

PECONIC LAND TRUST



Testimony of the Peconic Land Trust Before the Joint Legislative Hearing during the Environmental Conservation Budget Hearings for New York State Fiscal Year 2018-19

February 7, 2018

My name is John v.H. Halsey, President of the Peconic Land Trust. My thanks to Senator Catharine Young and Assemblywoman Helene Weinstein for the opportunity to testify today on behalf of 45 organizations from Long Island and across the state (attached as an addendum to this testimony) at the joint hearing of the Senate and Assembly as it relates to the New York State Budget for State Fiscal Year 2018-19 (SFY 2018-19).

I also want to thank all of the members of the Legislature for your ongoing leadership in preserving New York's natural resources and agricultural economy. Through your efforts, our state continues to be a national leader in conservation, agriculture, and farmland preservation.

Today, I am respectfully requesting your immediate action to address an urgent threat to the future of agriculture on Long Island and New York State.

To that end, I am asking that the Senate and Assembly include the attached draft legislation developed in conjunction with the Department of Agriculture & Markets in your SFY 2018–19 One-House Budgets to ensure that buildings or structures necessary for bona fide agricultural production are permitted on privately-owned farmland when interests or rights in real property are acquired by municipalities for the preservation of agricultural lands under General Municipal Law (GML) §247. This is critical to the continued viability of farming and our agricultural economy in New York State. This is especially urgent due to a recent State Supreme Court decision that has undermined farming and farmland preservation efforts in Suffolk County. We do not want this threat to spread across New York State.

In 1974, Suffolk County established its Farmland Preservation Program based on GML §247 which includes bona fide agricultural production as a public purpose. This

program was the first of its kind in the country to purchase restrictions on privately-owned farmland. It has sought to not only protect productive agricultural soils from non-agricultural development, but also to assure the future of farming given its importance to the Suffolk County economy. In the 40 years since this program began, over 10,000 acres of farmland have been protected by the Suffolk County Program and an additional 10,000 acres by individual Town Programs within Suffolk County, most recently through the Peconic Bay Region Community Preservation Fund also based on GML §247. Another 15,000 acres have yet to be protected. Not only has the County program been replicated in towns within Suffolk County, but also elsewhere in New York State and additionally in 25 states. In the last half-century, Suffolk County has lost farmland faster than New York State overall, but it has maintained its singular rural character because of farmland preservation programs. Today, Suffolk County continues to be one of the top three counties in gross sales of agricultural products in all of New York—and supports an economy that provides good local jobs and incentivizes tourism.

The State Supreme Court decision by Justice Thomas Whelan in September 2016, however, threatens agriculture in Suffolk County and beyond. Uncertainty reigns as farmland owners no longer know what they can do on their protected farmland because the decision bars Suffolk County from permitting buildings, structures and improvements necessary for agricultural production including barns, deer fencing, and irrigation systems. While there is an appeal before the Appellate Division, it is uncertain when a decision will be rendered or if similar litigation will be brought against farmland preservation programs operated by the towns in Suffolk County or elsewhere that are also based on GML §247. If the Whelan decision is not overturned, few farmers will participate in such programs and, over 15,000 acres of unprotected farmland may end up in residential or commercial development, local food and other agricultural products will become increasingly scarce, and countless jobs related to agriculture will be at risk.

Additionally, Suffolk County may face litigation from many landowners who own farmland protected by Suffolk County. Hundreds of individual contracts and deeds document that farmland owners retained the right to have structures and improvements related to agricultural production. Each farmland owner who is prevented from exercising those rights could claim a breach of contract, or join with others in a class-action lawsuit. The alternative would be for the County to renegotiate each and every contract individually, a potentially long, uncertain, and arduous process. Many of these current contracts could also be voided, allowing farmland owners to sell their land to developers thereby unraveling 40 years of farmland preservation efforts. If we don't act quickly, a New York treasure hanging in the

balance could be lost forever — and agriculture in Suffolk County as we know it could cease to exist. We are the canary in the coalmine.

Our farms and their protected farmland are at a crossroads, with nothing less than their future at stake. Your inclusion of this legislation in the One-House Budgets will ensure that buildings or structures necessary for bona fide agricultural production are permitted on farmland protected under General Municipal Law (GML) §247 throughout New York State. It will also validate the original legislative intent of Suffolk County's landmark Farmland Preservation Program and similar programs elsewhere in the state. In June, 2017, the Suffolk County Legislature unanimously passed a Home Rule Message (18-0) in support of legislation for this same purpose.

Thanks again for your ongoing leadership in preserving New York's natural resources and agricultural economy. Through your efforts, our state continues to be a national leader in conservation, agriculture, and farmland preservation. We look forward to working with you to address this urgent threat to the future of agriculture on Long Island and New York State.

For more information, contact:

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Organizations in support of the attached draft legislation developed in conjunction with the Department of Agriculture and Markets, to be included in the SFY 2018-19 One-House Budgets.

Aeros Cultured Oyster Co., Inc., Karen Rivara, President
Amber Waves Farm, Amanda Merrow and Katie Baldwin, Co-Founders & Farmers
Agricultural Stewardship Association, Teri Ptacek, Executive Director
Amagansett Food Institute, John de Cuevas, Chairman of the Board
American Farmland Trust, David Haight, New York State Director
Avalon Park and Preserve, Katharine Griffiths, President
Balsam Farms LLC, Alexander Balsam and Ian Calder-Piedmonte, Owners
Columbia Land Conservancy, Peter R. Paden, Executive Director
Cornell Cooperative Extension of Suffolk County, Vito A. Minei, Executive Director
Cornell University's Long Island Horticultural Research and Extension Center, Dr.
Mark Bridgen, Director and Professor
CJ Van Bourgondien Inc., Mark Van Bourgondien, Vice President
Crescent Duck Farm, Douglas Corwin, President
Deer Run Farm, Bob Nolan, Owner/Operator
Dutchess Land Conservancy, Rebecca Thornton, President
Edible East End, Brian Halweil, Editor in Chief
Farm Credit East, Stephen Weir, Vice President
Food and Beverage Law Clinic, Jonathan Brown, Director
Half Hollow Nursery, Inc., Karl J. Novak, General Manager
Halsey Farm & Nursery, Inc., Adam Halsey, Owner/President
Island Harvest Food Bank, Randi Shubin Dresner, President & CEO
Karen Karp & Partners, Karen Karp, Founder & President
J Kings Foodservice, Joel Panagakos, Sales Ambassador
Kraszewski Farms, Henry Kraszewski, Owner/Operator
Long Island Association, Matthew Cohen, Vice President of Government Affairs
Long Island Farm Bureau, Robert Carpenter, Executive Director
Long Island Wine Council, Anthony Sannino, President
Milk Pail, LLC, Jennifer H. Dupree, Member
Moyer Agricultural Consulting, Dale Moyer, Owner/Senior Consultant
New York Farm Bureau, David Fisher, President
New York League of Conservation Voters, Marcia Bystryn, President
Noank Aquaculture Cooperative, Melanie Douglass and Ian Wile, Directors

North Sea Farms, Richard W. King, Owner/Operator
Peconic Land Trust, John v.H. Halsey, President
Remi Wesnofske Inc., John Wesnofske, Treasurer
Scenic Hudson, Senior Vice President, Stephen Rosenberg
South Fork Land Foundation, Lee Foster, President
Suffolk County Executive, Steven Bellone
Suffolk County Farmland Committee, Howard Johnson
Suffolk County Farmland Committee, Gene Murphy, Representative for Islip Town
Suffolk County Food Policy Council, August Ruckdeschel, Chair
Suffolk County Legislature, Legislator Al Krupski, District 1
Suffolk County Legislature, Legislator Bridget Fleming, District 2
Sylvester Manor Educational Farm, Stephen Searl, Executive Director
Tate's Bake Shop, Kathleen King, Founder, and Zvi Friedman
Wickham's Fruit Farm LLC, Jonathan Wickham and Thomas Wickham, Managers

Draft Legislation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 §1. Notwithstanding any provision of law to the contrary, all
2 interests or rights acquired in real property for the preservation of agricultural
3 lands pursuant to section 247 of the general municipal law do not and have not
4 constituted an alienation of the owner’s right to use the land or to construct
5 buildings or structures for bona fide agricultural production and such acquisitions
6 shall permit the use of such land for bona fide agricultural production pursuant to
7 state and local law; and the granting of a permit for uses, buildings or structures
8 on such real property that are necessary for bona fide agricultural production
9 shall not constitute alienation of any interests or rights in real property acquired
10 for the preservation of agricultural lands, pursuant to this section.

11 §2. This act shall apply to all interests or rights acquired in real property by
12 any municipality for the preservation of agricultural lands, pursuant to section 247
13 of the general municipal law, now-owned or hereafter acquired.

14 §3. This act shall take effect immediately.

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