

URBAN CREEP IN UPSTATE NEW YORK: OPTIMIZING THE PRESERVATION OF AGRICULTURAL LAND

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New York State is home to the largest city in the United States and one of the most famous cities in the world: New York City.¹ However, Upstate New York is also home to a diversity of agriculture all across the state from dairy farms, apple orchards, and strawberry fields, to maple syrup, wineries, and cut Christmas trees.² A drive across the state in late summer or early fall showcases all that Upstate New York has to offer from the beautiful scenery to the acres upon acres of crops that blanket the landscape with a multitude of colors and envelops visitors in a feeling of home.

In New York and across the United States, there is a deep heritage and tradition of agriculture and it needs to be preserved and protected for future generations. Additionally, the United States is the world's top exporter of food and agricultural products with expectations for the future projected to continue in order to feed the rapidly increasing world population.³ Upstate New York is home to many farming families and agriculturalists, providing food for those in their local communities across the state, and even across the country.⁴ While farmers take pride in their crops and animals, they are faced with the economic uncertainty of securing the future of the land that they put their blood, sweat, and tears into for future

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¹ See Edward L. Glaeser, *Urban Colossus: Why Is New York America's Largest City?*, FRBNY ECON. POL'Y REV., Dec. 2005 at 7.

² See, e.g., *About Ag at CCE*, CORNELL COOPERATIVE EXTENSION: SENECA COUNTY, <http://senecacountycce.org/agriculture/about-ag-at-cce> (last visited Dec. 28, 2018); *NY AG Facts: New York Is an Agricultural State!*, N.Y. ST. AGRIC. SOC'Y, <http://www.nysagsociety.org/n-y-ag-facts/> (last visited Dec. 28, 2018).

³ See Mary Jane Maxwell, *U.S. Farmers Feed the World*, SHARE AM. (Oct. 13, 2017), <https://share.america.gov/u-s-farmers-feed-world/>.

⁴ See N.Y. ST. DEP'T. AGRIC. & MKTS., <https://www.agriculture.ny.gov/> (last visited Dec. 28, 2018); THOMAS P. DINAPOLI, THE IMPORTANCE OF AGRICULTURE TO THE NEW YORK STATE ECONOMY 1, 4 (2015).

generations.

In the last fifty years, the population growth across the country has created a migration of people from the cities and suburbs to the surrounding urban and rural areas.⁵ This move has impacted farming practices because land is a precious commodity and once farmland is redeveloped for housing purposes, that land is lost forever.⁶ Unlike European cities that have walls that act as physical barriers indicating where the urban areas end, the United States faces the epidemic of a centerless sprawl because there is no designation on where the urban areas end and people from the urban areas keep expanding farther away from the epicenter of the cities and are encroaching into the countryside.⁷

While there are no walled cities to assist in protecting against a centerless sprawl, farmers have several options to preserve their lands and the agricultural heritage and tradition in America. There are federal programs such as the Farmland Protection Program that conveys a conservation easement as a voluntary restriction on a farmer's land and the Natural Conservation Service that provides financial assistance to farmers that want a conservation easement to limit nonagricultural uses of the land.⁸ Additionally, at the state level, New York has a conservation easement program, the Environmental Conservation Law, and a protection plan under the Department of Agriculture and Markets to provide financial and technical support in preserving agricultural land in New York.⁹ Furthermore, non-profit organizations, such as the Agricultural Stewardship Association (ASA), may assist in providing a portion of the finances required for a conservation easement.¹⁰ At the local level, zoning can be used to fit the goals and objectives of the local community and this personal relationship with the local ecosystem is

⁵ See William H. Frey, *US Population Disperses to Suburbs, Exurbs, Rural Areas, and "Middle of the Country" Metros*, BROOKINGS (Mar. 26, 2018), <https://www.brookings.edu/blog/the-avenue/2018/03/26/us-population-disperses-to-suburbs-exurbs-rural-areas-and-middle-of-the-country-metros/>; Derek Thompson, *Why So Many Americans Are Saying Goodbye to Cities*, ATLANTIC (Apr. 4, 2017), <https://www.theatlantic.com/business/archive/2017/04/why-is-everyone-leaving-the-city/521844/>.

⁶ See TOM DANIELS & DEBORAH BOWERS, *HOLDING OUR GROUND: PROTECTING AMERICA'S FARMS AND FARMLAND* 4 (1997).

⁷ See Stephen R. Miller, *Boundaries of Nature and the American City*, in *ENVIRONMENTAL LAW AND CONTRASTING IDEAS OF NATURE: A CONSTRUCTIVIST APPROACH* 133, 136 (Keith H. Hirokawa ed., 2014).

⁸ See 16 U.S.C. § 3865 (2012); see, e.g., 16 U.S.C. § 3865c(b)(4)(A), (c) (2012); 16 U.S.C. § 3865d(c)(1) (2012).

⁹ See N.Y. AGRIC. & MKTS. LAW § 323 (McKinney 2018).

¹⁰ See *About ASA: Our Mission*, AGRIC. STEWARDSHIP ASS'N, <https://www.agstewardship.org/about/> (last visited Nov. 17, 2018).

vital to preserving farmland because farms tend to be the buffer against urban sprawl and therefore, communities must work together.¹¹ However, increasing demand for land can put a strain on a community and there must be a discussion between farmers and members of the community in order to find a solution to a difficult problem.¹²

In New York State, the Agricultural Mediation Program provides the tools necessary to facilitate a conversation between farmers and community members to address issues regarding farming practices and to find a solution that works for all participants.¹³ A neutral third-party would be able to provide services for a community facing a zoning issue and, in the process, the participants are able to listen and learn from one another. To further the connection in communities across the state, the promotion of agritourism and education programs—such as the Farm Bureau and Cornell Cooperative Extension—can inform the community members about farming and the agricultural practices occurring locally.¹⁴

Preserving agricultural lands may be a daunting task, but New York State has the tools and capabilities of promoting agriculture and land use planning by focusing on the needs of communities at the local level, expanding the Agricultural Mediation Program to address issues of land use planning and fully utilizing the educational programs available.

I. THE IMPORTANCE OF AGRICULTURE

A. *Agriculture Across the United States*

While agriculture in the United States “has been a part of our collective societal identity at both the local and national levels”, over 175 acres of farm and ranch lands are lost every hour due to urban sprawl and development.¹⁵ Furthermore, around three million acres

¹¹ See DANIELS & BOWERS, *supra* note 6, at 109.

¹² See *id.* at 40.

¹³ See N.Y. ST. AGRIC. MEDIATION PROGRAM, *The New York State Agriculture Mediation Program*, http://nysamp.com/?hp_highlights=the-new-york-state-agriculture-mediation-program (last visited Dec. 28, 2018).

¹⁴ See *About Us: Chris Watkins*, CORNELL COOPERATIVE EXTENSION, <http://cce.cornell.edu/info/about> (last visited Jan. 5, 2019); *NYFB Promotion & Education (PE) Programs*, N.Y. FARM BUREAU, https://www.nyfb.org/application/files/4314/9790/4458/2017_Promotion_Education_Brochure_.pdf (last updated May 23, 2017).

¹⁵ See Jess R. Phelps, *Defining the Role of Conservation in Agricultural Conservation Easements*, 44 *ECOLOGY L.Q.* 627, 632 (2017); *No Farms No Food*, AMERICAN FARMLAND TRUST, <https://www.farmland.org> (last visited Jan. 5, 2019).

of farmland across the United States are converted to non-agricultural uses each year with the majority of the land expanding urban areas and increasing transportation from the cities and into the countryside.¹⁶ For example, from 2002 to 2012, land in urban areas went up ten million acres, while between 2007 and 2012, “total cropland decreased by [sixteen] million acres to its lowest levels since . . . 1945.”¹⁷

Beginning in the 1970’s and 1980’s, people began to move away from cities and near farms on the fringe of more rural areas.¹⁸ This was, in part, due to dense suburbs such as Levittown, New York, where people wanted more personal space and to escape from the congestion, such that most moved to urban areas while others migrated to more rural areas.¹⁹ Urban sprawl was augmented and made easier by the 1956 Interstate Highway Act, which created 42,000 miles of highway which allowed for easier access to rural areas and perpetuated a “centerless sprawl,” an expansion into rural areas that is not controlled or centralized.²⁰ Furthermore, farming close to urban areas results in development pressures from urban and suburban growth and conflicts usually emerge due to this proximity.²¹ Currently, many small farms are still pressured by urban and suburban sprawl because of the high demand for the land, whereby farmers are often faced with heavy economic pressures such as high property taxes and incentives to sell their lands to developers.²²

Since large areas of agricultural land across the U.S. has been converted to suburban use, “such rapid urbanization may contribute to congestion, diminish environmental quality, and cause an

¹⁶ See U.S. DEP’T OF AGRIC. ET AL., NAT’L AGRIC. LANDS STUDY: EXECUTIVE SUMMARY OF FINAL REPORT 6 (1981), https://www.farmlandinfo.org/sites/default/files/NAL_Executive_Summary_1.pdf; Jacqueline P. Hand, *Right-to-Farm Laws: Breaking New Ground in the Preservation of Farmland*, 45 U. PITT. L. REV. 289, 289 n.1 (1984); see also DANIEL P. BIGELOW & ALLISON BORCHERS, MAJOR USES OF LAND IN THE UNITED STATES, 2012 iv (2017) (explaining that three-percent of the 2.3 billion acres of land in the United States is urban use).

¹⁷ See BIGELOW & BORCHERS, *supra* note 16, at iv.

¹⁸ See Gina Moroni, Comment, *Mediating Farm Nuisance: Comparing New Jersey, Missouri, and Iowa Right to Farm Laws and How They Utilize Mediation Techniques*, 2018 J. DISP. RESOL. 299, 303 (2018).

¹⁹ See TIM LEHMAN, PUBLIC VALUES, PRIVATE LANDS: FARMLAND PRESERVATION POLICY, 1933-1985 53 (1995).

²⁰ *Id.* at 54; see also DANIELS & BOWERS, *supra* note 6, at 134–35 (discussing how the increase in road construction after World War II allowed Americans to become more mobile, allowing workers to live in rural areas).

²¹ See AM. FARMLAND TR., AGRICULTURAL AND FARMLAND PROTECTION FOR NEW YORK 5 (1993).

²² See Sean F. Nolon & Cozata Solloway, Comment, *Preserving Our Heritage: Tools to Cultivate Agricultural Preservation in New York State*, 17 PACE L. REV. 591, 595 (1997).

inefficient use of land.”²³ Farmers “hold the key not only to the nation’s food supply, but also [vital] to managing community growth, maintaining an attractive landscape, and protecting air, water, and wildlife resources.”²⁴ In the last thirty years across the U.S., there has been a large population increase in suburban areas encroaching on rural lands and it is vital to preserve agricultural land now while there is still time to save them because “once farmland is fragmented or converted to other uses, the loss of that farmland is usually permanent.”²⁵

B. Agriculture in New York State

Farmland preservation in New York State began in the 1960’s on Long Island, Suffolk County, where farmland loss was first noted due to urban sprawl and the county was able to save its remaining agricultural industry by preserving about 6,000 acres.²⁶ In upstate New York, agriculture contributes more than \$39 billion to the economy annually and is a vital part of identity for many upstate New Yorkers because there are more than 35,000 farms of which many people have some sort of connection with.²⁷ Additionally, more than seven million acres in New York is in agriculture and that amounts to twenty percent of the State’s total land mass.²⁸

The vast majority of farms in New York are family owned and because the local food movement is gaining momentum all across the country, New Yorkers are purchasing healthy foods from local

²³ Joshua Templeton et al., *Forecasting Development at the Suburban Fringe*, in *ECONOMICS AND CONTEMPORARY LAND USE POLICY: DEVELOPMENT AND CONSERVATION AT THE RURAL-URBAN FRINGE* 83, 83 (Robert J. Johnston & Stephen K. Swallow eds., 2006).

²⁴ DANIELS & BOWERS, *supra* note 6, at 4; see U.S. DEP’T OF AGRIC. ET AL., *supra* note 16, at 8 (“Population growth in rural areas not only affects agriculture directly by causing the conversion of agricultural land to other uses; it also has some serious indirect effects on agriculture. One of these effects is termed the ‘impermanence syndrome.’ As population increases in agricultural areas, land values rise and farms are broken into small parcels more suitable for housing than for farming.”).

²⁵ DANIELS & BOWERS, *supra* note 6, at 134; see *State Fact Sheets*, U.S. DEP’T AGRIC.: ECON. RES. SERV., https://data.ers.usda.gov/reports.aspx?ID=17854#P06c564cda8e1404fac763b660ecd5215_2_39iT0 (last updated Oct. 26, 2018).

²⁶ See Deborah Bowers, *Survey Shows 1.4 Million Acres Preserved by Top State Programs; \$4 Billion Spent Over 30 Years*, FARMLAND PRESERVATION REP. (Oct. 25, 2013), <http://www.farmlandpreservationreport.com/spring-2013/>.

²⁷ See AM. FARMLAND TR., *CULTIVATE NEW YORK: AN AGENDA TO PROTECT FARMLAND FOR GROWING FOOD AND THE ECONOMY* 5 (2016) [hereinafter *CULTIVATE NEW YORK*]; Press Release, Thomas P. DiNapoli, New York State Comptroller, Agricultural Activity Brings \$37 Billion Into New York’s Economy (Mar. 3, 2015), <https://www.osc.state.ny.us/press/releases/mar15/030315.htm>.

²⁸ See N.Y. ST. DEP’T. AGRIC. & MKTS., *supra* note 4.

farmers markets and farm stands.²⁹ The local food movement has been attributed to millennials.³⁰ Millennials are generally young adults that grew up with technology and they want to know where their food is coming from because they are intrigued with transparency.³¹ Millennials are used to searching on their smartphones and being able to research anything they want by the small device they can carry in their pocket.³² This constant passion and intuitiveness has extended to the food that they eat and they want to know more about where it was grown and how it was grown. Therefore, there is a demand for locally grown foods, but with the population in rural areas increasing and taking up land once used for farming, it is critical that agricultural lands are preserved for continued and future use not only for the farmers, but from those that want to have a deeper connection with the foods that they are consuming.

In New York State alone, “5,000 acres of farmland per year is lost to real estate development—about one farm a week.”³³ Moreover, the saying, “if you build it, they will come”³⁴ is applicable because if we are proactive and preserve the farmland we have now while continuing the momentum of demand for locally grown foods and educating the general public, agriculture in upstate New York will be prevalent for many years to come. Therefore, farmland preservation should have three main elements: (1) protecting agricultural lands, (2) utilizing available tools and resources, and (3) raising awareness and educating local communities on agriculture and farming.

II. TOOLS AVAILABLE TO PRESERVE FARMLAND

A. Federal

The federal Farmland Protection Program uses easements and

²⁹ See CULTIVATE NEW YORK, *supra* note 27, at 7–9; *State Fact Sheets*, *supra* note 25.

³⁰ See Beth Hoffman, *How ‘Millennials’ Are Changing Food as We Know It*, FORBES (Sept. 4, 2012), <https://www.forbes.com/sites/bethhoffman/2012/09/04/how-millennials-are-changing-food-as-we-know-it/#5c9a4fd74041>; Tricia Smith, *Millennials Seek Local Foods That Offer a Sense of Place*, FOOD LOGISTICS (Mar. 31, 2015), <https://www.foodlogistics.com/blogs/article/12052201/millennials-seek-local-foods-that-offer-a-sense-of-place>.

³¹ See LaVell Winsor, *Why Farmers Need to Understand Millennials*, FARM FUTURES (May 1, 2014), <http://www.farmfutures.com/blogs-why-farmers-need-understand-millennials-8457> (demonstrating how millennials are part of the “transparency generation” that wants more information on what farmers do).

³² See *id.*

³³ CULTIVATE NEW YORK, *supra* note 27, at 5 (indicating that since the early 1980’s in New York State, an average of one farm a week have been destroyed).

³⁴ FIELD OF DREAMS (Gordon Company 1989).

other interests in land to conserve agricultural land in order to “protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land.”³⁵ An agricultural conservation easement is a voluntary restriction that individual landowners can use to keep the land available for farming and the restrictions of the easement are binding on future uses of the land.³⁶

An agricultural easement is conveyed to provide “the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan,”³⁷ and the length of an agreement may depend on whether it is a permanent easement, the eligibility of the land, and state laws as they relate to easements.³⁸ Furthermore, a federal easement plan is under the supervision of the Secretary and the Secretary has sole authority in setting up, granting, modifying, and even terminating an easement.³⁹

Another federal option in preserving agricultural lands is the Natural Resources Conservation Service (NRCS) through the United States Department of Agriculture, which provides financial assistance to help farmers and ranchers keep their “cropland, rangeland, grassland, pastureland and nonindustrial private forest land” by submitting proposals to their local NRCS state office to determine if they are eligible for an agricultural land easement.⁴⁰ However, “[t]he State Conservationist will use ranking factors consisting of national and State criteria to score and rank each eligible application” and the eligible entity must pay at least as much as the federal share.⁴¹ Additionally, while the objective of the Agricultural Conservation Easement Program-Agricultural Land Easements (ACEP-ALE) is to help farmers and ranchers purchase agricultural land easements, the land is restricted by the terms in the easement including limiting oil, gas, earth, or mineral rights

³⁵ 16 U.S.C. § 3865 (2012).

³⁶ See Julie Ann Gustanski, *Protecting the Land: Conservation Easements, Voluntary Actions, and Private Lands*, in PROTECTING THE LAND: CONSERVATION EASEMENTS PAST, PRESENT, AND FUTURE 9, 16 (Julie Ann Gustanski & Roderick H. Squires eds., 2000); *Agricultural Conservation Easements*, FARMLAND INFO. CTR. (Jan. 2016), http://www.farmlandinfo.org/sites/default/files/Agricultural_Conservation_Easements_AFT_FIC_01-2016.pdf.

³⁷ 16 U.S.C. § 3865a(1)(B) (2012).

³⁸ See 16 U.S.C. § 3865b(c) (2012).

³⁹ See, e.g., 16 U.S.C. § 3865c(a) (2012); 16 U.S.C. § 3865d(e)(1) (2012).

⁴⁰ *2014 Farm Bill - Agricultural Conservation Easement Program*, U.S. DEP'T AGRIC. NAT. RESOURCES CONSERVATION SERV. (May 2017), <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/easements/acep/?cid=stelprdb1242695>.

⁴¹ *Part 528 - Agricultural Conservation Easement Program (ACEP): Subpart E - ACEP-ALE Application, Ranking, and Selection*, TITLE 440 - CONSERVATION PROGRAMS MANUAL (May 2017), <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=40723.wba>.

exploration.⁴² This potentially puts a limit on what landowners can do with the land including, for example, adding a free-stall barn to house additional cows. To add an additional structure that was not included in the conservation easement agreement, the landowner, which could be the one who entered into the conservation easement or the person that bought the land with the easement, would not be able to make those changes unless allowed to with the permission of the Grantee.⁴³ Additionally, this could also impact any changes to the land such as making a ditch for better drainage or adding a pond for irrigation that was not present when the conservation easement was created.⁴⁴

To facilitate farmers across the country in preserving their land with agricultural easements, organizations such as the American Farmland Trust assist landowners not only to help fund the easements, but they also advocate for various programs aimed at protecting agricultural lands, develop innovative policies and programs, and provide educational programs on the importance of saving farmland and supporting family farmers.⁴⁵ Moreover, “[a] land trust is a private, nonprofit organization whose primary purpose usually is the direct protection of natural areas and open space.”⁴⁶ Specifically, the purpose of the American Farmland Trust is “stopping the loss of productive farmland and promoting farming practices that ensure a healthy environment[;]” they have protected over five million acres of farm and ranch lands across the U.S.⁴⁷ The efforts made by this organization demonstrates dedication to protecting farmland because not only are they providing the necessary funding, but they are taking the time and energy to invest in programs aimed at educating non-farmers in order to gain support for their overall purpose of saving farmland across the country.

While these federal easements and trusts can facilitate in the preservation of agricultural lands, it is not always a financially viable

⁴² See *Part 528 - Agricultural Conservation Easement Program (ACEP): Subpart D – ACEP-ALE General Information and Eligibility Requirements*, TITLE 440 - CONSERVATION PROGRAMS MANUAL (May 2017), <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=40722.wba>.

⁴³ See *Agricultural Conservation Easement Program Agricultural Land Easement Minimum Deed Terms for the Protection of Agricultural*, U.S. DEP'T AGRIC. NAT. RESOURCES CONSERVATION SERV. 6, https://www.nrcs.usda.gov/wps/PA_NRCSCconsumption/download?cid=nrcseprd322825&ext=pdf (last visited Jan. 6, 2019).

⁴⁴ See *id.*

⁴⁵ See *Farmland*, AM. FARMLAND TR., <https://www.farmland.org/our-work/areas-of-focus/farmland> (last visited Jan. 6, 2019).

⁴⁶ DANIELS & BOWERS, *supra* note 6, at 194.

⁴⁷ *Id.* at 195; see *Farmland*, *supra* note 45.

or feasible option for farmers because the easements need to be monitored and enforced over the course of agreement which can span generations.⁴⁸ For example, in Upstate New York, the vast majority of farms are family owned and the average size of a farm is only 202 acres and a long enduring and costly restriction on the land would not be a good option for many family farmers because they need to adapt to changes and the restriction on the use of their land may become a burden.⁴⁹ Therefore, an easement plan created and enforced by the federal government can be highly restrictive on the use of the land, not cost efficient, and may not be a viable option for many farms in Upstate New York.

B. State

Maintaining growth and urban sprawl is primarily a concern of state and local governments and “states have generally recognized the importance of farmland and their agricultural industries, as well as the limited involvement of the federal government in protecting farmland, and thus the need for action at the state level.”⁵⁰ Additionally, the right-to-farm statute is an example of New York State’s effort to preserve and promote agriculture by protecting sound agricultural practices.⁵¹ In New York State, the “right-to farm statute instructs New York courts to uphold protections for farmers in the absence of compelling evidence to do otherwise.”⁵² The statute is an example of the policy judgment of the state legislature that “the social benefits of retaining land in agriculture are so critical that, rather than allowing courts to decide on a case-by-case basis whether an agricultural use is reasonable, the balance between agriculture and other uses should always be tipped toward agriculture.”⁵³ Additionally, while the State protects “sound agricultural practices,”⁵⁴ the community needs to be educated about what to

⁴⁸ See *Agricultural Conservation Easements*, *supra* note 36.

⁴⁹ See DINAPOLI, *supra* note 4, at 1–2.

⁵⁰ DANIELS & BOWERS, *supra* note 6, at 87; see Pierre Crosson, *The Issues*, in *THE VANISHING FARMLAND CRISIS: CRITICAL VIEWS OF THE MOVEMENT TO PRESERVE AGRICULTURAL LAND* 1, 2 (John Baden ed., 1984).

⁵¹ See N.Y. AGRIC. & MKTS. LAW § 308 (McKinney 2018).

⁵² Nicholas Clark Buttino, Note, *An Empirical Analysis of Agricultural Preservation Statutes in New York, Nebraska, and Minnesota*, 39 B.C. ENVTL. AFF. L. REV. 99, 109 (2012); see also *Town of Lysander v. Hafner*, 759 N.E.2d 356, 359 (N.Y. 2001) (demonstrating that the mobile homes at the farm could be considered part of the farm operation and did not have to comply with the local zoning ordinance).

⁵³ Hand, *supra* note 16, at 305.

⁵⁴ N.Y. AGRIC. & MKTS. LAW § 308(1)(b).

expect from local farms in order to minimize social pressures that farmers may face in their communities.⁵⁵

1. New York State Conservation Easements

The New York State Legislature recognizes the crucial role of agriculture and “it is therefore declared the policy of the state to promote local initiatives for agricultural and farmland protection.”⁵⁶ Furthermore, in New York, while “preservation, conservation, management or improvement of lands” are tools used for agricultural protection in the state,⁵⁷ the federal Agricultural Conservation Easement Program focuses only on land easements.⁵⁸ Therefore, at the state level, there is more flexibility in planning for agricultural land protection and this allows landowners more options in order to fit their individual needs.

In New York State, Article 49, Title 3 of the Environmental Conservation Law (ECL) is the state’s conservation easement statute, the purpose of which is in “conserving, preserving and protecting its environmental assets.”⁵⁹ These easements are agreements between an individual landowner and an organization such as a government entity or a non-profit organization which seeks to protect the land by restricting future activities.⁶⁰ This creates an opportunity for landowners to protect their lands, however, the public is only involved in the process if a conservation easement is to be modified or extinguished.⁶¹ While a state easement provides a more localized plan, it restricts landowners and the local community is not involved in the beginning stages.⁶² Furthermore, the majority of land conserved with this statute are working forest conservation easements that are located in the Adirondacks and the Tug Hill

⁵⁵ See Nolon & Solloway, *supra* note 22, at 619.

⁵⁶ N.Y. AGRIC. & MKTS. LAW § 321 (2018).

⁵⁷ N.Y. AGRIC. & MKTS. LAW § 322(1) (2018).

⁵⁸ See 16 U.S.C. § 3865a(1) (2012); see also AM. FARMLAND TR., *supra* note 21, at 32 (“[E]asements help maintain agricultural viability by ensuring that productive farmland will be available for future generations.”).

⁵⁹ See N.Y. ENVTL. CONSERV. L. § 49-0301 (2008); N.Y. COMP. CODES R. & REGS. tit. 6, § 592.3 (2018); see also Karin Marchetti & Jerry Cosgrove, *Conservation Easements in the First and Second Federal Circuits*, in PROTECTING THE LAND: CONSERVATION EASEMENTS PAST, PRESENT, AND FUTURE 78, 94 (Julie Ann Gustanski & Roderick H. Squires eds., 2000) (demonstrating that under General Municipal Law § 247, public funds may be used in the purchasing of interest or rights in real property for the preservation of open spaces).

⁶⁰ See N.Y. ENVTL. CONSERV. L. § 49-0303(1) (2013).

⁶¹ See N.Y. COMP. CODES R. & REGS. tit. 6, § 592.4 (2016).

⁶² See *id.*

regions.⁶³ Therefore, while agricultural land can be preserved under the ECL, the current major use and purpose of the law is one forest conservation and lacks the integral knowledge of the needs of various agricultural landowners.

2. Protection Plans

A protection plan is under the supervision of the Commissioner of the New York State Department of Agriculture and Markets, who has the duty to “initiate and maintain a state agricultural and farmland protection program to provide financial and technical assistance, within funds available, to counties, municipalities, soil and water conservation districts, and not-for-profit conservation organizations.”⁶⁴ These plans may be from a county or municipality and may include the location of the land to be protected, the value of the agricultural economy to that area, the level of conversion pressure on the lands, and a description of activities, programs, and strategies to promote continued agricultural use.⁶⁵ As of the beginning of 2017, the New York State Agricultural and Farmland Protection Program has protected 61,374 acres and has 7,183,576 acres of farmland and \$19,930,000 available in program funds.⁶⁶

The Agricultural and Markets law includes working with counties and establishes a relationship between the state and the individual counties in order to achieve the needs of landowners at a local level.⁶⁷ A simple reason for this is that the counties have a more intimate knowledge about the land that is to be protected and the state can provide insight from a neutral perspective, adding balance to the decision-making process.⁶⁸ Additionally, the county agricultural and farmland protection board must conduct at least one public hearing

⁶³ See *Modification or Extinguishment of a DEC Conservation Easement*, DEP’T ENVTL. CONSERV., <https://www.dec.ny.gov/lands/82814.html> (last visited Jan. 6, 2019).

⁶⁴ N.Y. AGRIC. & MKTS. LAW § 323 (McKinney 2013).

⁶⁵ See N.Y. AGRIC. & MKTS. LAW § 324(1) (McKinney 2015); N.Y. AGRIC. & MKTS. LAW § 324-a(1) (McKinney 2015).

⁶⁶ See *Status of State Purchase of Agricultural Conservation Easement Programs*, FARMLAND INFO. CTR. 4–5 (Aug. 2017), http://www.farmlandinfo.org/sites/default/files/State_Purchase_of_Agricultural_Conservation_Easement_Programs_2017_AFT_FIC.pdf.

⁶⁷ See N.Y. AGRIC. & MKTS. LAW § 324(1).

⁶⁸ See *Agriculture*, ERIE CTY., N.Y.: ENV’T & PLAN. (Oct. 16, 2018), <http://www2.erie.gov/environment/index.php?q=agriculture>; see also *Agricultural and Farmland Protection Program*, AGRIC. & MKTS, <https://www.agriculture.ny.gov/ap/agsservices/farmprotect.html> (last visited Nov. 21, 2018) (demonstrating that these plans take into consideration the location of the land, its economic and cultural value, development pressure, and how the local government intends to implement the plans and promote the continual agricultural use).

to get feedback from the local community on the protection plan before it is submitted to the county legislature.⁶⁹ Therefore, community involvement in decision making is encouraged in order to convey concerns, questions, or support for a proposed protection plan.

Protection plans developed at the municipal level can also work in cooperation with local farms, cooperative extension, and similar organizations.⁷⁰ The municipality will cover a variety of elements, including the location, open space value, consequences of possible conversion, and a description of activities, programs, and strategies.⁷¹ Similar to county agricultural and farmland protection boards, municipalities must also hold a public hearing before it is submitted to the municipal legislative body prior to submitting the plan to the county board.⁷² This allows the local community to voice their opinions or support on a possible protection plan that would impact them directly or indirectly in their local ecosystem.

While New York State has programs to provide funding and the opportunity to protect farmland, it “has had difficulty in getting localities to complete projects once approved” because of the high costs and time required to implement a plan.⁷³ Additionally, a protection plan may not be an option for an entire county because agriculture in New York is very diverse so a more localized and small scale approach may meet the needs of the communities with agricultural lands. Therefore, since there are funds available to assist in protecting the vital farmland, it is imperative to work on a local level to advocate for the preservation of the land by using a protection plan and to work with municipalities, counties, and not-for profit organizations in order to save the land for future generations.

Not-for-profit conservation organizations can assist counties and municipalities with protection plans to seek funds so long as they have one active farmer on their board and can assist landowners in securing funds for a conservation easement.⁷⁴ For example, to help

⁶⁹ See N.Y. AGRIC. & MKTS. LAW § 324(2).

⁷⁰ See N.Y. AGRIC. & MKTS. LAW § 324-a(1); see also CULTIVATE NEW YORK, *supra* note 27, at 2 (“To date, the State of New York has partnered with farm families, local governments and land trusts to permanently protect 59,165 acres on 232 farms.”).

⁷¹ See N.Y. AGRIC. & MKTS. LAW § 324-a(1).

⁷² See *id.* § 324-a(2).

⁷³ See Bowers, *supra* note 26.

⁷⁴ See N.Y. AGRIC. & MKTS. LAW § 325-a(1), (3) (McKinney 2008); see also JOHN OPIE, THE LAW OF THE LAND: TWO HUNDRED YEARS OF AMERICAN FARMLAND POLICY 172 (1987) (“As nonprofit organizations they solicit contributions, generate private grants, and in some cases receive public funds to make loans to threatened farmers, or under emergency conditions they step in to buy farmland away from developers.”).

farmers access the funds available, organizations such as the Agricultural Stewardship Association assist farmers seeking easements, and they do so in order to protect and “promot[e] a vibrant future for agriculture in the region.”⁷⁵ ASA is a non-profit land trust that currently helps preserve farmland in Washington and Rensselaer Counties that fights for the continued vitality of agriculture in the upper Hudson River Valley.⁷⁶ In addition, ASA has been able to protect 20,042 acres since its inception in 1990 in Washington and Rensselaer counties in New York State.⁷⁷ Therefore, the ASA is a significant support and asset for preserving land in those counties and serve as a template for possible services that could be provided in other counties across the state that want to preserve their agricultural lands.

Conservation easements through New York State programs allow a more intimate relationship with farms in the state compared to federal programs, and may be able to implement easements that can be tailored to address the specific concerns of the farmers and the local community.⁷⁸ However, the New York State program requires community involvement to ensure the success of farmland conservation efforts which creates additional issues as farmers are reluctant to relinquish their rights and lose autonomy over their land.⁷⁹ Furthermore, community members play a minor role, if any, in conservation easements and protection plans offer the opportunity for community development, however, since they are not highly utilized, their impact on preserving agricultural land is minimal at best. While the agricultural and conservation values and interests are well aligned, they are not always compatible with furthering the overall goal of preserving agricultural lands because of their costs and lack of community involvement, such that conservation easements may not be the best option for the small family farmers in New York.⁸⁰ To achieve the preservation of agricultural lands, there needs to be communication and an understanding of agriculture and farming at a local level to allow for more in-depth involvement and a more narrowly tailored solution to prevent the loss of farmland from the expanding population and urban encroachment.

⁷⁵ See *About ASA*, *supra* note 10.

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ Compare Part II(A) (describing the federal programs used to protect farmland), with Part II(B) (describing the New York State farmland preservation programs).

⁷⁹ See OPIE, *supra* note 74, at 179; *About ASA*, *supra* note 10.

⁸⁰ See DANIELS & BOWERS, *supra* note 6, at 34; Phelps, *supra* note 15, at 630.

III. PRESERVING AGRICULTURAL LAND AT THE LOCAL LEVEL

At the local level, a community has more interaction with the lands and “[t]he key to good land-use planning is anticipating and accommodating change to fit in with the goals and objectives of the people who live in the community.”⁸¹ Furthermore, communities tend to confront the law and policy of ecosystems through a very personal lens because of their own personal experiences with their local ecosystems and therefore, it requires communities to go through some self-searching and self-knowledge to determine how to handle environmental and land allocation issues.⁸² Since “[a]griculture shapes both the spirit and the landscape of the place where it is found,” programs or solutions on preserving agricultural lands must be tailored to the local political realities, and most importantly, to the local farming community.⁸³

While small farms provide scenic attributes, are more connected with the uniqueness of the landscapes they work with, and have a greater reliance on conservation practices, they are often the buffer against urban sprawl.⁸⁴ Therefore, in New York, small farms are heavily impacted by development and land allocation issues arising from the spread from cities and into the countryside—the home of farms—and the farms located close to urban areas are feeling the most pressure because they act as the divide between the developed urban areas and the agricultural rural areas.⁸⁵ Since the local communities have an insider view of what is best for their communities, it will require communication and cooperation from farmers and non-farmers to find a solution for urban sprawl and to evaluate the importance of agriculture in that community.⁸⁶ Since agricultural lands vary state to state and even county to county, there must be a “balance between the private and social benefits derived

⁸¹ DANIELS & BOWERS, *supra* note 6, at 34.

⁸² See Keith Hirokawa, *Environmental Law from the Inside: Local Perspective, Local Potential*, 47 ENVTL. L. REP. 11048, 11053 (2017) (explaining how community governance has been at the center of how social, economic, and environmental changes are perceived).

⁸³ AM. FARMLAND TR., *supra* note 21, at 6; see DANIELS & BOWERS, *supra* note 6, at 23.

⁸⁴ See Gerard D’Souza & John Ikerd, *Small Farms and Sustainable Development: Is Small More Sustainable?*, 28 J. AGRIC. & APPLIED ECON. 73, 74, 76–77 (1996) (describing how large farms individually and collectively create greater ecological “disturbance” while small farms generate a greater “man-nature relationship” and support a diversity of plant and animal life).

⁸⁵ See *id.* at 77; Nolon & Solloway, *supra* note 22, at 595.

⁸⁶ See AM. FARMLAND TR., *supra* note 21, at 55–56; Hirokawa, *supra* note 82, at 11057; see also DINAPOLI, *supra* note 4, at 4 (describing a variety of policy initiatives, including tax incentives and other programs that have been created to promote stability and growth in New York’s agricultural sector).

from land-use decisions will vary from place to place, depending on the preferences and goals of landowners, governmental agencies, and other stakeholders.”⁸⁷

Community identity is tied in with the local ecosystem and how community members experience and interact with the land and therefore, the local government reflects these values from the insider perspective and strives to protect them.⁸⁸ Additionally, land-use planning from the bottom up, rather than the top down, is likely to be supported by the general public if they are able and willing to participate in creating a comprehensive plan that will reflect their unique values that they share with their local ecosystem.⁸⁹ In order for the protection of agricultural lands to be successful, “communities must work together to foster a respect for farmers and farming.”⁹⁰

A. Zoning

When faced with the expansion of urban areas, to encourage and ensure responsible development, emphasis needs to be placed on appropriate areas, such as a centralized housing plan, to better promote the conservation of farmland by preventing a centerless sprawl.⁹¹ Additionally, zoning should be utilized to “strike a balance between the right of property owners to use their land and the right of the public to a healthy, safe, and orderly living environment.”⁹² At the local level, planning and zoning are important tools to preserve agricultural lands, and the gathering and reviewing of information at a local level allows for a development plan of land use to form that will allow for the promotion and protection of agricultural lands.⁹³ This future land-use planning requires input from the community in order to have a lasting impact on how the land is used as the population increases and land becomes a more precious and valued commodity.

⁸⁷ See BIGELOW & BORCHERS, *supra* note 16, at 47.

⁸⁸ See Hirokawa, *supra* note 82, at 11057.

⁸⁹ See DANIELS & BOWERS, *supra* note 6, at 40.

⁹⁰ AM. FARMLAND TR., *supra* note 21, at 56.

⁹¹ See Jesse J. Richardson, Jr., *Beyond Fairness: What Really Works to Protect Farmland*, 12 DRAKE J. AGRIC. L. 163, 172–73 (2007).

⁹² DANIELS & BOWERS, *supra* note 6, at 42.

⁹³ See AM. FARMLAND TR., *supra* note 21, at 42, 52; see, e.g., N.Y. AGRIC. & MKTS. LAW § 300 (1988); Nolon & Solloway, *supra* note 22, at 620. Compare *Gisler v. County of Madera*, 112 Cal. Rptr. 919, 921–22 (Cal. Ct. App. 1974) (demonstrating how a county’s zoning ordinance was upheld in order to preserve the agricultural character of the area), with *Racich v. County of Boone*, 625 N.E.2d 1095, 1099 (Ill. App. Ct. 1993) (rezoning of the land from agricultural use to single-family residential use was denied).

Planning and zoning must also be reasonable, achieve a public purpose, be nonarbitrary, non-exclusionary, and not result in the taking of private property.⁹⁴ For example, local governments have the ability and authority to regulate land-use by commercial and industrial property developers and can either allow or inhibit such development with zoning in order to “preserve the environment and character of the community.”⁹⁵

Agricultural Districting in New York State provides “a locally-initiated mechanism for the protection and enhancement of New York State’s agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance.”⁹⁶ However, a landowner has to have a minimum of 250 acres of land to be included in the district, but due to the average size of a farm in upstate New York being 202 acres, this is not an option for many small farmers across the state.⁹⁷

In 1993, local planning and land use decision-making was added to recognize the impact that municipalities could have on the policy, and a farm owner may request the commissioner to determine “whether farm operations would be unreasonably restricted or regulated by proposed changes in local land use regulations, ordinances or local laws pertaining to . . . appropriate local land use enforcement officials administering local land use regulations, ordinances, or local laws.”⁹⁸ While there is no specific body of law regulating agricultural zoning, in order to challenge agricultural zoning, “the challenger must overcome the presumption of validity and show that there is no relation to the public health, safety, or welfare.”⁹⁹ Moreover, New York’s Town, Village, and General City law, allows local governments to create intermunicipal agreements in order to “adopt compatible comprehensive plans and zoning laws as well as other land use regulations.”¹⁰⁰ Additionally, “[l]ocal governments also may agree to establish joint planning, zoning, historic preservation, and conservation advisory boards, and to hire joint inspection and

⁹⁴ See DANIELS & BOWERS, *supra* note 6, at 42–43, 87 (“[M]ost local programs will accomplish substantially more when supported by state money and state program administration.”).

⁹⁵ Templeton et al., *supra* note 23, at 91.

⁹⁶ N.Y. AGRIC. & MKTS. LAW § 300.

⁹⁷ See N.Y. AGRIC. & MKTS. LAW § 303(1) (2016); DINAPOLI, *supra* note 4, at 1.

⁹⁸ N.Y. AGRIC. & MKTS. LAW § 305-a(1)(b) (2016); see Nolon & Solloway, *supra* note 22, at 616.

⁹⁹ Nolon & Solloway, *supra* note 22, at 621.

¹⁰⁰ John R. Nolon, *Champions of Change: Reinventing Democracy Through Land Law Reform*, 30 HARV. ENVTL. L. REV. 1, 31 (2006).

enforcement officers.”¹⁰¹ Furthermore, this option may be a solution for small farms that are faced with developmental pressures that are willing to work with other farms to form a sort of coalition promoting the preservation of farmland because agricultural zoning can protect a larger area and farms that have less than 250 acres can be protected from urban creep by joining together in a concerted effort.¹⁰²

However, while rezoning is a possibility, it is not a permanent solution because the farmland may be rezoned again and no longer protected from developers and the pressures to sell.¹⁰³ However, this apprehension can be combated and addressed by increasing and raising awareness of agriculture and farming practices in local communities so non-farmers are aware of the pressures on agricultural lands and the concerns of the local farmers.¹⁰⁴ For example, for farms on the fringe of urban sprawl, they do not see zoning as a guarantee of protection against increasing pressures and demand for land because zoning can be changed at any time to fit the needs of those seeking reprieve from the suburbs.¹⁰⁵ Therefore, discussions on zoning must involve farmers and members of the community in order to promote communication, the sharing of information, and to think outside the box.¹⁰⁶ This will allow the community to step into the shoes of another and find a viable solution that promotes the needs and goals of all community members.

B. Mediation Generally

When a conflict arises, an option outside the courtroom is mediation. Mediation is used “to facilitate a mutually acceptable resolution that requires the agreement of the participants for [its] implementation” and a mediator acts as a neutral third party to assist in communication between the participants.¹⁰⁷ Additionally, mediation empowers participants to think individually as well as collectively to fully understand the situation, and it facilitates discussion, so the participants can make well-informed personal and

¹⁰¹ *Id.*

¹⁰² *See* Nolon & Solloway, *supra* note 22, at 622, 638.

¹⁰³ *Id.* at 628.

¹⁰⁴ *See id.* at 629.

¹⁰⁵ *See* DANIELS & BOWERS, *supra* note 6, at 109.

¹⁰⁶ *See id.*; Nolon & Solloway, *supra* note 22, at 629.

¹⁰⁷ GREGORY TILLET & BRENDAN FRENCH, *RESOLVING CONFLICT: A PRACTICAL APPROACH* 110 (3rd ed. 2006).

mutual decisions.¹⁰⁸

In preparing for a mediation session, the mediator can help the participants come to an initial agreement on “a precise, specific, clearly defined problem or problems” in order to focus efforts and energy to work towards a mutual resolution addressing the defined problems.¹⁰⁹ Throughout the mediation process, the mediator will apply conflict resolution as a problem-solving approach to the problems defined by the participants in order to facilitate a resolution that the participants work toward in a collaborative manner.¹¹⁰ To achieve a consensus for a resolution, there must be trust between the participants and the decision making process must be “legitimate, fair, balanced, and open.”¹¹¹ Furthermore, a more tailored solution is likely to result from mediation because the approach considers the needs and interests of the participants rather than specific legal arguments or factors which may be significant in the eyes of the law.¹¹² This allows for out of the box and creative thinking to find solutions that are helpful and tailored to the specific issues facing that community.

The influence and role of the mediator is limited because a mediator has no decision-making authority and is focused on the exchanges between the participants, not the ultimate resolution.¹¹³ Essentially, the mediator facilitates a discussion and asks appropriate questions to assist the participants in working together to agree on and implement a solution to their agreed upon problems.¹¹⁴ A mediator does this by focusing more on the future and guiding the conversations to focus on developing the future.¹¹⁵ By doing this, the mediator improves communication and develops a constructive relationship with the participants.¹¹⁶

Mediation opens with the participant’s presenting their “stories” and the mediator aids in moving the story “from a blaming, past-focus to a cooperating, future-focus that leads to an agreement embodying

¹⁰⁸ *Id.* at 157.

¹⁰⁹ *Id.* at 123–24.

¹¹⁰ *See id.* at 2–3.

¹¹¹ *See* ROGER SIDAWAY, RESOLVING ENVIRONMENTAL DISPUTES: FROM CONFLICT TO CONSENSUS 68, 69 (2005) (“Consensus building processes which aim to resolve conflict are based on negotiations geared to remove misunderstanding, clarify interests and establish common ground [to remove misunderstanding.]”).

¹¹² *See* Moroni, *supra* note 18, at 327.

¹¹³ *See* SIDAWAY, *supra* note 111, at 74.

¹¹⁴ *See* JOHN MICHAEL HAYNES ET AL., MEDIATION: POSITIVE CONFLICT MANAGEMENT 18 (2004); SIDAWAY, *supra* note 111, at 75.

¹¹⁵ *See* HAYNES ET AL., *supra* note 114, at 7, 18.

¹¹⁶ *See* SIDAWAY, *supra* note 111, at 75.

a future with a difference for all involved.”¹¹⁷ Also, mediation provides a balance of power among the participants and requires the sharing of information or the insistence that research is done where it is lacking in order to establish equal opportunities and mutual respect throughout the mediation process.¹¹⁸ Furthermore, sharing information and promoting understanding will “enable each party to understand how the other perceived and felt about the situation.”¹¹⁹ Therefore, when participants begin identifying possible options, they can brainstorm to find solutions and then evaluate those possibilities by allowing the participants to discuss their options.¹²⁰ The mediator then administers a reality test to determine if the mutual solution is plausible and assists figuring out how the mutual solution can be implemented.¹²¹ The mediator will then “use gentle questioning to assist parties to consider possible problems” and assist in figuring out who, what, when, where, and how the plan can be implemented.¹²²

Mediation can be utilized for group facilitation by managing the process where a group seeks to find a solution to a problem and can also assist where many parties are involved—such as a local community.¹²³ The key to a successful mediation with members of the general public is to “[s]tart early, plan carefully, know what you want, be flexible, know who is doing what, provide useful information, work for broader participation, make meetings convenient, get lots of publicity, be organised but informal, and report conclusions adequately.”¹²⁴ For example, large corporations and associations are beginning to utilize mediators during meetings and negotiations in order to facilitate the discussions because a neutral third party provides the opportunity for enhanced communication, allowing for better productivity.¹²⁵ Furthermore, since mediation requires participants to sit down and talk, the mediator can address any misinformation or lack of information by facilitating the exchange of information between the group participants and any

¹¹⁷ HAYNES ET AL., *supra* note 114, at 9.

¹¹⁸ See SIDAWAY, *supra* note 111, at 71.

¹¹⁹ TILLET & FRENCH, *supra* note 107, at 188; see also SIDAWAY, *supra* note 111, at 81 (“Misunderstandings might arise because of the stereotypical perceptions that disputing parties have of their rivals’ positions, or because of disagreements over the scientific and technical aspects of the dispute.”).

¹²⁰ See TILLET & FRENCH, *supra* note 107, at 191.

¹²¹ See *id.* at 192.

¹²² *Id.* at 192, 193.

¹²³ *Id.* at 113, 119.

¹²⁴ SIDAWAY, *supra* note 111, at 140 (explaining the main concepts for a successful community mediation).

¹²⁵ See TILLET & FRENCH, *supra* note 107, at 145.

misunderstandings can also be clarified.¹²⁶ Therefore, while “people can and do live and work together with varying degrees of disagreement,” the relationships among the group participants can be facilitated and improved through the process of mediation.¹²⁷ This provides a foundation of better communication among the group participants so if a future issue should arise, they will have the knowledge and capability to either work together or to seek a neutral party to facilitate a communication because they know it is an available option that may have had great results in the past.

1. Mediation for Agriculture

At the federal level, the United States Department of Agriculture (USDA) has an Agricultural Mediation Program that assists those that are directly affected by the actions of the USDA to resolve disputes.¹²⁸ For example, the USDA Mediation Program has helped farm borrowers and creditors to work out a solution and avoid processes such as administrative appeal, foreclosure, and litigation.¹²⁹ Therefore, while the USDA Mediation Program provides the opportunity for participants to communicate and come to a solution, it is very limited in scope and community members are usually left out of any conversation and resolution.¹³⁰ Furthermore, the USDA Mediation Program does not cover issues beyond those between borrowers and creditors,¹³¹ and therefore, any issues regarding land use or concerns a community may have will not be addressed.

While the purpose of the USDA Mediation Program is to restore communications between farmers and lenders,¹³² mediation at the local level between farmers and the community could create and bolster communication so that the farmers and community can thrive together. In states such as Idaho, Pennsylvania, and Hawaii, involved and affected parties of a land use proposal application “have the opportunity to influence modifications to a plan before it is approved or adopted by the governing authority.”¹³³ This allows for

¹²⁶ See Moroni, *supra* note 18, at 328.

¹²⁷ TILLET & FRENCH, *supra* note 107, at 189; see Moroni, *supra* note 18, at 328.

¹²⁸ See *Agricultural Mediation Program: Fact Sheet*, U.S. DEP'T AGRIC.: FARM SERV. AGENCY 1 (July 2003), https://www.fsa.usda.gov/Internet/FSA_File/mediate03.pdf.

¹²⁹ See Chester A. Bailey, *The Role of Mediation in the USDA*, 73 NEB. L. REV. 142, 142 (1994).

¹³⁰ See *Agriculture Mediation Program: Fact Sheet*, *supra* note 128, at 1.

¹³¹ See Bailey, *supra* note 129, at 142, 146.

¹³² See *id.* at 142.

¹³³ Nolon, *supra* note 100, at 34.

those in the community that will potentially be impacted by proposed changes to land use to engage in effective communication in order for development to be beneficial to the community as a whole.¹³⁴ For example, in *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*,¹³⁵ mediation was utilized in creating a development agreement and they were able to come to a mutual consensus “regarding the number and location of housing units, the preservation of agricultural land, and open space conservation easements.”¹³⁶ Furthermore, in *Medeiros v. Hawaii County Planning Commission*,¹³⁷ mediation for land disputes was endorsed because it put the community members and the developers on equal footing and allowed the community to have a greater impact on the land use decision to meet their values and needs.¹³⁸

Mediation is a versatile tool that can also be used to settle disputes relating to possible nuisances, such as the smell from spreading manure, by facilitating a conversation to allow the participants to come to an agreement.¹³⁹ For example, in Rumford, Maine, there was a dispute in the community on the potential health effects of emissions from a pulp mill and mediation was used to find a resolution.¹⁴⁰ Here, the initial meetings were heavy with emotion, but it is “vital to move from a debate based on emotion to one grounded by facts.”¹⁴¹ The community created a plan to meet for three hours once a month, built on trust and communication, emphasized research and not emotions, and ultimately, improved community communications.¹⁴² Therefore, mediation at the local level covers a larger scope of issues regarding agriculture and it allows community members to have a say in how the land is being used, improve communication amongst participants faced with a problem, and improve relationships amongst the people that live in the same community.

¹³⁴ See *id.*; see also *Urban*, N.Y. ST. AGRIC. MEDIATION PROGRAM, http://nysamp.com/?page_id=363 (last visited Jan. 9, 2019) (demonstrating that mediation can be used for urban agriculture that may involve neighbors and agencies from the local, state, and federal levels).

¹³⁵ *Santa Margarita Area Residents Together v. San Luis Obispo Cty. Bd. of Supervisors*, 100 Cal. Rptr. 2d 740 (Cal. Ct. App. 2000).

¹³⁶ Nolon, *supra* note 100, at 33; see *Santa Margarita Area Residents Together*, 100 Cal. Rptr. 2d at 742–43.

¹³⁷ *Medeiros v. Haw. Cty. Planning Comm’n*, 797 P.2d 59 (Haw. Ct. App. 1990).

¹³⁸ See *id.* at 67; Nolon, *supra* note 100, at 34.

¹³⁹ See *Success Stories*, N.Y. ST. AGRIC. MEDIATION PROGRAM, http://nysamp.com/?page_id=44 (last visited Jan. 9, 2019).

¹⁴⁰ See SIDAWAY, *supra* note 111, at 97.

¹⁴¹ See *id.* at 98–99, 100.

¹⁴² See *id.* at 102–03, 106, 107, 111.

Mediating agricultural issues requires certain knowledge regarding how agriculture works in order for a resolution to be implemented and successful. Since the general population in the U.S. is shifting away from farming, judges are less likely to have expertise in agriculture, such that a mediator that does have that expertise is better equipped to help guide the participants to a resolution that is better suited for all the participants involved.¹⁴³ “The New York State Agricultural Mediation Program (NYSAMP) provides the agricultural community with the opportunity to communicate clearly and negotiate effectively in order to find fair and workable solutions to challenges they face.”¹⁴⁴ The New York State Dispute Resolution Association (NYSARA), which manages NYSAMP, is a non-profit organization that provides “quality conflict management and peaceful dispute resolution.”¹⁴⁵ Additionally, NYSAMP provides services in every county in New York and they work with other mediation centers in order to provide free or low-cost services by professionals.¹⁴⁶ Since NYSAMP has a broad scope and includes right to farm complaints, USDA appeals, and family farm succession and transfers issues,¹⁴⁷ they have the experience of working with farmers and non-farmers and therefore, would be a significant and valuable tool in addressing the preservation of agricultural lands in New York and provide better relationships among community members in the process.

C. *Educating the General Public on Local Agriculture*

Educating the general public about agriculture and the important contributions that farming makes in upstate New York is a vital piece to bridge the gap between farmers and non-farmers. Besides the economic benefits that agriculture supplies New York State, farming also provides “non-economic societal benefits, including maintaining rural lifestyles and increasing awareness and preservation of local customs and unique cultural traits of [a specific localized] area.”¹⁴⁸ One way to educate the general public about local agriculture is

¹⁴³ See Moroni, *supra* note 18, at 326.

¹⁴⁴ See *The New York State Agriculture Mediation Program*, *supra* note 13.

¹⁴⁵ NYSAMP, N.Y. ST. AGRIC. MEDIATION PROGRAM, http://nysamp.com/?page_id=463 (last visited Jan. 9, 2019).

¹⁴⁶ See *id.*

¹⁴⁷ See *What Can Be Mediated*, N.Y. ST. AGRIC. MEDIATION PROGRAM, http://nysamp.com/?page_id=42 (last visited Jan. 9, 2019).

¹⁴⁸ Christine Tew & Carla Barbieri, *The Perceived Benefits of Agritourism: The Provider's Perspective*, 33 TOURISM MGMT. 215, 216 (2012).

through agritourism. It is suggested that agritourism can “produce many benefits for farms, their operators, the surrounding communities, and society overall.”¹⁴⁹ This benefits the owners and operators of family farms especially because it increases the amount of new potential customers, enhances their quality of life by the increase in revenue, and also brings awareness to the general public about local farming practices.¹⁵⁰ The popularity and growth of agritourism is in part due to the recent interest of millennials wanting to know where their food is coming from and how it is grown.¹⁵¹ This continued intrigue and fascination with transparency is likely to continue and farms have the opportunity to educate the public and share their agricultural knowledge.

In New York State, organizations such as Cornell Cooperative Extension and the New York Farm Bureau provide opportunities and tools to bring awareness to local communities of the farms in their communities and the benefits that those farms bring to the area.¹⁵² The key to community understanding and the sharing of information is providing a platform for those exchanges to occur. For example, the Farm Bureau promotes and educates non-farmers through several programs and events such as the Empire Farms Days to showcase county programs and diverse exhibit material, the consumer education project that provides in-store point-of-sale information, and the showcase at the NYS Fair that tells the story of New York agriculture.¹⁵³ Furthermore, some counties have their own websites with information pertaining to farms in that county that aid the farmers, but also provide information to the general public.¹⁵⁴ For example, Chenango County has their own website with a page that provides facts regarding agriculture in general.¹⁵⁵ However, the main focus of the Farm Bureau in general is their grassroots platform to assist in “economic and public policy issues challenging the agricultural industry.”¹⁵⁶ While educating the public is a goal of the Farm Bureau, their main objective is to receive feedback from

¹⁴⁹ *Id.*

¹⁵⁰ *See id.* at 222.

¹⁵¹ *See Winsor, supra* note 31.

¹⁵² *See About Us: Chris Watkins, supra* note 14; *NYFB Promotion & Education (PE) Program, supra* note 14.

¹⁵³ *See NYFB Promotion & Education (PE) Program, supra* note 14.

¹⁵⁴ *See Visit a County Page*, N.Y. FARM BUREAU, <https://www.nyfb.org/about/county-farm-bureau> (last visited Jan. 9, 2019).

¹⁵⁵ *See, e.g., Ag Facts*, CHENANGO COUNTY FARM BUREAU, <http://www.ccfbny.org/Index.htm> (last visited Jan. 9, 2019).

¹⁵⁶ *About*, N.Y. FARM BUREAU, <https://www.nyfb.org/about> (last visited Jan. 9, 2019).

farmers across the state concerning agricultural issues and getting policy developed to meet those needs.¹⁵⁷

The mission of Cornell Cooperative Extension is to “bring local experience and research based solutions together, helping New York State families and communities thrive.”¹⁵⁸ Furthermore, there are local offices all across the state that provide information and host events for the local community, many, if not all of which offer programs and resources for the agricultural needs in that county because agriculture in New York State is very diverse and the best approach in addressing the variety of needs is a local one.¹⁵⁹ For example, the Broome County office provides events such as Broome County Farm Trail where local farms allow the public to get some hands-on experience with agriculture through farm tours, activities, and tastings, and it also promotes and provides information regarding local farmers markets so community members have access to farm fresh produce.¹⁶⁰ Furthermore, the Seneca County Office offers programs such as workshops on how to start an organic garden and the local Farm to School program that brings local, farm fresh foods into the schools.¹⁶¹ Since Seneca County is near the Finger Lakes, there is a focus on the variety of produce grown in the region such as grapes, hops, berries, and maple syrup.¹⁶² The county offices are able to cater to the needs of the farmers in their region and therefore, their programs are tailored to providing services for the farmers and connecting the public to the farms in unique ways that work for the community.

By promoting educational programs for the general public on agriculture and enhancing the lives of family farmers across the

¹⁵⁷ *See id.*

¹⁵⁸ *About Us: Chris Watkins, supra* note 14.

¹⁵⁹ *See Local Offices*, CORNELL COOPERATIVE EXTENSION, <http://cce.cornell.edu/localoffices> (last visited Jan. 9, 2019).

¹⁶⁰ *See Broome County Regional Farmers Market*, CORNELL COOPERATIVE EXTENSION: BROOME COUNTY, <http://ccebroomecounty.com/agriculture/broome-county-regional-farmers-market> (last visited Jan. 9, 2019); *Open Farm Weekend*, CORNELL COOPERATIVE EXTENSION: BROOME COUNTY, <http://ccebroomecounty.com/agriculture/open-farm-weekend> (last visited Jan. 9, 2019).

¹⁶¹ *See Farm to School*, CORNELL COOPERATIVE EXTENSION: SENECA COUNTY, <http://senecacountyce.org/food-family/farm-to-school> (last visited Nov. 23, 2018); *Cooperative Extension Puts a Wealth of Useful, Research-Based Information at Your Finger Tips!*, CORNELL COOPERATIVE EXTENSION: SENECA COUNTY, <http://senecacountyce.org/> (last updated Nov. 16, 2018).

¹⁶² *See About Ag at CCE, supra* note 2; *Craft Beverage*, CORNELL COOPERATIVE EXTENSION: SENECA COUNTY, <http://senecacountyce.org/agriculture/craft-beverage> (last visited Jan. 9, 2019); *Juneberries*, CORNELL COOPERATIVE EXTENSION: SENECA COUNTY, <http://senecacountyce.org/agriculture/juneberries> (last visited Jan. 9, 2019); *Maple Syrup Production*, CORNELL COOPERATIVE EXTENSION: SENECA COUNTY, <http://senecacountyce.org/agriculture/maple-syrup-production> (last visited Jan. 9, 2019).

state, “the importance of promoting and preserving the rural and agricultural lifestyle for those living on the farm and in the surrounding area” is evident and is an important task for state and local governments to collaborate and build on for the future of agriculture in New York State.¹⁶³ Therefore, organizations like the Farm Bureau have immense amounts of information regarding what benefits the farms do and can bring to their communities and they should share that information with the general public. One of the greatest barriers to finding a solution to an issue is that information is not shared and there is a lack of communication. The Farm Bureau and Cornell Cooperative Extension have the resources and information necessary to communicate their agricultural knowledge to the general public. By sharing this information, New Yorkers will become more aware of the importance of farming in their communities and therefore, the issue of land preservation could be addressed in a more productive and successful manner in preventing urban creep.

IV. CONCLUSION AND RECOMMENDATION

Agriculture is a part of the collective societal identity in the United States and is also part of the societal identity for many Upstate New Yorkers.¹⁶⁴ Agriculture is a vital part of identity for Upstate New Yorkers and thousands of acres of farmland is lost per year in New York alone.¹⁶⁵ In recent years, there has been an increased interest in locally grown foods and action needs to be taken to ensure that local farms are able to participate in this expanding opportunity and in order to do this and protect the rich agricultural heritage, we need to preserve agricultural lands.

Many farms in New York are small family owned farms and when it comes to preserving agricultural lands in New York State, there are no simple solutions, requiring thinking outside the box and trying to find what works for a community.¹⁶⁶ Federal programs, such as the federal Farmland Protection Program, the NRCS, and the USDA’s Agricultural Mediation Program, provide support and options for farmers to preserve their land and to help with loan

¹⁶³ Tew & Barbieri, *supra* note 148, at 222.

¹⁶⁴ See Phelps, *supra* note 15, at 632; *Hudson Valley Farmlink Network*, AMERICAN FARMLAND TRUST, <https://www.farmland.org/initiatives/hudson-valley-farmlink-network> (last visited Jan. 9, 2019).

¹⁶⁵ See CULTIVATE NEW YORK, *supra* note 27, at 5.

¹⁶⁶ See DINAPOLI, *supra* note 4, at 2.

issues, but they require a lot of money to implement and oversee.¹⁶⁷ For New York farmers, these options may not provide the niche results they require in order to preserve their land and these programs do not include the community in the planning or decision making process.

At the state level, farmland preservation programs, such as the ECL and protection plans, have not had high success rates in preserving agricultural lands because they are costly to implement and because they lack community involvement in the decision-making process on land use issues.¹⁶⁸ Therefore, the focus should be on programs tailored for local use and the community must get involved.

Zoning at the local level involves the community members and can “strike a balance between the right of property owners to use their land and the right of the public to a healthy, safe, and orderly living environment.”¹⁶⁹ However, issues arise when there is an unbalanced amount of information and understanding. Therefore, the services provided by NYSAMP should be utilized by communities to help provide a deeper understanding of the needs of the community members, to share information, to establish efficient communication, and to implement solutions to the localized issues that they face.

To further the understanding and communication among farmers and community members, agritourism and organizations such as the New York State Farm Bureau and Cornell Cooperative extension should be heavily promoted and utilized because they have the opportunity and ability to connect the community to the local farms and establish a strong relationship. The combination of mediation and education at the local level would enhance the understanding of agriculture and its importance in the local community, and therefore, the community could work together in a cohesive manner to preserve agricultural lands when there is a land use or development issue.

The preservation of agricultural lands in New York State can be achieved by focusing on the needs of local communities, utilizing the NYS Agricultural Mediation Program in land use issues that are arising due to urban sprawl, and by promoting the programs and organizations that provide information on agricultural practices and connect the general public to the local farms. These programs and organizations facilitate communication, build community

¹⁶⁷ See 16 U.S.C. § 3865 (2012); *Agricultural Mediation Program: Fact Sheet*, *supra* note 128, at 1; *2014 Farm Bill - Agricultural Conservation Easement Program*, *supra* note 40.

¹⁶⁸ See *supra* Part II.

¹⁶⁹ DANIELS & BOWERS, *supra* note 6, at 42.

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relationships, and provide information on local agriculture. By utilizing these resources to their full potential, a strong support and foundation can be set in preserving agricultural lands and therefore, protecting the rich agricultural heritage of New York State and connecting people to their local farms to ensure that future generations are guaranteed the benefits that agriculture provides.