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AGRICULTURAL ECONOMICS
STAFF PAPER

NEW FARMLAND PRESERVATION PROGRAMS IN NEW YORK

by

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Reprinted from Journal of the American Institute
of Planners, November 1975.

January 1976

No. 76-4

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New Farmland Preservation Programs in New York

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New York State and Suffolk County have sought new means for solving the problem of preserving farmland. Agricultural districting, developed at the state level, provides farmers in semi-rural areas with an opportunity to protect themselves on a voluntary basis from some of the rising costs and governmental actions usually associated with urbanization. Development rights purchase, developed in Suffolk County, provides farmers with an opportunity to voluntarily sell the nonfarm portion of their land's value, thus eliminating most of the problems interfering with farming in semi-suburban areas. Other areas may find the experience with agricultural districts and development rights purchase in New York helpful.

INTRODUCTION

Two programs developed within the past four years are currently being used to preserve farmland in New York. The state's agricultural district program has experienced a high degree of participation since the Agricultural District Law was enacted in 1971. Suffolk County, New York, became a pioneer in development rights purchase as a farmland preservation technique when it implemented its program in 1974. Both agricultural districting and development rights purchase are unique and innovative attempts to solve the problem of saving our farmland.

This article describes New York's experience with agricultural districts and Suffolk County's experience with development rights purchase, including the development, the administration, and the provisions of each program. An attempt will also be made to discuss the possible adaptability of New York's programs to other areas with similar rural land use situations.

EVOLUTION OF THE DISTRICT CONCEPT

Two efforts, one to provide special farmland assessment and the other to provide state zoning of agricultural lands, were considered in New York during the mid-sixties. Bills that would have permitted farmland to be assessed according to present use were passed by the New York legislature in 1965 and 1966. Although present use assessment of farmland had been practiced in the state extra-legally for some time, farm leaders noted that this practice could not exist forever in areas of rapidly increasing land prices adjacent to larger metropolitan concentrations. Farm leaders, therefore, supported the passage of a differential farmland assessment law. Others, including those in local government, opposed these bills and they received an executive veto. If one of these bills had passed, New York would have had a farmland assessment law similar to those in Maryland, New Jersey and several other states (House, 1967; Ishee, 1971; Koch, Morrill, and Hausmann, undated; Kolesar and Scholl, 1972).

The Office of Planning Coordination was created in 1966, with part of its function to restructure the planning and land use control laws in New York. This agency proposed that state zoning be used to protect areas of critical state concern. Under this plan, prime farmlands would have been designated as critical areas and the police power would have been used by the state to prevent further encroachment of nonfarm uses. This proposal was inconsistent with the values of many people in the state at the time and it did not come to a vote in the legislature. If this bill had passed, New York's farmland would have been protected in a

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manner similar to that being used in Hawaii (Roberts, 1975:46).

Almost simultaneous with the farmland assessment and state zoning efforts was a third and unrelated effort directed to the continuance of agriculture in New York. In 1966, a temporary commission, the Commission on the Preservation of Agricultural Land, was created by the governor to formulate solutions to the conflicts, incompatibilities, and economic and aesthetic losses associated with urban sprawl. This commission filed its final report in 1968 and was replaced by a permanent body, the Agricultural Resources Commission (Commission on the Preservation of Agricultural Land, 1968).

Shortly after its creation, the Agricultural Resources Commission recommended legislation designed to encourage new farm investments in areas where nonfarm and speculative influences were causing farm people to question the future of farming. Enacted in 1968, this legislation amended the state's real property tax law to permit farmers to obtain a five-year property tax exemption for improvements in farm real estate. Research on the preliminary effects of this law indicates that it has had some success in stimulating new farm investments (Linton, 1973).

A second proposal by the Agricultural Resources Commission recommended legislation to permit the creation of special districts, to be known as agricultural districts, in areas well adapted to farming (Bryant and Conklin, 1974). This proposal evolved as a compromise, combining some elements of both the farm value assessment and state zoning proposals (Conklin and Bryant, 1974:607). Having widespread political support, the district proposal received a unanimous vote of approval by the New York legislature and became effective in September 1971.

CREATING AN AGRICULTURAL DISTRICT

Both local and state governments are involved in the process of creating an agricultural district. Local government plays the role of initial and final decision maker, with state government providing required administrative procedures for local decisions. State government reviews the nature and extent of agriculture in each proposed district and has the power to change boundary lines, subject to final decision by local governments. In many respects, this type of process represents a major reform in land use policy (Babcock, 1966:153).

Agricultural districts start at the grass roots level. One or more farmers, typically younger men who wish to remain in farming for many years, spend a

number of days contacting other farmers and rural landowners about the creation of an agricultural district. A minimum of 500 acres is required for a district. Informational meetings are often held at this time by the county agent to explain the mechanics of the law to all interested parties. After obtaining signatures from participating landowners and preparing maps showing the boundaries of the district, the proposal is submitted to the county legislative body.

The county legislative body refers the district proposal to the county planning board and agricultural advisory committee.¹ These latter two groups examine the proposal and make recommendations to the legislative body. After one or more public hearings to determine citizen sentiment toward the proposed district, the county legislature may accept the proposal, or a modification of it, for referral to the State Commissioner of Environmental Conservation.

The Commissioner of Environmental Conservation refers the district proposal to the Agricultural Resources Commission and the Office of Planning Services. Following field inspection, reports are prepared on the nature and extent of farming and urban influences in the area of the proposed district. Each district must be consistent with state comprehensive plans, policies, and objectives. When the state review process is completed, the Commissioner may certify the proposal, or a modification, as eligible for adoption as a district.

Final action on the district proposal is taken by the county legislative body. Another public hearing may be held before the proposal receives final approval or disapproval. Should the county legislature decide to take no action, the proposal automatically becomes effective as a district within a specified period.

The process of forming an agricultural district is both complicated and time-consuming. The many steps in the formation process provide ample opportunity for increasing public awareness of the importance of agriculture and the significance of agricultural districts at both the local and state levels (Stan-ton and Conklin, 1973:7). Six months may elapse from the time a district is initiated until it is actually formed.

Each district must be reexamined by the county and state at eight-year intervals. This is the only time that the boundaries of a district may be changed. At this time, the district may be left as it is, made larger, made smaller, dissolved, or perhaps consolidated with adjacent districts. Though an agricultural district does not necessarily last forever, the county and state together have the authority to continue any district indefinitely.

"Unique and irreplaceable" agricultural lands may

be protected by the state creation of agricultural districts. The Commissioner of Environmental Conservation, beginning in September 1975, has the power to create districts in farming areas determined to be unique and irreplaceable by the Agricultural Resources Commission. Cooperation from local and state groups would be elicited in the creation of these state districts. Because the formation of districts by local initiative has proceeded at such a rapid rate and in such an orderly manner, it is unlikely that the state will exercise its authority to create districts for some time.

PROVISIONS OF THE DISTRICT LAW

Land use within an agricultural district may be affected by the following provisions (Bryant and Conklin, 1974:2-3):

1. *Agricultural Value Assessments*—Farmers may have the value of their land in excess of its value for farming exempt from taxation if they produce \$10,000 worth of farm products and file an annual application. Land which has received this exemption is subject to a maximum five-year rollback if converted to a nonfarm use.
2. *Local Ordinances*—Local governments may not enact ordinances that would restrict or regulate farm structures or farm practices beyond the requirements of health and safety.
3. *State Regulations*—State agencies must modify administrative regulations and procedures to encourage the maintenance of commercial agriculture to the extent compatible with health, safety, and any applicable federal regulations.
- 4a. *Eminent Domain*—The right of public agencies to acquire farmland by eminent domain is modified, though not removed. These agencies are required to give serious consideration to alternative areas before good farmland can be taken for public uses.
- 4b. *Development Funds*—The right of public agencies to advance funds for sewer, water, and other facilities that would encourage nonfarm development is modified.
5. *Special Service Tax Assessments*—The power of special districts to impose benefit assessments or special ad valorem levies on farmland for sewer, water, lighting, non-farm drainage, solid waste disposal, or other landfill operations is limited.

Taken in combination, the provisions of the law may be considered an integrated package designed to encourage the continuance of a strong agricultural industry in the face of growing urban pressure and speculation. On the one hand, certain provisions of the law offer farmers an opportunity to protect themselves from some of the rising costs and governmental actions associated with urbanization.² On the other hand, certain provisions of the law are designed to discourage residential, industrial, and commercial development from locating within farm areas.

PARTICIPATION IN THE DISTRICT PROGRAM

Large numbers of landowners have participated in New York's agricultural district program. To date, there are over 200 districts, totaling nearly 2.5 million acres, in the state. Nearly half of New York's full-time farmland is in districts. Districts are located in forty-four of the state's fifty-seven agricultural counties³ and in all major agricultural areas of the state except those proximate to New York City (Figure 1). In general, there has been little organized opposition to the creation of districts.

Beyond the fact that large numbers of districts have been formed, there is yet little empirical evidence concerning the long-run efficacy of agricultural districting as a farmland preservation technique. Additional time will be needed before an adequate evaluation can be made. Even at this time, however, there is reason to believe that the district concept will be a more effective farmland preservation tool than differential farmland assessment alone, which is being used in over thirty states (Cloude-mans, 1973; Hady and Sibold, 1974). The ultimate success of the program in New York will depend on whether the existence of a district affects the decision-making processes of farm and nonfarm people.

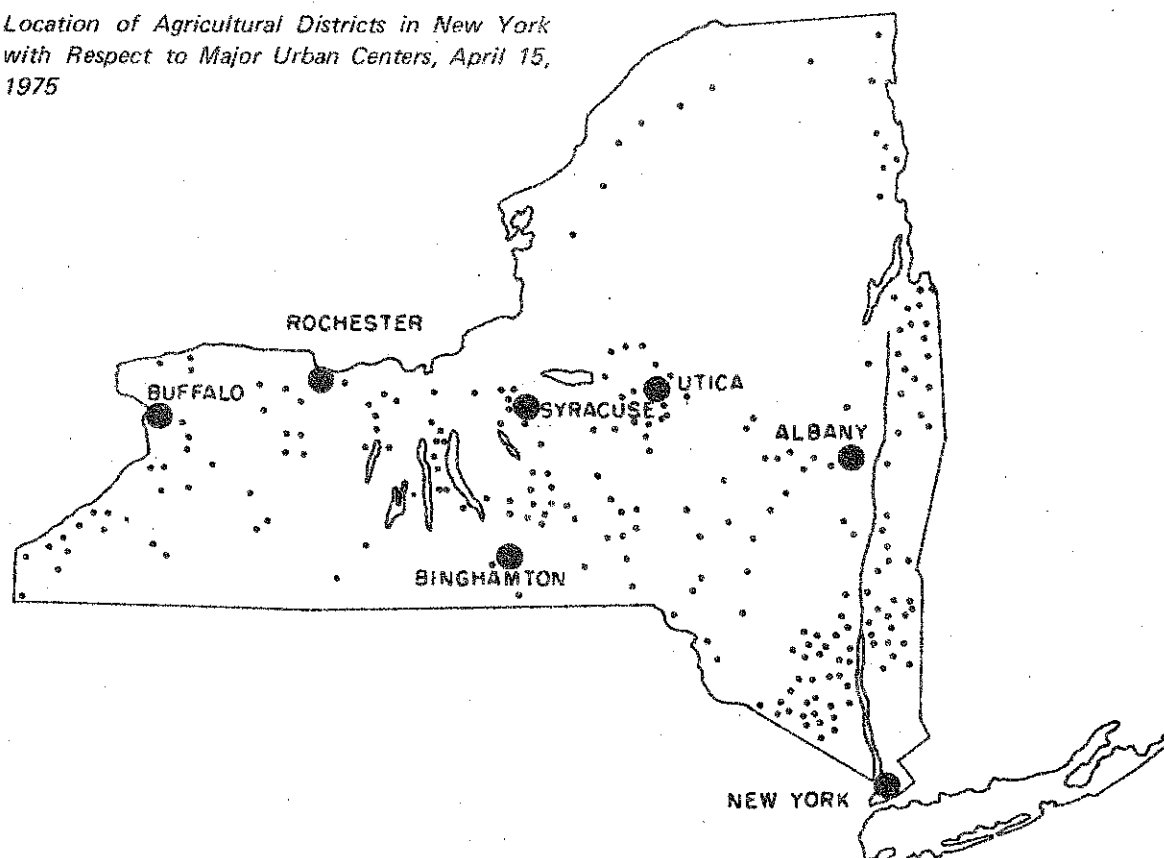
One particularly significant aspect of the district concept is the fact that it recognizes the importance of preserving a critical mass of farmland. The minimum area that an agricultural district may be is 500 acres. Based on the districts formed prior to July 1974, the average size of an agricultural district in New York is 10,300 acres and the average number of farms in a district is forty (Bills, 1975). Public policy that can be justified for preserving a group of farms may not be justified for the single farm. The idea of preserving large contiguous blocks of farmland seems to increase the acceptability and credibility of a farmland preservation program in the eyes of the nonfarm public.

DIFFERENT DEGREES OF URBAN PRESSURE

Farming areas may be classified according to the degree of urban pressure present (Bryant, 1975b:3-4). Urban pressures may be thought of as being on a continuum, with a very low degree of urban pressure in rural areas and a very high degree of urban pressure in urban areas. In between the rural and urban areas are the semi-rural, semi-suburban, and suburban areas, each characterized by a different degree of urban pressure.

There is not yet a precise definition for the classes on the continuum. Evidence gathered in two recent upstate New York studies provides an initial basis for

Figure 1. Location of Agricultural Districts in New York with Respect to Major Urban Centers, April 15, 1975



defining the classes (Bryant, 1974; Bryant, 1975a). The following are tentative definitions:

1. *Rural*—Few urban pressures are present in rural areas, though some nonfarm people live in the countryside. Farming and other extensive activities are the primary uses of land. Farmland seldom sells for more than its farm value. Owners of farmland have very low expectations about the possibility of selling their land for more intensive uses. In New York, large areas of several upstate counties would be classified as rural. Most areas of Lewis, Madison, Wyoming, and Washington Counties, for instance, would be rural.

2. *Semi-Rural*—Urban pressures are an important part of the physical setting in semi-rural areas. The nonfarm population in semi-rural areas outnumbers the farm population by more than ten to one. Farmland sells for as much as three times its farm value, with land speculation present. Landowners have high expectations about the possibility of selling their farmland for nonfarm uses. There is, however, no chance of selling all the land in the area for higher than farm prices during the next five years. Some semi-rural areas would be located in most upstate counties in New York. Columbia, Onondaga, and Orange Counties would be predominately semi-rural.

3. *Semi-Suburban*—There is hardly a landscape in

a semi-suburban area that does not include many non-farm residences. The nonfarm population in semi-suburban areas outnumbers the farm population by more than thirty to one. Farmland sells for five times or more its farm value and landowners have high expectations about the possibility of selling farmland for nonfarm uses. Unlike semi-rural areas, there's a good possibility that nearly all the farmland in semi-suburban areas could sell for as much or more than twice its farm value within five years. In New York, eastern Suffolk County and southern Dutchess County would be prime examples of semi-suburban areas. Other semi-suburban areas in New York would be found in narrow bands around expanding upstate cities.

4. *Suburban*—These areas are mostly residential, with some commercial and industrial uses present. A few estate type farms may be found but there are no full-time commercial farms. Land prices in suburban areas may be ten times or more higher than farm value. In New York, Westchester, Putnam, Rockland, Nassau, and western Suffolk Counties would contain large suburban areas.

5. *Urban*—City parks are the only type of open space found in urban areas. Intensive land uses, whether they be residential, industrial, or commercial occupy nearly all the land in urban areas. Obvious examples

of urban areas in New York are downtown segments of New York City or any upstate city.

Because rural areas have a low degree of urban pressure and suburban and urban areas typically have little remaining farmland, interest in farmland preservation is most intense in semi-rural and semi-suburban areas. A basic difference between these latter two areas is related to the probability of selling farmland at a higher-than-farm-value within a relatively short period. In semi-suburban areas, the chances of selling at higher-than-farm-value within a given period, say five years, is much greater than in semi-rural areas. Land prices in semi-suburban areas have reached what may be described as a "trigger level." At the trigger level, most farmers can sell their farmland at a price which permits them to buy an equivalent amount of equal or better farmland in another location and to cover all the costs of selling and relocating. In semi-rural areas, this trigger level of land prices has not been reached, though some farmers may occasionally sell parcels of farmland at extremely high prices per acre.

Agricultural districts may prove to be more adaptable to semi-rural areas than to semi-suburban areas. Response to the Agricultural District Law in New York has been greatest in semi-rural areas. No districts, however, have been created in semi-suburban areas. Owners of farmland do not receive adequate compensation or incentives for losses in control and land values that are likely to result from placing their land in a district. Additionally, agricultural districting does not provide an adequate solution to the farm estate tax problem in areas characterized by high land prices.

SUFFOLK COUNTY'S EXPERIENCE

Realizing that agricultural districts did not appear to be a solution to the problem of farmland preservation in a semi-suburban setting, the Suffolk County executive appointed an Agricultural Advisory Committee in 1972 to develop an alternative program (Klein, 1973). This committee reviewed several possible techniques, including purchasing farmland in fee simple and leasing it back to farmers, before it recommended development rights purchase. Although Maryland, New Jersey, and Connecticut are also considering development rights purchase, Suffolk County is the leader in implementing this type of program (Alampi, 1973; Stroh, 1974).

Statutory authorization for Suffolk County's purchase of development rights program is found in Section 247 of New York's General Municipal Law and in Suffolk County Local Law Number 19. Section 247

of the General Municipal Law authorizes local governments, including counties, to acquire full title or lesser interests in lands to be preserved as open space (Libby and Bugliari, 1968). Local Law Number 19, passed by the Suffolk County Legislature in 1974, authorizes the expenditure of public funds for the acquisition of development rights on agricultural lands. This law defines development rights as "the permanent legal interest in the use of agricultural lands and the right to restrict, prohibit, or limit the use of such lands for any purpose other than agricultural production."

Sixty million dollars have been earmarked in Suffolk County's 1974-77 capital budget to finance its development rights purchase program. Needed revenue will be raised through the sale of thirty-year municipal bonds. A county real estate transfer tax is being considered as a means of providing debt service on these bonds.

Although Suffolk's program emphasizes the purchase of development rights, it also allows for fee simple acquisition of farmland by the county (Klein, 1974a). This option will be exercised only in special circumstances where it is impossible to purchase development rights alone. When fee simple purchase is used, the agricultural rights will be offered for sale before an attempt is made to lease the land to farmers. Hopefully, nonfarm owners of farmland will be interested in dividing their bundle of rights, selling their development rights to the county and their agricultural rights to adjoining or nearby farmers.

As with the New York agricultural district program, participation in Suffolk County's program is on a voluntary basis. During specified periods, the owners of farmland submit offers to the county to sell their development rights. Landowners may offer the sale of their development rights on less than the full extent of their holdings.

A committee called the Select Committee on Acquisition of Farmlands reviews the offers and makes recommendations concerning which development rights should be purchased (Klein, 1974b). Priority will be given to development rights on farmlands which have the best soils, comprise contiguous blocks of 200 or more acres, and are under greatest development pressures. If a landowner's offer to sell is at a high price, the county may try to negotiate a lower price. The Suffolk County Legislature makes the final determination as to which offers to accept.

BENEFITS OF DEVELOPMENT RIGHTS PURCHASE

The benefits accruing from a development rights purchase program are numerous. Most importantly,

farmland cannot be sold for any purpose other than farming once the development rights have been sold to the county. With the opportunity for a nonfarm sale removed, urban pressure for land can no longer have an adverse effect on farm investment.

To some extent, a public purchase of development rights program may provide farmers with the "best of both worlds." The farmer can continue to farm while receiving payment for the increment of his land's value due to its nonfarm potential. Property tax assessments based on nonfarm uses are no longer a problem or potential problem to the farmer, since land is now assessed at its farm value. The payment of estate taxes is less of a problem once development rights have been converted from real property to some other more liquid asset. Proceeds from the sale of development rights can be used in the farm business as operating and/or investment capital or placed in other income-producing investments. Finally, pride of ownership is maintained because the farmer retains ownership of the agricultural rights and is free to sell the land for farming purposes at a competitively determined agricultural price when he wishes.

Nonfarm owners of farmland may view development rights purchase as an opportunity to divest themselves of their land holdings. This is particularly true if such land is being held for speculation or development and there has been a slowdown in real estate activity.

PRESENT STATUS OF THE PROGRAM

The first round of soliciting offers to sell development rights in Suffolk County, completed in February 1975, resulted in 381 offers to sell development rights and two offers to sell fee simple title. In the aggregate, these development rights offers included approximately 17,000 acres and totaled approximately \$117 million. Offers to sell development rights ranged from \$4,000 per acre in the eastern part of the county to \$20,000 per acre in the western part of the county, with the average for the county being about \$6,000 per acre. The approximate agricultural value of an acre of farmland in Suffolk County is \$1500.

In May 1975, after reviewing all the offers, the Select Committee on the Preservation of Farmland recommended to the county legislature that they further pursue 276 offers for sale of development rights on nearly 14,000 acres, approximately 25 percent of the county's farmland. These offers totaled slightly more than \$83 million, averaging about \$6,000 for the development rights on one acre. Approximately half of the farmland area recommended for purchase is owned by

active farmers or former farmers while the other half is owned by nonfarmers.

Many of the offers to sell development rights in Suffolk County are contingent upon the outcome of an Internal Revenue ruling influencing the amount of federal income tax liability that would result from a development rights sale. The capital gains treatment of the proceeds from a development rights sale and the use of an installment contract through a third party intermediary in receiving development rights payments are in question. An Internal Revenue ruling is being sought to clarify these issues.⁴

Some of the farmland recommended for purchase will probably not be acquired for one reason or another. Still, it appears that the county will be able to purchase development rights on a substantial acreage, provided the Internal Revenue ruling is favorable. The county executive has asked the county legislature to earmark an additional \$15 million to supplement the initial \$60 million outlay earmarked for development rights purchase.

The success of development rights purchase as a farmland preservation technique remains to be seen. In Suffolk County at least, development rights purchase has proved to be politically acceptable to the general public, despite its relatively high cost.⁵ Based on the first round of soliciting offers to sell development rights, overall voluntary participation in Suffolk's program has the potential for being high. Like agricultural districting, it will be some time before the long-run impacts of development rights purchase can be fully evaluated.

CONCLUDING REMARKS

Existing land use situations with respect to farmland preservation in New York State and in Suffolk County are not unlike those found in many other areas. The concluding paragraphs of this article will be addressed to the possible adaptability of the agricultural districting and development rights purchase concepts to other areas.

The several provisions of New York's Agricultural District Law provide an integrated package designed to encourage the continuance of a strong agricultural industry. Recognition is given to the fact that a critical mass of farmland is needed to sustain a viable agriculture. Compared to differential assessment, agricultural districts is a much more comprehensive approach to farmland preservation. Response to the District Law in New York has been particularly high in semi-rural areas, where the chances for a nonfarm sale of farmland are fair to good, but not a certainty. By voluntar-

ily forming a district, farmers in semi-rural areas have shown they are willing to sacrifice the chances for a nonfarm sale for a better chance to farm. Other states with semi-rural land use situations may find certain provisions of the district program useful ingredients in a farmland preservation program of their own.

Agricultural districts, however, do not appear to be the answer to farmland preservation in semi-suburban areas, where urban pressures are more intense and the chances for a nonfarm sale almost a certainty. Under these circumstances, farmers are not willing to voluntarily form an agricultural district and possibly sacrifice their chances for a nonfarm sale.

Development rights purchase is a farmland preservation technique that appears very attractive for certain semi-suburban areas. By providing landowners with a reasonable amount of compensation for the nonfarm increment of their farmland's value, development rights purchase provides a positive means of saving farmland where urban pressures are great. The cost of implementing a development rights purchase program is high, perhaps making it feasible only in those areas where concern for farmland and open space preservation has reached a high level. Semi-suburban areas with such a high level of concern and with pockets of viable farmland may indeed find development rights purchase worth further investigation.

NOTES

- 1 The agricultural advisory committee is provided for in the Agricultural District Law and consists of four farmers, four agribusinessmen, and one county legislator.
- 2 Though the agricultural value assessment provision of the district law is important, it is by no means the only provision that has prompted farmers to form agricultural districts in New York.
- 3 Including the five metropolitan counties in the New York City area, New York State has sixty-two counties.
- 4 This ruling may have national significance, because its outcome may influence the possible use of development rights purchase in other areas.
- 5 It is hoped that large future increases in public service costs in Suffolk County will be avoided as a result of the development rights purchase program. At least, this has been emphasized as a selling point of the Suffolk farmland preservation program to the nonfarm public.

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