

SUMMARY OF CLUP PARKING LOT ITEMS

Agriculture Excerpt

December 9, 2011

December 20, 2011 - updated with AC recommendations

Chapter 5: Standards for Land Use

5.3.1 Applicability and other policies

- *“Agriculture or horticulture in the Compatible Growth Area is encouraged to comply with best management practices.”* Suggest replacing the word “encouraged” with more directive language.
- Clearing for new or expanded agricultural activities. Clarify under NYS Environmental Conservation Law (ECL) 57 and NYS Agriculture and Markets Law if:
 - the activity of farming is “non-development”
 - if new clearing for new agricultural activity in the CGA is considered development, then it is subject to Standards of the CLUP
 - if new clearing for new agricultural activity in the Core is considered development, then it is subject to the Hardship requirements for review and a decision by the Commission

(The Commission has issued several decisions in the past in regard to clearing related to agriculture. These are attached for your review. In the first decision resolution, dated October 19, 2005 and pertaining to the application of Metz Farms to clear in the CGA, the Commission approved the clearing of portions of a parcel “...depicted as lightly wooded and grass field...” as well as a “...small portion of...” a wooded area. In the second matter, which entailed a proposal by Gladys Gherardi to develop a vineyard on 37 acres of a 57-acre site in the Core containing native vegetation, the Commission determined in its adopted resolution of June 21, 2006, that the “...site preparation activities required for the Gherardi proposal such as clearing, excavation or the material alteration of grade or vegetation or activities which will result in a material increase in the intensity of land use or environmental impact thereof would constitute development and would require a hardship exemption before any such activities may commence on the site...”). In the Gherardi case, the applicant litigated, and on August 1, 2007, the Commission’s decision was upheld by the Court.

Development if it meets definition pursuant to NYS ECL § 57-0107 (13) (c):

“commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities;”

Non-development if it meets definition pursuant to NYS ECL § 57-0107 (13) (v): “the use of any land for the purpose of agriculture or horticulture;”

Definition of Agriculture pursuant to NYS ECL § 57-0107(14):

“Agriculture” or “horticulture” shall mean any production of plants or animals useful to man, including but not limited to: forage or sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, and including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds including wineries; vegetables; nursery, floral, ornamental and greenhouse products and farm stands for selling products raised or produced on site and other associated structures required for their production.”

See attached definitions in NYS Ag & Markets Law Section 25-AA § 301.

- Obtain references for most current State Agriculture and Markets Law to clarify the status of farms.

(The New York State Constitution and New York State Agriculture and Markets Law both contain references to agriculture. The State Constitution states that one of the policies of New York State is to “encourage the development and improvement of its agricultural lands for the production of food and other agricultural products” and that the State legislature must “... include adequate provision for ... the protection of agricultural lands.”

In addition, the State Agriculture and Markets Law declares that the “agricultural industry is basic to the life of our state” and reiterates that it is the policy of the state to “...promote, foster and encourage the agricultural industry.” The law also indicates that one of the duties of the State Department of Agriculture and Markets is the “...improvement of the fertility and productiveness of farm lands and the restoration to fertility and productiveness of unoccupied and unproductive land.” The Agriculture and Markets Law also contains provisions which require the Department to “provide for the operation of the state soil and water conservation committee...,” establish integrated pest management (IPM) programs and voluntary programs for “Agricultural Environmental Planning and Implementation” in conjunction with the soil and water conservation committee and Cornell Cooperative Extension. Finally, Article 11A of the law contains an entire section devoted to “Agricultural Environmental Management (AEM)” which includes measures such as best management practices and coordination with NYSDEC in regard to SPDES regulation of agriculture. (Attached appendices contain more complete excerpts from the State Constitution and State Agriculture and Markets Law.)

The CLUP referenced a document entitled Controlling Agricultural Nonpoint Source Water Pollution in New York State (Bureau of Technical Services and Research, Division of Water, New York State Department of Environmental Conservation, 1991). An update will either be located or a reference to its replacement will be inserted. A related document entitled “Division of Water Technical and Operation Guidance Series (5.1.3)

Investigation of Agricultural Sources of Water Pollution, dated April 1, 1987 and reissued July 22, 1996, is attached, along with a series of informative documents from the New York State Soil and Water Conservation Committee which pertain to Agricultural Environmental Management (discussed above).

A comment was expressed that Best Management Practices (BMPs) do not work. This is evidenced by the recently released Suffolk County Comprehensive Water Resources Plan which indicates nitrates in groundwater are increasing and may require changes not only to the CLUP but also to ECL Article 57. A comment was made that the right to farm does not grant the right to pollute groundwater.

AC ACTION: THE AC TABLED ANY ACTION ON THIS MATTER AND INSTEAD DEFERRED TO THE LONG ISLAND FARM BUREAU TO PREPARE AND SUBMIT COMMENTS AND SUGGESTED LANGUAGE TO THE COMMISSION IN REGARD TO AGRICULTURE AND HORTICULTURE.