

## **Guidelines for Review of Local Zoning and Planning Laws**

### **Background and Objective**

As communities adopt or amend zoning regulations, potential conflicts between farm operations and local land use controls may increase. This, coupled with continuing exurban development pressures on many of the State's agricultural communities, increases the need to better coordinate local planning and the agricultural districts program, and to develop guidelines to help address conflicts which may occur. Proactively, guidelines can aid in crafting zoning regulations by municipalities with significant farming activities.

### **Zoning and Farm Operations: Practical Limitations and Problems**

Farms are host to several discrete but interdependent land uses which may include barns, commodity sheds, farm worker housing, garages, direct farm markets, silos, manure storage facilities, milking parlors, stables, poultry houses and greenhouses, to name but a few. The typical zoning regulation, in addition to establishing minimum lot sizes and separations between uses, often prohibits more than one "principal" structure on each parcel of record. Many zoning devices, then, are unable to distinguish between on-farm structures as part of a *farm operation* from the same building when it is used for an independent, freestanding use.

The minimum separation and "yard" requirements of zoning are designed to avoid over concentration, maintain adequate spaces for light and air, and to reduce fire hazard in more urban environments. The application of such requirements to suburban and rural communities and farm operations often results in the unintended regulation of farm operations and uses not as an integrated whole, but as separate improvements.

The rapidly changing nature of the agricultural industry does not always allow zoning and the comprehensive planning process to keep pace. This can result in the application of outdated regulations to contemporary land uses and gives rise to potentially unreasonable restrictions. Local governments may run afoul of the letter and intent of the Agricultural Districts Law by limiting the type and intensity of agricultural uses in their communities and by narrowly defining "farm" or "agricultural activity." This is sometimes problematic even in municipalities with a significant base of large, "production" level farming operations. Inadequately defined terms also give rise to conflict between the zoning device and farm operations.

Because of the inherent nature of zoning, there is essentially no discrete administrative authority to waive its standards, even when those standards are at variance with the community's land use policy and what may be deemed its "intent." A municipal zoning board of appeals may, consistent with specific tests

found in Town, Village and City Law, vary the use and area standards of a zoning regulation, and reverse or affirm determinations of the zoning administrative official. Such a remedy: i.e., an area or use variance, may, however, in and of itself be considered “unreasonably restrictive” if it is the only means available to establish, expand or improve a “farm operation” in a county adopted, State certified agricultural district.

These and other limitations and problems that can lead to AML §305-a violations may be avoided in the first instance by sound comprehensive planning. The Town Law, Village Law, General City Law and the Agricultural Districts Law are designed to encourage coordination of local planning and land use decision making with the agricultural districts program.

### **Agricultural Districts and County Agricultural and Farmland Protection Plans: Their Influence on the Municipal Comprehensive Plan and the Zoning Process**

The preparation, adoption and administration of a municipal comprehensive plan and zoning regulation are not independent actions of local government, but should be part of a well thought out, seamless process. A zoning regulation is, in the final analysis, simply a device to implement the community plan and, in fact, “... must be in accordance with a comprehensive plan ...” [Town Law §272-a(11)(a)]

The State Legislature has codified the intent, definition and content of the comprehensive plan (Town Law §272-a, Village Law §7-722 and General City Law §28-a). In so doing, the Legislature has given significant status to “agricultural uses” in general, and State certified agricultural districts and county agricultural and farmland protection plans created under Agriculture and Markets Law Articles 25-AA and 25-AAA in particular. Town Law §272-a (9) requires agricultural review and coordination with the comprehensive planning process:

*“A town comprehensive plan and any amendments thereto, for a town containing all or part of an agricultural district or lands receiving agricultural assessments within its jurisdiction, shall continue to be subject to the provisions of article twenty-five-AA of the agriculture and markets law relating to the enactment and administration of local laws, ordinances, rules or regulations. A newly adopted or amended town comprehensive plan shall take into consideration applicable county agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law.”*

(The same language is found in Village Law and General City Law.)

Thus, the statutory influence the Agricultural Districts Law and the Agricultural and Farmland Protection programs have on the comprehensive planning process and zoning regulations is significant. State certified agricultural districts and

county agricultural and farmland protection plans are community shaping influences in much the same way as existing and proposed infrastructure; wetlands, floodplains, topographical features; cultural, historic and social amenities; economic needs; etc. are viewed. The Agricultural Districts Law is a valuable planning tool to conserve, protect and encourage the development and improvement of the agricultural economy; protect agricultural lands as valued natural and ecological resources; and preserve open space.

In addition to AML §305-a, limitations on local authority in Town Law §283-a and Village Law §7-739 were enacted to ensure that agricultural interests are taken into consideration during the review of specific land use proposals. Town Law §283-a (1) and Village Law §7-739(1), as recently amended by Chapter 331 of the Laws of 2002, require local governments to "...exercise their powers to enact local laws, ordinances, rules or regulations that apply to farm operations in an agricultural district in a manner which does not unreasonably restrict or regulate farm operations in contravention of the purposes of article twenty-five-AA of the agriculture and markets law, unless it can be shown that the public health or safety is threatened." The recent amendments make the Town and Village Law provisions consistent with AML §305-a regarding showing a threat to the public health or safety. AML §305-a, subd.1 is not a stand-alone requirement for coordination of local planning and land use decision making with the agricultural districts program. Rather, it is one that is fully integrated with the comprehensive planning, zoning and land use review process.

### **Application of Local Laws to Farm Operations within Agricultural Districts**

In general, the construction of on-farm buildings and the use of land for agricultural purposes should not be subject to site plan review, special use permits or non-conforming use requirements when conducted in a county adopted, State certified agricultural district. The purpose of an agricultural district is to encourage the development and improvement of agricultural land and the use of agricultural land for the production of food and other agricultural products as recognized by the New York State Constitution, Article XIV, Section 4. Therefore, generally, agricultural uses and the construction of on-farm buildings as part of a farm operation should be allowed uses when the farm operation is located within an agricultural district.

Town Law §274-b, subdivision 1 allows a town board to authorize a planning board or other designated administrative body to grant special use permits as set forth in a zoning ordinance or local law. "Special use permit" is defined as "...an authorization of a particular land use which is permitted in a zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met." Agricultural uses in an agricultural district are not, however, "special uses." They are constitutionally recognized land uses which are protected by AML §305-a, subd.1. Further, agricultural districts are created

and reviewed locally through a process which includes public notice and hearing, much like zoning laws are adopted and amended. Therefore, absent any showing of an overriding local concern, generally, an exemption from special use permit requirements should be provided to farm operations located within an agricultural district.

The application of site plan and special permit requirements to farm operations can have significant adverse impacts on such operations. Site plan and special permit review, depending upon the specific requirements in a local law, can be expensive due to the need to retain professional assistance to certify plans or simply to prepare the type of detailed plans required by the law. The lengthy approval process in some local laws can be burdensome, especially considering a farm's need to undertake management and production practices in a timely and efficient manner. Site plan and special permit fees can be especially costly for start-up farm operations.

Generally, farmers should exhaust their local administrative remedies and seek, for example, permits, exemptions available under local law or area variances before the Department reviews the administration of a local law. However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation. The Department has found local laws which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Building Code (unless exempt from the State Building Code <sup>1</sup>) and Health Department requirements not to be unreasonably restrictive. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

### **Site Plan Review for Farm Operations within an Agricultural District**

Many local governments share the Department's view that farm operations should not have to undergo site plan review and exempt farms from that requirement. However, the Department recognizes the desire of some local governments to have an opportunity to review agricultural development and projects within their borders, as well as the need of farmers for an efficient, economical, and predictable process. In view of both interests, the Department developed a model streamlined site plan review process which attempts to respond to the farmers' concerns while ensuring the ability to have local issues examined. The process could be used for farm buildings and structures (new and significant expansions) proposed for a site, but should not be required for non-structural agricultural uses. For example, to require farm operations in an agricultural district to undergo site plan review to engage in the production,

---

<sup>1</sup> A discussion of the New York State Uniform Fire Prevention and Building Code follows below.

preparation and marketing of crops, livestock and livestock products, would generally be unreasonably restrictive.

The authorizing statutes for requiring site plan review are quite broad and under "home rule" municipalities retain significant flexibility in crafting specialized procedures (e.g., the selection of a reviewing board; uses which trigger submission of site plans; whether to have a public hearing and the length of time to review an application). Town Law §274-a and Village Law §7-725-a define a site plan as "a rendering, drawing, or sketch prepared to specifications and containing necessary elements as set forth in the applicable zoning ordinance or local law which shows the arrangement, layout and design of the proposed use of a single parcel of land... ." These sections of law further outline a list of potential site plan elements including parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as additional elements.

Many municipalities have also added optional phases to the site plan review. While a preliminary conference, preliminary site plan review and public hearings may assist the applicant earlier in the review process and provide the public an opportunity to respond to a project, they can result in a costly delay for the farmer.

For the sake of simplicity, the model site plan process and the following guidance presume that the planning board is the reviewing authority.

### **Site Plan Process**

The applicant for site plan review and approval shall submit the following:

- 1) Sketch of the parcel on a location map (e.g., tax map) showing boundaries and dimensions of the parcel of land involved and identifying contiguous properties and any known easements or rights-of-way and roadways.

Show the existing features of the site including land and water areas, water or sewer systems and the approximate location of all existing structures on or immediately adjacent to the site.

- 2) Show the proposed location and arrangement of buildings and uses on the site, including means of ingress and egress, parking and circulation of traffic.
- 3) Sketch of any proposed building, structure or sign, including exterior dimensions and elevations of front, side and rear views. Include copies of any available blueprints, plans or drawings.

- 4) Provide a description of the project and a narrative of the intended use of such proposed buildings, structures or signs, including any anticipated changes in the existing topography and natural features of the parcel to accommodate the changes. Include the name and address of the applicant and any professional advisors. If the applicant is not the owner of the property, provide authorization of the owner.
- 5) If any new structures are going to be located adjacent to a stream or wetland provide a copy of the floodplain map and wetland map that corresponds with the boundaries of the property.
- 6) Application form and fee (if required).

If the municipality issues a permit for the structure, the Code Enforcement Officer (CEO) determines if the structures are subject to and comply with the local building code or New York State Uniform Fire Prevention and Building Code prior to issuing the permit. Similarly, the Zoning Enforcement Officer (or the CEO in certain municipalities) would ensure compliance with applicable zoning provisions.

The Department urges local governments to take into account the size and nature of the particular farm buildings and structures when setting and administering any site plan requirements for farm operations. The review process, as outlined above, should generally not require professional assistance (e.g., architects, engineers or surveyors) to complete or review and could be completed relatively quickly.<sup>2</sup> The Department understands, however, that in some cases, a public hearing and/or a more detailed review of the project which may include submission of a survey, architectural or engineering drawings or plans, etc., may be necessary. The degree of regulation that may be considered unreasonably restrictive depends on the nature of the proposed activities, the size and complexity of the proposed buildings or structures and whether a State agricultural exemption applies.

### **Time Frame for Review and Decision**

Town Law §274-a and Village Law §7-725-a require that a decision on a site plan application be made within a maximum of 62 days after receipt of the application or date of a public hearing, if one is required. Town and Village Law authorize town boards and village boards of trustees to adopt public hearing requirements and local laws often provide planning boards with the discretion whether to hold a public hearing. The Department recommends that if the municipality requires construction of farm buildings and structures within a state certified agricultural district to undergo site plan review, that the review and decision be expedited within 45 days, with no public hearing. The Department recognizes that the Town Law allows municipalities to determine which uses

---

<sup>2</sup> Please see discussion of Agricultural Exemptions below.

must undergo site plan review, the time frame for review (within the 62 day maximum), and whether to conduct a public hearing. A protracted review of most agricultural projects could, however, result in significant economic impacts to farmers.

The process outlined above affords the community an opportunity to examine a proposed agricultural project and to evaluate and mitigate potential impacts in light of public health, safety and welfare without unduly burdening farm operations. Of course, the “process” must also be administered in a manner that does not unreasonably restrict or regulate farm operations. For example, conditions placed upon an approval or the cost and time involved to complete the review process could be unreasonably restrictive.

### **Agricultural Exemptions**

**State Environmental Quality Review (SEQR)** - Agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with “generally accepted principles of farming” are designated as Type II actions which do not require preparation of an Environmental Assessment Form (EAF) and are not subject to compliance with State Environmental Quality Review (SEQR). 6 NYCRR §617.5(a), (c)(3). [See *In the Matter of Pure Air and Water Inc. of Chemung County v. Davidsen*, 246 A.D.2d 786, 668 N.Y.S.2d 248 (3<sup>rd</sup> Dept. 1998), for application of the exemption to the manure management activities of a hog farm.] The SEQR regulations require localities to recognize the Type II actions contained in the statewide list.

**New York State Uniform Fire Prevention and Building Code** - While farmers must comply with local requirements which regulate health and safety aspects of the construction of farm buildings, many farm buildings are exempt from the State Uniform Fire Prevention and Building Code (“Uniform Code”). The Uniform Code recently underwent major revisions and now is comprised of seven sub-codes (the Building Code, Fire Code, Residential Code, Plumbing Code, Mechanical Code, Fuel Gas Code, and the Property Maintenance Code). The exemption for agricultural buildings has been incorporated in the following portions of the revised Uniform Code and the Energy Conservation Construction Code, which became fully effective on January 1, 2003.

- Agricultural building is defined in §202 of the Building Code as “A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public.”

- Building Code §101.2(2) provides an exemption from the Building Code for "[a]gricultural buildings used solely in the raising, growing or storage of agricultural products by a farmer engaged in a farming operation."
- Section 102.1(5) of the Fire Code of New York State provides that "[a]gricultural buildings used solely in the raising, growing or storage of agricultural products by a farmer engaged in a farming operation" are exempt from the provisions of the Fire Code pertaining to construction but are subject to applicable requirements of fire safety practice and methodology.
- Section 101.4.2.5 of the Energy Conservation Construction Code ("ECCC") exempts "nonresidential farm buildings, including barns, sheds, poultry houses and other buildings and equipment on the premises used directly and solely for agricultural purposes" from the provisions of the ECCC.

The above briefly highlights the agricultural buildings exemptions. Any specific questions regarding the interpretation and applicability of the revised State Uniform Fire Protection and Building Code should be directed to the Department of State's Codes Division at (518) 474-4073.

**Professionally Stamped Plans** - Education Law §7209(1) provides that no official of the State or any city, county, town or village charged with the enforcement of laws, ordinances or regulations may accept or approve any plans or specifications that are not stamped with the seal of an architect, or professional engineer, or land surveyor licensed or authorized to practice in the State. Thus, where local laws, ordinances or regulations require that plans and specifications for private construction be accepted or approved, they may not be accepted or approved without the required seal, subject to the exceptions set forth in the statute. 1981 Op Atty Gen April 27 (Informal).

However, the exceptions contained in Education Law §7209(7)(b) include "farm buildings, including barns, sheds, poultry houses and other buildings used directly and solely for agricultural purposes." As a result, plans and specifications for such buildings are not required to be stamped by an architect, professional engineer or land surveyor.<sup>3</sup>

Against this backdrop, specific guidelines for review of zoning and planning regulations by local governments and the Department can best be understood.

### **Generic Review Guidelines**

Generic reviews are those of entire zoning regulations or sections of zoning regulations that impact the municipality's farm community as a class or several farm operations in the same way. Examples of actions which might result in a generic review include the adoption or administration of an entirely new or

---

<sup>3</sup> Similar requirements and exceptions are also provided in Education Law §7307(1) and (5).

substantially amended zoning regulation that results in a material change in the use and area standards applied to farm operations in a State certified agricultural district. In such cases, the Department recommends that the municipality ask itself the following questions:

- Do the regulations materially limit the definition of farm operation, farm or agriculture in a way that conflicts with the definition of “farm operation” in AML §301, subd.11?
- Do the regulations relegate any farm operations in agricultural districts to “non-conforming” status?
- Is the production, preparation and marketing of any crop, livestock or livestock product as a commercial enterprise materially limited, restricted or prohibited?
- Are certain classes of agriculture subject to more intensive reviews or permitting requirements than others? For example, is “animal agriculture” treated differently than crop production without demonstrated links to a specific and meaningful public health or safety standard designed to address a real and tangible threat?
- Are any classes of agricultural activities meeting the definition of “farm operation” subject to special permit, site plan review or other original jurisdiction review standard over and above ministerial review?
- Are “farm operations” subject to more intensive reviews than non-farm uses in the same zoning district?
- Are “farm operations” treated as integrated and interdependent uses, or collections of independent and competing uses on the same property?
- Is the regulation in accordance with a comprehensive plan and is such a plan crafted consistent with AML Article 25-AA as required by law?

If the answer to any of the first six questions is “yes,” or if the answer to either of the last two is “no,” the zoning regulations under review are likely to be problematic and may be in violation of AML §305-a, subd.1. Certainly such regulations would appear to be on their “face” inconsistent with the statutory requirement that *“Local governments ...shall exercise these powers in such manner as may realize the policy and goals set forth in this article [Article 25AA-Agricultural Districts].”*

### **Guidelines for Site Specific Reviews**

AML §305-a zoning case reviews often involve application of zoning regulations to a specific farm operation. Such cases typically result from applying the site plan, special use permit, use or non-conforming use sections, yard requirements, or lot density sections of the municipal zoning device to an existing farm operation.

These cases often evolve because although the zoning regulation may appear to be consistent with the agricultural districts law, its application to a specific issue or set of facts is not. In such cases, the Department recommends that the municipality ask itself the following questions:

- Is the zoning regulation or restriction being applied to a use normally and customarily associated with a “farm operation” as defined in AML Article 25-AA?
- Does the regulation or restriction materially limit the expansion or improvement of the operation without offering some compelling public benefit?
- Is the regulation or restriction applicable to the specific farm operation in question or, under the same circumstances, would it apply to other farm operations in the community?
- Does the zoning regulation impose greater regulation or restriction on a use or farming activity than may already be imposed by State or federal statute, rule or regulation?
- Is the regulation or restriction the result of legislative action that rendered the farm operation a “non-conforming use”?

If the answer to any of these questions is yes, then the zoning regulation or restriction under review is likely to be problematic and may be in violation of the statutory prohibitions against unreasonably restrictive regulation of farm operations in an agricultural district, unless a threat to the public health or safety is demonstrated.

### **Guidance on Specific Zoning Issues**

The following are some specific factors that the Department considers when reviewing local zoning laws<sup>4</sup>:

#### **A. Minimum and Maximum Dimensions**

Generally the Department will consider whether minimum and maximum dimensions imposed by a local law can accommodate existing and/or future farm needs. For example, many roadside stands are located within existing garages, barns, and outbuildings that may have dimensions greater than those set by a local ordinance. Also, buildings specifically designed and constructed to accommodate farm activities may not meet the local size requirements (e.g., silos and barns which may exceed maximum height limitations). The size and scope of the farm operation should also be considered. Larger farms, for example, cannot effectively market their produce through a traditional roadside

---

<sup>4</sup> Please see other Department guidance documents for further information on issues related to specific types of farm buildings and practices.

stand and may require larger farm markets with utilities, parking, sanitary facilities, etc.

## B. Lot Size

Establishing a minimum lot size for farm operations within a zoning district that includes land within a State certified agricultural district might be unreasonably restrictive. The definition of "farm operation" in AML §301, subd. 11 does not include an acreage threshold. Therefore, the Department has not set a minimum acreage necessary for protection under AML §305-a and conducts reviews on a case-by-case basis. For example, a nursery/greenhouse operation conducted on less than 5 or 10 acres may be protected as a "farm operation" under §305-a if the operation is a "commercial enterprise" and more than a hobby farm.

For agricultural assessment purposes, however, AML §301, subd. 4 states that a farm must have "land used in agricultural production" to qualify (either seven or more acres and gross sales of an average of \$10,000 or more in the preceding two years *or* have less than seven acres and average gross sales of more than \$50,000 in the preceding two years). A recent amendment to AML §301, subd. 4 also provides for an agricultural assessment on seven or more acres which has an *annual* gross sales of \$10,000 or more "...when such land is owned or rented by a newly established farm operation in the first year of operation." AML §301, subd. 4.h. *Laws of 2003, Chapter 479*, effective September 9, 2003.

Local requirements for minimum lot sizes for farm buildings raises concerns similar to those involving minimum and maximum building dimensions. A farmer may be unable to meet a minimum lot size due to the configuration of the land used for production or lying fallow as part of a conservation reserve program. The need to be proximate to existing farm roads, a water supply, sewage disposal and other utilities is also essential. Farm buildings are usually located on the same property that supports other farm structures. Presumably, minimum lot size requirements are adopted to prevent over concentration of buildings and to assure an adequate area to install any necessary utilities. Farm buildings should be allowed to be sited on the same lot as other agricultural use structures subject to the provision of adequate water and sewage disposal facilities and meeting minimum setbacks between structures.

## C. Setbacks

Minimum setbacks from front, back and side yards for farm buildings have not been viewed as unreasonably restrictive unless a setback distance is unusually long. Setbacks that coincide with those required for other similar structures have, in general, been viewed as reasonable.

A farm operation's barns, storage buildings and other facilities may already be located within a required setback, or the farm operation may need to locate new facilities within the setback to meet the farm operation's needs. Also, adjoining land may consist of vacant land, woodland or farmland. The establishment of unreasonable setback distances increases the cost of doing business for farmers because the infrastructure needed to support the operation (e.g., water supply, utilities and farm roads) is often already located within, and adjacent to, the farmstead area or existing farm structures. Setbacks can also increase the cost of, or make it impracticable to construct new structures for the farm operation.

#### D. Sign Limitations:

Whether or not a limitation on the size and/or number of signs that may be used to advertise a farm operation is unreasonably restrictive of a farm operation depends upon the location of the farm and the type of operation. A farmer who is located on a principally traveled road probably will not need as many signs as one who is located on a less traveled road and who may need directional signs to direct the public to the farm. The size of a sign needed may depend on whether the sign is used to advertise the farm's produce or services (e.g., for a commercial horse boarding operation) as part of the farm's direct marketing, or just for directional purposes.

#### E. Maximum Lot Coverage

Establishing a maximum lot coverage that may be occupied by structures may be unreasonably restrictive. For example, it may be difficult for horticultural operations to recoup their investment in the purchase of land if they are not allowed to more fully utilize a lot/acreage for greenhouses. Farm operations within an agricultural district should be allowed the maximum use of available land, consistent with the need to protect the public health or safety. Generally, if setbacks between buildings are met and adequate space is available for interior roads, parking areas (where required), and safe operation of vehicles and equipment, health and safety concerns are minimized.

#### F. Screening and Buffers

Some municipalities impose buffer requirements, including setbacks where vegetation, landscaping, a wall or fencing is required to partially or completely screen adjacent land uses. Often, the buffer area cannot be used or encroached upon by any activities on the lot. Requirements for buffers or setbacks to graze animals, construct fences and otherwise use land for agricultural purposes are generally unreasonably restrictive.

Buffers and associated setbacks may require farmers to remove land from production or otherwise remove land from use for the farm operation. The impact on nursery/greenhouse operations is especially significant since they are often

conducted on smaller parcels of land. Maintenance of the buffer also creates a hardship to the landowner. If a setback is required for fencing, the farmer may have to incur the expense of double fencing the perimeter of the property, or portion thereof, to prevent encroachment by neighboring property owners.

A requirement to screen a farm operation or agricultural structures such as farm labor housing or greenhouses from view has been found by the Department to be unreasonably restrictive. Screening requirements suggest that farm operations and associated structures are, in some way, objectionable or different from other forms of land use that do not have to be screened. Farmers should not be required to bear the extra costs to provide screening unless such requirements are otherwise warranted by special local conditions or necessary to address a threat to the public health or safety. While aesthetics are an appropriate and important consideration under zoning and planning laws, the purpose of the Agricultural Districts Law is to conserve and protect agricultural lands by promoting the retention of farmland in active agricultural use.

**Guidelines for Review of Local Laws Affecting Nutrient Management Practices (i.e. Land Application of Animal Waste, Recognizable and Non-recognizable Food Waste, Sewage Sludge and Septage; Animal Waste Storage/Management)**

Nutrient Management Practices are an essential component of any farm operation and are protected under AML §305-a from unreasonable local restrictions. Nutrient Management Practices generally include: (1) land application (i.e. materials are applied to the soil surface or injected into the upper layer of the soil) and/or composting of animal waste, recognizable and non-recognizable food waste, sewage sludge and septage; and (2) storage of animal waste. Animal waste, recognizable and non-recognizable food waste, sewage sludge, septage, and composted sludge have beneficial uses as fertilizer and soil amendments for crop production.

The Department recognizes a local government's right to regulate certain aspects of the storage and disposal of solid wastes within its geographic boundaries.<sup>1</sup> However, AML §305-a prohibits local governments from enacting and administering laws that would unreasonably restrict farm operations within a county adopted, State certified agricultural district unless the locality can show a threat to the public health or safety. Districts are established to encourage the development and improvement of agricultural land. In general, the Department believes that local waste management laws should provide exemptions to allow the land application, storage, and/or composting of animal waste, recognizable and non-recognizable food waste, septage, sludge, and composted sludge, or products derived therefrom, for agricultural purposes on farm operations within a county adopted State certified agricultural district. Certain local permit requirements are reasonable, however, including, for example, submission of copies of Department of Environmental Conservation (DEC) applications, materials and approvals to the local government; provisions for access to permitted sites and information on the activity (e.g., copies of information submitted to DEC to maintain a permit); and a reasonable permit fee.

The following is an outline of the common ways that local laws can restrict the Nutrient Management Practices of farms, and the position of the Department with regard to these restrictions.

*DEC Standards*

- Local laws that regulate solid wastes should include an exemption for (1) the land application of animal manure and recognizable and non-recognizable food wastes as provided in 6 NYCRR §360-4.1(c)(1); and (2) the disposal

---

<sup>1</sup> Environmental Conservation Law §27-0711, for example, allows localities to adopt local laws, ordinances or regulations which comply with at least the minimum applicable requirements set forth in the DEC's solid waste disposal regulations. See also, *Monroe-Livingston Sanitary Landfill, Inc. v. Town of Caledonia*, 51 N.Y.2d 679, 683-684 (1980).

and/or storage of farm generated waste as provided in 6 NYCRR §360-1.7(b)(1), (2) and (3). Local laws that only provide exemptions for solid waste disposed of or stored on the property where it is produced are generally unreasonably restrictive. Local laws should exempt the on-farm disposal or storage of solid waste for agricultural purposes, no matter where it is produced, consistent with the DEC's regulations. Such laws should also include a separate definition for recognizable and non-recognizable food processing waste consistent with the definitions used by the DEC in 6 NYCRR Part 360, §360-1.2(b)(70).

- The DEC regulates and permits land application of solid wastes. The State Environmental Conservation Law (ECL), solid waste management regulations (6 NYCRR Part 360) and waste transporter regulations (6 NYCRR Part 364) address disposal and land application of food processing waste, septage, sludge and composted sludge. For permitted activities, DEC requires detailed information concerning the activity. DEC review includes a technical analysis of the proposed activity; review of environmental impacts through the SEQRA process; notice and public comment for major projects; and, in some cases, a public hearing.
- The Department considers the standards and permitting requirements under the DEC's regulations in evaluating whether restrictions on agricultural land use and nutrient management practices are unreasonably restrictive in violation of AML §305-a. In many instances, the Department has found local laws that exceed State standards unreasonably restrictive. Each law, however, is judged on its own merits and reviews are performed on a case-by-case basis. If a local government believes that local conditions warrant standards that differ from the DEC's, the Department considers those conditions in evaluating whether the standards are unreasonably restrictive.

#### *Regulations Affecting Animal Waste Management Facilities*

- Animal waste management facilities (including manure pile areas) are a common land use for dairy and livestock operations and farmers must handle waste management in a timely and effective manner. Absent any showing of an overriding local concern, a farmer should not be required to obtain special permits and engage in site plan review when locating these facilities in a county adopted, State certified agricultural district.
- Larger farms are required to have a plan for the proper management of liquid and solid waste prepared according to the NRCS Conservation Practice Standard "Waste Management System No. NY-312" in order to obtain a DEC Concentrated Animal Feeding Operation (CAFO) General Permit. Such a plan includes other NRCS practice standards needed to address resource concerns, such as, "Waste Storage Facility NY313" and "Nutrient Management (Supplement) NY590."

- The DEC's permitting process for CAFOs addresses public health and safety issues related to water pollution. The Department believes that the thresholds and standards established by DEC for the CAFO permit are appropriate. A requirement that a DEC regulated and permitted activity also obtain a locally administered permit would generally not be unreasonably restrictive if the local permit requirements did not exceed the State standard, applications were timely considered and without substantial fees or costs. A local law which required CAFO farms to submit copies of their permit application and permit to the locality; make the permit information available for inspection; and to keep the locality updated on changes in permit status, would be reasonable. Also, to the extent permitted by State and federal law, a local law could adopt the State standard and include an enforcement mechanism.
- Since the State does not require CAFO permits for smaller farms, requiring all farmers to comply with the standards required for a CAFO permit might be unreasonably restrictive, unless the local government can show conditions that warrant the more stringent standards.

#### *Restrictive Zoning of Animal Housing or Waste Management Facilities*

- Zoning provisions that require animal housing or waste management facilities to be set back a great distance from roads or neighboring lot lines could be unreasonably restrictive. A farm operation's barns and waste management facilities may already be located within the setback, or the farm operation may need to locate new facilities within the setback, both to meet the farm operation's needs and CAFO permit requirements. The establishment of unreasonable setback distances increases the cost of doing business for farmers because the infrastructure needed to support the operation (e.g., water supply, utilities and farm roads) is often already located within, and adjacent to, the farmstead area or existing farm structures. Setbacks can also increase the cost of, or make it impracticable to construct new structures for the farm operation. In summary, setback requirements may adversely affect the farm operator's ability to manage the farm operation effectively and efficiently.
- Many local laws prohibit the storage of manure, and other odor or dust-producing substances within one hundred (100) feet of any lot line. Some zoning laws also prohibit buildings housing farm animals from being located within one hundred (100) feet of any lot line. There may be situations when the most favorable location for manure storage and livestock housing, both environmentally and operationally, may be less than 100 feet from a property line and a 100 feet setback may be considered unreasonable under certain circumstances. Also, adjoining land may consist of vacant land, woodland or farmland. One of the most important issues involving any type of waste is the

protection of ground water. The NYS Department of Health's (DOH's) standards for water well construction (private supplies) (10 NYCRR, Appendix 5-B) include a minimum distance of 100 feet between a new **well** and barnyards, silos, barn gutters and animal pens and 200 feet between a new **well** and storage areas for a manure pile. According to the standards, the separation distance between a new well and a manure pile may be reduced to 100 feet if the area is managed to prevent contamination of surface and ground water. In view of this, the Department concluded that a 100 feet setback from any **existing wells** and new barnyards, silos, barn gutters, livestock confinement structures, and animal pens would be reasonable. A 200 feet setback from any **existing wells** would also be reasonable for a manure pile, or 100 feet from a manure pile managed to prevent contamination of surface and ground water<sup>2</sup>. A 100 feet setback is also reasonable for lined manure storage ponds or fabricated units, while a 300 feet setback is reasonable for unlined self-sealing manure storage facilities (based on NRCS standards and specifications for waste storage facilities).

- The State Environmental Quality Review (SEQR) regulations at 6 NYCRR Part 617 list "agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming" as Type II actions which do not require preparation of an EAF or other compliance with SEQR. The SEQR regulations require localities to recognize the Type II actions contained in the statewide list.

---

<sup>2</sup> The NYS Dept. Of Health standards also include a separation distance of 200 feet between new wells and areas used for manure application. The separation distance may be reduced to 100 feet based upon an on-site evaluation of the agricultural property by a certified nutrient management planner or soil and water conservation district official. Note that well drillers, not the owners or operators of agricultural land, are required to comply with the NYS DOH setbacks for construction of new wells. The NYS DOH confirms that the requirements are only applicable to the location of water wells at the time of construction and do not regulate existing or future agricultural activities. The setback requirement is the responsibility of the residential landowner and well driller, not the agricultural operator.

## **Guidelines for Review of Local Laws Affecting Commercial Horse Boarding Operations**

In 2001 the Agriculture and Markets Law (AML) was amended to include commercial horse boarding operations in the definition of a “farm operation” under AML §301, subdivision 11. This amendment recognized that commercial horse boarding operations are farm operations and as such should receive AML §305-a protection from unreasonably restrictive local laws. (Previously, commercial horse boarding operations were only eligible for agricultural assessments.)

Under AML §301, subd. 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. 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.” AML §301, subd. 13 defines the term “commercial horse boarding operation” as “...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.”

The Department has consistently viewed the raising, breeding, boarding and sale of horses as a “farm operation” under AML §301, subdivision 11. A horse boarding operation provides care, housing, health related services and training to animals kept on the premises or on other properties owned or leased by the farm operator. Riding and training activities that are directly related to and incidental to the boarding and raising of horses, including riding lessons for persons who own or have a long-term lease from the farm owner for the horse that is boarded at the farm and used for such activities, are part of the farm operation. Horse shows for horses either boarded at or owned by the farm operation, which are not open to the general public, are also part of the farm operation. The Department does not consider a riding academy to be an agricultural activity under the AML. A riding academy generally offers riding lessons to the public and to individuals that do not own or have a long-term lease for the horse that is boarded and used at the facility for such riding. Local zoning laws which include definitions and provisions for riding academies or commercial horse boarding operations should include language which distinguishes between the types of operations.

In general, the construction of on-farm buildings and the use of land for agricultural purposes should not require site plan review, special use permits or be subjected to non-conforming use requirements when located in a county adopted, State certified agricultural district. The purpose of an agricultural district is to encourage the development and improvement of agricultural land and the use of agricultural land for the production of food and other agricultural products is recognized by the New York State Constitution, Article XIV, Section 4. Therefore, generally, agricultural uses and the construction of on-farm buildings as part of a farm operation should be permitted uses when the farm operation is located within an agricultural district.

The application of site plan and special permit requirements to farm operations can have significant adverse impacts on such operations. Site plan and special permit review, depending upon the specific requirements in a local law, can be expensive due to the need to retain professional assistance to certify plans or simply to prepare the type of detailed plans required by the law. The lengthy approval process in some local laws can be burdensome, especially considering a farm's need to undertake management and production practices in a timely and efficient manner. Site plan and special permit fees can be especially costly for start-up farm operations. Therefore, absent any showing of an overriding local concern, generally, an exemption from site plan and special use permit requirements should be provided to farm operations located within an agricultural district. However, as discussed in more detail in the Department's *Guidelines for Review of Local Zoning and Planning Laws*, the Department recognizes the desire of some local governments to have an opportunity to review agricultural development and projects within their borders. Therefore, the Department developed a model streamlined site plan review process which attempts to respond to farmers' concerns while ensuring that local issues are examined.

Generally, farmers should exhaust their local administrative remedies and seek, for example, certain permits, exemptions available under local law or area variances before the Department reviews the administration of a local law. However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation. The Department has found local laws which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Uniform Fire Prevention and Building Code ("Uniform Code") [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code §102.1(5)] and Health Department requirements for potable water and sewage disposal not to be unreasonably restrictive. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

The following are some specific matters that the Department considers when reviewing a local law that affects commercial horse boarding operations<sup>1</sup>:

A. Minimum Lot Size

The AML states that a commercial horse boarding operation must be at least seven acres in size. A Town's limitation on the number of horses allowed per acre could be unreasonably restrictive. The Department considers, among other things, the impacts on a particular farm operation to determine if a density limitation is unreasonably restrictive. If pasture is to be used for sustenance, then one acre of pasture per horse is usually appropriate. If the area is to be used for a turn-out area, then five or more head may be carried on one acre of land. Many commercial horse boarding operations are closed systems where they are conducted on smaller acreage, feed is brought in and manure is exported off the farm. However, some horse farms may landspread and/or compost manure on the farm (See Section I of this guideline for further discussion on manure management). Horses are exercised in various arenas, indoor and outdoor, and rotated in small rectangular fenced areas (paddocks).

---

<sup>1</sup> Please see *Guidelines for Review of Local Zoning and Planning Laws* for further general discussion of each of these issues.

## B. Setbacks

Minimum setbacks from front, back and side yards for farm buildings have not been viewed as unreasonable unless a setback distance is unusually long. Setbacks that coincide with those required for other similar structures have, in general, been viewed as reasonable.

A farm operation's barns, storage buildings and other facilities may already be located within a required setback, or the farm operation may need to locate new facilities within the setback to meet the farm operation's needs. Also, adjoining land may consist of vacant land, woodland or farmland. The establishment of unreasonable setback distances increases the cost of doing business for farmers because the infrastructure needed to support the operation (e.g., water supply, utilities and farm roads) is often already located within, and adjacent to, the farmstead area or existing farm structures. Setbacks can also increase the cost of, or make it impracticable to construct new structures for the farm operation.

Requiring setbacks from property lines for riding trails may be unreasonably restrictive. If riding trails are located in or adjacent to fields that are used for the production of hay or other field crops, a minimum setback from a property line would take land out of production. In such instances, the trail would generally be located closer to the property line to reduce the amount of land taken out of production and reduce the amount of operating costs and time necessary to maintain a swath of unusable land established by a setback.

## C. Screening

Some local laws require a landowner to screen an agricultural activity from adjacent non-agricultural uses. The Department has previously determined that a requirement to screen agricultural activities from adjoining non-agricultural uses is unreasonably restrictive. While aesthetics are an appropriate and important consideration under zoning and planning laws, the purpose of the Agricultural Districts Law is to conserve and protect agricultural lands by promoting the retention of farmland in active agricultural use. Screening requirements suggest that agricultural uses are objectionable or different from other forms of land uses that do not have to be screened. Farmers should not be required to bear the extra costs to provide screening unless it is required to address a threat to the public health or safety.

## D. Event Permits

Local laws that require a special permit to hold public events, shows, rodeos, competitive events, etc. are, in general, not unreasonably restrictive when the event involves the general public and not just those individuals who board their horses on the farm. If the event is limited to those individuals who board their horses on the farm, a special permit should not be required.

## E. Sign Limitations

The administration of local law provisions which regulate signs may unreasonably restrict a commercial horse boarding farm operation. Such farm operations may need to use signs to advertise the name of the farm and the services it offers. Paddocks and barns may not be visible from the road and therefore the farm may need to use an adequately sized on-premises sign or locate a sign(s) at off-premises locations. Whether or not a limitation on the size and/or number of signs that may be used to advertise a commercial horse boarding operation is unreasonably restrictive depends primarily on the location of the operation. An operation located on a principally traveled road probably will not need as many signs as one which is located on a less traveled road and may need directional signs to direct the public to the premises.

## F. Farm Worker Housing

Farm worker housing, including mobile homes (also known as “manufactured homes”), is an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. Generally, in evaluating the use of farm labor housing under §305-a, the Department considers whether the housing is used for seasonal and/or full-time employees and their families; is provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products); and whether the employee to be housed is engaged in the production function(s) of the farm operation and is not a partner or owner of the farm operation. The Department does not consider the primary residence of the owner or partner of the farm operation to be protected under §305-a. For further discussion see the Department’s *Guidelines for Review of Local Laws Affecting Farm Worker Housing*.

## G. Noise

Some local laws have established maximum permitted sound pressure levels. For example, one local law prohibited noise from exceeding a maximum decibel level, which was reduced by six decibels for lots within two hundred feet of a residence district. Such noise provisions may unreasonably restrict farm operations within an agricultural district. According to an article written by David E. Baker entitled *Noise: The Invisible Hazard* (University Extension, University of Missouri-Columbia, published October 1993), a chain saw has a decibel level of 120 and tractors, farm equipment and power saws have a decibel level of 100. Inside an acoustically insulated tractor cab, the decibel level is 85. This type of equipment is commonly used along and/or near property boundaries and may exceed maximum decibel levels allowed by a local law.

## H. Smoke, Dust

Local laws may regulate smoke and other particulate matter. Such laws often prohibit measurable emission of dust or other particulate matter. These provisions may unreasonably restrict farm operations. Some measure of dust usually occurs with the tillage of land and may not subside until the area is populated with crops. Furthermore, horse operations may, from time to time, have bare spots within fields that could be a cause for airborne particulate matter and dust. Horses and other livestock may roll or dig up the turf. Dust may also occasionally come from paths used by livestock and from riding rings. Particulate matter may also become airborne from mowing and other field maintenance activities. Further, the regular operations of a farm typically involve the removal of trees and brush during field clearing and maintenance; the removal or trimming of diseased fruit canes, vines, and trees; and the removal of vegetative material from cultivated wetlands, among other things. These materials are often disposed of on the farm by open burning. On-farm open burning is considered by the Department to be a practice that is part of a “farm operation” and thus protected from unreasonable local restriction. Open burning is regulated by the Department of Environmental Conservation (DEC). Local laws should allow open burning consistent with the DEC’s regulations and/or guidance. For further discussion see the Department’s *Guidelines for Review of Local Laws Affecting On-Farm Open Burning*.

## I. Nutrient Management

Nutrient Management Practices are an essential component of any farm operation and are protected under AML §305-a from unreasonable local restrictions. Traditionally, farm operators

use animal waste as a main source of nutrients for crop production. Many commercial horse boarding operations may not have enough land for crop production or may have excess horse manure. Generally, manure from commercial horse boarding operations is either composted and spread on fields or stored and removed off-site. In general, the Department believes that any local waste management laws should provide exemptions to allow the land application, storage, and/or composting of animal waste, for agricultural purposes on farm operations within a county adopted, State certified agricultural district. The DEC regulates most types of solid wastes pursuant to 6 NYCRR Part 360, but exempts animal waste from this regulation. The Department considers the standards and permitting requirements under the DEC's regulations in evaluating whether restrictions on agricultural land use and nutrient management practices are unreasonably restrictive in violation of AML §305-a. For further discussion see the Department's *Guidelines for Review of Local Laws Affecting Nutrient Management Practices*.

Agricultural wastes and by-products, including manure, must be utilized or disposed of in an environmentally safe manner. It is the Department's view that it is not unreasonably restrictive for a local government to require that a commercial horse boarding operation submit a plan that describes how its manure will either be used or removed from the farm (e.g. by landspreading, composting, or periodic removal). Manure should not be stored and remain on the farm for a period in excess of one year. The composting of such agricultural waste is a preferred method because it is recycled and utilized as a soil amendment to enhance plant growth for both crop production and off-farm uses (e.g. landscaping, home gardens, etc.). Agriculture and Markets Law §305-a, subdivision 1 protects the on-farm composting of these materials when the composting is part of the agricultural production function of the farm, that is, the farm composts to rid the farm of its excess agricultural waste *or* the farm composts to create a soil amendment for crop production. For further discussion please refer to the Department's *Guidelines for Review of Local Laws Affecting On-Farm Composting Facilities*.

#### J. Odor

Some local laws prohibit any land use which emits any discernible odor outside the building in which the use is conducted or beyond the lot line of the property. Livestock operations emit odors associated with the animals themselves, the feed, and livestock manure. The amount of odor that can be tolerated by an individual varies and quantities discernible to one person may not be to another. The actual odor regulation and its administration would have to be examined to determine whether or not a farm is unreasonably restricted.

#### K. Animal Control

Generally, farmers are responsible for the care, safety and confinement of livestock in their charge. Farm operations must provide adequate fencing and gates to confine livestock in a safe and reasonable manner. The public needs to be protected from livestock that may cause bodily harm and/or property damage if the animals venture off the farm. Therefore, local animal control laws that require livestock to be confined and not "run at large" without restraint, confinement or supervision, are reasonable and help to protect public health and safety. Local governments should be aware that commercial horse boarding farms may need to install fences with a height greater than may be allowed under a local law (e.g., certain horses may not be adequately confined by a maximum three or four feet fence). For further discussion please refer to the Department's *Guidelines for Review of Local Laws Affecting the Control of Farm Animals*.

## **Guidelines for Review of Local Laws Affecting Small Wind Energy Production Facilities**

As energy costs increase and financial assistance becomes more available, an increasing number of farm operators are considering the installation of small wind energy production facilities to help offset on-farm production costs. In prior AML §305-a reviews, the Department has considered wind turbines used to supply a portion of a farm's electrical needs (not exceeding 110% of the farm's anticipated demand) to be on-farm equipment. The turbine must be part of a "farm operation" which otherwise meets the AML §301, subd. 11 definition of that term.

### **Regulations Affecting Small Wind Energy Production**

Some local laws currently require building permits, site plan review and/or special use permits for small wind energy production facilities. If a town considers a small wind turbine to be a structure or building under its zoning regulations, the Department also considers the wind turbine to be an on-farm building. In general, the construction of on-farm buildings and the use of land for agricultural purposes within a county adopted, State certified agricultural district should not be subject to site plan review, special use permits or non-conforming use requirements. The purpose of an agricultural district is to encourage the development and improvement of agricultural land and the use of agricultural land for the production of food and other agricultural products as recognized by the New York State Constitution, Article XIV, Section 4. Therefore, generally, agricultural uses and the construction of on-farm buildings as part of a farm operation located within an agricultural district should be allowed uses.

Some current and proposed local laws have included provisions that require a farm operator to complete a Long Environmental Assessment Form (EAF) and visual impact assessments. Such requirements can be expensive and can cause delays in the installation of the wind energy equipment. Other provisions of local laws that could be considered unreasonably restrictive include height restrictions and excessive setbacks from buildings and property lines.

Agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with "generally accepted principles of farming" are designated as Type II actions which do not require preparation of an Environmental Assessment Form (EAF) and are not subject to compliance with State Environmental Quality Review (SEQR). 6 NYCRR §617.5(a), (c)(3). [See *In the Matter of Pure Air and Water Inc. of Chemung County v. Davidsen*, 246 A.D.2d 786, 668 N.Y.S.2d 248 (3<sup>rd</sup> Dept. 1998), for application of the exemption to the manure management activities of a hog farm.] The SEQR regulations require localities to recognize the Type II actions contained in the statewide list.

Many local governments share the Department's view that farm operations should not have to undergo site plan review and exempt farms from that requirement. However, the Department recognizes the desire of some local governments to have an opportunity to review agricultural development and projects within their borders, as well as the need of farmers for an efficient, economical, and predictable process. In view of both interests, the Department developed a model streamlined site plan review process which attempts to respond to the farmers' concerns while ensuring the ability to have local issues examined. Please see the Department's *Guidelines for Review of Local Zoning and Planning Laws* (pages 4-7) for discussion of site plan issues.

### **Provisions that would Generally not be Viewed as Unreasonably Restrictive**

The following sets forth a suggested process for review of small wind energy production facilities:

1. Sketch of the parcel on a location map (e.g., tax map) showing boundaries and dimensions of the parcel of land involved and identifying contiguous properties and any known easements or rights-of-way and roadways.

Show the existing features of the site including land and water areas, water or sewer systems, utility lines, and the approximate location of all existing structures on or immediately adjacent to the site.

2. Show the proposed location and arrangement of small wind energy production facilities on the site.
3. Include copies of plans or drawings prepared by the manufacturer.
4. Provide a description of the project and a narrative of the intended use of the proposed wind energy production facility, including any anticipated changes in the existing topography and natural features of the parcel to accommodate the changes. Include the name and address of the applicant and any professional advisors. If the applicant is not the owner of the property, provide authorization of the owner.
5. List safety measures to prevent unauthorized climbing on the tower.
6. Prescribe requirements for automatic braking, governing, or feathering system to prevent uncontrolled rotation of the rotor blades and turbine components.

7. Include a requirement that the wind tower be setback 1.5 times the combined height of the tower and blades from existing structures and property not owned by the farm operation.

\* The suggested provisions related to the safe operation of wind turbines is not intended to be an exhaustive list of the measures which may be desirable or necessary. Municipalities should consult with appropriate professionals to determine whether any additional or different measures should be required for small wind energy production facilities.

## **Guidelines for Review of Local Laws Affecting Direct Farm Marketing Activities**

Typically “direct farm marketing” encompasses roadside stands, farm markets, farmers’ markets, and “u-pick” or “pick your own operations”. Direct farm marketing is considered by the Department to be part of a “farm operation” and thus protected from unreasonable local restrictions by Agriculture and Markets Law (AML) §305-a when conducted on the farm.

Direct farm marketing should be allowed in all areas within a county-adopted, State certified agricultural district. However, the degree of regulation of the various forms of direct farm marketing that is considered unreasonable depends on the nature of the proposed activities and the size and complexity of the proposed structure. A requirement to apply for a permit is generally not unreasonable. Depending upon the size and scope of the retail facility, greater regulation, such as site plan review, may be reasonable. The Department urges local governments to take into account the size and nature of the particular farm market when setting and administering such requirements. For example, to require a small farm market, which sells only a minimal amount of off-farm product, to obtain site plan approval may be unreasonably restrictive.

In some cases farmers should exhaust their local administrative remedies and seek, for example, certain permits, exemptions available under a local law or area variances, before the Department reviews the administration of a local law. However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation. Local laws which the Department has found not to be unreasonably restrictive include those which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Uniform Fire Prevention and Building Code ("Uniform Code") [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code §102.1(5)]<sup>1</sup> and Health Department requirements. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

The following are some of the specific matters that the Department considers when reviewing a local law that affects direct farm marketing:

### A. Maximum Dimensions:

Generally the Department will consider whether maximum dimensions imposed by a local law are sufficient to meet existing and/or future farm needs. For example, many roadside stands are located within existing garages, barns,

<sup>1</sup> Please see *Guidelines for Review of Local Zoning and Planning Laws* for discussion of State Building Code.

and outbuildings that may have dimensions greater than those set by a local ordinance. Buildings specifically designed and constructed to accommodate the sale of farm products may also not meet the local requirements. The size and scope of the farm operation is also considered. Larger farms, for example, cannot effectively market their produce through a traditional roadside stand.

#### B. Sign Limitations:

Whether or not a limitation on the size and/or number of signs that may be used to advertise a roadside stand is unreasonable depends upon the location of the stand and the type of produce sold. A farmer who is located on a principally traveled road probably will not need as many signs as one who is located on a less traveled road and may need directional signs to direct the public to their stand. The size of a sign needed may depend on whether the farmer needs to advertise the availability of several different types of produce or just one or two products.

#### C. Product Origin:

Some farmers import produce from other farms to sell at their stands to increase the diversity of products offered or to bridge periods of low supply of commodities produced on-farm. Product diversity may attract potential customers to a roadside stand or farm market. The Department believes the sale of some agricultural products grown off the farm should be allowed, but has not established a percentage of on-farm versus off-farm products for that purpose. The Department considers the facts of a particular case in making a determination whether a local law is unreasonably restrictive, but generally would view requiring a predominance of on-farm products as reasonable. The needs of “start-up” farm operations should also be considered. These farms often start out selling a large percentage of agricultural products grown off the farm in order to develop a customer base and maintain income while their farms are growing. If a percentage of on-farm products were required by a locality, allowing such farms a reasonable period of time to meet the percentage would be reasonable.

The Department considers agricultural commodities produced “on-farm” to include any products that may have been produced by a farmer on their “farm operation,” which could include a number of parcels owned or leased by that farmer throughout a town, county, or the State. The Department considers all such land, when it is located in a State certified agricultural district, as part of the farm operation.

#### D. On-farm preparation of processed foods:

Some of the larger farm markets may have facilities for the on-site preparation of processed foods (e.g. a kitchen, bakeshop, etc.), as well as facilities for consumption of foods (e.g., a café). The Department considers these practices as part of the farm operation as long as the products that are prepared are composed primarily of ingredients produced on the farm.

#### E. Ag-tourism/recreational activities:

Many farm markets offer some form of on-farm recreational activity such as hayrides, a petting zoo, or a cornfield maze. These activities are often an important component of farm markets since they are a useful tool to attract customers. If it can be shown, on a case by case basis, that an activity will "...contribute to the production, preparation and marketing of crops, livestock, or livestock products..." [AML §301(11), emphasis added] it may be considered by the Department to be part of the farm operation. However, the activity, e.g., hayrides, a petting zoo, or a cornfield maze, must be used as part of the direct marketing strategy of the farm operation. Crops, livestock or livestock products must be grown or raised and sold through direct marketing to the public at the time the activity is in use since these activities are designed to attract potential customers to the property so they may purchase crops, livestock or livestock products.

#### F. Farm wineries:

The Department has concluded that on-farm wedding receptions, parties and special events (e.g., harvest festivals and wine tastings) held at farm wineries help market the farm operation's wine. The Department interprets AML §301, subd. 11 to include such receptions and parties held at a farm winery as part of a farm operation under certain conditions. In cases where the farm winery is renting its facilities to private persons for such receptions and parties, the sales of the farm's wine at such events, on an annual basis, must exceed the fees charged for the facility rental so that the primary purpose of the use of the facility is to sell the farm's wine and not to gain rental income. In cases where the farm winery holds the special event as part of its overall marketing strategy, the event is open to the general public and no facility rental is involved, the sales of the farm's wine at such events need not exceed the income derived from fees charged for such events (e.g., fees for a tasting, dinner or festival). The primary purpose of the events must still be to market the farm's wines and the events must be sufficiently related to the farm operation. In addition, these activities are subject to any State or federal requirements applicable to the processing, storage and sale of alcoholic products.