

A stylized agricultural landscape with a bright yellow sun in a blue sky, green and yellow striped fields, and yellow farm buildings in the distance. A dark green plant with three leaves and a bud is in the foreground.

**New York State Department of
Agriculture and Markets**

Agricultural Districts Law
Section 305-a & Section 308

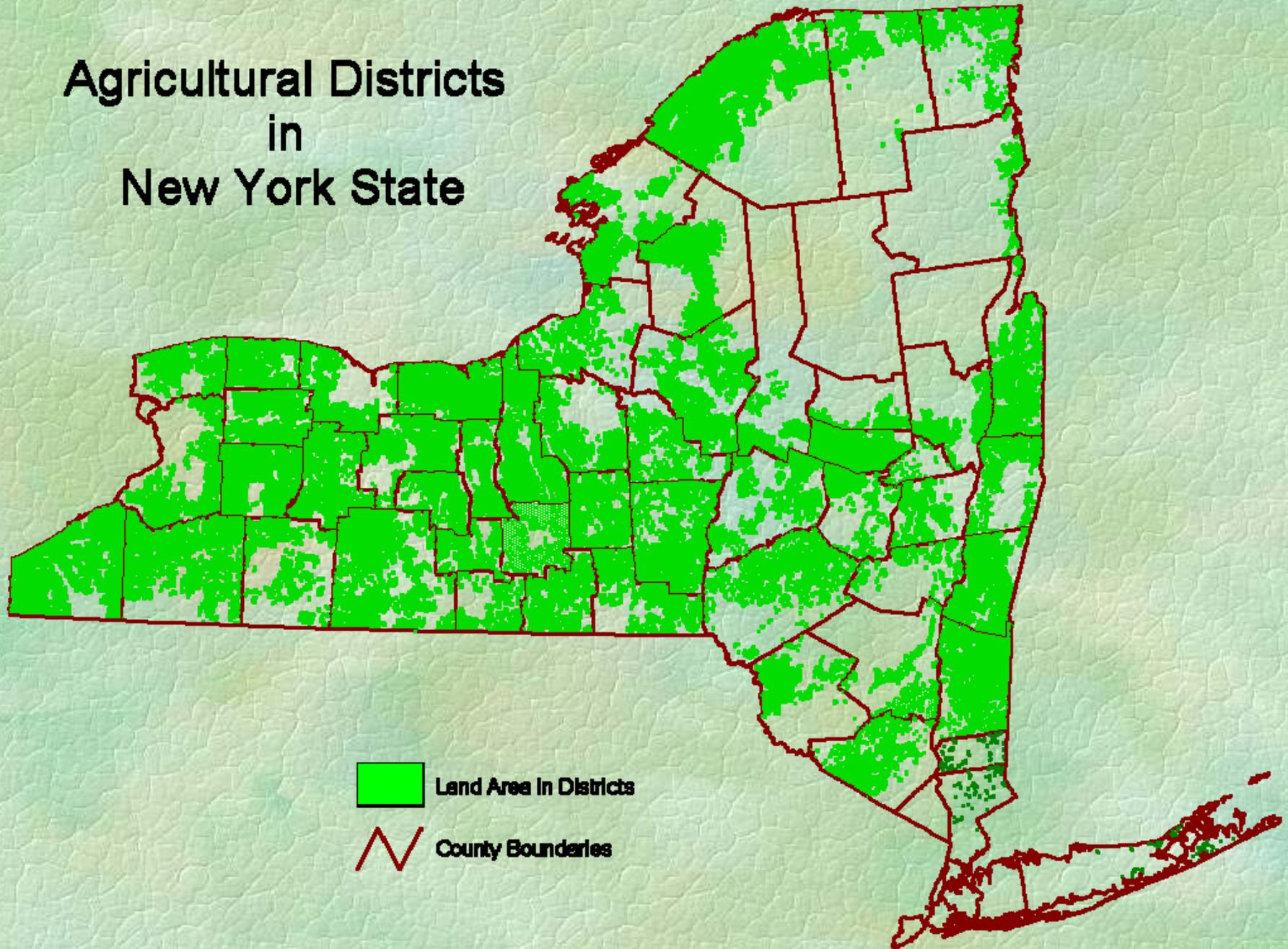
Agricultural Districts Law
Article 25-AA

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Agricultural Districts Law

In 1971, the Agricultural Districts Law, Article 25-AA of the Agriculture and Markets Law (AML), was enacted *to conserve and protect agricultural lands.*

Agricultural Districts in New York State



What is an Agricultural District?

- Geographic area consisting predominantly of viable agricultural land.
- Agricultural operations are the priority land use.
- Districts may include land that is actively farmed, idle, forested, residential and commercial.

Agricultural District Benefits and Influences

- Limitation on the Exercise of Eminent Domain and Other Public Acquisitions
- Protected From Unreasonable Restrictions (section 305-a)
- Right to Farm (section 308)
- Agricultural Assessment

AML §305-a(1)

Unreasonably Restrictive Local Laws

- Local governments are prohibited from unreasonably restricting ***farm operations*** located within an agricultural district unless it can be shown that the ***public health or safety is threatened.***

What is a “Farm Operation”?

- Defined by AML §301(11)
- *Local Laws and Agricultural Districts: How Do They Relate?*

Initiating a review

- The Commissioner may conduct a review without a specific request;
- An affected farmer may initiate a complaint;
- A municipality or other affected/interested party may request a review.

Factors used to determine if local law is unreasonably restrictive:

- Cost of compliance in light of size and complexity of the farm operation.
- Will requirements cause a lengthy delay?
- Will requirements affect farmer's ability to manage the operation effectively and efficiently?
- Will requirements restrict production options?
- Are less onerous means available to achieve the locality's objective?
- Does a State law, regulation or standard apply?

Other Considerations:

- Is activity exempt by the State?
- Does local law imposes performance standards over and above those of the State?
- Do local conditions warrant the more stringent standards?

Remedies under §305-a may include:

- The Commissioner may bring an action to enforce the law; or
- The involved parties may also reach a mutually satisfactory resolution.

§305-a Cases Reviewed

- Manure Storage and Application
- Agricultural Buildings & Equipment
- Junk Vehicles
- Nursery/Green-house Construction and Operation
- Equine/Horse Boarding
- Labor/Housing

Land Use Laws that Discourage Agriculture Structures

- Restrictions on farm worker housing.
- Requirement for site plan review prior to constructing an agricultural building.

Land Use Laws that Discourage Agriculture Practices

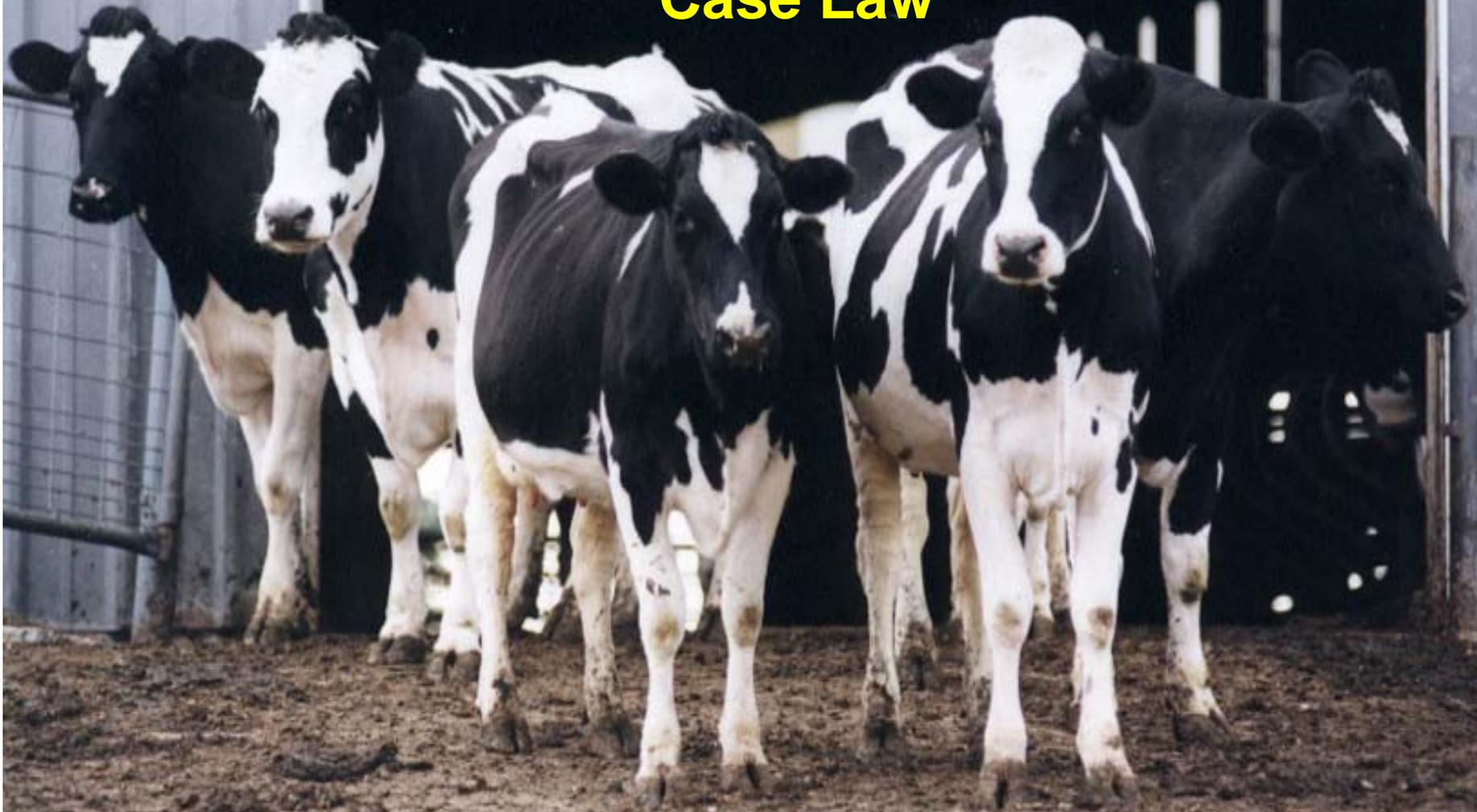
- Special use permit required for agricultural activities within a particular zoning district.
- Setback requirements for fencing.
- Setback requirements for animal grazing.
- Animal density requirements.
- Cannot leave horses in paddocks overnight.

Land Use Laws that Discourage Animal Agriculture

- Moratorium or local law restricting the number and or type of animals on farms.
- Odor from farm cannot leave the boundary of the property.
- Cannot spread manure on certain parcels of land within the town.
- Waste management practices must be done according to Natural Resource Conservation Service (NRCS) standards. State only requires such standards for Concentrated Animal Feeding Operations (CAFOs).

**Agriculture and Markets Law
Section 305-a(1)**

Case Law



1) Town of Lysander v. Hafner

- New York's highest court upheld Mr. Hafner's right to choose to provide on-farm housing as well as the type of housing, in this case.
- The Court also ruled that the Town's zoning ordinance is superseded by Agriculture and Markets Law (AML) §305-a.

2) Town of Butternuts v. Davidsen

- Farmer's right to landspread septage, pursuant to a DEC permit, was upheld by the Court.
- The Commissioner issued an Order under AML §36 determining that Town's prohibition on dumping "waste materials of any nature" unreasonably restricted the farmer in violation of AML §§305(2) and 305-a(1).
- Court ruled that Commissioner properly relied on AML §36 in his enforcement efforts.

3) Inter-Lakes Health, Inc. v. Town of Ticonderoga

- The Town's adoption of a local law which provides that "farm operations" as defined in the AML shall be a permitted principal use in all areas located within an agricultural district was upheld.

4) Inter-Lakes Health, Inc. v. Town of Ticonderoga

- Appeal from a judgment of the Supreme Court.
- Upholds lower court's decision that the enactment of the local law is in compliance with §305-1(1)(a) of the AML.
- Agreed with a Court of Appeals decision that the Commissioner's application of the statute is entitled to deference.
- Court stated that §305-a is intended to supercede zoning ordinances or comprehensive zoning plans.

Provisions of Local Laws That Would Generally Be Considered Reasonable

- Local permit requirements that do not exceed the State Standards.
- Applications are timely considered.
- Permit process does not result in substantial fees or costs for the farmer.
- To the extent permitted by State and federal law, a local law could adopt the State standard and include an enforcement mechanism.

Provisions of Local Laws That Would Generally Be Considered Reasonable [continued]

- A local law which requires CAFO farms to submit copies of their DEC permit application and permit to the locality and to keep the locality updated on changes in permit status, would be reasonable.

Reasonable Setback Distances of Manure Sources From Wells (Not Property Lines)

- Barnyards, silos, barn gutters and animal pens – 100 feet (based on Dept. Health Standards for New Water Wells).
- Manure Piles – 200 feet (based on Dept. Health Standards for New Water Wells).
- Lined manure storage ponds or fabricated units – 100 feet (NRCS standards).
- Unlined self sealing manure storage facilities – 300 feet (NRCS standards).

Planning and Zoning Considerations

- When local planning boards are identifying farm uses which are permitted principal uses in certain zoning districts they should determine if such areas contain land located in a county adopted, State certified agricultural district.
- Local zoning laws should provide an exemption for farm activities conducted in an agricultural district.

Section 308 Right To Farm

- The Commissioner shall issue opinions upon request from any person as to whether particular agricultural practices are sound.
- Sound agricultural practices includes practices necessary for the on-farm production preparation and marketing of agricultural commodities.

Section 308 Right To Farm

- An agricultural practice shall not constitute a private nuisance, provided such practice is sound and is conducted on land in an agricultural district or land used in agricultural production subject to an agricultural assessment.
- All opinions issued on a case by case basis.

Guidelines for Establishing Opinions

- The practice should be legal.
- The practice should not cause bodily harm or property damage off the farm.
- The practice should achieve the results intended in a reasonable and supportable way.
- The practice should be necessary.

Case Law

- Pure Air and Water, Inc. filed an Article 78 proceeding against the Commissioner arguing that an opinion issued in 1995 was illegal, arbitrary and capricious and not supported by substantial evidence, as well as due process violations.
- The courts found that the Commissioner had jurisdiction to issue the opinion and that the opinion was rational, reasonable, and supported by the record.

Case Law [continued]

- In 1997 the Department issued an opinion that the manure application on a hog farm, as it relates to odor control, was sound.
- Pure Air and Water, Inc. sought a declaration that Agricultural and Markets Law section 308 is unconstitutional.
- The Court declared New York's Right to Farm Law and the opinion constitutional.

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