CHAPTER 2.5

FARMLAND PROTECTION

PROJECT ENVIRONMENTAL GUIDELINES

June 1997

New York State Department of Transportation
Environmental Analysis Bureau
# 2.5 FARMLAND PROTECTION

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I. SUMMARY

It is the policy of New York State to preserve and protect agricultural lands as valued natural and ecological resources. Article 25-AA of the New York State Agricultural and Markets Law Section 305(4), (See Attachment 2.5.A) protects farmlands by requiring a notice of intent and public review procedure for acquisition of more than one acre from any actively operated farm in an Agricultural District or a cumulative total of more than 10 acres in any Agricultural District.

The Federal Farmland Protection Policy Act, 7 CFR Part 658, (See Attachment 2.5.F) requires federal agencies to consider the adverse effects their programs may have on the preservation of farmland, review alternatives that could lessen adverse effects, and 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 guidelines set forth in 7 CFR Part 658.

II. 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 funds 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.

**Actively Operated** - operated at any time during the preceding twelve months.

**Advance of Public Funds** - any act by which NYSDOT makes a transfer of funds or a binding commitment to transfer funds.

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

**Agricultural Setting** - the type of farm enterprises (e.g., timber harvesting, dairy, vegetable, field crop etc...); approximate size in acres; and the diversity of agricultural products produced.
County Agricultural and Farmland Protection Board - as defined by the Section 302 of the Agriculture and Markets Law.

EDPL Hearing - a hearing held pursuant to Eminent Domain Procedures Law (EDPL) Article 2, Section 201.

Farm Operation - means the land used in agricultural production and farming practices conducted on such land, farm buildings, equipment and farm residential buildings.

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

NYSDOT - New York State Department of Transportation

Prime or Unique Farmland - farmlands as defined in Section 1540(c)(1) of the Farmland Protection Policy Act (Attachment 2.5.D). The location of this farmland is supplied by the regional Natural Resources Conservation Service field offices. (Note; NRCS defines farmland based on soil type.)

Site - the particular section of farmland that would be converted by the proposed, federally funded project.

III. APPLICABILITY

The state law applies to any project, regardless of the funding source, that will acquire, or have any interest in, more than one acre from an actively operated farm within an Agricultural District, or more than 10 acres within any one Agricultural District.

The federal law applies to any federally funded project that converts any amount of prime or unique farmland, or farmland of state or local importance, as defined by the USDA Natural Resources Conservation Service, to a nonagricultural use.

NOTE: Prime and unique farmland is also regulated by the State Environmental Quality Review Act under Section 15.14(d)(7)(iii). Revisit the project’s environmental classification and, subsequently, the project schedule.
IV. PROCEDURES

STEP 1: Determine whether the action requires filing a Notice of Intent under the Agricultural and Markets Law

A. Determine Whether an Action is Occurring
Pursuant to Section 305.4(a) of the Agriculture and Markets Law, any state agency which intends to acquire land or any interest therein; or which intends to advance funds for the construction of dwellings, commercial or industrial facilities, water or sewer facilities to serve non-farm structures; shall use all practicable means to act and choose alternatives that avoid or minimize adverse impacts to farmland.

B. Thresholds
The Notice of Intent provisions of the state Agriculture and Markets law apply if NYSDOT intends to acquire any land or any interest in land in excess of one acre from any actively operated farm within an Agricultural District or in excess of ten acres within one Agriculture District.
NOTE: Revisit the deminimis determination, environmental class and subsequently, the project schedule.

Maps of Agricultural Districts should be available from the Regional Environmental Unit. The Institute for Resource Information Systems (IRIS, formally known as CLEARS) at Cornell University maintains the Agricultural District Maps for the Department of Agriculture and Markets. Copies of the Agricultural Districts maps can be obtained from IRIS by calling (607) 255-6529.

The Notice of Intent 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. NOTE: this applies regardless of the acreage of any real estate takings, e.g., a local betterment.

C. To the Maximum Extent Practicable, Choose Alternatives that Minimize or Avoid Adverse Impacts to Agriculture
When acquiring land in excess of the Thresholds (see Subpart B, above), 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. The adverse impacts on agriculture to be minimized or avoided include impacts revealed in the Notice of Intent process.
D. No Preliminary or Final Notice of Intent is Required if:

1) the land owner signs a document waiving the provisions of this law pursuant to 1 NYCRR Part 371, Section 371.8 (See Attachment 2.5.C for the Waiver Form), or;

2) the project is immediately necessary for the protection of life or property. (Attachment 2.5.A, Agriculture and Markets Law, Section 305.4(I))

NOTE: If a Waiver form is being used, keep in mind the following; if a project is acquiring farmland, or any interest therein, 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 one 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 a number of farms within one agricultural district, a waiver must be obtained for every farm from which land will be acquired or any interest therein.

Keep in mind, (See Attachment 2.5.B, 1 NYCRR Part 371, Section 371.8(d)), 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) (See Attachment 2.5.A) and to the maximum extent practicable, minimize or avoid adverse impacts on agriculture. A Statement to this affect should be documented for the project file.

STEP 2: The Preliminary Notice of Intent

A. Preparing a Preliminary Notice of Intent

If a Threshold is exceeded (see Subpart B, above), as early as possible in the development of a project, but no later than the date of any determination as to whether an Environmental Impact Statement (EIS) must be prepared under the State Environmental Quality Review Act (SEQRA) (See Attachment 2.5.A, Article 25AA, Section 305.4 (b) i.e., a determination of Type II classification or a Negative or Positive Declaration), NYSDOT shall file a preliminary Notice of Intent with the Commissioner of Agriculture and Markets and with the county agricultural and farmland protection board. Refer to Chapter 2.1 of the Environmental Procedures Manual for SEQRA guidance.

NOTE: Before filing can occur, impacts of project alternatives must be identified in order to know if the thresholds, listed above in Subpart B, will be exceeded. Therefore, filing will occur at some point after the first phase of design. 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. Revised Regulations detailing the form and content of the notice were adopted February 28, 1996, 1 NYCRR Part 371 (SEE ATTACHMENT 2.5.B). An example copy of a completed Preliminary Notice of Intent has been included in this guidance (SEE ATTACHMENT 2.5.D.)
The preliminary notice of intent required by section 305(4)(b)(Attachment 2.5.A) of the Agriculture and Markets Law, (SEE ATTACHMENT 2.5.B) should contain the following information, (the following criteria can be found in 1 NYCRR Part 371, Section 371.6, Attachment 2.5.B, 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, if known.

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.

Send the complete, original copy of the Preliminary Notice of Intent to:
   Commissioner of Agriculture and Markets
   New York State Dept. of Agriculture and Markets
   1 Winners Circle
   Albany, New York 12235

Also, send one complete copy of the Preliminary Notice of Intent to the county agricultural and farmland protection board.
STEP 3: The Final Notice of Intent

A. Preparing a Final Notice of Intent
After filing a Preliminary Notice of Intent, at least 65 days before acquisition of the farmland, the NYSDOT shall file a Final Notice of Intent with the Agriculture and Markets Commissioner. This will typically occur during Design Approval, close to or during design phase V-VI, when detailed information is available on the actual project right-of-way takings or easements. Remember, the Notice of Intent process must be complete before ROW acquisition. An example copy of a completed Final Notice of Intent has been included in this guidance (SEE ATTACHMENT 2.5.E.)

The final notice of intent required by section 305(4)(c) of the Agriculture and Markets Law shall be in the following form and contain the following information, (the following criteria can be found in 1 NYCRR Part 371, Section 371. 7, Attachment 2.5.B, 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 (see 7, A(I) a below) for the owners of all farms which will be affected by the project.

7) A detailed agricultural impact statement setting forth the following:
   A) I) A detailed description of the proposed action.
      II) 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.

B) 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.

C) Any adverse agricultural effects, including short-term and long-term effects, which cannot be avoided should the project be implemented.

D) The reason(s) why the preferred alternative, route, and/or site was selected.

E) Any irreversible impacts to agricultural resources which would result from the project if it is constructed.

F) Any mitigation measures proposed to minimize the adverse impact of the project on the farm enterprise(s) within the district.

G) Any aspect of the project that could promote non-farm development.

H) The anticipated date of commencement of the action, the date of R.O.W. acquisition and the estimated date construction will begin.

I) The name, title, address and telephone number of the individual authorized to respond to inquiries concerning the final notice; and

J) The name, title, address and telephone number of the individual authorized to respond to Agriculture & markets inquiries concerning the Final Notice of Intent.

K) 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 non-farm structures, also provide the following information (this could be applicable for local betterment):
A) the source of the funds;

B) the name, address and telephone number of the recipient(s) of the funds.

The party proposing the action shall file an original and four complete copies of the final notice of intent, including all maps, appendices and other information, with the Commissioner of Agriculture and Markets. A complete copy of the final notice of intent must also be filed with the county agricultural and farmland protection board.

B. Completing Final Notice of Intent

The Commissioner of Agriculture and Markets after receiving four copies of the final notice of intent shall determine whether the Final Notice of Intent is complete. If the Commissioner of Agriculture and Markets does NOT issue this decision within 30 days, the Final Notice is deemed complete. If the Commissioner of Agriculture and Markets determines the Notice is incomplete, the Commissioner of Agriculture and Markets shall notify the NYSDOT in writing of the reasons for that decision. Any new submission of a Final Notice of Intent starts the Commissioner of Agriculture and Markets 30 day review period again.

NOTE: the 30 day review period begins the day the FNOI is received by Agriculture and Markets.

If the Commissioner of Agriculture and Markets notifies NYSDOT that the final notice of intent is incomplete, (See Attachment 2.5.A, Agriculture and Markets Law, Section 305(4)(c)), then additional information or a revised final notice of intent should be filed with the Commissioner of Agriculture and Markets. File an original and four complete copies of the information with the Commissioner of Agriculture and Markets. Remember to file a complete copy of the information with the county agriculture and farmland protection board.

C. Review of the Complete Final Notice of Intent

After the Final Notice of Intent is deemed complete, the Commissioner of Agriculture and Markets sends copies to DEC, the Secretary of State and the Advisory Council on Agriculture. These agencies have 45 days to review the action and initially determine whether it will have an unreasonably adverse effect on the continuing viability of farm enterprise(s) within the Agricultural District, state environmental plans, policies or objectives or state comprehensive plans, policies or objectives.

In this 45 day review period, the Commissioner of Agriculture and Markets may decide to issue an order directing the NYSDOT not to undertake the project for 60 days immediately following the 45 day period. This would allow the Commissioner of Agriculture and Markets to review the project to determine whether any reasonable and practical alternatives exist to minimize or avoid the adverse impact on agriculture.

The Commissioner of Agriculture and Markets may hold a public hearing on the project in a
location easily accessible to the Agricultural District, after publishing notice and giving written notice to the municipalities, DEC, the Secretary of State, the advisory council on agriculture, and the NYSDOT.

On or before the conclusion of the additional 60 day period, the Commissioner of Agriculture and Markets reports the findings to the NYSDOT, to any other agency with review/approval over the project, and publishes the findings to the public.

If the Commissioner of Agriculture and Markets concludes that there are reasonable and practicable alternatives that would minimize or avoid the adverse impact of the project, those alternative(s) will be proposed for acceptance by NYSDOT.

1) If the NYSDOT accepts the Commissioner of Agriculture and Markets’s alternative(s), the Notice of Intent process is concluded.

2) If the NYSDOT rejects the Commissioner of Agriculture and Markets’s alternative(s) (1 NYCRR Part 371, Section 371.10), it shall provide the Commissioner of Agriculture and Markets with the reasons for the rejection and a detailed comparison between NYSDOT’s selected alternative and the Commissioner of Agriculture and Markets’s alternative(s).

You should consult with the Environmental Analysis Bureau before making a determination to reject an alternative provided by the Commissioner of Agriculture and Markets.

STEP 4: Certification

At least 10 days before commencing or approving an action that has been the subject of a Notice of Intent filing, the NYSDOT shall certify to the Commissioner of Agriculture and Markets that it has made an explicit finding that the requirements of the Agriculture and Markets Law Section 305(4) have been met and consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse agricultural impacts revealed in the Notice of Intent process will be minimized or avoided. The certification must state the reasons for this finding. (See Attachment 2.5.B; 1 NYCRR Part 371, Section 371.11)

NOTE: A preliminary Notice filing occurs no later than the date of any determination as to whether an Environmental Impact Statement (EIS) must be prepared under the SEQRA (See Attachment 2.5.A., Article 25AA, Section 305.4 (b)). Therefore, Certification may occur after the SEQRA process is complete. Refer to Chapter 2.1 - SEQRA, of the Environmental Procedures Manual.

If the project will use federal funding, continue to STEP 5.

NOTE: If the project requires federal involvement other than funding, e.g., a federal permit, the project does not need to comply with the Federal Farmland Protection Act, 7 CFR Part 658 and
no further analysis is required under this guidance. If the project will use state funds only, no further analysis is required under this guidance.

**STEP 5. Federal Farmland Protection Act**

A. **During the Design Phase I, or as soon as possible, determine if the project will convert federal farmland**

For any project using federal funding, the NYSDOT must: determine whether federal farmland, defined as prime, unique, of statewide or local importance, will be converted by the project; identify and take into account adverse effects of the project on the preservation of farmland; consider alternative actions that could lessen adverse effects; and ensure that programs, to the maximum extent practicable, are compatible with other local or private policies or programs protecting farmland.

Federal farmland is classified as prime, unique, of statewide importance or of local importance (See Attachment 2.5.E. Prime and Unique Farmlands, 7 CFR Part 657, Section 657.5). Maps showing the federal farmland classifications of prime and unique soils are available from the county Natural Resources Conservation Service (NRCS) offices. A list of the NRCS offices is Attachment 2.5.H. of this chapter. (In some instances, these maps are available in the regional offices.) To determine if your project will impact farmland of statewide importance see Attachment 2.5.J. Farmland of Statewide Importance-Soil Types by County.

B. **Verify condition of farmland**

Prime farmland that has been developed or zoned for development is not considered prime or unique farmland. You should make a site visit to verify that land mapped as prime or unique farmland has not been converted to industrial, residential or commercial use (Farmland Protection Policy Act, 7 CFR Part 658, Section 658.2(a)). If the farmland was converted and developed, document this in the project files. The county NRCS should be advised of this determination.

C. **Determine whether federal farmland will be converted**

If there is prime or unique farmland in or adjacent to the project, determine 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; or
- farmland directed by NYSDOT to be used for a disposal or borrow area and that negatively affects the production of the farmland for any period of time. NOTE: this typically occurs during the construction phase of a project, it is recommended that you simply call the local NRCS office rather than complete Form AD 1006 as discussed in the following sections.

If no prime or unique farmland will be converted by the project, no further compliance is
required. If prime or unique farmland, or farmland of state or local importance, will be converted by the project, continue to Step 6, below.

NOTE: If you are unable to determine if the project is impacting federal farmland, NRCS can determine this for you. Complete Part I and III of Form AD 1006 and send three copies to the county NRCS office. The NRCS should make a determination within 45 days as to whether the project converts prime, unique, local or statewide important farmland. See Step 6, Subpart C and D, below.

**STEP 6: Complete and File the Farmland Conversion Impact Rating Form (AD 1006)**

**A. Complete Portions of Form AD 1006**

If it has been determined that federal farmland will be converted by the project, the Region must complete portions of Form AD 1006, provided by the NRCS. (See Attachment 2.5.G. for a copy of the forms).

Initially, complete only Part VI of Form AD 1006. The completion of Part VI is **for internal use only** at this point to determine if you need to file the Form with NRCS. The Form is only filed with NRCS if the score in Part VI is more than 60. Use the criteria and points explained below to complete Part VI. These criteria are taken from the Farmland Protection Policy Act, 7 CFR Part 658, Section 658.5(b). (See Attachment 2.5.F.) Scores should be 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 following assessment criteria:

1. How much land is in nonurban use within a radius of 1.0 mile from where the project is intended?
   - More than 90 percent--15 points
   - 90 to 20 percent--14 to 1 point(s)
   - Less than 20 percent--0 points

2. How much of the perimeter of the site borders on land in nonurban use?
   - More than 90 percent--10 points
   - 90 to 20 percent--9 to 1 point(s)
   - Less than 20 percent--0 points
(3) How much of the site has been farmed (managed for a scheduled harvest or timber activity) more than five of the last 10 years?
   - More than 90 percent--20 points
   - 90 to 20 percent--19 to 1 Points
   - Less than 20 percent--0 points

(4) Is the site subject to private sector, local or state government policies or programs to protect farmland?
   - Site is protected--20 points
   - Site is not protected--0 points

NOTE: Zoning is considered a local government policy to protect farmland (7 CFR Part 658.2(d)).

(5) How close is the site to an urban, built-up area?
   - The site is 2 miles or more from an urban, built-up area--15 points
   - The site is more than 1 mile but less than 2 miles from an urban, built-up area--10 points
   - The site is less than 1 mile from, but is not adjacent to an urban, built-up area--5 points
   - The site is adjacent to an urban built-up area--0 points

(6) How close is the site to water lines, sewer lines and/or other local facilities and services whose capacities and design would promote nonagricultural use?
   - None of the services exist nearer than 3 miles from the site--15 points
   - Some of the services exist more than 1 but less than 3 miles from the site--10 points
   - All of the services exist within half a mile of the site--0 points

(7) Is the farm unit(s) containing the site (before the project) as large as the average-size farming unit in the county?
   - NOTE: Use Attachment 2.5.I., from the 1992 Census of Agriculture
   - As large or larger--10 points
   - Below average--deduct 1 point for each 5 percent below the average, down to 0 points
   - 50 percent or more below average--9 to 0 points

(8) If this site is chosen for the project, how much of the remaining land on the farm will become non-farmable because of interference with land patterns?
   - Acreage equal to more than 25 percent of acres directly converted by the project--10 points
   - Acreage equal to between 25 and 5 percent of the acres directly converted by the project--9 to 1 point(s)
   - Acreage equal to less than 5 percent of the acres directly converted by the project--0 points

(9) Does the site have available adequate supply of farm support services and markets, i.e., farm suppliers, equipment dealers, processing and storage facilities and farmer’s markets?
   - All required services are available--5 points
   - Some required services are available--4 to 1 point(s)
   - No required services are available--0 points
(10) Does the site have substantial and well-maintained on-farm investments such as barns, other storage building, fruit trees and vines, field terraces, drainage, irrigation, waterways, or other soil and water conservation measures?
   High amount of on-farm investment--20 points
   Moderate amount of on-farm investment-- 19 to 1 point(s)
   No on-farm investment--0 points

(11) Would the project at this site, by converting farmland to nonagricultural use, reduce the demand for farm support services so as to jeopardize the continued existence of these support services and thus, the viability of the farms remaining in the area?
   Substantial reduction in demand for support services if the site is converted--10 points
   Some reduction in demand for support services if the site is converted--9 to 1 point(s)
   No significant reduction in demand for support services if the site is converted--0 points

(12) Is the kind and intensity of the proposed project sufficiently incompatible with agriculture so that it is likely to contribute to the eventual conversion of surrounding farmland to nonagricultural use?
   Proposed project is incompatible with existing agricultural use of surrounding farmland--10 points
   Proposed project is tolerable to existing agricultural use of surrounding farmland--9 to 1 point(s)
   Proposed project is fully compatible with existing agricultural use of surrounding farmland--0 points

B. File Form AD 1006 in the Project Files
If the score in Part VI is less than 60, considering the maximum possible in Part V is 100, the total project score will be less than 160. No coordination with the NRCS is required. Document this and all decisions in the project files.

C. File Form AD 1006 with NRCS
If the score in Part VI is more than 60, complete only Parts I and III of a new, clean Form. Send three copies to the county NRCS office. The NRCS has 45 days to respond. If they do not respond within 45 days and if further delay would interfere with construction activities, the NYSDOT may proceed as though the site were not farmland 7 CFR Part 658, Section 658.4(a). The NRCS should make a determination within 45 days as to whether the project converts prime, unique, local or statewide important farmland. If no federal farmlands are converted, the NRCS will return the form. This should be documented as discussed in Subpart E below and no further compliance is required. NOTE: Once a score is calculated, revisit the project’s deminimis determination, environmental classification and, subsequently, the project schedule.
NOTE: If the project is under a very tight schedule you may wish to send the form registered mail because the 45 day deadline begins from the date NRCS receives the form.

If the NRCS determines that the project will convert federal farmland, it will complete the form and return it to the NYSDOT Regional office. Where the NRCS has returned the form with Part II indicating farmland will be converted, continue to Step D, below.

D. Proceeding with the project
NYSDOT may proceed with a project requiring conversion of federal farmland after consideration of the adverse effects and suggested alternatives and completion of the Farmland Protection Policy Act, 7 CFR Part 658 process. The federal farmland protection regulations, Farmland Protection Policy Act, 7 CFR Part 658, Section 658.3(c), do not authorize FHWA to refuse the requested federal assistance. NYSDOT must send copies of the documented decision to NRCS, 7 CFR Part 658, Section 658.4(g).

E. Document project decision
The NYSDOT region makes a recommendation whether or not to proceed with the farmland conversion. The completed Form AD 1006 and analysis, discussions and regional recommendation should be made part of the NEPA process and appear in:
- the appendix of the Design Report/EA
- the project files for Categorical Exclusion Projects;
- the Environmental Assessment that leads to a FONSI; or
- the Draft Environmental Impact Statement.
VI. CITATIONS

The following state and federal laws and regulations are used as a source for this guidance. In addition to the regulations in this Chapter, copies of other laws and regulations are maintained in the various Chapters of the Environmental Procedures Manual.

STATE STATUTE

Agriculture and Markets Law - Article 25AA

STATE REGULATIONS

1 NYCRR Part 370 and Part 371- Agriculture and Markets Regulations

FEDERAL STATUTE

7 USC Section 1540(c)(1) - Farmland Protection Policy Act
7 USC Section 4201-4209 - Farmland Protection Policy Act

FEDERAL REGULATIONS

7 CFR Part 657, Section 657.5 - Prime and Unique Farmlands
7 CFR Part 658 - Natural Resources Conservation Service Regulations under the Farmland Protection Policy Act
VII. ATTACHMENTS

2.5.A. CIRCULAR 1150 "ARTICLE 25AA-Agricultural Districts" (As Amended Through January 1, 1996)

2.5.B. NYSDOS; Department of Agriculture and Markets; Notice of Intent Regulations (Adopted February 28, 1996); 1 NYCRR Part 371

2.5.C. Form for Waiver of Notice of Intent under State Agriculture and Markets Law

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2.5.J. LIST OF NATURAL RESOURCES CONSERVATION SERVICE COUNTY FIELD OFFICES
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<table>
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