

PART 390

AGRICULTURAL AND FARMLAND PROTECTION

(Statutory authority: Agriculture and Markets Law, Sections 16,18, 324, 325, 326)

Sec.

390.1 Introduction

390.2 Definitions

390.3 County agricultural and farmland protection plans

390.4 Municipal agricultural and farmland protection plans

390.5 Planning grants

Section 390.1 Introduction. This Part establishes the requirements for county and municipal agricultural and farmland protection plans, the procedures for development and approval of such plans and the application process for planning grants to assist counties and municipalities in the development of such plans.

390.2 Definitions. For the purposes of this Part, the following terms shall mean:

(a) *Agricultural and farmland protection* means the preservation, conservation, management or improvement of lands which are part of viable farms, for the purpose of encouraging such lands to remain in agricultural production.

(b) *Agricultural district* means a district established pursuant to section 303 or 304 of the Agriculture and Markets Law.

(c) *Commissioner* means the Commissioner of Agriculture and Markets of the State of New York.

(d) *County agricultural and farmland protection board* means a board established pursuant to section 302 of the Agriculture and Markets Law.

(e) *Department* means the New York State Department of Agriculture and Markets.

(f) *Plan* means the county or municipal agricultural and farmland protection plan, prepared by a county agricultural and farmland protection board or a municipality, as provided for in article 25-AAA of the Agriculture and Markets Law.

(g) *In-kind services* means compensated labor, materials or equipment provided by the applicant or the county, its employees or representatives in connection with the development of a county agricultural and farmland protection plan.

(h) *Municipality* means a city, town or village.

390.3 County agricultural and farmland protection plans.

(a) *Plans.* County agricultural and farmland protection boards may develop agricultural and farmland protection plans, in cooperation and consultation with the county's soil and water conservation district and the U.S.D.A., Natural Resources Conservation Service. The boards may cooperate and consult with other interested parties, such as municipalities, cooperative extension services, planning organizations, private land trusts, farm organizations, and civic and citizen organizations, in developing plans. The plans shall include at least the following elements:

(1) a statement of the county's goal(s) with respect to agricultural and farmland protection (e.g., to stabilize or enhance the agricultural economy of the county; preserve open space; abate land conversion pressure; maintain community goals with respect to development and growth; and protect natural resources such as air quality, watersheds, aquifers or wildlife habitats);

(2) an identification of the general location of any lands or areas that are proposed to be protected (e.g., the whole county, all agricultural district lands within the county, farms or farmlands in particular sections of the county). Specific tracts of land or farms need not be identified. Maps are not mandatory but may be used at the discretion of the board to illustrate strategies or to explain the plan more completely;

(3) an analysis of the lands or areas to be protected, such as their value to the agricultural economy of the county, their open space value, the level of conversion pressure being experienced, and the consequences of possible conversion;

(4) a description of the strategies intended to be used by the county to promote the maintenance of lands in active agricultural use and to implement the plan, including how the program will be financed; and

(5) a description or identification of other county and municipal planning and land use programs, if any, such as economic development, zoning and comprehensive land use planning, which may be shown to complement and be consistent with, the county agricultural protection plan, as well as identification of any county and municipal plans, policies or objectives which are inconsistent with or conflict with the plan.

(b) *Planning and approval process.* In developing an agricultural and farmland protection plan, the board and the county legislative body shall follow the planning and approval process in sequence as follows:

(1) the county agricultural and farmland protection board shall conduct at least one public hearing to solicit citizen views and recommendations;

(2) the board shall undertake specific efforts to involve members of the farm community in the planning process, and to assure that the final plan is made available to the farm community for comment before it is approved;

(3) the county agricultural and farmland protection board shall consult with the department throughout the planning process;

(4) the county agricultural and farmland protection board shall submit the proposed plan to the county legislative body for approval;

(5) if the county legislative body approves the plan, its approval should be documented by a resolution;

(6) plans of work must be completed within 18 months to be eligible for State matching grants under this program, unless said period is extended by written agreement between the county and the department; however, the county legislative body need not approve the final plan within 18 months; and

(7) the county legislative body shall submit the plan to the commissioner for approval. The commissioner shall act upon the plan within 45 days of receipt of the document, and notify the county legislative body of the plan's approval or disapproval. A copy of the commissioner's decision shall be sent to the chair of the county agricultural and farmland protection board.

(c) *Plan review process.* The following criteria shall be used by the commissioner to determine the acceptability of a county agricultural and farmland protection plan:

(1) the consistency of the plan with State agricultural and farmland protection plans, policies and objectives; State environmental plans, policies, and objectives; and State comprehensive plans, policies, and objectives;

(2) the consistency of the plan with county and municipal plans, policies, and objectives which the plan could affect;

(3) the practicality of the plan (*i.e.*, the extent to which it can reasonably be expected to meet the identified county goal[s] for agricultural and farmland protection);

(4) the extent to which the plan satisfies the analytical factors addressed under section 324 of the Agriculture and Markets Law.

(5) the adequacy of substantiating data, information, and facts;

(6) the cost implications of the protection measures identified in the plan (*i.e.*, what can be accomplished recognizing limited State/local funding mechanisms in view of the public benefit to be derived from protection of agriculture and agricultural lands); and

(7) whether the county legislative body has approved the plan.

390.4 Municipal agricultural and farmland protection plans.

(a) Plans. Municipalities may develop agricultural and farmland protection plans, in cooperation with cooperative extension and other organizations, including local farmers. These plans shall include at least the following elements:

(1) a statement of the municipality's goal(s) with respect to agricultural and farmland protection (e.g., to stabilize or enhance the agricultural economy of the municipality; preserve open space; abate land conversion pressure; maintain community goals with respect to development and growth; and protect natural resources such as air quality, watersheds, aquifers, or wildlife);

(2) an identification of the general location of any lands or other designation of areas that are proposed to be protected (e.g., the whole municipality, all agricultural district lands within the municipality, farms or farmlands in particular section of the municipality). Specific tracts of land or farms need not be identified. Maps are not mandatory but may be used at the discretion of the municipality to illustrate strategies or to explain the plan more completely;

(3) an analysis of the lands or areas to be protected, such as their value to the agricultural economy of the municipality, their open space value, the level of conversion pressure being experienced, and the consequences of possible conversion;

(4) a description of activities, programs and strategies intended to be used by the municipality to promote continued agricultural use, including how they are to be financed, and which may include but not be limited to revisions to the municipality's comprehensive plan pursuant to section 272-a subdivision 2(a) of the Town Law and land use regulations as defined in section 272-a subdivision 2(b) of the Town Law as appropriate; and

(5) a description or identification of other municipal and county planning and land use programs, if any, such as economic development, zoning and comprehensive land use planning, which may be shown to complement and be consistent with, the municipal agricultural and farmland protection plan, as well as identification of any municipal and county plans, policies or objectives which are inconsistent with or conflict with the plan.

(b) Planning and approval process. In developing an agricultural and farmland protection plan, the municipality shall follow the planning and approval process in sequence as follows:

(1) the municipality shall conduct at least one public hearing to solicit citizen views and recommendations;

(2) the municipality shall undertake specific efforts to involve members of the farm community in the planning process, and to assure that the final plan is made available to the farm community for comment before it is approved;

(3) the municipality shall consult with the department throughout the planning process;
(4) the municipality shall submit the proposed plan to the municipal legislative body and the agricultural and farmland protection board for the county in which the municipality is located for approval;

(5) municipal legislative body approval of the plan shall be documented by a resolution;

(6) plans of work must be completed within 24 months to be eligible for State matching grants under this program, unless said period is extended by written agreement between the municipality and the department; however, the municipality legislative body need not approve the final plan within 24 months; and

(7) the municipality shall submit the plan to the commissioner for approval. The commissioner shall act upon the plan within 45 days of receipt of the document, and notify the municipality of the plan's approval or disapproval. A copy of the commissioner's decision shall be sent to the chair of the agricultural and farmland protection board for the county in which the municipality is located.

(c) Plan review process. The following criteria shall be used by the commissioner to determine the acceptability of a municipal agricultural and farmland protection plan:

(1) the consistency of the plan with State agricultural and farmland protection plans, policies and objectives; State environmental plans, policies, and objectives; and State comprehensive plans, policies, and objectives;

(2) the consistency of the plan with county and municipal plans, policies, and objectives which the plan could affect;

(3) the practicality of the plan (i.e., the extent to which it can reasonably be expected to meet the identified municipality goal[s] for agricultural and farmland protection);

(4) the extent to which the plan satisfies the analytical factors addressed under section 324-a of the Agriculture and Markets Law;

(5) the adequacy of substantiating data, information, and facts;

(6) the cost implications of the protection measures identified in the plan (i.e., what can be accomplished recognizing limited state/local funding mechanisms in view of the public benefit to be derived from protection of agriculture and agricultural lands); and

(7) whether the municipal legislative body has approved the plan.

390.5 Planning grants.

(a) Matching grants program. Subject to the availability of funds, the department shall maintain a matching grants program intended to assist counties and municipalities in the development of agricultural and farmland protection plans.

(b) Applications. Applications for State matching funds shall be submitted to the department by the county's agricultural and farmland protection board or two such boards acting jointly, or the municipality or two such municipalities acting jointly. Applications may be submitted to the department at any time. A county may not make application for funds until it has established its agricultural and farmland protection board and a chairperson for such board has been elected. A municipality may not make application for funds until the county in which the municipality is located has established its agricultural and farmland protection board and a chairperson for such board has been elected. All planning grant applications made to the department shall contain at least the following information:

- (1) the name of the county or the municipality applying;
- (2) the identification of the county agricultural and farmland protection board chair (name, address, and telephone number);
- (3) the identification of an individual to be contacted concerning information contained within the application (name, address, and telephone number);
- (4) a summary statement of the trends and conditions in the county or the municipality that warrant agricultural and farmland protection measures;
- (5) a description of the agricultural setting in the county or the municipality including:
 - (i) the approximate number and types of farms in the area which is the subject of the plan;
 - (ii) the present and future prospect for farm viability in the county or the municipality; and
 - (iii) other indications of the economic condition and importance of agriculture to the county or the municipality;
- (6) a detailed description of the plan of work to be followed in developing the county or the municipal plan;
- (7) the anticipated timeframe for completing the plan of work;
- (8) a budget detailing the cost of developing the plan, including itemization of costs to be charged against State versus county or the municipal matching resources available to the board or the municipality by individual budget category;

(9) a description of in-kind services to be used for up to 80 percent of the required match;

(10) evidence of the availability of matching funds (such as a copy of a resolution, a copy of a portion of the county or the municipal budget that demonstrates that the matching funds have been earmarked for such activities, a letter from the county or the municipal executive that the county or the municipality has appropriated matching funds, or a copy of letter[s] from an external granting agency that funding is provided to the county or the municipality, or its agent, for the development of the plan);

(11) Signature of the chair of the county or the municipal legislative body; and

(12) the qualifications of the principals who will be developing the plan including experience in developing agricultural protection sections of comprehensive plans and land use regulations.

(c) Review and approval.

(1) The commissioner shall review all requests for grant funding in consultation with the advisory council on agriculture. Criteria to be used by the commissioner in determining approval of applications are as follows:

(i) the responsiveness of the grant application to the analytical factors required under section 324 or 324-a of the Agriculture and Markets Law;

(ii) the degree to which the need for agricultural protection by the county or the municipality is substantiated by facts and trends;

(iii) the adequacy of the plan of work (e.g., does it relate to the needs identified, is it logically constructed, and can it be accomplished within the timeframe predicted);

(iv) the qualifications of the principals who will be developing the plan;

(v) the reasonableness of the estimated cost of developing the plan versus the work to be performed;

(vi) overall compliance with procedural requirements of article 25-AAA of the Agriculture and Markets Law; and

(vii) the completeness of the application.

(2) The commissioner, in consultation with the advisory council on agriculture, shall determine whether or not an application shall receive funding within 90 days from the receipt of a complete application. The commissioner may negotiate the amount of funds awarded versus funds requested. The standard for determining the amount of funds awarded is the extent to which the plan meets the criteria set forth in paragraph (1) of

this subdivision, as well as mutually acceptable modifications of the application and/or plan of work, and the availability of funds in relation to the number of eligible applications received.

(d) Eligible costs. The following costs shall be eligible for State reimbursement:

(1) personal services, including fringe benefits for professional, secretarial, and legal services related directly to the development of the plan;

(2) consultant services;

(3) travel;

(4) conducting public hearings;

(5) expendable supplies;

(6) printing; and

(7) communication.

State planning grant funds shall not be made available for the purchase of equipment, non-expendable supplies, or implementation of measures recommended in a plan.

(e) Funding limits and matching requirements. State grant funds shall not exceed \$50,000 to each county or \$100,000 to two counties applying jointly and shall not exceed 50 percent of the total cost of preparing a county agricultural and farmland protection plan, or \$25,000 to each municipality or \$50,000 to two municipalities applying jointly and shall not exceed 75 percent of the total cost of preparing a municipal agricultural and farmland protection plan. Sum total of State grants shall not exceed \$50,000 per county or \$25,000 per municipality regardless of whether that county or that municipality receives only one award or multiple awards. County funds must match State funds at least on a one-to-one basis and at least 20 percent of its contribution must be cash (i.e., for initial as well as each supplemental county funding). For example, 20% of 50% of \$50,000 equals a \$5,000 cash contribution from the county. Municipal funds must match state funds at least on a one-to-three basis and at least 20 percent of its contribution must be cash (i.e., for initial as well as each supplemental municipal funding). For example, 20% of 25% of \$25,000 total project cost equals a \$1,250 cash contribution from the municipality. In-kind services matches are acceptable for all eligible costs categories identified in subdivision (d) of this section, as well as for those items set forth in the definition of in-kind services in section 390.2(g) of this Part. Indirect and overhead charges and volunteer services are not acceptable as match. Counties or the municipalities are authorized to use as a match any private or other public (non-State) funds obtained to develop a plan.

(f) Funding and reporting requirements. The department shall provide all funds to the county or the municipality through a written contract, and shall incorporate the plan of

work and approved budget. All funds to the county or the municipality under the contract shall be paid only after submission of a State standard voucher by the county or the municipality, which shall be subject to approval by the State Comptroller and the availability of funds. At the commissioner's discretion, an advance of up to 25 percent of the total State funds awarded may be made under the contract to the county or the municipality to initiate plan development. Whether an advance will be made, and the amount of same, is based upon the county's or the municipality's written request for an advance and statement of need, including the percentage of the funds requested, and the commissioner's determination that the advance is necessary for the county or the municipality to initiate plan development. Thereafter, the remaining State funds will be provided on a reimbursement basis subject to the submission of quarterly progress reports. Ten percent of all State funds awarded shall be withheld until the commissioner verifies that the entire plan of work is completed.

(g) Plan updates. A county which has an approved agricultural and farmland protection plan may after one hundred twenty months from the date of such approval by the commissioner, apply for additional state assistance payments for planning activities related to the updating of its current agricultural and farmland protection plan or development of a new plan. Such additional assistance payments shall not exceed \$50,000 to each county agricultural and farmland protection board or \$100,000 to two such boards applying jointly, and shall not exceed 50 percent of the total cost of preparing an agricultural and farmland protection plan. Applications for such additional state assistance shall be made and submitted as provided for and in accordance with this section and section 390.3.