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
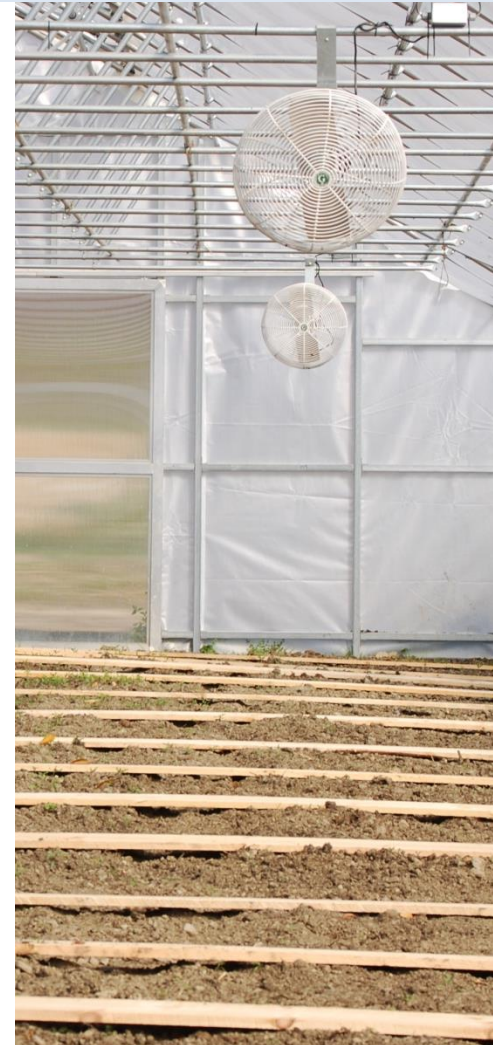
Purchase of Development Rights

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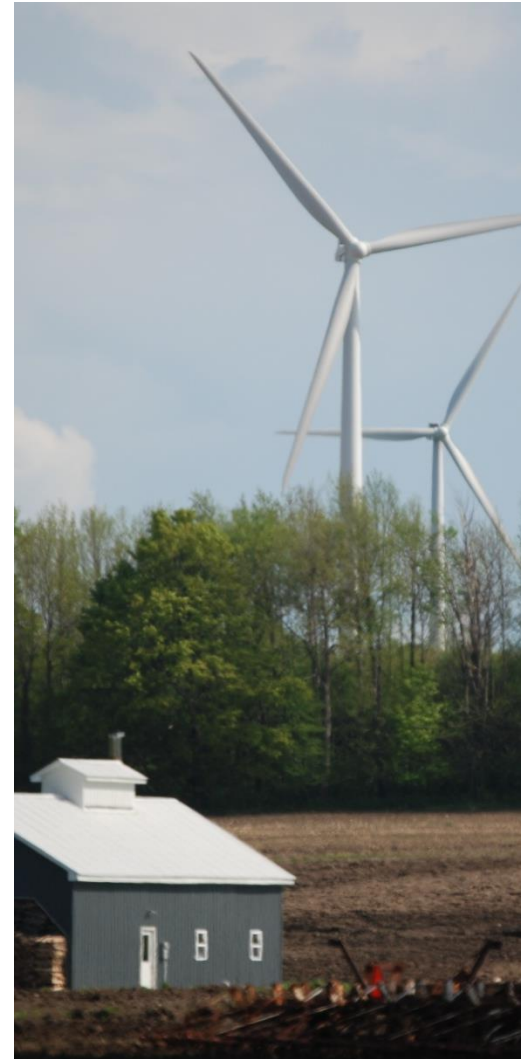
Planning with PDR / CE'S

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