Drafting Conservation Easements for Agriculture

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Your Land is Your Legacy, A Guide to Planning the Future of Your Farm
Legal Framework

• Environmental Conservation Law Article 49, Title 3
• General Municipal Law 247
• Internal Revenue Code 170(h)
Basic Structure and Function

• Negative covenant
• Usually no requirement for agricultural use
• Flexibility for agricultural use
• No public access required
• Development “rights” not transferable
Key Drafting Issues

• Purpose Clause
• Agricultural Structures
• Farmworker Housing
• Other Rural Enterprises
• Farming Operations
• Renewable Energy
• Affordability
• Affirmative Farming Covenant
Drafting Issues Cont.

• Residential Building
• Subdivision
• Mining
• Extinguishment/Termination
• Resource Protection Areas
IRC Requirements

• Perpetual duration
• “Qualified” organization
• Exclusively for Conservation Purposes:
  – Recreation/Education
  – Natural Habitat
  – Open Space(including farmland)
  – Historical Importance
IRS “Two Prong” Test for Open Space

- Must further a clearly delineated government conservation policy and yield a significant public benefit
- Or provide scenic enjoyment for the general public and yield a significant public benefit
Purchase of Development Rights

• Benefits – can strengthen farm business and help transfer the farm operation
• Disadvantage – limited funding and potentially complex transaction process
Planning with PDR / CE’S

Issues –
• Land Planning
• Business Planning
• Financial Planning
• Estate/Succession Planning
Tax Implications/Opportunities with PDR

- Capital Gain
- Allocation of Basis
- 1031 Like-kind exchange
- Bargain sales
Donation of Conservation Easements

• Tax benefits – Income (170(h), Gift (2522(d), Estate (2055(f), 2031(c))

• Valuation – “before and after” appraisal

• “Qualified” Appraisal required (form 8283)
Funding Sources

- New York State – EPF
- Federal – ACEP / ALE
- Private matching funds –
  - Nonprofits
  - Neighboring landowners
  - Bargain sale