

# **Town of Parma Agricultural and Farmland Protection Plan**

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# **APPENDIX A**

## Residents Survey Report



## APPENDIX A

### Farmland & Open Space Preservation Survey Results - Town of Parma Summary Report

#### Methodology

The Town of Parma Farmland & Open Space Preservation Survey was distributed in July 2007. Approximately 6,300 surveys were mailed to every property owner in the Town. The survey was also available on-line.

#### Respondents

A total of 1,686 people responded to the survey. This represents a response rate of 29.4%.

A total of 51.3% of the respondents were between the ages of 46 and 65; 23% were over age 65 and 18% were between 36 and 45. Only 5.5% were between 26 and 35 and less than one percent were under age 25.

A total of 1,155 respondents (68.5%) resided in the Town outside of the Village; 448 (26.6%) were Village residents. A total of 51 respondents (3%) resided along the lake shore and 118 (7.0%) resided south of Ridge Road.

#### Importance of Preserving Farmland and Open Space

A total of 94.4% of all survey respondents believe that “it is important to preserve farmland and open space in Parma.” Similarly, 94.0% stated that they “support the town in efforts to preserve farmland and open space.” There was no significant difference of opinion between Village residents and residents of the Town outside the Village.

#### Relative Preservation Priorities

Survey respondents were asked to rate the importance of various agricultural and open space resources. All resources identified were considered important by the respondents. The average rating ranged from 7.5 for “Promote active and passive recreational areas” to 9.4 for “Preserving natural streams and watersheds.” Responses from Village residents and residents of the Town outside the Village were nearly the same.

“Preserving natural streams and watersheds” received the highest rating (9.42 out of 10) followed by “Preserving natural habitats of migratory birds, plants and animals” and “Preserving natural wetlands and woodlands”(both with 9.14 out of 10.) Many written comments mentioned wildlife sightings and expressed support for protecting water quality and wildlife habitats.

“Preserving farmland and encourage local farming” received a rating of 9.01 out of 10. Many written comments noted that Parma is an agricultural community and encouraged residents and the town to support local farming operations.

“Preserving local historic resources” received a rating of 8.58 out of 10. Few respondents commented specifically on historic resources, although many mentioned concerns about the appearance of “historic” Ridge Road and the proliferation of used car lots.

“Promote waterfront access along Lake Ontario and town creeks” received a rating of 7.95 out of 10. Many written comments referred to a past opportunity to purchase lakefront land that was not approved by voters. Others expressed dissatisfaction with large homes that block views of the lake.

“Promote public active and passive recreational areas” received a rating of 7.48 out of 10. Many written comments stated that the Town had sufficient parkland. Many commenters praised the existing Town Park. There were numerous statements in opposition to the proposed soccer complex for the Greece Cobras, although there were also a few statements in support of the complex. Some commenters indicated that new parkland would be suitable if it were nature-oriented and passive. Several noted that they did not understand what “passive recreation” means.

### Perceptions of Open Space and Development

The survey asked residents to estimate the percentage of the Town that is actively farmed and that which is developed. A total of 41% of residents thought that between 21-40% of the Town is farmed, and 30% thought that 41-60% is farmed.

A total of 37% thought that the extent of development is 21-40%; 35% of respondents thought that the Town is 41-60% developed.

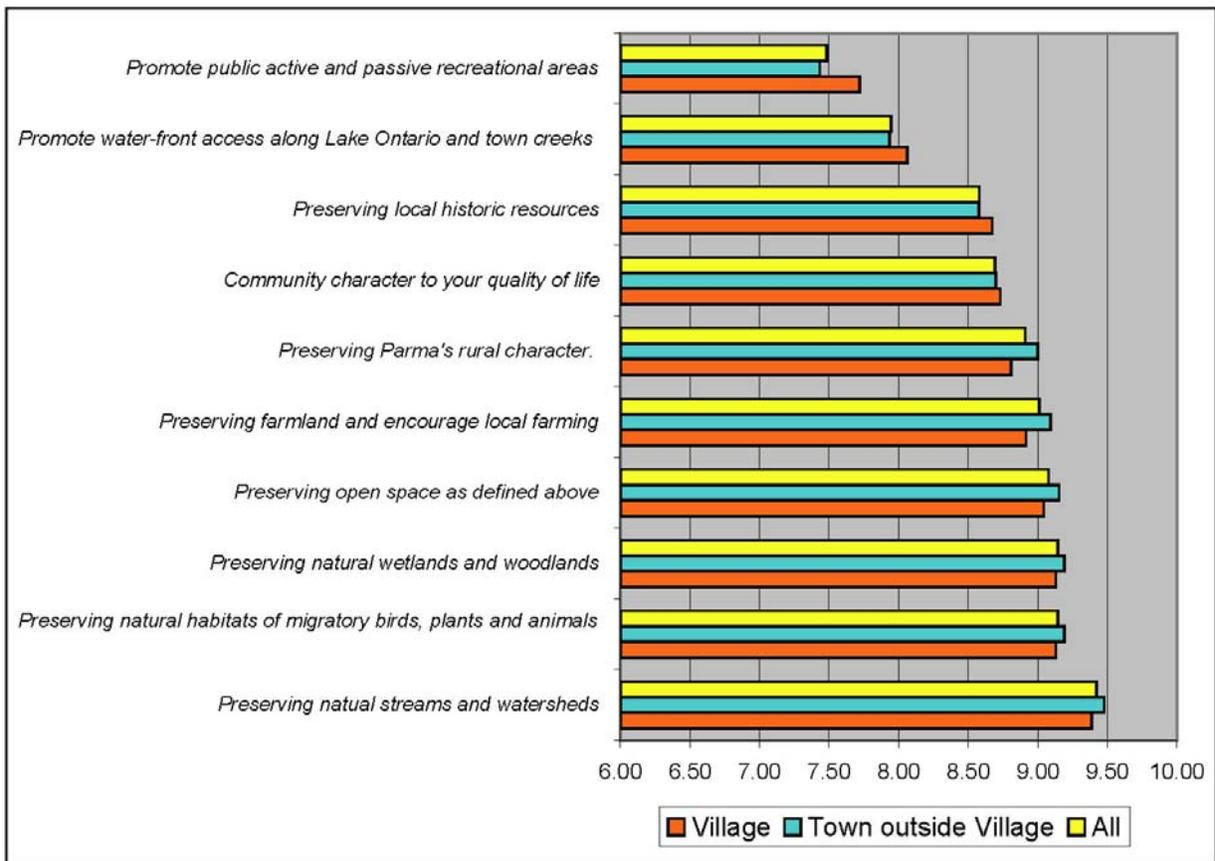
### Written Comments

Based on the written comments from respondents to the Residents’ Survey, the following observations may be made regarding residents’ perceptions and opinions regarding agriculture and farmland preservation.

- **Fiscal impacts of development and land preservation.** While many residents acknowledged that land preservation is generally beneficial to a community’s tax base, because farms do not require many community services, compared to housing, others saw housing development as contributing to the tax base and potentially resulting in lower taxes.
- **Address link between farmland protection and development policies.** Many residents are critical of the pace of development in Parma, particularly of housing development. Others indicated that an appropriate balance of new development and conservation should be pursued. The goals of protecting farmland, open space, and wildlife habitat are linked to slowing the pace of development
- **Support economic viability of farming.** Many respondents acknowledge that farming is a business and needs to be profitable in order to continue. Several suggested providing additional tax breaks to farmers who continue to keep land in agricultural use. Several suggested that residents should purchase more local farm products
- **Respect landowner rights.** Several acknowledge that farmers may need to sell land to finance retirement and oppose programs that would limit landowners’ options.

## Farmland Open Space Survey Results Town of Parma

<i>Please rate the following based upon how important each item is to you (1-10)</i>	All	Town outside Village	Village
Preserving natural streams and watersheds	9.42	9.48	9.39
Preserving natural habitats of migratory birds, plants and animals	9.14	9.19	9.13
Preserving natural wetlands and woodlands	9.14	9.19	9.13
Preserving open space as defined above	9.08	9.15	9.04
Preserving farmland and encourage local farming	9.01	9.09	8.92
Preserving Parma's rural character.	8.91	9.00	8.81
Community character to your quality of life	8.69	8.70	8.73
Preserving local historic resources	8.58	8.58	8.67
Promote water-front access along Lake Ontario and town creeks	7.95	7.94	8.06
Promote public active and passive recreational areas	7.48	7.43	7.72



## Summary of Written Comments

- Appears to be overwhelming support for efforts to retain Parma's rural character, including farmland and wildlife habitats.
- Concern about continued housing development, traffic congestion.
- Don't want to become like Greece.
- Concern about imposing restrictions on landowners.
- Concern about high taxes.
- Suggestions to reduce taxes for landowners who keep their land open.
- Need to help farmers make farming economically viable.
- Opposition to soccer complex.
- Opposition to "McMansions" along the lakeshore.
- Sense that there are enough parks, especially for sports. Some support for passive, nature-oriented parkland. Concern about cost of maintaining parkland.
- Support for increased public access to Lake Ontario.
- Some opposition to using tax dollars to purchase development rights to farmland.
- Expressed need to reduce taxes
- Some support for more industrial/ commercial development to add to property tax base.
- Opposition to too many used car lots and other "eyesores" along Ridge Road.
- Some support fishing on Salmon Creek.
- Some support for well-designed development.
- Variety of opinions regarding lot sizes. Some say lots should be 1-2 acres or up to 5 acres. Others say 5-acre lots are a waste of space. Several commenters don't like "high density" subdivisions.
- Support for interconnected walkways/ bike paths.
- Concern about pesticide spraying.
- Support Kelly's, Zarpentines, DeMeyer's
- Praise for Town Park.
- Provide canoe/ kayak access to Salmon Creek.
- Some support for sewers along lakeshore to protect water quality.
- Some support for purchasing former railroad corridor.
- Concern about pesticide spraying.
- Support Village downtown business district and other small businesses.

# **APPENDIX B**

Summary of Monroe County Agricultural and Farmland  
Protection Plan – 1999



## APPENDIX B

### Excerpts from the Monroe County Agricultural & Farmland Protection Plan - 1999 Recommendations for Municipalities

Monroe County completed an Agricultural & Farmland Protection Plan in 1999. The Plan included goals were to preserve farmland and promote the agriculture industry. The Plan includes an inventory and analysis of farmland and agriculture and recommended a set of actions to achieve the Plan's goals.

The following narrative summarizes the recommendations that were proposed to be carried out by municipalities.

#### **Farmland Preservation and Protection**

- Encourage farmland owners to enroll their land in Agricultural Districts at the time of district renewal.
- Target Class I soils and the leading Class II soils for both protection and profitability efforts when the landowner wishes to participate in such efforts.
- As required by State Agricultural Districts Law (Article 25AA), Town Law, and Village Law, ensure that zoning regulations applying to farming and agriculture are consistent with Article 25AA.
- As required by Article 25AA, Town Law, and Village Law, ensure that municipal comprehensive plans and related policies that apply to agriculture are in conformance with Article 25AA and also take into consideration the recommendations in this plan.
- Municipalities currently using farmland preservation techniques such as PDR, conservation easements, cluster development, and comprehensive plans promoting agriculture, should continue to do so.
- Evaluate purchase of development rights (PDR) programs. If PDR programs are established, consider placing emphasis on purchasing the development rights on field crop land, vacant agricultural land, and truck crop land, and on other lands containing Class I and the leading Class II soils where owners of these lands which to participate in this program. Conservation easement programs are another option for protecting these lands from nonfarm development.
- Evaluate the potential to use other farmland preservation techniques such as conservation easements and cluster development.
- Utilize LESA to identify wetlands, floodplains, open space, historic sites, land in conservation easements, and land involved in PDR. When feasible as part of a communitywide development strategy, take this into consideration when zoning land for

agricultural use and when identifying land for agricultural use in comprehensive plans to help “round out” areas for agriculture, and help provide a buffer between farm and nonfarm development. Meet with core farmers in the community to obtain their input on proposals.

- When feasible as part of a communitywide development strategy, zone lands adjacent to agricultural districts for the types of industrial use which are deemed most compatible with farming operations.

### **Economic Development/Viability/Marketing**

- Support efforts to insure an adequate labor supply, including improvements to the Federal Guest Worker Program, and, if feasible, the development of local programs to help increase the supply of trained local labor.
- Evaluate the benefits of undertaking cost of community service studies using the methodology incorporating economic multiplier effects, and use the results to assist in land use planning.

### **Education**

- Inform community residents of municipal efforts to preserve and promote farmland, and “package” efforts into a coordinated, pro-active program;
- In conjunction with Monroe County, promote public awareness of agriculture by placing signs at town boundaries indicating, for example, “An Agriculture-Friendly Community”; and
- Encourage assessors to attend educational and training programs related to assessment and classification of agricultural land.
- support efforts to develop training opportunities for assessors to improve understanding of agriculture-related assessment practices.

In addition, the following educational programs were recommended to be established or continued by Cornell Cooperative Extension and the Monroe County Farm Bureau:

- Agricultural awareness - to inform officials and the public of the benefits of the industry and the implications resulting from the loss of the industry.
- Promote coalitions between the environmental and farm communities.
- Compatible highway development - to inform highway officials of the importance of roads to farming operations, and to develop coordination on such matters as access to farm fields, drainage, and participation in design of proposed highway improvements in farming areas.

- Good neighbor relations - to advise farmers on what they can do to promote better relations with their nonfarm neighbors in an effort to reduce nonfarm neighbor complaints.
- Farmland preservation techniques - to create a better understanding amongst municipal officials and farmers of the various techniques available to preserve and protect farmland (ideally, offered prior to initiating agricultural zoning, PDR and other preservation programs).
- Include representatives of such organizations as the American Farmland Trust, Genesee Land Trust, Mendon Foundation and others to explain the role non-profits can play in farmland preservation.
- Agricultural districts and agricultural assessment programs - to make farmers more aware of the benefits of and differences between the programs.
- Estate and business planning for farmers.



# **APPENDIX C**

## **Agricultural Provisions in the 1989 Town of Parma Master Plan**



## Appendix C

### Parma Master Plan – Agricultural Provisions

#### **Evaluation of Comprehensive Plan provisions**

The 1989 Town of Parma Master Plan acknowledges that agriculture is the dominant land use. In 1989, farmland and cropland accounted for 40% of the land area, approximately 10,950 acres. A total of 5,789 acres were in the Agricultural District. The plan noted that acreage in the Ag. District had increased from 5,176 in 1984.

The Master Plan also acknowledged the significant of agriculture to the local and regional economy. It reported that agricultural operations consisted of dairy, vegetable, fruit and apple farms. It noted the historical importance of orchards, which contributed to the once-flourishing canning industry in Hilton.

#### Land Use Policies relating to agriculture

1. Conserve viable working farmland in recognition of the community and regional contributions of farming and agri-business
2. Develop an environment encouraging good farmers with adequate resources to remain in farming, including neighbor relations, property taxation policies and town regulations
3. Development in rural and agricultural areas should occur on lands either unsuitable for farming or on lands where conflicts would be minimal.
4. The goal of preserving agricultural lands will be actively pursued by the Town throughout the planning period. The Town will develop and implement innovative approaches to maintaining viable agriculture including conservation easements, various zoning techniques such as 281 (cluster) zoning, purchase and transfer of development rights and public education.
5. Discourage the placement of public sanitary sewers and other utilities and services that would encourage growth in those areas of the Town designated as agricultural on the land use plan.
6. Residential development proposed for agricultural areas should be limited to low density, single-family units and located so as to minimize potential loss of prime agricultural soils or the disruption of agricultural operations.
7. Support State and County programs, such as the agricultural districting program, which are aimed at the protection of established viable agricultural areas.

#### Residential policies

#7: Residential densities shall be based upon compatibility with existing development patterns, impact on established agricultural resources and operations, availability of public water and sewer facilities, accessibility and natural constraints.

#8: The majority of the Town will remain rural in character through the planning period, with low density, single-family residences and agricultural land.

#10: Zoning in rural and agricultural areas shall be based on, among other factors, the goal of maintaining an overall low density and reducing the pressure for premature subdivision of agricultural and rural lands.

#11: Provide for the use of Section 281 of the Town Law (average density development) to allow for smaller lots in rural/ agricultural areas at an underlying low density, thereby conserving farmland and open space.

#12: Provide for a transition area between large scale agricultural operations and higher density residential development.

### Land Use Plan

The Land Use Plan (see Figure 4) includes an Agricultural Conservation designation, which represents areas which should be considered for continued agricultural operations as well as low density residential development. These areas have soils suitable for agriculture and were mostly within the County Agricultural District. They did not have sanitary sewer service and extension of sewer service was seen as unlikely during the planning period. In addition, soils in these areas are generally poor for on-site septic systems.

Densities of 3-5 acres per dwelling are recommended. Lot size would depend on compliance with health regulations pertaining to septic systems. Clustered designs could reduce lot size to one acre, with remaining lands used for continuing agricultural operations or conservation and open space.

Lot design needs to be addressed to avoid long, narrow lots, such as 5-acre lots with 200 feet of road frontage.

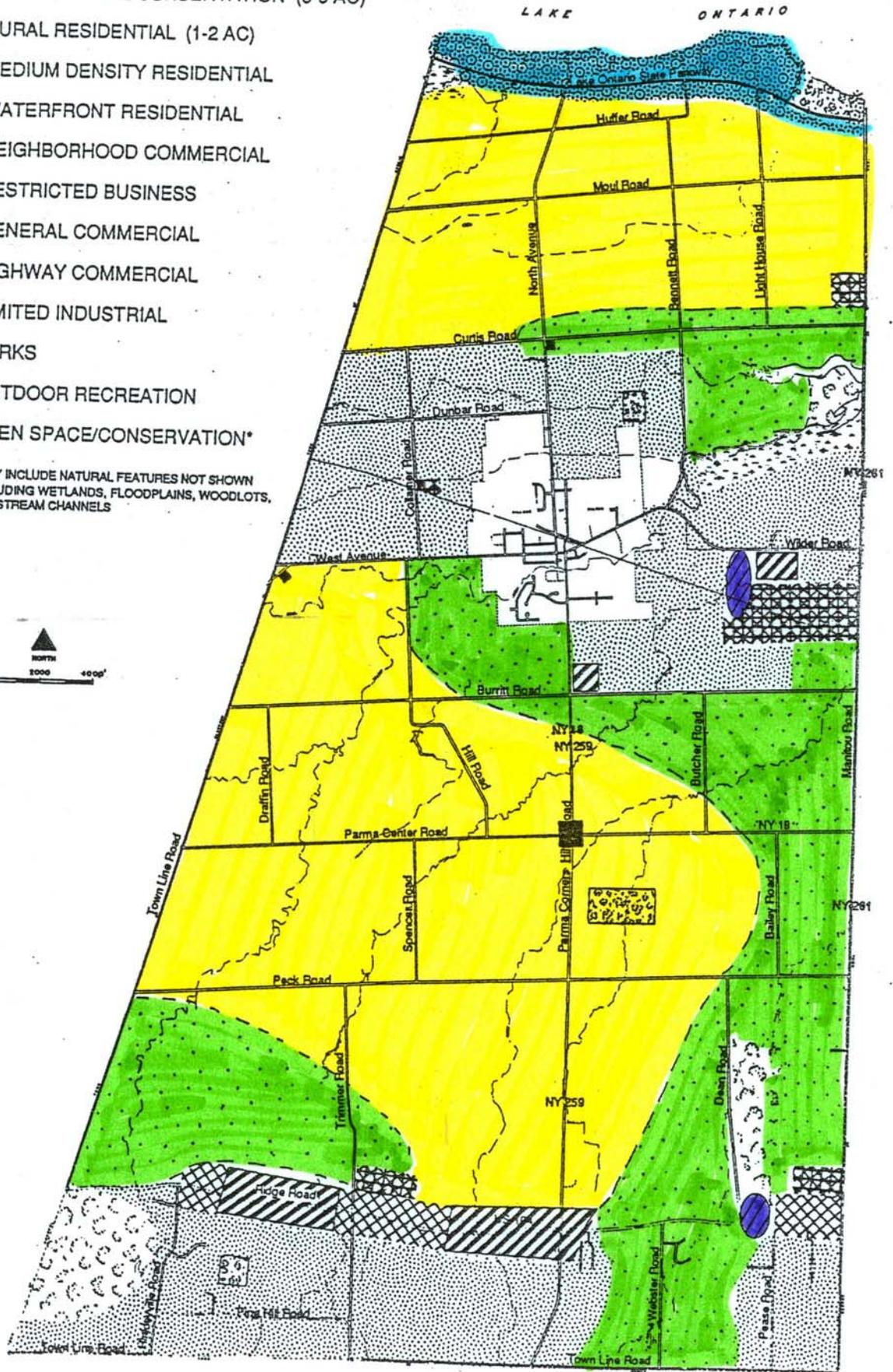
# LAND USE PLAN

## TOWN OF PARMA

### MONROE COUNTY, NEW YORK

-  AGRICULTURAL CONSERVATION (3-5 AC)
-  RURAL RESIDENTIAL (1-2 AC)
-  MEDIUM DENSITY RESIDENTIAL
-  WATERFRONT RESIDENTIAL
-  NEIGHBORHOOD COMMERCIAL
-  RESTRICTED BUSINESS
-  GENERAL COMMERCIAL
-  HIGHWAY COMMERCIAL
-  LIMITED INDUSTRIAL
-  PARKS
-  OUTDOOR RECREATION
-  OPEN SPACE/CONSERVATION\*

\*MAY INCLUDE NATURAL FEATURES NOT SHOWN INCLUDING WETLANDS, FLOODPLAINS, WOODLOTS, AND STREAM CHANNELS





# **APPENDIX D**

Review of Agricultural Provisions in the Town of Parma  
Zoning Regulations



## Review of Town of Parma Regulations

### Zoning Provisions Pertaining to Agriculture

- The stated purpose of the Agricultural Conservation (AC) District is “to regulate land use, which includes working farmland, fallow land, woodland and wetland areas, for low-density residential development in a manner to support agricultural operations, to preserve open spaces and to conserve the natural environment.” The purpose should be clarified to specify agriculture as the primary use and residential uses as secondary.
- The Town zoning regulations permit agricultural operations “by right” in all zoning districts, with some restrictions:
  - In the AC, RR, MD, HD and WF districts, the following conditions apply:
    - Buildings in which farm animals are kept or agricultural products handled must be at least 150 feet from the front lot line and at least 100 feet from a side or rear property line
    - Storage of waste or products from agricultural operations must be 100 feet from any lot line
    - Temporary sales of farm products are permitted, provided that any structures are at least 25 feet from the edge of the roadway and a suitably graded 1200 sq.ft. area is provided for customer parking
    - A minimum of 5 acres is required.
  - In the RB, GC, HC and I zones, no new agricultural buildings with a capital cost exceeding \$10,000 may be constructed.
- Keeping horses is allowed as an accessory use in the AC, RR, MD and HD districts, subject to the following conditions:
  - Boarding horses that do not belong to the landowner requires a special use permit from the ZBA. Specific criteria for granting such a permit are not provided
  - Size of structures is limited to 6,000 sq. ft. and 15% of the rear yard area
  - Stables must be set back 150 feet from the front lot line and 100 feet from any side or rear boundary line.
  - Fencing a minimum of 4 feet high and maximum of 10 feet high shall enclose the animals

Agricultural Preservation Plan – Town of Parma  
**Review of Town Regulations**

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- Minimum lot size of 2.5 acres for 1-2 horses, 5 acres for 3-5 horses. An additional acre per horse for 6-10 horses, and an additional ½ acre per horse for 1+ horses.
- Limitation on size of accessory buildings does not apply to farm operations.
- Temporary housing to support an individual agricultural operation is permitted with a special use permit in the AC, RR, MD and HD districts, subject to the following criteria:
  - Justification of need, such as full time employment by occupant with the agricultural operation
  - Occupied only during planting, growing and harvesting season
  - Not to be used, leased or rented to a person who is not affiliated with the agricultural operation
  - Located on the same parcel as the agricultural operation
  - Comply with State Codes.
  - Have approved septic system or connection to public sewer
  - Driveway to a public highway
  - One parking space per housing unit
  - Anchored to concrete pad or attached to a building foundation
  - Separate storage area of 1600 cubic feet.
  - Located on a portion of the farm that causes least disruption to farming operations
  - Land area not to exceed 5% of total lot area
  - Meet front, side and rear setbacks for principal buildings in the AC zone
- Agricultural crops may not exceed 3 feet in height or obstruct vision within 50 feet from the edge of the pavement at a road intersection
- Storage of animal waste is exempt from the prohibition on solid or liquid waste storage or disposal without the permission of the Town Board
- Customary agricultural practices are exempt from the prohibition on dumping
- One of the criteria for approving a special use permit for dumping is whether the activity will render land unproductive or unsuitable for agricultural purposes.
- Fence regulations

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**Review of Town Regulations**

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- No permit is required for fences associated with an agricultural use
- Open fences are permitted, as necessary, to restrain livestock

**Consistency with NYS Department of Agriculture & Markets Guidelines**

NYS Agricultural Districts law states that local governments “shall not unreasonably restrict or regulate farm operations within agricultural districts ... unless it can be shown that the public health or safety is threatened.” The NYS Department of Agriculture and Markets provides guidance and reviews local laws upon request to determine if a provision is “unreasonable.”

Some of the provisions in Parma’s zoning regulations may be determined to unreasonably restrict farming practices if they were challenged by a farmer. For example, the restriction on building a structure valued at more than \$10,000 in a General Business district, if it were applied to a farm operation, could be held to be invalid.

Horse boarding is considered to be an agricultural practice according to the NYS Ag. District Law if the operation utilizes 7 acres or more, boards a minimum of 10 horses and receives \$10,000 in gross income from fees from boarding or other agricultural products. A horse boarding operation that meets these requirements and is located within the Agricultural District may be exempted from the requirement to apply for a special use permit, the maximum building size and the limitation on the number of horses per acre.

Other provisions of Parma’s local regulations have been challenged by farmers. These include provisions against barking dogs, fencing and commercial operations.

**Recommended Changes**

The following narrative summarizes the changes that are recommended to the zoning regulations to ensure consistency with NYS Agriculture & Markets guidelines.

Agricultural Conservation District

- Revise Purpose to expressly support agriculture as a priority use
- Specify that businesses that are accessory to a farm operation are permitted (i.e., food service, entertainment, retail sales)
- Remove the provision requiring a property line setback for storage of agricultural materials.
- State that the storage of waste materials needs to meet EPA and NYS Department of Health guidelines.

Agricultural Preservation Plan – Town of Parma  
**Review of Town Regulations**

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- Delete the minimum lot size requirement for a farm operation
- Make setback requirements for animal housing consistent with setback requirements for other types of buildings, except that a setback of 150 feet from any well or waterbody should be required for animal housing and storage of animal waste.

Restricted Business (RB) District

- Eliminate the requirement that limits the capital cost of new agricultural structures to \$10,000.

Farm Worker Housing

- Establish provisions for year-round as well as seasonal housing
- Allow farm worker housing in any district that permits agriculture
- Eliminate the requirement that farm worker housing be located on the same parcel as the agricultural operation.

Animal Boarding/ Horses

- Incorporate a provision that provides an exception for operations located in a County Agricultural District that meet the definition of “farm” established by NYS Agriculture & Markets

Zoning Map

- Revise the boundaries of the Agricultural Conservation zoning district to include additional land where farming is a predominant use. Consider rezoning the following areas:
  - south of Curtis Road, west of North Ave to the Town line
  - the area bounded by Manitou, Curtis, Moul and Lighthouse Roads
  - the area bounded by Manitou, Parma Center, Burritt and Butcher Roads

# Evaluation of Agricultural Provisions in the Town of Parma Zoning Regulations

## District Regulations

### § 165-31. Agricultural Conservation (AC) District.

A. Purpose. The purpose of the Agricultural Conservation (AC) District is to regulate land use, which includes working farmland, fallow land, woodland and wetland areas, for low-density residential development in a manner to support agricultural operations, to preserve open spaces and to conserve the natural environment.

**Comment [b1]:** The purpose should be reworded to expressly support agriculture as a priority use and to also accommodate low-density residential development.

B. Permitted principal uses.

(1) One single-family dwelling.

(2) Customary agricultural operations, including but not limited to plant nursery, greenhouse operations, fruit growing and processing, dairy, animal husbandry, wood cutting, feed and farming operations, storage of farm produce, and repairing of farm implements incidental to the maintenance of the agricultural operations, subject to the following restrictions:

**Comment [b2]:** These provisions are also included in regulations for the RR, MD, HD, RB, GC, HC, and LI zones.

(a) No building in which farm animals are kept or agricultural products are handled shall be closer than 150 feet to the front lot line and 100 feet to a side or rear property line.

**Comment [b3]:** These setback requirements are larger than those for other uses.

(b) No storage of waste materials or products from the agricultural operations shall be permitted within 100 feet of any adjoining lot line.

**Comment [b4]:** These setback requirements need to have a basis in protecting the public health and safety, such as setbacks from private wells.

(c) Farm frontage may be used for the sale of farm products provided any temporary or movable stand, table or shelf used for the display or sale of such product shall be at least 25 feet from the nearest edge of the roadway. An open area of at least 1,200 square feet suitably graded shall be provided for off-street customer parking. Permanent buildings for such purpose must comply with principal building requirements as to setback and side yards.

**Comment [b5]:** These provisions are probably reasonable, but may be overturned in particular case. Consider adding an exception to allow use of a pre-existing building that may not meet the setback requirements for a principal building.

(d) Premises for agricultural operations shall not be less than five acres in size.

**Comment [b6]:** This requirement should be removed.

C. Permitted accessory uses.

(1) Home occupations, as defined herein, conducted by the resident only, provided that there is no external evidence of such operations, except one sign not exceeding two square feet in area. [Amended 4-15-2003]

**Comment [b7]:** There should be some allowance for farm-related businesses

(2) A one-story garage, greenhouse, storage barn or utility shed. Excluding the garage, the total area of all accessory structures associated with a single-family residence shall not exceed 2,000 square feet, provided that such building or use is incidental to the principal use. This requirement shall not apply to farm operations.

(3) Decks or porches, provided that the total area does not exceed the first-floor area of the primary dwelling.

(4) Tennis courts or swimming pools for the private, noncommercial use of the residents of the premises.

(5) Seasonal storage of recreational vehicles shall be permitted only if the vehicle is owned by an occupant of the residence.

(6) The keeping of horses and other animals according to the requirements of Article X of this chapter.

**Comment [b8]:** See comments on these requirements.

(7) Dish antennas/towers according to the requirements of Article X of this chapter.

D. [Amended 12-1-1998] Special permitted uses. The following uses may be permitted by the Zoning Board of Appeals according to the requirements of Article IX of this chapter:

- (1) Temporary housing to support an individual agricultural operation.
- (2) Animal boarding facilities.
- (3) Cemeteries.
- (4) Essential services, excluding structures, maintenance facilities or storage yards for area utility services.
- (5) Tourist homes.
- (6) Camping grounds.
- (7) Accessory apartments.
- (8) Golf courses, excluding indoor recreation facilities.
- (9) Golf driving ranges.

E. Dimensional requirements for the Agricultural Conservation (AC) District.

- (1) The dimensional requirements for this district are specified in Schedule I which is a part of this chapter.EN
- (2) The minimum total living area of the single-family dwelling, excluding the area of the garage or porch, shall be:
  - (a) One-story building: 1,600 square feet.
  - (b) One-and-one-half-story building, or split-level: 1,800 square feet.
  - (c) Two-story building, or raised ranch: 2,000 square feet.
- (3) Each principal dwelling unit shall have, at a minimum, one two-car garage, at least 20 feet in width and containing an area of not less than 480 square feet.

### § 165-37. Restricted Business (RB) District.

B. Permitted principal uses.

- (11) Customary agricultural operations, structures and uses as specified in § 165-31B of this chapter, except that no new buildings or structures with a capital cost exceeding \$10,000 may be built to serve an agricultural use in this district. Upon application, the Town Board may waive this \$10,000 limitation.

**Comment [b9]:** See comments on these requirements.

**Comment [b10]:** If the horse boarding is an agricultural operation as defined by NYS Ag & Markets, the requirement for a special use permit may not be permitted.

**Comment [b11]:** These provisions are also included in regulations for the GC, HC and LI zoning districts. Although the restriction would not be considered reasonable as applied to farms in a County Agricultural District, the waiver provision may offer sufficient relief to farmers.

# Evaluation of Agricultural Provisions in the Town of Parma Zoning Regulations

## Keeping of Horses and Animal Boarding

### § 165-82. Regulations applicable to all districts

CC. The keeping of horses and the structures related thereto shall be considered customary accessory uses by the owner/occupant of properties in the Town of Parma subject to the limitations specified below:[Amended 4-15-2003]

Number of Horses      Minimum Acreage

1 or 2	2.5
3 through 5	5
6 through 10	1 per horse
More than 10	10 acres, plus 1/2 acre per additional horse

**Comment [b1]:** Ag. & Markets requires 7 acres for a commercial horse boarding operation. Larger minimum acreage requirements may be found "unreasonable" when applied to farms within a County Agricultural District.

(1) Boarding or keeping of horses which belong to individuals other than the owner/occupant shall be prohibited unless a special permit for such purpose is approved by the Zoning Board of Appeals.

**Comment [b2]:** Consider adding an exemption for commercial horse boarding within a County Agricultural District. A streamlined site plan review process would be acceptable.

(2) In addition, no structure or combination of structures used in the housing, storage or exercising of horses shall exceed 6,000 square feet in area. Also, all structures used for keeping horses shall be included, along with other structures, in computing the maximum lot occupancy of 15% of the rear yard area that can be covered by accessory structures.

**Comment [b3]:** These provisions would not be considered "reasonable" when applied to a "commercial horse boarding operation" within a County Ag. District.

(3) Any stable shall be set back at least 150 feet from the front lot line and 100 feet from any side or rear boundary line. Any exercise/building pens attached to a stable housing riding horses shall be located to the rear of such building and screened from adjacent properties. The barns, stalls, paddocks and any other grounds where horses are kept shall be maintained in a clean and sanitary condition so as not to create a condition or odor that would be objectionable to persons occupying adjoining property.

**Comment [b4]:** For commercial horse boarding within a County Agricultural District, setback requirements for farm buildings should be comparable to those for other structures in the zoning district. Setback from a private well would be reasonable.

DD. Fencing. Fencing shall be erected and maintained around any paddock area, pasture area or any other area outside of the stable or structure where a horse or animal is housed. Such fences shall be a minimum of four feet in height, except an electrical fence which may only be three feet in height, supported by wooden or steel posts at intervals of not more than 10 feet. Such fence shall be of sufficient strength and may be either a three or four board wooden rail fence, and shall be strongly secured to each post. Any opening in said fence shall have a self-closing gate of sufficient strength to contain the animals.

**Comment [b5]:** Screening requirements are not considered "reasonable" for farms in Ag. Districts.

# Evaluation of Agricultural Provisions in the Town of Parma Zoning Regulations

## Keeping of Horses and Animal Boarding

ANIMAL BOARDING -- The keeping of **any horse or animal** on the premises that is not owned by the owner or lessee of said premises for gain or commercial purposes.

**Comment [b6]:** Consider creating a separate definition for "horse boarding," as there are separate requirements for a special use permit.

### § 165-57. **Animal boarding facilities.** [Amended 12-1-1998]

The Zoning Board of Appeals may approve a permit for animal boarding facilities within the AC Agricultural Conservation, RR Rural Residential and MD Medium Density Residential Districts, provided that the following standards and conditions are maintained:

**Comment [b7]:** There are inconsistencies between these regulations and those for the "keeping or boarding of horses."

- A. The minimum size parcel of land shall be five acres.
- B. An enclosed structure shall be provided for each animal to be boarded.
- C. No animal boarding structure shall be located closer than 150 feet to a residential structure on an adjacent lot.
- D. No animal boarding structure shall be closer than 150 feet to the front lot line and 100 feet to a side or rear property line.
- E. No outdoor runs or open exercise areas shall be visible from any adjacent residential zoned site. All openings from the enclosed structure to the exercise area shall be screened and buffered from any adjacent residential sites.
- F. No outdoor storage of feed shall be permitted.
- G. No outdoor storage of animal waste shall be permitted.
- H. No deceased animals shall be buried on the premises.
- I. An exercise area shall be provided for each animal. The size of such exercise area shall be based on standards accepted by a nationally recognized animal husbandry organization.
- J. Each application for a special permitted use permit for animal boarding shall be accompanied with a sketch plan showing buildings on the site, exercise area, dumpster, method of animal waste disposal, water supply and watercourses, access, parking, landscaping, site lighting and signage. Similar structures and features on adjacent properties developed for residential purposes shall be shown on the sketch plan if they are located within 100 feet of the site for which the special permitted use permit is being requested.
- K. All outdoor exercise areas shall be enclosed by a fence of adequate height to contain the animal being boarded.

# Evaluation of Agricultural Provisions in the Town of Parma Zoning Regulations

## Farm Labor Housing

### § 165-56. Temporary housing to support agricultural operations. [Amended 12-1-1998]

The Zoning Board of Appeals may approve the construction and maintenance of temporary housing to support an individual agricultural operation within the AC Agricultural Conservation, the RR Rural Residential, the MD Medium Density Residential and the HD High Density Residential Districts, provided that the following standards and conditions are maintained:

A. In addition to the information required in the special permit application and enumerated in Article IV, the maximum number of temporary housing units allowed for an individual agricultural operation shall be based on:

(1) Justification of need for the number of dwelling units requested. This justification is to be based on, among other items, full time employment by one or more persons living as a family in the temporary dwelling unit and deriving their principal income from the individual agricultural operation for which this special permitted use permit is requested.

(2) A temporary housing unit shall only be occupied during the planting, growing and harvesting season for the agricultural operation. At all other times the temporary housing unit shall be secured and maintained in a state of good repair.

(3) No temporary housing unit shall be used, leased or rented to another person if that person does not have a legal interest established with the individual agricultural operation.

(4) All temporary housing units shall be located on the same parcel as the individual agricultural operation.

(5) All temporary housing units shall comply with the standards of the State Uniform Fire Prevention and Building Code.

(6) All temporary housing units shall have a septic system approved by the Monroe County Department of Health, or an approved connection to a public sewer system.

(7) All temporary housing units shall have a driveway to a public highway. To the extent possible, this driveway shall be combined with the driveway for the owner of the individual agricultural operation and any other driveways for all other temporary housing units associated with said individual agricultural operation.

(8) All temporary housing units shall have a designated area for parking of at least one vehicle per housing unit. This parking area shall be located adjacent to, or within 100 feet from, the main entrance to each temporary housing unit. All such parking area(s) shall be adequately screened or buffered from existing dwelling units or adjacent residential zoned land.

(9) All temporary housing units shall be anchored to a concrete pad or attached to a building foundation.

(10) All temporary housing units shall have a designated storage area of at least 1,600 cubic feet (10 feet by 20 feet by eight feet). The storage area shall be separate from the temporary dwelling unit and screened or buffered from existing dwelling units or adjacent residential zoned land.

(11) All temporary housing units shall be located on that portion of an actively farmed site which the Zoning Board of Appeals had determined would cause the least disruption to continued farming operations. The basis for this determination will include an overall site plan identifying the land needed for production and the land needed in support of said production.

**Comment [b1]:** Not clear what "temporary housing" means.

**Comment [b2]:** Should be allowed in any district that permits farming

**Comment [b3]:** Housing for year-round employees should also be permitted

**Comment [b4]:** The Town should allow farms to share housing for farmworkers

## Evaluation of Agricultural Provisions in the Town of Parma Zoning Regulations Farm Labor Housing

(12) The maximum land area to be used for temporary housing units shall not exceed 5% of the total area of the parcel.

(13) All temporary housing units, regardless of the zone district, shall be subject to the front, side and rear setback standards specified in Schedule IEN for principal buildings in the AC Agricultural Conservation District.

B. The Zoning Board of Appeals shall require the applicant to prepare and submit an agricultural data statement for all temporary housing units. The data statement shall be referred to the Agricultural Advisory Committee and to the Monroe County Department of Planning and Development as part of any required referral under the provisions of §§ 239-1 and 239-m of the General Municipal Law. Said statement will be used to identify the level of agricultural operations occurring within 500 feet of the site for which the special permitted use permit is requested. Said data statement shall also be used to give notice to adjacent property owners of the request for a special permitted use permit.

# Evaluation of Agricultural Provisions in the Town of Parma Zoning Regulations

## Incentive Zoning

### § 165-14. Incentive zoning.

A. Purpose. The purpose of these provisions is to offer incentives to applicants who provide amenities that assist the town in achieving specific physical, cultural and social policies described in the Town of Parma Comprehensive Plan and as may be further supplemented by local laws and ordinances adopted by the Town Board.

B. Districts designated for incentives. Land within any zone district may be eligible for zoning incentives. Incentives may be offered to applicants who offer an acceptable amenity to the town in exchange for the incentive.

C. Amenities for which incentives may be offered.

(1) The following amenities may be either on or off the site of the subject application:

(a) Preservation, to the greatest extent possible, of viable agricultural land for farm operations.

(b) Passive and active open space and related improvements.

(c) Road and/or utility improvements.

(d) Cultural or historic facilities.

(e) Provision of senior citizen or "elderly" housing facilities, provided that such uses shall be located in areas which are zoned as RR Rural Residential, MD Medium Density Residential or HD High Density Residential.

(f) Other amenities to residents of the town which help to implement specific physical, cultural and social policies in the Comprehensive Plan.

(g) Cash in lieu of any amenity(ies).

(2) These amenities shall be in addition to any mandated requirements pursuant to other provisions of Chapter 130, Subdivision of Land, and this chapter.

D. Incentives permitted. The following incentives may be granted by the Town Board to the applicant on a specific site:

(1) Changes in residential/nonresidential unit density.

(2) Changes in lot coverage.

(3) Changes in setbacks or height.

(4) Changes in floor area.

(5) Other changes to specific regulations set forth in Chapter 130, Subdivision of Land, and this chapter.

E. Criteria and procedure for approval.

(1) Applications for incentives in exchange for amenities shall be submitted to the Town Board. In order for the town to evaluate the adequacy of amenities proposed in exchange for the incentive requested, the applicant shall provide the following information:

(a) The proposed amenity.

(b) The cash value of the proposed amenity.

**Comment [b1]:** There should be more detailed guidance regarding how many additional units would be allowed with the acquisition of an easement protecting a certain number of acres of farmland.

(c) A narrative which:

[1] Describes the benefits to be provided to the community by the proposed amenity.

[2] Indicates that there are adequate sewage disposal, drainage, water, transportation, trash disposal and fire protection facilities in the zoning district in which the proposal is located to accommodate the demands generated by the incentive and amenity which are beyond the demands that would be placed on the existing facilities if the district were developed to its fullest potential.

[3] Explains how the amenity helps implement the physical, social or cultural policies of the Town of Parma Comprehensive Plan and as may be supplemented by local laws and ordinances adopted by the Town Board.

(d) The requested incentive.

(2) The Town Board shall review the proposal and inform the applicant as to whether or not the proposal is worthy of further consideration. If it is deemed worthy of further consideration, the applicant may then submit two sketch plans to the Planning Board in accord with the following procedures and requirements:

(a) The first sketch plan.

[1] The first sketch plan shall show how the site will be developed, with the amenity, if it is on-site, and the incentive. In addition to meeting the requirements of Chapter 130, Subdivision of Land, and this chapter, the sketch plan shall also show existing development, property owners' names and tax account numbers for all properties within 500 feet of the property lines of the proposed project or such other distance as specified by the Town Board.

[2] If the incentive will result in an increase in the height of a structure, the applicant shall submit an elevation drawing, at a scale of 1/4 inch equals one foot, which shows the height permitted by district regulations, the proposed additional height, the distance to other principal structures on-site and on adjacent properties and their heights, as well as the locations of all property lines.

[3] If the incentive will result in a reduction of the setback requirement, the drawing shall show this reduction in relation to the principal structures on-site and on adjacent properties, as well as the locations of all property lines.

[4] If the incentive will result in a change to the floor area requirements, the drawing shall note the change in relation to each site.

(b) The second sketch plan shall show existing development, the names of property owners and tax account numbers for all properties within 500 feet of the property line of the project site or such other distances as specified by the Town Board. This sketch plan shall show how the site would be developed exclusive of any amenity or incentive.

(c) The applicant shall also submit such additional information and plans as may be required by the Planning Board which, in its judgment, are necessary in order to perform a thorough evaluation of the proposal.

(3) The Planning Board shall review the proposal and report to the Town Board with its evaluation of the adequacy with which the amenity(ies)/incentive(s) fit the site and how they

relate to adjacent uses and structures. The Planning Board's review shall be limited to the planning design and layout considerations involved with project review or such other issues as may be specifically requested by the Town Board. The Planning Board's report shall be submitted to the Town Board within 70 days from the date of the Planning Board meeting at which the proposal is first placed on the agenda. This time period may be extended/suspended for good cause by the Town Board.

(4) The Town Board shall review the Planning Board's report and notify the applicant as to whether it is willing to further consider the proposal. All requests submitted subject to the incentive provisions of this chapter shall require a public hearing by the Town Board. The Town Clerk shall give notice of all public hearings on incentive zoning requests in the official newspaper of the town at least five days prior to the date of the hearing.

(5) All applicable requirements of the State Environmental Quality Review (SEQR) Act shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of an environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has sufficient sewage disposal, water, transportation, waste disposal and fire protection facilities to:

(a) Serve the remaining vacant land in the district as though it were developed to its fullest potential under the district regulations in effect at the time of the amenity/incentive proposal; and

(b) Serve the on-site amenity and incentive, given the development scenario in Subsection E(5)(a) above.

(6) Following the hearing and in addition to compliance with all SEQR requirements, the Town Board shall, before taking action, refer the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to the Planning Board and other town boards and officials for review and comment. In order to approve an amenity/incentive proposal, the Town Board shall determine that the proposed amenity provides sufficient public benefit to provide the requested incentive. Thereafter, the Planning Board is authorized to act on an application for preliminary approval pursuant to Chapter 130, Subdivision of Land, and this chapter.

(7) Following preliminary plan approval and subject to meeting all conditions established in conjunction with the approval of the preliminary plan, including all documentation required by the Town Attorney and Town Board on the amenity, the applicant may submit a final plan for review and approval.

(8) Upon final plan approval, the Town Clerk shall affix a reference to the Official Zoning Map that this site was developed under the town's incentive zoning provisions and include a reference to the date such action was taken.

F. Cash payment in lieu of amenity. If the Town Board finds that an on-site amenity is not suitable or cannot be reasonably provided, the Town Board may require a cash payment in lieu of the provision of the amenity. These funds shall be placed in a trust fund to be used by the Town Board exclusively for specific amenities to be described prior to the acceptance of funds. Cash payments shall be made prior to the issuance of a building permit. Cash payments in lieu of amenities are not to be used to pay general and ordinary town expenses.



# **APPENDIX E**

Overview of Existing Plans, Programs and Regulations



## Overview of Existing Plans, Programs and Regulations

### Agricultural District Program

The Agricultural District Program offers a range of protections to farmers. Farmland in Parma is part of Monroe County's Northwestern Agricultural District (#5). This district was created initially in 1976. The renewal process was initiated in 2008; as of October 2008, the District renewal had not been formally approved by Monroe County and New York State. The district contains 37,641 acres. Inclusion in an Agricultural District denotes a commitment on the part of the County and the landowner to retain the use of such land for agriculture.

The Agricultural District Program includes the following provisions to protect farmers:

- Agricultural use value assessments: Eligible farmland is assessed at its value for agricultural production, rather than at its full market value. If land that received the agricultural exemption is sold for non-farm purposes, the landowner must repay the amount of property taxes saved over the life of the District, up to 8 years.
- Protection from local regulations that would restrict farm practices.
- Protection from public acquisition of farmland through "eminent domain." Before a local or county government may undertake a project that affects land within an Agricultural District, it must submit a "Notice of Intent" to the County Agricultural and Farmland Protection Board and the NYS Department of Agriculture and Markets for consideration of the impacts on agriculture.
- Protection from nuisance suits (right-to-farm provisions). A person who buys property within an Agricultural District must be notified about the possible presence of noise or odors associated with farm practices and acknowledge receipt of this notice in writing.

### Environmental Protection Programs

Several State and federally funded programs provide financial incentives and technical assistance to farmers and farmland owners to encourage the installation of "best management practices" (BMPs) that incorporate environmental protection into agricultural practices. These techniques are designed to protect the natural environment from contaminants that may be associated with agricultural activities. Environmental management goals include reducing the amount of stormwater that leaves a farm site, managing fertilizer inputs to match the amount taken up by crops, and providing safe storage and application of pesticides. Although such practices may be expensive to install and maintain, they frequently result in lower costs for fertilizer, decreased soil erosion, and improved pest control.

Programs that support environmental management on farms include:

- Agricultural Environmental Management (AEM)
- Agricultural Nonpoint Source Abatement and Control
- Environmental Quality Incentives Program (EQIP)
- Conservation Reserve Program (CRP)
- Conservation Reserve Enhancement Program (CREP)
- Conservation Security Program (CSP) and
- Wildlife Habitat Incentives Program (WHIP).

Summaries of these programs are provided at the end of this Appendix.

### **Tax Relief Programs**

Farming utilizes large amounts of land but does not demand proportionally large expenditures from local governments. In response to this situation, New York State has made established programs to reduce property taxes on farmland that meets certain eligibility requirements.

**Agricultural Use Assessments** base property taxes on the value of the land as farmland, rather than its value for development. Eligible farms located within certified Agricultural Districts, as well as farms outside a District that meet certain requirements, may receive Agricultural Use Assessments. Agricultural Use Assessment is available to landowners who rent the property to an eligible farmer.

The NYS Department of Agriculture & Markets has established a formula to determine the Agricultural Use value of property based on soil types and projected crop yields. In areas where the land is valuable for development purposes, the agricultural use value will be much lower than the market value, resulting in significantly lower property taxes. However, in areas where farming is the “highest and best use” of the property – where a farmer is likely to pay as much for the land as anyone else - the agricultural use value is the same as the market value.

New York State has established the **Farmers School Property Tax Credit** program for eligible farmers to receive refunds of up to 100% of School taxes on up to 350 acres of agricultural land, and 50% of School taxes on acreage in excess of 350 acres. To be eligible for this tax credit, farmers must earn at least 2/3 of their income in excess of \$30,000 from farming. The credit may be claimed in the farmer’s annual NYS tax return.

Farm worker housing is exempt from property taxes, provided that the facility meets all safety and health standards set by the State building code and the NYS Department of Labor. Renovation of a historic barn for continued agricultural use also qualifies for a property tax exemption.

Certain property and services used in agricultural production is exempt from sales tax. Farmers need to complete Form ST-125.

## **Neighbor Relations**

Farming practices sometimes result in neighbor complaints or, in more extreme cases, lawsuits. Non-farm neighbors may consider certain agricultural practices to be objectionable, such as noise from farm equipment, dust from harvesting, odors from animal housing or manure storage, or pesticide applications. Techniques to address neighbor relations include local “Right-to-Farm” laws and notification provisions.

The NYS Agricultural District law establishes a procedure to define “sound agricultural practices.” Upon request of a farmer or neighbor, a representative from the NYS Department of Agriculture and Markets will investigate the practice and determine whether it is “sound.” If a party brings a nuisance suit against a farmer for a practice which is determined to be “sound”, the person bringing the suit must pay all legal costs to the farmer.

The NYS Agricultural District Law also includes provisions to notify purchasers of property of potential farming impacts. When property located within a certified Agricultural District is purchased, the buyer must sign a statement acknowledging that:

"It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances."

Local “Right to Farm” laws often include provisions for settling disputes between farmers and non-farming neighbors. An appointed committee may be empowered to mediate the dispute, or mediation could be assigned to a specialized organization trained by New York State’s network of Community Dispute Resolution Centers (CDRCs).

## **Land Preservation Programs**

Programs that result in permanent preservation of farmland for continued agricultural use include public Purchase of Development Rights and the acquisition of conservation easements by private land trusts. These programs are voluntary and typically provide the landowner with payment equal to the difference in the value of land for development and its value for continued agricultural use.

New York State administers a Purchase of Development Rights program that provides up to 75% of the cost of acquiring permanent easements to viable farmland. Since the inception of

this program in 1996, the Department has awarded nearly \$80 million to protect approximately 36,000 acres on 200 farms in 18 counties.

The U.S. Department of Agriculture also administers a Purchase of Development Rights program, the Farm and Ranch Lands Protection Program, which was reauthorized as part of the 2008 Farm Bill. Federal funds may be available to provide the local match for a State PDR application.

Conservation easements may also be conveyed privately to a land trust or other qualified conservation organization. A conservation easement is a legal document written in the form of a deed, in which a landowner permanently restricts the future development of real property for the purpose of preserving or maintaining the scenic, open, historic, agricultural, or natural condition, character, significance or amenities of that property. Once a conservation easement is attached to a property, the property may be sold, subject to the restrictions defined in the easement. The restrictions placed by the easement will also affect the value of the property for property tax assessment purposes.

Temporary Easements may protect land for a period of time. Several municipalities have established programs that reduce property taxes for farmland owners who agree to leave land undeveloped for a specified period of time. Typically, these parcels are not eligible for agricultural use assessments. If the land is developed prior to the end of the period, the landowner pays a penalty which goes into a fund for purchase of land or easements.

### **Agricultural Economic Development Programs**

Farmland can continue to be utilized for agricultural purposes only as long as the business of farming remains viable. Publicly funded programs aimed at encouraging investment in farming include loans, technical assistance, research and grants.

The **Grow NY Enterprise Program** is a joint Governor's initiative of the Governor's Office for Small Cities (GOSC), Empire State Development Corporation (ESDC) and the Department of Agriculture and Markets (NYSDAM), which dedicates \$3 million annually to increasing the demand for and expanding the use of New York's agriculture and forest products. The primary objective of the program is to provide funds to local governments who in turn use the dollars to assist qualifying businesses who undertake activities resulting in the creation of job opportunities for low- and moderate-income persons.

The New York State Department of Agriculture and Markets operates several programs aimed at improving the economic viability of farming. These include:

- grants to provide promotional support for farmers' markets in New York State.
- a matching grant program for the development, implementation or expansion of programs, projects, activities or events which will promote New York State food and agriculture through agri-tourism. For the purposes of this program, agri-tourism is

defined as any food or agriculture related program, project, activity or event taking place at a farm or other food or agriculture related location(s) that will attract visitors to promote and enhance the public's understanding and awareness of New York food, farms, and agriculture.

- a program to encourage school districts to purchase fresh produce directly from local farmers. School district must follow certain guidelines in order to participate in the program.
- A program to assist farm operators and agricultural cooperatives developing business plans or implementing part(s) of an existing business plan that will enhance the profitability and/or environmental compatibility of their farm operations.

The NYS Energy Development Agency (NYSERDA) administers programs to encourage energy conservation and the use of sustainable energy sources in agricultural operations. These include:

- financial assistance to farmers interested in installing alternative or sustainable energy facilities, such as a wind-powered or bio-fuel-based electricity generator.
- NYSERDA offers cash incentives to install wind-energy systems, solar electric systems, and energy-saving equipment. It provides technical assistance to farms and other facilities through energy audits to reduce energy consumption.
- NYSERDA's Agricultural Waste Management Program focuses on farms under pressure to control contaminants from manure. To meet these challenges, farms are partnering with NYSERDA to evaluate a variety of potential technological solutions, innovative business structure, and community waste management systems that could improve system economics and farm profitability. Technologies being evaluated include:
  - Anaerobic digestion of manure
  - On-site production of electricity from digester biogas
  - Composting of manure and digested solids.

## **Organizations that assist farmers and farmland owners**

### **Soil & Water Conservation District**

The Monroe County Soil & Water Conservation District has been actively involved in assisting farmers evaluate, install and improve conservation management practices since the District formed in 1954. In conjunction with evolving state and federal funding opportunities, District and NRCS technical staff have assisted many farmers with planning and implementation of conservation practices.

The Monroe County SWCD has identified the following natural resources concerns relating to farming:

- Cropland erosion control
- Loss of farmland to development
- Lake Ontario shoreline protection relating to water quality impacts
- Water quality impacts by nutrient, pesticide and sediment runoff from cropland

Conservation programs administered by the SWCD include:

- Agricultural Environmental Management (AEM)
- Agricultural Nonpoint Source Abatement & Control Grant Program
- Identifying soil types as basis for agricultural use assessments

### **Cornell Cooperative Extension**

Cornell Cooperative Extension of Monroe County provides technical assistance to farmers. Teams of experts have been assembled on a regional basis to address issues Lake Ontario Fruit Program Team provides researched-based information on Integrated Pest Management, Cultural Practices, Business Management and Economics, and Harvesting and Marketing. The Northwest Dairy, Livestock and Fieldcrops Team organizes educational programs to help producers:

- Enhance the sustainability of their businesses.
- Enhance profitability and other aspects of economic performance of their businesses.
- Practice environmental stewardship.
- Enhance employee well-being and satisfaction.
- Provide safe, healthy agricultural products in ways that are safe to farm owners and their families, farm employees and their families, and neighbors.
- Provide leadership for enhancing relationships between the agricultural sector and the general public.

The Lake Plains Vegetable Program provides specialized information to vegetable, potato, and dry bean growers and allied industry.

### **MCC Agriculture and Life Sciences Institute**

The Agriculture and Life Sciences Institute at Monroe Community College, directed by Robert King, provides advocacy on land use issues, marketing education, academic instruction and skills training.

As part of its advocacy mission, Institute faculty assist farmers, landowners, municipalities and authorities with interpretation of land use policy, planning, regulations, laws and ordinances.

Marketing education is designed to help landowners and farmers realize viability/sustainability of their land or business through effective use of the land or business. Institute staff:

- assists town, county and state municipalities in developing and implementing plans to help protect farmland and make operations viable.
- promotes agricultural economic development, including value-added processes and marketing strategies
- interprets, educates and assists landowners, farmers, and municipal officials on agricultural district laws and agricultural value assessments.
- assists first responders on farm security and agro-terrorism concerns, and partners with other MCC divisions, including the Homeland Security Management Institute and the Public Safety Training Facility to provide such assistance and training.

Skills training includes workshops held at MCC facilities, on-location consultations, Webcast seminars, direct television conferences, and training sessions using other innovative technologies and approaches. Recent high school graduates and others interested in entering the agricultural field may be able to study in traditional degree and certificate programs, credit and noncredit courses.

### **USDA Natural Resources Conservation Service (NRCS)**

The Natural Resources Conservation Service (NRCS) was established pursuant to Public Law 103-354, the Department of Agriculture Reorganization Act of 1994, (7 U.S.C. 6962). The mission of NRCS is to provide national leadership in a partnership effort to help people conserve, improve, and sustain the Nation's natural resources and environment.

NRCS technical experts help land managers and communities take a comprehensive approach in planning the use and protection of soil, water, and related resources on private and non-Federal lands, in rural, suburban, urban, and developing areas. NRCS assistance to individual landowners is provided through soil and water conservation districts, which are units of local government created by state law. NRCS works in partnership with the State conservation agency and other State and local agencies to deliver a wide range of programs necessary to enhance our natural resources.

### **Financial Assistance Programs**

- Conservation Security Program
- Environmental Quality Incentives Program (EQIP)
- Wildlife Habitat Incentives Program (WHIP)
- Forestry Incentives Program (FIP)

### Easement Programs

- Farm and Ranch Lands Protection Program
- Wetlands Reserve Program
- Grassland Reserve Program
- Conservation Reserve Program

### Other Programs

- Conservation Operation & Technical Assistance
- Watershed and Flood Prevention Operation
- Emergency Operations
- Resource Conservation & Development Program
- Grazing Lands Conservation Initiation
- Plant Materials Program
- Urban Resource Partnership Program

### **USDA Farm Service Agency (FSA)**

The Farm Service Agency (FSA) administers several programs that assist farmers and farmland owners, including Conservation Reserve Program (CRP), disaster assistance and loans, as well as outreach, education and analysis of laws and regulations. The FSA works closely with NRCS, SWCD and Cooperative Extension to administer many of these programs.

### **Monroe County Farm Bureau**

The New York Farm Bureau is a private organization that advocates politically on a broad range of issues. Its structure encourages participation among members at the local level through County chapters. The website of the Monroe County Farm Bureau indicates that the organization “works to promote public policy that protects an owner's right to use land” and “believes that a strong, viable agricultural industry benefits the economy, local communities and consumers.” More information is available on the Monroe County Farm Bureau website, <http://www.nyfb.org/monroe/index.html> and the New York Farm Bureau website: <http://www.nyfb.org/whatisfb.htm>

### **USDA Rural Development**

USDA Rural Development administers several grant programs that provide assistance to farmers, municipalities and institutions, including the following Rural Business-Cooperative Service programs:

- Grant funds to help independent agricultural producers enter into value-added activities. Awards may be made for planning activities or for working capital expenses
- Rural Economic Development Loan and Grant (REDLG) program

# Environmental Management and Conservation Program Summaries

## Agricultural Environmental Management Program (AEM)

The New York State Agricultural Environmental Management Program, which is administered by the County Soil & Water Conservation District, consists of five "tiers":

- **Tier 1:** The initial baseline survey of operation, including farm type, number and type of animals, identification of common farm management practices, and future plans for farm.
- **Tier 2:** A detailed assessment of each farm management practice, including waste management, soil management, petroleum storage, barnyard management, and other categories.
- **Tier 3:** In this planning phase, information that is collected in the Tier 2 phase is ranked according to environmental impact potential. Tier 3 includes **tract level** plans (Tier 3A); **nutrient management**, plans (Tier 3B); and **whole farm** plans (Tier 3C).
- **Tier 4:** The implementation phase, where conservation practices are installed or constructed in order to address the areas of concern that have been identified.
- **Tier 5:** The practices are evaluated for effectiveness in addressing problem.

The program was designed to implement provisions of the federal Clean Water Act. The local team includes USDA NRCS, FSA, and Cooperative Extension. It is overseen by a Statewide AEM Steering Committee and the Statewide Conservation Committee.

The program provides cost-sharing for conservation measures. Farmers and farmland owners who install approved practices reduce their liability for nutrients or other substances that may flow to surface or groundwater.

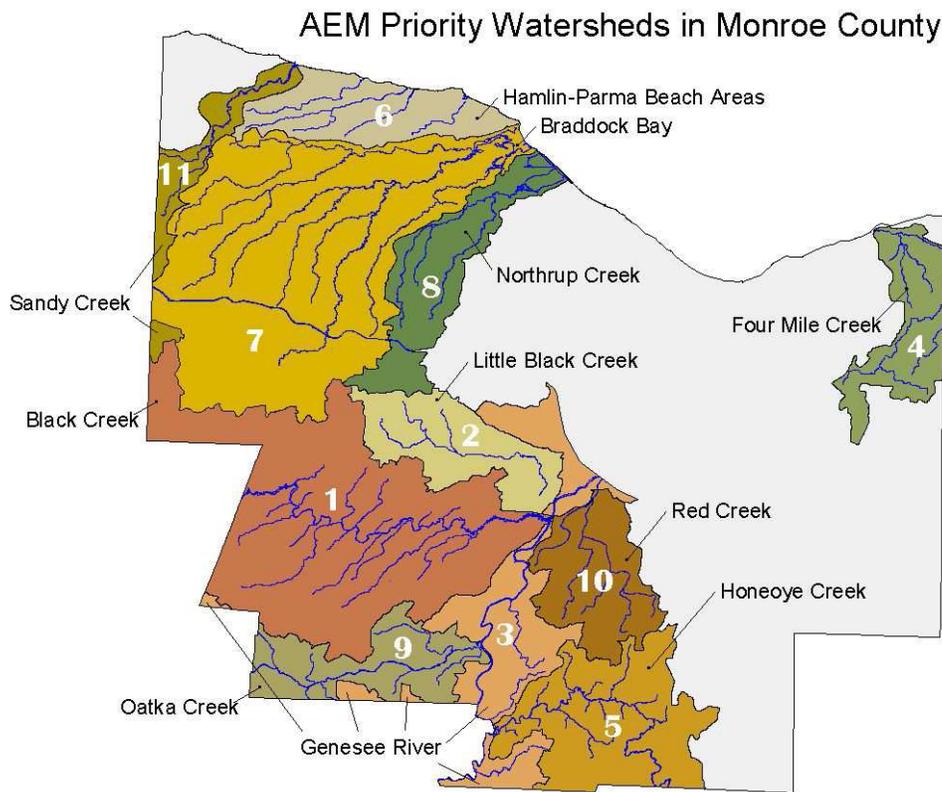
Priority areas are defined by watershed. Monroe County designated the Black Creek watershed as its first priority, due to concerns about phosphorous from agricultural and municipal sources and a requirement to implement a Total Maximum Daily Loading (TMDL) plan.

In 2008, the Monroe County SWCD is focusing on farms in the Hamlin/ Parma Beach watershed (Priority #6). According to the AEM Strategic Plan 2005-2010, 95% of agricultural land use in the Hamlin-Parma Beach Areas may pose threat to water quality of NYSDEC protected streams and the Lake Ontario shoreline. Farming operations in the watershed include orchards, grain, cabbage (8000 acres), and green manure crops. Total cropland in the watershed is estimated by the District to be approximately 13,000 acres.

The Braddock Bay watershed (Priority #7) will be addressed beginning in May 2008. In the Braddock Bay watershed, which includes Salmon Creek, agriculture is suspected of

contributing to impaired boating and fishing, and to stressed bathing and fish propagation. (1996 NYSDEC PWL) Agricultural land use in the watershed includes grain, fruit, vegetables, livestock, and tree farm.

The Northrup Creek Watershed (priority #8) is of local interest due to potential agricultural impacts on Northrup Creek, Long Pond and the Lake Ontario shoreline. Agricultural activities occurring within the Northrup Creek watershed may be contributing to the nutrient, sediment and silt loading that has impaired aesthetics and stressed fishing in the creek. (1996 NYSDEC PWL) Also, Long Pond continues to have issues with nutrients and impaired bathing, aesthetics and boating. While municipal and urban runoff may be the primary contributors, the need exists to look closely at all potential sources, including agriculture.



Source: AEM Strategic Plan 2005-2010

## **Agricultural Nonpoint Source Abatement & Control Grant Program**

This grant program was established in 1994 by the State of New York to assist farmers in preventing water pollution from agricultural activities by providing technical assistance and financial incentives. County Soil & Water Conservation Districts apply for the competitive grants on behalf of farmers and coordinate funded activities. Grants can cost-share up to 75% of project costs or more if farm owners or operators contribute, in the following two areas:

- Planning; funds awarded to conduct environmental planning
- Implementation; funds awarded to construct or apply management practices

The New York State Soil & Water Conservation Committee and the Department of Agriculture & Markets coordinate the statewide program and allocate funds provided by the NYS Environmental Protection Fund on a semi-annual basis. Since the program began in 1994 more than \$50 million has been awarded to 53 Soil & Water Conservation Districts across the state to help farmers reduce and prevent agricultural sources of Nonpoint Source (NPS) Pollution.

NPS pollution is caused by rainfall or snowmelt, moving over and through the ground, which picks up and carries natural and human-made pollutants and deposits them into lakes, rivers, wetlands, coastal waters, or groundwater. These pollutants include:

- Excess fertilizers, herbicides, and insecticides from agricultural lands and residential areas;
- Oil, grease, and toxic chemicals from urban runoff and energy production;
- Sediment from improperly managed construction sites, crop and forest lands, and eroding streambanks;
- Salt from irrigation practices and acid drainage from abandoned mines;
- Bacteria and nutrients from livestock, pet wastes, and faulty septic systems;

## **Conservation Reserve Program (CRP)**

The Conservation Reserve Program (CRP) was authorized under the Food Security Act of 1985, Title XII, P.L. 99-198. It is administered by USDA's Commodity Credit Corporation (CCC) through the Farm Services Agency (FSA). Technical assistance is provided by the NRCS. The CRP encourages farmers to voluntarily plant permanent areas of grass and trees on land that needs protection from erosion, to act as windbreaks, or in places where vegetation can improve water quality or provide food and habitat for wildlife. Eligible producers must enter into contracts with the CCC lasting between 10 and 15 years. In return they receive annual rental

payments, incentive payments for certain activities, and cost-share assistance to establish the protective vegetation. The CRP has been expanded in the past few years to also include a "Continuous Sign-up" element along with the regular annual sign-up periods.

The Conservation Reserve Program in New York has attracted participants from throughout the state with over 55,000 acres enrolled in the program as of October 1, 1999. Most of this land has been seeded to permanent grasses, including native warm-seasoned grass species. In addition, the removal of New York's most erosive and least profitable cropland from production has reduced erosion by 288,000 tons statewide and has improved the net returns to cropland still in production. Total Federal expenditures for the program were about \$3 million generating \$3.7 million in local sales statewide and creating 37 new jobs across the state.

### **Conservation Reserve Enhancement Program (CREP)**

CREP is a federal-state natural resource conservation program targeted to address state and nationally significant agricultural related environmental problems. Under CREP, program participants receive financial incentives from USDA to voluntarily enroll in the Conservation Reserve Program (CRP) in contracts of 10- to 15-years. Participants remove marginal pastureland or cropland from agricultural production and convert the land to native grasses, trees and other vegetation. CRP is authorized by the Food Security Act of 1985, as amended.

The New York's CREP helps farmers address erosion and nutrient runoff on 30 million acres of land within New York's 12 major watersheds. Retiring highly erodible cropland and planting it to protective vegetation will enhance water quality and provide shelter, nesting areas and food for many species of wildlife. Buffers planted along stream banks and rivers will filter phosphorus, nitrogen and sedimentation from the waterways. The Lake Ontario Direct Drainage Watershed is one of the watersheds targeted in New York.

The goals of the New York CREP are to:

- Reduce annual nutrient loads of phosphorus by 73,000 pounds, nitrogen by 29,000 pounds per year and sediments from 109,000 tons per year;
- Reduce the potential for animal waste to enter streams and rivers;
- Establish tree buffers adjacent to 4,598 stream miles and 473,457 acres of surface waters; and
- Establish grass and trees on areas that recharge drinking water supplies for cities and towns.

Eligible conservation practices include planting grasses or trees on erodible soil or establishing wildlife habitat and protecting streams with filter strips, grass waterways and buffer plantings.

## **Environmental Quality Incentives Program (EQIP)**

The Environmental Quality Incentives Program (EQIP), which was created through the 2002 Farm Bill and is administered by the USDA-Natural Resources Conservation Service (NRCS), is intended to promote agricultural production as well as environmental quality through cost-sharing of conservation practices.

EQIP includes two types of payments, cost-share and incentive. Incentive payments are flat rate payments used to encourage a producer to perform land management practices. Participants will receive an incentive payment in the first year of implementation, and are required to carry out the practice for 3 years. Cost-share payments are primarily for structural conservation practices. Cost-share payments are at fixed amounts for each practice, based on 50% to 75% of the state average cost. Limited Resource Producers will be eligible for up to 90% cost-share based on state average costs.

A current Comprehensive Nutrient Management Plan (CNMP) is required prior to application for any agricultural waste practices that address manure storage, milkhouse waste, silage leachate, barnyards, composting or nutrient management. CNMPs developed with EQIP incentive payments must be completed by a NYS Certified Nutrient Management Planner.

## **Wildlife Habitat Incentives Program (WHIP)**

The Wildlife Habitat Incentives Program (WHIP) is authorized by Section 387 of Title III of the Federal Agriculture Improvement and Reform (FAIR) Act of 1996. The purpose of the program is to develop habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish and other types of wildlife. Objectives of the program are to provide technical, educational, and financial assistance to eligible landowners to address the protection of wetlands, wildlife habitat, and related concerns on their land.

## **Conservation Security Program**

The CSP is a voluntary program that provides financial and technical assistance to conserve and improve soil, water, air, energy, plant and animal life on tribal and private working lands—cropland, grassland, prairie land, improved pasture and rangeland, as well as certain forested land that is an incidental part of an agriculture operation. Visit the Natural Resources Conservation Website to get detailed CSP Information:  
<http://www.nrcs.usda.gov/programs/csp/>

The CSP has a unique role among USDA conservation programs. It identifies and rewards those farmers and ranchers who meet the highest standards of conservation and environmental management on their operations, creates powerful incentives for other producers to meet those same standards of conservation performance on their operations, and provides public benefits for generations to come.



# **APPENDIX F**

## **Models for Implementation Tools**

1. Local Right to Farm laws
2. Sample Administrative Procedures for Municipal Purchase of Development Rights Programs
3. NYS Law Authorizing Towns to Acquire Easements
4. NYS PDR Grant Program application and information
5. Agricultural Data Statement – Monroe County
6. Promotional Programs – Farm to School; Grow Monroe; Pride of New York and other State programs
7. Transfer of Development Rights – Sample Regulations



Local Law Number 2 of the year 1993

A local law The Right to Farm Law of the Town of Sweden

Be it enacted by the Town Board of the Town of Sweden as follows:

Section 1. Statement of Legislative Finding and Intent:

- A. It is hereby found and declared by the Town Board of the Town of Sweden that agricultural lands are irreplaceable assets. To that end, the Town Board finds farming to be an essential activity within the Town which greatly contributes to the economic viability of the Town. Farming also reinforces the special quality of life enjoyed by the town's residents, provides the visual benefit of open space and generates economic benefits and social well-being within the community. Therefore, the Town Board emphasizes to both the Town's current residents and prospective newcomers to the Town that it is the policy of this Town to conserve, protect and encourage the development and improvements of agricultural land for the production of food, and other products, and also for its natural and ecological value.
- B. Furthermore, the Town Board hereby supports those farmers, as well as all those employed, retained, or otherwise authorized to act on behalf of farmers, in their efforts to lawfully and responsibly engage in the time honored profession of farming. The Town Board hereby expresses its support of the enactment by the State Legislature of Chapter 797 of the Law of 1992 of the State of New York which, among other things, added a new section to the Agriculture and Markets Law of the State of New York by establishing for the first time a statutory Right to Farm by prohibiting the commencement of private nuisance suits against farmers who engage in sound agricultural practices.
- C. The Town Board, in an effort to promote and foster a harmonious relationship between the residents of the Town and those who contemplate purchasing land within the Town of Sweden, and to conserve, protect and encourage the development and improvement of agricultural land for the production of food and other products, hereby declares that it shall be the policy of this Town to provide reasonable notice to prospective landowners that farming activities may occur on neighboring lands.

Section 2. Notice to Prospective Grantees:

- A. Upon the submission of a preliminary subdivision plat or a multi-family residential site plan to the Planning Board of the Town of Sweden, pursuant to Article 16 of the Town Law of the State of New York, the applicant, in addition to any other requirement, shall submit a separate statement to the Planning Board stating whether the boundaries of the proposed subdivision or multi-family residential dwelling are to be located partially, wholly or within or are within 500 feet of either an Agricultural District or land for which an individual commitment has been received pursuant to Section 305 or 306 of the Agriculture and Markets Law of the State of New York, then the following notice shall appear on either the final subdivision plat or final site plan: "It is the policy of the Town of

Sweden 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 ecological value. This notice is to inform prospective grantee that the property they are about to acquire lies partially, wholly or within 500 feet of either an agricultural district or land for which an individual commitment has been received pursuant to Section 305 or 306 of the Agriculture and Markets Law of the State of New York, and that farming activities may occur on such property. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors.”

- B. In addition to the requirements of the notice in Section 2-A. of this local law, the Planning Board shall also require as a condition of final subdivision or site plan approval, that prior to the initial sale, purchase or exchange of any real property within such subdivision or multi-family residence, the grantor shall also deliver to the prospective grantee a typewritten document containing the notice set forth in Section 2-A. Further, grantor shall incorporate said notice in any deeds wherein title to any such property is to be initially conveyed to a grantee.

Section 3. Severability Clause:

- A. If any part of this Local Law is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remainder of this Local Law.

Section 4. Effective Date:

- A. This Local Law shall be effective immediately upon filing in the Office of the Secretary of State of the State of New York, pursuant to Section 27 of the Municipal Home Rule Law.

Filed New York Department of State on 6/28/93.

ARTICLE I, Right to Farm [Adopted 3-14-2001 by L.L. No. 2-2001]

§ 106-1. Legislative intent and purposes.

A. The Eden Town Board finds, declares, and determines that agriculture is vital to the Town of Eden, New York, because it is a livelihood and provides employment for agriservice; provides locally produced, fresh commodities; agricultural diversity promotes economic stability; agriculture maintains open space and promotes environmental quality, and agricultural land does not increase the demand for services provided by local governments. In order to maintain a viable farming economy in the Town of Eden, farmers must be afforded protection allowing them the right to farm. When nonagricultural land uses extend into agricultural areas, agricultural operations may become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operation or are discouraged from making investments in agricultural improvements.

B. It is the purpose of this article to reduce the loss to the Town of Eden of its agricultural resources by limiting the circumstances under which farming may be deemed to be a 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.

§ 106-2. Definitions.

A. As used in this article, the following terms shall have the meanings indicated:

**AGRICULTURAL PRACTICES** -- All activities conducted by a farmer on a farm to produce agricultural products and which are inherent and necessary to the operation of a farm and the on-farm production, processing, and marketing of agricultural products, including, but not limited to, the collection, transportation, distribution, storage, and land application of animal wastes; storage, transportation, and use of equipment for tillage, planting, harvesting, irrigation, fertilization, and pesticide application; storage and use of legally permitted fertilizers, limes, and pesticides all in accordance with local, state and federal law and regulations and in accordance with manufacturers' instructions and warnings; storage, use, and application of animal feed and foodstuffs, construction and use of farm structures and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizers, agricultural products, and livestock, for the sale of agricultural products, and for the use of farm labor, as permitted by local and state building codes and regulations, including the construction and maintenance of fences.

**AGRICULTURAL PRODUCTS** -- Those products as defined in § 301(2) of Article 25-AA of the Agricultural and Markets Law.

**FARM** -- The land, buildings, farm residential buildings, and machinery used in the production, whether for profit or otherwise, of agricultural products.

FARMER -- Any person, organization, entity, association, partnership, or corporation engaged in the business of agriculture, for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock, poultry, fur-bearing animals, or fish, the harvesting of timber or the practicing of horticulture or apiculture.

GENERALLY ACCEPTED AGRICULTURAL PRACTICES -- Those practices which are feasible, lawful, inherent, customary, necessary, reasonable, normal, safe, and typical to the industry or unique to the commodity as they pertain to the practices listed in the definition of "agricultural practices."

RESOLUTION COMMITTEE -- Shall be made up of the Chairman of the Conservation Board or designee, Chairman of the Agricultural Committee or designee, and a member of one other standing committee of the Town designated by the Town Supervisor.

B. Unless specifically defined, above words or phrases used in the article shall be interpreted so as to give them meanings they have in common usage, and to give this article its most reasonable application.

§ 106-3. Authority to engage in agricultural practices.

A. Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within the Town of Eden at all such times and in 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 and improved technologies.

B. 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 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 unreasonably obstruct the free passage or use of navigable waters or public roadways.

C. Nothing in this article shall be construed to prohibit an aggrieved party from recovering damages for bodily injury or wrongful death.

§ 106-4. Duty of Town officers and boards to consider impact of farm operations on certain applications.

The legislative intent and purposes of this article shall be taken into consideration by each Town officer and/or board in processing any application requesting rezoning, site plan approval and/or special use permit approval when the property which is the subject of such application is located within one mile of an existing farm. Such Town officer and/or board shall, as part of its review of such application, determine whether appropriate and reasonable conditions may be prescribed or required, which would further the purposes and intent of this article as part of an approval of the application. Such appropriate and reasonable conditions shall be determined on a case-by-case basis and may include, but not be limited to, requiring declarations, deed restrictions and/or covenants which run with the land which would notify future purchasers and owners of the subject property that owning and occupying such property might expose them to certain discomforts or inconveniences resulting from the conditions associated with agricultural practices and operations in the Town.

§ 106-5. Informal resolution of disputes.

A. Should any controversy arise regarding any inconveniences or discomforts occasioned by agricultural operation, including, but not limited to, noise, odors, fumes, dust, the operation of machinery, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and/or pesticides, the parties may submit the controversy to the resolution committee as set forth below in an attempt to resolve the matter prior to the filing of any court action.

B. Any controversy between the parties may be submitted to the resolution committee, whose decision shall be advisory only, within 30 days of the date of the occurrence of the particular activity giving rise to the controversy or of the date a party became aware of the occurrence.

C. The effectiveness of the resolution committee as a forum for resolution of grievances 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.

D. The controversy shall be presented to the committee by written request of one of the parties within the time limits prescribed above. Thereafter, the committee may investigate the facts of the controversy but must, within 30 days, hold a meeting to consider the merits of the matter and within 20 days of the meeting must render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each party considers to be the pertinent facts.

# Yates County, New York

## Agricultural Development and Farmland Enhancement Plan

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### 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

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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.

# Yates County, New York

## Agricultural Development and Farmland Enhancement Plan

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### 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.

Cayuga County Pre-Application  
for  
New York State's  
Farmland Protection Implementation  
Grants Program  
2008

## **PURPOSE**

In response to growing interest among local farmers in the State's Farmland Protection Implementation Grants (FPIG) Program, **Cayuga County Agriculture and Farmland Protection Board (AFPB)** has adopted a pre-application process in order to review and select farmland protection projects to compete at the State level for FPIG grant funds.

## **PROCESS**

The AFPB will review and rank pre-applications, and will select those proposals that may advance to the next stage. Applicants of pre-applications chosen by the Board will have authorization to proceed with development of a full application, to be submitted by the Board to the State. AFPB review criteria reflect the State's FPIG Program priorities.

## **PRE-APPLICATION DEADLINE**

Pre-applications **must be received** by Cayuga County Planning Department on or before **Monday March 3<sup>rd</sup>, 2008**. Mail or hand-deliver (1) original to:

Cayuga County Department of Planning & Economic Development  
160 Genesee Street, 5<sup>th</sup> Floor  
Auburn, New York 13021  
ATTN: Trish Ottley Riter

## **REVIEW & SELECTION**

County Planning staff will undergo a preliminary review and ranking of FPIG applications based on established criteria. The top ranking applications will be presented to the AFPB for final review and selection. A meeting date has not yet been established, but will be announced publicly through the press. The Board will select proposals to advance to the next stage at this meeting. The AFPB will consider all criteria in its evaluation including farm viability, development pressure and environmental benefit indicators.

## **STATE DEADLINE**

At this time, New York State has not issued a Request for Proposals (RFP) for the Farmland Protection Program. Although there is no guarantee that funding will be made available this year, we are initiating the pre-application process now so that approved applicants may have maximum amount of time to prepare full proposals once the RFP is issued.

## **MORE INFORMATION**

*Please contact Trish Ottley Riter, Community Development Planner, Cayuga County Department of Planning & Economic Development, (315-253-1276) with any questions or concerns about the Pre-Application. Please contact Judy Wright, American Farmland Trust consultant (315-255-2508) with any questions or concerns about the State or Federal Farmland Protection Program.*

For more information on the County's Farmland Protection Program, please visit us online at:  
<http://www.co.cayuga.ny.us/planning/farmland>

# CAYUGA COUNTY FARMLAND PROTECTION PROGRAM PRE-APPLICATION

1) Owner Name(s) \_\_\_\_\_

2) Name of Farm \_\_\_\_\_

3) Mailing Address \_\_\_\_\_

4) Phone \_\_\_\_\_ 5) Email \_\_\_\_\_

6) Nature of farm operation \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7a) No. of Acres Owned \_\_\_\_\_ 7b) No. of Acres Tillable \_\_\_\_\_ 7c) No. of Acres to be Protected for Crop and/or Livestock Production \_\_\_\_\_ 7d) Do you anticipate excluding any future building lots? If so, how many and total number of acres? \_\_\_\_\_.

8) Please list tax map ID numbers for all parcels included in your FPIG proposal, as well as all individuals/entities with ownership interest in those parcels. **ALL OWNERS MUST SIGN THIS PRE-APPLICATION FOR CONSIDERATION BY THE AFPB.**

**TAX MAP ID NUMBERS** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OWNERS** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attach additional pages if necessary.

9) Is your farm located within an agricultural district? \_\_\_\_\_ Yes \_\_\_\_\_ No

9a) If yes, please list the district number \_\_\_\_\_.

10) Describe the nature of land use adjacent to your farm, including a description of the level of farm and non-farm activity occurring within a 1-mile radius of your farm.

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11) Please describe your level of farm management. Do you have a nutrient management plan? Have you participated in Cayuga County Soil & Water Conservation District programs? What other activities have you undertaken that demonstrate best practices in farm management?

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12) Please describe major investments you have made in your farm to date, such as barns, irrigation, fruit trees, drainage tile, manure storage, etc. Include dates of investment.

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13) Have you completed Tier 1 and Tier 2 of the State's Agricultural Environmental Management (AEM) Program (required)? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes please list the dates of completion for Tiers 1 and 2 \_\_\_\_\_. **If no, you are not eligible to apply to the County's Farmland Protection Program.** The Cayuga County Soil and Water Conservation District provides Tier 1 and Tier 2 AEM services at no cost to the landowner. Please contact the District at 252-4171 to go through this process prior to submission of the pre-application or supplement. In extenuating circumstances, exceptions *may* be made. Please contact Trish Riter at Cayuga County Dept. of Planning and Economic Development, 315-253-1276, to discuss further. If your land is selected for the County's application, you must complete Tier 3 of the AEM Program prior to the State's application deadline.

14) Please explain briefly why you would like to include your farm in the State's PDR Program.

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15) Please describe your plans for farm succession \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16) List the public roads your farm fronts, and the number of feet of frontage for each:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17) What is the proximity of your farm to public water? \_\_\_\_\_

18) What is the proximity of your farm to public sewer? \_\_\_\_\_

19) Does your farm provide access to, or is it part of, a scenic vista? If yes, please describe:  
\_\_\_\_\_  
\_\_\_\_\_

20) Please describe the development pressure around your farm. Quantify if possible with number of subdivisions, building permits, new home construction in your area over the past several years.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21) Is your farm located within a public water source area (includes watersheds, reservoirs, aquifers and other water recharge areas)? If yes, please describe:  
\_\_\_\_\_  
\_\_\_\_\_

22) Does your farm front a stream, river, lake, or other surface water body? If yes, please describe, and provide the number of feet of frontage for each water body:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

23) Is your farm located within a floodplain or does it contain wetlands? If yes, please describe. Please provide the number of acres of wetland if applicable.

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24) Does your farm serve as a **buffer** to a significant natural resource? If yes, please describe. (e.g. maintaining vegetative buffer strips or no-till zones along stream corridors; providing buffer to adjacent parkland; etc.)

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25) Have you initiated conversation with a land trust (e.g. NY Agricultural Land Trust, Finger Lakes Land Trust) to discuss holding the conservation easement on your property? \_\_\_\_\_yes \_\_\_\_\_no

25a) Name of person you've been working with \_\_\_\_\_

25b) Name of land trust organization \_\_\_\_\_

26) Local Match: NYS Farmland Protection Program will fund up to 75% of the value of development rights on farmland. Typically, farmers will commit to a "bargain sale" of their development rights, meaning that they will accept 75% of the value from the state, and assume the remaining 25% as an in-kind contribution. Please indicate your willingness to assume 25% of the value of development rights on your farm.

I will provide the required 25% local match through bargain sale of my development rights \_\_\_\_\_.

I will not provide the required 25% local match through bargain sale of my development rights \_\_\_\_\_.

Certification: I (we) certify that all information presented in this pre-application is, to the best of my (our) knowledge, accurate and true.

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Signature

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Date

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Signature

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Date

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Signature

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Date

**Pre-applications must be received by Monday March 3<sup>rd</sup> 2008.**

# CAYUGA COUNTY FARMLAND PROTECTION PROGRAM

## 2008 Ranking Criteria: Score Sheet

RANKING CRITERIA	Measurable	Thresholds	Weight	MAX Weight
<b>FARMLAND VIABILITY (SUBJECT PROPERTY)</b>	Quality of Soils	Based on RPS Agricultural Assessed Value of Soil Associations	1-40	40
	% Total Farm Available for Ag Production	Greater than 90%	10	10
		75-90%	5	
		<75%	0	
	Level of Demonstrated Farm Management	Owner participates in farm management programs, BMPs	5	5
Owner has not invested in farm, does not participate in programs		0		
<b>DEVELOPMENT PRESSURE</b>	Public Road Frontage	Greater than 20 LF/acre	10	10
		15 – 20 L.F/acre	7	
		Between 10-15 L.F/acre	5	
		< 10 L.F/acre	0	
	Proximity to Public Water	Located within ¼ mile	10	10
		Located between ¼ - ½ mile	7	
		Located between ½ - 1 mile	5	
		Located > 1 mile	0	
	Proximity to Public Sewer	Located within ¼ mile	5	5
		Located between ¼ - ½ mile	3	
		Located between ½ - 1 mile	2	
		Located > 1 mile	0	
<b>ENVIRONMENTAL IMPACT</b>	Proximity to Public Drinking Water Source	Located within watershed of public drinking water source	10	10
	Stream and Water Frontage	> 5000 L.F stream frontage, > 200 L.F. lake frontage	5	5
	Other Significant Natural Resources	< 5000 L.F. stream frontage; wetlands (5+ acres); proximity to public parkland	5	5
	<b>Buffers</b> Significant Natural Resource	e.g. Maintenance of vegetative buffer strips or setbacks; buffers parkland; etc.	5	5
<b>FARMLAND VIABILITY (EXTERNAL FACTORS)</b>	Buffers Protected Farmland	Within ½ mile of protected farmland	20	20
		Within 2 miles of protected farmland	15	
		Within 5 miles of protected farmland	10	
	Percentage of farmland within 2-mile radius	Greater than 75%	30	30
		50 – 75%	5-30 pts	
Located within an Ag District	Farm is located within a certified agricultural district	5	5	
<b>ACREAGE IMPACT</b>	Number of acres to be protected	Greater than 500	10	10
		200-500	7	
		Between 50-200	5	
		Less than 50 acres	0	
<b>PROPERTY OWNER COMMITMENT</b>	Number of times applied to program	More than once	5	5
		First time	0	0



**LIVINGSTON COUNTY  
AGRICULTURAL & FARMLAND  
PROTECTION BOARD**

Livingston County Government Center  
6 Court Street, Room 305  
Geneseo, New York 14454-1043

Telephone: (585) 243-7550  
Fax: (585) 243-7566  
E-mail: dwoods@co.livingston.ny.us

**LIVINGSTON COUNTY PURCHASE OF DEVELOPMENT RIGHTS PROGRAM  
2008 PRE-APPLICATION**

**Applicant Name:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Contact Information**

**Phone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Part One: Eligibility Criteria**

In order to be eligible to participate in a County-supported Purchase of Development Rights program, the following criteria must be met. Please answer all of the following.

	Yes	No	N/A
1. Is the property or set of properties in Livingston County Agricultural District #1, #2, #3 or #4?	<input type="checkbox"/>	<input type="checkbox"/>	
2. Does the zoning of the property or set of properties allow residential, commercial or industrial development? (If in Town of Springwater or Town of Portage, check N/A)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do the physical characteristics of the property or set of properties (slopes, soils, drainage) permit residential, commercial or industrial development?	<input type="checkbox"/>	<input type="checkbox"/>	
4. Is the property or set of properties free of restrictive easements?	<input type="checkbox"/>	<input type="checkbox"/>	
5. Is the property or set of properties more than 100 acres in size? If not, is the property or set of properties contiguous to permanently preserved parcels?	<input type="checkbox"/>	<input type="checkbox"/>	
6. Does the property have at least 50% USDA Prime Soils? Confirmed by Livingston County Soil & Water Conservation District (LCSWCD): _____ (LCSWCD signature required)	<input type="checkbox"/>	<input type="checkbox"/>	
7. Does the property have a Soil Conservation and Water Quality Plan, Forest Management Plan, Nutrient Management Plan, CAFO Plan or similar plan? Confirmed by Livingston County Soil & Water Conservation District (LCSWCD): _____ (LCSWCD signature required)	<input type="checkbox"/>	<input type="checkbox"/>	
8. Is the property in good standing (no more than 12 months in arrears) with local tax authorities (i.e. Village, Town, County, School)?	<input type="checkbox"/>	<input type="checkbox"/>	

If all of the answers to the questions above are "Yes" or "N/A," please proceed with Parts 2 and 3. If you answered "No" to any of the above questions, your property is not eligible for this program.

**Part 2: Property Information**

Please provide the following information on the property or set of properties to be considered:

- Number of tax parcels to be considered: \_\_\_\_\_
- Tax parcel number, owner, acreage and location:

Tax Parcel Number	Owner Name	Acreage	Parcel Address	Parcel Municipality
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(attach additional sheets if necessary)

Please check all that apply:

**Farm Characteristics (Maximum 80 points)**

- Soil Quality: (Maximum 30 points)
  - Property or set of properties has greater than 90% USDA Prime Soils (30 points)
  - Property or set of properties has 75-89% USDA Prime Soils (25 points)
  - Property or set of properties has 50-74% USDA Prime Soils (20 points)

Confirmed by Livingston County Soil and Water Conservation District (LCSWCD)

\_\_\_\_\_ (LCSWCD signature required)

- Size of Application: (Maximum 20 points)
  - Application contains more than 200 acres (20 points)
  - Application contains 100 to 199 acres (10 points)
  - Application contains less than 100 acres, but is contiguous to permanently preserved parcels of more than 100 acres (5 points)

- Land Usage: (Maximum 30 points)
  - Property or set of properties has greater than 90% of land available for crops or livestock production (30 points)
  - Property or set of properties has 75-89% of land available for crops or livestock production (25 points)
  - Property or set of properties has 50-74% of land available for crops or livestock production (20 points)

Confirmed by Livingston County Soil and Water Conservation District (LCSWCD)

\_\_\_\_\_ (LCSWCD signature required)

**Location Factors (Maximum 70 points)**

4. Adjacency to Agricultural Land (Maximum 20 points) - *check all that apply*

- Property or set of properties is adjacent to permanently protected land (20 points)
- Property or set of properties is not adjacent to but is within 1/2 mile of permanently protected land (10 points)
- Property or set of properties is adjacent to actively farmed land (10 points)

Please justify: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(attach additional sheets as needed)

5. Adjacency to public water and sewer service, I-390 access points, or State Highways (Maximum 20 points) - *check all that apply*

- Adjacent to public water or sewer lines (10 points)
- Not adjacent to but within 1/2 mile of public water or sewer lines (5 points)
- Adjacent to I-390 access points or State Highway (10 points)
- Not adjacent to but within 1/2 mile of I-390 access points or State Highway (5 points)

Please explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(attach additional sheets as needed)

6. Development Pressure (Maximum 10 points)

Please describe farm location in relation to Villages, developed areas, or any other development pressures on the farm:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(attach additional sheets as needed)

7. Road Frontage (Maximum 10 points)

Total feet of road frontage (up to 5,000 feet): \_\_\_\_\_ feet

8. Adjacency to public natural resources (Maximum 10 points)

- Adjacent to or within a public natural resource (e.g. Genesee River, Conesus Lake Watershed, State Forests, parks, Genesee Valley Greenway, etc.) (10 points)

Please describe: \_\_\_\_\_

\_\_\_\_\_

**Part 3: Farm Viability Narrative (Maximum 15 points)**

Please describe the viability of the farming operation. Please be sure to include information on the following, if applicable:

- Type of farming
- Operational continuity of the farm
- Economic productivity
- Improvements to farm operation

Please limit description to one page.

**Submittal Information**

Please submit completed pre-applications by January 31, 2008, to:

Livingston County Planning Department  
6 Court Street-Room 305  
Geneseo, NY 14454

If you have any questions on the pre-application, please contact:

Livingston County Soil and Water Conservation District: 585-243-0043  
Genesee Valley Conservancy: 585-243-2190  
Livingston County Planning Department: 585-243-7550

**This section must be completed to process the pre-application.**

“I certify that the information provided is true and correct to the best of my knowledge.”

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature of person completing the pre-application)

**If there are multiple owners of the parcels included in this application, all owners must sign below.**

“I acknowledge and agree with the submittal of this pre-application for the Livingston County Purchase of Development Rights Program.”

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**LIVINGSTON COUNTY, NEW YORK  
2008 PURCHASE OF DEVELOPMENT RIGHTS PROGRAM**

**ELIGIBILITY CRITERIA**

In order to be eligible to participate in a County support Purchase of Development Rights program, the applicant property(s) must meet the following basic requirements:

- AGRICULTURAL DISTRICT:** Property must be enrolled in an agricultural district.
- DEVELOPABILITY:** Applicant property must be developable based on zoning, soils, and other physical characteristics of the property (wetlands, steep slopes, etc.).
- RESTRICTIVE EASEMENT:** Applicant property must be free of restrictive easements.
- SIZE:** Applicant property offered as a single easement, or in combination with others, must comprise at least 100 contiguous acres. *Note: Individual applicants with fewer than 100 acres must demonstrate that they are contiguous to permanently preserved parcels and will serve a valuable in-fill purpose.*
- SOILS:** Applicant property must contain at least 50% USDA Prime Soils.
- STEWARDSHIP:** Land must have a fully implemented Soil Conservation and Water Quality Plan, Forest Management Plan, Nutrient Management Plan, or similar plan.
- TAXES:** Property is in good standing (no more than 12 months in arrears) with local tax authorities (i.e. Village, Town, County, School).

**DRAFT RANKING FORMULA**

Once an applicant has passed the initial screening outlined above, the applicant will be ranked against concurrent applications using the following formula. (Maximum score is 165 points)

Farm Characteristics (Maximum of 80 Points)

- |  |             |
|--|-------------|
| 1. Soil Quality  | _____Points |
| Applicant property has more than 90% USDA Prime Soils  | (30 points) |
| Applicant property has 75% to 89% USDA Prime Soils   | (25 points) |
| Applicant property has 50% to 74% USDA Prime Soils   | (20 points) |
| 2. Size of Application (measured as contiguous parcel)   | _____Points |
| Application contains more than 200 contiguous acres  | (20 points) |
| Application contains 100 to 199 contiguous acres   | (10 points) |
| Application contains less than 100 contiguous acres, but is contiguous to permanently preserved parcels of more than 100 acres | (5 points)  |
| 3. Land Usage  | _____Points |
| Applicant property has more than 90% of land available for crops or livestock production                                       | (15 points) |
| Applicant property has 75% to 89% of land available for crops or livestock production  | (10 points) |
| Applicant property has 50% to 74% of land available for crops or livestock production  | (5 points)  |

Location Factors (Maximum of 70 points)

- |  |             |
|--|-------------|
| 4. Adjacency to Agricultural Land  | _____Points |
| Applicant property is adjacent to permanently protected land   | (20 points) |
| Applicant property is not adjacent to but is within ½ mile of permanently protected land   | (10 points) |
| Applicant property is adjacent to actively farmed land   | (10 points) |
| 5. Adjacency to public water and sewer service, I-390 access points, or State Highways (Points may be cumulative)                      | _____Points |
| Adjacent to public water or sewer lines  | (10 points) |
| Not adjacent but within ½ mile of public water or sewer lines  | (5 Points)  |
| Adjacent to I-390 access points or State Highways  | (10 Points) |
| Not adjacent but within ½ mile of I-390 access points or State Highways  | (5 Points)  |
| 6. Development Pressure  | _____Points |
| Farm location in relation to Villages, developed areas or any other development pressure   | (10 Points) |
| 7. Road Frontage   | _____Points |
| Total feet of road frontage (up to 5,000 feet) _____/500   |             |
| 8. Adjacency to critical environmental areas or unique natural resources   | _____Points |
| Adjacent to a critical or unique environmental resource (e.g. Conesus Lake Watershed, parks, environmental areas, State Forests, etc.) | (10 Points) |

Discretionary Points (Maximum of 15 points)

At the Agricultural & Farmland Protection Board's discretion, it may award up to 15 points to an applicant's ranking score based on qualitative considerations or specific localized conditions at the time of the application. The rationale for awarding such points should be clearly delineated and may include factors such as:

- Consistency of application with County, town, and municipal plans
- Operational continuity
- Critical economic factors



## Appendix F.3

### **NYS General Municipal Law**

S 247. Acquisition of open spaces and areas.

1. Definitions. For the purposes of this chapter an "open space" or "open area" is any space or area characterized by (1) natural scenic beauty or, (2) 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 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.

2. The acquisition of interests or rights in real property for the preservation of open spaces and areas shall constitute a public purpose for which public funds may be expended or advanced, and any county, city, town or village after due notice and a public hearing 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 achieve the purposes of this chapter, to land within such municipality. In the case of a village the cost of such acquisition of interests or rights may be incurred wholly at the expense of the village, at the expense of the owners of the lands benefited thereby, or partly at the expense of such owners and partly at the expense of the village at large as a local improvement in the manner provided by article twenty-two in the village law entitled local improvements.

3. After acquisition of any such interest pursuant to this act the valuation placed on such an open space or area for purposes of real estate taxation shall take into account and be limited by the limitation on future use of the land.

4. For purposes of this section, any interest acquired pursuant to this section is hereby enforceable by and against the original parties and the successors in interest, heirs and assigns of the original parties, provided that a record of such acquisition is filed in the manner provided by section two hundred ninety-one of the real property law. Such enforceability shall not be defeated because of any subsequent adverse possession, laches, estoppel, waiver, change in character of the surrounding neighborhood or any rule of common law. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any acquisition pursuant to this section, unless such general law expressly states the intent to defeat the enforcement of any acquisition pursuant to this section.



## NYS Criteria for Reviewing Farmland Protection Applications

		Percent of Total	Percent for Easement Projects
Involves Conservation Easements	80 - yes; 50 - no	26.7%	
Will preserve "viable agricultural land"	65 max	21.7%	29.5%
In area facing significant development pressure	25 max	8.3%	11.4%
Serves as buffer to significant natural resource	25 max	8.3%	11.4%
Long-term potential for land to remain in agriculture	55 max	18.3%	25.0%
Cost in relation to acreage preserved	20 max	6.7%	9.1%
Local partners' commitment to farmland protection	30 max	10.0%	13.6%
	300 total	100.0%	100.0%

### Will preserve "viable agricultural land"

- Quality of soil resources
  - Town's GIS-based maps/ rating system should indicate the extent of "prime soils" and "other soils of statewide importance" for each parcel
- % of total farm available for agricultural production
  - Indicate how many acres are unsuitable for farming (wetlands; poor quality soils; buildings). A limited amount of timber harvesting from woodlands on the farm may be included as part of the farm's agricultural production.
- Number of acres to be protected
  - Consider whether any land is to be excluded from the conservation easement and set aside for future building lots.
- Level of demonstrated farm management
  - Demonstrate success (yield; recognition or awards)
  - Participation in federal conservation programs such as Agricultural Environmental Management (AEM)

### Located in area facing significant development pressure

- Number of building permits granted per year
- Areas of Town that have higher rate of development
- Areas served by public sewer and/or water or areas likely to have these services in the future
- Proposed residential subdivisions

- Identify boundary between “development” and “conservation” areas

#### **Serves as buffer to significant natural resource**

- Important habitat or ecosystem would be protected by long-term conservation of the farmland. Important habitats/ ecosystems may include stream corridors, woodlands, “edge” habitats, wetlands, etc.
- Are any endangered species located in the Town?
- What role might there be for the Conservation Board in identifying significant natural resources that may be protected through agricultural conservation easements?

#### **Long-term potential for land to remain in agriculture**

- Extent to which property is bordered by or near other protected farms or farms that will likely be protected in the future
- Proximity to markets and processors
- Proximity to vendors providing supplies and services to the subject farm
- Succession plan

#### **Cost of project in relation to acreage preserved**

- Cost per acre of preserved farmland

#### **Local partners' commitment to farmland protection**

- Actions contained in local farmland protection plans have been implemented
- Total local public (Town) and private (Land Trust) expenditures on Purchase of Development Rights projects
- Number and acreage of permanent conservation easements on local viable agricultural land
- All Monroe County Agricultural Districts have been reviewed on or before their respective anniversary date

**New York State Department of Agriculture and Markets  
Standard Agricultural Easement – August 22, 2008**

**Deed of Conservation Easement**

*[Italics Text in brackets is informational, to be deleted for first draft]*

THIS CONSERVATION EASEMENT ("Easement") is granted this \_\_\_\_ day of \_\_\_\_\_ 200\_\_, by \_\_\_\_\_ ("Grantor") to \_\_\_\_\_ ("Grantee"), a New York municipal corporation having an office at \_\_\_\_\_ and to \_\_\_\_\_ ("Grantee"), a New York not-for-profit corporation having an office at \_\_\_\_\_. *[Depending on the project, Grantee will be either the municipality or the not-for-profit or both]*

**WHEREAS:**

- A. Grantor is the owner of certain real property (the "Property") consisting of \_\_\_\_ acres, in \_\_\_\_ parcel[s] located on \_\_\_\_\_ and \_\_\_\_\_ Roads in the Town of \_\_\_\_\_, \_\_\_\_\_ County, New York, more fully described in the legal survey description of the property ("EXHIBIT A") and shown on the Easement Map ("EXHIBIT B"), both attached hereto. *(and as depicted on a survey of the Property to be filed simultaneously with the County Clerk)*
- B. Grantee is a New York not-for-profit corporation within the meaning of Article 49, Title 3 of the Environmental Conservation Law of the State of New York (together with any successor statute, the "ECL"), is organized for, among other purposes, conserving real property, is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a)(1) and 170(b)(1)(A)(iv) of the Internal Revenue Code, and is "qualified organization" to accept, purchase, and hold Conservation Easements under Section 170(h) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c). *[for a land trust grantee or use C. below if a municipality or use both if applicable]*
- C. Grantee is a municipal corporation and has the authority pursuant to Section 247 of the General Municipal Law and Article 49, Title 3 of the New York Environmental Conservation Law (the "ECL") to acquire conservation easements. *[for a town or county grantee]*
- D. The Property consists primarily of productive agricultural land. The Property contains \_\_\_\_ acres of prime soils, and \_\_\_\_ acres of soils of statewide importance as defined by the U.S. Department of Agriculture Natural Resources Conservation Service. The Property also contains *[describe features and importance of any designated Resource Protection Areas]*
- E. Article 14, Section 4 of the New York State Constitution states that "the policy of this state shall be to conserve and protect its natural resources and scenic beauty and encourage the

development and improvement of its agricultural lands for the production of food and other agricultural products;”

- F. In Section 49-0301 of the ECL, the Legislature of the State of New York found and declared that “in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, and the preservation, development and improvement of agricultural and forest lands..., is fundamental to the maintenance, enhancement and improvement of...balanced economic growth and the quality of life in all areas of the state;”
- G. The Property is located within \_\_\_\_\_ County’s Agricultural District # \_\_\_\_, created pursuant to Article 25AA of the New York State Agriculture and Markets Law. In Section 300, it states: “It is hereby found and declared that many of the agricultural lands in New York State are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited resources results...It is therefore the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products...It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State’s agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance;”
- H. Article 25-AAA, Section 321 of the Agriculture and Markets Law states that “It is hereby found and declared that agricultural lands are irreplaceable state assets. In an effort to maintain the economic viability, and the environmental and landscape preservation values associated with agriculture...” the Commissioner is authorized to administer programs to assist counties in developing agricultural and farmland protection plans and to assist both county and municipal governments in the implementation of such plans. The Commissioner gives priority to projects that will preserve viable agricultural land, are located in areas facing significant development pressure and serve as a buffer for a significant natural public resource containing important ecosystem or habitat characteristics;
- I. The Property is located within \_\_\_\_\_ County which has adopted an Agricultural and Farmland Protection Plan. The Plan recommends...*[add appropriate text]*;
- J. The Property is located within the Town of \_\_\_\_\_, which has adopted an Agricultural and Farmland Protection Plan *[or other plan name]*. The Plan recommends...*[add appropriate text]*;
- K. Grantor has received independent legal and financial advice regarding this Easement to the extent that Grantor has deemed necessary. Grantor freely signs this Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing, Dollars (\$\_\_\_\_\_) and the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

**1. Grant of Conservation Easement.**

Grantor hereby grants and conveys to Grantee, a Conservation Easement (the “Easement”), an immediately vested interest in real property defined by Article 49, Title 3 of the ECL of the nature and character described herein, for the benefit of the general public, which Easement shall run with and bind the Property in perpetuity. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

**2. Purpose.**

The Primary Purpose of this easement is to conserve viable agricultural land and soil resources by preventing uses of the Property that will significantly impair or interfere with the Property’s agricultural and forestry viability and productive capacity.

All other purposes listed below shall be secondary and none shall conflict with or significantly diminish the Primary Purpose of this Easement. The Secondary Purposes of this Easement include: *[optional if secondary purposes exist]*

**3. Implementation.**

This Easement shall be implemented by limiting and restricting the development and use of the Property in accordance with its provisions. The Property remains subject to all applicable local, state and federal laws and regulations. This Easement shall not unreasonably restrict or regulate farm operations in contravention of the purposes of Article 25-AA of the Agriculture and Markets Law.

**4. Definitions.**

**4.(a).** “Grantor” or “owner” include the original Grantor, its heirs, successors and assigns, all future owners of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof.

**4.(b).** “Grantee” includes the original Grantee(s) and its [their] successors and assigns. The term “Lead Grantee” is the Grantee designated by mutual agreement between the Grantees to give and receive all notices and other communications to and from the Grantor as specifically indicated in this Easement and to pursue any legal action to enforce this Easement. The \_\_\_\_\_ shall be Lead Grantee unless the Grantors receive written notice of a change in such designation executed by both Grantees. *[use these two sentences if there are two or more Grantees who want to designate a lead grantee in the easement]*

- 4.(c). **“Residential Dwelling”** means dwellings or structures, together with accessory improvements that comprise single-family, multi-family, apartments, “in-law” apartments, guest houses and farm labor housing, whether or not the structure(s) are used as the primary residence of a farm owner.
- 4.(d). **“Farm Labor Housing”** means dwellings or structures, together with accessory improvements used to house seasonal and/or full-time employees where such residences are provided by the farm landowner and/or operator, the worker is an essential employee of the farm landowner and/or operator employed in the operation of the farm and the farm worker is not a partner or owner of the Farm Operation. For instance, a structure used as the primary residence of a farm owner is not “farm labor housing”.
- 4.(e). **“Farm Operation”** shall be defined as “the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise” in accordance with Section 301 of the New York State Agriculture and Markets Law (“Agriculture and Markets Law”), or such successor law as enacted or amended.
- 4.(f). **“Impervious Surfaces”** are defined as structures or improvements that permanently cover soil resources. Impervious Surfaces do not include permeable surfaces such as gravel roads and parking areas, structures whose principal purpose is to protect soil and water resources, such as manure storage areas, and structures and improvements lacking permanent foundations.
- 4.(g). **“Sound Agricultural Practices”** is defined as those practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the farm, and achieve the intended results in a reasonable and supportable way. If necessary, to determine if a practice is “sound,” Grantee or Grantor may request that the New York State Department of Agriculture and Markets initiate a sound agricultural practice review pursuant to Section 308 of the New York State Agriculture and Markets Law, or any successor law as enacted or amended.
- 4.(h). **“Viable Agricultural Land”** is defined as land highly suited for agricultural production.
- 4.(i). The following use areas are defined for the Easement:  
**“Farmstead Area”** is defined as area(s) depicted in Exhibit B, that centers on existing farm structures or future planned structures.  
**“Resource Protection Area”** is defined as the area depicted in Exhibit B, which contains unique or important natural resources. *[optional if an RPA is designated]*  
**“Farm Area”** is defined as the remaining area of the farm, depicted in Exhibit B.

**5. Reserved Rights Retained by Grantor.**

As the owner of the Property, Grantor reserves all customary rights and privileges of ownership, including the right of exclusive use, possession and enjoyment of the Property, the rights to sell, lease, and devise the Property, as well as any other rights consistent with the Purpose set forth in Section 2 (“Purpose”) and not specifically prohibited or limited by this Easement.

However, nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law and nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or Force Majeure.

**5.(a). Right to Use Property for Agricultural Uses.**

Grantor has the right to produce crops, livestock and livestock products and use the Property as a Farm Operation, which includes but is not limited to the right to establish, reestablish, maintain, and use cultivated fields, orchards, pastures and woodlands. Said farming practices shall be carried out in accordance with Sound Agricultural Practices as defined herein and in a manner consistent with the Conservation Plan.

**5.(b). Right to Use Property for Rural Enterprises.**

Grantor has the right to operate otherwise lawful rural enterprises, such as, but not limited to, farm machinery repair, professional offices within the home, bed and breakfasts, crafts production and firewood distribution, subject to the limitations set forth in this Easement, including Section 8 (“Construction of Buildings and Other Improvements”). In all cases, such rural enterprises must be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property.

**5.(c). Right to Use Property for Recreational Purposes.**

Grantor retains the right to use the Property for otherwise lawful personal or commercial recreational uses, including, but not limited to, hunting, fishing, cross-country skiing, camping, horseback riding and snowmobiling, subject to the limitations set forth in this Easement, including Section 8 (“Construction of Buildings and Other Improvements”). In all cases, such recreational uses must be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property.

**6. Conservation Plan.**

Grantor and Grantee recognize that changes in economic and environmental conditions, in agricultural technologies, in accepted farm management practices and in the Farm Operations of Grantor may result in changes in the agricultural uses of the Property. It is the intention of this Easement to maintain Grantor’s discretion to employ their choices of farm uses and management practices so long as those uses and all farming operations are conducted in accordance with Sound Agricultural Practices as defined herein and in a manner consistent with a Conservation Plan

prepared by a qualified conservation professional or by the local Soil and Water Conservation District in cooperation with the Grantor. The Conservation Plan shall identify potential adverse environmental impacts of agricultural activities, as well as enhance the agricultural productivity and economic viability of the Property. This plan shall be updated periodically and whenever the Farming Operation changes substantially. Upon request, Grantor shall provide a copy of the most current plan to Grantee.

**7. Access.**

Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

**8. Construction of Buildings and Other Improvements.**

The Property is divided into two [*three*] principal areas as further described in the Baseline Documentation Report, Section 18 (“Baseline Documentation”) and identified in the Easement Map attached hereto as Exhibit B: 1) the Farmstead Area[s]; and 2) the Farm Area [*; 3) the Resource Protection Area*]. Grantor may undertake construction, erection, installation, removal or placement of buildings, structures, or other improvement to the Property within these areas only as provided in this Easement and set forth below.

**8.(a). Impervious Surfaces**

Subject to the limitations set forth below, Impervious Surfaces may be constructed or placed on up to a maximum of 10% of the Farm Area and without limitation in the Farmstead Area.

**8.(b). Fences**

Existing fences may be repaired, removed and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife, safety and general management and to prevent trespassing on the Property.

**8.(c). Agricultural Structures and Improvements**

Any existing or subsequent agricultural structures and improvements may be repaired, removed, enlarged and replaced at their current locations, subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”).

***Farmstead Area:*** Without permission of Grantee, Grantor may construct new buildings, structures and other improvements with impervious surfaces, including asphalt and concrete roads and parking areas within the Farmstead Area to be used primarily for purposes related to a Farm Operation and for such other agricultural purposes as (i) the production, storage, marketing or sale of farm products or by-products, or processing of farm products or by-products, (ii) the storage of equipment used for agricultural production, and (iii) the keeping of livestock or other animals.

***Farm Area:*** Subject to the Impervious Surface coverage limitations set forth in Section 8(a)

(“Impervious Surfaces”), Grantor may construct buildings, structures and impervious improvements for such purposes related to the Farm Operation on up to 5% of the Farm Area without permission of Grantee. With permission of Grantee, Grantor may construct buildings, structures and improvements related to the Farm Operation that would cover up to an additional 5% of the Farm Area.

**8.(d). Residential Dwellings**

Existing residential dwellings, as defined in Section 4(c), if any, may be repaired, removed, enlarged and replaced at their current locations, which are shown on Exhibit B.

*Farmstead Area:* Without permission of Grantee, Grantor may construct, maintain, repair, remove or replace residential dwellings, together with accessory structures and improvements within the Farmstead Area, subject to any applicable local, state or federal laws and regulations.

*Farm Area:* Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct new dwellings or structures and improvements for Farm Labor Housing, as defined in Section 4(d) (“Farm Labor Housing”), on up to 1% of the Farm Area without permission of the Grantee. With permission, Grantor may construct additional Farm Labor Housing in the Farm Area as proven necessary to conduct current farm operations. The land on which these dwelling, structures and improvements stand shall not be subdivided, except as permitted in Section 11 (“Subdivision”).

**8.(e). Rural Enterprises**

Rural enterprises may be established and carried out within the Farmstead Area, including but not limited to, professional offices within the home, bed and breakfasts, crafts production and firewood distribution. In all cases, such uses and any necessary structures or improvements, shall be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property. Enterprises which market non-agricultural petroleum or chemical products are prohibited. The land on which these structures stand shall not be subdivided, except as permitted in Section 11 (“Subdivision”).

**8.(f). Recreational Structures and Improvements**

Existing recreational improvements, if any, may be repaired, relocated, removed and enlarged up to an aggregate 1,000 square feet, or replaced at their current locations, which are shown on Exhibit B, so long as such improvements and structures are compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property. *[optional clause if applicable]* Under no circumstances shall golf courses and/or ranges be allowed in the Farm Area.

*Farmstead Area:* Without permission of Grantee, Grantor may construct permanent, recreational improvements within the Farmstead Area, so long as such improvements are

compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property.

***Farm Area:*** Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct permanent, recreational improvements in the Farm Area up to an aggregate of 1,000 square feet in size without permission of Grantee. With permission of Grantee, permanent recreational improvements that exceed an aggregate footprint of 1,000 square feet may be constructed in the Farm Area. All recreational structures and improvements shall be compatible with the Purpose of this Easement, subordinate to the agriculture use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.

**8.(g). Utility Services and Septic Systems**

Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to or from the improvements permitted in this Easement may be installed, maintained, repaired, removed, relocated and replaced, and Grantor may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved. All such services and systems shall be compatible with the Purpose of this Easement, subordinate to the agricultural use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.

**8.(h). Alternative Energy and Communications Structures and Improvements**

Structures and improvements necessary to undertake alternative energy and communications activities such as wind, solar, methane and other similar energy generation activities as well as cell towers or 911 communications towers are permitted as further described below provided they are compatible with the Purpose of this Easement, subordinate to the agricultural use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.

***Farmstead Area:*** Within the Farmstead Area, Grantor may construct such structures and improvements without permission of Grantee.

***Farm Area:*** Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), such structures and improvements, including roads and drainage ditches, may be built in the Farm Area only with the permission of Grantee, which may be conditioned upon the posting of a bond. These structures and improvements are permitted only if the activity is limited and localized in impact affecting no more than two percent (2%) of the Farm Area at one time.

Prior to determining the location of a site for these structures and improvements in the Farm

Area, the Grantor shall notify the Grantee, the New York State Department of Agriculture and Markets, and the local Soil and Water Conservation District to give them an opportunity to participate in an onsite meeting to review proposed locations. Grantor shall agree to comply with the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for construction of such structures.

**9. Maintenance and Improvement of Water Sources.**

Grantor may use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement. Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion and/or flooding, provide irrigation for the Property or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the Conservation Plan, Sound Agricultural Practices, the Purpose of this Easement and is carried out in accordance with applicable local, state and federal laws and regulations.

**10. Water Rights.**

Grantor may use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property in accordance with applicable local, state and federal laws and regulations. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

**11. Subdivision.**

The Property is currently comprised of \_\_\_\_\_ parcels owned by Grantor. Unless otherwise permitted by Grantee, Grantor shall maintain such parcels comprising the Property, and all interests therein, under common ownership, as though a single parcel. [*optional paragraph*]

[Unless otherwise indicated above in this Section,] the Property may be partitioned or subdivided only with the permission of the Grantee, which permission shall be granted only if all parcels of land thereby created will remain viable for agricultural production either individually, or as part of an established farming operation. Any such subdivision shall not include the right to construct or relocate any new habitable or commercial structures, except as otherwise permitted by this Easement, and shall explicitly limit any existing farm labor housing in the Farm Area to that exclusive use. Any partition, subdivision or lot line adjustment also must comply with all applicable local, state or federal regulations, and any subdivided parcels shall be subject to the terms of this Easement. The Farmstead Area[s], as shown on Exhibits B and C, may not be subdivided or partitioned.

The right to construct new impervious improvements set forth in Paragraph 8(a) shall be allocated at the time of a proposed subdivision. Such allocation of rights to construct new impervious improvements set forth in Paragraph 8(a) shall not result in greater than 10% of the Farm Area being covered by impervious surfaces. At the discretion of Grantee, a functionally and materially equivalent Easement may be recorded at the time of conveyance. Any other subdivision, recording of a subdivision plan, partition, or any other attempt to internally or externally divide the Property into

two or more parcels is prohibited.

Mortgages, or other non-possessory interests in land do not constitute subdivisions for the purpose herein, provided such interests encompass the whole parcel.

## **12. Forest Management.**

Without permission of Grantee, Grantor may clear forested areas for conversion to farmland, harvest wood for use on the Property including heating or construction of buildings and improvements, manage forested areas for wildlife habitat and recreation, and remove trees that are fallen, dead, diseased or invasive, so long as such activities are consistent with generally accepted forest best management practices.

Without permission from Grantee, Grantor may commercially harvest timber and other wood products, conduct timber stand improvements and construct, maintain, remove, and repair unpaved access roads and “staging areas”, those areas where logs are temporarily stored for transport necessary for such activities. All such activities shall be in accordance with generally-accepted forestry best management practices. Such commercial timber harvests and timber stand improvements shall be carried out in accordance with a forest management plan and harvest plan prepared by a forester who is certified by the Society of American Foresters or such successor organization as is later created, a Cooperating Consulting Forester with the New York State Department of Environmental Conservation or a qualified forester approved by Grantee.

In order to facilitate the monitoring and stewardship of this Conservation Easement, and ensure continuing communication between parties, Grantor shall give Grantee, its successors or assigns, written notice not less than forty-five (45) days prior to the anticipated commencement of any commercial timber harvest or timber stand improvement. Such written notice shall include submission of the current forest management plan and harvest plan.

## **13. Mining and On-Site Extractive Activity. *[Presumes no third party ownership of surface mining or other mineral rights]***

Exploration for, or development, storage and extraction of, minerals and hydrocarbons on or from the Property by any method are permitted only under the following conditions. Grantor may remove sand and gravel on the Property, provided said removal: (a) is limited and localized in impact, affecting no more than two acres of the Property at one time; (b) is compatible with the Purpose of this Easement; (c) is reasonably necessary and exclusively for the Farm Operation; and (d) minimizes the impact to the prime and statewide important soils.

Grantor may undertake subsurface mineral and hydrocarbon exploration, development and extraction activities only with the permission of Grantee, which may be conditioned upon the posting of a bond. Such activities must: (a) be limited and localized in impact; (b) be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property; and (c) minimize the impact to prime and statewide important soils. Grantor shall use all practical means to

mitigate any adverse effect on the agricultural viability of the Property in carrying out any permitted exploration, development or extractive activities.

Prior to determining the location of a site for exploration, development or extraction activities, the Grantor shall notify the Grantee, the New York State Department of Agriculture and Markets, and the local Soil and Water Conservation District to give them an opportunity to participate in an onsite meeting to review proposed locations. Grantor shall agree to comply with the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for construction of such structures and related extractive activities.

**14. Road Construction.**

Pursuant to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct roads for residential driveways, barnyards, farm markets or other improvements necessary to provide access to, and parking for, permitted buildings or improvements, or to conduct other activities permitted by this Easement. Roads constructed in the Farm Area shall be located in a manner that minimizes impacts to the prime and statewide important soils.

**15. Dumping and Trash.**

The dumping, land filling, burial, application, injection, or accumulation of any kind of garbage, trash or debris on the Property is prohibited, other than agriculturally-related waste or biodegradable material as described below. Without permission of Grantee, Grantor may 1) store, compost, apply or inject agriculturally-related waste or biodegradable material; 2) store old farm equipment to be used for parts; 3) temporarily store trash or household waste in receptacles for periodic off-site disposal and 4) compost or re-use biodegradable materials generated off the Property for use on the Property or commercial use or sale. All such activities shall be conducted in accordance with Sound Agricultural Practices and in a manner consistent with the Conservation Plan and all applicable local, state or federal laws and regulations. Notwithstanding the foregoing, the storage and treatment of sewage associated with buildings permitted on the Property, is permitted by this Easement.

**16. Permission of Grantee.**

When Grantor is required to obtain Grantee's permission for a proposed action pursuant to the Easement, such permission shall be requested in writing. Grantee shall grant permission unless it determines that such action is 1) incompatible with the Purpose of this Easement or 2) not subordinate to the agricultural use of the Property. Such permission shall not be unreasonably withheld. Grantee shall respond with a decision in writing within forty-five (45) days of receipt of the Grantor's written request which shall include all relevant building plans identifying the use, footprint and total square footage of any proposed structures, and related survey information, if available. If mutually agreed upon by Grantee and Grantor, this timeline may be reasonably extended.

**17. Ongoing Responsibilities of Grantor and Grantee.**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility

on Grantee, or in any way to affect any obligations of Grantor as owner of the Property, including, but not limited to, the following:

**17.(a). Taxes**

Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.

**17.(b). Upkeep and Maintenance**

Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law and this Easement. Grantee shall have no obligation for the upkeep or maintenance of the Property.

**17.(c). Liability and Indemnification**

Grantor agrees to indemnify and hold Grantee and the State of New York, Department of Agriculture and Markets harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly.

**18. Extinguishment of Development Rights.**

Except as otherwise reserved to the Grantor in this Easement, all non-agricultural development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

**19. Baseline Documentation.**

By its execution of this Easement, Grantee acknowledges that the present uses of, and related structures and improvements on the Property are permitted by this Easement. In order to evidence the present condition of the Property so as to facilitate future monitoring and enforcement of this Easement, a Baseline Documentation Report, including relevant maps and photographs, describing such condition at the date hereof, has been prepared and subscribed by both parties, and a copy thereof has been delivered to Grantor and a copy will be kept on file with Grantee. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

**20. Right of Inspection.**

Grantee shall have the right to enter upon the Property with forty-eight (48) hours advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. Such inspection shall be conducted between the hours of 9 a.m. and 7 p.m. on a weekday that is not a legal holiday recognized by the State of New York or at a date and time agreeable to the Grantee and Grantor. In the instance of a violation or suspected violation of the terms of this Easement which has caused

or threatens to cause irreparable harm to any of the agricultural or other resources this Easement is designed to protect, no such advance notice is required. Representatives of the New York State Department of Agriculture and Markets shall have the same right of inspection.

**21. Enforcement.**

If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation. Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Purpose of this Easement, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation: (a) money damages, including damages for the loss of the resources protected under the Purpose of this Easement; and (b) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

**22. Third Party Enforcement.**

The New York State Department of Agriculture and Markets and its successor agency shall have the right to enforce a material violation of this Easement subject to the following provisions.

**22.(a).** Prior to commencing an enforcement action, New York State Department of Agriculture and Markets must first notify Grantee and Grantor, give Grantee thirty (30) days to take appropriate action, including commencing an enforcement action, and give Grantor thirty (30) days from the receipt of such notice to cure the violation.

**22.(b).** If the New York State Department of Agriculture and Markets determines that Grantee is diligently prosecuting an enforcement action in good faith, it shall not have a right to take legal action for the same violation of this Easement unless pursuant to a written request by Grantee.

**23. Dispute Resolution. [optional clause]**

If a dispute arises between the Grantor and the Grantee concerning the consistency of any proposed use or activity with the purposes of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties, or refer the dispute to mediation by written request. Within ten (10) days of such request, Grantee shall schedule a meeting or the parties shall select a single trained and impartial mediator knowledgeable about production agriculture to

recommend potential resolutions of the dispute. Reasonable costs associated with the mediation process shall be determined by the impartial mediator. Nothing in this clause shall diminish Grantee's rights under Section 21 ("Enforcement").

**24. Transfer of Easement.**

Both Grantees, acting together, or any sole remaining *[underlined part in this sentence for easements with co-grantees]* Grantee which has acquired the rights of another Grantee, shall have the right to transfer this Easement to any remaining co-grantee or any private non-governmental organization or public agency that, at the time of transfer is a "public body" or "not-for-profit conservation organization" as defined by Section 49 of New York State Environmental Conservation Law or "qualified organization" under Section 170(h) of the Code, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ever ceases to exist or qualify under Section 49 of New York State Environmental Conservation Law and Section 170(h) of the Code, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement. Grantor and the New York State Department of Agriculture and Markets must be notified in writing in advance of any such transfer. The Department of Agriculture and Markets must approve the choice of any new non-governmental organization or public agency designated as "Grantee", which shall not unreasonably withhold or delay such approval.

**25. Transfer of Property.**

Any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Property, shall be subject to this Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This {conveyance, lease, mortgage, easement, etc.} is subject to a Conservation Easement which runs with the land and which was granted to \_\_\_\_\_ by instrument dated \_\_\_\_\_, and recorded in the office of the Clerk of \_\_\_\_\_ County at Liber [or] Cartridge \_\_\_\_\_ of Deeds at Page [or] Frame \_\_\_\_\_." Grantor shall notify Grantee and the New York State Department of Agriculture and Markets in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. The failure to notify Grantee or New York State Department of Agriculture and Markets or to include said language in any deed or instrument shall not, however, affect the validity or applicability of this Easement to the Property or limit its enforceability in any way.

**26. Amendment of Easement.**

This Easement may be amended only with the written consent of Grantee and current Grantor and with the approval of the New York State Department of Agriculture. Any such amendment shall be consistent with the Purpose of this Easement and shall comply with the Environmental Conservation Law or any regulations promulgated thereunder, and shall not unreasonably restrict or regulate farm operations in contravention of the purposes of Article 25-AA of the Agriculture and Markets Law. Any such amendment shall be duly recorded.

**27. Extinguishment of Easement.**

At the mutual request of Grantor, Grantee, New York State Department of Agriculture and Markets a court with jurisdiction may, if it determines that conditions surrounding the Property have changed so much that it becomes impossible to fulfill the Purpose of this Easement described in Section 2 (“Purpose”), extinguish or modify this Easement in accordance with applicable law. In that case, the mere cessation of farming on the Property shall not be construed to be grounds for extinguishment of this Easement.

Notwithstanding the foregoing, if condemnation by exercise of the power of eminent domain, make impossible the continued use of the Property for Purpose of this Easement as described in Section 2 (“Purpose”) herein, the restrictions may be extinguished by judicial proceeding. In either case, upon any subsequent sale, exchange or involuntary conversion by the Grantor, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, or title insurance proceeds, in accordance with Section 28 (“Proceeds”) herein.

In the event that grantor retains the Property subsequent to any such extinguishment or partial extinguishment, Grantee shall be entitled to receive from Grantor an amount equal to the fair market value of the Property or a portion of the Property as to which the extinguishment applies times the percentage determined under Section 28.

**28. Proceeds.**

The grant of this Easement gives rise to a property right, immediately vested in Grantee, which, for purposes of calculating value in the event of any such extinguishment or partial extinguishment or proceeds from a sale or other disposition of the Property as contemplated under Section 27 (“Extinguishment of Easement”), shall have a value equal to a percentage of the value of the Property unencumbered by this Easement (the "Proportionate Share"). The Proportionate Share is determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share is \_\_\_\_%. The Proportionate Share shall remain constant (subject to reasonable adjustment to the extent permissible under Section 170(h) of the Internal Revenue Code for any improvements which may hereafter be made on the Property).*[This section will vary depending on the on individual circumstances of each project]*

With regard to the portion of such Proportionate Share equal to the percentage of the purchase price of this Easement that was paid using State Farmland Protection Program Grant funds, Grantees agree to use such portion in a manner consistent with the primary Purpose of this Easement; to enable land to remain in active agricultural and forestry use. Prior to such re-use, Grantee must notify the New York State Department of Agriculture and Markets and may proceed only with the written consent of [name of municipality] \_\_\_\_\_. *[if Grantee is not the municipality then name of municipal awardee of State grant goes in blank space]*

If any part or all of this Easement is terminated pursuant to Section 27 (“Extinguishment of Easement”), Grantee shall pay over to a) the Town of \_\_\_\_\_, \_\_\_\_%, b) the County of \_\_\_\_\_,

\_\_\_\_%, the \_\_\_\_\_ Land Trust, Inc., \_\_\_\_%, and the New York State Department of Agriculture and Markets \_\_\_\_%, of the Proportionate Share of such proceeds received by Grantee.

**29. Interpretation.**

This Easement shall be interpreted under the laws of the State of New York, or federal law, as appropriate. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to affect the Purpose of this Easement. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**30. Successors.**

Every provision of this Easement that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest, and shall continue as a servitude running in perpetuity with the Property.

**31. Severability.**

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

**32. Notices.**

Any notice required or desired to be given under this Easement shall be in writing and shall be sent by (i) personal delivery, (ii) via registered or certified mail, return receipt requested, or (iii) via Federal Express or other private courier of national reputation providing written evidence of delivery. Notice shall be deemed given upon receipt in the case of personal delivery, and upon delivery by the U.S. Postal Service or private courier. All notices shall be properly addressed as follows: (a) if to Grantee, at the address set forth above; (b) if to Grantor, at the address set forth above; (c) if to any subsequent owner, at the address of the Property; (d) if to New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235. Any party can change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this Section.

**33. Title.**

The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Easement; that the Property is free and clear of any and all mortgages not subordinated to this Easement, and that the Grantee shall have the use of and enjoyment of the benefits derived from and existing out of the aforesaid Easement.

**34. Subsequent Liens on Property.**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property, or a portion thereof encompassing entire separately deeded parcels, as collateral for a

subsequent borrowing. Any subsequent liens on the Property must be subordinate to this Easement.

**35. Subsequent Encumbrances.**

The grant of any easements or use restrictions is prohibited, except with the permission of Grantee. Any future encumbrances shall be consistent with the primary Purpose of this Easement and shall not unreasonably restrict or regulate farm operations in contravention of the purposes of Article 25-AA of the Agriculture and Markets Law.

**36. Grantor's Environmental Warranty.**

Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee and New York States Department of Agriculture and Markets against, and hold Grantee and New York State Department of Agriculture and Markets harmless from, any and all loss, cost, claim (without regard to its merit), liability or expense (including reasonable attorneys' fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

If at any time after the effective date of this Easement there occurs a release in, on, or about the property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup.

Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee, or the New York State Department of Agriculture and Markets to exercise physical or management control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator or arranger with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") or any corresponding state and local statute or ordinance.

**37. Duration of Easement.**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

**38. Entire Agreement.**

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings and agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be

valid or binding unless contained in an amendment that complies with Section 26 (“Amendment of Easement”).

**39. Waiver.**

No waiver by Grantee of any default, or breach hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No waiver shall be binding unless executed in writing by Grantee.

**40. Binding Effect.**

The provisions of this Easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantor and all future owners and any party entitled to possess or use the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred cease being a Grantor or owner with respect to such Property for purposes of this Easement and shall, with respect to the Property transferred, have no further responsibility, rights or liability hereunder for acts done or conditions arising thereafter on or with respect to such Property, but the transferor shall remain liable for earlier acts and conditions done or occurring during the period of his or her ownership or conduct.

**41. Captions.**

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

**IN WITNESS WHEREOF**, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

**Grantor:** \_\_\_\_\_  
(Grantor’s name)

**Grantee:**

By: \_\_\_\_\_

*State of New York* )

*County of* ), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory

evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature/office of individual taking acknowledgement

*State of New York* )

*County of* ), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature/office of individual taking acknowledgement

*State of New York* )

*County of* ), ss:

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\_\_\_\_\_  
Signature/office of individual taking acknowledgement



**MONROE COUNTY AGRICULTURAL DATA STATEMENT**

Please note: Section 283-a of the Town Law requires any application for a site plan approval, subdivision approval, special permit or use variance on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred (500) feet of a farm operation located in an agricultural district, to include an Agricultural Data Statement.

A farm operation is defined as "...the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise...." (Section 301, Article 25-AA of the Agriculture and Markets Law).

All applications requiring an Agricultural Data Statement must be referred to the County Planning Department in accordance with amended Sections 239- m and 239-n of the General Municipal Law.

Applicant name & address: \_\_\_\_\_

Project address: \_\_\_\_\_

Tax parcel number(s) & acreage : \_\_\_\_\_

Agricultural District (e.g. Midwestern): \_\_\_\_\_

Description of project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\*Names and mailing addresses of all owners of land located within five hundred (500) feet of the project property within an agricultural district and containing farm operations:

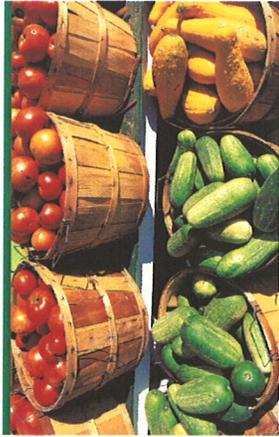
	Landowner name	Address	Tax parcel number(s)	Type of farm
1				
2				
3				
4				
5				

Use separate sheet if needed.

\*Attach tax map showing the site of the proposed project relative to the location of farm operations identified above.

\*INFORMATION REQUIRED IN THIS APPLICATION BY LAW





### Farm to School: A Ripe Idea!

Research shows Farm to School provides a multitude of benefits.

- **Prepares children to learn:** Diet quality and nutritional status are associated with a child's ability to focus and learn. By providing fresh, nutritious and delicious school meals, a student's academic performance may be enhanced.
- **Improves health and well-being:** Establishing healthy diets in childhood – those rich in a diversity of fruits and vegetables – is important for life-long well-being. Farm to School, with its focus on a well-balanced diet including fresh, minimally processed fruits and vegetables, offers schools an exciting way to positively impact children's health and well-being throughout their lives.
- **Strengthens the local economy:** By supporting local farmers and distributors, schools help keep and re-circulate dollars in the local economy. Also, any purchase of New York State product contributes to the NYS tax base, which in turn, funds NYS public schools.
- **Building healthy communities:** By connecting health concerns, education and local farmers and processors, NYS Farm to School can help to:
  - ✓ Address diet-related problems among our youth
  - ✓ Develop an appreciation for the importance of agriculture
  - ✓ Preserve open-space and the natural environment
  - ✓ Promote strong community food security networks

## What is Farm to School?

Farm to School initiatives are popping up throughout New York and all over the country – in day care centers, in public and private schools, and in colleges and universities. These programs focus on featuring locally grown, healthy foods in school meals. They often also include other components such as classroom lessons on food and nutrition; visits to farms and farmers' markets; creation of school gardens, and the support of school-based community supported agriculture (CSA) programs.



## Resources

- New York Farm to School Toolkit from Cornell Farm to School Research and Extension  
[www.farmtoschool.cce.cornell.edu](http://www.farmtoschool.cce.cornell.edu)
- New York State Department of Agriculture & Markets: Farm to School  
[www.prdairy.com/farm\\_to\\_school.html](http://www.prdairy.com/farm_to_school.html)
- New York State Department of Health Division of Nutrition  
<http://www.health.state.ny.us/prevention/nutrition>
- New York State Education Department  
[www.nysed.gov/cn/crms.htm](http://www.nysed.gov/cn/crms.htm)
- NY Farm to School Listserv  
[www.farmtoschool.cce.cornell.edu/content/view/full/Farm\\_to\\_School-listserv.html](http://www.farmtoschool.cce.cornell.edu/content/view/full/Farm_to_School-listserv.html)
- NY Farms!  
[www.nyfarms.info/farmtoschool.html](http://www.nyfarms.info/farmtoschool.html)
- National Farm to School Program  
[www.farmtoschool.org](http://www.farmtoschool.org)
- Food Routes: Farm to School  
[www.foodroutes.org/farmtoschool.jsp](http://www.foodroutes.org/farmtoschool.jsp)



### New York State Department of Agriculture & Markets

10B Airline Drive  
Albany, NY 12235  
800.554.4501

[www.agmkt.state.ny.us](http://www.agmkt.state.ny.us)

55 Hanson Place  
Brooklyn, NY 11217  
718.722.2834

# New York State Department of Agriculture & Markets Farm to School Program



Photo courtesy of USDA

Photo courtesy of USDA

Photo courtesy of USDA

### Farm to School Mission

*Our goal is to increase the consumption of nutritious New York-grown and produced foods in schools in order to strengthen local agriculture, improve student health, and promote regional food systems awareness. Through a variety of tools and hands-on resources, we provide assistance to schools, farms, food distributors, parents and community organizations who want to provide students with nutritious, delicious, seasonally varied meals from foods produced by local farms and food processors.*

### Who is leading Farm to School in New York?

The New York Farm to School Coordinating Committee represents many organizations with a wide range of interests. Together, they are collaborating to advance sound policies, programs and resources to expand the capacity for successful Farm to School efforts throughout the State. Coordinating Committee members include:

- Agriculture in the Classroom
- Cornell University
- Food Service Directors
- Farmers
- Food Processors and Food Distributors
- NY Farm Bureau
- NY Farms!
- NY School Nutrition Association
- NYC Department of Education, School Food
- NY Assembly Task Force on Food, Farm, and Nutrition
- NYS Department of Agriculture & Markets
- NYS Department of Health
- NYS Education Department
- NYS Office of General Services

### The Department's Farm to School Efforts

The Department of Agriculture & Markets is committed to working with other State agencies and partners to connect local farmers and food processors with schools in their communities. We facilitate these connections by:

- Maintaining a list of farmers and food processors who are interested in selling their products to schools
- Increasing access to New York-grown and produced foods by identifying purchasing opportunities and building the State's distribution capacity
- Conducting an annual survey of school districts to ascertain their interest in Farm to School and the demand for specific New York agricultural products
- Providing technical assistance and support for the development and marketing of healthy products targeted for children (such as Carrot Crunchers)
- Making policy recommendations to support local purchasing preference in New York schools
- Developing school gardening programs and policy recommendations to encourage school gardening and school connections with nearby gardens and farms
- Through the Department's Pride of New York Program, offering a variety of educational and promotional resources for schools to demonstrate their commitment to Farm to School and to highlight their accomplishments to the community

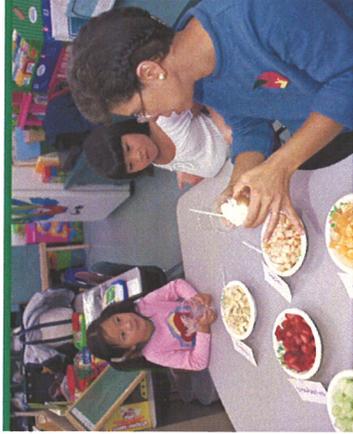


Photo courtesy of USDA

### Farm to You Fest! New York Harvest for New York Kids Week

Farm to You Fest! (NYHNYK) is a weeklong celebration of local food and agriculture where a diverse variety of activities occur throughout the State. Resources are available to help schools and communities learn about New York agriculture, enjoy locally grown foods, and inspire healthy food choices. During this celebration, school cafeterias feature New York farm products; classes do food tastings; schools visit farms and farmers' markets; students harvest their school gardens, and much more!

### What can you do to support Farm to School in New York?

We can all be role models for desired dietary and exercise behaviors. Here are some tips on how you can support Farm to School efforts in your community:

#### Food Service Directors

Let your food distributor and local farmers know that you are interested in purchasing fresh, local, nutritious food for students and in supporting your local economy! Contact the NYS Department of Agriculture & Markets or your local Cornell Cooperative Extension office for assistance locating a farmer interested in participating.

#### Farmers and Processors

Contact the school food service director at your nearby school and ask about what the school needs and when they need it. Contact the NYS Department of Agriculture & Markets or your local Cornell Cooperative Extension office for a list of schools who have expressed an interest in purchasing local products.

#### School Teachers

Students see teachers as role models, embrace the vital role you can play in your student's health. Many curricula exist that allow teachers to integrate food and food system concepts into classroom learning. Talk to other teachers and school administrators about what your school or district could do to support Farm to School.

#### Parents and Community Members

Approach the school administration and school boards to communicate your support of Farm to School in your community. Offer positive suggestions for healthy school meals. Volunteer in the classroom or cafeteria.

See Resources section for where you can go for more information and additional contacts.

## Grow Monroe Membership Application

Be a member of the GROW Monroe marketing program to keep Monroe County Agriculture Strong.



Are you currently selling Monroe County grown farm products directly to the public? How about letting the masses know about you with help from the GROW Monroe campaign! Please fill out the application below to become an active member. Membership fees and benefits are listed below.

### ~Membership Benefits~

- √ Use of the GROW Monroe logo for advertisement. Members will be given a CD-ROM with multiple graphics that can be used for banners, signs, posters, buttons, stickers, etc. The success of the program rests on careful and coordinated use of the GROW Monroe name and distinctive graphic marks.
- √ A guaranteed listing in a future GROW Monroe Consumers Guide.

### ~Membership Fees~

Membership Type	Cost
Farm/Farm Stand	\$35/year
Farmers' Market	\$50/year

### ~Membership Obligation~

- √ Monroe County farmers can use GROW Monroe materials only to promote sales. Vendors must join individually to use signage and point of purchase materials.
- √ All Members must renew their membership annually by registering with the Agriculture and Life Sciences Institute at Monroe Community College. Membership criteria are used to assure that foods promoted with GROW Monroe marketing materials are locally grown and/or produced in Monroe County.
- √ GROW Monroe products must be traceable to a Monroe County farm. GROW Monroe materials can be used only for Monroe County grown products. GROW Monroe members that also retail non-locally produced items are expected to take care that such products are properly labeled to distinguish from Monroe County products. Example: Georgia Peaches.

If you have any questions about GROW Monroe, please call: Agriculture and Life Sciences Institute, 585.292.2065. For an electronic version of the application, please email: Bob King: [rking@monroecc.edu](mailto:rking@monroecc.edu)

# MEMBERSHIP APPLICATION

Please answer all questions applicable to your operation or point of sale.

## Farm/Farm Stand/Farm Market Info:

**Grower Name:** \_\_\_\_\_

**Farm/Market Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Location of Point of Sale (If different):** \_\_\_\_\_

**County:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Email:** \_\_\_\_\_ **Web-site:** \_\_\_\_\_

## **Point of Sale Description (Number of Vendors, Type, Grower only):**

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**Products Grown/Amount** Please include information about units per week:  
pounds/bushels/quarts/etc. or other indication of scale of harvest or size of buyer you can supply. If  
necessary, attach additional sheets.

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**Send the completed form to:** GROW Monroe c/o Robert King  
1000 E. Henrietta Road Bldg 8, Room 312  
Rochester, NY 14623



# GROW *new york*

**Enhancing the economic vitality of New York's food and agriculture industry**

# ENVIRONMENTAL STEWARDSHIP

## WHO:

Farm operators

## 5 TIERS OF AEM:

1. Document good practices.
2. Identify areas of concern.
3. Develop farm plan.
4. Implement farm plan.
5. Evaluate effectiveness.

## WEB SITE:

<http://www.nys-soilandwater.org>



New York's Agricultural Environmental Management (AEM) program serves as a national model of how a proactive, voluntary, incentive-based approach can successfully result in protecting and enhancing the State's soil and water resources, while meeting the economic needs of New York's diverse agricultural industry. The AEM partnership of local, state and federal agencies, environmental groups, private sector businesses and farmers, provides technical, educational and financial assistance to develop and implement conservation plans to address issues such as pesticide use and nutrient management. This program will fund up to 87.5 percent of the total cost of eligible projects.

AEM offers large and small farms a solution for complying with regulatory requirements, while advancing water quality objectives and meeting business goals on the farm. Using AEM's five-tiered process, farmers work with a team of local AEM resource professionals to develop and implement effective and profitable farm plans. The five tiers include:

- ★ Tier I - survey current activities, future plans and potential environmental concerns
- ★ Tier II - document current environmental stewardship and identify and prioritize areas of concern
- ★ Tier III - develop a conservation plan addressing areas of concern, tailored toward the goals for the individual farm
- ★ Tier IV - implement the plan, utilizing available financial, technical and educational assistance
- ★ Tier V - perform evaluations to ensure the protection of the environment and farm viability

## New York State Department of Agriculture and Markets

1 Winners Circle, Albany, NY 12235 1-800-554-4501 <http://www.agmkt.state.ny.us>



# QUALITY ASSURANCE

## WHO:

Farm operators

## PRODUCE QUALITY:

- Third-party certification services for the produce industry
- More info: call 518-457-4492

## EGG QUALITY:

- Voluntary program to minimize *Salmonella enteritidis* in shell eggs
- More info: call 518-457-3502

## CATTLE HEALTH:

- Disease prevention program that develops farm-specific herd health plans
- Website: <http://nyschap.vet.cornell.edu>
- More info: call 518-457-3502

New York leads the way with programs to assist production agriculture in maintaining the utmost level of quality through voluntary, incentive-based initiatives.

### ★ PRODUCE QUALITY ASSURANCE PROGRAM

The Produce Quality Assurance Program (PQAP) provides third party verification services for growers, packers, shippers and receivers. Developed to minimize the potential for microbiological contamination of New York State produce and to ensure continued quality, PQAP certification verifies that products sold are produced and/or packed under the safest means practicable.

### ★ EGG QUALITY ASSURANCE PROGRAM

The New York State Egg Quality Assurance Program (NYSEQAP) is a voluntary program that helps egg producers implement recommended best management practices to minimize *Salmonella enteritidis* (SE) contamination of shell eggs. Currently, over eighty percent of the commercial shell eggs produced in New York State come from NYSEQAP certified farms.

### ★ CATTLE HEALTH ASSURANCE PROGRAM

The New York State Cattle Health Assurance Program (NYSCHAP) is an integrated disease prevention program that utilizes a team of advisors to develop a farm-specific herd health plan. The objective is to increase herd health, while assuring food safety and promoting environmental stewardship. The cooperative approach to NYSCHAP involves participation from the producer, herd veterinarian, nutritionist, and consultants.

## New York State Department of Agriculture and Markets

1 Winners Circle, Albany, NY 12235 1-800-554-4501 <http://www.agmkt.state.ny.us>



# PRIDE OF NEW YORK

## WHO:

Producers, processors, packers and retailers of New York food and agricultural products

## OBJECTIVE:

Enhance consumer demand and increase sales for New York State grown and produced products

## PRODUCT QUALIFICATION:

- Products must be either grown or processed in New York State, and
- Meet program standards

## RETAILER QUALIFICATION:

- Willing to commit space and promotional resources to *Pride of New York* products

## MORE INFO:

Call the Pride of New York Program at the Department at 518-457-7229 or visit the Department's website

Surveys show that consumers are more likely to buy a local product if it is comparable in price and quality to an imported product. In response to the food industry and consumer demand, the Department of Agriculture and Markets has developed a promotional program that identifies and encourages the sale of New York State food and agricultural products. That program is entitled Pride of New York.

The Pride of New York Program assists food producers and retailers by promoting the sale of New York produced food and food products. The program does so by providing marketing materials and assistance, and by conducting promotional activities which highlight New York State's many exceptional products.

Regardless of the size of your business or promotional budget, Pride of New York is a cost-effective way to give your product and business a competitive edge. Participation in the Pride of New York Program will

- ★ help customers more easily identify products produced in New York State;
- ★ help retain existing customers who value local and New York State products; and
- ★ help ensure product quality to New York consumers.

Currently, Pride of New York is recognized on a long list of products that are either produced or manufactured in New York State. They include:

Dairy Products	Maple Syrup
Fruits & Vegetables	Beef, Poultry & Meats
Christmas Trees	Wines
Jams, Jellies & Relishes	Baked Goods & Candies

Supporting local businesses improves the economy for all New Yorkers. We invite you to assist us in our efforts to promote New York State food and agriculture by joining the Pride of New York Program today.



## New York State Department of Agriculture and Markets

1 Winners Circle, Albany, NY 12235 1-800-554-4501 <http://www.agmkt.state.ny.us>

# MARKET ENHANCEMENT

## WHO:

Agricultural producers and food manufacturers

## WHAT:

Marketing assistance on the local, state, national and international levels

## SERVICES AVAILABLE:

### Direct:

- Farmers' Market Nutrition Program
- Farm Fresh Guide
- Farmers' Market Grant

### Domestic:

- State & National Trade Shows

### International:

- Market research
- Liaison with USDA Foreign Agricultural Service
- International market development funds
- International representation

## MORE INFO:

Call the Department at 518-457-7076 for additional information and promotional materials. Browse the Farm Fresh Guide on the Department's website.

## New York State Department of Agriculture and Markets

1 Winners Circle, Albany, NY 12235 1-800-554-4501 <http://www.agmkt.state.ny.us>

Marketing has recently gained increased attention in the food and agriculture industries. The Department of Agriculture and Markets administers numerous programs, organizes activities and provides services, which assist the industry in expanding existing markets and developing new ones on various marketing levels.

### ★ DIRECT MARKETING

The Farmers' Market Nutrition Program provides checks to low income, nutritionally at-risk families enrolled in the Women, Infants, and Children (WIC) and Senior Meal Programs, which are redeemable for fresh produce at more than 200 participating farmers' markets statewide. The Department also publishes the "Farm Fresh Guide," a bi-annual directory available in print and on the web, that lists and describes farm stands, u-pick operations and other direct marketing outlets throughout the state.

### ★ DOMESTIC MARKETING

To assist New York food and agriculture producers in obtaining national representation for their products, the Department is extremely active in participating in and/or providing New York pavilions at numerous trade shows and other promotional events throughout the country.

### ★ INTERNATIONAL MARKETING

In the international marketplace, the Department provides buyers with information about sourcing products from New York State. The Department also disseminates trade leads to New York companies, conducts market research and development activities, and fosters communication between industry and USDA's Foreign Agricultural Service.

Through the Market Access Program (MAP) Branded Program, the Department is also able to secure matching funds for international market development and promotion. New York companies receive approximately \$1.25 million in funds annually to advertise and promote their products around the world.

New York companies are also represented in generic international marketing activities such as trade shows, in-store promotions and trade missions in the following regions of the world.



# BUSINESS DEVELOPMENT

## WHO:

Agricultural producers/businesses in New York State

## OBJECTIVE:

- Provide technical assistance and regulatory guidance, streamlining agricultural business development
- Communicate with both the public and private sectors

## RELATIONSHIPS WITH:

Empire State Development Corp.  
Local Agricultural Development Specialists  
NY Agri-Development Corp.  
NYS Dept. of Environmental Conservation  
NYS Dept. of Health  
NYS Dept. of Transportation  
NYS Energy Research and Development Authority  
NYS Office of Parks & Recreation  
NYS Public Service Commission  
NYS Tax and Finance  
USDA Rural Development  
USDA Farm Service Agency  
US Small Business Administration

## MORE INFO:

Call the Department at  
518-457-7076

Have you developed a business plan or marketing strategy for your existing business? Are you looking to expand your business or seeking to access new and improved technologies? Would you like to make your business more efficient and competitive?

If so, we can help! The New York State Department of Agriculture and Markets now provides assistance to help agricultural producers and food processors locate public and private funding for business development or expansions. In addition to other services described in this folder, we also offer business development, expansion and diversification assistance by:

- ★ Evaluating laws, rules, and regulations to determine industry impact and to assure implementation in a manner that does not place unnecessary hardship on agriculture producers or food processors;
- ★ Helping individual businesses to overcome obstacles during the permitting process;
- ★ Assisting with implementing cost saving procedures while maintaining regulatory compliance and economic viability;
- ★ Providing an information exchange process between the agricultural and food processing industry and regulatory agencies;
- ★ Offering guidance in addressing technical questions;
- ★ Aiding with business plan development and review; and
- ★ Serving as a comprehensive, one-stop-shop for agricultural business development.

The Department works closely with a number of state and local agencies and organizations to provide comprehensive information and assistance. Through these partnerships, the Department provides important connections to other valuable programs and resources.

Our expansive contacts throughout state government and the agricultural industry will not only provide you with technical assistance, but will help you overcome bureaucratic obstacles that you may encounter.

Let us help! Contact the New York State Department of Agriculture and Markets today with your ideas for improving the agriculture and food industries.



## New York State Department of Agriculture and Markets

1 Winners Circle, Albany, NY 12235 1-800-554-4501 <http://www.agmkt.state.ny.us>

# WORKFORCE DEVELOPMENT

## WHO:

Agricultural workers and employers

## WORKFORCE TRAINING:

- 30-40 hours of training; half in class and half “hands-on”
- Many courses offered in Spanish

## CHILD DEVELOPMENT:

- Available for children of farmworkers
- Includes health and dental care for children
- Meals and transportation provided
- Age appropriate activities
- Follows Head Start guidelines

## MORE INFO:

- For the AWCP Program, contact your local Cooperative Extension Office or the Department.
- For ABCD Day Care, contact the NYS Federation of Growers’ and Processors’ Association at 518-346-6447 or the Department.

Help Wanted.

These are two words that many businesses are becoming all too familiar with. For years now, the Department of Agriculture and Markets has been working to help farmers find an adequate and skilled workforce by providing professional training and day care for your current and future employees. Take a closer look at these two programs. They may be the answer you have been looking for.

## ★ AGRICULTURAL WORKFORCE TRAINING

The New York State Agricultural Workforce Certification Program (AWCP) has increased the number and improved the skills of agricultural workers in New York State by providing training and employment placement to individuals seeking specialized commodity based farm employment. Since 1992, AWCP has graduated more than 4,000 men and women with a placement rate exceeding 90 percent.

An AWCP program usually takes place on a college campus or Cooperative Extension office, and is between 30 and 40 hours in length, with half classroom training and half job shadowing, or “hands on” training. New curricula are constantly being developed. If your community has a workforce development need in the production agriculture or food processing areas, contact the Department to discuss arranging a new course. Here are some of the current course offerings, many of which are offered in Spanish.

Dairy Manager	Herdsperson	Milker
Crop Manager	Nursery Specialist	Sheep Shearer
Landscape Technician	Equine Specialist	Equipment Repairer

AWCP graduates are in demand, so put your request in early or explore the possibility of starting a training program in your area, if one does not already exist.

## ★ AGRIBUSINESS CHILD DEVELOPMENT & DAY CARE

The New York State Agribusiness Child Development Program (ABCD) serves children of farm workers across the state. The program currently serves between 1,500 and 1,800 children per year in 11 licensed child care centers and 25 to 30 licensed day care homes from which the ABCD purchases services. New sites are being added to help serve more children in more areas of New York State.

Children from six weeks of age to six years are eligible for the services provided by ABCD. Comprehensive child development services, including health and dental care, meals, transportation, and age appropriate educational and physical activities are provided to each child, including services for children with disabilities. The program utilizes Head Start guidelines, which require extensive parental involvement.



**New York State Department of Agriculture and Markets**

1 Winners Circle, Albany, NY 12235 1-800-554-4501 <http://www.agmkt.state.ny.us>

# FUNDING OPPORTUNITIES

## WHO:

Farmers, agribusinesses, food processors and research institutions

## GRANT FACTS:

- Most grants require a cost-share that can include cash or in-kind services
- Could fund up to 75% of your project, depending on individual grant

## APPLICATION PROCESS:

1. The Department will issue funding availability, usually through a Request for Proposals (RFP), announcing the application requirements, criteria and deadlines.
2. Interested parties can obtain a copy of the RFP by contacting the Department via telephone or website.
3. Complete and return application by deadline specified on the RFP.
4. If appropriate, applications are scored and competitively ranked.

## MORE INFO:

Call the Department at 518-457-2713 or visit the Department's website at [www.agmkt.state.ny.us](http://www.agmkt.state.ny.us)

We have the resources that could address your needs for capital improvements, market feasibility, new product development, farm market enhancement, or assist with the purchase of development rights on farmland. The Department of Agriculture and Markets has numerous funding opportunities that help individual businesses and the agricultural industry become stronger and more profitable. So, take a look at what we have and see which ones fit you and your business.

### ★ AGRICULTURAL RESEARCH AND DEVELOPMENT GRANTS

To keep pace with global marketplace competition, this grant offers funding for projects which promise positive economic results, such as new product development; alternative production, processing, distribution, and marketing technologies; the introduction of new technologies; and organizational approaches that further develop the industry.

### ★ FARMLAND VIABILITY GRANTS

Designed to help maintain farmland as a working landscape, this program funds the development of farm viability plans and the implementation of projects which contribute to farm profitability and sound environmental management. Grant funds may be used by a county to implement a portion of its agricultural and farmland protection plan or may be used by an individual farm to develop or implement a business management plan.

### ★ FARMERS' MARKET DEVELOPMENT GRANTS

To encourage the creation of new farmers' markets or the improvement of existing ones, this grant may be used to assist in the construction, reconstruction, expansion, rehabilitation or physical improvement of a market, including assistance for engineering or architectural designs.

### ★ ENTERPRISE PROGRAM

Provides gap financing funds for agricultural business development/expansion or for construction of publicly owned facilities/infrastructure which are necessary to accommodate production agriculture or agribusiness development.

### ★ NON-POINT SOURCE ABATEMENT & CONTROL GRANTS

Helps farmers protect New York's lakes, streams and rivers from agricultural runoff by awarding Soil and Water Conservation Districts funding to correct and prevent water pollution from farms through the development of water quality assessments, runoff buffers and waste management systems.

### ★ FARMLAND PROTECTION GRANTS

To help put a stop to the conversion of farmland into irreversible commercial and residential properties, this program helps protect farmland by awarding grants to towns and counties for developing farmland protection plans and for the purchase of farm conservation easements or development rights.



**New York State Department of Agriculture and Markets**

1 Winners Circle, Albany, NY 12235 1-800-554-4501 <http://www.agmkt.state.ny.us>

## ARTICLE XXVII

### **Transfer of Development Rights**

#### **Section 139-72. Legislative Intent**

The Town of Lysander has developed a Transfer of Development Rights (TDR) program in accordance with Section 261-a of the Town Law of New York State. The establishment of sending and receiving area overlays in the AR-40 zoning district is intended to ensure a long-range growth management strategy. The Lysander TDR program is designed to maintain an economically viable agricultural presence and to preserve open space in those areas of the Town zoned AR-40, particularly in the Cold Springs Peninsula, and associated objectives outlined in Amendment No. 1 to the Town of Lysander Land Use Plan and GEIS adopted on July 12, 2007.

#### **Section 139-73. Compliance with Town Law and Planning Documents**

The TDR program was developed pursuant to Section 261-a of the Town Law of New York State and the Town of Lysander Land Use Plan (Comprehensive Plan). Sending and receiving areas shall be indicated as floating overlay zones on the official Town of Lysander Zoning Map and may be adjusted over time following due process through Town Law. The procedure for amending the sending and receiving area overlays shall be the same as an amendment to the Town Zoning Map.

#### **Section 139-74. General Procedures and Restrictions**

##### **A. Town Approval**

Before a transfer of Development Rights occurs, the Lysander Planning Board shall determine that said transfer from the sending area parcel to the proposed receiving area is consistent with the program goals and objectives. This determination shall be made as a part of the reviews by the Town Planning Board under Sections 139-75(C). and 139-76(C).

## B. Designation of Sending and Receiving Areas

Sending and receiving areas shall be designated with specificity by the Town Board based upon the criteria in Sections 139-75(A) and 139-76(A) and upon a finding that the designation meets with the intent of the TDR program goals and objectives. Prior to the designation, a public hearing upon appropriate notice to affected property owners and the public will be held. The Town Planning Board will review the proposed designations and provide recommendations to the Town Board. The designation and mapping of sending and receiving areas may be amended by the Town Board following the same procedure.

## C. Restriction on Transfers

The transfer of Development Rights from a sending area to a receiving area shall be subject to the following restriction: Development Rights transferred from a sending area in one region may only be assigned or transferred to a receiving area in the same region with the intent to equalize sending and receiving areas within each region. It is anticipated that the Town Board, when sending and receiving areas are designated and amended for the AR-40 zoning district [see Section 139-74(B)], will establish three regions:

Region A - the Cold Springs Peninsula,  
Region B - the Seneca Region, and  
Region C - the West Phoenix Region

D. The TDR Program is proposed to be initiated with the implementation of a Revolving Fund [see Section 139-74(E)], which is made possible with the acquisition of Development Rights on up to three farms whose conservation easement transactions will be paid for through a Farmland Protection Implementation Grant award from the NYS Department of Agriculture and Markets.

## E. Establishment of a Revolving Fund to Purchase and Sell Development Rights

(1) There is hereby established the Transfer of Development Rights Revolving Fund (hereafter, the "Revolving Fund") to assist in the administration of the Transfer of Development Rights program in the Town of Lysander under this Article XXVII of the Zoning Law.

(2) The Town, through the Revolving Fund shall purchase and accept assignments of Development Rights, conduct periodic auctions of Development Rights, sell Development Rights and maintain a registry of Development Rights in accordance with the provisions of this Article XXVII of the Zoning Law and any regulations adopted by resolution of the Lysander Town Board. The Revolving Fund shall receive monies from the

sale of Development Rights, and may also accept gifts, donations and bequests of money, Development Rights or other property. All funds shall be deposited in a special municipal account or accounts in the name of the Town. With the consent of the Town Board, monies shall be expended from the Revolving Fund for the purchase of Development Rights and for the expenses necessitated by the Development Rights program.

- (3) The Revolving Fund shall operate according to procedures expressly approved by resolution of the Town Board.

#### F. Establishment of an Open Market System to Purchase and Sell Development Rights

An Open Market System will provide the option for sending parcel owners to sell Development Rights to the Town or to negotiate directly with interested buyers. The transfer and recording of Development Rights (and respective conservation easements) will be processed by the Town in accordance with the requirements of this article.

The Open Market System may be exercised within sending and receiving areas within the three regions [as further defined in Section 139-74(C)] in a chronological timeline relative to the TDR Program:

- (1) Region A - No sooner than the requirements of the NYS Department of Agriculture and Markets Farmland Protection Implementation Grant are fulfilled, but not later than one year from the time of adoption of this legislation.
- (2) Region B and C – One year from the time of adoption of this legislation.

#### G. Determination of the Number of Transferable Development Rights

The number of Development Rights available to be transferred from a sending area parcel is generally calculated based upon the underlying density permitted in the AR-40 zoning district. The number of Development Rights that can be used in a receiving area is based upon the underlying density permitted in the R-20 zoning district.

- (1) The number of Development Rights is generally calculated through the following formulas, rounding down to the nearest whole number to avoid fractions of Development Rights:

No. of Acres in Sending x 0.75 = No. of Dev. Rights per Sending Acre

No. of Acres in Receiving x 1.25 = No. of Dev. Rights per Receiving Acre

- (2) The product of the numbers above shall be verified upon approval of a density determination exhibiting a buildable AR-40 subdivision scenario on sending parcels unless the landowner selects the alternative procedures in Section 139-75(C)(2). Said density determination shall follow the procedures set forth in Section 278 of Town Law.
- (3) The product of the numbers above shall be verified upon approval of a density determination exhibiting a buildable R-20 subdivision scenario on receiving parcels. Said density determination shall follow the procedures set forth in Section 278 of Town Law.

#### H. Conservation Easement

If the landowner of a sending parcel intends to sell Development Rights, he or she shall retain the title to the property but shall be required to attach a permanent conservation easement to the title prohibiting future development in accordance with the **Town of Lysander Standard Conservation Easement** as approved by the Lysander Town Board. The perpetual conservation easement shall forever prohibit residential, industrial, and commercial uses, except in connection with agriculture as defined by the New York State Department of Agriculture and Markets, of the portion of land from which Development Rights were severed, and shall not be amended to permit such uses.

#### I. Transferability of Remaining Rights

The remaining unrestricted portion of a sending area parcel may still be developed with the remaining Development Rights, or the remaining transferable Development Rights may be sold with the remaining land deed restricted in accordance with the provisions of this article.

#### J. Reduction and/ or Extinguishment of Revolving Fund

Upon fulfillment of the requirements of the NYS Agriculture and Markets Farmland Protection Implementation Grant, the Town may determine that the Revolving Fund contains a surplus and may adopt a resolution following a public hearing declaring a finding of Excess Money. The finding will be based upon one of three criteria as follows:

- (1) The Revolving Fund has generated more money than is needed to purchase the remaining Development Rights from the sending areas and make any Residual Payment otherwise due.
- (2) No purchase of Development Rights by the fund are either requested [by the submission of an application under Section 139-75(C)(1) or (C)(2)] or completed within a period of five years.

- (3) All Development Rights from approved sending areas have been purchased, at which time the Revolving Fund may be extinguished.

Should the Revolving Fund be extinguished, the Town may elect to continue with an Open Market System working under due process and the TDR Program procedures as prescribed herein.

K. Use of Excess Moneys Generated through the TDR Program

Excess Moneys generated by the TDR Program may be used by the Town for any purpose allowed under Town law. Excess Moneys shall exclude any Residual Payments yet owed under Section 139-75(E).

**Section 139-75. Sending Areas**

A. Sending Area Criteria

Land that meets the following criteria qualifies for designation by the Town Board as a sending area:

- (1) Sending parcels must be within the AR-40 Zoning District.
- (2) Sending parcels or sending acreage within parcels must contain economically viable agricultural land including either a predominance of tillable acreage or land primarily suitable for agriculture, silviculture, or horticulture (tillable acres are the amount of land area than can be tilled to allow for crop propagation).
- (3) Sending parcels must contain soils of Class 1, 2, 3 or 4, as defined by the New York State Department of Agriculture and Markets in 1 NYCRR part 370.
- (4) Sending parcels must be within (or proposed to be included in) an agricultural taxing district.
- (5) Sending parcels must be a minimum of 11 acres in size or adjacent to a qualified sending parcel that contains a minimum of 11 acres of land.
- (6) Sending parcels must be actively farmed, be part of a farm operation, or contain vacant agricultural land suitable for farming.
- (7) Sending parcels must be owned or leased by a farmer or farm operation.

## B. Landowner Options

The landowner of an eligible sending parcel has the following development and transfer options, subject to any other applicable provisions of Section 139-75:

Option 1: A landowner may develop his or her property in compliance with all applicable provisions of the requirements of Chapter 139, Article V and Chapter 117 of the Town of Lysander Code. Lot size shall be in compliance with Section 139-58 for lots within Agricultural Taxing Districts.

Option 2: A landowner may sell or transfer all or part of the Development Rights associated with the property to the Town of Lysander Revolving Fund for subsequent resale through a public bidding process. A sending landowner may retain one development right for every 25 acres of farmland to be preserved.

Option 3: A landowner may sell or transfer all or part of the Development Rights associated with the property through an Open Market System [in compliance with Section 139-74(F)]. A sending landowner may retain one development right for every 25 acres of farmland to be preserved.

Option 4: A landowner may transfer Development Rights from property in a sending area under his or her ownership to other property in a receiving area under his or her ownership, subject also to the applicable provisions of Section 139-76.

## C. Transferring Development Rights from Sending Areas: Approval Procedure

(1) Landowners in designated sending areas who wish to sell Development Rights must demonstrate that their land meets the sending area criteria listed in Section 139-75(A) and will meet with the program goals and objectives outlined in Amendment No. 1 of the Town of Lysander Land Use Plan.

The number of Development Rights that qualify for transfer shall be determined by the Town of Lysander Planning Board. A landowner must submit an application including a conceptual plan, meeting all of the requirements of Chapter 139, Article V of the Town of Lysander Zoning Law and all requirements of the subdivision regulations. The original and three copies of a conceptual plan must be submitted to the Planning Board along with a signed written application seeking approval of the proposed transfer of Development Rights.

The application and conceptual plan shall include the following:

(a) A survey of the property stamped and signed by a Professional Licensed Surveyor at a scale of no less than 1 inch equals 100 feet (1"=100.0') showing:

- [1] Property acreage,
- [2] Stream corridors,
- [3] Wetlands and steep slopes greater than 15%,
- [4] Vegetation other than agricultural crops (tree lines, hedgerows, etc.),
- [5] Roads and utilities within 500 feet of the property boundary,
- [6] Easements and rights-of-way,
- [7] Underground easements, and
- [8] Location of all building structures and impervious surfaces.

(b) A copy of a preliminary plat indicating:

- [1] The layout of a hypothetical subdivision that complies with Chapter 139, Article VI of the Town of Lysander Zoning Law and Chapter 117, Subdivision Regulations;
- [2] The acreage of each subdivided parcel;
- [3] The dimensions (width and length) of all internal roads, stormwater management areas, and required easements; and
- [4] Certification by a Professional Licensed Surveyor of all boundaries as required for approval of a preliminary plat in accordance with the Subdivision Regulations.

(2) A landowner in a designated sending area who does not wish to follow the full Development Rights determination set forth in Section 139-75(C)(1) may opt to accept a Development Rights determination of 0.75 Development Rights per acre. A landowner must submit a signed written application electing that option, along with a survey in compliance with Section 139-75(C)(1)(a) showing the items in 139-75(C)(1)(a)[1], [2] and [3], must follow the procedure in Section 139-75(D) and, if the landowner proposes a sale of Development Rights to the Revolving Fund, must follow the procedure in Section 139-75(C)(7) and (8).

(3) The Planning Board will forward the conceptual plan to the Town Engineer. The Town Engineer shall review the submission for accuracy and compliance with the Town of Lysander Zoning Law and Subdivision Regulations. The Engineer shall advise the Planning Board of findings and required adjustments to the conceptual plan.

- (4) At a regular meeting, the Planning Board, after giving consideration to the engineer's report and any additional information that the parcel owner, engineer, or Planning Board shall reasonably require, shall make a determination as to the number of Development Rights eligible for transfer based upon either (1) the approved preliminary plat (e.g., approval of a buildable plat by the Planning Board) as the measure of the development potential of the parcel (i.e., Development Rights yield) or (2) the landowner's 0.75 Development Rights per acre election.
- (5) Any sending area landowner who is dissatisfied with the Planning Board's determination regarding the number of Development Rights may appeal the Planning Board's decision to the Town Board by forwarding a letter or other written notice to the Town Supervisor setting forth the landowner's position. The Town Board shall hear arguments and receive evidence deemed appropriate at one or more public hearings, and shall make a determination based upon the criteria in this local law. The determination of the Town Board shall be final, and reviewable only in an Article 78 proceeding commenced within 30 days after the filing of the Town Board's determination in the Town Clerk's office.
- (6) Any appeal or review of a Development Rights determination in a sending area shall occur prior to the recording of a conservation easement. Once a property is restricted through the recording of a conservation easement, the owner's appeal and any Article 78 review is forfeited and the parcel owner shall be deemed to have finally accepted the number of Development Rights calculated by the Planning Board.
- (7) If the landowner proposes to sell the Development Rights to the Revolving Fund, following the determination in Section 139-75(C)(4), the applicant shall submit to the Town Board a current self contained appraisal of the value of the land area presented in the conceptual plan and the value of the Development Rights to be transferred. An appraiser approved by resolution of the Town Board shall prepare the appraisal, and the appraisal shall comply with any requirements set by resolution of the Town Board.
- (8) If the landowner proposes to sell the Development Rights to the Revolving Fund, the Town Board shall establish the value of the Development Rights from the landowner's parcel based upon the appraisal. Once the value of the Development Rights is established, the Town Board will authorize the purchase of the Development Rights from the sending landowner to the extent that funds are available in the Revolving Fund. The Town Board will require a boundary survey of the land area to be placed in a conservation easement.

D. Transferring Development Rights from Sending Areas: Closing and Registration Procedure

- (1) After the Town Board approves the transfer of Development Rights, the sending landowner shall submit to the Town Attorney a signed **Town of Lysander Standard Conservation Easement**, a title insurance report (commitment), and any other documents requested by the Town Attorney to provide the Town with a conservation easement upon, and an assignment of Development Rights from, the sending landowner's parcel free of liens, mortgages and other encumbrances. Title insurance shall be provided to the Town for the full value of the Development Rights sold.
- (2) The Town Attorney shall determine that the conservation easement is in proper legal form for recording in the County Clerk's Office. The Town Attorney shall also determine, based upon the title report and any accompanying documents, that the applicant holds insurable title clear of any encumbrances to the parcel; or that rights-of-way, easements, or utilities exist on the parcel and that the holder of any lien, mortgage, or other interest affecting the conservation easement has agreed in writing to subordinate their interest in the parcel to the purpose set forth in the conservation easement.

The Town Attorney shall certify to these facts by signing the conservation easement and shall record the appropriate documents with the County Clerk and notify the Town Comptroller that the documents have been recorded.

- (3) Upon receipt of proof that the conservation easement has been recorded with the Onondaga County Clerk's Office, the Town Comptroller shall:
  - (a) Assign serial numbers to each development right;
  - (b) Record the Development Rights in a Registry. (This record shall include the County Clerk's assigned book and page of recording of the conservation easement); and
  - (c) Forward a copy of the recorded conservation easement to the Planning Board for its information.
- (4) A landowner shall be responsible for all costs associated with the review of the enrollment application, including professional fees authorized by Section 67-4 of the Lysander Town Code, and the expense of title insurance, abstract fees, and recording fees.

## E. Payments from the Revolving Fund to the Sending Landowners

Where the Town Board has authorized the purchase of Development Rights, the Town will utilize the Revolving Fund to purchase Development Rights from the sending landowners for 75% of the current value of the Development Rights within 90 days after the recording of a conservation easement (Initial Payment), and any other necessary documents with the Onondaga County Clerk. Within 90 days after the Development Rights have been purchased from the Revolving Fund, the sending landowners will receive payments for the remaining 25% plus 90% of any proceeds above the initial appraised value (Residual Payment). Until such time as the Development Rights purchased with the NYS Agriculture and Markets Farmland Protection Implementation Grant are totally resold, Residual Payments shall be made to sending landowners in proportion to the amount of contributory Development Rights of each participant.

## Section 139-76. Receiving Areas

### A. Receiving Area Criteria

Land that meets the following criteria qualify for designation by the Town Board as a receiving area:

- (1) Receiving parcels must be within the AR-40 zoning district.
- (2) Receiving parcels must lack environmental sensitivity (e.g., wetlands, stream corridors, steep slopes, important habitat) or contain enough area to avoid and buffer environmentally sensitive land areas.
- (3) Receiving parcels must be within or contiguous to an existing or proposed water district.
- (4) Receiving parcels must be within, contiguous to, or in close proximity to existing sewer districts or currently proposed sewer extensions.
- (5) Receiving parcels must have direct access to an arterial road or collector road as defined in Section 139-60 of the Lysander Town Code. Access to an arterial or collector road must be from a system of local roads in accordance with the Town of Lysander's Long Range Transportation Plan, and must be built to Town standards and constructed within the proposed development.

## B. Landowner or Developer Options

The landowner or developer of a property located in a receiving area shall have the following development options, subject to any other provisions of Section 139-75.

Option 1: A landowner or developer may develop his or her property in compliance with all applicable provisions of the requirements of Chapter 139 Article V and Chapter 117 of the Town of Lysander Code. Lot size shall be limited to the AR-40 lot size requirements and in compliance with Section 139-58 for lots within Agricultural Taxing Districts.

Option 2: A landowner or developer may purchase additional Development Rights through a public bidding process and apply those Development Rights to an approved receiving site, through subdivision review pursuant to Chapter 139, Article VI (R-20) and Chapter 117 of the Town of Lysander Code. The owner of a parcel in a receiving area shall have final plat approval prior to utilizing Development Rights in a receiving area.

Option 3: A landowner or developer may purchase Development Rights through the Open Market System [in compliance with Section 139-74(F)].

Option 4: A landowner may transfer Development Rights to property in a receiving area under his or her ownership.

## C. General Procedures and Restrictions

- (1) Purchase of Development Rights from the Revolving Fund shall be based upon a public bidding process. The minimum bid at any auction shall be the full value of any Development Right purchased by the Town in each respective region.
- (2) For each Development Right purchased, the receiving site landowner or developer shall be permitted to build one (1) additional dwelling unit.
- (3) In no case shall the resulting density of the property, after the addition of the purchased Development Rights, exceed the net residential density. Net residential density shall mean the maximum development potential of a site that meets all of the conditions of the Town of Lysander Subdivision Regulations (Chapter 117 of the Town Code) and Article VI (R-20) of the

Zoning Law (Chapter 139, Article VI of the Town Code) and conditions set forth by the Town of Lysander Planning Board necessary for preliminary plat approval of the property unless the Development Rights are transferred to a receiving area that has been designated as a Planned Unit Development (PUD) in accordance with Chapter 139 Article XVI of the Lysander Town Code. In the case of an approved PUD, net density may be concentrated or clustered on portions of a lot or lots as outlined in a General Project Plan approved by the Lysander Town Board indicating the use and density for a land area that is subject to a zone change to PUD.

- (4) Density may be increased up to 12 units per acre upon request for a zone change to Planned Unit Development or within a cluster subdivision on a portion or portions of a receiving area. However, overall density of the development will be based upon the underlying allowable density of the R-20 zoning district and shall not exceed 1.25 units per acre. Calculation of the overall density and the total number of units per acre shall be stated in the conditions of a change in zoning to Planned Unit Development.
- (5) Except in a PUD, development added to property in a receiving area through the TDR Program shall be consistent with the list of permitted uses in the R-20 zone (Chapter 117 and Chapter 139, Article VI of the Lysander Town Code) and shall be compatible with the existing and/or proposed uses on the property; and shall meet all permitting agency requirements.
- (6) The final subdivision plat shall indicate the sending parcel from which Development Rights were purchased.
- (7) When clustering, lot sizes in receiving areas shall not be less than 20,000 square feet unless public water, sewer, and adequate area for stormwater management are available. The Town Law Section 278 cluster technique provided by local zoning may be exercised within the receiving areas when authorized by the Town Board. The distribution of unit density through clustering techniques is encouraged where appropriate.
- (8) Development in receiving areas should provide a variety of housing types to provide for low to moderate income housing pursuant to the Town Law of New York State.

D. Transfer of Development Rights from the Registry to Receiving Parcels.

The Planning Board shall specifically identify each lot in the proposed subdivision to which each development right shall attach. The maximum density in the receiving area will be based upon an approved preliminary plat. Upon approval of a final plat, the Development Rights will be transferred to a

development parcel. If the final plat is approved for more development lots than the number of purchased Development Rights, only the approved number of Development Rights may be exercised in the receiving area. If the final plat is approved for fewer lots than the approved preliminary plat, the unused Development Rights will remain in the Registry.

#### E. Approval Procedures

An owner or developer of land located within a receiving area may utilize Development Rights purchased from the Revolving Fund or through the Open Market System to increase the number of units that may be developed by utilizing the following procedures:

- (1) The owner/developer of land within the receiving area must first obtain final approval for the development of a project within the receiving area contingent and conditioned on the acquisition of Development Rights.
- (2) To meet the condition of approval, the owner/developer, at or prior to the signing of a subdivision plat or the issuance of the first building permit, whichever occurs first, on forms approved by the Planning Board and obtained from the Town Clerk, shall submit to the Town Comptroller:
  - (a) An original and two copies of a completed application for Development Rights use that indicates the specific source of Development Rights to be used within the development,
  - (b) An original and two copies of a deed of Development Rights transfer, and
  - (c) Receipt of the appropriate fees expended for review.
- (3) The Town Comptroller, with the assistance of the Town Attorney and the Town Engineer, within 95 days of receipt, shall determine that the application is complete and:
  - (a) Accurately specifies the number of Development Rights indicated on the preliminary plat approved by the Planning Board for the development of the parcel sought to be developed;
  - (b) Demonstrates that the developer has acquired all Development Rights needed for the proposed development; and
  - (c) Accurately specifies by reference to assigned serial numbers or otherwise which Development Rights are being used by the development.

- (4) Upon the determination described in Section 139-76(E)(3), the Town Comptroller shall sign the deed of Development Rights transfer, which shall certify that recording the deed of Development Rights transfer will permanently and irreversibly transfer the number of Development Rights contained within it to the parcel of land cited, and arrange for the recording of the deed with the County Clerk.
- (5) Proof of recording of the deed of Development Rights transfer shall be a prerequisite to the issuance of any building permit for development of the land upon which the Development Rights are to be used.
- (6) Recording the deed of Development Rights transfer shall extinguish the ability to use any development right transferred except upon the parcel to which the development right has been transferred.
- (7) Upon receipt of proof that the deed of Development Rights transfer has been recorded, the Town Comptroller shall:
  - (a) Record the Development Right in the Registry (the record shall include the Clerk's assigned book and page of recording);
  - (b) Forward a copy of the recorded deed of Development Rights transfer to the Planning Board for its information; and
  - (c) Assign the transferred Development Rights to the receiving parcel in the Development Rights Registry [Section 139-75(D)(3)(b)].
- (8) Any person, firm, or entity that purchases or otherwise acquires, encumbers or utilizes any development potential under this chapter shall notify the Town Clerk and Comptroller of the same in writing within 10 business days.

#### F. Deed of Dedication

After a final plat for the first section of an approved subdivision plan is signed by representatives of the Town, but before the plat is filed, the developer shall record against the land to be developed a deed of dedication approved by the Town Attorney which shall dedicate the entire site for use in the Transfer of Development Rights program. The residual Development Rights existing on the land covered by the development, if any, shall be deemed created only upon the filing of the deed of dedication. Filing the deed of dedication shall entitle the landowner to exercise Development Rights obtained through this program and created on the land affected by the application of development at the R-20 density or for the uses permitted by provisions of this Article. Until the deed of dedication is recorded, the land is subject to the density and use restrictions otherwise controlling within the district.

#### G. Review Costs

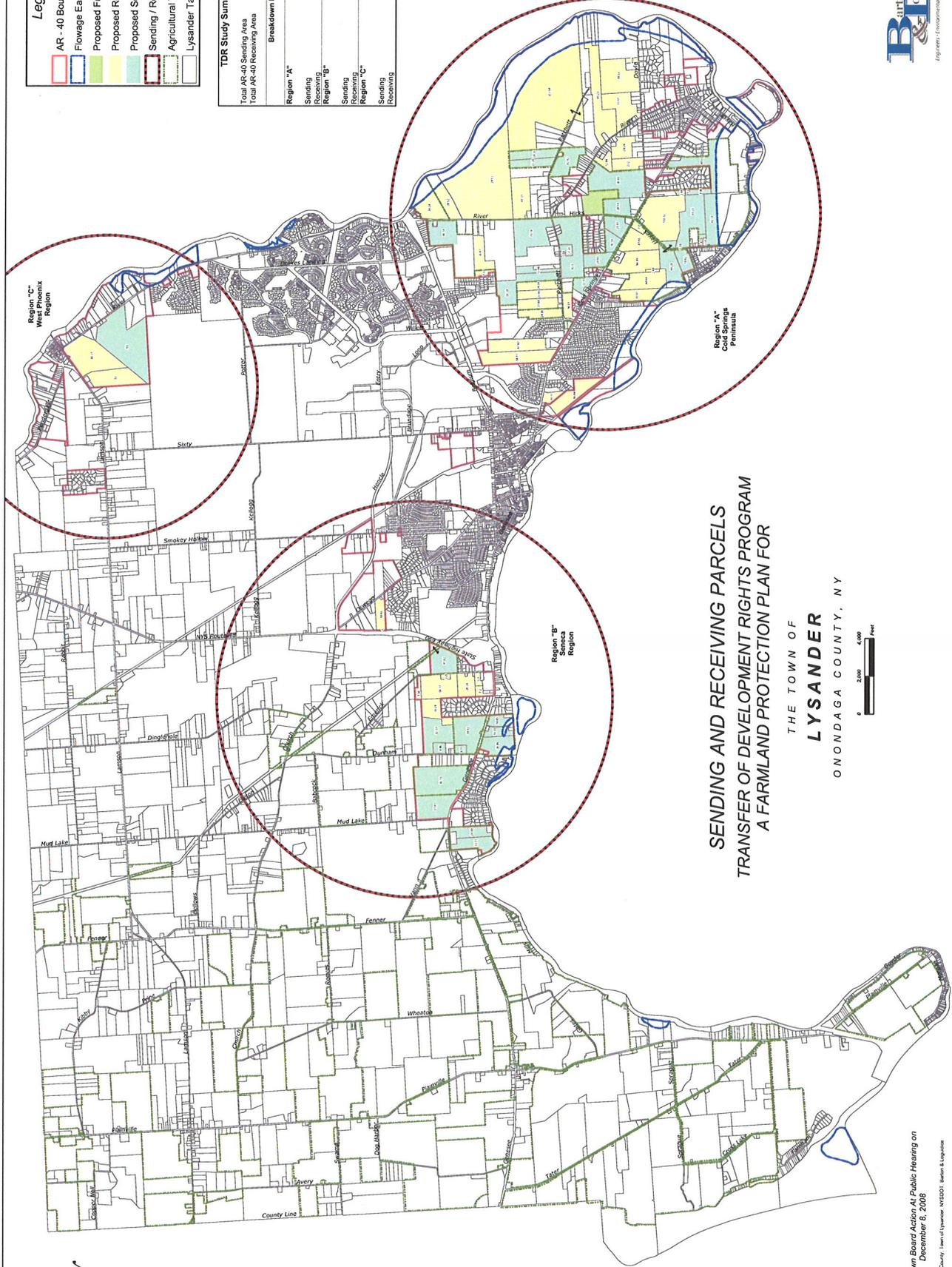
A receiving area landowner shall be responsible for all costs associated with the review of the Development Rights transfer application, including professional fees authorized by the Town Code and recording expenses.

**Legend**

- AR - 40 Boundary
- Flowage Easement
- Proposed Future Park Land
- Proposed Receiving Area
- Sending Area
- Sending / Receiving Region
- Agricultural Tax District
- Lysander Tax Parcel Boundaries

**TDR Study Summary Statistics**

Total AR-40 Sending Area	1411 Acres = 1057 Units
Total AR-40 Receiving Area	1934 Acres = 2416 Units
<b>Breakdown By Study Area</b>	
<b>Region "A"</b>	
Sending Region	619 Acres = 463 Units
Receiving Region	1633 Acres = 2043 Units
<b>Region "B"</b>	
Sending Region	443 Acres = 332 Units
Receiving Region	155 Acres = 193 Units
<b>Region "C"</b>	
Sending Region	150 Acres = 112 Units
Receiving Region	148 Acres = 182 Units



**SENDING AND RECEIVING PARCELS**  
**TRANSFER OF DEVELOPMENT RIGHTS PROGRAM**  
**A FARMLAND PROTECTION PLAN FOR**

THE TOWN OF  
**LYSANDER**  
 ONONDAGA COUNTY, NY



Adopted By Town Board Action At Public Hearing on  
 December 6, 2008

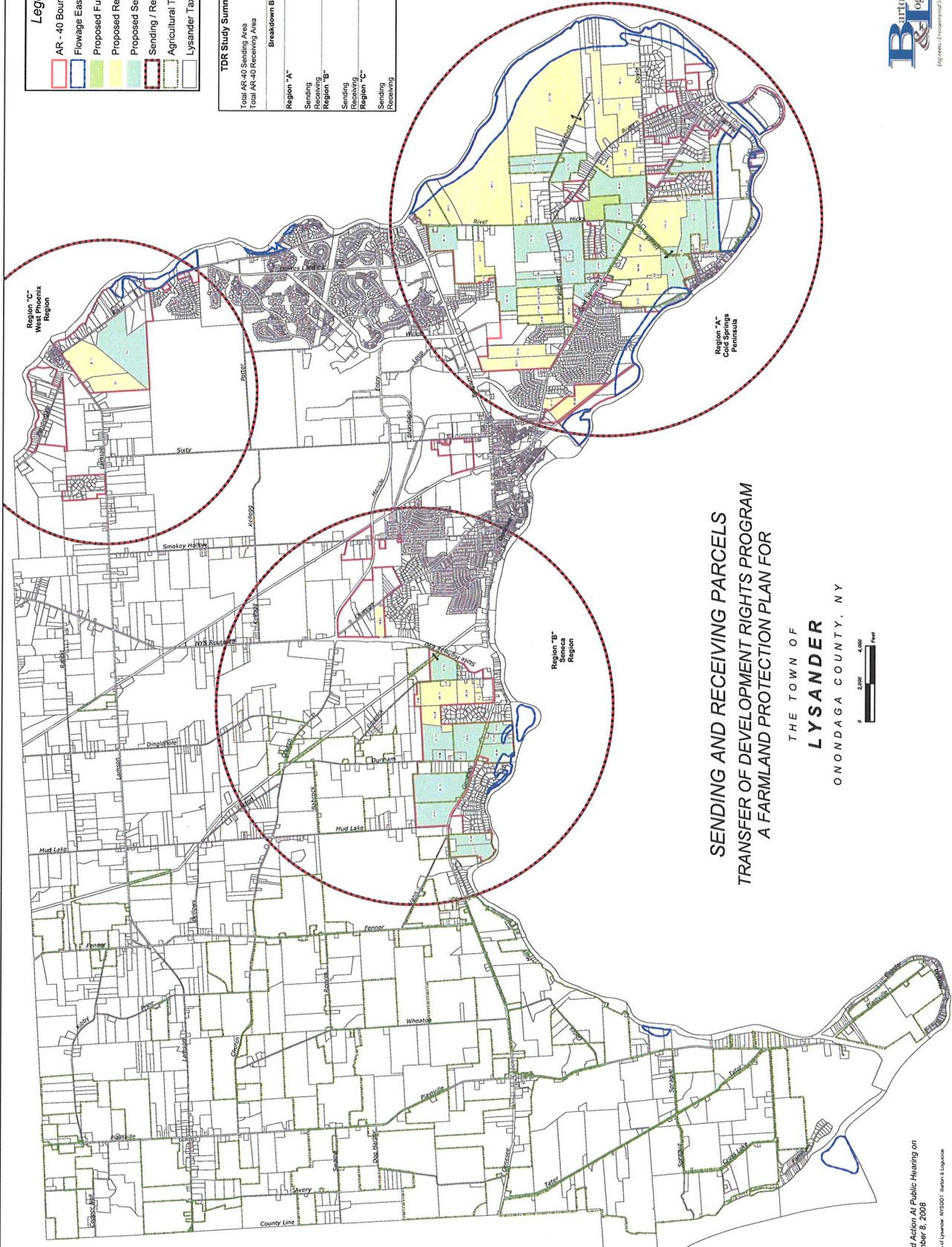
Source: Onondaga County, Town of Lysander, NYSDOT, Aerials & Logistics

**Legend**

- AR - 40 Boundary
- Flowage Easement
- Proposed Future Park Land
- Proposed Receiving Area
- Proposed Sending Area
- Sending / Receiving Region
- Agricultural Tax District
- Lysander Tax Parcel Boundaries

**TDR Study Summary Statistics**

Total AR-40 Sending Area	1411 Acres = 1057 Units
Total AR-40 Receiving Area	1934 Acres = 2416 Units
<b>Breakdown by Study Area</b>	
<b>Region "A"</b>	
Sending	818 Acres = 613 Units
Receiving	1633 Acres = 2041 Units
<b>Region "B"</b>	
Sending	443 Acres = 332 Units
Receiving	155 Acres = 193 Units
<b>Region "C"</b>	
Sending	150 Acres = 112 Units
Receiving	146 Acres = 182 Units



**SENDING AND RECEIVING PARCELS**  
**TRANSFER OF DEVELOPMENT RIGHTS PROGRAM**  
**A FARMLAND PROTECTION PLAN FOR**

THE TOWN OF  
**LYSANDER**  
 ONONDAGA COUNTY, NY



Adopted By Town Board Action At Public Hearing on  
 December 8, 2008  
 Sources: Onondaga County, Town of Lysander, NYSDOT, Barton & Boeghildice

(Draft Glenville ordinance, June 2008)

**ARTICLE XXII**  
**Transfer of Development Rights**

**§270-161. Purpose.**

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

**§270-162. Authority.**

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

**§270-163. Basic concept.**

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

§270-169.

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

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

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

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

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

- (3) Consist of a minimum of 20 acres of contiguous land, except along a stream or potential trail corridor, or where adjacent to already-preserved land.

B. Transferable development rights computation.

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

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

A. Any landowner in a Town or Village sending area may request a TDR Certificate from the Town that specifies the number of development rights that may be separated and transferred from a qualified sending area tract based on the provisions of §270-165 above. The Town planner shall be responsible for making this determination and issuing the certificate, for which no fee shall be charged.

B. An application for a TDR Certificate shall include:

- (1) A new title search and legal description, including any existing boundary survey, of the sending area tract, and legal opinion of title affirming that the development rights being transferred have not been previously severed from or prohibited upon the sending area tract.
- (2) An identification of lands previously restricted by development as described in §270-165.B.(4) above.
- (3) Such additional information required by the Town planner as necessary to determine the number of development rights that qualify for transfer, but not including a plat map or new boundary survey.

C. A TDR Certificate shall:

- (1) Identify the transferor.

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

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

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

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

sending area tract.

- (3) The date of transfer.
- (4) A copy of the TDR Certificate described in §270-166 above.
- (5) The number of development rights being transferred up to the number permitted on the TDR Certificate.
- (6) The number of development rights remaining on the sending area tract (both for on-site and off-site use).
- (7) A current title search of the sending area tract (or portion of the tract to be placed under easement) prepared within 30 days prior to submission of the deed, or a signed affidavit that title has not changed since issuance of the TDR Certificate under §270-166.
- (8) A legal description and plat of the sending area tract or that portion of the tract to be placed under easement, prepared by a licensed surveyor.
- (9) A conservation easement, which shall permanently restrict development of the sending area tract as provided in §270-168. below and which shall be recorded with the Schenectady County Clerk at the same time as the Original TDR Deed.

B. An Intermediate TDR Deed is required for any subsequent conveyance of development rights after the recording of the Original TDR Deed. An Intermediate TDR Deed shall include or be accompanied by the following Information:

- (1) Items 1-7 above.
- (2) Copies and a listing of all previous TDR deeds identified by the books and pages where they are recorded with the Schenectady County Clerk.

C. The Town planner shall, prior to their recording and within 30 days of receipt, review and endorse the Original TDR Deed and conservation easement after comparing them with the TDR Certificate to determine the accuracy of the representation of the number of development rights being transferred as well as the number of any remaining development rights that may later be used either on- or off-site. The Town planner shall also, within 30 days of receipt, review and endorse any Intermediate TDR Deeds at the time of submittal of any application for development under §270-169.B. of this Ordinance.

D. The Town legal counsel shall, prior to their recording and within 30 days of

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

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

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

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

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

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

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

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

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

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

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

1) building lot coverage only

2) combined lot coverage for buildings, parking and loading areas, access drive and sidewalks

3) approximate average; actual number is variable depending on use

4) the 20% waiver is to actual parking standards in Schedule A of the Zoning Ordinance

5) for 7,500 sf lots, the lot frontage requirement shall be 60' and the side yard requirements five feet each

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

(1) An affidavit of intent to transfer development rights to the property.

(2) Either of the following:

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

**§270-170. Public acquisition.**

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

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

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

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

### **§270-172. TDR Bank.**

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

#### A. Acquisition of development rights.

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

#### B. Sale of development rights.

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

#### C. Program administration.

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

### **§270.173. Amendment**

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

### **§270-174. Definitions**

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

ACCEPTABLE DEVELOPMENT AREA -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\* already defined in 2005 Zoning Ordinance

**§270-175. Enforcement**

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