

Eight-Year Review of Agricultural Districts in Orange County: 2020 Report of the Orange County Agricultural and Farmland Protection Board

Overview of the Purpose and Benefit of Agricultural Districts

The New York State Agricultural District Program exists to protect current and future farmland from nonagricultural development which would result in competition for limited land resources, and also to prevent ordinances which would inhibit farming and raise farm taxes. The socio-economic vitality of agriculture is essential to the economic stability and growth of many local communities and the State as a whole. The importance of local food has been underscored in 2020 due to the COVID-19 pandemic, with farm markets and farm stands surging in activity and commerce as opposed to 2019.

There are a number of benefits, protections, and incentives available to farms that are in a County Agricultural District. These include:

- Eligibility for property valuation for tax purposes based on a property's agricultural use value, not its market value. This benefit/protection is a key tool for keeping land in agricultural use, and is especially valuable in areas where there is pressure for development. This benefit is now also available to qualified farm operations outside of Agricultural Districts, somewhat weakening the need for districting to protect agricultural lands.
- Protections from nuisance lawsuits for farms using sound agricultural practices, as determined on a case-by-case basis by the Commissioner of Agriculture and Markets (*Ag and Markets*)
- Restrictions on local governments in how they regulate farm operations within an Agricultural District (and to some extent outside districts as well). The Agricultural District Program may actually supersede local regulation.
- Requirements that local governments and agencies evaluate how their actions may impact farm operations within Agricultural Districts. This process may limit what governments legislate and what agencies can do or fund in such areas.
- Requirements that the purchasers of property in an Agricultural District be given specific notice that the land they are purchasing is in an agricultural area and therefore subject to the sounds, odors, and other aspects common to farming.

These protections and benefits are in place due to NYS Ag and Markets Law §303-A, which defines the maintenance, review, and updating of the districts as an act of the County Legislative body, although the Commissioner of NYS Ag and Markets makes the ultimate decision as to the district updates. This Law outlines the review process and stipulates the contents of this Report, as well as requires that districts are reviewed every eight years.

Eight-Year Review Process

In order to ensure that the districts are comprised of predominantly agricultural land uses and are in compliance with NYS Ag and Markets Law §303-A (AML 303-A), the County conducts a thorough review of the districts every eight years to determine if changes are warranted. While parcels can be added to a district each year during the month of March, it is only during the eight-year review that parcels can be both removed and added; such actions are referred to as district modifications.

The review of agricultural districts is undertaken by the County Legislature with assistance from the County Planning Department, the Office of Real Property, Cornell Cooperative Extension and the municipalities within the County as well as input from landowners. Once a review has been completed, the County Legislature directs the Orange County Agriculture and Farmland Protection Board (AFPB), as outlined in AML 303-A, to review the proposed modifications, provide recommendations, and submit a report for review and approval by the County legislature. Once approved, the report is then submitted to the NYS Department of Ag and Markets for review and certification.

The 2020 Review Process

In the spring of 2020, the Planning Department mailed maps of the 2019 agricultural districts to each municipality in order to solicit feedback on modifications. The following municipalities provided comment that was incorporated into the proposed modifications:

- Town of Crawford
- Town of Goshen
- Town of Minisink
- Town of Montgomery
- Town of Mount Hope
- Town of Palm Tree
- Town of Wallkill
- Town of Warwick
- Town of Wawayanda
- Village of Maybrook
- Village of Warwick

This feedback (see Appendix H) was complemented by the Department's analysis, which was extensive and included use of geographic information systems (GIS) in order to ascertain which parcels had been converted out of agriculture. After completing this analysis later in May/June, the Planning Department mailed another set of maps to municipalities. This series of revised maps incorporated the municipal feedback that was received as well as the recommendations of the Department's staff and landowner requests.

Landowners were notified of the district review process through several avenues: publication of the Legislature's public notice, posting of information on the County's website, emails from various agencies including Cornell Cooperative Extension, and postings of paper notices in strategic public locations.

After reviewing all information provided through the above processes, the Planning Department developed a final draft of district modifications. The County Legislature will set a public hearing to solicit comments on the proposed modifications on September 3, 2020. The notice of public hearing will be published in the County's official newspapers and posted on the county's website. Notice of such public hearing shall also be given in writing by first class mail to those municipalities whose territories encompass the district and any proposed modification to the district and to persons, as listed on the most recent assessment roll, whose land is the subject of a proposed modification and to the Commissioner of Ag and Markets.

Upon review of this Report and any and all comments received, the County Legislature shall make a finding by Resolution whether the district(s) should be continued, terminated or modified. The district review plan (description of the district, including a map delineating the exterior boundaries of the district conforming to tax parcel boundaries; the tax map identification numbers for every parcel in the district; a copy of this Report of O.C. Agricultural and Farmland Protection and a copy of the minutes of the public hearing testimony offered at the public hearing) will be submitted to the Commissioner of Ag. and Markets before November 20, 2020 seeking certification of the district(s).

The Legislature's resolution and the minutes of the public hearing will be attached to this report as Appendices B and C. Agricultural District Review Profiles, a pro-forma requirement by Ag and Markets, will be included as Appendix D to this Report.

Agricultural District and the SEQRA process

County legislative bodies adopt, review, modify and consolidate agricultural districts pursuant to Agriculture & Markets Law ("AML") §§303, 303-a, 303-b, and 303-c.

The State Environmental Quality Review Act ("SEQRA") and its corresponding regulations (6 NYCRR Parts 617 and 618) define those situations in which local governments must conduct an environmental review as part of their decision-making process. In accordance with 6 NYCRR Part 617, the "Proposed Action" consisting of the consolidation, continuation and modification of Orange County's Agricultural Districts No. 1 & 2, which were certified pursuant to Article 25-AA of the Agriculture & Markets Law ("AML"), is subject to SEQRA.

The Department of Environmental Conservation ("DEC") has advised in its guidance documents that the consolidation, continuation or modification of an AML agricultural district involving a material change is an *Unlisted Action* under SEQRA. Orange County has determined the Proposed Action involves a material change in the County's AML agricultural districts. Therefore, the Proposed Action requires the completion of a SEQRA Short Environmental Assessment Form (EAF) and determination of environmental significance.

To comply with SEQRA, the Orange County Legislature will approve a New York State Department of Agriculture and Markets EAF to help it assess the environmental significance of the Proposed Action. The draft Ag & Markets EAF, including the findings of significance, is attached to this report as Appendix G.

Status of Agriculture in Orange County¹

Orange County adopted the Orange County Agricultural and Farmland Protection Plan as an addendum to the County Comprehensive Plan in 2015. The following text includes excerpts from that Plan as well as updates based on the 2017 Agricultural Census and local information regarding development trends.

Farmland Characteristics

Orange County has a long history of farming, and agriculture has shaped many aspects of the County as it exists today. Agriculture has historically been a key part of the County's economy. Land use patterns and roads developed originally to serve farms. Development of transportation routes across the County, including the railroads and shipping on the Hudson River and the Delaware and Hudson Canals facilitated the movement of agricultural products to markets in metropolitan centers.²

Agriculture is an important industry and land use in the County because it:

- ✓ Contributes to jobs and the economy (see Agricultural Economy section, below)
- ✓ Contributes to the visual character of the landscape, and sense of community and cultural identity
- ✓ Provides fresh, safe, and local foods and products
- ✓ Provides recreational opportunities
- ✓ Foundation for many tourism activities
- ✓ Keeps taxes down because it costs less to provide municipal services to agriculture than residential uses
- ✓ Provides open lands to enhance biodiversity
- ✓ Offers a quality of life that residents highly value
- ✓ Protects the environment – soil conservation, carbon sequestration, conservation of biodiversity

The following figures provide additional detail on the County's agricultural industry and was acquired through the United States Department of Agriculture, which conducts an Agricultural Census every five years to acquire data on the agricultural industry.

¹ See Appendix A for additional statistics on Orange County from the Agricultural Census.

² See, the "Official Rails-to-Trails Conservancy Guidebook" by Craig Della Penna and Tom Sexton, 2002 as cited in Report of Orange County Historian, Johanna Porr Yaun to the Legislature's Education and Economic Development Committee on August 19, 2019.

Figure 1. Orange County's statistics from the 2017 Agricultural Census, highlighting change from the 2012 Census

Total and Per Farm Overview, 2017 and change since 2012		
	2017	% change since 2012
Number of farms	621	-6
Land in farms (acres)	81,192	-8
Average size of farm (acres)	131	-2
<hr/>		
Total	(\$)	
Market value of products sold	87,915,000	-13
Government payments	463,000	-77
Farm-related income	8,196,000	-25
Total farm production expenses	85,594,000	-15
Net cash farm income	10,981,000	-16
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Per farm average	(\$)	
Market value of products sold	141,571	-7
Government payments (average per farm receiving)	6,806	-38
Farm-related income	31,404	-19
Total farm production expenses	137,832	-10
Net cash farm income	17,683	-11

Figure 2. Characterization of the proportions of various farmland types in Orange County based on the 2017 Agricultural Census

Land in Farms by Use (%) ^a	
Cropland	61
Pastureland	13
Woodland	16
Other	11

Farmland Preservation

In line with Article 25-AAA of the NYS Ag and Markets Law, Orange County has a significant amount of preserved farmland, totaling over 6,300 acres. New York State’s Farmland Protection Implementation Grants Program has enabled protection of thousands of acres of land in Orange County through Purchase of Development Rights (PDR). Other entities that have furthered farmland protection in the County include:

- Orange County, which spent \$6,291,245 on farmland preservation from 2004-2007 through its open space fund. This leveraged nearly \$20.1 million dollars through partnerships with New York State and other conservation partners and protected 2,557 acres.
- Orange County Land Trust
- Scenic Hudson
- Open Space Institute
- Municipalities, including the Towns of Warwick, Montgomery, Chester, Goshen and Wallkill

While the preservation of farmland is ongoing in the County, the land that has been preserved through PDR helps to maintain a critical mass of farmland that ensures the local agricultural industry will continue to thrive.

Development Pressure

Orange County, being located on the edge of the New York City metropolitan area, has historically experienced residential development pressure due to in-migration from more urban areas. This residential development pressure has increased in response to major events impacting New York City, such as the increase in migration from New York City and neighboring counties post 9/11. This development pressure could be seen in the increase in the median house prices from 2001 and 2006, where the median house price went from \$159,900 to \$298,500 ([A Three-County Regional Housing Needs Assessment: Orange, Dutchess and Ulster Counties from 2006 to 2020](#), p. 18), as the price indicates a supply and demand response as people were leaving more urban areas. During the previous five-year period of time (1996 – 2000) the median house price increased from \$124,900 to \$141,000 ([A Three-County Regional Housing Needs Assessment: Orange, Dutchess and Ulster Counties from 2006 to 2020](#), p. 18).

Much of this residential development consisted of single-family housing located on large lots. As a result, farmland was converted to residential lots that were no longer farmed. Currently, the country and the world have been impacted by the COVID-19 pandemic. Based on anecdotal information and the post-9/11 response of people moving out of New York City and more urban areas, Orange County believes that it will face a similar increase in residential development pressure as people seek to move out of New York City in response to the COVID-19 pandemic.

Additionally, three major highways, including two interstates (I-87, I-84, and State Route 17) traverse the County and has led to developments including warehouses. More recently, the need for renewable energy combined with the aging of some of the County's farmers has also led to the development of commercial scale solar installations on land that was previously farmland. Thus, the agricultural landscape and economy in the County is in a state of transition and the agricultural districts are an important tool for maintaining this critical industry.

Expansion of the Community Preservation Act to all local municipalities within Orange County

The Hudson Valley Community Preservation Act of 2007 authorizes designated communities (towns or cities with the Hudson Valley counties of Putnam, Ulster or Westchester to establish dedicated accounts (community preservation funds) to protect parkland, open space, farmland, and historic buildings via the imposition of a real estate transfer tax.³

In May of 2019, the Orange County Legislature sent a home rule message to the New York State Legislature seeking an expansion of the 2007 Hudson Valley Community Preservation Act to include the County of Orange within the definition of “Designated Community”.⁴ The New York State Legislature has failed to act on this request.

Please note, the Town of Warwick has its own state legislation authorizing the town as a designated community to impose the real estate transfer tax to be deposited into a community preservation funds to protect and preserve lands within the town. (see section 4 of chapter 262 of the laws of 2005) which expires in 2025.

County Comprehensive Plan

The 2019 Orange County Comprehensive Plan is consistent with and supportive of the Orange County Agricultural Districts. This plan encourages growth to occur within the County Priority Growth Areas, which are primarily located in and near the County’s cities, villages, and hamlets. These places typically have the infrastructure to serve growth, including transportation, central water and sewer services, dense housing and other infrastructure (pp. 16-17 of the County Comprehensive Plan). As a result, the County Priority Growth Areas help direct development away from the more rural areas of the County, including agricultural areas.

Furthermore, the 2015 Orange County Agricultural and Farmland Protection Plan is integrated into the Orange County Comprehensive Plan as Supplemental Chapter 4 of the comprehensive plan. The 2015 Orange County Agricultural and Farmland Protection Plan contains eight Priority Projects. Of those Priority Projects, Priority Project 6 supports the continuation of the County Agricultural Districts since this Priority Project aims to “protect farmland within core production areas” (2019 Orange County Comprehensive Plan, p. 4). By identifying and working to address this priority project, along with the remaining seven priority projects, the County shows that it is sensitive to the needs of agriculture within the County and that it seeks to assist the agricultural sector to thrive in an area that is being increasingly developed.

Local Comprehensive Plans

While completing the 2015 Orange County Agricultural and Farmland Protection Plan, the County performed an audit to determine how farm-friendly its municipalities were (see Appendix 6: Farm Friendly Audits, Orange County Agricultural and Farmland Protection Plan). During its audit, the County found that about half of the municipalities had comprehensive

³ See, chapter 596 of the laws of New York State of 2007.

⁴ See, Orange County Legislature Resolution No. 119 of 2019.

plans that included a section on agriculture, including 66% of the towns containing agriculture using farm-friendly practices.

Most municipalities' comprehensive plans contained a vision statement or goals that address agriculture and demonstrated the value of agriculture to the community (60% of all communities using farm-friendly practices and 89% of towns containing agriculture and using farm-friendly practices). Furthermore, most of the municipal comprehensive plans indicated that agriculture was an important resource in the municipalities (63% of all farm-friendly municipalities and 100% of municipalities with agriculture and using farm-friendly practices). In general, the towns that have more active agricultural activities are the same towns that are more likely to address agriculture in their comprehensive plans and to be more farm-friendly.

Land Use Regulations

Most towns in Orange County are making an attempt to deal with suburban development through land use control policies. In many towns with a significant agricultural presence, agriculture plays at least some role in balancing future land uses from an economic perspective. The maintenance of farmland as an open, working landscape results from the economic use of the land for agricultural purposes. Towns can take this into consideration as they develop their land use control policies. They can take into account the nature of the planned use, the compatibility of adjoining uses and the respective demand for public services for the use. Furthermore, some towns have proactive agricultural policies ranging from town level agricultural and farmland protection programs, cluster development, right-to-farm provisions, notification to new residents that they are moving into an agricultural production area, and business recruitment and attraction strategies.

Zoning is the land use regulation that most impacts farming. Most Orange County towns set the lowest residential density of one dwelling per one acre (1:1) to one per four acres (1:4). With regulation of minimum residential lot size, zoning can set up housing densities that compromise the land base or, *if properly timed*, it can keep residential development sufficiently low to allow agriculture to continue. Choices made in zoning can drive up land values, making farm expansion impossible. This effect coupled with the characteristics of Orange County's farming population (e.g. aging farmers, the transitioning agricultural economy, the challenge of intergenerational transfer) can make selling the land for development irresistible.

For the 2020 eight-year review of the Orange County Agricultural Districts, the County Planning Department utilized the 2015 Orange County Agricultural and Farmland Protection Plan, Appendix 6: Farm Friendly Audits. This appendix indicates that 49% of municipalities using farm friendly practices and 89% of municipalities with agriculture using farm friendly practices have regulations whose purpose statement includes a discussion of agriculture or promotes the goal of preserving agriculture. About half (52%) of municipalities using farm-friendly practices and about two-thirds (66%) of towns containing agriculture and using farm friendly practices have zoning that establishes a local agricultural zoning district, an agricultural overlay district, or a special use district for agriculture. About half (48%) of municipalities using farm-friendly practices and about a third (33%) of towns containing agriculture and using farm-friendly

practices have zoning codes that do not require special use permits for agriculture or ag-related uses.

Furthermore, 39% of all municipalities using farm-friendly practices and 50% of towns with agriculture using farm friendly practices have zoning that does not encourage higher density or commercial growth in core farm areas or where a NYS Ag District exists. Finally, about a half (56%) of municipalities using farm-friendly practices and about two-thirds (66%) of towns with agriculture using farm friendly practices have regulations that encourage, allow, or mandate development patterns that preserve farmland (i.e. conservation subdivisions, clustering, TDR).

Effectiveness of Agricultural Districts

The objectives of Orange County's agricultural districts are to protect both actively farmed land and land with the potential to be farmed from nuisance lawsuits and unreasonably restrictive local regulations. The County believes that these objectives have been achieved as demonstrated by the relatively low number of grievance-related inquiries that have been received by the NYS Department of Ag and Markets in recent years. The protections provided through this program have reinforced to farmers, municipal officials, and the County's landowners that agriculture is a vital local industry and instills a keen awareness and tolerance of agricultural practices, some of which involve noise (e.g. cattle, pigs, chickens, equipment, etc.), odor (e.g. manure-spreading, crop applications, etc.), or traffic concerns (e.g. tractors driving slowly, etc.), thereby contributing to the vitality of the County's agricultural industry. Furthermore, in cases where farmers who owned or rented farmland within the County Agricultural District faced nuisance lawsuits or restrictive zoning, the farmers were supported by the NYS Department of Ag and Markets so long as the farmers were using sound agricultural practices and were not creating a health or safety threat.

Proposed Modifications in 2020

In Orange County, there have historically been two agricultural districts: #1 and #2. New York State route 17 was used as the dividing line between the two districts. These districts were established in 1972 and were reviewed in 1980, 1988, 1996, 2005, and 2012. As of 2019, there were 68,176 acres in district #1 and 94,683 acres in district #2. The 2020 Review process has resulted in modifications that propose a 13% decrease in the acreage of agricultural districts, as demonstrated in Figure 3.

Figure 3. Proposed modifications to Orange County's agricultural districts⁵

Municipality	2019 District Statistics		Modifications to 2019 district parcels						Proposed District in 2020		Change from 2019	
	# Parcels	Acreage	Add		Remove		Keep		# Parcels	Acreage	Acreage Change	Percent Change
			# Parcels	Acreage	# Parcels	Acreage	# Parcels	Acreage				
Blooming Grove (T)	546	6,677	6	186	396	1,296	150	5,382	156	5,568	-1,110	-17%
Chester (T)	668	5,659	5	46	423	1,314	245	4,346	250	4,392	-1,267	-22%
Cornwall (T)	166	2,365	9	1,059	90	372	76	1,994	85	3,052	687	29%
Crawford (T)	1,112	14,994	4	61	556	1,380	556	13,613	560	13,675	-1,319	-9%
Deerpark (T)	145	3,188	5	191	74	225	71	2,962	76	3,154	-34	-1%
Goshen (T)	1,984	19,158	8	697	1,027	4,122	1,066	15,036	1,074	15,733	-3,425	-18%
Greenville(T)	282	5,729	8	345	74	454	208	5,274	216	5,619	-109	-2%
Hamptonburgh(T)	681	9,132	6	64	404	1,383	277	7,750	283	7,813	-1,319	-14%
Minisink(T)	1,003	11,924	0	0	590	1,778	413	10,146	413	10,146	-1,778	-15%
Monroe(T)	12	132	0	0	0	0	12	132	12	132	0	0%
Montgomery(T)	1,075	15,763	5	171	596	2,393	479	13,369	484	13,541	-2,222	-14%
Mount Hope(T)	362	6,341	9	284	203	1,452	159	4,889	168	5,173	-1,168	-18%
Newburgh(T)	304	3,401	5	123	152	530	152	2,871	157	2,994	-407	-12%
New Windsor(T)	272	3,174	12	251	173	313	99	2,860	111	3,112	-62	-2%
Palm Tree(T)	1	21	0	0	1	21	0	0	0	0	-21	-100%
Wallkill(T)	999	11,662	3	86	554	1,398	445	10,264	448	10,350	-1,312	-11%
Warwick(T)	2,905	29,715	38	840	1,215	3,556	1,690	26,159	1,728	27,000	-2,715	-9%
Wawayanda(T)	1,473	16,077	5	103	797	2,524	676	13,553	681	13,656	-2,420	-15%
Woodbury(T)	3	152	0	0	0	0	3	152	3	152	0	0%
Chester(V)	193	279	2	17	101	50	92	230	94	247	-33	-12%
Florida(V)	164	299	0	0	0	0	164	299	164	299	0	0%
Goshen(V)	1	7	0	0	0	0	1	7	1	7	0	0%
Maybrook(V)	1	4	0	0	0	0	1	4	1	4	0	0%
Montgomery(V)	5	52	0	0	0	0	5	52	5	52	0	0%
S. Blooming Grove(V)	6	152	0	0	1	3	5	150	5	150	-3	-2%
Warwick(V)	238	283	0	0	236	270	2	13	2	13	-270	-95%
Washintonville(V)	3	49	3	155	0	0	3	49	6	205	155	315%
COUNTYWIDE TOTALS:	14,604	166,389	133	4,680	7,663	24,832	7,050	141,557	7,183	146,237	-20,152	-12%

While the amount of land used for agriculture in Orange County has been decreasing in recent decades, it should be noted that the noticeable decrease in district acreage is also due to the extensive mapping process undertaken in 2020, which enabled the County to remove a significant number of parcels that are not being used for agricultural production. These removals were predominantly small residential lots but also included industrial, commercial, and other non-agricultural parcels. Despite these removals, the proposed modifications in 2020

⁵ Due to enhancement of the accuracy of the County's GIS parcel layer, there is a discrepancy between acreage reported in 2019 and that shown in the table above

retain just under 27% of the County within the district. Figures 4 & 5 illustrate the change in acreage from 1988 to the proposed 2020 district.⁶

Figure 4. Trends in acreage in Orange County’s agricultural districts, 1988-2020

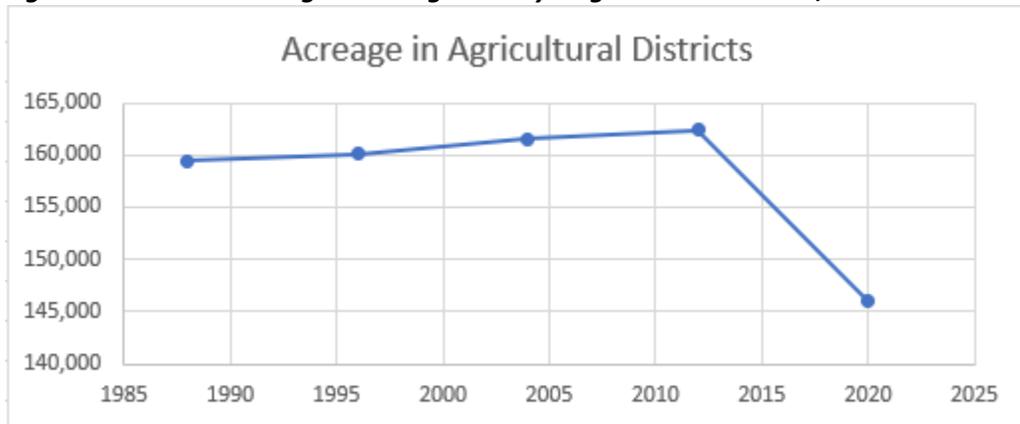
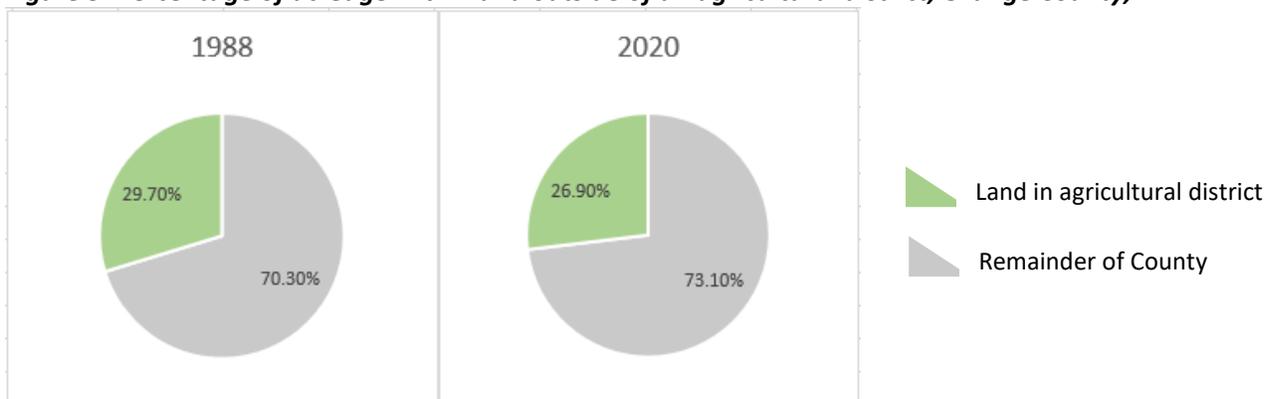


Figure 5. Percentage of acreage within and outside of an agricultural district, Orange County, NY



Appendix E displays a map of the proposed modifications, showing those parcels that are proposed to remain in the agricultural district, be added to the district, or be removed from the district. Appendix F includes a listing of those parcels.

District Consolidation

During this eight-year review, the County proposes to combine the two districts into one district called Orange County Agricultural District No. 1. This consolidation will simplify administrative procedures such as completion of agricultural data statements (a requirement for certain land use proposals at the municipal level) and would especially benefit those municipalities that have been divided by Route 17 into two districts; in some cases, parcels themselves have been divided into two districts. The County proposes this consolidation because having two districts provides no clear benefit.

⁶ While agricultural districts were first established in the County in 1972, acreage data prior to 1988 was not readily available.

Recommendations

The County recommends that:

1. the agricultural district program continue,
2. the parcels listed in Appendix F be modified by being added to or removed from the district, and
3. the County's two districts be consolidated into one district.

APPENDICES

- A. County Profile from the 2017 Agricultural Census
- B. County Resolution Approving Continuance and Modification of Orange County Agricultural District #1
- C. Public Hearing Minutes (9/3/2020)
- D. District Review Profiles (One RA-114 Form for each District)
- E. Map of proposed modifications to Orange County Agricultural District #1
- F. Parcel list of modifications to “consolidated” Orange County Agricultural District #1
- G. Agricultural District EAF
- H. Municipal responses, Spring 2020