



Agriculture and Markets

MEMORANDUM

TO: County Agricultural and Farmland Protection Boards

FROM: Michael Latham, Director

DATE: August 24, 2016

SUBJECT: Agriculture and Markets Law (AML) §303-b – Inclusion of Viable Agricultural Land

Under AML §303-b (2)(a) County Agricultural and Farmland Protection Boards (AFPBs) are charged with making recommendations to CLBs *“as to whether the land to be included in the agricultural district consists predominantly of ‘viable agricultural land’ as defined in [AML §301(7)] and the inclusion of such land would serve the public interest by assisting in maintaining a viable agricultural industry within the district.”*

AFPBs provide important advice and recommendations to county legislative bodies (CLBs) on the creation, review and inclusion of land within county-adopted, State certified agricultural districts. AFPBs have a diverse membership, including at least four active farmers and six members that are county residents, and offer CLBs a unique, local perspective when making recommendations concerning requests for inclusion of land which is predominantly viable agricultural land within a certified agricultural district. AFPBs are well-suited to evaluate these requests, which are submitted on a parcel-by-parcel basis.

Evaluation Factors

AFPBs evaluate two factors when making recommendations: 1) Does the parcel of land consist predominantly of “viable agricultural land” and 2) Would the inclusion of the land serve the public interest by assisting in maintaining a viable agricultural industry within the district.

Viable Agricultural Land

Under AML §301(7), “viable agricultural land” is defined as “land *highly suitable for a farm operation* as defined in [§301(11)]” (emphasis added). Therefore, land need not be actively farmed to be considered for inclusion in an agricultural district. The term “farm operation”¹ is

¹ “Farm operation” was first defined in 1997 as part of a package of amendments to the Agricultural Districts Law (AML Article 25-AA) that removed language which required farms to meet the agricultural assessment acreage and income thresholds to be eligible for protection from unreasonably restrictive local laws under AML §305-a [and the former §305(2)]. These amendments allowed start-up and fledging farms to qualify for such protection. Prior to the amendments, some farms could not start up and begin to meet the agricultural assessment thresholds because farming was not allowed within the zoning district in which the land was located.

broadly defined to include 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. Commercial horse boarding operations, timber operations, compost, mulch or other biomass crops and commercial equine operations [defined in §301(13), (14), (16) and (17), respectively] are also included. A farm operation may consist of one or more parcels of owned or rented land; and such parcels may be contiguous or noncontiguous to each other.

The statutory definition of "farm operation" does not require minimum acreage and income thresholds for most operations.² Many viable farm operations are conducted on limited acreage (e.g., greenhouses, poultry and aquaculture); as well as on marginal lands (e.g., farmed deer on steep slopes and non-prime soils, etc.). Much of the land in a county could, therefore, be considered "highly suitable for a farm operation." Farm operations are much more than their land base, however; they rely on their owners and operators, including the ideas, skills and investment they bring, to become and remain viable.

Inclusion Assists in Maintaining a Viable Agricultural Industry

In light of the statutory definition of "farm operation," the more difficult task for AFPBs when making recommendations to CLBs is whether *"the inclusion of the land would serve the public interest by assisting in maintaining a viable agricultural industry within the district."* AFPBs, as a local advisory body, understand the agricultural industry within their county. AFPBs still need information about the land proposed to be included in a district, as well as the farm operation or start-up farm involved.

- Existing Farms - If an existing farm operation seeks inclusion in an agricultural district, certain information may make the AFPB's task easier, such as whether or not the farm is eligible for or receives an agricultural assessment; the farm's land base and sales; whether the land is subject to a conservation easement which includes agricultural uses as allowed uses; etc.
- Start-up or Fledging Farms - Start-ups and fledging farms may be more difficult to evaluate as they may have no, or limited, sales history. Therefore, information sought from these applicants may include land base, sales (if any), investment/planned investment, equipment, ideas/expertise/plans to become viable, whether subject to conservation easement, etc.

² "Commercial horse boarding operation" (CHB), "timber operation" and "commercial equine operation" (CEO) do have thresholds. CHBs and CEOs can qualify as farm operations during start-up, however.