Maggie Brooks
County Executive

DEPARTMENT OF PLANNING AND DEVELOPMENT
MONROE COUNTY, NEW YORK

Development Review Guide

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Rochester, New York 14614

April 2006

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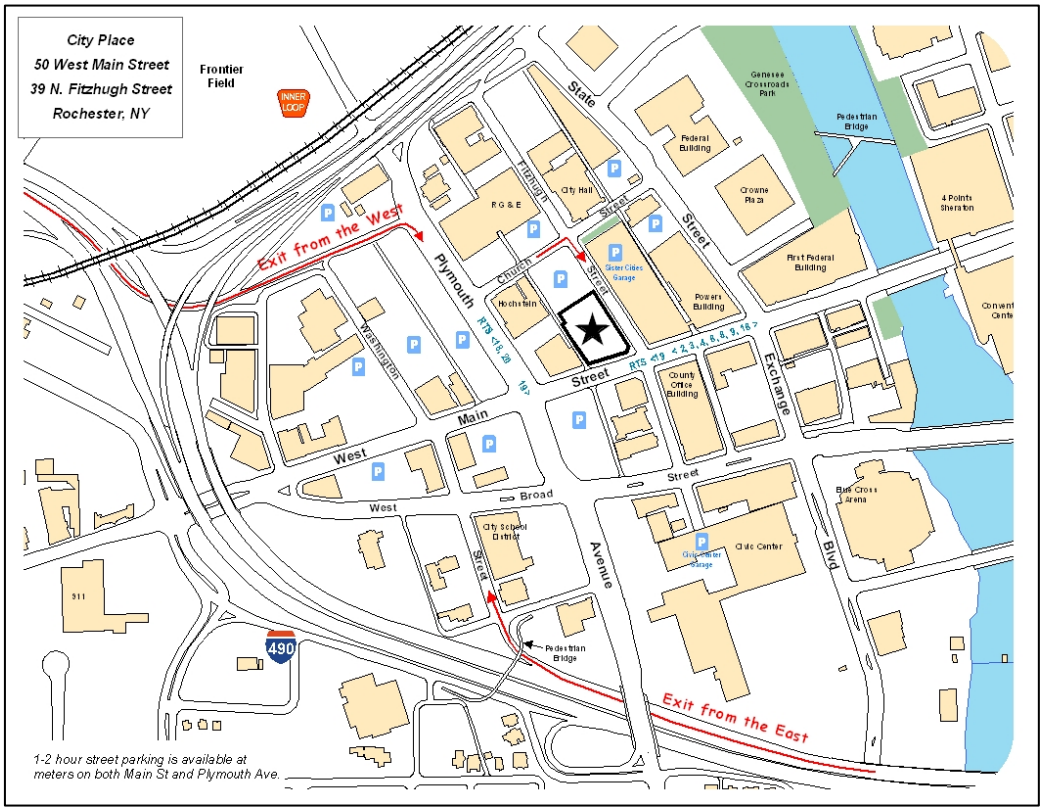

From the West:

Take 490 East
Get off at Exit 13, Plymouth Avenue
Turn right on Plymouth Avenue
Turn left on Church Street
Turn right on Fitzhugh Street

From the East:

Take 490 West
Get off at Exit 14, Plymouth Avenue
Turn right on West Main Street
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I. Introduction to the Monroe County Development Review Process

The Planning Division of the Monroe County Department of Planning and Development ("Planning" or "County Planning") provides review services for comprehensive plans, amendments to zoning ordinances or local laws, new local laws, rezoning of parcels, special permits, conditional use permits, variances, site plans, subdivisions of land, and development in the vicinity of the Greater Rochester International Airport (GRIA) reviews.

The following pages will provide you with the legal framework for the development review process; forms to use to submit referrals to County Planning; explanatory information on local or state programs if applicable to your municipality; and contact information for Planning staff and other agencies which may review referrals.

II. County Review Authority

Municipalities are required to submit certain local zoning and planning actions and subdivision plats to County Planning for review under Sections 239-l, -m and - n of the New York State General Municipal Law (NYS GML) and Sections C5-4A and C5-4C of the County Charter (included as Appendices A and B, respectively). The purpose of these reviews is to identify inter-community and county-wide impacts of proposed projects and to bring land use actions to the attention of neighboring municipalities and agencies with jurisdiction. The County review area is graphically summarized on Map A, in the back pocket of the Guide.

A. General Municipal Law § 239-l, m, & n

Section 239-m of NYS GML requires the referral of certain proposed municipal planning and zoning actions to County Planning. The proposed actions subject to referral include:

- adoption or amendment of a comprehensive plan;
- adoption or amendment of a zoning ordinance or local law;
- issuance of special use permits;
- approval of site plans;
- granting of use or area variances;
- other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

Section 239-n. of NYS GML requires the referral of certain proposed subdivision plats to the County Planning.

These proposed planning, zoning and subdivision actions apply to real property within 500 feet of the following:

- the boundary of any city, village, or town;

- the boundary of any existing or proposed county or state park or other recreation area;
- the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
- the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
- the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
- the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law.

Agreement to Exempt Zoning and Subdivision Matters
Monroe County has an agreement with eleven towns and nine villages whereby specifically stated matters that are normally referred to County Planning are exempted. The agreement does not apply to our airport review authority area.

The purpose of the exemption agreement is to make the land development review process more cost-effective and efficient. Please take a moment to reacquaint yourself with the agreement included as Appendix C; or, if your municipality does not have an agreement with the County, please review the generic agreement in Appendix C. If your municipality is interested in obtaining or updating an exemption agreement with Monroe County please contact one of our staff.

B. Monroe County Charter Section C5-4A and C

Municipalities are required to submit land use proposals in the vicinity of the Greater Rochester International Airport to the County Planning for review and approval (County Charter Section C5-4A.). The purpose is to allow the county to consider impacts such as aircraft hazards and noise on the public as well as proposed structure heights on aircraft safety. Map B shows the airport review area.

Per County Charter Section C5-4C, Monroe County has advisory review authority over land use and land subdivision in its advisory review area, defined as: within ¼-mile of the shoreline of Lake Ontario and Irondequoit Bay and within the hundred-year floodplain of the Genesee River, Irondequoit Creek, Black Creek, Little Black Creek, Oatka Creek, Honeoye Creek, Red Creek and Salmon Creek. County Planning has the right to make advisory comments on land use and land subdivision actions that fall within this area. Map A outlines the entire area in Monroe County for which County Planning has review authority.

III. The Development Review Process

County Planning receives approximately 800 development referrals annually. Some are determined to be a local matter: they are stamped as such and returned to the municipality. Other referrals are reviewed by Planning staff and comments/approvals are submitted to the municipality.

See Map B
Monroe County Airport Review Area

The remaining referrals are distributed to the Development Review Committee (DRC). Participating DRC members include the Monroe County Departments of Health and Transportation and the New York State Departments of Transportation and Environmental Conservation. The DRC members' comments are compiled into a Project Review Report which is attached to County Planning's Response Form and submitted to the municipality. This comprehensive, integrated report brings the concerns of all DRC member agencies to the attention of the municipality and applicant at an early stage of project development.

Development Referral Form

The purpose of County Planning's Development Referral form is to provide staff with enough information to determine if the referral can be considered a local matter or if it should be distributed to the DRC committee for review.

A copy of the Development Referral Form is included as Appendix D. Extra forms are also included in the front pocket of this Guide.

Submittal

Referrals are reviewed by County Planning and the DRC committee weekly. Applications must be received by 12:00 p.m. Monday to be distributed to the Development Review Committee on Tuesday. Referral applications are distributed on Tuesday mornings; if there is a Monday holiday, applications must be received by 12:00 p.m. on the previous Friday. Incomplete applications will be held for ten business days, after which time they will be returned to municipality.

Referrals that are likely to be distributed to the DRC committee should include five plan sets or copies of a text amendment or new local law. If the municipality is aware of the presence of a wetland or protected stream on the property, an extra plan set is required.

To expedite the review process, all information obtained by the municipality pertaining to this application (letter from agent, environmental assessment forms, agricultural data statement, etc.) should be attached to the referral form.

Project Information

The application should address the entire project site and should include an overall site plan showing phased development.

Known environmental factors refer to the presence of state and/or federal wetlands or a protected stream; this information allows us to route the application to the NYS DEC immediately, thereby making the process more efficient and can save the applicant a considerable amount of time.

Type of Referral
The referral will be one or more of the following actions: a planning or zoning matter; subdivision of land; or land use in the vicinity of the airport. Indicate which planning or zoning actions are being considered:

- Comprehensive Plan adoption or amendment –call County Planning to determine how many copies of the Plan are needed. Copies are expensive and each municipality has different review requirements.
- Amendment to zoning ordinance or local law – attach text which clearly indicates which text is to be added, and which deleted.
- New local law – attach text and provide new local law name and number.
- Rezoning – specify the current and proposed zoning classification.
- Special and conditional use permits – describe what the permit is for.
- Use variance – describe the intended use of the property.
- Types of area variances – each municipality has its own terminology for variances other than use variances; indicate what type of variance is being requested.

Municipal Information
According to NYS law, Monroe County has 30 days from the time an application arrives in our office to respond to the board submitting the referral. However, this section of the form is intended to help the referring board let County Planning know the date of the meeting at which the referral will be discussed and request a response by a certain date.

Certification
NYS Law requires that municipalities refer matters to County Planning for review. This section verifies that the application is complete and has been accepted by a municipal official. Applications submitted without this certification will be considered incomplete and returned to the municipality. If applicants are delivering referrals on behalf of the municipality, this section must still be completed and signed by a municipal official.

<u>Airport Referral Form</u>
Municipalities are required to submit land use proposals in the vicinity of GRIA to County Planning for review and approval (County Charter Section C5-4A.). The purpose is to allow the county to consider impacts such as aircraft hazards and noise on the public as well as proposed structure heights on aircraft safety.

A copy of the Airport Referral Form is included as Appendix E. Extra forms are also included in the front pocket of this Guide.

<u>Referral Response Form</u>
Within 30 days of receiving a referral from a municipality, Planning staff issues a referral response with the DRC committee project review report attached; Appendix F contains a generic Referral Response Form and Project Review Report. Since the board with an application before them submits the referral to County Planning, the response is addressed to that board. The DRC, the owners and/or applicant, the agent and other interested agencies are copied. If the response is finalized within five days of the board

meeting, County staff fax the form to the secretary of the board. Others will be faxed only upon request.

The body of the memo communicates under what authority(ies) County Planning has reviewed the referral (see Section I of this Guide), the response and whether the proposed action was sent to DRC, in which case a project review report is attached.

Very often County staff have comments on the referral. These are intended to be advisory. They may alert the board to a situation on the site they were not aware off, such as the presence of wetlands, a protected stream or large woodlot. Staff suggestions to the board might include having the applicant contact NYS DEC about the need for a permit; incorporate techniques to protect a stream corridor; encourage the developer to save important trees; etc. are meant to expedite the development process, to protect water quality, to reduce drainage problems, to improve the health, safety and welfare of the public.

IV. Monroe County Agricultural Districts Program

The Monroe County Agricultural Districts Program applies to each municipality in the county with the exception of Brighton, Irondequoit and Rochester.

New York State Agricultural Districts Law

Article 25AA of the New York State Agriculture and Markets Law, titled Agricultural Districts (Appendix G), provides counties with the opportunity to create agricultural districts for the purpose of protecting and promoting the agriculture industry.

Included in this law are benefits to farmers including preferential real property tax treatment (agricultural assessment and special benefit assessment), and protections against overly restrictive local laws, government funded acquisition or construction projects, and private nuisance suits involving agricultural practices. A farmer does not have to be enrolled in an agricultural district to receive the tax and "Right to Farm" benefits, but the benefits are enhanced for farmers who are enrolled in a district.

Monroe County Agricultural Districts

In the early 1970s Monroe County created five agricultural districts (see Map C, following page). Once created, the law requires that each district must be reviewed on an eight, ten or twelve year basis to see if it is still achieving its intended purpose. In Monroe County, districts are reviewed every eight years.

In 2002 and 2003, the New York State Legislature adopted changes to Article 25AA that enables property owners to petition for adding viable agricultural lands to an established agricultural district during a 30-day period established by the County Legislature once a year. The 30-day petition for addition period in Monroe County occurs in the spring. Landowners wanting to remove their parcels from a district must still wait for the eight-year anniversary of that district.

See Map C
Monroe County Agricultural Districts

Monroe County's five agricultural districts are summarized as follows:

1. Midwestern Agricultural District (#1)
   Location: Towns of Sweden (part), Ogden (part) and Riga (part)
   Total Acreage: 16,060.3
   Creation Date: 1973
   Last Update: 2005
   Next Update: 2013

2. Southwestern Agricultural District (#2)
   Location: Towns of Chili, Riga (part) and Wheatland
   Total Acreage: 35,871 acres
   Creation Date: 1974
   Last Update: 1998 (last parcel added in 2004)
   Next Update: 2006

3. Northeastern Agricultural District (#3)
   Location: Towns of Penfield and Webster
   Total Acreage: 8,361 acres
   Creation Date: 1975
   Last Update: 1999
   Next Update: 2007

4. Southeastern Agricultural District (#4)
   Location: Towns of Henrietta, Mendon, Perinton, Pittsford and Rush
   Current Total Acreage: 32,166 acres
   Creation Date: 1975
   Last Update: 1999 (last parcel added in 2004)
   Next Update: 2007

5. Northwestern Agricultural District (#5)
   Location: Hamlin, Clarkson, Sweden (part), Parma, Greece and Ogden (part)
   Total Acreage: 37,386 acres
   Creation Date: 1976
   Last Update: 2000
   Next Update: 2008

<u>Monroe County Agricultural Data Statement</u>

According to 305-a.2 of the NYS Ag. Districts law, an agricultural data statement is required to be submitted with "any application for a special use permit, site plan approval, use variance or subdivision approval requiring municipal review and approval by a planning board, zoning board of appeals, town board or village board of trustee… that would occur on property within an agricultural district containing a farm operation or on property with boundaries within 500 feet of a farm operation located in an agricultural district shall include an agricultural data statement." Municipal boards evaluate the

statement and consider the impact of the proposed project on the farm operations in the district. Monroe County's agricultural data statement form is included as Appendix H.

V. A Special Note to Assessors Regarding Modifications to a Monroe County Agricultural District

Periodically the Department of Planning and Development processes a development review request for a subdivision which affects land located within a certified Monroe County agriculture district. In the event of a subdivision of a parcel located in an agriculture district, each of the newly created parcels remains part of that agriculture district. It is up to the Town Assessor to be certain that the proper agriculture district code is included for all of the newly created parcels the RPS database is updated. Planning notifies Town Assessors of subdivision reviews; an example notification memo is included as Appendix I.

In addition, the County manages an annual addition process whereby landowners can request that a parcel be added to a certified Monroe County agricultural district. County Planning contacts assessors toward the end of each yearly process if parcels have been added to agricultural districts in that municipality

Finally, landowners can request that a parcel be added to or removed from the agriculture district during the 8-year agriculture district review process. County Planning will contact assessors towards the end of each review year if parcels have been added to an agricultural district in your town.

The schedule for the next reviews of Monroe County's five agriculture districts is as follows:

District	Year of Next 8-year Review
Midwestern Agriculture District (#1)	2013
Southwestern Agriculture District (#2)	2014
Northeastern Agriculture District (#3)	2007
Southeastern Agriculture District (#4)	2007
Northwestern Agriculture District (#5)	2008

VI. Monroe County Watersheds

Watersheds within Monroe County are shown on Map D. This map shows twenty-one unique watersheds; with one small exception on the east edge of the county the streams and ponds in these watersheds flow to Lake Ontario. Due to its size, five subwatersheds of the lower Genesee River are also shown: Little Black Creek, Black Creek, Oatka Creek, Red Creek and Honeoye Creek.

Watershed organizations exist to bring municipal and agency staff and residents together to address water quality and drainage issues. For more information on the Black Creek

See Map D
Monroe County Watersheds

Watershed Coalition go to www.blackcreekwatershed.org and for more information on the Oatka Creek Watershed Committee go to www.oatka.org.

The Monroe County Department of Public Health is involved with work focusing on water quality in the Genesee River and Lake Ontario embayments. They staff the Stormwater Coalition of Monroe County, which helps municipalities meet NYS DEC Stormwater Phase 2 regulatory requirements. Stormwater Coalition members, included as Appendix J of this Guide, are a resource for applicants who need to meet construction and post-construction permit requirements of the regulations

Irondequoit Creek Watershed Stormwater Management Packet for Developers
Many municipalities in the Irondequoit Creek watershed participate in the Irondequoit Creek Watershed Collaborative (IWC). The mission of the IWC is to identify and advance common goals related to water resource management to their mutual benefit; most of the municipalities in the watershed entered an intermunicipal agreement to codify their commitment to that end. Collaborative participants developed *Irondequoit Creek Watershed Collaborative Recommendations for Comprehensive Stormwater Management* (September, 1999); Appendix C, *Packet for Developers* which includes a storm water pollution prevention plan template, forms, guidelines and tables. A current list of IWC members and copy of the packet is included as Appendix K of this Guide.

VII. Monroe County Development Review Staff

Rochelle Bell, Environmental Planner
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Kathy Mahns, Clerk II
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Katie Evans, Planning Assistant
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E-mail: kevans@monroecounty.gov

Steve Olufsen, Junior Planner
Phone: 753-2027
E-mail: solufsen@monroecounty.gov

VIII. Monroe County Development Review Committee

Monroe Co. Department of Health
David Cross, 753-5455
E-mail: dcross@monroecounty.gov

NYS Department of Transportation
David Goehring, 272-3300
E-mail: dgoehring@gw.dot.state.ny.us

Monroe Co. Department of Transportation
Henry Herdzik, 753-7711
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NYS Dept. of Environmental Conservation
Peter Lent, 226-5390
E-mail: palent@gw.dec.state.ny.us

IX. Monroe County Holiday Closings

New Year's Day
Martin Luther King's Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Election Day
Veteran's Day
Thanksgiving Day
The Day after Thanksgiving
Christmas Day

APPENDIX A.

New York Sate
General Municipal Law 239-l, m, & n

General Municipal Law § 239-l, m, &n

§ 239-l. Coordination of certain municipal zoning and planning actions; legislative intent and policy.

1. Definitions. For the purposes of this section and sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article, the following terms shall apply:

(a) "County planning agency" means a county planning board, commission or other agency authorized by the county legislative body to review proposed actions referenced for inter-community or county-wide considerations subject to the provisions of this section, and sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article.

(b) "Regional planning council" means a regional planning board or agency established pursuant to the provisions of this chapter.

2. Intent. The purposes of this section, sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article shall be to bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. Such review may include inter-community and county-wide considerations in respect to the following:

(a) compatibility of various land uses with one another;

(b) traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities;

(c) impact of proposed land uses on existing and proposed county or state institutional or other uses;

(d) protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas;

(e) drainage;

(f) community facilities;

(g) official municipal and county development policies, as may be expressed through comprehensive plans, capital programs or regulatory measures; and

(h) such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment.

3. Review considerations. In no way shall the review of inter-community and county-wide considerations pursuant to the provisions of this section, or pursuant to sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article, preclude a county planning agency or a regional planning council from making informal comments, or supplying such technical assistance as may be requested by a municipality.

§ 239-m. Referral of certain proposed city, town and village planning and zoning actions to the county planning agency or regional planning council; report thereon; final action.

1. Definitions. As used herein:

(a) The term "proposed" as used in subparagraphs (ii) and (iii) of paragraph (b) of subdivision three of this section shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county comprehensive plan adopted pursuant to section two hundred thirty-nine-d of this article or adopted on an official map pursuant to section two hundred thirty-nine-e of this article.

(b) The term "referring body" shall mean the city, town or village body responsible for final action on proposed actions subject to this section.

(c) The term "full statement of such proposed action" shall mean all materials required by and submitted to the referring body as an application on a proposed action, including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. When the proposed action referred is the adoption or amendment of a zoning ordinance or local law, "full statement of such proposed action" shall also include the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any, if not already in the possession of the county planning agency or regional planning council. Notwithstanding the foregoing provisions of this paragraph, any referring body may agree with the county planning agency or regional planning council as to what shall constitute a "full statement" for any or all of those proposed actions which said referring body is authorized to act upon.

(d) The term "receipt" shall mean delivery of a full statement of such proposed action, as defined in this section, in accordance with the rules and regulations of the county planning agency or regional planning council with respect to person, place and period of time for submission. In no event shall such rule or regulation define delivery so as to require in hand delivery or delivery more than twelve calendar days prior to the county planning agency's or regional planning council's meeting date. In the absence of any such rules or regulations, "receipt" shall

mean delivery in hand or by mail to the clerk of the county planning agency or regional planning council. Where delivery is made in hand, the date of receipt shall be the date of delivery. Where delivery is made by mail, the date as postmarked shall be the date of delivery. The provisions of this section shall not preclude the rules and regulations of the county planning agency or regional planning council from providing that the delivery may be a period greater than twelve days provided the referring body and the county planning agency or regional planning council agree in writing to such longer period.

2. Referral of proposed planning and zoning actions. In any city, town or village which is located in a county which has a county planning agency, or, in the absence of a county planning agency, which is located within the jurisdiction of a regional planning council duly created pursuant to the provisions of law, each referring body shall, before taking final action on proposed actions included in subdivision three of this section, refer the same to such county planning agency or regional planning council.

3. Proposed actions subject to referral.

(a) The following proposed actions shall be subject to the referral requirements of this section, if they apply to real property set forth in paragraph (b) of this subdivision:

(i) adoption or amendment of a comprehensive plan pursuant to section two hundred seventy-two-a of the town law, section 7-722 of the village law or section twenty-eight-a of the general city law;
(ii) adoption or amendment of a zoning ordinance or local law;
(iii) issuance of special use permits;
(iv) approval of site plans;
(v) granting of use or area variances;
(vi) other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

(b) The proposed actions set forth in paragraph (a) of this subdivision shall be subject to the referral requirements of this section if they apply to real property within five hundred feet of the following:

(i) the boundary of any city, village or town; or
(ii) the boundary of any existing or proposed county or state park or any other recreation area; or
(iii) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
(iv) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
(v) the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or

(vi) the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law, except this subparagraph shall not apply to the granting of area variances.

(c) The county planning agency or regional planning council may enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed actions set forth in this subdivision are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.

4. County planning agency or regional planning council review of proposed actions; recommendation, report.

(a) The county planning agency or regional planning council shall review any proposed action referred for inter-community or county-wide considerations, including but not limited to those considerations identified in section two hundred thirty-nine-l of this article. Such county planning agency or regional planning council shall recommend approval, modification, or disapproval, of the proposed action, or report that the proposed action has no significant county-wide or inter-community impact.

(b) Such county planning agency or regional planning council, or an authorized agent of said agency or council, shall have thirty days after receipt of a full statement of such proposed action, or such longer period as may have been agreed upon by the county planning agency or regional planning council and the referring body, to report its recommendations to the referring body, accompanied by a statement of the reasons for such recommendations. If such county planning agency or regional planning council fails to report within such period, the referring body may take final action on the proposed action without such report. However, any county planning agency or regional planning council report received after thirty days or such longer period as may have been agreed upon, but two or more days prior to final action by the referring body, shall be subject to the provisions of subdivision five of this section.

5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning agency or regional planning council recommends modification or disapproval of a proposed action, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

6. Report of final action. Within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

§ 239-n. Referral of certain proposed subdivision plats to the county planning agency or regional planning council; report thereon; final action.

1. Definitions. As used herein:

(a) The term "proposed" as used in subparagraphs (ii) and (iii) of paragraph (a) of subdivision three of this section shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county comprehensive plan, adopted pursuant to subdivision seven of section two hundred thirty-nine-d of this article, or shown on an official map adopted pursuant to section two hundred thirty-nine-e of this article.

(b) The term "undeveloped plat" shall mean those plats already filed in the office of the clerk of the county in which such plat is located where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

(c) The term "referring body" shall mean the city, town or village body authorized by a municipal legislative body to approve preliminary or final plats or to approve the development of undeveloped plats and/or plats already filed in the office of the county clerk.

2. Referral of proposed plats. In any city, town or village which is located in a county which has a county planning agency authorized by the county legislative body to review preliminary or final plats or to approve the development of undeveloped plats, the clerk of the municipal planning agency, upon receipt of application for preliminary and/or final approval of a subdivision plat or proposal to develop an undeveloped plat and/or plats already filed in the office of the county clerk, shall refer certain of such plats to the county planning agency. In the absence of a county planning agency, the county legislative body may authorize a regional planning council whose geographic area includes the county, to perform the review functions prescribed herein.

3. Plats subject to referral.

(a) The following applications for approval of preliminary or final plats and undeveloped plats shall be subject to the referral requirements of this section, if the application applies to real property within five hundred feet of the following:

(i) the boundary of any city, village, or town; or

(ii) the boundary of any existing or proposed county or state park or other recreation area; or

(iii) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or

(iv) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or

(v) the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
(vi) the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law.

(b) The county planning agency or regional planning council may enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed plats are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.

4. County planning agency or regional planning council review of proposed plats; recommendation, report.

(a) The county planning agency or regional planning council, when authorized by the county legislative body, shall review any referred plat for inter-community or county-wide considerations, including but not limited to those considerations identified in section two hundred thirty-nine-l of this article. The county planning agency or regional planning council may adopt such rules and regulations as are necessary to perform such function. Such county planning agency or regional planning council shall recommend approval, modification, or disapproval, of such plat, or report that such plat has no significant county-wide or inter-community impact.

(b) Such county planning agency or regional planning council, or an authorized agent of said agency or council, shall have thirty days after receipt of a preliminary or final plat or proposal to develop an undeveloped plat, or such longer period as may have been agreed upon by the county planning agency or regional planning council and the referring body, to report its recommendations to the referring body, accompanied by a statement of the reasons for such recommendations. If such county planning agency or regional planning council fails to report within such period, the referring body may take final action on the referred plat without such report. However, any county planning agency or regional planning council report received after thirty days or such longer period as may have been agreed upon, but two or more days prior to final action by the referring body, shall be subject to the provisions of subdivision five of this section.

5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning agency or regional planning council recommends modification or disapproval of a referred plat, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

6. Report of final action. Within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council. A referring body which acts contrary to a recommendation of

modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

APPENDIX B.

Monroe County Charter, Section C5-4

Monroe County Charter, § C5-4

§ C5-4. Review and approval over land use. [Amended 9-14-1983 by L.L. No. 3-1983; EN 6-9-1992 by L.L. No. 5-1992, approved 7-2-1992]

A. Review and approval in the vicinity of publicly owned airports. The Director of Planning and Development shall have the authority of review and approval specified below in accordance with the procedures, standards and guidelines set forth in § A14-1 of the Administrative Code. Appeals from decisions of the Director of Planning and Development may be made to the Planning Board as set forth in § C5-5 of this Article.

(1) For the purpose of governing the efficient use and safe operation of publicly owned airports and for the purposes of assuring that land use and land subdivision in the vicinity of publicly owned airports will be of such character as not to subject undue concentrations of people to aircraft crash hazards, aircraft noises or other adverse impacts of airport operations, the Director of Planning and Development shall have the power of review and approval over land use and land subdivision, including the height of all structures:

(a) Within one (1) mile from the boundary line of any publicly owned airport within the county; and

(b) Within the approach/departure corridors of instrument-equipped runways at such airports, not to exceed three (3) miles in length from the end of the runway and one (1) mile in width, as shown on a map based on Federal Aviation Administration standards prepared by the Director of Planning and Development, said map to be approved by the Planning Board.

No map subdividing such land into lots for residential, business or industrial purposes in such areas shall be accepted for filing by the County Clerk unless it shall have been approved by the Director of Planning and Development and shall have such approval endorsed thereon.

(2) For the purpose of governing the efficient use and safe operation of publicly owned airports, the Director of Planning and Development shall have the power of review and approval over the height of any structure which is to be located outside the area defined in Subsection A(1) above, where the following two (2) conditions obtain:

(a) The structure is to be located within a distance of seven (7) miles from the nearest runway of any publicly owned airport in the county; and

(b) The structure is to be of greater height than an imaginary surface extending outward and upward at a slope of one hundred to one (100:1) from such runway. The elevation of runways of the Greater Rochester

International Airport shall be considered to be five hundred thirty (530) feet above mean sea level, United States Geological Survey datum.

(3) The height of structures described below shall be exempt from the review and approval of the Director of Planning and Development pursuant to this subsection; however, such structures shall not be exempt from review if located in the area defined in Subsection A(1) above.

(a) Any structure that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater elevation, where it is evident that the structure so shielded will not adversely affect safety in air navigation;

(b) Any antenna structure of no more than twenty (20) feet in height, except one that would increase the height of another antenna structure to be combined total height of more than twenty (20) feet; and

(c) Any one-family or two-family home, including any appurtenant structure which does not exceed the peak of the roof of such home by a height of more than twenty (20) feet.

B. Review and approval in relation to major street plan. In accordance with the guidelines in § A14-2 of the Administrative Code, the Director of Planning and Development shall have authority to approve, modify or disapprove plans submitted for subdivision or development of land anywhere in the county in areas abutting on the streets contained in the major street plan for the county as adopted by the County Legislature as a part of the Comprehensive Development Plan. Appeals from decisions of the Director of Planning and Development may be made to the Planning Board as set forth in § C5-5 of this Article.

C. Advisory review on land use. The Director of Planning and Development shall have the power of review, with the right to render advisory reports only, over land use and land subdivision:

(1) Within one-fourth (1/4) mile of the shoreline of Lake Ontario and Irondequoit Bay.

(2) Within the hundred-year floodplain of the Genesee River, Irondequoit Creek, Black Creek, Little Black Creek, Oatka Creek, Honeoye Creek, Red Creek and Salmon Creek.

The Director of Planning and Development shall complete such reviews within thirty (30) days of the receipt of a complete application, except that this thirty-day period may be extended by agreement between the municipality and the Director of Planning and Development.

D. Advisory reviews on actions by departments and other agencies. Before adopting any final plans, policies or standards on services or capital facilities and before making any recommendation to the County Legislature on any such plans, policies or standards, on the acquisition or sale of land, on major changes in the use of land or on site plans for any county building or buildings, departments and other agencies shall refer such proposals to the Director of Planning and Development for a written report of his or her recommendations with respect thereto. Such report shall be prepared and submitted in accordance with guidelines set forth in § A12-2 of the Administrative Code.

APPENDIX C.

Agreement to Exempt
Zoning & Subdivision Matters

AGREEMENT

THIS AGREEMENT, made this 3rd day of FEBRUARY, 1994, by and between **MONROE COUNTY, NEW YORK**, a municipal corporation, with offices at 39 West Main Street, Rochester, New York 14614 (the "County"), and the TOWN of _____, with offices at _____ (the ("TOWN").

WITNESSETH:

WHEREAS, Article 12–B of the General Municipal Law provides for submission of certain proposed municipal zoning actions and subdivision plats to a county planning agency for its review and recommendation; and

WHEREAS, Sections 239–m and 239–n of Article 12–B of the General Municipal Law provide for an exception to mandated county planning agency review of such matters as may be made subject of an agreement approved by the governing bodies of the municipal agency and the county planning agency that such matters are of a local rather than an inter–community or county–wide concern; and

WHEREAS, the Monroe County Department of Planning and Development and the TOWN of _____ have identified certain matters which are of a local rather than inter–community or county–wide concern, and should therefore be deleted from the Monroe County Department of Planning and Development review process; and

WHEREAS, by Resolution No. 322 of 1993, the Monroe County Legislature approved a listing of local municipal zoning and subdivision matters exempted in accordance with Sections 239–m and 239–n; and

WHEREAS, by Resolution No. _____ of 1994, the TOWN BOARD approved a listing of local municipal zoning and subdivision matters exempted in accordance with Section 239–m and 239–n; and

WHEREAS, the parties desire to enter into this Intermunicipal Cooperation Agreement pursuant to the authority provided in Article 12–B of the General Municipal Law, to effect the removal of such matters from review at the County level.

NOW, THEREFORE, in consideration of the promises and the mutual benefits to be realized by the provisions herein contained, the parties hereto mutually agree as follows:

FIRST: The following matters are hereby agreed by and between the parties hereto to be of local rather than inter–community or county–wide concern, and are therefore eliminated from the Monroe County Department of Planning and Development review process:

(attached Schedule "A")

SECOND: The TOWN agrees that public hearing minutes should note which matters are exempted under this Intermunicipal Agreement. For matters not subject to a public hearing, minutes of the meeting at which the TOWN took action should note which matters are exempted under this Intermunicipal Agreement. In both cases, copies of the minutes shall be sent to the Monroe County Department of Planning and Development, unless such Department advises the TOWN in writing that it is no longer necessary to forward the minutes.

THIRD: The TOWN may submit an exempted matter to the Monroe County Department of Planning and Development for review if the TOWN wishes to have

advice on the matter from the County. Matters submitted for review on which the Monroe County Department of Planning and Development recommends modification or disapproval shall require the TOWN to meet the voting requirements in Sections 239–m or –n of the General Municipal Law.

FOURTH: None of the matters listed in this Intermunicipal Agreement are exempted from the review, approval or permit issuing authority of any other County agency or of any State of Federal agency. All other applicable requirements of Sections 239–m and –n of the General Municipal Law and the Monroe County Charter remain in effect.

FIFTH: The term of this Agreement shall commence upon the date first above written and shall continue in full force and effect until mutually amended or terminated by either party upon written notice given at least 30 days prior to the termination date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

MONROE COUNTY, NEW YORK

APPROVED AS TO FORM BY MON. CO. ATTORNEY

By: _____

APPROVED AS TO SUFFICIENCY OF FUNDS
Source NA
Date 2/23/94
By _____
MONROE COUNTY BUDGET DIRECTOR

TOWN OF _____, NEW YORK

By: _____
SUPERVISOR

SCHEDULE A

List of Municipal Zoning and Subdivision Matters subject to exemption from review by the Monroe County Department of Planning and Development.

A. **Variances; conditional or special use permits; and temporary, temporary and revocable and seasonal use permits for:**

1. Front, side and rear setback variances as long as such variances do not permit any property improvement to be closer to a County or State highway right-of-way line than currently permitted by a municipal zoning ordinance or local law.

2. Lot area, lot coverage and/or lot dimensions.

3. Floor area for principal and accessory structures.

4. Heights of structures excluding signs, as long as the height will not exceed fifty (50) feet above finished grade elevation at the structure location.

5. First floor elevation to be lower than the crown of the fronting street.

6. Buffer and/or landscaping requirements.

7. Type of use, as long as the use does not have direct access to a County or State road.

8. Reduction in parking lot aisle and/or parking space size.

9. Increase building-mounted or window-mounted sign face size or area. This exemption does not apply to signs which face a County or State road or other County or State property.

10. Number of building-mounted or window-mounted signs. This exemption does not apply to signs which face a County or State road or other County or State property.

11. Freestanding sign heights and sign face area. Such items are also exempt from review where they are next to or face a County or State road or other County or State property as long as the height and/or sign face area will not exceed the specifications listed in Appendix 1.

12. Sign, canopy, or awning illumination as long as signs, canopies or awnings visible from County or State roads or other County or State property are illuminated from a constant source, and do not include flashing, intermittent, pulsating, alternating, strobe or other forms of non-constant illumination.

13. On-site directional and information signs as long as these signs are designed exclusively to provide information to persons already on the site and are not located or designed so as to be readable by or attract the attention of motorists on a County or State road.

14. Temporary signs as long as the signs will not be in the right-of-way of a County or State Road or on other County or State property

15. Temporary structures as long as the structure will not be located in the right-of-way of a County or State road or on other County or State property.

16. Height, type and location of fences as long as the fence: (1) is not to be located closer than ten (10) feet to the right-of-way line of a County or State road or other County or State property, or (2) will not be located in a clear vision zone of an intersection involving a County or State Road. A clear vision zone is a triangular area defined by the point of intersection of right-of-way lines with the point extended along the lines for a distance of thirty-five (35) feet from the intersection.

17. Fences to be located over easements as long as the applicant receives written permission by the easement owner.

18. Temporary or seasonal displays; temporary events such as amusement rides, carnivals and field days, antique and arts and craft shows, bazaars, charity and promotional events, grand openings, and tent sales as long as the proposal is not located in the right-of-way of a County or State road or on other County or State property. Events such as "walk-a-thons" along County or State roads are also exempted from review as long as permission is received from the appropriate County, State and/or local law enforcement agencies.

19. Keep animals as pets. However, applications involving birds, pigeons and the like, are not exempt from review.

20. Permits to change from an existing permitted use listed in a zoning district to another permitted use listed in the same zoning district.

21. Utility substations, as long as access is not to a County or State road.

22. Home occupations as long as the use does not have direct access to a County or State road.

23. Permit renewals, unless such renewal is contrary to a prior recommendation or condition by a County or State agency.

24. Relief from prior stipulations placed on uses, structures or property by a municipal board or official, unless such stipulation was the result of a County or State recommendation or condition.

25. Continuance of a legal non-conforming use, structure or sign unless such continuance is contrary to a prior recommendation or condition by a County or State agency; expansion of legal non-conforming uses unless such expansion is contrary to a prior recommendation or condition by a County or State agency or unless the expansion has direct access to a County or State road or is adjacent to other County or State property.

26. Changes in ownership of use or property.

27. Re-use of non-residential floor space. However, the new use is not exempt from review if it will result in a substantial increase in traffic over the previous use, and its parking area has direct access to a County or State road.

28. Applications involving architectural review.

29. Applications involving interpretation of zoning ordinance and/or subdivision regulation provisions.

30. Applications involving changes to zoning ordinance or subdivision regulation fees and administrative provisions (i.e., general provisions, permit application and review procedures, powers and duties of boards and other municipal officials, public hearing requirements, amendment procedures and penalties).

B. **Subdivisions and Site Plans:**

1. Final plats as long as the preliminary plat was reviewed by the County Planning and Development Department (Department) and Monroe County Development Review Committee (DRC), and any substantial changes between the preliminary and final plats are not in conflict with the Department's and/or DRC's report.

2. Preliminary plats previously reviewed by the Department and the DRC where filing or other deadlines have lapsed and any substantial changes to the plat are not in conflict with the Department's and/or DRC's report.

3. Alteration of existing lot lines as long as no additional lots are created along a County or State road.

4. Concept or sketch plans for uses which do not propose to have direct access to a County or State road.

5. Site plans for interior/exterior structure remodeling.

6. Site plans for accessory structures or minor building additions.

- Before any of these matters are approved, they should be reviewed by the Monroe County Health Department if: (1) the site involves an existing or proposed sewage disposal (septic) system or, (2) the matter is next to a parcel which involves an existing or proposed sewage disposal system.

- All events and/or vendors proposing to serve food to the public (temporary food service establishments) may first need to obtain a permit from the Monroe County Health Department. For additional information, contact the Health Department's Food Protection Section at 274-6061.

APPENDIX 1

		Area Surrounded by Business or Industrial Uses		Area Surrounded by Residences, Institutions or Rural Areas	
Type of Highway	Speed (mph)	Area (sq. ft)	Height (ft)	Area (sq. ft)	Height (ft)
Two (2) lanes	15-25	15	5	10	5
	30-40	35	6	20	6
	45-55	75	20	50	16
Four (4) lanes	15-25	20	6	15	6
	30-40	50	18	35	11
	45-55	120	22	80	18
Six (6) lanes	15-25	25	16	20	14
	30-40	65	20	40	16
	45-55	130	24	90	20
Expressways	50-55	230	32	150	28

SOURCE: Street Graphics and the Law, Daniel R. Mandelker and William R. Ewald, American Planning Association, reprinted 1977, pp. 77, 79.

APPENDIX D.

Monroe County Development Referral Form

MONROE COUNTY
DEPARTMENT OF PLANNING AND DEVELOPMENT

DEVELOPMENT REFERRAL FORM

SUBMITTAL CHECKLIST *(please check all that apply; see www.monroecounty.gov for forms & more information.)*

- ☐ Referral form completed in full, clearly printed or typed, signed by municipal representative.
- ☐ 6 copies of plan sets folded to 8 ½"x11" with title block showing, including overall site plan showing phased development; or 5 copies of text amendment or new local law.
- ☐ If there is a wetland or protected stream on the property include extra copy of plan set (making a total of 6 sets).
- ☐ All information obtained by the municipality pertaining to this application (letter from agent, environmental assessment forms, agricultural data statement, etc.) is attached.
- ☐ Airport Referral Form (for projects subject to MCDP&D review under Section 239-m of the New York State (NYS) General Municipal Law (GML) and Section C5-4A of the County Charter).

	Owner/Applicant	Agent
Name:		
Business:		
Address:		
City, State, Zip:		
Telephone No.:		
Fax No:		
E-mail Address:		

PROJECT INFORMATION

Project Name: _____

Project Description: _____

Project Address: _____

Nearest Major Intersection and Direction: _____

Tax Account Number: _____

Previous MCDP&D Review Referral No.: _____

Type of Development *(Check all that apply)*

- ☐ Agricultural
- ☐ Commercial, Non-Retail
- ☐ Commercial, Retail
- ☐ Community Service
- ☐ Industrial
- ☐ Public Services
- ☐ Recreation & Entertainment
- ☐ Residential
- ☐ Vacant Land
- ☐ Wild, Forested, Conservation Lands & Public Parks
- ☐ Other (explain) _____

Will this development include affordable housing? ☐ Yes ☐ No

Project Size

Number of phases for overall project: _____ Phase number for this submittal: _____

Proposed Gross Floor Area: _____ Total Acreage: _____ Phase Acreage: _____

Maximum Structure/Equipment Height: _____ Number of Lots: _____ Number of Units: _____

Permits: Will this project require any permits from the following agencies?

- ☐ Army Corp of Engineers
- ☐ NYS Dept. of Environmental Conservation
- ☐ MC Dept. of Health
- ☐ NYS Dept. of Transportation
- ☐ MC Dept. of Transportation
- ☐ Other *(explain)*: _____

Site Information

Known environmental factors on site: _____

Will this project disturb more than one acre of land? ☐ Yes ☐ No

Will this project disturb more than five acres of land? ☐ Yes ☐ No

MCDP&D Use Only

Airport	COMIDA	NYS DEC	Date Received:		Referral Number:	
Army Corp.	Econ Develop.	NYS DOT	Post Mark Date:		Reviewer:	
Canal Corp.	Empire Zone	Parks	Land Use Code:		DRC Due Date:	
Community Dev.	Enviro. Services	Public Safety	Notes:		❑ LOCAL MATTER ❑ AIRPORT APPROVAL	

TYPE OF REFERRAL (*please check all appropriate boxes)*

☐ Planning/Zoning Referral **(***subject to review under Section 239-m of the NYS General Municipal Law)*

- ☐ Comprehensive Plan (adoption or amendment)
- ☐ Amendment to Zoning Ordinance or Local Law *(submit original text showing amendments)*

  Chapter Title and Number in Local Law: _____
- ☐ New Local Law *(submit text)*

  New Local Law Name and Number: _____
- ☐ Rezoning of Parcel(s) *(If this rezoning includes subdivision of land, please check Subdivision box below)*

  From: _____ To: _____
- ☐ Special Permit For: _____
- ☐ Conditional Use Permit: For: _____
- ☐ Use Variance(s): Intended use of the property: _____
- ☐ Other Variance(s) - check all that apply:

  ☐ Area ☐ Density ☐ Height ☐ Lot ☐ Setback ☐ Sign ☐ Other _____
- ☐ Site Plan, please check: ☐ Concept ☐ Preliminary ☐ Final ☐ Addition Only

☐ Subdivision Referral: (*subject to review under 239-n of the NYS GML & C5-2 of the County Charter)*

☐ Airport Referral *(attach airport referral form)*

MUNICIPAL INFORMATION

Municipality: _____

Referring Board: ☐ Planning ☐ Zoning ☐ Town/Village Board

Date of Board Hearing: _____ Preferred Municipal Due Date: _____

Please discuss any special concerns the municipality has with this application: _____

_____

_____

Note: According to State Law, Monroe County is allowed 30 days to respond to this application.

CERTIFICATION

With the following signature I certify that this application provides a complete description of the proposed local action and is a complete application pursuant to NYS General Municipal Law Article 12b, Section 239-m,1(c).

Referring Official Signature: _____

Print Name: _____ Title: _____

Phone No.: _____ Fax No.: _____ E-mail: _____

SUBMITTAL INSTRUCTIONS

Referrals are reviewed by MCDP&D and the Monroe County Development Review Committee weekly. Applications must be received by 12:00 p.m. Monday. Any submittals received after 12:00 p.m. Monday will be distributed to the DRC the following week. Incomplete applications will be held for ten business days after which time they will be returned to municipality.

Direct all submittals and questions to: Monroe County Department of Planning and Development, Planning Division, CityPlace, 50 West Main Street, Suite 8100, Rochester, New York 14614-1225, Phone (585) 753-2000, Fax (585) 753-2028.

(rev. April 2006)

APPENDIX E.

Monroe County Airport Referral Form

MONROE COUNTY
DEPARTMENT OF PLANNING & DEVELOPMENT (MCDP&D)

AIRPORT REFERRAL FORM

This form is a supplement to the MCDP&D DEVELOPMENT REFERRAL FORM. It lists additional information needed by the Director of Planning & Development (in making a determination regarding any land use or land subdivision proposed to be located within the area covered by the county's airport review jurisdiction, as provided in Section C5-4 of the Monroe County Charter.)

Instructions: In addition to the space provided below, use the back of this form or attach another sheet if more space is needed to complete an entry. Also, submit two (2) copies of the plan for the proposal. For major development projects, the plan should include topographic information and should illustrate or show locations of any of the information requested in items 1-8, below.

1. Current use of the property: _____

2. Proposed use of the property: _____

3. Coverage of structures on the site:
   a. current coverage of structures on site _____ %
   b. proposed coverage of structures on site _____ %

4. The height, in feet above mean sea level, of:
   a. the tallest existing structure on the site _____ Feet
   b. the tallest proposed structure on the site _____ Feet

5. The maximum number, type (cars, tractor trailers) and location of vehicles on the site at any one time. The time of maximum occupancy is:
   From: _____ AM (PM) To: _____ AM (PM)

6. Type, location and direction of exterior lighting:
   _____

7. Exterior signs, if any, and light source (interior/exterior lit; light color; animation; flashing):
   _____

8. Are there any proposed or existing detention or retention ponds on site? ☐ Yes ☐ No
   If yes, list types of pond, existing or proposed, and acreage of pond:
   1. _____
   2. _____
   3. _____

Signature, title and telephone number of municipal employee completing this form:

Signature: _____
Title: _____
Telephone No.: _____

For questions concerning the use of this form please call (585) 753-2000 (Fax No. (585) 753-2036).

Completed, signed forms and all information pertaining to this application should be mailed along with the Development Referral Form to:

Monroe County Department of Planning & Development
Development Review Committee
CityPlace, 50 West Main Street, Suite 8100
Rochester, NY 14614-1225

ATTACHMENT TO: MCDP&D Referral #: _____

(rev. April 2006)

APPENDIX F.

Monroe County Referral Response Form

Department of **Planning and Development**
Monroe County, New York

Maggie Brooks
County Executive

Terrence G. Slaybaugh
Director

To: Municipality

From: County Planning Staff

Date:

Subject: Project name
Project number
MCDP&D Response to Development Review Referral (id no.)

Review Authority and Response:

General Municipal Law: ☐ Section 239-m (Zoning)
☐ Approval ☐ Modification ☐ Disapproval ☐ Comment ☐ No Comment

☐ Section 239-n (Subdivision)
☐ Approval ☐ Modification ☐ Disapproval ☐ Comment ☐ No Comment

County Charter: ☐ Section C5-4.A (Airport)
☐ Approval ☐ Approval with Conditions ☐ Disapproval

☐ Section C5-4.C (Advisory Review)
☐ Approval ☐ Modification ☐ Disapproval ☐ Comment ☐ No Comment

Referred to the Development Review Committee (DRC) (If yes, DRC Project Review Report attached):
☐ Yes ☐ No

MCDP&D Comments:
1.
2.

Attachment (Project review report)

xc: Development Review Committee
Owner or applicant
Agent

PROJECT REVIEW REPORT April 17, 2006
Monroe County Development Review Committee

Subject: Attachment to File #_____

The Monroe County Development Review Committee (DRC) has reviewed the subject application and has identified the following points that require appropriate action PRIOR TO SUBMISSION OF FINAL PLANS FOR APPROVAL.

(NOTE: The letter in parentheses following each comment identifies the DRC member listed at the bottom of the page making the comment. Questions should be addressed to the appropriate DRC agency.)

(A) - Monroe County Department of Health, David Cross, 753-5455
(B) - Monroe County Department of Transportation, Henry Herdzik, 753-7711
(C) - New York State Department of Transportation, David Goehring, 272-3300
(D) - New York State Department of Environmental Conservation, Peter Lent, 226-5390

APPENDIX G.

New York State Agricultural District Law

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

CIRCULAR 1150

ARTICLE 25AA -- AGRICULTURAL DISTRICTS

AGRICULTURE AND MARKETS LAW
(AS AMENDED THROUGH February 21, 2005)
AGRICULTURAL DISTRICTS LAW

The following is a summary of **1999 Amendments** to the Agricultural Districts Law.

Section Amended: §301(4)(e) and §301(9)(e)
Description: Provides that land set aside through participation in a federal conservation program, regardless of the income derived from the land, shall be eligible for an agricultural assessment.
Effective Date: 9/7/99

Section Amended: §301(9)(e)
Description: Adds a new paragraph (e) to allow payments received for land set aside under a federal conservation reserve program to be included in calculating the average gross sales value of products produced in determining whether land used as a single farm operation qualifies as "land used in agricultural production."
Effective Date: 9/7/99

Section Amended: §303-a(4)
Description: Renumbers subdivision (4) to subdivision (5)
Effective Date: 7/20/99

Section Amended: §303-a(4)
Description: Adds a new subdivision (4) that states that if the county legislative body does not review a district upon its anniversary date, the agricultural district remains as originally constituted or until such time that the agricultural district is modified or terminated.
Effective Date: 7/20/99

Section Amended: §305(7)
Description: Provides that the real property tax exemption for agricultural land which is used solely for the purpose of replanting or crop expansion as part of an orchard or vineyard may be greater than 20% of the total acreage of such orchard or vineyard when such orchard or vineyard is located within an area declared by the Governor to be a disaster emergency.
Effective Date: 9/7/99 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after 9/7/99.

Section Amended: §308(3)
Description: Renumbers subdivision (3), which was added by Chapter 362 of the Laws of 1998, to subdivision (4)
Effective Date: 4/6/99

Summary of **1999 Amendments** to the Agricultural Districts Law (continued)

Section Repealed: §309(8) & (9)
Description: Repeals the two subdivisions
Effective Date: 7/20/99

Section Amended: §309(10)
Description: Renumbers subdivision (10) to subdivision (8)
Effective Date: 7/20/99

Section Amended §310(1)
Description: Adds language to the agricultural district disclosure statement to notify a prospective buyer of land within an agricultural district that under certain circumstances, the availability of water and sewer services may be limited.
Effective Date: 7/1/00

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

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

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

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

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

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

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

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

Sections Amended: §301(4), §301(4)(b), and §301(4)(f)
Description: Reduces the number of acres needed to qualify for agricultural real property assessment from ten acres to 7 or more acres as long as the value of crops produced exceeds $10,000 on average in the preceding two years. The size of rented land eligible for an agricultural assessment is reduced from 10 acres to 7 acres as long as the smaller parcel yields at least $10,000 in average annual gross sales independently or in conjunction with land owned by the farmer renting the parcel. The amendment also reduces the number of acres needed to qualify as land used in agricultural production from not less than ten acres to seven or more acres and average gross sales of $10,000 or more in the preceding two years or less than seven acres and average gross sales $50,000 or more in the preceding two years.
Effective Date: 1/1/03

Section Added: §301(9)(f)
Description: Allows payments received by thoroughbred breeders pursuant to Section 247 of the racing pari-mutuel wagering and breeding law to be included in the definition of “gross sales value” for agricultural assessment purposes.
Effective Date: 9/17/02

Section Amended: §301(11)
Description: Amends the definition of farm operation to indicate that such operation may consist of one or more parcels of owned or rented land and such parcels may or may not be contiguous to each other.
Effective Date: 1/1/03

Section Amended: §301(13)
Description: Reduces the minimum acreage required for a commercial horse boarding operation from ten to seven acres.
Effective Date: 1/1/03

Summary of **2002 Amendments** to the Agricultural Districts Law (continued)

Sections Amended:	§303(2)(a)(1), §303(4), §303(5)(a) and (b), §303(6)(a) and (b), §303(7) and §303(8)
Description:	Amends various sections of the law to allow a landowner to include viable agricultural land within a certified agricultural district prior to its eight, twelve or twenty year review period.
Effective Date:	12/20/02

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

Section Added:	§301(4)(h)
Description:	Adds a new paragraph (h) to allow first year farmers to receive an agricultural assessment if they meet the gross sales value requirements during their first year of operation.
Effective Date:	9/9/03

Sections Amended:	§301(5), §305(1)(d)(iv), and §306(2)(c)
Description:	Amends various sections of the law so that conversion penalties are not assessed on farmland that is being used in agricultural production and receives an agricultural assessment when such land is converted to wind energy generation facilities.
Effective Date:	9/22/03

Sections Added and Amended:	§303-b, §303(2)(a)(1) and §303(4)
Description:	Adds a new section 303-b to establish an annual 30-day period during which a farmer can submit proposals to include viable land within a certified agricultural district.
Effective Date:	9/17/03

Sections Amended:	§303(5)(b), §303(6)(b) and §303(8)
Description:	Repeals various sections of the law to conform with the provisions of a new section 303-b.
Effective Date:	9/17/03

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

Section Amended:	§301(4)(h)
Description:	Amends paragraph (h) to allow a farm operation to receive an agricultural assessment if it meets the acreage and gross sales value requirements during its first or second year of agricultural production.
Effective Date:	2/24/04

Section Amended:	§301(4)(i)
Description:	Adds a new paragraph (i) to allow start-up farm operations that plant orchard or vineyard crops to immediately become eligible to receive an agricultural assessment in its first, second, third or fourth year of production.
Effective Date:	1/1/05

ARTICLE 25AA - AGRICULTURAL DISTRICTS

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300. Declaration of legislative findings and intent

It is hereby found and declared that many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited land resources results. Ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements, often leading to the idling or conversion of potentially productive agricultural land.

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

The constitution of the state of New York directs the legislature to provide for the protection of agricultural lands. It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance.

301. Definitions

When used in this article:

1. "Agricultural assessment value" means the value per acre assigned to land for assessment purposes determined pursuant to the capitalized value of production procedure prescribed by section three hundred four-a of this article.

2. "Crops, livestock and livestock products" shall include but not be limited to the following:

    a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
    b. Fruits, including apples, peaches, grapes, cherries and berries.
    c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
    d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
    e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk, eggs and furs.
    f. Maple sap.
    g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
    h. Aquaculture products, including fish, fish products, water plants and shellfish.
    i. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.

3. "Farm woodland" means land used for the production for sale of woodland products, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land used for the processing or retail merchandising of woodland products.

4. "Land used in agricultural production" means not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more; or, not less than seven acres of land used in the preceding two years to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more. Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products. Land used in agricultural production shall also include:

    a. Rented land which otherwise satisfies the requirements for eligibility for an agricultural assessment.

b. Land of not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products, exclusive of woodland products, which does not independently satisfy the gross sales value requirement, where such land was used in such production for the preceding two years and currently is being so used under a written rental arrangement of five or more years in conjunction with land which is eligible for an agricultural assessment.

c. Land used in support of a farm operation or land used in agricultural production, constituting a portion of a parcel, as identified on the assessment roll, which also contains land qualified for an agricultural assessment.

d. Farm woodland which is part of land which is qualified for an agricultural assessment, provided, however, that such farm woodland attributable to any separately described and assessed parcel shall not exceed fifty acres.

e. Land set aside through participation in a federal conservation program pursuant to title one of the federal food security act of nineteen hundred eighty-five or any subsequent federal programs established for the purposes of replenishing highly erodible land which has been depleted by continuous tilling or reducing national surpluses of agricultural commodities and such land shall qualify for agricultural assessment upon application made pursuant to paragraph a of subdivision one of section three hundred five of this article, except that no minimum gross sales value shall be required.

f. Land of not less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more, or land of less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of fifty thousand dollars or more.

g. Land under a structure within which crops, livestock or livestock products are produced, provided that the sales of such crops, livestock or livestock products meet the gross sales requirements of paragraph f of this subdivision.

h. Land that is owned or rented by a farm operation in its first or second year of agricultural production that consists of (1) not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more; or (2) less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of fifty thousand dollars or more; or (3) land situated under a structure within which crops, livestock or livestock products are produced, provided that such crops, livestock or livestock products have an annual gross sales value of (i) ten thousand dollars or more, if the farm operation uses seven or more acres in agricultural production, or (ii) fifty thousand dollars or more, if the farm operation uses less than seven acres in agricultural production.

i. Land of not less than seven acres used as a single operation for the production for sale of orchard or vineyard crops when such land is used solely for the purpose of planting a new orchard or vineyard and when such land is also owned or rented by a newly established farm operation in its first, second, third or fourth year of agricultural production.

5. "Oil , gas or wind exploration, development or extraction activities" means the installation and use of fixtures and equipment which are necessary for the exploration, development or extraction of oil, natural gas or wind energy, including access roads, drilling apparatus, pumping facilities, pipelines, and wind turbines.

6. "Unique and irreplaceable agricultural land" means land which is uniquely suited for the production of high value crops, including, but not limited to fruits, vegetables and horticultural specialties.

7. "Viable agricultural land" means land highly suitable for agricultural production and which will continue to be economically feasible for such use if real property taxes, farm use restrictions, and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of non-agricultural development.

8. "Conversion" means an outward or affirmative act changing the use of agricultural land and shall not mean the nonuse or idling of such land.

9. "Gross sales value" means the proceeds from the sale of:

a. Crops, livestock and livestock products produced on land used in agricultural production provided, however, that whenever a crop is processed before sale, the proceeds shall be based upon the market value of such crop in its unprocessed state;
b. Woodland products from farm woodland eligible to receive an agricultural assessment, not to exceed two thousand dollars annually;
c. Honey and beeswax produced by bees in hives located on an otherwise qualified farm operation but which does not independently satisfy the gross sales requirement; and
d. Maple syrup processed from maple sap produced on land used in agricultural production in conjunction with the same or an otherwise qualified farm operation.
e. Or payments received by reason of land set aside pursuant to paragraph e of subdivision four of this section.
f. Or payments received by thoroughbred breeders pursuant to section two hundred forty-seven of the racing, pari-mutuel wagering and breeding law.

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. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.[1]

12. "Agricultural data statement" means an identification of farm operations within an agricultural district located within five hundred feet of the boundary of property upon which an action requiring municipal review and approval by the planning board, zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village law is proposed, as provided in section three hundred five-a of this article.

13. "Commercial horse boarding operation" means an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing.

302. County agricultural and farmland protection board

1. (a) A county legislative body may establish a county agricultural and farmland protection board which shall consist of eleven members, at least four of whom shall be active farmers. At least one member of such board shall represent agribusiness and one member may represent an organization dedicated to agricultural land preservation. These six members of the board shall reside within the county which the respective board serves. The members of the board shall also include the chairperson of the county soil and water conservation district's board of directors, a member of the county legislative body, a county cooperative extension agent, the county planning director and the county director of real property tax services. The chairperson shall be chosen by majority vote. Such board shall be established in the event no such board exists at the time of receipt by the county legislative body of a petition for the creation or review of an agricultural district pursuant to section three hundred three of this article, or at the time of receipt by the county of a notice of intent filing pursuant to subdivision four of section three hundred five of this article. The members of such board shall be appointed by the chairperson of the county legislative body, who shall solicit nominations from farm membership organizations except for the chairperson of the county soil and water conservation

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

district's board of directors, the county planning director and director of real property tax services, who shall serve ex officio. The members shall serve without salary, but the county legislative body may entitle each such member to reimbursement for actual and necessary expenses incurred in the performance of official duties.

(b) After the board has been established, the chairperson of the county legislative body shall appoint to it two qualified persons for terms of two years each, two qualified persons for terms of three years each and two qualified persons for a term of four years. Thereafter, the appointment of each member shall be for a term of four years. Appointment of a member of the county legislative body shall be for a term coterminous with the member's term of office. Appointment of the county planning director and county director of real property tax services shall be coterminous with their tenure in such office. The appointment of the chairperson of the county soil and water conservation district's board of directors shall be for a term coterminous with his or her designation as chairperson of the county soil and water conservation district's board of directors. Any member of the board may be reappointed for a succeeding term on such board without limitations as to the number of terms the member may serve.

(c) The county agricultural and farmland protection board shall advise the county legislative body and work with the county planning board in relation to the proposed establishment, modification, continuation or termination of any agricultural district. The board shall render expert advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within any proposed or established area and the relation of farming in such area to the county as a whole. The board may review notice of intent filings pursuant to subdivision four of section three hundred five of this article and make findings and recommendations pursuant to that section as to the effect and reasonableness of proposed actions involving the advance of public funds or acquisitions of farmland in agricultural districts by governmental entities. The board shall also assess and approve county agricultural and farmland protection plans.

(d) A county agricultural and farmland protection board may request the commissioner of agriculture and markets to review any state agency rules and regulations which the board identifies as affecting the agricultural activities within an existing or proposed agricultural district. Upon receipt of any such request, the commissioner of agriculture and markets shall, if the necessary funds are available, submit in writing to the board (i) notice of changes in such rules and regulations which he or she deems necessary, (ii) a copy of correspondence with another agency if such rules and regulations are outside his or her jurisdiction, including such rules and regulations being reviewed, and his or her recommendations for

modification, or (iii) his or her reasons for determining that existing rules and regulations be continued without modification.

(e) The county agricultural and farmland protection board shall notify the commissioner and the commissioner of the department of environmental conservation of any attempts to propose the siting of solid waste management facilities upon farmland within an agricultural district.

2. Upon the request of one or more owners of land used in agricultural production the board may review the land classification for such land established by the department of agriculture and markets, consulting with the district soil and water conservation office, and the county cooperative extension service office. After such review, the board may recommend revisions to the classification of specific land areas based on local soil, land and climatic conditions to the department of agriculture and markets.

303. Agricultural districts; creation

1. Any owner or owners of land may submit a proposal to the county legislative body for the creation of an agricultural district within such county, provided that such owner or owners own at least five hundred acres or at least ten per cent of the land proposed to be included in the district, whichever is greater. Such proposal shall be submitted in such manner and form as may be prescribed by the commissioner, shall include a description of the proposed district, including a map delineating the exterior boundaries of the district which shall conform to tax parcel boundaries, and the tax map identification numbers for every parcel in the proposed district. The proposal may recommend an appropriate review period of either eight, twelve or twenty years.

2. Upon the receipt of such a proposal, the county legislative body:

a. shall thereupon provide notice of such proposal by publishing a notice in a newspaper having general circulation within the proposed district and by posting such notice in five conspicuous places within the proposed district. The notice shall contain the following information:

(1) a statement that a proposal for an agricultural district or proposal for inclusion of agricultural land into a certified agricultural district has been filed with the county legislative body pursuant to this article;
(2) a statement that the proposal will be on file open to public inspection in the county clerk's office;
(3) a statement that any municipality whose territory encompasses the proposed district or any landowner who owns at least ten per cent of the land proposed to be included within the proposed modification of the proposed district may propose a modification of the proposed

district in such form and manner as may be prescribed by the commissioner of agriculture and markets;

(4) a statement that the proposed modification must be filed with the county clerk and the clerk of the county legislature within thirty days after the publication of such notice;

(5) a statement that at the termination of the thirty day period, the proposal and proposed modifications will be submitted to the county planning board and county agricultural and farmland protection board and that thereafter a public hearing will be held on the proposal, proposed modifications and recommendations of the planning board and county agricultural and farmland protection board;

b. shall receive any proposals for modifications of such proposal which may be submitted by such landowners or municipalities within thirty days after the publication of such notice;

c. shall, upon the termination of such thirty day period, refer such proposal and proposed modifications to the county planning board, which shall, within forty-five days, report to the county legislative body the potential effect of such proposal and proposed modifications upon the county's planning policies and objectives;

d. shall simultaneously, upon the termination of such thirty day period, refer such proposal and proposed modifications to the county agricultural and farmland protection board, which shall, within forty-five days report to the county legislative body its recommendations concerning the proposal and proposed modifications, and;

e. shall hold a public hearing in the following manner:

(1) The hearing shall be held at a place within the proposed district or otherwise readily accessible to the proposed district;

(2) The notice shall contain the following information:

(a) a statement of the time, date and place of the public hearing;

(b) a description of the proposed district, any proposed additions and any recommendations of the county planning board or county agricultural and farmland protection board;

(c) a statement that the public hearing will be held concerning:

(i) the original proposal;

(ii) any written amendments proposed during the thirty day review period;

(iii) any recommendations proposed by the county agricultural and farmland protection board and/or the county planning board.

(3) The notice shall be published in a newspaper having a general circulation within the proposed district and shall be given in writing to those municipalities whose territory encompasses the proposed district and any proposed modifications, owners of real property within such a proposed district or any proposed modifications who are listed on the most recent assessment roll, the commissioner, the commissioner of environmental conservation and the advisory council on agriculture.

3. The following factors shall be considered by the county planning board, the county agricultural and farmland protection board, and at any public hearing:

(i) the viability of active farming within the proposed district and in areas adjacent thereto;
(ii) the presence of any viable farm lands within the proposed district and adjacent thereto that are not now in active farming;
(iii) the nature and extent of land uses other than active farming within the proposed district and adjacent thereto;
(iv) county developmental patterns and needs; and
(v) any other matters which may be relevant.

In judging viability, any relevant agricultural viability maps prepared by the commissioner of agriculture and markets shall be considered, as well as soil, climate, topography, other natural factors, markets for farm products, the extent and nature of farm improvements, the present status of farming, anticipated trends in agricultural economic conditions and technology, and such other factors as may be relevant.

4. The county legislative body, after receiving the reports of the county planning board and the county agricultural and farmland protection board and after such public hearing, may adopt as a plan the proposal or any modification of the proposal it deems appropriate, and shall adopt as part of the plan an appropriate review period of either eight, twelve or twenty years. The plan as adopted shall, to the extent feasible, include adjacent viable farm lands, and exclude, to the extent feasible, nonviable farm land and non-farm land. The plan shall include only whole tax parcels in the proposed district. The county legislative body shall act to adopt or reject the proposal, or any modification of it, no later than one hundred eighty days from the date the proposal was submitted to this body. Upon the adoption of a plan, the county legislative body shall submit it to the commissioner. The commissioner may, upon application by the county legislative body and for good cause shown, extend the period for adoption and submission once for an additional thirty days. Where he or she does so, the county legislative body may extend the period for the report from the county

planning board and/or the period for the report from the county agricultural and farmland protection board.

5. a. The commissioner shall have sixty days after receipt of the plan within which to certify to the county legislative body whether the proposal, or a modification of the proposal, is eligible for districting, whether the area to be districted consists predominantly of viable agricultural land, and whether the plan of the proposed district is feasible, and will serve the public interest by assisting in maintaining a viable agricultural industry within the district and the state. The commissioner shall submit a copy of such plan to the commissioner of environmental conservation, who shall have thirty days within which to report his or her determination to the commissioner. A copy of such plan shall also be provided to the advisory council on agriculture. The commissioner shall not certify the plan as eligible for districting unless the commissioner of environmental conservation has determined that the area to be districted is consistent with state environmental plans, policies and objectives.

   b. [repealed]

6. a. Within sixty days after the certification by the commissioner that the proposed area is eligible for districting, and that districting would be consistent with state environmental plans, policies and objectives, the county legislative body may hold a public hearing on the plan, except that it shall hold a public hearing if the plan was modified by the commissioner or was modified by the county legislative body after they held the public hearing required by paragraph e of subdivision two of this section and such modification was not considered at the original hearing. Notice of any such hearing shall be in a newspaper having general circulation in the area of the proposed district and individual notice, in writing, to those municipalities whose territories encompass the proposed district modifications, the persons owning land directly affected by the proposed district modifications, the commissioner, the commissioner of environmental conservation and the advisory council on agriculture. The proposed district, if certified without modification by the commissioner, shall become effective thirty days after the termination of such public hearing or, if there is no public hearing, ninety days after such certification unless its creation is disapproved by the county legislative body within such period. Provided, however, that if, on a date within the thirty days after the termination of such public hearing or, if there is no public hearing, within the ninety days after such certification, the county legislative body approves creation of the district, such district shall become effective on such date. Provided further, that notwithstanding any other provision of this subdivision, if the commissioner modified the proposal, the district shall not become effective unless the county legislative body approves the modified district; such approval must be given on a date within the thirty days after termination of the public hearing; and the district, if approved, shall become effective on such date. Before approving or disapproving any proposal

modified by the commissioner, the county legislative body may request reports on such modified proposal, from the county planning board and the county agricultural and farmland protection board.

b. [repealed]

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

8. [repealed]

303-a. Agricultural districts; review.

1. The county legislative body shall review any district created under this section eight, twelve or twenty years after the date of its creation, consistent with the review period set forth in the plan creating such district and at the end of every eight, twelve or twenty year period thereafter, whichever may apply. In counties with multiple districts with review dates in any twelve month period, the commissioner, on petition of the county legislative body, may, for good cause shown, approve an extension of up to four years for a district review. Thereafter, the extended review date shall be deemed the creation date for purposes of subsequent reviews by the county legislative body in accordance with this section. The review date of a district may not be extended more than four years. The petition of the county legislative body for an extension shall be submitted to the commissioner at least six months prior to the review date.

2. In conducting a district review the county legislative body shall;

   a. Provide notice of such district review by publishing a notice in a newspaper having general circulation within the district and by posting such notice in at least five conspicuous places within the district. The notice shall identify the municipalities in which the district is found and the district's total area; indicate that a map of the district will be on file and open to public inspection in the office of the county clerk and such other places as the legislative body deems appropriate; and notify municipalities and land owners within the district that they may propose a modification of the district by filing such

proposal with the county clerk of the county legislature within thirty days after the publication of such notice;

b. Direct the county agricultural and farmland protection board to prepare a report concerning the following:

(1) The nature of farming and farm resources within such district;
(2) The overall status of farming, the farm economy and farm investment in such district as evidenced by information provided by farmers on forms as may be prescribed by the commissioner, and other available data;
(3) The extent to which the number of farms and farm acres in such district furthers the purposes for which such district was originally created;
(4) The extent to which the district has achieved its original objectives;
(5) Any county agricultural and farmland protection planning or implementation efforts pursuant to article twenty-five-aaa of this chapter; and
(6) Recommendations to continue, terminate or modify such district.

c. Direct the county planning board to prepare a report concerning the following:

(1) The effect of such district on county and local comprehensive plans, policies and objectives;
(2) The impacts of nonagricultural development in such district;
(3) The degree of coordination between local laws, ordinances, rules and regulations that apply to farm operations in such district and their influence on farming; and
(4) Recommendations to continue, terminate or modify such district.

d. Hold a public hearing at least one hundred twenty days prior to the district review date and not more than one hundred eighty days prior to such date, in the following manner:

(1) The hearing shall be held at a place within the district or other-wise readily accessible to the proposed district;
(2) A notice of public hearing shall be published in a newspaper having a general circulation within the district and shall be given in writing to those municipalities whose territories encompass the district and any proposed modifications to the district; to persons, as listed on the most recent assessment roll, whose land is the subject of a proposed modification; and to the commissioner;
(3) The notice of hearing shall contain the following information:

(a) a statement of the time, date and place of the public hearing; and

(b) a description of the district, any proposed modifications and any recommendations of the county planning board or county agricultural and farmland protection board.

3. The county legislative body, after receiving the reports and recommendations of the county agricultural and farmland protection board and the county planning board, and after public hearing, shall make a finding whether the district should be continued, terminated or modified. If the county legislative body finds that the district should be terminated, it may do so at the end of such eight, twelve or twenty year period, whichever may be applicable, by filing a notice of termination with the county clerk and the commissioner. If the county legislative body finds that the district should be continued or modified, it shall submit a district review plan to the commissioner. The district review plan shall include a description of the district, including a map delineating the exterior boundaries of the district which shall conform to tax parcel boundaries; the tax map identification numbers for every parcel in the district; copies of the reports of the county planning board and the county agricultural and farmland protection board required by paragraphs c and d of subdivision two of this section; and a copy of the testimony given at the public hearing required by subdivision two of this section or a copy of the minutes of such hearing.

4. If the county legislative body does not act, or if a modification of a district is rejected by the county legislative body, the district shall continue as originally constituted, unless the commissioner, after consultation with the advisory council on agriculture, terminates such district, by filing a notice thereof with the county clerk, because:

   a. The area in the district is no longer predominantly viable agricultural land; or

   b. The commissioner or environmental conservation has determined that the continuation of the district would not be consistent with state environmental plans, policies and objectives; provided, however, that if the commissioner certifies to the county legislative body that he or she will not approve the continuance of the district unless modified, the commissioner shall grant the county an extension as provided in subdivision one of this section to allow the county to prepare a modification of the district in the manner provided in this section.

5. Plan review, certification and filing shall be conducted in the same manner prescribed for district creation in subdivisions five, six and seven of section three hundred three of this article.

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

1. The legislative body of any county containing a certified agricultural district shall designate an annual thirty-day period within which a land owner may submit to

such body a request for inclusion of land which is predominantly viable agricultural land within a certified agricultural district prior to the county established review period. Such request shall identify the agricultural district into which the land is proposed to be included, describe such land, and include the tax map identification number and relevant portion of the tax map for each parcel of land to be included.

2. Upon the termination of such thirty-day period, if any requests are submitted, the county legislative body shall:

a. refer such request or requests to the county agricultural and farmland protection board, which shall, within thirty days report to the county legislative body its recommendations as to whether the land to be included in the agricultural district consists predominantly of "viable agricultural land" as defined in subdivision seven of section three hundred one of this article and the inclusion of such land would serve the public interest by assisting in maintaining a viable agricultural industry within the district; and

b. publish a notice of public hearing in accordance with subdivision three of this section.

3. The county legislative body shall hold a public hearing upon giving notice in the following manner:

a. The notice of public hearing shall contain a statement that one or more requests for inclusion of predominantly viable agricultural land within a certified agricultural district have been filed with the county legislative body pursuant to this section; identify the land, generally, proposed to be included; indicate the time, date and place of the public hearing, which shall occur after receipt of the report of the county agricultural and farmland protection board; and include a statement that the hearing shall be held to consider the request or requests and recommendations of the county agricultural and farmland protection board.

b. The notice shall be published in a newspaper having a general circulation within the county and shall be given in writing directly to those municipalities whose territory encompasses the lands which are proposed to be included in an agricultural district and to the commissioner.

4. After the public hearing, the county legislative body shall adopt or reject the inclusion of the land requested to be included within an existing certified agricultural district. Such action shall be taken no later than one hundred twenty days from the termination of the thirty day period described in subdivision one of this section. Any land to be added shall consist of whole tax parcels only. Upon the adoption of a resolution to include predominantly viable agricultural land, in whole or in part, within an existing certified agricultural district, the county legislative body shall submit the resolution, together with the report of the county agricultural and farmland protection board and the tax map identification numbers and tax maps for each parcel of land to be included in an agricultural district to the commissioner.

5. Within thirty days after receipt of a resolution to include land within a district, the commissioner shall certify to the county legislative body whether the inclusion of predominantly viable agricultural land as proposed is feasible and shall serve the

public interest by assisting in maintaining a viable agricultural industry within the district or districts.

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

304. Unique and irreplaceable agricultural lands; creation of districts

1. The commissioner, after consulting with the advisory council on agriculture, may create agricultural districts covering any land in units of two thousand or more acres not already districted under section three hundred three of this article, if (a) the land encompassed in a proposed district is predominantly unique and irreplaceable agricultural land; (b) the commissioner of environmental conservation has determined that such district would further state environmental plans, policies and objectives; and (c) the director of the division of the budget has given approval of the establishment of such area.

2. Prior to creating an agricultural district under this section, the commissioner of agriculture and markets shall work closely, consult and cooperate with local elected officials, planning bodies, agriculture and agribusiness interests, community leaders, and other interested groups. The commissioner shall give primary consideration to local needs and desires, including local zoning and planning regulations as well as regional and local comprehensive land use plans. The commissioner shall file a map of the proposed district in the office of the clerk of any municipality in which the proposed district is to be located, and shall provide a copy thereof to the chief executive officer of any such municipality and the presiding officer of the local governing body, and, upon request, to any other person. The commissioner shall publish a notice of the filing of such proposed map and the availability of copies thereof in a newspaper of general circulation within the area of the proposed district, which notice shall also state that a public hearing will be held to consider the proposed district at a specified time and at a specified place either within the proposed district or easily accessible to the proposed district on a date not less than thirty days after such publication. In addition, the commissioner shall give notice, in writing, of such public hearing to persons owning land within the proposed district. The commissioner shall conduct a public hearing pursuant to such notice, and, in addition, any person shall have the opportunity to present written comments on the proposed district within thirty days after the public hearing. After due consideration of such local needs and desires, including such testimony and comments, if any, the commissioner may affirm, modify or withdraw the proposed district. Provided, however, that if the commissioner modifies the proposal to include any land not included in the proposal as it read when the public hearing was held, the commissioner shall hold another public hearing, on the same type of published and written notice, and with the same opportunity for presentation of written comments after the hearing. Then the commissioner may affirm, modify or

withdraw the proposed district, but may not modify it to include land not included in the proposal upon which the second hearing was held.

3. Upon such affirmation or modification, a map of the district shall be filed by the commissioner of agriculture and markets with the county clerk of each county in which the district or a portion thereof is located, and publication of such filing shall be made in a newspaper of general circulation within the district to be created. The creation of the district shall become effective thirty days after such filing and publication.

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

304-a. Agricultural assessment values

1. Agricultural assessment values shall be calculated and certified annually in accordance with the provisions of this section.

2. a. The commissioner of agriculture and markets shall establish and maintain an agricultural land classification system based upon soil productivity and capability. The agricultural land classification system shall distinguish between mineral and organic soils. There shall be ten primary groups of mineral soils and such other subgroups as the commissioner determines necessary to represent high-lime and low-lime content. There shall be four groups of organic soils.

   b. The land classification system shall be promulgated by rule by the commissioner following a review of comments and recommendations of the advisory council on agriculture and after a public hearing. In making any revisions to the land classification system the commissioner may, in his or her discretion, conduct a public hearing. The commissioner shall foster participation by county agricultural and farmland protection boards, district soil and water conservation committees, and the cooperative extension service and consult with other state agencies, appropriate federal agencies, municipalities, the New York state college of agriculture and life sciences at Cornell university and farm organizations.

   c. The commissioner shall certify to the state board of real property services the soil list developed in accordance with the land classification system and any revisions thereto.

   d. The commissioner shall prepare such materials as may be needed for the utilization of the land classification system and provide assistance to landowners and local officials in its use.

3. a. The state board of real property services shall annually calculate a single agricultural assessment value for each of the mineral and organic soil groups which shall be applied uniformly throughout the state. A base agricultural assessment value shall be separately calculated for mineral and organic soil groups in accordance with the procedure set forth in subdivision four of this section and shall be assigned as the agricultural assessment value of the highest grade mineral and organic soil group.

   b. The agricultural assessment values for the remaining mineral soil groups shall be the product of the base agricultural assessment value and a percentage, derived from the productivity measurements determined for each soil and related soil group in conjunction with the land classification system, as follows:

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

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

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

d. The agricultural assessment value for organic soil group A shall be two times the base agricultural assessment value calculated for mineral soil group 1A.

e. The agricultural assessment value for farm woodland shall be the same as that calculated for mineral soil group seven.

f. Where trees or vines used for the production of fruit are located on land used in agricultural production, the value of such trees and vines, and the value of all posts, wires and trellises used for the production of fruit, shall be considered to be part of the agricultural assessment value of such land.

g. The agricultural assessment value for land and waters used in aquacultural enterprises shall be the same as that calculated for mineral soil group 1A.

4. a. The base agricultural assessment value shall be the average capitalized value of production per acre for the eight year period ending in the second year preceding the year for which the agricultural assessment values are certified. The capitalized value of production per acre shall be calculated by dividing the product of the value of production per acre and the percentage of net profit by a capitalization rate of ten percent, representing an assumed investment return rate of eight percent and an assumed real property tax rate of two percent.

   b. The value of production per acre shall be the value of production divided by the number of acres harvested in New York state.

   c. The percentage of net profit shall be adjusted net farm income divided by realized gross farm income.

      (i) Adjusted net farm income shall be the sum of net farm income, taxes on farm real estate and the amount of mortgage interest debt attributable to farmland, less a management charge of one percent of realized gross farm income plus seven percent of adjusted production expenses.
      (ii) The amount of mortgage interest debt attributable to farmland shall be the product of the interest on mortgage debt and the percentage of farm real estate value attributable to land.
      (iii) The percentage of farm real estate value attributable to land shall be the difference between farm real estate value and farm structure value divided by farm real estate value.
      (iv) Adjusted production expenses shall be production expenses, less the sum of the taxes on farm real estate and the interest on mortgage debt.

   d. The following data, required for calculations pursuant to this subdivision, shall be as published by the United States department of agriculture for all farming in New York state:

      (i) Farm real estate value shall be the total value of farmland and buildings, including improvements.
      (ii) Farm structure value shall be the total value of farm buildings, including improvements.
      (iii) Interest on mortgage debt shall be the total interest paid on farm real estate debt.
      (iv) Net farm income shall be realized gross income less production expenses, as adjusted for change in inventory.
      (v) Production expenses shall be the total cost of production.

(vi) Realized gross income shall be the total of cash receipts from farm marketings, government payments, nonmoney income and other farm income.
(vii) Taxes on farm real estate shall be the total real property taxes on farmland and buildings, including improvements.
(viii) Number of acres harvested including all reported crops.
(ix) Value of production shall be the total estimated value of all reported crops.

e. In the event that the data required for calculation pursuant to this subdivision is not published by the United States department of agriculture or is incomplete, such required data shall be obtained from the New York state department of agriculture and markets.

f. Upon completion of the calculation of agricultural assessment values, the state board of real property services shall publish an annual report, which shall include a schedule of values, citations to data sources and presentation of all calculations.

The state board of real property services shall transmit copies of the annual report to the governor and legislature, the advisory council on agriculture and other appropriate state agencies and interested parties. The state board of real property services shall thereupon certify the schedule of agricultural assessment values and the state board of real property services shall transmit a schedule of such certified values to each assessor.

5. a. In carrying out their responsibilities under this section, the state board of real property services and the commissioner shall keep the advisory council on agriculture fully apprised on matters relating to its duties and responsibilities.

b. In doing so, the state board of real property services and the commissioner shall provide, in a timely manner, any materials needed by the advisory council on agriculture to carry out its responsibilities under this section.

304-b. Agricultural district data collection

1. The commissioner shall develop and maintain, within funds made available for such purposes, information on agricultural districts and lands outside districts and receiving an agricultural assessment to assist in the agricultural districts program administration and to evaluate the environmental and economic effects of the program.

2. Counties containing agricultural districts or lands outside districts and receiving an agricultural assessment may develop and maintain, in coordination with the department of agriculture and markets, information concerning districts and

agricultural assessments in a manner prescribed by the commissioner. Owners or operators of land used in agricultural production within agricultural districts or outside districts and receiving an agricultural assessment shall provide the county with information about their property, including, but not limited to, total acres, number of acres of cropland, number of acres by land classification, if available, principal products, and approximate annual gross sales. The county shall provide to the commissioner at the time of district creation and review information given to the county by land owners or operators pursuant to this subdivision.

3. Financial information about farm enterprises received by the county or the commissioner pursuant to this section shall be exempt from disclosure as provided for in subdivision two of section eighty-seven of the public officers law. Such information may be disclosed only as aggregate statistical data on farms or districts as a whole, except where the commissioner determines that disclosure is necessary for the effective administration of this article or to otherwise comply with applicable state or federal law.

4. The commissioner shall file a written report with the governor and the legislature biennially beginning January first, nineteen hundred ninety-four concerning the status of the agricultural districts database and agricultural districts program. Such a report shall include, but not be limited to, information included in subdivision two of this section. The report shall also include information pertaining to the conversions of lands from agriculture to non-agricultural uses and conversion penalties assessed, a list of the counties that have established county agricultural and farmland protection plans, a summary of the agricultural protection planning grants program and other relevant physical and economic information pertaining to lands that are receiving an agricultural assessment pursuant to section three hundred five or three hundred six of this article.

305. Agricultural districts; effects

1. Agricultural assessments.

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

prepared for the applicant's land or water bodies used in agricultural production by the soil and water conservation district office within the county, and information demonstrating the eligibility for agricultural assessment of any land used in conjunction with rented land as specified in paragraph b of subdivision four of section three hundred one of this article. Such application shall be filed with the assessor of the assessing unit on or before the appropriate taxable status date; provided, however, that in the year of a revaluation or update of assessments, as those terms are defined in section one hundred two of the real property tax law, the application may be filed with the assessor no later than the thirtieth day prior to the day by which the tentative assessment roll is required to be filed by law. If the assessor is satisfied that the applicant is entitled to an agricultural assessment, the assessor shall approve the application and the land shall be assessed pursuant to this section. Not less than ten days prior to the date for hearing complaints in relation to assessments, the assessor shall mail to each applicant, who has included with the application at least one self-addressed, pre-paid envelope, a notice of the approval or denial of the application. Such notice shall be on a form prescribed by the state board of real property services which shall indicate the manner in which the total assessed value is apportioned among the various portions of the property subject to agricultural assessment and those other portions of the property not eligible for agricultural assessment as determined for the tentative assessment roll and the latest final assessment roll. Failure to mail any such notice or failure of the owner to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on such real property.

b. That portion of the value of land utilized for agricultural production within an agricultural district which represents an excess above the agricultural assessment as determined in accordance with this subdivision shall not be subject to real property taxation. Such excess amount if any shall be entered on the assessment roll in the manner prescribed by the state board of real property services.

c. (i) The assessor shall utilize the agricultural assessment values per acre certified pursuant to section three hundred four-a of this article in determining the amount of the assessment of lands eligible for agricultural assessments by multiplying those values by the number of acres of land utilized for agricultural production and adjusting such result by application of the latest state equalization rate or a special equalization rate as may be established and certified by the state board of real property services for the purpose of computing the agricultural assessment pursuant to this paragraph. This resulting amount shall be the agricultural assessment for such lands.

(ii) Where the latest state equalization rate exceeds one hundred, or where a special equalization rate which would otherwise be

established for the purposes of this section would exceed one hundred, a special equalization rate of one hundred shall be established and certified by the state board for the purpose of this section.

(iii) Where a special equalization rate has been established and certified by the state board for the purposes of this paragraph, the assessor is directed and authorized to recompute the agricultural assessment on the assessment roll by applying such special equalization rate instead of the latest state equalization rate, and to make the appropriate corrections on the assessment roll, subject to the provisions of title two of article twelve of the real property tax law.

d. (i) If land within an agricultural district which received an agricultural assessment is converted parcels, as described on the assessment roll which include land so converted shall be subject to payments equaling five times the taxes saved in the last year in which the land benefited from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years. The amount of taxes saved for the last year in which the land benefited from an agricultural assessment shall be determined by applying the applicable tax rates to the excess amount of assessed valuation of such land over its agricultural assessment as set forth on the last assessment roll which indicates such an excess. If only a portion of a parcel as described on the assessment roll is converted, the assessor shall apportion the assessment and agricultural assessment attributable to the converted portion, as determined for the last assessment roll for which the assessment of such portion exceeded its agricultural assessment. The difference between the apportioned assessment and the apportioned agricultural assessment shall be the amount upon which payments shall be determined. Payments shall be added by or on behalf of each taxing jurisdiction to the taxes levied on the assessment roll prepared on the basis of the first taxable status date on which the assessor considers the land to have been converted; provided, however, that no payments shall be imposed if the last assessment roll upon which the property benefited from an agricultural assessment, was more than five years prior to the year for which the assessment roll upon which payments would otherwise be levied is prepared.

(ii) Whenever a conversion occurs, the owner shall notify the assessor within ninety days of the date such conversion is commenced. If the landowner fails to make such notification within the ninety day period, the assessing unit, by majority vote of the governing body, may impose a penalty on behalf of the assessing unit of up to two times the total payments owed, but not to exceed a maximum total penalty of five hundred dollars in addition to any payments owed.

(iii) (a) An assessor who determines that there is liability for payments and any penalties assessed pursuant to subparagraph (ii) of this paragraph shall notify the landowner by mail of such liability at least ten days prior to the date for hearing complaints in relation to assessments. Such notice shall indicate the property to which payments apply and describe how the payments shall be determined. Failure to provide such notice shall not affect the levy, collection or enforcement or payment of payments.

(b) Liability for payments shall be subject to administrative and judicial review as provided by law for review of assessments.

(iv) If such land or any portion thereof is converted to a use other than for agricultural production by virtue of oil, gas or wind exploration, development, or extraction activity or by virtue of a taking by eminent domain or other involuntary proceeding other than a tax sale, the land or portion so converted shall not be subject to payments. If the land so converted constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment, and adjust the agricultural assessment attributable to the portion of the parcel not subject to such conversion by subtracting the proportionate part of the agricultural assessment attributable to the portion so converted. Provided further that land within an agricultural district and eligible for an agricultural assessment shall not be considered to have been converted to a use other than for agricultural production solely due to the conveyance of oil, gas or wind rights associated with that land.

(v) An assessor who imposes any such payments shall annually, and within forty-five days following the date on which the final assessment roll is required to be filed, report such payments to the state board of real property services on a form prescribed by the state board.

(vi) The assessing unit, by majority vote of the governing body, may impose a minimum payment amount, not to exceed one hundred dollars.

(vii) The purchase of land in fee by the city of New York for watershed protection purposes or the conveyance of a conservation easement by the city of New York to the department of environmental conservation which prohibits future use of the land for agricultural purposes shall not be a conversion of parcels and no payment shall be due under this section.

e. In connection with any district created under section three hundred four of this article, the state shall provide assistance to each taxing jurisdiction in an amount equal to one-half of the tax loss that results from requests for agricultural assessments in the district. The amount of such tax loss shall be computed annually by applying the applicable tax rate to an amount computed by subtracting the agricultural assessment from the assessed value of the property on the assessment roll completed and filed prior to

July first, nineteen hundred seventy-one, taking into consideration any change in the level of assessment. The chief fiscal officer of a taxing jurisdiction entitled to state assistance under this article shall make application for such assistance to the state board of real property services on a form approved by such board and containing such information as the board shall require. Upon approval of the application by such board, such assistance shall be apportioned and paid to such taxing jurisdiction on the audit and warrant of the state comptroller out of moneys appropriated by the legislature for the purpose of this article; provided, however, that any such assistance payment shall be reduced by one-half the amount of any payments levied under subparagraph (i) of paragraph d of this subdivision, for land in any district created under section three hundred four of this article, unless one-half the amount of such payments has already been used to reduce a previous assistance payment under this paragraph.

f. Notwithstanding any inconsistent general, special or local law to the contrary, if a natural disaster, act of God, or continued adverse weather conditions shall destroy the agricultural production and such fact is certified by the cooperative extension service and, as a result, such production does not produce an average gross sales value of ten thousand dollars or more, the owner may nevertheless qualify for an agricultural assessment provided the owner shall substantiate in such manner as prescribed by the state board of real property services that the agricultural production initiated on such land would have produced an average gross sales value of ten thousand dollars or more but for the natural disaster, act of God or continued adverse weather conditions.

2. [repealed]

3. Policy of state agencies. It shall be the policy of all state agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans, or other funding.

4. Limitation on the exercise of eminent domain and other public acquisitions, and on the advance of public funds.

a. Any agency of the state, any public benefit corporation or any local government which intends to acquire land or any interest therein, provided that the acquisition from any one actively operated farm within the district would be in excess of one acre or that the total acquisition within the district would be in excess of ten acres, or which intends to construct, or advance a grant, loan, interest subsidy or other funds within a district to construct,

dwellings, commercial or industrial facilities, water or sewer facilities to serve non-farm structures, shall use all practicable means in undertaking such action to realize the policy and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse impacts on agriculture in order to sustain a viable farm enterprise or enterprises within the district. The adverse agricultural impacts to be minimized or avoided shall include impacts revealed in the notice of intent process described in this subdivision.

b. As early as possible in the development of a proposal of an action described in paragraph a of this subdivision, but in no event later than the date of any determination as to whether an environmental impact statement need be prepared pursuant to article eight of the environmental conservation law, the agency, corporation or government proposing an action described in paragraph a of this subdivision shall file a preliminary notice of its intent with the commissioner and the county agricultural and farmland protection board in such manner and form as the commissioner may require. Such preliminary notice shall include the following:

(i) a brief description of the proposed action and its agricultural setting;
(ii) a summary of any anticipated adverse impacts on farm operations and agricultural resources within the district; and
(iii) such other information as the commissioner may require.

c. The agency, corporation or government proposing the action shall also, at least sixty-five days prior to such acquisition, construction or advance of public funds, file a final notice of intent with the commissioner and the county agricultural and farmland protection board. Such final notice shall include a detailed agricultural impact statement setting forth the following:

(i) a detailed description of the proposed action and its agricultural setting;
(ii) the agricultural impact of the proposed action including short-term and long-term effects;
(iii) any adverse agricultural effects which cannot be avoided should the proposed action be implemented;
(iv) alternatives to the proposed action;
(v) any irreversible and irretrievable commitments of agricultural resources which would be involved in the proposed action should it be implemented;
(vi) mitigation measures proposed to minimize the adverse impact of the proposed action on the continuing viability of a farm enterprise or enterprises within the district;
(vii) any aspects of the proposed action which would encourage non-farm development, where applicable and appropriate; and

(viii) such other information as the commissioner may require.

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

d. The provisions of paragraphs b and c of this subdivision shall not apply and shall be deemed waived by the owner of the land to be acquired where such owner signs a document to such effect and provides a copy to the commissioner.

e. Upon notice from the commissioner that he or she has accepted a final notice as complete, the county agricultural and farmland protection board may, within thirty days, review the proposed action and its effects on farm operations and agricultural resources within the district, and report its findings and recommendations to the commissioner and to the party proposing the action in the case of actions proposed by a state agency or public benefit corporation, and additionally to the county legislature in the case of actions proposed by local government agencies.

f. Upon receipt and acceptance of a final notice, the commissioner shall thereupon forward a copy of such notice to the commissioner of environmental conservation and the advisory council on agriculture. The commissioner, in consultation with the commissioner of environmental conservation and the advisory council on agriculture, within forty-five days of the acceptance of a final notice, shall review the proposed action and make an initial determination whether such action would have an unreasonably adverse effect on the continuing viability of a farm enterprise or enterprises within the district, or state environmental plans, policies and objectives.

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

The commissioner may hold a public hearing concerning such proposed action at a place within the district or otherwise easily accessible to the district upon notice in a newspaper having a general circulation within the

district, and individual notice, in writing, to the municipalities whose territories encompass the district, the commissioner of environmental conservation, the advisory council on agriculture and the state agency, public benefit corporation or local government proposing to take such action. On or before the conclusion of such additional sixty day period, the commissioner shall report his or her findings to the agency, corporation or government proposing to take such action, to any public agency having the power of review of or approval of such action, and, in a manner conducive to the wide dissemination of such findings, to the public. If the commissioner concludes that a reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact of the proposed action, he or she shall propose that such alternative or alternatives be accepted. If the agency, corporation or government proposing the action accepts the commissioner's proposal, then the requirements of the notice of intent filing shall be deemed fulfilled. If the agency, corporation or government rejects the commissioner's proposal, then it shall provide the commissioner with reasons for rejecting such proposal and a detailed comparison between its proposed action and the commissioner's alternative or alternatives.

g. At least ten days before commencing an action which has been the subject of a notice of intent filing, the agency, corporation or government shall certify to the commissioner that it has made an explicit finding that the requirements of this subdivision have been met, and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse agricultural impacts revealed in the notice of intent process will be minimized or avoided. Such certification shall set forth the reasons in support of the finding.

h. The commissioner may request the attorney general to bring an action to enjoin any such agency, corporation or government from violating any of the provisions of this subdivision.

h-1. Notwithstanding any other provision of law to the contrary, no solid waste management facility shall be sited on land in agricultural production which is located within an agricultural district, or land in agricultural production that qualifies for and is receiving an agricultural assessment pursuant to section three hundred six of this article. Nothing contained herein, however, shall be deemed to prohibit siting when:

(i) The owner of such land has entered into a written agreement which shall indicate his consent for site consideration; or
(ii) The applicant for a permit has made a commitment in the permit application to fund a farm land protection conservation easement within a reasonable proximity to the proposed project in an amount not

less than the dollar value of any such farm land purchased for the project; or

(iii) The commissioner in concurrence with the commissioner of environmental conservation has determined that any such agricultural land to be taken, constitutes less than five percent of the project site.

For purposes of this paragraph, "solid waste management facility" shall have the same meaning as provided in title seven of article twenty-seven of the environmental conservation law, but shall not include solid waste transfer stations or land upon which sewage sludge is applied, and determinations regarding agricultural district boundaries and agricultural assessments will be based on those in effect as of the date an initial determination is made, pursuant to article eight of the environmental conservation law, as to whether an environmental impact statement needs to be prepared for the proposed project.

i. This subdivision shall not apply to any emergency project which is immediately necessary for the protection of life or property or to any project or proceeding to which the department is or has been a statutory party.

j. The commissioner may bring an action to enforce any mitigation measures proposed by a public benefit corporation or a local government, and accepted by the commissioner, pursuant to a notice of intent filing, to minimize or avoid adverse agricultural impacts from the proposed action.

5. Limitation on power to impose benefit assessments, special ad valorem levies or other rates or fees in certain improvement districts or benefit areas. Within improvement districts or areas deemed benefited by municipal improvements including, but not limited to, improvements for sewer, water, lighting, non-farm drainage, solid waste disposal, including those solid waste management facilities established pursuant to section two hundred twenty-six-b of the county law, or other landfill operations, no benefit assessments, special ad valorem levies or other rates of fees charged for such improvements may be imposed on land used primarily for agricultural production within an agricultural district on any basis, except a lot not exceeding one-half acre surrounding any dwelling or non-farm structure located on said land nor on any farm structure located in an agricultural district unless such structure benefits directly from the service of such improvement district or benefited area; provided, however, that if such benefit assessments, ad valorem levies or other rates of fees were imposed prior to the formation of the agricultural district, then such benefit assessments, ad valorem levies or other rates or fees shall continue to be imposed on such land or farm structure.

6. Use of assessment for certain purposes. The governing body of a fire, fire protection, or ambulance district for which a benefit assessment or a special ad valorem levy is made, may adopt a resolution to provide that the assessment

determined pursuant to subdivision one of this section for such property shall be used for the benefit assessment or special ad valorem levy of such fire, fire protection, or ambulance district.

7. Notwithstanding any provision of law to the contrary, that portion of the value of land which is used solely for the purpose of replanting or crop expansion as part of an orchard or vineyard shall be exempt from real property taxation for a period not to exceed four successive years following the date of such replanting or crop expansion beginning on the first eligible taxable status date following such replanting or expansion provided the following conditions are met:

   a. The land used for crop expansion or replanting must be a part of an existing orchard or vineyard which is located on land used in agricultural production within an agricultural district or such land must be part of an existing orchard or vineyard which is eligible for an agricultural assessment pursuant to this section or section three hundred six of this chapter where the owner of such land has filed an annual application for an agricultural assessment;

   b. The land eligible for such real property tax exemption shall not in any one year exceed twenty percent of the total acreage of such orchard or vineyard which is located on land used in agricultural production within an agricultural district or twenty percent of the total acreage of such orchard or vineyard eligible for an agricultural assessment pursuant to this section and section three hundred six of this chapter where the owner of such land has filed an annual application for an agricultural assessment;

   c. The land eligible for such real property tax exemption must be maintained as land used in agricultural production as part of such orchard or vineyard for each year such exemption is granted; and

   d. When the land used for the purpose of replanting or crop expansion as part of an orchard or vineyard is located within an area which has been declared by the governor to be a disaster emergency in a year in which such tax exemption is sought and in a year in which such land meets all other eligibility requirements for such tax exemption set forth in this subdivision, the maximum twenty percent total acreage restriction set forth in paragraph b of this subdivision may be exceeded for such year and for any remaining successive years, provided, however, that the land eligible for such real property tax exemption shall not exceed the total acreage damaged or destroyed by such disaster in such year or the total acreage which remains damaged or destroyed in any remaining successive year. The total acreage for which such exemption is sought pursuant to this paragraph shall be subject to verification by the commissioner or his designee.

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

1. Policy of local governments.

   a. Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.

   b. The commissioner, upon his or her own initiative or upon the receipt of a complaint from a person within an agricultural district, may bring an action to enforce the provisions of this subdivision.

2. Agricultural data statement; submission, evaluation. Any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by a planning board, zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village law, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The planning board, zoning board of appeals, town board, or village board of trustees shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of any other application form required by local law, ordinance or regulation.

3. Agricultural data statement; notice provision. Upon the receipt of such application by the planning board, zoning board of appeals, town board or village board of trustees, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the said project. The cost of mailing said notice shall be borne by the applicant.

4. Agricultural data statement; content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

306. Agricultural lands outside of districts; agricultural assessments

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

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

1-a [repealed]

2. a. (i) If land which received an agricultural assessment pursuant to this section is converted at any time within eight years from the time an agricultural assessment was last received, such conversion shall subject the land so converted to payments in compensation for the prior benefits of agricultural assessments. The amount of the payments shall be equal to five times the taxes saved in the last year in which land benefited from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years.

   (ii) The amount of taxes saved for the last year in which the land benefited from an agricultural assessment shall be determined by applying the applicable tax rates to the amount of assessed valuation of such land in excess of the agricultural assessment of such land as set forth on the last assessment roll which indicates such an excess. If only a portion of such land as described on the assessment roll is converted, the assessor shall apportion the assessment and agricultural assessment attributable to the converted portion, as determined for the last assessment roll on which the assessment of such portion exceeded its agricultural assessment. The difference between the apportioned assessment and the apportioned agricultural assessment shall be the amount upon which payments shall be determined. Payments shall be levied in the same manner as other taxes, by or on behalf of each taxing jurisdiction on the assessment roll

prepared on the basis of the first taxable status date on which the assessor considers the land to have been converted; provided, however, that no payments shall be imposed if the last assessment roll upon which the property benefited from an agricultural assessment, was more than eight years prior to the year for which the assessment roll upon which payments would otherwise be levied is prepared.

(iii) Whenever a conversion occurs, the owner shall notify the assessor within ninety days of the date such conversion is commenced. If the landowner fails to make such notification within the ninety day period, the assessing unit, by majority vote of the governing body, may impose a penalty on behalf of the assessing unit of up to two times the total payments owed, but not to exceed a maximum total penalty of five hundred dollars in addition to any payments owed.

b. (i) An assessor who determines that there is liability for payments and any penalties pursuant to subparagraph (ii) of this paragraph shall notify the landowner of such liability at least ten days prior to the day for hearing of complaints in relation to assessments. Such notice shall specify the area subject to payments and shall describe how such payments shall be determined. Failure to provide such notice shall not affect the levy, collection, or enforcement of payments.

(ii) Liability for payments shall be subject to administrative and judicial review as provided by law for the review of assessments.

(iii) An assessor who imposes any such payments shall annually, and within forty-five days following the date on which the final assessment roll is required to be filed, report such payments to the state board of real property services on a form prescribed by the state board.

(iv) The assessing unit, by majority vote of the government body, may impose a minimum payment amount, not to exceed one hundred dollars.

c. If such land or any portion thereof is converted by virtue of oil, gas or wind exploration, development, or extraction activity or by virtue of a taking by eminent domain or other involuntary proceeding other than a tax sale, the land or portion so converted shall not be subject to payments. If land so converted constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment, and adjust the agricultural assessment attributable to the portion of the parcel not subject to such conversion by subtracting the proportionate part of the agricultural assessment attributable to the portion so converted. Provided further that land outside an agricultural district and eligible for an agricultural assessment pursuant to this section shall not be considered to have been converted to a use other than for agricultural production solely due to the conveyance of oil, gas or wind rights associated with that land.

d. The purchase of land in fee by the city of New York for watershed protection purposes or the conveyance of a conservation easement by the city of New

York to the department of environmental conservation which prohibits future use of the land for agricultural purposes shall not be a conversion of parcels and no payment for the prior benefits of agricultural assessments shall be due under this section.

3. Upon the inclusion of such agricultural lands in an agricultural district formed pursuant to section three hundred three, the provisions of section three hundred five shall be controlling.

4. A payment levied pursuant to subparagraph (i) of paragraph a of subdivision two of this section shall be a lien on the entire parcel containing the converted land, notwithstanding that less than the entire parcel was converted.

5. Use of assessment for certain purposes. The governing body of a water, lighting, sewer, sanitation, fire, fire protection, or ambulance district for whose benefit a special assessment or a special ad valorem levy is imposed, may adopt a resolution to provide that the assessments determined pursuant to subdivision one of this section for property within the district shall be used for the special assessment or special ad valorem levy of such special district.

307. Promulgation of rules and regulations

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

308. Right to farm

1. a. The commissioner shall, in consultation with the state advisory council on agriculture, issue opinions upon request from any person as to whether particular agricultural practices are sound.

b. Sound agricultural practices refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Examples of activities which entail practices the commissioner may consider include, but are not limited to, operation of farm equipment; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing agricultural commodities produced on-farm; and construction and use of farm structures. The commissioner shall consult appropriate state agencies and any guidelines recommended by the advisory council on agriculture. The commissioner may consult as appropriate, the New York state college of agriculture and life sciences and the U.S.D.A. natural resources conservation service. The commissioner shall also consider whether the agricultural practices are conducted by a farm owner or operator as part of his or her participation in the AEM program as set forth in article eleven-A of this chapter. Such practices shall be evaluated on a case-by-case basis.

2. Upon the issuance of an opinion pursuant to this section, the commissioner shall publish a notice in a newspaper having a general circulation in the area surrounding the practice and notice shall be given in writing to the owner of the property on which the practice is conducted and any adjoining property owners. The opinion of the commissioner shall be final, unless within thirty days after publication of the notice a person affected thereby institutes a proceeding to review the opinion in the manner provided by article seventy-eight of the civil practice law and rules.

3. Notwithstanding any other provisions of law, on any land in an agricultural district created pursuant to section three hundred three or land used in agricultural production subject to an agricultural assessment pursuant to section three hundred six of this article, an agricultural practice shall not constitute a private nuisance, when an action is brought by a person, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued upon request by the commissioner. Nothing in this section shall be construed to prohibit an aggrieved party from recovering damages for personal injury or wrongful death.

4. The commissioner, in consultation with the state advisory council on agriculture, shall issue an opinion within thirty days upon request from any person as to whether particular land uses are agricultural in nature. Such land use decisions shall be evaluated on a case-by-case basis.

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

1. Definitions. For purposes of this section:

a. "Action" means any civil action brought by a person in which a private nuisance is alleged to be due to an agricultural practice on any land in an agricultural district or subject to agricultural assessments pursuant to section three hundred three or three hundred six of this article, respectively.

b. "Fees and other expenses" means the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, consultation with experts, and like expenses, and reasonable attorney fees, including fees for work performed by law students or paralegals under the supervision of an attorney, incurred in connection with the defense of any cause of action for private nuisance which is alleged as part of a civil action brought by a person.

c. "Final judgment" means a judgment that is final and not appealable, and settlement.

d. "Prevailing party" means a defendant in a civil action brought by a person, in which a private nuisance is alleged to be due to an agricultural practice, where the defendant prevails in whole or in substantial part on the private nuisance cause of action.

2. Fees and other expenses in certain private nuisance actions.

a. When awarded. In addition to costs, disbursements and additional allowances awarded pursuant to sections eight thousand two hundred one through eight thousand two hundred four and eight thousand three hundred one through eight thousand three hundred three-a of the civil practice law and rules, and except as otherwise specifically provided by statute, a court shall award to a prevailing party, other than the plaintiff, fees and other expenses incurred by such party in connection with the defense of any cause of action for private nuisance alleged to be due to an agricultural practice, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued by the commissioner under section three hundred eight of this article, prior to the start of any trial of the action or settlement of such action, unless the court finds that the position of the plaintiff was substantially justified or that special circumstances make an award unjust. Fees shall be determined pursuant to prevailing market rates for the kind and quality of the services furnished, except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings.

b. Application for fees. A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application which sets forth

(i) the facts supporting the claim that the party is a prevailing party and is eligible to receive an award under this section,

(ii) the amount sought, and
(iii) an itemized statement from every attorney or expert witness for which fees or expenses are sought stating the actual time expended and the rate at which such fees and other expenses are claimed.

3. Interest. If the plaintiff appeals an award made pursuant to this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award. Such interest shall run from the date of the award through the day before the date of the affirmance.

4. Applicability.

   a. Nothing contained in this section shall be construed to alter or modify the provisions of the civil practice law and rules where applicable to actions other than actions as defined by this section.

   b. Nothing contained in this section shall affect or preclude the right of any party to recover fees or other expenses authorized by common law or by any other statute, law or rule.

309. Advisory council on agriculture

1. There shall be established within the department the advisory council on agriculture, to advise and make recommendations to the state agencies on state government plans, policies and programs affecting agriculture, as outlined below, and in such areas as its experience and studies may indicate to be appropriate. The department of agriculture and markets shall provide necessary secretariat and support services to the council.

2. The advisory council on agriculture shall consist of eleven members appointed by the governor with the advice and consent of the senate, selected for their experience and expertise related to areas of council responsibility. At least five members of the council shall be operators of a commercial farm enterprise and at least two members shall be representatives of local governments. The balance of the council shall be comprised of representatives of business or institutions related to agriculture. Members shall be appointed for a term of three years and may serve until their successors are chosen provided, however, that of the members first appointed, three shall serve for a term of one year, three shall serve for a term of two years, and three shall serve for a term of three years. Members shall serve without salary but shall be entitled to reimbursement of their ordinary and necessary travel expenses. The members of the council shall elect a chairman.

3. The duties and responsibilities of the advisory council on agriculture as they pertain to agricultural districts shall include, but not be limited to, providing timely advice, comments and recommendations to the commissioner in regard to:

a. the establishment of agricultural districts;
b. the eight year review of agricultural districts; and
c. the establishment of and any revision to the land classification system used in connection with the determination of agricultural assessment values.

The commissioner may delegate to the council such additional duties and responsibilities as he deems necessary.

4. The duties and responsibilities of the advisory council on agriculture shall include, but not be limited to, providing timely advice, comments and recommendations to the state board of real property services in regard to the establishment of agricultural assessment values.

5. The advisory council on agriculture shall advise the commissioner and other state agency heads on state government plans, policies and programs affecting farming and the agricultural industry of this state. Concerned state agencies shall be encouraged to establish a working relationship with the council and shall fully cooperate with the council in any requests it shall make.

6. The advisory council on agriculture may ask other individuals to attend its meetings or work with it on an occasional or regular basis provided, however, that it shall invite participation by the chairman of the state soil and water conservation committee and the dean of the New York state college of agriculture and life sciences at Cornell university. The advisory council on agriculture shall set the time and place of its meetings, and shall hold at least four meetings per year.

7. The advisory council on agriculture shall file a written report to the governor and the legislature by April first each year concerning its activities during the previous year and its program expectations for the succeeding year.

8. The advisory council on agriculture shall advise the commissioner in regards to whether particular land uses are agricultural in nature.

310. Disclosure

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

"It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective residents that the property

they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances."

1-a. Such disclosure notice shall be signed by the prospective grantor and grantee prior to the sale, purchase or exchange of such real property.

2. Receipt of such disclosure notice shall be recorded on a property transfer report form prescribed by the state board of real property services as provided for in section three hundred thirty-three of the real property law.

APPENDIX H.

Monroe County Agricultural Data Statement Form

MONROE COUNTY
DEPARTMENT OF PLANNING AND DEVELOPMENT

AGRICULTURAL DATA STATEMENT

Please note: Section 283-a of the Town Law requires any application for a site plan approval, subdivision approval, special permit or use variance on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred (500) feet of a farm operation located in an agricultural district, to include an Agricultural Data Statement.

A farm operation is defined as "...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…." (Section 301, Article 25-AA of the Agriculture and Markets Law).

All applications requiring an Agricultural Data Statement must be referred to the County Planning Department in accordance with amended Sections 239- m and 239-n of the General Municipal Law.

Applicant name & address: _____

Project address: _____

Tax parcel number(s) & acreage : _____

Agricultural District (e.g. Midwestern): _____

Description of project: _____

_____

***Names and mailing addresses of all owners of land located within five hundred ft. (500') of the project property within an agricultural district and containing farm operations:**

	Landowner name	Address	Tax parcel number(s)	Type of farm
1				
2				
3				
4				
5				

Use separate sheet if needed.

***Attach tax map** showing the site of the proposed project relative to the location of farm operations identified above.

***INFORMATION REQUIRED IN THIS APPLICATION BY LAW**

APPENDIX I.

Note to Assessors Regarding Agricultural Districts

Department of **Planning and Development**
Monroe County, New York

Maggie Brooks
County Executive

Terrence G. Slaybaugh
Director

To: Assessor's Information
Agency
Address1
Address2

From: Reviewer's Information

Date:

RE: Parcel ID #: Tax Account Number

Agricultural District: Agricultural District Name

MCDPD Referral No: RefNo

Dear AssessorName

The Department of Planning and Development is currently processing a development review request for a subdivision of the parcel(s) listed above.

This subdivision affects land located within an Agriculture District. Please be advised that in the event of a subdivision of a parcel located in an agriculture district, each of the newly created parcels remains part of that agriculture district. Accordingly, please be certain that the proper agriculture district code is included for all of the newly created parcels when you update the RPS database.

Landowners can request that their properties be added to or removed from an agriculture district during the Agriculture District review process. In Monroe County, agriculture districts are reviewed every eight years. The schedule for review of Monroe County's five agriculture districts is as follows:

District	Renewal Date
Midwestern Agriculture District (#1)	2013
Southwestern Agriculture District (#2)	2006
Northeastern Agriculture District (#3)	2007
Southeastern Agriculture District (#4)	2007
Northwestern Agriculture District (#5)	2008

Landowners also have an annual opportunity to add parcels to an agricultural district. In either case, we will inform you of any changes to parcels in your municipality at the end of the process.

Thank you very much for your attention to this matter. If you have any questions, please contact me at Phone Number.

8100 CityPlace • 50 West Main Street • Rochester, New York 14614
(585) 753-2000 • *fax:* (585) 753-2028 • *www.monroecounty.gov*

APPENDIX J.

Stormwater Coalition of Monroe County

Stormwater Coalition of Monroe County

Membership Status	First Name	Last Name	Organization Name	Work Phone	Fax Number	e-mail
For E.Rochester	Gary	Smith	DJ Parrone (E. Rochester)	(585) 586-0200		gsmith@djparrone.com
MS4/non-member	Amy	Kahn	NYS DOT	(585) 272-4825		akahn@gw.dot.state.ny.us
MS4/member	Dr. James	Zollweg	SUNY Brockport	(585) 395-2353		jzollweg@brockport.edu
MS4/member	Dalton	Patterson	Town of Irondequoit	(585) 467-8840	(585) 467-2862	wabbott@irondequoit.org
MS4/member	Edward	Bailey	Village of Pittsford	(585) 586-4597	(585) 586-4597	pittvill@frontiernet.net
MS4/member	Jack	Barton	Town of Parma	(585) 392-9449	(585) 392-6659	building@parmany.org
MS4/member	Thomas	Beck	Town of Perinton DPW	(585) 223-5115	(585) 223-0448	tbeck@perinton.org
MS4/member	Eric	Williams	Town of Perinton DPW	(585) 223-5115	(585) 223-0448	ewilliams@perinton.orgb.org
MS4/member	Geoff	Benway	Town of Penfield	(585) 377-8600	(585) 377-8667	benway@penfield.org
MS4/member	Ed	Walsh	Town of Mendon	(585) 624-6060	(585) 624-6065	mbickweat@townofmendon.org
MS4/member	Martin	Brewster	Pittsford Public Works	(585) 248-6250	(585) 248-6262	mbrewster@townofpittsford.com
MS4/member	Joseph	Carr	Town of Chili	(585) 889-3550	(585) 889-8710	lbrown@townofchili.org
MS4/member	Tom	Cesario	Monroe County Dept of Transportation	(585) 760-7737		TCesario@monroecounty.gov
MS4/member	William	Southwell	Village of Webster	(585) 265-3770 (Ext. #19)	(585) 265-1004	bsouthwell@villageofwebster.com
MS4/member	John	Gauthier	Town of Greece	(585) 723-2376	(585) 225-4885	jgauthier@townofgreece.org
MS4/member	Mark	Gregor	City of Rochester	(585) 428-5978	(585) 428-6010	mgregor@cityofrochester.gov
MS4/member	Don	Hauza	Town of Webster	(585) 872-1000	(585) 872-1352	dhauza@ci.webster.ny.us
MS4/member	Joe	Herbst	Town of Webster	(585) 872-1443x117	(585) 872-1352	jherbst@ci.webster.ny.us
MS4/member	Tim	Keef	Town of Brighton	(585) 784-5250	(585) 473-8115	tkeef@rochester.rr.com
MS4/member	Thomas	Low	Town of Brighton	(585) 784-5250		tlow@rochester.rr.com
MS4/member	John	Lathrop	Town of Gates	(585) 247-6100	(585) 247-0017	dzabaglia@townofgates.org
MS4/member	Chuck	Marshall	Town of Henrietta	(585) 359-7008	(585) 359-7006	dmarshal@mcls.rochester.lib.ny.us
MS4/member	Ken	Moore	Village of Fairport	(585) 421-3201	(585) 223-5466	kwm@fairportny.com
MS4/member	Dick	Nurse	Town of Clarkson	(585) 637-1132/33		highway@clarksonny.org
MS4/member	Fred	Perrine	Town of Sweden	(585) 637-3369	(585) 637-7389	fredp@townofsweden.org
MS4/member	Brian	Speer	Town of Parma	(585) 392-9461	(585) 392-6659	highway@parmany.org
MS4/member	Harry	Reiter	Environmental Services	(585) 760-7610	(585) 324-1213	hreiter@monroecounty.gov
MS4/member	Tony	Argento	Village of East Rochester	(585) 586-3553	(585) 586-4792	eastroch@frontiernet.net
MS4/member	Thomas	Tilebein	Village of Hilton	(585) 392-4144	(585) 392-5620	tom@scenicview.com

Stormwater Coalition of Monroe County

Membership Status	First Name	Last Name	Organization Name	Work Phone	Fax Number	e-mail
MS4/member	Harry	Donahue	Village of Brockport	(585) 637-5300	(585) 637-1062	hdonahue@frontiernet.net
MS4/member	Tom	West	Village of Spencerport		(585) 352-3484	twest@vil.spencerport.ny.us
MS4/member	Dave	Widger	Town of Ogden	(585) 352-2123	(585) 352-2133	highway@ogdenny.com
nonMS4/non-member	Howard	Hazelton	Town of Wheatland	(585) 538-6535	(585) 538-9585	HRoadman@aol.com
nonMS4/member	Tom	Ingraham	Town of Hamlin Highway	(585) 964-2421	(585) 964-9124	Highway@Hamlinny.org
nonMS4/member	Dave	Adams	Village of Churchville	(585) 293-3720	(585) 293-2590	dave@churchville.net
NonMS4/member	Robert	Ottley	Town of Riga	(585) 293-3880		bottley@rochester.rr.com
nonMS4/non-member	Greg	Emerson	Village of Honeoye Falls			gregvhf@frontiernet.net
nonMS4/non-member	Luther	Keyes	Town of Rush	(585) 533-1312		
nonMS4/non-member	Jim	Luke	Village of Scottsville			EJamesluke@aol.com
Guest	Rochelle	Bell	Planning & Devt Dept	(585) 428-5464	(585) 428-5336	rbell@monroecounty.gov
Guest	Jason	Haremza	G/FLRPC	(585) 454-0190	(585) 454-0191	jharemza@gflrpc.org

APPENDIX K.

Irondequoit Creek Watershed
Stormwater Management Packet for Developers

Irondequoit Creek Watershed Collaborative Contact List
April 2006

Town of Brighton:	Tim Keef, 784-5250
Town of East Rochester:	David Bussey, 381-1565
Village of Fairport:	Ken Moore, 421-3201
Town of Henrietta:	Chuck Marshall, 359-7008
Town of Mendon:	Charles Andolino, 624-9511
Town of Penfield:	Geoff Benway, 340-8683
Town of Perinton:	Eric Williams, 223-5115
Town of Pittsford:	Marty Brewster, 248-6250
Village of Pittsford:	Robert Corby and Skip Bailey, 586-4332

See Map A
Monroe County Generalized DRC Review Area