

New York State Department of Agriculture and Markets

GUIDANCE DOCUMENT SERIES
FARMLAND PROTECTION IMPLEMENTATION GRANT PROGRAM

Farmland Protection and Agricultural Districts

G.D. # 1

Policy Guidance for Local Governments, Land Trusts and Farmers

Overview

Agricultural Districts are the cornerstone of farmland protection in New York State. This guidance document details the inter-relationship between the Agricultural Districts and the State Farmland Protection Program and highlights the importance of integrating the two.

Background

Article XIV, Section 4 of the New York State Constitution, added in 1970, provides that the policy of the State shall be to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. It states that the legislature, in implementing this policy, shall include adequate provision for the protection of agricultural lands. Shortly thereafter, in 1971, the Agricultural Districts Law (Agriculture and Markets Law-AML- Article 25-AA) was enacted implementing that policy. The Agricultural Districts Law helps maintain a supportive operating environment for farm businesses in State-certified districts through several “right to farm” provisions.

In 1992, the Agricultural Protection Act was passed, and it created Article 25-AAA, to encourage further development of agricultural and farmland protection programs at the State and local levels. The legislation is intended to support local efforts to protect agricultural land and ensure the continued economic viability of the State’s agricultural industry. This strong connection between the protection of productive agricultural land resources and the economic viability of farm businesses is integral to New York’s farmland protection efforts. In 1996, Article 25-AAA was amended to provide eligible municipalities with grants to implement farmland protection activities. Since 1996, the New York State Department of Agriculture and Markets (NYSDAM) has administered an agricultural and farmland protection program and has awarded implementation grants totaling over \$100 million, primarily for purchase of development rights projects.

Agricultural Districts – The Cornerstone of Farmland Protection in NYS

Program Administration and Integration with the Farmland Protection Program

Agriculture requires both land and people. Without farmers to manage the land, land will not be kept in farming. At the same time, farmers depend on productive farmland for their livelihood. As a result, the Agricultural Districts Law has been amended numerous times over the years and is focused on keeping farmland in agricultural production. AML Section 300 states that *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.* AML Article 25-AA provides for agricultural assessment and contains several “right to farm” protections,

including a provision that provides protection against local laws that unreasonably restrict farm operations within county adopted, State certified agricultural districts. New York's highest court, the Court of Appeals, in *Town of Lysander v. Hafner (2001)* upheld this provision of the Agricultural Districts Law and ruled that the interpretation and administration of Agricultural Districts Law, AML §305-a(1) by the Commissioner of Agriculture and Markets was entitled to deference.

New York's Farmland Protection Program seeks to protect the State's productive agricultural resources while supporting farmers' ability to manage profitable businesses. Creating a workable balance between the two is the key to the program's long-term success. As a result, the Farmland Protection program supports local projects that integrate these objectives. This approach is reflected in the NYSDAM model agricultural conservation easement that states as its 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.

This strong tie between land protection and economic viability reflects the program's legislative and administrative links with the Agricultural Districts program.

Agricultural Districts Law Section 305-a(1) – Policy of local governments

Section 305-a states in its first paragraph that

Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.

(emphasis added)

The critical right to farm protections of the Agricultural Districts Law (Article 25-AA including Sections 303, 305 and 308) guide NYSDAM in its administration of the farmland protection program and in its review of various aspects of farmland protection projects including land use planning and conservation easement drafting. **Consequently, NYSDAM will review proposed easement language to determine that proposed projects are not *unreasonably restrictive of farm operations.***

Review Considerations and Guidelines

The rapidly changing nature of agriculture and farming practices has necessitated numerous revisions of the Agricultural Districts Law over the years. This can make it difficult to draft permanent conservation easement provisions, as those written today may unreasonably restrict agriculture in the future as accepted practices change. This is especially true for easement provisions and program requirements that affect a farm operation's ability to adapt to changing market conditions by changing production practices or agricultural enterprises.

In addition, farms are host to several discrete but interdependent land uses which may include barns, sheds, farm worker housing, garages, farm markets, manure storage facilities, silos (vertical or horizontal), milking parlors, stables, poultry houses, greenhouses, and increasingly, energy production facilities like methane digesters and wind turbines . In many cases, conservation easement drafters have attempted to narrowly define agricultural activities as well as other permitted uses because the holder of the easement is uncomfortable with the uncertainty that this kind of flexibility entails.

Some factors that NYSDAM will consider relative to the reasonableness of proposed easement restrictions and/or land planning proposals include:

- Whether the provisions adversely affect the farm operator’s ability to manage the farm operation effectively and efficiently;
- Whether the provisions would restrict production options which could affect the economic viability of the farm;
- Whether the provisions would cause a lengthy delay in the construction of a farm building or implementation of an agricultural practice;
- The availability of alternative means to achieve the objective
- How the provisions compare to relevant standards under State laws and regulations (e.g., farms and farm buildings benefit from various exemptions found in the Environmental Conservation Law and regulations; Executive Law and NYS Uniform Fire Prevention and Building Code; and Education Law).

Examples of Unreasonably Restrictive Easement Provisions

While proposed easement language that differs from the NYSDAM Model Agricultural Conservation Easement will be considered on a case-by-case basis, some illustrative examples of “unreasonable restrictions,” based on the Department’s experience in interpreting the Agricultural Districts Law right to farm provisions, are outlined below:

- Prohibition on mobile or modular homes as farmworker housing – The *Hafner* case involved this type of restriction, a restriction that could make it very difficult if not impossible for farm operators to provide cost effective housing options for their workers and sufficient flexibility in determining where to locate the housing.
- Requirement of specific agricultural practices – Specific farming practices may prove more or less feasible or sustainable in the future as best management practices and the “state of the art” evolve over time. It is important to provide future farm operators the flexibility to make those decisions as future circumstances warrant.

- Prohibition on feedlots or concentrated animal feeding operations – Currently large feedlots (known as concentrated animal feeding operations or CAFOs) are regulated by the Environmental Protection Agency at the federal level and by the New York Department of Environmental Conservation at the State level. These regulations have and will continue to evolve over time as best management practices (BMPs) reflect the current status of science and technology. Blanket prohibitions that do not reflect current science-based production practices are unwarranted and consequently viewed as unreasonable.
- Prohibition of certain types of livestock – Similarly, blanket prohibitions of certain types of livestock production (or other agriculture) that do not reflect science-based production practices will be considered unreasonably restrictive.
- Prohibition of greenhouses or substantial limitation regarding their size – Greenhouses provide many farmers the opportunity to diversify their farm operations and extend the growing season. Many greenhouses are considered temporary structures because they do not have a permanent foundation or an impervious surface as a floor.
- Prohibition on subdivision – Outright prohibitions on subdivision will be considered unreasonably restrictive because what is deemed a viable farming unit today may be very different in the future. Some operations may desire or require larger acreages while others may actually focus their production efforts on fewer acres and farm more intensively, like many direct market vegetable growers.
- Prohibition of amendments - New York State Environmental Conservation Law allows conservation easements to be amended in accordance with the specific terms of the easements and amendment clauses should be included in agricultural easements. Notwithstanding the time and care spent on drafting flexible easements that encourage agricultural use, an amendment clause serves as an important “safety valve” or adjustment mechanism for the future.