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Diversifying Finance of Farmland Protection in the Hudson Valley

Prepared by Scenic Hudson, Inc., with support from the Doris Duke Charitable Foundation

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Scenic Hudson would like to thank the many federal, state and local officials; land trust leaders; and other stakeholders invested in protecting the Hudson Valley's irreplaceable farmland.

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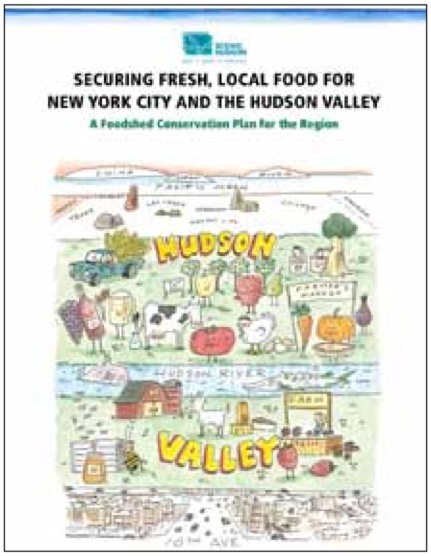


Introduction

In June 2013 Scenic Hudson published a report, funded by the Doris Duke Charitable Foundation, entitled "Securing Fresh, Local Food for New York City and the Hudson Valley: A Foodshed Conservation Plan for the Region." In addition to quantifying high-priority farmland in the 11-county Hudson Valley region, the study calls for a collaborative campaign involving government agencies, land trusts, private individuals, foundations and businesses to protect this land as a permanent food source for residents of the valley and New York City.

This paper describes a strategy to help provide funding for this campaign through an innovative municipal bonding concept that taps New York State's Clean Water Revolving Fund. The proposed strategy also achieves smart growth goals by concentrating development in existing town and village centers while protecting surrounding farms and open spaces.

To inform this report, a focus group consisting of state, county and local officials and leaders of land trusts throughout the region was convened to identify obstacles to raising sufficient funds for farmland protection at the local level. Among their concerns was the need for greater legislative authority to generate revenues locally and access to affordable capital for bonding that would support the purchase of development rights on farms. (Appendix III)

The towns of Red Hook (Dutchess County) and Warwick (Orange County) have shown that when local funding is available, great strides can be made in protecting farmland. Both communities have been extremely successful in leveraging Community Preservation Funds, supported by real estate transfer taxes, to acquire conservation easements on farms. Westchester and Putnam counties have been granted enabling authority to create similar funds, but neither has put them into effect. Counties have used traditional finance tools like bonding for capital costs and also provided grants to cover transactional costs in farmland preservation projects. Watershed Improvement Districts, a funding mechanism approved by the state Legislature and governor in 2012, have not yet been tested. (Appendix II) At the county level, Dutchess and Orange counties have been leaders in farmland protection, contributing capital as matching funds to acquire conservation easements. Orange County also has provided grants to land trusts to cover transactional costs within its borders, a program that has been proposed but not enacted in other counties.


Northwind Farm, Red Hook

While local revenue sources for financing farmland protection, such as real estate transfer taxes, are available in some communities, they tend to generate funding slowly, sometimes taking years before sufficient amounts of capital become available to conserve working farms in any meaningful way.

Connecting municipalities and land trusts with funders committed to farmland protection and accessing new mechanisms for reducing the cost of capital is critical to preserving the Hudson Valley-New York City foodshed before productive lands are lost. In selecting a finance agency and mechanisms, it is important for policy makers at all levels of government to consider other broad policy goals. These include developing state-local/public-private partnerships and achieving multiple public benefits through single investments, often essential for engendering sufficient political will to borrow funds at the local or county level. Taking these goals into consideration, the NYS Environmental Facilities Corporation—the state's leading financer of water and wastewater infrastructure—is a potential partner to local governments in advancing regional farmland protection goals.

Under a new application of its existing authority and capabilities, the Environmental Facilities Corporation could participate in farmland preservation financing. Its senior staff and top officials of the NYS Department of Environmental Conservation are eager to work on a pilot project to test this capability.

Overview of the NYS Environmental Facilities Corporation Finance Model

The Environmental Facilities Corporation (EFC) is a public corporation whose mission is to provide low-cost financing and technical assistance for projects that help public and private organizations meet federal and state water quality goals. It has a culture that supports innovation and development of municipal borrowing capacity.

Since 1990 the EFC has provided over $15 billion in low-cost financing and grants for over 2,000 water and sewer infrastructure projects throughout the state. Traditionally, the agency has provided both financial and technical support to local governments, non-profits and businesses engaged in meeting water quality goals. Programmatically, the EFC's mission is addressed through one of the following mechanisms:

- The Clean Water State Revolving Fund (CWSRF)
- The Drinking Water State Revolving Fund
- The State Revolving Fund Sustainability Initiative (also known as "Green Grants")

The CWSRF is administered by the EFC and the NYS Department of Environmental Conservation (DEC) to provide low-interest-rate loans to local governments for water quality protection projects.

Traditionally, the EFC has supported financing of sewers and wastewater treatment, stormwater management and landfill-closure projects. Beginning in 2000, the EFC expanded its focus to include land protection projects. Specific authorization exists to allow funding of such projects in National Estuary Program Areas under section 320 of the Clean Water Act. Borrowers secure funding, construct infrastructure or protect land, and pay the interest and principal back to the EFC, which then reinvests its funds in similar projects. A primary benefit of this program is the EFC's AAA bond rating, which results in the lowest possible cost of funds available to municipal borrowers.

In the case of land protection, qualified municipalities and non-profits (under Article 49 of the NYS Conservation Law) may apply for financing. Applicants must first submit a Land Acquisition Plan to the EFC. If the plan sufficiently demonstrates that preservation of the property would provide water quality protection or enhance non-point source management or estuary conservation goals and is accepted by the EFC, then it may be listed on the EFC's annual Project Priority List, which is published in the CWSRF's Intended Use Plan (IUP). Following an assessment of impacts of the proposed project, the municipality must secure a bond resolution that establishes its legal authority to issue debt. Similarly, the non-profit must be authorized by its board of directors to issue debt for the project. Each September projects are reviewed, scored and ranked on a competitive basis. Projects earning the highest scores receive funding.

Municipalities may qualify for borrowing under the EFC's enhanced AAA borrowing program through the IUP, with a subsidy on top of the high-quality borrowing program. Non-profits may qualify only for market rate loans; under this approach, the EFC uses its AAA rating to determine the appropriate interest rate for borrowing and purchases the issuer's debt at that rate.

Eligible Projects

Two categories of projects are supported under the CWSRF:

Treatment Works Projects—Publicly owned infrastructure projects that improve water quality and address failing systems are eligible for funding under section 212 of the Clean Water Act. Typically, these include new or expanded wastewater, collection, overflow, storm water management, sludge treatment and water-efficiency projects, as well as environmentally innovative initiatives that demonstrate new approaches to delivering services or managing water resources.

Non-Point Source Pollution Control—Eligible projects listed in the 2013 Intended Use Plan include green infrastructure, storm water management, decentralized treatment systems, landfill improvements, chemical and brownfield remediation, and run-off from contaminated airports. Three types of land acquisition projects are listed as eligible:

- Water body restoration, including stream bank stabilization, drainage erosion and sediment control
- Restoration of riparian vegetation, wetlands and other water bodies
- Land acquisition or conservation easements for water quality protection

EFC Requirements for Financing and Ranking Criteria

The viability of projects financed by the EFC is determined by the creditworthiness of borrowers and the strength of either an Engineering Report (for Treatment Works Projects) or a Land Acquisition Plan outlining the water quality benefits of the proposed project.

Creditworthiness is evaluated by the EFC. For non-profits, it is based on submission of financial statements for a three-year period. In the case of municipalities, the evaluation is based on current capital and operating budgets, and financial statements for a three-year period.

Engineering reports are required to evaluate the water quality benefits of "traditional," built infrastructure. These must highlight green infrastructure features and energy efficiency attributes, as well as adherence with the state's Smart Growth Public Infrastructure Act, embodied in the EFC's Smart Growth Assessment Form. Multiple construction bids must accompany the report.

Land Acquisition Plans must provide a variety of information about the proposed project, including acreage, the water body affected and "the relationship of each property to the water quality purpose in the corresponding state or national water quality plan." Specifically, the plan must assess:

- The geographic area, including physical characteristics, water resources and land use patterns and trends
- Water quality classification of the property
- Existing water quality impacts, the level of impairment and sources of pollution, including erosion, impact of development and any listing on DEC's Priority Water List
- The property's ability to protect wellheads, recharge areas and shoreline
- Local and regional water assessment plans, groundwater resource management plans, wellhead protection plans, community preservation plans, land conservation plans and waterfront revitalization plans may also be referenced

In addition, the project must be consistent with applicable state and federal plans under sections 319 and 320 of the Clean Water Act. In the Hudson Valley, programs that would apply include the New York State Nonpoint Source Management Program Plan, the Hudson River Estuary Program, and the New York-New Jersey Harbor and Estuary Program.

A review of these programs, sample projects listed on the EFC website and interviews conducted with DEC staff familiar with the decision-making process specified the following criteria as important to determining the water quality benefits of a land acquisition project:

- Proximity to waterways and their riparian zones
- Proximity to wetlands
- Erosion/sedimentation prevention relating to steep slopes and stream banks
- Aquifer recharge areas
- Soil infiltration
- Easements or other property restrictions that enhance water quality through best management practices

New Policy Changes Increase Competitiveness of Land Acquisition Projects

Once water quality benefits are determined, the relative priority of each eligible project is ranked according to the following criteria:

- Existing conditions that cause or caused the water quality problem
- The value of the resources that will be improved or protected based on the classification of the receiving water
- The severity of impairment to the desired usage of the affected water
- The degree of improvement to the desired usage likely to result
- Consistency with an approved management plan
- An obligation or mandate for the projects
- The financial impact on the applicant municipality

In 2012, the EFC changed the threshold required for non-point source projects to be eligible for and listed on the IUP, thereby allowing land acquisition projects to compete more favorably with traditional infrastructure water improvement projects. Authorization for this policy change is provided under section 319 of the Clean Water Act.

The precedent for this policy decision was based, in part, on the EFC's experience in helping to finance a 161,000-acre transaction in the Adirondack Park in collaboration with The Nature Conservancy of New York (TNC). TNC protected the Finch Pruyn lands in 2007 and subsequently secured an agreement with the state to purchase a portion of the property over a five-year period. In the interim, EFC purchased the debt that TNC had incurred from the original lender. EFC benefitted from this transaction on both sides of its balance sheet: It received financial benefits to its revolving fund for acquiring the debt and the payback of principal and interest over time. The transaction also met the EFC's goal of achieving a water quality benefit through its investment. The Finch Pruyn lands contain approximately 12 percent of the upper Hudson River's watershed.

This project demonstrates the successful finance of land acquisition projects through the EFC.

Toward a New Paradigm—Multi-benefit, Multi-partner Transactions

The EFC has traditionally been used for infrastructure development, with a preference toward upgrading failing systems. Use of the Clean Water State Revolving Fund for the purposes of land acquisition has been limited to the project described above and one other, also in the Adirondacks. Farmland protection projects generally have not been proposed.

Factors that provide a favorable context for funding farmland preservation through the EFC include the state's Smart Growth Public Infrastructure Policy Act of 2010. It requires state agencies to consider infrastructure siting and funding decisions according to specific criteria that guide development into municipal centers and away from natural resources. In addition, there is a growing recognition of the value of conserved open space and farmland to water quality.

Dutchess County—Background

Dutchess County established a farmland protection program (The Partnership for Manageable Growth—Open Space and Farmland Protection) in 1999, during the administration of recently retired County Executive William Steinhaus. However, the program stopped considering new applications in 2008, when all authorized funds were committed to specific projects.

In late 2012, Scenic Hudson approached newly elected County Executive Marcus Molinaro and encouraged him to reinstitute the program. He identified funds that had been authorized but not expended under the prior program and directed these funds to a new project in 2013. The available funding helped finance the purchase of a conservation easement on the Greig Farm in Red Hook, in conjunction with other sources, including the U.S. Department of Agriculture, the Town of Red Hook, Scenic Hudson and the Dutchess Land Conservancy.

In his 2013 State of the County address, Mr. Molinaro went on to propose a new funding initiative that would link the financing of farmland and open space protection with wastewater infrastructure projects in village and town centers in a smart growth context. The goal of this novel proposal is to bolster downtown development by upgrading infrastructure while conserving critical parcels of farmland and open space to limit sprawling development.

EFC guidelines currently favor financing existing wastewater facilities that are failing to meet water quality goals rather than building or enhancing facilities to encourage downtown development. In some situations, Dutchess County may wish to upgrade facilities that are not yet failing or replace private septic systems with public sewer systems. Additional research should be conducted to identify changes in EFC rules that would allow for more diverse categories of water and wastewater infrastructure to be financed.

Policy Basis

- *County*—This proposed approach is consistent with Dutchess County's membership in the Hudson River Valley Greenway Compact and its commitment to smart growth principles.
- *State*—The proposal meets core goals under Article 6 of the NYS Environmental Conservation Law as enacted by the 2010 State Smart Growth Public Infrastructure Policy Act. In addition, smart growth, farmland protection and water quality are important goals identified in the state's Hudson River Estuary Program Action Agenda.

- *Federal*—The proposal meets goals established under section 320 of the Clean Water Act, as the Hudson River Estuary Action Agenda has been adopted by the federal New York-New Jersey Harbor and Estuary Program. In December 2011 the program changed its name (from New York-New Jersey Harbor) to reflect a new geographic focus on the entire estuarine watershed, as opposed to its previous, narrow definition within a 25-mile radius of the Statue of Liberty.
- *Other*—A water quality resource survey conducted in conjunction with this paper also demonstrates that Dutchess County possesses a large quantity of unprotected land that provides direct water quality benefits. In addition, interviews with local and regional officials conducted for this paper confirmed a political perception that in the current fiscal climate, some constituencies would not support an open space preservation bond issue without a related wastewater component.

Roles of Transaction Partners

Within this framework, the EFC could partner with Dutchess County in a bond transaction to upgrade water quality infrastructure and contribute to conservation easements on working farmland. The farmland would be selected on the basis of the land's ability to contribute to both agricultural and water quality goals, subject to an approved Land Acquisition Plan and best practices for water quality management. Scenic Hudson or another land trust could facilitate the transaction and leverage financial support from other governmental and private partners. Both DEC and EFC officials have expressed receptivity to this on a conceptual level. However, EFC officials stressed that linking two transactions in a single bond issue would require a policy revision by the EFC Board of Directors.

Water Resources and their Nexus with Priority Farmland

Until now, no comprehensive survey of water resources—and how they overlap with agricultural resources—existed for the Hudson Valley. Two recent analyses by Scenic Hudson identify water quality priority areas and farmland priority areas. The results of the two studies can be overlaid to identify geographic areas where the two resources co-exist.

The analysis conducted by Scenic Hudson identifies farms in the 11-county Hudson Valley region that are located in watersheds with high conservation value for groundwater and surface water quality. The study was conducted on the assumption that Scenic Hudson or other land trusts could interest farmers in protecting their lands through easements and engaging in stewardship practices that support water quality goals.

Scenic Hudson's Geographic Information Systems (GIS) analysis of important water quality resources identified water quality conservation values for surface water and for groundwater likely to be considered by the EFC in determining the eligibility and scoring for land protection projects on the Intended Use Plan. Using existing data, relative conservation values for surface water and for groundwater were identified for all areas in the region at a 30-meter resolution. Those values were summarized within individual catchments and larger watersheds to show water quality values at multiple scales. The results provide a spatial distribution of relative water quality conservation rankings for the region.

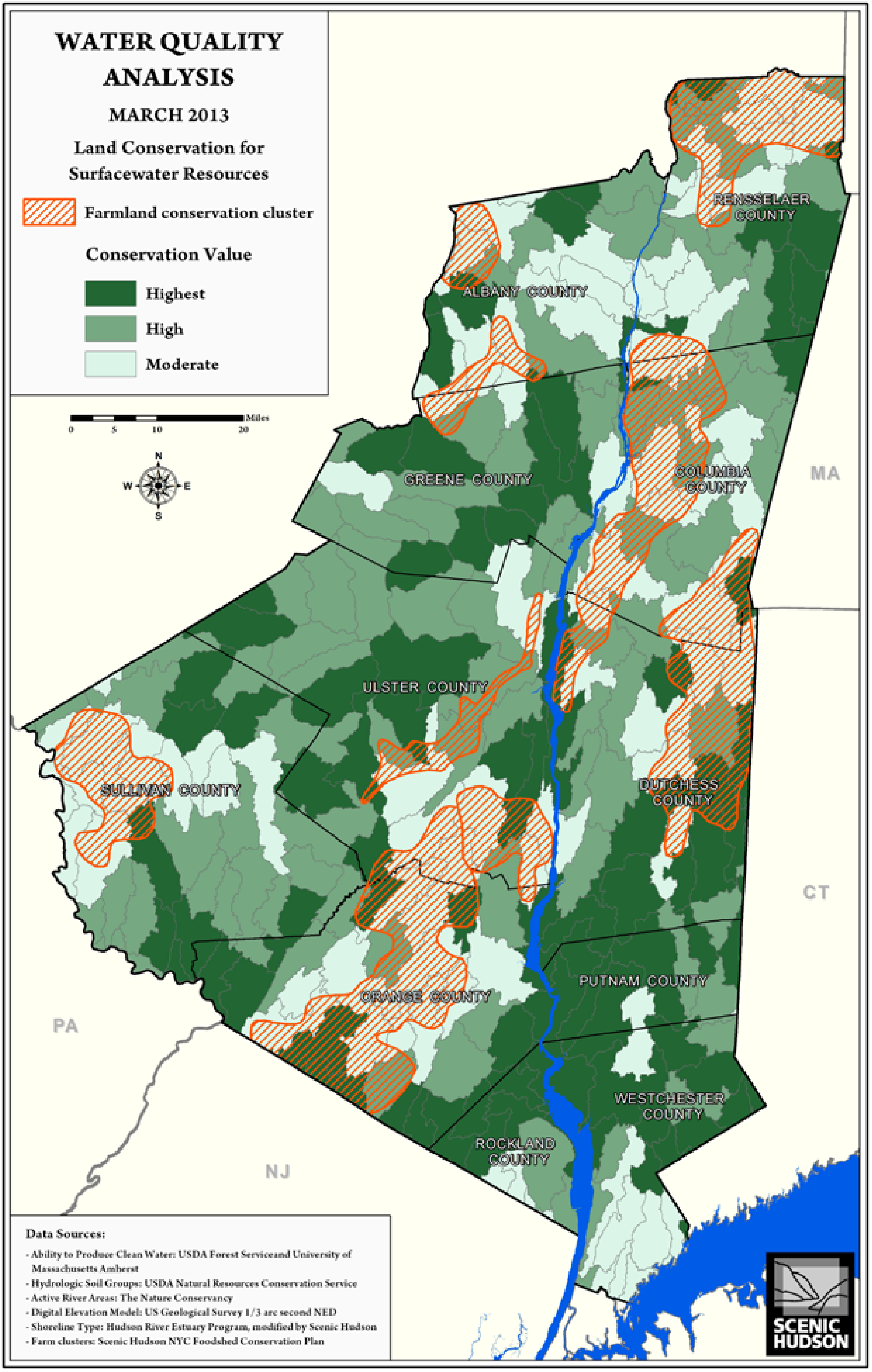
Surface water conservation values were ranked using the following data:

- Waterways and their riparian zones
- Land uses that impact water quality[1]
- Soil erosion potential
- Soil infiltration capacity
- Natural Hudson River shoreline areas susceptible to erosion

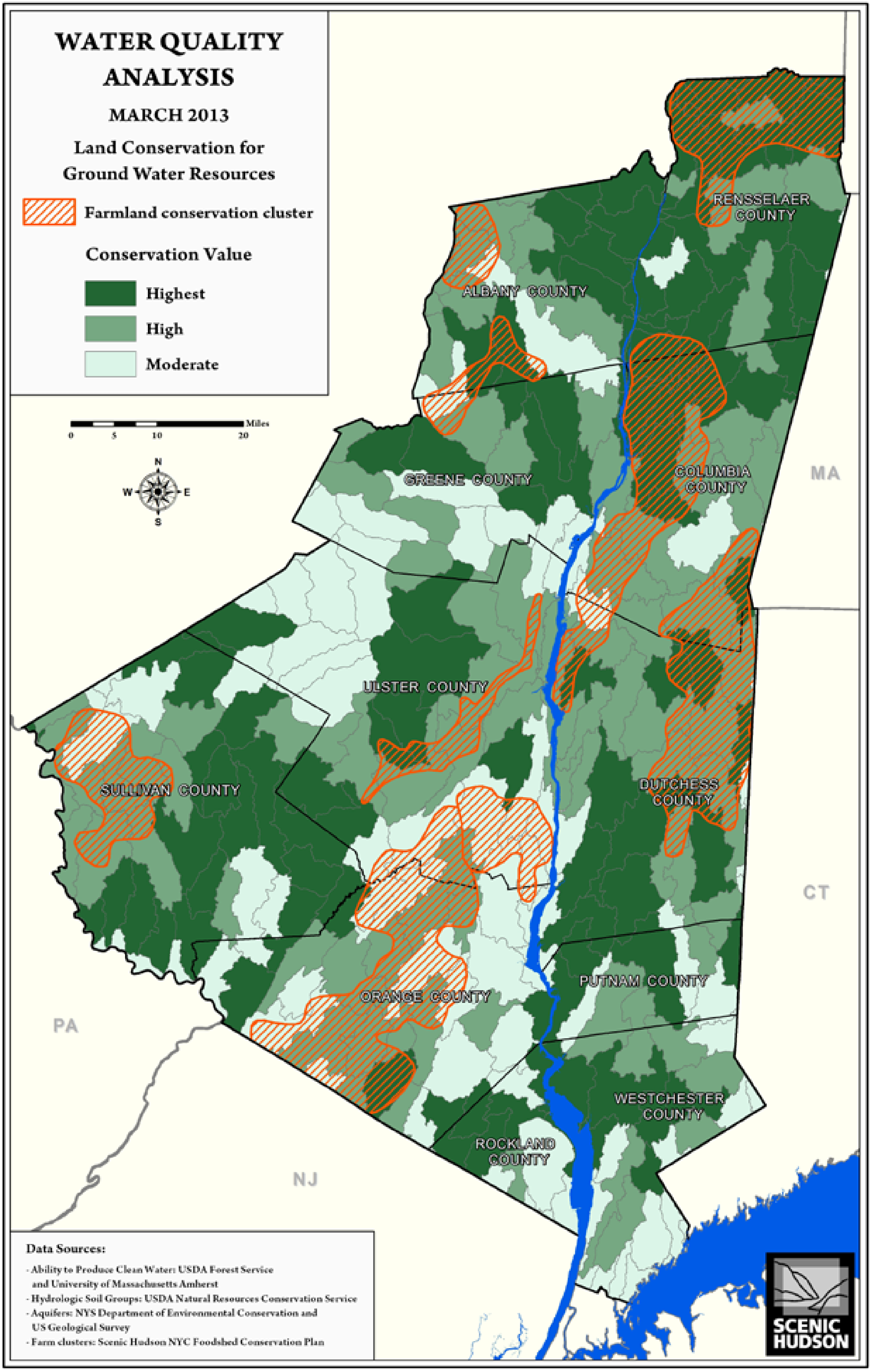
Groundwater conservation values were ranked using the following data:

- Recharge areas for primary and principal unconsolidated aquifers
- Land uses that impact water quality[1]
- Soil erosion potential
- Soil infiltration capacity

Columbia County farmland



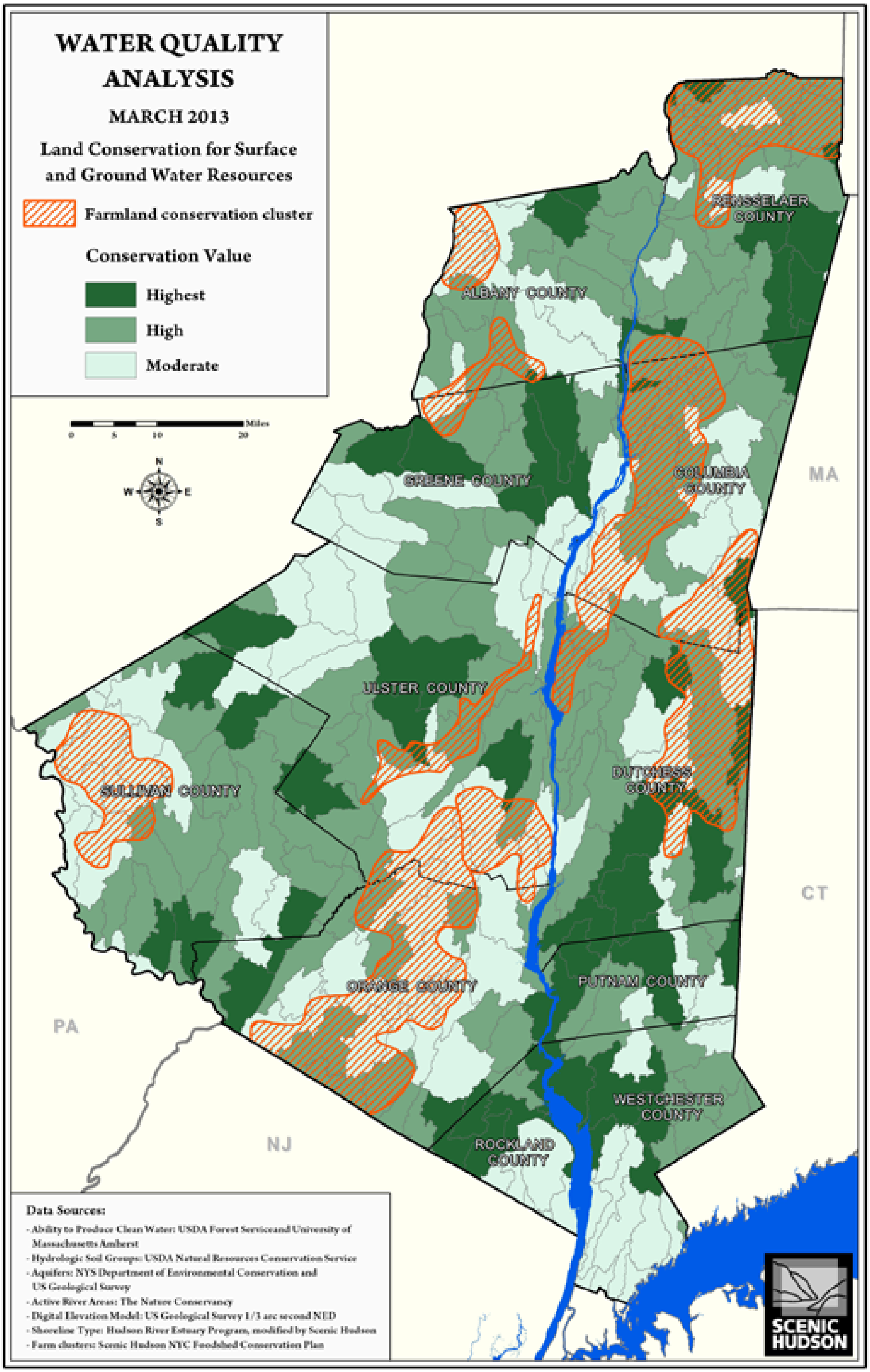
Farmland priority conservation clusters identified in a recent study of the Hudson Valley foodshed also are contained wholly or partly within watersheds ranking high or highest for water quality conservation value for surface water (left) and groundwater (right).


WATER QUALITY ANALYSIS
MARCH 2013
Land Conservation for Ground Water Resources
Farmland conservation cluster
Conservation Value
Highest
High
Moderate
Miles
0 5 10 20
N
W
E
S
RENSSELAER COUNTY
ALBANY COUNTY
GREENE COUNTY
COLUMBIA COUNTY
MA
ULSTER COUNTY
SULLIVAN COUNTY
DUTCHESS COUNTY
CT
PUTNAM COUNTY
ORANGE COUNTY
PA
WESTCHESTER COUNTY
ROCKLAND COUNTY
NJ
Data Sources:
- Ability to Produce Clean Water: USDA Forest Service and University of Massachusetts Amherst
- Hydrologic Soil Groups: USDA Natural Resources Conservation Service
- Aquifers: NYS Department of Environmental Conservation and US Geological Survey
- Farm clusters: Scenic Hudson NYC Foodshed Conservation Plan
SCENIC HUDSON

For both surface water and groundwater, data were ranked in GIS, and relative conservation values were identified spatially. Rankings were based on scientifically accepted standards, where possible, and in relative terms where standards were not available.

The individual results of the surface and groundwater GIS were then summarized by watersheds and further combined to highlight those watersheds that have the highest conservation values for both groundwater and surface water resource protection.

The GIS analysis and study conducted by Scenic Hudson for this report found that approximately 53 percent of the area within farmland priority conservation clusters identified in its recent Foodshed Conservation Plan also is located in watersheds ranking high or highest for overall water quality conservation value. (Approximately five percent of this farmland is in areas with highest water quality values.)



This analysis shows that approximately 17 percent of the farms ranked highest priority for protection in Scenic Hudson's Foodshed Conservation Plan also are located wholly or partly in watersheds ranked highest for overall water quality conservation value. These farms are primarily concentrated in Dutchess County, southeast and northeast Columbia County, and southeast and northwest Rensselaer County. To a lesser degree, they are clustered in Greene, Ulster, northwest Columbia and western Orange counties.

As this analysis indicates, the proposed pilot transaction in Dutchess County would meet water quality goals of interest to the EFC.

Ensuring Water Quality on Agricultural Lands

Ensuring water quality goals on farmland protection projects financed by the EFC could be achieved through a combination of voluntary and mandatory programs by New York State and private land conservation organizations. There is no universal policy that applies toward achieving this goal. However, water quality measures on protected farmland can be achieved on a site-by-site basis.

The GIS analysis and study conducted by Scenic Hudson for this report found that approximately 53 percent of the area within farmland conservation priority clusters identified in its Foodshed Conservation Plan also is located in watersheds ranking high or highest for overall water quality conservation value.

Agricultural Environmental Management—Achieving water quality goals on working farms is generally directed by Article 11A, sections 150-151, of New York State Law, which lays the groundwork for the Agricultural Environmental Management Program (AEM), as implemented by the Department of Agriculture & Markets (DAM) and the Soil and Water Conservation Committee in partnership with the DEC[2]. The purpose of the AEM is to "assist farmers in managing their farm operations in a way that protects the environment and helps maintain the economic viability of the farm." The AEM Plan, typically prepared by a certified third party, documents a specific course of action tailored to each individual farm likely to result in "the most effective, economically feasible and practicable means of preventing or reducing water pollution…" AEM Plans typically address:

- Watershed site evaluation
- Management and storage of manure, silage, wash water, fertilizer, pesticides, petroleum, etc.
- Soil, pasture, stream and flood plain, irrigation water and water supply management
- Waterborne pathogens and waste disposal[3]
- Additional AEM strategies may be developed for vegetable and fruit, greenhouse or horse farms

Planning and implementation grants are available to farmers wishing to participate in the AEM program. In addition, Agricultural Waste Management and Agricultural Non-point Source Control grants through the state's Environmental Protection Fund may help farmers achieve the goals outlined in their AEM programs.

State Pollution Discharge Elimination System permits—In addition to the AEM Program, some farms may be required to file State Pollution Discharge Elimination System (SPDES) permits under certain circumstances. This may apply to many Consolidated Animal Feedlot Operations (CAFOs). Furthermore, in situations where farmers elect to secure an Environmental Conservation Law (ECL) General Permit for CAFO operations, are participating in AEM and are appropriately implementing nutrient management plans, they may claim an Agricultural Storm Water Exemption in the event of a discharge that otherwise would violate the Clean Water Act.

Conservation easements—Restrictions on land use activities to support water quality goals may be contained in conservation easements. It is customary for easements to include natural resource protection areas where farming activity is restricted or prohibited. These resource areas typically include riparian areas, wetlands and wellheads, and are identified through direct negotiations between the land trust or government agency as holder of the easement and the farmer. The easement could serve as a key element of the farm's compliance with water quality goals.

The Capacity of Counties to Borrow for Farmland Preservation

The success of this model will be based in part on the capacity of county or local governments to borrow funds and their creditworthiness with the EFC and the market.

Recent studies conducted by The Trust for Public Land show that the Mid-Hudson Region (Columbia, Dutchess, Orange and Ulster counties) has substantial untapped opportunity for local conservation finance.

One assessment tool used to determine borrowers' creditworthiness for water and wastewater infrastructure is the U.S. Environmental Protection Agency's Guidance for Financial Capability Assessment and Schedule Development for Combined Sewer Overflows. This tool offers a framework that can be adapted to assess municipal capacity to partner with the EFC in financing projects that provide the dual benefits of non-point-source and farmland protection. It examines a community's financial capability and other factors that relate to programmatic goals of the Clean Water Act, which provides funding to the EFC to administer its loan program.

In interpreting the results generated from this tool, it is important to consider that private farmland does not generate a direct public revenue stream as public water infrastructure projects do. Additionally, the value of various local economic and quality of life benefits varies across communities. However, unlike the development of traditional water and wastewater infrastructure projects, which have a "useful life" of 20 to 30 years, farmland/open space protection provides a broad spectrum of public benefits, including safeguarding water quality in perpetuity.

The first step in using this tool is to measure the financial impact of the proposed measure on residential beneficiaries of the investment. This data was readily available for Dutchess and Orange counties; it showed that a potential loan would have low impact on residences. However, a completed data set for Columbia and Ulster counties was not available, making an assessment of residential impact impossible.

Pasture and stream at McKeon Farm, Red Hook.

The second step in this assessment is to evaluate the financial capability of the potential borrower, including debt burden, socioeconomic conditions and financial operations. Debt indicators determine the applicant's ability to issue additional debt, and are evaluated based on bond ratings (general obligation bonds and revenue bonds) and overall net debt as a percentage of full market property value. Financial Management Indicators are used to evaluate the borrower's overall ability to manage financial operations, and are indicated by property tax revenue collection rates and property tax revenues as a percentage of full market property value. Data was available for all four counties. Dutchess, Orange and Ulster counties had strong financial indicators (above 2.50 points using the EPA methodology), while Columbia County scored in the middle range (2.40 points).

This analysis of the four Hudson Valley counties presents a positive assessment of their current financial strength and capacity to implement additional financial systems and controls. Columbia, Dutchess, Orange and Ulster counties appear likely to be considered viable borrowers by the EFC. (For a full description of the methodology used to make these financial assessments, visit http://www.scenichudson.org/sites/default/files/farmland-financial-capability-assessment.pdf[4])

Toward Implementation of Farmland Preservation as a Water-Quality Protection Strategy

The research and findings in this paper suggest that a strategic effort that combines wastewater infrastructure and farmland protection is possible in the Hudson Valley and would achieve multiple benefits and help public dollars go further.

To implement this initiative on a pilot basis in Dutchess County, we recommend the following:

- Dutchess County must gain authorization for a revenue source to secure a potential bond that is politically acceptable to conservation and agricultural advocates, as well as support communities' economic development goals. The county proposed a 0.5 percent mortgage surcharge and requested home rule legislation to enact the tax but did not secure state legislative support.
- EFC/DEC project ranking criteria should be adjusted to allow for the financing of water and wastewater infrastructure projects that are potentially threatened but not yet failing. Preventive measures will maintain or improve water quality while also meeting local and regional economic development goals.
- The EFC should consider the joint DEC-DAM Agricultural Environmental Management Program as the standard of assurance to guarantee that water quality goals are being met on working farms whose protection is financed by this proposed model. The DEC and DAM should negotiate the terms under which a participating farmer would subscribe to the program, recognizing that protecting land provides permanent environmental benefits while traditional wastewater and water treatment infrastructure is financed with a limited "useful life."
- Land trusts should identify working farms and open space properties that are contained wholly or partly within priority watershed lands surveyed in the Scenic Hudson GIS analysis and pursue potential preservation strategies through easements. Land trusts should work with counties to propose the relevant properties for the EFC Intended Use Plan or for EFC's market-rate financing and for a site-based water resources analysis.
- Dutchess County should identify local water quality infrastructure projects it wishes to finance in conjunction with farmland or open space projects and move them toward eligibility for EFC funding by proposing them for the Intended Use Plan.

- Dutchess County and land trusts should move forward to implement the pilot transaction and evaluate its success.
- Land trusts should review existing easement templates to determine their adequacy to meet EFC's program objectives while being acceptable to farmers.
- Counties in the Hudson Valley should consider the feasibility of jointly setting regional and sub-regional priorities for open space and farmland preservation in conjunction with water quality protection across jurisdictions, and pursue joint financing for protection of these lands through the EFC.

APPENDIX
I: Additional Findings & Recommendations

In the process of researching and writing this paper, the authors and those interviewed made many suggestions that, if implemented, would build a stronger public-private, local-county-state-federal commitment to financing the protection of the Hudson Valley-New York City foodshed. Their recommendations and "next steps," and those of the authors, are summarized below:

Private Impact Capital

- **Issue:** Given the lack of private philanthropic capital for farmland preservation, a foundation or consortium of foundations and private donors should make a major, multi-year commitment of funds to build on the existing capital base among land trusts, federal and other governmental entities to boost the region's farmland protection campaign into a higher orbit. Land trusts and foundations working together should set an aggressive but achievable goal of acreage to be protected over a multi-year period while collaborating to attract additional donors to the initiative. Ideally a major grant would be made to a capable regional land trust (e.g., Scenic Hudson) with authorization to re-grant funds to smaller land trusts working to conserve farmland in sub-regions.
  - **Next Steps:** Identify and meet with various foundations to explore potential collaboration and outreach strategies.

Accountable Public Policy

- **Issue:** Farmland protection generally is not discussed widely among policy makers at the local and county levels, despite being a critical component of our regional economy. In part, this is due to the lack of information available regarding the state of farm and farmland resources in the region. Government leaders in state, county and local agencies should set tangible goals for farmland protection, including the amount of farmland in their jurisdiction, amounts protected to date and acreage to be protected in future timeframes. This work should occur in the context of Scenic Hudson's ***Securing Fresh, Local Food for New York City and the Hudson Valley: A Foodshed Conservation Plan for the Region***.
  - **Next Steps:** Land trusts seeking to establish or enhance local farmland protection programs should meet with government officials to discuss setting and tracking goals in relevant jurisdictions.

Public Funding

- **Issue:** Given the many benefits of securing the land base of its proximate, high-quality foodshed, New York City should significantly increase its funding of farmland preservation in the 11-county Hudson Valley region, building on its success in protecting its watershed. A capital funding program should be established specifically for farmland preservation and include requirements that are compatible with federal and county programs. It should be based on collaboration with land trusts in the purchase of development rights.
  - **Next Steps**: Farmland conservation organizations should reach out to NYC mayoral candidates and encourage them to make a pre-election commitment to a farmland preservation capital program.

Environmental Protection Fund

- **Issue:** The state's Environmental Protection Fund (EPF) has a strong record of ensuring a healthy and vibrant environment that also achieves economic development goals. Funding for the EPF—including the line item for farmland preservation—was cut disproportionately compared to other sectors of the state budget following the recession of 2008. Governor Andrew Cuomo provided the first increase to the EPF in five years in his 2013 budget. The existing Farmland Protection Program has a backlog of projects approved by the state for funding.
  - **Next Steps:** New York State should continue to increase funding for the Farmland Protection Program, eliminate the backlog of projects and issue a Request for Proposals for new applications in a timeframe that allows state funds to serve as match for the federal farmland protection program in its next grant cycle.

Interest Subsidies

- **Issue:** Interest subsidies are a financial tool that can be used by the EFC under certain conditions to reduce the cost of interest payments to the EFC by a borrower. The EFC is authorized to provide interest subsidies as well as market-rate financing to non-point source and land acquisition projects that protect or enhance water quality, but to date only the market-rate financing tool has been utilized for this purpose. The state should consider developing an interest subsidy program for land acquisition as a parallel yet non-competing funding program to the CWSRF for traditional infrastructure projects. The EFC should create a dedicated funding source for this purpose given the water quality benefits of open space and farmland preservation and the permanence of the purchase of development rights versus the limited "useful life" of traditional infrastructure.
    - **Next Steps:** The DEC and EFC should direct a portion of Clean Water Act funds for the purpose of providing interest subsidies for private land acquisition projects. They would need to budget funds into section "E" of section 319 of the Clean Water Act. Redirecting just 1 percent of the billion-dollar investment made annually by the EFC could nearly double the availability of funds for farmland protection in New York and achieve significant economic and water quality benefits. Other incentive-based approaches should be considered since it is obvious that county officials are reluctant to issue debt for this purpose.

County Financing of Farmland Protection

- **Issue:** Nationwide, counties are the largest contributors to open space protection. However in the mid-Hudson Valley, they rank relatively low compared to municipal, federal and private funders. Currently, only Dutchess and Orange counties have a track record of supporting farmland protection. Dutchess and Orange should recommit to full funding of county programs, while Ulster and Columbia counties should consider and implement mechanisms to contribute to farmland protection efforts. Even a minimum investment in farmland protection projects would make a difference. If counties lack the political will or financial resources to contribute a large capital outlay toward projects, they should consider alternative tools. For example, county funding has been directed to land trusts to cover real estate transaction costs (legal fees, appraisals, etc.) in Orange County through an annual budget line item ranging between $83,000 and $100,000. Similar programs have been proposed but not adopted in the final budgets of other counties in the region.
    - **Next Steps:** Farmland conservation organizations should convene meetings with county executives of Dutchess, Ulster and Orange counties; interested members of Columbia County's Board of Supervisors; and national conservation finance experts from The Trust for Public Land to consider which finance mechanisms—bonding through the EFC or another entity, a county sales tax or real estate transfer tax, general obligation bonding and/or transactional cost financing program—may be most appropriate to achieve local and regional goals.

Regional Farmland Protection

- **Issue:** Farms and farmland are part of the regional economy and are a regional as well as local resource, yet the models of protecting farmland in the Hudson Valley are funded by local, federal and private funding sources. Municipalities and counties should collaborate and consider creating multi-county tax districts to finance regional farmland preservation. Such an approach might lower the cost of borrowing funds by spreading risk among multiple jurisdictions.
    - **Next Steps:** County executives and regional economic development groups in the Mid-Hudson Valley should discuss the potential benefits of a regional farmland protection finance program.

Federal-State-Local Policy Coordination

- **Issue:** In view of the divergent criteria for securing programmatic requirements of federal, state and municipal funding, all levels of government should work together to set and coordinate policy goals and resolve discrepancies among program criteria to allow for seamless intergovernmental financing of farmland preservation. Most important, New York State should take immediate steps to make its impermeable surface standard consistent with federal Farm and Ranch Lands Protection Program (FRPP) requirements.

    Background: The FRPP (proposed to be renamed the Agricultural Land Easement Program in the Farm Bill) and NYS Farmland Protection Grants are generally aligned, with a few significant exceptions. Specifically, federal rule stipulates that impervious (paved) surfaces on farmland protected with federal funds must not exceed 2 percent of the overall acreage. The state program allows 10 percent of the overall acreage to consist of impervious surfaces. The state has made a case for special exemption from this rule given the relatively small size of farms in Northeastern states when compared to the nation as a whole (e.g., a barn on a small farm may take up a greater percentage of land than a barn on a large farm). The House of Representatives Agriculture Committee recently "urge[d] the Department [USDA-NRCS] to encourage innovative practices at the state level relating to impervious surface requirements within the Agriculture Lands Easement programs." In addition, the state and federal programs are not aligned regarding the allowed placement of temporary or permanent worker housing. This has resulted in a mismatch of available funds for more than a dozen high-priority projects throughout the state and in some cases may result in farms not being protected.

- **Next steps:** Farmland conservation organizations have continuously urged state officials to work within the existing federal program, including the opportunity to seek exemptions from the impervious surface restrictions on a case-by-case basis. Now is the time for New York to move forward to implement these innovative mechanisms so federal-state funds can jointly advance farmland preservation outcomes. If the state does not demonstrate clear, near-term progress in this context, collaborating organizations (American Farmland Trust, Farm Bureau, Land Trust Alliance, land trusts, relevant legislators) should strengthen efforts to gain the cooperation of the Commissioner of Agriculture & Markets to reinterpret the state's impermeable surface rule and/or practices.

Community Preservation Acts

- **Issue:** In view of the cumbersome and costly two-step approval process (NYS Legislature and local referendum) faced by communities desiring to adopt Community Preservation Acts, the Legislature should pass a statewide enabling statute empowering towns and counties to adopt CPAs via local referendum alone. The Legislature should consider giving discretion to communities to diversify the use of funds to include property tax relief, affordable housing and historic preservation in conjunction with open space and farmland preservation. In addition, the Legislature should consider authorizing increases in state grants and assistance to counties and municipalities that authorize farmland preservation borrowing or grant programs as incentives to action in this context.
  - **Next Steps:** Farmland conservation advocates should develop strategies to urge legislative and executive initiatives in this context, while also reaching out to the real estate industry—typically an opponent of CPAs—to gain their collaborative support.

NY-NJ Harbor Estuary Program

- **Issue:** EFC staff has noted they were not aware of the New York-New Jersey Harbor and Estuary Program's 2011 policy decision to include lands in the Hudson Estuary watershed in the definition of this federal program. It is important to clarify this relationship, as participation in the program is sometimes a requirement for projects to receive funding from the Clean Water Act.
  - **Next Steps:** The EPA should officially inform the EFC that the federal estuary program now extends to the head of the estuary at the Troy Dam, making upriver projects—including potential farmland preservation initiatives—eligible for relevant funding under the Clean Water Act. Additionally, Congress should clarify language in the Clean Water Act to explicitly name the Hudson Estuary as extending to the Troy Dam.

Watershed Protection Districts

- **Issue:** Under Chapter law 378 of 2012, local governments are permitted to establish and extend watershed protection districts under a mechanism similar to creating special lighting or sewer districts. In the case of watershed improvement, the district enables the installation and maintenance of traditional built infrastructure and specific natural resource protection measures. To date, this program has not been utilized by any municipality in the Hudson Valley or New York State.
  - **Next Steps:** The state should promote this new law to local governments seeking to raise matching funds to participate in state and federal farmland protection programs.

II: Existing Public Finance Tools for Farmland Protection in the Mid-Hudson Valley

Local governments in the Mid-Hudson Valley have a variety of options available to finance the protection of open space. Using these tools—and in some cases working to make them more effective—could lead to transformative conservation in our region.

- **Local Property Taxes**

Property taxes represent approximately 44 percent of local government revenues statewide and are widely considered the most stable source of revenue for local governments. Over the past 15 years, voters in four communities (all in Westchester County) have approved new land conservation programs supported by property tax measures. Together, these measures will generate $6 million for land conservation.

- **Municipal Bonding**

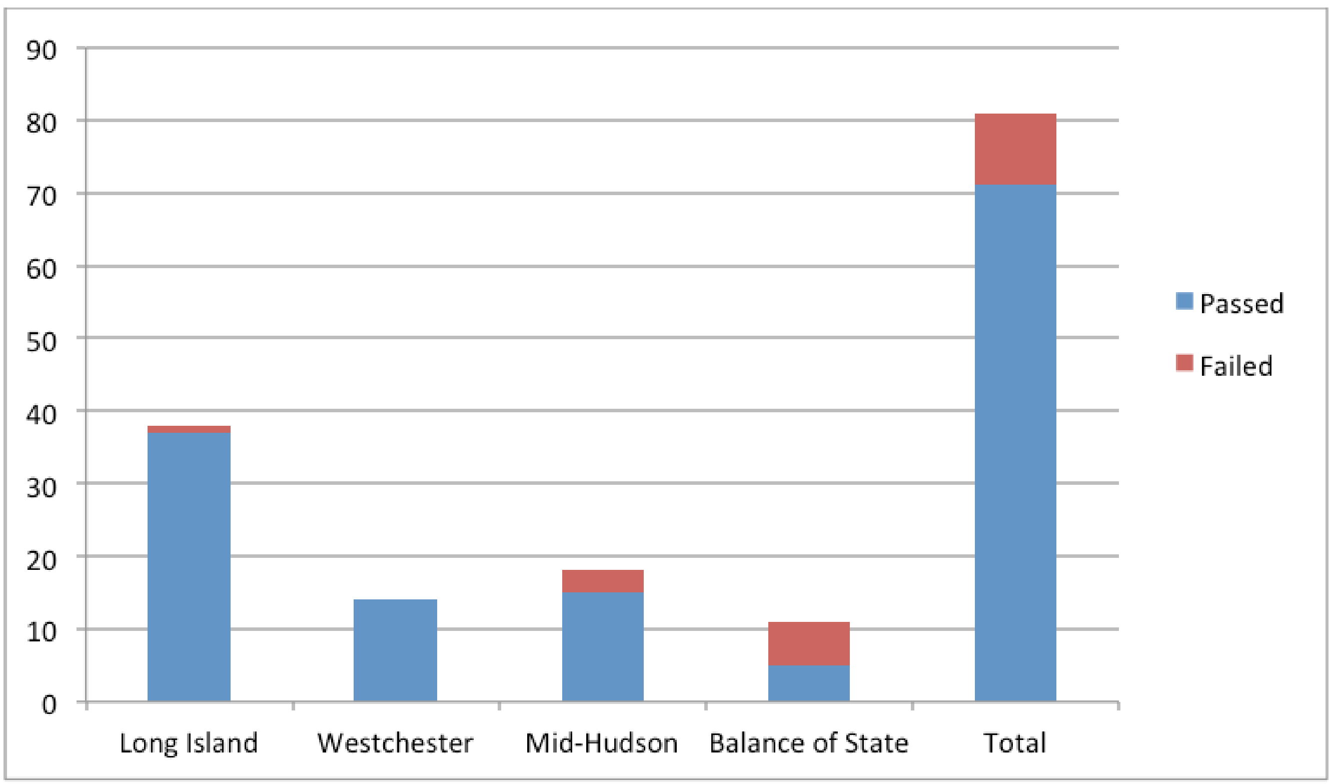
Municipal bonds are among the most common sources of funds for the public financing of open space projects in the Hudson Valley. Twelve valley municipalities have approved ballot measures authorizing general obligation and serial bonds since the late 1990s, creating more than $40 million in new funding to protect open space and farms.

- **County Sales Tax**

Counties may direct sales tax revenue toward open space projects. New York State sales tax is fixed at 4 percent. Counties can levy a tax of up to 3 percent, or higher with approval of the Legislature and governor. The NYS Comptroller's 2012 Annual Report on Local Governments notes that sales taxes have regained an upward trend but have yet to meet the average annual growth experienced prior to the Great Recession. Tax revenue statewide grew 3.9 percent in the first three quarters of 2012 compared to the same period in 2011.

- **Community Preservation Acts**

Community Preservation Acts create a mechanism for localities to enact a real estate transfer tax dedicated to protect natural, historic, recreational and agricultural land. Only communities with approval by the state Legislature, governor and local voters may create a Community Preservation Fund (CPF). In New York State, $1 billion in new funding has been raised through CPFs, including $20 million generated by the towns of Red Hook (Dutchess County) and Warwick (Orange County), and the remainder in Long Island's Suffolk County. Westchester and Putnam counties have enabling authority to create CPFs through Hudson Valley CPA legislation passed in 2007, but to date neither has utilized this tool. CPFs are generally regarded as extremely labor-intensive to pass at the local level.



Success Rate of Local & County Conservation Finance Measures by Region of New York State
New York Local Conservation Finance Measures by Region (1998-2010) Source: The Trust for Public Land

- **Transactional Cost Financing**

In Orange County, funding has been directed to land trusts to cover the cost of real estate transactions through an annual budget line item. The contract allows the county to reimburse a land trust for documented land transaction costs associated with new projects. The budget has ranged between $83,000 and $100,000 annually. Similar programs have been proposed but not adopted in the final budgets of other counties in the region.

- **Establishment of Water Improvement Districts**

  Under Chapter law 378 of 2012, local governments are permitted to establish and extend watershed protection districts. The mechanism is similar to establishing special lighting or sewer districts. In the case of watershed improvement, the district enables the installation and maintenance of traditional built infrastructure and specific natural resource protection measures.

III: Attitudes Toward & Knowledge of Farmland Protection

To inform this report, Scenic Hudson convened a meeting of county and local leaders, policy makers and economic development experts[5] in July 2012 to discuss the perception of farmland protection in the Mid-Hudson Valley and how more capital could be generated at the local level. We asked these individuals a series of questions, including:

- Can farmland protection be advanced on a regional or foodshed basis?
- How can practitioners conserve more high-quality farmland at a faster pace?
- What are the obstacles to collaboration with local, county, state and federal governments?
- What entities can best provide for farmland preservation funding?
- What barriers exist to access capital?
- How can the affordability of borrowed capital at the local/county level be enhanced?
- In fiscally challenging times, can costs be shared by different jurisdictions and by public and private partners?
- Given that farmland protection achieves multiple public benefits, what other policies and programs should be utilized by land trusts?
- What changes to public policy and transactional models are needed to safeguard our farming future?

Answers to these questions varied within the four Mid-Hudson Valley counties (Columbia, Dutchess, Ulster and Orange) considered in this paper. But common trends emerged, including:

- We must find ways to generate more readily available local funding for projects to match federal and private programs.
- The state must reform its Farmland Protection Program and issue a new Request for Proposals.
- We need to develop synergies between all levels of government and leverage the strengths of multiple partners to achieve regional goals.
- We should examine new, multi-tiered, public-private models for transactions.
- We must improve the function of existing farmland protection programs among federal, state and other government agencies by aligning their management goals and requirements.
- We must have a better understanding of how economic development issues and environmental resources, particularly water quality, intersect with farming and soil resources.
- We must work to keep farmland affordable and farming profitable to keep agriculture viable in the Hudson Valley.

We followed up on this meeting with several person-to-person phone calls, e-mails and meetings with these stakeholders through February 2013. We asked questions that helped us understand local attitudes, needs and policies. In addition, we discussed emerging themes and findings with practitioners in the field of farmland protection and conservation finance[6] in the winter of 2012 and spring of 2013. Some of the ideas also were discussed at two forums (April and June 2013) attended by land trust practitioners and representatives of county and municipal governments. The forums were organized by The Trust for Public Land and Scenic Hudson, and funded by the Doris Duke Charitable Foundation.

A summary of the comments from these discussions is included below.

Public support for farmland protection is strong.

- The public understands farmland preservation and supports its funding by government. A 2011 public opinion poll of likely voters in New York State conducted by Fairbank, Maslin, Maullin, Metz & Associates and paid for by the Environmental Leaders Group, a coalition of environmental organizations, found that voters expect government to make good on its responsibility to fund conservation projects, even in tough economic times. Voters believe that economic growth and environmental protection are complementary goals. In the poll, 76 percent of likely voters indicated that protecting working farmland was "extremely important."

- The same poll found that local voters would support legislation giving them the opportunity to vote on local ballot initiatives to fund economic development and conservation programs. Similarly, if given the opportunity, three in five New York voters would vote to increase their local sales tax to fund regional economic development programs, including local conservation projects.

Local government support for farmland protection is tempered by the economy.

- Generally speaking, elected officials at the county level in the Mid-Hudson region support the concept of farmland protection and are willing to express this support publicly. However, translating this support to action on specific projects varies across the region.
- County governments are challenged to meet existing service and infrastructure commitments, according to the 2012 Annual Report on Local Governments by the NYS Comptroller. The report noted that local government expenditures grew less than one percent between 2010 and 2011, while total revenues decreased by one-half a percent. During this time, inflation measured 3.2 percent. This situation has caused a decline in service areas among local governments.
- Because of uncertainties in Congress, local officials are unsure of the impact of budget cuts at the municipal level.
- With limited resources, new programs compete with existing commitments. Some counties in the region are considering how to shed existing capital facilities, while others are investing in existing facilities with little if any analysis of long-term fiscal and societal costs/benefits.
- Local government is strained to address current capital needs and state mandates. In one community, it was said that at current levels of investment it would take nearly 100 years to finance maintenance of existing transportation infrastructure.
- Limits on available capital by local governments make partnering with federal and private parties challenging.

There is a divergence of political support for farmland protection at the local level.

- The importance of preserving farms and investing in farm infrastructure is seen as important but not urgent enough to motivate action. One official noted, "We need a good crisis to elevate the level of this [farmland preservation and farm viability] debate."
- Political obstacles exist in some New York counties with high credit ratings that would otherwise support municipal financing of farmland preservation.
- Discussion of raising sales taxes or incurring debt through non-referenda bonds draws unwanted public attention.
- After several years of relative inaction on funding of new projects by Dutchess County—due to the unavailability of state matching funds—new County Executive Marcus Molinaro allocated residual funds to support a collaborative farmland preservation initiative on one of the county's signature farms. In his 2013 State of the County Address, he also articulated a goal of allocating new funding to farmland preservation. To date he has not allocated new resources to this concept.
- New York State's Real Property Tax Cap, enacted by chapter 97 of the Laws of 2011, limits growth in local property taxes to at or below 2 percent of the total assessed value of properties, or the rate of inflation, whichever is less. This can be overridden by a three-fifths majority of a municipal board. In interviews with elected officials, the tax cap is regarded as an obstacle, but more in perception than in actual fact since a three-fifths majority for some municipal boards is also a simple majority. It was noted that this is definitely not the case at the county level, where legislatures are larger in number.

Local governments have diverse policies and knowledge-bases relating to farmland protection.

- Most local governments do not assess their farmland acreage, set goals for farmland preservation and track progress toward those goals. This creates a challenge in having a substantive discussion about needs and appropriate levels of investments. In contrast, local governments have tracking and goal-setting processes for transportation, social service and other programs. These efforts create a common set of facts that can elevate the level of discussion and create a common basis for informed budget decisions.
- There is variability in the level of preparedness among counties and local governments to support farmland preservation more robustly. Some counties have policies and programs in place to complete projects provided capital is available. Other counties do not yet have, or are in the process of developing, the organizational infrastructure.
- There is diversity in county and municipal knowledge of financing tools for farmland preservation. The value of multi-tiered public partnerships, public-private partnerships and mechanisms to make capital more affordable is not broadly understood or shared. It was suggested that a process to evaluate and tap financing tools should be established.

- Some officials noted confusion over how priorities are set for farmland preservation, believing it is subjective or solely based on landowner willingness. While many land preservation organizations and government agencies have specific criteria to rank and fund farmland preservation projects, many local officials are unfamiliar with them. Additionally, there is a lack of awareness about how regional priorities for farmland protection relate to public health, farm viability and regional economic development goals.
- Case studies of successful farmland preservation projects have not been sufficiently communicated to local officials outside of a few communities. As a result, the benefits are not clearly understood.

Existing farmland protection programs at the federal, county and local level are largely compatible; New York State's program has potential to leverage federal and local funding.

- Interviews with stakeholders suggest that local interest in protecting farmland is motivated by an interest in supporting local businesses, reducing tax burdens and preserving residents' quality of life.
- While a comprehensive survey of all local/municipal farmland protection laws and programs was not possible for this paper, we found that criteria used to prioritize projects at the federal, state, county (Dutchess and Orange) and municipal (Red Hook and Warwick) levels are largely compatible. New York State's criteria for impervious surfaces are the notable exception. Additionally, a review of planning policies in Ulster and Columbia counties and nascent farmland protection plans in the towns of Ancram (Columbia), Marlborough and Marbletown (both Ulster) demonstrated that the policy intent of these plans are generally compatible with state and federal policies.

A new era in farmland protection can be achieved on a regional level by leveraging multiple agencies and focusing on projects that realize multiple public benefits.

- Even in communities familiar with and experienced in farmland preservation, there is confusion regarding the interplay of various funding sources, including the different standards and criteria for federal, state and county programs.
- Local officials do not perceive New York State as a capable partner in farmland preservation because of the long timelines involved in completing projects and because agency staff are not perceived as helpful. One county official said, "New York State has developed a poor reputation. Someone needs to prove that the [Farmland Protection] program can work effectively to build confidence."
- Some stakeholders observed that farmland preservation initiatives are typically advanced by a limited number of partners to achieve a narrow set of goals. For example, a local community may initiate a campaign to save a specific farm with only a general sense of how that project may fit in with regional priorities. Similarly, some perceive that conservation priorities often trump regional priorities because of a lack of understanding of how groups of farms connect with agricultural support systems such as markets, food hubs and distribution systems. All respondents agreed that there is a need for greater discussion about the deployment of resources for farmland protection in the context of the entire regional farm-to-table system.

More funds are needed for farmland protection at all levels of government.

- Legislators and the executive should consider legislation authorizing a transferrable tax credit for donated conservation easements on working farmland to attract more private capital into the field.
- In some communities, water quality and agricultural production benchmarks appear to be in conflict. While there are opportunities for synergies, an analysis of the nexus between farm soils, water quality and farming practices is lacking.
- Government agencies universally consider land trusts effective and essential partners in consummating farmland conservation transactions. One public employee tasked with evaluating projects noted, "Without question, when you look at the record, the involvement of land trusts is what gets farmland protection projects to the finish line."

photos (cover; back cover):Robert Rodriguez, Jr.

Endnotes

[1] "Ability to Produce Clean Water" dataset quantifies forest or riparian lands as helpful to water quality, and development or agricultural lands as harmful to water quality.

[2] The DEC's particular role is to uphold the State Pollutant Discharge Elimination System (SPDES) permit program, minimize regulatory burden on farmers and protect the quality of the state's waters.

[3] www.nys-soilandwater.org/aem/aemcc.html

[4] The authors wish to thank Jim Strickler of Saddlestone Capital LLC for his contributions to this paper and completing this financial assessment and analysis.

[5] Art Basin, Supervisor, Town of Ancram & Columbia County Board of Supervisors; Dave Church, Commissioner, Department of Planning, Orange County; Dennis Doyle, Director, Ulster County Planning Board; Todd Erling, Executive Director, Hudson Valley AgriBusiness; March Gallagher, Deputy Director for Economic Development and Planning, Ulster County; Jeffrey Gratz, Deputy Director, Clean Water Division, U.S. Environmental Protection Agency, Region 2; The Honorable Mike Hein, Ulster County Executive; Ron Hicks, Deputy Commissioner for Strategic Planning & Economic Development, Dutchess County; Noela Hooper, Senior Planner, Dutchess County Department of Planning and Development; Jim Levine, NYS Environmental Facilities Corporation; The Honorable Marcus Molinaro, Dutchess County Executive; Jacquie Moody, Deputy Secretary for Agriculture for New York Gov. Andrew Cuomo; Kealy Salomon, Commissioner, Dutchess County Department of Planning and Development; Matt Zeiper, Research Director, The Trust for Public Land.

[6] Andrew Chmar, Executive Director, Hudson Highlands Land Trust; Jim Delaune, Executive Director, Orange County Land Trust; Christine DeBoer, Director, Wallkill Valley Land Trust; David Haight, Director, New York Office of American Farmland Trust; John Halsey, President, Peconic Land Trust; Tom Gilbert, Regional Conservation Services Director, The Trust for Public Land; Kevin McDonald, Conservation Project Director for Public Lands, The Nature Conservancy of New York, Long Island Chapter; Peter Paden, Executive Director, Columbia Land Conservancy; Terri Ptacek, Executive Director, Agricultural Stewardship Association; Candace Schafer, Executive Director, Westchester Land Trust; Becky Thornton, Executive Director, Dutchess Land Conservancy; Rene Van Shaak, Greene County Industrial Development Agency; Jeff Williams, New York Farm Bureau; Ethan Winter, New York Conservation Manager, Land Trust Alliance.