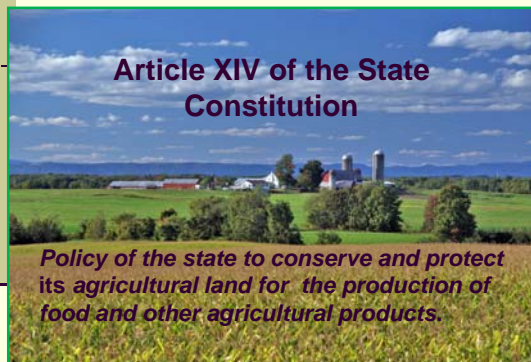


New York State Department of Agriculture and Markets

How Agricultural Districts Support Agricultural Businesses

1

Article XIV of the State Constitution



*Policy of the state to conserve and protect
its agricultural land for the production of
food and other agricultural products.*

2

The Constitution of the State of New York directed the legislature to provide for the protection of agricultural lands

Agricultural Districts Law - Since 1971, Article 25-AA of the Agriculture and Markets Law, has been the *centerpiece of state and county level efforts to conserve, protect and encourage the development and improvement of agricultural lands for food and other agricultural products [and]...to conserve agricultural lands as valued natural and ecological resources* and which provide needed open spaces for clean air sheds and aesthetic purposes.

3

History of AG Protection Laws

- ❖ 1971 Agricultural Districts Law (ADL)
- ❖ 1992 County Ag Protection Planning
Major RTF Amendments to ADL
- ❖ 2005 Municipal Ag Protection Planning
- ❖ 2007 County Ag Protection -- Updates

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County Agricultural and Farmland Protection Board §302

• AFPB Established by Co. Legislature

- 11 Members on the Board
- 4 active farmers
 - 1 agribusiness person
 - 1 land protection person
 - Employee of the Soil and Water Conservation District
 - Member of the Co. Legislature
 - Cooperative Extension Agent
 - Real Property Tax Director
 - County Planning Director

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Counties Create and Review Agricultural Districts- AML §303

- Landowner petitions county legislative body to add land to agricultural district.
- County agricultural and farmland protection board reviews petitions and makes recommendation to county legislative body.
- County legislative body holds public hearing and creates, modifies, or terminates the agricultural district. **Local Governments Notified**
- District reviewed every 8 years, annual additions during a county designated 30-day period. **State/Local Govt. Partnership**

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Ag Districts in New York

Total Acres –
8.75 million

Acres Farmed –
6.2 million

No. of Farms –
24,927



Produced by IRIS, Cornell University

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Agricultural Districts and the Local Planning Process

- ❖ Municipalities are responsible for the regulation of land uses through comprehensive and/or master plans, local zoning, local laws, and building code enforcement. (Home Rule)
- ❖ ADL acknowledges Home Rule and protects farm operations.



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Integration of ADL into Village and Town Law

- ❖ Town, Village, County or Regional Comprehensive Plan (content) - may include consideration of agricultural uses [Town Law 272-a(3)(d), Village Law 7-722(3)(d), General Municipal Law 239-d(1)(d) and 239-i(1)(d)]
- ❖ A Town, Village, County or Regional Plan and any amendments shall be subject to the provisions of the Agricultural Districts Law relating to enactment and administration of local laws, rules or regulations. [T.L. 279-a(9), V.L. 7-722(9), G.M.L. 239-d(4) & 239-i(4)]

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How Does the Agricultural Districts Law Help Municipalities?

- ❖ Opinions re Proposed Local Laws and Administration of Laws [AML §305-a(1)(b)]
- ❖ Agricultural Data Statements [AML §305-a(2)-(4)]
- ❖ Notice of Intent - Limitation on Eminent Domain, Public Acquisitions of Land and Advance of Funds for Construction of Public Facilities [AML §305 (4)]
- ❖ Disclosure to Potential Buyers of Property in an Agricultural District [AML §310]

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Farmer Compliance with Local Laws

All farms, whether in a county-adopted, State certified ag district, **must comply with local laws**. To the extent that a farm operation is in an agricultural district, it can avail itself of an AML §305-a review by the Department and may get regulatory relief. If a farm is not in a county-adopted, State certified agricultural district, then AML §305-a does not apply and the farm does not get the benefit of having us help them under §305-a and would need to work out issues with the local government.

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Guidance Documents for Local Govts. Compliance with Section 305-a

- Farm Marketing Activities
- Control of Farm Animals
- On-Farm Composting
- Open Burning
- Nutrient Management Practices (Land Application of Animal Waste, Recognizable and Non-recognizable Food Waste, Sewage Sludge and Septage; Animal Waste Storage/Management)
- Wetlands
- Farm Worker Housing

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Guidance Documents for Local Govts. Compliance with Section 305-a

- Greenhouses
- Zoning and Planning Laws
- Commercial Horse Boarding and Equine Operations
- Junk, Junkyards and Litter
- Small Wind Energy Production Facilities
- Nursery Operations
- Crops Grown to Support Distilleries, Breweries, Cideries and Wineries
- Farm Operation Defined
- Start-up Farm Defined
- **Guidance Documents at www.agriculture.ny.gov.**

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AML §305-a Opinions

- ❖ Local gov't. officials may request an opinion from the Commissioner as to whether farm operations would be unreasonably restricted or regulated by proposed changes in land use regulations, ordinances or local laws; or by administration of local laws.
- ❖ A&M has reviewed a wide range of local laws and their administration with respect to farm operations, including: noise ordinances; special events permits; site plan laws; farm market laws; and zoning code amendments.

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AML §305-a(1) Policy of Local Governments

Imposes affirmative obligation upon local governments to **enact and administer local laws and ordinances to effect the policy of AML Article 25-AA**, which is to protect and enhance New York's farmland.



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AML §305-a(1) Policy of Local Governments

...And prohibits local governments from **unreasonably restricting or regulating farm operations** in agricultural districts unless the locality can show that the public health or safety is threatened.



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What is a "Farm Operation"?

Defined by AML §301(11) 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**, including:

- a) 'commercial horse boarding operation,'
- b) 'timber operation,'
- c) 'compost, mulch or other biomass crops,' and
- d) 'commercial equine operation' as defined..."

May consist of one or more parcels of owned or rented land and parcels may be contiguous or noncontiguous to each other.

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Wineries, Breweries, Distilleries, Cideries – Processing Facility/Tasting Room



- Regulation of Special Events – Health/Safety
 - Charitable Events
 - Weddings
 - Corporate Meetings
 - Birthday Parties
 - Limitation on No. of Events, Hours of Operation
- Special Use Permit
- Tasting Room

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Agriculture and Markets Law Considerations

- ❖ Production of Alcoholic Beverages
 - ❖ AML Protects:
 - ❖ Production of Crops – A Farm First
 - ❖ Processing of Crops into Alcohol
 - ❖ Marketing of Alcohol
 - ❖ 51% of crops needed to produce alcohol must be grown by the farm operation.
 - ❖ Marketing may include public events as long as intent is to sell your alcohol and only 30% of gross is incidental charges, such as rental fees.
 - ❖ Tasting room and direct sale to public protected.

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Municipal Land Use Regulations A Partnership

- ❖ Production of Alcoholic Beverages
 - ❖ Take into consideration A&M guidance/letters
 - ❖ Municipality May Regulate Through Expedited Special Event Permit, Special Use Permit, Site Plan Review (consider time and cost to farm):
 - ❖ Activities Outside of the Scope of the AML
 - ❖ Matter Related to Public Health and Safety, Such As: Hours of operation, traffic, noise, number of events, number of guests, dark skies, ingress/egress, parking, sanitary facilities, permits (Health Department and/or SLA), catering, building construction, sale of alcohol not produced on premises, etc.

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New York State - Winery Weddings

Acquired from an internet site advertising Farm weddings at wineries



A Winery Wedding in one of New York State's picturesque vineyard settings! Nestled along waterways and grand lakes in the company of historic villages, some 225 wineries enhance areas of rural charm in the six NY regions described below. The majority of wineries are found in the Finger Lakes, Hudson River Valley, and Long Island viticultural regions. The remaining wine-countries are in the burgeoning wine countries of Central New York/Lake Ontario, Lake Erie/Chautauqua, and the Niagara Escarpment.

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Protecting Vineyard Crop with Propane Cannon – 95% of Crop Destroyed

Starlings Eating Grapes



Starlings Above Grape Vines



NOV for using Propane Cannon to Scare Birds

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Opportunities for New Farm Related Uses



Pumpkin Patches

Agricultural Tourism

U-pick, CSAs, roadside stands, corn mazes, hay rides, pumpkin patches, farm stays, festivals, bakeries & restaurants, parties, weddings, etc.

Farm Support Businesses

Slaughterhouse, farm implement repair, community kitchen, etc.

Farm Compatible Businesses

Bed & Breakfast, outdoor recreation, child day care, etc.

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Agriculture and Markets Law Considerations

- ❖ Sale of Agricultural Products Grown on Farm
 - ❖ AML Protects:
 - ❖ Production of Crops and Sale of Crops Grown on Farm
 - ❖ Processing of Crops into Value Added Products
 - ❖ Marketing of Farm Products
 - ❖ 51% of crops marketed must be grown by the farm operation. Additional crops can be sold to diversity products offered to public.
 - ❖ On-Farm sales protected under AML.
 - ❖ Construction of farm markets protected under AML.
 - ❖ Recreational activities such as corn maize, hay maize, hay rides, petting zoos, produce sling shots, etc.

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Municipal Land Use Regulations A Partnership

- ❖ Production of Crops Grown on Farm
 - ❖ Take into consideration A&M guidance/letters
 - ❖ Municipality May Regulate Through Expedited Site Plan Review (consider cost & time to farm):
 - ❖ Activities Outside of the Scope of the AML
 - ❖ Matter Related to Public Health and Safety, Such As:
 - ❖ Hours of operation, traffic, noise, number of events, number of guests, dark skies, ingress/egress, parking, sanitary facilities, permits (Health Department), sale of food, building construction, amusements such as cow trains, jump y jumps, slides, lookouts, and other non-agricultural activities

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Agri-Tourism Activities



- Direct Farm Sales to Public
 - Increases income to farmer
 - Allows sale of product grown on the farm
 - Educational tool/brings people to the country
 - Fees charged to access activities/become a destination farm
 - Fees charged should not exceed sale of crops, otherwise, recreational, not agricultural

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Agritainment – NY Farm Advertisement – On-Farm Marketing



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Cow Train – Not a protected activity under the AML, but may be allowed by the Town or regulating municipality



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Bounce Pillow, Farm Animal Petting Zoo, Slide and Climbing Hill



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Farm and Farm Market with Agritainment

- Entrance Fee - \$9.75 Adults and \$7.75 Children
- Receives \$2 pumpkin, \$2 gift certificate, \$1 sent to Maize Quest in PA.
- Building used as admissions booth and concessions
- Advertising for CSA. Active CSA. Received site plan approval from town in Spring, 2015.



Change In Use

81,000 ± sq. ft. heated greenhouse to produce organically grown vegetables and fruit in the winter.

Town Code states that 60 percent of the product sold at a farmstand must be grown by the farmer.



On-Farm Market consists of 4,000 sq. ft. of market space.

Town Code does not define "farmstand" or "farm market". Farm Market is only defined in section of code that regulates signs.

Kitchen is used to process farm grown product.



Horse Operations – Boarding/Equine

- ❖ Seven plus acres of land;
- ❖ 10 horses, regardless of ownership;
- ❖ No time period set in statute concerning residency;
- ❖ CHB - > \$10,000 in gross receipts annually from **boarding** and/or sale of crops, livestock and livestock products;
- ❖ Equine – > \$10,000 from lessons, trail riding, training
- ❖ Protects start-up operations;
- ❖ Does not include operations where primary function is horse racing.

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Equine by Primary Use - 2005

- ❖ Equine Survey – 2005
- ❖ 197,000 horses in NY
- ❖ 87,000 pleasure
- ❖ 27,000 competition
- ❖ 26,900 breeding
- ❖ 14,500 racing
- ❖ 11,100 lessons
- ❖ 4,700 specialty/camps
- ❖ 25,800 other/farm work



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Equine Related Expenditures - 2005

- ❖ Value of all horses in NY is \$1,831,040,000.
- ❖ Value of related land, fencing and buildings in NY is \$7,084,830,000.
- ❖ Equine related expenditures is \$958,130,000.
 - ❖ \$180,790,000 in 2000
 - ❖ 89% of \$ spent in NY
- ❖ \$139,420,000 spent on boarding fees



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Constructed an 11-stall horse barn. Horse paddock adjacent to barn. Building behind the paddock is a multipurpose building (tool/woodworking/farm equipment repair shop). Commodity shed used to store farm equipment. Town concluded, not a farm because tax returns do not show a profit.



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Temporary Greenhouses

Typical temporary greenhouse - discontinuous foundation, poly covering and dirt floor covered with textile fabric.



A&M, DOS, ORPS - classifies as specialized agricultural equipment

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Agricultural or Commercial?



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Unfinished Greenhouse – In Front of Primary Structure, Broome County

Unfinished temporary greenhouse – **stop work order**. Greenhouse positioned in front of unoccupied residence/farm building. The site was cleared and leveled prior to placing the poles in the ground.



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Temporary Greenhouse Used for Growing and Sales

Two-ply poly membrane cover. Air is pushed between two sheets of plastic to act as a thermal barrier. Plastic tubing for irrigation purposes. Also, gas heater used in winter to eliminate snow cover and in spring to keep immature plants from freezing.



Mulch, Gravel, Hard Scrabble, Topsoil and Sand Sold at Many Nursery Operations

Allowed or Not Allowed?



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Animal Agriculture



- ❖ Limit number of animals (usually by type) on the farm (X animals per acre).
- ❖ Restrict odors from leaving boundary of farm.
- ❖ Impair value and enjoyment of adjoining landowners.
- ❖ Manure storage requirements.

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Building Requirements?

- ❖ Prohibit construction of buildings if they obstruct views within a "scenic corridor overlay zone."
- ❖ Require screening of agricultural buildings.
- ❖ Require site plan review prior to construction.
- ❖ Require permits, surveys, inspections, compliance with BCNYS.



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Beef Cow Feeding Facility Dutchess Co. Setback Violation From Road, Nuisance



45

Construction of Barn – Start-up Operation – Dutchess County

- ❖ Barn used to house farm equipment/supplies.
- ❖ Barn is 40' x 48', post and beam construction, 34' tall.
- ❖ **Code height - 16'; farmer denied area variance.**
- ❖ **Construction started prior to issuance of building permit and variance request.**



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Tompkins County – Over 100 Jacob sheep on property, rotational grazing, lease land up the road. Farm parcel is 10.2 acres, 8.5 acres in pasture.

Zoning only allows 16 sheep on property



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Manure Composting Facility

Town prevented farm from using a safer entrance to property to export manure



New composting facility constructed to handle animal waste on an organic beef operation located within Westchester County. Watershed Agr. Council designed and helped fund construction.

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Farmer plowed fallow field (grass and brush) and planted grass to pasture cows

Town cited farmer for stormwater and wetland violations, DEC and DEP issued NOV for SPDES Permit violations



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Table Grape, Sour Cherry and Aronia (Choke Berry) Farm, Dutchess County - 57.91 acres (7 acres in production)

Stop Work Order – DEC and DEP Permit Required to Convert woodland to agricultural use – erosion control/stormwater issues



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Removal of Sand and Gravel in Aid of Agricultural Production, Cortland County

**Received Mining Exemption from DEC
A&M Told Town they Could Require Streamlined Site Plan Approval**



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Knoll to be removed to reduce slope and reshaped to fit within existing landscape



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Constructed Bergey EXCEL 10 Wind Turbine on Alpaca Farm – Columbia County

- ❖ Provisions of Local Law not deemed unreasonable:
- ❖ List safety measures
- ❖ Describe how rotor blades are controlled
- ❖ Setback 1.1 times the combined ht. of tower and blades from property lines and power lines
- ❖ Tower base to human-occupied buildings 5 times rotor diameter.



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Provisions of Local Law not unreasonable:

- Sketch plan
- Proposed location
- Manufacturer plans and drawings
- Description of project
- Legible electrical diagram showing major system components



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Noise Issue – SUP Revoked by Town



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Obsolete structures on farm – 1850's barn, 1780's house, stable, 4-bay garage, farm market (now wine processing/tasting facility) and two run-in sheds. House, barn, stable and run-in sheds are not used. FMV at \$1.42 million. FMV of improvements is \$870,000. Property Taxes \$39,000 in 2013. Receives agricultural assessment. Most of value placed on obsolete, unused, structures. Orange County. Owner intends to demolish buildings to save on taxes



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Summary – A Partnership to Review Impacts

■ A&M

- ❖ Is it a farm operation,
- ❖ Is the parcel located in an agricultural district,
- ❖ Zoning definitions,
- ❖ Is the activity permitted in the zone,
- ❖ Local variance approval,
- ❖ State Law,
- ❖ Cost and time, etc.

■ Municipal Code/Law

- ❖ Zoning interpretation(s),
- ❖ Is the local law reasonable,
- ❖ Is public health and safety threatened,
- ❖ Are amendments to local laws needed,
- ❖ Is an expedited review an option, etc.

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