
REPORT OF THE

**Agricultural Districts
Review Panel**



March 1989

March 1, 1989

The Honorable Mario M. Cuomo
Governor

The Honorable Ralph J. Marino
Majority Leader of the Senate

The Honorable Melvin H. Miller
Speaker of the Assembly

Gentlemen:

The Agricultural Districts Review Panel, established pursuant to Chapter 774 of the Laws of 1987, herewith submits its required March 1, 1989 report.

In this report, the Panel has made several recommendations related to the areas specifically identified in the enacting legislation. The Panel has also made recommendations relating to other issues which surfaced during its deliberations. The Panel did not address agricultural assessment values and the appropriateness of the penalty provisions. The 1987 revisions were effective in 1988 and data will first be collected in 1989. The penalty provisions were changed substantially in statutory amendments adopted in December, 1988.

As indicated within the report, there was not unanimous agreement on each of the issues discussed. However, in the true spirit of cooperation, the members have worked to find common ground between their individual interests. The package of recommendations achieves what I believe is an appropriate balance between the interests represented. For example, while expansion of agricultural assessment eligibility is included, the recommendations which would implement that expansion include ample specification to ensure that only intended lands benefit. Similarly, the Panel has recommended procedures for early payment of conversion penalties which are designed to benefit farmers and local governments alike. Overall, the recommendations will enhance agricultural viability in New York, without burdening local governments.

I commend each of the Panel members for their efforts in this endeavor. I also appreciate the support provided by the staffs of the agencies and associations involved. The cooperative efforts which produced this report will continue to be an asset as the Panel looks toward the filing of its second report in January of 1991.

I trust that you will find our recommendations helpful.

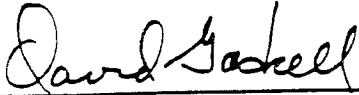
Sincerely,



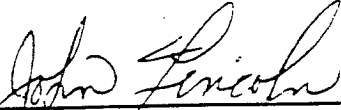
David Gaskell
Chairman

Attachment

Agricultural Districts Review Panel Members



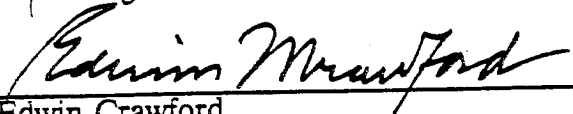
David Gaskell; Chairman
Executive Director, New York State Division of Equalization and Assessment



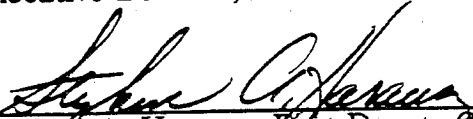
John Lincoln
Commercial Farmer, Assessor, Vice President - New York Farm Bureau



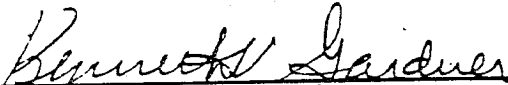
Jeffrey Haber
Executive Director, Association of Towns of the State of New York



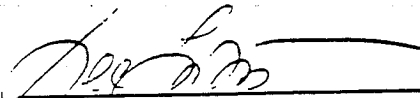
Edwin Crawford
Executive Director, New York State Association of Counties



Stephen A. Harausz, First Deputy Commissioner
New York State Department of Agriculture & Markets



Kenneth V. Gardner, Sr.,
Vice Chairman - Advisory Council on Agriculture



Lee Foster
Commercial Farmer

TABLE OF CONTENTS

INTRODUCTION		1
SUMMARY OF RECOMMENDATIONS:		3
A. LOCAL ASSESSMENT PRACTICES OF FARM IMPROVEMENTS, INCLUDING BARNS, SILOS, DRAINAGE, AND ROADWAYS		5
B. MINIMUM ACREAGE AND INCOME ELIGIBILITY		7
Other States' Restrictions		8
Gross Sales Requirement		11
Minimum Acreage Requirement		13
C. TYPES OF LANDS AFFORDED PROTECTION UNDER THE AGRICULTURAL DISTRICTS LAW		15
Christmas Tree Production		16
Aquaculture		18
Honey and beeswax production		19
Equine Operations		20
Conservation Reserve Program		22
Federal Farm Support Programs and Acreage Reduction		25
D. LAND CLASSIFICATION SYSTEM FOR INDEXING ORGANIC SOILS BASED ON PRODUCTIVITY		28
E. APPROPRIATENESS AND EFFECTIVENESS OF SANCTIONS		29
F. OTHER ISSUES		35
Soil & Water Conservation District Staff Development		35
Agricultural District Maps		35
Program Data For Analysis		36
January 1991 Report of the Panel		38
APPENDIX		39

LIST OF TABLES

Table 1.	Preferential Assessment of Agricultural Land: Other States' Acreage and Income Requirements	9
Table 2.	Minimum Gross Sales Requirement Adjusted by Producer Price Index for Farm Products	12
Table 3.	Acreage Idled by Federal Farm Programs	26
Table 4.	Penalty Provisions of the Agricultural Districts Law	30

INTRODUCTION

As indicated in the declaration of intent¹, the purpose of the Agricultural Districts Law is to provide "a 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". The Law authorizes non-tax provisions which limit governments' ability to impose restrictive ordinances and exercise its eminent domain powers, and which protect farmers from nuisance suits brought by non-farming neighbors. The Law also authorizes special property tax provisions.

The Agricultural Districts Law has been amended several times since its original enactment in 1971. Most of the amendments have focused on the tax provision known as the Agricultural Assessment Program. That program provides a method for the assessment of qualified agricultural land based on soil productivity and capability, rather than on the basis of the prevailing market-based ad valorem system.

Most notable of the Agricultural Districts Law amendments have been Chapter 79 of the Laws of 1980 and Chapter 774 of the Laws of 1987. Both amendments revised the methodology used to arrive at agricultural assessment values, and resulted from the recommendations made in studies commissioned by the State. Chapter 774 of 1987, which codified the recommendations of the Governor's Task Force on Agricultural Value Assessment, commissioned the present study.

Whereas earlier studies have focused on the means of establishing program benefit levels, a more comprehensive program review has not been undertaken since its original enactment.

¹ §300 of the Agriculture and Markets Law

Section 15 of Chapter 774 directed the Agricultural Districts Review Panel to:

"review the agricultural districts program, with respect to the changing nature of agriculture in New York state, in the following areas: (a) local assessment practices of farm improvements, including barns, silos, fences, drainage and roadways; (b) the minimum acreage and income criteria which establish eligibility for the tax benefits of the program; (c) the types of lands afforded protection under the agricultural districts law in view of the substitution of equine operations or intensive agricultural operations for dairy or traditional crops in areas experiencing development; (d) the feasibility of using a land classification system for indexing organic soils based on a productivity measurement; and (e) the appropriateness and effectiveness of the sanctions which are intended to encourage continued agricultural use."

The findings of the Panel's review are included in this report. The Panel is also directed to issue a second report, in January 1991, reviewing the impact of the Agricultural Assessment Program, as revised by Chapter 774, on the farming community and local governments, and also reviewing the effectiveness of the revised program in furthering the protection of agricultural lands.

The Panel began its deliberations on November 30, 1988, and has convened five times to date. The recommendations contained in this report relate primarily to the areas shown in the statutory excerpt above, however, the Panel also explored and made recommendations in some other known problem areas. The small number of issues identified by the Panel in this effort testifies to the vision of the framers of the original Agricultural Districts Law.

This report is organized in sections which correspond to the separate areas of inquiry assigned to the Panel, plus an additional section discussing the other issues identified. The summary of recommendations which follows, is keyed to the report sections which contain the related discussion and, wherever possible, suggested language for statutory revision. In addition, the report includes an appendix with letters from individual Panel members who wished to more fully explain their positions.

SUMMARY OF RECOMMENDATIONS:

- A. • Farm property valuation training opportunities for assessors should be enhanced. In those jurisdictions with agricultural districts, satisfactory completion of the Farm Appraisal course should be required.
- A training course related to the Agricultural Assessment Program should be developed and made available to assessors on a continuing basis.
- B. • Income and acreage eligibility criteria associated with the Agricultural Assessment Program should be continued at existing levels.
- C. • Agricultural Assessment eligibility should be extended to:
- Christmas tree operations;
 - Lands idled through participation in federal conservation reserve and set aside programs; and
 - Lands necessary for two types of horse boarding operations -- (a.) those specifically and exclusively related to qualified horse breeding farms, and (b.) those that produce crops which if sold would satisfy the gross sales requirement.
- Income from the production of honey and beeswax should be counted towards meeting the gross sales requirement.
 - Data relating to the aquacultural industry should be gathered for further review to ascertain whether or not eligibility for agricultural assessment is appropriate.
 - Income derived from the federal conservation reserve program should qualify towards satisfaction of the gross sales requirement of the Agricultural Assessment Program.
 - Income derived from the federal set aside programs should qualify towards satisfaction of the gross sales requirement of the Agricultural Assessment Program.

- D. • A land classification system for indexing organic soils based on productivity should not be developed.
- E. • The penalties applicable to converted lands should remain unchanged from the levels established in the 1987 and 1988 program amendments.
 - Soil and Water Conservation District offices should provide information related to partial parcel conversions to the assessor on request.
 - Procedures should be instituted to allow the voluntary early payment of penalties.
- F. • A seminar related to the Agricultural Assessment Program should be developed and made available to Soil and Water Conservation District Staff on a continuing basis. This should be a cooperative effort between the Department of Agriculture and Markets, the Division of Equalization and Assessment and the State Soil and Water Conservation Committee.
 - Agricultural district boundaries should be delineated on tax maps and follow parcel boundaries wherever possible.
 - A comprehensive database related to lands benefiting from the Agricultural Assessment Program should be developed to provide accurate, current information about the program. The State Soil and Water Conservation committee is urged to work together with the Department of Agriculture and Markets and the Division of Equalization and Assessment to develop a system for Soil and Water Conservation District office use in administering and providing information about the program.

A. LOCAL ASSESSMENT PRACTICES OF FARM IMPROVEMENTS, INCLUDING BARNs, SILOS, DRAINAGE, AND ROADWAYS

Lack of uniformity in assessing practices is perplexing to landowners such as farmers who may have property in several towns and even different counties. Such landowners must deal with different assessors who may interpret laws differently and use differing valuation approaches. The Panel voiced concerns about local assessment consistency, particularly in relation to administering the Agricultural Assessment Program. For example, concern was expressed about the potential for assessors increasing the value of buildings to offset the reduced valuation of land resulting from agricultural assessment. The commonplace assessment of farm improvements at cost, even though they contribute something less to a property's market value, was also noted by the Panel. As it looked for means of addressing these concerns, the Panel recognized that New York's strong home rule tradition reduces the options available. That tradition means that only consistency within each jurisdiction, rather than between jurisdictions, can be expected. The Panel believes, therefore, that the best way to address any inconsistency in the administration of the real property tax and in valuation of farm property is through increased efforts to educate assessors.

In the past few years, several legislative amendments have focused on the importance of training and the increased professionalism of assessors. To hold office in New York, each assessor is now subject to training requirements and must attain certification through satisfactory completion of a core of courses, including some electives. Failure of an assessor to complete the required training is grounds for removal from office. Among the elective courses offered to assessors is one on farm appraisal. The Farm Appraisal course covers a variety of techniques used to value farm land and improvements. The concept of contributory value is stressed to assessors in that course because it is fundamental to accurate farm appraisal. This concept is based on the fact that the cost to build a farm improvement almost always exceeds its contributory value to the overall

property. It is important to note, however, that completion of the Farm Appraisal course, or any other training, does not guarantee that assessments will be determined as taught.

The provisions of the Agricultural Assessment Program are presently covered, to a limited degree, in one of the required assessor training courses. During 1987, a special Agricultural Assessment Program seminar was developed to update assessors on the major program changes that occurred in that year. Over 700 assessors attended those training sessions. Judging by the attendance and comments heard from assessors, there is a need for this type of training on a regularly scheduled basis.

Panel Recommendation

The Panel recommends that the Farm Appraisal course continue to be made available on as wide a basis as possible. The Panel further recommends that in assessing units containing an agricultural district, the Farm Appraisal course be made a mandatory requirement for assessor certification. In addition, the Panel recommends that workshops and training sessions be developed and held annually throughout the State on the implementation of the provisions of the Agricultural Assessment Program.

B. MINIMUM ACREAGE AND INCOME ELIGIBILITY

The minimum acreage and income requirements for participation in the Agricultural Assessment Program were set at their present levels in the original Agricultural Districts Law enacted in 1971. As indicated in the following excerpt, Governor Rockefeller vetoed earlier Legislation providing agricultural assessment in New York largely because such eligibility restrictions were lacking.

...[B]ecause the definition of "farmland" is so broad, the principal effect of the bill might be to encourage persons holding vacant land for speculative purposes to devote the land to a token and marginal farm use which would entitle them to a lower assessment under this bill. Not only would this raise everyone else's taxes, but also it would harm the farmer by inducing the supply of farm products produced by persons who have no real need or desire to make a profit from farming.²

Under the Agricultural Districts Law, the basis for determining whether or not lands qualify for agricultural assessment is found in the definition of "land used in agricultural production". That definition includes the twofold threshold of ten acres of land used for production of specified agricultural products with an average gross sales value of ten thousand dollars in the preceding two years. These restrictive conditions are designed to ensure that only lands associated with active, commercial farms enjoy program benefits. Part of the Panel's charge was to review the need for revision of the acreage and income requirements in light of the changes which have shaped New York agriculture in the years since 1971.

In early discussions, the Panel identified the need for information gathering in three related areas. First, the Panel reviewed the requirements of similar programs implemented in the other states. Second, the Panel reviewed data relating to the gross sales requirement to identify changes that have occurred in the value of farm products in the years since 1971. And third, the Panel

² New York State Legislative Annual - 1965, page 626

reviewed the available evidence relating to certain agricultural enterprises, requiring small acreage, to ascertain if such enterprises are being excluded.

Other States' Restrictions

Each state has some type of program for preferential taxation of agricultural land. While these programs vary in terms of how benefits are received, the Panel focused its analysis on each program's measures related to who (or what land) benefits. Table 1 summarizes the income and acreage requirements associated with each state's program. As indicated in that Table, there is great variation among the provisions used to restrict program participation. Nineteen states do not have specific statutory language for determining program eligibility. Rather, they include only general requirements such as "bona fide", "good faith", or "commercial" agricultural use to qualify. For example, Colorado requires use of the land for farm purposes to make monetary profit. Only four of the states in this category designate the specific official(s) involved in judging eligibility. The remaining thirty states, which do specify eligibility criteria, can be classified into three basic groups according to which requirements are applied to which owners.

One group, including three states, uses income or acreage minimums which are only imposed upon a subset of property owners. For example, Oregon and Wisconsin impose acreage or income requirements only upon lands which are not located in prescribed agricultural areas. Similarly, Georgia imposes the requirement that 80% of the owners income must be derived from agricultural production on the property, but only in the case of lands owned by family farm corporations rather than individual American citizens.

Table 1. Preferential Assessment of Agricultural Land:
Other States' Acreage and Income Requirements

State	<u>Acreage and Income Requirements for Program Eligibility</u>
Alabama	No acreage or income requirements specified.
Alaska	No acreage minimum, but owner or lessee must derive at least 10% of annual gross income from the land.
Arizona	No acreage or income requirements specified.
Arkansas	No acreage or income requirements specified.
California	Ten acre minimum if "prime", 40 acre minimum for "non-prime". One definition of "prime" land requires \$200/Acre in 3 of last 5 years.
Colorado	None, but requirements specify use of land for farm purposes to make monetary profit.
Connecticut	Eligibility standards left to assessors' judgement based on certain factors.
Delaware	Ten acre minimum or \$10,000 average gross in prior two years.
Florida	Appraiser determines if land is classified agricultural, which requires good faith commercial agricultural use of the land.
Georgia	Family farm corporations must earn 80% of the annual gross income from bona fide ag. pursuits on the property to qualify, otherwise no income or acreage requirements specified.
Hawaii	No income or acreage requirements specified for Use Value Assessment, however, to receive additional 50% reduction, property must be dedicated to agricultural use. Before dedication, the county director of taxation judges the suitability and economic viability of the land.
Idaho	Five acre minimum, unless actively devoted to ag. for 3 prior years and producing either 15% or \$1,000 of annual gross income.
Illinois	No acreage or income requirements specified.
Indiana	No acreage or income requirements specified.
Iowa	No acreage or income requirements specified.
Kansas	No acreage or income requirements specified.
Kentucky	Ten acre minimum if agricultural, five acre minimum if horticultural. Annual gross income requirements relate to those in place for other federal and state agricultural payment programs.
Louisiana	Three acre minimum or \$2,000 average gross in prior four years.
Maine	Ten acre minimum and \$1,000 + \$100/acre for each additional acre over 10, however, the total income requirement shall not exceed \$2,000.
Maryland	Eligibility determined by the State, but, if less than 20 acres, \$2,500 gross income may be required.
Massachusetts	Five acre minimum and \$500/year + \$5/acre over 5.
Michigan	Forty acre minimum or if 5 to 40 acres need \$200 per acre or if a specialty farm of less than 5 acres need \$2,000.
Minnesota	Ten acre minimum and either 1/3 of owners total family income or \$300 plus \$10 per tillable acre.
Mississippi	Eligibility determined by the assessor.
Missouri	No acreage or income requirements specified.
Montana	No acreage minimum, but \$1,500/yr. income required.

Nebraska	Eligibility determined by assessor, but \$2,500 required in prior year.
New Hampshire	Eligibility criteria determined by Commissioner of Agriculture and the Current Use Advisory Board.
New Jersey	Five acre minimum and \$500 + \$5/acre over 5 in two prior years.
New Mexico	No acreage or income requirements specified.
No. Carolina	Ten acre minimum and \$1,000/year average in 3 prior years.
North Dakota	Ten acre minimum unless contiguous, but no income requirement.
Ohio	Thirty acre minimum or if less than 30 acres need \$2,500/year average in 3 prior years.
Oklahoma	All property valued at use value - no special requirements.
Oregon	If not in an exclusive agricultural zone then need \$500 if less than 5 acres, or \$100/acre if between 5 and 20 acres, or \$2,000 if over 20 acres.
Pennsylvania	Farmland defined as 20 acre minimum, but eligibility requirements specify either 10 acres or \$2,000 anticipated income.
Rhode Island	Ten acre minimum, but exceptions allowed depending on criteria established by the Commissioner of Environmental Management.
So. Carolina	No acreage or income requirements specified.
South Dakota	Lands must meet two of the three following criteria: at least 5 acres of unplatted land; either 1/3 of owners total family income or \$2,500 derived from the land in 3 of the last 5 years; or land must be actively devoted to agriculture.
Tennessee	Fifteen acre minimum and the assessors judgment of qualifying use.
Texas	No acreage or income requirements specified.
Utah	Five acre minimum and \$1,000 per year.
Vermont	Twenty-five acre minimum unless alternative requirements satisfied. For example, \$2,000 in 1 of 2 or 3 of 5 prior years would qualify a property.
Virginia	Five acre minimum and locality must have a land use plan in effect.
Washington	Twenty acre minimum, or if 5-20 acres need \$100/acre, or if less than 5 acres need \$1,000 per year in 3 of last 5 years.
West Virginia	Five acres or more need \$1,000 per year, less than 5 acres need \$500.
Wisconsin	If not located in a county with a certified agricultural preservation plan or exclusive agricultural zoning then 35 acres and \$6,000 in prior years or \$18,000 in prior 3 years required.
Wyoming	No acreage or income requirements specified.

Source: State Laws Relating to Preferential Assessment of Farmland, published by the U.S. Dept. of Agriculture, Economic Research Service, Natural Resource Economics Division.

Another group, including twenty states, imposes acreage or income requirements upon all landowners involved. Some of these states show high qualifying acreage, however, if specified income levels are met, parcels can qualify regardless of size. For example, Ohio requires 30 acres of land, unless an average annual income of \$2,500 can be shown in the prior three years. Similarly, Delaware falls in this group with the requirement of either 10 acres of land or \$10,000 average annual gross income in the prior two years.

The last group, including seven states, imposes both acreage and income requirements upon all landowners as is the case in New York. None of the states in this group are as restrictive, particularly with respect to income, as New York. In four of the states, the income requirement is determined by the number of acres involved. It is theoretically possible for the income requirement in three of these states to exceed \$10,000, but only with exceptionally high acreage. For example, Massachusetts and New Jersey programs would require more than \$10,000 of income to qualify properties of more than 1,905 acres. In Minnesota, a property exceeding 980 acres would require more than \$10,000 of income unless the alternative standard of 1/3 of total family income were met.

The Panel's analysis of other states' programs concluded that New York is currently at the more restrictive end of the spectrum in terms of acreage and income requirements used to qualify agricultural properties for preferential tax treatment.

Gross Sales Requirement

The \$10,000 gross income requirement from sales of qualified products has not been changed since the original enactment of the Agricultural Districts Law in 1971. In reviewing the

relevant changes that have occurred in New York agriculture in the intervening years, the Panel explored several alternative data sources. Since New York uses a gross income figure, the analysis was not complicated by consideration of changes in the costs facing farmers. Rather, a measure of the changes in the value of farm products sold was sought. Because the period under review spans seventeen years with widely varying rates of inflation, the Panel ultimately chose the Producer Price Index for Farm Products as reported by the United States Bureau of Labor Statistics. Unlike the gross income figures available from the New York Crop Reporting Service, the Producer Price Index reflects changes in farm product price in constant dollars (i.e., subsequent to adjustment for inflation).

Table 2 presents the results of adjusting the original \$10,000 requirement by the annual change in the Producer Price Index for Farm Products for the period 1972 through 1987, the most current year available. According to the Table, the gross sales requirement should be updated

**Table 2. Minimum Gross Sales Requirement
Adjusted by Producer Price Index for Farm Products**

<u>Year</u>	<u>Percent Change in Index from Prior Year</u>	<u>Gross Sales Value</u>
1971	--	\$10,000
1972	+10.7	11,070
1973	+41.0	15,609
1974	+6.5	16,623
1975	-0.5	16,540
1976	+2.3	16,921
1977	+0.8	17,056
1978	+10.4	18,830
1979	+13.6	21,391
1980	+3.3	22,096
1981	+2.2	22,586
1982	-4.9	21,476
1983	+2.4	21,992
1984	+3.1	22,673
1985	-9.9	20,429
1986	-2.5	19,918
1987	+3.0	20,515

Source: U.S. Bureau of Labor Statistics, Producer Price Indexes.

to approximately \$20,000, to restore the same level of significance it had in 1971. However, the Panel recognized that a doubling of the eligibility threshold in one year could have serious consequences for many farmers in the State.

Minimum Acreage Requirement

Investigation of the need for revision of the minimum qualifying acreage concentrated on three sectors of the agricultural industry in New York -- poultry, nursery, and greenhouse enterprises -- which were identified in early discussions as potential problem areas. From time to time through the life of the Agricultural Assessment Program, claims have been made that these types of enterprises were excluded inadvertently simply by virtue of the fact that they often encompass less than 10 acres of land. This claim is buttressed by the fact that the definition of qualifying crops and livestock products included in section 301(2) of the Agriculture and Markets Law makes specific reference to the products of such enterprises.

Evidence gathered by the Department of Agriculture and Markets in response to the Panel's request indicates that poultry operations in New York have decreased in numbers significantly in recent years. However, this reduction is largely indicative of a concentration of production. The Department estimates that there are presently 50 poultry operations in the state, each with 3,000 or more layers. According to representatives of this industry questioned by the Department, the overwhelming majority of these operations encompass 10 or more acres.

The Department's data on nursery operations show that the overwhelming majority, 1,003 of 1,363, do not produce sales of a sufficient magnitude to qualify for agricultural assessment. The 360 remaining nursery operations, which had at least \$10,000 in sales, show an average size of 49 acres.

Of the three types of enterprises reviewed by the Panel, only greenhouse operations showed evidence of routinely encompassing less than 10 acres of land. However, the Panel recognized that such enterprises rely more on buildings than land and also that lands devoted to the processing or sale of eligible products are specifically excluded from the benefit of agricultural assessment. The Panel further noted that where land is only incidental to an operation, the benefit of agricultural assessment would be inconsequential.

Panel Recommendation

Based upon the evidence gathered and reviewed, the Panel recommends that neither the gross sales nor minimum acreage requirements warrant revision. While the data showed that a doubling of the gross sales requirement could be justified, the Panel decided against recommending such a move. That decision hinged upon the analysis showing New York already with the highest such requirement in the Country, and consideration of the purpose of the income requirement -- to identify bona fide farms. The Panel is confident that the original level set in 1971 continues to serve that purpose. Similarly, the Panel sees no sufficient problem with the existing acreage requirement.

C. TYPES OF LANDS AFFORDED PROTECTION UNDER THE AGRICULTURAL DISTRICTS LAW

Lands within Agricultural Districts are afforded several means of protection to encourage agriculture. In order for land to be eligible for agricultural assessment under the Agricultural Districts Law, it must (1) be located in an established agricultural district or be committed to continued agricultural production for eight years; (2) have been used for agricultural production for the preceding two years; (3) be at least ten acres in size; and (4) yield an average of \$10,000 per year from the sale of qualified agricultural products in the preceding two years. Section 301 of the Agricultural Districts Law lists the types of agricultural products which qualify under the definition of crops, livestock and livestock products. Farm woodland is also eligible for an agricultural assessment when it is used in conjunction with land used in agricultural production and does not exceed 50 acres per parcel. Support land is also eligible to receive an agricultural assessment.

The Department of Agriculture and Markets advised that over 8 million acres of land are now within established agricultural districts. From program data, it is estimated that approximately 2.7 million acres of agricultural land, farm woodland, and support land are benefitting from an agricultural assessment. Of this 2.7 million acres, it is estimated that more than 80 percent is within agricultural districts, with the remainder being individually committed lands.

While most agricultural enterprises are included within the scope of the Agricultural Assessment Program, there are some which are not specifically mentioned in the statutory definition of "land used in agricultural production", or its qualifying list of crops, livestock or

livestock products.³ The Panel undertook a review of the evidence related to lands used in conjunction with several enterprises not specifically addressed in the existing Agricultural Districts Law. In addition, the Panel addressed the treatment of lands enrolled in certain federal acreage reduction programs for purposes of agricultural assessment eligibility.

Christmas Tree Production

According to a 1988 report entitled "Research Needs of the Christmas Tree Industry in New York", New York was the sixth largest producer of Christmas trees in the nation with a production of approximately 1,400,000 trees harvested in 1983. The U.S. Forest Service estimated that there were 17,200 acres of Christmas trees in New York State in 1980.

Christmas trees are currently regarded as woodland products in the Agricultural Assessment Program. Therefore, lands devoted to Christmas tree production may be eligible to receive an agricultural assessment when they occur in conjunction with a farm operation that produces qualifying crops, livestock, or livestock products. In determining eligibility, however, only \$2,000 of the gross sales derived from Christmas trees, since they are currently considered a woodland product, can count towards the \$10,000 gross sales requirement. An enterprise using lands solely for the production of Christmas trees, therefore, is not eligible to receive an agricultural

³ The Panel discussed existing statutory provisions and why some types of enterprises are currently ineligible to receive an agricultural assessment. The Division of Equalization and Assessment has strictly construed the agricultural assessment provisions in a manner similar to that of exemption provisions in the Real Property Tax Law. Tax exemption provisions must be strictly construed and interpretations cannot be made to include activities not clearly identified in statute. The local government representatives agree with the Division of Equalization and Assessment in their construing of the Agricultural Assessment Program as providing an exemption for qualifying farmland through a preferential assessment. The representatives of the Department of Agriculture and Markets, the Advisory Council on Agriculture and the farm community object to classifying the Agricultural Assessment Program as an exemption program and the use of the term preferential assessment. This report avoids the use of these terms. It is important, however, in reviewing lands eligible for the Agricultural Assessment Program to understand the historic strict construction of the agricultural assessment provisions.

assessment. However, an argument for the consideration of Christmas trees as ornamental specialty or nursery products has long been made. In fact, under present statutory interpretation⁴, a Christmas tree which is dug for transplanting qualifies as an ornamental specialty or nursery product, while a Christmas tree cut off the stump is considered a woodland product. Furthermore, Christmas trees are included in lists of agricultural commodities and farm products elsewhere in the Agriculture and Markets Law⁵

The intent of the Agricultural Districts Law is to encourage land to stay in farming rather than be converted to nonagricultural uses. From this standpoint, as long as regular harvest occurs, Christmas tree production is fostering that statewide policy. With the local government representatives on the Panel dissenting, the majority of the Panel recommends that statutory language should be amended to allow Christmas tree operations to be eligible to receive an agricultural assessment in their own right. The local government representatives oppose the inclusion of Christmas tree operations since it would enlarge the fiscal impact of the program and does not involve a commonly understood farm product.

The inclusion of Christmas tree operations within the Agricultural Districts Law would best be accomplished by the addition of a new paragraph to §301(2) as follows:

"Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump."

⁴Opinions of Counsel, State Board of Equalization and Assessment, Number 7-11.

⁵See §§245(1) and 293(1) of the Agriculture and Markets Law.

Since Christmas trees are no longer to be considered a woodland product subject to the \$2,000 limitation on qualifying sales value, §301(3) should also be revised as follows:

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 used for the processing or retail merchandising of woodland products.

Aquaculture

Aquaculture has experienced some growth in New York State in recent years. Not surprisingly, it is difficult to relate aquacultural operations within the scope of the Agricultural Assessment Program because the existing land classification system is not designed to accommodate water based operations. Also, it appears that the aquaculture industry will be facility intensive rather than land intensive. Presently, the industry is still emerging and a small number of aquaculture producers exist -- thus limiting the Panel's ability to conduct meaningful analysis. Furthermore, this subject is complicated by questions relating to the treatment of baitfish production, which is regulated by the Department of Environmental Conservation.

The representatives of the Department of Agriculture and Markets, the Advisory Council on Agriculture, and the farm community believe that aquaculture is rightfully part of agriculture and should be included in the Agricultural Assessment Program. These representatives, however, acknowledge that existing soil classification and valuation concepts are not adequate or appropriate for aquaculture. In order to achieve inclusion of aquaculture in the Agricultural Assessment Program, therefore, further study and inventory of the industry would be required. The representative of the Association of Counties believes that aquaculture should not qualify and that no further study is warranted. The representatives of the Association of Towns and the Division of

Equalization and Assessment believe that further study and experience are needed before determining whether aquaculture should be included within the program.

The Panel is scheduled to file a further report in 1991, and recommends that in the intervening period the Department of Agriculture and Markets and Cornell University develop data on the aquaculture industry. The information gathered should relate to the identification and valuation of property typically associated with an aquacultural enterprise.

Honey and beeswax production

Over 7,000 beekeepers have hives in New York. It is estimated that less than 300 of the beekeepers are commercial operations. Oftentimes, the commercial hives require less than 1,000 square feet in space. Rarely would an apiary involve more than 10 acres.

Beehives are typically part of a larger agricultural operation and help supplement the income from other agricultural products. With the representative of the Association of Counties dissenting, the Panel recommends that income derived from the sale of honey and beeswax should be eligible to be included in achieving the \$10,000 income requirement. The Panel proposes that statutory sections on gross sales value and land used in agricultural production be clarified and, within the gross sales value definition, that the following addition be made:

"the proceeds from the sale of honey and beeswax may be used to satisfy the gross sales requirement where honey is produced by bees in hives located on land which is otherwise qualified as land used in agricultural production"

Equine Operations

The breeding and raising of horses is specifically included within the Agricultural Assessment Program. However, lands that are devoted to only the care of horses, i.e., a horse boarding operation, do not qualify. This is because the income of horse boarding operations is not derived through the sale of livestock or livestock products, but through the providing of a service for the care of livestock. Some panel members argued that a horse boarding operation meets the intent of the Agricultural Districts Law of keeping land in farming.

A primary problem relating to the inclusion of horse boarding farms exists in determining the income to be used in meeting the \$10,000 gross sale requirement. In most other instances, the \$10,000 is derived from the sale of an agricultural crop, livestock or livestock products. In this instance, there is no sale of an agricultural crop, livestock, or livestock product. Some of the panel members were especially concerned about the resulting exclusion of those horse boarding operations of a commercial nature. Presently, income from the sale of the horses of a qualified breeding farm will qualify the land used to raise the horses only if that land is owned by the breeding farm. However, oftentimes such breeding farms must rely upon others' land to raise the horses. This situation is somewhat analogous to the currently allowed eligibility of lands which are used by a qualified farm through a rental arrangement. Similarly, concern was expressed about the exclusion of lands which, though used in a horse boarding operation, would qualify if the crops produced were sold rather than consumed by the horses raised.

The representative of the Association of Counties opposes extension of the Agricultural Assessment Program to any horse boarding operations. The majority of the Panel members supports extension of agricultural assessments to only those commercial horse boarding operations

which separately meet the ten acre requirement and: (a.) are exclusively and specifically linked to a qualified horse breeding farm; or (b.) produce qualified products which, if sold rather than consumed by the horses, would satisfy the \$10,000 gross sales requirement. The eligibility envisioned by the Panel is further limited to only those operations' lands that are necessary for the care and maintenance of the boarded horses. In addition to the already mentioned opposition of the representative of the Association of Counties, the first type of expansion was opposed by the representative of the Association of Towns, while the second type of expansion was opposed by the Division of Equalization and Assessment.

To accomplish this expansion to limited horse boarding operations, the Panel proposes that a paragraph relating to each of the two types of qualifying operations be added to the land used in agricultural production section of the statute (§301(4)) as follows:

- A. "Land of not less than ten acres of a single operation for solely boarding horses of a commercial horse breeding operation, which does not independently satisfy the gross sales requirement but is utilized in such operation to produce crops, exclusive of woodland products, or is necessary for the care and maintenance of the boarded horses, where such land was so used in the prior two years in connection with a written boarding arrangement of one or more years."
- B. "Land of not less than ten acres of a single operation for boarding horses, which does not independently satisfy the gross sales requirement but is necessary for pasture and used to produce crops, exclusive of woodland products, utilized in such operation, where such land was so used for the preceding two years and currently is being so used, provided that the market value of such pasture crop or crops if sold would equal or exceed an average annual sales value of ten thousand dollars or more."

The gross sales value section proposed for the statute should also include the following addition:

"the market value of crops produced and used for the commercial boarding of horses may be included provided the boarding activities are carried out in conjunction with land which is otherwise qualified as land used in agricultural production."

Conservation Reserve Program

The federal Food Security Act of 1985 directed the USDA to establish a Conservation Reserve Program (CRP) designed to transfer cropland which is highly susceptible to erosion to permanent vegetative cover. The discussion of CRP program specifics which follows was excerpted from a recent publication of the Cornell Cooperative Extension.⁶

"The goal is to enroll 45 million acres in the CRP by the 1990 crop year. If this goal is achieved, the CRP will remove more than 10 percent of the total U.S. cropland base from active crop use for 10 years. The U.S. Department of Agriculture (USDA) is required by the Congress to define highly erodible land and tailor these definitions to implementation of the CRP program. Determinations of highly erodible land are currently focused on erosion potential in relation to the land's allowance average annual soil loss, as reflected in soil loss tolerances.

Under this system, soil erodibility is determined by dividing the potential average annual erosion rate of a soil unit by its soil loss tolerance. Soil erosion on New York cropland stems primarily from rainfall events.

About 1.2 million acres fall in the highly erodible category when these definitions are applied to the current New York cropland base. This highly erodible cropland accounts for 20 percent of total cropland and 70 percent of total gross soil erosion on cropland each year. According to the USDA, this land is a candidate for conversion to permanent vegetative cover because it has the requisite physical properties to erode at unacceptably high rates when actively cropped.

Several rules govern eligibility of both land and applicants for the CRP. In general, applicants must have owned or operated highly erodible cropland for three years to be eligible; applicants who control such land with a lease or rental agreement must show evidence that they will operate the land for the full term of a CRP contract. The USDA will deny eligibility to an applicant who acquires highly erodible cropland for the express purpose of obtaining government payments by enrolling it in the CRP.

Land eligibility depends upon cropping history in addition to soil erosion requirements. Highly erodible land must be in active crop production before the USDA will consider an application to retire it. For purposes of the CRP, active cropland is acreage which has been annually planted or considered planted to produce an agricultural commodity (other than orchards, vineyards or ornamental plantings) in at least two of the five crop years, 1981 through 1985. The USDA

⁶Policy Issues in Rural Land Use, Vol. 1, No. 3, July, 1988

now extends CRP eligibility to land in hay crops, even though hay production does not typically involve annual tillage operations.

Finally, eligibility must be determined on a field-by-field basis because highly erodible soils are often intermixed with soil units which are not erosion-prone. The USDA will consider fields which are "predominantly" highly erodible for CRP. The general rule is that a field comprised of two-thirds highly erodible soil is CRP-eligible.

Operators of highly erodible land that is CRP-eligible can submit a bid reflecting the annual rental payment required to retire their land for a 10-year period. The bid must be at or below a maximum acceptable rental rate. The USDA takes prevailing local rental rates into account when considering a bid. If accepted, the applicant agrees to implement a conservation plan to convert the highly erodible land to permanent vegetative cover for the contract period. Provisions are made for tree plantings, wild life plantings, filter strips and perennial grasses. Commercial use - including grazing, forage harvesting, and shearing or shaping of trees for future harvest as Christmas trees -- is prohibited during the contract period. Exceptions for commercial use are reserved by the USDA to allow a response to drought or other national emergencies.

In return, the USDA agrees to pay each participant an annual rental payment over the 10-year life of the contract. The USDA will also reimburse (cost-share with) the applicant for 50 percent of the expenses required to establish permanent vegetative cover under an approved conservation plan.

In New York, the USDA has finalized 1,083 contracts with farm operators in 46 counties to retire 40,317 acres for the six completed sign-up periods. This amounts to slightly more than 3 percent of New York's highly erodible land (compared with about one quarter nationally). Low participation compared with the U.S. average traces to regional differences in CRP enrollment. CRP acreage is concentrated in Western New York. Eastern New York counties account for 42 percent of eligible land but only 10 percent of CRP enrollment to date.

The average CRP contract involves 37 acres, showing that only a portion of a farm is eligible and even a smaller amount is typically signed up in the CRP (the average New York farm has 134 acres of cropland). For calendar 1986 and 1987, annual rental payments for New York producers enrolling land in the CRP averaged \$56.60 per acre, compared with the U.S. average of \$48.50 per acre. In addition, producers receive cost-share funds to help offset the expense involved in establishing and maintaining permanent vegetative cover on retired crop acreage."

The Panel believes that land placed in the CRP is analogous to support land, except that restrictions have been placed on the land. Furthermore, the purpose of the CRP is the wise management of farmland. The Panel unanimously recommends that land in the CRP be made eligible for an agricultural assessment. The statutory language for land used in agricultural

production, therefore, should be revised to provide eligibility for CRP land for an agricultural assessment. To accomplish this, the Panel recommends the following language:

"Land which is idled through participation in the conservation reserve program, established by the federal food security act of 1985 (Public Law Number 99-198) and, if subsequently extended in its current form, by the specific Act of Congress extending the program, which is part of land which is qualified for an agricultural assessment value".

A related issue involves the payments made for putting land in the CRP. The representatives of the Association of Towns, Association of Counties, and the Division of Equalization and Assessment believe that, since the land is removed from agricultural production for at least 10 years, the \$10,000 gross sales requirement should be met from the actual production of qualified agricultural products. Therefore, these members recommend against inclusion of the payments received as qualifying income. However, the majority of the Panel believes that all land related income should be included in meeting the \$10,000 requirement. This later belief is also supported by the fact that all government payments received by farmers are included in determining the income which ultimately is capitalized into the agricultural assessment values.

To accomplish this, the Panel recommends that the statutory section proposed for gross sales value include the following language:

"There may be included payments made with respect to land idled through participation in the conservation reserve program, established by the federal food security act of 1985 (Public Law Number 99-198) and, if subsequently extended in its current form, by the specific Act of Congress extending the program."

Federal Farm Support Programs and Acreage Reduction

Pursuant to the Food Security Act of 1985 and previous federal legislation, farmers participating in federal farm support programs are often required to set-aside land from normal production. Under the 1985 Act, the Secretary of Agriculture may establish levels of acreage reduction in programs referred to as the acreage conservation reserve (ACR), paid land diversion and set-aside.

Diverted acreage must, under normal conditions, be devoted to approved conservation practices. For example, ACR lands may be planted to an approved cover crop or a small grain crop that is disposed of before harvest for crop residue. When planted to a cover crop defined as hay or similar grasses, harvest may not occur without specific permission. The conditions for such permission may be a declaration of a severe drought as occurred in 1988.

Participation in federal farm support programs which require adherence to acreage reduction or set aside programs allows farmers to be eligible for commodity loans and deficiency payments. Price support commodity loans enable farmers to hold their crop for sale at a later date, usually within the marketing year. Deficiency payments are government payments made to participating farmers based on the difference between the target price of a commodity and market price or loan rate, whichever is higher. Similarly, the ACR program provides for two forms of payments, a deficiency payment and a diversion payment. The deficiency payment is based on the difference between the target price per bushel of a seed crop and what the farmer actually receives. The diversion payment is made for removing land committed to the ACR program from the production of wheat, feed grains, cotton, or rice.

The level of acreage reduction is established annually by the U.S. Department of Agriculture based on the supply-demand outlook and guidelines established under the Food Security Act. Presently, in order to qualify for the ACR program, land must have been seeded for crop production for two of the last three years and constitute 10% of the base acreage. The land to be committed to the program must be signed up annually. Land already in the CRP cannot be committed to the ACR program. The level of reduction may change annually and the producer may or may not participate in any given year.

The amount of acreage reduction in New York for 1987 and the preliminary figures for 1988 are shown in the following table.

Table 3. Acreage Idled by Federal Farm Programs

<u>Commodity</u>	<u>1987</u>	<u>1988 (preliminary)</u>
Corn	253,104	284,362
Sorghum	24	62
Barley	5,042	4,968
Oats	17,872	7,793
<u>Wheat</u>	<u>58,865</u>	<u>56,737</u>
Total	334,907	353,922

Because of annual variations, the effect of federal acreage reduction program enrollments on the eligibility of land for agricultural assessment is difficult to predict. Nevertheless, it is possible that the same acreage may be set aside for several years in a row which would disqualify it for agricultural assessment. The Panel believes that, given the fact that land idled through annual federal program sign-ups will ultimately continue in agricultural production and the specter of additional year to year administrative problems for assessors, such land should specifically be made

eligible for agricultural assessment.

Payments received for participation in the federal acreage reduction programs vary annually and are directly related to prices and agricultural production. The Panel unanimously concluded that these payments should be included in meeting the \$10,000 income requirement. To accomplish this, the Panel recommends that the statutory section proposed for gross sales value include the following language:

"There may be included payments made with respect to land idled through participation in federal farm support programs, established by the federal food security act of 1985 (Public Law Number 99-198) and, if subsequently extended in its current form, by the specific Act of Congress extending the programs."

The land used in agricultural production section of the statute should also include the following addition:

"land which is idled through participation in federal farm support programs, established by the federal food security act of 1985 (Public Law Number 99-198) and, if subsequently extended in its current form, by the specific Act of Congress extending the programs."

D. LAND CLASSIFICATION SYSTEM FOR INDEXING ORGANIC SOILS BASED ON PRODUCTIVITY

Organic soils, also known as "black dirt" or "muck" exist in certain areas of the state. Approximately 20,000 acres of this highly valuable soil are presently being farmed. These soils represent less than one percent of all agricultural land receiving an agricultural assessment.

The present land classification system used in the Agricultural Assessment Program uses a productivity index to rate mineral soils based upon the ability of a given soil to produce corn and hay in an appropriate rotation. No such productivity index has yet been devised to rate organic soils. Instead, organic soils have been classified based upon their depth, flooding, and drainage as proxies for their productive potential. In its 1986 report to the Governor, the Task Force on Agricultural Value Assessment recommended that the Department of Agriculture and Markets investigate a methodology for indexing organic soils based on their productivity like mineral soils. Because no such index existed for organic soils, the Governor's Task Force had to use historical relationships in establishing distinct values for the four different classes of organic soils rather than the relationship of the productivity index used in valuing the mineral soil classes.

According to information gathered by the Department of Agriculture and Markets, it would be very costly to develop a productivity index standard for organic soils. Cornell agronomists have estimated that the development of such an index would require the investment of five years and \$500,000. The Panel is not aware of any complaints regarding the present valuation of organic soil. It is possible that this results from the fact that 1988 was the first year for using the new valuation methodology. However, the Panel believes the current methodology is satisfactory, particularly given the cost and time required to devise an alternative. The Panel, therefore, recommends against the development of a land classification system for indexing organic soils based on productivity.

E. APPROPRIATENESS AND EFFECTIVENESS OF SANCTIONS

The purpose of sanctions in the Agricultural Districts Law is to discourage the conversion of agricultural land to non-agricultural uses. The Panel is charged with studying the appropriateness and effectiveness of the sanctions currently in place.

Chapter 774 of the Laws of 1987 significantly revised the penalty provisions as recommended by the Governor's Task Force on Agricultural Value Assessment. These new provisions on sanctions were first applicable in 1988. However, a problem immediately emerged with the sanction provisions applicable to individual commitments involving more than one parcel. Under the revised provisions, the conversion penalty of a single parcel or part of a parcel resulted in a penalty being imposed on all parcels under the same ownership and subject to commitment. The potential severity of this type of conversion stimulated controversy and led to the introduction of legislation by Senator Kuhl and Assemblyman Bragman. In December, their legislation was enacted as Chapter 736 of the Laws of 1988.

Chapter 736 changed the penalty provisions for lands individually committed under the Agricultural Assessment Program and simplified the local administration of the program. The penalty calculation is now identical (except for multipliers) for both agricultural district land and individually committed land, thus eliminating the confusion caused by the previous differences in the penalty provisions. The new provisions are also intended to establish a more equitable and practical means of imposing the penalty. These changes reflect the original intent of the program by maintaining the more severe penalties for conversion of committed lands situated outside agricultural districts as compared to the penalty applicable to conversion of lands located in agricultural districts.

A comparison of the changes in the sanction provisions is shown below.

Table 4. Penalty Provisions of the Agricultural Districts Law

Version of Agricultural Districts Law	Penalty for land located within an Agricultural District	Penalty for land under an 8 year individual commitment
Original Law	Roll-back Tax equal to taxes saved for past five years, applicable only to that portion of land converted to nonagricultural use.	Penalty Tax equal to 2X the land taxes levied in the year following conversion against all of the parcels previously under commitment.
1987 Amended Version	Single Penalty Tax, 5X the taxes saved in the last year, plus 6% interest per year, compounded annually, not exceeding five years. This penalty applicable only to converted portion of land.	Same as for land inside an Agricultural District, except applicable to <u>all parcels</u> as described on the assessment roll that include land subject to any commitment.
Latest Amended Version	Same as 1987 Version	Penalty Tax equal to 9X the taxes saved in the last year the land benefitted from the program, plus interest of 6% per year compounded annually for each year an agricultural assessment was granted for up to eight years. Applicable only to that portion of land converted to nonagricultural use.

In addition, Chapter 736 contained several technical amendments to the Agricultural District Law.

These included:

1. An individual filing a commitment to obtain a real property tax exemption under the Agricultural Assessment Program on lands located outside an agricultural district must now include a single commitment for all of the lands used in agricultural production as a single farm operation.
2. The law now specifies that nothing should be construed to limit an applicant's discretion to withhold from commitment any portion of the land contained within a single farm operation, making explicit what formerly had been implicit.

3. The definition of the word **conversion** is now codified as an **"outward or affirmative act changing the use of agricultural land"** and further provides that non-use of such land does not constitute a conversion.
4. The tax lien resulting from the penalty tax now applies to the entire parcel, not just to the portion converted, making the same provision for both agricultural district lands as well as individually committed lands.
5. Individuals who have committed land on or after March 1, 1988 but before the December 16, 1988 effective date of this act, have the right to elect which penalty provisions will apply in the event of the conversion of a portion or all of their property under such commitment. At the time of a conversion, the assessor must calculate the penalty using both methods in order for the landowner to elect which penalty should apply. However, should such land again be committed in 1989, only the new penalty provisions will be applicable.
6. Assessors are required to report on an annual basis to the State Board any penalty taxes imposed under the program.

With the newness of the 1987 and 1988 amendments, the Panel believes it is premature to recommend changes in the level and amount of the sanctions. One of the farm representatives expressed concern that the multiplier of nine used in determining the new penalty for individual commitments may impair the purpose of the program. The 1988 amendments do require reporting of penalties imposed by assessors which should be helpful to the Panel when it conducts its review for the report required in 1991. Several administrative aspects of the sanction provisions, however, were identified by the Panel as areas of more immediate concern.

All land receiving an agricultural assessment must be soil mapped. When an entire parcel is converted to non-agricultural use, calculation of the penalty does not require review of the soil maps. However, when only part of a parcel is sold and converted the assessor does not know the specific soil classes for the acreage subject to penalty. Without this information, correct calculations of the penalty due cannot be made. Resolution of this problem requires staff of the Soil and Water Conservation Districts to review the soil maps for the portion converted and accurately apportion the soil breakdown of the entire parcel. Assessors must be able to request and receive

quick turnaround of this information from Soil and Water Conservation Districts. As long as Soil and Water Conservation Districts are willing to provide this service, no legislation is needed. Should assessors in future years have difficulty obtaining partial parcel information, legislation should then be considered.

The panel is also aware of problems with the timing of the penalty calculations and collections. Frequently, land is sold but not immediately converted. Title problems arise when conversion occurs at a time substantially later than the original transfer. The parties to a sale frequently want to know what the penalties will be so that they can be incorporated into the sales transaction. Assessors have received many requests from attorneys, title companies, and parties to the sale asking for estimates of penalty taxes and for early payment of the penalties due. One result of the lack of procedural guidelines is the holding of substantial funds in escrow awaiting eventual conversion and subsequent imposition of penalties.

To remedy this problem, the Panel recommends that the statute be amended to allow an option for early payment of penalties, even though actual conversion has not taken place. Such a voluntary option would be of benefit to all parties. When a property is sold, clear title could be passed at an earlier point in time. From a local government perspective, administration of the penalty is easier at the time of sale than at a subsequent date, plus the penalty is received earlier.

The Panel unanimously recommends that a provision for early penalty payment be added in law. The following language amending the Agricultural Districts Law would accomplish this objective.

1. Voluntary Penalty tax prepayment

An owner of land used in agricultural production that is benefiting, or has benefited, from an agricultural assessment value may prepay the penalty taxes that would otherwise be due had such land or a portion thereof been converted to use other than for agricultural production, in accordance with the following procedure:

- (a) the owner of the land shall notify the assessor;
- (b) the land shall be identified by the latest final assessment roll parcel description, and, if a portion of a parcel, the portion must be specifically identified and described;
- (c) the assessor shall calculate the penalty taxes due as if a conversion had occurred on the date of the notice submitted pursuant to paragraph (a) of this subdivision;
- (d) the assessor shall submit the calculation of penalty taxes to the owner and to the chief fiscal officer of the county;
- (e) the penalty taxes calculated in accordance with this subdivision may be paid to the chief fiscal officer of the county, and upon payment such penalty taxes shall be deposited to the credit of the appropriate municipal corporations and shall be considered a reserve in the next ensuing fiscal year;
- (f) upon prepayment of all penalty taxes, the chief fiscal officer of the county shall issue a certificate of cancellation, which certificate shall be filed with the county clerk in the same manner and place as the commitment was filed;
- (g) upon the filing of a certificate of cancellation the land may be converted without further penalty, and a commitment shall become null and void.

The Panel also discussed what could be termed "piecemeal conversion", where land in an agricultural district or subject to an individual commitment has been purchased by a developer and subdivided, or where an owner decides to develop the property himself by subdividing it. The subdivision of a parcel or parcels by obtaining the approval of local planning board or other authorized board does not constitute a "conversion" (as defined by chapter 736 of the Laws of 1988) of that property. The land may be sold by lots and only at the time construction begins on each of those lots is that lot deemed converted. A parcel subdivided into 25 pieces would thus require

25 penalty calculations over several years. Penalty calculations become administratively complex when a separate calculation must take place for each subdivided piece.

Although some members felt that the filing of a subdivision map was evidence of the likelihood of conversion of land out of agricultural use, the Panel was divided on what action, if any, should be taken. The local government representatives and the Division of Equalization and Assessment took the position that the actual conversion of one lot should be construed as the conversion of the whole parcel triggering the imposition of the penalty on all the subdivided lots of the parcel. They envision a situation where the farmer who received the original benefit of the agricultural assessment may no longer be around, and it is the developer who is making the land use decisions. Consequently, they believe that the land will remain in farming only until the time is right for further building. In this type of situation, the imposition and collection of penalties would be greatly simplified, particularly where the conversion of the entire property occurs over several years, if piecemeal conversion were construed as complete conversion of the subdivided lands.

The majority of the Panel, however, believes that all lots covered by a subdivision map should continue to receive an agricultural assessment until actually converted. The majority position was based on the fact that oftentimes lands covered by subdivision maps continue in agricultural use for many years whether or not they continue in farm ownership. In fact, some subdivision plans filed on Long Island more than 15 years ago have not yet resulted in the conversion of any land out of agricultural use.

F. OTHER ISSUES

Soil & Water Conservation District Staff Development

Aside from the need for enhanced assessor training opportunities discussed in Section A, efforts are needed to keep the Soil and Water Conservation District staff informed about changes in the Agricultural Assessment Program. Many times the Soil and Water Conservation District office technician is the first local representative that a landowner applying for an agricultural assessment meets. It is important that they have a good understanding of the Agricultural Assessment Program as well as the technical aspects of properly mapping the soils.

The Panel recommends that the Division of Equalization and Assessment and the Department of Agriculture and Markets staff work together to develop an annual seminar on the Agricultural Assessment Program for Soil and Water Conservation District staff. The two agencies should consult with the State Soil and Water Conservation Committee in developing and conducting the seminar.

Agricultural District Maps

The Agricultural Districts Law allows the formation of an agricultural district for eight, twelve or twenty years, however, to date no districts have been formed for terms beyond eight years. Agricultural district boundaries, therefore, are reviewed every eight years after original delineation. The location of agricultural district boundaries is important for administering the Agricultural Assessment Program and the other provisions and benefits that land is afforded under the Agricultural Districts Law. Presently, the mapping of agricultural districts is handled independently

by the Department of Agriculture and Markets. Agricultural districts could be delineated on tax maps prepared in each county in the same manner that other special districts and school districts are now noted, thus benefitting the assessor and other local officials who need to know where agricultural districts are located. In the absence of tax map based boundaries, it is difficult to ascertain if specific tax parcels are in or out of an agricultural district. As a result, administrative problems are created in determining which provisions apply to which lands. In some cases, tax maps are being used as a key reference from which the agricultural district maps are drawn.

The Panel recommends that it be required that all tax maps carry agricultural district boundaries on them. The Panel further recommends that, as part of each district's eight year review, district lines be amended so that no tax parcel is inadvertently divided by an agricultural district boundary. If a tax parcel is split by an agricultural district boundary, two separate tax parcels should be established whenever possible.

Program Data For Analysis

The Agricultural Districts Review Panel has further responsibility to review this program in more depth and issue a second report by January 1, 1991. That review will focus on the impact of program changes upon the farming community and local government real property tax revenues and administration. The effectiveness of the program in furthering the protection of agricultural land will also be reviewed at that time. In order for the Panel to adequately fulfill its responsibilities, current, accurate data related to the program will be required.

The amendments to the Agricultural Districts Law in 1988 now require the assessor to report annually to the State Board of Equalization and Assessment any penalty taxes that are levied

on parcels of land that previously benefitted from an agricultural assessment. That data will become available for the first time around December of 1989. From assessors' annual report data, we are able to observe the number of parcels receiving an agricultural assessment and the resulting reduction in the dollar amount of taxable property value. Since this program is designed to conserve and protect agricultural lands and retain lands in agricultural production, it is important that we measure this program in relation to the attributes of the land area affected. Currently, no precise data is available on the amount or type of acreage enrolled in the Agricultural Assessment program.

For every parcel that receives an agricultural assessment, a Soil Group Worksheet (Form RA-100) is prepared by the Soil and Water Conservation District offices. This basic document for the program has been entered into the Division of Equalization and Assessment's computerized files from 1981 through 1985. However, due to lack of personnel and budget constraints, this effort has not been continued. The information contained on the RA-100 form is among the most valuable in conducting any meaningful analysis of the program. The Panel recommends that the database developed from earlier years be built upon by Soil and Water Conservation District staff using microcomputers that are readily available in most district offices. Equalization and Assessment could develop software to automate the filing of the form for use by Soil and Water Conservation District staff. In this way the processing of RA-100 forms would be streamlined and several administrative improvements would result. For example, an on-line database of all parcels in this program would allow for simple implementation of changes in soil classifications, parcel sizes, and ownership, as well as providing the type of information the Panel needs to conduct a meaningful analysis of the program. The Panel recommends that the Department of Agriculture and Markets and the Division of Equalization and Assessment work together with the State Soil and Water Conservation Committee in developing and maintaining a current program database.

January 1991 Report of the Panel

The Panel's study of the implementation of the revised Agricultural Assessment Program, due January 1, 1991, will be necessarily limited in scope. Data relating to only the first two years of experience will be available for review within the allotted time frame. In fact, data relating to the fiscal impact of the program in the second year since revision, 1989, will not be available for the entire State until sometime in the autumn of 1990. Similarly, data relating to the incidence of conversion penalties is anticipated to become available in December of the year following the year in which the conversion occurred. It is also important to recognize that, aside from these process related delays, any failings in the data development efforts recommended in this report will impinge upon the scope and quality of the Panel's final report.

APPENDIX



New York State Association of COUNTIES

150 STATE STREET ALBANY NEW YORK 12207 (518) 465-1473
FAX: (518) 465-0506

PRESIDENT

Lucille P. Pattison
Dutchess

PRESIDENT-ELECT

James J. Snyder
Cattaraugus

VICE PRESIDENTS

David Kaufman
Sullivan

Robert C. Densberger
Chemung

DIRECTORS

James Brenner
New York City

Mary Ann Discenza
Cortland

Joseph J. Dolan, Jr.
Albany

Norman W. Dumas
Franklin

Sandra R. Galef
Westchester

Louis Heimbach
Orange

Clayton H. Osborne
Monroe

Lawrence Schwartz
Suffolk

Richard M. Shanley
Niagara

James W. Wright
Jefferson

DIRECTOR-AT-LARGE
Joanne D. VanZandt
Monroe

**EXECUTIVE DIRECTOR
AND ASSOCIATE COUNSEL**
Edwin L. Crawford

GENERAL COUNSEL
Herman S. Geist

TREASURER
Robert F. Cumer
Albany

February 28, 1989

David Gaskell, Chairman
Agricultural Districts Review Panel
New York State Division of Equalization & Assessment
16 Sheridan Avenue
Albany, New York 12210-2714

Dear Mr. Gaskell:

This letter is to provide the members of the Agricultural Districts Review Panel an explanation of the New York State Association of Counties position regarding the Panel's report and the recommendations contained therein.

In 1986, I served as a member of the Governor's Task Force on Agricultural Use Value Assessment, Chaired by Secretary of State Gail S. Shaffer. The Task Force had been charged with the responsibility of reviewing the viability and effectiveness of the provisions of the State's Agricultural Districts Law (Agriculture and Markets Law, Article 25-AA). In a report issued by that body in December of 1986, I stated in a letter analogous to this that although the State's policy with respect to the preservation of agricultural land was commendable, that the costs associated therewith were a "malignant tumor to the fiscal health of the counties, towns, cities, and villages of this great state."

Since that time, the forces at play within the State's financial and political economies have created an environment that is even more conducive to shifting the burdens of government rather than alleviating them. Witness the disastrous effects which the Governor's proposed 1989-90 State budget will have upon county government- \$440 million dollars of additional expense. Sad to say, but the dire prediction that I made in that 1986 letter - "without a strong State commitment . . . , the plight of local governments could all too soon mirror those of the farm community" - has become a nightmarish reality.

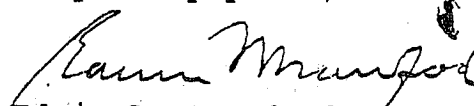
13th ANNUAL LEGISLATIVE CONFERENCE • March 12-14, 1989 Albany County

65th ANNUAL FALL SEMINAR • September 17-20, 1989 Sullivan County

Ultimately, after more and careful review of the agricultural districts program, I am convinced that the economic vitality of the farming industry within this state cannot be saved or even greatly enhanced at the expense of the local real property tax base. Consequently, NYSAC strenuously objects to the additional incursions that the Panel recommends upon the local tax base and we have dissented as specifically noted on many of the conclusions reached by the panel. Our point is simple and we hope that by objecting we have made it clear - the local real property tax is a regressive and inappropriate source of financial assistance for farmers.

In closing, I take this opportunity to express my high regard for your personal effort as chair of this Panel. It has been a privilege to work with you, your fine staff and the other members of the Agricultural Districts Review Panel. I thank you for your dedication and consistent attention to the people and local governments in this state.

Very truly yours,


Edwin L. Crawford
Executive Director

ELC:jlh

THE
ASSOCIATION OF TOWNS

THE
STATE OF NEW YORK

146 State Street
Albany, N. Y. 12207

A. KEVIN CRAWFORD
Counsel

G. JEFFREY HABER
Executive Secretary

ZELDA M. UTHE
Director

Telephone
Area Code 518 — 465-7933

February 28, 1989

David Gaskell, Chairman
Agricultural Districts Review Panel
New York State Division of
Equalization & Assessment
16 Sheridan Avenue
Albany, New York 12210-2712

Dear Mr. Gaskell:

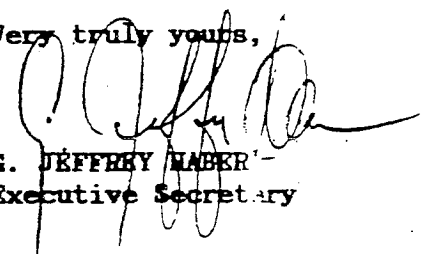
The purpose of my letter this date is to provide the Agricultural Districts Review Panel with a clarification of the Association of Towns' position with respect to the recommendation contained in the panel's final report.

The Association of Towns has always supported and continues to support the farmland preservation and protection goals of the Agricultural Districts Law (Article 25AA of the Agriculture and Markets Law). As I stated previously when a member of the Governor's Task Force on Agricultural Use Value Assessment in 1986, agriculture is the principle economic stimulus for many of our rural towns. Thus, support for that industry is a state policy we will continue to endorse. As I also pointed out at that time, the policy should not be supported and funded exclusively by the local real property taxpayer.

This report notes our disagreement on many conclusions reached by the panel. Our disagreement reflects our long standing policy that the needed fiscal support for the farming industry should come from sources other than the local real property tax base. In many agricultural areas, the exemption burden ends up right back upon those for whom it was intended to benefit. If significant revenues from other sources could be directed towards our farm economy, then, perhaps, we could significantly enhance the economic vitality of the farming industry.

It has been a pleasure and my privilege to again serve with you and the other members on this panel. I thank you for your assistance and attention to the concerns of local governments in New York State.

Very truly yours,


G. JEFFREY HABER
Executive Secretary

GJH:dmm

Lee Foster
Box 384, Main Street
Sagaponack NY 11962

February 27, 1989

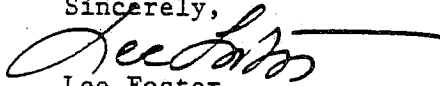
Report of the Governor's Agricultural Districts Review Panel

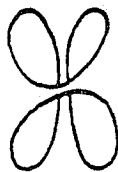
I have served only one month as a member of this panel and my input has been minor at best. I realize that the Agricultural Districts Law will continue to evolve relative to the revenue needs of the state, the economic policies of the government and the cooperation of the landowner.

I look forward to making much more of an addition to the next overview and am challenged by the prospects that agriculture in New York will continue to be pressured by urbanization and regulation.

I will be particularly interested in changes in the Agricultural Districts Law as they impact on the dual constraints of the environment and the economy. It will be a pleasure for me to more fully serve as a farm representative to the panel in its ongoing work.

Sincerely,


Lee Foster



516 537-1014



NEW YORK FARM BUREAU

Route 9W P.O. Box 992
Glenmont, New York 12077-0992
(518) 436-8495

February 28, 1989

Mr. David Gaskell, Chairman
Executive Director
NYS Department of Equalization & Assessment
16 Sheridan Avenue
Albany, NY 12210-2714

Dear Mr. Gaskell;

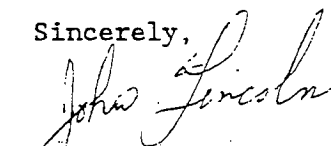
It has been my pleasure to serve on the Agricultural Districts Review Panel. I believe that the panel has addressed and resolved many issues of importance to farmers in a satisfactory manner. I sincerely appreciate the sense of cooperation and open dialogue that has occurred among the members of the panel and the willingness of the members and your department to provide helpful information which allowed us to make informed decisions.

I believe, however, I would be remiss if I did not emphasize a concern that is being expressed by Farm Bureau members who are participating in the individual commitment program in areas with high real estate and property tax values. New York Farm Bureau supported the enactment of legislation that clarified the penalty on conversion being applied only to the converted portion of land rather than the entire parcel. We believe this was important legislation. Our concern at this time, is for a farmer who wishes to retire from farming in an area where there exists a large amount of urban pressure and few incentives for farming. This type of farmer believes that under present laws, when the sale of his farm occurs, conversion to non-agricultural use will take place. However, because of the amount of penalty incurred this farmer must remain in the program for over eight years to have the benefits equal the liability. This is a lengthy commitment for a farmer approaching retirement age to make. Additionally, farmers who can not join an agricultural district due to acreage limitations or reluctance on the part of a county to form such a district are not afforded the protections of limitation of local regulation and benefit assessments or special ad valorem limits afforded to farmers located within a district. This erodes the incentive to become involved in the program and can weaken the state policy to preserve farmland.

I would like to urge members of the Task Force to be aware of these problems and develop information on the impact of the individual commitment penalty on a farmer's decision to maintain his land in agricultural production.

With warm regards.

Sincerely,


John Lincoln
Vice President

JL:lll