

A rustic wooden fence made of weathered logs and posts runs across a field of tall grass. In the background, there are dense trees with green and yellowing leaves, suggesting an autumn setting. The sky is bright and clear.

Still On Course **For Failure**

Renewed
A \wedge Call To Action

On Land Preservation

Introduction

One year ago, the Long Island Pine Barrens Society published a White Paper on the history and status of Long Island's efforts to preserve open space and farmland. The report sought to review land preservation accomplishments, to assess current efforts and to reconcile preservation goals with available resources and processes. Entitled, "On Course for Failure: A Call to Action on Land Preservation," the 67-page analysis was extremely well received by the Long Island community.

The White Paper is an outgrowth of the Pine Barrens Society's five year-old "Preservation: Now or Never" campaign which seeks to mobilize government, business and the non-profit sector to preserve 25,000 acres of open space and 10,000 acres of farmland before final build-out of Long Island, projected for 2015. Failure to obtain the goals would have serious, even catastrophic, environmental and economic consequences, including the decline of tourism (annually a \$4.7 billion industry) and the second-home industry; the exodus the Island's workforce, middle class and seniors due to the high cost of government services (taxes) associated with new development; and the loss of farming in the state's largest agriculture-producing county in terms of dollars produced.



The report identified five major elements necessary to reach the preservation goal.

- 1) Increasing government spending at every level.
- 2) Increasing personnel assigned to the preservation programs.
- 3) Streamlining the process of appraising and negotiating parcels.
- 4) Improving inter-agency communication and coordination.
- 5) Increasing the number of annual transactions.

The 2007 report explained that to preserve 35,000 acres of open space and farmland would cost some \$3 billion and require doubling the current rate of land acquisition to achieve a preservation rate of nearly 5,000 acres per year by New York State, Nassau and Suffolk Counties and Long Island towns collectively. It concluded that as successful as past efforts have been, absent a dramatic increase in the land preservation rate, Long Island will fail by nearly half to reach the preservation objective — saving 35,000 of the remaining 70,000 acres still “up for grabs” — and that land not preserved immediately would be lost forever to development.

One Year Later

A year after the White Paper's publication, Long Island's preservation remains "On Course for Failure." Open space acquisition and purchase of farmland development rights have increased overall, but not to a rate sufficient to reach Long Island's preservation goal. Monetary resources have been continued by some levels of government but have been exhausted by others. Staffing has not increased in most instances, the time taken to appraise and negotiate parcels has not been shortened or streamlined, and some parcels approved for acquisition remain in limbo. So, while the number of acres preserved by all of Long Island's land preservation agents increased from 1,569 acres in 2006 to 2,000 acres in 2007, the preservation rate is far below that required to meet the preservation objective.

The Good News

Voters in Suffolk County and in two towns approved continued funding for the preservation of open space and farmland in 2007. Suffolk County voters approved extension of its quarter-cent sales tax (a program established in 1987) that will generate another \$322 million for preservation across the county. Oyster Bay voters supported a new \$60 million Bond Act (its largest ever) to continue land acquisition and parks improvement in the town. And Southold voters endorsed a \$4 million Bond Act to supplement the town's Community Preservation Fund.

In all, 1,270 acres of open space and 730 acres of farmland were protected in 2007. The table below shows what land was protected, where and at what cost.

Total Land Preserved by Agency in 2007

Entity	Open Space Acres	Farmland Acres	Total Acres	Total Cost
NY State	142	0	142	\$11,357,400
Nassau County	0	0	0	0
Suffolk County	458	307	764	\$97,639,662
Brookhaven	345	105	450	\$54,070,573
East Hampton	91	16	108	\$34,111,105
Riverhead	31	88	119	\$14,064,437
Southampton	159	60	219	\$53,607,338
Southold	3	130	132	\$10,457,204
Shelter Island	9	25	34	\$3,829,192
Oyster Bay	25	0	25	\$5,800,000
Huntington	6	0	6	\$823,000
Totals	1,270	730	2,000	\$285,759,910

The Bad News

In 2007, government agencies responsible for land preservation fell 2,180 acres short of the target acquisition-rate (4,180 acres per year) required to protect 35,000 acres of open space by 2015. As a result, the rate of preservation necessary to obtain the objective has risen to 4,490 acres per year for the next seven years. If land acquisition continues at the current rate, the total number of acres preserved on Long Island will reach only 17,568 acres by 2015 — just half of the goal.



In Brookhaven, real estate development interests defeated the proposed Brookhaven Community Preservation Fund by a 60-40 margin — a program that had been expected to generate \$500 million over the next 17 years through a buyer-paid, two percent real estate transfer tax. Defeat of the referendum jeopardizes some 5,000 acres of open space and farmland in Long Island's largest town. The sub-prime mortgage crisis, dramatic decline in consumer confidence and anti-tax sentiment caused by over-development contributed to the first defeat of a land preservation initiative on Long Island.

In Riverhead, the town announced that it had bonded for the full amount expected to be generated by its Community Preservation Fund through 2030 and was left with virtually no local resources for continuing land acquisition in a town where 1,500 acres of open space and 3,500 acres of farmland are in need of preservation. Riverhead generates an average of just \$4 million annually from its CPF.

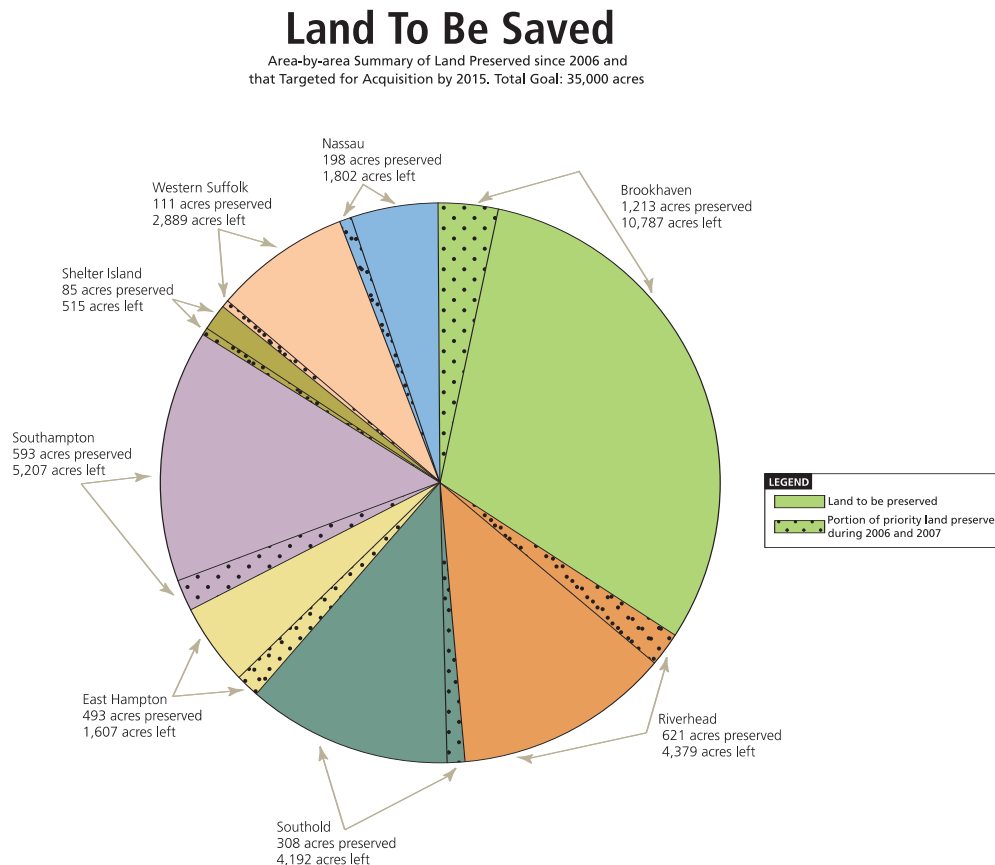
Southampton Town has bonded \$88 million — just \$18 million more than Riverhead (\$70 million) — despite the fact that its CPF generates ten times the revenues produced by the CPF in Riverhead. As our 2007 report found, it is imperative that each of the East End towns borrow the maximum amount possible in order to meet their preservation goals for the lowest possible price and before the land is lost to development.

And Island-wide, questions were raised about development on farmland from which development rights have been purchased. Suffolk County and its towns are scrambling to limit such development and to preserve the integrity of their farmland protection programs.

Overall, few of the White Paper’s 2007 recommendations for improved preservation results were implemented.

What is Needed

As the graph below shows, the availability of open space varies significantly by area, but only a small portion (11.25 percent on average) of the acres available in each area has been acquired in the two years since the regional preservation commitment began — leaving only seven years to secure more than 85 percent of the remaining targeted land.



With considerable land acquisition still to be accomplished by 2015, what could be done differently to improve the rate of land preservation at a state, county and town level? The Society looked simultaneously at obstacles to increased preservation and possible solutions:



Increased State Funding

New York State must increase funding for Long Island land preservation through the state's Environmental Protection Fund. Created in 1993 in response to the need for Pine Barrens preservation funding, environmentalists proposed increasing the EPF from \$250 million to \$300 million this year; upping the amount used for land preservation from \$66 million to \$100 million and directing \$50 million of that total to Long Island. At this writing, none of these goals had been achieved.

The rationale for disproportionate funding for Long Island is that the Island provides unparalleled local matching funds for land preservation relative to other regions, because the urgency of preservation is without precedent, and because Long Island has received little state funding in the past few years. In addition, a 2009 state Bond Act is needed in the amount of \$2 billion to supplement EPF funding for land preservation and to accelerate the acquisition process.

A Nassau County Bond Act

Nassau County has little open space remaining, but the land that is left is very expensive. Nassau must advance an additional \$100 million in funding for land preservation immediately. Previous initiatives in 2004 and 2006 were overwhelmingly approved, and private conservation measures cannot, by themselves, save the needed land..

Focus on Brookhaven and the North Fork

Suffolk Towns are not equally capable of meeting their respective preservation goals. For example, Southampton and East Hampton are capable of meeting their preservation goals through proceeds from their Community Preservation Funds which, over the last five years, averaged \$44 million per year and \$21 million per year, respectively. However, the failure of the Brookhaven CPF requires \$25 million in bridge funding by the Town Board to complete land purchases negotiated in anticipation of CPF passage, followed by a \$100 million bond, as recommended by the town's recently created Blue Ribbon Panel. Otherwise, Brookhaven's goal of saving 10,000 acres of open space and 2,000 acres of farmland will be unfeasible.

Most critical of all is the need for funding necessary to preserve 1,500 acres of open space and 3,500 acres of farmland in Riverhead, and 1,500 acres of open space and 3,000 acres of farmland in Southold. Since Riverhead averages only about \$4 million per year from its CPF and Southold about \$6 million, it is clear that state and county dollars must be disproportionately focused on the North Fork if the region's preservation goals are to be obtained. The survival of

tourism and agriculture will depend upon it, apart from maintenance of a healthy environment and quality-of-life. One billion dollars will be needed from all sources to save the North Fork.



Maximized Borrowing Against Anticipated CPF Revenues

Southampton, Southold and East Hampton must increase bonding against their CPF income to acquire some 12,000 acres of open space and farmland before the price climbs or the land is lost forever to development. The bond ratings of these towns will not be adversely affected by such bonding because the money is generated by a dedicated funding stream approved by referendum and independent of the towns' other resources and budget.

Rethinking of the Purchase of Development Rights Program

Industry support for development on farmland from which the development rights have been purchased undermines public support for farmland preservation. Industrial agriculture (in which soils are stripped and permanent structures constructed) is inconsistent with the public's preservation objectives. Long Island's counties and towns must restrict such development and include covenants in PDR transactions that prevent industrial agriculture or other development on land from which development rights have been purchased by the public. Otherwise, the public is unlikely to continue supporting farm preservation, and potentially open space preservation efforts as well.

Further, the percentage of the "fee simple" or full acquisition cost of purchasing development rights on farmland has risen from 20 percent, at the onset of farmland preservation efforts (in the late 1970's), to nearly 90 percent in some cases today. Despite the threat of farmers' resistance to selling their land to government (as opposed to merely selling its development rights), it may be a fiduciary responsibility of government to purchase farmland outright in order to protect the public's interest in farmland preservation.

Finally, since the use of fertilizers and pesticides on farms is injurious to drinking and surface waters, government purchases of farmland or development rights on farms should include limitations and restrictions on the use of fertilizers and pesticides as a precondition of purchase. A temporary moratorium on farmland preservation programs may be necessary while these issues are resolved.

Streamlined and Uniform Preservation Procedures

Every land purchasing agent on Long Island follows separate land preservation procedures. While some variations are necessary to reflect the unique circumstances in each locality, there are many processes from which most entities would benefit. For example:

A) Agencies should update their lists of targeted parcels on an ongoing basis. Parcels that are no longer available for preservation or those that have already been preserved should be removed from the lists. Additionally, the five East End towns should update their CPF project plans, as some of them have not been updated for years.

B) Agencies should use a qualitative ranking system for target parcels to determine their value to the public, such as that developed for Suffolk County's Greenways Program. In addition, an internal ranking system would ensure that purchases are objective and timely. The system would also ensure that parcels facing the threat of imminent development trigger expedited purchase efforts.

C) A process to follow-up on efforts to preserve critical land is essential in every program. While most funding sources require a willing seller, some towns do not re-approach “unwilling sellers” despite the changing circumstances and economy. Others determine purchase efforts on the initiative of buyers. Government land purchasers must determine which lands are most important to the public for preservation and aggressively pursue landowners just as developers do. Buying land on a first come, first served basis is simply irresponsible.

Refined Procedures at the County Level

In Suffolk, land acquisition transactions currently take two or more years to complete for two reasons. First, there remains no full-time attorney assigned to land preservation, causing many transactions to stall in the law department — an issue that has been pointed out previously with no remediation. Second, transactions funded by the recently-extended, quarter-cent sales tax are further delayed because of a new provision to strip development rights from the properties prior to purchase. The provision was intended to free development credits in order to build affordable housing in downtown areas, and it affects both county acquisitions and joint acquisitions involving Suffolk. To date, no affordable housing has resulted from reservation of these development rights.



Next, Suffolk has halted purchases under the county's Multi-faceted Land Preservation Program. Ostensibly, this is intended to focus purchases on the quarter-cent sales tax program. Because that is a dedicated fund, expenditures have no effect on the County's bond rating. However, the result of this policy decision is a reduction in land purchasing funds by more than \$10 million, and there is real concern that these funds may be re-directed to program components unrelated to open space and farmland protection. The balances in the Multi-faceted and Legacy funds should be expended promptly even as Suffolk borrows against anticipated revenues from the quarter-cent sales tax. There is no excuse not to expend these funds and buy the land immediately.

There continues to be one ill-informed source of opposition to land preservation by Suffolk. It is the Suffolk County Legislature's Budget Review Office and it appears to be adversely influencing the Suffolk Legislature's public policy on this issue.

Its position defies explanation. The Budget Review Office (BRO) was soundly criticized a year ago for its error-filled report on Suffolk's vaunted land preservation programs.

Using incorrect information which it was required to retract and amend, BRO concluded last year that there were "competing goals of land preservation and keeping taxes under control." Of course, it is well settled that over-development is responsible for the high taxes Long Islanders pay. This is because the cost of government services such as schools, roads, police protection and so forth, exceed the tax revenue generated by the proliferation of residential building. Alas, the Spring 2008 Review of the 2009-2011 Capital Budget repeats and extends much of the information discredited in last year's report.

In this year's report, the BRO concludes, "The proliferation of land preservation programs and the expansion of affordable housing programs may be mutually exclusive. This is because land is finite and essential to both programs. As more and more land is preserved, the value of the available parcels will increase and the tax base will decrease as more and more land is taken off the tax rolls."

This astonishing assertion has been thoroughly debunked by nearly all advocates of both open space preservation and workforce housing. At the Newsday Summit on this subject, all agreed that there is simply no conflict between open space preservation and affordable housing. It's a false choice. Government has never acquired for preservation a single acre of land which would otherwise have been used for affordable housing. And among the 252 sites Suffolk has identified for affordable housing, not one of them is on any preservation list. The reason Long Island has little affordable housing is that developers make more money building unaffordable housing. Ending or limiting land preservation would do nothing to produce affordable housing.



Nor does BRO's reference to the law of supply and demand argue against land preservation. If 35,000 of the remaining 70,000 acres of land available for preservation or development is preserved, it would have no greater impact on the value of the remaining 35,000 acres than if the preserved land were, instead, developed. In fact, were the land developed instead of preserved, taxes for new government services would climb higher still. If the land were preserved, the cost of new government services and the corresponding increase in taxes would be prevented. Simply put, that's because deer don't go to school!

The 2008 Suffolk legislative report also suggests that "The Legislature should give consideration to the large commitment made by the five East End towns to their Community Preservation Funds" for land preservation. The implication is that if these towns are making an additional commitment to the preservation of open space and farmland, perhaps the County should reduce or end its investment. Of course, obtaining Long Island's preservation goals will require an increased, not decreased investment. One county legislator described this suggestion as "penalizing" local government for responsibly joining the effort to protect the economic and environmental interests of the region.

The report concludes with the observation that "the level of resources allocated to acquire land may be beyond our means...To plan for the future, information must be shared constantly, updated and evaluated to determine if circumstances

require a different approach." We would argue that completing Long Island's open space and farmland preservation programs is something we cannot afford NOT to do. Land preservation is essential to maintaining critical economic engines such as tourism, farming, the second home industry and others – and to control taxes, the greatest threat to Long Island's economic survival. We believe that a comprehensive economic and environmental analysis of the importance of these programs should be a high and immediate priority.



Finally, in Suffolk, an internal executive branch prioritization committee is unilaterally determining what properties are bought and when, without regard to threat of development, merit relative to competing parcels, legislative intent or how long they've been on the acquisition authorization lists. This arbitrary process must be halted.

In Nassau, politically-charged provincialism interferes with the legislature's ability to address county-wide needs. Many legislators promote spending in their own legislative districts without regard to the county's regional land preservation needs. Additionally, the executive branch must expedite parks and infrastructure projects even though they are more complicated and time-consuming than open space transactions. Some legislators are more interested in the parks and infrastructure components of Nassau's \$100 million Bond Act than in the open space component. As a result, open space purchases have been held hostage in retaliation for the slower pace of other components. All of these programs must be expedited.

Maximized Land Purchases during Real Estate Market Decline

The downturn in the housing market is resulting in lower property values and significantly more properties for sale. Additionally, previously “unwilling sellers” are now open to negotiation, making this an opportune time to make land



acquisition deals as rapidly as possible. Preservation agencies can maximize their purchasing power by borrowing against anticipated revenue streams such as the state Environmental Protection Fund, Suffolk quarter-cent sales tax and East End Community Preservation Fund. Most preservation agencies still decline to fully borrow against anticipated revenues. This is neither productive nor fiscally responsible as land prices will only increase over time. Furthermore, land purchasing entities must work with bond counsel to be certain that no excessive “reserves” against anticipated funds are required.

Maintained Public Support for Preservation Initiatives

The Community Preservation Fund provides that towns may pay for the administrative cost of acquisitions (beyond the actual cost of the land) and for towns to use up to 10 percent of their CPF funds for management and stewardship. In addition, CPF funds are authorized to compensate special taxing districts (such as school or fire districts) to cover expenses resulting from having property removed from the tax rolls for preservation (Payment in Lieu of Taxes or PILOTS). However, there is mounting evidence that towns may be spending CPF dollars for expenses not envisioned under the state legislation and that school districts may be receiving PILOTS without demonstrating that their economic need has been caused by preservation.

The state legislative sponsors are contemplating an amendment to tighten the CPF to ensure that its principal purpose remains open space preservation – a proposal to which the East End Town Supervisors have expressed opposition.

Continued public support for land preservation programs will depend on both program integrity and public perceptions of the same. CPF funds should not be directed to increased stewardship programs or staff salaries unless and until the East End towns improve their land purchase performance. In East Hampton, the supervisor acknowledges having borrowed and repaid money from the CPF for unrelated town expenses – a matter the district attorney is investigating. The New York State Comptroller is currently auditing all of the town CPF programs.

Improved Communication among Land Purchasing Agencies

Last year, the Society recommended creation of a “clearing house” that would coordinate communication among land purchasing entities, share effective procedures and enhance partnering opportunities. This year, a Land Preservation Advisory Group has been created to accomplish these and other purposes. Comprised of leaders of voluntary, non-government organizations committed to land preservation, it will convene conferences and seminars and distribute reports and suggestions aimed at facilitating and accelerating land purchases at every level of government. The group will hold its first meeting in June 2008.

Conclusions

There is no evidence that funding for land preservation is growing relative to the needs enumerated in last year’s White Paper, or that procedures for buying open space or purchasing development rights on farmland are improving commensurate with the need to preserve 35,000 additional acres. On the contrary, despite significant commitments to funding, income for land preservation is more than \$500 million less today than what was expected a year ago for this date. The rate of purchases both in terms of acres saved and transactions completed is only half the rate needed to achieve the conservation goal. Purchasing entities have largely not borrowed at the rates necessary to meet annual goals nor to assure that the identified land is acquired before its cost increases and before it’s lost to development. And policies and procedures for continued outreach to landowners, prioritization of purchases and adequate staffing will doom the preservation effort without immediate reforms. The Pine Barrens Society warns that if the rate of preservation is not dramatically increased this year, it will be nearly impossible to ever reach the preservation goals.

So bleak are the prospects for achieving the preservation goal that the Society is recommending that a special commission be created to examine the economic and environmental impacts of failing to meet the open space and farmland protection goals including, but not limited to, adverse impacts to drinking water and surface water protection, fish and other wildlife, tourism, farming, the second home industry, property values and broader externalities.

The results of such a study may prompt re-prioritization of land preservation or may suggest alternative actions to attempt to minimize the profound impacts on the future of Long Island which would result from continued over-development and inadequate land preservation.



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