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## The Stable Door is Open: New York's Statutes to Protect Farm Land

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## Introduction

**D**aniel Webster, in his Remarks on Agriculture, asserted that "When tillage begins, other arts follow. The farmers, therefore, are the founders of human civilization." If Webster is right, civilization in New York State is floundering. Dutchess County recently witnessed the closing of the county's oldest dairy operation, Kay-Ray Farm. With Kay-Ray gone, Dutchess now has just over 50 farms left, down from over 100 in 1987 and from nearly 300 in 1972. What happened to this farm and this county is happening, to varying degrees, throughout the state. Legislatively, we have left the barn door ajar and the state's productive agricultural land is disappearing through it.

Webster was right to associate farming with "other arts" and the flourishing of human civilization. We value agricultural land, and the unspoiled rural countryside, for a variety of subjective reasons that appeal to residents of rural areas and their urban visitors. Webster should have gone on, however, to define the economic importance of agricultural land.

## The Economic Importance of Agriculture

Agriculture is one of New York's largest industries. The annual gross income of farmers is nearly \$3.0 billion. Our state ranks among the top three in the production of a large number of agricultural products including apples, sweet corn, silage, milk, cherries, and cottage cheese. This robust productivity supports farmers, their families, farm employees, food processors, a transport industry and the providers of agricultural machinery, supplies and services. Estimates of the gross revenues of these economic activities approach \$10 billion annually.

Farming contributes to the fiscal stability of many New York regions in subtler ways as well. For rural counties with active tourist industries, agricultural lands provide the essential character that acts as a magnet for tourists. The disappearance of Dutchess County farms is of serious concern because it threatens to erode the special attributes of the place that are translated into livelihoods for the many in Dutchess who depend on the tourist industry to survive. The

# The Stable Door is Open: New York's Statutes to Protect Farm Land

BY JOHN R. NOLON

Route 28 corridor that meanders through Ulster and Delaware counties has been designated one of America's ten most threatened scenic by-ways, in part because of the conversion of agricultural land to uses that are inconsistent with the qualities of that area that attract recreational users and tourists to the region. In 1992, nearly 37,000 employees were at work in the fields of tourism, the arts and culture in the mid-Hudson region that includes Dutchess, Ulster and Delaware counties.

Further, agricultural land uses demand little public infrastructure and require only modest governmental services. Several recent studies demonstrate that farm land in rural communities pays more to local governments in property taxes than it costs localities in the provision of municipal services. By protecting agricultural land from conversion, the state maintains the vitality of its current agricultural industry, its food production base for future generations and avoids the cost of importing food from other states and nations.

## The Disproportionate Impact of Development Pressures on Farm Land

Despite its importance, agricultural land is disappearing in New York. Between 1982 and 1991, for example, the state lost over 700,000 acres of farmland and approximately 10,000 farms. With the removal of this acreage from production, the economic value of agricultural to the state is diminished significantly. Although land ceases being agricultural for a variety of reasons, development pressures have a particu-

larly heavy impact on the agricultural economy since much of the state's most productive farm land is located precisely where development is occurring. Since 1960, net population growth has occurred almost exclusively in open agricultural areas and very small rural hamlets, mostly at the edge of formerly urbanized areas. According to federal studies, 58% of New York's agricultural production occurs within developing areas and 38% in counties that are immediately adjacent to these areas.

## The Land Use Connection

The American Farmland Trust has documented that all but four of New York's 62 counties are "urban influenced." Urban influenced counties are those whose agricultural land is "subject to urban pressures, including conversion of farmland to non-agricultural uses and economically risky conflicts with nearby residential and commercial land uses."

In these urban influenced areas, the conversion of agricultural properties to other uses is dependent on the approval of land use agencies. Farm land cannot be converted to non-agricultural uses unless land use regulations and public spending programs allow and encourage such conversion. Quite often, it is in anticipation of a change of zoning or a subdivision approval that speculators will purchase farm land; speculators sense that local officials will welcome more intense land uses and the greater gross property tax receipts and local employment that they bring. They also assume that as farmland is converted to other uses, the public sector will will-

ingly provide the new developments with the public services and infrastructure they ultimately demand.

As development pressures grow through the cumulative effect of land use approvals, farmers find that their property taxes increase, their operations become less profitable, and the opportunity and temptation to sell to land speculators increases. This chain of events leads directly to the loss of farms and tillable acreage. Agricultural land disappearance that is due to these factors, therefore, directly implicates the land use approval process.

### New York State Policy

The New York State Constitution, Article XIV, provides clear direction to the state legislature on these matters: "The policy of the 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. The legislature, in implementing this policy, shall include adequate provision for ...the protection of agricultural lands...."

The New York State legislature has recognized the economic importance of agricultural land, the severity of the problem of agricultural land disappearance and has identified it as a land use issue. Statutes passed by the New York State legislature contain the following specific findings:

1. The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many communities and the state as a whole.
2. It is the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for food production.
3. Much of the agricultural land in New York is in jeopardy of being lost for any agricultural purpose.
4. When non-agricultural development extends into farm areas, competition for limited land resources results. Ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements, often leading to the conversion of productive agricultural land.

### Two Strategic Approaches for Protecting Farm Land

The American Farmland Trust has called for coordinated efforts at all levels of government to curb sprawling development which competes for agricultural land and to encourage farmers to commit their land to long-term agricultural use. This implies two paths to agricultural land protection:

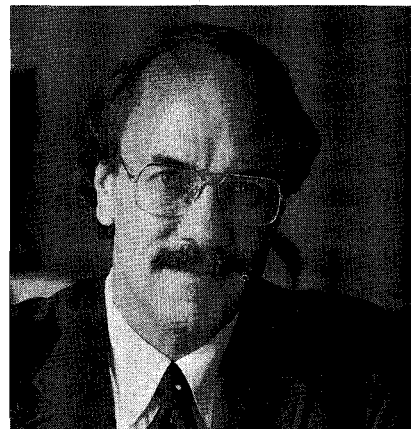
1. providing incentives to farmers that maintain the profitability of farming, and
2. directing development pressures to appropriate locations, generally away from valuable farming regions.

### Providing Incentives—The New York Approach

Virtually all states, including New York, provide direct incentives, such as property tax relief, to maintain the profitability of farming. Property tax relief is one of several incentives that accrue to farmers under protective laws adopted by the New York legislature. These laws provide for the creation of agricultural districts upon the initiative of agricultural land owners themselves; districts are established formally by county governments after approval by the state. Once created, agricultural districts allow for farmers to benefit from reduced property tax assessments based on the agricultural use of the land, rather than on its speculative use for non-agricultural purposes.

In these agricultural districts, farmers are protected also from "nuisance suits" brought by nearby property owners, such as new homeowners who now complain of the noise and smells of agricultural operations. In designated districts, local governments and special taxing districts are limited in their ability to regulate farm uses and to tax farmers for infrastructure improvements needed to serve newly developing lands around existing farms.

These provisions are designed to lessen some of the impacts that occur in rural areas when "development pressures" mount: higher property taxes, special assessments for needed infrastructure, occurrence of nuisance suits, and restrictions on agricultural uses and operations. They do not, however, alter the pressure to sell farm land at relatively high prices to speculators who an-



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ticipate receiving local approval for non-agricultural land uses.

### Land Acquisition Strategies—Constrained Alternatives to the Incentive Approach

Since incentives fail to balance the financial pressures on farmers to sell, private and public sector strategies have been created to acquire valuable development rights from farmers. Among these, three have received the most attention:

1. Transfer of Development Rights: The state legislature recently sanctioned the transfer of development rights from productive agricultural areas to zones that are more appropriate for development. Such programs allow property owners in appropriate areas, or receiving districts, to purchase development rights from land owners in sending districts, such as productive agricultural areas. Transfer of development rights programs have proven both complicated and controversial to adopt in New York's communities, particularly rural municipalities with limited planning expertise. As a consequence, they have been used very little.
2. Public and Non-Profit Purchase of Development Rights: State law allows municipal governments to



acquire full title, development rights, restrictive covenants or conservation easements in agricultural properties in order to preserve them as open space. The proceeds of state-wide environmental bond acts have been used to acquire similar interests in agricultural land to preserve open spaces or natural resources. Similarly, non-profit land trusts sometime use their funds to purchase development rights from farmers.

Very little productive agricultural land has been protected using public and non-profit funds, however. This is simply explained: as development pressures increase, land values escalate. Because farm land that is subject to speculative pressure is expensive, acquisition initiatives necessarily are exceedingly costly. The limited funds that are available for this purpose do not allow for the protection of meaningful quantities of agricultural acres. All told, such programs nationally have resulted in the acquisition of development rights only to .3% of all private land in rural America. The remaining 97.7% remains vulnerable to development pressures.

3. **Donation of Development Rights to Land Trusts:** The federal income tax code and New York State law encourage farmers to donate development rights to non-profit land trusts. This has the effect of preserving agricultural use and open space; farmers receive the benefit of reduced real property and estate tax assessments, since the land has no value beyond its agricultural use after the owners' donation of their development rights. Since the development rights are now held by a non-profit organization which is tax-exempt, however, this results in a reduction of taxable property for the municipality, without its involvement or consent. Also, such strategies are limited to a small pool of farmers: those who want to continue farming *and* are willing to trade the full market value of their land for the tax benefits of the donation of their development rights.

### **Additional Problems With These Approaches**

In addition to the limitations already described, these strategies suffer from additional problems. They fail, fundamentally, to relieve farmers from the inherent incongruity of trying to farm

in an area whose residential population is increasing. Where agricultural districts are created, new residents may be precluded from nuisance suits in the judicial forum, but not from complaining constantly about dust, noise and slow moving traffic in less formal venues, such as the local hardware store. Similarly, new residents clog narrow country roads, making the passage of farm machinery difficult, dangerous, and, at times, impossible. Experience proves that, as population increases, so do incidences of trespass and vandalism on farm property. At some point in this process, farmers simply give up trying to farm and succumb to the temptation to sell to land speculators.

The cumulative impact of these "pressures" overpowers the incentives in many areas of the state and neutralizes their positive effect. The result is the failure of the program to accomplish the objectives contained in the Constitution and articulated in the legislation that created these programs. This observation is reinforced by the fact that the number of agricultural parcels benefiting from lower use value assessments, under the Agricultural District Law, and those parcels protected by acquisition programs, represent a relatively small fraction of all farm tax parcels in the state. Agricultural land is still disappearing and development pressures, particularly in most productive rural areas of the state, are still on the rise.

### **Directed Growth Strategies—Closing the Stable Door**

The ubiquitous effect of development pressures on agricultural land, and on the public treasury that is fated to support development wherever it goes, has led some other states to develop what can be called "directed growth strategies." These strategies are based on the belief that public policy and spending programs should target appropriate areas for growth and development and not be drawn to other areas, where development should be discouraged. Because such decisions are very difficult to make, not all states have had the courage to try. An increasing number have, however, in response to the cumulative negative effects of ignoring the issue, one of which is the loss of productive agricultural land.

Over twenty years ago, the Oregon state legislature adopted a directed growth statute designed primarily to protect farm land in the Willamett Valley, one of the nation's most productive farming areas. At that time, development pressures had dramatically reduced the quantity of land available for farming, caused environmental degradation and depleted the area's natural resources. Under this legislation, local governments and state agencies collaborated in locating "urban growth boundaries" to separate developable, or urban, land from agricultural land. They agreed that designated urban areas had to contain enough developable land to accommodate foreseeable population and economic growth. The capital and service budgets of state, county and local government, thereafter, were focussed on encouraging and servicing development within the designated growth areas.

Under the Oregon program, over 90% of the land contained in designated rural areas has been zoned by local governments for "exclusive farm use." This land use solution has maintained the vitality of the agricultural sector and has attracted the political support of its production farmers and agricultural industry groups whose businesses it has protected over the two decades since the statute was adopted.

### **Complementary and Cost-Effective Strategies**

Under Florida's directed growth statute, agricultural land is protected in a similar fashion, while fragile natural resources are preserved by an aggressive public land acquisition program funded at a level of \$3 billion over a ten year period. Here, complementary programs emerge. Directed growth is used to maintain the agricultural economy by protecting agricultural lands while public funds are directed at acquiring natural resource areas that should not be developed or farmed intensively.

Rural boundaries and agricultural use zoning in directed growth states combine to protect agricultural lands from speculative pressures and obviate the need to acquire their development rights. In states where there is no directed growth statute, the limited amount



of public and philanthropic funds available for land acquisition are depleted by the need to purchase the appreciating development rights of farm lands.

In directed growth states, property tax assessments remain more constant in designated rural areas, nearby residential development is limited so the threat of nuisance suits is absent, infrastructure is not needed to support incompatible uses, so the prospect of service charges is eliminated and, since farming operations are wanted in designated rural areas, there is little need to protect them from restrictive regulations. Further, agricultural zoning can allow compatible non-agricultural uses including small scale residential, commercial and light industrial developments that bring vitality and increased value to an individual farm and economic diversity to a rural community, without threatening its rural character.

Directed growth statutes in other states are adopted by legislatures that want the benefits of land development as intensely as they want to protect farm land and natural resources. They are statutes that promote land development, they facilitate and finance it, but they are guided by a commitment to supporting and encouraging development where ought to occur in the greater public interest. State lawmakers in these states have challenged the everyday notion that they should be required to expend taxpayers dollars to chase and support development wherever it happens to appear.

Highly productive agricultural areas, under these regimes, are not exempted from development in any wholesale fashion, but these lands often define the line between "urban" and "rural" zones because of the high public costs of servicing development there and of losing productive agricultural acreage. In New Jersey, a "directed growth" state, much of the state's agricultural lands are designated as a special planning area and not targeted for costly public improvements; estimates of the savings to the public of not having to extend road, water, sewer and school systems in rural areas approach \$1.5 billion over the next 20 years.

### **Recent Legislative Actions Further Complicate the Land Use System**

The New York legislature adopted another initiative in 1992 that provides further protection of agricultural land, but

which complicates the land use approval and environmental planning process. This statute provides for the creation of Agricultural Protection Boards at the county level. These boards are eligible to receive state matching funds to develop agricultural land protection plans. The 1992 act further stipulates that certain public actions are subject to a separate procedure to review their impact on the conversion of agricultural land.

These initiatives bear the trademark of New York's overlapping, patchwork, uncoordinated approach to land resource management. The effects of these new provisions to protect agricultural land are either redundant of, or counter to, the requirements of other land use statutes. For example:

1. Agricultural land is converted to non-agricultural uses that are approved by local zoning and planning bodies. State law requires that zoning and other local land use regulations must conform to a "comprehensive plan," which the law makes clear is a local document. This new provision for county-wide farm land protection planning bears no observable relationship to the legally potent and controlling local comprehensive plan.

2. This new law establishes a separate review procedure applying to certain actions to determine their impact on agricultural land conversion. This new review requirement was created in spite of the fact that all forms of land use actions are already subject to extensive environmental review procedures. These review requirements have been criticized recently by a state advisory panel as unduly cumbersome, yet the 1992 agricultural protection statute creates another level of review for certain land use actions. Meanwhile, regulations of the Department of Environmental Conservation already require a hard look at the impact of all proposed non-agricultural use occurring in a designated agricultural district.

3. Other provisions of law already provide for county planning boards to prepare comprehensive county master plans. One reason such county-wide plans have not been prepared in most counties is a lack of funding. County plans, to be comprehensive, must consider the issue of agricultural land conservation. This 1992 statute provides for the creation of another county wide planning board, limited in its focus to farm land protection,

and provides state funds to support the planning activities of these new boards without supporting the preparation of comprehensive land use planning at the county level. How these farm land protection plans are to be coordinated with comprehensive county planning is not addressed by the 1992 legislation.

### **Cumulative Effect of New York's Agricultural Protection Program**

New York's agricultural protection laws provide incentives to farmers that are insufficient to stave off the powerful effect of development pressures. The land acquisition programs authorized by state statutes are of limited effect because development pressures render them too costly to be widely used. The procedures authorized by recent additions to the agricultural protection laws further complicate a burdensome land use review and approval process. Finally, all of these legislative efforts stop short of addressing the powerful effect of the development pressures that contribute significantly to the problem of agricultural land disappearance.

These defects in New York's agricultural land protection statutes are the direct result of the steady accumulation of good laws intended to protect an important single interest: farm land protection. These laws add to, and sometimes conflict with, other good statutes designed to promote other public interests such as economic development, comprehensive planning or local control of land uses, for example.

Because land use laws are drafted by separate legislative committees at different points in time to accomplish separate purposes, they fail to connect with one another: to become integrated in the objectives they seek to accomplish and to establish efficient procedures regulating the use of the land. In short, there is no unifying policy such as creating cost-effective and balanced land use patterns throughout the state to harmonize these separate legal initiatives.

At some point in this process of legal accretion, New Yorkers will understand that their land use system has become unworkable because of its complexity and this lack of coordination. This look at New York's agricultural land protection statutes provides further evidence of this fundamental weakness in the fabric of the state's land law. ❖