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**Session on Farmland Protection:
Market and Policy Tools for Improving Farm Viability**

I'd like to begin with a story of two farms located next to each other in the mid-Hudson Valley. This is a true story, but let's call them the Jones Farm and the Brown Orchard. The Jones Farm surrounds the Brown Orchard on three sides.

The Jones Farm had become an estate farm and was eventually sold for development. Both the developer and the town were proud of the development proposed, which was innovative for the region: instead of cookie cutter lots, it mixed single family home lots with townhouses and apartments, providing a variety of housing types much needed in the area. The developer stressed that the prospect of living next door to the Orchard would be attractive to potential buyers; the site plan included road names like "Orchard Lane".

During the review process, the owner of Brown Orchard expressed several concerns. For example, he was afraid that the road names would suggest that his orchard was part of the development and open to unrestricted use by the residents. His requests that the road names be changed and that the developer be required to erect a fence separating the development from his farm (an expense he could not afford) were denied. The town did accept his request that a buffer be created between the development and the orchard, but only 25 feet wide.

A few years down the road, the orchard has 500 neighbors. There are so many children that a new school has been built, also nearby the orchard. The intent of the buffer has not been honored or enforced – although houses were not built in it, pools and decks and playsets have been. Since the farmer cannot spray next to these kinds of uses, he has had to pull back from active management around the boundary of his property, effectively shifting the buffer onto the orchard and reducing his productivity.

Despite Brown's dedication to responsible farm practices, he must continually deal with complaints from neighbors regarding noise ("Can't you use your tractor during the week when I am at work, rather than on the weekend?" or "Do you have to make so much noise at night?" on a summer evening when the sun is still high in the sky); and traffic (mostly from a pick-your-own operation that is an important element of the orchard's financial base).

Damage to crops and machinery, even vandalism and theft, have become commonplace as a result of children in the new development who do not respect the farm. Given the

turnover in residents, it is hard to establish the relationships needed to combat this. The total impact of the new development has been such that Brown has begun to consider whether he, too, should sell his farm for development.

The point here is that there were many missed opportunities for local officials to shape the new development in ways that would have protected the viability of the orchard.

As advocates for small and mid-size farmers and local food systems, we often overlook this key set of players who have the ability to either advance or frustrate our efforts - the officials who control land use and other regulatory and tax policy at the local level.

Surprisingly, most of them aren't aware of the effect that their actions have on farming, either. Their assumption is that farm viability is determined by national policy or broad economic forces that are beyond their influence.

But there are many ways in which local policy impacts farm viability. There are many local policies and regulations that undermine a farmer's ability to succeed, for example, by making it difficult to diversify or to engage in direct marketing. And there are many local regulatory approaches and real property tax programs that can affirmatively encourage those farmers to remain in farming.

In New York, Pennsylvania and many other states, the majority of land use decisions are made at the municipal level, by Town and Village government officials. Other states delegate authority to the county government. In both cases, these local leaders play a key role in what happens on the land, including farm land.

A primary focus of Glynwood's work is on what can be done at the community or regional level to sustain small and mid-sized farms. In the course of this work we have identified several basic ways in which local regulations undermine the sustainability of farms – as well as innovative approaches being taken by communities in our region that may spark ideas to be explored in your own communities. I'd like to share a few.

Zoning too often both reflects and creates a mindset that farming is “transitional.”

For example, the vast majority of land in New York is zoned commercial, industrial or residential. In most communities, agriculture is not a separate zoning category, but is an “as of right” use in a residential zone, which in most rural communities means that you can build one house on every acre of land. This land use policy both reflects and creates a mental framework in which agriculture is seen as part of a transitional landscape: there is an assumption that all farmland will one day become residential housing – that housing is its “highest and best use.” Even farmers come to value their land not in terms of production capacity, but by the number of “buildable lots” allowed by the zoning. Too often, value for future development, rather than value for current agricultural use also determines real property taxes.

○ Innovation: Pittsford, New York, is an example of a community that has developed a vision of its community's future that encompasses agriculture and uses its zoning authority to help achieve that vision. It created a "greenprint" plan, based on an analysis of what the community values, and uses its financial resources as well as its zoning authority to protect farm land. For example, to achieve the maximum impact from its purchase of development rights from farm land, it developed a strategy that gives priority to the farm land that is most subject to development pressure.

The Law of Unintended Consequences: #1:

Lot sizes intended to slow the conversion of farm land often encourage it.

When communities realize that one acre residential zoning is encouraging the loss of farmland, they generally require either "large lot" zoning or "cluster" development, neither of which helps farmers stay in production. In part this is because development is allowed to "leapfrog" across the landscape, creating a patchwork of developments and farms that become uneasy neighbors.

The requirement of large lots – 3, 5 or even 10 acres – just leads to more rapid spread of residential development as more land is used for each house. So some communities now require "cluster" development in which houses are grouped on small lots and some percentage of the land remains "open." To encourage clustering, many communities even provide a bonus, allowing additional units.

However, most cluster developments are designed so that the open space maximizes the value of the new homes, which often makes continued agricultural use unfeasible. The houses are usually placed in the center of the old farm, surrounded by irregularly shaped fields that now serve as an open space amenity, often complete with trails. At best the fields may be mowed for hay, but they are rarely used for animal husbandry or the production of food.

○ Innovation: Red Hook, New York, now requires that when a farm is developed, the site plan must include a soils map. The houses must be sited in a way that disturbs as little land as possible and avoids the best quality soils.

In many counties, the health code requires that houses that are not served by municipal sewer systems be located on at least an acre of land to ensure an adequate septic field. So even when an attempt is made to move away from one acre development in the local zoning code, it may be imposed through the county health code.

○ "Package treatment systems" could be installed to manage waste on the site of these scattered developments, allowing smaller lot sizes. Many county boards of health had bad experiences with an early generation of these systems in the 1970s and 80s and are unwilling to allow the use of the current generation. It is worth urging them to reconsider.

The Law of Unintended Consequences: #2:

Residential developers (and their purchasers) are drawn to agricultural areas for the scenic settings provided by the farms. But the new owners often make it difficult for the farms to remain in operation.

Many developers like to locate their residential developments next to small and mid-size farms, which are considered “scenic.” We began with a clear example of this dynamic.

○ Innovation: Some communities in the Hudson Valley, such as Goshen, now require that when a subdivision is created near an active farm, each deed must contain a notice that the nearby farming operation will generate normal noise and smells. This helps create a more realistic expectation on the part of the buyer. And if the local officials do later receive a call from a new homeowner demanding that action be taken against the farmer, he or she can point to this notice and refuse.

There are many other things that the town could have done in considering the Jones Farm development that suggest ideas to consider in similar situations. For example, the orchard would have benefited had the town officials heeded Brown’s request that the developer be required to construct a fence along the boundary with the orchard. The town could also have required a wider buffer area or at least enforced the setback that it did require. And Farmer Brown still believes that the street names (to which he had objected) contribute to the new residents’ assumption that his land is open to their use.

Zoning often does not allow farmers to diversify their income.

Every zoning code includes a definition of the “accessory uses” allowed within each type of district. What is considered an acceptable accessory use on a farm varies from one town to the next. For example, in Clinton Corners, New York, a commercial kitchen is considered a commercial use and prohibited on agricultural land.

In Warwick, only 75 miles away, these activities are all deemed acceptable farming uses under the zoning code. The Rogowski Family Farm recently added a large commercial kitchen and began a catering business, producing soups and other value-added products from their own produce, taking advantage of changing market demands.

Other examples of zoning that may preclude diversification of farm income include set back requirements that require that farm stands be set back far from the road, thereby making them hard to notice and undermining their potential; subdivision requirements that require that a farm parcel be subdivided before a barn, for example, may be used as a farm market; and prohibitions on bed and breakfast operations (a mainstay of agri-tourism in Europe) as commercial operations. These are all regulations that may make sense in a strictly residential district, but not when applied to farms as businesses, especially if the community wants those farms to continue in operation.

- Local leaders in some communities are beginning to work with farmers to identify the ways that local regulations interfere with their ability to diversify and amending their zoning codes to permit them.

Zoning is often done at too small a scale.

For example, some communities have recognized that “leap frog” development and clustering houses on farm land not only results in the loss of the productive capacity of that farm, but also undermines the viability of the other farms in the area (as has been the case with the Barton Orchard). In order to sustain their farms, they have created “transfer of development rights” or TDR programs. Through a TDR program, a farmer may realize a financial return on the equity in his land by selling the development rights (based on the number of lots allowed in the underlying zoning) to a developer who transfers them to another parcel that has been zoned as a “receiving parcel” where additional density is allowed only if a development right has been purchased from a “sending parcel”, in this case a farm.

Unfortunately, New York law allows for the transfer of rights only within a single municipality. As a result, development rights from farms in a Town (basically the countryside), cannot be transferred to a Village (generally a more developed area which is more likely to have the infrastructure needed to support development.) They can only be transferred within the Town, from one part of the countryside to another.

- Innovation: The Town and Village of Warwick, New York have created an innovative “work around” to this problem. They identified TDR receiving zones that are in the Town, but adjacent to the Village. A development application for this area, using development rights to be purchased from a farmer in the Town is reviewed by the Village and, if approved, the Village annexes the “receiving parcel” after the rights have been transferred.

Too often, local real property tax policy encourages development of farm land.

Although tax rates are set by the states, localities do have some ability to reduce the tax burden on farmers. Since the 1970s states have developed many programs to reduce the tax burden on farmers, such as school tax abatements and agricultural value assessments. Nevertheless, taxes remain the factor more commonly cited by farmers as the reason to sell their farms.

Some municipalities thought that they could solve this problem by purchasing the development rights (through a purchase of development rights or “PDR” program or a conservation easement), which in theory would reduce the value of the land and result in lower taxes, thereby encouraging the farmer to continue farming. Unfortunately, it doesn’t always work this way. Many studies have shown that in areas experiencing strong development pressure, such as the Hudson Valley and parts of Maryland, large land holdings sell for the same value with or without development rights. Many assessors have begun to look at “preserved” farm land and argue that if the value may

remain the same, there is no basis to reduce the taxes. Thus while the farmer may receive a helpful infusion of cash when the development rights are sold, the long-term viability of the farming operation is not improved.

Some municipalities in the Hudson Valley are considering adapting a tax abatement program commonly used to attract new industrial or commercial enterprises to help agriculture. Essentially the municipality would pay farmers for a “term easement” – an agreement not to develop the property for a certain period of time. The municipality would key the payment to the farm’s annual real property tax liability. The municipality would, in effect, “forgive” the farmer from taxes for a period of time, say ten years, in order to encourage the establishment of a new farm business or the retention of an existing farmer..

Creating informed leaders supported by a broad constituency.

For a community to be effective in supporting their local farmers, there must be enlightened local leaders who understand the factors that influence the continued viability of farming. These local leaders also need a constituency that will support their efforts to take new steps to encourage that viability.

Keep in mind that these are not simple situations, since for most farmers the land is their primary asset. Farmers are no different than the rest of us. They are just as diverse in their long term goals and their current position along life’s trajectory. Be sensitive to the underlying personal and equity issues. And for heaven’s sake, engage the farming community. We continue to be surprised at the well-intentioned communities that have crafted elaborate programs to “save their farms” without ever talking with the farmers who actually own and operate them.

Glynwood is attempting to address this need for informed leadership and a supportive constituency through several programs beginning with the *Glynwood Grange* and *Keep Farming*.

Through the *Glynwood Grange* we are creating a peer network of local leaders who have a deeper understanding of agriculture in the region and share a commitment to working to sustain it. The Grange provides an opportunity for community leaders to work together over a period of 18 months to address agriculturally-related issues. Participants are chosen through an application process. A key criterion is their commitment to taking action in their communities to move forward on agricultural issues. Each Grange participant chooses a specific set of policies or regulations in their home community that they commit to attempt to change so as to enhance local farmers’ ability to remain viable and to contribute to the regional food system.

Participants in the current Grange class include Town Supervisors and County Legislators, zoning and planning board members, the representative of a U.S. Senator, nonprofit professionals and other local leaders from throughout the Hudson Valley. Some are also farmers or consultants who work with farmers. Participants meet at Glynwood

once every eight weeks to make presentations, mentor each other, and work with experts brought in to help them develop strategies. An Advisory Committee of regional agriculture experts also stands ready to assist Grange participants fulfill the goals they develop for creating positive change for local agriculture in their communities.

As a result, the participants are beginning to take new approaches. For example, in Goshen a fair amount of land has been “saved” through cluster zoning or purchase of development rights programs that preclude further development. The Supervisor has begun to examine how the municipality can encourage owners of that land to return it to active farming, rather than hold it as lawn or open space.

The *Keep Farming* program has a broader focus. Through Keep Farming, community members develop a deeper and more comprehensive understanding of the many ways in which local farming contributes to their quality of life. This newly informed constituency then works with Glynwood and their local leaders to develop a strategy for sustaining local agriculture that is tailored to their community’s situation and resources.

Keep Farming is an intensive two phase, year and a half long, collaborative process. Glynwood piloted this program in Butler County, PA originally and recently initiated a second pilot in Chatham, NY, in the upper Hudson Valley. Both communities used the Keep Farming program to supplement their town’s comprehensive planning process.

In the initial phase of the program, *Creating Understanding and Awareness*, residents assess the key values that farming supports in a community - economics, aesthetics, local foods, and natural resources. By working together to document these core aspects of local agriculture, a community builds awareness and begins to develop a consensus around the value of retaining and enhancing local agriculture.

The second phase, *Strategic Action*, helps the community analyze the tools and techniques available to them to help protect farmland and support farmers in the region. During this second phase Glynwood helps communities identify policies and regulations that can adversely affect a farmer’s ability to succeed through diversification, direct marketing, agritourism, and the like and, in contrast, those policies which could encourage those farmers, including, in particular, local tax policy.

As an example of how we often wrongly assume that people know what we think they need to know, I want to mention a farmer who participated in the Butler *Keep Farming* program. After the meeting at which a range of tools and techniques were discussed, he arranged to put a conservation easement on his land. Until then, he had not understood that he could carve out a future house lot for use of a family member and still protect the rest of the farm. Now he is trying to serve as an example of what other farmers in the community can do.

Both the *Grange* and *Keep Farming* focus on leadership and community capacity.

Creating new markets for regional products.

We are also developing ways to create new markets for products from the Hudson Valley. One program, which will be used for the first time at this year’s annual meeting of the Conservation Biology Association, is *the Moveable Feast for Wildlife and People*. Working with our partner, the Metropolitan Conservation Alliance of the Wildlife Conservation Society, we have identified Hudson Valley farmers who are managing their production in “wildlife friendly” ways. Through *the Moveable Feast*, organizations will have dinners that serve this food, accompanied by educational materials that draw the connection among the farmer, the wildlife and the food. For example, we may feature pasture raised beef from Rallye Farm that is produced in ways that protect the endangered bog turtle. And eggs from Glynwood, which is managed to protect the bobolinks.

Through the *Moveable Feast* we will help organizations and other consumers understand that they can support biodiversity in their home region through the way they spend their food dollar.

This reflects our strong belief that everyone can do something to help sustain small and mid-size farmers – regardless of where they live.

To encourage this widespread action, we prepared the *Guide to Serving Local Food at Your Next Event*, which urges people to use as much local food as possible when planning a special party, meeting or event at a hotel or conference center. The *Guide* explains the most common roadblocks to such institutional use of local food and how to get around them. It also urges people to recognize that it is much better to do a little than to do nothing. We recognize that in most parts of the country, it is not possible to do a meal that is 100% local during every season. But if every large event used even 10-15% local food think of the cumulative impact in providing a market for local farmers.

Along the same vein, we prepared a *Gleaning* publication called “Connecting Communities Farmers and Food”, which highlights many of the people and organizations who were nominated for our *Glynwood Harvest Award* last year – and others across the country who have found creative ways to support local farmers.

In sum, we believe that there is a great deal more that can be done at the local level – by both local officials and community residents. Our mantra is that whoever you are, where ever you are, you can do something to help sustain local farmers.

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Note: Our Harvest Awards program succeeded in generating significant visibility for the award winners and the range of work that is going on at the community level, with coverage in publications including the New York Times, the Washington Post, and the DesMoines Register, as well as radio outlets. We will be having another round of the *Harvest Awards* this year and if you are interested in making a nomination please contact us. We will be pleased to include you on the list for the Call for Nominations which will go out next Month.

For copies of documents mentioned and other information, please visit
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