4.4.15 Farmland

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4.4.15.1 Introduction
Agricultural production in New York State annually returns billions of dollars to the state’s farm economy. Approximately 25 percent of the state’s land area is used by more than 37,000 farms to produce a diverse array of farm products.

Laws exist at both the federal and state level to ensure that impacts to agricultural lands and operations are integrated into the project decision making process, and that impacts upon agricultural land are minimized to the extent reasonable. The impacts resulting from any action that causes the conversion of farmland to non-farmland must be considered. For example, Farmlands may be converted as a result of locating a new road in an agricultural area, rebuilding and/or enlarging an existing road, or adding an interchange from an interstate highway in a rural area. Conversion may indirectly result when land remaining in a tract taken for right-of-way can no longer be farmed because the project would 1) restrict access, 2) substantially reduce the remaining parcel to diminish the working efficiency based on field shape or type of equipment that is needed to be used for the crops grown and can no longer be used efficiently, or 3) is converted because of accessibility to a new highway.

The steps to be taken to assure consistency with the federal and state regulations include:
1) Determining whether or not the project requires review for potential farmland conversion;
2) Verifying the presence of federally protected farmland and state agricultural districts;
3) Determining the effect of the project alternatives on protected farmland, and if mitigation will be required;
4) Consulting with the United States Department of Agriculture and/or the New York State Department of Agriculture prior to acquisition of any protected farmland.

Thresholds for Applicability:

<table>
<thead>
<tr>
<th>NYSDOT Region</th>
<th>Federal Farmland Protection Policy Act</th>
<th>State Agricultural Districts</th>
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<tr>
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<td>1, 2, 3, 4, 5, 6, 7, 8, 9, 10</td>
<td>1, 2, 3, 4, 5, 6, 7, 8, 9, 10</td>
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Federal:
For Department projects, the Farmland Protection Policy Act (FPPA) applies to any federally funded project that requires the acquisition of any amount of new right-of-way for highway purposes. The environmental documentation for all federally funded projects with proposed right of way acquisitions must provide evidence of compliance with the FPPA as acquisition of farmland for highway purposes is considered a conversion to a non-agricultural use.

State:
The State Agriculture and Markets law requires a Notice of Intent be prepared, regardless of the funding source, when a project will result in the acquisition of land in excess of 1 acre from an area...
actively operated farm in a designated Agricultural District or in excess of 10 acres from within any one district.

The State provisions also apply if NYSDOT advances any amount of funds for the construction of commercial, industrial, water or sewer facilities to serve non-farm structures within an Agricultural District. This applies regardless of the acreage of any real estate taking.

There may be impacts to agriculture/farming that do not meet the thresholds for either the Federal or State Processes but may have an impact as defined by SEQRA. For example, the temporary closure of a bridge that is used by an existing farm to access and work their property on both sides of the bridge may have a significant impact on agricultural operations and also have a significant economic impact. A temporary off-site detour may mitigate impacts, or, could significantly increase impacts, depending on factors such as the length of the detour, number of growing seasons the detour will be in effect, the safety and accessibility of the detour route for farm vehicles, etc. Documentation of impacts for these types of situations should be considered.

4.4.15.2 Section Objectives
This section outlines procedures for compliance with federal and state provisions for farmland protection. The project staff will be able to ensure that agricultural lands and operations are integrated into the decision making process, and that adverse impacts upon agricultural land are minimized or avoided to the maximum extent practicable. Information is provided that defines the different types of farmlands, the procedures necessary to evaluate potential impacts, and also addresses mitigation strategies.

4.4.15.3 NYSDOT Policy
It is the policy of New York State Department of Transportation, in its programs, procedures, and operations, to preserve and protect New York State farmland to the extent practicable and feasible; giving appropriate consideration during the development of transportation projects to alternatives that could lessen adverse impacts to farmland.

4.4.15.4 Legal Basis
Abstract of Law/Regulation

The Federal Farmland Protection Policy Act (FPPA), Public Law 97-98, 7 U.S.C., 4201 requires federal agencies to consider the adverse effects their programs may have on the preservation of farmland, to review and consider alternatives that could lessen adverse effects, and to ensure that their programs are compatible with private, local and state programs and policies to protect farmland. The federal agencies must comply with the United States Department of Agriculture, Natural Resources Conservation Service (USDA-NRCS) guidelines set forth in 7 CFR Part 658.

New York State Agricultural and Markets Law, Article 25AA, Section 305(4) protects farmlands by requiring a Notice of Intent for acquisition of more than 1.0 acre from any actively operated farm in an Agricultural District or a cumulative total of more than 10 acres in any Agricultural District.
Other Related Regulations

**State Environmental Quality Review Act 17 NYCRR 15.14 (d) (7)(iii) & (iv)** For projects to be progressed as a SEQRA Type II action, the following criteria have to be satisfied: “(7) no more than minor alteration of, or adverse effect upon, any property, protected area, or natural or manmade resource of national, State or local significance, including but not limited to: (iii) prime or unique agricultural land, (iv) agricultural districts designated pursuant to article 25, section 203, when more than one acre of such district may be affected”.

**4. 4.15.5 General Methodology Analysis and Evaluation**

For both the Federal and State processes, farmlands analyses should be conducted during the Scoping and Preliminary Design stages of a project:
- Prior to the Environmental Determination
- Prior to the draft design approval document and
- Prior to any route selection or acquisition activities

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<thead>
<tr>
<th>PROJECT STAGE</th>
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<tr>
<td>INITIATION</td>
<td>IPP Preparers may reach out to Regional Environmental Unit to review the Initial Project Proposal to determine if there are project issues or circumstances that may arise such as community concerns, special technical activities and/or environmental issues that should be considered during the progression of the project. Document in IPP. During this stage the funding source(s) is (are) identified (e.g., fully/partially federally-funded or 100% state-funded).</td>
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<td><em>If using federal funds go to Farmland Protection Policy Act Procedure <a href="#">Step FF1</a>.</em></td>
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<td><em>If the project will only use state funding, go to <a href="#">Step SA1</a>.</em></td>
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Farmland Protection Policy Act Procedure

The federal process to assess farmland impacts is guided by provisions in the Farmland Protection Policy Act (FPPA) which calls for completing the Farmland Conversion Impact Rating Form. The scoring process is an iterative one, with both the NRCS and NYSDOT completing various portions of the form, with scores for different sections establishing thresholds for further action and helping to determine the relative value of the farmland and its priority for protection. The following table provides an overview of the process.

<table>
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<th>PROJECT STAGE</th>
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<tr>
<td>SCOPING</td>
<td><em>Existing Conditions/Affected Environment.</em></td>
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<td></td>
<td><strong>STEP FF1. Determine if FPPA defined farmland (collectively defined as prime, unique, or statewide or local importance) is within or adjacent to the project limits. The definitions are based upon soil types.</strong></td>
</tr>
</tbody>
</table>
|               | Typically, the Regional Environmental/Landscape Architecture Units undertake the review and provide a determination.
Maps showing the presence of FPPA defined farmland can be viewed using the NYSDOT Environmental Viewer or by using the Web Soil Survey which provides information on soil types and their classifications.

**TIP!** Farmland Information is located under Cultural Resources drop down menu on NYSDOT Environmental Viewer. Follow instructions on Web Soil Survey home page to obtain soils data.

If the project does not involve FPPA defined farmland, document this finding. See sample statement. No further federal review is required.

If the maps indicate there is FPPA defined farmland, proceed to step FF2.

**Step FF2. Determine if the project will potentially convert FPPA defined Farmland.**

Determine if the project has the potential to acquire right-of-way or affect agricultural operations (for example: restricting access to agricultural fields).

If the project has the potential to acquire right-of-way or affect agricultural operations, proceed to step FF3.

**ALERT!** If it is clear at Scoping that significant quantities of FPPA Farmland of a potentially relatively high value would be converted by the proposed project, early identification of alternative actions, locations and designs is recommended. The evaluation of alternative actions will be necessary to complete the FPPA process. See Step FF4 for more discussion on this topic. See PDM Exhibit 7.1 to determine if this modifies the project category.

If the project does not have the potential to acquire right-of-way or affect agricultural operations, document this finding. See sample statement. No further federal review is required.

**Step FF3. Verify development status of farmland**

A site visit should be made to verify that land mapped as farmland has not been converted to industrial, residential or commercial use.

FPPA farmland that has been developed or is committed to urban development or water storage is not regulated by the Farmland Protection Policy Act. Farmland already in development includes all land with a density of 30 structures per 40-acre area. Farmland already in urban development as described and not regulated by the FPPA also includes land:

1. identified as ”urbanized area″ (UA) on the Census Bureau Map,
2. or as urban area mapped with a ”tint overprint″ on the USGS topographical maps,
3. or as ”urban-built-up” on the USDA Important Farmland Maps. (Areas shown as white on the USDA Important Farmland Maps are not ”farmland” and are not subject to the Act).

Section 658.2 (a) of the FPPA provides more information to assist in defining development.
PRELIMINARY DESIGN

Determination of Potential Adverse Impacts and/or Beneficial Effects.

Step FF4. Determine whether FPPA defined farmland will be converted by any of the project alternatives

If there is FPPA defined farmland within the project area, determine for each feasible alternative whether the farmland will be converted to non-farmland. Conversion includes:
- acquisition of the farmland (direct conversion);
- farmlands that are not directly acquired but would no longer be capable of being farmed after the project work because access will be restricted; (indirect conversion)

TIP! FPPA defined farmland that is acquired for highway right of way purposes will be considered converted, even if it will continue to be farmed by agreement after the acquisition. The legal purpose is for highway use.

If no FPPA defined farmland will be converted by any of the project alternatives, no further compliance is required. No further review is needed for Federal FPPA Process. Document the determination that although FPPA Farmland is present, it will not be converted by the proposed project. See sample statement.

If FPPA defined farmland will be converted by the project, continue to Step FF6, below.

NOTE: If you are unable to determine if the project is impacting FPPA defined farmland, (most questions arise with indirect conversion) USDA-NRCS can determine impacts for you. Complete the NRCS Farmland Conversion Impact Rating-Information Form/Checklist and attach a USGS or aerial map outlining the perimeter of the project. Send one copy to the State NRCS-FPPA contact. The USDA-NRCS will make a determination within 10 days whether the project converts FPPA defined farmland. Once the determination is received back from USDA-NRCS and the project does NOT impact FPPA defined farmland, document the determination.

If the project does impact FPPA defined farmland, continue to Step FF5, below.

Step FF5: Complete and File the Farmland Conversion Impact Rating Form (AD 1006 or NRCS-CPA-106)
Complete Portions of Farmland Impact Rating Form

If it has been determined that one or more project alternatives will convert FPPA defined farmland, the Region must complete portions of the appropriate Farmland Impact Rating, as noted in the “TIP” above.

Initially, complete only Part VI of the Farmland Impact Rating Form. The completion of Part VI is for internal NYSDOT use only at this point to determine if you need to file the Form with USDA-NRCS. The Form is only filed with USDA-NRCS if the score in Part VI is 60 or more.

Scores are given based on an examination of the site or project area, the surrounding area, and the programs and policies of the local unit of government in which the project is located. Each project alternative should be evaluated individually, using the assessment criteria.

If the score in Part VI is less than 60, considering the maximum possible from the portion completed by USDA-NRCS in Part V is 100, the total project score will be less than 160. Based on the Act, if the score in Part VI is less than 60, no further coordination with the USDA-NRCS is required and the Farmland Impact Rating form need not be submitted to State NRCS FPPA contact. Document this in the project files and Design Approval Document.

File Impact Rating with USDA-NRCS

If the score in Part VI is more than 60, on a new clean form, complete only Parts I and III of the Farmland Impact Rating form. USDA-NRCS will fill out the remainder of the form. Also complete the NRCS Farmland Conversion Impact Rating–Information Form/Checklist and attach a USGS or aerial map outlining the perimeter of the project. Send one copy to the State NRCS FPPA contact. The USDA-NRCS has 10 days to respond from the date of receipt.

TIP! If the project is under a very tight schedule you may wish to send the form “certified mail – return receipt” because the 10 day deadline begins from the date USDA-NRCS receives the form with all required information. USDA-NRCS also accepts electronic transmittals and “delivery receipt” or “read receipt” can be requested when sending via email.

The USDA-NRCS will make a determination within 10 days as to whether the project converts FPPA defined farmland. If the USDA-NRCS determines that no FPPA defined farmland is proposed to be converted, the USDS-NRCS will return the form.

If the USDA-NRCS determines that no FPPA defined farmland is proposed to be converted, document this in the project files and Design Approval Document. No further compliance is required.
If the USDA-NRCS determines that the project will convert federal farmland, it will complete the form with Part II indicating farmland will be converted and return it to the NYSDOT Regional office. Where the USDA-NRCS has returned the form, continue to Step FF6, below.

**Step FF6: Alternatives, Mitigation and Proceeding with Farmland Conversion**

Where the Land Evaluation and Site Assessment score (Farmland Impact Rating Form) is 160 points or greater, DOT staff consider the following when making decisions on project proposals:

- Use of land that is not farmland, or rehab/re-use of existing structures;
- Alternative alignments that would avoid the farmland altogether, or convert fewer acres of farmland or take other farmland that has a lower relative value;
- Specific requirements of the proposed project and the extent to which an alternative fails to satisfy the specific requirements as well as the preferred alternative.

If avoidance is not possible, mitigation measures to minimize and/or reduce the impacts should be evaluated and, where appropriate, should be included in the proposed action. Potential mitigation strategies should be coordinated with the USDA NRCS field office and the affected landowner. Some potential mitigation strategies to consider include:

- Minimizing shoulder width to avoid the farmland or convert fewer acres;
- The construction of bridges or widening of existing highways. This may alleviate the need for a new roadway. (Widening of highways may also provide a safer travel route for farm vehicles that must travel along the roadway);
- Improvements to an existing or creation of a new farmland access road for farm equipment and vehicles. This can help protect water quality by reducing erosion and sedimentation, prevent damage to adjacent areas by confining vehicle movement to a specific area and provide a safe, stable surface for equipment;
- Installation of cattle (or other animal) crossings;
- Leasing roadside right-of-way for agricultural purposes where no immediate or near future need exists for the farmland’s use for transportation;
- Creation of a conservation easement on alternative farmland parcels;
- Planting of windbreaks or shelterbelts to protect crops from wind related damage, improve air and water quality and manage snow deposition;
- Improvements to fencing of agricultural properties and
- Staging activities to occur after the end of a harvest season.

After weighing alternative actions with the project’s purpose and need, consideration of the adverse effects, potential for avoidance and or minimization efforts and completion of the Farmland Impact Rating, the NYSDOT region makes a recommendation whether or not to proceed with the farmland conversion. NYSDOT must send copies of the documented decision to USDA-NRCS including a copy of the completed Farmland Impact Rating.

**Step FF7: Document project decision**

The completed Form AD 1006 or NRCS-CPA-10 and the analysis, evaluations and discussions from Step FF6 and the NYSDOT regional recommendation appear in:

- the project files (See sample memo)
- the appendix of the draft and final Design Approval Document
State Agricultural Districts

State Farmland and Agricultural Districts: When there will be acquisition of land exceeding 1.0 acre from an actively operated farm in a designated Agricultural District or in excess of 10 acres from within any one district, a Notice of Intent (NOI) must be submitted to the Commissioner of Agriculture and Markets and the County Agricultural and Farmland Protection Board. The NOI must be complete before ROW acquisition. However, a NOI is not required if the land owner signs a document waiving the provisions of law. The following table describes the process in more detail.

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<th>PROJECT STAGE</th>
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<tbody>
<tr>
<td>SCOPING</td>
<td><strong>Existing Conditions/Affected Environment</strong></td>
</tr>
<tr>
<td></td>
<td><strong>STEP SA1. Determine if there is an Agricultural District within the project area.</strong></td>
</tr>
<tr>
<td></td>
<td>Maps showing the presence of State Agricultural Districts can be viewed using the NYSDOT Environmental Viewer, the NYS Clearinghouse and Mann Library, Cornell University. Verify the presence or absence of Agricultural Districts.</td>
</tr>
<tr>
<td></td>
<td><strong>TIP! Farmland Information is located under Cultural Resources drop down menu on NYSDOT Environmental Viewer.</strong></td>
</tr>
<tr>
<td></td>
<td>Typically, the Regional Environmental/Landscape Architecture Units undertake the review and provide a determination.</td>
</tr>
<tr>
<td></td>
<td><strong>ALERT! DOT staff should contact the respective county planning office to determine if land was added to an agricultural district that is not indicated on the maps. Ag district map information provided to the NYS Clearinghouse, Mann Library or NYSDOT Environmental Viewer is approved / updated every eight years. County Agricultural District additions may be made on an annual basis and are not reflected in the information from the above sources.</strong></td>
</tr>
<tr>
<td></td>
<td>If the project does not involve an Agricultural District, document this finding. No further state review is required. See sample statement.</td>
</tr>
<tr>
<td>PRELIMINARY DESIGN</td>
<td><strong>STEP SA2. Determine whether the action requires filing a Notice of Intent and subsequent review in accordance with the New York State Agricultural and Markets Law.</strong></td>
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<td></td>
<td>Determine if the project will potentially acquire, or have interest in (e.g.: easements, rights of way, options, leaseholds, etc.), more than 1.0 acre from an actively operated farm within an Agricultural District, or more than 10 acres within any one Agricultural District. When acquiring land in excess of the Thresholds, the Agriculture and Markets Law requires the NYSDOT to choose alternatives that, consistent with other social, economic and other essential considerations, and to the maximum extent practicable, minimize or avoid adverse impacts on agriculture in order to sustain viable farm enterprise(s) within the Agricultural District. If avoidance is not possible, measures to reduce the impacts should be evaluated, and where appropriate, included in the proposed action.</td>
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</table>
If the project has the potential to acquire right-of-way, but the quantity will be less than the thresholds above, document this in the project files. A Notice of Intent does not have to be filed and no further state review is required. See sample statement.

If the project has the potential to acquire right-of-way, and the amounts will potentially exceed the thresholds above, document this along with potential alternative actions and mitigation measures that have been preliminarily identified and proceed to step SA3.

**Regardless of real estate takings**, if NYSDOT constructs or advances any amount of funds for the construction of commercial, industrial, water or sewer facilities to serve non-farm structures within an Agricultural District, the Notice of Intent must be filed. Proceed to Step SA3.

Please note, even if a Notice of Intent does not have to be filed, NYSDOT is still obligated to use all practicable means in undertaking the action to realize the policy and goals set forth in the Agriculture and Markets Law, Article 25-AA, Section 305(4) and to the maximum extent practicable, minimize or avoid adverse impacts on agriculture.

The Notice of Intent process is **not** required if:
1) The land owner signs a document (Waiver form) waiving the provisions of this law pursuant to 1 NYCRR Part 371, Section 371.8. Please note, there are two different waivers, one for individual land owners, one for corporate land owners.

2) The Notice of Intent process is also not required if the project is immediately necessary for the protection of life or property. The Commissioner of Agriculture and Markets must declare that there is an emergency. (Refer to Agriculture and Markets Law, Section 305.4(i). This is an extremely rare occurrence.

**STEP SA3: The Preliminary Notice of Intent**

**TIP!** As of this document date, NYS Department of Agriculture and Markets (NYS Ag & Markets) is allowing the filing of a Preliminary and Final Notice of Intent in one submission. As the law and regulations have not been revised, the Regional Environmental Unit Supervisor should contact NYS Ag & Markets and confirm this approach at this point in the process. Document the agreed upon approach in the project documentation.

Before filing can occur, impacts of project alternatives must be identified in order to know if the thresholds, listed above in SA2, will be exceeded. Therefore, filing will occur at some point during Scoping or Preliminary Design phases. However, only the approximate acreage of right-of-way takings or easements is known at this phase of the project. The approximate amount of acreage and potential project impact is sufficient to prepare the Preliminary Notice of Intent.
The preliminary NOI should contain the following information: (the following criteria can be found in 1 NYCRR Part 371, Section 371.6, and have been slightly modified to apply to NYSDOT projects):

(1) The following statement at the top of the first page: PRELIMINARY NOTICE OF INTENT TO UNDERTAKE AN ACTION WITHIN AN AGRICULTURAL DISTRICT
(2) The name and address of the NYSDOT office proposing the project.
(3) The county and number for each of the agricultural districts affected by the project.
(4) The municipality or municipalities within which the project will occur.
(5) A brief description of the project including its purpose, the type of action proposed (e.g., the acquisition of farmland or any interest therein by eminent domain or purchase; construction, or the advance of public funds for construction); and the number of acres of land or any interest therein, which is expected to be acquired from an actively operated farm or farms, within an agricultural district or a parcel or parcels of land within an agricultural district.
(6) A brief description of the agricultural setting and the location of the project site.
(7) A summary of any anticipated adverse impacts on farm operations and agricultural resources which are located within the district.
(8) The approximate date of commencement of the proposed action (either the acquisition of the land or the advance of public funds for construction).
(9) The name, title, address and telephone number of the individual who is authorized to respond to department inquiries concerning the preliminary notice; and the signature of the authorized individual, verifying that the information contained in the preliminary notice is truthful and accurate to the best of his or her knowledge and date signed.

TIP! Refer to NYS Ag & Markets Preliminary Notice of Intent Checklist to determine completeness of submittal.

Send the complete, original copy of the Preliminary Notice of Intent to:
Commissioner of Agriculture and Markets
New York State Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235

The NYS Ag and Markets will reply with a confirmation letter acknowledging receipt of the Preliminary NOI.

Also, send one complete copy of the Preliminary Notice of Intent to the County’s Agricultural and Farmland Protection Board and in the project documentation.

If the project is within a State Agricultural District, and a Notice of Intent will be filed, document either the intent to file or the actual documents in the scope approval document (and later in the Design Approval Document).

TIP! If a Waiver form is being used, keep in mind the following; if a project is acquiring farmland within an Agricultural District from more than one farm, and the total amount of farmland being acquired is less than 10 acres, but more than 1.0 acre will be acquired from one farm, a waiver need only be obtained from the property owner for which more than one acre is being acquired. However, if more than 10 acres of farmland will be acquired for the project from numerous farms within one Agricultural District, a waiver must be obtained for every farm from which land will be acquired or any interest therein regardless of the amount of acreage.
Step SA3. Preparing a Final Notice of Intent

At least 65 days before acquisition of the farmland, NYSDOT shall file a Final Notice of Intent (FNOI) with the Agriculture and Markets Commissioner and the County Agricultural and Farmland Protection Board. This will typically occur after Design Approval, during Final Design - Phase V, when detailed information is available on the actual project right-of-way takings or easements.

**ALERT!** The NOI process must be complete (Letter of Acceptance of FNOI received from NYS Department of Agriculture and Markets) before ROW acquisition may occur.

The Final NOI should contain the following information, (the following criteria can be found in 1 NYCRR Part 371, Section 371.7, and have been slightly modified to apply to NYSDOT projects):

1. This statement at the top of the first page:
   **FINAL NOTICE OF INTENT TO UNDERTAKE AN ACTION WITHIN AN AGRICULTURAL DISTRICT**
2. The name and address of the NYSDOT office proposing the project.
3. The county and number for each of the agricultural districts affected by the project.
4. The total number of acres in the agricultural district which will be affected by the project.
5. The location of the project, city, village or other municipality involved.
6. The name, address, telephone numbers including the county, town, and tax map numbers for the owners of all farms which will be affected by the project.
7. A detailed agricultural impact statement setting forth the following:
   - A detailed description of the proposed action.
   - A detailed description of the agricultural setting including:
     a. a tax map, or other map which sets forth the tax map numbers of all affected landowners as identified in Step 3(6), identifying the final proposed siting of the project, which is the subject of the action; and the surrounding land use, including agricultural land use by type of production (if tax maps are not available from your Regional Real Estate Office, they are available in the Town Tax Assessors Office);
     b. the total number of farms within the agricultural district which will be affected by the project;
     c. the total number of acres of land in farms within the agricultural district which will be affected by the project.
   - An assessment, in the form of a brief narrative, of the anticipated short-term and long-term agricultural impacts of the project. Short-term effects may include construction effects, such as temporary loss of land used in agricultural production, disruption of ongoing farm practices and the general economic impact of these effects. Long-term effects may include permanent loss of land used in agricultural production, the extent to which the project will cause or encourage non-farm development and the general economic impact of these effects. Include a brief narrative of concerns, if any, expressed by the farm landowners directly affected by the project. These may include concerns over access to the farmland.
   - Any adverse agricultural effects, including short-term and long-term effects, which cannot be avoided should the proposed action be implemented.
   - The reason(s) why the preferred alternative, route, and/or site was selected.
   - Any irreversible and irretrievable commitments of agricultural resources which would result from the proposed action if it is implemented.
Any mitigation measures proposed to minimize the adverse impact of the proposed action on the continuing viability of a farm enterprise or enterprises within the district (e.g., use of construction techniques which would avoid soil compaction, loss of topsoil, disturbance of the soil profile, and damage to farm drainage systems and conservation structures; restoration of land used in agricultural production which is affected by construction activities to its pre-construction condition to the maximum extent practicable; siting a facility in such a manner as to avoid or minimize adverse effects on farm operations; or the imposition of permit conditions or other binding restrictions that would avoid or minimize the potential for nonfarm growth inducement within the agricultural district, such as the imposition of service lateral restrictions for water or sewer lines).

Any aspects of the proposed action which would encourage nonfarm development. Include, where applicable and appropriate, a description of any roadways, water or sewer lines, gas lines, or commercial or industrial facilities which are proposed. If the proposed action may encourage nonfarm development, also provide the following information:

a. Local zoning restrictions which apply to the area.
b. The total number of applications for subdivisions of five or more lots submitted to the local government(s) in the locality where the action is proposed in the two years preceding the filing of the final notice of intent. Include the total number of lots involved and, for applications for subdivisions of 10 or more lots, provide a brief description of the project, including location and proximity to the proposed action.

The anticipated date of commencement of the proposed action.

The name, title, address and telephone number of the individual authorized to respond to department inquiries concerning the final notice.

The signature of the authorized individual, verifying that the information contained in the final notice is truthful and accurate to the best of his or her knowledge, and date signed.

8) If the action involves the advance of funds of any kind within an agricultural district for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities to serve nonfarm structures, provide, in addition to the information required by the previous subdivisions 1-7 of this section, the following additional information:

a. the source of the funds;
b. the name, address and telephone number of the recipient(s) of the funds.

File an original and four complete copies of the FNOI, including all maps, appendices and other information, with the commissioner of Ag & Markets. If the commissioner notifies the Department that the FNOI is incomplete, an original and four complete copies of the additional information or revised FNOI shall be filed with the commissioner. A complete copy of the FNOI, including all maps, appendices and other information, shall be filed with the county agricultural and farmland protection board. If additional information or a revised final notice of intent is filed with the commissioner, the party shall also file a complete copy of the information or revised final notice of intent with the board.

TIP! Refer to NYS Ag & Markets FNOI Checklist to determine completeness of submittal.
4.4.15.6 Interagency Coordination and Agreements

When the need has been determined by Section 4.4.15.1 and/or 4.4.15.2, the project staff is responsible for coordinating (undertaking the federal farmland and state farmland processes) with both USDA-NRCS and NYS Ag & Markets. Requirements for coordination with USDA-NRCS, although similar to those for NYS Ag & Markets are separate and distinct. Coordination with NYS Ag & Markets does not preclude the need to coordinate with USDA-NRCS. Projects which require coordination with USDA-NRCS will typically exceed the state acreage thresholds and require coordination with NYS Ag & Markets. The project staff is responsible for coordinating with both agencies. Typically, this coordination is handled by the Regional Environmental / Landscape Architecture staff. The two agencies do not coordinate with each other, even if the same farmland is affected.

4.4.15.7 Project Development and Construction Guidance

This section provides guidance for project developers to incorporate the federal and state processes followed in Section 4.4.15.5 General Methodology and Analysis into the Department’s process and documentation requirements as outlined in the Project Development Manual (PDM).

Project Scoping Stage

The scope approval document should summarize investigation into the presence of active agricultural operations, FPPA defined Farmland, and State Agricultural.

If the project is federally funded and is of a type where there may be acquisition of any amount of right of way, the project documentation must address the FPPA. Refer to FPPA Defined Farmland Sample Statements.

If it is clear at scoping the FPPA defined farmland was converted and developed (Step FF2), document this in the project files and scope approval document. Refer to Sample Statement.

If it is clear at scoping that significant quantities of FPPA Farmland of a potentially relatively high value have the potential to be converted by the proposed project, early identification of alternative actions, locations and designs is recommended. The evaluation of alternative actions will be necessary to complete the FPPA process. Document in the scope approval document that it will be necessary to coordinate with USDA-NRCS.
If the project is within a State Agricultural District, and it appears a Notice of Intent will be filed, document either the intent to file or the actual documents in the scope approval document (and later in the Design Approval Document).

Preliminary Design
The Design Approval Document (DAD) should summarize the results of early consultation with the USDA-NRCS and, as appropriate, State and local agriculture agencies where FPPA defined farmland or an agricultural district could be directly or indirectly impacted by any alternative under consideration. In general, the DAD should discuss or include the following items:

- Identification of the resource
- Will feasible alternative route locations or designs require converting or losing less farmland important to agriculture?
- What are the secondary effects of the proposed action on farmlands important to agriculture? For example, a secondary effect could be the extent the project will cause or encourage non-farm development and the general economic impact of these effects.
- What benefits are lost if farmlands important to agriculture are taken? For example, are there agricultural products that are in high demand or otherwise significant that will not be available for sale or use?
- A copy of the completed Farmland Impact Rating (Form AD 1006 or NRCS-CPA-106)
- Where the Land Evaluation and Site Assessment Score (from Form AD 1006 or NRCS-CPA-106) is 160 points or greater, alternative actions to avoid farmland should be discussed and if avoidance is not possible, measures to minimize or reduce the impacts should be evaluated.
- A summary of the farmland protection process, including correspondence from USDA-NRCS and the Regional recommendation.
- Any commitments to mitigation measures that will offset the loss of farmland.
- If the project is within a State Agricultural District, and a Notice of Intent process has been started (but not completed), include a statement indicating either the status of the process or the actual documents if the process has been completed.

Final Design (Phases V & VI)
If the Notice of Intent process is being followed for the acquisition of any agricultural district land, the process must be completed prior to ROW acquisition.

Generally, once the decision has been made to acquire any type of farmland, it is treated similarly to other types of new right-of-way on the contract drawings. However, depending on the location of the farmland, the type of work being undertaken and any mitigation that has been agreed upon, it may be necessary to label the plan sheets (typically General or Erosion Control) as to where the designated farmland is. Additional information that has been agreed upon such as stockpiling of soils, keeping within Right of Way limits during construction, not interrupting planting or harvesting activities, etc., may also be addressed in the contract documents. Refer to Sample Plan Notes in the Appendix.
Construction Considerations

If a project is located within an Agricultural District but impacts do not meet the thresholds for action, it may still be possible that during the construction phase, staging areas or temporary spoil or borrow areas identified by the contractor may negatively affect the production of the farmland for a period of time and/or cross the thresholds for action. It should be recognized that work within the Right-of-Way differs from work outside the right of way. Anything off the right-of-way will involve a separate agreement between the landowner and the contractor. It is rare when temporary or permanent takings so severely impact farm operations to the extent where it is an economic burden to the farmer. Staging activities to occur after the end of a harvest season is one possibility to minimize these types of impacts.

4.4.15.8 Operations Guidance

Generally, maintenance and operational activities taking place within the highway right of way are not regulated by federal or state farmland protection policies and procedures. For example, activities not usually regulated include work activities tied to the installation of or creation of living snow fences, such as the purchase of standing corn rows or temporary easements to install vegetated wind breaks.

Certain activities however, associated with operation and maintenance of the State highway system may potentially affect adjacent properties that are being used for agriculture. NYSDOT is obligated to use all practicable means in undertaking actions to realize the policy and goals set forth in the State Agriculture and Markets Law, Article 25-AA, Section 305(4) and to the maximum extent practicable, minimize or avoid adverse impacts on agriculture. Farmland of any type, particularly vineyards and land that is being farmed organically, is highly sensitive to the use of herbicides. Alteration of drainage patterns to improve highway conditions must consider the affects on adjacent agricultural properties. Work on culverts or bridges may affect adjacent agricultural lands by temporarily blocking access to fields.

The regional Maintenance Environmental Coordinator or other qualified staff should review all such activities that may affect adjacent properties particularly in areas where farming is taking place. While most operations activities that will affect an agricultural district fall below the thresholds where formal action must be taken, there are some best practice measures that may be considered as appropriate. Some examples include:

- Stockpiling and re-using soils
- Improving drainage
- Providing alternate means of access to a field
- Install windbreaks at another location on a farm for the mutual benefit of the farmer and NYSDOT.

In the event of emergencies that have the potential to affect active agricultural lands and farmland, consult with the Regional Maintenance Coordinator (MEC), USDA-NRCS and/or NYS Agriculture and Markets.
4.4.15.9 Flow Chart

The following flow charts graphically illustrate the typical review processes to be followed for:

1) The federal process to assess farmland impacts which is guided by provisions in the Farmland Protection Policy Act (FPPA) (as discussed in Farmland Protection Policy Act procedure)

2) The state Notice of Intent process which is required by the NYS Department of Agriculture and Markets, when a project will result in the acquisition of land in excess of 1 acre from an actively operated farm in a designated Agricultural District or in excess of 10 acres from within any one district. (as discussed in State Agricultural Districts)

The flow charts omit procedural details found within the text of this document. Therefore, the reader should not rely upon them as stand-alone guidance.
Farmland (FPPA Process)

**Legend:**
- Scoping Stage
- Scoping and/or Preliminary Design
- Preliminary Design
- Final Design

**Note:** The flow chart is a graphical presentation of the FPPA Defined Farmland process. Refer to subsection 4.4.15.5.1 for additional details about the required steps.

* Mitigation Commitments agreed to in Preliminary Design should be documented in the Design Report and should be incorporated into contract documents during Final Design.
Farmland

(New York State Process)

Review Farmland maps for presence of State Agricultural Districts

Will the project potentially acquire more than one acre from an active farm in an Ag district or more than 10 acres from any one district? OR will NYSDOT advance any funds for the construction of facilities to serve non-farm structures within an Ag District?

Yes

Will the landowner(s) sign a document waiving the provisions of the law?

Yes

No Preliminary or Final Notice of Intent (NOI) is required. Commissioner of A & M must concur there is an emergency.

No

Determine approx. amount of acreage affected and potential project impact

Prepare Preliminary Notice of Intent, File with Ag & Markets

Document in Design Approval Documents.

Prepare Final Notice of Intent, File with Ag & Markets

After FNOI is accepted, Regional Certification must be prepared and sent to Ag & Markets

NOI process is complete, ROW may be acquired

Document in the Project Documentation

End

Legend:

Scoping Stage

Scoping and/or Preliminary Design

Preliminary Design

Final Design

Note: The flow chart is a graphical presentation of the Federal Farmland process. Refer to subsection 4.4.15.5.2 for additional details about the required steps.

* Mitigation Commitments agreed to in Preliminary Design should be documented in the Design Report and should be incorporated into contract documents during Final Design.
**4.4.15.10 Local Project Guidance**

**FPPA defined Farmland:** Local projects funded with Federal Funds are subject to the Federal Farmland Protection Policy Act (FPPA). Refer to [Farmland Protection Policy Act Procedure](#).

**State Agricultural Districts:** Local projects that will result in the acquisition of land in excess of 1 acre from an actively operated farm in a designated Agricultural District or in excess of 10 acres from within any one district must prepare a Notice of Intent. Refer to [State Agricultural Districts](#).

The State provisions also apply if state or federal funds are used for the construction of commercial, industrial, water or sewer facilities to serve non-farm structures within an Agricultural District. **This applies regardless of the acreage of any real estate taking.**

**4.4.15.11 Appendices**

**A. Legal Citation**

- State Agriculture and Markets Law, Article 25AA, Section 305(4)
- State Agriculture and Markets Regulations, Part 371, Notice of Intent

**B. Definitions**

**Action** - the exercise of the power of eminent domain, to effect an acquisition, as that term is defined by Eminent Domain Procedure Law (EDPL) Section 103(A), through the filing of an acquisition map pursuant to EDPL Section 402, to acquire land in excess of one acre from any single actively operated farm located within an agricultural district; or land in excess of 10 acres located within an agricultural district; or the acquisition of land or any interest therein. An action could also be defined as the advance of finds to construct dwellings commercial or industrial facilities, or water or sewer facilities to serve non-farm structures within an agricultural district; or for the construction of dwellings, commercial or industrial facilities or water or sewer facilities to serve non-farm structures within an agricultural district.

**Agricultural District** - a district established pursuant to Article 25-AA of the Agriculture and Markets Law, Section 303 and Section 304.

**Alternative Actions** – required by the FPPA, involves the consideration of alternative sites, locations and designs that would serve the proposed project purpose but covert either fewer acres of farmland or other farmland of a lower relative value. For some projects with the potential for conversions of substantive amounts of farmland, the considerations of alternative actions may be jointly undertaken with the development and analysis of Feasible Alternatives under NEPA.

**Interest (there) In** - any right, title or estate in land, including but not limited to, easements, rights-of-way, fee simple, options, and leaseholds.
NRCS - Natural Resources Conservation Service

**Prime Farmland** – Land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion, as determined by the Secretary of Agriculture. Prime farmland includes land that possesses the above characteristics but is being used currently to produce livestock and timber. It does not include land already in or committed to urban development or water storage.

**Unique Farmland** - Land other than prime farmland that is used for production of specific high-value food and fiber crops, as determined by the Secretary of Agriculture. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables.

**Farmland of Statewide or Local Importance** – Farmland, other than prime or unique farmland that is of statewide or local importance for the production of food, feed, fiber, forage or oil-seed crops, as determined by the state or local government agency or agencies, using U.S. Department of Agriculture guidelines.

**Water Storage** - refers to land already taken out of farmable condition as it is tied to flood control structures in flood prone. It also refers to small flood or water retention or detention structures similar to those found near newer developments that are required to contain water on site. The land is no longer prime or unique. These water storage facilities would most likely be found in urban and suburban areas.

C. Contacts

State NRCS FPPA Contact:
Cathy Crotty, NRCS State GIS Specialist
Natural Resources Conservation Service
441 Salina St., Suite 354
Syracuse, NY 13202-2450

New York State Dept. of Agriculture and Markets: [https://www.agriculture.ny.gov/ap/agservices/agricultural-districts.html](https://www.agriculture.ny.gov/ap/agservices/agricultural-districts.html)

New York State Agriculture and Markets Process Contact:
Bob Somers
518-457-3738
bob.somers@agriculture.ny.gov

Contacts revised 2/5/2020
D. Sample Statements

Alert! Red text needs to be changed to reflect specific project. All statements should be reviewed and edited to reflect specific conditions of project.

FPPA Defined Farmland Sample Statements –

- [Use for projects with NO federal-aid]
The proposed project is 100% State funded therefore the Farmland Protection Policy Act does not apply.

- [Use for projects with NO FPPA defined farmland within the project area]
The proposed project has no FPPA defined farmlands so no further federal review is required.

- [Use for projects that will NOT convert FPPA defined farmland to nonagricultural use]
FPPA defined farmland is adjacent to (within) the project limits. The proposed project activities will not convert any prime or unique farmland, or farmland of state or local importance, as defined by the USDA Natural Resources Conservation Service, to a nonagricultural use.

- [Use for projects with FPPA defined farmland that has previously been converted to nonagricultural use]
Based on a field visit and review of GIS soils maps for XX County it has been determined that the preferred alternative will impact soils which normally would be considered prime or statewide important farmland soils but which have been converted to residential or commercial use. The project impacts and right of way takings have been minimized to the maximum extent possible while still meeting the project objectives. Since there will not be a conversion of any prime or unique farmland, or farmland of state or local importance, as defined by the USDA Natural Resources Conservation Service, this project is not subject to the Farmland Protection Policy Act.

- [Use for project that will NOT convert FPPA defined farmland to nonagricultural use (but may have temporary easements or similar)]
The proposed project activities will not convert any prime or unique farmland, or farmland of state or local importance, as defined by the USDA Natural Resources Conservation Service, to a nonagricultural use. While there is FPPA defined farmland within the project limits/adjacent to the project site, the proposed work will not result in any change in the existing conditions. No farmland will be taken out of service either permanently or during construction. It is anticipated that work will be performed during periods of low flow of the watercourse/stream/creek and will not interrupt the planting or harvesting activities in the district or on the farm.
• [Use for projects that MAY affect FPPA defined farmland]
Acquisition of prime or unique farmland, or farmland of state or local significance, may be required for this project. (Identify area and potential impacts). A site visit will be scheduled to determine whether the land has previously been converted to non-farm use. Completion of the Farmland Conversion Rating Impact Rating and its submission to the USDA Natural Resources Conservation Service (NRCS) may be required, as well as consultation with the State NRCS FPPA contact and a review of alternative actions that do not require farmland acquisition.

• [Use for project that will affect FPPA defined farmland]
The provisions of the Farmland Protection Policy Act (7CFR Part 658) apply to the proposed project. The proposed project will involve permanent conversion of some prime or unique farmland or farmland of statewide or local importance. The Farmland Conversion Impact Rating was submitted to the USDA Natural Resources Conservation Service. The total ROW taking of all farmland is xx acres and of this amount, xx acres is FPPA defined farmland. Land that has been converted to residential use is not included in the above areas. The XX County Soil Survey Maps, the lists of Prime and Unique Farmland, Farmland of Statewide Importance, the Farmland Conversion Impact Rating and Correspondence with USDA-NRCS are included in Appendix XX. The requirements of the Federal Farmland Protection Policy Act have been met and to the maximum extent practicable, adverse agricultural impacts have been minimized or avoided. This finding is based upon the following (identify best practices, mitigation that has been agreed upon, contract provisions, etc).

State Farmland and Agricultural Districts Sample Statements

• [Use for projects NOT located in an Agricultural District]
Based on a review of the NYS Agricultural District Maps for XX County, the proposed project is not located in or adjacent to an Agricultural District.

• [Use for projects located in an Agricultural District and not meeting size threshold criteria]
Based on a review of the NYS Agricultural District Maps for XX County, the proposed project is located thru portions of NYS Agricultural Districts #XX and #XX for XX County. However, since the proposed project will not acquire more than one acre from an actively operated farm within any of the Agricultural Districts, or more than ten acres within any of the individual Agricultural Districts, the notification requirements of the NYS Agriculture and Markets Law do not apply.

• [Use for projects exceeding the acreage thresholds for Agricultural Districts]
The project is located in XX County Agricultural District # XX. The project will not acquire more than 10 acres from within an agricultural district. However, the project will acquire more than 1.0 acre from one individual farm since X acres is required from the farm.
The Agriculture and Market Law, Article 25-AA, requires prior notice to the Commissioner of Agriculture and Markets for these right-of-way acquisitions in an Agricultural District. A Preliminary and Final Notice of Intent (PNOI and FNOI) has been filed with the New York State Commissioner of Agriculture and Markets and the XX County Agriculture and Farmland Protection Board. The FNOI includes a report justifying the proposed action including an evaluation of alternatives that would not require action within the Agricultural District. After the FNOI is accepted by the NYS Ag & Markets, a certification by the Regional Director is required, certifying that NYSDOT has met the requirements of State Agriculture and Market Law, Section 305(4) and to the maximum extent practicable, adverse agricultural impacts revealed in the FNOI will be avoided, minimized and mitigated. The Notice of Intent process will be completed prior to right-of-way acquisition.

Sample Plan Notes for Contract Documents – to protect farmland topsoil from construction activities

- Geotextile Bedding shall be installed prior to the start of construction activities at locations as indicated on the plans.
- Strip topsoil and stockpile on the Geotextile Bedding. Install a silt fence and temporarily cover or seed the stockpiled topsoil to prevent erosion.
- Following construction of the culvert and removal of the temporary detour, the Contractor shall regrade the area and replace the stockpiled topsoil to the line and grade of the pre-construction conditions. The contractor shall repair any agricultural drainage systems that may have been damaged, remove and properly dispose of the geotextile fabric and re-establish turf on the disturbed areas.
Alert! These are only samples of letters, they are not shells. Please review for applicability to specifics of proposed project and edit accordingly.

Sample memo to files documenting previous development of FPPA Farmland

TO:   FILE

FROM:  XX, Regional Environmental Unit Manager, R-X

SUBJECT:  P.I.N. XXX Highway Reconstruction Project
             Rte. XX
             Town of XX, XXX County

DATE:   XX XX, 20XX

The following information is offered in reference to the subject project with respect to the requirements of the Farmland Protection Policy Act (FPPA). Where federally funded or permitted NYSDOT projects have proposed takings of prime, unique, and statewide and locally important farmland soils our policy is to evaluate the impacts and complete the Farmland Impact Rating to the extent necessary according to our guidance.

The New York State Department of Transportation has initiated a highway reconstruction project to address safety and efficiency concerns with the subject intersection and Rte. XX corridor. The project will involve strip takes of right of way primarily to construct new sidewalks and accommodate highway stormwater drainage. Based on a field visit and review of GIS soils maps for XX County it has been determined that the preferred alternative will impact soils which normally would be considered prime or statewide important farmland soils but which have been converted to residential or commercial use. The project impacts and right of way takings have been minimized to the maximum extent possible while still meeting the project objectives. The Regional Environmental Unit does not need to coordinate with USDA-Natural Resources Conservation Service and according to guidance provided in The Environmental Procedures Manual (TEM) the process is complete.

Therefore, the site will be afforded no further consideration for protection, and no additional site alternatives need to be evaluated. The preferred alternative will have no known impacts on agricultural support businesses in the area, satisfies all project goals and objectives, and therefore will be constructed.

cc:  XX, Regional Design Engineer
     XX, Project Manager, R-X
     XX, Project Team Leader/ XX, Project Designer, R-X
     XX, State NRCS FPPA Contact

November 2011       TEM 4.4.15
Sample Memo to State NRCS FPPA Contact requesting assistance with determination

State NRCS-FPPA Contact

RE: US ROUTE XX
    CIN XX
    TOWN OF XX, XX COUNTY
    PIN XX

Dear Ms. XXX:

The New York State Department of Transportation (NYSDOT) is in the early stages of project development for the mentioned project, PIN XX, on US Route XX. At this time, we believe the work will consist of replacing the existing culvert with a pre-cast reinforced concrete 3-sided culvert on the existing alignment of Route XX.

This project will pass through the Chautauqua County Agriculture District #2 in the Town of Sheridan. The maps indicate the culvert is located in ‘Pompton Silt Loam,’ listed as prime farmland. Within close proximity is ‘Wakeville Silt Loam’ and ‘Niagara Silt Loam,’ which are prime farmland when drained and ‘Chenango Gravelly Loam,’ which is prime farmland. The designers estimate that approximately 6100 square feet of property will be taken adjacent to the existing highway right-of-way at two locations, please see attached aerial photo.

In order to fulfill the Federal Farmland Protection Policy Act requirements we are looking for your guidance in determining if Form AD 1006 or NRCS-CPA-106 is necessary.

Very truly yours,

XXX, Regional Environmental Manager

cc: XX, Project Designer
    File

November 2011       TEM 4.4.15
Sample Memo – Request for Concurrence with determination that farmland will not be converted

State NRCS-FPPA Contact

RE: P.I.N. XXX Highway Reconstruction Project
Rte. XX, Town of XX, XXX County

Dear Ms. XX:

The Department of Transportation is in the process of developing plans for the construction of transportation improvements along portions of US Route XX. The proposed project is a culvert replacement, ditch cleaning; shoulder widening.... that will be completed on its current alignment within the NYSDOT right-of-way. It is our understanding that the preparation of the Farmland Conversion Impact Rating form is not required for this project due to the purpose and nature of the proposed project activities.

The proposed work will not result in any change in the existing conditions. No farmland will be taken out of service either permanently or during construction. It is anticipated that the work will be performed during periods of low flow of the watercourse/stream/creek and will not interrupt the planting or harvesting activities in the district or on the farm.

It is anticipated that there will be a need for a temporary easement for construction activities. The easement will be for materials storage, an on-site detour, or creating either an access road, or staging area. The site shall be returned to its pre-construction condition after construction and prior to the closing of the contract.

Any soils excavated for construction shall be immediately stockpiled, enclosed with silt fence, and temporarily seeded. The soil shall remain in place until construction is completed and used to restore the site to its original condition. The stockpiled soils shall be used only at the site where disturbed, unless directed by the Engineer in Charge. At no time shall soils be taken off site and out of the Agricultural district where they were found.

As no direct or indirect conversion of farmland will result from the project, and the project is not designed to support new development, I have enclosed a soils map, the NRCS Information Form Checklist, and a USGS map which identifies the location of the project. Please send us your concurrence with our approach so that we have the necessary documentation for our project files.

Sincerely,

XX, Regional Environmental Unit Manager, R-X

cc: XX, Project Manager, R-X
XX, Design Squad Leader/ XX, Project Designer, R-X
Sample memo to files documenting previous development of FPPA Farmland

TO: FILE
FROM: XX, Regional Environmental Unit Manager, R-X
SUBJECT: P.I.N. XXX Highway Reconstruction Project
           Rte. XX
           Town of XX, XXX County
DATE: XX XX, 20XX

The following information is offered in reference to the subject project with respect to the requirements of the Farmland Protection Policy Act (FPPA). Where federally funded or permitted NYSDOT projects have proposed takings of prime, unique, and statewide and locally important farmland soils our policy is to evaluate the impacts and complete the Farmland Impact Rating to the extent necessary according to our guidance.

The New York State Department of Transportation has initiated a highway reconstruction project to address safety and efficiency concerns with the subject intersection and Rte. XX corridor. The project will involve strip takes of right of way primarily to construct new sidewalks and accommodate highway stormwater drainage. The project impacts and right of way takings have been minimized to the maximum extent possible while still meeting the project objectives. The Regional Environmental Unit will not need to coordinate with Natural Resources Conservation Service to complete the Farmland Impact Rating Form for this project because the score for Part VI is less than 60 points, therefore the total project score will be less than 160 and according to NYSDOT guidance in The Environmental Manual the evaluation process is complete.

Therefore, the site will be afforded no further consideration for protection, and no additional site alternatives need to be evaluated. The preferred alternative will have no known impacts on agricultural support businesses in the area, satisfies all project goals and objectives, and therefore will be constructed.

cc: XX, Regional Design Engineer
    XX, Project Manager, R-X
    XX, Project Team Leader/ XX, Project Designer, R-X
TO: FILE

FROM: XXX, Regional Environmental Manager

SUBJECT: P.I.N. XX, Corridor Safety Improvement Project (5 Sites)
Rte. XX
Towns of XX
XX County

DATE: June 27, 2007

The following information is offered in reference to the June 27, 20XX letter from XXX, Regional Environmental Unit Manager to the Natural Resources Conservation Service, and the completed Form AD-1006 which evaluates proposed takings of prime, unique, and statewide or locally important farmland soils.

The New York State Department of Transportation has initiated a highway realignment and reconstruction project to address safety concerns. The preferred alignment alternative for the 5 sites, evaluated as Site A, will impact soils which are considered prime farmland soils and which are currently under cultivation for agricultural production at 3 sites. The completion of the Form AD-1006 for Site A resulted in the total points score of 162. Per coordination with USDA-NRCS, the site will be afforded no further consideration for protection and, no additional sites need to be evaluated. The Site A alternative will have no known impacts on agricultural support businesses in the area and satisfies all project goals and objectives and therefore will be constructed.

cc: XX, Regional Design Engineer, R-X
XX, Project Manager, R-X
XX, Design Squad Leader/ XX, Project Designer, R-X
Sample Final Notice of Intent (FNOI)

**FINAL NOTICE OF INTENT**

TO UNDERTAKE AN ACTION

WITHIN AN AGRICULTURAL DISTRICT

P.I.N. XXX

NYS ROUTE XX

TOWN OF XXXXXXXX, XXXXX COUNTY

Prepared by:

New York State Department of Transportation, Region X

Address

City, NY ZIP

**INTRODUCTION**

In accordance with Agriculture and Markets Law, Article 25-A – Agricultural Districts, Section 305(4)(c) Part 371, Notice of Intent as amended through February 28, 1996, the New York State Department of Transportation has developed this Notice of Intent presenting the project alternatives considered and the resultant impacts upon the farms comprising XXXX County Agricultural District #6 should the proposed action be undertaken.

The proposed project involves the reconstruction of Town A – Town B PT. 1 SH XXXX, herein referred to as N.Y.S. Route XX in the Town of XXXX, XXXX County, NY. The highway corridor lies in a primarily agricultural area and traverses part of XXXX County Agricultural District # 6 and will require the acquisition of right-of-way strip taking from one property within the District.

**PROJECT EVOLUTION**

The present day alignment of Route XX generally follows the same alignments originally constructed in 1927. The highway was dedicated in 1849 and was originally known as the XXX Plank Road. Portland cement pavement was originally placed in nine foot lanes on this segment in 1927 when the Department of Transportation took over the county road. The section of Route XX in the current project area currently consists of two 3.3 m [11 feet] lanes with 2.4 m [8 feet] shoulders and the intersection is a type “Y” intersection controlled by a stop sign on XXX Rd. The proposed project will involve highway realignment to flatten a non-standard horizontal curve to meet current design standard, while developing a northbound left turn lane onto XXX Rd which will be consolidated to a conventional type ”T” intersection. Additionally the proposed travel lanes will be widened to 3.6 m [12 feet] to meet current design standards. The highway corridor lies in a primarily agricultural area and traverses part of XX County Agricultural District # 6 (see project area map 2). The area south of the project is the northern edge of the Village of XXXX and is more densely populated than the project area.

**EXISTING CONDITIONS AND NEEDS**

Route XX is major travel corridor and is an important link between City 1 and City 2 in the Southern Tier. The highway is classified as “Rural Major Collector”.

Traffic volumes along the project’s southern segment average approximately 4100 vehicles daily. Trucks comprise 7 percent of the total vehicles. Volumes are anticipated to increase to approximately 4500 vehicles daily by the year 2027. *(If necessary, insert Design Criteria Table here)*
PROJECT OBJECTIVES

1. Provide highway access improvements in conformance with NYSDOT standards in a cost effective manner.
2. Provide cost effective improvements that will reduce the potential of vehicular conflicts and reduce the number and severity of accidents.

PROJECT ALTERNATIVES:

Project alternatives were developed to meet the project objectives. All reasonable alternatives were considered.

The range of alternative solutions considered include:

**Alternative #1 - THE NO BUILD "NULL" ALTERNATIVE.** The Null Alternative provides for only the continued maintenance with an increasing amount of maintenance time and money required to keep the facility open to traffic. This alternative was considered and rejected as it does not address all of the project objectives.

**Alternative #2 – SAFETY IMPROVEMENTS.** This alternative is considered feasible since it meets the project objectives. The horizontal geometric design and lane width would be brought up to standards, a left turn lane for the north bound traffic onto XXX Road would be constructed and the realignment of Daytonville Road to a “T” type intersection would also be constructed.

PROJECT IMPACTS

The realignment construction involves full depth asphalt cement roadway reconstruction and drainage improvements in addition to geometric improvements to improve sight distance. Construction will directly impact the agricultural community through the acquisition and conversion of farmlands for highway uses. Sections of current roadway alignment do not conform to the current state and federal design standards which apply to the functional classification (Rural Major Collector) of Route XX. In those targeted areas the improvements to the geometric alignment and the roadway/shoulder cross-section will necessitate the acquisition of takings generally paralleling the existing and/or proposed roadway alignment. The proposed acquisitions within the agricultural district involve three separate parcels of land and total 1.93 acres (0.78 hectares). The project will impact one active farm (Mr. Xxxxx, owner) and will involve the conversion of a total of 1.83 acres of hayfields/croplands to highway embankment. Each proposed acquisition has been analyzed regarding its necessity and to ensure minimization of the impacts.

Specific contacts with the affected property owners were made on March 3, 2009, April 16, 2009, May 14, 2009 and January 7, 2010 by NYSDOT Regional Real Estate staff and additional phone messages were left on the Xxxxxx’s answering machine on December 29 and 30, 2009. Mr. Xxxxxx’s response was made to the NYS DOT Environmental Unit staff on December 30, 2009. NYSDOT believes that the property owners are not interested in selling cropland to NYSDOT at the value of current comparable sales.
Traffic will be maintained along Route 12 throughout the project with access maintained to all adjacent properties. Since the Xxxxxx’ farm operation center is not located within the project area but on a local road over 1.25 miles distant from Route XX the project will not adversely impact the operation of the farm buildings and minimal inconveniences are anticipated during construction. No severance of individual farm parcels or farmsteads will occur. Benefits derived from the highway realignment and reconstruction of Route XX will include a safer, more efficient transportation facility with improved geometrics and improved side road access. Improvements to the vertical and horizontal alignment will improve sight distance which will benefit the farmer, their employees, and motorists in general. Provisions will be made to ensure the farm drive access is at least as good as or safer than the pre-construction condition.

Improvements to the highway drainage system will also be made within the project area. New roadside ditches will be constructed at the outer curve edge and new stormwater treatment practices will be installed to treat the water exiting the pavement, therefore water exiting from the highway drainage system should be of equal or better quality than before the project. Also, any farm tile line drainage system will be re-configured to function properly, if impacted by activities necessary to accommodate the highway realignment, or repaired if impacted inadvertently by construction activities. Additionally, contract documents will note that any portions of the project area and adjacent agricultural land used for access by the contractor under release from the farm owner must be left in a suitably uncompacted state so that future precipitation infiltration and crop growth is not inhibited. Efforts to ensure that the project design accommodates the agricultural community and provides opportunities to improve access and drainage will be addressed through consultation with the affected agricultural property owner.

An open Public Information Meeting was held on October 25, 2006. At the present time the XXXX County Farmland Protection Board and XXXX County Soil Water Conservation District staffs have not become involved with the project.

Any questions shall be directed to:

XX, Regional Environmental Unit Manager

Or

XX, Project Manager
Sample Certification Letter to Commissioner of Agriculture and Markets following completion of NOI process

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

RE: PIN XXXXX
Highway Intersection Improvement
Rt. XX and Country Rd.
Town of XXX, XXXX County

Dear Commissioner XXX:

This is to advise you that the Department has made an explicit finding that the requirements of 305(4) have been met and that to the maximum extent practicable, adverse agricultural impacts revealed in the Notice of Intent process will be minimized or avoided. The finding is based on the following reasons:

- The project will not adversely impact the operation of the farm buildings and minimal traffic inconveniences are anticipated during construction.
- Provisions are included within the project contract documents to ensure the farm drive access is maintained in as good as existing or safer than the pre-construction condition for the duration of construction and post-construction.
- Provisions are included within the project contract documents that any farm tile line drainage system will be reconfigured to function properly if impacted by activities necessary to accommodate the highway realignment, or repaired if impacted inadvertently by construction activities.
- Provisions have been included within the project contract documents that any portions of the project area and adjacent agricultural land used for access by the contractor under release from the farm owner must be left in a suitably uncompacted state so that future precipitation infiltration and crop growth is not inhibited.
- The proposed cross section keeps grading limits and loss of adjacent agriculture field used for cultivation to a minimum, in order to reduce the amount of land acquisition necessary.

As advised, the Department has prepared this Certification pursuant to Section 305(4) of the Agriculture and Markets Law at least 10 days prior to advancing the funds to construct the proposed highway.

If you have any questions or comments or require further information, please contact me at (phone number), e-mail: XXXX@dot.state.ny.us.

Sincerely,

(XXXX)

November 2011
Regional Environmental Manager
cc: XXXX, Supervisor, Town of XXX
     XXXX, Chair, XXX County AFPB
     XXXX, XXX County Planning