

## **THE RIGHT TO FARM IN THE ADIRONDACKS**

## TABLE OF CONTENTS

	Page
I. The Importance of the Farming Industry in New York State .....	1
II. The Adirondack Park Agency Act Carves Out Farms and Exempts Them From Regulation By the Adirondack Park Agency .....	2
1. Legislative History .....	2
2. The Density Controls of the Act Exempt Farm Buildings .....	3
3. The Specific Exemption for Farming.....	7
4. Construction of Agricultural Use Structures Including Farm Employee Housing is not a Subdivision that Grants Jurisdiction to the Agency.....	8
III. The Rivers Act Does Not Expand the Agency's Jurisdiction Over Farming .....	10
IV. Conclusion .....	11

## **I. The Importance of the Farming Industry in New York State**

Agriculture is among New York State's most important industries. New York farmers generate farm products in excess of three billion dollars in value. New York's farms employ some 113,000 people. Food industry employment accounts for 425,000 jobs. Related transport, marketing, and international sales are important. A strong and viable agricultural industry benefits the State's farm and food industry; it is a foundation stone of the New York economy.

The three million acres of private land in the Adirondacks hold a wealth of natural resources that includes an agricultural resource base sustained by abundant rainfall, productive soils, a sufficient growing season and proximity to the nation's largest markets.<sup>1</sup>

New York State law provides benefits and protections to farmers. Article 25-AA of New York State's Agriculture and Markets Law authorizes the creation of local agricultural districts pursuant to land owner initiative, county review, state certification and county adoption. There are over 340 agricultural districts in New York State, containing approximately 21,500 farms and 8.6 million acres. Agricultural districting encourages farming and use of farmland for agricultural production. The program is based on a combination of landowner incentives and protections designed to protect farms, farmers, and to discourage farmland conversion to non-agricultural use. Included in these benefits are preferential real property tax treatment and, more important, protections against restrictive local laws, protection against government funded acquisition or construction projects, and statutory defenses to private nuisance suits

---

<sup>1</sup> New York Farm Bureau; 2007 Policy Statement; p. ii.

involving agricultural practices. Local governments in New York State may not regulate farming. New York State farmers have a right to farm.

The State of New York Department of Agriculture and Markets supports the rights of the farming community under New York law, including the right to engage in sound agricultural practices and the right of farmers to support their operations with necessary buildings and infrastructure, including farmworker housing. The Department recognizes that farmworker housing is an integral part of a successful farm operation. Housing accommodates the work day of farm laborers and farm management, and meets needs in recognition of the shortage of nearby rental housing in rural farm communities. Farm hands cannot afford to buy or even rent good housing in the Adirondacks. The Department of Agriculture and Markets firmly maintains that the construction of farmworker housing is protected by Agriculture and Markets Law §35-a, as upheld by the New York State Court of Appeals in Town of Lysander v. Hafner, 98 N.Y.2d 558 (2001).

## **II. The Adirondack Park Agency Act Carves Out Farms and Exempts Them From Regulation by the Adirondack Park Agency.**

### **1. Legislative History.**

In 1971, New York State determined that the three million acres of private land inside the Adirondack Park needed a regional land use law. To ensure optimum overall conservation, preservation, development and use of the Park's resources, State lawmakers determined to establish the Adirondack Park Agency (the "Agency") and the Adirondack Park Agency Act (the "Act") under Article 27 of the Executive Law. In so doing, the lawmakers specifically determined to "exempt bona fide forest and agricultural

management practices" from regulation by the Adirondack Park Agency.<sup>2</sup> At the time, Governor Nelson A. Rockefeller regarded the creation of the Adirondack Park Agency as one of the most significant accomplishments of the 1971 Session. The Governor embraced the comprehensive nature of the law, yet also proclaimed the wisdom of its limitations on executive power. He determined that the law achieved a "balance between desirable development and economic growth and the protection of the natural resources of the Adirondack Park."<sup>3</sup>

At the time of passage, the State Executive Department recognized that the land use plan at the heart of the Act "would be implemented primarily by the park's local government . . . the Agency would have concurrent jurisdiction only over large scale projects and those proposed to be located in especially critical environmental areas of the park."<sup>4</sup> The Legislature also determined to make the Wild, Scenic and Recreational Rivers Act consistent with the provisions of the Act.

## **2. The Density Controls of the Act Exempt Farm Buildings.**

Ultimately, State lawmakers developed a comprehensive approach under the Act through the Adirondack Park Land Use and Development Plan (the "Plan"). Overall, the Plan is carefully designed to nourish and facilitate existing economic activities in the Adirondack Park while development is controlled through land use classifications and density guidelines within those classifications. Executive Law §801, *et seq.* Thus, all private lands in the Park are classified into six categories, identified by color on the Park

---

<sup>2</sup> McKinney's 1971 Session Laws of New York, Legislative Memoranda; Adirondack Park Agency-Creation; Ch 706 p. 2471.

<sup>3</sup> *Id.* at p. 2627.

<sup>4</sup> *Id.* at p. 2202.

plan map: hamlet (brown), moderate intensity use (red), low intensity use (orange), rural use (yellow), resource management (green) and industrial use (purple).

The classification of particular areas depended upon such factors as existing land use and population growth patterns, soils, geological features, biological considerations, the need to preserve the open space character of the Park and the protection of certain fragile ecosystems.<sup>5</sup> The twofold purpose of the land classification system established by the law is to channel growth into areas where it can best be supported and limit incompatible uses in some land use areas. Thus, "primary compatible uses" are listed for each of the six land use areas under the Plan and overall intensity guidelines are in place for each of the land uses.<sup>6</sup>

The intensity guidelines facilitate compatible uses in appropriate land use categories while significantly limiting the number of "Principal Buildings" in other areas. Compatible uses such as homes in the hamlets are not limited in the intensity guidelines, nor are compatible industrial uses in the industrial zones. The overall intensity guidelines are fairly summarized as follows:

**Overall Intensity Guidelines**

<u>Land Use Area</u>	<u>Color on Map</u>	<u>Bldgs. (per sq. mile)</u>	<u>Size (acres)</u>
Hamlet	brown	no limit	none
Moderate Intensity Use	red	500	1.3
Low Intensity Use	orange	200	3.2
Rural Use	yellow	75	8.5
Resource Management	green	15	42.7
Industrial Use	purple	no limit	none

<sup>5</sup> See generally, Citizens Guide to the Adirondack Park Agency Land Use Regulations, Adirondack Park Agency, pp. 2-6 (2006).

<sup>6</sup> See generally, Executive Law §805.

In accordance with the legislative purpose of exempting farming practices from regulation by the Agency, agricultural uses and agricultural use structures are deemed a compatible use throughout the Park except in the hamlet areas.<sup>7</sup>

In fulfilling its commitment to exempt farming practices from regulation by the Agency, the Legislature took several steps in the Act to prevent the exercise of State executive power over farming.

The Legislature acknowledged that "open space uses, including forest management, agriculture and recreational activities, are found throughout" the land use designation of "resource management areas" where "Agricultural Uses" and "Agricultural Use Structures" are classified as the highest and best use of the land. The Legislature recognized that farms achieve two of the primary goals of the overall act: (1) "protection of open space resources";<sup>8</sup> and (2) protection of farming as an economic activity in the Park. Specifically, the Legislature acknowledged in the text of the statute that:

"Important and viable agricultural areas are included in resource management areas, with many farms exhibiting a high level of capital investment for agricultural buildings and equipment. These agricultural areas are of considerable economic importance to segments of the park and provide for a type of open space which is compatible with the park's character."<sup>9</sup>

---

<sup>7</sup> Executive Law §805(3)(d)(4)(4) and (5) [farming compatible in moderate intensity use areas]; Executive Law §805(3)(e)(4)(4) and (5) [farming compatible in low intensity use areas]; Executive Law §805(3)(f)(4) and (5) [farming compatible in rural use areas]; Executive Law §805(3)(g)(4)(1) and (2) [farming compatible in resource management areas]; Executive Law §805(3)(h)(3)(9) and (10) [farming compatible in industrial use areas].

<sup>8</sup> Executive Law §805(3)(g)(1).

<sup>9</sup> Id.

Most important, although the density guidelines within resource management areas limit growth to fifteen "Principal Buildings" per square mile in this land use area, the Legislature carefully crafted the statute to embrace and protect unlimited economic growth of farms in the resource management areas without any impact whatsoever upon the density guidelines. This was done through a specific paragraph within the definition of "Principal Building", which provides as follows:

"All agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, **his employees engaged in such use and members of their respective immediate families**, will together constitute and count as a single principal building."<sup>10</sup>

Thus, as the Adirondack Park Agency regulates development in accordance with the intensity guidelines, the Agency has absolutely nothing to say about the growth of farms as a matter of law. The expansive definition of "Principal Buildings" on farms could not be clearer in expressing a legislative requirement that farms be allowed to grow without regulation by the Agency. A farm could have fifty or more structures upon it, including employee housing, yet all of the structures are counted as just one "principal building," thus assuring the growth and prosperity of farms in protecting open space and providing an economic foundation for residents of the Park. The Agency does not have jurisdiction over farm development.

The Economic Affairs Committee of the Adirondack Park Agency has recognized and continues to struggle with the primary threat to the economic vitality of the Park, affordable housing.<sup>11</sup> The first step the Agency must take towards solving this policy

---

<sup>10</sup> Executive Law §802(50).

<sup>11</sup> See Adirondack Park Agency 2006 Annual Report, p. 27.



crisis is to recognize the legal protection afforded to farmers as a matter of law, which places the growth of farms and farm employee housing beyond the reach of the Agency.

### **3. The Specific Exemption for Farming.**

Under the Act, the Agency only has jurisdiction to review "Class A" and "Class B" regional projects within the Park.<sup>12</sup> In defining this limited class of projects over which the Agency has jurisdiction, the Legislature was careful to follow through with its protection of farming by not listing "agricultural use structures" as jurisdictional.<sup>13</sup> Indeed, not only did the Legislature go out of its way to not list "Agricultural Use Structures" as jurisdictional, it specifically provided that throughout the Park, including the hamlets, all "Agricultural Use Structures" are exempt from regulation as a "Project" even if they are in excess of forty feet in height.<sup>14</sup>

Obviously, the Agency cannot stand the Act on its head, ignore the fact that farm employee housing does not count as a principal building, ignore the explicit exemption for agricultural use structures (notwithstanding their height, size or shape), and somehow gain jurisdiction by labeling farm employee housing as a "single family dwelling". Such a contorted reading, designed to overreach and regulate farming, would do violence to the

---

<sup>12</sup> Executive Law §810.

<sup>13</sup> "Structure" is broadly defined to include anything from a fence to a building, including housing. Executive Law §802(62). The definition of "Agricultural Use Structure" borrows from this broad definition of "Structure" and provides that "Agricultural Use Structure" includes any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use. Clearly, farm employee housing, barns and other such improvements are within the definition of "Agricultural Use Structure". Executive Law §802(8).

<sup>14</sup> Executive Law §810(1)(a)(4) [agricultural use structures of any height exempt from regulation in hamlet areas]; §810(1)(b)(5) [agricultural use structures of any height exempt from regulation in moderate intensity areas]; §810(1)(c)(1)(d)(5) [agricultural use structures of any height exempt from regulation in low intensity use areas]; §810(1)(d)(1)(d)(5) [agricultural use structures of any height exempt from regulation in rural use areas]; and §810(1)(e)(8) [agricultural use structures of any height exempt from regulation in resource management areas].

Legislative intent and careful Legislative structure of the Act in exempting farms. Farm employee housing is always an "Agricultural Use Structure," because this definition includes housing. These structures are beyond the reach of the Agency under the Act.

The Agency's numbing insistence on controlling the number of nuclear families who live and work on farms is contrary to law and will doom the future of farming in the Adirondacks. Successful farm employee housing is more than just a bunkhouse with shared sanitary facilities.<sup>15</sup>

This comprehensive review of the Adirondack Agency Act establishes that regulations of the growth of farms, including farm employee housing, is not permitted by the limited jurisdiction provided to the Adirondack Park Agency. In addition, regulation of the growth of farms, including farm employee housing, serves absolutely none of the goals and purposes of the Act because Agricultural Use Structures, including farm worker housing, are not counted as Buildings in the density guidelines. Indeed, regulation of farms and the growth of farming is contrary to the balanced purposes of the Act in protecting farms as open space resources and as one of the foundation stones upon which the fragile economy inside the Adirondack Park must be supported.

#### **4. Construction of Agricultural Use Structures Including Farm Employee Housing is Not a Subdivision That Grants Jurisdiction to the Agency.**

Ordinarily, a farmer constructs housing for her employees on lands of her own, without changing the appearance of the land, the use of the land or the description of the

---

<sup>15</sup> See Exec. Law § 802(50).

land in real property terms. No new lots are created, no new ownership regimes are imposed and no leases are signed.<sup>16</sup>

The Adirondack Park Agency Act defines "Subdivision of Land" as a "division of land into two or more lots, parcels or sites" for "separate ownership or occupancy".<sup>17</sup> The construction of farm employee housing by a farmer in the ordinary course does not include "the division of land", the creation of lots, separate ownership or separate occupancy. Rather, the occupancy anticipated in farm employee housing is only that which is integral to and within the employment structure of the farm; it is not "separate" from the farm, it is part of the farm. The farm owns it all. It is constructed and used to bring benefit to the farm.

The APA's regulations clarify that the construction of farm employee housing does not automatically create a subdivision because "subdivision into sites" only occurs when an additional principal building is constructed.<sup>18</sup> As stated above, farm growth does not impact the density guidelines sought to be fostered by the structure of the Act, because the Legislature directed the Agency to not count agricultural use structures such as farm employee housing as "principal buildings" within the density guidelines.

Since the very definition of "Principal Building" that is relied upon in this definition of "Subdivision" in the Agency's own regulations demands that farm employee

---

<sup>16</sup> In this regard, one is hard pressed to even maintain that the construction of an agricultural use structure, including farm employee housing, is "land use or development" under the meaning of the Act. "Land use or development" is limited to activity which materially changes the use or appearance of land or a structure or the intensity of the use of the land or a structure." Since the Legislature made clear that agricultural use structures are not to be counted as "principal buildings", they made a specific finding that the growth of farms does not change the use or appearance of land nor does it change the intensity of the use of the land because agricultural use structures are not counted among principal buildings. Executive Law §802(28).

<sup>17</sup> Executive Law §802(63).

<sup>18</sup> 9 NYCRR §570.3(ah)(3).

housing not be counted as a "principal building", the subdivision statute and regulations are not triggered such that the Agency gains subdivision jurisdiction. Farm employee housing is never an additional "Principal Building".<sup>19</sup> Therefore, farm employee housing is never an automatic subdivision over which the Agency may assert jurisdiction.

### **III. The Rivers Act Does Not Expand the Agency's Jurisdiction Over Farming**

The Wild, Scenic and Recreational River System Act (the "Rivers Act") was enacted pursuant to a Legislative finding that rivers possess outstanding natural, scenic, historic, ecological and recreational values that ought to be protected consistent with law.<sup>20</sup> The primary purpose of the Act is to preserve the free flowing condition of the rivers for recreational uses.<sup>21</sup>

Except for a few select areas where wild rivers are found, the Legislature made clear that the right to farm protected by the Act, as bolstered by New York's Agriculture and Markets Law, ought to be carried through with respect to the regulation of scenic rivers and recreational rivers. Thus, the Rivers Act specifically provides as follows with respect to recreational river areas:

In recreational river areas, the lands may be developed for the full range of agricultural uses, forest management pursuant to forest management standards duly promulgated by regulations, stream improvement structures for fishery management purposes, and may include small communities as well as disbursed or cluster residential areas.<sup>22</sup>

---

<sup>19</sup> See Executive Law §802(50)(g).

<sup>20</sup> ECL §15-2701(1).

<sup>21</sup> ECL §15-2701(3).

<sup>22</sup> ECL §15-2709(2)(c) (emphasis supplied).

Clearly, the Legislature knew what it meant when it passed the Rivers Act several years after the Adirondack Park Agency Act. The direct statement in the statute that the freedom to farm "for the full range of agricultural uses" is a deliberate reference to the farming exemptions then in existence in the Adirondack Park Agency Act itself.

The Adirondack Park Agency followed through with this Legislative directive, and in passing the regulations designed to implement the Rivers Act, the Agency stated:

The following may be undertaken without a permit if in compliance with the restrictions and standards set forth in Section 577.6 of this Part:

In recreational river areas:

Agricultural uses, agricultural use structures, open space  
recreation uses, game preserves and private parks . . .<sup>23</sup>

There can be no doubt that the freedom to farm in the Adirondacks, including the unfettered right to build farm employee housing, is carried through in the Rivers Act.

## CONCLUSION

The statutes and regulations that are brought to bear to control development within the Adirondack Park have uniformly and consistently placed all farm structures beyond the regulatory reach or control of the Adirondack Park Agency. This deliberate legislative decision was made to eliminate any discretion whatsoever within the Agency to control the size, growth, character or success of any farm in the Park. The Legislature wisely determined, as informed by the Blue Ribbon Commission empanelled by Governor Rockefeller, that farming in the Adirondacks needed complete freedom in order to foster two very important goals inside the park, the preservation of open space and the

---

<sup>23</sup> 9 NYCRR §577.4(b)(3)(ii) (emphasis supplied). Of course, virtually all agricultural use structures including farm employee housing are in compliance with the standards set forth in §577.6, as referenced in this permit exemption, because they are usually more than 150 feet from the mean high water mark of the river. 577.6(b)(3).

cultivation of economic growth. New York State must breathe life into these legal protections in the interest of the future of the Park.

John J. Privitera