

Town of Batavia
Agricultural & Farmland Protection Plan



December 2011

Prepared with financial assistance from the NYS Department of Agriculture & Markets

Table of Contents

A. Introduction and Methodology 1

- 1. Grant 1
- 2. Consultant 1
- 3. Steering Committee 1
- 4. Public/ Landowner meetings 1
- 5. Farmer interviews 2
- 6. Existing Plans and Programs 3
- 7. Approvals 4

B. Community Overview 5

- 1. Regional Setting 5
- 2. Streams and Watersheds 5
- 3. Population 5
- 4. Land Use 6
- 5. Infrastructure 7

C. Agricultural Land Resources 7

- 1. Soils 7
- 2. Cropland 8
- 3. Land to be Protected 10
- 4. Conversion Pressure/ Potential Consequences of Conversion 11
- 5. Summary of issues relating to farmland retention 12

D. Economic Value of Agriculture 15

- 1. Production Agriculture – Batavia and Genesee County 15
- 2. Markets for Farm Products 16
- 3. Issues relating to agriculture as a business 17

Town of Batavia Agricultural & Farmland Protection Plan

E. Tools and Techniques	19
1. Land Conservation Through Conservation Easements	19
2. Zoning Techniques	20
3. Subdivision Design	23
4. Infrastructure Management	23
5. Tax Relief Programs	28
6. Local “Right to Farm” Law.....	28
F. Strategies and Recommended Actions	30
1. Revise Land Use Regulations.....	30
2. Protect land through conservation easements	32
3. Support local agricultural and related businesses.....	34
4. Improve drainage to maintain or increase the productivity of farmland	36
5. Establish an ongoing committee to monitor the implementation of the Town’s Agricultural & Farmland Protection Plan	37
G. Next Steps	37

A. Introduction and Methodology

1. Grant

In 2008, the Town of Batavia initiated the process of preparing an Agricultural & Farmland Protection Plan that would help implement the recommendations of its 2007 Comprehensive Plan. The Town was awarded a \$25,000 grant from the NYS Department of Agriculture & Markets to prepare this Agricultural & Farmland Protection Plan.

2. Consultant

The Town of Batavia retained the consulting team of Stuart I. Brown Associates, a division of LaBella Associates, P.C., based in Rochester, New York, and American Farmland Trust, a national organization with a field office in western New York, to assist with the preparation of the Plan. Brown Associates was the lead consultant and American Farmland Trust assisted with the development of strategies and outreach to area farmers. The consultants conducted research, helped to organize and facilitated public meetings, prepared drafts for Committee review, and prepared the final plan document. Staff from the Genesee County Planning Department attended Committee meetings, provided data and other information, and advised the Committee throughout the process.

3. Steering Committee

The Town appointed a Steering Committee that consisted of farmers, residents and representatives of the Town Board, Town Planning Board, Town staff and the Genesee County Planning Department. Steve Mountain, Town Engineer, facilitated the process on behalf of the Town. The following persons served on the Advisory Committee for the preparation of the Agricultural & Farmland Protection Plan:

- Jill Babinski, Genesee County Planning Department
- Mac McCampbell, O-At-Ka Milk Products
- Paul McCollough, Town Planning Board
- Donna Morrill
- Steve Mountain, Town Engineer
- Gordon Offhaus
- Dan Underhill, Town Councilman
- Clint Worthington, Town Code Enforcement Officer

4. Public/ Landowner meetings

The consultants worked with Town staff to organize and publicize a series of public meetings and workshops. Town staff prepared a mailing list of all farmland owners and sent postcards to encourage their attendance at each of the public events.

Town of Batavia Agricultural & Farmland Protection Plan

- A public informational meeting was held on November 13, 2008 to “kick off” the planning process. Diane Held from American Farmland Trust described the tools and techniques available to local governments to support agriculture and the agricultural economy. Barbara Johnston from Stuart I. Brown Associates presented an overview of the planning process and maps of the agricultural resources in the Town. Public discussion about the issues and opportunities relating to agriculture and farmland was encouraged. At this meeting, participants identified several strengths, weaknesses, opportunities and threats relating to agriculture in the Town. Representatives from Cornell Cooperative Extension of Genesee County and the Genesee County Soil & Water Conservation District contributed their perspectives on how the Town may be able to retain farmland and better support the local agricultural industry. A total of 17 people attended this meeting.
- A panel discussion on Agricultural Economic Development was held on February 12, 2009 at the Town Hall. Panelists included Steve Hyde, Genesee County Economic Development Council; Mac McCampbell, Oatka Milk Products; and Paul Fenton, Fenton’s Produce. The program explored how the many large and small businesses that rely on farms and farmland are integrated into the local, regional, national and international agricultural economy. It also addressed the significance of farming and agriculture-related businesses to the economic well-being of the Town of Batavia and neighboring communities. A total of fifteen people attended this meeting, in addition to the presenters.
- A public workshop presented on Thursday, March 12, 2009 addressed potential zoning changes, how changes in local zoning regulations can help support agriculture, and whether the Town should change zoning density requirements in agricultural areas. Approximately 11 people attended this workshop. Information was presented on the following techniques:
 - Agricultural Protection Zoning
 - Incentive zoning/ Transfer of Development Rights
 - Density averaging/ Cluster development
 - Subdivision and site plan design considerations
- A workshop sponsored by Genesee County on purchase of development rights was held on January 29, 2009. Committee members, farmland owners and the public were encouraged to attend.
- A second public informational meeting was held on September 24, 2009 to provide an opportunity for farmers, landowners and the general public to comment on the recommendations proposed to be included in the draft Plan.

5. Farmer interviews

During the spring of 2009, American Farmland Trust consultants conducted in-person interviews with seven farmers who were identified by the Steering Committee as representative of the farm operations in the Town. The farmers were interviewed about what the Town could do to support agriculture, protect farmland, and plan for the future of farming. Most of the farmers interviewed had farms based

Town of Batavia Agricultural & Farmland Protection Plan

in the Town, while several of them had main farms outside of Batavia, but worked land within the Town limits. Three of the farmers also worked land in other counties.

6. Existing Plans and Programs

Town of Batavia Comprehensive Plan

This Plan will further the recommendations for agriculture and farmland protection that are included in the 2007 Town of Batavia Comprehensive Plan. A summary of the Comprehensive Plan's recommendations in these plans is included in Appendix A.

Agricultural District Program

Provisions in the NYS Agricultural District Program to protect farmers include:

- Agricultural use value assessments
- Protection from local regulations that would restrict farm practices
- Protection from public acquisition of farmland through "eminent domain"
- Protection from nuisance suits (right-to-farm provisions)

Lands within a County Agricultural District are depicted in Map 1.

Genesee County Agricultural & Farmland Protection Plan/ Agricultural & Farmland Protection Board

Genesee County completed a Farmland Protection and Agricultural Development Plan in 2001. A summary of the recommendation in this Plan is included in Appendix A. The Genesee County Agricultural and Farmland Protection Board is responsible for implementing the recommendations of the Farmland Protection and Agricultural Development Plan and ensuring that municipal agricultural plans are consistent with the County's goals and policies.

Genesee County Smart Growth Plan

The Genesee County Smart Growth Plan, prepared in 2001, was designed to encourage the revitalization of villages and hamlet areas and protect valuable agricultural resources. The Plan delineates Development Areas outside of which connections to the Genesee County water system are subject to additional oversight. Provisions are in place to ensure that water hookups are made available when new development is proposed that would result in significant regional economic benefits.

The Town of Batavia currently administers requests for water hookups outside of Development Areas. The boundaries of the Development Areas are reviewed every three years and the next review is scheduled for 2013. The location of Development Areas within the Town of Batavia are depicted in Map 1.

Town of Batavia Agricultural & Farmland Protection Plan

Wellhead Protection Zone

The Town of Batavia's zoning regulations delineate a designated "wellhead protection zone" and include provisions to protect the quality of groundwater of the Tonawanda Creek aquifer (See Map 4). The Town's regulations include standards for the storage of hazardous materials and other activities that may threaten the quality of this significant source of drinking water.

Relevant Agencies and Organizations

The recommended actions in the plan are intended to complement the ongoing activities being carried out by several Federal, State, County agencies as well as private organizations. These agencies include:

- NYS Department of Agriculture & Markets
- Genesee County Soil & Water Conservation District
- Cornell Cooperative Extension of Genesee County
- Agricultural Environmental Management (AEM)
- United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS)

Private organizations active in land conservation and other activities in support of agriculture include:

- Western New York Land Conservancy
- American Farmland Trust
- Genesee County Agricultural Society

Descriptions of these programs and organizations are provided in Appendix B.

7. Approvals

In accordance with the requirements of the NYS Department of Agriculture, the draft Agricultural & Farmland Protection Plan must be approved by the Genesee County Agricultural & Farmland Protection Board and the Town Board before it receives final approval by the NYS Department of Agriculture & Markets. In addition, the Town Board must conduct a public hearing on the Plan. The Town Board held public hearings on January 20, 2010, April 21, 2010 and December 21, 2011 and approved the Plan on December 21, 2011. The Genesee County Agricultural & Farmland Protection Board reviewed drafts at its meetings on December 16, 2009 and November 1, 2011 and approved the plan on November 1, 2011.

B. Community Overview

1. Regional Setting

The Town of Batavia is located in central Genesee County, New York (see Map 2: Regional Setting.) The Town completely surrounds the City of Batavia, which is the County seat. The City of Batavia and adjacent land in the Town form a regionally significant hub for commerce, industry, health care and government services.

The New York State Thruway provides access to the cities of Buffalo, located 35 miles to the west, and Rochester, located 35 miles to the east. Thruway Exit 48 is located in the Town of Batavia immediately north of the City of Batavia. Several State highways -- NYS Routes 63, 5, 33 and 98 -- are also major truck routes that pass through the Town of Batavia and converge in the City of Batavia.

2. Streams and Watersheds

Tonawanda Creek flows through the Town from the southern boundary, through the City and westerly through the western part of the Town. Other significant streams in the Town include Bowen Creek, a tributary of Tonawanda Creek located in the southwest portion of the Town, and Spring Creek, a tributary of Black Creek located east of Oak Orchard Road. Map 3 depicts the streams and watersheds in the Town.

Most of the Town's land area is within the Upper Tonawanda Creek watershed. The northeast portion of the Town drains into Black Creek and the southwest portion drains into Murder Creek.

Tonawanda Creek is one of the sources of drinking water for City and Town residents and it frequently floods. In addition, a large aquifer underlies much of the Town of Batavia. Large areas of the Town contain State or Federally regulated wetlands and/ or are subject to flooding. Map 4 depicts wetlands and flood-prone areas of the Town.

3. Population

The U.S. Census Bureau estimates the total population of the Town of Batavia in 2008 at 5,897. This represents a slight decline from the 2000 population of 5,915 and 6,055 in 1990. However, the number of housing units in the Town increased by 10% from 1990 to 2000, from 2,226 to 2,447. (2000 Census). The average number of persons per household decreased from 2.65 in 1990 to 2.53 in 2000.

Town of Batavia Agricultural & Farmland Protection Plan

4. Land Use

Agriculture is the predominant land use in the Town, with more than one-half of the land area occupied by agricultural uses. A total of 13,571 acres comprise active cropland, representing 44% of the Town's land area.

Approximately 25% of the Town's land area is devoted to residential uses. Residential development includes subdivisions, manufactured home parks, farm houses, and scattered rural residences. A portion of the hamlet of East Pembroke is located along the western boundary of the Town.

Commercial development is concentrated along the State highways to the west, north and east of the City of Batavia. Several "big box" stores and retail businesses are situated along Veteran's Memorial Drive and West Main Street Road west of the City of Batavia. Several hotels are located near the Thruway interchange. Smaller retail and service businesses are found along East Main Street Road and in the Hamlet of East Pembroke.

Two industrial parks developed by the Genesee County Economic Development Center (GCEDC) are located in the Town. Gateway I is located along NYS Route 98 (Oak Orchard Road) just north of the City of Batavia and Gateway II is located along East Saile Drive north of the City of Batavia and west of NYS Route 98. Other industrial development includes a large mining operation southeast of the City of Batavia and a concrete forms plant in the Hamlet of East Pembroke. A portion of the O-At-Ka Milk Products facility is located in the Town southeast of the City of Batavia. In addition, portions of the Pearl Street Industrial Park and the Batavia Industrial Park are located in the Town of Batavia. The GCEDC is in the process of developing an Agricultural Technology industrial park on 331 acres in the Town southeast of the City. Development of a new Medical Technology park is underway east of the City, south of Genesee Community College.

A major detention facility operated by the U.S. Immigration and Naturalization Service (INS) is located northwest of the Thruway interchange. The Genesee County Airport is located in the northeast part of the Town. Genesee Community College is located in the eastern part of the Town just south of the NYS Thruway. The City of Batavia wastewater treatment lagoons are located southwest of the City. Other governmental and institutional facilities are located in the Town include the Town Hall and Highway Garage, the City of Batavia wastewater treatment facility, State Police, and County Highway Department and several churches.

Recreational facilities include: the Town-owned Kiwanis Park, located on the south side of West Main Street Road; the Genesee County Fairgrounds located south of East Main Street Road; Terry Hills Golf Club, a public 27-hole golf course located in the eastern part of the Town; and the privately-owned Area 51 motocross park located on Harloff Road. The Town is working with the City and school district to identify potential sites for additional athletic fields. New athletic fields will be created on a temporary basis on an existing turf farm located in the Town on Bank Street Road northeast of the City of Batavia.

Existing land use by tax parcel is depicted in Map 5.

5. Infrastructure

The Town of Batavia maintains approximately 40 miles of water lines and provides public water service to most residents of the Town. Sanitary sewer service is available in the area between Route 98 and West Main Street Road northwest of the City of Batavia, east of the City along both sides of Routes 5 and 33 and north to the Thruway, and in the Gateway Park areas.

Cable television and broadband internet area available through Time Warner Cable in most areas of the Town. Natural gas is provided by National Fuel and electrical service is provided by National Grid.

C. Agricultural Land Resources

1. Soils

As depicted in Map 6, nearly one-half of the Town's land area consists of prime agricultural soils. Some areas consist of wetlands that have been drained, forming highly productive black "muck" soils. Other areas would constitute prime soils if drained.

Prime farmland soils have been identified by the USDA Natural Resource Conservation Service (NRCS) and are defined as follows:

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, range-land, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

Town of Batavia Agricultural & Farmland Protection Plan

Table 1: Agricultural Soils – Town of Batavia

Agricultural Soils	Acres	% of Total
Prime Farmland	13,065.7	42.1%
Muck	2,936.2	9.5%
Prime Farmland if drained	5,227.4	16.8%
Other Soils	9,794.7	31.6%
	31,023.9	100.0%

SOURCE: Soils data provided by the USDA Natural Resources Conservation Service; Acreages calculated from GIS shapefiles.

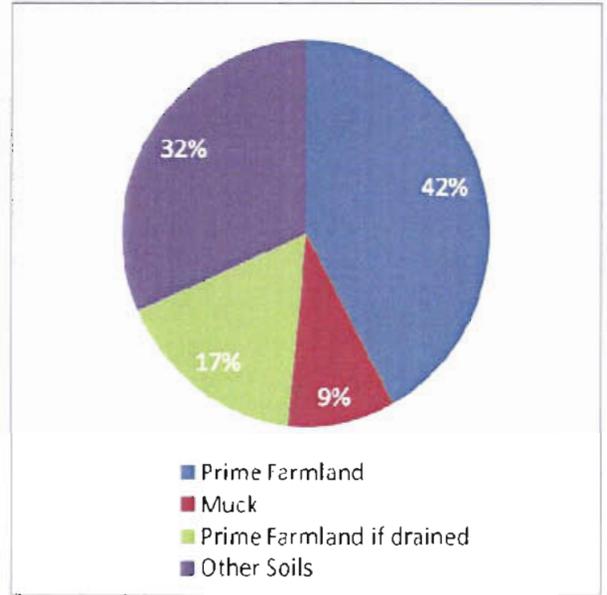


Table 2 on the following pages lists the soil types found in the Town, the number of acres in each soil type and whether the soil is classified as Prime Farmland, Prime Farmland if Drained, or Other Soils.

2. Cropland

For the purpose of this Plan, the Town of Batavia defines “farm” to be consistent with the definition of “Land used in agricultural production” contained in the NYS Agricultural Districts Law (AGM Article 25-AA, §301):

“not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more; or, not less than seven acres of land used in the preceding two years to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more.”

The complete text of the law is provided in Circular 1150, included in Appendix C.

A total of 13, 571 acres in the Town of Batavia is active cropland.¹ This represents 44% of the total land area of the Town. Map 7 depicts the extent and location of these lands. Virtually all of the land in the Town that is not wetland or developed is in active agricultural use.

¹ SOURCE: Farm Service Agency, from data provided by the Genesee County Soil & Water Conservation District (SWCD). Acreages calculated from GIS shapefiles.

Table 2: Acreages by Soil Type – Town of Batavia

Prime Farmland	
MUSYM	Acres
AnB	28.3
ArB	648.2
CeA	329.7
CeB	1,218.2
CIB	115.5
CmB	99.1
DuB	358.8
EIB	22.1
GnA	508.2
GnB	305.1
Hf	205.6
HIA	61.9
HIB	122.9
LmA	992.7
LmB	617.3
MoB	937.9
NuB	1.3
OnA	388.9
OnB	1,501.5
OsB	381.2
PbB	34.8
PhA	796.8
PhB	1,393.4
PIA	12.8
PIB	159.2
PsA	327.5
PsB	283.3
RoA	310.6
SeB	8.2
Te	345.3
WsB	549.3
Total:	13,065.7

Prime Farmland if drained	
MUSYM	Acres
AnA	39.3
ApA	384.4
ApB	23.6
DaA	83.0
FpA	192.5
FrA	5.0
KnA	204.9
MhA	369.8
MhB	1,856.3
MnA	130.4
NeA	101.0
NgA	291.4
Oa	287.9
OdA	19.8
OdB	43.9
OvA	592.0
OvB	552.4
Wk	49.9
Total:	5,227.4

Muck	
MUSYM	Acres
Br	174.8
CaA	421.4
CbA	633.2
Ed	12.0
Fo	214.5
Le	727.9
Pd	733.5
Pn	19.0
Total:	2,936.2

Grand Total 31,023.9

Other Soils	
MUSYM	Acres
Ad	306.8
ArC	45.0
AsD	14.5
AsE	48.4
AuA	319.1
AuB	140.5
BeB	775.3
BeD	131.0
BeE	32.1
CcA	265.9
CeC	256.9
CgC3	62.6
CgD3	70.4
CmC	29.1
DuC	63.8
GP	86.8
HaA	271.2
IoA	1,069.0
La	153.3
Ld	854.0
LoA	364.4
Ma	680.6
MoC	975.7
MoD	145.1
NuC	0.6
OnC	332.5
OnD	48.9
OrE	11.3
OsC	49.8
PbC	6.4
PbD	2.7
PhC	632.8
PkD	182.4
PkE	34.8
PIC	73.0
ReB	9.1
RmB3	5.6
RsA	185.8
Ru	74.2
ShC3	12.1
ShD3	1.5
SIE3	1.2
StA	37.3
Uf	96.6
Um	17.4
W	494.2
Wy	323.0
Total:	9,794.7

Town of Batavia Agricultural & Farmland Protection Plan

Agricultural uses in the Town of Batavia include large-scale vegetable, grain and dairy farms, as well as small and part-time livestock and other farms. More than one-half of the land area in the Town is occupied by agricultural uses. Map 8 depicts the location of parcels classified by the Town Assessor as agricultural.

3. Land to be Protected

The Town has identified all actively farmed land that consists of high quality agricultural soils as suitable for long term protection.

GIS maps were utilized to identify those lands in the Town that are both actively farmed and consist of high quality agricultural soils (prime, prime if drained, and muck.) A total of 10,273 acres are designated as suitable for long-term protection for agricultural uses.

The following table summarizes the agricultural soil classifications of land suitable for long-term protection in the Town of Batavia. (See also Map 9.)

Actively Farmed Land by Soil Suitability (acres)	Prime	Prime if Drained	Muck	Total
Total	7,565	2,425	283	10,273

Voluntary preservation techniques, such as public purchase of development rights or private sale of conservation easements, are encouraged for all areas designated as suitable for long-term protection. Areas proposed to be included in a new Agricultural Production Zoning District are identified in Appendix F.

Criteria for Long-term protection

The following criteria will guide the selection of specific parcels for permanent protection:

- Proportion of high quality (prime) agricultural soils
- Long term viability, based on the size of the farm, likelihood that the farm will continue to operate over succeeding generations, and farm management
- Extent to which the farm land helps to protect significant natural resources
- Extent of imminent or significant development pressure
- Landowner commitment to continued agricultural production

Town of Batavia Agricultural & Farmland Protection Plan

4. Conversion Pressure/ Potential Consequences of Conversion

Farmland in the Town of Batavia faces pressure for conversion, to varying degrees, from future residential, commercial, industrial, and institutional development.

Residential

Residential development during the past several years has occurred both as residential subdivisions and in scattered locations on individual lots. Map 10 depicts the location of residences constructed between 2000 and 2008 in relation to active cropland.

Four residential subdivisions have been established or expanded: Meadow Crest Estates (Valle Drive, Woodland Drive, Edgewood Drive) just west of the City of Batavia; Bennett Heights, north of the City and east of State Street Road; Stringham Subdivision (Stringham Drive, Violet Lane) east of the City and north of Clinton Street Road; and Rolling Acres (Haven Lane, Rolling Circle Way) west of the City and south of East Main Street Road. All of these residential subdivisions are within designated Smart Growth Development Areas and are within areas designated for future residential use in the 2007 Town of Batavia Comprehensive Plan. However, they also adjoin active farmland. Expansion of these subdivisions would likely require conversion of farmland.

Scattered residential development in farming areas also has the potential to impact agricultural operations. While such development does not require large areas of land, the establishment of residential uses near farms creates the potential for conflict between farms and residential neighbors. Fragmentation of farm fields makes it more difficult and less efficient to operate large farm equipment. Neighbors may complain about noise, odors and slow farm equipment on the roads. Such development represents a considerable threat to the future viability of agriculture in the Town of Batavia.

Commercial/ Industrial

The Town of Batavia has numerous assets that make it very attractive for commercial development, including Thruway Exit 48 and several State highways that converge in the City of Batavia. The Town has encouraged such development, particularly west of the City, with road and utility expansions. The Town has zoned additional areas for commercial development along State highways and near the County airport. (See Map 11.) As some of this land is currently farmed, development as proposed would result in the conversion of farmland.

The Town and the Genesee County Economic Development Center (GCEDC) is encouraging new industrial, office and/or commercial development in the Gateway I and II industrial parks, the Medical Technology Park and the Agri-Business Industrial Park. Development in several of these areas would result in the conversion of farmland.

A large area of farmland located west of Route 98 and north of the City of Batavia was rezoned "Planned Business Development" in 2008 at the request of the landowners and as recommended in the Town's 2007 Comprehensive Plan. This land continues to be farmed. Although the current owners have

Town of Batavia Agricultural & Farmland Protection Plan

obtained information about purchase of development rights and private easements, none have expressed interested in pursuing long term protection of this site for agricultural use.

The Planned Business Development regulations for this site prohibit residential development and small scale commercial development, thereby eliminating the short-term threat to farming of piecemeal development. Permitted uses in this district are limited to agriculture and one dwelling for each of the eight parcels of record that comprise the 600-acre zoning district. Conversion of this farmland would only occur if a coordinated development plan is presented for a minimum of 100 acres, adequate utilities are available to the site and the proposed development represents a significant regional economic development opportunity. Town Planning Board approval is required to authorize development of this site, subject to an acceptable site plan. The regulations for this zoning district are included in Appendix D.

Institutional/ Public

The expansion of the Genesee County Airport required the condemnation of agricultural land by eminent domain. The Federal Immigration Detention Center west of Gateway I Industrial Park along NYS Route 98 also was constructed on former agricultural land. There is some concern among landowners that these institutions may expand in the future and take farmland by eminent domain. No such plans have been indicated to date by the institutions involved.

Recreation

The Town recently purchased 42 acres of farmland along the south side of Galloway Road, as well as the former Village of Oakfield water supply facilities, for future recreational use. The Town intends to develop the area into a passive recreation park with picnic areas and walking trails.

A private landowner has been working with various organizations to lease land that is currently used as a turf farm for athletic fields. This area is located north of the NYS Thruway and east of Bank Street Road. Such use may be temporary, allowing the land to be used for agricultural purposes in the future.

Mining

Some of the farmland in the Town of Batavia is suitable for sand and gravel mining, and there are active mines in the Town. Some farmland may be converted to mining uses, as mining (commercial excavation) is a permitted use in the Town's Agricultural/ Residential zoning district.

5. Summary of issues relating to farmland retention

Conversion of Farmland to Development/ Competition for land

New residential or commercial development has the potential to convert high quality farmland to non-farming uses. Such conversions may result in increased neighbor conflicts in addition to the loss of land

Town of Batavia Agricultural & Farmland Protection Plan

for farming. The land that is most suitable for development is typically the same well-drained land that is best for agriculture.

Farm-neighbor conflicts become more frequent when new residential development is constructed adjacent to active farmland. In addition, efficiency of farming is affected when the subdivision of farmland reduces the amount of contiguous land available for farming.

Retention of farmland is especially challenging in those areas of the Town that are experiencing development pressures. Land that is close to the NYS Thruway interchange, in particular, has good potential for high-intensity industrial, commercial or other economic development uses. Individual landowners may choose to convert land to a more intensive use rather than pursue techniques that would preserve the land for continued agricultural use.

Landowner Equity

Frequently, retiring farmers will sell land for development in order to finance their retirement, as the price paid by developers is often higher than what the land is worth for farming. From the farmland owner's perspective, any alternative to selling land for development would need to offer a similar financial return.

Programs such as the Purchase of Development Rights (PDR) are designed to compensate farmland owners for placing a conservation easement on their property that restricts future development. The land may be sold with the restriction in place. The owner would receive the value of the land when sold for agricultural use in addition to the value of the development rights. (See "Tools and Techniques" section of this chapter.)

Floodplains

In the Town of Batavia, large areas of land are susceptible to periodic flooding. Many of these lands, such as large areas within the Tonawanda Creek floodplain, are highly suitable for agriculture as development opportunities are limited due to the risk of flooding.

Drainage

State and Federal wetlands and wildlife regulations sometimes affect the ability of a farmer to utilize land for agricultural production. For example, beavers are protected by the NYS Department of Environmental Conservation (NYS DEC) and can create wetlands by damming creeks with felled trees. Farmers may not eliminate beavers from their property without securing permission from the NYS DEC. If the damming continues, the land may be categorized as a protected wetland by NYS DEC or the Army Corps of Engineers. As such, farming activities may be limited.

Some of the most productive agricultural land in Genesee County – the rich, black "muck" land -- was created by draining wetlands. Drainage projects were subsidized by State and Federal government agencies to create this high quality farmland. However, as current policies favor protection of wetlands for wildlife habitat, State and federal funding for drainage improvements is scarce.

Town of Batavia Agricultural & Farmland Protection Plan

The Genesee County Soil & Water Conservation District (SWCD) regularly assists landowners with the design of drainage projects within the Town of Batavia. At this time, no specific projects have been identified in the Town.

Infrastructure Extensions

The extension of water and, especially, sewer lines into agricultural areas increases the attractiveness of these areas for residential development. New residential development in farming areas increases the potential for neighbor conflicts and can result in conversion of land from farming to residential uses.

The extension of water lines into agricultural areas can also benefit farm operations. By providing a reliable source of water, farm operations can readily comply with requirements for “Good Agricultural Practices” that have become necessary to sell produce to certain markets. In addition, residences served by public water are less susceptible to potential contamination of groundwater from manure or pesticide usage than those with private wells.

Genesee County Smart Growth Plan

The Genesee County Smart Growth Plan addresses the pressure to convert land from agricultural uses by managing connections to its public water system. The Smart Growth Plan requires that new non-agricultural development outside of designated Development Areas and located along water mains constructed by or funded through Genesee County apply for a special approval to connect to the County-operated water system. However, the Smart Growth Plan will permit hookups where new development would result in regionally significant economic benefits. In addition, water extensions funded by public agencies such as USDA Rural Development require that the municipality prohibit non-agricultural hookups while the land is within a County Agricultural District.

Fiscal Benefits of Farmland Protection

Communities often promote additional development in order to increase the tax base. However, new residential development, in particular, increases the demand for municipal services such as schools and infrastructure. Recent “Cost of Community Services” studies have shown that new housing requires \$1.19 in services for every \$1.00 raised in taxes. In contrast, farmland requires only \$0.37 in services for every \$1.00 it contributes in taxes. As a result, municipalities may find fiscal benefits to retaining farmland in a community, even if they incur costs to achieve permanent protection of farmland.

D. Economic Value of Agriculture

1. Production Agriculture – Batavia and Genesee County

Agriculture is the biggest industry in Genesee County. In 2007², the market value of agricultural products sold from Genesee County farms was \$177.81 million. This represents an increase of 42% since 2002. Genesee County ranks 4th in New York State in the value of agricultural products sold.

The leading products sold were milk and other dairy products from cows followed by vegetables. The following table summarizes the market value of leading products.

**Market Value of Agricultural Products Sold
Genesee County -2002**

Product	2007 Sales (\$ million)	% of Total	State Rank
Dairy Products	\$95.895	54	5
Vegetables	\$43.630	25	1
Cattle & Calves	\$13.302	13	5
Grains & dry beans	\$14.012	7	7
Hay & other crops	\$5.267	2	15
Other products	\$5.695	4	
Total:	\$124.938		4

SOURCE: 2007 Census of Agriculture

The 2002 Census of Agriculture reported a total of 70 farms located in the Batavia zip code (14020)³. This represents 12% of all farms in Genesee County. Of these farms, 52 (74%) reported sales of less than \$50,000, 12 (17%) reported sales of \$50,000 to \$249,999 and 6 (9%) reported sales of \$250,000 or more. A total of 26 farms were less than 50 acres in size while four were larger than 1,000 acres.

The direct income generated by farming is only a fraction of its economic impact on Genesee County and its communities. Each dollar earned or job created by dairy or crop farming generates an additional two jobs or dollars in other sectors of the economy. Farming has among the highest employment and “value added” “multipliers” of any industry.⁴

² SOURCE: 2007 Census of Agriculture

³ 2007 statistics for individual zip codes have not yet been released

⁴ SOURCE: “Policy Issues in Rural Land Use,” Vol. 9, No. 2, December 1996, Cornell Cooperative Extension, Contributed by Kevin Jack, senior economist, New York State Department of Labor, and Nelson Bills, and Richard Boisvert, professors, Department of Agricultural, Resource, and Managerial Economics.

2. Markets for Farm Products

Farms in the Town of Batavia sell their products to local, regional and national processors, wholesale operations, and directly to consumers. The following narrative describes these markets.

Processing

O-At-Ka Milk Products, which manufactures dairy products at its facility located in mostly in the City of Batavia and partly in the Town of Batavia, provides a local market for local and regional dairy farms. Other dairy farmers in the area work with cooperatives such as Dairy Farmers of America (DFA) and Upstate Niagara Farms and some market directly to processors and distributors.

O-At-Ka is the largest agribusiness in Batavia. The facility is owned by two dairy cooperatives -- Upstate Niagara Cooperative, Inc. and Dairy Farmers of America, Inc. The facility includes a headquarters building, research and development. According to the company website, O-At-Ka manufactures a wide variety of dairy and non-dairy based products including bulk cream and milk concentrate, butter, milk powder, condensed milk, infant formula, high protein drinks, ready-to-drink beverages, pet products and milk replacement beverages. Products are marketed worldwide.



SOURCE: O-At-Ka Milk Products website: www.oatkamilk.com

Town of Batavia Agricultural & Farmland Protection Plan

Two former Birdseye frozen vegetable processing plants located in Genesee County (Oakfield and Bergen) and one in nearby Brockport were sold in 2006 to Allen Canning and continue to process peas, corn, beans and carrots.

Ethanol plants, including one that was recently constructed in the Town of Shelby in Orleans County, were expected to provide additional nearby markets for locally grown corn. However, the future market for ethanol is uncertain. Several proposed plants have been cancelled and others have reduced their output.

Corn and grain are sold to brokers who market the products to processors.

Fresh Market

Several retail chains purchase fruits and vegetables directly from farmers in the Town of Batavia and Genesee County. Other farmers sell produce to brokers and wholesalers.

Direct Marketing

A seasonal Farmers Market has been established in the parking lot of Batavia Downs, located immediately west of the City of Batavia.

Several farm markets and roadside stands, operated by individual farmers, are located in the Town. Farm products for sale at these businesses include vegetables in season, herbs, cut and potted flowers, popcorn, and meats.

Cornell Cooperative Extension of Genesee County has published a guide to agritourism that identifies many of the direct market outlets in Genesee County. Map 12 depicts the direct market outlets in the Town of Batavia that are listed in this guide. A summary of direct market operations located in the Town of Batavia is provided in Appendix E.

3. Issues relating to agriculture as a business

The retention of farmland requires that agriculture continue to be profitable as a business. Farmers face numerous challenges and uncertainties, many of which are outside of the control of local government. These range from the weather to market conditions, federal immigration policies, price supports and environmental regulations. This section summarizes the issues that have been raised by farmers and agribusiness representatives at public meetings and in interviews during the planning process, with a focus on those that can be addressed by local, county or State government entities.

Labor Force

Many local farmers rely on immigrant and/or migrant labor to harvest crops, as resident labor has not been available. Improvements to immigration laws and enforcement policies are needed to assure a reliable workforce for local farmers. Housing is needed for farm labor. Such housing needs to be accommodated in local land use regulations.

Town of Batavia Agricultural & Farmland Protection Plan

Property Taxes

Most of the farmland in the Town of Batavia is eligible for agricultural use assessments as authorized by the NYS Agricultural Districts Law. Farmland owners must apply for an exemption each year. While most farmers in the Town receive the exemption, some owners of land that is rented to farmers may not be aware that they are also eligible. Additional outreach may be needed to inform property owners of the availability of the exemption and remind them of the deadline to apply.

The agricultural use exemption applies to Town, County and school district taxes. However, Fire Districts must take action to apply the exemption to agricultural operations. The governing body of the fire district -- whether it is the Town Board in the case of the Batavia Fire District or the Board of Commissioners in the case of the Pembroke Fire District -- must pass a resolution that authorizes the use of agricultural use values for the determination of fire district taxes.

Infrastructure

While the extension of water lines may encourage additional residential development in farming areas, public water service may be necessary to support farm operations. For example, "Good Agricultural Practices (GAP)" requirements may specify that fresh produce be washed by water from a public or otherwise certified source. Livestock operations require large quantities of water for consumption by the animals and for cleaning. While most of the Town of Batavia is already served by public water service, extension of such service to support agricultural operations may be needed in the future.

The extension of water lines into agricultural areas, while they may be beneficial to agricultural operations, encourages additional residential development. Such development can result in conflicts between farming and non-farm neighbors, such as neighbor complaints about noise and odors and trespassing on farm fields. Such conflicts can result in a financial burden on farmers if they are required to defend themselves legally. Even if such cases are not pursued in courts of law, such conflicts make it more difficult for farmers to conduct the business of farming.

Business Diversification

Some farm operations have established complementary businesses to attract customers and diversify their income. For example, agritourism operations may include recreational activities such as hay rides. Farms may produce craft items and sell them directly to the public. Such business diversification should be accommodated by local land use regulations.

Capital for Expansion

Farming in the Town of Batavia and Genesee County contributes to the economic viability of the region. Farms often require capital to finance expansions. The Town may be able to partner with farm enterprises to obtain funding for business expansions that would lead to the creation of new jobs.

E. Tools and Techniques

Several tools and techniques are available to local governments, individual landowners and private organizations to help meet the goal of retaining farmland and encouraging the continued economic viability of agriculture.

1. Land Conservation Through Conservation Easements

Private, voluntary conservation easements

Landowners may place farmland under a permanent conservation easement to be held and monitored by a private land trust or other non-profit organization. The donation of easements may be helpful to some families in estate planning as the value of the easement can be claimed as a tax deduction.

Public purchase of development rights

Purchase of Development Rights (also referred to as "Purchase of Agricultural Conservation Easements" (PACE)) is a program which compensates owners of farmland in exchange for an agreement to keep land from being developed. The value of development rights is calculated as the difference between the value of the land for agricultural purposes and its value for development. A permanent easement restricts development on the parcel. Placing an easement on a property does not affect the ownership of the parcel. The owner may continue to farm the parcel, and/or sell it. The easement holder is responsible for monitoring the property to ensure that it is not developed.

The advantages of a purchase of development rights program include:

- Protects agricultural land on a permanent basis
- Participation among landowners is voluntary

Disadvantages include:

- High cost
- Time and administrative work involved; landowner likely to wait 1-3 years for purchase to "close"
- Requires on-going monitoring by the easement holder

Temporary/ Term Easements

Some municipalities have established programs that lower property taxes in exchange for a landowner's commitment not to develop properties for a specified period of time. A landowner who breaks the terms of the easement pays a fine that goes into a fund for the purchase of land and development rights.

2. Zoning Techniques

Agricultural Protection Zoning

Agricultural Protection Zoning involves the creation of a zoning district that designates farming as the primary, preferred land use. Such a district targets the most productive soils and large contiguous areas of active farms. The minimum lot size is based on the size of the smallest viable farm unit -- such as 25 to 40 acres.

Regulations for this district typically limit non-agricultural development. Such a district may allow farm-related businesses and home-based businesses. Agricultural zoning districts may incorporate "density averaging" or "sliding scale" provisions to limit the number of dwellings permitted. The regulations may also specify maximum (as well as minimum) lot sizes for non-farm development.

Agricultural protection zoning may be combined with purchase of development rights, transfer of development rights or incentive zoning. This technique has the following advantages and disadvantages:

Advantages:

- Effective in limiting non-farm development and reducing conflicts between agriculture and non-farm neighbors.
- Can protect large areas of farmland at no cost to the public

Disadvantages:

- May reduce the market value of land.
- Is not permanent. Zoning can be changed by the Town Board.
- Limits resale options for farmland owners

Density averaging

Density averaging allows residences to be built on smaller lot sizes than typically permitted by zoning, provided that the average density of the original parcel is not increased. For example, if zoning requires a maximum density of 1 dwelling per 10 acres, a farm of 100 acres would be entitled to develop up to 10 dwelling units. If the 10 dwellings were built on a total of 20 acres of the parcel (with an average lot size of 2 acres), 80 acres would remain open.

The smaller lots should be sited in locations that are least suitable for farming, and that offer the most appealing views of open space and natural resources. The design of a proposed clustered subdivision should include buffers between the new residential development and the remaining farmland. A conservation easement would be placed on the remaining 80 acres to prevent future development.

Town of Batavia Agricultural & Farmland Protection Plan

Advantages

- Relatively simple to administer through the subdivision review process
- Provides for permanent protection of farmland or open space
- Landowner retains full development potential (number of building lots)

Disadvantages

- Results in non-agricultural development in close proximity to farming.
- May be more appropriate for open space preservation and retention of rural character than for retention of agricultural land.

Incentive zoning

Incentive zoning may be used to encourage the private acquisition of agricultural conservation easements (development rights) to land located in designated conservation areas. A developer would be authorized to purchase agricultural conservation easements or contribute toward a public fund to purchase such easements (development rights). In exchange, the developer would be permitted to develop additional units in suitable areas designated by the Town.

The technique is fairly easy for the Town to administer, as the developer and the owner of the farmland or open space arrange the transaction privately. Once the developer demonstrates that land will be preserved, he is entitled to the density bonus on the property to be developed.

This technique has virtually no cost to the Town, and would result in the permanent protection of farmland or open space through a conservation easement. However, the designation of areas suitable for higher density needs to be balanced with an analysis of the carrying capacity of local infrastructure. Infrastructure analysis needs to be required at an early stage in the development review process to identify any constraints to the utilization of incentives.

In addition, a specific formula is needed. For example, if a developer purchases the development rights to a 50-acre parcel in the Agricultural Residential zoning district, where zoning requires 20,000 square feet per dwelling, the developer would be entitled to a bonus of up to 100 dwelling units. If the bonus density were applied to a 50-acre parcel in the R District, where 20,000 sq. ft. per dwelling unit is also required, the maximum number of units permitted would be approximately 200 instead of 100. The actual number of additional units permitted would need to be determined based on the actual number of lots that could be accommodated on the parcel in the AC district. This number would be determined upon review of a conceptual lot layout that shows proposed streets and excludes any undevelopable land.

Advantages

- Flexibility in administration
- Can result in permanent protection of farmland if agricultural easements are provided as an amenity in exchange for higher density of housing

Town of Batavia Agricultural & Farmland Protection Plan

- Allows conservation easements to be purchased privately

Disadvantages

- Requires designation of an area within which higher densities can be sustained.
- Depends upon a housing market that would support the additional units

Transfer of Development Rights (TDR)

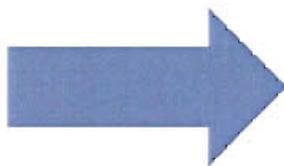
Municipalities are authorized by Section 261-a of NYS Town Law to establish Transfer of Development Rights (TDR) provisions in their zoning regulations. Such provisions encourage owners of land in designated conservation or “sending” areas to voluntarily sell their development rights for use in land located in designated “receiving” areas. Developers who propose projects within the “receiving” areas are entitled to develop at a higher density than would otherwise be permitted by zoning.

Transfer of Development Rights provisions need to establish the locations of the sending and receiving areas, specify how many additional dwelling units may be permitted in the receiving tract and establish procedures to administer the transfer and enforce the conservation provisions. The process results in the same conservation through easement and additional development as in the above example for incentive zoning. The main difference is that the Town buys the development rights instead of the developer. For example, the owner of 50 acres in Batavia’s Agricultural Residential zoning district, which allows one house per 20,000 square feet, may sell the 100 development rights attached to this property to develop an additional 30 dwelling units on land in the MD or HD district. With TDR, the number of dwelling units permitted on a 10-acre parcel in the HD district would increase from 35 to 65.

- The Town may consider requiring TDR as a condition of approving a townhouse or senior housing development in the MD or HD districts that proposes a higher density of development that would otherwise be allowed.



50 acres of farmland in the AR zoning district yields 100 development rights



With TDR, the number of dwelling units permitted on a 20-acre parcel would increase from 40 to 140 in the R district or from 80 to 180 in the HR district.

3. Subdivision Design

When new lots are created in agricultural areas, farmland may be lost and the potential for conflicts between the new residential development and the remaining farmland is increased. Design considerations can minimize the potential for conflict. Such considerations include:

- Incorporate buffers between the residences and adjoining farmland. Such buffers should be part of the design of the residential development.
- Avoid disturbing agricultural infrastructure such as access roads and drainage facilities

“Conservation subdivisions,” also known as density averaging or clustered subdivisions, can result in the retention of farmland for agricultural use by increasing density on a portion of the parcel. This technique works best when the zoning district requires very low densities of development. The example on the following page shows how this technique might work in a municipality with maximum densities of 2-3 acres per dwelling. (The Town of Batavia requires 20,000 sq. ft. per dwelling in the existing Agricultural Residential zoning district.)

4. Infrastructure Management

Tools available to municipalities to minimize the impacts of sewer and water line extensions on agricultural land include the Notice of Intent process and lateral restrictions.

Notice of Intent Process

Section 305 of the Agricultural Districts law requires local governments, before extending a water or sewer line that would serve non-farm structures within an Agricultural District, to file a preliminary and a final Notice of Intent with the NYS Department of Agriculture and the County Agricultural & Farmland Protection Board. The law states:

Any ... local government ... which intends to construct, or advance a grant, loan, interest subsidy or other funds within a district to construct, ... water or sewer facilities to serve non-farm structures, shall use all practicable means in undertaking such action to realize the policy and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable minimize or avoid adverse impacts on agriculture in order to sustain a viable farm enterprise or enterprises within the district.

HYPOTHETICAL Farm-Sensitive Subdivision with Density Averaging



30 acres
Zoning requires 3 acres per dwelling
Up to 10 lots allowed

66.7 acres
Zoning requires 2 acres per dwelling
Up to 33 lots allowed

Restrictions for stream corridors (25' buffer), small wetlands (compliance with US Army Corps of Engineers requirements) and woodlots (limit removal of mature woodlands) also apply. Assume parcel would accommodate 30 lots as a conventional subdivision.

Town of Batavia Agricultural & Farmland Protection Plan

The Notice of Intent (NOI) must set forth:

- A description of the proposed action and its agricultural setting
- The agricultural impact of the proposed action, including short-term and long-term effects
- Any adverse impacts on agriculture that cannot be avoided
- Alternatives to the proposed action
- Any irreversible and irretrievable commitments of agricultural resources which would be involved in the proposed action
- Mitigation measures proposed to minimize the adverse impact of the proposed action on the continuing viability of farms within the district
- Any aspects of the proposed action which would encourage non-farm development

A preliminary notice must be filed before the municipality issues a determination of significance pursuant to the State Environmental Quality Review Act (SEQR). The final notice must be filed at least 65 days prior to the construction or advancement of public funds. The commissioner has 45 days from receipt of the final notice to determine whether the action may have an unreasonably adverse effect on farm viability, and may take an additional 60 days to review the proposed action and issue findings.

The commissioner of agriculture may propose reasonable or practical alternative actions that would minimize or avoid the adverse impact of the proposed action on agriculture. The municipality or funding agency may either accept the proposed alternative or certify that other actions have been taken to minimize impacts on agricultural operations.

Lateral Restrictions

Often, as an outcome of the Notice of Intent process, a municipality will adopt a resolution that restricts hookups for non-farm structures to a new water or sewer line that extends into an Agricultural District. Typical language for such a resolution is:

LATERAL RESTRICTIONS RESOLUTION

WHEREAS, the [governing body of municipality] has created the [name of water district] pursuant to Town Law for the express purpose of providing public water supply to residents along [geographic extent of water district]; and

WHEREAS, part of the land area within [name of water district] is also within [name of Agricultural District] and

Town of Batavia Agricultural & Farmland Protection Plan

WHEREAS, the Town Board has filed a Notice of Intent to Undertake an Action Within an Agricultural District to evaluate the impact of providing a source of public water supply within this area on lands within [name of Agricultural District]; and

WHEREAS, the New York State Department of Agriculture and Markets ("Department") has expressed concern about the potential adverse impact that said public water supply is likely to have on agriculture within the Agricultural District,

NOW THEREFORE BE IT RESOLVED, that the Town Board, in recognition of the concerns that have been raised, hereby resolves to adopt the "Lateral Restriction - Conditions on Future Service" specified by the New York State Department of Agriculture and Markets as follows:

Lateral Restriction - Conditions on Future Service

The [municipality] imposes the following conditions, as warranted or recommended on the management of water/sewer lines located along [location] within an agricultural district:

- (1) The only land and/or structures which will be allowed to connect to the proposed waterline or sewer within an agricultural district will be existing structures at the time of construction, further agricultural structures, and land and structures that have already been approved for development by the local governing body prior to the filing of the Final Notice of Intent by the municipality.

Land and structures that have been approved for development refer to those properties/structures that have been brought before a local governing body where approval (e.g., subdivision, site plan, and special permit) is needed to move forward with project plans and the governing body has approved the action. If no local approval is required for the subdivision of land and/or the construction of structures, the municipality accepts the limitation under Public Health Law §1115 that defines a "subdivision," in part, as "any tract of land which is divided into five or more parcels." Water and/or sewer service will not be extended to the fifth and subsequent parcels where no local approval is required and the land is located within a county adopted, State certified agricultural district.

- (2) If a significant hardship can be shown by an existing resident, the lateral restriction to the resident's property may be removed by the municipality upon approval by the Department. It is the responsibility of the resident landowner to demonstrate that a hardship exists relative to his or her existing water supply or septic system and clearly demonstrate the need for public water or sewer service. The municipality shall develop

Town of Batavia Agricultural & Farmland Protection Plan

a hardship application to be filed with the municipality, approved by the County Department of Health, and agreed to by the Department of Agriculture and Markets.

- (3) If it can be demonstrated to the Department's satisfaction that the landowner requested the county to remove his or her land from an agricultural district at the time of district review and the county legislative body refused to do so, lateral restrictions may be removed by the municipality if the Department determines that the removal of the restriction for the subject parcel(s) would not have an unreasonably adverse effect on the agricultural district.

- (4) If land is removed from a county adopted, State certified agricultural district and the district has been reviewed by the county legislative body and certified by the Commissioner for modification, lateral restrictions imposed by the municipality are no longer in effect for the parcels of land that have been removed from the agricultural district.

- (5) Hydrants and valve boxes must not be placed directly in agricultural fields.

The restriction on hookups would apply to non-agricultural structures for as long as the property is located within an Agricultural District.

Town of Batavia Agricultural & Farmland Protection Plan

5. 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 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 also 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.

While agricultural use assessments are applied automatically to property taxes levied by municipalities and school districts, fire districts must “opt in.” To do so, the governing body needs to pass a resolution agreeing to utilize agricultural use assessments.

- 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 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.

6. Local “Right to Farm” Law

Several municipalities in New York State have passed local “Right to Farm” laws. Such laws typically establish a town policy in support of farming, define “generally accepted agricultural practices,” and affirm a farmers right to employ such practices. The laws also include a requirement that purchasers of

Town of Batavia Agricultural & Farmland Protection Plan

property within the town be notified of the policy of encouraging farming, and that farm practices may include odors, noise and other activities.

A “grievance” procedure is established to resolve complaints between farmers and non-farm neighbors. A local grievance committee may be formed to hear and resolve complaints. Such a committee should include local farmers as well as non-farm representatives. Municipalities may appoint an existing committee, such as the Conservation Advisory Council or Planning Board, to act as the Grievance Committee. In some counties, the Agricultural and Farmland Protection Board may take on the responsibility of handling local grievances under the “Right to Farm” law.

A new committee would need to follow the requirements of the NYS Open Meetings Law and schedule and advertise its meetings in advance.

F. Strategies and Recommended Actions

The Town of Batavia can help to retain farmland for agricultural production and the economic benefits of agriculture by:

- 1) revising land use regulations
- 2) encouraging the permanent protection of land through conservation easements, and
- 3) supporting local agricultural and related businesses.

1. Revise Land Use Regulations

a. Create an Agricultural Production Zone

As residential and other development may compromise the continued viability of agriculture in the the Town, zoning regulations to limit such development are recommended. The Town should establish a zoning district that establishes agriculture as a priority use and limits the extent of non-agricultural development. The zoning district should include a significant portion of the lands identified by the Town as suitable for long-term protection for agricultural use, consistent with the Town’s long-range community development plans. Draft regulations for consideration by the Town Board, including a map of lands to be included in such a district, are included in Appendix F.

The proposed regulations include the following provisions:

- Establish agriculture as the preferred use
- Set an appropriate density for residential development
- Accommodate business diversification on farms and farm labor housing
- Minimize fragmentation of farmland.

The number of non-farm lots that can be created by one “parent” parcel in existence on January 1, 2010 is established by the following “sliding scale.” If the parent parcel includes a dwelling, such dwelling is included in the number of residential lots permitted to be associated with that parcel.

Size of Lot	Permitted number of non-farm parcels
Smaller than 10 acres	1
10 – 49 acres	2
50 – 74	3
75 – 99	4
Each additional 25 acres	1 additional

Town of Batavia Agricultural & Farmland Protection Plan

Time Frame:	Immediate (within one year)
Responsible Agency:	Town Board
Estimated Cost:	\$500-\$1,500 for attorney review, if needed
Potential Funding Sources:	Town Board budget; Ag. & Markets grant

b. Modify existing zoning provisions as identified in the Zoning Audit (See Appendix G)

- Modify zoning to better accommodate farmworker housing, farm markets and roadside stands
- Modify zoning to remove provisions that may unreasonably restrict standard farm practices
 - Animal waste storage
 - Public stables
- Incorporate additional protections for farming and farmland in subdivision regulations

Time Frame:	Immediate (within one year)
Responsible Agency:	Town Board
Estimated Cost:	\$200-\$1,000 for attorney review, if needed
Potential Funding Sources:	Town Board budget; Ag. & Markets grant

c. Incorporate additional protections for farming and farmland in subdivision regulations

- Modify the Town’s subdivision regulations to include the following text in a new subsection J to Section 204-13: Design Standards:

PROTECTION OF AGRICULTURAL INFRASTRUCTURE AND SIGNIFICANT AGRICULTURAL LANDS

The subdivision shall be designed to minimize adverse impacts on any agricultural land remaining from the subdivision, prime and unique agricultural soils, adjoining or nearby agricultural land and operations, existing natural buffers, and agricultural infrastructure including but not

Town of Batavia Agricultural & Farmland Protection Plan

limited to surface and subsurface agricultural drainage systems, farm equipment access points, equipment lanes.

Time Frame:	Immediate (within one year)
Responsible Agency:	Town Board; Planning Board
Estimated Cost:	\$500-\$1,000 for attorney review, if needed
Potential Funding Sources:	Town Board budget

2. Protect land through conservation easements

a. Sponsor applications to New York State for Purchase of Development Rights (PDR)

- Provide information to farmland owners in the Town about the program and its requirements
- Encourage landowners to consider seeking development rights purchase for their land
- Either on its own or in partnership with Genesee County, identify the most competitive parcels for a PDR application.

Time Frame:	Immediate (within one year) to Short-term (1-2 years)
Responsible Agency:	Town Board; Town Agricultural & Farmland Committee
Estimated Cost:	To be determined
Potential Funding Sources:	Town Board budget; Genesee County

b. Encourage landowners to privately place land under permanent conservation easements

- Work with local land trusts to provide information to landowners about estate planning and the benefits of placing land under private conservation easements.

Time Frame:	Immediate (within one year)
Responsible Agency:	Town Agricultural & Farmland Committee
Estimated Cost:	Minimal
Potential Funding Sources:	Not applicable

Town of Batavia Agricultural & Farmland Protection Plan

c. Consider establishing a temporary (term) easement program that would reduce property taxes on farmland in exchange for an agreement by the landowner to keep the land undeveloped for a specified period of time.

- Consult with the Town Attorney regarding the program design and consistency with recent NYS Comptroller opinions
- Establish an appropriate tax exemption amount, perhaps supplemented by additional compensation, that would encourage participation in the program, as well as a significant penalty for developing the property prior to the end of the easement term. The penalties collected would raise funds for the purchase of land or easements elsewhere in the Town.
- Establish a fund for the purchase of development rights.

Time Frame:	Short-term (1-2 years)
Responsible Agency:	Town Board; Town Agricultural & Farmland Committee
Estimated Cost:	\$500-\$2,000 for attorney review, if needed
Potential Funding Sources:	Town Board budget

d. Facilitate the private purchase of development rights in designated conservation areas in exchange for the right to develop additional dwelling units in designated areas of the Town

- Modify the Town's zoning regulations to incorporate procedures and criteria for incentive zoning.
- Identify areas in the Town where privately purchased development rights can be / transfer of development rights

Time Frame:	Short-term (1-2 years)
Responsible Agency:	Town Board; Town Agricultural & Farmland Committee
Estimated Cost:	\$500-\$2,000 for attorney review, if needed
Potential Funding Sources:	Town Board budget

Town of Batavia Agricultural & Farmland Protection Plan

3. Support local agricultural and related businesses

a. Promote local farm products

- Work with Genesee County Cooperative Extension, as well as the administrators of State programs such as Farm-to-School and others, to encourage residents to purchase local farm products.
- Continue to accommodate the Genesee Country Farmers Market through appropriate zoning

Time Frame:	Ongoing
Responsible Agency:	Town Board; Town Agricultural & Farmland Committee
Estimated Cost:	Minimal
Potential Funding Sources:	Not applicable

b. Manage extensions of sewer and water infrastructure to support and/or minimize impacts on agricultural operations

- Work with Genesee County to identify appropriate areas for infrastructure extensions and corresponding boundaries for Smart Growth Development Areas.
- Continue to follow the existing policies and procedures (Agricultural District, Smart Growth, Town lateral restrictions) regarding water hookups to new water lines through agricultural areas
- Utilize the “Notice of Intent” process to obtain input from the NYS Department of Agriculture & Markets and the Genesee County Agricultural & Farmland Protection Board on the potential impact of infrastructure extensions.
- Work with farm operators to extend infrastructure when it is needed to support agricultural operations

Time Frame:	Ongoing
Responsible Agency:	Town Board; Town Engineer; Code Enforcement Officer; Town Planning Board
Estimated Cost:	Minimal
Potential Funding Sources:	Included in existing budget for Town staff

Town of Batavia Agricultural & Farmland Protection Plan

c. Reduce fire district taxes on farmland

- Encourage the governing bodies of the Batavia Fire District (Batavia Town Board) and the Pembroke Fire District (Board of Commissioners) to utilize agricultural use assessments for the purpose of fire district taxes.

Time Frame:	Immediate (within one year)
Responsible Agency:	Town Board; Town Agricultural & Farmland Committee
Estimated Cost:	Minimal
Potential Funding Sources:	Not applicable

d. Obtain funding to support job creation for agribusinesses

- Work with farm operators and agriculture-related businesses to apply for economic development grants when such grants would result in job creation.

Time Frame:	Ongoing
Responsible Agency:	Town Board; Genesee County EDC; Lake Plains RC&D Council
Estimated Cost:	\$1,00-\$5,000 for grants consultant, if needed
Potential Funding Sources:	Town Board budget; EDC

e. Pass a Local Right to Farm law that includes a mechanism to mediate disputes

- Establish a local committee authorized to mediate disputes between farmers and non-farming neighbors
- Clearly state the Town's policy in support of agricultural operations

Time Frame:	Immediate (within one year)
Responsible Agency:	Town Board
Estimated Cost:	\$200-\$1,000 for attorney review, if needed
Potential Funding Sources:	Town Board budget

Town of Batavia Agricultural & Farmland Protection Plan

4. Improve drainage to maintain or increase the productivity of farmland

a. Obtain funding for priority drainage projects

- Work with the Genesee County Soil & Water Conservation District and the Genesee County Agricultural & Farmland Protection Board to identify priority projects, facilitate coordination among participating landowners and to seek funding through State grants or other sources

Time Frame:	Ongoing; Medium term (3-5 years)
Responsible Agency:	Town Board; Genesee County SWCD; Town Agricultural & Farmland Committee
Estimated Cost:	To be determined
Potential Funding Sources:	To be determined

b. Encourage proper maintenance of existing drainage ditches

- Support efforts by the SWCD to work with landowners to establish needed drainage projects.

Time Frame:	Ongoing
Responsible Agency:	Town Board; Genesee County SWCD; Town Agricultural & Farmland Committee
Estimated Cost:	Minimal
Potential Funding Sources:	Not applicable

c. Advocate on behalf of agricultural land preservation with regard to State mapping of regulated wetlands

Time Frame:	Immediate (within one year) and Ongoing
Responsible Agency:	Town Board; Genesee County SWCD; Town Agricultural & Farmland Committee
Estimated Cost:	Minimal
Potential Funding Sources:	Not applicable

Town of Batavia Agricultural & Farmland Protection Plan

5. Establish an ongoing committee to monitor the implementation of the Town's Agricultural & Farmland Protection Plan

- Include farmers as well as non-farming residents on the Committee
- Empower the Committee to address conflicts between farmers and non-farming neighbors as provided for in the Town's Right to Farm Law.

Time Frame:	Immediate (within one year)
Responsible Agency:	Town Board
Estimated Cost:	Minimal
Potential Funding Sources:	Included in budget for Town staff

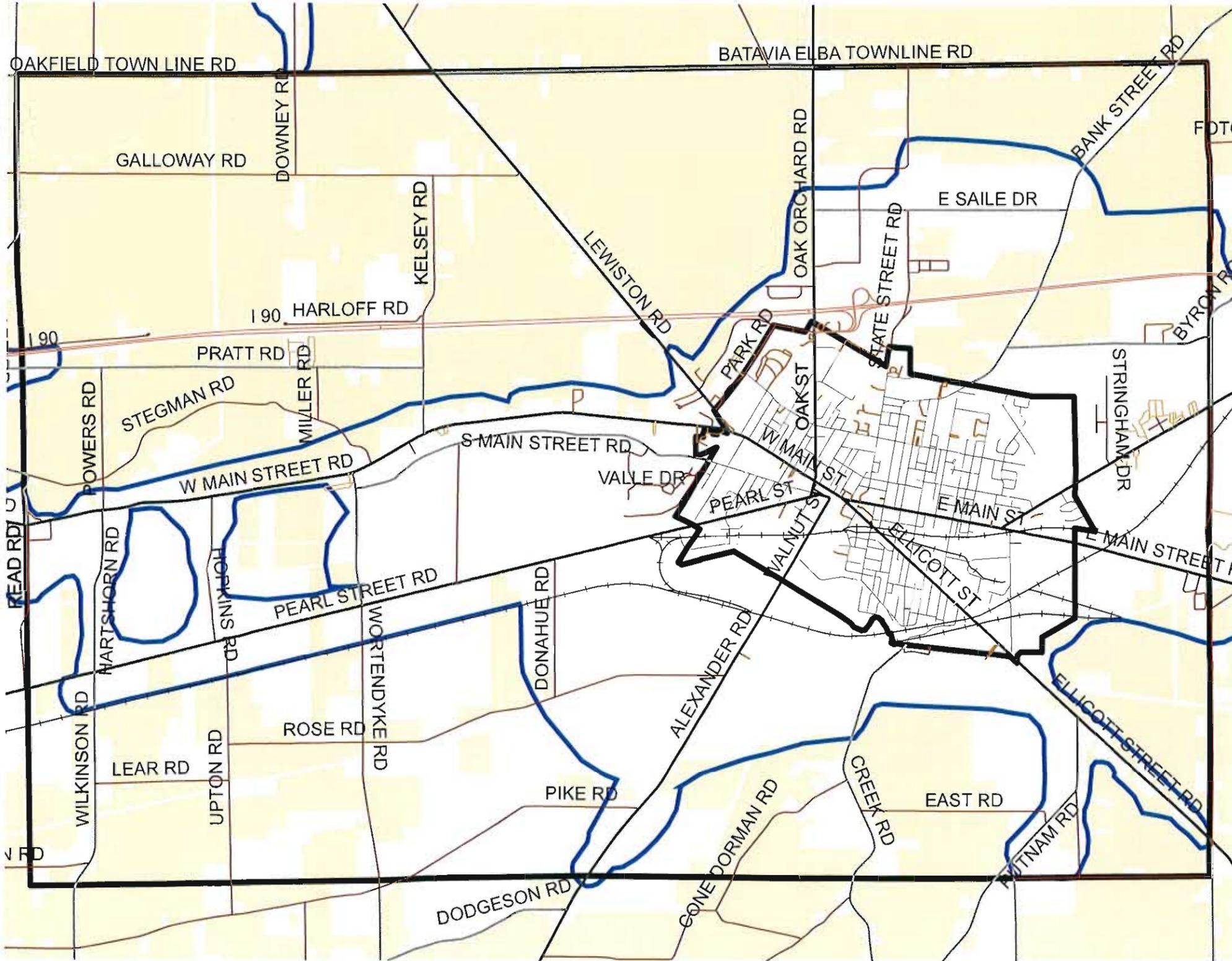
G. Next Steps

The Town Board should appoint a municipal Agriculture & Farmland Committee, which will take the lead in implementing the recommendations of this Agricultural & Farmland Protection Plan under the guidance of the Town Board. The Committee will include farmers as well as non-farming residents.

Town of Batavia Agricultural Protection Plan

List of Maps

- 1: County Agricultural Districts and Smart Growth Development Areas
- 2: Regional Setting
- 3: Streams and Watersheds
- 4: Wetlands and Flood Zones
- 5: Existing Land Use by Tax Parcel
- 6: Agricultural Soils
- 7: Active Cropland
- 8: Agricultural Parcels
- 9: Farmland Suitable for Protection
- 10: Recent Residential Construction
- 11: Recent and Potential Commercial Development
- 12: Direct Market Outlets

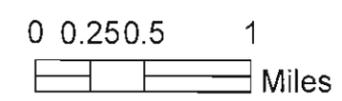


Agricultural Districts and Smart Growth Development Areas

September 2009

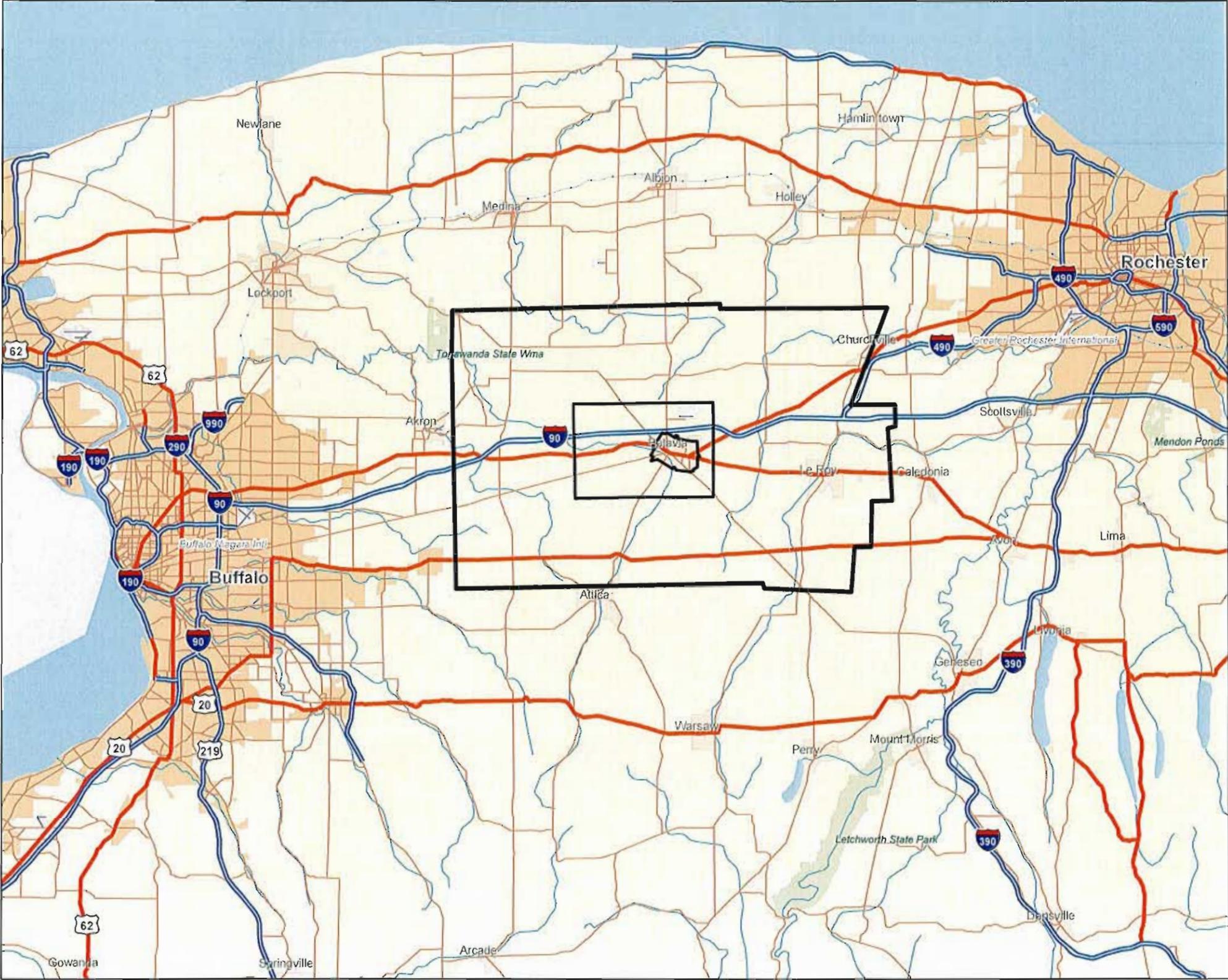
-  Town Boundary
-  Agricultural Districts
-  Smart Growth Development Areas

Base map and data provided by the Genesee County Planning Department



Regional Setting

July 2009



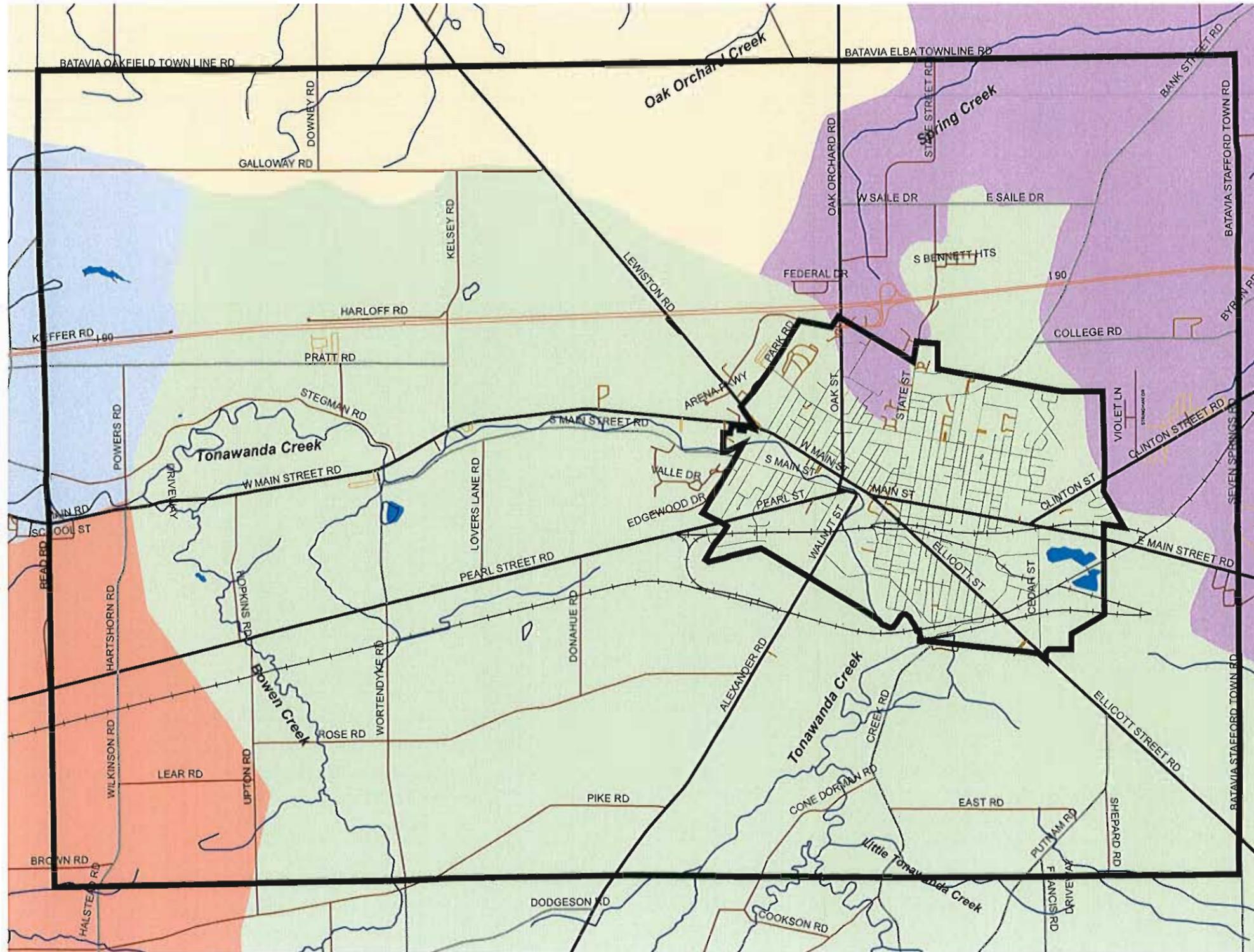
- Legend**
-  Genesee County
 -  Town of Batavia
 -  Limited Access
 -  Highway
 -  Major Road
 -  Local Road
 -  Minor Road
 -  Other Road



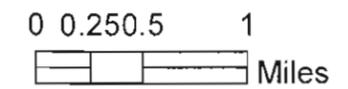
Town of Batavia Agricultural & Farmland Protection Plan

Streams and Watersheds

September 2009

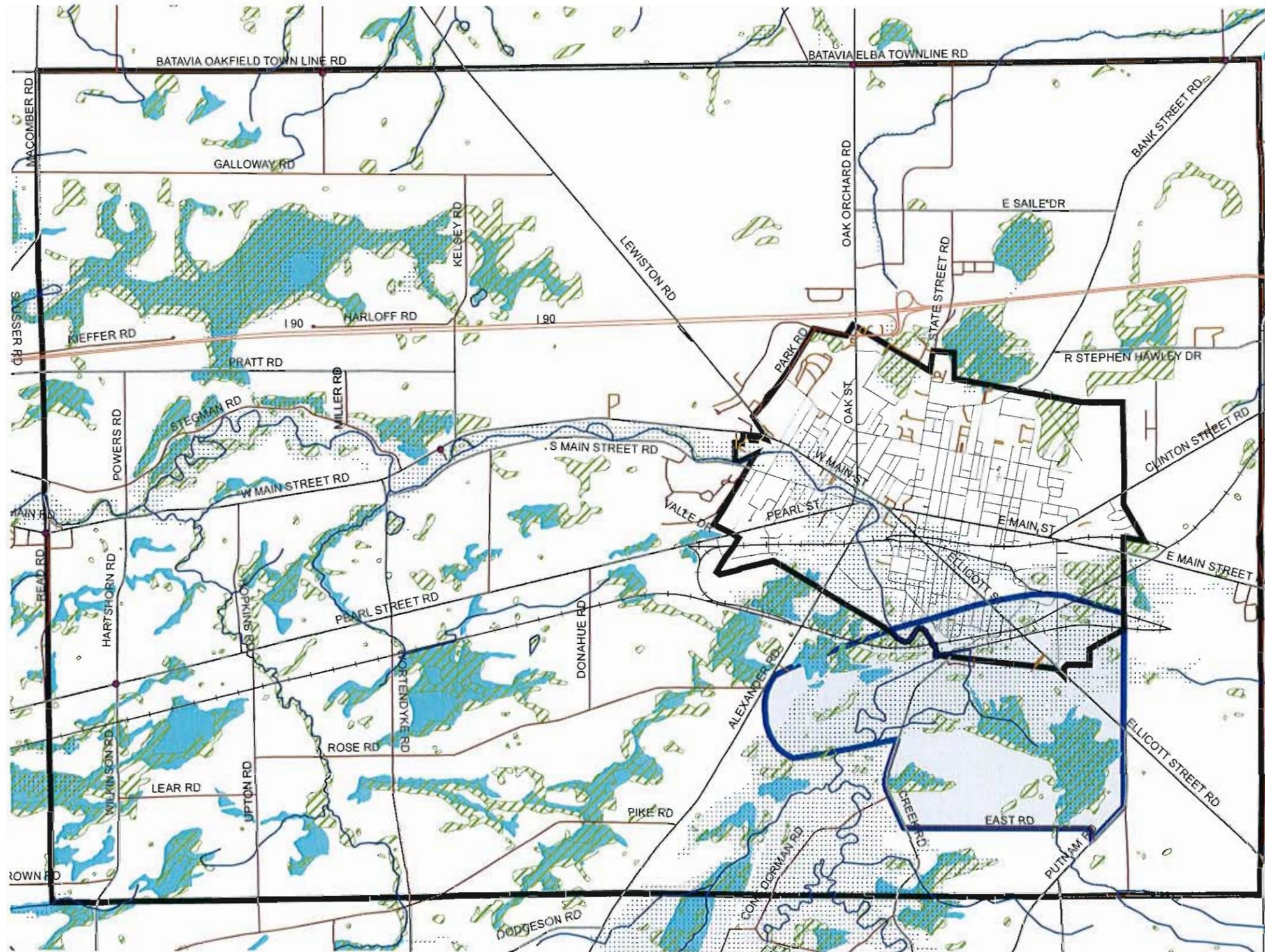


-  Streams
-  Surface Water
- Watersheds**
-  Black Creek
-  Ledge & Tonawanda Creeks
-  Murder Creek
-  Oak Orchard
-  Upper Tonawanda Creek

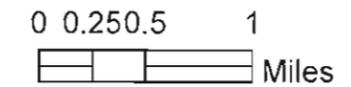


Wetlands, Flood Zones and Wellhead Protection Zone

September 2009

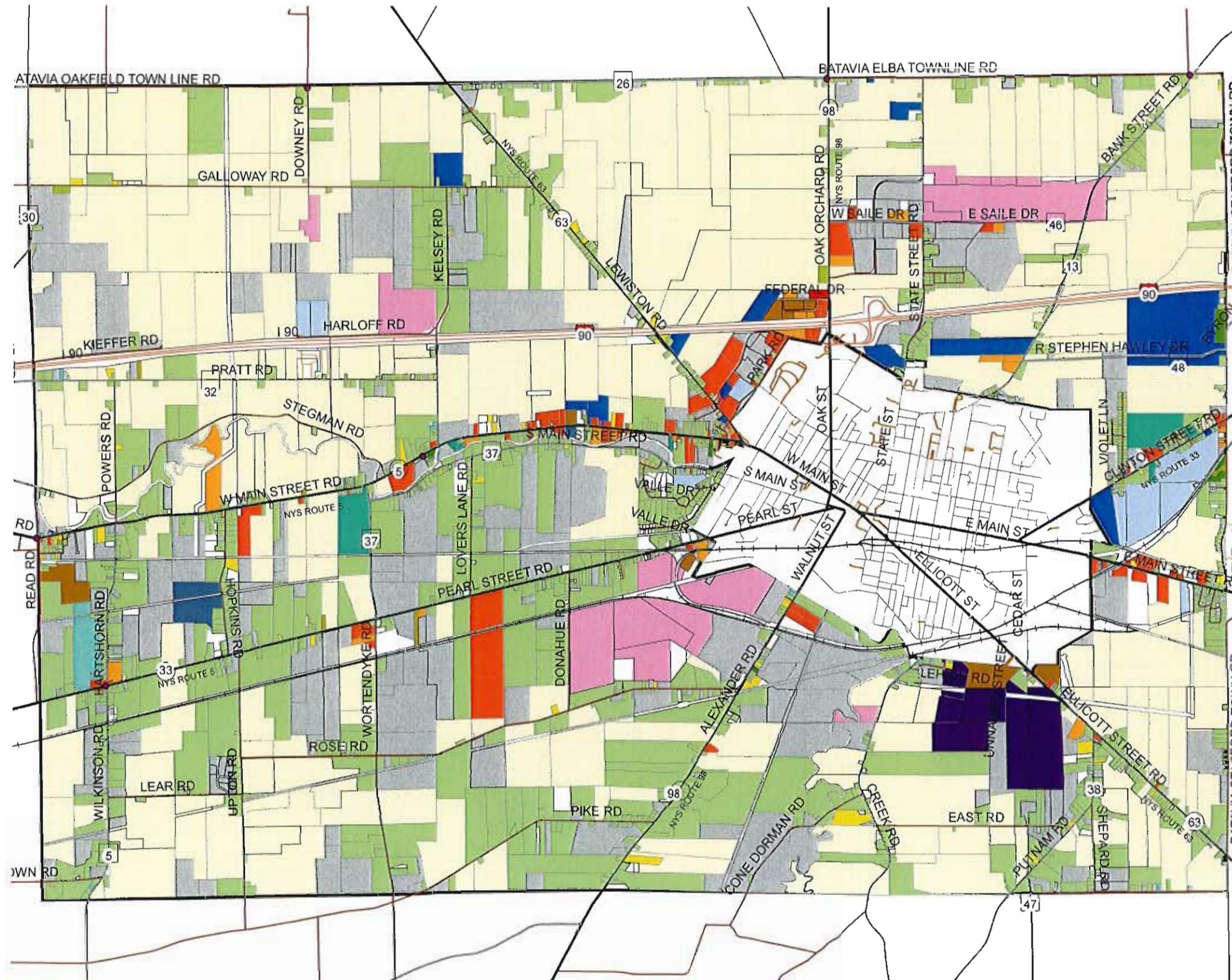


-  Streams
-  Floodplains
-  Federal Wetlands
-  State Wetlands
-  Wellhead Protection Zone

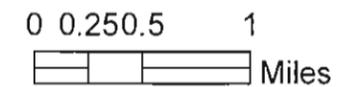


Existing Land Use

September 2009



- Tax Parcels**
Land Use Classification
- Agriculture
 - Single Family Residential
 - 2-Family Residential
 - 3-Family Residential
 - Manufactured Dwelling
 - Multiple Residences/ Mixed use
 - Vacant
 - Commercial
 - Apartments
 - Manufactured Home Park
 - Seasonal Cottage
 - Storage/ Distribution
 - Recreation
 - Public/ Community Service
 - Manufacturing
 - Excavation/ Mining
 - Utilities/ Transportation
 - Conservation
 - No Data



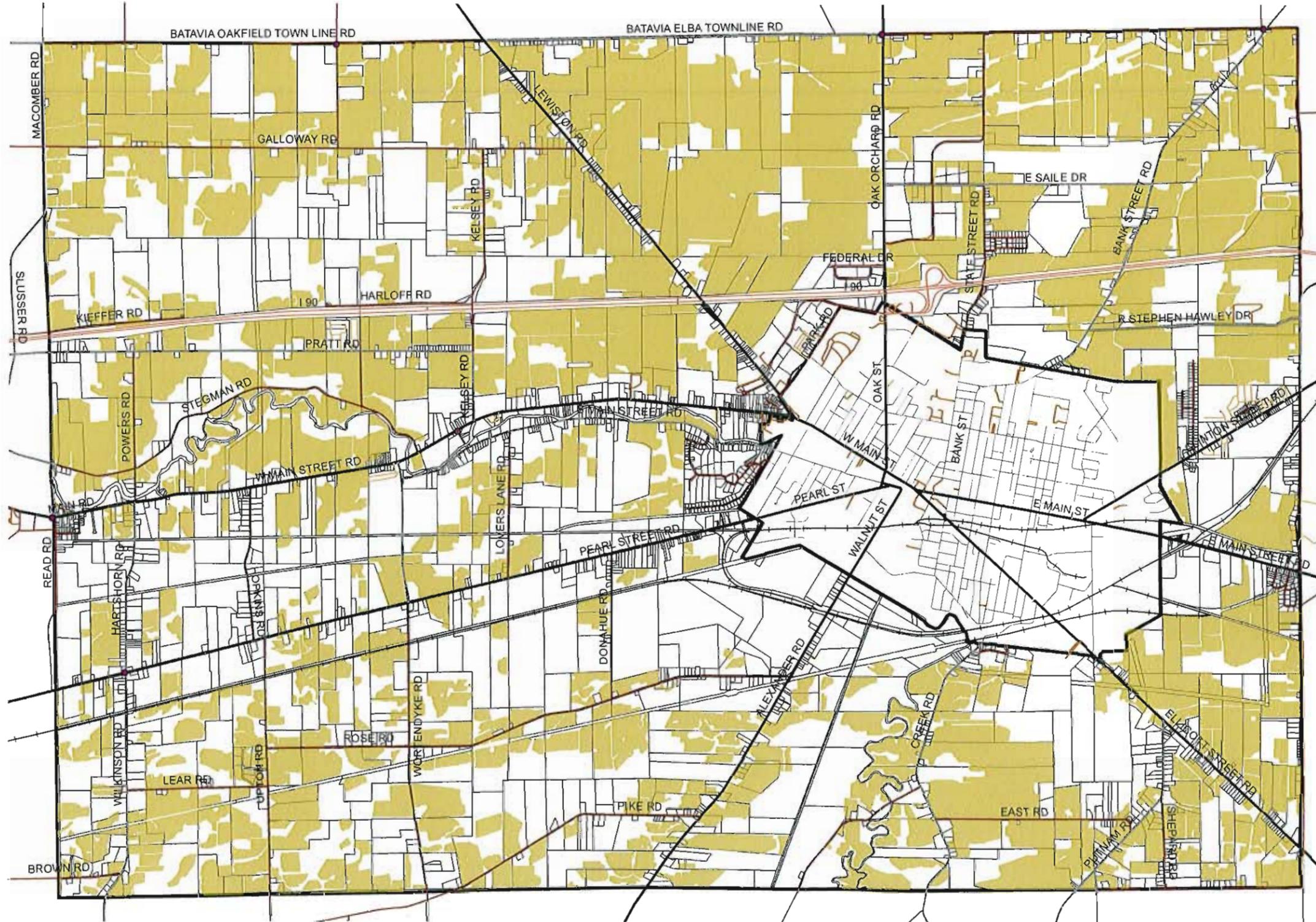
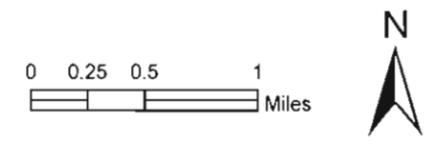
Active Cropland

September 2009

■ Active Cropland
□ 2008 Tax Parcels

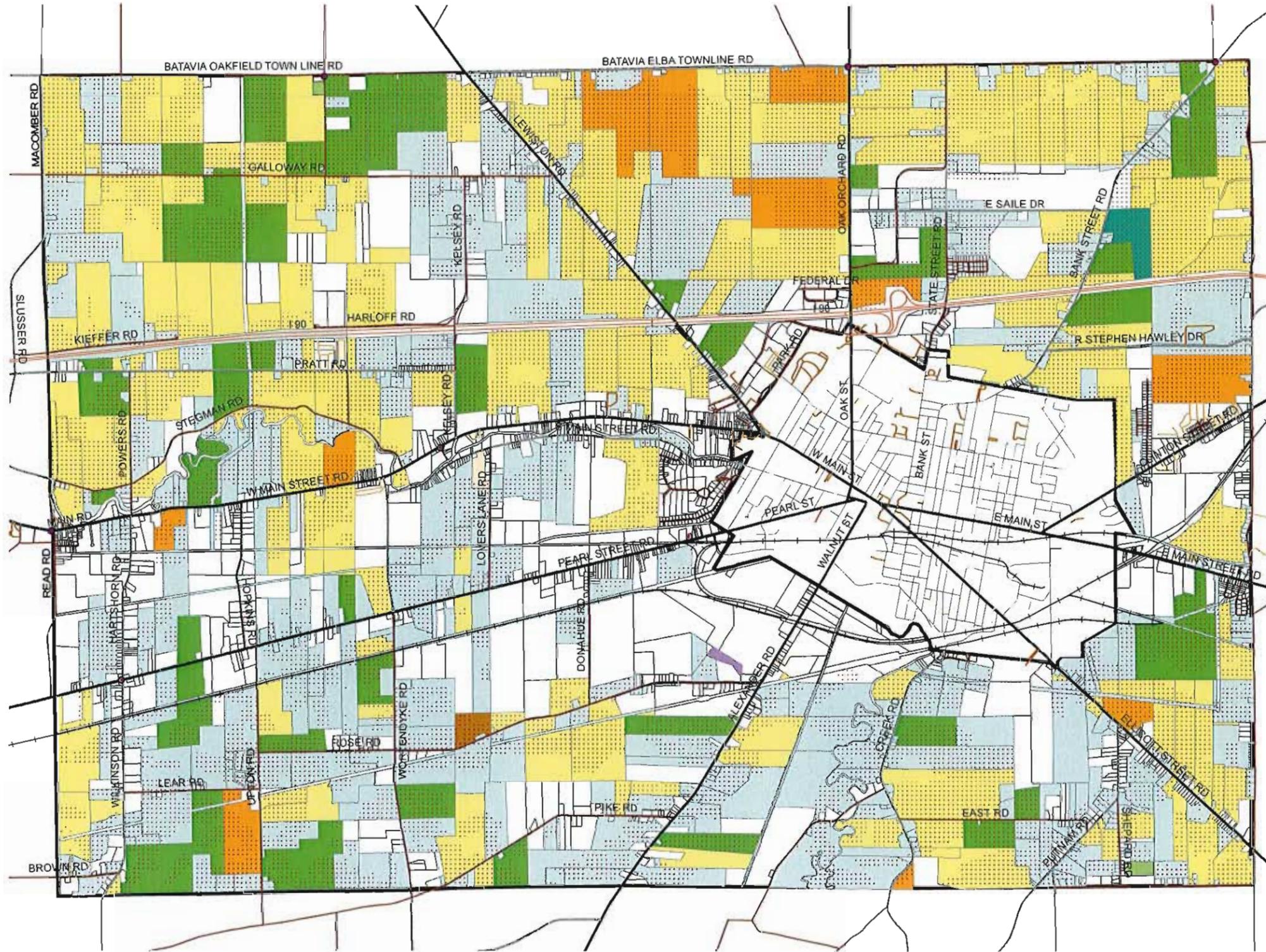
Base map and parcel data provided by the Genesee County Planning Department and by Stuart I. Brown Associates.

Cropland data provided by the Genesee County Soil & Water Conservation District



Agricultural Parcels and Active Cropland

March 2010

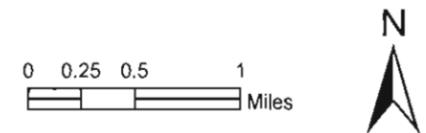


- 2008 Tax Parcels**
Property Classification
- Other Productive Land
 - Livestock & Products
 - Dairy
 - Cattle, Calves, Hogs
 - Sheep & Wool
 - Field Crops
 - Mucklands
 - Wildlife Preserve
 - Other Farm Parcels
 - Other Parcels
- Active Cropland

NOTE: Categories are based on a 2008 classification of tax parcels by the Assessor. "Other Farm Parcels" are so noted due to presence of cropland.

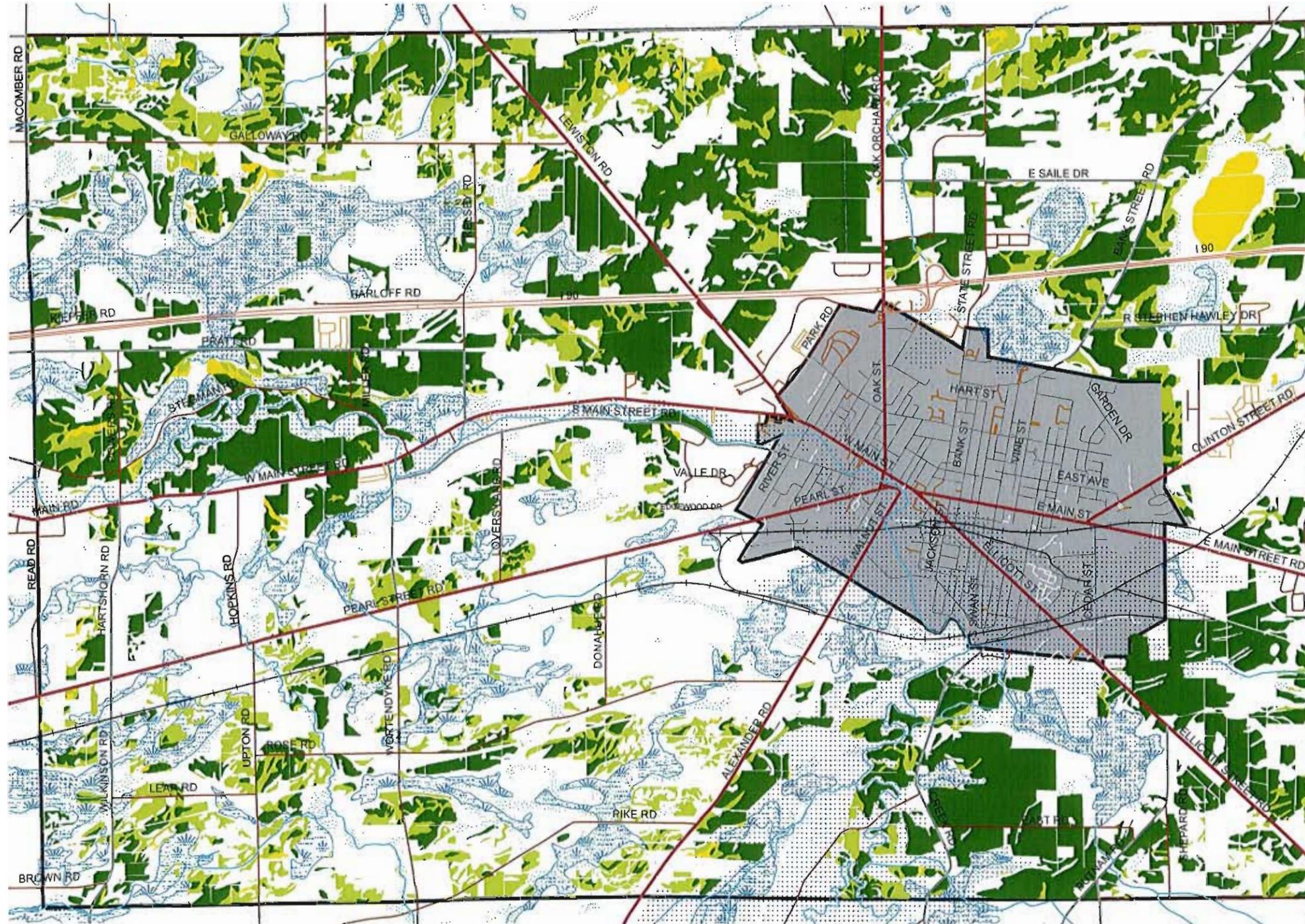
Base map and parcel data provided by the Genesee County Planning Department and by Stuart I. Brown Associates.

Cropland data provided by the Genesee County Soil & Water Conservation District



Farmland Suitable for Protection

September 30, 2010



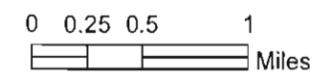
Agricultural Soil Classification

- Prime Farmland
- Prime Farmland if drained
- Muck

Natural Constraints

- Floodplains
- State Regulated Wetlands
- Federal Wetlands
- Hydrography

Street base map provided by the Genesee County Planning Department



Town of Batavia Agricultural & Farmland Protection Plan

Map 10

Residential Zoning and Recent Development

September 2010

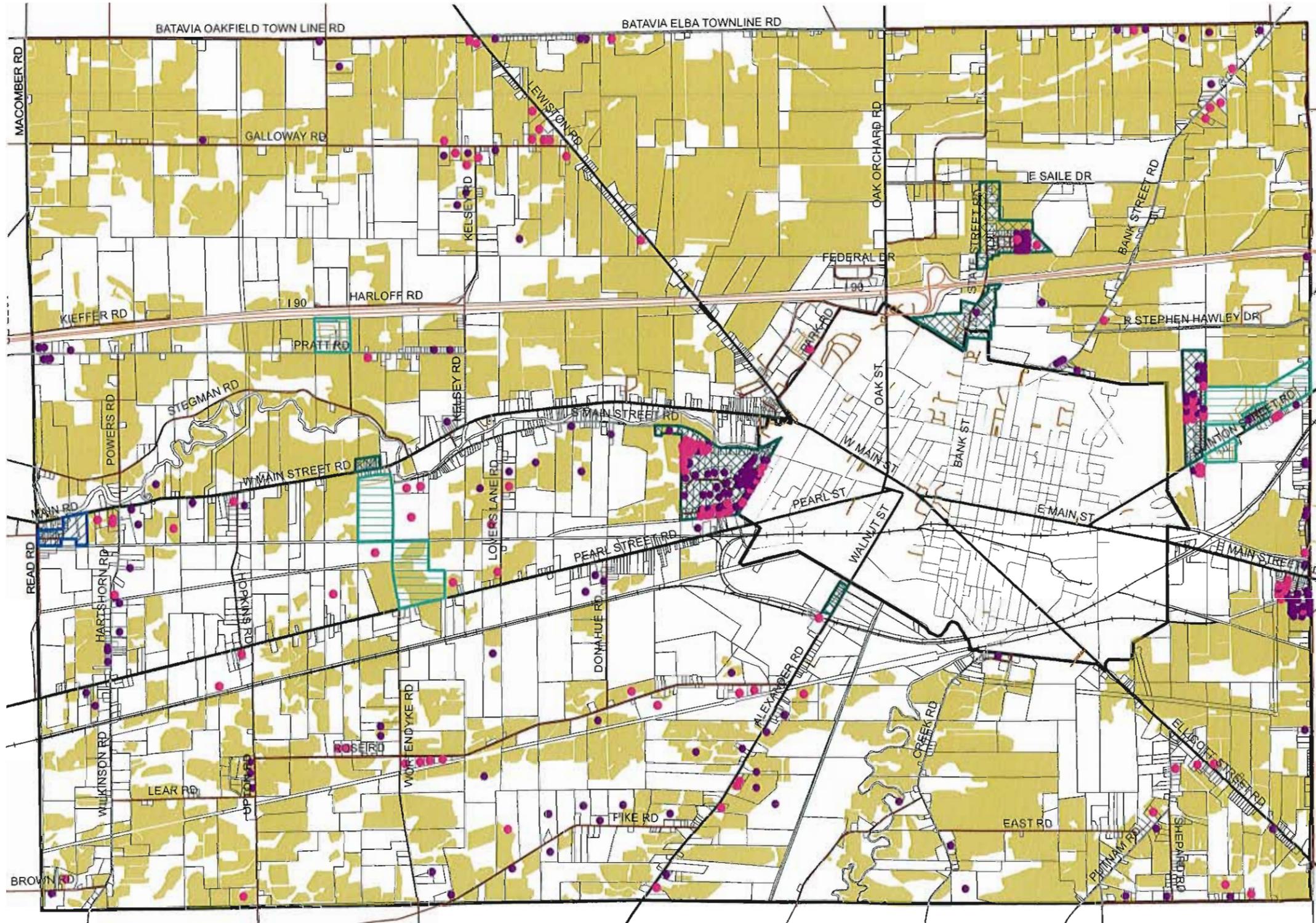
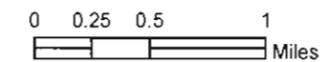
- Residential Zoning**
-  Hamlet Residential
 -  Mobile Home Park
 -  Residential

- Residential Structures Year Built**
-  1990 - 1999
 -  2000 - 2007
 -  Active Cropland

NOTE: Points depict parcel centroids, not the actual location of the residence

Base map and parcel data provided by the Genesee County Planning Department and by Stuart I. Brown Associates.

Cropland data provided by the Genesee County Soil & Water Conservation District



Existing Industrial/Commercial Zoning and Active Cropland

September 2010

Active Cropland

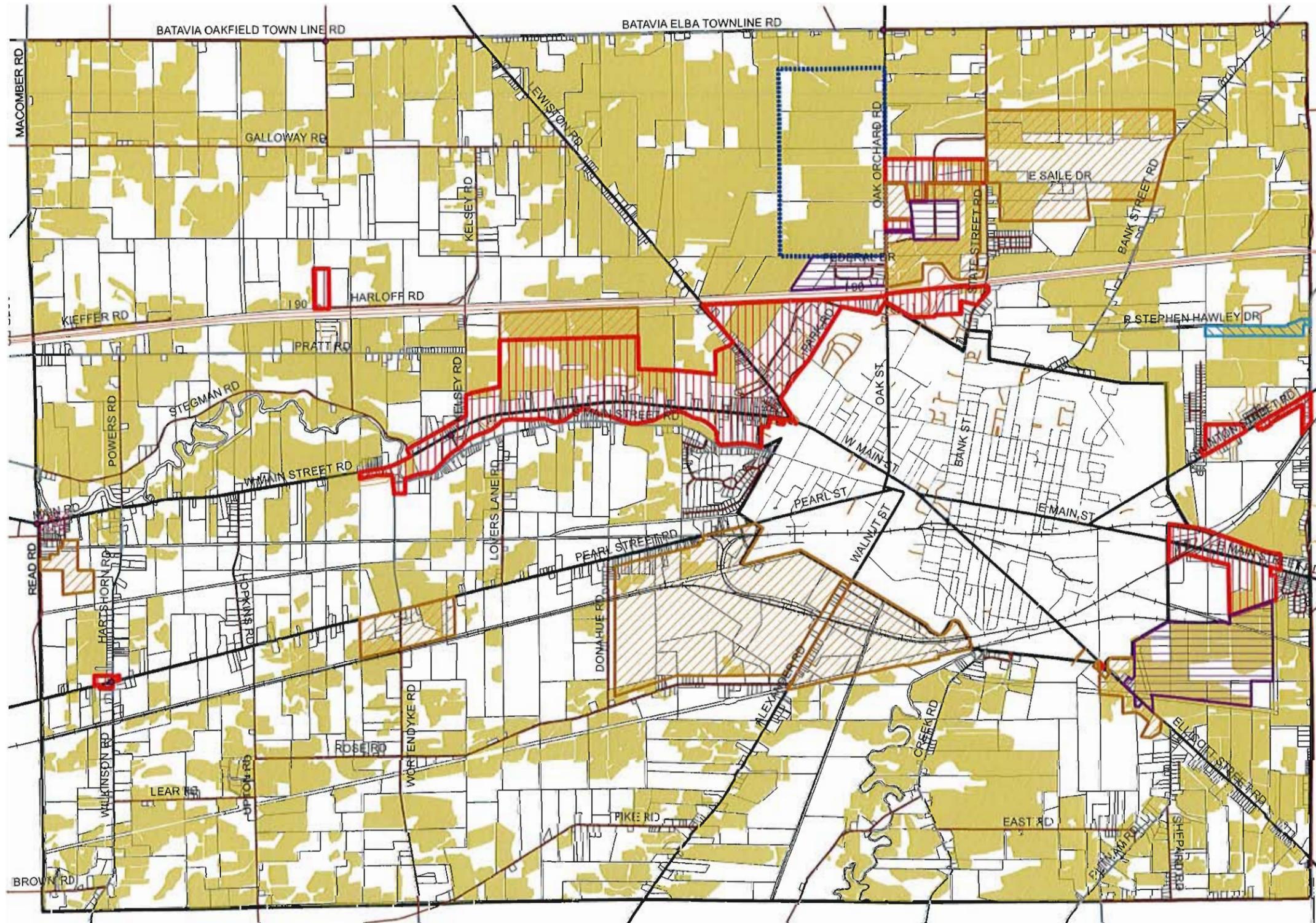
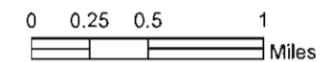
Commercial/Industrial Zoning

-  Commercial
-  Hamlet Commercial
-  Industrial
-  Industrial Park
-  Planned Business Development
-  Planned Unit Development

NOTE: Points depict parcel centroids, not the actual location of the residence

Base map and parcel data provided by the Genesee County Planning Department and by Stuart I. Brown Associates.

Cropland data provided by the Genesee County Soil & Water Conservation District



Direct Market Sales Outlets

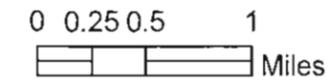
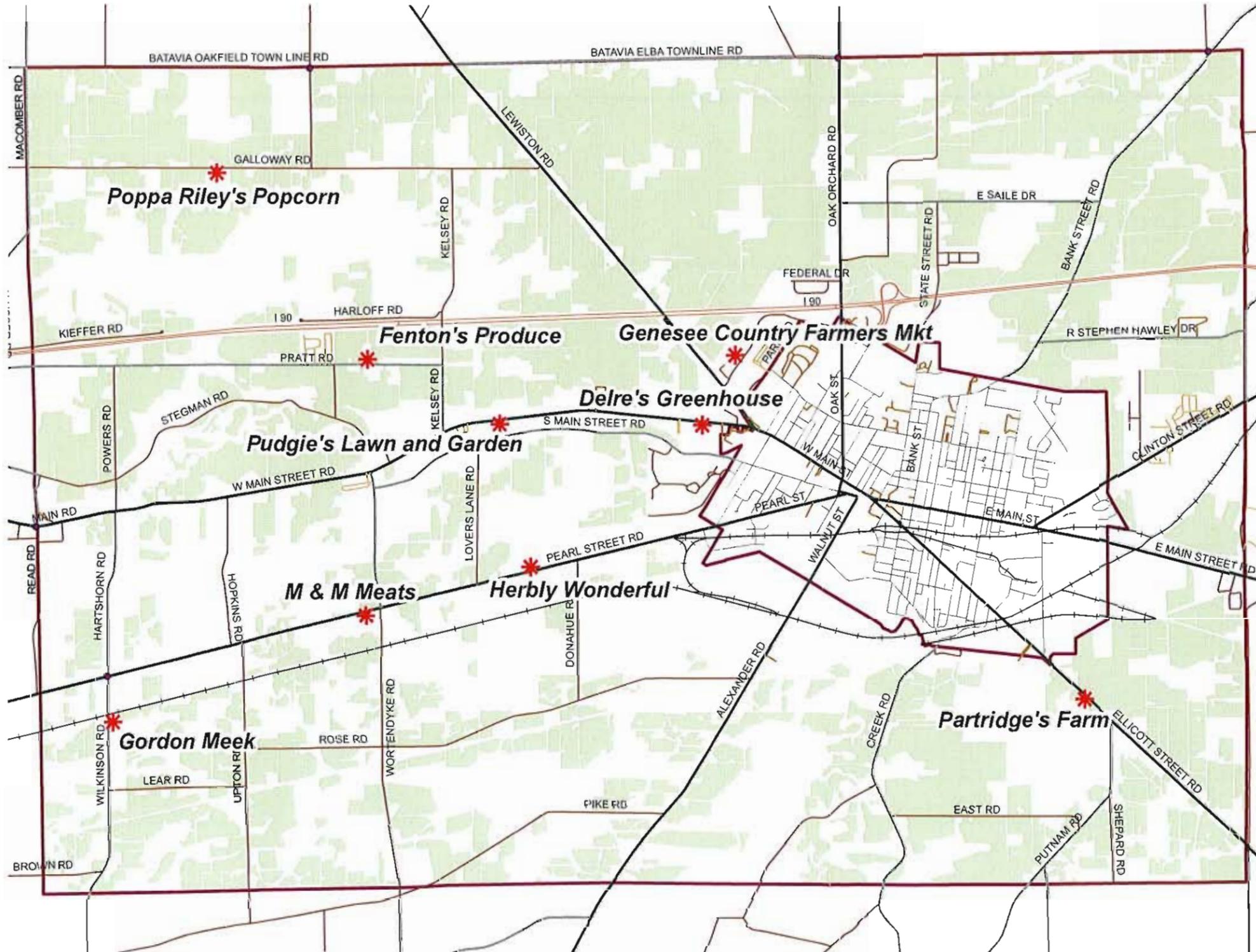
September 2010

-  Direct Market Sales
-  Active Cropland

Direct market sales locations provided by Cornell Cooperative Extension of Genesee County.

Cropland data provided by the Genesee County Soil & Water Conservation District

Base map and parcel data provided by the Genesee County Planning Department and by Stuart I. Brown Associates.



Town of Batavia Agricultural Protection Plan

List of Appendices

- A. Summary of Recommendations in the 2007 Town of Batavia Comprehensive Plan and 2001 Genesee County Agricultural Preservation Plan
- B. Overview of Existing Plans and Programs
- C. Circular 1150 – NYS Agriculture & Markets Agricultural District Law
- D. Existing Planned Business Development District regulations – Town of Batavia Zoning Law
- E. Summary of Direct Market Venues – Town of Batavia
- F. Proposed Agricultural Production Zone regulations
- G. Zoning Audit and Recommended Zoning Revisions

A. Summary of Recommendations in the 2007 Town of Batavia
Comprehensive Plan and 2001 Genesee County Agricultural
Preservation Plan

Summary of Recommendations in the 2007 Town of Batavia Comprehensive Plan and
2001 Genesee County Agricultural Preservation Plan

Town of Batavia Comprehensive Plan

The Town's decision to prepare this Agricultural & Farmland Protection Plan originated with recommendations in the Town of Batavia Comprehensive Plan, which was adopted in March 2007. The Comprehensive Plan addressed land use, housing, economic development, natural resources, agriculture, transportation and infrastructure, recreation and community facilities. The Comprehensive Plan's goals and recommendations related to agriculture are as follows:

Goals

1. Promote the continued economic viability of agriculture.
2. Attract and retain agricultural support businesses such as suppliers and processors.
3. Preserve a large, contiguous area of high quality farmland to ensure a viable land base for continued agricultural production in the Town.
4. Reduce the potential for conflict between farmers and non-farming neighbors.

Recommendations

1. Work with landowners, private land trusts and governmental agencies to purchase land, place conservation easements or acquire the development rights to large areas of farmland. Target land that would result in the preservation of large areas of contiguous, high-quality farmland, such as the Agricultural Protection areas identified in the Future Land Use Map.
2. Revise zoning regulations to permit farm-related businesses, such as farm markets and craft manufacturing, to be established on farm property in conjunction with agricultural operations.
3. Encourage agriculture-related businesses, such as suppliers and processors, to utilize Genesee County's revolving loan fund for economic development.
4. Work with County and State economic development agencies to attract and retain agricultural support businesses.
5. When residential subdivisions are proposed that abut active farmland, require effective buffers to be incorporated into the subdivision design.
6. Encourage the preservation of farmland under conservation easement in conjunction with the subdivision review of residential development in designated rural/ agricultural areas of the Town.
7. In conjunction with the revision of zoning regulations, establish a committee that includes farmland owners to identify effective agricultural protection mechanisms that would result in the long-term retention of farmland within the Agricultural Protection areas identified in the Future Land Use Map. Revise the Town's zoning regulations to include effective provisions to encourage the retention of high quality farmland for continued agricultural use.

Genesee County Farmland Protection Plan Recommendations

1. Refine the Strategic Farmland Map and incorporate it into the Smart Growth Plan.
2. Reaffirm the importance of existing agricultural districts, especially with regard to water and sewer extensions. Conduct an 'audit' of each town's zoning and subdivision provisions and recent past development patterns to help the towns understand the potential impact on maintaining a critical mass of farmland
3. Consider the designation of an 'agricultural production zone'
4. Consider use of incentive zoning as a mitigation tool
5. Develop new funding sources specifically for a farmland protection fund
6. Create 'Enhanced Agricultural District Program' for mid-term protection of Farmland
8. Prepare to Purchase Development Rights
9. Integrate a farmland protection component into the County's public education efforts about agriculture.
10. Conduct periodic estate planning seminars for farmers and professionals.
11. Advocate for implementation of the Agriculture Development Plan.
 - Retain, expand and recruit agribusiness
 - Support improvements to rural utilities
 - Integrate county plans, policies and programs
 - Direct consistent and supportive land-use policies
 - Advocate for appropriate infrastructure development

B. Overview of Existing Plans and Programs

APPENDIX B

Overview of Existing Plans, Programs and Regulations

Agricultural District Program

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).

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.

“Right to Farm”

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. 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 **Farm to School** 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.

Energy Conservation/ Sustainable Energy Programs

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.
- NYSEDA 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.
- NYSEDA's Agricultural Waste Management Program focuses on farms under pressure to control contaminants from manure. To meet these challenges, farms are partnering with NYSEDA 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.

Promotion of Locally-Grown Products

New York State administers the "Pride of New York" program, which assists food producers and retailers by promoting the sale of New York produced food and food products. The program provides marketing materials and assistance and conducts promotional activities which highlight New York State's many exceptional products.

Organizations that assist farmers and farmland owners

Soil & Water Conservation District

The Genesee County Soil & Water Conservation District has been actively involved in assisting farmers evaluate, install and improve conservation management practices since the District formed in 1944. 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 Genesee County SWCD has identified the following natural resources concerns relating to farming:

- Cropland erosion control
- Loss of farmland to development
- 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
- Completing soil group work sheets for agricultural use assessments

Cornell Cooperative Extension

Cornell Cooperative Extension of Genesee County provides information and technical assistance to farmers. Teams of experts have been assembled on a regional basis to address issues:

- The Cornell Vegetable Program serves the vegetable, greenhouse, potato, and dry bean industries within a 9 County region in western New York. It provides research-based information to assist farmers produce and market vegetable crops profitably and in an environmentally safe manner.
- 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.

Other educational programs administered by Cornell Cooperative Extension of Genesee County include a directory of agritourism and direct market sales outlets and "Agriculture in the Classroom" activities. More information is available at the website:

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.

New York 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 Genesee County Farm Bureau website, <http://nyfb.org/genesee/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.

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.

C. Circular 1150 – NYS Agriculture & Markets Agricultural District
Law

~~~~~  
**New York State**  
**Department of Agriculture and Markets**  
**10B Airline Drive**  
**Albany, New York 12235**  
~~~~~

CIRCULAR 1150

ARTICLE 25AA -- AGRICULTURAL DISTRICTS

AGRICULTURE AND MARKETS LAW
(AS AMENDED THROUGH January 1, 2009)
AGRICULTURAL DISTRICTS LAW

Summary of **1999 Amendments** to the Agricultural Districts Law

Section Amended: §301(4)(e) and §301(9)(e)

Description: Provides that land set aside through participation in a federal conservation program, regardless of the income derived from the land, shall be eligible for an agricultural assessment.

Effective Date: 9/7/99

Section Amended: §301(9)(e)

Description: Adds a new paragraph (e) to allow payments received for land set aside under a federal conservation reserve program to be included in calculating the average gross sales value of products produced in determining whether land used as a single farm operation qualifies as "land used in agricultural production."

Effective Date: 9/7/99

Section Amended: §303-a(4)

Description: Renumbers subdivision (4) to subdivision (5)

Effective Date: 7/20/99

Section Amended: §303-a(4)

Description: Adds a new subdivision (4) that states that if the county legislative body does not review a district upon its anniversary date, the agricultural district remains as originally constituted or until such time that the agricultural district is modified or terminated.

Effective Date: 7/20/99

Section Amended: §305(7)

Description: Provides that the real property tax exemption for agricultural land which is used solely for the purpose of replanting or crop expansion as part of an orchard or vineyard may be greater than 20% of the total acreage of such orchard or vineyard when such orchard or vineyard is located within an area declared by the Governor to be a disaster emergency.

Effective Date: 9/7/99 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after 9/7/99.

Section Amended: §308(3)

Description: Renumbers subdivision (3), which was added by Chapter 362 of the Laws of 1998, to subdivision (4)

Effective Date: 4/6/99

Section Repealed: §309(8) & (9)

Description: Repeals the two subdivisions

Effective Date: 7/20/99

Section Amended: §309(10)

Description: Renumbers subdivision (10) to subdivision (8)

Effective Date: 7/20/99

Section Amended §310(1)

Description: Adds language to the agricultural district disclosure statement to notify a prospective buyer of land within an agricultural district that under certain circumstances, the availability of water and sewer services may be limited.
Effective Date: 7/1/00

Summary of **2000 Amendments** to the Agricultural Districts Law

Section Amended: §305(1)(d)(v) and §306(2)(b)(iii)
Description: Revises reporting requirement of assessors to the State Board of Real Property Services when land receiving an agricultural assessment is converted to non-agricultural uses.
Effective Date: 7/11/00

Section Amended: §308(1)(b)
Description: Requires the Commissioner to give consideration to a practice conducted under the Agricultural Environmental Management (AEM) Program when making a sound agricultural practice determination.
Effective Date: 11/8/00

Summary of **2001 Amendments** to the Agricultural Districts Law

Section Amended: §301(11)
Description: Includes manure processing and handling facilities as part of a “farm operation” for purposes of administering the Agricultural Districts Law.
Effective Date: 10/23/01

Section Amended: §301(11)
Description: Includes “commercial horse boarding operations” as part of a “farm operation” for purposes of administering the Agricultural Districts Law.
Effective Date: 10/31/01

Summary of **2002 Amendments** to the Agricultural Districts Law

Section Amended: §301(4)
Description: Eliminates county legislative body approval for the designation of eligible horse boarding operations as land used in agricultural production.
Effective Date: 1/30/03

Sections Amended: §301(4), §301(4)(b), and §301(4)(f)
Description: Reduces the number of acres needed to qualify for agricultural real property assessment from ten acres to 7 or more acres as long as the value of crops produced exceeds \$10,000 on average in the preceding two years. The size of rented land eligible for an agricultural assessment is reduced from 10 acres to 7 acres as long as the smaller parcel yields at least \$10,000 in average annual gross sales independently or in conjunction with land owned by the farmer renting the parcel. The amendment also reduces the number of acres needed to qualify as land used in agricultural production from not less than ten acres to seven or more acres and average gross sales of \$10,000 or

more in the preceding two years or less than seven acres and average gross sales \$50,000 or more in the preceding two years.

Effective Date: 1/1/03

Section Added: §301(9)(f)

Description: Allows payments received by thoroughbred breeders pursuant to Section 247 of the racing pari-mutuel wagering and breeding law to be included in the definition of "gross sales value" for agricultural assessment purposes.

Effective Date: 9/17/02

Section Amended: §301(11)

Description: Amends the definition of farm operation to indicate that such operation may consist of one or more parcels of owned or rented land and such parcels may or may not be contiguous to each other.

Effective Date: 1/1/03

Section Amended: §301(13)

Description: Reduces the minimum acreage required for a commercial horse boarding operation from ten to seven acres.

Effective Date: 1/1/03

Sections Amended: §303(2)(a)(1), §303(4), §303(5)(a) and (b), §303(6)(a) and (b), §303(7) and §303(8)

Description: Amends various sections of the law to allow a landowner to include viable agricultural land within a certified agricultural district prior to its eight, twelve or twenty year review period.

Effective Date: 12/20/02

Summary of **2003 Amendments** to the Agricultural Districts Law

Section Added: §301(4)(h)

Description: Adds a new paragraph (h) to allow first year farmers to receive an agricultural assessment if they meet the gross sales value requirements during their first year of operation.

Effective Date: 9/9/03

Sections Amended: §301(5), §305(1)(d)(iv), and §306(2)(c)

Description: Amends various sections of the law so that conversion penalties are not assessed on farmland that is being used in agricultural production and receives an agricultural assessment when such land is converted to wind energy generation facilities.

Effective Date: 9/22/03

Sections Amended: §303-b, §303(2)(a)(1) and §303(4)

Description: Adds a new section 303-b to establish an annual 30-day period during which a farmer can submit proposals to include viable land within a certified agricultural district.

Effective Date: 9/17/03

Sections Amended: §303(5)(b), §303(6)(b) and §303(8)

Description: Repeals various sections of the law to conform with the provisions of a new section 303-b.

Effective Date: 9/17/03

Summary of **2004 Amendment** to the Agricultural Districts Law

Section Amended: §301(4)(h)

Description: Amends paragraph (h) to allow a farm operation to receive an agricultural assessment if it meets the acreage and gross sales value requirements during its first or second year of agricultural production.

Effective Date: 2/24/04

Section Amended: §301(4)(i)

Description: Adds a new paragraph (i) to allow start-up farm operations that plant orchard or vineyard crops to immediately become eligible to receive an agricultural assessment in its first, second, third or fourth year of production.

Effective Date: 1/1/05

Summary of **2005 Amendments** to the Agricultural Districts Law

Section Amended: §301(2)(e)

Description: Amends paragraph (e) by adding wool bearing animals, such as alpacas and llamas, to the definition of "livestock and livestock products."

Effective Date: 7/12/05

Section Amended: §301(4)(h) and §301(13)

Description: Amends paragraph (h) to allow a "commercial horse boarding operation" to receive an agricultural assessment if it meets the acreage and gross sales value requirements during its first or second year of agricultural production. The definition of "commercial horse boarding operation" is amended by stating that such operations may qualify as a "farm operation" in its first or second year of operation if it meets the acreage and number of horse requirements.

Effective Date: 8/23/05

Section Amended: §301(11) and §301(14)

Description: Includes "timber processing" as part of a "farm operation" for purposes of administering the Agricultural Districts Law and adds a new section by defining the term "timber processing."

Effective Date: 8/23/05

Section Amended:§305-b

Description: Adds a new section that authorizes the Commissioner to review and comment upon the proposed rules and regulations of other State agencies which may have an adverse impact on agriculture and farming operations in the State.

Effective Date: 10/4/05 (Shall apply to proposed rules and regulations publicly noticed 60 or more days following the effective date.)

Summary of **2006 Amendments** to the Agricultural Districts Law

Section Amended:§301(4)

Description: Adds a new section (j) to allow newly planted Christmas tree farms to be eligible for agricultural assessment in their first through fifth years of agricultural production.

Effective Date: 1/1/07 and applies to assessment rolls prepared on the basis of taxable status dates occurring on or after such date.

Section Amended:§§301 and 308(1)

Description: Adds a new subdivision (15) to §301 to define "agricultural tourism" and amends §308(1) to add "agricultural tourism" to the list of examples of activities which entail practices the Commissioner may consider for sound agricultural practice opinions.

Effective Date: 8/16/06

Section Amended:§305(1)(a)

Description: Amends paragraph (1)(a) to allow filing of an application after taxable status date where failure to timely file resulted from a death of applicant's spouse, child, parent, brother or sister or illness of the applicant or applicant's spouse, child, parent, brother or sister which prevents timely filing, as certified by a licensed physician.

Effective Date: 9/13/06 and applies to assessment rolls prepared on the basis of a taxable status date occurring on or after such date.

Section Amended:§305(7)

Description: Amends paragraph (7) to extend the 100% exemption for newly planted orchards and vineyards from 4 to 6 years.

Effective Date: 9/13/06 and applies to assessment rolls prepared on the basis of a taxable status date occurring on or after 1/1/06.

Section Amended:§310(1), §308(5)

Description: Amends AML §§310(1), 308(5) and RPL §333-c(1) relative to the disclosure notice required for prospective purchasers of property within an agricultural district.

Effective Date: 7/26/06

Summary of **2007 Amendments** to the Agricultural Districts Law

Section Amended: §§303, 303-a & 304-b, repeals §303-a(2)(b) and (c)

Description: Amends AML §§303, 303-a and 304-b concerning the review of agricultural districts and the reporting of agricultural district data and repeals certain provisions of such law relating thereto.

Effective Date: 7/3/07

Section Amended: §304-a

Description: Amends AML §304-a to limit an increase in the base agricultural assessment values for any given year to 10 percent or less of the assessment value of the preceding year.

Effective Date: 6/4/07

Section Amended: §305(1)(a)

Description: Amends AML §305(1)(a) in relation to authorizing the filing of an application for an agricultural assessment after the taxable status date in the event of a natural disaster or destruction of farm structures.

Effective Date: 8/15/07

Summary of **2008 Amendments** to the Agricultural Districts Law

Section Amended: §§301(2)(j), 301(4)(k) and 301(16)

Description: Adds a new paragraph (j) to §301(2) to add "apiary products" to the definition of "crops, livestock and livestock products," adds a new paragraph (k) to §301(4) to independently qualify apiaries for an agricultural assessment and adds a new subdivision (16) to define "apiary products operation."

Effective Date: 7/21/08 and applies to assessment rolls prepared on the basis of a taxable status date occurring on or after 7/21/08 .

Section Amended: §§301(11) and 308(1)(b)

Description: Amends subdivision (11) of §301 to add the "production, management and harvesting of 'farm woodland'" to the definition of "farm operation" and amends §308(1)(b) to add the "production, management and harvesting of 'farm woodland'" to the list of examples of activities which entail practices the Commissioner may consider for sound agricultural practice opinions.

Effective Date: 9/4/08

Section Amended: §§301(9), 301(11), and 301(16)

Description: Adds a new paragraph (g) to §301(9) to allow up to \$5,000 from the sale of "compost, mulch or other organic biomass crops" to help meet the eligibility requirements for an agricultural assessment; amends subdivision (11) of §301 to add "compost, mulch or other biomass crops" to the definition of "farm operation" and adds a new subdivision (16) to define "compost, mulch or other organic biomass crops."

Effective Date: 9/4/08

ARTICLE 25AA - AGRICULTURAL DISTRICTS

- Sec.
- 300. Declaration of legislative findings and intent.
- 301. Definitions.
- 302. County agricultural and farmland protection board.
- 303. Agricultural districts; creation.
- 303-a. Agricultural districts; review.
- 303-b. Agricultural districts; inclusion of viable agricultural land.
- 304. Unique and irreplaceable agricultural land; creation of districts.
- 304-a. Agricultural assessment values.
- 304-b. Agricultural district data collection.
- 305. Agricultural districts; effects.
- 305-a. Coordination of local planning and land use decision-making with the agricultural districts program.
- 305-b. Review of proposed rules and regulations of state agencies affecting the agricultural industry.
- 306. Agricultural lands outside of districts; agricultural assessments.
- 307. Promulgation of rules and regulations.
- 308. Right to farm.
- 308-a. Fees and expenses in certain private nuisance actions.
- 309. Advisory council on agriculture.
- 310. Disclosure.

300. Declaration of legislative findings and intent

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 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 idling or conversion of potentially productive agricultural land.

The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the state as a whole. 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 also the declared policy of the state to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes.

The constitution of the state of New York directs the legislature to provide for the protection of agricultural lands. 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.

301. Definitions

When used in this article:

1. "Agricultural assessment value" means the value per acre assigned to land for assessment purposes determined pursuant to the capitalized value of production procedure prescribed by section three hundred four-a of this article.
2. "Crops, livestock and livestock products" shall include but not be limited to the following:
 - a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
 - b. Fruits, including apples, peaches, grapes, cherries and berries.
 - c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
 - d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
 - e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs.
 - f. Maple sap.
 - g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
 - h. Aquaculture products, including fish, fish products, water plants and shellfish.
 - i. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.
 - j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens. For the purposes of this paragraph, "nucs" shall mean small honey bee colonies created from larger colonies including the nuc box, which is a smaller version of a beehive, designed to hold up to five frames from an existing colony.
3. "Farm woodland" means land used for the production for sale of woodland products, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land used for the processing or retail merchandising of woodland products.
4. "Land used in agricultural production" means not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more; or, not less than seven acres of land used in the preceding two years to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more. Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products. Land used in agricultural production shall also include:
 - a. Rented land which otherwise satisfies the requirements for eligibility for an agricultural assessment.
 - b. Land of not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products, exclusive of woodland products, which does not independently satisfy the gross sales value requirement, where such land was used in such production for the preceding two years and currently is being so used under a written rental arrangement of five or more years in conjunction with land which is eligible for an agricultural assessment.
 - c. Land used in support of a farm operation or land used in agricultural production, constituting a portion of a parcel, as identified on the assessment roll, which also contains land qualified for an agricultural assessment.

- d. Farm woodland which is part of land which is qualified for an agricultural assessment, provided, however, that such farm woodland attributable to any separately described and assessed parcel shall not exceed fifty acres.
- e. Land set aside through participation in a federal conservation program pursuant to title one of the federal food security act of nineteen hundred eighty-five or any subsequent federal programs established for the purposes of replenishing highly erodible land which has been depleted by continuous tilling or reducing national surpluses of agricultural commodities and such land shall qualify for agricultural assessment upon application made pursuant to paragraph a of subdivision one of section three hundred five of this article, except that no minimum gross sales value shall be required.
- f. Land of not less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more, or land of less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of fifty thousand dollars or more.
- g. Land under a structure within which crops, livestock or livestock products are produced, provided that the sales of such crops, livestock or livestock products meet the gross sales requirements of paragraph f of this subdivision.
- h. Land that is owned or rented by a farm operation in its first or second year of agricultural production, or, in the case of a commercial horse boarding operation in its first or second year of operation, that consists of (1) not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more; or (2) less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of fifty thousand dollars or more; or (3) land situated under a structure within which crops, livestock or livestock products are produced, provided that such crops, livestock or livestock products have an annual gross sales value of (i) ten thousand dollars or more, if the farm operation uses seven or more acres in agricultural production, or (ii) fifty thousand dollars or more, if the farm operation uses less than seven acres in agricultural production; or (4) not less than seven acres used as a single operation to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more.
- i. Land of not less than seven acres used as a single operation for the production for sale of orchard or vineyard crops when such land is used solely for the purpose of planting a new orchard or vineyard and when such land is also owned or rented by a newly established farm operation in its first, second, third or fourth year of agricultural production.
- j. Land of not less than seven acres used as a single operation for the production and sale of Christmas trees when such land is used solely for the purpose of planting Christmas trees that will be made available for sale, whether dug for transplanting or cut from the stump and when such land is owned or rented by a newly established farm operation in its first, second, third, fourth or fifth year of agricultural production.
- k. Land used to support an apiary products operation which is owned by the operation and consists of (i) not less than seven acres nor more than ten acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more or (ii) less than seven acres used as a single operation in

the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of fifty thousand dollars or more. The land used to support an apiary products operation shall include, but not be limited to, the land under a structure within which apiary products are produced, harvested and stored for sale; and a buffer area maintained by the operation between the operation and adjacent landowners. Notwithstanding any other provision of this subdivision, rented land associated with an apiary products operation is not eligible for an agricultural assessment based on this paragraph.

5. "Oil , gas or wind exploration, development or extraction activities" means the installation and use of fixtures and equipment which are necessary for the exploration, development or extraction of oil, natural gas or wind energy, including access roads, drilling apparatus, pumping facilities, pipelines, and wind turbines.
6. "Unique and irreplaceable agricultural land" means land which is uniquely suited for the production of high value crops, including, but not limited to fruits, vegetables and horticultural specialties.
7. "Viable agricultural land" means land highly suitable for agricultural production and which will continue to be economically feasible for such use if real property taxes, farm use restrictions, and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of non-agricultural development.
8. "Conversion" means an outward or affirmative act changing the use of agricultural land and shall not mean the nonuse or idling of such land.
9. "Gross sales value" means the proceeds from the sale of:
 - a. Crops, livestock and livestock products produced on land used in agricultural production provided, however, that whenever a crop is processed before sale, the proceeds shall be based upon the market value of such crop in its unprocessed state;
 - b. Woodland products from farm woodland eligible to receive an agricultural assessment, not to exceed two thousand dollars annually;
 - c. Honey and beeswax produced by bees in hives located on an otherwise qualified farm operation but which does not independently satisfy the gross sales requirement; and
 - d. Maple syrup processed from maple sap produced on land used in agricultural production in conjunction with the same or an otherwise qualified farm operation.
 - e. Or payments received by reason of land set aside pursuant to paragraph e of subdivision four of this section.
 - f. Or payments received by thoroughbred breeders pursuant to section two hundred forty-seven of the racing, pari-mutuel wagering and breeding law.
 - g. Compost, mulch or other organic biomass crops as defined in subdivision sixteen of this section produced on land used in agricultural production, not to exceed five thousand dollars annually.
11. "Farm operation" means the land 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" as defined in subdivision thirteen of this section and "timber processing" as defined in subdivision fourteen of this section and "compost, mulch or other biomass crops" as defined in subdivision sixteen of this section. For the purposes of this section, such farm operation shall also include the production, management and harvesting of "farm woodland", as defined in subdivision

- three of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.¹
12. "Agricultural data statement" means an identification of farm operations within an agricultural district located within five hundred feet of the boundary of property upon which an action requiring municipal review and approval by the planning board, zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village law is proposed, as provided in section three hundred five-a of this article.
 13. "Commercial horse boarding operation" means an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, a commercial horse boarding operation that is proposed or in its first or second year of operation may qualify as a farm operation if it is an agricultural enterprise, consisting of at least seven acres, and boarding at least ten horses, regardless of ownership, by the end of the first year of operation.
 14. "Timber processing" means the on-farm processing of timber grown on a farm operation into woodland products, including but not limited to logs, lumber, posts and firewood, through the use of a readily moveable, nonpermanent saw mill, provided that such farm operation consists of at least seven acres and produces for sale crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more and that the annual gross sales value of such processed woodland products does not exceed the annual gross sales value of such crops, livestock or livestock products.
 15. "Agricultural tourism" means activities conducted by a farmer on-farm for the enjoyment or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life.
 16. "Apiary products operation" means an agricultural enterprise, consisting of land owned by the operation, upon which bee hives are located and maintained for the purpose of producing, harvesting and storing apiary products for sale.
 16. "Compost, mulch or other organic biomass crops" means the on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or handling of off-farm generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste. This shall also include the on-farm processing, mixing or handling of off-farm generated organic matter for use only on that farm operation. Such organic matter shall include, but not be limited to, manure, hay, leaves, yard waste, silage, organic farm waste, vegetation, wood biomass or by-products of agricultural products that have been processed on such farm operation. The resulting products shall be converted into compost, mulch or other organic biomass crops that can be used as fertilizers, soil enhancers or supplements, or bedding materials. For purposes of this section, "compost" shall be processed by the aerobic, thermophilic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material.

¹ The definition of "farm operation" was separately amended by Chapters 374 and 388 of the Laws of 2001 to add "manure processing and handling facilities" (Chapter 374) and "commercial horse boarding operations" (Chapter 388) and in 2005, "timber processing" (Chapter 573).

302. County agricultural and farmland protection board

1. (a) A county legislative body may establish a county agricultural and farmland protection board which shall consist of eleven members, at least four of whom shall be active farmers. At least one member of such board shall represent agribusiness and one member may represent an organization dedicated to agricultural land preservation. These six members of the board shall reside within the county which the respective board serves. The members of the board shall also include the chairperson of the county soil and water conservation district's board of directors, a member of the county legislative body, a county cooperative extension agent, the county planning director and the county director of real property tax services. The chairperson shall be chosen by majority vote. Such board shall be established in the event no such board exists at the time of receipt by the county legislative body of a petition for the creation or review of an agricultural district pursuant to section three hundred three of this article, or at the time of receipt by the county of a notice of intent filing pursuant to subdivision four of section three hundred five of this article. The members of such board shall be appointed by the chairperson of the county legislative body, who shall solicit nominations from farm membership organizations except for the chairperson of the county soil and water conservation district's board of directors, the county planning director and director of real property tax services, who shall serve ex officio. The members shall serve without salary, but the county legislative body may entitle each such member to reimbursement for actual and necessary expenses incurred in the performance of official duties.
- (b) After the board has been established, the chairperson of the county legislative body shall appoint to it two qualified persons for terms of two years each, two qualified persons for terms of three years each and two qualified persons for a term of four years. Thereafter, the appointment of each member shall be for a term of four years. Appointment of a member of the county legislative body shall be for a term coterminous with the member's term of office. Appointment of the county planning director and county director of real property tax services shall be coterminous with their tenure in such office. The appointment of the chairperson of the county soil and water conservation district's board of directors shall be for a term coterminous with his or her designation as chairperson of the county soil and water conservation district's board of directors. Any member of the board may be reappointed for a succeeding term on such board without limitations as to the number of terms the member may serve.
- (c) The county agricultural and farmland protection board shall advise the county legislative body and work with the county planning board in relation to the proposed establishment, modification, continuation or termination of any agricultural district. The board shall render expert advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within any proposed or established area and the relation of farming in such area to the county as a whole. The board may review notice of intent filings pursuant to subdivision four of section three hundred five of this article and make findings and recommendations pursuant to that section as to the effect and reasonableness of proposed actions involving the advance of public funds or acquisitions of farmland in agricultural districts by governmental entities. The board shall also assess and approve county agricultural and farmland protection plans.

- (d) A county agricultural and farmland protection board may request the commissioner of agriculture and markets to review any state agency rules and regulations which the board identifies as affecting the agricultural activities within an existing or proposed agricultural district. Upon receipt of any such request, the commissioner of agriculture and markets shall, if the necessary funds are available, submit in writing to the board (i) notice of changes in such rules and regulations which he or she deems necessary, (ii) a copy of correspondence with another agency if such rules and regulations are outside his or her jurisdiction, including such rules and regulations being reviewed, and his or her recommendations for modification, or (iii) his or her reasons for determining that existing rules and regulations be continued without modification.
 - (e) The county agricultural and farmland protection board shall notify the commissioner and the commissioner of the department of environmental conservation of any attempts to propose the siting of solid waste management facilities upon farmland within an agricultural district.
2. Upon the request of one or more owners of land used in agricultural production the board may review the land classification for such land established by the department of agriculture and markets, consulting with the district soil and water conservation office, and the county cooperative extension service office. After such review, the board may recommend revisions to the classification of specific land areas based on local soil, land and climatic conditions to the department of agriculture and markets.

303. Agricultural districts; creation

1. Any owner or owners of land may submit a proposal to the county legislative body for the creation of an agricultural district within such county, provided that such owner or owners own at least five hundred acres or at least ten per cent of the land proposed to be included in the district, whichever is greater. Such proposal shall be submitted in such manner and form as may be prescribed by the commissioner, shall include a description of the proposed district, including a map delineating the exterior boundaries of the district which shall conform to tax parcel boundaries, and the tax map identification numbers for every parcel in the proposed district. The proposal may recommend an appropriate review period of either eight, twelve or twenty years.
2. Upon the receipt of such a proposal, the county legislative body:
 - a. shall thereupon provide notice of such proposal by publishing a notice in a newspaper having general circulation within the proposed district and by posting such notice in five conspicuous places within the proposed district. The notice shall contain the following information:
 - (1) a statement that a proposal for an agricultural district has been filed with the county legislative body pursuant to this article;
 - (2) a statement that the proposal will be on file open to public inspection in the county clerk's office;
 - (3) a statement that any municipality whose territory encompasses the proposed district or any landowner who owns at least ten per cent of the land proposed to be included within the proposed modification of the proposed district may propose a modification of the proposed district in such form and manner as may be prescribed by the commissioner of agriculture and markets;
 - (4) a statement that the proposed modification must be filed with the county clerk and the clerk of the county legislature within thirty days after the publication of such notice;

- (5) a statement that at the termination of the thirty day period, the proposal and proposed modifications will be submitted to the county planning board and county agricultural and farmland protection board and that thereafter a public hearing will be held on the proposal, proposed modifications and recommendations of the planning board and county agricultural and farmland protection board;
 - b. shall receive any proposals for modifications of such proposal which may be submitted by such landowners or municipalities within thirty days after the publication of such notice;
 - c. shall, upon the termination of such thirty day period, refer such proposal and proposed modifications to the county planning board, which shall, within forty-five days, report to the county legislative body the potential effect of such proposal and proposed modifications upon the county's planning policies and objectives;
 - d. shall simultaneously, upon the termination of such thirty day period, refer such proposal and proposed modifications to the county agricultural and farmland protection board, which shall, within forty-five days report to the county legislative body its recommendations concerning the proposal and proposed modifications, and;
 - e. shall hold a public hearing in the following manner:
 - (1) The hearing shall be held at a place within the proposed district or otherwise readily accessible to the proposed district;
 - (2) The notice shall contain the following information:
 - (a) a statement of the time, date and place of the public hearing;
 - (b) a description of the proposed district, any proposed additions and any recommendations of the county planning board or county agricultural and farmland protection board;
 - (c) a statement that the public hearing will be held concerning:
 - (i) the original proposal;
 - (ii) any written amendments proposed during the thirty day review period;
 - (iii) any recommendations proposed by the county agricultural and farmland protection board and/or the county planning board.
 - (3) The notice shall be published in a newspaper having a general circulation within the proposed district and shall be given in writing to those municipalities whose territory encompasses the proposed district and any proposed modifications, owners of real property within such a proposed district or any proposed modifications who are listed on the most recent assessment roll, the commissioner, the commissioner of environmental conservation and the advisory council on agriculture.
3. The following factors shall be considered by the county planning board, the county agricultural and farmland protection board, and at any public hearing:
- (i) the viability of active farming within the proposed district and in areas adjacent thereto;
 - (ii) the presence of any viable farm lands within the proposed district and adjacent thereto that are not now in active farming;
 - (iii) the nature and extent of land uses other than active farming within the proposed district and adjacent thereto;
 - (iv) county developmental patterns and needs; and
 - (v) any other matters which may be relevant.
- In judging viability, any relevant agricultural viability maps prepared by the commissioner of agriculture and markets shall be considered, as well as soil, climate, topography,

- other natural factors, markets for farm products, the extent and nature of farm improvements, the present status of farming, anticipated trends in agricultural economic conditions and technology, and such other factors as may be relevant.
4. The county legislative body, after receiving the reports of the county planning board and the county agricultural and farmland protection board and after such public hearing, may adopt as a plan the proposal or any modification of the proposal it deems appropriate, and shall adopt as part of the plan an appropriate review period of either eight, twelve or twenty years. The plan as adopted shall, to the extent feasible, include adjacent viable farm lands, and exclude, to the extent feasible, nonviable farm land and non-farm land. The plan shall include only whole tax parcels in the proposed district. The county legislative body shall act to adopt or reject the proposal, or any modification of it, no later than one hundred eighty days from the date the proposal was submitted to this body. Upon the adoption of a plan, the county legislative body shall submit it to the commissioner. The commissioner may, upon application by the county legislative body and for good cause shown, extend the period for adoption and submission once for an additional thirty days. Where he or she does so, the county legislative body may extend the period for the report from the county planning board and/or the period for the report from the county agricultural and farmland protection board.
 5.
 - a. The commissioner shall have sixty days after receipt of the plan within which to certify to the county legislative body whether the proposal, or a modification of the proposal, is eligible for districting, whether the area to be districted consists predominantly of viable agricultural land, and whether the plan of the proposed district is feasible, and will serve the public interest by assisting in maintaining a viable agricultural industry within the district and the state. The commissioner shall submit a copy of such plan to the commissioner of environmental conservation, who shall have thirty days within which to report his or her determination to the commissioner. A copy of such plan shall also be provided to the advisory council on agriculture. The commissioner shall not certify the plan as eligible for districting unless the commissioner of environmental conservation has determined that the area to be districted is consistent with state environmental plans, policies and objectives.
 - b. [repealed]
 6.
 - a. Within sixty days after the certification by the commissioner that the proposed area is eligible for districting, and that districting would be consistent with state environmental plans, policies and objectives, the county legislative body may hold a public hearing on the plan, except that it shall hold a public hearing if the plan was modified by the commissioner or was modified by the county legislative body after they held the public hearing required by paragraph e of subdivision two of this section and such modification was not considered at the original hearing. Notice of any such hearing shall be in a newspaper having general circulation in the area of the proposed district and individual notice, in writing, to those municipalities whose territories encompass the proposed district modifications, the persons owning land directly affected by the proposed district modifications, the commissioner, the commissioner of environmental conservation and the advisory council on agriculture. The proposed district, if certified without modification by the commissioner, shall become effective thirty days after the termination of such public hearing or, if there is no public hearing, ninety days after such certification unless its creation is disapproved by the county legislative body within such period. Provided, however, that if, on a date within the thirty days after the termination of such public hearing or, if there is no public hearing, within the ninety days after such certification, the county legislative body approves creation of the district, such district shall become effective

on such date. Provided further, that notwithstanding any other provision of this subdivision, if the commissioner modified the proposal, the district shall not become effective unless the county legislative body approves the modified district; such approval must be given on a date within the thirty days after termination of the public hearing; and the district, if approved, shall become effective on such date. Before approving or disapproving any proposal modified by the commissioner, the county legislative body may request reports on such modified proposal, from the county planning board and the county agricultural and farmland protection board.

b. [repealed]

7. Upon the creation of an agricultural district, the description thereof, which shall include tax map identification numbers for all parcels within the district, plus a map delineating the exterior boundaries of the district in relation to tax parcel boundaries, shall be filed by the county legislative body with the county clerk, the county director of real property tax services, and the commissioner. For all existing agricultural districts, the county clerk shall also file with the commissioner upon request the tax map identification numbers for tax parcels within those districts. The commissioner, on petition of the county legislative body, may, for good cause shown, approve the correction of any errors in materials filed pursuant to a district creation at any time subsequent to the creation of any agricultural district.
8. [repealed]

303-a. Agricultural districts; review.

1. The county legislative body shall review any district created under this section eight, twelve or twenty years after the date of its creation, consistent with the review period set forth in the plan creating such district and at the end of every eight, twelve or twenty year period thereafter, whichever may apply. In counties with multiple districts with review dates in any twelve month period, the commissioner, on petition of the county legislative body, may, for good cause shown, approve an extension of up to four years for a district review. Thereafter, the extended review date shall be deemed the creation date for purposes of subsequent reviews by the county legislative body in accordance with this section. The review date of a district may not be extended more than four years. The petition of the county legislative body for an extension shall be submitted to the commissioner at least six months prior to the review date.
2. In conducting a district review the county legislative body shall;
 - a. Provide notice of such district review by publishing a notice in a newspaper having general circulation within the district and by posting such notice in at least five conspicuous places within the district. The notice shall identify the municipalities in which the district is found and the district's total area; indicate that a map of the district will be on file and open to public inspection in the office of the county clerk and such other places as the legislative body deems appropriate; and notify municipalities and land owners within the district that they may propose a modification of the district by filing such proposal with the county clerk of the county legislature within thirty days after the publication of such notice;
 - b. Direct the county agricultural and farmland protection board to prepare a report concerning the following:
 - (1) The nature and status of farming and farm resources within such district, including the total number of acres of land and the total number of acres of land in farm operations in the district;
 - (2) The extent to which the district has achieved its original objectives;

- (3) The extent to which county and local comprehensive plans, policies and objectives are consistent with and support the district;
 - (4) The degree of coordination between local laws, ordinances, rules and regulations that apply to farm operations in such district and their influence on farming; and;
 - (5) Recommendations to continue terminate or modify such district.
 - c. Hold a public hearing at least one hundred twenty days prior to the district review date and not more than one hundred eighty days prior to such date, in the following manner:
 - (1) The hearing shall be held at a place within the district or other-wise readily accessible to the proposed district;
 - (2) A notice of public hearing shall be published in a newspaper having a general circulation within the district and shall be given in writing to those municipalities whose territories encompass the district and any proposed modifications to the district; to persons, as listed on the most recent assessment roll, whose land is the subject of a proposed modification; and to the commissioner;
 - (3) The notice of hearing shall contain the following information:
 - (a) a statement of the time, date and place of the public hearing; and
 - (b) a description of the district, any proposed modifications and any recommendations of the county agricultural and farmland protection board.
3. The county legislative body, after receiving the report and recommendation of the county agricultural and farmland protection board, and after public hearing, shall make a finding whether the district should be continued, terminated or modified. If the county legislative body finds that the district should be terminated, it may do so at the end of such eight, twelve or twenty year period, whichever may be applicable, by filing a notice of termination with the county clerk and the commissioner. If the county legislative body finds that the district should be continued or modified, it shall submit a district review plan to the commissioner. The district review plan shall include a description of the district, including a map delineating the exterior boundaries of the district which shall conform to tax parcel boundaries; the tax map identification numbers for every parcel in the district; a copy of the report of the county agricultural and farmland protection board required by paragraph b of subdivision two of this section; and a copy of the testimony given at the public hearing required by subdivision two of this section or a copy of the minutes of such hearing.
4. If the county legislative body does not act, or if a modification of a district is rejected by the county legislative body, the district shall continue as originally constituted, unless the commissioner, after consultation with the advisory council on agriculture, terminates such district, by filing a notice thereof with the county clerk, because:
 - a. The area in the district is no longer predominantly viable agricultural land; or
 - b. The commissioner or environmental conservation has determined that the continuation of the district would not be consistent with state environmental plans, policies and objectives; provided, however, that if the commissioner certifies to the county legislative body that he or she will not approve the continuance of the district unless modified, the commissioner shall grant the county an extension as provided in subdivision one of this section to allow the county to prepare a modification of the district in the manner provided in this section.
5. Plan review, certification and filing shall be conducted in the same manner prescribed for district creation in subdivisions five, six and seven of section three hundred three of this article.

303-b. Agricultural districts; inclusion of viable agricultural land

1. The legislative body of any county containing a certified agricultural district shall designate an annual thirty-day period within which a land owner may submit to such body a request for inclusion of land which is predominantly viable agricultural land within a certified agricultural district prior to the county established review period. Such request shall identify the agricultural district into which the land is proposed to be included, describe such land, and include the tax map identification number and relevant portion of the tax map for each parcel of land to be included.
2. Upon the termination of such thirty-day period, if any requests are submitted, the county legislative body shall:
 - a. refer such request or requests to the county agricultural and farmland protection board, which shall, within thirty days report to the county legislative body its recommendations as to whether the land to be included in the agricultural district consists predominantly of "viable agricultural land" as defined in subdivision seven of section three hundred one of this article and the inclusion of such land would serve the public interest by assisting in maintaining a viable agricultural industry within the district; and
 - b. publish a notice of public hearing in accordance with subdivision three of this section.
3. The county legislative body shall hold a public hearing upon giving notice in the following manner:
 - a. The notice of public hearing shall contain a statement that one or more requests for inclusion of predominantly viable agricultural land within a certified agricultural district have been filed with the county legislative body pursuant to this section; identify the land, generally, proposed to be included; indicate the time, date and place of the public hearing, which shall occur after receipt of the report of the county agricultural and farmland protection board; and include a statement that the hearing shall be held to consider the request or requests and recommendations of the county agricultural and farmland protection board.
 - b. The notice shall be published in a newspaper having a general circulation within the county and shall be given in writing directly to those municipalities whose territory encompasses the lands which are proposed to be included in an agricultural district and to the commissioner.
4. After the public hearing, the county legislative body shall adopt or reject the inclusion of the land requested to be included within an existing certified agricultural district. Such action shall be taken no later than one hundred twenty days from the termination of the thirty day period described in subdivision one of this section. Any land to be added shall consist of whole tax parcels only. Upon the adoption of a resolution to include predominantly viable agricultural land, in whole or in part, within an existing certified agricultural district, the county legislative body shall submit the resolution, together with the report of the county agricultural and farmland protection board and the tax map identification numbers and tax maps for each parcel of land to be included in an agricultural district to the commissioner.
5. Within thirty days after receipt of a resolution to include land within a district, the commissioner shall certify to the county legislative body whether the inclusion of predominantly viable agricultural land as proposed is feasible and shall serve the public interest by assisting in maintaining a viable agricultural industry within the district or districts.

6. If the commissioner certifies that the proposed inclusion of predominantly viable agricultural land within a district is feasible and in the public interest, the land shall become part of the district immediately upon such certification.

304. Unique and irreplaceable agricultural lands; creation of districts

1. The commissioner, after consulting with the advisory council on agriculture, may create agricultural districts covering any land in units of two thousand or more acres not already districted under section three hundred three of this article, if (a) the land encompassed in a proposed district is predominantly unique and irreplaceable agricultural land; (b) the commissioner of environmental conservation has determined that such district would further state environmental plans, policies and objectives; and (c) the director of the division of the budget has given approval of the establishment of such area.
2. Prior to creating an agricultural district under this section, the commissioner of agriculture and markets shall work closely, consult and cooperate with local elected officials, planning bodies, agriculture and agribusiness interests, community leaders, and other interested groups. The commissioner shall give primary consideration to local needs and desires, including local zoning and planning regulations as well as regional and local comprehensive land use plans. The commissioner shall file a map of the proposed district in the office of the clerk of any municipality in which the proposed district is to be located, and shall provide a copy thereof to the chief executive officer of any such municipality and the presiding officer of the local governing body, and, upon request, to any other person. The commissioner shall publish a notice of the filing of such proposed map and the availability of copies thereof in a newspaper of general circulation within the area of the proposed district, which notice shall also state that a public hearing will be held to consider the proposed district at a specified time and at a specified place either within the proposed district or easily accessible to the proposed district on a date not less than thirty days after such publication. In addition, the commissioner shall give notice, in writing, of such public hearing to persons owning land within the proposed district. The commissioner shall conduct a public hearing pursuant to such notice, and, in addition, any person shall have the opportunity to present written comments on the proposed district within thirty days after the public hearing. After due consideration of such local needs and desires, including such testimony and comments, if any, the commissioner may affirm, modify or withdraw the proposed district. Provided, however, that if the commissioner modifies the proposal to include any land not included in the proposal as it read when the public hearing was held, the commissioner shall hold another public hearing, on the same type of published and written notice, and with the same opportunity for presentation of written comments after the hearing. Then the commissioner may affirm, modify or withdraw the proposed district, but may not modify it to include land not included in the proposal upon which the second hearing was held.
3. Upon such affirmation or modification, a map of the district shall be filed by the commissioner of agriculture and markets with the county clerk of each county in which the district or a portion thereof is located, and publication of such filing shall be made in a newspaper of general circulation within the district to be created. The creation of the district shall become effective thirty days after such filing and publication.
4. The commissioner shall review any district created under this section, in consultation with the advisory council on agriculture, the commissioner of environmental conservation and the director of the division of the budget, eight, twelve or twenty years after the date of its creation, consistent with the review period set forth in the plan creating such district or every eight years if the district was adopted prior to August first, nineteen hundred eighty-three, and every eight, twelve or twenty year period thereafter, whichever may be

applicable. Each such review shall include consultations with local elected officials, planning bodies, agricultural and agribusiness interests, community leaders, county agricultural and farmland protection boards, and other interested groups, and shall also include a public hearing at a specified time and at a specified place either within the district or easily accessible to the proposed district, notice of such hearing to be published in a newspaper having general circulation within the district. In addition, the commissioner shall give notice, in writing, of such public hearing to persons owning land in the district. After any such review, the commissioner may modify such district so as to exclude land which is no longer predominantly unique and irreplaceable agricultural land or to include additional such land, provided: (a) such modification would serve the public interest by assisting in maintaining a viable agricultural industry within the district and the state; (b) the commissioner of environmental conservation has determined that such modification would further state environmental plans, policies and objectives; and (c) such modification has been approved by the director of the division of the budget; provided, further that if the commissioner modifies the district to include additional land, he or she shall hold another public hearing, on the same type of published and written notice. Then the commissioner may again modify or dissolve the district, but may not modify it to include land not included in the proposed modifications upon which the second hearing was held. After any such review the commissioner, after consultation with the advisory council on agriculture, shall dissolve any such district if (a) the land within the district is no longer predominantly unique and irreplaceable agricultural land, or (b) the commissioner of environmental conservation has determined that the continuation of the district would not further state environmental plans, policies and objectives. A modification or dissolution of a district shall become effective in the same manner as is provided for in subdivision three of this section, except that in the case of dissolution, a notice of dissolution shall be filed instead of a map.

304-a. Agricultural assessment values

1. Agricultural assessment values shall be calculated and certified annually in accordance with the provisions of this section.
2. a. The commissioner of agriculture and markets shall establish and maintain an agricultural land classification system based upon soil productivity and capability. The agricultural land classification system shall distinguish between mineral and organic soils. There shall be ten primary groups of mineral soils and such other subgroups as the commissioner determines necessary to represent high-lime and low-lime content. There shall be four groups of organic soils.
- b. The land classification system shall be promulgated by rule by the commissioner following a review of comments and recommendations of the advisory council on agriculture and after a public hearing. In making any revisions to the land classification system the commissioner may, in his or her discretion, conduct a public hearing. The commissioner shall foster participation by county agricultural and farmland protection boards, district soil and water conservation committees, and the cooperative extension service and consult with other state agencies, appropriate federal agencies, municipalities, the New York state college of agriculture and life sciences at Cornell university and farm organizations.
- c. The commissioner shall certify to the state board of real property services the soil list developed in accordance with the land classification system and any revisions thereto.

- d. The commissioner shall prepare such materials as may be needed for the utilization of the land classification system and provide assistance to landowners and local officials in its use.
- 3. a. The state board of real property services shall annually calculate a single agricultural assessment value for each of the mineral and organic soil groups which shall be applied uniformly throughout the state. A base agricultural assessment value shall be separately calculated for mineral and organic soil groups in accordance with the procedure set forth in subdivision four of this section and shall be assigned as the agricultural assessment value of the highest grade mineral and organic soil group.
- b. The agricultural assessment values for the remaining mineral soil groups shall be the product of the base agricultural assessment value and a percentage, derived from the productivity measurements determined for each soil and related soil group in conjunction with the land classification system, as follows:

Mineral Soil Group	Percentage of Base Agricultural Assessment Value
1A	
1B	
2A	89
2B	79
3A	79
3B	68
4A	68
4B	58
5A	58
5B	47
6A	47
6B	37
7	37
8	26
9	16
10	5

- c. The agricultural assessment values for the remaining organic soil groups shall be the products of the base agricultural assessment value and a percentage, as follows:

Organic Soil Group	Percentage of Base Agricultural Assessment Value
A	100
B	65
C	55
D	35

- d. The agricultural assessment value for organic soil group A shall be two times the base agricultural assessment value calculated for mineral soil group 1A.
- e. The agricultural assessment value for farm woodland shall be the same as that calculated for mineral soil group seven.

- f. Where trees or vines used for the production of fruit are located on land used in agricultural production, the value of such trees and vines, and the value of all posts, wires and trellises used for the production of fruit, shall be considered to be part of the agricultural assessment value of such land.
 - g. The agricultural assessment value for land and waters used in aquacultural enterprises shall be the same as that calculated for mineral soil group 1A.
4. a. The base agricultural assessment value shall be the average capitalized value of production per acre for the eight year period ending in the second year preceding the year for which the agricultural assessment values are certified. The capitalized value of production per acre shall be calculated by dividing the product of the value of production per acre and the percentage of net profit by a capitalization rate of ten percent, representing an assumed investment return rate of eight percent and an assumed real property tax rate of two percent.
- b. The value of production per acre shall be the value of production divided by the number of acres harvested in New York state.
- c. The percentage of net profit shall be adjusted net farm income divided by realized gross farm income.
- (i) Adjusted net farm income shall be the sum of net farm income, taxes on farm real estate and the amount of mortgage interest debt attributable to farmland, less a management charge of one percent of realized gross farm income plus seven percent of adjusted production expenses.
 - (ii) The amount of mortgage interest debt attributable to farmland shall be the product of the interest on mortgage debt and the percentage of farm real estate value attributable to land.
 - (iii) The percentage of farm real estate value attributable to land shall be the difference between farm real estate value and farm structure value divided by farm real estate value.
 - (iv) Adjusted production expenses shall be production expenses, less the sum of the taxes on farm real estate and the interest on mortgage debt.
- d. The following data, required for calculations pursuant to this subdivision, shall be as published by the United States department of agriculture for all farming in New York state:
- (i) Farm real estate value shall be the total value of farmland and buildings, including improvements.
 - (ii) Farm structure value shall be the total value of farm buildings, including improvements.
 - (iii) Interest on mortgage debt shall be the total interest paid on farm real estate debt.
 - (iv) Net farm income shall be realized gross income less production expenses, as adjusted for change in inventory.
 - (v) Production expenses shall be the total cost of production.
 - (vi) Realized gross income shall be the total of cash receipts from farm marketings, government payments, nonmoney income and other farm income.
 - (vii) Taxes on farm real estate shall be the total real property taxes on farmland and buildings, including improvements.
 - (viii) Number of acres harvested including all reported crops.
 - (ix) Value of production shall be the total estimated value of all reported crops.
- e. In the event that the data required for calculation pursuant to this subdivision is not published by the United States department of agriculture or is incomplete, such

required data shall be obtained from the New York state department of agriculture and markets.

- f. Upon completion of the calculation of agricultural assessment values, the state board of real property services shall publish an annual report, which shall include a schedule of values, citations to data sources and presentation of all calculations. The state board of real property services shall transmit copies of the annual report to the governor and legislature, the advisory council on agriculture and other appropriate state agencies and interested parties. The state board of real property services shall thereupon certify the schedule of agricultural assessment values and the state board of real property services shall transmit a schedule of such certified values to each assessor.
 - g. Notwithstanding any other provision of this section to the contrary, in no event shall the change in the base agricultural assessment value for any given year exceed ten percent of the base agricultural assessment value of the preceding year.
- 5.
- a. In carrying out their responsibilities under this section, the state board of real property services and the commissioner shall keep the advisory council on agriculture fully apprised on matters relating to its duties and responsibilities.
 - b. In doing so, the state board of real property services and the commissioner shall provide, in a timely manner, any materials needed by the advisory council on agriculture to carry out its responsibilities under this section.

304-b. Agricultural district data reporting

1. The commissioner shall file a written report with the governor and the legislature on January first, two thousand eight and biennially thereafter, covering each prior period of two years, concerning the status of the agricultural districts program. Such report shall include, but not be limited to, the total number of agricultural districts, the total number of acres in agricultural districts, a list of the counties that have established county agricultural and farmland protection plans, and a summary of the agricultural protection planning grants program.
2. Between report due dates, the commissioner shall maintain the necessary records and data required to satisfy such report requirements and to satisfy information requests received from the governor and the legislature between such report due dates.

305. Agricultural districts; effects

1. Agricultural assessments.
 - a. Any owner of land used in agricultural production within an agricultural district shall be eligible for an agricultural assessment pursuant to this section. If an applicant rents land from another for use in conjunction with the applicant's land for the production for sale of crops, livestock or livestock products, the gross sales value of such products produced on such rented land shall be added to the gross sales value of such products produced on the land of the applicant for purposes of determining eligibility for an agricultural assessment on the land of the applicant. Such assessment shall be granted only upon an annual application by the owner of such land on a form prescribed by the state board of real property services. The applicant shall furnish to the assessor such information as the state board of real property services shall require, including classification information prepared for the applicant's land or water bodies used in agricultural production by the soil and water conservation district office within the county, and information demonstrating the eligibility for agricultural assessment of any land used in conjunction with

rented land as specified in paragraph b of subdivision four of section three hundred one of this article. Such application shall be filed with the assessor of the assessing unit on or before the appropriate taxable status date; provided, however, that (i) in the year of a revaluation or update of assessments, as those terms are defined in section one hundred two of the real property tax law, the application may be filed with the assessor no later than the thirtieth day prior to the day by which the tentative assessment roll is required to be filed by law; or (ii) an application for such an assessment may be filed with the assessor of the assessing unit after the appropriate taxable status date but not later than the last date on which a petition with respect to complaints of assessment may be filed, where failure to file a timely application resulted from: (a) a death of the applicant's spouse, child, parent, brother or sister, (b) an illness of the applicant or of the applicant's spouse, child, parent, brother or sister, which actually prevents the applicant from filing on a timely basis, as certified by a licensed physician, or (c) the occurrence of a natural disaster, including, but not limited to, a flood, or the destruction of such applicant's residence, barn or other farm building by wind, fire or flood. If the assessor is satisfied that the applicant is entitled to an agricultural assessment, the assessor shall approve the application and the land shall be assessed pursuant to this section. Not less than ten days prior to the date for hearing complaints in relation to assessments, the assessor shall mail to each applicant, who has included with the application at least one self-addressed, pre-paid envelope, a notice of the approval or denial of the application. Such notice shall be on a form prescribed by the state board of real property services which shall indicate the manner in which the total assessed value is apportioned among the various portions of the property subject to agricultural assessment and those other portions of the property not eligible for agricultural assessment as determined for the tentative assessment roll and the latest final assessment roll. Failure to mail any such notice or failure of the owner to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on such real property.

- b. That portion of the value of land utilized for agricultural production within an agricultural district which represents an excess above the agricultural assessment as determined in accordance with this subdivision shall not be subject to real property taxation. Such excess amount if any shall be entered on the assessment roll in the manner prescribed by the state board of real property services.
- c.
 - (i) The assessor shall utilize the agricultural assessment values per acre certified pursuant to section three hundred four-a of this article in determining the amount of the assessment of lands eligible for agricultural assessments by multiplying those values by the number of acres of land utilized for agricultural production and adjusting such result by application of the latest state equalization rate or a special equalization rate as may be established and certified by the state board of real property services for the purpose of computing the agricultural assessment pursuant to this paragraph. This resulting amount shall be the agricultural assessment for such lands.
 - (ii) Where the latest state equalization rate exceeds one hundred, or where a special equalization rate which would otherwise be established for the purposes of this section would exceed one hundred, a special equalization rate of one hundred shall be established and certified by the state board for the purpose of this section.
 - (iii) Where a special equalization rate has been established and certified by the state board for the purposes of this paragraph, the assessor is directed and authorized to recompute the agricultural assessment on the assessment roll

by applying such special equalization rate instead of the latest state equalization rate, and to make the appropriate corrections on the assessment roll, subject to the provisions of title two of article twelve of the real property tax law.

- d. (i) If land within an agricultural district which received an agricultural assessment is converted parcels, as described on the assessment roll which include land so converted shall be subject to payments equaling five times the taxes saved in the last year in which the land benefited from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years. The amount of taxes saved for the last year in which the land benefited from an agricultural assessment shall be determined by applying the applicable tax rates to the excess amount of assessed valuation of such land over its agricultural assessment as set forth on the last assessment roll which indicates such an excess. If only a portion of a parcel as described on the assessment roll is converted, the assessor shall apportion the assessment and agricultural assessment attributable to the converted portion, as determined for the last assessment roll for which the assessment of such portion exceeded its agricultural assessment. The difference between the apportioned assessment and the apportioned agricultural assessment shall be the amount upon which payments shall be determined. Payments shall be added by or on behalf of each taxing jurisdiction to the taxes levied on the assessment roll prepared on the basis of the first taxable status date on which the assessor considers the land to have been converted; provided, however, that no payments shall be imposed if the last assessment roll upon which the property benefited from an agricultural assessment, was more than five years prior to the year for which the assessment roll upon which payments would otherwise be levied is prepared.
- (ii) Whenever a conversion occurs, the owner shall notify the assessor within ninety days of the date such conversion is commenced. If the landowner fails to make such notification within the ninety day period, the assessing unit, by majority vote of the governing body, may impose a penalty on behalf of the assessing unit of up to two times the total payments owed, but not to exceed a maximum total penalty of five hundred dollars in addition to any payments owed.
- (iii) (a) An assessor who determines that there is liability for payments and any penalties assessed pursuant to subparagraph (ii) of this paragraph shall notify the landowner by mail of such liability at least ten days prior to the date for hearing complaints in relation to assessments. Such notice shall indicate the property to which payments apply and describe how the payments shall be determined. Failure to provide such notice shall not affect the levy, collection or enforcement or payment of payments.
(b) Liability for payments shall be subject to administrative and judicial review as provided by law for review of assessments.
- (iv) If such land or any portion thereof is converted to a use other than for agricultural production by virtue of oil, gas or wind exploration, development, or extraction activity or by virtue of a taking by eminent domain or other involuntary proceeding other than a tax sale, the land or portion so converted shall not be subject to payments. If the land so converted constitutes only a portion of a parcel described on the assessment roll, the assessor shall

apportion the assessment, and adjust the agricultural assessment attributable to the portion of the parcel not subject to such conversion by subtracting the proportionate part of the agricultural assessment attributable to the portion so converted. Provided further that land within an agricultural district and eligible for an agricultural assessment shall not be considered to have been converted to a use other than for agricultural production solely due to the conveyance of oil, gas or wind rights associated with that land.

- (v) An assessor who imposes any such payments shall annually, and within forty-five days following the date on which the final assessment roll is required to be filed, report such payments to the state board of real property services on a form prescribed by the state board.
 - (vi) The assessing unit, by majority vote of the governing body, may impose a minimum payment amount, not to exceed one hundred dollars.
 - (vii) The purchase of land in fee by the city of New York for watershed protection purposes or the conveyance of a conservation easement by the city of New York to the department of environmental conservation which prohibits future use of the land for agricultural purposes shall not be a conversion of parcels and no payment shall be due under this section.
- e. In connection with any district created under section three hundred four of this article, the state shall provide assistance to each taxing jurisdiction in an amount equal to one-half of the tax loss that results from requests for agricultural assessments in the district. The amount of such tax loss shall be computed annually by applying the applicable tax rate to an amount computed by subtracting the agricultural assessment from the assessed value of the property on the assessment roll completed and filed prior to July first, nineteen hundred seventy-one, taking into consideration any change in the level of assessment. The chief fiscal officer of a taxing jurisdiction entitled to state assistance under this article shall make application for such assistance to the state board of real property services on a form approved by such board and containing such information as the board shall require. Upon approval of the application by such board, such assistance shall be apportioned and paid to such taxing jurisdiction on the audit and warrant of the state comptroller out of moneys appropriated by the legislature for the purpose of this article; provided, however, that any such assistance payment shall be reduced by one-half the amount of any payments levied under subparagraph (i) of paragraph d of this subdivision, for land in any district created under section three hundred four of this article, unless one-half the amount of such payments has already been used to reduce a previous assistance payment under this paragraph.
- f. Notwithstanding any inconsistent general, special or local law to the contrary, if a natural disaster, act of God, or continued adverse weather conditions shall destroy the agricultural production and such fact is certified by the cooperative extension service and, as a result, such production does not produce an average gross sales value of ten thousand dollars or more, the owner may nevertheless qualify for an agricultural assessment provided the owner shall substantiate in such manner as prescribed by the state board of real property services that the agricultural production initiated on such land would have produced an average gross sales value of ten thousand dollars or more but for the natural disaster, act of God or continued adverse weather conditions.
2. [repealed]
3. Policy of state agencies. It shall be the policy of all state agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations

and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans, or other funding.

4. Limitation on the exercise of eminent domain and other public acquisitions, and on the advance of public funds.
 - a. Any agency of the state, any public benefit corporation or any local government which intends to acquire land or any interest therein, provided that the acquisition from any one actively operated farm within the district would be in excess of one acre or that the total acquisition within the district would be in excess of ten acres, or which intends to construct, or advance a grant, loan, interest subsidy or other funds within a district to construct, dwellings, commercial or industrial facilities, water or sewer facilities to serve non-farm structures, shall use all practicable means in undertaking such action to realize the policy and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse impacts on agriculture in order to sustain a viable farm enterprise or enterprises within the district. The adverse agricultural impacts to be minimized or avoided shall include impacts revealed in the notice of intent process described in this subdivision.
 - b. As early as possible in the development of a proposal of an action described in paragraph a of this subdivision, but in no event later than the date of any determination as to whether an environmental impact statement need be prepared pursuant to article eight of the environmental conservation law, the agency, corporation or government proposing an action described in paragraph a of this subdivision shall file a preliminary notice of its intent with the commissioner and the county agricultural and farmland protection board in such manner and form as the commissioner may require. Such preliminary notice shall include the following:
 - (i) a brief description of the proposed action and its agricultural setting;
 - (ii) a summary of any anticipated adverse impacts on farm operations and agricultural resources within the district; and
 - (iii) such other information as the commissioner may require.
 - c. The agency, corporation or government proposing the action shall also, at least sixty-five days prior to such acquisition, construction or advance of public funds, file a final notice of intent with the commissioner and the county agricultural and farmland protection board. Such final notice shall include a detailed agricultural impact statement setting forth the following:
 - (i) a detailed description of the proposed action and its agricultural setting;
 - (ii) the agricultural impact of the proposed action including short-term and long-term effects;
 - (iii) any adverse agricultural effects which cannot be avoided should the proposed action be implemented;
 - (iv) alternatives to the proposed action;
 - (v) any irreversible and irretrievable commitments of agricultural resources which would be involved in the proposed action should it be implemented;
 - (vi) mitigation measures proposed to minimize the adverse impact of the proposed action on the continuing viability of a farm enterprise or enterprises within the district;
 - (vii) any aspects of the proposed action which would encourage non-farm development, where applicable and appropriate; and
 - (viii) such other information as the commissioner may require.

The commissioner shall promptly determine whether the final notice is complete or incomplete. If the commissioner does not issue such determination within thirty days, the final notice shall be deemed complete. If the final notice is determined to be incomplete, the commissioner shall notify the party proposing the action in writing of the reasons for that determination. Any new submission shall commence a new period for department review for purposes of determining completeness.

- d. The provisions of paragraphs b and c of this subdivision shall not apply and shall be deemed waived by the owner of the land to be acquired where such owner signs a document to such effect and provides a copy to the commissioner.
- e. Upon notice from the commissioner that he or she has accepted a final notice as complete, the county agricultural and farmland protection board may, within thirty days, review the proposed action and its effects on farm operations and agricultural resources within the district, and report its findings and recommendations to the commissioner and to the party proposing the action in the case of actions proposed by a state agency or public benefit corporation, and additionally to the county legislature in the case of actions proposed by local government agencies.
- f. Upon receipt and acceptance of a final notice, the commissioner shall thereupon forward a copy of such notice to the commissioner of environmental conservation and the advisory council on agriculture. The commissioner, in consultation with the commissioner of environmental conservation and the advisory council on agriculture, within forty-five days of the acceptance of a final notice, shall review the proposed action and make an initial determination whether such action would have an unreasonably adverse effect on the continuing viability of a farm enterprise or enterprises within the district, or state environmental plans, policies and objectives.

If the commissioner so determines, he or she may (i) issue an order within the forty-five day period directing the state agency, public benefit corporation or local government not to take such action for an additional period of sixty days immediately following such forty-five day period; and (ii) review the proposed action to determine whether any reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact on agriculture in order to sustain a viable farm enterprise or enterprises within the district.

The commissioner may hold a public hearing concerning such proposed action at a place within the district or otherwise easily accessible to the district upon notice in a newspaper having a general circulation within the district, and individual notice, in writing, to the municipalities whose territories encompass the district, the commissioner of environmental conservation, the advisory council on agriculture and the state agency, public benefit corporation or local government proposing to take such action. On or before the conclusion of such additional sixty day period, the commissioner shall report his or her findings to the agency, corporation or government proposing to take such action, to any public agency having the power of review of or approval of such action, and, in a manner conducive to the wide dissemination of such findings, to the public. If the commissioner concludes that a reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact of the proposed action, he or she shall propose that such alternative or alternatives be accepted. If the agency, corporation or government proposing the action accepts the commissioner's proposal, then the requirements of the notice of intent filing shall be deemed fulfilled. If the agency,

corporation or government rejects the commissioner's proposal, then it shall provide the commissioner with reasons for rejecting such proposal and a detailed comparison between its proposed action and the commissioner's alternative or alternatives.

- g. At least ten days before commencing an action which has been the subject of a notice of intent filing, the agency, corporation or government shall certify to the commissioner that it has made an explicit finding that the requirements of this subdivision have been met, and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse agricultural impacts revealed in the notice of intent process will be minimized or avoided. Such certification shall set forth the reasons in support of the finding.
 - h. The commissioner may request the attorney general to bring an action to enjoin any such agency, corporation or government from violating any of the provisions of this subdivision.
 - h-1. Notwithstanding any other provision of law to the contrary, no solid waste management facility shall be sited on land in agricultural production which is located within an agricultural district, or land in agricultural production that qualifies for and is receiving an agricultural assessment pursuant to section three hundred six of this article. Nothing contained herein, however, shall be deemed to prohibit siting when:
 - (i) The owner of such land has entered into a written agreement which shall indicate his consent for site consideration; or
 - (ii) The applicant for a permit has made a commitment in the permit application to fund a farm land protection conservation easement within a reasonable proximity to the proposed project in an amount not less than the dollar value of any such farm land purchased for the project; or
 - (iii) The commissioner in concurrence with the commissioner of environmental conservation has determined that any such agricultural land to be taken, constitutes less than five percent of the project site.
- For purposes of this paragraph, "solid waste management facility" shall have the same meaning as provided in title seven of article twenty-seven of the environmental conservation law, but shall not include solid waste transfer stations or land upon which sewage sludge is applied, and determinations regarding agricultural district boundaries and agricultural assessments will be based on those in effect as of the date an initial determination is made, pursuant to article eight of the environmental conservation law, as to whether an environmental impact statement needs to be prepared for the proposed project.
- i. This subdivision shall not apply to any emergency project which is immediately necessary for the protection of life or property or to any project or proceeding to which the department is or has been a statutory party.
 - j. The commissioner may bring an action to enforce any mitigation measures proposed by a public benefit corporation or a local government, and accepted by the commissioner, pursuant to a notice of intent filing, to minimize or avoid adverse agricultural impacts from the proposed action.
5. Limitation on power to impose benefit assessments, special ad valorem levies or other rates or fees in certain improvement districts or benefit areas. Within improvement districts or areas deemed benefited by municipal improvements including, but not limited to, improvements for sewer, water, lighting, non-farm drainage, solid waste disposal, including those solid waste management facilities established pursuant to section two hundred twenty-six-b of the county law, or other landfill operations, no benefit assessments, special ad valorem levies or other rates of fees charged for such

improvements may be imposed on land used primarily for agricultural production within an agricultural district on any basis, except a lot not exceeding one-half acre surrounding any dwelling or non-farm structure located on said land nor on any farm structure located in an agricultural district unless such structure benefits directly from the service of such improvement district or benefited area; provided, however, that if such benefit assessments, ad valorem levies or other rates of fees were imposed prior to the formation of the agricultural district, then such benefit assessments, ad valorem levies or other rates or fees shall continue to be imposed on such land or farm structure.

6. Use of assessment for certain purposes. The governing body of a fire, fire protection, or ambulance district for which a benefit assessment or a special ad valorem levy is made, may adopt a resolution to provide that the assessment determined pursuant to subdivision one of this section for such property shall be used for the benefit assessment or special ad valorem levy of such fire, fire protection, or ambulance district.
7. Notwithstanding any provision of law to the contrary, that portion of the value of land which is used solely for the purpose of replanting or crop expansion as part of an orchard or vineyard shall be exempt from real property taxation for a period of six successive years following the date of such replanting or crop expansion beginning on the first eligible taxable status date following such replanting or expansion provided the following conditions are met:
 - a. The land used for crop expansion or replanting must be a part of an existing orchard or vineyard which is located on land used in agricultural production within an agricultural district or such land must be part of an existing orchard or vineyard which is eligible for an agricultural assessment pursuant to this section or section three hundred six of this chapter where the owner of such land has filed an annual application for an agricultural assessment;
 - b. The land eligible for such real property tax exemption shall not in any one year exceed twenty percent of the total acreage of such orchard or vineyard which is located on land used in agricultural production within an agricultural district or twenty percent of the total acreage of such orchard or vineyard eligible for an agricultural assessment pursuant to this section and section three hundred six of this chapter where the owner of such land has filed an annual application for an agricultural assessment;
 - c. The land eligible for such real property tax exemption must be maintained as land used in agricultural production as part of such orchard or vineyard for each year such exemption is granted; and
 - d. When the land used for the purpose of replanting or crop expansion as part of an orchard or vineyard is located within an area which has been declared by the governor to be a disaster emergency in a year in which such tax exemption is sought and in a year in which such land meets all other eligibility requirements for such tax exemption set forth in this subdivision, the maximum twenty percent total acreage restriction set forth in paragraph b of this subdivision may be exceeded for such year and for any remaining successive years, provided, however, that the land eligible for such real property tax exemption shall not exceed the total acreage damaged or destroyed by such disaster in such year or the total acreage which remains damaged or destroyed in any remaining successive year. The total acreage for which such exemption is sought pursuant to this paragraph shall be subject to verification by the commissioner or his designee.

305-a. Coordination of local planning and land use decision-making with the agricultural districts program

1. Policy of local governments.
 - a. 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.
 - b. The commissioner, upon his or her own initiative or upon the receipt of a complaint from a person within an agricultural district, may bring an action to enforce the provisions of this subdivision.
2. Agricultural data statement; submission, evaluation. Any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by a planning board, zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village law, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The planning board, zoning board of appeals, town board, or village board of trustees shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of any other application form required by local law, ordinance or regulation.
3. Agricultural data statement; notice provision. Upon the receipt of such application by the planning board, zoning board of appeals, town board or village board of trustees, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the said project. The cost of mailing said notice shall be borne by the applicant.
4. Agricultural data statement; content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

305-b. Review of proposed rules and regulations of state agencies affecting the agricultural industry

1. Upon request of the state advisory council on agriculture, or upon his or her own initiative, the commissioner may review and comment upon a proposed rule or regulation by another state agency which may have an adverse impact on agriculture and farm operations in this state, and file such comment with the proposing agency and the administrative regulations review commission. Each comment shall be in sufficient detail to advise the proposing agency of the adverse impact on agriculture and farm operations and the recommended modifications. The commissioner shall prepare a status report of any actions taken in accordance with this section and include it in the department's annual report.

306. Agricultural lands outside of districts; agricultural assessments

1. Any owner of land used in agricultural production outside of an agricultural district shall be eligible for an agricultural assessment as provided herein. If an applicant rents land from another for use in conjunction with the applicant's land for the production for sale of crops, livestock or livestock products, the gross sales value of such products produced on such rented land shall be added to the gross sales value of such products produced on the land of the applicant for purposes of determining eligibility for an agricultural assessment on the land of the applicant.

Such assessment shall be granted pursuant to paragraphs a, b and f of subdivision one of section three hundred five of this article as if such land were in an agricultural district, provided the landowner annually submits to the assessor an application for an agricultural assessment on or before the taxable status date. In the year of a revaluation or update of assessments, as those terms are defined in section one hundred two of the real property tax law, the application may be filed with the assessor no later than the thirtieth day prior to the day by which the tentative assessment roll is required to be filed by law. Nothing therein shall be construed to limit an applicant's discretion to withhold from such application any land, or portion thereof, contained within a single operation.

1-a [repealed]

2. a. (i) If land which received an agricultural assessment pursuant to this section is converted at any time within eight years from the time an agricultural assessment was last received, such conversion shall subject the land so converted to payments in compensation for the prior benefits of agricultural assessments. The amount of the payments shall be equal to five times the taxes saved in the last year in which land benefited from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years.
- (ii) The amount of taxes saved for the last year in which the land benefited from an agricultural assessment shall be determined by applying the applicable tax rates to the amount of assessed valuation of such land in excess of the agricultural assessment of such land as set forth on the last assessment roll which indicates such an excess. If only a portion of such land as described on the assessment roll is converted, the assessor shall apportion the assessment and agricultural assessment attributable to the converted portion, as determined for the last assessment roll on which the assessment of such portion exceeded its agricultural assessment. The difference between the apportioned assessment and the apportioned agricultural assessment shall be the amount upon which payments shall be determined. Payments shall be levied in the same manner as other taxes, by or on behalf of each taxing jurisdiction on the assessment roll prepared on the basis of the first taxable status date on which the assessor considers the land to have been converted; provided, however, that no payments shall be imposed if the last assessment roll upon which the property benefited from an agricultural assessment, was more than eight years prior to the year for which the assessment roll upon which payments would otherwise be levied is prepared.
- (iii) Whenever a conversion occurs, the owner shall notify the assessor within ninety days of the date such conversion is commenced. If the landowner fails to make such notification within the ninety day period, the assessing unit, by majority vote of the governing body, may impose a penalty on behalf of the assessing

- unit of up to two times the total payments owed, but not to exceed a maximum total penalty of five hundred dollars in addition to any payments owed.
- b. (i) An assessor who determines that there is liability for payments and any penalties pursuant to subparagraph (ii) of this paragraph shall notify the landowner of such liability at least ten days prior to the day for hearing of complaints in relation to assessments. Such notice shall specify the area subject to payments and shall describe how such payments shall be determined. Failure to provide such notice shall not affect the levy, collection, or enforcement of payments.
 - (ii) Liability for payments shall be subject to administrative and judicial review as provided by law for the review of assessments.
 - (iii) An assessor who imposes any such payments shall annually, and within forty-five days following the date on which the final assessment roll is required to be filed, report such payments to the state board of real property services on a form prescribed by the state board.
 - (iv) The assessing unit, by majority vote of the government body, may impose a minimum payment amount, not to exceed one hundred dollars.
 - c. If such land or any portion thereof is converted by virtue of oil, gas or wind exploration, development, or extraction activity or by virtue of a taking by eminent domain or other involuntary proceeding other than a tax sale, the land or portion so converted shall not be subject to payments. If land so converted constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment, and adjust the agricultural assessment attributable to the portion of the parcel not subject to such conversion by subtracting the proportionate part of the agricultural assessment attributable to the portion so converted. Provided further that land outside an agricultural district and eligible for an agricultural assessment pursuant to this section shall not be considered to have been converted to a use other than for agricultural production solely due to the conveyance of oil, gas or wind rights associated with that land.
 - d. The purchase of land in fee by the city of New York for watershed protection purposes or the conveyance of a conservation easement by the city of New York to the department of environmental conservation which prohibits future use of the land for agricultural purposes shall not be a conversion of parcels and no payment for the prior benefits of agricultural assessments shall be due under this section.
3. Upon the inclusion of such agricultural lands in an agricultural district formed pursuant to section three hundred three, the provisions of section three hundred five shall be controlling.
 4. A payment levied pursuant to subparagraph (i) of paragraph a of subdivision two of this section shall be a lien on the entire parcel containing the converted land, notwithstanding that less than the entire parcel was converted.
 5. Use of assessment for certain purposes. The governing body of a water, lighting, sewer, sanitation, fire, fire protection, or ambulance district for whose benefit a special assessment or a special ad valorem levy is imposed, may adopt a resolution to provide that the assessments determined pursuant to subdivision one of this section for property within the district shall be used for the special assessment or special ad valorem levy of such special district.

307. Promulgation of rules and regulations

The state board of real property services and the commissioner are each empowered to promulgate such rules and regulations and to prescribe such forms as each shall deem

necessary to effectuate the purposes of this article, and the commissioner is further empowered to promulgate such rules and regulations as are necessary to provide for the reasonable consolidation of existing agricultural districts with new agricultural districts or with other existing districts undergoing modification pursuant to section three hundred three of this article. Where a document or any other paper or information is required, by such rules and regulations, or by any provision of this article, to be filed with, or by, a county clerk or any other local official, such clerk or other local official may file such document, paper, or information as he deems proper, but he shall also file or record it in any manner directed by the state board of real property services, by rule or regulation. In promulgating such a rule or regulation, such board shall consider, among any other relevant factors, the need for security of land titles, the requirement that purchasers of land know of all potential tax and penalty liabilities, and the desirability that the searching of titles not be further complicated by the establishment of new sets of record books.

308. Right to farm

1. a. The commissioner shall, in consultation with the state advisory council on agriculture, issue opinions upon request from any person as to whether particular agricultural practices are sound.
b. Sound agricultural practices refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Examples of activities which entail practices the commissioner may consider include, but are not limited to, operation of farm equipment; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing agricultural commodities produced on-farm; agricultural tourism; production, management and harvesting of "farm woodland," as defined in subdivision three of section three hundred one of this article and construction and use of farm structures. The commissioner shall consult appropriate state agencies and any guidelines recommended by the advisory council on agriculture. The commissioner may consult as appropriate, the New York state college of agriculture and life sciences and the U.S.D.A. natural resources conservation service. The commissioner shall also consider whether the agricultural practices are conducted by a farm owner or operator as part of his or her participation in the AEM program as set forth in article eleven-A of this chapter. Such practices shall be evaluated on a case-by-case basis.
2. Upon the issuance of an opinion pursuant to this section, the commissioner shall publish a notice in a newspaper having a general circulation in the area surrounding the practice and notice shall be given in writing to the owner of the property on which the practice is conducted and any adjoining property owners. The opinion of the commissioner shall be final, unless within thirty days after publication of the notice a person affected thereby institutes a proceeding to review the opinion in the manner provided by article seventy-eight of the civil practice law and rules.
3. Notwithstanding any other provisions of law, on any land in an agricultural district created pursuant to section three hundred three or land used in agricultural production subject to an agricultural assessment pursuant to section three hundred six of this article, an agricultural practice shall not constitute a private nuisance, when an action is brought by a person, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued upon request by the commissioner. Nothing in this section shall be construed to prohibit an aggrieved party from recovering damages for personal injury or wrongful death.

4. The commissioner, in consultation with the state advisory council on agriculture, shall issue an opinion within thirty days upon request from any person as to whether particular land uses are agricultural in nature. Such land use decisions shall be evaluated on a case-by-case basis.
5. The commissioner shall develop and make available to prospective grantors and purchasers of real property located partially or wholly within any agricultural district in this state and to the general public, practical information related to the right to farm as set forth in this article including, but not limited to right to farm disclosure requirements established pursuant to section three hundred ten of this article and section three hundred thirty-three-c of the real property law.

308-a. Fees and expenses in certain private nuisance actions.

1. Definitions. For purposes of this section:
 - a. "Action" means any civil action brought by a person in which a private nuisance is alleged to be due to an agricultural practice on any land in an agricultural district or subject to agricultural assessments pursuant to section three hundred three or three hundred six of this article, respectively.
 - b. "Fees and other expenses" means the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, consultation with experts, and like expenses, and reasonable attorney fees, including fees for work performed by law students or paralegals under the supervision of an attorney, incurred in connection with the defense of any cause of action for private nuisance which is alleged as part of a civil action brought by a person.
 - c. "Final judgment" means a judgment that is final and not appealable, and settlement.
 - d. "Prevailing party" means a defendant in a civil action brought by a person, in which a private nuisance is alleged to be due to an agricultural practice, where the defendant prevails in whole or in substantial part on the private nuisance cause of action.
2. Fees and other expenses in certain private nuisance actions.
 - a. When awarded. In addition to costs, disbursements and additional allowances awarded pursuant to sections eight thousand two hundred one through eight thousand two hundred four and eight thousand three hundred one through eight thousand three hundred three-a of the civil practice law and rules, and except as otherwise specifically provided by statute, a court shall award to a prevailing party, other than the plaintiff, fees and other expenses incurred by such party in connection with the defense of any cause of action for private nuisance alleged to be due to an agricultural practice, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued by the commissioner under section three hundred eight of this article, prior to the start of any trial of the action or settlement of such action, unless the court finds that the position of the plaintiff was substantially justified or that special circumstances make an award unjust. Fees shall be determined pursuant to prevailing market rates for the kind and quality of the services furnished, except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings.
 - b. Application for fees. A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application which sets forth
 - (i) the facts supporting the claim that the party is a prevailing party and is eligible to receive an award under this section,
 - (ii) the amount sought, and

- (iii) an itemized statement from every attorney or expert witness for which fees or expenses are sought stating the actual time expended and the rate at which such fees and other expenses are claimed.
- 3. Interest. If the plaintiff appeals an award made pursuant to this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award. Such interest shall run from the date of the award through the day before the date of the affirmance.
- 4. Applicability.
 - a. Nothing contained in this section shall be construed to alter or modify the provisions of the civil practice law and rules where applicable to actions other than actions as defined by this section.
 - b. Nothing contained in this section shall affect or preclude the right of any party to recover fees or other expenses authorized by common law or by any other statute, law or rule.

309. Advisory council on agriculture

- 1. There shall be established within the department the advisory council on agriculture, to advise and make recommendations to the state agencies on state government plans, policies and programs affecting agriculture, as outlined below, and in such areas as its experience and studies may indicate to be appropriate. The department of agriculture and markets shall provide necessary secretariat and support services to the council.
- 2. The advisory council on agriculture shall consist of eleven members appointed by the governor with the advice and consent of the senate, selected for their experience and expertise related to areas of council responsibility. At least five members of the council shall be operators of a commercial farm enterprise and at least two members shall be representatives of local governments. The balance of the council shall be comprised of representatives of business or institutions related to agriculture. Members shall be appointed for a term of three years and may serve until their successors are chosen provided, however, that of the members first appointed, three shall serve for a term of one year, three shall serve for a term of two years, and three shall serve for a term of three years. Members shall serve without salary but shall be entitled to reimbursement of their ordinary and necessary travel expenses. The members of the council shall elect a chairman.
- 3. The duties and responsibilities of the advisory council on agriculture as they pertain to agricultural districts shall include, but not be limited to, providing timely advice, comments and recommendations to the commissioner in regard to:
 - a. the establishment of agricultural districts;
 - b. the eight year review of agricultural districts; and
 - c. the establishment of and any revision to the land classification system used in connection with the determination of agricultural assessment values.The commissioner may delegate to the council such additional duties and responsibilities as he deems necessary.
- 4. The duties and responsibilities of the advisory council on agriculture shall include, but not be limited to, providing timely advice, comments and recommendations to the state board of real property services in regard to the establishment of agricultural assessment values.
- 5. The advisory council on agriculture shall advise the commissioner and other state agency heads on state government plans, policies and programs affecting farming and the agricultural industry of this state. Concerned state agencies shall be encouraged to

- establish a working relationship with the council and shall fully cooperate with the council in any requests it shall make.
6. The advisory council on agriculture may ask other individuals to attend its meetings or work with it on an occasional or regular basis provided, however, that it shall invite participation by the chairman of the state soil and water conservation committee and the dean of the New York state college of agriculture and life sciences at Cornell university. The advisory council on agriculture shall set the time and place of its meetings, and shall hold at least four meetings per year.
 7. The advisory council on agriculture shall file a written report to the governor and the legislature by April first each year concerning its activities during the previous year and its program expectations for the succeeding year.
 8. The advisory council on agriculture shall advise the commissioner in regards to whether particular land uses are agricultural in nature.

310. Disclosure

1. When any purchase and sale contract is presented for the sale, purchase, or exchange of real property located partially or wholly within an agricultural district established pursuant to the provisions of this article, the prospective grantor shall present to the prospective grantee a disclosure notice which states the following:

"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. Prospective purchasers are urged to contact the New York State Department of Agriculture and Markets to obtain additional information or clarification regarding their rights and obligations under article 25-AA of the Agriculture and markets Law."
- 1-a. Such disclosure notice shall be signed by the prospective grantor and grantee prior to the sale, purchase or exchange of such real property.
2. Receipt of such disclosure notice shall be recorded on a property transfer report form prescribed by the state board of real property services as provided for in section three hundred thirty-three of the real property law.

D. Existing Planned Business Development District regulations –
Town of Batavia Zoning Law

Appendix D
Existing Planned Business Development District Regulations

§ 235-31.1 Planned Business Development District (PBD).

[Added 2-20-2008 by L.L. No. 2-2008]

A.

Purpose. The purpose of the Planned Business Development (PBD) District is to:

(1)

Establish an area for new commercial, industrial, recreational and/or mixed use development on a large scale that will provide the Town and region with employment opportunities, additional tax base and other community benefits, while minimizing impacts on public services;

(2)

Prevent piecemeal development that would compromise the availability and future marketability of a large area for significant new development;

(3)

Accommodate continued agricultural use in an area that is highly suited for agriculture;

(4)

Provide greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities;

(5)

Provide for both individual building sites and common property which are planned and developed as a unit; to provide harmonious land uses which offer a high level of amenities;

(6)

Permit a variety of industrial, commercial and/or recreational uses; and

(7)

Preserve natural and scenic qualities of the site during the development process.

B.

Requirements. Any development proposed for the Planned Business Development District shall meet the following requirements:

(1)

A coordinated development plan that addresses the requirements in this section and advances the purposes stated in Subsection **A** shall be presented for a contiguous land area that comprises at least 100 acres within the Planned Business Development District. Smaller developments would require an area variance from the Zoning Board of Appeals.

(2)

The preservation of open space and the preservation of trees, outstanding natural topography and sensitive environmental features shall be an integral part of the plan, while allowing sufficiently intensive development to support the extension of infrastructure to the PBD.

(3)

The development shall make creative and efficient use of land and related physical development resulting in smaller networks of utilities and streets and thereby lowering costs for construction and maintenance.

(4)

Adequate public services. No development shall be approved within the Planned Business Development District unless the Town Engineer submits a satisfactory report to the Planning Board regarding the following:

(a)

The project will be connected to municipal water and sewer.

(b)

The project will not overburden the municipal water and sewer system.

(c)

Adequate levels of water pressure are available for fire service.

(d)

A traffic impact study, detailing impacts and mitigation measures, has been prepared by each developer.

(e)

Any costs associated with improvements or upgrades to public facilities may be included in the developer's construction costs and carried out by the developer under the supervision of the Town Engineer.

(5)

Utilities. New public and private utilities and those relocated or replaced shall be underground, unless specifically exempted by the Planning Board.

(6)

Topography, landscaping and site appearance.

(a)

Landscaping shall contribute to prevention of water runoff and erosion problems. Temporary or permanent protection shall be provided during construction to prevent such problems.

(b)

All developments within the district shall be designed to take maximum advantage of the topography of the land, to provide for water storage and control of water runoff, to protect natural drainage courses, to reduce the amount of grading and maximize the conservation of trees and topsoil.

(c)

The design of the perimeter landscaping and improvements of each development should be visually harmonious and compatible with adjoining development.

(7)

Development in phases. If the applicant wishes to construct the development in phases, or if the Planning Board wishes to require that development be phased, the applicant may submit final site plans for only those phases for review per the approved phasing plan, provided that such final site plans are consistent with the coordinated development plan and approved preliminary site plan for the entire site. Any plan anticipated to require more than 24 months to be completed shall be required to be completed in phases, and a phasing plan must be developed. The Code Enforcement Officer may withhold the issuance of building permits if the approved phasing plan is not being followed.

(8)

Performance. The Planning Board may require bonding, a letter of credit or other instrument to ensure that public and private improvements are carried out as specified in the plans and approvals, as provided for in § 235-63C

(8).

(9)

Expiration. If no evidence of progressive activity has occurred within two years of the date of approval or upon expiration of any extension of time for starting development granted by the Planning Board, the Planning Board may, with twenty-day-advance-notice to the applicant, declare the approved plan to be null and void. Upon the request of the applicant, the Planning Board shall automatically grant a two-year extension for starting the development, and may thereafter consider further extensions in its discretion.

C.

Permitted uses.

(1)

The following uses are permitted in the Planned Business Development District:

(a)

Warehouse.

(b)

Manufacturing (enclosed).

(c)

Wholesale trade.

(d)

Commercial or professional office or service.

(e)

Research and development facility.

(f)

Governmental facilities.

(g)

Public utility (see § [235-38](#)).

(h)

Recyclables handling and recovery facility.

(i)

Pond (see § [235-48](#)).

(j)

Agriculture.

(k)

Agricultural products processing or distribution facilities.

(l)

Accessory buildings, structures and uses.

(2)

Uses requiring a special use permit. The following uses are permitted in the Planned Business Development District upon the issuance of a special use permit and provided the parcel fronts on, and is directly accessed from, a state highway:

(a)

Retail store.

(b)

Restaurant.

(c)

Hotel or motel.

(d)

Gasoline station (see § [235-37](#)).

(e)

Gasoline station-market (see § [235-37](#)).

D.

Area regulations. See Zoning Schedule A.

Editor's Note: Zoning Schedule A is included at the end of this chapter.

E.

Procedures.

(1)

Applicant. The applicant may be an individual, corporation or a group of individuals or corporations. An application shall be filed by the owner or jointly by the owners of all property included in a project. In the case of multiple ownership, the approved plan shall be binding on all owners.

(2)

Application for site plan approval for a planned business development. Application for a site development plan for a planned business development shall be made to the Planning Board. The applicant shall furnish basic data pertaining to the boundaries of the proposed development and the existing zoning, topography, drainage and soil conditions. A site development plan shall be provided in sufficient detail as may be required for an understanding of the type, uses and design of the proposed development. Information shall be provided to demonstrate that adequate public services exist or will exist to serve the proposed development.

(3)

Planning Board review of site plan.

(a)

The Planning Board shall review the proposed site plan in accordance with the criteria and procedures established in § 235-63C.

(b)

The Planning Board shall also consider the following criteria in its review of a proposed planned business development within the PBD District:

[1]

The suitability of the tract for the general type of development proposed and the physical characteristics of the land.

[2]

The relation of the proposed development to surrounding areas, existing and probable future development, including the extension of utilities to adjacent properties and the interconnection of road access to adjacent properties.

[3]

The relation to major roads, utilities and other facilities and services.

[4]

The adequacy of evidence on unified control and suitability of any proposed agreements, contracts, deed restrictions, sureties, dedications, contributions, guaranties or other instruments or the need for such instruments or for amendments in those proposed.

[5]

The suitability of plans proposed or the desirability of amendments, with reasons therefor.

(4)

Public hearing on the application for site plan approval. Within 62 days of receipt of the application, the Planning Board shall hold a public hearing, after public notice, on the application for site plan approval for the initial planned business development. A public hearing shall be optional for subsequent development within an approved planned business development that may be subject to site plan review pursuant to § 235-63C.

(5)

Changes in approved final plans. Changes in the types of uses within an approved planned business development and other changes to approved final plans and reports may be approved by the Planning Board only upon findings identical to those required for original approval.

(6)

Upon approval of final plans and reports, building permits shall be issued in the same manner as for building permits generally, provided that any requirements concerning the order and location in which building permits are to be issued in the particular planned business development shall be observed. Except as provided below, final plans and reports as approved shall be binding on the applicants and any successors in title so long as PBD zoning applies to the land.

(7)

Expiration of time limits on planned business development site plan approvals.

(a)

The Planning Board may require that certain actions be taken within specified time frames, as a condition of approval of the site development plan.

(b)

If actions required in any approval of a site plan in a PBD are not taken within any time limits set in connection with such approval, the Planning Board shall review the circumstances and prepare a written report specifying the circumstances and recommending that:

[1]

Site plan approval for the entire area be continued with revised time limits;

[2]

Site plan approval be continued for part of the area, with or without revised time limits;

[3]

Site plan approval be rescinded; or

[4]

Other appropriate actions taken.

(c)

Such recommendations shall include proposals for appropriate action in respect to any legal instruments in the case.

E. Summary of Direct Market Venues – Town of Batavia

Direct Marketing Outlets – Town of Batavia

M & M Meats

585-322-4342
3316 Pearl St. (Rte 33), Batavia



Custom slaughter and processing by appointment;
Retail meat counter featuring beef, pork, lamb, goat & veal;
Plus fresh sausage and custom sausage

Closed Sunday & Monday.
Open Tuesday – Friday 10 am – 5pm, Saturday 10 am – 2 pm.

Poppa Riley's Popcorn

585-948-9631
2982 Galloway Rd., Batavia

Popping corn: red, white, blue, yellow & Japanese hullless;
Great idea for fundraisers

Pudgie's Lawn And Garden

585-343-8352
3644 W. Main St., Batavia

Annuals, perennials, vegetable plants, roses, and other garden supplies

Open Monday – Friday 9 am – 6 pm, Saturday and Sunday 9 am – 4 pm.

Partridge's Farm

585-343-7264
4957 Ellicott St. Rd. (Rte 63),
Batavia



Christmas trees and wreaths

Thanksgiving – Christmas
Mon - Fri 5 - 9 pm, Sat and Sun 9 am - 9 pm

Herbly Wonderful

585-343-9227
3701 Pearl St. Rd. (Rte 33), Batavia

Fresh herbs, herbal creations, cut flowers, flower arrangements, lavender fields, herb & flower plants, heirloom vegetables, jams, jellies and gifts. Farm stand and greenhouse

Open May 1st. Tues – Sat 10 am – 6 pm and Sunday (in the spring) Noon – 5 pm

Gordon Meek

585-762-8648
9063 Wilkinson Rd., Batavia

Cut flowers mainly sunflowers and zinnias; bouquets available.
Home garden stand

Mid-July thru end of September

Genesee Country Farmers' Market

Batavia Downs Parking Lot
Park Rd, Batavia



Neighbors Growing for Neighbors. Wide variety of items from four counties: fruits, vegetables, baked goods, flowering plants, etc.

Open 8 am - 5 pm, Tuesdays and Fridays, June 16 – October 30

Batavia Turf Instant Lawns

1-800-333-1472
6465 Transit Rd., Elba

We can supply just the right sod for your application & location

Fenton's Produce

585-343-9491
3323 Pratt Rd., Batavia

Home grown produce including asparagus, sweet corn, tomatoes, peppers, potatoes, squash. Herbs, flowers, and greenhouse plants also offered

April - December

Genesee County Fair

585-343-3040 (ext. 106)
5056 East Main Street Road (Rt. 5), Batavia

Come to the Fair! A wide variety of educational, fun, and informational activities. Create friendships and memories that will last you a lifetime

July 21 – July 25. 4-H Meat Auction on July 23 at 7 pm

SOURCE: <http://geneseebuylocal.shutterfly.com/agritourism>

F. Proposed Agricultural Production Zone regulations

DRAFT Zoning Regulations
Proposed Agricultural Production Zoning District

Definitions:

Farm Dwelling - A residence located on a farm parcel.

Farm Parcel - A tract or parcel of land devoted primarily to agricultural uses, and which may include a dwelling and/or other accessory uses.

Farm-Related Business - A business engaged principally in providing supplies, implements, livestock and/or other products or services needed for agricultural uses, including but not limited to seed, fertilizers, herbicides, pesticides, animal feeds, tools, fencing and parts for farm machinery or equipment, blacksmithing, farm implement repair, storage of agricultural products, or retail sale of agricultural products. This definition shall not include agricultural processing plants, dealerships for farm equipment or machinery or slaughterhouses.

Non-farm Lot - A lot or parcel within the Agricultural Production Zoning District (APZ) that:

- a) contains less than 25 acres and contains one or more dwelling units or other non-agricultural use.; or
- b) contains 25 or more acres and is devoted to uses other than agricultural or residential.

Parent Tract - A tract of land located within an Agricultural Production Zoning District (APZ) on the effective date of this Local Law, and held in single and separate ownership.

§ XXX-1. Purpose and intent.

The intent of the Agricultural Production Zoning District (APZ) is to facilitate existing and future agricultural land uses; to preserve existing prime agricultural soils; to maintain highly productive agricultural lands by limiting encroachment of nonagricultural development; to minimize the conflicts between agricultural and nonagricultural uses; to discourage residential sprawl and minimize adverse fiscal impacts through the extension of municipal services; to maintain agricultural vistas, to promote agro-tourism, and to preserve the rural character of the Town of Batavia.

§ XXX-2. Uses.

In the APZ, no building, structure or premises shall be used or arranged or designed to be used, and no building or structure shall be hereafter erected, reconstructed or altered, unless otherwise provided in this chapter, except for the following permitted uses or specially permitted uses and their customary accessory uses:

A. Permitted uses.

Town of Batavia Agricultural & Farmland Protection Plan

Appendix F

Revised March 2010

- (1) Agricultural production, including but not limited to the following:
 - (a) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes, and dry beans.
 - (b) Fruits, including apples, peaches, grapes, cherries and berries.
 - (c) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
 - (d) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
 - (e) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, farmed deer, farmed buffalo, fur-bearing animals, milk, eggs and furs.
 - (f) Christmas trees grown in a managed Christmas tree operation, whether dug for transplanting or cut from the stump.
 - (g) Commercial horse boarding operation.
- (2) Dwelling, one-family.
- (3) Attached single-family dwellings within a cluster or conservation subdivision.
- (4) Riding academy, corral or facilities for the training of horses.
- (5) Greenhouse.
- (6) Farm Market
- (7) Roadside Stand

B. Uses allowed with a special use permit.

- (1) Bed-and-breakfast.
- (2) Kennel, commercial.
- (3) Agricultural Worker housing, subject to the requirements of § XXX-___.

C. Accessory uses. Accessory uses shall include those uses customarily incidental to any of the above permitted uses or specially permitted uses when located on the same lot. Specifically permitted are the following:

- (1) Home occupation.
- (2) Roadside Stand

Town of Batavia Agricultural & Farmland Protection Plan

Appendix F

Revised March 2010

(3) Agricultural worker housing pursuant to the requirements of § XXX-__.

(4) Agricultural use.

§ XXX-25. General lot, yard, bulk and height requirements.

A. No buildings shall be erected nor any lot or land area utilized unless in conformity with the Zoning Schedule incorporated into this article by reference and made a part hereof with the same force and effect as if such requirements were herein set forth in full as specified in said schedule, except as may be hereafter specifically modified.

B. Area Requirements

1. No farm parcel shall be subdivided to create a farm parcel of less than 25 acres.
2. The number of non-farm lots permitted to be subdivided from a parent parcel shall be limited according to the following sliding scale. If the parent parcel includes a dwelling, such dwelling is included in the number of residential lots permitted to be associated with that parcel.

Size of Lot	Permitted number of non-farm parcels
Smaller than 10 acres	1
10 – 49 acres	2
50 – 74	3
75 – 99	4
Each additional 25 acres	1 additional

3. A non-farm lot subdivided from a parent tract shall have a minimum of 20,000 square feet and a maximum of two (2) acres.
4. All other uses permitted by right or by special use permit shall have a minimum lot area of 20,000 square feet, except as specified in Schedule A.

C. Limitations on Subdivision of Parent Tracts

1. It is the intent of this provision to limit the creation of non-farm lots and the subdivision of farm parcels from parent tracts, in order to provide for the retention of tracts of sufficient size to be used reasonably for agricultural purposes.
2. The Town shall maintain a map that records the number of non-farm lots permitted to be subdivided from a parent parcel and shall record on this map the number of non-farm lots created from each parent parcel.
3. Landowners are encouraged to prepare a development and conservation plan for their entire holdings before subdividing a non-farm lot from a parent tract. Such

Town of Batavia Agricultural & Farmland Protection Plan

Appendix F

Revised March 2010

development and conservation plan should identify the areas within a farm parcel that are most appropriate for limited residential development, as well as those which are the most suited for continued agricultural use.

4. A single family detached dwelling may be erected on any single undeveloped lot of record (parent tract) as of the effective date of this Local Law. Such lot must be a parent tract in single ownership and not contiguous with other tracts in the same ownership. The parent tract must meet applicable requirements for minimum lot size, and any buildings erected on the lot must meet yard setback, lot coverage, and height regulations.
5. In the event a tract of land not originally classified as part of the Agricultural Production Zoning District (APZ), on the effective date of this Ordinance is hereafter classified as part of the Agricultural Production Zoning District (APZ), the size and ownership of such tract of land and its classification as a parent tract, shall be determined as of the effective date of the change in the zoning classification to Agricultural Production Zoning District (APZ).

D. Requirements for Dwellings Located on Non-farm Lots

1. Dwellings located on non-farm lots shall be subject to Site Plan Review by the Planning Board. The application for Site Plan Review shall include a scaled drawing indicating the location of the proposed dwelling in relations to surrounding farms.
2. The non-farm lot shall be sited on that portion of the parent parcel which separates it as much as possible from adjacent farming, including minimizing the length of property lines shared by the residential lot and adjoining farms.
3. The dwelling and its lot shall be located on the least productive farmland wherever practical.
4. The dwelling shall be sited on the smallest practical area to satisfy the requirements of this Section and on-site sewage disposal regulations.
5. In its review of a site plan for a dwelling located on a non-farm lot, the Planning Board shall consider the following:
 - (1) The location and extent of prime agricultural soils;
 - (2) The location of wooded areas;
 - (3) The location and extent of natural features;
 - (4) The general topography and the location and extent of sloped areas;
 - (5) The spatial relationship of the property to contiguous or neighboring preserved agricultural land;

Town of Batavia Agricultural & Farmland Protection Plan

Appendix F

Revised March 2010

(6) The general stormwater tributary area and the extent and direction of overland drainage.

E. Subdivision Development Guidelines.

The following guidelines are to be applied in addition to subdivision regulations (Article __) and site plan review and shall apply to all subdivisions within the APZ. The subdivision plat shall be designed so as to preserve agricultural vistas.

1. The subdivision plat must locate and arrange the residential lots so as to protect, to the maximum extent practicable, that portion of the tract preserved for agricultural use.
2. The subdivision plat must depict an arrangement of residential lots so as to reduce, to the maximum extent practicable, any nuisance or conflict between residential and agricultural uses, both within the tract and in relation to adjoining and nearby tracts and to demonstrate compatibility of the cluster plat with existing residential development and agricultural land uses.
3. The residential portion of the subdivision plat must be so laid out, and protected during construction, as to remain as harmonious to the greatest extent practicable with the natural environment minimizing the clearing of treed areas, the grading of earth, removal of soils, and precluding the disturbance of surface waters and wetlands and other similar disturbances of the natural environment pursuant to Chapter __ of the Batavia Town Code.
4. The agricultural portion of a subdivision plat must be so laid out as to provide for a contiguity with existing agricultural tracts, bounding of prime agricultural soils and retention of all storm water runoff.
5. The subdivision tract must demonstrate the ways in which scenic vistas are being considered or enhanced and shall depict a lot arrangement which has considered the visual impact of residential development upon such vistas.

F. The Planning Board shall refer any application for subdivision and site plan review within the Agricultural Production Zone to the Town Agriculture & Farmland Committee for an advisory review. Comments shall be provided to the Planning Board within 45 days of receipt of a complete application.

G. Zoning Audit and Recommended Zoning Revisions

APPENDIX G

Town of Batavia Agricultural & Farmland Protection Plan

Zoning Audit and Recommended Zoning Changes

ZONING AUDIT

The NYS Agricultural District Law protects farmers in Agricultural Districts from regulations that “unreasonably restrict or regulate farm operations within agricultural districts...unless it can be shown that the public health or safety is threatened.” To accomplish this, the NYS Department of Agriculture & Markets reviews regulations upon complaints from farmers and issues determinations as to whether the regulation is reasonable and/or necessary to protect public health. The Department of Agriculture & Markets has issued several guidance documents that identify specific zoning provisions that have been found to be unreasonable.

An audit of the Town of Batavia zoning law identified several provisions that may unreasonably restrict standard farm practices in some situations, according to the guidance issued by the NYS Department of Agriculture. The following narrative identifies these provisions and recommends revisions. Specific language to amend the zoning regulations is provided at the end of this document.

Animal Waste Storage – Requirement for Special Use Permit

The Town of Batavia’s zoning regulations currently require a special use permit for animal waste storage facilities. The existing provisions state:

All proposals for installation and/or modification of animal waste storage facilities shall be submitted to the Genesee County Soil and Water Conservation District (GCSWCD) or United States Natural Resources Conservation Service (NRCS) for its review and determination as to acceptability. If a proposal is acceptable to GCSWCD or NRCS then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

Guidance provided by the NYS Dept. of Agriculture & Markets states that requiring either a special use permit or site plan review for animal waste storage facilities constitutes an unreasonable restriction on a standard farm practice. Despite this guidance, some communities, concerned that improperly designed facilities may contaminate groundwater and surface drinking water supplies, require farmers to submit plans, signed by SWCD, NRCS or a qualified engineer, to the Planning Board for Site Plan Review. No fee is required and a determination must be issued within 30 days of submittal. These municipalities maintain that the review of a site plan for an animal waste storage facility helps to protect the public health and safety by ensuring that such facilities comply with the requirements established by the USDA NRCS.

Recommendation: Eliminate the provision to require a special use permit for animal waste storage facilities. Specify that such facilities must meet the standards of USDA NRCS.

Town of Batavia Agricultural & Farmland Protection Plan

Zoning Audit

Animal Waste Storage – Setback Requirements

The Town of Batavia zoning regulations currently require animal stabling and waste storage facilities to be set back 100 feet from a lot line and 500 feet from an R Residential District. (§ 235-20)

Guidance provided by the NYS Dept. of Ag. & Markets states that setback requirements for animal stables and animal waste storage facilities need to be related to health and safety and consistent with those for septic systems or other types of buildings. For example, setbacks from wells or water bodies are related to public health, whereas setbacks to property lines may be related to the potential for odor or nuisance and may unreasonably restrict a standard farming practice.

Recommendation: Modify setback requirements to specify setbacks from existing dwellings, wells and watercourses and eliminate minimum setback from lot lines and the R Residential District.

Farmworker Housing

The Town's zoning regulations currently do not include any provisions for farmworker housing. While such housing may be considered to be an accessory use to a farm, the Town has no provisions that would specifically permit farmworker housing on a separate lot from the farm. The Town's definition of Agricultural Use should be clarified to include farm worker housing (may be included in "necessary farm structures.")

Recommendations:

- Add "farmworker housing" to the list of uses allowed with a special use permit in the AR and in the proposed new AP zoning districts.
- Incorporate specific criteria for the review and approval of a special use permit for farmworker housing

Farmers markets, farm markets and roadside stands

Direct sales of farm products provide a means for farmers to "avoid the middleman" and sell farm products directly to customers. Farmers markets are typically operated by community organizations and provide a common space, often in the parking lot of another commercial or public use, for farmers to sell goods. Roadside stands typically consist of temporary structures and seasonal operations. Farm markets are typically year-round operations in permanent structures.

The existing zoning regulations do not have explicit regulations for farmers markets, roadside stands or farm markets. Provisions that specifically allow direct farm sales in agricultural zoning districts are needed.

Town of Batavia Agricultural & Farmland Protection Plan

Zoning Audit

Recommendations:

1. Modify the definition for “roadside stand.” Incorporate new definitions for “farm market” and “farmers market.”
2. Add “roadside stand” to list of permitted accessory uses in the AR zoning districts.
3. Add “farm market” to the list of permitted principal uses in the AR, PD, C and I districts.
4. Add “farmers market” to the list of permitted uses in the C zoning district. Include a provision stating that site plan review shall not be required.

Definitions

The Town’s existing definition of “agricultural use” is:

AGRICULTURAL USE — Any parcel of land containing at least five acres used for the raising of food products or other useful or valuable growths of the field or garden for sale, together with dairying, raising of livestock and poultry, and other generally accepted agricultural practices, where the same is carried on as a business or otherwise for profit.

- (1) Such uses shall include the establishment of necessary farm structures within the prescribed limits, and the storage of equipment used in connection therewith.
- (2) Agricultural uses shall exclude the raising of fur-bearing animals, riding academies, public stables or dog kennels.

The definition of agriculture established by the NYS Dept. of Agriculture & Markets, which establishes activities that are protected under the Agricultural Districts Law, specifically includes the raising of fur-bearing animals and horse boarding.

Several additional definitions are recommended to provide for ancillary businesses and agri-tourism operations on farms.

Recommendations:

1. **Revise the definition of agriculture in the Town’s zoning regulations to eliminate the exclusion of the raising of fur-bearing animals, riding academies and public stables, consistent with the definition in the NYS Agricultural Districts law.**
2. **Add definitions of “agriculture-related enterprises” and “agricultural recreational events.”**

Town of Batavia Agricultural & Farmland Protection Plan

Zoning Audit

Public stables

A public stable, as defined in the Town's zoning regulations, that is located in a County-certified Agricultural District, is considered an agricultural use by NYS Ag. & Markets Law. As such, local regulations should not unreasonably restrict its operation. Ag. & Markets guidance state that requiring a special permit for such operations represents an unreasonable restriction.

Recommendation: Eliminate the requirement for a special permit for a "public stable" when the operation fits the definition of "agricultural use" in NYS Ag. & Markets Law and is located in a certified Agricultural District.

Other provisions

The Town's zoning states that only one principal use is permitted on any parcel, with exceptions for a dwelling as part of a commercial property. (§ 235-12)

Recommendation: Add an exception that permits a single family dwelling on the same lot as a principal agricultural use.

The Town's zoning prohibits farm animals within the R Residential zoning district. A farm located both in the R District and in a County-certified Agricultural District should not be subject to this restriction. Although very little land in Batavia is located in both the R zoning district and a County Agricultural District, the zoning should be modified to exclude such farms from this provision.

Recommendation: Incorporate an exception to the restriction on farm animals for farms located within a County Agricultural District.

Town of Batavia Agricultural & Farmland Protection Plan

Recommended Zoning Amendments

Definitions

AGRICULTURAL USE — Any parcel of land containing at least five acres used for the raising of food products or other useful or valuable growths of the field or garden for sale, together with dairying, raising of livestock and poultry, and other generally accepted agricultural practices, where the same is carried on as a business or otherwise for profit.

The use of land for the production, preparation, marketing and transportation of grain, vegetable, fruit, and other crops, horticultural and floricultural products, animal husbandry, livestock and livestock products, as well as the buildings, structures, equipment, manure processing and handling facilities and associated operations necessary to support such production activities and practices, including a commercial horse boarding operation as defined in NYS Agriculture and Markets Law Article 25-AA, Section 301.

- (1) Such uses shall include the establishment of necessary farm structures within the prescribed limits, and the storage of equipment used in connection therewith.
- (2) Agricultural uses shall exclude the raising of fur-bearing animals, riding academies, public stables or dog kennels.

AGRICULTURAL ACCESSORY PRODUCTS -- Items, whether natural, processed, or manufactured, which are directly linked to and promote the use and sale of agricultural products such as but not limited to grain, fruit, produce, trees, shrubs, flowers, syrups and honeys, as well as seed, fertilizers, mulch soil amendments, hand implements and like products principally utilized in gardening, animal husbandry, horticulture, floriculture, apiculture and other agricultural pursuits.

AGRICULTURE-RELATED ENTERPRISES -- A retail or wholesale enterprise providing services or products principally utilized in agricultural production, including structures, agricultural equipment and agricultural equipment parts, batteries and tires, livestock, feed, seed, fertilizer and equipment repairs, or providing for wholesale or retail sale of grain, fruit, produce, trees, shrubs, flowers or other products of agricultural operations.

AGRICULTURAL RECREATIONAL EVENTS -- Recreational, educational and entertainment activities operated in conjunction with and as part of an overall direct marketing strategy for an active agricultural operation or farm market that contribute to the production, preparation and marketing of crops, livestock and livestock products, and including activities such as petting zoos, hayrides, corn mazes and other such recreational activities, educational demonstrations, the onsite processing of foodstuffs and sale of prepared foods comprised primarily of ingredients produced on the premises for consumption on site and off site.

AGRICULTURAL WORKER HOUSING — Any area of land and all buildings or other structures pertaining thereto, any part of which may be occupied by persons employed as laborers in farm activities in the Town of Batavia who are provided with sleeping facilities, in whole or in part, by the owner without a stipulated agreement as to the duration of their stay or whether or not they are supplied with meals, but who are supplied with such services or facilities as are necessary for agricultural production in the Town of Batavia.

ANIMAL WASTE STORAGE FACILITY — Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

CLUSTER DEVELOPMENT — A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, while maintaining the

Town of Batavia Agricultural & Farmland Protection Plan

Recommended Zoning Amendments

overall density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

FARMERS' MARKET – An enterprise or association that consistently occupies a given site on a seasonal basis, operating principally as a common marketplace for the sale of locally grown fresh produce and farm products, where the farm products sold are produced by the participating farmers.

ROADSIDE STAND — A structure of a nonpermanent nature (movable and temporary) located on the owner's property utilized during the harvest season for the sale of agricultural products grown primarily by the owner.

STABLE, PRIVATE — A building in which horses or other livestock are kept for private use and not for hire, remuneration, or sale.

STABLE, PUBLIC — A building in which horses or other livestock are kept for remuneration, hire or sale.

A building and ancillary facilities such as paddocks, indoor and outdoor riding rinks and pastures that provide care, housing, training and health-related services to horses kept on the premises or on other properties owned or leased by the stable operator, including horses boarded on the premises by others, and which may include activities such as the sale of horses to the general public, the hiring of horses and horse drawn vehicles to the general public, and riding academy providing lessons in horseback riding and other equestrian skills or sports.

STABLING OF AGRICULTURAL ANIMALS — A concentration of animals, permitted under agricultural use, private stable and public stable, within a building, structure or other defined area for the purpose of housing or feeding.

§ 235-12. Buildings, uses and lots.

- A. One principal building and use per lot. There shall not be more than one principal building and one principal use on any one lot in the Agricultural (AG), Agricultural-Residential (AG-R), and the Residential (R) Districts except as provided for in the following:
- (1) An approved multifamily dwelling project;
 - (2) A single-family dwelling accompanying a nonresidential use, or uses, permitted on a lot in Agricultural (AG), Agricultural-Residential (AG-R) and Residential (R) Districts, provided there is only one use of a commercial nature on the lot; or
 - (3) A single-family dwelling accompanying a nonresidential use, or uses, requiring a special use permit in Agricultural (AG), Agricultural Residential (AG-R) and Residential (R) Districts, if approved by the Planning Board as part of the special use permit application process, provided there is only one use of a commercial nature on the lot.
 - (4) A single family dwelling on the same lot as an agricultural use.

§ 235-20. Stabling agricultural animals.

There shall be no stabling of animals or storage of manure, fertilizer, or similar odor- or dust-producing substance within the R District, except in conjunction with an agricultural use located within a County-

Town of Batavia Agricultural & Farmland Protection Plan

Recommended Zoning Amendments

certified Agricultural District. Such stabling or storage shall be permitted in the AG, AG-R, I, IP or C Districts provided the following restrictions are observed:

- A. No such stabling or storage shall take place within ~~500~~ 100 feet of an existing dwelling, water supply well or watercourse R-District.
- B. No such stabling or storage shall take place within 100 feet of a lot line.

§ 235-46. Animal waste storage facilities.

All proposals for installation and/or modification of animal waste storage facilities shall be submitted to the Genesee County Soil and Water Conservation District (GCSWCD) or United States Natural Resources Conservation Service (NRCS) for its review and determination as to acceptability. If a proposal is acceptable to GCSWCD or NRCS then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

§ 235-45. Roadside stands.

- A. Roadside stands may be located in any district.
- B. Goods sold shall primarily be home grown. Sales shall be limited to: vegetables, fruits, herbs, flowers, plants and other farm products; handcrafts produced as part of a home occupation; and syrups, jams and jellies, juices, honey, baked goods and other foodstuffs grown or produced as part of a home occupation, however in no case shall the sale of goods requiring refrigeration or freezing be permitted.
- C. There shall be a front yard setback of at least 20 feet and side yard setbacks of at least 25 feet each. Any structure or ground display shall be located outside of the road right-of-way and shall be set back a minimum of 25 feet from the edge of pavement of the adjacent public road and a minimum of 20 feet from the side lot line.
- D. Stands shall be limited to 150 square feet in size, of a portable nature and must be removed when not in use. During those times or seasons of the year when such farm stand is not operational it shall be either dismantled or removed from the location to an area or a building upon the lands of the proprietor where such structure would be permitted, or secured in place by shutters or other such means to prevent unauthorized access or vandalism. At all times of the year however roadside stands visible from the public rights-of-way shall be maintained in a safe and attractive manner.
- E. Off-street parking shall be provided for a minimum of three vehicles with additional provisions if traffic warrants.
- F. Two signs of not more than 12 square feet each may be permitted, located not less than 10 feet from a lot line.
- G. No roadside stand shall be placed in a manner that limits the sight distance available to the motoring public or that in any other way obstructs their vision while driving, and furthermore, adequate space for customers to be able to park outside the outer edge of the road or highway shoulder shall be provided. Said space shall consist of an all weather surface.

§ 235-45A. Farm Markets

- A. No farm market, whether in a shared structure or freestanding structure, shall have more than 1,500 square feet of retail sales and display area, including any areas under porch roofs or other structures with roofs. Greenhouses and other structures utilized for production of plants but which may still be open to the public, or areas under cultivation open to the public such as "U-Pick" operations, are excluded from the limitation on size of retail sales and display area.

Town of Batavia Agricultural & Farmland Protection Plan Recommended Zoning Amendments

- B. No farm market structure or associated parking areas shall be located within any front, side or rear yard setback areas of the property.
- C. Except for products on display under porches or other structures with roofs, or in greenhouses and open fields or gardens, no more than 1,500 square feet of outdoor or ground display of products shall be permitted. Furthermore no more than 200 square feet of the above 1500 square feet of outdoor or ground display shall be permitted within any front, side or rear yard areas of the property. No outdoor or ground display of products shall be permitted within any public right-of-way.
- D. Paved, gravel or other all-weather surface off-street parking facilities shall be provided. A minimum of one parking space for each 300 square feet of indoor and outdoor retail display area shall be provided. No parking shall be permitted within any front, side or rear yard areas of the property. No single dimension of the parking area shall exceed 150 linear feet.
- E. Display of Products.
No more than 20 percent of the bulk or volume of the products or wares displayed for sale at any farm market shall be agricultural accessory products as defined in this chapter. For the purpose of this section greenhouses and other structures utilized for production of plants but which may still be open to the public, or areas under cultivation open to the public such as "U-Pick" operations, are excluded from the calculation of the size of retail sales and display area.

§ 235-25. Agricultural-Residential District (AG-R).

The Agricultural-Residential (AG-R) District is designed primarily to preserve farmland and secondarily to preserve the rural nature of the town. Agricultural and residential uses have a number of inherent conflicts between them. The purpose of this district is to minimize these conflicts by separating the uses by providing an area where agricultural uses are the primary use and low-density residential development is a secondary use.

A. Permitted uses. The following uses are permitted in the Agricultural-Residential District:

- (1) Agricultural uses.
- (2) One- and two-family dwellings.
- (3) Mobile homes (see § 235-54).
- (4) Religious institutions.
- (5) Public parks, public playgrounds, and municipal uses.
- (6) Private stable.
- (7) Schools.
- (8) Home Occupation I (see § 235-44).

(9) Farm Market

(9)(10) Accessory buildings, structures and uses.

B. Uses requiring special use permit. The following uses are permitted in an Agricultural-Residential District upon the issuance of a special use permit:

- (1) Multifamily dwellings.
- (2) Home Occupation II (§ 235-44).

Town of Batavia Agricultural & Farmland Protection Plan Recommended Zoning Amendments

- (3) Wind energy conversion systems, production model.
 - (4) Outdoor recreation facility.
 - (5) Club.
 - (6) Airport landing strip.
 - (7) Kennel.
 - (8) Community center.
 - (9) Public utility (see § 235-38).
 - (10) Public stable, except that a special use permit shall not be required if the operation is an agricultural use within a County-certified Agricultural District.
 - (11) Commercial greenhouse.
 - (12) Commercial excavation (see § 235-40).
 - (13) Cemetery.
 - (14) Campground (see § 235-43).
 - (15) Animal hospital.
 - (16) Residential care facility.
 - (17) Cluster residential development (see § 235-41).
 - (18) Day-care center.
 - (19) Bed-and-breakfast.
 - (20) Boardinghouse.
 - (21) Animal waste storage facilities (see § 235-46).
 - (22) Animal shelter.
 - (23) Pond (see § 235-48).
 - (24) Farm equipment sales, service and repair (see § 235-37).
 - (25) Skilled trade shop (see § 235-47).
 - (26) ECHO unit (see § 235-51).
 - (27) Self-service storage facility.
 - (28) Commercial communication tower (see § 235-52).
 - (29) Landscaping contractor's yard (see § 235-53).
 - (30) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).
- C. Uses requiring special use permit on arterial highways. The following uses are permitted in the Agricultural-Residential District upon the issuance of a special use permit, provided the affected lot and proposed use front directly upon an arterial highway and the lot involved is not located within 300 feet of a lot with an existing residential use (other than residential uses located on the involved lot) (such measurements shall be made between the nearest respective lot lines):
- (1) Hotel/motel.
 - (2) Motor vehicle repair shop (see § 235-37).
 - (3) Hospital.

Town of Batavia Agricultural & Farmland Protection Plan

Recommended Zoning Amendments

- (4) Indoor recreation facility.
- (5) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).

D. Area regulations. See Zoning Schedule A.

§ 235-26. Residential District (R).

The Residential District is designed to accommodate primarily residential uses on lots with a minimum area of 16,000 square feet (provided public water or sewer is available) or 20,000 square feet (no public water or sewer available). The purpose of this district is to encourage residential growth in areas of the town which have existing concentrations of residential uses. The Residential District will allow for more economical provision of public services such as water and sanitary sewer should the need arise at some future date.

A. Permitted uses. The following uses are permitted in the Residential District:

- (1) One- and two-family dwellings.
- (2) Religious institutions.
- (3) Public parks, public playgrounds, and municipal uses.
- (4) Agricultural uses, excluding the stabling of animals or the storage of manure, fertilizer, or similar odor- or dust-producing substances, unless such stabling or storage is integral to an agricultural use located in a County-certified Agricultural District.
- (5) Schools.
- (6) Accessory buildings, structures and uses.

§ 235-46. Animal waste storage facilities.

All proposals for installation and/or modification of animal waste storage facilities shall be designed, constructed and maintained in accordance with the standards promulgated by the USDA Natural Resources Conservation Service (NRCS), submitted to the Genesee County Soil and Water Conservation District (GCSWCD) or United States Natural Resources Conservation Service (NRCS) for its review and determination as to acceptability. If a proposal is acceptable to GCSWCD or NRCS then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

AGRICULTURAL WORKER HOUSING

The Planning Board may issue a special use permit for the construction and maintenance of housing to support an individual agricultural operation within the AR Agricultural-Residential District provided that the following standards and conditions are maintained:

- A. The maximum number of housing units allowed for an individual agricultural operation shall be based on 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 dwelling unit and deriving their principal income from the individual agricultural operation for which this special use permit is requested.

Town of Batavia Agricultural & Farmland Protection Plan
Recommended Zoning Amendments

- B. No 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. The landowner shall certify, on an annual basis, that the farm housing is used for farm labor. All housing units shall be located on a parcel that is under the same ownership as the individual agricultural operation.
- C. All housing units shall comply with the Standards of the Codes of New York.
- D. All housing units shall have a septic system approved by the New York State Department of Health, or an approved connection to a public sewer system.
- E. All housing units shall have adequate access to a public highway. To the extent possible, this access shall be combined with the primary agricultural operation and any other driveways for all other housing units associated with said agricultural operation.
- F. All housing units shall have a designated area for parking of at least one (1) 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.
- G. All housing units shall be anchored to a concrete pad or attached to a building foundation.
- H. All housing units shall be located on that portion of an actively farmed site which the Planning Board determines 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.
- I. All housing units, regardless of the zone district, shall be subject to the front, side and rear setback standards specified for principal buildings in the AR District.