

Intro. Res. No. 1174-2010

Laid on Table 2/2/2010

Introduced by Presiding Officer, on request of the County Executive

**RESOLUTION NO. -2010, ADOPTING LOCAL LAW
NO. -2010, A LOCAL LAW AMENDING CHAPTER 8 OF
THE SUFFOLK COUNTY CODE**

WHEREAS, there was duly presented and introduced to this County Legislature, at a regular meeting held on , 2010, a proposed local law entitled, "**A LOCAL LAW AMENDING CHAPTER 8 OF THE SUFFOLK COUNTY CODE**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2010, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW AMENDING CHAPTER 8 OF THE SUFFOLK COUNTY CODE

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds that the County of Suffolk ("county") has had a long history of agricultural production, dating back to the 17th Century.

This Legislature further finds that the county is number one out of 62 counties in the State of New York in terms of value of agricultural products sold according to the 2007 Census of Agriculture.

This Legislature further finds and determines that the agricultural industry is an essential component of the county's current economy.

This Legislature further finds that the county has more than 34,000 acres of land in active commercial agricultural production according to the 2007 Census of Agriculture.

This Legislature further finds and determines that the county has had a long, successful history of farmland preservation evidenced by the more than 9,000 acres of viable farmland permanently protected since 1974 through this nation's first purchase of development rights program.

This Legislature further finds and determines that it continues to be in the best interests of the county and its residents to preserve farmlands pursuant to the Suffolk County Purchase of Development Rights Program ("program").

This Legislature further finds that the county's residents demonstrated their support for farmland preservation pursuant to this program by extending the Suffolk County Drinking Water Protection Program in 2007 through 2030.

This Legislature further finds and determines that the agricultural industry on Long Island has evolved since the inception of this program and that it is necessary to clarify the

program's purpose and the policies and procedures the county will employ to administer and enforce it.

Therefore, the purpose of this local law is to amend Suffolk County Administrative Local Law Chapter 8, "Development Rights to Agricultural Lands," to ensure the county's ability to conserve and protect viable farmlands and active agricultural operations that will serve current and future generations of county residents.

Section 2. Amendments.

- §8-1. Statutory policy; legislative intent.
- §8-2. Definitions.
- §8-3. Applicability.
- §8-4. Farmland Committee.
- §8-5. Development rights; acquisition.
- §8-6. Development rights; alienation.
- §8-7. Notification requirements.
- §8-8. Permits.
- §8-9. Permit conditions.
- §8-10. Structures; farm stands.
- §8-11. Structures; alternative energy systems.
- §8-12. Prohibitions.
- §8-13. Enforcement.
- §8-14. Provisions to control over other legislation.
- §8-15. Severability.

§ 8-1. Statutory policy; legislative intent.

- A. The State of New York, by various legislative enactments, has emphatically stated it to be a most important policy to conserve and protect viable farmlands and to encourage the improvement of such lands both for the production of food and for the preservation of such lands as valued natural and ecological resources. It has further stated that the expenditure of county funds to acquire legal interests and rights in such lands is in furtherance of such policy and is a proper expenditure of public funds for public purposes.
- B. The county is in complete accord with such policy, and it is the goal of the county to conserve and protect viable farmlands, open spaces, open areas and the various natural and ecological resources associated with such lands, particularly soil and water. It is the intent of this chapter to establish the policies and procedures that will be employed by the county in its pursuit of this goal.
- C. The Suffolk County Legislature finds that adequate fresh, local food supplies are critical to the health and economy of the county, that best management practices are essential to ensure that the benefits associated with land preservation are not realized at the cost of the county's natural and ecological resources, that working farms and a diversity of agricultural practices are necessary to secure the future of the business of agriculture and that a minimum threshold of acreage must be in active agricultural production to sustain the industries that support agricultural production. The Suffolk County Legislature

further finds that conservation and protection of farmlands associated with viable agricultural operations that use best management practices will ensure that such lands are available to serve future generations.

§ 8-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AGRICULTURAL DEVELOPMENT PERMIT -- Written permission, issued by the department upon approval of the committee, to erect a structure, to install a structure, to locate a structure, to relocate a structure, to modify an existing structure, to rebuild a structure, to remove an existing structure, to demolish an existing structure, to operate an alternative energy system or to operate a farm stand on agricultural land. Only improvements necessary for agricultural production, as determined by the committee, shall be permitted.

AGRICULTURAL EDUCATION -- Instruction about agricultural production, agricultural-product management, soil and water conservation, best management practices and other agricultural matters, as deemed appropriate by the committee.

AGRICULTURAL LAND -- Land for which the county has purchased the development right(s), in whole in or in part, in order to preserve resources necessary for agricultural production. Land acquired in order to preserve nonagricultural open spaces or open areas shall not be considered agricultural land.

AGRICULTURAL LAND LESSEE -- The person, persons or entity who occupies or utilizes the agricultural land parcel under lease from the current agricultural land owner.

AGRICULTURAL LAND OWNER -- The person, persons or entity owning the residual right(s) to an agricultural land parcel.

AGRICULTURAL PRODUCTION -- The production for commercial purposes of agricultural products, as defined herein. Agricultural production shall not include the processing of agricultural products.

AGRICULTURAL PRODUCTS -- The crops, livestock and livestock products as defined in Section 301 of New York State Agriculture and Markets Law, as may be amended.

ALIENATION -- The transfer of any development right in real property from the county to another.

ALL TERRAIN VEHICLE -- Any self-propelled vehicle which is manufactured for sale for operation primarily on off-highway trails or for off-highway competitions and only incidentally operated on public highways, provided that such vehicle does not exceed seventy inches (70") in width or one thousand pounds (1,000 lbs.) of dry weight, as defined in the New York State Vehicle and Traffic Law, as may be amended. All terrain vehicles shall not include agricultural vehicles nor any vehicles used for law enforcement, fire, emergency or military purposes.

ALTERNATIVE ENERGY SYSTEM -- A solar energy system, wind energy system or other renewable energy transduction system intended to reduce onsite nonrenewable energy consumption.

COMMERCIAL HORSE BOARDING OPERATION -- A commercial horse boarding operation as defined in the Section 301 of New York State Agriculture and Markets Law, as may be amended.

COMMITTEE -- The Suffolk County Farmland Committee.

COUNTY -- The County of Suffolk.

DEPARTMENT -- The Suffolk County Planning Department, which shall administer the Purchase of Development Rights Program.

DEVELOPMENT RIGHT -- As authorized by Section 247 of the New York State General Municipal Law, as may be amended, the permanent legal interest in the use of the subject property, the permanent legal right to permit and require the use of the subject property be for agricultural production and the permanent legal right to limit, prohibit and restrict the use of the subject property to agricultural production, except where specified in this chapter.

FARM OPERATION -- A single commercial agricultural operation, a single commercial horse boarding operation or an enterprise that combines a single commercial agricultural operation with a single commercial horse boarding operation, including all parcels, contiguous or noncontiguous, that are owned and/or rented for the production, preparation and marketing of agricultural products for said operation.

FARM STAND -- A structure for retail sales of agricultural products grown on the premises and processed agricultural products, such as cheese, jam and wine, derived from agricultural products grown on the premises. Retail sales also may include agricultural products grown off the premises and processed agricultural products derived from agricultural products grown off the premises subject to the limitations specified herein. Only agricultural products and processed agricultural products shall be offered for sale at a farm stand.

GREENHOUSE -- A specialized piece of equipment that is specifically designed, constructed and used for the culture and propagation of agricultural products. Temporary structures, such as hoop layers, that do not exceed a height of three feet and six inches (3'6") and do not require or result in the alteration of the property grade shall not be regulated by this chapter.

GROSS SALES VALUE -- Proceeds as defined in Section 301 of the New York State Agriculture and Markets Law, as may be amended. For the purposes of this chapter, annual receipts collected in the operation of a commercial horse boarding operation, as defined herein, shall be considered gross sales value.

HAZARDOUS WASTE -- Those wastes identified or listed in regulations promulgated pursuant to Section 27-0903 of New York State Environmental Conservation Law, as may be amended.

INTEREST or RIGHT -- All legally recognized interests and rights in real property.

LANDSCAPE SCREEN -- Any vegetative screen such as a hedgerow, excluding agricultural crops, that obscures the agricultural land from view. Only landscape screens planted and maintained in accordance with standard agricultural practices, the contract of sale, the deed of development rights and this chapter, as determined by the committee, shall be permitted.

LOCALLY GROWN – A product grown in the Counties of Kings, Nassau, Queens or Suffolk, in the State of New York.

PERSON -- Any individual, partnership, firm, association, trust, company, joint venture or corporation.

PREMISES -- All parcels that constitute the farm operation.

PURCHASE OF DEVELOPMENT RIGHTS PROGRAM -- The official name of the program by which the county may purchase the development right(s), in whole or in part, to properties used for agricultural production, as established and outlined by this chapter.

PURCHASE OF DEVELOPMENT RIGHTS PROGRAM SIGN -- A sign provided by the department, which may be posted on agricultural land, for the purpose of educating the public about and promoting participation in the Purchase of Development Rights Program.

RESIDUAL RIGHT -- All legally recognized interests and rights in real property excluding development rights.

SITE DISTURBANCE -- Any physical alteration of agricultural land including, but not limited to, dredging, excavation, filling, grading and/or soil removal. Only site disturbances necessary for agricultural production, as determined by the committee, shall be permitted. Standard agricultural practices, as determined by the committee, including, but not limited to, crop harvesting and tilling shall not be considered site disturbances.

SOIL -- The unconsolidated mineral and organic material creating the topsoil and subsoil layers, including, but not limited to, sand, silt, clay and organic matter, that serves as a natural medium for the growth of plants.

SOLAR ENERGY SYSTEM -- A solar energy transduction system, wherein sunlight is used to produce electricity using photovoltaic technology and/or to heat water using solar thermal collection technology. Such transduction systems are intended to reduce onsite nonrenewable energy consumption.

SOLID WASTE -- Any unwanted and/or discarded material, with insufficient liquid content to be free flowing, from agricultural, commercial, industrial, institutional, mining and/or residential sources including, but not limited to, durable goods, nondurable goods, yard trimmings, stones, rubble, construction and demolition debris, garbage, rubbish, litter, ash or other substance described as solid waste in Title 6 of the New York Codes, Rules and Regulations, Part 360, as may be amended. Materials used as

livestock bedding or as fertilizer supplements and soil conditioners or used in other manners pursuant to standard agricultural practices, as determined by the committee, shall not be deemed solid waste.

SPECIAL EVENT -- Any occasion or activity conducted on agricultural land, with or without an admission fee, and held on a one-time or intermittent basis that does not constitute agricultural production, as determined by the committee. Only special events consisting of agricultural education, as determined by the committee, shall be permitted.

SPECIAL USE PERMIT -- Written permission, issued by the department upon approval of the committee: 1) to conduct a site disturbance and/or 2) to conduct a special event.

STRUCTURE -- Any improvement constructed or erected which requires location in, on or under the ground or attachment to something having a location in, on or under the ground, including, but not limited to, access roadways, alternative energy systems, berms, buildings, driveways, fences, greenhouses, irrigation pumps, landscape screens, parking areas, signs, tents, utilities and walkways.

UTILITIES -- Any overhead, surface or underground equipment such as a transmission line, pole, wire, pipe, well, drainage system or septic system necessary for the supply of electricity, natural gas and/or water, for the mitigation of stormwater runoff, for the removal of sanitary sewage effluent and/or for communication purposes. Only utilities necessary for the farm operation shall be permitted. In addition, all utilities infrastructure shall be subordinate to the agricultural use of the agricultural land.

WIND ENERGY SYSTEM -- A wind energy transduction system, wherein kinetic wind energy is converted into electricity or mechanical energy using a wind turbine, a tower and associated equipment. Such transduction systems are intended to reduce onsite nonrenewable energy consumption.

§ 8-3. Applicability.

This chapter shall be applicable to all agricultural lands to which the county has acquired interests or rights, in whole or in part, under the Purchase of Development Rights Program. This chapter shall not apply to nonagricultural lands acquired as open spaces or open areas for the purpose of preserving active parkland, passive parkland, woodlands and/or wetlands and shall not apply to farmlands to which the county does not own any interest or right.

§ 8-4. Farmland Committee.

A. Established. The committee is hereby constituted as a continuing agency of the county government.

B. Membership.

(1) The committee shall consist of nineteen (19) members, nine (9) of whom shall be appointed by the Suffolk County Executive with the approval of the Suffolk County Legislature and shall serve at the pleasure of the Suffolk County Executive and ten (10) of whom shall be designated one (1) from each town within the county and shall serve at the pleasure of the respective town boards.

- (2) The committee may invite any government officials, agricultural advocates and/or other special interests to participate in its deliberations in a non-voting capacity or otherwise assist it in discharging its functions under this chapter.
- C. Financial Disclosure. Each committee member shall be subject to the financial disclosure requirements specified in Chapter 61 of the Suffolk County Administrative Local Laws.
- D. Composition.
- (1) The Suffolk County Executive shall appoint nine (9) members as follows: the Suffolk County Economic Development and Workforce Housing Department Commissioner, or their designee; the Suffolk County Environment and Energy Department Commissioner, or their designee; the Suffolk County Health Services Department Commissioner, or their designee; the Suffolk County Planning Department Director, or their designee; and five (5) members at large subject to the criteria set forth in § 8-4(E)(3) of this chapter.
 - (2) The ten (10) town designees shall be certified to the Clerk of the Suffolk County Legislature by the Town Clerk of the respective towns. Each member shall be subject to the criteria set forth in § 8-4(E)(5) of this chapter.
 - (3) The Director of the Suffolk County Planning Department, or their designee, shall serve as chairman of the committee commencing on January 1, 2011 and continuing thereafter.
 - (4) Three (3) advisors may be appointed, one (1) from each of the following, to participate in the committee's deliberations in a non-voting capacity or otherwise assist the committee in discharging its functions under this chapter: the Natural Resources Conservation Service, Cornell Cooperative Extension and a farm advocacy group.
- E. Eligibility.
- (1) The four (4) Suffolk County Executive appointees from county departments, as specified in § 8-4(D)(1) of this chapter, shall not be subject to the eligibility requirements specified herein.
 - (2) A committee member shall be a resident of the county or an employee of a municipality in the county at the time of their appointment and throughout the duration of their term as a member of the committee.
 - (3) The five (5) at large members appointed by the Suffolk County Executive shall meet the following criteria:
 - a. at least three (3) members shall be individuals with a background or expertise in agriculture,
 - b. at least one (1) member shall be an individual with a background or experience in citizen advocacy and

- c. one (1) member may be appointed from the public at large.
- (4) The committee members designated by the towns shall have diverse backgrounds or expertise in areas including, but not limited to, agriculture, municipal planning, natural resources management, ecology, land-use litigation, land-use regulation, environmental law, tax law, citizen advocacy and/or real estate. All designees shall have a general understanding of agricultural practices.
- (5) A member of the committee shall continue to satisfy the requirements of this section with respect to eligibility for appointment to the committee throughout the duration of their term.
- (6) In order to continue to serve as a member of the committee, the member shall have attended at least seventy-five percent (75%) of the regular and/or special meetings held by the committee on an annual basis. Absences from such meetings caused by death in the immediate family of the member (i.e., spouse, children, parents, brothers, sisters, in-laws and/or grandparents), caused by a verifiable illness or caused by a verifiable accident shall not be counted for the purpose of this attendance calculation.

F. Terms.

- (1) An existing committee member, as of January 1, 2010, shall continue to serve until such time the individual voluntarily vacates the position or until such time the appropriate appointing body approves a resolution replacing the individual.
- (2) Each successive appointment shall be for terms of four (4) years, and no member shall serve more than three (3) terms cumulative for a maximum of twelve (12) years, except each member appointed as per § 8-4(D)(1) of this chapter whose term will run concurrent to service in the title specified.
- (3) Any member appointed under this chapter shall serve through the term to which they are appointed.
- (4) Any appointments made to fill a terminated position shall be made in accordance with the provisions of this chapter.

G. Authority.

The committee shall have and be entitled to exercise the following powers and duties:

- (1) to recommend to the Suffolk County Legislature farmlands from which development rights may be acquired;
- (2) to review requests to subdivide the residual right(s) of agricultural lands and to make, thereafter, a recommendation to the Suffolk County Legislature whether such requests be granted;
- (3) to review permit applications in accordance with the criteria set forth in this chapter and the rules and/or regulations promulgated thereunder and to make,

thereafter, a recommendation to the department as to whether or not a permit should be issued and the terms and conditions that should apply;

- (4) to review any matters relevant to development rights and the agricultural economy in general;
- (5) to promulgate such rules and/or regulations as may be necessary to carry out the intent of this chapter and to govern the administration and functions of the committee;
- (6) to establish and adopt written guidelines and property rating systems and
- (7) to cooperate with, at the discretion of the committee, any governmental agents and/or any experts to further the purposes of this chapter.

§ 8-5. Development rights; acquisition.

A. Annual review.

- (1) An annual review period shall be designated in order to maximize the county's financial resources while preserving its valuable natural resources, including, but not limited to, its viable agricultural soils and sole-source aquifer.
- (2) Each landowner interested in participating in the Purchase of Development Rights Program shall submit an application to the department during the month of September.
- (3) Each complete application received by the department during September shall be reviewed and acted on by the committee at the first committee meeting of the new year.
- (4) Only under extenuating circumstances, as determined by the department, such as estate concerns resulting from the sudden death of the landowner(s) and/or as a referral by local town(s) and/or village(s) within the county and/or a not-for-profit conservation organization, may an application for inclusion in the Purchase of Development Rights Program be submitted outside the annual review period. Such application may be considered providing the necessary funding is available.

B. Acquisitions.

- (1) The county shall have the authority to purchase the development right(s) to a parcel, in whole or in part, upon approval of the Suffolk County Legislature and subject to the provisions of this chapter.
- (2) To be considered for acquisition, the property shall:
 - a. be an active farm operation, or part of one, that has been in operation prior to committee review and
 - b. (i) be not less than seven (7) acres used in a single farm operation with an average gross sales value of ten thousand dollars (\$10,000) or more or (ii)

less than seven (7) acres used in a single farm operation with an average gross sales value of fifty thousand dollars (\$50,000) or more.

- (3) The committee shall demonstrate a preference for farm operations that promote agricultural production while protecting groundwater, soils and view sheds. The committee shall limit its recommendations for acquisition of farm operations that undermine the long-term viability of natural resources.
- C. Restrictions, conditions or encumbrances. When the county acquires title to development right(s) with funds received from the federal, state or local governments or from private sources, such title may be acquired subject to restrictions, conditions or encumbrances required as a result of the funds received. Such restrictions, conditions or encumbrances may include, but are not limited to, a reverter interest held by the source of funds. Such restrictions and conditions shall be reviewed by the Suffolk County Attorney. Acceptance of such funds and the terms and conditions for acceptance shall be subject to legislative approval.
- D. Title.
- (1) Where the county acquires the development right(s) through the Purchase of Development Rights Program, which conditions said acquisition upon the financial participation of a governmental entity or other private source, the title may be held by:
 - a. the county,
 - b. the county, governmental entity(ies) and/or not-for-profit conservation organization(s) as tenants in common, each on an undivided pro rata interest to the extent of the financial participation stipulated in the legislation authorizing the respective county acquisition or acquisition program or
 - c. the county, governmental entity(ies) and/or not-for-profit conservation organization(s), by physically dividing the property up between the county, governmental entity(ies) and/or not-for-profit conservation organization(s), with the county owning all of the development rights (and/or interests) in its respective portion of the property, with the governmental entity(ies) owning all of the development rights (and/or interests) in its(their) respective portion(s) of the property and with the not-for-profit conservation organization(s) owning all of the development rights (and/or interests) in its(their) respective portion(s) of the property.
- E. Management agreement. If it is not contrary to any statute, the Suffolk County Charter, this local law or any other local law, any regulation or other county policy, the county is hereby authorized to negotiate and to enter into management agreements with governmental entities and not-for-profit conservation organizations for the management of said county acquisition(s), and the terms and conditions thereof shall be approved by the Suffolk County Attorney in consultation with the Suffolk County Planning Department Director.

§ 8-6. Development rights; alienation.

- A. Unless authorized by local law recommended by the committee and approved upon mandatory referendum, development rights acquired by the county to agricultural lands shall not be alienated in any manner, except where provided herein.
- B. In determining whether to recommend the alienation of development rights, the committee shall take into consideration:
 - (1) the continuing practicality of the use of the residual right(s) to the land(s),
 - (2) the development rights which have been acquired by the county,
 - (3) such factors as the uses to which adjacent lands have been put and
 - (4) the necessity for the use of the land(s) for another governmental purpose.

§ 8-7. Notification requirements.

- A. Change of address. The agricultural land owner shall notify the department if the land is to be leased to another party and provide the agricultural land lessee's address. The agricultural land owner and agricultural land lessee shall notify the department in writing within thirty (30) days of a change of address.
- B. Change in ownership. The agricultural land owner, seller, shall notify the department in writing forty-five (45) days prior to the closing of a sale of the residual right(s) to land(s) for which the county has purchased, in whole or in part, the development right(s).

§ 8-8. Permits.

- A. Permit types.

- (1) Agricultural development permit.

Such permits shall only be granted for the purpose of supporting agricultural production and the agricultural operation. A permit shall be necessary for the following actions, where proposed on agricultural land:

- a. to erect a structure,
- b. to install a structure,
- c. to locate and/or relocate a structure,
- d. to modify an existing structure,
- e. to rebuild a structure,
- f. to remove and/or demolish an existing structure,
- g. to operate an alternative energy system and/or

h. to operate a farm stand.

(2) Special use permit.

Such permit shall be necessary for the following actions, where proposed on agricultural land.

a. Site disturbances.

(i) Such permit shall be necessary for all site disturbances on agricultural lands.

(ii) Only site disturbances associated with standard agricultural practices, drainage improvements and/or agricultural development permits, as determined by the committee, shall be permitted on agricultural land.

(iii) Applications for special use permits may be referred to the Natural Resources Conservation Service for expert advice, at the discretion of the committee.

b. Special events.

(i) Such permit shall be necessary to conduct a special event where proposed on agricultural land.

(ii) A maximum of one (1) special event may be held each calendar year per farm operation.

(iii) No special event shall exceed two (2) days of operation.

(iv) No special event shall adversely impact the viability of the agricultural operation and/or the associated natural resources, as determined by the committee.

B. Permit requirements and limitations.

(1) An agricultural development permit shall be obtained by the agricultural land owner or agricultural land lessee prior to commencement of construction activities, including clearing, regrading or other site preparation necessary for building, placing, modifying or demolishing a structure. Failure to comply with the permit requirements specified herein shall be subject to the provisions in § 8-13 of this chapter.

(2) A special use permit shall be obtained by the agricultural land owner or agricultural land lessee prior to commencement of site disturbance activities. Failure to comply with the permit requirements specified herein shall be subject to the provisions in § 8-13 of this chapter.

(3) A special use permit shall be obtained by the agricultural land owner or agricultural land lessee prior to any site preparation activities for a special event.

Failure to comply with the permit requirements specified herein shall be subject to the provisions in § 8-13 of this chapter.

- (4) An agricultural development permit does not relieve the agricultural land owner and/or agricultural land lessee from compliance with federal, state and local regulatory and/or zoning ordinances.
- (5) A special use permit does not relieve the agricultural land owner or agricultural land lessee from compliance with federal, state and local regulatory and/or zoning ordinances. Compliance with all health and safety codes shall be required in connection with any special events.

C. Permit application procedures.

- (1) Applications for permits or permit modifications shall be submitted to the department two (2) weeks before the committee meeting at which the application will be heard, unless a later filing is approved by the department. Applications shall include:
 - a. an application form, where required by the department;
 - b. the name, address and telephone number of the applicant and, if an agent will be representing the applicant, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant;
 - c. the name, address and telephone number of the agricultural land owner and, if the agricultural land owner is not the applicant, the application shall include a letter or other written permission signed by the agricultural land owner (i) confirming that the agricultural land owner is familiar with the application and (ii) authorizing the submission of the application;
 - d. the physical address of the subject parcel;
 - e. the Suffolk County Real Property Tax Map number (district, section, block and lot) of the subject parcel;
 - f. a site plan delineating the location of the proposed development and/or the proposed event, prepared by a licensed surveyor, where required;
 - g. a non-refundable application fee, where required; and
 - h. any other information requested by the department and/or committee that may be necessary to review the proposal.
- (2) Only complete applications, as determined by the committee, may be approved.
- (3) Upon recommendation by the committee, the department shall issue a permit, with applicable conditions, or notify the applicant that the application is denied.

- (4) The agricultural land owner shall record the agricultural development permit and/or special use permit, including applicable conditions, with the Suffolk County Clerk if such recording is required by the committee. Failure to comply with this requirement shall be subject to provisions in § 8-13 of this chapter.
- (5) The agricultural land owner shall submit the “as-built” plans associated with an agricultural development permit and/or special use permit, where required by the committee, to the department within one (1) year of the approval by the committee. The agricultural land owner may submit in writing a request to extend the timeframe within which this requirement must be completed. Failure to comply with this requirement shall be subject to provisions in § 8-13 of this chapter.

D. Permit issuance criteria.

Permit issuance shall be subject to the following conditions:

- (1) the agricultural land owner and the agricultural land lessee, if applicable, shall be otherwise in compliance with this chapter;
- (2) the proposed action shall not alienate the development right(s) acquired by the county in any manner;
- (3) the proposed action should be consistent with the intent and provisions of this chapter;
- (4) the proposed action should be consistent with all approved committee guidelines;
- (5) the proposed action shall promote agricultural production;
- (6) the proposed action shall not negatively impact the agricultural land’s short-term and/or long-term viability for agricultural production;
- (7) the proposed action shall not negatively impact the value of the agricultural land;
- (8) the proposed action shall not undermine the short-term and/or long-term viability of the natural resources;
- (9) the proposed action shall be approved in such a manner, with applicable conditions, as to limit the negative impacts to soils, view sheds and water (both groundwater and surface waters);
- (10) the proposed action shall not result in a significant negative impact to any adjacent property that is not consistent with current agricultural practices;
- (11) the proposed action should be approved in such a manner that minimizes, to the extent possible, all other negative impacts and
- (12) the proposed action shall be consistent with expert recommendations, where sought by the committee.

E. Permit fees.

- (1) A non-refundable application fee in the amount of one hundred dollars (\$100.00) shall be submitted with each application for a permit.
- (2) The fee shall be waived for an application if it is exclusively for
 - a. permission to install a purchase of development rights program sign,
 - b. permission to erect, place, relocate, modify or extend a fence structure or
 - c. permission to remove or demolish an existing structure.
- (3) Failure to submit the required fee shall deem the application incomplete.

§ 8-9. Permit conditions.

- A. General Conditions. Permits shall contain such reasonable conditions as the committee deems necessary to protect the agricultural land.
- B. Covenants and restrictions. Where it deems appropriate and necessary, the committee may condition the issuance of an agricultural development permit and/or special use permit upon the agricultural land owner's execution of a restrictive covenant, or other instrument acceptable to the department. In such case, such restrictive covenant or other instrument shall be recorded in the Office of the Suffolk County Clerk not later than sixty (60) days from the date of the approval, and proof of said recording must be provided to the department within ninety (90) days of the date of approval, except that the committee may extend the time for filing the restrictive covenant upon good cause and upon written application. Failure to file said restrictive covenant in accordance with the above shall render the permit null and void and may be subject to provisions in § 8-13 of this chapter.
- C. Continuing obligations. The agricultural land owner and/or agricultural land lessee shall have a continuing obligation to maintain all improvements authorized by and to abide by all conditions imposed by a permit, including compliance with all provisions of this chapter.
- D. Noncompliance. The failure to comply with any and all conditions of an agricultural development permit and/or special use permit shall be deemed a violation of this chapter, subject to the penalties provided in § 8-13 of this chapter. In addition, the county reserves the right to rescind or revoke, in whole or in part, such permit.
- E. Modifications of permits and restrictive covenants. All requests for modifications of conditions of permits or restrictive covenants must be made through the committee in accordance with §8-8(C).
- F. Expiration. All agricultural development permits shall expire within one (1) year of issuance unless the authorized improvements have been commenced or a building permit, where required by the local town or village, has been secured by the agricultural land owner, or the committee has granted the agricultural land owner an

extension. The agricultural land owner may submit in writing to the committee a request for an extension. Only one (1) extension may be granted by the committee per permit application. No extension may be granted for a duration greater than one (1) year. Requests for extension shall not be subject to the permit fee requirements specified in this chapter.

§ 8-10. Structures; farm stands.

- A. Purpose. Farm stands provide farmers with direct outlets to market the agricultural products produced on agricultural lands.
- B. Permits. The construction, placement, relocation, modification, expansion, demolition and/or operation of a farm stand on agricultural lands shall be subject to the agricultural development permit requirements as specified in this chapter. The committee may recommend the department issue an agricultural development permit for a farm stand structure subject to the following conditions:
 - (1) Only agricultural products and processed agricultural products shall be offered for sale at the farm stand.
 - (2) In addition to agricultural products grown on the premises and processed agricultural products, such as cheese, jam and wine, derived from agricultural products grown on the premises, retail sales also may include goods that are grown off the premises provided they are locally grown agricultural products or processed agricultural products derived from locally grown agricultural products and are offered for sale in an amount that shall not exceed forty percent (40%) of the total square footage of the farm stand structure.
 - (3) The farm stand structure shall not exceed five hundred (500) square feet and shall be subject to the agricultural development permit specified in this chapter.
 - (4) The total display area, outside the farm stand structure, shall not exceed one thousand (1,000) square feet.
 - (5) The farm stand structure shall be semi-permanent and shall be designed for use in growing seasons only. The installation and maintenance of permanent heating equipment within the farm stand structure shall be prohibited.
 - (6) The farm stand shall be constructed and operated in compliance with all applicable federal, state and local legal requirements, including, but not limited to, zoning restrictions.
 - (7) Gravel or dirt parking areas for the farm stand may be permitted as necessary, subject to the agricultural development permit requirement specified in this chapter.
- C. Conditions. The committee may impose such additional conditions as it deems necessary to carry out the purposes of this chapter.

§ 8-11. Structures; alternative energy systems.

- A. Purpose. Alternative energy systems provide farmers with opportunities to generate safe, efficient, effective and renewable energy onsite and diminish the farm operation's dependence on nonrenewable energy sources. All alternative energy systems shall be subordinate to the agricultural use of the agricultural land.
- B. Permits. The construction, placement, relocation, modification, expansion, demolition or operation of an alternative energy system on agricultural lands shall be subject to the agricultural development permit requirements as specified in this chapter. The committee may recommend the department issue an agricultural development permit for an alternative energy system subject to the following conditions:
 - (1) The rated capacity of the alternative energy system shall not exceed one hundred ten percent (110%) of the farm operation's average annual consumption, where annual consumption is the total amount of energy used per annum for those agricultural activities permitted on agricultural lands.
 - (2) Electricity generated by the alternative energy system shall not be consumed by any residential or other nonagricultural land use nor shall it be consumed by any activity prohibited on agricultural lands, including, but not limited to, processing, whether or not said use is on the subject parcel, contiguous to the subject parcel and/or under common ownership with the subject parcel, except as stated herein.
- C. Connectivity. The alternative energy system may be connected to the utility's electricity grid provided that the rated capacity of the alternative energy system is less than or equal to the standard set forth in § 8-11(B)(1) of this chapter. In the event that the farm operation changes and the average annual electricity consumption is reduced, the agricultural land owner shall be required to disconnect from the utility's grid unless the alternative energy system is modified such that the new rated capacity of the alternative energy system is consistent with the standard set forth in § 8-11(B)(1) of this chapter.
- D. Conditions. The committee may impose such additional conditions as it deems necessary to carry out the purposes of this chapter.

§ 8-12. Prohibitions.

- A. Nonagricultural use. No person shall use agricultural lands for any purpose other than agricultural production, except as provided in this chapter.
- B. Mining. Resource extraction shall be prohibited on all agricultural lands.
- C. Dumping. There shall be no dumping on agricultural lands.
- D. Processing. Processing, including the processing of agricultural products, shall be prohibited on agricultural lands.
- E. Solid waste. No solid waste shall be burned or stored on agricultural lands.
- F. Hazardous waste. No hazardous waste shall be stored on agricultural lands.

- G. Aviation. No aircrafts including, but not limited to, airplanes, helicopters, hot-air balloons and gliders shall be permitted to land on, hover above or take off from agricultural lands, except where part of standard agricultural practices, as determined by the committee, such as crop dusting or for law enforcement, fire, emergency or military purposes.
- H. Vehicles. No all terrain vehicles shall be permitted to be used or stored on agricultural lands except in aiding agricultural production, as determined by the committee.
- I. Structures. No person shall erect, install, relocate, modify, rebuild, remove or demolish a structure without an agricultural development permit.
- J. Farm stands. No person shall operate a farm stand without an agricultural development permit.
- K. Alternative energy systems. No person shall operate an alternative energy system without an agricultural development permit.
- L. Driveways, roadways, thoroughfares. No person shall use any driveway, roadway, path or thoroughfare on agricultural land for vehicular access to an adjacent parcel for any purpose other than agricultural production.
- M. Parking areas. Asphalt, concrete and all other impermeable parking areas shall be prohibited on agricultural lands.
- N. Landscape screens. No landscape screen shall be permitted around fallow agricultural land except those agricultural lands kept fallow customary to standard agricultural practices, as determined by the committee.
- O. Site disturbances. No person shall conduct a site disturbance including, but not limited to, dredging, excavating, filling, grading and/or soil removal on agricultural land without a special use permit.
- P. Special events. No person shall conduct a special event on agricultural land without a special use permit.
- Q. Contracts. No person shall violate the terms and conditions of the contract of sale, as may be amended, and the deed of development rights, as may be amended.
- R. Any nonagricultural activity not explicitly permitted by this chapter shall be prohibited.

§ 8-13. Enforcement.

- A. Cease and desist order.
 - (1) Where a violation of this chapter, the contract of sale and/or the deed of development rights is suspected, the department shall cause an investigation to be conducted. If the department determines by clear evidence that a violation of this chapter, the contract of sale and/or the deed of development rights has been committed or exists, the department may issue a cease and desist order. The

cease and desist order shall be served in person or by certified mail to the agricultural land owner at the address on file with the department and, if the property is leased, the agricultural land lessee. The cease and desist order may direct restoration of the property, removal of structures that are in violation of this chapter, the contract of sale and/or the deed of development rights and such other corrective actions and terms as the department finds necessary to protect the county's interest in the agricultural land.

- (2) A cease and desist order may be lifted by the department upon a finding that the violation has been abated and/or when an application to bring the activity into compliance has been filed and a permit has been issued by the department.
- B. Violations. Where it is determined by a court that a violation of any of the provisions of this chapter has been committed or exists, the agricultural land owner, the agricultural land lessee and any other person who takes part or assists in such violation shall each be deemed guilty of a violation of this chapter.
- C. Temporary restraining order and/or injunction.
- (1) The county may obtain a temporary restraining order and/or injunction to enforce the provisions of this chapter.
 - (2) Violation of a temporary restraining order and/or injunction may be punishable as contempt under state laws.
 - (3) Violation of a temporary restraining order and/or injunction shall constitute a separate violation of this chapter, punishable by penalties in addition to those imposed for the underlying violation for which the temporary restraining order and/or injunction was obtained.
- D. Restoration.
- (1) The court may compel the agricultural land owner and/or agricultural land lessee to restore agricultural land to a condition suitable for agricultural production where a site disturbance has occurred in violation of this chapter.
 - (2) Where a violation has resulted in damage to the agricultural resource on agricultural land, the court may order restoration of the agricultural land to the greatest extent possible, regardless of cost.
- E. Removal.
- (1) The court may compel the agricultural land owner and/or the agricultural land lessee to remove any and all unauthorized structures on agricultural land.
 - (2) Where a violation has resulted in the erection, relocation, modification or demolition of a structure or the operation of an alternative energy systems and/or farm stand on agricultural land, the court may order the removal of said structure or remains, regardless of cost.

- F. Damages. Where a violation of the provisions of this chapter results in damage to the county's interest in the development right(s) and/or the underlying value of the land, the court may award damages to the county equal to the development right(s) purchase price plus compounded interest and an additional amount as would be necessary to purchase the development right(s) to a similar agricultural property, as determined by the county.
- G. Civil Penalties.
- (1) A violation of § 8-12 shall be punishable by a civil penalty of up to five thousand dollars (\$5,000) per day, with each day constituting a separate violation.
 - (2) Any violation which causes a substantial reduction in the viability of the agricultural resource shall be punishable by a civil penalty not more than ten thousand dollars (\$10,000) per day, with each day constituting a separate violation. The viability of the agricultural resource may be determined by any reasonable means, including, but not limited to, testimony from any person with demonstrated agricultural expertise.
- H. Costs and disbursements. The court may award costs of investigating and enforcing this chapter.
- I. Attorneys' fees. The court may award attorneys' fees.
- J. No waiver. Failure to take an action to enforce the provisions of the contract of sale, the deed of development rights, this chapter and/or any rules and/or regulations promulgated thereunder shall neither constitute a waiver nor constitute an agreement to allow the prohibited activity nor constitute permission to engage in the activity without first obtaining applicable permits.
- K. Other remedies. The county reserves the right to pursue any and all legal and equitable remedies herein mentioned or otherwise available at law including administrative, civil and criminal actions to enforce the provisions of this chapter and to satisfy the intent and spirit of the Purchase of Development Rights Program.
- L. Cost no defense. Cost shall not be a defense to the imposition of remedies.

§ 8-14. Provisions to control over other legislation.

Notwithstanding the provisions of any special law, charter law, local law or resolution which may be inconsistent herewith, in whole or in part, this chapter shall in all respects control in the matter of the acquisition or alienation of development rights in agricultural lands.

§ 8-15. Severability.

Should any provision of this chapter be adjudged invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of any other provision of this chapter.

Section 3. Applicability.

This law shall apply to all agricultural lands to which the county has acquired interests or rights, in whole or in part, under the Purchase of Development Rights Program. This law shall not apply to nonagricultural lands acquired as open spaces or open areas for the purpose of preserving active parkland, passive parkland, woodlands and/or wetlands and shall not apply to farmlands to which the county does not own any interest or right.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c) (20) and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures and legislative decisions in connection with continuing agency administration, management and information collection, and the Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of non-applicability or non-significance in accordance with this law.

Section 6. Effective Date.

This law shall take effect immediately upon filing with the Secretary of State.

DATED:

APPROVED BY:

County Executive of Suffolk County

Date: