

Environmental Conservation

ARTICLE 15 WATER RESOURCES

TITLE 33 SOURCE WATER PROTECTION PROJECTS

Section 15-3301. Definitions.

15-3303. Land acquisition projects for source water protection.

15-3305. Approval and execution of projects.

§ 15-3301. Definitions.

As used in this title the following terms shall mean:

1. "Land acquisition projects" means open space acquisition projects undertaken with willing sellers including, but not limited to, the purchase of conservation easements, undertaken by a municipality, a not-for-profit corporation, or purchase of conservation easements by a soil and water conservation district.

2. "Municipality" means the same as such term as defined in section 56-0101 of this chapter.

3. "Not-for-profit corporation" means a corporation formed pursuant to the not-for-profit corporation law and qualified for tax-exempt status under the federal internal revenue code.

4. "Soil and water conservation district" means the same as such term as defined in section three of the soil and water conservation districts law.

5. "State assistance payment" means payment of the state share of the cost of projects authorized by this title to preserve, enhance, restore and improve the quality of the state's environment.

§ 15-3303. Land acquisition projects for source water protection.

1. The commissioner is authorized to provide state assistance to municipalities, not-for-profit corporations and soil and water conservation districts to undertake land acquisition projects for source water protection, in cooperation with willing sellers. Land acquisition projects for source water protection shall support, expand or enhance drinking water quality protection, including but not limited to aquifers, watersheds, reservoirs, lakes, rivers and streams.

2. a. Any buffer encumbered by a conservation easement acquired pursuant to this section that encumbers lands used in agricultural production as defined in section three hundred one of the agriculture and markets law in a county designated state certified agricultural district created under section three hundred three of the agriculture and markets law may allow agricultural activity that qualifies such lands, provided such activity on such lands does not impair drinking water and complies with an agricultural environmental management program plan developed by the state soil and water conservation committee, in partnership with the department.

b. Notwithstanding any limitations provided herein on lands acquired pursuant to this title a license or easement may be granted by the owner of such property to a public utility for a public purpose.

3. In evaluating land acquisition projects for source water protection pursuant to this section, the department shall give priority to projects

which protect or recharge drinking water sources and watersheds including riparian buffers and wetlands.

4. a. No state assistance may be provided pursuant to this section to fund any land acquisition project which is undertaken by eminent domain unless such process is undertaken with a willing seller.

b. The department shall not provide funding pursuant to this title for any land acquisition project for source water protection by a not-for-profit corporation, if any town, village or city within which such a project is located, by resolution, within ninety days of notification by such corporation of its interest in acquiring such projects, objects to such acquisition.

5. Consistent with section eleven-b of the soil and water conservation districts law, the soil and water conservation committee in consultation with the commissioner of agriculture and markets is authorized to provide state assistance payments to county soil and water conservation districts, within amounts appropriated, for land acquisition projects for source water protection projects to support, expand or enhance drinking water quality protection, including but not limited to aquifers, watersheds, reservoirs, lakes, rivers and streams. Such committee shall give priority to projects which establish buffers from waters which serves as or are tributaries to drinking water supplies for such projects using state assistance pursuant to this section.

6. Real property acquired, developed, improved, restored or rehabilitated by or through a municipality or not-for-profit corporation with funds made available pursuant to this title shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than the public purposes of this title without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.

7. If the state acquires a real property interest in land purchased by a municipality or not-for-profit with funds made available pursuant to this title, the state shall pay the fair market value of such interest less the amount of funding provided by the state pursuant to this section.

8. To the fullest extent practicable, it is the policy of the state to promote an equitable regional distribution of funds, consistent with the purpose of this section.

§ 15-3305. Approval and execution of projects.

1. Land acquisition projects for source water protection may be undertaken pursuant to the provisions of this article and other applicable provisions of law only with the approval of the commissioner.

2. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. In reviewing applications for projects pursuant to this section, the commissioner shall give due consideration to:

a. the project's contribution to the protection of drinking water supplies;

b. the presence of a water plan, including a source water assessment/protection plan or other similar plan which identifies measures to reduce threats to drinking water sources and priorities for

land acquisition projects; and,

c. financial need or hardship.

3. All land acquisition projects shall be undertaken in the state of New York. The total amount of the state assistance payments toward the cost of any such project shall be set forth in any request for proposal issued to solicit projects and will in no event exceed seventy-five percent of the cost.

For the purpose of determining the amount of the state assistance payments, the cost of the project shall not be more than the amount set forth in the application for state assistance payments approved by the commissioner. The state assistance payments toward the cost of a project shall be paid on audit and warrant of the state comptroller on a certificate of availability of the director of the budget.

4. a. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of a source water protection project. Such project shall be recommended to the commissioner by the governing body of the municipality and, when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provision of law.

b. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of a source water protection project. Such a project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such property for the benefit of drinking water and/or water quality protection. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law.

5. No monies shall be expended for source water protection land acquisition projects except pursuant to an appropriation therefor.