

## **Farmland Protection Implementation Grants (FPIG) Program Guidance Document: Conservation Easements - Title Curatives Letter**

The New York State Department of Agriculture and Markets (“Department”) has awarded funds for the acquisition of a Conservation Easement on viable agricultural land.

The Department’s *Guidance Document #5- Title Commitment and Curatives for Conservation Easements* describes various land use and legal issues which may arise during the course of the title review for a Conservation Easement project. Issues such as mortgages, rights of first refusal and unpaid taxes are legal matters that need to be addressed by the project attorney prior to acquiring the Conservation Easement.

A title curatives letter that addresses objectionable title matters that must be resolved prior to closing must be submitted as part of the Department’s Preliminary Review of the awarded project. The title curatives letter should explain how title matters will be cured prior to closing and should include a copy of proposed documents required to cure the defects. For example, if there is a mortgage that will be paid off at closing using a portion of the Conservation Easement proceeds, this should be set forth in the letter. If the mortgage is to be subordinated, a copy of the proposed subordination agreement should be included with the title information submitted to the Department. In some cases, the Department may request additional information from the project manager or attorney to determine if exceptions will have a negative impact on farm viability or if the Department has questions regarding the proposed title curatives.

Please refer to the following attachments for additional guidance in the preparation of your title curatives letter:

1. Department’s *Title Commitment and Curatives* guidance document for more information on title issues that must be addressed before Department approval of a project; and
2. Sample curatives letters.

**Farmland Protection Implementation Grants (FPIG) Program Guidance Document:  
Conservation Easements - Title Curatives Letter**  
*(continued)*

**ATTACHMENT #1:**

FPIG Guidance Document #5 –

Title Commitment and Curatives for Conservation Easements

**New York State Department of Agriculture and Markets****GUIDANCE DOCUMENT SERIES  
FARMLAND PROTECTION IMPLEMENTATION GRANT PROGRAM****Title Commitment and Curatives for Conservation Easements****GD # 5**

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***Overview***

A commitment for title insurance is one of the documents that NYSDAM requires in order to review Conservation Easement projects prior to disbursement of funds. The commitment for title insurance is the first step in securing a title insurance policy. It includes how much coverage is being requested, a description of the Property being insured, and a list of those title encumbrances that are being excluded from coverage. Easement holders should carefully review the title commitment to make sure that there are no prior encumbrances on the title that could significantly diminish or impair the conservation values of the Property that the Conservation Easement is designed to protect. Given the purpose of the State's Agricultural and Farmland Protection Program, particular attention will focus on any encumbrances that may unreasonably restrict or diminish the agricultural viability of a Farm Operation. NYSDAM's Counsel's Office will also review the policy to ensure that the state's funding will not be jeopardized by title matters.

***Elements of a Title Commitment***

The title insurance commitment should be an ALTA (American Land Title Association) Owners Policy provided by a title insurance company. The commitment should insure the easement holder and should reference that the proposed policy is to insure an "easement interest in real property as defined by Article 49, Title 3 of the Environmental Conservation Law."

The owner of the Property as revealed by the title search must be the proposed grantor of the Conservation Easement and must have proper authority to convey the easement. Corporate owners must have resolutions authorizing the conveyance and minors or individual owners deemed incompetent must have duly appointed guardians.

The amount of the title policy shall be no less than the amount being provided by NYSDAM, but preferably equivalent to the fair market value of the Conservation Easement as determined by an appraiser. The premium for the insurance policy is based on the policy amount and is determined by the Title Insurance Rate Service Association (TIRSA) Rate Manual. The premium can be determined by using several different rate calculators available on the internet provided by a number of different title insurance companies.

Schedule A of the title commitment should be the exact legal description of the Property to be covered by the Conservation Easement. Beginning with Conservation Easements funded in May 2006, this description must be the legal description of the Property prepared by a New York State Licensed surveyor and should not simply be a description prepared by the title insurance company based on the deed records. For projects funded prior to May 2006, the Property should be described based on a survey if one exists, or in a clear legal description of all of the land to be

covered by the Conservation Easement. In all cases, the legal description used in the title should be the same as that used in the Conservation Easement and the purchase and sales contract.

The title company will read the survey and examine the map and legal descriptions and will except any problem areas identified by the survey from coverage. Any encroachments, rights of way or other issues identified on the survey should be carefully reviewed by the holder of the Conservation Easement and remedied before closing.

Schedule B of the title commitment lists the matters that need to be addressed prior to closing and those matters that will be excepted from coverage. Legible copies of all of the documents listed in schedule B must be provided to NYSDAM.

### ***Title Review Process***

Title insurance provides coverage for future claims or future losses due to title defects which are created prior to the acquisition of the Conservation Easement. The first step in the process is the "title search" in which a title abstractor conducts a thorough search of the public records for those documents associated with the Property.

The title insurance company examines those recorded documents to determine if there are any rights or claims that may have an impact upon the title to the Property. The title search may reveal the existence of recorded defects, liens or encumbrances upon the title such as unpaid taxes, unsatisfied mortgages, judgments and tax liens against the current or past owners, easements, restrictions and court actions. These recorded defects, liens and encumbrances are reported as exceptions to coverage listed in the Schedule B of the Commitment for Title Insurance. Once listed, these matters can be:

- accepted (such as simple utility easements),
- resolved (such as obtaining a mortgage subordination from a bank), or
- omitted prior to the closing of the transaction (such as obtaining a release of and oil and gas lease from a petroleum company).

Prior encumbrances on the title can affect both the legality of the proposed Conservation Easement as well as the use of the land. The easement holder should carefully review both the legal and the land use impacts of the issues found in the title search.

### **Land Use Issues**

The easement holder should carefully review the Schedule B with their attorney to decide how they will handle all exceptions listed. Some listed exceptions may have a significant negative impact on the agricultural viability of the Property and should be resolved prior to closing. Prior conveyances including the right to extract sand and gravel, oil and gas leases, and other conveyances affecting the surface and use of the land may have a significant negative impact on the agricultural viability of the Farm Operation and may directly conflict with the purpose of the Conservation Easement. For example, a prior conveyance that allows an individual to remove and sell topsoil would be unacceptable to NYSDAM and would need to be resolved prior to closing. However, many title exceptions such as simple utility easements that allow utility

companies to place poles and electric wires along a public road would likely have no impact on the agricultural use of the Property and could simply be accepted as an exception.

It is in the best interest of the easement holder to do this review of listed exceptions as some may also pose stewardship challenges in the future. For example, rights of way across farmland are often poorly defined and may allow for a paved driveway across farm fields. This could be in violation of the Conservation Easement depending upon where the right of way falls.

#### Legal Issues

Issues such as mortgages, rights of first refusal and unpaid taxes are legal matters that need to be addressed prior to acquiring the Conservation Easement. NYSDAM's Counsel's Office will also review the title and will need a copy of the title commitment along with a legible copy of all the documents listed as exceptions in Schedule B.

In addition, a title curative letter that addresses objectionable title matters that must be resolved prior to closing must be submitted with the title. All communication regarding the title must come from a municipal attorney or the project manager if that responsibility has been delegated through a written agreement between the project manager and municipal contractor. The title curative letter should explain how title matters will be cured prior to closing and should include a copy of proposed documents required to cure the defects. For example, if there is a mortgage that will be paid off at closing using a portion of the Conservation Easement proceeds, this should be set forth in the letter. If the mortgage is to be subordinated, a copy of the proposed subordination agreement should be included with the title information submitted to NYSDAM. In some cases, NYSDAM may request additional information from the project manager to determine if exceptions will have a negative impact on farm viability.

#### ***Exceptions in Need of Review***

While it is impossible to anticipate what will be identified during the title search, the following is a list of routine exceptions to title coverage. Easement holders should carefully review all exceptions with their attorney to determine whether or not the prior encumbrances on the Property will interfere with the agricultural use or viability of the farm. NYSDAM Counsel's Office will review the specifics of the title to determine potential impact on farm viability and the legality of the Conservation Easement, but in general, will evaluate the following encumbrances as set forth below.

#### Electric and Telephone Easements

These pre-existing rights generally do not interfere with the agricultural viability of the Farm Operation. However, these easements should be carefully read to ensure that each does not grant future rights that could limit agricultural practices allowed by the landowner or have a negative impact on agricultural viability, such as the right to build a five-acre substation. In such a case, the most appropriate curative for this exception may be to exclude the five acres from the easement.

#### Water and Sewer Easements

It is essential that an onsite visit be conducted to investigate as to whether rights granted under water and sewer easements have already been exercised or if reserved rights remain to install

pipelines and roadways for access to such infrastructure. If they allow for future disturbance of the soil, the extent of potential disturbance and implications for farm management should be investigated to determine the impact on farm viability.

### Water Rights

Limited rights of use or access to water are generally compatible with farmland conservation. However, a conveyance of all water rights on the Property to an adjoining landowner may diminish the agricultural value of the Property so much that NYSDAM may decide not to fund the Conservation Easement on the farm.

### Oil and Gas Leases and Pipelines

In some areas of the state, it is common to find an old oil and gas lease that has expired by its own terms where it can be documented that no oil or gas was ever produced on the Property. In those cases, such a lease can be addressed by obtaining a release from the company holding the lease or by having the landowner sign an affidavit stating that no oil and gas related activity took place during the terms of the lease. In all cases, as per the NYSDAM model Conservation Easement, oil and gas rights must be limited and localized in impact, affecting no more than two acres of the Property at one time.

Existing oil and gas leases that are still active can be addressed as listed below in descending order of preference. Any of these options would be satisfactory to NYSDAM provided the specific language/provision of the selected option as it appears in the Conservation Easement or title curative is also acceptable to NYSDAM:

1. Release the oil/gas lease from the Property that is to be encumbered with the proposed Conservation Easement or release the surface rights related to the oil/gas lease on the Property that is to be encumbered with the proposed Conservation Easement;
2. Subordinate the oil/gas lease to the proposed Conservation Easement;
3. Amend the oil/gas lease to designate the allowable specific site(s) for any well and all associated appliances **and then exclude that portion** (or whole tax parcel) from the proposed Conservation Easement;
4. Amended the oil/gas lease to incorporate stipulations to address these specific issues (**and then retain the entire farm** within the proposed Conservation Easement) and perhaps address other issues depending upon the specific provisions or language of the oil and gas lease:
  - maximum extent of area that will be associated with each well site and associated appliances,
  - whether or not the access road may be paved (i.e., will the access road become an impervious surface?), and
  - site remediation must address topsoil quality as well as ground surface contours;
5. Incorporate the following stipulations into the proposed Conservation Easement:
  - require the landowner to notify NYSDAM when the location of each well site is to be determined (and give NYSDAM an opportunity to participate in an onsite meeting to determine said location),

- require the landowner to notify the local Soil & Water Conservation District (SWCD) and NYSDAM prior to when a well site is to be reclaimed and restored to agricultural land (and give NYSDAM an opportunity to participate in an onsite meeting to review the proposed reclamation), and
- require that the completed reclamation must be acceptable to the local SWCD and/or NYSDAM – if not acceptable, **the landowner shall be responsible to restore** the site to a condition acceptable to the local SWCD and/or NYSDAM.

#### Energy and Communications Leases

It is becoming more common to see long-term leases or easements granted to companies to operate wind turbines or place cellular towers on farms across the state. These leases will be treated in much the same way as oil and gas leases. The use of farms for wind energy or communication installations will be found acceptable if they are compatible with the Purpose of the Conservation Easement, subordinate to the agricultural use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.

#### Mineral Rights

Surface minerals such as sand and gravel are often leased to construction companies to extract material for commercial use. These surface mines can make the Property unfit for agriculture and must be excluded, released or otherwise accounted for in the Conservation Easement prior to closing on the Conservation Easement. With approval of NYSDAM, the area subject to the lease may be permitted to be excluded from the conservation project. Mineral rights can be found compatible with the Conservation Easement if they are (a) limited and localized in impact, affecting no more than two acres of the Property at one time; (b) compatible with the Purpose of this Easement; (c) reasonably necessary and exclusively for the Farm Operation; and (d) the impact to the prime and statewide important soils is minimized.

#### Right of First Refusals

These rights must be released or made subordinate to the Conservation Easement.

#### Life Estates

These rights must be released or made subordinate to the Conservation Easement.

#### Mortgages and Uniform Commercial Code filings (UCCs) Indexed against real property

These rights must be discharged or made subordinate to the Conservation Easement.

#### Other Exceptions

Other prior encumbrances such as private covenants that prohibit construction of all buildings, including agricultural structures, will be reviewed on a case-by-case basis, but will need to be terminated or subordinated if they will unreasonably restrict or diminish the agricultural viability of the Farm Operation.

#### ***Conclusion***

The careful review of the title to Property will avoid potential conflicts in the future and will ensure that the agricultural viability of the Property is not diminished by title defects.

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***Title Checklist***

- Does the title curative letter from the local municipal contractor or project manager address all exceptions of concern listed in Schedule B?
- Does the title curative letter include proposed curatives such as subordination agreements and releases?
- Does the packet include legible copies of all documents listed in Schedule B?
- Is Schedule A the legal description completed by the surveyor? (*for awards made in May 2006 and thereafter*)
- Is the legal description used for the title identical to that used for the Conservation Easement and purchase and sales contract?
- Is the title commitment for an Owners Policy in an amount not less than NYSDAM's contribution toward the project?
- Is title vested in the proposed Grantor of the easement (i.e., landowner)?
- Does the title commitment reference that the proposed policy is to insure a "Conservation Easement interest in real property as defined by Article 49, Title 3 of the Environmental Conservation Law"?

Samples online:      Title Curative Letter  
                                 Subordination Agreement  
                                 Boundary Line Agreement

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**Farmland Protection Implementation Grants (FPIG) Program Guidance Document:  
Conservation Easements - Title Curatives Letter**  
*(continued)*

**ATTACHMENT #2:**

Sample Curative Letters –

1. 15-page sample
2. 4-page sample

Attorney at Law

January 17, 2013

Mr. David Behm  
Farmland Protection Program Manager  
Ag Protection Unit  
N.Y.S. Dept. of Agriculture & Markets  
10B Airline Drive  
Albany, NY 12235

Re: [redacted] L.L.C. Conservation Easements  
[redacted]  
NYSDAM Contract No. [redacted]

Dear David:

This letter has been prepared to more fully explain the requirements and exceptions set forth in the title commitment for this transaction, being [redacted] Title Insurance Company Commitment Number [redacted] dated October 4, 2012.

Please also note that this letter and the comments and opinions expressed below have also been reviewed by [redacted] and acting as project manager [redacted] in relation to this project. I have been retained [redacted] to assist in the preparation of the project file.

The legal description for the property to be protected is based on the proposed descriptions prepared by [redacted] and on the maps prepared from the survey of the land performed by [redacted]. The proposed descriptions conform fully to the survey and have been reviewed and accepted by [redacted] Title Insurance Company (who will be insuring the conservation easement.) The legal description set forth in Schedule A of the title commitment will thus be used in the conservation easements and all other related project documents.

Please note that while the maps of the survey conform substantially to the Site Plan approved and executed in August 2012, several tax parcel number used on the Site Plan and in prior documents have recently changed. While this may cause some confusion, the maps are correct. The changes are the following: First, in relation to Conservation Easement 3, tax parcel [redacted] has been merged into [redacted] and no longer exists as a separate tax parcel. (Parcel 05.0 was a .44 acre parcel in the corner of parcel 04.1.) Second, in relation to

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Conservation Easement 4, both tax parcels \_\_\_\_\_ have been merged by municipal action into an adjoining tax parcel (which is not part of the project but is owned by \_\_\_\_\_). The new tax parcel is \_\_\_\_\_ (This change was in part the result of both of the tax parcels being removed from the \_\_\_\_\_.) Neither of these changes are reflected on current tax maps but are in effect for tax year 2013 and the tax maps will be changed in future months.

I have set forth below comments and explanations in relation to the requirements (Schedule B, Section I) and exceptions (Schedule B, Section II) of the title commitment.

**Schedule B, Section I ("Matters to Be Disposed of on Before Closing")** contains six items, all of which will be complied with and omitted at closing:

Items 1, 2 and 6 are standard closing requirements pertaining to the continuation of title searches, execution and recording required documents and proof of payment of all taxes through the date of closing.

Item 3 requires a standard proof of authorization for action by \_\_\_\_\_ A copy of the LLC's articles of organization, operating agreement, filing receipt and certificate of good standing are found in Appendix A of this letter. A proposed acknowledgment of consent to be executed at closing is also contained in the Appendix.

Item 4 requires an affidavit from the owners regarding certain expired oil and gas leases. A copy of the proposed affidavit is found in Appendix A. I have previously discussed the noted leases with the owners and they have confirmed that they believe that the leases have expired by their terms. My research regarding the leases (noted below) confirms this belief.

Item 5 requires the subordination of an existing credit line mortgage now held by \_\_\_\_\_ which covers a portion of the land to be covered by Conservation Easement 1. A copy of a letter from \_\_\_\_\_ consenting to the subordination and a proposed subordination agreement are contained in Appendix A. Based on my communications with \_\_\_\_\_, I expect no problems with this arrangement. Note that the borrower in the original mortgage to \_\_\_\_\_ bought the property from \_\_\_\_\_ and assumed the mortgage in question.

**Schedule B, Section II ("Exceptions That Will Appear in Policy")** of the title commitment lists a number of exceptions to the coverage in the policy to be issued. Items 1 to 9 are standard exceptions from the ALTA Owner's Policy (06/17/06) which form has been approved for use in New York State by the New York State Title Insurance Rate Service Association.

- Item 10. This exception recites the exact acreage of the insured property is not insured. This is a standard exception found in title policies. While the survey is assumed to be accurate and the title company is insuring the described premises, the insurer cannot verify the surveyor's calculations of acreage.
- Item 11. This exception states what is obvious: that the five parcels making up the project are not contiguous.
- Item 12. This exception notes the existence of possible claims arising under the Indian Non-Intercourse Act of 1790, provides coverage against those claims and provides a covenant to reissue the title insurance policy to future holders of interests in the property. This is a standard clause used in areas that have previously been affected by claims relating to aboriginal or other tribal lands.

Items 13 to 87 are addressed below and include survey readings, easements, right of way agreements or other matters that potentially affect the property. For each item, I have set forth a summary and/or comment. Where appropriate, I have included a copy of each referenced instrument in Appendix B. (The item numbers used below match those found in the title commitment.)

#### Matters that Concern Conservation Easement 1

- Item 13. No encroachments or other significant adverse matters are disclosed in the survey reading
- Item 14. The property runs to the center lines of the noted roads ( ). The right of the public to use the roads is thus excepted. appears to be a "paper" street with no physical existence or maintenance.
- Item 15. Right of Way given by \_\_\_\_\_ to \_\_\_\_\_ Power Co. recorded March 13, 1906 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for no more than two pole structures not exceeding 60 square feet (not further located) and for compensation for damage to crops.
- Item 16. Right of Way to \_\_\_\_\_ Electric Light & Power Co. recorded December 12, 1919 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for pole line of a single row of poles for the transmission of electricity along highway and fence line. Includes the right to trim and compensation for damages.

- Item 17. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric Company recorded July 23, 1931 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for pole lines on \_\_\_\_\_ (which appears to be east of premise.) Includes right to trim tree within 4 feet of line and compensation for damage.
- Item 18. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric Company recorded February 1, 1937 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for pole line for transmission of electric current described as roughly parallel to \_\_\_\_\_ . Includes right to trim within 6 feet of line and provides compensation for damages.
- Item 19. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric Company recorded February 1, 1937 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for pole line for transmission of electric current adjacent to \_\_\_\_\_ Street. Includes right to trim and provides compensation for damages.
- Item 20. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric Company recorded February 1, 1937 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for pole line for transmission of electric current described as being along the southerly boundary roughly parallel to \_\_\_\_\_ Road . Includes right to trim within 6 feet of line and provides compensation for damages.
- Item 21. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric & Gas Corporation recorded January 30, 1939 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for pole line along the easterly boundary of \_\_\_\_\_ Road. Includes right to trim and compensation for damages.
- Item 22. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric & Gas Corporation recorded December 6, 1945 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for a pole line for distribution of electricity. Recite line is to enter subject property on west and extend to point near the then existing house and continue east to \_\_\_\_\_ Road. Includes right to trim within 12 feet of line and provides compensation for damages.
- Item 23. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric & Gas Corporation recorded on December 8, 1951 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for pole line for electric distribution or communication running adjacent to the southerly boundary of property. Includes right to trim and for compensation for damages.

- Item 24. Easement given by \_\_\_\_\_ to \_\_\_\_\_  
Electric & Gas Corporation recorded July 16, 1953 in Book \_\_\_\_\_ of Deeds at  
page \_\_\_\_\_. Provides for pole line for distribution of electricity or telephone or  
telegraph communications. Enters property from \_\_\_\_\_ and runs north to  
improvements with right to extend. Includes right to trim trees and brush within 8  
feet and provides for compensation for damages.
- Item 25. Easement given by \_\_\_\_\_ to \_\_\_\_\_  
Electric & Gas Corporation recorded December 6, 1957 in Book \_\_\_\_\_ of Deeds at  
page \_\_\_\_\_. Provides for one pole for distribution of electricity or telephone or  
telegraph communications adjacent to the westerly boundary of \_\_\_\_\_ Road and  
approximately 181 feet south of north line of parcel. Includes right to trim trees  
and brush within 6 feet and provides for compensation for damages.
- Item 26. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Telephone  
Company recorded September 20, 1961 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_.  
Provides for communication lines of poles, cables and conduits. Location not  
further described. Includes right to trim, prohibits buildings within 10 feet of  
lines and provides for compensation for damages.
- Item 27. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Telephone  
Company recorded September 20, 1961 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_.  
Provides for communication lines of poles and cables. Location not further  
described. Includes right to trim, prohibits buildings within 10 feet of lines and  
provides for compensation for damages.
- Item 28. Easement given by \_\_\_\_\_ to \_\_\_\_\_  
Telephone Company recorded September 20, 1961 in Book \_\_\_\_\_ of Deeds at  
page \_\_\_\_\_. Provides for communication lines, poles and related fixtures. Location  
is limited to 5 foot strip along the south boundary of \_\_\_\_\_. Includes right to  
trim, relocation at grantors' request and compensation for damages.
- Item 29. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric & Gas  
Corporation recorded August 11, 1964 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_.  
Provides for pole line for distribution of electricity or telephone or telegraph  
communications. Easement is 30 feet wide and runs north from  
approximately 82 feet west of the centerline of \_\_\_\_\_ Road and then to  
Road. Includes right to trim trees and brush within 15 feet and provides for  
compensation for damages.

- Item 30. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric & Gas Corporation and \_\_\_\_\_ Telephone Company recorded February 12, 1993 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for electric, gas and communication system in 10 foot wide easement area adjacent to \_\_\_\_\_ Road. Includes right to trim and provides compensation for damages.
- Item 31. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric & Gas Corporation recorded August 24, 1994 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for pole line and related structure for transmission of electricity or communications. Specifies an easement with a width of 20 feet running from a point on \_\_\_\_\_ Road (175 feet north of intersection of \_\_\_\_\_) west a distance of 75 feet to a pole with services line to same. Includes right to trim and a required a 10 foot clearance from aerial wires.
- Item 32. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Telephone Company recorded October 20, 1997 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for services lines, buried cables and poles within a strip of land running from \_\_\_\_\_ to the lands of the New York State Thruway. Drawing attached to easement does not reflect width of the strip but appears from drawing to be within the paper street known as \_\_\_\_\_ Road. Includes right to trim, prohibits certain surface structures and changing of the grade without consent and provides with indemnification to Grantor for damages.

#### **Matters that Concern Conservation Easement 2**

- Item 33. No encroachments or other significant adverse matters are disclosed in the survey reading
- Item 34. The property runs to the center lines of the noted \_\_\_\_\_ roads. The right of the public to use the roads is thus excepted.
- Item 35. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric and Gas Corporation recorded June 25, 1956 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. For pole line along \_\_\_\_\_ Road and pole and service line to buildings on property. Includes right to trim and for any damages other than trimming to be the responsibility of Grantee.

#### **Matters that Concern Conservation Easement 3**

- Item 36. No encroachments or other significant adverse matters are disclosed in the survey reading.

- Item 37. The property runs to the center lines of the noted roads. The right of the public to use the roads is thus excepted.
- Item 38. No encroachments or other significant adverse matters are disclosed in the survey reading. Note that this survey (Conservation Easement 3, Sheet 2 of 3) shows the excepted area. The is not set up in the title commitment as the area is excluded from the project. I have however included a copy of the recorded easement to (recorded March 21, 2008 in Book : of Deeds at page ) in Appendix B.
- Item 39. The property runs to the center lines of the noted roads The right of the public to use the roads is thus excepted.
- Item 40. No encroachments or other significant adverse matters are disclosed in the survey reading except for the existence of a garage overhang which extends up to four feet into to premises. No structure on the ground appears to encroach over the line.
- Item 41. The property runs to the center line of the Road. The right of the public to use the road is thus excepted.
- Item 42. Agreement between and Power Co. recorded March 13, 1906 in Book ' of Deeds at page Provides for standing timber on lands of Grantor located within fifty feet of transmission lines of Grantee (on land adjacent to subject lands, not premises) to be cut.
- Item 43. Grant by to Power Co. recorded March 13, 1906 in Book of Deeds at page . Provides right to enter on upon and place and repair transmission towers or poles on land adjacent to lands of the Railroad Company. Applies to land adjacent to north line of tax parcel .. (Same book and page as above but different instruments.)
- Item 44. Easement given by to (Electric Company recorded on January 9, 1937 in Book l of Deeds at page . Provides for pole line for distribution of electric current. Describes location as entering from the south and extending easterly to adjoining lands. Includes right to trim and compensation for damage.

- Item 45. Easement and Right of Way given by \_\_\_\_\_ to \_\_\_\_\_ Oil Company, Incorporated recorded October 8, 1940 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for pipeline over a portion of land not identified but no evidence of any such line exists on ground or is shown by surveyor. Includes right to trim trees or brush and reserves to Grantor the full use of the land and damages from Grantee for damage to fences or crops.
- Item 46. Appropriation by State of New York of land of \_\_\_\_\_ recorded November 13, 1951 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. The land taken is north of the subject premises but appropriation contains a prohibition of commercial signs, billboards or other advertising devices within 1000 feet of from the center line of the lands of the New York State Thruway or any Thruway Interchange Roads. A portion of the subject premise is within the affected area.
- Item 47. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Telephone Company recorded August 17, 1962 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for poles and other facilities for communication lines. Does not provide location. Includes right to trim trees and brush and prohibits buildings within 10 feet of lines. Grantee to compensate Grantor for damage to crops, driveway, fences and fields.
- Item 48. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Telephone Company recorded on April 20, 1971 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for poles and other facilities for communication lines. Does not provide location. Includes right to trim trees and brush and prohibits buildings within 10 feet of lines. Grantee to compensate Grantor for damage to crops, driveway, fences and fields.
- Item 49. Right of Way and Easement given by \_\_\_\_\_ to \_\_\_\_\_ Telephone Company recorded May 5, 1971 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for communication lines, poles and other facilities. Does not provide location. Includes right to trim trees and brush and prohibits buildings within 10 feet of lines. Grantee to compensate Grantor for damage to crops, driveway, fences and fields.
- Item 50. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric & Gas Corporation recorded August 14, 1989 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for pole and underground wires for distribution of electrical current and communication purposes. Describes 30 foot wide easement located 28 feet north of center line of \_\_\_\_\_. Includes right to trim and for compensation for damages.

- Item 51. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric and Gas Corporation recorded October 24, 2007 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provide for single pole, guy wires and related facilities adjacent to \_\_\_\_\_ Road. Includes right to trim within 10 feet and compensation for damages to property.
- Item 52. Lease given by \_\_\_\_\_ to \_\_\_\_\_ recorded September 1, 1933 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Covers north half (portion in Military Lot 9) of tax parcel \_\_\_\_\_. Term is ten years or for so long as operations are conducted.
- Item 53. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_ Exploration Company recorded October 17, 1989 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Covers 118 acres including premises and adjoining lands. Term is five years or for so long as operations are conducted.
- Item 54. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_ recorded September 21, 1984 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Covers 120 acres including premises and adjoining lands. Term is five years or for so long as operations are conducted. Assigned to \_\_\_\_\_ Inc. by instrument recorded October 3, 1984 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_, further assigned to \_\_\_\_\_ Inc. by instrument recorded April 12, 1988 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_ and to \_\_\_\_\_ Exploration Company by instrument recorded April 1, 1989 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_.

**Note:** The above three leases are assumed to have expired and the title policy will include affirmative coverage. The owners will provide an affidavit attesting lack of activity or payment under the leases. A search of State corporate records reveals that original grantees and the current holders of leases set forth as items 53 and 54 were foreign corporations whose authority to do business in New York has been dissolved by proclamation /annulment of authority since 1995.

#### Matters that Concern Conservation Easement 4

- Item 55. No encroachments or other significant adverse matters are disclosed in the survey reading except for the note that "landscaping" appears to extend an undetermined distance over the line of premises. The adjoining owner runs a landscaping business. The notation on the survey appears to reflect the occasional use by the adjoining owner of a portion of premise to store seasonal material such as mulch, gravel, etc. No structures or permanent use of the noted area appears to exist.
- Item 56. The property runs to the center line of the \_\_\_\_\_ . The right of the public to use the road is thus excepted.

- Item 57. The property runs to the center line of \_\_\_\_\_ Creek. Rights of others in and to the bed and waters of the creek is thus excepted.
- Item 58. No encroachments or other significant adverse matters are disclosed in the survey reading. Information regarding the drainage easement to the \_\_\_\_\_ is set forth in item 63 and 64 below (copies of which are found in Appendix B.)
- Note:** Access to the portion of the property shown on the map for Conservation Easement 4 (Sheet 2 of 2) is to be provided by the proposed Declaration of Easement by \_\_\_\_\_, which instrument is included in Appendix A. (Note that the lands shown on the map is what was formerly identified as tax parcels \_\_\_\_\_ and \_\_\_\_\_ but is now part of tax parcel \_\_\_\_\_.)
- Item 59. The property runs to the center line of \_\_\_\_\_ Road. The right of the public to use the road is thus excepted.
- Item 60. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric and Gas Corporation recorded June 27, 1957 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. For gas pipeline for distribution. Enters from west and runs along \_\_\_\_\_ Road (east of premises) with service lines to "present and future building." Line to be placed sufficiently deep to prevent interference with agricultural use of land. Includes right to trim within 10 feet, restricts buildings over pipeline and provides compensation for damage.
- Item 61. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric and Gas Corporation recorded December 26, 1973 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for a pole line for distribution of electricity or telephone or telegraph communications adjacent to or within \_\_\_\_\_ Road (east of premises). Includes right to trim within 15 feet and provides compensation for damages.
- Item 62. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric and Gas Corporation recorded December 11, 1985 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Provides for a pole for distribution of electricity or telephone or telegraph communications 25 feet west of center line of \_\_\_\_\_ Road (east of premises) with service lines to owners' improvements. Includes right to trim and provides compensation for damages.
- Item 63. Agreement between \_\_\_\_\_ recorded July 6, 2011 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. First Amendment of Agreement recorded July 6, 2011 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Second Amendment to Agreement recorded July 6, 2011 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_.

Item 64. Deed of Easement given by \_\_\_\_\_ to \_\_\_\_\_  
recorded July 6, 2011 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_.

**Note:** The above two documents pertain to the settlement of certain disputes between the \_\_\_\_\_ and \_\_\_\_\_ and the effect of certain agricultural use of the subject land on residential property to the north. Copies of all the documents are found in Appendix B.

Item 65. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_  
Company recorded June 9, 1964 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_  
Cover 105 acres and has a term of ten years or for so long thereafter as oil or gas are produced.

Item 66. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_, L.P.  
recorded June 8, 1999 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Assigned by \_\_\_\_\_  
to \_\_\_\_\_ Inc. by instrument recorded October 13, 1999 in  
Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Covers tax parcel \_\_\_\_\_ (120+/- acres) and  
has a term of five years or for so long as gas or oil are produced.

Item 67. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_ Inc. recorded September 20, 2004  
in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Covers tax parcel \_\_\_\_\_ (119.3+/-  
acres) and has a term of five years or for so long as gas or oil are produced.

**Note:** The above three leases are assumed to have expired and the title policy will include affirmative coverage. The owners will provide an affidavit attesting lack of activity or payment under the leases. A search of State corporate records reveals that \_\_\_\_\_ were foreign corporations and have either terminated their authorization to do business in New York or have been dissolved by proclamation /annulment of authority.

#### **Matters that Concern Conservation Easement 5**

Item 68. No encroachments or other significant adverse matters are disclosed in the survey reading. The 60 foot right of way shown by the surveyor may not legally affect the premises. The right of way is not reserved in the deed given by the former owner to \_\_\_\_\_. The only indication of the existence of the right of way is on a map filed in the \_\_\_\_\_ County Clerk's Office shortly before the property was conveyed to \_\_\_\_\_. That map showed the 60 foot right of way and a second right of way. The second right of way was reserved in the deed to \_\_\_\_\_ (but does not affect the subject premises) but the 60 foot right of way is not mentioned or reserved in the deed or in any other recorded instrument.

- Item 69. The property runs to the center lines of the noted roads. The right of the public to use the roads is thus excepted.
- Item 70. No encroachments or other significant adverse matters are disclosed in the survey reading.
- Item 71. The property runs to the center line of Road. The right of the public to use the road is thus excepted.
- Item 72. Easement given by to Electric Company recorded June 8, 1939 in Book of Deeds at page . Affects Parcel . For pole line for electric current along and across a road (Road) to residences. Includes right to trim trees and for payment for any damage resulting from line or its maintenance.
- Item 73. Grant given by to Company, Inc. recorded October 29, 1951 in Book of Deeds at page . Affects tax parcel . For a pipe line for the transportation of petroleum or gas. Line not located but no evidence of the line is found on ground or shown by surveyor. Reserves owner's right to use land and provides for payment for damage to crop or fences.
- Item 74. Grant given by to Company, Inc. recorded October 29, 1951 in Book of Deeds at page . Affects tax parcel . For a pipe line for the transportation of petroleum or gas. Line not located but no evidence of the line is found on ground or shown by surveyor. Reserves owner's right to use land and provides for payment for damage to crop or fences.
- Item 75. Grant given by to Company, Inc. recorded October 29, 1951 in Book of Deeds at page . Affects tax parcels . For a pipe line for the transportation of petroleum or gas. Line not located but no evidence of the line is found on ground or shown by surveyor. Reserves owners' right to use land and provides for payment for damage to crop or fences.
- Item 76. Easement given by to recorded July 23, 1969 in Book of Deeds at page . Affects tax parcels . For underground water line easement along the south line of (running northwesterly about 746 feet from Town of water line on the west side of Road). Provides for right to trim trees and underground as needed for maintenance of line and payment for damage.
- Item 77. Easement given by to Telephone Company recorded April 20, 1970 in Book of Deeds at page . Affects tax parcels . For underground communication line located within 35 feet of center of highway (not clearly stated but most likely Road.) Provides for

trimming. No buildings within 10 feet of line but will relocate line at no cost to owner if land is developed.

- Item 78. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Telephone Company recorded June 18, 1985 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Affects tax parcels \_\_\_\_\_. For line, buried cables and related fixtures. Plan attached to easement shows location adjacent to south line of \_\_\_\_\_ Road. Limits owner's use of land to avoid interferences with facilities but allows longitudinal or parallel use of strip by owner and payment for damage caused by easement or its maintenance.
- Item 79. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric and Gas Corporation recorded October 6, 1989 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Affects ta parcel \_\_\_\_\_. For poles or lines for electric distribution or communication systems. Describes a 20 foot wide easement area located 40 feet west of the center line of \_\_\_\_\_ Road with services lines to grantor's buildings. Allows trimming of trees and brush and provides payment for damage from construction or maintenance of lines.
- Item 80. Easement given by \_\_\_\_\_ to \_\_\_\_\_ Electric and Gas Corporation recorded on May 8, 1991 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. For single pole and lines to Grantor's buildings on \_\_\_\_\_ Road. Allows trimming of trees and brush and provides payment for damage from construction or maintenance of lines.
- Item 81. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_, Inc. recorded on July 20, 1982 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Assigned (with reserved overriding royalty) to Supply Corporation by instrument recorded on October 25, 1982 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_ and further assigned to \_\_\_\_\_ by instrument recorded on April 30, 1985 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Affects tax parcels \_\_\_\_\_. Lease covered 254 acres and had a term of ten years or for long thereafter as gas is produced. Rental payments were required after six months if no well was commenced and all well sites had to be mutually agreed to.
- Item 82. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_ L.P. recorded on March 30, 1999 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Assigned to \_\_\_\_\_, Inc. by instrument recorded December 13, 1999 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Affects tax parcels \_\_\_\_\_. Lease covered 257 acres and had a term of five years or for long thereafter as gas is produced. Rental payments were required after one year if no well is commenced and all well sites had to be mutually agreed to.

Item 83. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_ L.P.  
recorded June 8, 1999 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_. Affects tax parcel  
\_\_\_\_\_. Lease covered 142 acres and had a term of five years or for long  
thereafter as gas was produced. Rental payments required after one year if no  
well is commenced.

**Note:** The above three leases are assumed to have expired and the title policy will  
include affirmative coverage. The owners will provide an affidavit attesting lack  
of activity or payment under the leases. A search of State corporate records  
reveals that all of the original grantee and the current holders of the leases,  
(except for \_\_\_\_\_) have either terminated their authorization to do business in  
New York or have been dissolved by proclamation /annulment of authority.  
\_\_\_\_\_ is still listed as current but has filed no further instruments in  
County since December 1999.

Item 84. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_  
LLC recorded on April 3, 2007 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_.  
Covers tax parcels \_\_\_\_\_ (104.9 acres per lease).

Item 85. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_  
LLC recorded on May 4, 2007 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_.  
Covers tax parcel \_\_\_\_\_ (6.73 acres per lease).

Item 86. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_  
, LLC recorded on May 4, 2007 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_.  
Covers tax parcel \_\_\_\_\_ (155.93 acres per lease).

Item 87. Oil and Gas Lease given by \_\_\_\_\_ to \_\_\_\_\_  
LLC recorded on May 14, 2007 in Book \_\_\_\_\_ of Deeds at page \_\_\_\_\_.  
Covers tax parcel \_\_\_\_\_ (16.33 acres per lease).

**Note:** These are the four active leases set forth in Section 13 of Conservation  
Easement for this parcel. As of the date of title continuation (December 22,  
2012), they had not been further assigned.

Please note that I have asked \_\_\_\_\_ to review the exceptions noted above and the  
maps from the survey of the property. He has also conducted several onsite inspections of the  
property. He has advised and I concur, that the noted exceptions do not impair or interfere with  
the property's agricultural and forestry viability or productive capacity or otherwise interfere  
with the agricultural use of the property allowed under the Easements. Please note that with the  
exception of the one 2007 easement and the 2011 agreement between \_\_\_\_\_ and  
\_\_\_\_\_, the noted easements and right of ways have been in effect for many decades,  
during which time the property has been continuously used for agricultural purposes.

Mr. David Behm  
January 17, 2013  
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Finally, I would like to confirm that it is the intension of all parties that all of the closing requirements set forth in Schedule B, Section I of the title commitments will be dealt with and omitted either at or before closing.

If any further information is required in relation to the information set forth above, please feel free to contact me or the project manager,

Yours truly,

cc:

Attachments:

Appendix A: Copies of Curatives and Proposed Documents

1. Farms, L.L.C. corporate documents and proposed Consent for Action
2. Proposed Title Affidavit re Expired Oil and Gas Leases
3. Proposed Subordination Agreement and Letter from
4. Proposed Access Agreement for Portions of Easement / Parcel 4

Appendix B: Copies of all Easements, Right of Ways and other Instruments

To Whom It May Concern:

The Town of \_\_\_\_\_, by and through the undersigned counsel as attorney for the Town, has reviewed the exceptions identified in the Title Report for the \_\_\_\_\_ Farm and has determined that they will not interfere with the purpose of the conservation easement or the long-term agricultural viability of the farm.

Please refer to the attached Schedule B, Section II, "Exceptions which will appear in title policy" from the 2013 Title Report when reviewing this letter (as enclosed). This letter explains the basis of the opinions stated above (and below). Such opinions were formed by examining the Schedule B, Section II, Exceptions from a legal, factual, and/or historical basis, and from a review of the Abstract of title, surveys, and other title and relevant historical information as hereafter set forth.

**Exceptions #1 through #7** refer to governmental regulations, police power, eminent domain, unknown claims, doing-business laws in New York State, Insured Mortgages, federal bankruptcy, imposed liens on the title, and other legal issues. These items will not impact the long-term viability of agriculture for the farm as:

- i. Exceptions 1 and 2 refer to Governmental Regulation and Rights of Eminent Domain. The area is zoned for agricultural use. The land has an "AG" zoning designation under Town of \_\_\_\_\_ Code, which, at § \_\_\_\_\_ lists permitted uses, including: "Any lawful farm purpose, including usual farm buildings and structures, but excluding rendering plants"; a "plant nursery"; and roadside stands, and other accessory farm uses, such as housing, equestrian facilities, domestic animal shelters, etc. If eminent domain rights are ever exercised in relation to the farm, the title policy will not insure any loss as the governmental authority exercising such power must compensate for such loss under the State and Federal Constitutions;
- ii. Exception 3 covers title defects, liens, encumbrances, and adverse claims, including those arising from various unrecorded rights or those unknown to the title company, as well as losses affirmatively created by the insured, and liens suffered or placed by the insured after the date of issuance of the policy. These will not affect the long-term viability of agriculture for the farm as the insured, here the Town and County, have no knowledge of unrecorded interests or liens and the Town and County will not have sufficient interests in title to use the property to secure any lien or mortgage;
- iii. Exceptions 4 and 5 apply only to loan policies so do not affect this coverage;
- iv. Exception 6 covers preferential transfers and fraudulent transfers in bankruptcy (mainly, but not exclusively, the Bankruptcy and U.S. Trustees' rights to "unwind" such transactions). No party is in bankruptcy. The Town and County are not "insiders" relative to the landowners, such that any preference action could only stand if the transfer occurs within 90 days of filing a bankruptcy and such transfer is a preferential transfer (generally, but not exclusively, a transfer other than at fair market value or one that enhances the rights of a creditor unfairly in relation to other creditors). Since this is a fair market value transaction, since the Town and County would not be or become creditors if a bankruptcy case were filed within 90 days of filing of the easement, and since the landowners are not insolvent, it is duly believed that this exception will not affect the long-term viability of agriculture for the farm; and

v. Finally, Exception 7 relates to intervening tax liens. Verification of payment of all taxes has occurred, and will re-occur before filing (see also Schedule B, Section I, item 1), such that this exception will not affect the long-term viability of agriculture for the farm.

Further, these exceptions are common to all title insurance policies within the State of New York and are general in their terms. In addition, Town Counsel has performed a detailed examination of the Abstract of Title and has located and/or mapped any matter that is contained in the Abstract that affects title, with a particular eye towards making an informed opinion as to whether these exclusions will affect the viability of future agricultural use of the parcels in question. This title work, together with the physical inspections of the land, does not lead the Town or the County to anticipate that these standard exclusions will impact the long-term agricultural viability of the farm.

**Exceptions #8 and #9** refer to the state of facts an inspection of the premises would show and the rights of tenants or persons in possession. Neither of these exceptions is expected to interfere with the long-term agricultural viability of the farm. Further, as shown by the Baseline Report and other documentation, the premises shown and mapped in the final project surveys depict parcels of land that have actually been inspected by the Town and the County. There is no noted condition or tenancy that is observable or known to exist that could, or would, potentially interfere with the long-term agricultural viability of the farm.

**Exception #10** refers to rights to use waters from a spring upon neighboring lands. It is believed that this right has expired and that no such use continues to date due to the fact that the area is serviced by municipal water and the once neighboring farmland that benefitted from such right is no longer farmland and thus needs not such spring to irrigate crops or water livestock. Even if a vestigial right survives from such 1875 grant, it would not interfere with farmland uses as it only supports the shared right of use and transportation of water over the existing farm, and irrigation ditches are not an impediment to farming.

**Exceptions #11 and #12** refer to 8 recorded utility and communications (telephone) easements that should not negatively impact the present or future agricultural use of the Property. All of these easements are for existing utility lines to accommodate electrical transmission poles and lines, natural gas service, and communication (telephone) lines. These easements are as follows:

- a) An easement from \_\_\_\_\_ to \_\_\_\_\_ dated January 5, 1954, and recorded May 29, 1954, in the \_\_\_\_\_ County Clerk's Office at Liber \_\_\_ of Deeds, page \_\_\_;
- b) An easement granted by \_\_\_\_\_ to \_\_\_\_\_ dated July 23, 1958, and recorded October 17, 1958, in Liber \_\_\_ of Deeds, page \_\_\_, in said Clerk's Office;
- c) An easement for a gas pipeline granted by \_\_\_\_\_ to \_\_\_\_\_ dated July 9, 1959, and recorded November 6, 1959, at Liber \_\_\_ of Deeds, page \_\_\_, in said Clerk's Office;
- d) An easement from \_\_\_\_\_ to \_\_\_\_\_ dated August 25, 1939, and recorded September 14, 1939, at Liber \_\_\_ of Deeds, page \_\_\_, as recorded in said Clerk's Office;
- e) An easement granted from \_\_\_\_\_ to \_\_\_\_\_ dated July 23, 1958, and recorded at Liber \_\_\_ of Deeds, page \_\_\_, in said Clerk's Office;

f) An easement from \_\_\_\_\_ to \_\_\_\_\_ dated July 9, 1959, and recorded November 6, 1959, at Liber \_\_\_ of Deeds, page \_\_\_, as recorded in said Clerk's Office.

g) A right-of-way and easement granted by \_\_\_\_\_ to the \_\_\_\_\_ Telephone Company dated August 19, 1958, and recorded February 5, 1959, at Liber \_\_\_ of Deeds, page \_\_\_, in the \_\_\_\_\_ County Clerk's Office;

h) A right-of-way from \_\_\_\_\_ to \_\_\_\_\_ Telephone Company dated January 15, 1971, and recorded March 29, 1971, at Liber \_\_\_ of Deeds, page \_\_\_, in said Clerk's Office.

None of these easements have interfered with agricultural operations to date and none are expected to have any impact upon the long-term viability of agricultural operations in the area. In fact, these easements are standard utility easements that insure the delivery of necessary utilities to the farm itself. Many are related only to the roadways and do not even enter or cross the agricultural areas of the farm. Without these easements there would be no electricity to the barns to operate equipment, so it is the opinion of the County and the Town that the viability of agriculture is enhanced by some, if not all, of these easements.

**Exceptions #13 through #15** reference existing open mortgage liens and such exceptions clarify that the title policy does not insure against mortgage defaults that may impair title. This exception exists as a matter of law as mortgage foreclosures are not generally insurable against as default upon a mortgage rests in the hands of the Mortgagor-landowner (except in rare title cases, such as ancient mortgages or expired notices of pendency, etc.).

These mortgages will be satisfied or subordinated at or before closing, consistent with the Department's Guidance Document *Title Commitment and Curatives for Conservation Easements*. Attached are proposed Subordination Agreements and letters from \_\_\_\_\_ Bank and \_\_\_\_\_ Bank confirming that they agree to subordinate the mortgages to the conservation easement.

**Exception #16** refers to land within any highway or road rights-of-way. None of the land within any adjacent roads or highways is used for agricultural production, and this exception is common to all title policies, such that its presence or enforcement will not affect the long-term viability of agriculture for the farm.

**Exception #17** is not a true exception but provides affirmative coverage to the holder of a loan policy that the utility easements (items 10 through 12, above) will not interfere with the use and enjoyment of the insured premises.

Hence, the legal conclusions drawn from the above-referenced examinations show that none of the listed title exceptions to coverages as listed in Schedule B are expected to interfere with the use of the insured lands as farmland or to impact the agricultural uses, and future agricultural uses, of the subject insured lands.

These opinions and this report are for the use solely and only of the Attorney signing below, the Town of \_\_\_\_\_, and the New York State Department of Agriculture and Markets in connection

with a farmland grant and conservation program arising under Environmental Conservation Law Article 49 and the related conservation easement submitted of near even date herewith covering the insured premises.

This review and report was prepared on \_\_\_\_\_, 2013, by \_\_\_\_\_, Esq, as an Attorney for the Town of \_\_\_\_\_. If any questions, clarifications, or requests for third party use arise, please contact said attorney through the Town of \_\_\_\_\_ offices or at his business phone line at \_\_\_\_\_.

Very truly yours,

\_\_\_\_\_, Esq.