

New York State Department of Agriculture and Markets**GUIDANCE DOCUMENT SERIES
FARMLAND PROTECTION IMPLEMENTATION GRANT PROGRAM****Developing a Land Plan for an Agricultural Conservation Easement GD # 3*****Overview***

A land plan (or site plan) is a map and physical description of the Property being protected by a conservation easement. Specific “use areas” are defined in the land plan and integrated with provisions of the conservation easement. The map should be drawn on an aerial photograph of the property showing boundary lines and may be surveyed as part of the project.¹ Beginning with awards made in 2007, the land plan is one of the required documents to close a farmland protection project.

Background

The land plan is a tool to help facilitate clear communication between the landowner and project partners about the project. These conversations should occur early in the life of a project, if not at the time of application. The New York State Department of Agriculture & Markets (NYSDAM) will do a preliminary review of land plans and the associated conservation easements at the beginning of a farmland protection project to ensure that the proposed project meets NYSDAM standards. The following objectives should guide project managers during the land planning process. The land plan and conservation easement should:

- Provide opportunities for active, economically viable Farm Operations on protected farmland now and in the future.
- Establish adequate flexibility for farmers operating on protected farms to grow, adapt and change to new market conditions.
- Create opportunities for farmers to own protected farms with the ability to develop housing for farm families and farm labor, agricultural buildings and structures that support rural businesses compatible with agriculture.
- Reduce the likelihood of conflicts between farmers operating on protected farms and their non-farm neighbors.
- Facilitate the protection of natural resources in a manner compatible with commercial Farm Operations, consistent with the provisions of the Agricultural Districts Law and reasonably within the stewardship capacity of the conservation easement holder.

Ultimately, the right to farm protections of Article 25-AA of the Agricultural Districts Law (including Sections 303, 305 and 308) will guide NYSDAM in its review of various aspects of farmland protection projects including land planning and conservation easement drafting (See Guidance Document #1, “Farmland Protection and Agricultural Districts”). Consequently, NYSDAM will review all proposed language to determine that proposed projects are not *unreasonably restrictive* of Farm Operations in contravention of the Agricultural Districts Law.

¹ For Farmland Protection Implementation Program Grants made on or after May 2006, a legal boundary survey is required for project closure. See Guidance Document on Surveys for more details on surveys.

This guidance document identifies possible “use areas” that can be included on a land plan and provides insight into how NYSDAM will determine if the land plan is consistent with the purpose of the conservation easement and the Agricultural Districts Law. It also identifies, when appropriate, the related clauses in the NYSDAM Model Agricultural Conservation Easement (hereinafter “Model Easement”) that land planning introduces, demonstrating the close connection between the land plan and the conservation easement language. NYSDAM will review proposed land plans and associated draft conservation easements for all projects funded by the Farmland Protection Implementation Grants program and will provide its preliminary approval of those documents for each project on a case-by-case basis.

Use Areas

1. “The Property” – Total Area Under Conservation Easement

The entire property to be included under conservation easement is often referred to in conservation easement language as the “Property”. During the land planning stage in a project, it is important to discuss how the conservation easement will be structured. The Property can be protected with one conservation easement or in some cases multiple conservation easements. Multiple conservation easements are preferred for projects with multiple parcels that are owned by different parties – one conservation easement per ownership. Multiple conservation easements are also possible for projects consisting of large acreage or when one Property consists of multiple tax parcels owned by the same landowner especially when tax parcels are not contiguous or may become stand-alone Farm Operations. In this case, the Property may be divided into multiple conservation easements depending upon the predicted future use of the Property. The appropriate size of each resulting parcel under conservation easement will vary based on location, soil type, commodity grown and potential economic viability of the divided agricultural property.

2. The “Farm Area”

The working farmland (and forest land) is often referred to as the “Farm Area”. The Farm Area will comprise the largest percentage of the land area under conservation easement. This area includes most of the active crop, pasture and forest land on the Property and should be identified on the land plan with the guidance of the landowner.

Construction of agricultural buildings will be allowed in the Farm Area. The Model Easement allows up to 5% of this area to be used for agricultural buildings and other impervious agricultural improvements without permission of the conservation easement holder. Permission is required by the conservation easement holder for up to an additional 5% of the Farm Area to be used for further impervious surface coverage for agricultural purposes.

**See Clause: #4 “Definitions”
#8 “Construction of Buildings and Other Improvements”**

3. The “Farmstead Area”

The “Farmstead Area” is the term used in the conservation easement to describe one or more designated areas where a majority of the buildings or structures are or will be built on the farm including, but not limited to, the operator’s residence(s), retail markets, Farm Labor Housing and

farm buildings. This area is typically where the majority of existing and/or future buildings, expansions and improvements to the Farm Operation are planned.

The Farmstead Area is often defined as a “use” area in the conservation easement. Within this area, the landowner has the right to construct new agricultural buildings and related improvements without limit and without needing permission from the holder of the conservation easement. In addition, certain activities, such as on-farm processing facilities and other rural enterprises are only allowed in the Farmstead Area under the conservation easement. These rights give farmers assurance that their farm businesses will be able to grow and adapt to changing market and production conditions in the future.

Questions sometimes arise when identifying Farmstead Area(s), whether to include or exclude existing farm buildings and when delineation of new Farmstead Areas is appropriate. In all cases, delineations of a Farmstead Area(s) should be as simple as possible to ease stewardship and compliance with the conservation easement. NYSDAM suggests considering the following elements when identifying and delineating Farmstead Area(s) in the land plan.

- a) **Size of the Farmstead Area** – In some cases, the existing farm buildings provide the outline of Farmstead Area in the conservation easement. In others, there is a clear need for an expansion of the area covered by the existing farm buildings to meet the anticipated agricultural needs of the current and future Farm Operation. There are several factors to consider in determining the appropriate size of the Farmstead Area.
 - i. Business or Expansion Plan – Link the size of the Farmstead Area to a farm business or expansion plan. Does the farm intend to expand their operation, requiring new facilities in the next 5, 10, 20 years? Does the business plan identify new construction improvements like manure storage or a shift in the nature of the farm enterprise that would necessitate new structures? It would be most appropriate to locate these improvements in the Farmstead Area and therefore, it is advisable to ensure that the Farmstead Area is large enough to accommodate them.
 - ii. Topography – Natural features sometimes dictate the size of the Farmstead Area. For example, if the existing structures are bordered by a steep slope it may make sense to include this area in a Farmstead Area. While the hill slope itself may limit construction of new farm buildings, it may provide opportunities for rural enterprises, alternative energy and communications structures or approved recreational uses.
 - iii. Manmade Features and other Site Conditions – Manmade features may also help delineate the Farmstead Area. Roads or tax parcel boundaries may provide easy guide points for mapping the Farmstead Area in the land plan. Other site conditions may also play a role including proximity to residential or industrial areas, or soil type boundaries.
 - iv. Other Considerations – Other considerations about the project will help determine the appropriate size of the Farmstead Area. They include: whether there is more than one Farmstead Area identified for the Property, whether there are any exclusions from the project and the likelihood that the land could be used as support land for an existing operation in the future.

b) New/Multiple Farmstead Area(s) -

- i. Designation of Farmstead Area(s) – Many projects will delineate the Farmstead Area as the area covered by existing farm buildings on the land plan. However, delineation of new a Farmstead Area(s) may be appropriate in specific cases, in locations where no farm buildings currently exist or where relocation of the current Farmstead Area is warranted by environmental or economic conditions. In some cases, this determination will be based upon a farm business or expansion plan. NYSDAM will consider the following to determine whether designation of a new Farmstead Area(s) is allowed:
 1. Does the Property under conservation easement consist of multiple parcels of land or large acreage that could sustain multiple smaller Farm Operations in the future, each of which would require a Farmstead Area?
 2. Do the environmental conditions of the farm warrant a new Farmstead Area? For example, is there a great distance between current farm structures and the bulk of the Farm Area? Do new pressures exist on the current Farmstead Area that may impact the viability of the farm at its existing location (e.g., new non-farm neighbors)?
 3. What is the likelihood of the new Farmstead Area becoming an estate home?
- ii. Siting – New Farmstead Area(s) should be located in close proximity to the bulk of the Farm Area with easy access to existing roads. When possible, the Farmstead Area should be sited to minimize the impact of future building construction on productive farm soils. Additionally, the Farmstead Area(s) should be sited to minimize non-farm neighbor conflicts, now and in the future (i.e., away from current residences or potential buildable lots). As described above, they should be appropriately sized to serve the intended purpose. Current land use regulations may also affect where a Farmstead Area may be located.

c) To Include or Exclude Existing Farm Buildings from the Conservation Easement –

Including or excluding the existing farm buildings from the conservation easement is an important consideration. The decision must balance whether doing so will enhance or undermine farm viability both in the short and long term. NYSDAM will not require inclusion of the existing farm buildings, but will consider several elements when determining whether the inclusion or exclusion is appropriate for a specific land plan.

- i. Condition/Utility of the Facilities – If the buildings are in good condition, have an adaptable use and are structurally sound, they will likely serve a purpose to the current and any future landowners (favors inclusion). However, if the structures are in poor condition, are of limited functionality or are very old, they may be a liability to a landowner as they will need to be rehabilitated or reconstructed in order to be used (favors exclusion).
- ii. Likelihood of Land Being Used Solely for Crop Production – In some cases, farm properties are more likely to be used as support land for crop production by a farmer who already has a Farmstead Area on another property. In such a case, the farmer using the Property will likely have farm buildings on his or her own farm and may not have any use for the existing farm buildings on the protected

Property (favors exclusion). The Property's soil quality, proximity to other Farm Operations and the size of the Property are factors that will be considered in this assessment.

- iii. Impacts on Farmland Affordability – Exclusion of the existing house and farm buildings could help keep the land more affordable for purchase by another farmer in the future.
 - iv. Proximity to the Farm Area – If the existing farm buildings are separated from the bulk of the Farm Area or if it is geographically isolated from the rest of the Farm Area, it may make sense to consider exclusion. In this instance, a future Farmstead Area could be identified on the land plan closer to the bulk of the operation, where no buildings currently exist.
 - v. Impact on Farm Viability – Exclusion of existing farm buildings can have at different times, a positive and negative effect on farm viability. It can have a positive effect on farm viability for all the reasons listed above that favor exclusion. When determining whether exclusion of farm buildings will negatively impact farm viability, NYSDAM will consider the following factors:
 - 1. Whether exclusion will adversely affect the farm operator's ability to manage the Farm Operation
 - 2. Whether exclusion would significantly restrict agricultural production options which could affect the economic viability of the farm
 - 3. Whether exclusion would negatively inhibit construction of new farm buildings on the protected Property
 - 4. Whether exclusion is allowable by current subdivision and zoning standards in the community
 - 5. Whether exclusion will introduce a new non-farm neighbor in close proximity to the Farmstead Area (if the area under the existing farm buildings is sold)
 - 6. Whether exclusion will remove prime agricultural soils from the protected property
- d) **To Include or Exclude Existing Farm Buildings from the Farmstead Area** – Similarly, including or excluding existing farm buildings in a Farmstead Area use area is an important consideration. NYSDAM will not require inclusion of existing farm buildings in a Farmstead Area, but the landowner should bear in mind that farm buildings outside the Farmstead Area will count towards the maximum impervious surface limitation imposed by the conservation easement. In addition, these buildings will have less flexibility for adaptive reuse in the future if excluded from a Farmstead Area.
- e) **Special Case: No Farmstead Area** – Under some conditions, it may be appropriate not to delineate any Farmstead Area on a Property. These are most likely special circumstances where a small parcel has high quality soils and will most likely be used by a neighboring farm as support land solely for crop production. This special case will be evaluated by NYSDAM on a case-by-case basis.

See Clause: #8(c) "Agricultural Structures and Improvements"
#8(e) "Rural Enterprises"

#8(f) “Recreational Structures and Improvements”
#8(h) “Alternative Energy and Communications Structures and Improvements”

4. Residential and Other Building Areas

Residential areas can include existing homes or reserved building rights for farm owner/operator housing, farm family housing and Farm Labor Housing. In each case, residential areas should be delineated in the land plan. NYSDAM has specific standards or suggestions for each case.

- a) **Farm Labor Housing** – Inside the Farmstead Area, residential buildings may be constructed for owner/operators, family members and farm employees. Outside the Farmstead Area, residences may only be constructed for seasonal or full-time employees on the Farm Operation that are not partners or owners of the Farm Operation, defined as “Farm Labor Housing” in the Model Easement. Housing for farm owners is not allowed outside the Farmstead Area.

Generally, NYSDAM requires that landowners be allowed to construct and maintain Farm Labor Housing in the Farm Area without permission, provided that the housing and other impervious surfaces do not cover more than 5% of the Farm Area. Farm Labor Housing cannot be subdivided as a residential lot. Existing Farm Labor Housing should be identified on the land plan. Future Farm Labor Housing sites can be identified on the land plan, if known at the time of drafting. Farm Labor Housing should meet New York State Department of Labor standards for housing and local laws regarding workforce housing (See Guidance Document #1 “Farmland Protection and Agricultural Districts”).

See Clause: #4 “Definitions”
#8(d) “Residential Dwellings”

- b) **Existing Homes** – On the land plan, all existing homes on the Property should be identified and determined whether they will be included within or excluded from the conservation easement. Similar to the discussion about farm buildings, the decision to include or exclude existing homes must balance the positive or negative effect on farm viability. If excluded, existing home sites do not have to be subdivided from the farm property. However, NYSDAM strongly recommends subdividing excluded home sites before closing on the conservation easement as land use regulations change over time and may limit the ability to subdivide later. At the least, excluded home sites should be surveyed. If included, existing homes must be included in a Farmstead Area. NYSDAM will consider several elements when determining whether the inclusion or exclusion of an existing home site from the conservation easement is appropriate for the specific project.
- i. Proximity to Existing Farm Buildings – If an existing home is adjacent to actively used farm buildings, retail markets or Farm Labor Housing, it likely should be included in the conservation easement. Activities in this area, such as animal housing, equipment operation and truck deliveries, have the potential to cause conflicts with new non-farm neighbors that may purchase the house if it was excluded. On the opposite spectrum, the exclusion of houses may make sense if

- they are located a considerable distance from the Farmstead Area and would likely have a limited impact on the viability of the Farm Operation.
- ii. Condition/Utility of Existing Home – Just like in the discussion regarding inclusion or exclusion of farm buildings, some residences may serve limited use to future landowners due to their condition. If an existing home is in poor condition and has limited adaptability to other uses (i.e., rural enterprises), it may be a liability to the landowner, rather than an asset and exclusion may be justified.
 - iii. Topography/Site Conditions – When the home is buffered from agricultural operations by topography or natural features such as forested areas or steep slopes, and does not contribute toward sustaining the Farm Operation (e.g., housing for farm labor or the site for a rural enterprise), exclusion of an existing home may be appropriate.
 - iv. Impact on Farmland Affordability – Exclusion of a home often lowers the value of the protected Property, thereby helping ensure the affordability of the land for future farmers. Ideally, the exclusion of an existing house should be done in concert with other steps to insure the continued affordability of the property for farmers.
 - v. Impact on Farm Viability – When determining whether exclusion of a home site will impact farm viability NYSDAM will consider the same factors as listed above under the Farmstead Area section.
 - vi. Lot Size Requirements – The size of the excluded house lot should be adequate to meet the standards of current local land use regulations and health requirements for septic and water infrastructure, but limited in a way that minimizes the impact on productive soils.
- c) **Future Building Rights** – There are two distinct types of future building rights that can be identified in the land planning process (if appropriate); “lots” to be subdivided from the farm and excluded from the conservation easement and agricultural parcels with a reserved Farmstead Area.
- i. Subdividable Lot – If the landowner wishes to subdivide any portion of the property for any non-agricultural use (i.e., build a home for their children or to sell for non-farm development), this land must be identified on the land plan. These lots must be excluded from the conservation easement, should be surveyed and will likely be subdivided from the Property. NYSDAM will look at the following considerations to determine whether the exclusion of the lot will be acceptable.
 1. Proximity to Existing Farm Buildings – The lot should be located on the Property so as to provide the fewest opportunities for farm-neighbor conflicts that would negatively impact farm viability. The lot should be geographically distant from any Farmstead Area(s) on the Property, main access roads to fields on the Farm Area or other areas of the Property actively used in agricultural production, processing or retail.
 2. Topography/Site Conditions – Alternatively, the lot could be separated from agricultural activities, not by distance, but by topography or specific site conditions. These features could include forested areas, water bodies, roads, steep slopes or other land uses.

3. Impact on Farmland Affordability – Exclusion of a lot often lowers the value of the protected Property, thereby helping ensure the affordability of the land for future farmers.
 4. Impact on Farm Viability – When determining whether exclusion of a lot will impact farm viability NYSDAM will consider the same factors as listed above under the Farmstead Area section (3.c.v).
 5. Lot Size Requirements – The size of the excluded lot should be adequate to meet the standards of current local land use regulations and health requirements for septic and water infrastructure, but limited in a way that minimizes the impact on productive soils.
- ii. Separate Farm Units – In this case, the conservation easement will allow for subdivision to create viable farm units that may be farmed independently at some time in the future. These stand alone agricultural parcels, or farm units, formerly a part of a larger operation, may require a home site for the new owner/operator and farm buildings associated with a Farmstead Area. In this case, the land plan may depict “reserved” Farmstead Area(s) that may be executed in the future if the Property is subdivided in accordance with the conservation easement. In most cases, the specific location of a reserved Farmstead Area will be identified on the land plan. However, there may be situations when additional flexibility is needed for the designation of reserved Farmstead Area(s), for example, when future residential development around the Property could dictate where the Farmstead Area would be best located. In these special cases, the land plan may identify multiple possible locations for one future Farmstead Area, or a larger area in which a specified acreage could be used for a Farmstead Area.

Similar to the discussion in section 3(b) “New/Multiple Farmstead Area(s)”, NYSDAM will review reserved Farmstead Area(s) on a case-by-case basis to determine their potential impact on farm viability. In this analysis, NYSDAM will consider the same factors listed in Section 3(b).

**See Clause: #8 “Construction of Buildings and Other Improvements”
#11 “Subdivision”**

5. Resource Protection Areas

Agricultural conservation easements may include specific Resource Protection Areas, in an attempt to integrate other resource conservation purposes with the primary purpose of keeping land available for agricultural and forestry use. Any resource protection areas, such as those that protect wetlands, waterways or other natural or scenic features, must be identified and delineated on the land plan. NYSDAM will consider the following when determining if a resource protection area is appropriate for the land plan of a specific Property.

- a) Compatibility of Resource Protection with Agricultural Purpose – Can the resource in question be adequately protected without unreasonably restricting farm operations? For

example, NYSDAM would not allow a blanket prohibition on the construction of new buildings in the entire farm area to protect a view from a roadway.

- b) Permitted Uses in the Resource Protection Area - Any restrictions on agricultural practices or building construction within these areas must be consistent with the primary agricultural purpose of the conservation easement. The rationale for restrictions on agricultural practices within these areas should be clearly articulated and related to the stated resource protection objective in the Whereas Clauses of the conservation easement.
- c) Size and Extent of Resource Protection Area – Is the resource protection area geographically located such that restrictions on farm operations will be minimized – for instance on the edge of a forested area or along a waterway? Alternatively, does the resource protection area cover a large portion of the farm area or a critical piece of the farm area necessary for successful farm viability? Boundaries of Resource Protection Areas should be clearly identified on the land plan and should be defined in such a way as to be easily monitored by the easement holder and complied with by the landowner.
- d) Excluding the Resource Protection Area – When the Resource Protection Area is incompatible with the farm use or covers a large area of the farm or when the restrictions imposed in it inhibit farm viability, it may be most appropriate to simply exclude the Resource Protection Area from the conservation easement or seek alternative programs or approaches to protect that portion of the Property. In this case, the Resource Protection Area should be surveyed as a part of the project to facilitate stewardship of the conservation easement.

In some situations, project partners may wish to identify future specific targeted areas in the Farm Area where construction of agricultural buildings can or should occur in order to protect the resources defined in a Resource Protection Area. NYSDAM will allow project partners to define “Can’t Build” areas in a land plan, so long as the restrictions do not unreasonably restrict Farm Operations in contravention to Agriculture and Markets Law. A “Can’t Build” area dictates that construction of agricultural buildings is allowed anywhere in the Farm Area except for the region identified in the land plan. These areas should be defined in concert with the goals of the landowner.

See Clause: #8 “Construction of Buildings and Other Improvements”

Conclusion

The land plan is an essential tool for landowners and project partners to better understand the scope and specifics of the conservation easement. It should be completed early in the project, if not at the time of application, and should also be reviewed during the project lifetime to ensure that all partners are still in agreement on the project. Clear communication on the land plan can result in a more efficient project closing.

Land Planning Checklist

- A legal survey of the boundary of the Property is required for grants made on or after May 2006.
- The land plan is accurate and comprehensive with the total acreage to be included under the conservation easement clearly identified (this acreage must correspond to acreage listed in the appraisal, baseline documentation report and budget).

- The land plan is drawn on a tax parcel map, aerial photograph or survey of the Property.
 - The land plan delineates the Farmstead Area or any other “use” areas described in the conservation easement, including any areas to be excluded from the conservation easement. These areas may be surveyed.
 - The land plan is signed by the landowners, the project manager and the municipal grantee (if not the project manager).
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