

# PECONIC LAND TRUST



## Federal Estate Tax Policy

*Impact on farmland and natural lands and recommendations for policy revisions*

### The Problem

- The current Federal estate tax causes the development of farmland and natural lands near major metropolitan areas where land is highly appreciated and subject to intense development pressure. Indeed, at a time when transportation costs continue to climb, the importance of regional food production, watershed areas, and recreational opportunities near major metropolitan areas could not be greater.

### Current Situation on Long Island

- Federal estate tax policy has been one of the most significant causes of the loss of farmland and natural lands on Long Island.

Example: The Peconic Land Trust was founded in 1983, in part, due to the plight of a family who owned a historic farm of over 200 acres in the Village of Southampton, New York. The property had been in the Downs family for 10 generations when it had to be sold in order to pay \$2.2 million in federal estate taxes in the late 1970's. Unfortunately, the family entered into a \$4.1 million contract of sale contingent upon subdivision approval, which took 5 years to secure. By the time the family had the funds to pay the tax, there was a 47% penalty, leaving the family with very little of the equity in the land and the community lost an agricultural asset of incalculable value.

- Given highly appreciated real estate values on Long Island and the complexities of estate planning for landowners, we will undoubtedly continue to lose farms and natural lands due to Federal estate tax policy.
- Federal estate tax policy has changed the face of Long Island and many other communities near major metropolitan areas throughout the country.

*continues on back*

### **Attempts to Reform Tax Policy**

- In the 1970's, Congress adopted IRS Code Section 2032A, which provides owners of family businesses, including farmers, with the opportunity to limit estate tax liability by retaining ownership of a family business for 10 years after death.
- The provisions of 2032A have been rendered useless to most landowners in our area given high real estate values, the maximum amount of value that estates can be reduced (\$750,000 adjusted by inflation), and the complexities of complying with its requirements.

Example: A forty-acre farmland parcel in Southampton Town was sold in 2005 for \$25 million in order to pay federal estate taxes. Even if the family had been able to use 2032A, the reduction of the value of the gross estate by \$750,000 (adjusted for inflation) would have had a minimal effect on the estate taxes due.

- Current federal estate tax policy envisions a \$3.5 million estate tax exemption in 2009, an unlimited exemption in 2010, and a reversion to \$1 million in 2011. Even if Congress increases the exemption to \$5 - \$10 million, while helpful, it will not solve the problems for landowners on Long Island or other areas in the country near major metropolitan areas.

### **Recommendations**

Peconic Land Trust proposes the Farm Preservation and Land Conservation Act.

- The proposed bill is environmentally sound and is driven by the preservation of farmland and other property that meets the conservation criteria specified in IRC 170 (h).
- It is voluntary, but once such election is made, it is irrevocable and will permanently exempt qualified farmland or land of conservation value from federal estate tax (and other transfer taxes) subject to a lien that runs with the land.
- Recapture tax penalty is binding on any successive owners and is due upon cessation of use inconsistent with the conservation intent. The sale or donation of development rights or conservation easements will not trigger estate tax recapture.
- The recapture tax penalty is based on the fair market value of the land at time of cessation of use inconsistent with the conservation intent.
- A program of this type would transform Federal estate tax policy from a cause of land conversions to a land-based incentive program for conservation.

John v.H. Halsey, President  
Peconic Land Trust