

## **AGRICULTURAL DISTRICT CREATION AND REVIEW AND THE SEQRA PROCESS**

The State Environmental Quality Review Act (SEQRA) and regulations (6 NYCRR Part 617) apply to the adoption, modification, continuation and termination of agricultural districts. County legislative bodies adopt and review agricultural districts pursuant to Agriculture and Markets Law (AML) §§303 and 303-a. The Department of Environmental Conservation (DEC) has advised that the decisions of county legislative bodies in establishing or modifying agricultural districts are discretionary and subject to SEQR (The SEQR Handbook, 3<sup>rd</sup> Edition- 2010, page 200; available here: <http://www.dec.ny.gov/permits/6188.html> ). DEC's SEQR handbook (page 201) indicates that the initial adoption of an agricultural district is a type of comprehensive resource management plan and therefore a Type I action for purposes of SEQRA review. Under SEQR regulations, Type I actions require the use of a Full Environmental Assessment Form (EAF) to determine the environmental significance of such actions. [6 NYCRR §617.6(a) (2)] County legislative bodies should refer to the criteria contained in the SEQR regulations, 6 NYCRR Part 617; specifically, §617.6 "Initial Review of Actions and Establishing Lead Agency" and §617.7 "Determining Significance."

Once a county legislative body has prepared its full EAF and made a determination of significance concerning the adoption of an agricultural district, the county legislative body should follow the notice and filing requirements for Type I actions, set forth in 6 NYCRR §617.12 for negative declarations and for positive declarations. As §617.12 states, notice of all negative or positive declarations for Type I actions shall be published in the Environmental Notice Bulletin in a manner prescribed by DEC. The negative or positive declaration must

be filed with the chief executive officer of the political subdivision or subdivisions in which the action will be principally located (the political subdivisions within the agricultural district which is being adopted); in the main office and appropriate regional office, if any, of the lead agency; and with the Department of Agriculture and Markets.

County legislative bodies undertake review of agricultural districts pursuant to AML §303-a and consider requests for inclusion of land which is predominantly viable agricultural land within certified agricultural districts under AML §303-b. If an agricultural district is modified or terminated upon its review, the modification or termination would be an Unlisted action under SEQR. Since the inclusion of predominantly viable agricultural land within an existing agricultural district modifies the district, this action would also be an Unlisted action. As such, the county legislative body must use the Short EAF to determine environmental significance. If an agricultural district is simply continued, with no material change, the recertification of the district is not subject to SEQR review. DEC advises that district continuation without modification would be considered a Type II action (SEQR Handbook, page 201). As a Type II action, no determination or procedure is required under SEQRA.

The information provided herein is intended to assist county legislative bodies in fulfilling their obligations under SEQRA and 6 NYCRR Part 617 when adopting and reviewing agricultural districts. County legislative bodies are ultimately responsible for ensuring that the requirements of SEQRA have been met and, therefore, should consult their individual county attorneys and the Department of Environmental Conservation for further assistance and information.