## Town of North East

## Agricultural and Farmland Protection Plan

May 13, 2010

## **PREPARED BY:**

The Town of North East

with assistance from



## **Acknowledgements**

#### **Town Board**

David Sherman, Supervisor Dave McGhee Steven Merwin Tim Shaffer Carl Stahovec

#### **Steering Committee**

Dan Briggs Dianne Engleke Kent Kay Lynn Mordas, Chair John Perrotti Jack Pulver Jane Rossman Henry Smedley Kevin Smith

#### Participants of Public Outreach

Janet Bartomen Chip Barrett David Beeker Donald and Mary Booth Peter Coon Mark Doyle Alex Duncan Donald Duncan Leslie Farhangi Ralph Fedele Audrey Fisher Karen Kisslinger Mark Liebergall Petrina Lopane Patti Lynch Bill Lutz Ray McEnroe Edwin McGhee Krista McGhee Mike Meiller Louise Merriman Bobby Perrotti Jack and Jean Pulver Chris Regan Dave Reagon Jay and Marty Reynolds Robert Runge Harry and Julie Schroeder Ron Steed Andy Szymanowicz Donald Totman

#### Additional technical support was provided by:

Harry Baldwin - Dutchess County Agriculture and Farmland Protection Board Lindsay Carille and Noela Hooper - Dutchess County Department of Planning and Development Becky Thornton and Art Collings - Dutchess Land Conservancy Neil Curry and Les Hulcoop – Cornell Cooperative Extension of Dutchess County Betsy Mark – Dutchess County Office of Real Property Services

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#### Table of Contents

Executive Summary	1
Introduction and Context	4
The State of Agriculture in North East	8
Public Outreach for the Plan	20
Goals, Recommendations and Action Strategies	24
Implementation Matrix	41
Selection Criteria	40
Carrying the Plan into the Future	43

#### Appendices

- A: Agricultural Resource Maps
- B: American Farmland Trust Fact Sheet "Cost of Community Services Studies"
- **C:** Interview Themes
- D: Sample Conservation Easement Tax Abatement Program
- E: Purchase of Development Right Programs
- F: Community Preservation Act Law for the Town of North East
- G: Sample Incentive Zoning Code
- H: Sample Agricultural Definitions
- I: Sample Town Farm Map
- J: Sample Town Right-to-Farm Law
- K: NYS Office of Real Property Services Agricultural Assessment Pamphlet
- L: Sample Language Establishing a Town Agricultural Advisory Committee
- M: Resources

### **Executive Summary**

Agriculture has been the backbone of the Town of North East for generations. The sweeping views of farm fields define this community for residents and visitors alike. The fertile soils combined with convenient access to large markets in three states has historically supported a strong farm industry in the Town.

"The Town of North East has been for many years the pre-eminent farming town in Dutchess County."

- Harry Baldwin, Chairman, Dutchess County Agriculture and Farmland Protection Board

However, change has come to North East, threatening the future of agriculture, but also providing new opportunities for farmers and landowners. Once dubbed "Milk Row" because of the abundance of dairy farms to be found in North East, only 4 active dairies remain due to challenges of low milk prices and increased cost of doing business. The community has seen a slow influx of new residents, predominately in the development of large lots for second homes. At the same time, agriculture has diversified dramatically in North East, with farmers producing specialty crops for niche markets or selling directly to consumers through farmers' markets and restaurants.

Recognizing both the threats to and the opportunities for agriculture, the Town of North East embarked upon developing an Agricultural and Farmland Protection Plan in early 2008. The plan is a roadmap that describes ways that the town can address top concerns of local farmers and creating a supportive environment for agriculture.

With a grant from the New York State Department of Agriculture and Markets to develop the plan, the Town hired American Farmland Trust to assist in its development. A Steering Committee of agricultural stakeholders and community members including four active farmers, a farmland owner, an agricultural businessperson, and representatives from the Conservation Advisory Committee and the Town Board was tasked with guiding the planning process. The process included public meetings, monthly Steering Committee meetings open to the public, formal public comments, and one-on-one outreach to agricultural stakeholders through interviews. The Steering Committee used the results of this public outreach to identify opportunities to support agricultural businesses and strategies to limit threats to farmland in North East.

This work resulted in the four main goals of the plan identified below. Recommendations were then developed to implement these goals with action steps identified to achieve each recommendation. These recommendations provide the toolbox for leaders in North East to take action to support farm businesses and protect farmland for future generations. Some of these recommendations are simple, easily acted upon and will result in little or no cost to the town. Others are less straightforward or could involve greater town expenditures and require analysis before further action is taken. The plan also includes an implementation matrix to assist the Town in its implementation of recommended actions contained in the Plan. This matrix identifies key recommendations of the Plan and a suggested timeframe for implementation. It is recognized, however, that the Town Board will determine, in its discretion, which portions of the Farmland Protection Plan recommendations it will be implementing, and will be setting its own timeframes for such implementation.

The following list is an abbreviated summary of the recommendations outlined in detail in the plan:

# GOAL 1: Protect farmland to ensure a future for productive agriculture and to maintain the character of the community.

<u>Recommendation 1.1:</u> Research and implement property tax reduction programs to limit assessments on lands committed to long-term agricultural use

Recommendation 1.2: Assist farmland owners in participating in Purchase of Development Rights programs such as the Dutchess County Farmland and Open Space Program and the New York State Farmland Protection and Implementation Grants Program.

<u>Recommendation 1.3</u>: Act as a resource for landowners regarding property tax reduction programs for farmland.

<u>Recommendation 1.4</u> Research the opportunity to use incentive zoning to direct development towards desired locations and raise funds for permanent farmland protection.

<u>Recommendation 1.5:</u> Strengthen subdivision regulations to protect prime agricultural soils and encourage new development compatible with continued agricultural use. <u>Recommendation 1.6</u> Research the feasibility of a Transfer of Development Rights (TDR) program in North East.

## <u>GOAL 2: Support economic opportunities for farms and businesses that complement</u> <u>agriculture.</u>

<u>Recommendation 2.1:</u> Amend the Town zoning code to clearly define agricultural uses and under what conditions they are allowed.

<u>Recommendation 2.2:</u> Create incentives for agricultural businesses existing in Town or locating in Town.

<u>Recommendation 2.3</u>: Explore and implement opportunities to obtain federal and state funding for agricultural economic development.

## GOAL 3: Support agricultural education and awareness of its values and activities.

<u>Recommendation 3.1:</u> Create linkages between traditional tourism outlets and agriculture in North East.

<u>Recommendation 3.2</u>: Provide information to new landowners regarding the agricultural nature of North East.

<u>Recommendation 3.3</u>: Support the reinvigoration and expansion of Agricultural Education in the area public schools.

## GOAL 4: Encourage town policies and regulations that are supportive of agriculture.

Recommendation 4.1: Adopt a Town Right-to-Farm Law.

Recommendation 4.2: <u>Support efforts to clarify agricultural assessment standards</u> <u>Recommendation 4.3</u> Establish an Agricultural Advisory Committee to advise the Town in decisions with impact to agriculture.

<u>Recommendation 4.4</u>: Support a goal to have one farmer representative on each town board, including the Planning Board and the Zoning Board of Appeals.

<u>Recommendation 4.5</u>: Consider modifying the clustering rule as provided by the zoning code in the A5A district to encourage protection of workable agricultural land.

## I. Introduction and Context

When driving along Route 22 south into Dutchess County, one is struck by the sweeping expanses of farm fields nestled beneath the Taconic Range. Corn and hay blow in breezes that flow down the valleys of the Town of North East on a June day and one feels as if the clock has turned back in time.

In 1849, the Harlem Railroad extension brought change to the community of North East. The railroad provided access to New York City markets for local iron and dairy products and brought city residents north up the valley to find a different way of life. In some ways, not much has changed in 160 years. Metropolitan New York continues to provide an important market for agricultural products and new residents continue to make their way north along the Metro North rail line that now stops in Wassaic, just south of North East.

When it comes to agriculture however, much is different from what it was then in the Harlem Valley. The primary commodities being grown today have changed and dairy farms are fewer in number. In some cases, farms have become larger to take advantage of the economies of scale, but in others, they have significantly downsized in order to minimize labor costs and maximize a niche market. Farmers in the Hudson Valley more broadly have proved themselves innovative and able to adapt to changing economic pressures and consumer demand to keep the region one of the highest grossing agricultural areas in New York.

The region is also one of the most threatened. A study by American Farmland Trust identified Dutchess County as one of the most threatened agricultural areas in the state<sup>1</sup>. The scenic vistas that farmland provides are what also attract newcomers to the region. In many cases, residential development is occurring on the best farm soils – the same ground that grows tall corn, also perks well for septic systems and digs easily for basements.

"The working landscape is the backbone of what makes North East beautiful. The loss of it would irrevocably change our town." - Supervisor David Sherman.

<sup>&</sup>lt;sup>1</sup> "Farming on the Edge", American Farmland Trust, March 1997

#### **Development of a Farmland Protection Plan**

Recognizing the changing needs of the agricultural industry, the Town of North East embarked upon an Agricultural and Farmland Protection Plan in early 2008. The Town hired American Farmland Trust to assist in the development of the plan and tasked a Steering Committee of agricultural stakeholders and community members with guiding the process. That process has included public meetings, monthly Steering Committee meetings open to the public and one-on-one outreach to agricultural stakeholders through interviews. The process was meant to be as inclusive as possible and the feedback provided through these mechanisms directly impacted the recommendations of the plan.

Excerpt from the Town of North East application to New York State Department of Agriculture and Markets for a Municipal Farmland Protection Planning Grant:

"The Town of North East's character is embodied in its agricultural operations and the open spaces and vistas they preserve. Farming predates all other land uses in our Town and benefits our community in numerous ways....By creating and implementing a formal plan, the Town of North East can permanently protect valuable farmland and promote the viability of agriculture in the community."

#### History of Agricultural Planning in North East

This plan does not exist in a vacuum. North East has long recognized the resources – agricultural, natural and cultural – that make it distinct. Goal #2 of North East's Comprehensive Plan, completed in 1994, is to "encourage the continuation and diversification of agricultural activities." The Plan says, "It is the intention of the Comprehensive Plan to encourage the maintenance of agricultural activities and the preservation of land necessary to carry them out." Cited for this goal are such reasons as protection of food security, local jobs and scenic character. Recommendations to achieve this goal include, Purchase of Development Rights programs, a Right-to-Farm law, strengthened Conservation Subdivision rules, and increased agricultural education. The Town has successfully implemented some of these recommendations, including supporting the purchase of development rights on two farms totaling 437 acres in Town. However, some of the recommendations from this plan remain to be implemented.

In addition to the Town's Comprehensive Plan, the Dutchess Land Conservancy did an "Agricultural Preservation Study" in the Town of North East in 2000. The plan included an inventory of resources,

analysis of growth and development and recommendations for preserving agriculture in North East. Such recommendations included modifying zoning regulations to increase farm viability, adopting a Right-to-Farm law, developing a local Purchase of Development Rights program, and changing subdivision regulations to encourage conservation development. Many of these tools echo those from the Comprehensive Plan. Similar tools have been repeated in this plan when not yet implemented by the Town of North East.

Most recently, in February of 2008, Hudsonia Ltd, a nonprofit scientific research and education institute, completed a biodiversity study analyzing significant habitats in the Town of North East. They identified a series of ecologically significant habitats and mapped those resources in a comprehensive Geographic Information System. Habitat maps provide another planning tool when making decisions regarding land use in North East and indeed, Hudsonia suggested proactively planning for biodiversity through the use of these maps. One of the general strategies to achieve such conservation was by "preserve[ing] farmland potential wherever possible."

#### **Dutchess County Agricultural and Farmland Protection Plan**

The Dutchess County Agriculture and Farmland Protection Board wrote a plan outlining strategies to sustain agriculture and support farms in the County in 1998. Recognizing that towns play a significant role in supporting agriculture, the plan included recommendations for Municipal Planning Strategies. The number one recommendation in this section states, "agricultural protection strategies should be developed on a town-by-town basis." The plan also identifies actions that Towns should take to support agriculture, for example, passage of a local Right-to-Farm law and for the creation of core areas of protected working farmland in each town of at least 2,000 acres. Many of these actions are included here in North East's Agricultural and Farmland Protection Plan.

#### Community support for agriculture and farmland protection efforts

The Town Comprehensive Plan, completed in 1994, included a community-wide survey that rated the interest of residents on a variety of issues. The survey included questions related to farmland protection and support for agriculture as the backbone of the community. Of the 22% respondents to the survey, 82% showed strong support for preservation of agricultural land. 74% of respondents supported tax incentives for farmers by local and county governments to continue farming. 61% of town respondents placed local agriculture on the top 5 most important elements of the community. While this gauge of

public opinion is dated, it does represent historical support for policies that promote farm viability and protect farmland.

## II. The State of Agriculture in North East

#### Land in Agriculture

Data on land use in agriculture at the town scale is somewhat limited. Information was gathered from several sources to get an estimate of land in agriculture. While these numbers are not always consistent with one another, they illustrate the scale and location of farming in the Town of North East.

Table 1. Farm Operations by Area Operated		
Area Operated	# of Operations	
1 - 49 acres	8	
50 - 999 acres	27	
> 1,000 acres	1	

Data from 2007 Agricultural Census, USDA, 2007

As of 2002, the Agricultural Census provides information on farm operations within a given zip code area<sup>2</sup>. It is important to note that the Agricultural Census defines a "farm" as any operation that produces and sells \$1,000 or more annually in farm products. Responses to the written survey are voluntary and the census is taken every 5 years. From this data source, in 2007, there were 36 farm operations which responded to the Census in the Town of North East, down from 39 operations responding in 2002. Unfortunately this data source does not provide total acreage information. It does however, give the number of farm operations within given ranges of area operated as shown in Table 1 below. The majority of farms responding in the Town of North East are in the middle size range provided by the Census.

The acreage enrolled in state certified Agricultural Districts provides another measure of the quantity of land involved in agriculture. Landowners can apply annually to the County Agriculture and Farmland Protection Board to be included in an existing Agricultural District. The New York State Department of Agriculture and Markets provides important "right-to-farm" protections to landowners enrolled in Agricultural Districts. These benefits include protection against unreasonably restrictive local laws as well as determination of "sound agricultural practices" which can be helpful in private nuisance

<sup>&</sup>lt;sup>2</sup> The Zip Code 12546 was used to calculate statistics for the Town of North East. Portions of the Town of North East are in three other zip codes: 12501 (Amenia), 12503 (Ancram) and 12567 (Pine Plains). These areas have farm operations of substantial size and income that are not included in the data presented as it is impossible to extract only the Town of North East land from the Census data provided.

lawsuits. Upwards of 70% of the land base of Town – or 18,402 acres<sup>3</sup> – lies within the state certified Agricultural District. It is important to note that not all of this land is in agricultural production, however, as parcels are enrolled wholly and often include wooded areas or wetlands that are not suitable for cropping.

Parcels receiving agricultural assessment give yet another estimate of land in farms in North East. The New York State agricultural assessment program values land at its current use, rather than its highest and best use. Valuations are determined based on soil classes set at the state level and landowners must file annually with their local assessor to be included in the program. Land placed under agricultural assessment and then converted to non-agricultural use is subject to conversion fees. In order to qualify, a farm operation must utilize more than 7 acres (owned and/or leased) and gross an average of \$10,000 or more in farm sales annually. Farms less than 7 acres can qualify, but the operation must meet an average \$50,000 in sales annually.<sup>4</sup> In North East, there are 195 parcels or 14,457 acres currently receiving an agricultural assessment<sup>5</sup>.

The New York State Office of Real Property Services classifies land use in a series of standardized codes, with agricultural uses falling between 100-199. According to this data, the final estimate of land in agricultural use, is 11,128 acres or 158 parcels<sup>6</sup> in the Town of North East. This information, however, is often inaccurate; with numerous parcels coded incorrectly for primary perceived use. For example, a hay field may be coded as "Vacant Land". Likewise, an agricultural parcel that also has a home on it could be coded as "Residential". The map in Appendix A, "Land Use and Zoning" shows the distribution of these codes in the Town of North East.

#### Soils and Agricultural Resources

Approximately half of the total land in town is classified by the Natural Resources Conservation Service as good agricultural soils, with 4,858 acres classified as prime and 9,189 acres classified as statewide important.<sup>7</sup> "Prime farmland" soils is a classification given to soil groups that produce the highest yields with minimal inputs of energy and economic resources, and farming them results in the least damage to

<sup>&</sup>lt;sup>3</sup> Dutchess County Real Property Tax Service Agency 5/29/09

<sup>&</sup>lt;sup>4</sup> NYS Agriculture and Markets Law Article 25-AA, Section 301.

<sup>&</sup>lt;sup>5</sup> Data provided by Dutchess County Real Property Tax Service Agency, 8/20/09

<sup>&</sup>lt;sup>6</sup> Dutchess County Tax Parcels, Real Property Tax Service Agency, acquired by CCEDC GIS lab July 27, 2009.

<sup>&</sup>lt;sup>7</sup> SSURGO Database, USDA Natural Resource Conservation Service, 2006

the environment. "Soils of statewide importance" is a classification given to soils considered of statewide importance for the production of crops. These soils are important to agriculture in the state, but exhibit some properties that do not meet Prime Farmland criteria, such as seasonal wetness. Some of these soils have been developed for other uses as can be seen by the apparent parcel size on the map "Farmland Soils and Agricultural District Parcels" in Appendix A. However, nearly 50% of these combined soil classifications remain on open land that receives an agricultural assessment – in essence 50% of the quality soils in town are presumably still in farm use. These soil resources are finite; once paved over it is difficult to reclaim them.

Table 2 shows the variety of agricultural products currently grown in Town as described by the steering committee and farmers interviewed. This wide variety is an indication of both the quality of the soils for agriculture and the adaptability of the farmers in the community.

Agricultural Products in North East		
vegetables		
hot house tomatoes		
specialty salad greens		
beef		
poulty		
pork		
lamb		
beefalo		
eggs		
forage for animals		
fluid milk		
goat cheese		
nursery and greenhouse plants		
cut flowers		
wool		

Table 2. Agricultural products currently grown or raised in North East.

Information provided by the Steering Committee for the plan.

In addition to these agricultural products, there are also a number of equine operations in the Town. By all estimates, a considerable portion of the Town of North East remains agricultural. This plan takes a proactive approach to designing strategies to protect this land and promote its continued agricultural use in the future.

#### Value of the Agricultural Economy

The availability of statistical information on the value of the agricultural economy on the town scale is limited. According to the 2007 Agricultural Census, 22 of the 36 farms had reported less than \$50,000 each in sales, 7 had reported between \$50,000 and \$249,999 in sales each and 7 had reported greater than \$250,000 in sales each<sup>8</sup>. While data on total farm sales in the Town is not available, it can be safely concluded that agriculture is a multi-million dollar economic engine in the Town of North East. Research from Cornell University shows that every dollar grossed on the farm doubles in the community as farmers purchase goods and services locally.<sup>9</sup>

The Agricultural Census provides much more information about the economics of agriculture at the County scale. This data provides insight to the trends seen locally in agriculture over time. While milk and commodity prices experienced a temporary high in 2007, input prices also skyrocketed, decreasing the total net income of farms. Despite increases in the market value of crop and livestock production in 2007 – up 41% from 2002 according to the Census of Agriculture – the average farm in Dutchess County lost \$8,850 in 2007. The dairy industry has been hit hardest with this trend. In 1972 there were 275 dairies in the County. Thirty years later, there were only 38.

Not all sectors of agriculture are declining in the County, however. The value of products sold directly to the consumer increased 44% from 1997 to 2007 – an increase of approximately \$1.2 million in sales during that time. This documents an increase in the number of farms moving from commodity production to direct retail, either through farmer's markets, community supported agriculture enterprises, or working directly with end-users such as restaurants and institutions. In addition, hired labor payroll on farms, one measure of the economic impact of agriculture in Dutchess County, doubled between 2002 and 2007 to over \$15 million.

The value of farms in Dutchess County has also increased over time. The estimated value of land and buildings on farms increased by \$87 million during the period from 1997 to 2007 according to the Census of Agriculture. During this time there was also a decrease in land ownership and increase in land leased for agricultural operations as shown in Figure 1 below. As land values increase and residential development shifts the ownership of farmland to non-farmers, many adaptive farmers in

<sup>&</sup>lt;sup>8</sup> All sales values reported are gross sales of farm products.

<sup>&</sup>lt;sup>9</sup> "Agriculture-Based Economic Development: Trends and Prospects for New York." Nelson Bills, July 2001.

Dutchess County are finding more economical ways to access land. Farmer stakeholder interviews conducted by American Farmland Trust in the Town of North East supported this same trend, with 5 of the 10 participants indicating that they leased land from other landowners to support their farm businesses.



Figure 1. Change in ownership of farmland in Dutchess County from 1997-2007. *Agricultural Census data*.

Certainly, agriculture is facing difficult economic times. As the trends described above show, however, a shift appears to be occurring to compensate for tough times and changing markets. The trend towards more direct marketing allows farm businesses to set the price for their products. At the same time, businesses are doing more to cut costs, like renting rather than owning land. In this fiscal environment, it becomes even more critical that the Town support opportunities for farms to diversify their businesses and also increase awareness for new landowners on how to keep their properties in production.

#### Open space value

In addition to its strict economic value, agriculture has an important value in maintaining "open space". Approximately 6,314 acres of land in town are protected. This land includes 2,125 acres under New York State ownership in the Taconic State Park<sup>10</sup> and one parcel owned by The Nature Conservancy. The Dutchess Land Conservancy (DLC) holds perpetual conservation easements on 4,107 acres of

<sup>&</sup>lt;sup>10</sup> Public Land Boundaries, New York State Office of Cyber Security & Critical Infrastructure Coordination, 2005

land<sup>11</sup>. Approximately 60% of the easements held by DLC are on "working lands" in either agricultural or forestry production with the remainder on parcels protected for other purposes, including open space. These lands are shown on the "Protected Lands" Map in Appendix A. Land under easement, unlike State-owned land, remains in private ownership and thus on the Town tax roll.

These open landscapes are essential to the definition of the community of North East. The scenic vistas provided from the hills and valleys surrounding the Village of Millerton are priceless in what they bring to the community in tourism dollars and a sense of place for residents. In addition, these open landscapes are what attract new residents to the community. In some cases, this landscape may be caused by the permanent conversion of productive farmland to a major subdivision. In other circumstances, the poor siting of a new house along a scenic roadway or continued fragmentation may significantly impact the scenic, ecological or open space values found in North East. This plan outlines ways the Town can continue to grow while limiting impact on this important resource.

<sup>&</sup>lt;sup>11</sup> Data provided by Dutchess Land Conservancy, 8/12/2009

#### Indicators of conversion pressure

The population of North East has grown very slowly over the last 50 years as shown in Figure 2. In 2000, according to the US Bureau of the Census, there were 3,002 residents in the town. Interestingly, while the population of the Village of Millerton has held relatively flat over the last 70 years, the population of the Town has grown consistently, albeit slowly, since 1930. Observations of community members echo this statistical trend. New residential construction is occurring outside the village, typically on lots larger than the zoning minimum. The "Property Class and Zoning Districts" Map in Appendix A shows current zoning boundaries and parcel assessor code identification in North East.



Figure 2. Population of Town of North East and Village of Millerton 1930 – 2000. US Census data.

The average household size at the time of the last Census (2000) was 2.5 persons with a total of 1,366 housing units in the Town. Of this total, 84% was occupied with about two-thirds owner-occupied and one-third occupied by renters. Approximately 10% of the housing stock was identified as seasonal, recreational or occasional use. New residential construction has fluctuated slightly from 2000 to date as shown in Figure 3 with on average 10 new homes per year. Interestingly, the highest level of new home construction was seen in 2002. Other regional data is consistent with this trend seen in North East and may be linked to New York City residents leaving the urban environment for more rural and seemingly safe places.



Figure 3. Building permits issued for new residential construction in the Town of North East from 2000 to July 2009. *Town of North East Building Department data*.

Unlike in the neighboring towns of Amenia and Pine Plains, conversion pressure on farmland in North East has not been from a significant influx of people or large housing subdivision proposals. Here, according to farmers and residents, development pressure has come primarily from a small influx of people purchasing large lots historically owned or rented by farmers. In many instances, these new homeowners seek to continue renting their land to farmers in exchange for the tax programs provided. However, if development of these lots is not done with an eye towards protecting access to quality agricultural soils, it can have significant impact. Poorly planned construction on large lots can result in areas too small to farm or difficult to access with modern equipment. While much different than a large influx of people or homes, the end result of the development occurring in the Town of North East has been increased pressure on farming due to the reduction of available farmland acreage.

#### The consequences of possible farmland conversion

Farmland provides many benefits to the Town of North East that could be impacted if land was converted to other uses. It provides the scenic backdrop that invites tourists to the area. For residents, farmland provides a visual reminder of the agricultural heritage of the community. Well-managed farmland also provides important environmental benefits as wildlife habitat and water recharge areas that would be negatively impacted if land were converted to developed uses. Farmland has significant economic value to the community as well. American Farmland Trust "Cost of Community Services" studies analyze town revenue and expenditures from different land use categories. A study done in North East in 1989 showed that for every dollar taken in as revenue in taxes from the Residential category, \$1.36 in services was required. At the same time, for every revenue dollar generated from Agricultural Land, only \$0.21 in services was required. While these numbers are dated, similar studies done by AFT across the country over the last 20 years show consistent results; farmland pays more in taxes than it demands in services from the community. In essence, farmers pay taxes on their homes, just like other residents living on a <sup>1</sup>/<sub>4</sub> acre lot, and pay significant additional taxes on their remaining land as well. These studies show that agriculture's influence extends to supporting the necessary services required by other land uses in the community. For more information on Cost of Community Services studies, see the Fact Sheet in Appendix B.

## III. Public Outreach for the Plan

Public input was particularly important to the Town in this planning process. Public outreach was seen as a two-way communication stream. The community was given several opportunities to provide input on the needs of the agricultural industry in North East and the strategies that would best support farm businesses. In addition, the Town had an opportunity to educate the community on the development of the plan. The Town employed several different methods to ensure public participation in the plan.

#### Public Meetings:

The Town hosted three public informational meetings on the plan. The first was a kick-off meeting held on September 30, 2008 to introduce the community to the planning process and gather initial feedback on the state of agriculture in Town. Twenty-three people attended the meeting. David Haight, New York Director for the American Farmland Trust, provided an overview of agriculture in New York. Liz Brock, lead consultant for the Town from American Farmland Trust, provided an introduction to the planning process for the Town of North East and then led the group in a brainstorming session about the strengths, weaknesses, opportunities and threats (SWOT) to agriculture in Town.

A second public meeting was held on August 3, 2009 to gather feedback on the draft plan with 16 people in attendance. The draft plan was made available to the community electronically on the North East Community Center website. In addition, it was available in hard copy format at the Town Hall, Village Hall and the North East-Millerton Public Library. The public was asked to provide comments on the plan. Comments were recorded and considered for revision by the Steering Committee. Written comments were also accepted on the first draft of the plan for a period of nine weeks. Concerns were raised in this first round of comments including, the accuracy of the statistics and the recommendations presented in the first draft. These concerns were addressed through a revised second draft of the plan presented at a third public meeting.

A third public meeting was held on November 16<sup>th</sup> to take public comment on the revised plan. Approximately 43 people were in attendance for this meeting that included a presentation about the planning process and proposed recommendations. Public comment was accepted from many individuals in attendance at the meeting and the public comment period was extended to November 30<sup>th</sup> to accommodate additional input.

#### Town Board Input:

American Farmland Trust presented the draft recommendations of the plan as compiled by the steering committee to the Town Board on April 2, 2009. Three members of the Board were present in addition to Supervisor David Sherman. This meeting gave Town Board members the opportunity to provide input on the draft goals and recommendations for the plan prior to receiving the final completed plan for approval. It also provided another opportunity for public comment, as several members of the community were present for that meeting. Comments from the meeting were taken into consideration and edits were made as appropriate to the goals and recommendations.

#### Press:

The Millerton News provided a final outlet for public education on the plan. They published 19 articles about the Plan throughout the duration of the process. At the beginning of the process, an editorial was published strongly supporting the Town's efforts to protect farmland.

#### SWOT [ Strengths, Weaknesses, Opportunities and Threats] Analysis:

In the initial meetings of the steering committee and at the first public meeting, factors relating to and impacting agriculture in the Town were discussed at length, with input solicited from the public at large, those directly involved in agriculture or agriculturally-related businesses, and members of the steering committee. Input was solicited on four categories as they relate to agriculture in the Town of North East: strengths, weaknesses, threats and opportunities. Generally, strengths and weakness are factors that may be internal to the community, while opportunities and threats may be factors that are external to the community. This information provided important guidance to the Steering Committee as they developed draft goals and recommendations for the plan. The combined results of this SWOT exercise are provided in the chart below.

#### <u>Stakeholder Interviews:</u>

American Farmland Trust did a series of 10 stakeholder interviews to get one-on-one feedback directly from members of the agricultural community in North East. The steering committee identified the interview candidates and approved the themes to be covered in each interview (Appendix C). Responses were kept confidential so as to ensure honesty in the interviews. In addition, Lynn Mordas and Kent Kay from the Steering Committee interviewed eight additional agricultural stakeholders from the community. Common themes that derived from those conversations were compiled into the summary found below. This summary was provided to the steering committee and helped guide the development of goals and recommendations for the plan. The interview summary was mailed to all participants interviewed by American Farmland Trust with an invitation to provide comment or correction. Interviewees were also sent a draft copy of the goals and recommendations for the plan as well as personal invitations to public meetings to solicit direct comment.

## S.W.O.T. Analysis

INTERNAL FACTORS		
Strengths	Weaknesses	
Defines the community/sense of place	Inflated land values and high property taxes	
Opportunity to provide local food	Lack of processing facilities	
Environmental protection benefits	Lack of labor pool willing to work on farms	
Quality agricultural natural resources	Minimal agricultural education in schools	
Flexibility of farm businesses to adapt to new business environments	Lack of agricultural support infrastructure and services	
Available strong markets for products (NYC, Greenmarkets, etc.)	Difficulty in getting products into local markets	
Residential development has retained farmable parcels	Barriers for entry of new farmers are high	
Good farmer/neighbor relationships for now		

**T** A

EXTERNAL FACTORS		
Opportunities	Threats	
	Lack of farmer involvement on town boards and	
Increased consumer demand for local food	committees	
Close to new markets for products (Wholefoods,	Residential development pressure; mainly in the	
CIA, etc)	form of estate/recreation homes	
Expansion in demand for organic - especially	Lack of next generation interested in taking over	
meat products	farm operations	
	Limited availability of workforce housing in	
Agritourism/ Agri-"tainment"	region	
Cooperatives between farmers to reduce the cost		
of needed services and achieve joint marketing	Economic viability of traditional agricultural	
opportunities	commodities	
	Increased dependence on leased land to grow	
New crop development, including berries, hops	crops and manage wastes	
Renewable energy, including wind, solar,	Zoning limits options to diversity farm operation	
biofuels, etc.	and increase viability	
Town to assist in marketing of local farms and		
farm products		
Value-added processing facilities		
Link second homeowners with local farmers		
Docking station for potential mobile		
slaughtering facility		

## North East Agricultural Stakeholder Interview Summary

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

#### The communities of North East and Millerton have changed significantly over the last 50

years. "Used to be you were able to do work with a hand shake – we knew all our neighbors." Those interviewed shared nostalgia of the past, going to Millerton on a Friday night, doing their shopping and catching up with neighbors about the latest farm practices. The village has changed, shifting from stores providing basic needs to boutiques and antiques. Traffic has increased on Route 22, especially on Friday nights as weekenders arrive. As farms have gone out of business, the farm community has become increasingly segregated with at least two producers interviewed indicating that they have no real relationships with other farmers in town.

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

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

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

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

#### Farmers are interested in tools that would improve their profitability and support farm

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

## V. Goals, Recommendations and Action Strategies

Using input provided by the community at public meetings, during stakeholder interviews and at steering committee meetings, the steering committee drafted four goals for North East's Agriculture and Farmland Protection Plan. These include:

- Protect farmland to ensure a future for productive agriculture and to maintain the character of the community.
- ✓ Support economic opportunities for farms and businesses that complement agriculture.
- ✓ Support agricultural education and awareness of its values and activities.
- ✓ Encourage town policies and regulations that are supportive of agriculture.

These four goals guided the development of appropriate recommendations and the action steps necessary to achieve them. Tools were chosen to specifically meet the needs of the farmers and agribusinesses in North East. The following pages outline in detail each goal, recommendation and action step required to achieve it. The last page in this section includes an implementation matrix that succinctly identifies each action step, the responsible parties to achieve it and a timeline for completion of the activity. Appendix M identifies other resources available to assist the community in implementing this plan.

# <u>GOAL</u>: Protect farmland to ensure a future for productive agriculture and to maintain the character of the community.

It is recognized that much of the charm of North East for tourists and residents alike is based upon the beauty of the hills and valleys that run through town. Agriculture has been and continues to be a major industry and the predominate land use in Town. The wide sweeping hay fields and rows of corn overlooking the Taconic Range are part of the reason North East has been enjoyed by generations of local residents and newcomers alike as a place to stay and live.

## I. RECOMMENDATIONS

1. <u>Research and implement property tax reduction programs to limit assessments on lands</u> <u>committed to long term agricultural use.</u>

Term easements provide a possible mechanism to relieve property taxes on farmland while temporarily securing it for the future. Such mechanisms do not permanently protect land, but they do help enhance farm viability by reducing property taxes for enrolled farmland owners and provide additional time for complementary actions to keep land in farming.

Often called the "Lease of Development Rights", landowners receive a reduction in the assessment of their property as determined by the structure of the program in the community. A term conservation easement is placed on the land, restricting the ability to develop it for non-agricultural uses. The reduction in the assessment and term of the easement are often linked – with a higher reduction coming in exchange for a longer term. The program would have to be researched to gauge interest by farmers and to determine its potential financial impact on the community. With a reduction in assessment, the tax base is shifted to other town residents. Sample language from a community employing this program can be found in Appendix D.

## **ACTION STEPS:**

- a. Research the feasibility of a term easement program that would give landowners a reduction in assessment on land committed to remaining in agricultural production for a specific number of years (e.g. a 10-20 year term).
- b. Gauge local interest in the program from farmers and community residents. Determine legality of program for community.
- 2. <u>Assist farm landowners in participating in Purchase of Development Rights programs such as</u> <u>the Dutchess County Farmland and Open Space Program and the New York State Farmland</u> <u>Protection and Implementation Grants Program.</u>

The Purchase of Development Rights (PDR) is a voluntary method of private land conservation that pays landowners to permanently protect their land for agriculture. The land is

protected by way of an agricultural conservation easement that runs with the deed to the property and permanently extinguishes the right to develop the property for non-agricultural uses. In exchange for this, landowners are compensated for the value of the development rights. Value is determined by way of two appraisals – one of the property at its fair market value and one as if the restrictions were in place. The difference between the appraisals represents the value of the development rights. PDR projects have the dual benefit of permanently protecting farmland and making land more affordable for the next generation of farmers.

There are several programs that will fund PDR projects in New York. The Federal Farmland Protection Program is funded through the Farm Bill and will contribute up to 50% of the value of the development rights. The New York State Farmland Protection Program is funded through the State's Environmental Protection Fund and pays for 75% of the value of development rights. Dutchess County also has matching funds available to contribute towards PDR projects. All three programs require some form of matching dollars either in the form of cash or a "bargain sale" – when the farmer accepts less than 100% of the value of the development rights. In the case of Dutchess County, the program requires that Town's contribute dollars to the local match. More information about these programs can be found in Appendix E. Another option would be the establishment of a transferable state income tax credit equal to the value of the donation of a permanent conservation easement. Such credits could be sold to businesses and individuals that could use the credits while providing cash to landowners for unused credits.

There are several mechanisms by which the Town could raise matching funds for a PDR program. Funding could be raised through a municipal open space/farmland protection bond, voted on by the residents of North East. North East already has had success with this approach when the voters in the Town of North East authorized a \$10,000 bond to match state and county funding to protect the Pulver Farm.

Alternatively, the Town could also research the use of the Community Preservation Act to fund farmland protection. The Community Preservation Act (CPA) is a real estate transfer fee of a maximum of 2% of the value of a home sale that is above the current median for Dutchess County, currently at \$309,900.<sup>12</sup> *Like a bond, it would also require a town referendum supported by the voters of the Town of North East to be enacted.* The Town would also need to adopt a plan on how and where the funds would be used prior to a vote (separate from this plan). In other communities, the CPA has been used successfully in conjunction with a Municipal Bond to pay back the terms of the bond, limiting the impact of the bond on taxpayers in the community. A copy of the Community Preservation Act authorizing language for the Town of North East can be found in Appendix F. The Town could also seek alternative funding sources, such as private donations or foundation grants to fund farmland protection work in the community. Regardless

<sup>&</sup>lt;sup>12</sup> Data for 2008, provided by NYS Office of Real Property Services.

of the strategy employed, the impacts to the community, including to taxpayers, should be fully explored with public input prior to seeking a vote for approval.

## **ACTION STEPS:**

- a. Work with the Dutchess Land Conservancy and Dutchess County Planning Department to hold workshops on the State and County PDR programs.
- b. Support new tax incentives for the permanent protection of farmland as well as greater funding for New York's Farmland Protection Program and the federal Farm and Ranchland Protection Program.
- c. Explore opportunities for local funding to match federal, state and county funding for PDR projects.
- 3. Act as a resource for landowners regarding property tax reduction programs for farmland.

The most commonly heard concern among farmers and agricultural landowners revolved around the challenge of paying high property taxes. Many programs currently exist at the state level to address this issue – including agricultural assessment (discussed earlier), farm building exemptions, forestland exemptions and the Farmer School Tax Credit. Some landowners may not be aware of these opportunities. The Town can provide contact information for the appropriate people to assist landowners in learning about and enrolling in these and other existing programs, as well as about the programs established locally.

In addition to these programs, there are additional opportunities the Town could consider to ease the property tax burden on farmland. Special use districts can choose to adopt agricultural assessment valuation, lowering the contribution required from farmland that may not demand services like other land uses. This decision must be made on a case-by-case basis by each special use district and is at the full discretion of the district.

The appropriate assessment of land and buildings helps farmers and agricultural landowners maintain the land in agriculture. Valuations and standards change, as do assessors. The Town should require the assessor to receive training provided by New York State Department of Agriculture and Markets and the Office of Real Property Services on the State standards of assessing agricultural land and buildings.

The Agricultural Advisory Committee established by the Town will act to support development of the local laws and to apprise the Town of other mechanisms for farmland tax relief. This Committee could also be called upon as necessary by the Board of Assessment Review.

## ACTION STEPS:

- a. Pro-actively distribute a Resource Package for landowners including information on agencies and programs that can provide expertise in keeping land in agriculture; including, but not limited to: Cornell Cooperative Extension of Dutchess County, Dutchess Land Conservancy, Soil and Water Conservation Districts, and Farm Service Agency.
- b. Explore opportunity for fire districts to adopt agricultural assessment for valuation.
- c. Encourage the Town Assessor to regularly attend trainings provided by the New York State Department of Agriculture and Markets and Office of Real Property Services on appropriate taxation of agricultural buildings and land.

## 4. <u>Research the opportunity to use incentive zoning to direct development towards desired</u> <u>locations and raise funds for permanent farmland protection.</u>

Incentive zoning can be an alternative method of funding farmland protection activities, while also encouraging growth in places deemed appropriate by the Town. With this tool, there must be an incentive for builders in order to achieve success. An incentive is offered to potential developers of property – ideally something that they would like that zoning currently does not allow. Incentives offered could include, though not limited to, increased building density, decreased setbacks or increased impervious lot coverage. Areas appropriate for this type of construction are identified by the community and a fee structure to achieve them is established. The funds from such development could then go to land conservation priorities in the community. The Town should work with the agricultural community and builders in the region in order to research a program most likely to meet the needs of each. A sample incentive zoning code can be found in Appendix G.

## ACTION STEP:

- a. Research the feasibility and applicability of incentive zoning to development to appropriate areas and raise funds for farmland protection activities.
- 5. <u>Strengthen subdivision regulations to protect prime agricultural soils and encourage new</u> <u>development compatible with continued agricultural use.</u>

The development of large lots has in many cases resulted in quality acreage left available to continue in agriculture. Subdivision language that directs development to less prime soils, however, will give the Planning Board tools to limit the impact of development on agriculture, both on the land being developed and neighboring lands. To date, this kind of development has proven a double benefit – farmers can continue to work the land and as a result, new landowners may qualify for agricultural assessment on their properties.

## ACTION STEP:

a. Consider revised subdivision codes that require new development to minimize impact on prime agricultural soils or soils of statewide importance where practical.

### 6. <u>Research the feasibility of a Transfer of Development Rights (TDR) program in North East.</u>

Transfer of Development Rights, like incentive zoning, is another planning tool that can be used to generate funds for farmland protection. In this case, TDR programs establish parameters whereby the private sector pays for the conservation of land important to the community. Two "districts" must be identified in the community – a "sending" area and a "receiving" area – and development rights are transferred from one to the other. Sending districts are the parts of the community that will be the focus of land conservation efforts. Receiving districts are the focus of more concentrated development.

TDR programs are authorized by New York State Law 261-A. The law requires towns to identify specific sending and receiving districts in accordance with a comprehensive plan. Land in sending districts must be permanently protected by conservation easements. Development rights removed from protected properties can either be used to increase the density of development in receiving districts or "banked" for sale to a developer in the future.

TDR programs are very complex and require significant oversight and management at the Town level. Challenges can arise when sending and receiving districts are in different taxing jurisdictions. In addition, sending and receiving districts are often challenging for a community to identify. However, it represents an opportunity for the private market place to fund farmland conservation and community residents expressed interest in exploring its potential use in North East.

## ACTION STEP:

a. Work with Dutchess County Planning Department, the Town Planning Board, the Agricultural Advisory Committee and Dutchess Land Conservancy to research the feasibility of the development of a Transfer of Development Rights program in North East.

## GOAL: Support economic opportunities for farms and businesses that complement agriculture.

One of the best ways to protect agriculture as a land use is to support it as a business. If farms are profitable, they will be under less financial pressure to convert the land to other uses. In some cases, farm profitability is supported by complimentary businesses occurring on the farm, including bed and breakfasts, home offices or machine repair shops. These businesses help diversity the farm and bring income to the farm family, while not affecting the use of the land for agriculture. In other cases, profitability depends upon access to farm support services like tractor dealerships, animal processing facilities and value-added kitchens. The Town of North East lies in an important location in the heart of a tri-state agricultural region. As such, it could be a magnet to agricultural businesses that would help support the industry as a whole.

## **II. RECOMMENDATIONS**

1. <u>Amend the Town zoning code to clearly define agricultural uses and under what conditions they are allowed.</u>

As farms increasingly have to adapt and change under economic pressures, they may seek new and different opportunities to diversify their operations or change products. The Town zoning code should be explicit in it's support of agriculture as a preferred land use in the A5A district and supported elsewhere in the town. There are two examples of discrepancies in the zoning code with respect to its definition of different types of farms.

In the main definition for "Farm", the code lists, "…nurseries, greenhouses or other similar operations used primarily for the raising of agricultural or horticultural commodities." Then later, it defines "Farm, Nursery" separately with limitations on construction of such facilities. Nursery farm operations should be included in the definition of "farm" in the code.

"Agriculture" is defined very narrowly and all references to it have been stricken from the code, replaced instead by a broad definition of "farm". While this achieves the goal of supporting diverse farm operations, it is confusing to the reader. The Board could consider removing definition of "agriculture" completely if "farm" is preferred to provide clarity.

## ACTION STEP:

- a. Reconcile discrepancy between distinct definition of "Farm, Nursery" and "nurseries" as defined under the definition of "farm"<sup>13</sup>.
- b. Reconcile the use of the word "farm" vs. "agriculture" in the zoning code.<sup>14</sup>

<sup>&</sup>lt;sup>13</sup> See § 98-5, page 9817-9818 and § 98-48.1, page 9888.1

 $<sup>^{14}</sup>$  See § 98-5, page 9809 ("agriculture") and page 9817 ("farm)

#### 2. Create incentives for agricultural businesses existing in Town or locating in Town.

The Town can support farms by supporting opportunities for the creation or expansion of businesses that complement agriculture. As farms seek to diversify their income, they may develop related businesses on the farm, for example, machine or equipment repair. Such related businesses help other farms in the community – one of the most commonly lamented challenges of farms in North East was the distance from needed service businesses. Small changes to the zoning code could potentially encourage such businesses to locate in North East and increase the economic viability of farms in North East.

For example, currently, the code stipulates that  $2/3^{rd}$  of the produce sold in a farm market must be produced on the farm where the market resides. This rule predicates that each farm have their own market. An amendment to change the code to say " $2/3^{rd}$  of the produce sold must come from farms in the Town of North East" would allow for cooperative arrangements between farms and lower overhead costs. The remaining  $1/3^{rd}$  could remain as currently stated in the code as required to come from within a 100-mile radius of North East.

Agri-tourism operations allow farmers to diversify their businesses and expand their income streams. Such operations also serve an important role in educating the non-farm public about agriculture, helping to build better neighbor-relations and appreciation for agriculture in the community. Currently, agri-tourism is not defined nor explicitly allowed in the zoning code, presenting possible challenges to those who wish to employ it as a tool.

There are many other agri-businesses that support farms and can help diversify farm income. The Town can define these businesses, such as slaughterhouses, food processors or equipment and feed dealers as they see appropriate in an "Agricultural Commerce" definition and allow for their use in zones as compatible with existing uses. Sample definitions of such agricultural terms can be found in Appendix H.

## **ACTION STEP:**

- a. Consider modifying the zoning code as it pertains to farm markets to allow for cooperation between farmers.<sup>15</sup>
- b. Include a definition for Agri-Tourism and add it as a use under the definition of "Farm" in the zoning code.
- c. Create a definition for Agricultural Commerce and define zones for its inclusion.

<sup>&</sup>lt;sup>15</sup> See § 98-48.10, page 988.34-36

3. Explore and implement opportunities to obtain federal and state funding for agricultural economic development.

Federal and State departments typically allow for applications to be made for economic development funds of a general or directed nature. Municipalities are eligible to apply for these funds for individual projects. Additionally, legislative initiatives are also available as means for funding specific projects. The Town can be proactive in soliciting funds as additional incentive to agricultural or agriculturally supportive projects. Projects currently under consideration by area farmers include a co-operative kitchen for value added production, a distribution center for agricultural products to be marketed co-operatively, a mill for processing shorn wool, a meat aging facility, and an authorized site for a mobile slaughterhouse facility. The Town can use the many tools included in this plan to support the development of such operations as ensuring the sustainability of local farms, which would also serve to create local jobs.

#### **ACTION STEPS:**

- a. Authorize the Town Clerk to receive electronic notices of funding opportunities from the State and Federal governments .
- b. Establish communications between the Town Board and Legislators to express interest in their support of funding for specific projects on an as needed basis.

## GOAL: Support agricultural education and awareness of its values and activities.

As stakeholders described in interviews and public meetings, the nature of the community of North East and Millerton has changed. The population of the community today has less direct connection to agriculture compared to 30 years ago. As a result, understanding of the sights, sounds and smells related to working agriculture has decreased in the community. In addition, there are less children growing up on farms leading to a decrease in youth education about agriculture. With the age of farmers increasing, a new generation must be trained and willing to take over the farm businesses of today. And as the population continues to shift, a general understanding of the realities of agriculture must be instilled in the community in order to see a future for working farms in North East.

## **III. RECOMMENDATIONS:**

1. <u>Create linkages between traditional tourism outlets and agriculture in North East.</u>

The Town can provide education about agriculture by advertising themselves as a "farm community" through traditional tourism tools. For example, a Town website could include links to agricultural businesses and farm events as well as the weekly Farmers' Market in Millerton. The website could also serve as a hub of information for agricultural landowners as mentioned in Recommendation I.2.

Other communities have used Town farm maps showing cooperating farms, farm stands and markets, hours of operation, contact information and products for sale as a tool to promote agriculture and provide education to it's residents. In the Town of North East, with the popularity of the Rail Trail with visitors to the community, the Agricultural Advisory Committee could work collaboratively with cycling clubs to create a farm bike route or one-time farmer's market at the finish line of big cycling events in the community. A sample farm map from a Town website can be found in Appendix I.

In addition, the equine industry continues to grow in Dutchess County, with the County ranked number one statewide in the 2007 Agricultural Census in the number of horses. Several farms in North East have adjusted to meet this new demand by growing high quality hay and feed for horses, keeping the land open and farms viable. The Town could consider opportunities to provide equine related activities where appropriate to encourage the growth of this industry and education of residents about agriculture.

## **ACTION STEP:**

- a. Create a town website and highlight the agricultural nature of Town.
- b. Create a town farm map for distribution at local businesses in Millerton, the Millerton Farmer's Market, train station in Wassaic and Harlem Valley Rail Trail entrances (amongst other places).
- c. Connect agriculture to cycling events in North East.
- d. Consider opportunities to increase equine related tourism.

#### 2. Provide information to residents regarding the agricultural nature of North East.

Just as the Town can provide information to visitors through the tools described above, it can provide educational opportunities about agriculture to its residents – both new and existing. Such education could limit the potential for farmer/neighbor conflicts and help educate residents on the realities associated with agriculture. Examples of the information that could be provided include:

- ✓ Common farm practices likely to be witnessed by residents including plowing, seeding and spreading manure – describing why the practices are done on the farm.
- ✓ The benefits agriculture provides to the community in open space, jobs, and moderation of property taxes.
- ✓ A sample breakdown of what it "takes" to farm, a list of the income vs. sample expenditures spent on farm – for example, how much it costs to produce a potted plant for your yard, a tomato for your dinner or a gallon of milk for your breakfast.

The information could be shared via the web, or through a printed brochure that could be distributed in local shops, the Town Hall and on farm.

The community would also benefit from additional opportunities to talk directly with farmers about their continuing efforts as stewards of the lands they utilize. This could be accomplished by establishing a Farm Day event in the Town, which would enable the public to interact with farmers at either a specified location or at individual farms. This event could also be co-coordinated with the annual tractor pull event sponsored by the local FFA chapter.

#### **ACTION STEPS:**

- a. Work with Cornell Cooperative Extension to create a brochure highlighting the agricultural nature of North East and the realities it presents.
- b. Consider sponsoring an annual Farm Day event for the community.

#### 3. Support the reinvigoration and expansion of Agricultural Education in the area public schools.

In the past, the public school district in the local community had a strong and vibrant agricultural education program. This helped to instill an interest in agriculture in students and prepare them for careers or future education in agriculture. To ensure the sustainability of agriculture and a future workforce, the Town can be proactive in supporting (with the cooperation of other Towns included in the school district) agricultural education at all levels, elementary, middle and high school. This support may come in the form of restricted in-kind or financial contributions from the community.

#### **ACTION STEPS:**

- a. Support agricultural education opportunities in municipal schools.
- b. Partner with organizations like Cornell Cooperative Extension and Farm Bureau to ensure existing programs are being implemented in North East schools.
- c. Work with 4H, FFA and other youth programs to promote local agriculture and build public awareness of agricultural practices, challenges facing local farmers and the benefits of farms to North East.

#### **<u>GOAL</u>**: Encourage town policies and regulations that are supportive of agriculture.

The overall goal of this agricultural and farmland protection plan is to institutionalize the support of agriculture in the Town of North East. The plan will announce to the region, the county and the state that North East is a farming community and the Town is dedicated to supporting the future for farms. This commitment can be demonstrated by policies and regulations that encourage agricultural use of land. As the community continues to grow and change, these policies will ensure that agriculture continues to be supported.

#### **IV. RECOMMENDATIONS:**

1. Adopt a Town Right-to-Farm law.

A Town Right-to-Farm law puts residents and visitors on notice that they are in an agricultural community. This visible demonstration of support of farms can go a long way towards educating people about the agricultural nature of the community. In addition, a Town Right-to-Farm law can move the Real Estate Disclosure Notice required by NYS Agricultural Districts Law up in the purchasing process. Currently, if property is sold that borders or lies within an Agricultural District, state law requires the new landowner to sign a Real Estate Disclosure Notice certifying that the landowner understands he or she is moving into an agricultural community. The law requires this notice be signed at closing. A Town Right-to-Farm law can require signature of this document at the time a purchase and sale contract is signed, ensuring early on that landowners are aware of the consequences of moving into an agricultural district. A Town Right-to-Farm law can also establish a dispute resolution process to mediate conflicts and avoid expensive legal battles. A sample Right-to-Farm law can be found in Appendix J.

#### ACTION STEP:

a. Work with the Agricultural Advisory Committee described below to draft a Right-to-Farm law that is appropriate for North East and adopt it.

#### 2. Support efforts to clarify agricultural assessment standards

The Town of North East re-evaluated all assessments of land parcels in 2007. The aftermath of this effort included public outcry of unevenness in application, particularly of farmlands, farm buildings and agricultural assessment exemptions. The state laws regarding such assessments and

their applications include provisions under both Agriculture and Markets Law and Real Property Law. Repeated amendments to theses statutes have created a maze of code, which is difficult to interpret. The Town can assist in clarifying interpretations of these laws. A fact sheet related to proper agricultural assessment can be found in Appendix K Distribution of such information will help ensure uniform and fair application of standards. Parcels in agricultural use should be appropriately coded as such, even where there is mixed use. Additionally, the pay back (required five year tax payback) for conversion of agricultural lands with prior agricultural assessment exemption should be addressed to preclude automatic triggering upon any transfer of deed of such lands, instead allowing time to determine whether the lands or any portion thereof are to remain in agricultural use subsequent to transfer of ownership.

#### ACTION STEP:

a. Work with the Town Assessor and others to provide clear guidance to farm landowners about agricultural assessment standards and how these standards are to be applied.

b. Encourage the state Office of Real Property Services to provide clear guidance and direction for the application of agricultural assessment standards and support state legislation to give the Office of Real Property Services the authority to ensure compliance with such standards.

# 3. <u>Establish an Agricultural Advisory Committee to advise the Town in decisions with impact to agriculture.</u>

Agricultural Advisory Committees are used in communities to serve as a sounding board on issues that could have impact on agricultural businesses and lands. Committees meet as needed to address concerns raised by other town boards regarding new development proposals and other land use issues as they pertain to agriculture. This entity would also serve as a resource for the assessment and assessment review processes. Such committees secure a voice for agriculture at the Town level. The committee in North East can work with other local town governments to support the development and placement of mutually beneficial agricultural support facilities in the area (e.g. mobile or regional USDA slaughter facility for meats/poultry, wool processing mill, co-operative cheese production/aging facility). The authorizing law should establish eligibility criteria for the committee's members and define their tenure. A Sample local law establishing a Town Agricultural Advisory Committee can be found in Appendix L.

#### **ACTION STEP:**

- a. Draft and adopt a local law establishing an Agricultural Advisory Committee and appoint its members.
- 4. <u>Support a goal to have one agricultural representative on each town board, including the Planning</u> <u>Board, and Zoning Board of Approvals.</u>

While the Agricultural Advisory Committee described above would institutionalize input by farmers about land use decisions affecting farmers, it would not have regulatory authority. The Town can ensure farmer input on land use decisions by supporting a goal to have an agricultural representative on each town board. Such a representative could include for example, farmers, agricultural landowners, agri-business owners or employees.

#### **ACTION STEP:**

- a. Encourage agricultural representatives to participate on town boards and committees.
- 5. <u>Consider modifying clustering rule as provided by zoning code in the A5A district to encourage</u> protection of workable agricultural land.<sup>16</sup>

Zoning ordinances can give bonuses for residential or commercial development plans that cluster new growth away from high quality farmland. Bonuses are based on the goal of protecting viable agricultural soils. This technique allows developers to receive income from the additional units while protecting farmland acreage that could be rented to farmers for continued use.

Currently, in the A5A district, a clustering density bonus of up to 25% is allowed, however, a minimum of 100 acres must be protected for agricultural use in order to be eligible. This high minimum acreage may be limiting the potential use of this tool to protect farmland. Currently, there are 67 parcels greater than 100 acres in North East and another 63 between 50 – 100 acres in size.<sup>17</sup> Reducing the minimum acreage required for the clustering density bonus could double the parcels eligible for this program and potentially increase its use to protect farmland.

#### **ACTION STEP:**

a. Consider lowering the acreage threshold required for clustering bonus to a minimum of 50 acres in the A5A district to encourage development of land that is compatible with continued agricultural use.

<sup>&</sup>lt;sup>16</sup> See § 98-12, page 9833.

<sup>&</sup>lt;sup>17</sup> Data provided by Neil Curry, Cornell Cooperative Extension Dutchess County, GIS Lab, 9/16/09.

## VI. Implementation Matrix

Action to Implement Recommendation	Responsible Parties <sup>18</sup>	Timeframe for Completion
Adopt a Town Right-to-Farm Law	Town Board	1 year
Establish an Agricultural Advisory Committee (AAC)	Town Board	1 year
Create a definition for "agricultural commerce" and define zones for its inclusion	ZBA/CCE/Planning Board/AAC	1 year
Include a definition for "agri-tourism" and add it as a use under the definition of "Farm" in the zoning code	ZBA/AAC	1 year
Reconcile discrepancy between two definitions of "nursery" in zoning code	ZBA/AAC	1 year
Reconcile the use of the word "farm" vs. "agriculture" in the zoning code	ZBA/AAC	1 year
Explore opportunity for fire districts to adopt agricultural assessment	Town Board/CAC/AAC	1 year
Pro-actively distribute a Resource Package to agricultural landowners	CCE/CAC/Assessor	1-2 years
Create a town farm map	CCE/CAC/Assessor/AAC	1-2 years
Research incentive zoning as a tool to raise funds for farmland protection	DCP/ZBA/AAC	1-2 years
Consider strengthened subdivision regulations to require new development to minimize impact on soils classified as Prime or Statewide Important	DCP/Planning Board/AAC	1-2 years
Connect agriculture to cycling events	HVRTA/NECC/CAC	1-2 years
Create a brochure that outlines the realities of living in an agricultural community	Town Board/AAC/CCE	1-2 years
Assist farm landowners interested in participating in PDR Programs.	CAC/Town	2-4 years
Create a town website and highlight farms	Town Board/AAC	2-4 years
Research the feasibility of and interest in a term easement program	Town Board/AAC	2-4 years
Research the feasibility of and interest in a TDR Program	Town Board/AAC	2-4 years
Consider lowering the acreage threshold required for clustering bonus to a minimum of 50 acres in the A5A district	ZBA/Planning Board/Town Board/AAC	2-4 years
Consider opportunities to increase equine related tourism	AAC	2-4 years
Support efforts to clarify agricultural assessment standards	Town Board/AAC/Assessor	2-4 years

<sup>&</sup>lt;sup>18</sup> The following acronyms are used here: AAC - Agricultural Advisory Committee, CAC - Conservation Advisory Council, CCE - Cornell Cooperative Extension, DCP - Dutchess County Planning, DLC - Dutchess Land Conservancy, HVRTA – Harlem Valley Rail Trail Association, NECC – North East Community Center, ZBA - Zoning Board of Appeals

# VI. Implementation Matrix

Work with the Dutchess Land Conservancy and Dutchess County Planning Dept to hold PDR workshops	DLC/DCP/CAC	on-going
Encourage assessor to regularly attend trainings on appropriate taxation of agricultural buildings and land	Town Board/Assessor	on-going
Explore opportunities to obtain federal and state funding for agricultural economic development	Town Board/AAC	on-going
Consider sponsoring an annual Farm Day event for the community	Town Board/AAC/CCE/DLC	on-going
Support agricultural education opportunities in municipal schools and work with participating students to promote local agriculture.	Town Board/AAC/CCE	on-going
Support a goal to have one agricultural representative on each town board	Town Board	on-going

# VII. Selection Criteria for Farmland Protection

Several of the plan's recommendations lend themselves well to selection criteria to be used by the Town to determine eligibility and suitableness for programs, for example, the development of a town funded Purchase of Development Rights program or incentive zoning to fund farmland conservation.

The Town wished to create selection criteria that are fair, quantitative when possible and consistent with the goals and recommendations of the Agriculture and Farmland Protection Plan. The Town also wished to match criteria when possible to other funding programs likely to be used including, the New York State Farmland Protection Program and the Dutchess County Farmland Protection Program, in order to leverage maximum funding for farmers and landowners.

The criteria outlined below represents a first draft at ranking the benefits provided to the community through farmland protection. The criteria are expected to be revised over time to meet changing standards set by other funding sources and the changing needs of the community. The Agricultural Advisory Committee will be tasked with periodically reviewing the selection criteria, as well as using it to review potential farmland protection projects. The Town Board must approve all revisions of the selection criteria with recommendations provided by the Agricultural Advisory Committee.

Ranking Criteria	Measurable	Thresholds	Weight	MAX weight			
	Quality of Soils	1/2 a point for percent soil classified as prime or statewide important up to 90%	0.5 * X%	45			
	% Total Farm Available for Ag	Greater than 80%	30				
	Production <sup>1</sup>	60-80%	15	30			
Viability of Subject Farmland		< 60%	5				
viability of Subject Parimane	Succession/Business Planning	Owner has a business and/or succession plan	10	10			
	Succession/ Busiliess Flamming	Owner does not	0	10			
		Adjacent to farmland under easement	15				
	Proximity to Farmland	within < 0.5 mile from farmland under easement	10	15			
		> 0.5 mile from farmland under easement	0				
		Owner participated in AEM Tier 3 or has other conservation plan in place	15				
	Conservation Planning <sup>2</sup>	Owner participated in AEM Tier 2	10	15			
		Owner does not participate in AEM or other conservation planning tool	0				
Environmental Impact		Farm contains or is adjacent to critical habitat as defined by Hudsonia maps	15				
	Buffer to Signficant Natural Public Resource	Farm is in an aquifer recharge area	15	30			
	Resource	Farm does not contain habitat or lie within aquifer recharge area	0				
	Proximity to Conservation Land <sup>3</sup>						
		> 500 ft from protected conservation land	0				
	Proximity to Rail Trail	Adjacent to or visible from Rail Trail	5	5			
		Not adjacent to or within view from Rail Trail	0	5			
	Proximity to Route 22	Adjacent to or visible from Route 22	5	5			
Community Impact	Frominity to Route 22	Not adjacent to or visible from Route 22	0	5			
inpact	Description to Historia D	Farm is in Historic District or contains building on National or State Historic Registry	5				
	Proximity to Historic Resources	Farm is adjacent to Historic District	2	5			
		Farm is not adjacent to or within Historic District	0	1			
	8	• /	Total	1			

#### Notes on Selection Criteria:

1 – Land available for agricultural production can include tillable acres, pastureland, managed woodlots, maple sugar bush, or other lands as deemed "productive" by the Agricultural Advisory Committee.

2 – The Agricultural Environmental Management (AEM) program is administered by the New York State Department of Agriculture and Markets. The program's mission is to "protect and enhance the environment while increasing the economic viability of New York State's agricultural industry and improving the quality of life for all New Yorkers." The program employs a series of Tiers to achieve this mission. Tier 1 consists of an inventory of the farm and it's resources. Tier 2 is an assessment of possible on-farm concerns and a documentation of baseline conditions on the farm. Tier 3 is the development of a conservation plan for the farm to address possible concerns or issues. The farm may qualify for these points at the discretion of the Agricultural Advisory Committee if they have another conservation plan on the farm, not through AEM, including, but not limited to a Comprehensive Nutrient Management Plan or a Whole Farm Plan.

3 – Conservation land can include state-owned parks and wetlands, town-owned land or land owned by conservation organizations like The Nature Conservancy and the Dutchess Land Conservancy, or other lands as deemed "conservation" by the Conservation Advisory Committee.

## VIII. <u>Carrying the Plan into the Future</u>

As agriculture changes with the seasons and over time, so too must this Agricultural and Farmland Protection Plan. The recommendations and strategies laid out here present an opportunity to support farm businesses today and protect agricultural land for the future. It will take commitment on behalf of the farm community in North East, as well as on the part of the Town boards and committees to implement the strategies defined here. As the community continues to grow and agriculture continues to change, new or revised approaches may be needed to address new concerns or new opportunities. The Town can continue to seek ways of supporting connections for its agricultural operations and businesses with the strong markets for their products to the south. The plan should be revisited in at least 10 years in order to identify and address new challenges and opportunities for agriculture in the Town of North East.

# Farmland Soils and Agricultural District Parcels

Town of Northeast, NY



# Legend



Wetlands

USDA Soils by Farmland Classification\*\*
All areas are prime farmland
Farmland of statewide importance
Prime farmland if drained



1:20,500



## Data Sources:

Roads: Dutchess County Real Property Tax Service Agency, January 2008

Massachusetts Boundary: MassGIS, March 1991

Municipal Boundaries: Dutchess County Real Property Tax Service Agency, 2007

Tax Parcels: Real Property Tax Service Agency, July 2008

Wetlands: US Fish and Wildlife Service, 2007

Streams, Waterbodies: National Hydrography Dataset, USGS, 2007

USDA Soils by Farmland Classification : SSURGO Database, USDA Natural Resource Conservation Service, 2006

Agricultural District Parcels (DRAFT): Dutchess County Real Property Tax Service Agency and CCEDC, 2007-2008; Subject to change pending 2008 annual inclusion and addendum updates.



July 2008

GIS Lab, Environment Program Cornell Cooperative Extension Dutchess County

WARNING: This map is not a substitute for land surveys or legal documents. No accuracy or completeness guarantee is implied or intended.

CCEDC provides equal program and employment opportunities. The programs provided by this agency are partially funded by monies received from the County of Dutchess.

# Protected Lands

Town of Northeast, NY



# Legend

—— Local Ro	bad
County	Road
—— State Ro	bad
Stream	
Waterbo	ody

Tax Parcels

Wetlands

**Protected Lands** Harlem Valley Rail Trail Harlem Valley Rail Trail (Proposed) Municipal/State Boundary



Land Under Easement



1:20,500

Data Sources:

Streams/Waterbodies: National Hydrography Dataset USGS, 2007

Roads: Real Property Tax Service Agency, January 2008

Trails: OCIS, June 2007

Municipalities: Real Property Tax Service Agency, April 2007

Wetlands: US Fish and Wildlife Service, 2007

Protected Lands: from Tax Parcels, Dutchess County Real Property Tax Service Agency, July 2008, identified by CCEDC GIS Lab; Dutchess Land Conservancy, March 2008; NYS DEC, 2007



# July 2008

CCEDC provides equal program and employment opportunities.

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WARNING: This map is not a substitute for land surveys or legal documents. No accuracy or completeness guarantee is implied or intended.

# Property Class and Zoning Districts

Town of Northeast, NY





# Legend









# Data Sources:

Streams, Waterbodies: National Hydrography Dataset, USGS, 2007

Roads: Real Property Tax Service Agency, January 2008

Zoning Boundaries: Dutchess County Planning Department January 2008

Municipalities: Real Property Tax Service Agency, April 2007

Massachusetts Boundary: MassGIS, March 1991

Land Use Codes: Tax Parcel Boundaries, Real Property Tax Service Agency, July 2008



Cornell University Cooperative Extension Dutchess County

July 2008

CCEDC provides equal program and employment opportunities.

The programs provided by this agency are partially funded by monies received from the County of Dutchess.

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# Farmland Information Center

# FACT Sheet

COST OF

# COMMUNITY

# SERVICES

# **STUDIES**



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

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

#### DESCRIPTION

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

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

#### METHODOLOGY

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

COCS studies involve three basic steps:

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

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

#### HISTORY

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

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

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

#### FUNCTIONS & PURPOSES

Communities pay a high price for unplanned growth. Scattered development frequently causes traffic congestion, air and water pollution, loss of open space and increased demand for costly public services. This is why it is important for citizens and local leaders to understand the relationships between residential and commercial growth, agricultural land use, conservation and their community's bottom line. COCS studies help address three claims that are commonly made in rural or suburban communities facing growth pressures:

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

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

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

Median COCS Results

\$1.25 \$1.00 \$1.15 \$0.75 \$0.50 \$0.25 \$0.28 \$0.36 \$0.00 Commercial Working & Residential & Industrial Open Land

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

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

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

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

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

# COST OF Community Services

# STUDIES

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

www.farmlandinfo.org

(800) 370-4879



American Farmland Trust works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment.

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

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
Colorado				
Custer County	1:1.16	1:0.71	1:0.54	Haggerty, 2000
Saguache County	1:1.17	1:0.53	1:0.35	Dirt, Inc., 2001
Connecticut				
Bolton	1:1.05	1:0.23	1:0.50	Geisler, 1998
Durham	1:1.07	1:0.27	1:0.23	Southern New England Forest Consortium, 1995
Farmington	1:1.33	1:0.32	1:0.31	Southern New England Forest Consortium, 1995
Hebron	1:1.06	1:0.47	1:0.43	American Farmland Trust, 1986
Litchfield	1:1.11	1:0.34	1:0.34	Southern New England Forest Consortium, 1995
Pomfret	1:1.06	1:0.27	1:0.86	Southern New England Forest Consortium, 1995
Georgia				
Carroll County	1:1.29	1:0.37	1:0.55	Dorfman and Black, 2002
Grady County	1:1.72	1:0.10	1:0.38	Dorfman, 2003
Thomas County	1:1.64	1:0.38	1:0.66	Dorfman, 2003
Idaho				
Canyon County	1:1.08	1:0.79	1:0.54	Hartmans and Meyer, 1997
Cassia County	1:1.19	1:0.87	1:0.41	Hartmans and Meyer, 1997
Kentucky				
Lexington-Fayette	1:1.64	1:0.22	1:0.93	American Farmland Trust, 1999
Oldham County	1:1.05	1:0.29	1:0.44	American Farmland Trust, 2003
Maine				,
Bethel	1:1.29	1:0.59	1:0.06	Good, 1994
	1.1.27	1.0.37	1.0.00	0000, 1774
Maryland	4 4 4 5	1 0 40	1 0 45	
Carroll County	1:1.15 1:1.17	1:0.48 1:0.34	1:0.45 1:0.66	Carroll County Dept. of Management & Budget, 1994
Cecil County Cecil County	1:1.17	1:0.34	1:0.88	American Farmland Trust, 2001 Cecil County Office of Economic Development, 1994
Frederick County	1:1.12 1:1.14	1:0.28 1:0.50	1:0.53	American Farmland Trust, 1997
Harford County	1:1.14	1:0.40	1:0.91	American Farmland Trust, 2003
Kent County	1:1.05	1:0.64	1:0.42	American Farmland Trust, 2002
Wicomico County	1:1.21	1:0.33	1:0.96	American Farmland Trust, 2001
Massachusetts				
Agawam	1:1.05	1:0.44	1:0.31	American Farmland Trust, 1992
Becket	1:1.03	1:0.83	1:0.72	Southern New England Forest Consortium, 1995
Deerfield	1:1.16	1:0.38	1:0.29	American Farmland Trust, 1992
Franklin	1:1.02	1:0.58	1:0.40	Southern New England Forest Consortium, 1995
Gill	1:1.15	1:0.43	1:0.38	American Farmland Trust, 1992
Leverett	1:1.15	1:0.29	1:0.25	Southern New England Forest Consortium, 1995
Middleboro	1:1.08	1:0.47	1:0.70	American Farmland Trust, 2001
Southborough	1:1.03	1:0.26	1:0.45	Adams and Hines, 1997
Westford	1:1.15	1:0.53	1:0.39	Southern New England Forest Consortium, 1995
Williamstown	1:1.11	1:0.34	1:0.40	Hazler et al., 1992
Michigan				
Marshall Twp., Calhoun Cty	. 1:1.47	1:0.20	1:0.27	American Farmland Trust, 2001
Newton Twp., Calhoun Cty.		1:0.25	1:0.24	American Farmland Trust, 2001
Scio Township	1:1.40	1:0.28	1:0.62	University of Michigan, 1994

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

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

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

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

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

#### Themes to be addressed in Interviews as pertinent, Town of North East:

- 1. *Basics about the business* commodity grown, scale, history at the site, quality of the land.
- 2. *Future of the business* have a business plan? Expansion plan for next 5, 10, 15 years? Plans for transfer of farm to next generation (is there a next generation?)
- 3. Labor availability, skill level, cost
- 4. *Land in town* availability, rent, buy/cost, quality (where is the best land), competition for land
- 5. *Agricultural issues viewed as important* impression of the state of agriculture in their town/county/state. What does the future look like in general? What are the biggest challenges and opportunities facing the industry?
- 6. Benefits of farms to community impression of what farms bring to town/region
- 7. *Infrastructure* roads, utilities, communications
- 8. *Finance/Service Providers* availability of skilled accountants, attorneys, consultants, agribusiness, lenders.
- 9. *Impacts of development on agriculture* is farmland being lost in town? To what? Where? What is causing it? What are the impacts of conversion?
- 10. *Policy* town, county support of business of ag and land use of ag
- 11. Farmer/neighbor conflicts what kind of issues/opportunities are there in town for you
- 12. *Other land use conflicts* development issues/zoning issues? Local issues pertinent to you? (water/drainage/etc)
- 13. What tools/opportunities would be useful to you to protect the business and land use of *ag*?(share information on each)
  - a. Town Right to Farm Laws
  - b. Ag Districts
  - c. Conservation Easements Purchase, term, lease, transfer
  - d. Farm-friendly zoning
  - e. Better siting/subdivision standards
  - f. Infrastructure planning
  - g. Agricultural assessment
- 14. What can the town do that would be most helpful to you as the owner of a farm business?
- 15. What challenges are facing your farm business?

Local Law No. 1 of 2004, a local law amending Chapter 125, Conservation Easement of the Town Code, as adopted by Local Law No. 12 of 1996

#### Chapter 125, CONSERVATION EASEMENT

[HISTORY: Adopted by the Town Board of the Town of Clifton Park 12-16-1996 by L.L. No. 12-1996. Amendments noted where applicable.] GENERAL REFERENCES Environmental Conservation Commission -- See Ch. 13. Farming -- See Ch. 102. Freshwater wetlands and stream protection -- See Ch. 124. Land development -- See Ch. 141. Parks and preserves -- See Ch. 152. Subdivision of land -- See Ch. 179. Zoning -- See Ch. 208. Planned development districts -- See Ch. A217.

#### § 125-1. Title.

This chapter shall hereinafter be known and cited as the "Conservation Easement Law of the Town of Clifton Park."

#### § 125-2. Purpose.

It is the purpose of this chapter to provide for the acquisition of interests or rights in real property for the preservation of historic buildings and landmarks and open space and areas which shall constitute a public purpose for which public funds may be expended or advanced after due notice and a public hearing, by which the Town of Clifton Park may acquire, by purchase, gift, grant, bequest, devise, lease or otherwise, the fee or any lesser interest, development right, easement, covenant or other contractual right necessary to acquire open space or open area or historic buildings or landmarks as the same are defined in § 125-5 herein.

#### § 125-3. Legislative authority.

In accordance with § 247 of the General Municipal Law of the State of New York, the Town Board of the Town of Clifton Park has the authority to acquire such interests or rights in land. Pursuant to the above authority, the Town Board has prepared and adopted this chapter setting forth standards to be followed in the acquisition of such interest.

#### § 125-4. Jurisdiction.

This chapter shall apply to the entire area of the Town of Clifton Park.

#### § 125-5. Definitions.

For the purpose of this chapter, the terms used herein are defined as follows: FARM or FARMING -- As defined in §§ 208-7 and 208-8 of the Town Code. HISTORIC BUILDINGS OR LANDMARKS -- As described in Article XIII of Chapter 208 of the Town Code.

LOT -- As defined in § 208-7 of the Town Code.

OPEN SPACE or OPEN AREA -- Any space or area characterized by natural scenic beauty or whose existing openness, natural condition or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development or would maintain or enhance the conservation of natural or scenic resources. For the purposes of this section, natural resources shall include but not be limited to agricultural lands defined as open lands actually used in bona fide agricultural production.

§ 125-6. Procedure for granting easement.

A. Proposal by owner. Any owner or owners of land which constitutes an historic building or landmark for an historic conservation easement or a minimum of 15 acres per lot, or a minimum of 7.5 acres each for any two adjoining lots for a conservation easement may submit a proposal to the Town Clerk, who shall refer such application to the Town Board. The Town Board shall refer such application to the Historic Preservation Commission or to the Environmental Specialist, as appropriate, and the Planning Board for review and comments within 45 days if deemed necessary and/or appropriate. Such proposal shall be submitted on a conservation easement application form available in the Town Clerk's office. It must include a copy of a full size tax map showing the property, if the entire parcel is being encumbered, or a copy of a survey map and metes and bounds description of the proposed area if it is part of a parcel.

B. Review by Historic Preservation Commission or Environmental Specialist in conjunction with the Planning Board. Upon receipt of such proposal, the Historic Preservation Commission or Environmental Specialist and Planning Board shall investigate the area to determine if the proposal would be of benefit to the people of the Town of Clifton Park. If the Historic Preservation Commission or Environmental Specialist and Planning Board, if such a referral has been made by the Town Board, determines that it is in the public interest to accept such a proposal, each shall recommend to the Town Board that it hold a public hearing for the purpose of determining whether or not the town should accept such proposal.

C. Public hearing by Town Board. The Town Board shall, within 45 days of receipt of such advisory opinion, hold a public hearing concerning such proposal at a place within the Town of Clifton Park. At least 10 days' notice of the time and place of such hearing shall be published in a paper of general circulation in such town, by the Town Clerk. A written notice of such proposal shall be mailed by the applicant to all adjacent property owners and to any municipality whose boundaries are within 500 feet of the boundaries of said proposed area and to the school district in which it is located. Receipts of mailing shall be submitted to the Town Clerk's office prior to the date of the public hearing.

D. Determination. The Town Board, after receiving the reports of the Historic Preservation Commission or Environmental Specialist and the Clifton Park Planning Board and after such public hearing, may adopt the proposal or any modification thereof it deems appropriate or may reject it in its entirety. E. Recording agreement. If such proposal is adopted by the Town Board, it shall be executed by the owner or owners in written form and in a form suitable for recording in the Town Clerk's office.

F. Cancellation. Said agreement may not be canceled by either party. However, the owner or owners thereof may petition the Town Board for cancellation upon good cause shown, and such cancellation may be granted only upon payment of the penalties provided in § 125-8 herein.

G. The owner shall pay to the town a fee of \$15 which shall be deemed a reasonable sum to cover the costs of administration, no part of which shall be returnable to the applicant.

§ 125-7. Valuation for taxation.

After acquisition of any such interest pursuant to this chapter, the valuation placed upon such area for purposes of real estate taxation shall take into account and be limited by the limitation on the future use of the land.

§ 125-8. Penalty for violation or cancellation.

In the following paragraph "substantial" will be defined as a 100% increase in the density of the parcel which will trigger a review and final determination by the combined efforts of the Town Assessor, Director of Planning and Environmental Specialist. The determination of substantial as it relates to historic structures will be referred to the Historic Preservation Commission, as it has expertise in this area and will review the project to make a determination on the penalty.

If there is a substantial violation of the terms and conditions of the easement agreement or if said agreement is canceled by the Town Board upon petition, the then owner or owners of said property must pay to the Town of Clifton Park the following amounts:

A. All taxes granted abatement under and pursuant to the Historic Preservation Commission or Environmental Specialist easement agreement, said taxes to include the state, county, town, school districts and all special improvement districts and other taxing units to which the property is subject. Said back taxes shall be limited as follows: Any easement broken before its 11th year will be subject to a five-year maximum rollback; an easement broken between its 11th and 15th year will be subject to a four-year maximum rollback; an easement broken in its 16th year or later will be subject to a three-year maximum rollback.

B. The penalty assessed on the basis of the previous year's tax abatement multiplied by a factor equal to the term of the easement divided by the current year of the easement. This factor shall not exceed five.

C. Property covered by a conservation easement that is destroyed by fire or natural disaster will not be penalized unless the future use of the land or buildings is changed.

§ 125-9. Types of Easements.

In applying for the easement, the applicant should state the type of easement proposed. The following types of easements may be proposed:

a Conservation easement: the applicant agrees that land under easement will not be developed, built upon or otherwise changed during the term of the easement.

b Conservation easement (farming purposes): the same as Subsection a, except that farm structures as described in §§ 208-7 and 208-8 of the Town Code which are used as part of an active agricultural operation, are permitted, and are granted the same percentage(%) of easement value remaining taxable on the land. The land and buildings under easement shall be principally and actively used for farming purposes for the term of the easement, but approved farming easement applicants can also apply for other tax saving programs without penalty. The conservation easement will be applied first, and can not be shifted from one program to another.

c Conservation easement (historic preservation): the applicant shall preserve the Historic Building or Landmark as described in Article XIII of Chapter 208 of the Town Code.

Land covered by a conservation easement may be sold at any time, but the terms and conditions of the easement shall run with the land and continue until its expiration.

#### § 125-10. Duration.

Easements proposed must be subject to a minimum term of 15 years. There is no maximum term.

§ 125-11. Valuation percentages.

The assessor is legally required to take into account and be limited by the limitation on the future use of the land resulting from the easement. The following table of tax assessment is presently in use.

Percent of Pre-Easement Value Remaining Taxable

Years	Conservation	Farming Purposes	Historic Preservation
15	20	15	15
16	19	14	14
17	18	13	13
18	17	12	12
19	16	11	11
20	15	10	10
21	14	10	10
22	13	10	10
23	12	10	10
24	11	10	10
25±	10	10	10

§ 125-12. Exceptions.

Other than for historic preservation easements, it will be required that a parcel which include a principal dwelling exclude a one acre, (43,560 square feet) area with a maximum of three acres (130,680 square feet) encompassing the dwellings and designate that area as an exception to the easement.

#### § 125-13. Cancellation.

The easement may be canceled by applying to the Town Board. At the time of such cancellation or if the terms of the easement have been violated by the landowner, the town will assess rollback taxes and a penalty as outlined in § 125-8 of this chapter. The penalty shall be assessed against all the land under easement, except in the case of the death of a sole owner in which case the penalty will be assessed only against that portion which is to be developed or changed in use within one year of the date of death. Thereafter, the penalty and back taxes will be levied upon the land under easement.

#### TOWN OF CLIFTON PARK – CONSERVATION EASEMENT PENALTY MULTIPLIER

(Applied to the previous year's tax reduction)

	15	5.0	5.0	5.0	3.8	3.0	2.5	2.1	1.9	1.7	1.5	1.4	1.3	1.2	1.1	1.0	
	14	5.0	5.0	4.7	3.5	2.8	2.3	2.0	1.8	1.6	1.4	1.3	1.2	1.1	1.0		
	13	5.0	5.0	4.3	3.3	2.6	2.2	1.9	1.6	1.4	1.3	1.2	1.1	1.0			
	12	5.0	5.0	4.0	3.0	2.4	2.0	1.7	1.5	1.3	1.2	1.1	1.0				
· •	11	5.0	5.0	3.7	2.6	2.2	1.8	1.6	1.4	1.2	1.1	1.0					
Easement	10	5.0	5.0	3.3	2.5	2.0	1.7	1.4	1.3	1.1	1.0						
Term	9	5.0	4.5	3.0	2.3	1. <b>8</b>	1.5	1.3	1.1	1.0							
	8	5.0	4.0	2.7	2.0	1.6	1.3	1.1	1.0								
	7	5.0	3.5	2.3	1.8	1.4	1.2	1.0									
	6	5.0	3.0	2.0	1.5	1.2	1.0										
	5	5.0	2.5	1.7	1.3	1.0											
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	;
			C	urrei	nt Ye	ear C	)f Ea	sem	ent								

#### CONSERVATION EASEMENT

#### 125 Attachment 1

#### **Policy Statement**

Clifton Park continues to grow. Each year, more and more people are buying land and building homes in the town as the area continues to expand. Pressures to find buildable land will necessarily move sights westward.

People want to live in Clifton Park for many reasons. The town is a wonderful place to live. It is convenient to job centers, it has an excellent school system and well-managed, active recreation programs; but, most of all, Clifton Park is exceptionally scenic, with lots of historic landmarks, wooded hills and rolling fields.

Many of Clifton Park's first suburban residents came here to escape the crowded urban environment of the city, but the city has followed. In a few cases, not much thought was given to the need to preserve some of Clifton Park's original character - the very historic and environmental quality that attracts people to the town.

Open space and historic conservation is more than aesthetics. There are other needs for open space in Clifton Park. Open space areas can help to meet basic human needs for places to relax or play, to meet with friends and neighbors, to enclose neighborhoods so they can be easily identified as social communities, to link homes with shopping centers so they can be safely reached by walking or cycling.

Rural areas with valuable mineral, agricultural and forest lands need to be set aside for sand, gravel, food and timber production, especially when the future supplies of these goods from other areas are becoming more and more uncertain.

Finally, many open lands in Clifton Park play important parts in the ecological system; they absorb floodwaters, prevent soil erosion, provide habitat for wildlife, help cleanse the air of pollutants and moderate the climate by providing shade and windbreaks. They help to reduce dust and noise pollution and provide visual relief from the often cluttered urban landscape. These wetlands must be protected.

Our commitment is to the citizens of Clifton Park, those who live here now and those who will live here in future years. On your behalf, we are dedicated to keeping Clifton Park as a community of people who have a close relationship with the land. Open land is a part of our lives, and we are all part of the Clifton Park environment. What we do with our lands and landmarks will shape our future and our children's future.

We are committed to Clifton Park's future as a community with coexisting suburban, rural and agricultural areas which welcomes development interests consistent with the preservation of these characteristics.

#### CLIFTON PARK CODE

We are also concerned with our lands which represent valuable areas of regulated resource. We want to maintain farming and forest production as a viable way of life. We believe suburban and rural interests can coexist in harmony but that Clifton Park's future growth should be related to the existing characteristics.

Our neighborhoods and communities should be separated as distinct areas instead of mindless extensions of suburban sprawl.

Parks and recreation areas should be closely related to neighborhoods and communities; places people can walk or cycle to, rather than drive.

Commercial and employment centers should be screened from, but linked to, residential areas.

Development should minimize disturbance to the land; neighborhoods with trees, streams and soils left intact.

It is this Board's intention and desire to preserve open space and historic landmarks whether they are isolated or adjacent to residential or commercial development.

#### DESCRIPTION

FACT SHEET New York State's Farmland Protection Program was enacted in 1992 as part of the Agricultural Protection Act. The program encourages counties and towns to work with farmers to promote local initiatives that help maintain the economic viability of agriculture and protect the industry's land base.

Under this program, funds are available to develop county agricultural and farmland protection plans and implement farmland protection projects. Since the enactment of the Agricultural Protection Act, more than 49 counties have received planning grants to develop agricultural and farmland protection plans. In 1996, the state amended Article 25-AAA to provide counties that have approved plans, or eligible municipalities, with implementation grants to purchase development rights (PDR) to farmland.

**NEW YORK STATE'S** 

FARMLAND

**PROTECTION** 

**PROGRAM:** 

PURCHASE OF

DEVELOPMENT

RIGHTS

## SEPTEMBER 2004



American Farmland Trust NORTHEAST REGIONAL OFFICE 6 Franklin Square, Suite E Saratoga Springs, NY 12866 Tel: (518) 581-0078 Fax: (518) 581-0079 Web: www.farmland.org E-mail: neaft@farmland.org Purchase of development rights (PDR) is a voluntary farmland protection technique that pays farmland owners for permanently protecting the land for agriculture. In general, landowners possess a variety of rights to their property, including the rights to use water resources, harvest timber or build on the property consistent with local regulations. Each of these rights can be separated from the rest of the bundle of rights and sold or leased. When one right is restricted or removed from the land, all other rights and obligations of property ownership remain.

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

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

### VALUATION

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

#### AGRICULTURAL CONSERVATION EASEMENTS

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

- Limit future uses of the land that are inconsistent with or damage the agricultural value or productivity of the land
- Encourage the business of farming
- Permit the construction of new farm buildings and farm employee housing
- Complement the right to farm provisions in the Agricultural Districts Law
- Do not require public access
- Retain private ownership of the farm subject to the easement restrictions

#### HISTORY

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

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

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

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



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

#### WHO CAN APPLY FOR PDR GRANTS

- A county Agricultural and Farmland Protection Board (AFPB) that has an approved county agricultural and farmland protection plan.
- A municipality that has adopted a local farmland protection plan (a comprehensive plan or other land-use ordinances that consider agricultural uses and needs; the project must be endorsed by the county AFPB).
- Local land trusts and other non-profit conservation organizations interested in protecting agricultural land are not eligible to apply directly for implementation funds, but can work cooperatively with county or municipal governments in support of a project for which funding is requested.

#### FEDERAL FARM AND RANCH LAND PROTECTION PROGRAM

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

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

www.nrcs.usda.gov/ programs/frpp/

#### FUNDING ARRANGEMENT

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

#### PDR APPLICATION PROCESS

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

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

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

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

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

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

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

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

NYS Agriculture & Markets, Agricultural Protection Unit 10 B Airline Drive Albany, New York 12235 Tel: (518) 457-2713

www.agmkt.state.ny.us/

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

#### American Farmland Trust Northeast Office

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

For more information about farmland protection nationwide, go to the: Farmland Information Center www.farmlandinfo.org

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

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

#### EXAMPLES OF SUCCESSFUL FARMLAND PROTECTION PROGRAM APPLICATIONS

- *Town of Macedon* Excellent working partnerships and community support have led to several successful applications submitted by the town of Macedon in Wayne County. A multifaceted partnership between the town, Genesee Land Trust and county has resulted in grant awards from both state and federal programs that total nearly \$1.5 million to protect over 2,000 acres of farmland. A survey of residents, which demonstrated community support for farms and rural character, was instrumental in the success of Macedon's farmland protection efforts.
- *Long Island* Suffolk County and several towns on eastern Long Island have recognized that farmland protection efforts on the island require a level of conservation, tax, and land planning expertise that few local governments possess. Instead, these municipalities have hired the Peconic Land Trust to help manage aspects of their farmland protection programs from project selection and design to negotiation to stewardship obligations after the deal is done.
- *Orange County* When Warwick farmer Tunis Sweetman inquired about the state's new farmland protection program, he was advised that a local match was required and that such local funds were not available. Undaunted, Sweetman asked whether he could provide the "local" match by offering a bargain sale of his development rights. He would agree to accept the state match (75%) as full payment, in effect making a donation of the remaining value. After review, the Department of Agriculture & Markets decided to accept the bargain sale as fulfilling the local match requirement. As a result, at least four farms in Orange County were awarded funding in the first round using the bargain sale as the local match.
- *Town of Ancram* Following Tunis Sweetman's example, the Columbia County Land Conservancy asked the Department of Agriculture & Markets if an owner of contiguous farmland could supply the local match by donating a conservation easement on her property. They answered in the affirmative, and one Ancram landowner was financially able and willing to donate a conservation easement on her land in order to provide the local match requirement for the purchase of development rights on neighboring farms.
- *Washington County* Two adjacent farm properties on 654 acres. These farms are operated by one dairy, which milks an average of 250 cows and produces over 4 million pounds of milk annually. This property is a critical buffer to the Battenkill, which is included in the New York State Open Space Plan and is part of a Nationwide Rivers Inventory designed by the US Department of the Interior and the National Park Service.



American Farmland Trust

American Farmland Trust works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment.

# The Dutchess County Partnership for Manageable Growth

# I. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

# Attachment A: Program Guidelines

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

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

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

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

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

# **III. Municipal Planning Grants**

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

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

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

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

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

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

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

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

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

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

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

## Attachment C: Program Guidelines

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

Attachment D					٦	
Criteria for Dutchess County Water and Wastewater Facility Planning & Development*						
*Items to be ranked on a scale from 'A' (highest value) to 'E' (lowest value)	A	В	С	D	Ε	
Local and Regional Support						
Consistent with County service area plan. (Projects can be phased.)						
Consistent with local land use plan.						
Support from local officials; formation of district or assessment zone.						
Intermunicipal cooperation.						
Feasibility						
Readiness to proceed.						
Favorable cost-effectiveness ratios.						
Complementary water supply protection/land use regulations and water conservation plans approaches are provided.						
Project meets future expansion needs (e.g., pipe-sized for expansion)						
Resource Protection						
Promotes energy efficiency.						
Addresses critical environmental/health problems.						
Promotes open space/agricultural preservation						
Promotes natural resource protection						
Municipal Benefits						
Strengthens community center.						
Stimulates economic activity.						
Assists with affordable housing.						

# Funding

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

# V. Application Components

# A. Cover Sheet

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

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

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

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

- Location map
- Tax parcel map
- Topographic map
- Soils map if farmland
- Photographs including existing structures
- Aerial photographs if available
- E. Budget detailing the <u>total estimated cost of completed project</u> including the following items. Please indicate any additional expenses required by primary funding source:
  - Land acquisition: estimated cost per acre and total Note: <u>Appraisals are</u> not required at this time but will be required if matching funds are <u>awarded</u>. If available, please include summary and identify certified appraiser.
  - Survey
  - Baseline Mapping and Documentation
  - Title Search and Insurance
  - Administrative costs including negotiation of contracts
  - Stewardship/Monitoring Program costs

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

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

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

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

## H. Stewardship/Monitoring Plan

Describe plan for monitoring land to insure compliance with terms of conservation easement and plan for the maintenance of acquired public property. Identify the name of the responsible organization or municipality as well as projected costs and sources of stewardship fund for continuing oversight. (See Maintenance and Monitoring.)

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

# I. Letters of Support

# VI. Awards

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

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

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

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

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

# VII. Maintenance and Monitoring of Acquisitions

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

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

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

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

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

For example, the budget submitted to the NYS Department of Agriculture and Markets for the Mead Orchard Grant included \$4,000 for monitoring based on the size of the property. Placed into an endowment account, these funds would provide enough income to cover the monitoring land trust's annual costs. In the case of **fee simple acquisition of property by a land trust**, the land trust would assume responsibility for maintenance, monitoring, and liability. In the case of **acquisition by a municipality**, maintenance, monitoring, and liability would be the responsibility of the municipality.

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

Land or PDR Acquisition Categories
DEC Land Acquisition Categories
Unique Character
Freshwater Wetlands
Tidal Wetlands
Pine Barrens
Exceptional Forest Character
Wildlife Habitat
Unique Area
Exceptional Scenic Beauty
Forest Preserve
Coastal Waterfront Protection
Inland Waterfront Protection
Open Space
State Land Access
Stream Rights
Inland Waterway Access
Tidal Waterway Access
Open and Natural Land
Trailways
Greenways/Parklands
Aquifer Recharge Area
Watershed Protection
Working Landscape
OPRHP Land Acquisition Categories
Open Space/Natural Areas
Trailways
Metro Shoreline
Metro Park
Historic Preservation
Waterways
NYS Department of Agriculture and Markets/Environmental Protection Fund Categories
Prime or Important Agricultural Soils
Economically Viable Farm Operation

Proximity to Critical Mass

Historic Resource

Parkland

Additional Categories Specific to Dutchess County

Gateway Conservation Areas

Prime Farmland Areas

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

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

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

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

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

1. As used in this section, the following words and terms shall have the following meanings:

(a) "Town" means the town of Northeast.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision five of this section.

(c) "Board" means the advisory board required pursuant to subdivision six of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-bb of the tax law or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of the tax law.

2. The town board of the town of Northeast is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-A-three of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any Other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

3. The purposes of the fund shall be exclusively: (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, and (d) to provide a management and stewardship program for such interests and rights consistent with subdivision ten of this section and in accordance with such plan designed to preserve community character. Not more than ten percent of the fund shall be utilized for the management and stewardship program.

4. If the implementation of the community preservation project plan, adopted by the town board, as provided in subdivision seven of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

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

(a) preservation of open space;

(b) establishment of parks, nature preserves, or recreation areas;

(c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;

(d) preservation of lands of exceptional scenic value;

(e) preservation of freshwater marshes or other wetlands;

(f) preservation of aquifer recharge areas;

(g) preservation of undeveloped beach-lands or shoreline;

(h) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;

(i) preservation of unique or threatened ecological areas;

(j) preservation of rivers and river areas in a natural, free-flowing condition;

(k) preservation of forested land;

(l) preservation of public access to lands for public use including stream rights and waterways;

(m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and

(n) undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

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

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

each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the

office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred thirty-nine-bb of the tax law. If at the time of referendum, the town shall have in place an dopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed twelve months.

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

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

10. Rights or interest in real property acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. Notwithstanding any other provision of this subdivision there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

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

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

#### \* § 1439-aa. Definitions.

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

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

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

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

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

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

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

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

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

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

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

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include a conveyance made pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Fund" means a community preservation fund created pursuant to section sixty-four-j of the town law.

10. "Recording officer" means the county clerk of the county of Dutchess.

11. "Town" means the town of Northeast, county of Dutchess.

12. "Treasurer" means the treasurer of the county of Dutchess.

13. "Town supervisor" means the town supervisor of the town of Northeast.

14. "Tax" shall mean the real estate transfer tax imposed pursuant to section fourteen hundred thirty-nine-bb of this article or, if the context clearly indicates, shall mean the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

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

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

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

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

\* NB Repealed December 31, 2028

#### \* § 1439-bb. Imposition of tax.

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

\*NB Repealed December 31, 2028

#### \* § 1439-cc. Payment of tax.

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

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

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

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

\*NB Repealed December 31, 2028

#### \* § 1439-dd. Liability for tax.

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

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

\*NB Repealed December 31, 2028

#### \* § 1439-ee. Exemptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\* NB Repealed December 31, 2028

#### \* § 1439-ff. Credit.

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

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

\* NB Repealed December 31, 2028

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

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

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

the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance. \* NB Repealed December 31, 2028

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

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

\* NB Repealed December 31, 2028

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

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

\* NB Repealed December 31, 2028

#### \* § 1439-jj. Refunds.

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

\* NB Repealed December 31, 2028

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

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

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

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

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

\* NB Repealed December 31, 2028

#### \* § 1439-ll. Judicial review.

1. Any final determination of the amount of any tax payable under section fourteen hundred thirty-nine-cc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefore is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the state superintendent of insurance as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such

proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

\* NB Repealed December 31, 2028

#### \* § 1439-mm. Apportionment.

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

\* NB Repealed December 31, 2028

#### \* § 1439-nn. Miscellaneous.

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

\* NB Repealed December 31, 2028

#### \* § 1439-00. Returns to be secret.

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

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

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

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

\* NB Repealed December 31, 2028

# New York State Town Law Section 261-b

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

1. Definitions. As used in this section:

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

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

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

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

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

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

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

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

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

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

(i) the incentives, or bonuses, which may be granted by the town to the applicant;

(ii) the community benefits or amenities which may be accepted from the applicant by the town;

(iii) criteria for approval, including methods required for determining the adequacy of community amenities to be accepted from the applicant in exchange for the particular bonus or incentive to be granted to the applicant by the town;

(iv) the procedure for obtaining bonuses, including applications and the review process, and the imposition of terms and conditions attached to any approval; and

(v) provision for a public hearing, if such public hearing is required as part of a zoning ordinance or local law adopted pursuant to this section and give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof.

(f) All other requirements of article eight of the environmental conservation law shall be complied with by project sponsors for actions in areas for which a generic environmental impact statement has been prepared including preparation of an environmental assessment form and a supplemental environmental impact statement, if necessary. (g) Prior to the adoption or amendment of the zoning ordinance or local law pursuant to this section to establish a system of zoning incentives or bonuses the town board shall evaluate the impact of the provision of such system of zoning incentives or bonuses upon the potential development of affordable housing gained by the provision of any such incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the town. Further, the town board shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the town has or will take reasonable action to compensate for any negative impact upon the availability or potential development of affordable housing of this section.

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

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

#### § 180-30. Open space incentive option.

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

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

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

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

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

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

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

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

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

[2] Land suitable for agricultural use.

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

[4] Environmentally sensitive lands.

[5] Lands that are inappropriate for development.

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

[7] Rural character of the surrounding area.

[8] Scenic rural roads and viewsheds.

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

[2] Public open space.

[3] Private open space.

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

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

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

(c) The land designated for development shall be subject to the approval of the Planning Board. The Planning Board shall make its decision based upon consideration of the Rural Development Design Guidelines (Appendix B) and based on the Town's desire to: [1] Avoid locating buildings in open fields. Preference will be to locate structures at the edges of fields along more heavily vegetated areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## A. Maximum Dimensions:

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

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

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

## B. Sign Limitations:

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

## C. Product Origin:

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

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

## D. On-farm preparation of processed foods:

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

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

## E. Ag-tourism/recreational activities:

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

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

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

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

In 1992, the Executive Law was amended to define temporary greenhouses as "specialized agricultural equipment." [Executive Law  $\S372(17)^1$ ] Executive Law  $\S372(3)$  states that temporary greenhouses are not buildings for purposes of the State Building Code. Therefore, temporary greenhouses that are specifically designed, constructed and used for the culture and propagation of horticultural commodities are exempt from requirements for building permits. However, temporary greenhouses are not exempt from local zoning requirements. The erection and use of temporary greenhouses as part of a farm operation, including nursery/greenhouse operations, produce farms and livestock farms, is protected under AML  $\S305$ -a.

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

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

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

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

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

# A. Minimum Lot Size

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

B. Maximum Lot Coverage

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

## C. Maximum Number of Greenhouses

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

D. Setbacks

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

## E. Screening

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

# F. Greenhouses/Nursery Operations as a Permitted Use

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

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

# **Permitted Uses**

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

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

## **Roadside Stand**

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

# Farm Market

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

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

# Definitions

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

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

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

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

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

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

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

<u>Agricultural Tourism</u>: Agricultural related tours, events and activities, as well as nonagricultural related activities used to attract people and promote the sales of farm produce and agricultural products. These tours, events and activities include, but are not limited to petting zoos, school tours, outdoor trails, corn mazes, hayrides, pony rides, group picnics, on- and offsite food catering services, musical events, craft shows, outdoor recreation. To be a permitted use, the farm must be actively producing agricultural products for sale. Farm markets where the seller is not actively producing agricultural products for retail sales will require a special use permit for agricultural tourism activities.

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

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

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

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

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

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

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

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

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

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

**<u>Roadside Stand:</u>** A direct marketing operation without a permanent structure and only offering outdoor shopping. Such an operation is seasonal in nature and features on-farm produced as well as locally produced agricultural products, enhanced agricultural products and handmade crafts.
<u>Seasonal Sign</u>: any sign that is removed for three consecutive months. These signs must be removed whenever business is closed for seven or more consecutive days. Because seasonal signs will be removed for a minimum of three months at a time, size and quantity restrictions do not apply.

## **Design and Operations Standards**

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

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

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

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

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

- Parking:To ensure public safety, farm markets will be required to have off-street parking<br/>with adequate ingress and egress with an area for turn-around. A minimum of<br/>one 10 x 20 parking area per 200 sq. ft. of selling and display area, with a<br/>minimum of two spaces, shall be required. For the purpose of calculating the<br/>required number of parking spaces, production facilities, garden plots, planting<br/>beds and outdoor storage area opened to the public are excluded. The above<br/>notwithstanding, adequate off street parking shall be provided. Parking spaces are<br/>exclusive of driveways and turnarounds. Entrances and exits onto roadways must<br/>have an all-weather surface. PYO operations will require a greater number of off-<br/>road parking spaces based on the expected number of cars per day. Overflow<br/>parking should be, minimally, grass covered.
- Setbacks: Frontyard 20 feet from the right of way line to front of sales area, excluding production facilities, garden plots, planting beds and outdoor storage areas open to the public. No parking is allowed within frontyard setback or within 20 feet of the edge of roadway, whichever distance is less. Sideyard 20 foot setback from property line.

	Rear - 40 foot setback from property line.
	Where a roadside stand or farm market is located on a separate parcel of land, maximum lot coverage by buildings shall be 30%. Total coverage, including parking areas, shall not exceed 70%.
<u>Signs:</u>	Seasonal signs are allowed, but cannot be placed anywhere it would create a traffic hazard. All other town signage regulations may apply.
<u>Lighting:</u>	No outdoor lighting shall produce glare beyond the boundary of the property. No rotating or flashing lights on advertising signage <i>shall be permitted</i> .
Buffers:	Buffers shall be a minimum of 15 feet in width, and planted with plant materials reaching a minimum of 6' within 5 years and produc <i>ing</i> a continuous visual barrier, or alternately, include a solid fence or wall with a minimum height of 6'.
	(Buffers are recommended in addition to any required setbacks if next door use is substantially different.)
Water:	Potable water on site is required.

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

## Sample Agricultural Definitions

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

§ 301. Definitions. When used in this article:

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

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

a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.

b. Fruits, including apples, peaches, grapes, cherries and berries.

c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.

d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.

e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs.

## f. Maple sap.

g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.

h. Aquaculture products, including fish, fish products, water plants and shellfish.

i. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.

j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens. For the purposes of this paragraph, "nucs" shall mean small honey bee colonies created from larger colonies including the nuc box, which is a smaller version of a beehive, designed to hold up to five frames from an existing colony.

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

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

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

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

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

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

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

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

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

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

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

(ii) fifty thousand dollars or more, if the farm operation uses less than seven acres in agricultural production; or (4) not less than seven acres used as a single operation to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more.

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

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

k. Land used to support an apiary products operation which is owned by the operation and consists of (i) not less than seven acres nor more than ten acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more or (ii) less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock or livestock products of an average gross sales value of fifty thousand dollars or more. The land used to support an apiary products operation shall include, but not be limited to, the land under a structure within which apiary products are

produced, harvested and stored for sale; and a buffer area maintained by the operation between the operation and adjacent landowners. Notwithstanding any other provision of this subdivision, rented

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

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

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

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

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

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

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

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

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

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

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

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

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

11. **"Farm operation"** means the land on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section, "timber processing" as defined in subdivision fourteen of this section and "compost, mulch or other biomass crops" as defined

in subdivision sixteen of this section. For purposes of this section, such farm operation shall also include the production, management and harvesting of "farm woodland", as defined in subdivision three of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

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

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

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

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

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

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

\* NB There are 2 sb 16's

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

\* NB There are 2 sb 16's

## Town of Warwick Online Farm Map

(www.townofwarwick.org)



# Model Right to Farm Law

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

## Section 1. Legislative Intent and Purpose

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

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

## Section 2. Definitions

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

## Yates County, New York Agricultural Development and Farmland Enhancement Plan

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

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

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

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

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

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

## Section 4. Notification of Real Estate Buyers

In order to promote harmony between farmers and their neighbors, the Town requires land holders and/or their agents and assigns to comply with Section 310 of Article 25-AA of the State Agriculture and Markets Law and provide notice to prospective purchasers and occupants as follows: "It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products and also for its natural and ecological value. This notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors." This notice shall be provided to prospective purchase of property within an agricultural district or on property with boundaries within 500 feet of a farm operation located in an agricultural district.

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

### Section 5. Resolution of Disputes

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

## Section 6. Severability Clause

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

#### Section 7. Precedence

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

## Section 8. Effective Date

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

#### What is the application procedure?

The landowner's first step in applying for an agricultural assessment is to go to the county Soil and Water Conservation District office. There, all farmland to be enrolled in the program will be classified by soil productivity. A district technician plots each farm tax parcel of the farm on a soil map, and calculates the acreage in each soil group. The landowner should work with the technician to outline woodland areas and ineligible areas. The landowner may exclude any area from the program and this area should be clearly defined and marked on the map. The technician records the information on a "Soil Group Worksheet" (Form APD-1). The landowner, in turn, transfers this soil information to the "Application for an Agricultural Assessment" (form RP-305), available from the assessor's office and indicates any farm woodland on the parcel. The landowner submits the completed RP-305) application form along with copies of the completed APD-1 soil group worksheet and the soil map to the assessor by taxable status date. In most towns, taxable status date is March 1, but it is advisable to confirm this with the assessor. Landowners must file an application each year with the local assessor. After the initial application, a short form application (RP-305-r) may be used if there have been no changes since the previous year's application.

# How is the amount of assessment reduction determined?

After deciding whether the parcel, or any part of it, is eligible for an agricultural assessment, the assessor calculates such assessment by multiplying the acreage in each soil group and farm woodland by the applicable agricultural assessment value. The values for each soil group are annually certified by the New York State Board of Real Property Services. The sum of the values is multiplied by the municipality's latest State equalization rate or special equalization rate. The resulting figure is the agricultural assessment for the eligible land in the parcel. This amount is compared to the assessed value of the eligible land. Any assessed value above the agricultural assessment is exempt from real property taxation. In other words, taxes on eligible farmland are based on the land's agricultural assessment rather than its full assessment.

# How is the landowner informed of the result of an application?

If a landowner includes a self-addressed, stamped envelope with the application, the assessor must notify the landowner of the approval, modification, or denial of the application. The assessor will inform the applicant at least ten days before the date for hearing assessment complaints which in most towns is the fourth Tuesday in May. If an application is denied, the assessor must also state the reason on the form. For applications approved, the assessor must show how the total assessed value is apportioned between the eligible and ineligible parts of the property for the current year and prior year. A landowner may request the municipal or school tax collector to disclose the dollar value of reduction in tax liability attributable to lands receiving an agricultural assessment.

# What happens if the farmland is taken out of agricultural production?

If farmland which has received an agricultural assessment is converted to a nonagricultural use (within five years of last receiving an agricultural assessment if located in an agricultural district and within eight years if located outside an agricultural district), a payment to recapture the taxes forgone for converting such land will be imposed. The assessor determines whether a conversion has occurred on the basis of the facts of each case. Conversion is defined as "an outward or affirmative act changing the use of agricultural land." Non use of the property (for example, abandoning land or leaving it idle) disgualifies such land from receiving an agricultural assessment, but is not considered a conversion. Similarly, land converted to a non-agricultural use through oil and gas exploration, or extraction activity, or through eminent domain or through the purchase of land or the conveyance of a conservation easement to protect the New York City Watershed, or through other involuntary proceedings (except a tax sale) would be ineligible for an agricultural assessment but would not be subject to a payment for conversion.

A payment for conversion will be equal to five times the taxes saved in the most recent year that the land received an agricultural assessment. In addition, interest of 6 percent per year compounded annually will be added to the payment amount for each year that the land received an agricultural assessment, not exceeding five years. When only a portion of a parcel is converted, the assessor apportions the assessment and the agricultural assessment and determines the tax savings attributable to the converted portion. The payment for conversion of the portion of the parcel is then computed.

**90 Day Notice** - Whenever a conversion occurs, the landowner shall notify the assessor within 90 days. Failure to notify may result in a penalty of two times the payments owed to a maximum of \$500.

#### Questions?

For additional information on the agricultural assessment program contact any of the following:

- Your local assessor
- The County Director of Real Property Tax Services
- <u>Real Property Services Regional Offices</u>

Request additional copies of this pamphlet from:

NYS Office of Real Property Services 16 Sheridan Avenue Albany, NY 12210-2714

### STATE OF NEW YORK David A. Paterson, Governor

Lee Kyriacou, Executive Director Office of Real Property Services 16 Sheridan Avenue Albany, NY 12210-2714



# Agricultural Assessments

Partial Reduction in Real Property Taxes for Eligible Farmland in New York State

## **Questions and Answers**



A PUBLICATION OF THE STATE OFFICE OF REAL PROPERTY SERVICES



#### Introduction

The State Legislature initially enacted the New York Agricultural Districts Law in 1971 to protect and promote the availability of land for farming purposes. Subsequent amendments have broadened its scope. The law provides a locally initiated mechanism for the creation of agricultural districts. The formation of agricultural districts is intended to counteract the impact which non-farm development can have upon the continuation of farm businesses.

Briefly, agricultural districts provide the framework to limit unreasonable local regulation on farm practices, to modify public agencies' ability to acquire farmland through eminent domain, and to modify the right to advance public funds to construct facilities that encourage development. The law also requires state agencies to modify their administrative regulations and procedures to encourage the continuation of farm businesses. Right to Farm provisions provide protection from private nuisance suits for land in agricultural districts and parcels receiving agricultural assessments outside districts.

Benefit assessments, special ad valorem levies, or other rates and fees for the finance of improvements such as water, sewer or non-farm drainage may not be imposed upon land used in agricultural production and within an agricultural district unless such charges were imposed prior to the formation of the agricultural district.

The Agricultural Districts Law also provides for reduced property tax bills for land in agricultural production by limiting the assessment of such land to its prescribed agricultural assessment value. Owners whose land satisfies the eligibility requirements may apply for an agricultural assessment.

# Does farmland automatically receive an agricultural assessment?

**No.** Landowners must file an application (form <u>RP-305</u> or <u>RP-305-r</u>) with the assessor to receive an agricultural assessment for their parcels. Landowners must apply annually for an agricultural assessment, and the farmland must satisfy certain gross sales and acreage eligibility requirements.

# Can land outside an agricultural district qualify for an agricultural assessment?

**Yes.** The requirements and application procedure are the same. However, land located outside of an established agricultural district which receives an agricultural assessment will continue to be encumbered with an obligation to remain in agricultural use for a period of eight years (land within an agricultural district is encumbered for five years) or be subject to a payment for conversion to nonagricultural use.

#### How is eligibility determined?

Eligibility is determined by the assessor or board of assessors with whom the application is filed. If denied, the applicant has the right to an administrative review by the Board of Assessment Review. The following eligibility requirements must be met:

- Land generally must consist of seven or more acres that were used in the preceding two years for the production for sale of crops, livestock, or livestock products.
- The annual gross sales of agricultural products generally must average \$10,000 or more for the preceding two years. If an agricultural enterprise is less than seven acres, it may qualify if average annual gross sales equal \$50,000 or more. (See rented land and exceptions to gross sales requirements.) Land that supports a commercial horse boarding operation may qualify for an agricultural assessment if the following eligibility requirements are met:
  - at least seven acres of land supports the commercial horse boarding operation;
  - the operation boards at least ten horses regardless of ownership; and
  - the operation receives \$10,000 or more in gross receipts annually in the preceding two years from fees generated through the boarding of horses and/or through the production for sale of crops, livestock, and livestock products.

Land that supports operations whose primary on site function is horse racing is not eligible.

- A start-up operation may qualify based on its annual gross sales of agricultural products in the operation's first or second year. Such annual sales must amount to at least \$10,000, if the start-up operation has seven or more acres, or to at least \$50,000, if the start-up operation has less than seven acres in agricultural production.
- A start-up commercial horse boarding operation may also qualify based on annual boarding fees of \$10,000 or more in its first or second year.

#### What land can be included?

Agricultural assessment is limited to land used in agricultural production, defined to include cropland, pasture, orchards, vineyards, sugarbush, support land, and crop acreage either set aside or retired under Federal supply management or soil conservation programs. Up to 50 acres of farm woodland is eligible for an agricultural assessment per eligible tax parcel. Land and water used for aquacultural production are eligible, as is land under a structure within which crops, livestock or livestock products are produced. Land visibly associated with the owner's residence is ineligible.

#### What if a farm includes several tax parcels?

Since farm operations often encompass more than one parcel, eligibility is determined by combining separately assessed parcels that are farmed together as a single operation. However, a separate application for each separately assessed parcel must be made. A single operation is one distinct agricultural business enterprise.

## Can rented land qualify for an agricultural assessment?

**Yes.** Land rented for agricultural purposes may receive an agricultural assessment. If the rented land satisfies the basic eligibility requirements described above, it is eligible for agricultural assessment. In addition, if the rented land does not satisfy the average gross sales value requirement, but does satisfy the other requirements, it may still be eligible if it is farmed, under a written rental agreement of at least five years, with other farmland that satisfies all eligibility requirements. The applicant must substantiate the existence and the term of the rental agreement by providing the assessor with either a copy of the lease or an affidavit confirming that such an agreement exists (application <u>RP-305-c</u>). A start-up farm operation may include rented land.

#### How is the gross sales value determined?

Gross sales value means the actual proceeds from sales of agricultural products. The landowner must adequately document sales for the assessor. Proceeds from all parcels used in a single operation may be combined to satisfy the average gross sales value requirement. If a crop is grown and processed on the farm, the value of the crop before processing must be used when computing its average gross sales value. When the farm woodland is eligible, proceeds from the sale of woodland products may be included in the computation of average gross sales value but only to a maximum of \$2,000. The commercial horse boarding receipts can be generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products or through both.

# Are there any exceptions to the gross sales requirement?

**Yes.** Agricultural lands affected by natural disasters or continued adverse weather conditions may continue to be eligible. County Cornell Cooperative Extension staff must certify such natural disaster or weather condition destroyed the agricultural production and, as a result, the average gross sales value for the preceding two years was less than the minimum required for eligibility. The landowner must document the extent of damage and the gross sales value the land can produce under normal conditions on the application form <u>RP-305-b</u>. No minimum gross sales value is required for crop acreage either set aside or retired under Federal supply management or soil conservation programs.

# Does the agricultural assessment program apply to buildings?

**No.** Agricultural assessment applies only to land and any posts, wires and trellises used to support vines or trees for the production of fruit on eligible land. The program does not apply to farm buildings, residences, and other improvements. Farm buildings and structures may qualify for property tax benefits under Real Property Tax Law Sections <u>483</u>, <u>483-a</u>, <u>483-b</u>, <u>483-c</u>. See Farm Building Exemptions brochure for details. However, land under farm buildings and structures that produce qualified crops, livestock or livestock products may in certain circumstance receive an agricultural assessment.

## CHAPTER 5 AGRICULTURAL ADVISORY COMMITTEE

## § 5-1 Title.

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

## § 5-2 Purpose.

The purpose of this chapter is to:

- A. Recognize the importance of agriculture as both a vital local economic base and as a land form that provides the Town of Eden with much of its rural, rustic character and charm.
- B. Assure the continued viability of farming as an industry which is important to the local economy and to the preservation of open space and vistas.
- C. Provide for the most beneficial relationship between the use of land and buildings and the agricultural practices of the community and to further encourage the wise use and management of the town's natural resources through modern farming practices.
- D. Provide the Town Board, Planning Board and other relevant boards/committee of our government with a conduit for recommendations from the agricultural community on the long- and short-term impact of a variety of matters and questions considered by these groups.

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

- A. The Committee shall be composed of five members appointed by the Town Board as follows:
  - (1) Five residents of the Town of Eden from the agricultural community, including but not limited to representatives from the greenhouse, crop production and dairy segments of the industry. The members shall recommend a Chairperson for appointment by the Town Board.
  - (2) One member of the Planning Board, the Board of Assessors Chairperson, one representative from the Erie County Farm Bureau and one member of the Town Board shall serve as ex officio members.
- B. The members appointed to the Committee shall serve for a three-year term. Upon initial formation, one member shall serve for a one-year terms, two members for a two-year term and all others for a three-year term. Each year thereafter, reappointments or new appointments will be for three-year terms.
- C. Appointments shall be from January 1 through December 31.
- D. Members shall serve without salary.

## § 5-4. Powers and duties.

The Committee shall:

- A. Advise the Town Board and the County Agricultural and Farmland Protection Board in relation to the proposed establishment, modification, continuation or termination of any county agricultural district. The Board shall present advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within any proposed or established area.
- B. Review of proposed zoning change or development in agricultural districts.
  - (1) Whenever a proposed zoning, policy change or development (residential, business or industrial) affecting town agricultural zoning districts is presented to the Town Board within or contiguous to a county agricultural district or town agricultural zones, it shall be referred to the Agricultural Advisory Committee for review. The Agricultural Advisory Committee shall have 45 days to respond with a recommendation(s) for the action(s).
  - (2) The Board shall present advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within any proposed or established area. This recommendation(s) shall include a determination as to whether the proposed action(s) will have an unreasonable adverse effect on the continuing viability of a farm enterprise or enterprises within the county or town agricultural districts. This recommendation(s) shall be advisory only.
- C. Review county, state and federal legislation affecting agricultural issues and communicate the effect to the appropriate board and/or the Town Board.
- D. Serve as a vehicle for communication between the agricultural community, the town communicate the effect to the appropriate board and/or the Town Board.
- E. Meet as determined necessary by Committee members, but no less than two times a year for review and recommendation purposes. These annual review and recommendations shall focus on zoning, planning activities and other actions within the county agricultural districts and the town agricultural zones.
- F. Submit to the Town Board an annual summary of the activities of the Agricultural Advisory Committee.

# STATE CONSERVATION TAX CREDITS





# **CONSERVATION RESOURCE CENTER**

2007

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Conservation Resource Center staff includes attorneys Mike Strugar, Debra Pentz, and Tina Burghardt

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> Cover photo: Autumn mountains, Colorado Back cover photos: Conserved land in Colorado and Virginia

# STATE CONSERVATION TAX CREDITS

# IMPACT AND ANALYSIS

Authored by Debra Pentz, Conservation Resource Center with research assistance by Roman Ginzburg and Ruth McMillen

## The Conservation Resource Center's Tax Credit Exchange

The Conservation Resource Center's (CRC) Tax Credit Exchange is a nonprofit land conservation organization and a Colorado tax credit facilitation organization. It is run by conservation attorneys with more than 30 years of combined experience in conservation law and policy. In 2000, the Conservation Resource Center established the first transfer market for conservation tax credits. The Tax Credit Exchange also works at the state and national levels on tax credit law and policy. Conservation Resource Center Tax Credit Exchange 820 Pearl Street Suite F Boulder, CO 80302

www.taxcreditexchange.com

## 4 table of contents



Special Thanks	 	 		 •	 	•		•	 •	 	•		 6	
The Purpose of This Report	 	 		 •	 	• •				 	•		 7	

## 

A. Background – What Is a Conservation Credit?
3. Conservation Credit Program Effectiveness
1. Effectiveness in driving additional land protection – Statistics 10
a. Enacting a Conservation Credit program
b. Increasing credit value
c. Making credits transferable
2. Effectiveness in driving additional land protection – Expert opinion 13
a. Effectiveness where credit value is less than \$100,000
b. Effectiveness where credit value is equal to or greater
than \$100,000
3. Effectiveness in protecting important conservation values at a
reasonable cost

## PART TWO: Creating a State Conservation Credit Program: Drafting Considerations ......16

A. What type of land will be protected? Fee title, conservation						
easement, or both?						
B. What conservation values are to be protected?						
1. Broad definitions of conservation values and IRC §170(h)						
2. More detailed definitions of conservation values						
C. What Financial Limitations Will Be Placed on the Credits?						
1. Credit valuation						
2. Caps that may be placed on credit transactions						
a. Maximum value of credit						
b. Amount of credit that may be applied to taxes in any given year 20						
c. Number of credits earned annually						
d. Statewide cap on tax credits that may be earned						
3. Sunset date						

D. Who Will Be Eligible to Earn a Credit?	21
E. What Entities Will Be Eligible to Hold a Donation?	22
1. IRC §170(h)	22
2. Additional state requirements on land trusts or other	
entities holding easements	22
3. State-approved land trusts	
F. How Can the Effectiveness of the Tax Credit be Maximized?	20
Carry-Forward, Transfer, and Refund Provisions	
1. Carry-forward	23
2. Transferability	23
3. Refundability	24
G. What Information Should be Tracked for Reporting Purposes?	24
H. What Is the Appropriate Level of Program Oversight?	25
1. Audit approach	25
2. Certification approach	
3. Transactional screen	
PART THREE: Conclusion and Appendices	30
Appendix A: Summary of State Conservation Credit Programs	32
Appendix B: Sample Transactional Screen	
Appendix C: Footnotes	
	00

## **CHARTS & GRAPHS**

Figure 1: States Using Income Tax Incentives for Land Conservation 10
Figure 2: Enacting a Conservation Credit program:
Virginia Outdoors Foundation
Figure 3: Increasing Credit Value:
North Carolina Conservation Tax Credit Statistics
Figure 4: Making the Credits Transferable:
Virginia Department of Taxation Statistics

## 6 special thanks



Special Thanks to the following land conservation organizations for sharing their valuable time and experience to support this project.

California Council of Land Trusts California Wildlife Conservation Board Colorado Coalition of Land Trusts Connecticut Land Trust Service Bureau Conservation Trust for North Carolina Delaware Department of Natural Resources and Environmental Control Environmental Edge, South Carolina Georgia Land Trust Service Bureau Kentucky Sierra Club Maryland Environmental Trust Massachusetts Chapter of The Nature Conservancy Mississippi Chapter of The Nature Conservancy Mississippi Land Trust Nebraska Land Trust New Mexico Land Conservancy New Mexico State Forestry Division New York Chapter of The Nature Conservancy North Carolina Department of Environment and Natural Resources Virginia Outdoors Foundation West Virginia State Senator John Unger



Wetlands, Florida

## the purpose of this report 7

**The purpose of this report** is to assess the effectiveness of state income tax credits (Conservation Credits) in advancing land conservation and to guide states through issues related to the development of a tax credit program.<sup>1</sup>

It has been twenty-three years since North Carolina enacted the nation's first state tax credit program for land conservation donations. Since that time, the tool has become increasingly popular, with eleven additional states passing tax credit legislation since 1999. With many programs at least five years old, it is an appropriate time to evaluate the effectiveness of Conservation Credits in advancing land protection and to provide guidance to other states considering such programs. Part One of this report addresses the effectiveness of state tax credit programs. Part Two provides guidance for program development.

The Conservation Resource Center (CRC) has conducted an in-depth analysis of the nation's twelve Conservation Credit programs. The information and conclusions presented in this report are based on:

• Detailed examination of state Conservation Credit legislation and supporting regulations.



- Interviews with land conservation professionals in each of the twelve states having state tax credits.
- CRC's nearly ten years of work in Conservation Credit law, policy, and transactions.

This report is intended both to provide a snapshot of the current effectiveness of Conservation Credit programs and to serve as an aid to states that are rethinking existing legislation or drafting new programs.





# **Effectiveness of**

**State Income Tax Credits** 

in Advancing State Land

**Conservation Goals** 

A Conservation Credit is an income tax credit available to landowners who voluntarily preserve their land through the donation of a conservation easement and/or fee title. The donation must protect conservation values as defined by individual states and must be made to an entity qualified to hold such property interest by the terms of the legislation creating the credit. Typically, this includes state and local governments and 501(c)(3) land conservation organizations. Whether stated explicitly or not, Internal Revenue Code (IRC) §170(h), pertaining to federal tax deductions, is often the starting point for setting eligibility guidelines for a program.<sup>2</sup> Most states also add their own layer of requirements to those required by IRS guidelines for federal deductibility.

Conservation Credits were developed to complement existing state and federal incentive structures for land conservation. Depending on their value, Conservation Credits can provide greater and more direct financial benefits to landowners than those provided by federal tax deductions. State Conservation Credits, as distinguished from federal deductions, are dollar-for-dollar write-offs of state income taxes. However, as with federal deductions, landowners with little or no taxable income derive less benefit from tax credits than do wealthier landowners with higher taxable incomes.

To partially address this inequity, nearly all Conservation Credit programs allow credits to be carried forward so that the credit may be applied to reduce taxes over a number of years. While this can help, many times landowners still can not realize the full benefit of their credit. To further address this issue, several states have made their credits transferable or refundable. This will be discussed later in greater detail.

Twelve states (California, Colorado, Connecticut, Delaware, Georgia, Maryland,

Mississippi, New Mexico, New York, North Carolina, South Carolina, and Virginia) and Puerto Rico<sup>3</sup> currently offer state Conservation Credits to landowners who donate lands for conservation.⁴ Georgia and New York are the states that most recently enacted new programs, having done so in 2006. Several of the states with tax credit programs anticipate running legislation to increase program incentives in 2007. Another six states have either attempted to pass legislation within the past year or are actively considering a Conservation Credit program. Massachusetts and Idaho are currently working to create programs. Nebraska and West Virginia both introduced legislation in 2006, but their plans for 2007 are uncertain. Groups in Kentucky and Minnesota are



Desert Plateaus, New Mexico



B.

in the very early stages of considering programs. See Figure 1, Map of State Conservation Credit Programs, for states with current or pending programs. Attachment A, Summary of State Conservation Credit Programs, can be found on pages 32-34 of this report.



A Conservation Credit program can be a highly effective tool to promote land conservation. With a thoughtfully crafted program, everyone benefits. Landowners receive a financial reward for protecting their land, the state advances its goals of land conservation through tax policy rather than generalfund expenditures, and the public reaps the benefit of lands preserved as open space at a fraction of their cost. As a tool that provides tax relief, benefits agriculture, and encourages land conservation, Conservation Credit programs receive strong bipartisan support.

For the purposes of this report, program effectiveness is judged by the extent to which the programs drive additional land conservation and protect important conservation values.

**1. Effectiveness in driving additional land protection – Statistics** The effectiveness of Conservation Credit programs in driving additional land protection varies widely among the twelve states. This is attributable to substantial



differences among programs. In a perfect world, program success in spurring greater land protection would be determined by comparing donation statistics before and after enactment of a program. Unfortunately, according to the organizations interviewed, accurate protection numbers are unavailable due to a lack of comprehensive statewide tracking of donations before legislation was passed. Virginia has the most reliable statewide donation statistics prior to the creation of its Conservation Credit program. The Virginia Outdoors Foundation (VOF) holds approximately 90 percent of conservation easements in the state and has tracked its easement donations since 1968.

Fortunately, once Conservation Credit programs are created, states typically keep detailed records of donations that generate tax credits. To demonstrate program effectiveness in driving land protection, this report relies on detailed statistics from both Virginia and North Carolina. The statistics provide documentation of what can occur when a credit program is enacted (Figure 2), when credit value is increased (Figure 3), and when credits are made transferable (Figure 4). Please note that the statistics from Virginia and North Carolina are from programs having high-value credits and, in the case of Virginia, transferability. Not all programs include these elements.

## a. Enacting a Conservation Credit program

Virginia Outdoors Foundation statistics demonstrate that after passage of Virginia's Conservation Credits, the average number of conservation easements donated and the acres represented in those donations nearly quadrupled from



12 part one



years after enactment. Please note that these numbers represent conservation easement donations only and do not include fee title donations.

the six years prior to enactment of the program to the six

## b. Increasing credit value

North Carolina first enacted Conservation Credits in 1983, making its program the oldest ongoing state Conservation Credit program. The statistics gathered by the state demonstrate how increasing the value of a conservation tax credit can impact both annual donations and annual acres donated. Over the years, the maximum allowed credit was raised from \$5,000 to \$250,000 for individuals and from \$5,000 to \$500,000 for corporations.

The average number of conservation easements donated more than doubled when the credit cap was raised from \$25,000 to \$100,000 per individual and from \$25,000 to \$250,000 per corporation. The average number of dona-

Sand Dune, Texas

tions more than doubled again when the cap was raised to \$250,000 for an individual and \$500,000 for a corporation. While not shown in Figure 3, average annual acres donated also rose significantly from 1983 to 2004, climbing from an average of 397 acres to 11,500 acres.

## Figure 3

## INCREASING CREDIT VALUE: NORTH CAROLINA CONSERVATION TAX CREDIT STATISTICS



## c. Making credits transferable

Figure 4 demonstrates the impact of making credits transferable. It compares donation activity in the first two years of Virginia's program, when the credit was not transferable, with activity in the next four years of the program, when credits were transferable. The average number of donations doubled and the acres protected tripled once credits were made transferable. Since 2002, the average percentage of credits transferred by landowners to third parties has been 75 percent.

## 2. Effectiveness in driving additional land protection – Expert opinion

To assess program effectiveness where accurate statistics are not readily available, CRC relied on the estimates of land conservation professionals in each state. The experts shared their opinions about what level of increased land protection, if any, is directly attributable to their states' Conservation Credit programs. Generally, programs with credits valued at less than \$100,000 reported no significant increase, and programs with credits valued at or greater than \$100,000 reported varying degrees of increased donations. The two states with transferability reported the highest increases.

## a. Effectiveness where credit value is less than \$100,000

Five states—Delaware, Maryland, Mississippi, New York and South Carolina have credit values less than \$100,000. Legislation in Delaware, Maryland, and Mississippi explicitly caps credit value at some amount less than \$100,000.



Credits in New York and South Carolina are kept under \$100,000 by virtue of their valuation<sup>5</sup>. In Delaware, Maryland, and South Carolina, programs have been in place for several years. Professionals in these states noted that although Conservation Credits provide additional incentives, they "are not a driving force for land conservation," and that there has been "no significant increase" in land donations as a direct result of the credits<sup>6</sup>. Experts in each state implied that program effectiveness would be enhanced if credit values were increased.

South Carolina is the only state with credits valued at under \$100,000 that offers transferability. While generally, transferability increases program effectiveness, this has not been the case in South Carolina due to the low credit value, the unlimited



Everglades, Florida

carry-forward period, and the requirement that all transfers must be approved by the state. These factors combine to make transferring credits less appealing, as landowners can realize much of the value of the credit through an unlimited carry-forward period without the burden of state review.

## b. Effectiveness where credit value is equal to or greater than \$100,000

Seven states—California, Connecticut, Colorado, Georgia, New Mexico, North Carolina, and Virginia—offer credits valued at or greater than \$100,000. Land conservation professionals in five of these states reported that their programs were effective (or, for Georgia, were expected to be effective) in driving additional land conservation.<sup>7</sup> Conservation Credit programs in North Carolina and New Mexico were credited with generating 20 per-

cent and 25 percent increases in land conservation donations, respectively. While these gains are important, professionals in both states believe that land donations would greatly increase if the credits were either transferable or refundable. Please note that at the time of the publication of this report, New Mexico passed legislation that raises the cap on its credit to \$250,000 and makes them transferable, effective January 2008. Colorado and Virginia both have transferable credits. Professionals in these states estimate that land donations have tripled in Colorado and quadrupled in Virginia as a direct result of the creation of transferable Conservation Credit programs.

Not surprisingly, existing statistics and expert opinions together confirm that Conservation Credit programs with high-value, transferable credits will drive significant additional land protection. Programs with high-value credits that are not transferable and programs with low-value credits that are transferable do not approach the success of programs that combine high-value credits with transferability.

# **3. Effectiveness in protecting important conservation values at a reasonable cost**

Although Conservation Credits can work well to encourage donations, the number of donations made and acres of land protected are not the only gauges of program success. For programs to be successful, there should also be assurance that sufficient conservation values are being protected in perpetuity at a reasonable cost to the public.

Most experts interviewed for this report stated that their programs effectively protected important conservation values at a reasonable cost. Programs with certification programs and/or appraisal reviews (discussed later in this report) were most confident of this. However, experts in several states expressed concern about what they believed was a small percentage of donations that may have: had low conservation values, were overvalued, and/or had been accepted by entities lacking the intent or resources to preserve the conservation values of the land in perpetuity.

Fortunately, each of these concerns can be minimized or eliminated through careful drafting of program guidelines. In fact, Colorado and Virginia each recently amended their existing legislation to directly address some of these concerns. States with newer legislation, such as Georgia, have designed their legislation and supporting regulations to avoid these pitfalls from the outset.

It is clear that through drafting, states can enact Conservation Credit programs that successfully drive additional land donations with high conservation values at a reasonable cost to the public. By looking to other states' experiences, proponents of Conservation Credit programs and state legislatures can increase the chances of develop<image>

Forest, New Hampshire

ing effective programs and can minimize or avoid risks. The remainder of this report walks those drafting legislation through the major issues to be considered in program development.



# **Creating** a

**State Conservation** 

**Credit Program:** 

# **Drafting Considerations**

## States have not followed a uniform model in creating their Conservation Credit programs.

While the programs all share the same basic elements—limitations on credits, definition of conservation values, and eligibility of entities that may claim credits— they vary dramatically within these categories. For example, Connecticut offers only corporate tax credits. Mississippi's credit is valued at 50 percent of a project's transaction costs rather than the value of donated land, and credits may be earned only through donations of land of a certain type. New York's credit, while it is applied to income taxes, is valued at 25 percent of a landowner's property taxes. California's program requires a



Forest, Alaska

significant investment of time and resources from both donor and donee prior to earning a credit, severely curtailing use of the program. Colorado and Virginia offer high-value transferable credits, attracting many landowners to make use of the program.

Legislatures, land conservation organizations, and other program supporters must determine exactly what they are trying to accomplish with a conservation tax credit program to ensure that the provisions in their legislation will achieve the desired results. This section presents the primary questions to be considered in program development and includes lessons learned from existing programs to assist those currently developing or amending Conservation Credit legislation.

Land protection through both fee title and conservation easement donations is important to an overall land protection strategy. However, drafters must determine which type of donation they want to encourage through their Conservation Credit program. The majority of programs award credits for both. In contrast, Colorado, Maryland, and New York award Conservation Credits only for the donation of conservation easements. In Colorado, where one-third of the State's land is already in public ownership, the general preference is that lands remain in the hands of private landowners rather than be donated in fee to a government or land conservation entity. The structure of programs in Maryland and New York is also more consistent with providing incentives to landowners who continue to hold title to their properties. Maryland's Conservation Credit (\$5,000 per year with a 15-year carry-forward) layered an additional incentive on existing property tax credits for land donations. In form, New York's credit is an income tax credit, but it functions more like a property tax credit.

WHAT TYPE OF LAND WILL BE PROTECTED? FEE TITLE, CONSERVATION EASEMENT, OR BOTH?



**Conservation Credit programs must sufficiently define the conservation values they are established to protect.** Some states have broadly defined conservation values, while other states narrow the definitions to promote specific land preservation goals. Somewhere in between is where most states end up. More precisely defining the conservation values to be protected will provide guidance to landowners and will make the program more effective in achieving state land protection goals.

## 1. Broad definitions of conservation values and IRC §170(h)

Many Conservation Credit programs characterize conservation values or benefits very broadly, defining them either in the Conservation Credit statute or referring to preexisting definitions in conservation easement enabling legislation. In addition, seven of twelve programs specifically require that donations satisfy the requirements of a "qualified donation" pursuant to IRC §170(h).<sup>8</sup>

Requiring compliance with IRC §170(h) for a donation to earn a state tax credit allows a simplified method of setting program rules. However, drafters should consider the full implications of doing so. States may have different goals for their state tax credits than the federal government does for its deductibility program. If certain provisions are acceptable and desired for use in a state's program, it might be better to use the specific language rather than merely requiring compli-

> ance with IRC §170(h). Otherwise, when IRS requirements are amended or interpretations evolve over time, states may not be happy with the resulting impact on their programs.



Many states go beyond IRC §170(h) by providing additions to or restrictions on those requirements. Delaware, for example, provides within its Conservation Credit statute its own brief definition of open space and natural habitat. Georgia and North Carolina list categories of eligible conservation benefits in their legislation. Both also provide much more detailed guidance in supporting regulations and procedural documents. In 2006, Virginia passed legislation authorizing the Virginia Land Conservation Foundation to describe "the objective characteristics of lands that have important conservation values."

California and Mississippi provide the most guidance on lands eligible to earn a credit. In addition to setting out broad categories of conservation lands that qualify, California goes further, requiring a donation to meet one or more requirements such as the land being a part of a conservation plan.<sup>9</sup> Mississippi goes the furthest, requiring that only lands designated as priority sites by the state's Natural Heritage Program or lands adjacent to and along streams nominated for the state's Scenic Streams Stewardship are eligible to earn a credit.



Field of wildflowers, Virginia

**CONSERVATION RESOURCE CENTER 2007** 

WHAT

**FINANCIAL** 

LIMITATIONS WIL

**BE PLACED ON** 

**THE CREDITS?** 

C.

Finally, some states have chosen to specifically make certain types of lands ineligible for tax credits. For example, both South Carolina and Georgia explicitly exclude golf courses and lands directly associated with golf courses from eligibility.

Another critical decision for program drafters is the level of financial incentive the program will provide. Most often, credit value is set as a percentage of the fair market value of the donated land or some predetermined cap on value, whichever is less.

Some state legislatures express concern over the potential fiscal impact of a Conservation Credit program. However, as is discussed in the following sections, there are numerous ways to limit the fiscal impact of a program while still maximizing the public benefit. These include offering a credit for only a portion of the donated value of the land, placing caps on the credits, and setting a sunset date at which time costs and benefits of the program can be reviewed. In addition, it should be noted that the full value of each potential tax credit that could be earned is not always realized. There are pipeline losses. First, not all landowners claim credits. Second, in states with certification, some credits may be rejected. Finally, a landowner may not be able to make use of the entire value of the credit, especially in states without transferability.

## 1. Credit valuation

All but three programs base credit values on some percentage of fair market value of the donated land.<sup>10</sup> This ensures that there is a significant public benefit for any dollars awarded as tax credits. For example, when credits are valued at 50 percent of the fair market value of the donation, the public receives \$2 of land protection for every \$1 offered as a tax incentive. Credit valuations range from

25 percent the donated value in North Carolina to 100 percent in Maryland. The average credit value is 48% of the donated value.<sup>11</sup>

# 2. Caps that may be placed on credit transactions

States have capped credit transactions in four different ways, as described here.

## a. Maximum value of credit

All but five states have a cap on the total value of the credit. Considering the programs that value credits based on the fair market value of the donation, individual and corporate caps range from \$50,000 in Delaware to an unlimited credit in Virginia, Connecticut and California.



Connecticut's credits are available only to corporations. California's credit program, due to its onerous program requirements, is not readily accessible to the typical landowner. Virginia faces the greatest fiscal impact because its credits are both unlimited and transferable. However, after scrutinizing its program in 2006, Virginia elected to keep both an unlimited credit and credit transferability, recognizing the importance of these elements in dramatically increasing land conservation in the state. As discussed earlier, New York and South Carolina do not set explicit limits on credits, but credits are kept low through valuation methods.

## b. Amount of credit that may be applied to taxes in any given year

Three states allow a higher credit to be earned than can be applied to taxes in a given year. In Maryland, credits of up to \$80,000 can be earned, but only \$5,000 can be applied to offset taxes each year. There is no upper limit on credit values in Virginia and New York (25 percent of each year's property taxes). However, in Virginia no more than \$100,000 can be applied by the donor to his or her state income tax annually and in New York the maximum amount that can be applied in a given year is \$5,000.

## c. Number of credits earned annually

In Colorado and New Mexico, landowners may not earn more than one credit a



Redwood forest, California

year. Colorado's law goes on to require that when a landowner earns a credit, he or she may not earn another credit until all value from the first credit is applied to income taxes or is relinquished.<sup>12</sup> Mississippi allows only one credit in a lifetime. Most other states do not have a similar limitation. So long as the cap on the amount of credit that may be applied to taxes in any given year is not exceeded, multiple credits may be earned.

## d. Statewide cap on tax credits that may be earned

Statewide caps offer state legislatures certainty regarding the maximum annual fiscal impact a program may have. California, Delaware, and now Virginia have caps on the total value of credits that may be earned statewide. California's cap is \$100 million (or whatever has been spent by FY 2007–2008, whichever is less). Delaware's cap is \$1 million in any given year. Virginia's cap is set at \$100 million a year. No other programs have a statewide cap on the overall value of credits that may be earned.

The difficulty with statewide caps is that if credits are awarded on a first-come, first-served basis, projects that are pushed through most quickly—and not necessarily those projects with the highest conservation value—may be the projects that receive funds. Conservation easement donations can be complex and time-consuming transactions when done correctly. Donors and donees trying to put together solid deals thus may be punished for their diligence. Other methods of allocating limited funds also come with unintended consequences. A lottery system leaves too much to chance, and setting standards and criteria turn the tax credit program into more of a grant award program with its associated layers of bureaucracy. Each of these allocation methods reduces the certainty of whether a credit will be earned, thereby reducing the effectiveness of the program.

## 3. Sunset date

Finally, two states have sunset dates in their Conservation Credit legislation. Conservation Credit supporters generally disfavor sunset dates because of the additional investment of time and resources necessary to extend the sunset or make

the credits permanent at the time the program expires. However, if a legislature is unwilling to make the leap to a permanent program, this offers a more conservative approach. California and Delaware both have sunset dates for their legislation in fiscal years 2008 and 2010, respectively.

These restrictions on Conservation Credit programs are valuable tools to limit the overall fiscal impact of a program. However, such limitations may work against strategic use of the credit program. If an entity is working to preserve land in a particular geographic area, it may be important that a particular landowner be able to earn more than one credit over a certain period of time. Landowners may own multiple parcels in a given protection area. In trying to maintain a high degree of control over a program through tight drafting, one must be watchful of unintended consequences that may impair the program's effectiveness.

With regard to who will be eligible to earn a Conservation Credit, it must be considered whether the program is intended to protect as much land as possible, to provide incentives to the greatest number of taxpayers, or to reward a specific group of landowners. Having more eligible land donors provides the greatest opportunity to protect land. However, several states have decided to limit eligibility in this area. Although most states allow both individual and corporate taxpayers to claim tax credits, three do not. Connecticut offers credits only to corporations, while Maryland offers credits only to individuals. Colorado provides credits only to individuals who are residents. Arizona's program, in existence until January 2006, was available only to agricultural districts. In one western state, a pending program may make benefits available only to agricultural landowners.

Related considerations include the treatment of pass-through entities, married couples, trusts, and estates, and whether there should be residency requirements on individuals and/or corporations.



Rock formations, Utah



D.

WHAT ENTITIES WILL BE ELIGIBLE TO HOLD A DONATION?

**Conservation Credit programs vary widely in the entities they deem eligible to accept donations of land or conservation easements that generate credits.** This is an important issue to consider, as some of the actual and perceived program abuses relate to the qualifications of the entities that accept the donations. The concern is that some entities may form for the specific purpose of holding fee or conservation easement donations deemed inadequate by the more established land trusts and government open space programs. To protect the public investment of dollars, states should ensure that the entities eligible to hold Conservation Credit land or easement donations possess sufficient expertise and funding for long-term management and monitoring.

## 1. IRC §170(h)

Most Conservation Credit programs provide that the entities that qualify under IRC §170(h) are eligible to hold easements earning a tax credit. This includes government entities and nonprofit 501(c)(3) organizations. Nine states specifically require compliance with §170(h).

# **2.** Additional state requirements on land trusts or other entities holding easements

Other programs have added requirements beyond the general provisions of IRC §170(h). These additional requirements may exist in the state's conservation



easement enabling legislation or may be within its Conservation Credit legislation. Georgia requires that eligible entities must adopt and implement the standards and practices of the Land Trust Alliance. It also places annual monitoring requirements on the land trusts and requires that copies of monitoring reports be sent to the state. Colorado requires a two-year waiting period before an entity may hold conservation easements. Virginia requires that an entity accepting a donation have an office in the state for at least five years.

In 2008, the Land Trust Accreditation Commission, an independent program of the Land Trust Alliance, plans to initiate a national accreditation program for land trusts. In the future, Conservation Credit legislation may cite accreditation as an eligibility requirement for accepting donations that generate tax credits.

Blossoming tree, Virginia
### **3. State-approved land trusts**

Finally, California and Maryland have taken the strictest line, allowing only approved land trusts to hold easements generating tax credits. In California, nonprofits must be designated by a qualified government entity and must have experience in land conservation. In Maryland, only the Maryland Environmental Trust and the Maryland Agricultural Land Preservation Foundation are eligible.

**Research demonstrates that by far the most important element of a successful Conservation Credit program is making the credits transferable.** Legislatures have been averse to make credits refundable.<sup>13</sup> However, it would be expected that full refundability would likewise increase the effectiveness of Conservation Credit programs. Having a carry-forward provision helps, but alone it is insufficient to significantly improve the performance of a program. These provisions also work to make Conservation Credit programs more equitable. Without transferability and/or refundability, the wealthy will disproportionately benefit from the program.

### **1. Carry-forward**

To help ensure that landowners can realize much of the value of their credits, all Conservation Credit programs allow their credits to be applied to state income tax for a minimum of five years. Some programs offer the option to carry-forward for an unlimited amount of time. However, in circumstances where credits are large but landowners have a low taxable income, these carry-forward provisions may be insufficient to ensure equitable treatment of both the wealthy landowner and the land rich/cash poor landowner. In these cases, the best way to ensure that conservation tax credits are an incentive to all landowners is to make credits transferable or refundable.

### 2. Transferability

Currently, South Carolina, Colorado, and Virginia all have transferable credits. Reliable transfer markets exist in Colorado and Virginia, making it simple for landowners to transfer credits to third parties and realize an immediate financial benefit for their credits.<sup>14</sup> Market rates can fluctuate, but currently landowners receive between 70 percent and 82 percent of the value of their credits.<sup>17</sup> Third parties purchase the credits at a discount and in turn reduce their own tax liability. In Virginia, an average of 76 percent of the total credit value earned in the state is transferred each year.

In states with transferability, Conservation Credit facilitators provide an additional layer of due diligence review to ensure that easement donations that earn Conservation Credits meet program standards. In addition, facilitators negotiate for the highest price for their landowners and schedule credit transfers to meet the landowners' needs. Facilitators are often reimbursed for their services from the proceeds of the credit transfer. HOW CAN THE EFFECTIVENESS OF THE TAX CREDIT BE MAXIMIZED? Carry-Forward, Transfer, and Refund Provisions

E.



Of the professionals interviewed for this report, in the eight states that do not currently have transferability or refundability, five stated that they would like to see their states' credits be made transferable. Two others wanted to wait to see the experience of other states with transferability, and only one said he did not want his state's credits to be transferable.

### 3. Refundability

Legislatures are generally loath to make any type of tax credits refundable. Although refundable credits clearly streamline the process, most legisla-

Smoky Mountains, Tennessee

G.

tures find credit transfers more palatable than writing government checks to refund credits. Only two states offer refunds, and both are capped at a low annual value. Colorado's legislation has a rarely used partial-refund provision; landowners may seek refunds of up to \$50,000 per year during state surplus years. However, since the enactment of the program, there have only been two surplus years.<sup>15</sup> In New York, where credits have a maximum annual value of \$5,000, if the income tax credit earned exceeds taxes due, the remainder may be refunded.

WHAT INFORMATION SHOULD BE TRACKED FOR REPORTING PURPOSES?

Any tax credit program should have methods by which to track usage to allow future analysis of program effectiveness. Both Virginia and North Carolina have the ability to obtain detailed information regarding the Conservation Credits earned in their states. Colorado has less ability to access program data, and organizations are currently working to devise a detailed and reliable tracking system for Colorado credits. States considering Conservation Credit programs should determine what information they would like to have available and how they intend to collect it for the for future evaluation of program effectiveness. Information to track might include the following:

- Annual number of credits earned,
- Value of credits earned,
- Value of land protected,
- Number of acres protected through donation,
- Types of land protected through donation (agricultural, wildlife, wetlands, and so on),
- Type of donor claiming credit (individual, corporation, other),
- Type of holder of the conservation easement (land trust, government, other),
- Number of credits transferred and
- Value of credits transferred.

Most tax credit programs already have a form that must be filed with the tax department to claim the credit. It will be a simple matter to expand this form to include requests for the types of information discussed above. The state department of revenue or taxation may then compile these statistics on an ongoing basis. To ensure wise use of public funds, it is important to consider the appropriate mechanisms to guarantee that credits earned are supported by qualified land donations. Land Conservation professionals in four of the ten states with established Conservation Credit programs reported one or more transactions that pushed the envelope too far, suggesting that the easement donation might be unqualified. Issues of concern include:

- Overvaluation of the donation,
- Questionable conservation benefits,
- Inappropriate phasing of a transaction,<sup>16</sup> and
- Conservation easement donations being made to entities that may be inexperienced or that lack a true dedication to land conservation.

These are the same issues that have been of potential concern for the federal government for decades. The creation of state Conservation Credit programs has not created these problems. However, such programs have suddenly put these issues into play at the state level. Without checks on the system, the opportunity for significant financial reward poses the risk that some may attempt mediocre deals that may not have otherwise been pursued.

Two principal approaches have been used to ensure that credits are supported by qualified transactions. One is the audit approach, which allows taxpayers to unilaterally claim tax benefits on their tax returns, and those benefits are allowed unless a post-return audit disallows them. The second approach involves certification of the credits, whereby the tax credits involved must be certified by the government before a taxpayer can claim them on a tax return. Each of these approaches has its benefits and drawbacks.

### 1. Audit approach

The general approach employed in the world of taxation relies on taxpayers honestly reporting their taxes on tax returns, followed up by the potential for a post-return audit, which could happen at any time before the expiration of the statute of limitations. For example, a credit springs to life as soon as a donation is made. A state would review the credit, if at all, only after the credit has been claimed on a tax return. Programs in Colorado, Connecticut, and New York rely exclusively on this approach for controlling the use of the credits. South Carolina and Virginia rely primarily, but not exclusively, on the audit approach. However, South Carolina



Forest stream, Michigan

WHAT IS THE APPROPRIATE LEVEL OF PROGRAM OVERSIGHT? requires certification where a credit will be transferred to a third party. New in 2006, Virginia requires certification of a credit valued at more than \$1 million. The chief benefits of an audit approach are speed and simplicity. Because there are no governmental prerequisites for creating credits, the credits spring into existence as soon as a donation is made. Practice shows that many easements are finalized at the end of the tax year; the audit approach thus allows the maximum number of easement donations to occur in any given year. Also, because a system



Birch Trees, Maine

already exists for post-return audits, this approach does not require any new governmental infrastructure or bureaucracy to administer the credit program.

One disadvantage of an audit-based approach is that users of credits do not know for certain that the credits are valid, because the credits could later be reversed upon an audit. This is of particular concern when a program allows the credits to be transferred, because the transferees of the credits cannot be certain that they are acquiring good credits. Instead, many transferees rely on indemnification provisions from credit sellers and/or on credit facilitators, who perform due-diligence review on transactions before placing them with buyers to ensure their interests are protected. Another disadvantage of an audit-based system is in determining who will conduct the audits. If a state creates the credits, the financial burden is on the state budget. In such a case, if the state is relying on the IRS to conduct the audits, the state might find that the IRS is not auditing all of the transactions that the state would like to see reviewed. On the other hand, states often lack the resources and expertise to conduct full audits on their own.<sup>17</sup> Despite these shortcomings, the audit approach is elegant in its simplicity. Virginia recently upheld the use of the audit approach for credits valued at under \$1 million.

### 2. Certification approach

Seven programs rely primarily on a state certification process for donations prior to awarding a credit.<sup>18</sup> The

certification means that the transaction meets state standards for earning a state tax credit. State certification generally empowers a state department of natural resources or some other authorized arm of the state to conduct a substantive review of a conservation easement credit transaction. Such certification programs vary greatly in their requirements. In California, a donor must submit materials to the Wildlife Conservation Board to ensure that the project is generally consistent with the requirements of the program. If approval is granted for the project to advance, the donor and donee must then hold a public hearing about it. After the public hearing, an application must be submitted to the Wildlife Conservation Board for consideration. Although this procedure is atypical, it exemplifies one extreme example of what a certification process might entail. New Mexico's legislation requires that donors must submit deed information, mineral reports, baseline reports, appraisals, and title work by January 31 of the year in which the credit will be earned. This timing does not work well for landowners. Based on the normal timeline for land donations, this information would not be available until very late in the year. The state has decided to accept materials up until April 16 to, in part, address this hardship.

Georgia's certification program sets a 90-day turnaround time from submittal of materials to decision. For a landowner to be certain he or she may earn a credit in the year in which the donation is made, all materials must be in final form and submitted to the state by early October. However, if any materials are missing or

if changes need to be made, they may not receive a decision by December 31.<sup>19</sup>

Before adopting a certification program, states must consider what their standards for certification are. Is the goal of certification to reject the clearly abusive transactions? Such transactions might lack any real conservation values, have highly over inflated appraisals, or have unqualified entities accepting the donation. At the other end of the spectrum, certification standards might be set to ensure that only the highest-quality transactions are approved. This might include a detailed examination of conservation values and baseline documentation, appraisal reviews to ensure that appraised values are indisputable, and review to ensure that entities accepting donations of



conservation easement and/or fee title meet standards and practices set by the Land Trust Alliance. The latter purpose of identifying the highest quality transactions can be difficult to achieve. Unless the meaning of the term "conservation value" is clearly defined in a state's statute, nearly every parcel of land may contain an important conservation value in someone's opinion. As appraising is not an exact science, there is often room for debate with respect to the value of a donation. In-depth investigation of each entity accepting a donation would also be a lengthy process.<sup>20</sup> Bad transactions are typically fairly easy to identify. Attempts to award credits to only the best transactions requires a much higher level of investigation and oversight.

Based on responses from experts in the field, there seems to be a need for some middle ground between the audit and certification approaches. Several experts in states that rely on audit systems (without certification) wished there was more proShoreline, New Mexico

gram oversight and infrastructure. Several experts in states with certification said that their certification procedures were too onerous and that they would simplify the process and shorten the time required to determine certification. Moreover, several expressed concern that certification, if too onerous, serves as a deterrent to landowners, curtailing the effectiveness of the programs. Given the desire for some level of oversight to protect against gross violations and the concern that too onerous a process will harm the program, the appropriate level of oversight is probably somewhere in between an audit system and a full certification process.

#### 3. Transactional screen

A transactional screen is a limited, nonbinding review of a transaction that occurs either before or after a donation is made.<sup>21</sup> It allows states to immediately reject the worst deals while preserving the right to raise objections on more detailed questions at a later date. The review is expedited to ensure that the transaction



Field of poppies, Arizona

meets minimum standards. The screen may review three basic areas: the technical aspects of appraisal methodology, whether land donated meets the conservation-value criteria of the program, and other basic due diligence to ensure the transaction is complete and correct. As soon as a transaction passes this screen and the donation is made, a credit may be claimed. Such a screen is similar to the review most tax credit facilitators conduct in states with transferable credits. However, there is no reason a state could not provide a similar review.

If a project is approved through a transactional screen, credits may be earned and claimed on a tax return. However, there is no guarantee that credits will not be reduced or disallowed upon a subsequent audit. For several reasons, transactional screens appear well suited for regulating conservation easement donations. Most important is the fact that the transactional screen may be the only regulatory scheme that would be acceptable to the state revenue departments that must enforce it. Any system that is more thorough and final poses problems for those reviewing the credit. First, the short turnaround time that the timeline of a land conservation donation requires would be a significant hardship to those doing the review, especially in connection with appraisal review. Many easement transactions involve high-value lands and are increasingly accompanied by exceedingly thorough and sophisticated appraisals (some contain hundreds of pages of text) whose in-depth review might require months.

Additionally, as noted previously, the IRS may choose to conduct its own audit of the subject transaction. It is uncertain how a state would react if it approves a

drafting considerations 29

certain transaction that is subsequently disqualified by the IRC.<sup>22</sup> This uncertainty is further complicated if the state's legislation makes compliance with IRC §170(h) a requirement of the program. In addition, most states have conformity laws that allow the state to rely on adjustments in tax value made by the IRS. It is highly unlikely that a state taxing authority would be willing to waive that right in favor of a binding certification.

Aside from the pragmatic basis discussed above, transactional screens have immediate practical benefits. First, they cull many bad transactions from the system before damage can be done. As noted previously with respect to programs that allow transferability, once credits are sold, it can be very difficult to get the toothpaste back into the tube.<sup>23</sup> Any kind of after-the-fact audit will not prevent that unfortunate problem. Additionally, it appears that a competent transactional screen can be accomplished in a manner that will not interfere with an efficient market for the sale of the credits. This is an essential component that allows the powerful tool of transferability to accomplish its ends.

Finally, the experience of Conservation Credit facilitators seems to provide real-world evidence that transactional screens work and that they can be done in a reasonably short time frame so as to not interfere with the marketability of credits. As noted previously, almost all of the facilitators of tax credit sales conduct some sort of due diligence. The experience of the Conservation Resource Center in reviewing more than five hundred transactions has shown that a substantial number of the transactions had problems that initially prevented their sale. However, the vast majority of these problems were fixed relatively easily, ultimately permitting the credits to be sold. It is certainly preferable to find and fix these problems at an early stage rather than to identify them long after the fact, at a time when repair may no longer be practical or possible. See Appendix B, Sample Transactional Screen, for one example of a transactional screen.



Sunset, New Jersey



A Conservation Credit program can be a valuable tool in a state's overall land protection strategy. It has the potential to dramatically increase voluntary land protection. The amount of additional land protection attributable to a Conservation Credit program is primarily driven by two factors: (1) the maximum value of credit that may be earned and (2) whether the credit may be deferred over several years, transferred, and/or refunded.

The continued success of tax credit programs will depend on diligent attention to such issues as (1) ensuring that transactions earning credits are worthy of public investment and (2) tracking the lands conserved and conservation benefits protected so that program success can be shared with the legislature and the public. As a compendium to this report, the Conservation Resource Center is developing model conservation tax credit legislation that states may use as a starting point for developing new legislation or amending existing programs. Its release is anticipated in mid-2007.



Green mountains, Virginia

# 32 part three

A Constant in		CALIFORNIA	COLORADO	CONNECTICUT
	LEGISLATION (Date of Enactment) Statutory Citation	Natural Heritage Preservation Tax Credit Act of 2000 (2000) Cal. Public Resource Code §§37000-37042	Credit Against Tax – Conservation Easements (1999) Colo. Rev. Stat. § 39-22-52	Tax Credit For Donation of Open Space (2000) Conn. Gen. Stat. §12-217dd
	LANDS ELIGIBLE TO EARN CREDITS • Fee title, Conservation easement, or both • IRC § 170(h) = explicit requirement to meet federal eligibility requirements related to conservation values • State additions to/ restrictions on federal standard	<ul> <li>Fee Title &amp; Conservation Easement</li> <li>IRC § 170(h)</li> <li>Water conservation for protection of threatened or economically important species. Wildlife habitat must be identified by CESA/ESA. Agricultural land must be threatened by development.</li> </ul>	<ul> <li>Conservation Easement only</li> <li>IRC § 170(h)</li> <li>Agriculture lands and environmental quality benefits are recognized per se.</li> </ul>	<ul> <li>Fee Title &amp; Conservation Easement</li> <li>Conservation of <ul> <li>(i) water resources,</li> <li>(ii) soils, wetlands,</li> <li>beaches or tidal marshe</li> <li>(iii) agriculture lands,</li> <li>(iv) forestry lands (over 25 acres), and (v) promotion of orderly urban or suburban developments is recognized per se.</li> </ul></li></ul>
	CREDIT VALUE AND LIMITATIONS • Value as a % of FMV of donated land unless otherwise noted. • Maximum credit, if any • Cap on credits applied to taxes/yr., if any • Limitation on # credits that may be claimed by one individual/entity, if any • Statewide cap, if any • Sunset date, if any	<ul> <li>55% FMV</li> <li>Unlimited credit</li> <li>Statewide cap of \$100,000,000/program lifetime.</li> <li>2008 sunset date.</li> </ul>	<ul> <li>50% FMV</li> <li>\$375,000 max credit.</li> <li>\$375,000 cap on credit applied to taxes/yr.</li> <li>Individual/entity limited to one credit /yr.</li> </ul>	• 50% FMV • Unlimited credit
	ENTITIES ELIGIBLE TO EARN CREDITS	Individual/Corporate/ Pass-Through Entities	Resident Individual/ Corporate/Pass-Through Entities	Corporate
	ENTITIES ELIGIBLE TO HOLD A DONATION • IRC § 170(h) = explicit requirement to meet federal eligibility requirements • State eligibility requirements	<ul> <li>IRC § 170(h)</li> <li>Governmental entities limited to State or its subdivisions; Nonprofits must be designated by a qualified governmental entity and have experience in conservation.</li> </ul>	<ul> <li>IRC § 170(h)</li> <li>Nonprofits must have operated for 2 years.</li> </ul>	Governmental entities limited to State or its subdivisions; Nonprofits must be conservation organizations; Water Companies eligible.
	CARRY FORWARD?	8 yrs.	20 yrs.	15 yrs.
	TRANSFERABLE?	No	Yes	No
	REFUNDABLE?	No	Conditional on State Surplus and limited to \$50,000/yr.	No
	CERTIFICATION?	Yes – by CA Wildlife Conservation Board. Scope of review: appraisal, conservation value, donor/ donee eligibility, public comments etc	No	No

DELAWARE	GEORGIA	MARYLAND	MISSISSIPPI	N. CAROLINA*
Delaware Land & Historic Resources Protection Incentives Act of 1999 (2000) Del. Code Ann. tit. 30, \$\$1801-1807; tit. 7, \$\$6901- 6902.	Credit for Donation of Real Property for Conservation Purposes (2006) Ga. Code Ann. § 48-7-29.12	Income Tax Credit for Preservation and Conservation Easements (2001) Md. Code Ann §10-723	Tax Credit [for] Natural Heritage Priority Conservation or Scenic Streams Land Donations (2003) Miss. Code Ann. §27-7-22.21	North Carolina Conservation Tax Credit Program (1999) N.C. Gen. Stat. §105-151.12 and §105-130.34
• Fee Title & Conservation Easement	• Fee Title & Conservation Easement	• Conservation Easement only	• Fee title & Conservation Easement	• Fee Title & Conservation Easement
<ul> <li>IRC § 170(h)</li> <li>Conservation of water resources is recognized per se.</li> </ul>	<ul> <li>IRC § 170(h)</li> <li>Conservation of <ul> <li>(i) water quality,</li> <li>(ii) wetlands,</li> <li>(iii) prime agricultural lands,</li> <li>(vi) forestry lands, (v) from floods, and (vi) from erosion is recognized per se.</li> </ul> </li> <li>Agricultural land must be cultivated under a USDA developed conservation plan.</li> </ul>	• Conservation of (i) agriculture lands, (ii) forest lands, (iii) watersheds, and (iv) view sheds is recognized per se.	<ul> <li>IRC § 170(h)</li> <li>Land must be listed by the MS's Scenic Streams Stewardship Program, or Land be priority site under MS's Natural Heritage Program.</li> </ul>	• Wildlife habitat should exceed 25 Acres. Forest land should be managed under a Forest Stewardship Plan using best practices, with restrictions on prescribed burning, timber harvesting, and herbicide application. Conservation develop- ments are recognized.
<ul> <li>40% FMV</li> <li>\$50,000 max credit.</li> <li>Statewide cap of \$1,000,000/year.</li> <li>2010 sunset date.</li> </ul>	•25% FMV • \$250,000 Ind. max credit/ \$350,000 Corp. max credit.	<ul> <li>100% FMV</li> <li>\$80,000 max credit.</li> <li>\$5,000 cap on credit applied to taxes/yr.</li> </ul>	<ul> <li>50% Transaction costs</li> <li>\$10,000 max credit.</li> <li>individual/entity limited to one credit/lifetime.</li> </ul>	• 25% FMV • \$250,000 Ind. max credit/ \$350,000 Corp. max credit.
Individual/Corporate/ Pass-Through Entities	Individual/Corporate	Individual	Individual/Corporate/ Pass-Through Entities	Individual/Corporate
• IRC § 170(h)	<ul> <li>IRC § 170(h)</li> <li>Governmental entities limited to State or its subdivisions; Nonprofits must adopt LTA Standards and receive IRS Determination Letter.</li> </ul>	• Only Maryland Environmental Trust and Maryland Agricultural Land Preservation Foundation are eligible.	• IRC § 170(h)	• Governmental and Nonprofit entities are eligible.
5 yrs.	5 yrs.	15 yrs.	10 yrs.	5 yrs.
No	No	No	No	No
No	No	No	No	No
Yes – by the DE Division of Revenue of the Department of Finance. Scope of review: appraisal issues.	Yes – by GA Department of Natural Resources. Scope of review: conservation values, legality of CE, and donee's eligibility	Yes – by the MD Board of Public Works. Scope of review: cost-benefit analysis.	Yes – by the MS Scenic Streams Stewardship Program or MS Natural Heritage Program. Scope of review: conservation values and 170(h).	Yes – by NC Department of Environment and Natural Resources. Scope of review: conservation values.

\* North Carolina's first credit program was enacted in 1983. However, the legislation in its current form was enacted in 1999.

# 34 part three

A.					
(summary continued)	NEW MEXICO*	NEW YORK	S. CAROLINA	VIRGINIA	
LEGISLATION (Date of Enactment) Statutory Citation	Land Conservation Incentive Act (2004) NM Stat. §\$75-9-1-5, §7-2- 18.10; N.M. Code R. §3.13.20	Conservative Easement Tax Credit (2006) NY Tax §606(kk)	South Carolina Conservation Incentives Act (2001) S.C. Code Ann. §12-6-3515	Virginia Land Conservation Incentives Act of 1999 (2000) Va. Code Ann. §§ 58.1-510-513	
LANDS ELIGIBLE TO EARN CREDITS • Fee title, Conservation easement, or both • IRC § 170(h) = explicit requirement to meet federal eligibility requirements related to conservation values • State additions to/ restrictions on federal standard	<ul> <li>Fee Title &amp; Conservation Easement</li> <li>IRC § 170(h)</li> <li>Conservation of agriculture lands, forest lands, and watersheds is recognized per se.</li> </ul>	<ul> <li>Conservation Easement only</li> <li>IRC § 170(h)</li> <li>Preservation of agricul- ture lands and watersheds is recognized per se.</li> </ul>	<ul> <li>Fee Title &amp; Conservation Easement</li> <li>IRC § 170(h)</li> </ul>	<ul> <li>Fee title &amp; Conservation Easement</li> <li>IRC § 170(h)</li> <li>Conservation of water resources is recognized per se.</li> </ul>	
CREDIT VALUE AND LIMITATIONS • Value as a % of FMV of donated land unless otherwise noted. • Maximum credit, if any • Cap on credits applied to taxes/yr., if any • Limitation on # credits that may be claimed by one individual/entity, if any • Statewide cap, if any • Sunset date, if any	<ul> <li>50% FMV</li> <li>\$100,000 max credit.</li> <li>\$100,000 cap on credit applied to taxes/yr.</li> <li>Individual/entity limited to one credit/yr.</li> </ul>	<ul> <li>25% Property Tax</li> <li>Unlimited credit</li> <li>\$5,000 cap on credit applied to taxes/yr.</li> </ul>	<ul> <li>Lesser of \$250/Acre or 25% of Federal Conservation Easement deduction</li> <li>Unlimited credit</li> <li>\$52,500 cap on credit applied to taxes/yr.</li> </ul>	<ul> <li>40% FMV</li> <li>Unlimited credit</li> <li>\$100,000 cap on credit applied to taxes/yr. (Note unlimited amount may be transferred and used by 3rd parties.)</li> <li>Statewide Cap of \$100,000,000/year</li> </ul>	
ENTITIES ELIGIBLE TO EARN CREDITS	Individual/Corporate/ Pass-Through Entities	Individual/Corporate/ Pass-Through Entities	Individual/Corporate/ Pass-Through Entities	Individual/Corporate/ Pass-Through Entities	
ENTITIES ELIGIBLE TO	• IRC § 170(h)	• IRC § 170(h)	• IRC § 170(h)	• IRC § 170(h)	
HOLD A DONATION • IRC § 170(h) = explicit requirement to meet federal eligibility requirements • State eligibility requirements				• Governmental entities limited to State or its subdivisions; Nonprofits must have office in State for 5 yrs.	
CARRY FORWARD?	20 yrs.	**	Unlimited	10 yrs.	
TRANSFERABLE?	No	No	Yes	Yes	
REFUNDABLE?	No	Yes	No	No	
CERTIFICATION?	Yes – by NM Energy, Minerals, and Natural Resources Department. Scope of review: conservation values.	No	No, unless credits are being transferred. If transfer, certified by SC Department of Revenue.	Yes – but <i>only</i> on transactions where credit value is <i>greater</i> <i>than \$1 million</i> . Scope of review: conservation values and appraisal issues.	
	* In March 2007, New Mexico passed legislation raising the cap on its credits to \$250,000 and making them transferable, both effective January 2008. ** Annual credit of 25% of the property tax, up to \$5,000, runs with the land and continues in perpetuity.				

### conclusion and appendices 35

### SAMPLE TRANSACTIONAL SCREEN

A transactional screen might look like the following:"

- 1. Before state credits can be used (either by the original donor or by a transferee), the credits must be screened and registered with the state.
- 2. To pass the screening process, an easement donor must submit certain easement documents to a review board. These documents would include, at a minimum, the easement and the appraisal. The system should be set up to allow review of both the completed transactions and the draft documents (before the easement is executed and recorded) so donors can make modifications to any deficiencies that may be found.
- 3. An application for screening would be accompanied by a nonrefundable processing fee, which would be used by the state to fund the cost of the prescreening system."
- **4**. The review board would be required to rule on screening requests within 60 days of submittal. In cases of resubmittals (in which deficiencies pointed out by the review board have been corrected), the board would be required to issue a ruling within 30 days.
- **5.** The scope of review of the review board would be limited to three areas, and in all three cases the standards would be intentionally low:
  - **a. Appraised value:** Does the appraisal appear to meet minimum standards for a qualified appraisal; does the valuation appear to be manifestly abusive? **b. Conservation values:** Does the property arguably have values worthy of conservation, and do the restrictions set forth in the easement arguably protect those values?

**c. Documentation:** Does the easement document (and any other documents that may be reviewed as part of the process) arguably comply with minimum standards for a qualified easement?

**6.** The board would be composed of three members (who may be floating, and may change for the review of any easement or group of easements):

**a. A tax and valuation expert** (presumably an appraiser from a state department that deals with property tax valuations) who would be familiar with appraisals of conservation easements (see a. above).

b. A conservation expert (presumably from the State Department of Natural Resources or Agriculture and/or some other appropriate state agency) who would be familiar with the conservation elements involved (see b. above).
c. A land conservation attorney (from the state or private practice), familiar with the legal requirements of conservation easements.

Challenges to decisions of the review board would generally be in the form of resubmissions to the board for reconsideration. True appeals would take place under the state's applicable administrative procedures act. It is anticipated that there would be few if any such appeals, since even if a transaction were approved through a screen, it would always be subject to future full audit by the state or IRS under a much more rigorous standard of review.

i Please note that this is merely one example of how a screening process may be structured. The particulars of any screening process could easily be crafted to meet a state's individual needs.
ii At \$500 per transaction, programs like Colorado's would raise in excess of \$100,000 per year, which should cover the costs of a modest-sized review board.

APPENDIX B: Sample Transactional Screen

# APPENDIX C: FOOTNOTES

1 State tax incentives for land conservation include income tax credits and deductions, property tax credits, and low property assessment categories. Each has varying levels of effectiveness, but by far the most successful has been the state income tax credit. For this reason, the focus of this report is on state income tax credits rather than other state tax incentives.

**2** The federal government has long allowed federal income tax deductions for conservation easements. A body of conservation easement law has been developed around 170(h), and consistency seems appropriate as landowners claiming state tax credits are often also claiming federal tax deductibility.

**3** The unofficial English translation citation for Puerto Rico's program is Act No. 138, June 4, 2004. However, an evaluation of this program is not included in this study.

**4** A thirteenth state, Arizona, had a state income tax credit of \$33,000 a year for conservation easements donated in an agricultural preservation district. Although this program showed promise, there were no agricultural preservation districts in existence to accept donations. The income tax credit sunset in January 2006.

**5** New York's credit is valued at 25 percent of the property taxes on the land. It is an annual credit of up to \$5,000. Because this is an annual credit, it could eventually exceed \$100,000, but as it is a remote possibility it is treated as having a cap of under \$100,000. South Carolina's credits are valued at \$250/acre or 25% of an individual's federal tax deduction, whichever is less, limiting the value of its credits.

**6** Although experts in Maryland stated that Maryland's income tax credit has not had significant impact, they believed that its property tax credit has been a strong incentive. The property tax credit predated the income tax credit and credits 100 percent of property taxes over fifteen years, after which time the property under easement is taxed at the lowest property tax rate.

**7** California's credit program, due to significant costs involved in meeting procedural requirements, has not been accessible to most landowners. Connecticut's credits are only available to corporations. As a result, credits in these states have generated important donations, but not a significant number of additional donations.

**8** A "qualified donation" includes the preservation of land areas for outdoor recreation by, or the education of, the general public; the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; and the preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public or for other "significant" benefit. Note that conservation values for the purpose of federal tax deductibility and some state programs include the donation of land for historic uses as eligible for receiving a tax credit. Historic purposes are outside the scope of this report and are not discussed here.

**9** Additional California requirements include that the protected land must: meet the goals of a conservation plan; protect species or habitat; conserve threatened

farmland in unincorporated areas, areas zoned for agricultural use, including water rights; and/or must be used for access to parks and open space.

**10** As mentioned, Mississippi and New York base their credits on transaction costs and property taxes, respectively. South Carolina bases its valuation on a percentage of federal tax deduction earned, or \$250 per acre, whichever is less.

**11** To discourage the fragmentation of conservation easements, valuation should be set at a flat percentage or a lower percentage rising to a higher percentage. For example, Colorado originally set its valuation at 100% of the value of the donation up to \$100,000 and then 40 percent for the next \$400,000, for a maximum credit of \$260,000. This had the unintended consequence of encouraging landowners to donate in \$100,000 increments of value, thus requiring many smaller easements over a larger parcel of land. Legislation was passed in 2006 that corrected this by setting the valuation at a flat 50 percent up to a maximum credit of \$375,000.

**12** This is true even if it is a third party that has purchased the credit. If the third party does not use the entire credit, the landowner originally earning the credit may not generate a new credit until the third party uses the entire value or relinguishes the remainder.

**13** Only one state, New York, has full credit refundability. However, its credit is capped at \$5,000 per year.

**14** Note that while South Carolina's program permits credit transfers, it does not have an active transfer market. There is less need for one, as credits are capped at \$52,500 and transferred credits must be certified by the state.

**15** Further, due to legislation passed in 2005, there will not be another surplus year until after 2010.

**16** Project phasing—dividing a parcel into several conservation easements to maximize the benefit a landowner receives from the Conservation Credit program—has been mentioned as an issue of concern. However, so long as each phase of a transaction can stand on its own and meet the conservation benefits test, phasing may be appropriate in many circumstances.

17 Colorado has language in its easement statute making it clear that the state is empowered to audit all matters related to the easement, including compliance with IRC §170(h) and related federal matters. However, as a practical matter, the state typically relies on the IRS for audit of all federal matters, including the appropriateness of the easement valuation.

**18** In addition, Virginia's and South Carolina's programs require certification in limited circumstances, as discussed earlier.

**19** Georgia also offers a nonbinding precertification review that may be conducted before a donation is made.

**20** This may be simplified once the Land Trust Alliance's Land Trust Accreditation Program is implemented.

**21** Georgia's nonbinding pre-certification option is similar to the transactional screening process discussed here.

**22** At least one state with certification has clarified that the credits are still subject to audit even after certification. For example, the North Carolina Conservation Tax Credit Issue Paper written by the Conservation Trust for North Carolina and the North Carolina Land Trust Council notes that both the IRS and the state revenue department have existing authority "to audit any tax returns, including those claiming the CTC (Conservation Tax Credit), and both have authority to pursue significant civil and criminal penalties against appraisers that aid individuals in filing fraudulent tax returns."

**23** The state of Virginia is now running into this problem. The Virginia Department of Taxation has undertaken the review of at least one very large transaction (with a donated amount well in excess of \$10 million dollars). This state review was initiated several years after the easement donation was made and also after the resulting state credits had been sold to a large number of purchasers. Although the reviews are not complete (and may not be for years), the result of any adjustments to the donation amount may require the further adjustment of a large number of individual tax returns.





# STATE CONSERVATION TAX CREDITS



CONSERVATION RESOURCE CENTER TAX CREDIT EXCHANGE

820 Pearl Street • Suite F • Boulder, CO 80302 303.544.1044 phone • 303.544.1043 fax • www.taxcreditexchange.com

### Resources for additional information and technical support

### American Farmland Trust

Providing technical assistance to towns and counties to develop and implement farmland protection plans 112 Spring St., Suite 207 Saratoga Springs, NY 12866 (518) 581-0078 www.farmland.org

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

Providing technical assistance to farmers and farm businesses 2715 Route 44 Millbrook, NY 12545 (845) 677-6563 <u>http://counties.cce.cornell.edu/dutchess</u>

### Dutchess County Department of Planning and Development

Providing technical assistance in planning and matching grant funding for farmland protection
27 High St.
Poughkeepsie, NY 12601
(845) 486-3600 <u>http://www.co.dutchess.ny.us/CountyGov/Departments/Planning/PLIndex.htm</u>

### **Dutchess Land Conservancy**

Providing technical assistance in farmland protection and planning to farmers interested in protecting their properties 4289 Route 44 Millbrook, NY 12545 (845) 677-3002 <u>http://www.dutchessland.org/</u>

### New York State Department of Agriculture and Markets

Providing technical assistance and grant funding for farmland protection, marketing and many others 10B Airline Dr. Albany, NY 12235 (518) 457-3880 or 800-554-4501 <u>www.agmkt.state.ny.us</u>

### New York State Department of State

Providing technical assistance in planning 99 Washington Ave. Albany, NY 12231-0001 (518) 474-4752 <u>www.dos.state.ny.us</u>

### New York State Office of Real Property Services

Providing technical assistance in agricultural assessment 16 Sheridan Ave. Albany, NY 12210-2714 (518) 474-2982 www.orps.state.ny.us

### NY Farm Net

Providing counseling and technical assistance in farm succession and business planning, and linking farmers and landowners 415 Warren Hall Ithaca, NY 14853-7801 800-547-3276 www.nyfarmnet.org