

**New York City Department of Environmental Protection
Bureau of Water Supply**

Farms in Transition

June 2018

*Prepared in accordance with Section 4.2 of the NYSDOH
2017 Filtration Avoidance Determination*



Prepared by: DEP, Bureau of Water Supply

2017 FAD Deliverable:

Work with stakeholders to explore the feasibility of a program that will protect the majority of each transitioning farm (agricultural land that is at risk of foreclosure or farms with retiring farmers). This program would seek to secure a conservation easement on the majority of the farm. Report on the findings of this workgroup by June 30, 2018 and meet with NYSDOH, USEPA, and NYSDEC to discuss the findings of the workgroup by July 31, 2018.

1. Introduction

Loss of farms and agricultural soils has been a challenging problem for decades in many parts of the country (Hart, 1968) including New York State (US Department of Agriculture), and likewise for communities in the New York City watershed. Between 1992 and 2012, the nation lost over 30 million acres of agriculture to development, yet by 2050 the nation's farms will be expected to satisfy demands for food, fiber and energy that will be 50-70% higher than today (American Farmland Trust, 2018).

Pressures on farms to transition out of agricultural use may result from a number of situations: lack of interest in farming by the next generation, death or injury of the farmer, property foreclosure or short sale, external market forces, financial difficulty, weather-related losses, or any combination of these factors. Taking note of such farm losses, there is interest on the part of communities and stakeholders in New York City's watershed to identify ways to protect farmland from pressures that force them into non-agricultural uses.

2. Agriculture in the Watershed

There are a variety of predominant farm types in the watershed: dairy, beef, horse, mixed livestock, hay and vegetable. Since 1992, the New York City Department of Environmental Protection (DEP) has funded a voluntary Watershed Agricultural Program (WAP) that is locally administered by the Watershed Agricultural Council (WAC). The WAP offers a range of services to watershed farmers, including the development and implementation of Whole Farm Plans and nutrient management plans, opportunities to sell conservation easements, enrollment in the federal Conservation Reserve Enhancement Program, technical and financial support for precision feed management, and a wide range of educational and economic viability programs including a micro-grants initiative, a business planning initiative, and the Pure Catskills marketing program.

In the watershed, stresses at the local community level are similar to those found elsewhere, with the agricultural industry experiencing significant economic challenges and the number of dairy farms declining considerably over the last few decades. In 1994, approximately 350 large commercial farms were identified in the watershed; today WAC estimates there are about 200 large farms, of which 177 have developed Whole Farm Plans. A total of 265 farms in the West of Hudson watershed currently have active Whole Farm Plans covering 135,213 acres (owned and rented land), which includes 43,818 acres of cropland, hayland, and pasture. Nearly 27,000 acres of watershed farms are permanently protected by conservation easements acquired by WAC with City funds.

WAC estimates that 85% of watershed farmers are over 50 years old and that 30% are over 64 years old, indicating a coming wave of conveyances of farms to the next generation or non-

family. Delaware County (Delaware County, NY, 2016) estimates that between 2007 and 2012, County-wide acreage in agricultural use dropped 12% to 145,600 acres, average farm size dropped 7% to 207 acres, and the number of dairy farms dropped 16% to 135.

Another measure of agricultural transition is the distribution of animal units (AUs¹) among farms participating in the WAP. For the 265 active Whole Farm Plans in the West of Hudson watershed, 30 farms (11%) have no AUs (these are mainly vegetable/crop/hay farms and former livestock farms that currently have no animals) while 176 farms (66%) have between 15 and 100 AUs. The total number of AUs in Whole Farm Plans has declined 41% from 1997 to 2017 from an estimated 27,742 (including 16,427 mature dairy AUs and 8,758 dairy young stock AUs) to 17,234 (including 6,260 mature dairy AUs and 5,025 dairy young stock AUs). Although the number of dairy herds declined precipitously, the mature beef cattle AUs increased 30% and horse AUs increased 45% during this period.

The 2017 FAD refers to a “transitioning farm” as agricultural land that is at risk of foreclosure, and/or farms with retiring farmers. Although there is little available data on the number of transitioning farms during any period of time, WAC forecasts that over 55,000 watershed farm acres will transition ownership through 2028. Watershed stakeholders agree that there is a need to serve the watershed farming community in order to minimize stressful farm transitions, reduce overall loss of farms, and support farmers as they convey their farm to the next generation of owners.

3. Findings of the Stakeholder Workgroup: Potential Opportunities

The USEPA first initiated stakeholder meetings on this topic in July 2016, after which DEP continued to convene stakeholder meetings through early 2018. During these meetings, stakeholders heard presentations from the New Jersey State Agricultural Development Committee’s Farmland Preservation Program, the Vermont Land Trust’s Farm Access Program, FarmNet, and the Open Space Institute, all presenting on diverse tools being employed to keep farmers farming and to permanently protect farmland from conversion to non-agricultural uses. These tools typically involve services that support farmers and agribusinesses, along with acquisition of agricultural conservation easements.

Since there are numerous other programs and organizations already in place that offer important tools and services, DEP has reviewed and compiled information on existing program resources in order to assess the feasibility and necessity of a new initiative for transitioning farms; a comprehensive list of these resources is annexed to this report. Locally, WAC and Cornell Cooperative Extension both offer an array of resources to help farmers operate profitable businesses, including workshops and programs that address cash flow analysis, retirement planning, tax management, loan procurement, start-up programs for new farmers or those new to the area, and support for established farmers seeking to diversify operations.

During multiple meetings, watershed stakeholders discussed the possibility of a potential new program through which WAC would acquire outright farms that are in foreclosure and then sell the farm to another farmer subject to a conservation easement retained by WAC. This approach has been used elsewhere (Vermont Land Trust, 2018) but because it would involve acquisition of

¹ One Animal Unit (AU) is generally defined as 1,000 lb (450 kg) of living animal (i.e.: one beef cow, 12 goats, 300 rabbits, etc.).

land and dwellings² outright with City funds, such a program would require additional negotiations with watershed stakeholders and possibly modifications to the Water Supply Permit. For such a program to function, it would need to address the following steps:

- (1) Develop a process to identify farms that meet criteria such as:
 - a. foreclosure is imminent or complete;
 - b. property is eligible for the existing conservation easement program;
 - c. willing seller and/or lienholder(s).
- (2) Successful negotiation with owners (including lienholders) to buy the property;
- (3) Entry into multi-party purchase contract including lienholder(s);
- (4) Successful due diligence in which the farm is demonstrated free of hazardous materials and significant debris, title defects, and mortgages or liens that cannot be satisfied at the closing;
- (5) Successful negotiations with the town regarding local interest in having an area of the farm subdivided and sold without being subject to the conservation easement, either to the town or on the private market, in order to satisfy local concerns or desires for future development;
- (6) Successful closing in which WAC acquires the farm outright (subject to conditions agreed to with the town regarding land to be kept out of the eventual project);
- (7) Submission by WAC for local subdivision approval pursuant to above;
- (8) Local approval of subdivision;
- (9) Marketing and successful sale of areas partitioned from the farm for private or municipal use;
- (10) During WAC's ownership, the farm and all BMP improvements would need to be maintained and/or leased to a tenant by WAC, with all carrying costs including property taxes paid in order to keep WAC and town whole;
- (11) Marketing to identify a new farmer / buyer for the farm;
- (12) A Whole Farm Plan and conservation easement configuration would need to be confirmed or developed with the prospective buyer in advance of the closing;
- (13) Successful closing in which the buyer acquires the farm subject to a conservation easement to be retained by WAC.

While other forms of this construct have been implemented elsewhere in the country, these generally operate under simpler conditions – for example, local communities often welcome the effort and/or do not oppose temporary ownership of dwellings by the land trust, nor are process requirements such as fair market value limitations nearly as strict. The scale and complexity of the program described above, combined with lack of local support (Delaware County, 2018a), lead many stakeholders to conclude that pursuit of this initiative was not an efficient use of resources at this time. Therefore, DEP does not recommend pursuing such a program until key stakeholders are in support.

However, the workgroup did find that there may be opportunities for WAC to play a role in facilitating conveyance of a transitioning farm to a new owner without becoming an intermediary owner, while still creating a conservation easement to protect the property. This process would involve tools and steps that are already in place for the existing WAC Farm Easement Program, envisioned as follows:

² The 1997 Watershed Memorandum of Agreement prohibits NYC Land Acquisition Funds from being spent on acquisition of dwellings West of Hudson.

1. WAC learns that a farm is in distress or that a foreclosure action is proceeding;
2. WAC contacts the owner – and with permission, speaks to the lienholder – to outline a scenario in which the property could be conveyed to the next owner with a conservation easement in place while keeping all parties whole. The process would be incentivized for the seller and lienholder by having WAC bring potential buyers to the table through ongoing maintenance of a list of interested buyers and/or integrating with other programs that do same. The goal would be to keep the full fair market value intact by having WAC pay for the eased portion of the value with the subsequent owner paying the remainder. The easement would be expected to reduce the buyer's cost and thus increase the potential pool of interested buyers / next generation farmers.
3. WAC would bring the involved parties together with the goal of (1) creating an easement configured to current and/or expected farm uses, (2) appraising the easement, and (3) securing agreement from the farmer and the lien-holder(s) to market and sell the farm subject to the conservation easement as an option.
4. The farm would be marketed to be sold “as-is” on the open market, and/or with an easement in place to a “conservation buyer”. In the latter case, the Whole Farm Plan and BMPs would be revised or drafted with the next owner prior to closing.
5. Once a conservation buyer is found, negotiations would include refining the easement configuration and purchase prices for the two real property interests to be partitioned.
6. Parties enter their two respective purchase contracts.
7. All parties undertake due diligence.
8. A simultaneous closing is scheduled where the conservation easement is purchased by WAC and the underlying farm is acquired by the new owner (the easement could also be acquired by WAC prior to conveyance of the farm itself).

While the situation where WAC could insert itself to facilitate such an easement might arise only infrequently and would not be simple to implement, it does involve existing tools and procedures and would not require many new steps, new stakeholder negotiations, or new enabling documents such as stakeholder agreements or modification of the Water Supply Permit.

4. Conclusion and Recommendations

Several factors lead DEP to recommend that no new programs to assist transitioning farms be developed at this time. In particular, local concerns expressed during stakeholder meetings indicate there is little to no consensus on program need or direction, especially within Delaware County, which contains the majority of farms and agricultural acreage within the watershed and is also home to many farms outside the watershed. In recent months, the Delaware County Board of Supervisors has convened its own workgroup dedicated to developing ideas to address transitioning farms; this local dialogue includes WAC and other organizations, but is not expected to issue findings until later in 2018. Until such findings are finalized, it will be difficult to assess whether there is a need for an additional program and whether one can be crafted that satisfies local concerns and maximizes efficient use of funding and resources.

Nonetheless there are several opportunities to assist transitioning farms through existing City-funded programs. For example, DEP already funds the Watershed Agricultural Program, which includes a robust and flexible farmer education program implemented by Cornell Cooperative Extension of Delaware County under contract to WAC; farmer education is an important

strategic component to address transitioning farms as suggested by Delaware County. DEP also funds an Economic Viability Program through WAC, which supports the development of business plans for watershed farms and a competitive micro-grants program that is intended, in part, to assist interested farm operators with transitioning to another type of agricultural enterprise; business plans are another key component to address transitioning farms as suggested by Delaware County. DEP encourages WAC to collaborate with watershed stakeholders to better integrate and leverage these existing programs to support broader local efforts.

DEP also encourages WAC and other local stakeholders to be proactive about identifying farms at the earliest stages of transition in order to (1) assist with orderly conveyance of the farm and operations while still under control of the current farmer, and (2) help to broker a sale – whether or not in the context of a foreclosure or threat thereof – that would result in a conservation easement as described above. It is possible that transitioning farms may be supported if WAC plays a more prominent role in coordinating existing programs that assist farmers in maintaining ownership or conveying ownership to future farmers with reduced stress or strife by educating farmers (with or without easements) about programs, and convening periodic meetings of involved organizations listed in the Appendix. DEP looks forward to participating in future discussions on the topic of transitioning farms once there is broader consensus and direction from watershed stakeholders.

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Appendix – Existing Farm Assistance Programs

American Farmland Trust (<https://www.farmland.org/>) is a national nonprofit organization that advocates for farmer interests, food production, and the protection of agricultural land and activities. AFT's Farmland Information Center offers resources for farmers and communities needing help with saving their farm and ranch land. AFT offers a comprehensive collection of resources about farm and ranch land protection, farm conservation and agricultural viability.

Conservation Easements involve transfer of development rights from the grantor to the receiving organization, which then retires or extinguishes the development rights. A specific form of easement is tailored to farms, under which rights to practice agricultural activity in some form is retained by the grantor – but while agricultural use may be allowed, it is not required (see OPAV below). Conservation easements can be placed on a farm to permanently protect the property for continued uses (agriculture and forestry) that are compatible with the easement purposes while preventing significant development. There are about a dozen local and regional land trusts whose territory includes all or portions of the West of Hudson watershed, including WAC, Catskill Center for Conservation and Development, Greene County Land Trust, Rondout-Esopus Land Conservancy, Woodstock Land Conservancy, Schoharie Land Trust, Delaware Highlands Conservancy, The Nature Conservancy, Open Space Institute, Trust for Public Land, and the North American Land Trust. However, only WAC operates a program through which farmers are paid fair market value for their easements, after which DEP pays property taxes in proportion to the easement value.

The **Conservation Fund** (<https://www.conservationfund.org/>) operates a Revolving Fund that offers capital for organizations and municipalities to acquire and permanently protect properties of local interest; this Fund allows partners to quickly acquire land that is under threat with a low-cost loan, which is reimbursed to the Fund once monies are raised from other sources.

The **Dairy Acceleration Program** (<https://prodairy.cals.cornell.edu/dairy-acceleration>) is coordinated through Cornell PRO-Dairy in collaboration with Cornell Cooperative Extension; the program provides funds for Business Management Planning, Production Management, Environmental Management, and Facilities Engineering and offers up to \$5,000 to each farm toward development of a business plan through a planner of the farmer's choice.

Equity Trust (<http://equitytrust.org/2015/05/hv-farms/>) is a national nonprofit organization that assists farmers in Delaware, Greene and Schoharie Counties. According to its website, the Equity Trust Fund “is a revolving loan fund enabling socially conscious lenders and donors to support projects that are creating new ways of owning, using, and stewarding property.” This initiative provides grant money and low-interest loans as bridge funding so that farms can be taken off the market while long-term protection plans – conservation easements, affirmative covenants or Options to Purchase at Agricultural Value (OPAV) – are secured.

- **The Property and Values Program** “promotes exploration, understanding, and implementation of socially equitable forms of property ownership and economics based on principles of social justice, equity, and environmental sustainability.”
- **Farms for Farmers** “promotes alternative ownership structures for farms, to benefit farmers who need affordable farmland and communities that want a secure source of locally grown food and a way to preserve their environmental heritage.”

NY FarmNet (<https://www.nyfarmnet.org/>) is a nonprofit organization funded by NYS Department of Agriculture and Markets, Cornell University, and the NYS Office of Mental Health. FarmNet offers free and confidential consulting to any farm in New York State, helping farmers with personal or financial issues through a network of consultants who work one-on-one with farm families. Topics include business and family finances, farm changes, farm management, disaster, stress, and family communication and conflict.

NYS Department of Agriculture and Markets

(<https://www.agriculture.ny.gov/ap/agservices/farmprotect.html>) promotes local initiatives for agricultural and farmland protection through several programs that offer funding and support for communities and land trusts to develop and implement farmland protection plans, and to acquire easements on farms. State law allows for designation of agricultural districts in which farming is encouraged, protected, and subsidized in a number of ways. Perhaps most importantly, farms within agricultural districts that meet certain criteria receive relief through reduced regulatory impositions and enjoy significant reductions in property tax.

NYS Department of Environmental Conservation (<https://www.dec.ny.gov/lands/5236.html>) oversees the Forest Tax Law, which provides for a reduction of roughly 80% in property taxes for enrolled forested properties, which can be a significant benefit to watershed farmers.

Option to Purchase at Agricultural Value (OPAV) – these involve constraints on land uses similar to conservation easements, but further require that the property remain in agricultural production regardless of owner, and that the property only be sold at a price that reflects agricultural value rather than another ‘highest and best use’. This process is intended to support farming rather than conversion to non-farming use. Although DEP does not fund acquisition of OPAV easements, it is a tool available to local land trusts as interest may lead them to use it.

USDA (<https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/>) provides financial assistance, up to 50% of fair market value, to eligible partners for purchase of farm easements. The USDA also offers resources to help active farmers improve their bottom lines and for new farmers to enter the field. The Agricultural Management Assistance Program helps agricultural producers use conservation to manage risk and solve natural resource issues through natural resources conservation. The Conservation Stewardship Program helps agricultural producers maintain and improve their existing conservation systems and adopt additional conservation activities to address priority resources concerns; participants earn payments for conservation performance – the higher the performance, the higher the payment. The Environmental Quality Incentives Program provides financial and technical assistance to agricultural producers to address natural resource concerns and deliver environmental benefits. The Conservation Reserve Enhancement Program provides landowners with payments for maintaining vegetated buffers along streams for periods of 10-15 years and is an active program in the watershed. The USDA also offers tools for first-time farmers to access both capital and land to take the life-changing step of entering farming as a profession, from building a business plan to accessing the land and capital needed to be successful; through its partnership with SCORE, USDA offers free business mentoring and coaching to small business owners.