



Request for Applications 2023 Forest Conservation Easements for Land Trusts Program

The Land Trust Alliance (Alliance), with support from Governor Kathy Hochul, the New York State Legislature, and the New York State Department of Environmental Conservation (DEC), is pleased to announce a second round of competitive land trust grants through the Forest Conservation Easements for Land Trust Program (FCELT). This new public-private partnership is funded through the state Environmental Protection Fund (EPF) and administered by the Alliance, in coordination with the DEC.

Up to \$1.35 million in funding is available through the 2023 grant round which will be awarded in the fall of 2023. Grant awards are contingent upon the receipt of state funds.

The program has a two-step application process which includes a preapplication and a full application.

Preapplications are now being accepted and are due by May 11, 2023. Full applications are by invitation only. Applicants invited to submit a full application will be notified by June 13, 2023. Full applications are due by July 28, 2023.

Preapplications and full applications must be completed through our [online application and reporting system](#). Complete details about this grant opportunity including eligibility requirements and other program elements can be found below. Please review carefully as you evaluate whether your project is a potential fit.

Visit the [FCELT](#) webpage for more information including:

- [2023 Virtual Roundtables Schedule](#)
- [Resource Guide](#)
- [Frequently Asked Questions](#)

The Alliance reserves the right to amend the request for applications specifications to correct errors or oversights, or to supply additional information, as it becomes available.

Questions? For questions about the program, please contact Jim Daus, New York Forest Conservation Easement Advisor for the Land Trust Alliance, jdaus@lta.org or 518-227-1318.

For questions about accessing the online system, please contact Katrina Howey, Grants Management Specialist, Land Trust Alliance at khowey@lta.org or 518-587-0932.

Overview and Purpose

The purpose of the Forest Conservation Easements for Land Trusts Program is to provide grants of up to \$350,000 to fund the acquisition of conservation easements by land trusts accredited by the Land Trust Accreditation Commission on forestland in New York State that increase the pace of forested land conservation to combat climate changes.

According to the 2020 New York State Forest Action Plan, “Privately owned forestlands cover 13.62 million acres and represent 74 percent of New York’s forests. 10.2 million acres are considered family-owned or non-corporate forests. Nearly 700,000 private forest landowners provide the public with the benefits of clean air and water, carbon sequestration, wildlife habitat, and a forest-based economy.” The plan identifies some of the biggest threats to keeping privately owned forests healthy and intact as follows: development pressure, inconsistent or

lack of professional forest management practices, succession planning, and invasive pests which are often exacerbated by climate change and have the potential to devastate or completely wipe out entire tree species.

Land trusts are uniquely positioned to help private forest owners protect and manage their lands while also educating the public about the benefits of forest conservation to the environment and economy.

Land trusts applying for FCELT grants will be asked to articulate how and to what extent the proposed easement acquisition provides community benefits, advances [ecosystem services](#) and climate resilience, and furthers the goals/strategies identified in the [New York State Open Space Plan](#), the [New York State Wildlife Action Plan](#), the [New York State Forest Action Plan](#) and/or other local, regional or statewide land protection plans. Applicants should utilize relevant scientific data to make the strongest possible case for their project's climate resilience benefits including The Nature Conservancy's [Resilient Land Mapping Tool](#).

Applicant and Project Eligibility Requirements

- Applicant's service area includes the State of New York and project site is located within the State of New York. These funds are intended for projects and activities within the State of New York.
- Land Trust must be accredited by the Land Trust Accreditation Commission. However, applicants do not need to be members of the Land Trust Alliance to apply for or receive grant funding. Non-member land trusts are encouraged to learn more about the benefits of [Land Trust Alliance membership](#).
- Projects must provide permanent protection via conservation easements consistent with the provisions of Environmental Conservation Law Article 49 that satisfy the minimum conservation easement requirements contained in the Term Sheet in Appendix C. The easement must explicitly run in perpetuity, and the land trust must be the intended long-term easement holder. The conservation easement must be registered with DEC. A Notice of Grant, Appendix F, must be attached to the final conservation easement as an exhibit.
- Forests (as defined in the Term Sheet in Appendix C) must cover at least 50% of the protected property. Lands used for agriculture cannot exceed 25% of the protected property. Sustainable forest management must not be a prohibited use (although it may be prohibited on portions of the property, where appropriate).
- If timber harvests are permitted, they must be conducted pursuant to a forest management plan under the supervision of a qualified forester (as further described in the Term Sheet in Appendix C) and approved by the easement holder (except in limited cases for on-site uses of timber harvested from the protected property).
- Acquisitions must be able to close by the end of 2025. Only projects that have not yet closed prior to signature of the Grant Agreement are eligible. It is recommended projects do not close until all required pre-closing items on the Due Diligence Checklist in Appendix B are satisfied as failure to complete them may jeopardize awardee's eligibility to receive grant funding.

Costs

Costs eligible for reimbursement or match must be structured such that it is an applicant expense, not the landowner's (ie. invoices must be addressed to applicant) and include:

1. Easement acquisition;
2. Recording fees;
3. Related staff time;

4. Indirect or overhead costs for awardees that have a written indirect or overhead cost policy;
5. Environmental assessment;
6. Title Insurance Premiums;
7. Baseline documentation report;
8. Boundary Surveys;
9. Appraisal;
10. Awardee's legal counsel;
11. Management plan(s) (including Forest Management Plan);
12. Up to \$10,000 towards stewardship endowment (calculation methodology will be required);
13. Up to \$3,000 towards legal defense fund contribution; and
14. Other fees or expenses necessary and appropriate for the completion of a transaction.

Costs that are not eligible for reimbursement or match include:

1. Any costs incurred prior to or after the grant period noted below;
2. General operating support;
3. Fees for Alliance trainings and events;
4. Accreditation fees;
5. Awardee's Insurance premiums, including Terrafirma;
6. Property taxes or other state/local/federal taxes including real estate transfer taxes;
7. Cost of improvements and heavy equipment;
8. Implementation of management plans or resource management/stewardship actions;
9. Staff costs for stewardship operations; and
10. Landowner's cost for legal or financial advisors.

All costs, whether to be granted or counted as match, must be incurred within the grant period (January 1, 2023 – December 31, 2025), however, applicant's expenditures are made so at applicant's sole risk prior to completion of the grant agreement.

Evaluation Process

An independent review team of volunteers and Alliance and DEC staff will review letters of interest and full applications. The committee will evaluate and score each letter of interest considering the project's overall design. Those projects that score highest will be invited to submit a full detailed application. Project Evaluation Criteria is included as Appendix A to this document. Applications must include all required content of the online application. All committee decisions are final.

Match Requirements

Applicants must provide a match equal to at least twenty-five percent (25%) of the grant funds requested. For example, a \$50,000 grant would require a match of \$12,500 for a total project cost of \$62,500; \$50,000 of which would be funded by the grant and \$12,500 of which would be match.

Match may include appraised value of any donation of the conservation easement by the landowner, other funds raised by the applicant to assist in the purchase of the conservation easement, and any expense eligible for reimbursement listed above that is not reimbursed by the grant, including related staff time. Matching funds must be non-state funds. Source and status of the match must be explained in the preapplication. Preapplications and applications with stronger evidence of match (e.g. Landowner commits in writing to the bargain sale contained in the budget or the land trust board commits in writing that it will provide match to the extent Landowner is unwilling to provide the full match via a bargain sale) will be ranked higher than those lacking such specificity. See [FAQs](#) for more guidance. If grant funds are awarded, verifiable documentation of the match is required prior to making any payments to grant awardees.

Grant Awards and Payments

The review team will score full applications and designate a portfolio of projects to support in 2023. Projects that are selected will receive a grant agreement from the Alliance. The grant agreement shall be due within 30 days of its being made available to awardees. The grant agreement and scope of work attached thereto will ask awardees to agree to:

- Minimum conservation easement deed terms (Appendix C);
- Grant reporting requirements;
- Periodic phone check-ins with the Alliance and/or DEC;
- Potential site visit(s);
- Use of photographs and other media;
- Complete the scope and schedule as an attachment to the grant agreement; and
- Complete report 1 within 60 days of grant agreement.

Upon receipt of the completed grant agreement and scope and schedule, the Alliance will work with each awardee to finalize report 1 for each project. The scope and schedule are intended to match, to the greatest extent possible, the awardee's existing project benchmarks and due diligence/reporting requirements.

Grant funds will be distributed in up to four payments. The first installment, if requested, will be released upon receipt of completed Grant Agreement and agreed upon scope of work with complete status reporting. The second installment, if requested, will be released upon certain due diligence benchmarks as noted in the agreed upon scope. Specifically, first and second payments will be calculated on a case-by-case basis, depending on project's timeline, expenses already incurred and anticipated, feasibility and achievements. The third installment will be released into escrow for closing. Third payment will be based on purchase price and closing expenses. The fourth installment, if requested, will be released after the transaction has closed and upon fulfillment of all post-closing matters, including final performance report, and as addressed in the scope. Fourth payment will be limited to expenses not yet reimbursed and post-closing matters. Each payment installment will require verification that matching funds have been expended or are in hand.

We will make every effort to meet your anticipated closing date. However, please recognize that the FCELT requires internal review of all due diligence material and Alliance and DEC staff are also reviewing due diligence for other grants. Delays in providing materials to the Alliance may prevent us from wiring funds to meet a specified closing date.

A list of required documentation is available in Appendix B. Please note that in addition to the Alliance's review and approval of all documents, DEC may review and approve the following documents: survey map, appraisal, title insurance policy and conservation easement including all appendices. Survey maps must be submitted with the title report for review.

Reporting Process

Consistent with the agreed-upon scope and schedule, awardees will submit grant reports for the project. The scope and schedule and grant agreement will specify reporting deadlines. Failure to complete required reports may result in an awardee forfeiting a portion of or all grant funds awarded.

Conservation Easement Standards

Appendix C of this document provides applicants with a conservation easement Term Sheet. The sheet includes specific conservation easement provisions that must be followed to be eligible for FCELT funds and to ensure consistency with the Alliance's and DEC's goals for the program.

Appraisal Standards and Survey Title Block Requirements

Please see Appendix D for appraisal standards and Appendix C for survey title block requirements.

Publicity and Freedom of Information Law

The title you give your project may be used in press releases, reports, and other public documents produced by the Alliance and DEC. If you are concerned about confidentiality, select a project title that is descriptive but does not reveal the exact property or landowner name, and please inform the Alliance of the confidential nature of the project. New York State will announce all its grant awards. Announcements will give the name of the property or project (sometimes property names are replaced by a project name), a very general location and the grant amount. They do not list the property owners' name(s) unless otherwise directed to do so.

Due to Freedom of Information Law requirements, anything submitted to or collected by the Alliance could become publicly available. As such, please take precautions when submitting any documentation. For example, be sure to black out any sensitive information (e.g. bank account information) that might occur on any of your submittals. The awardee is advised to notify the property owner that certain details of the transaction will be shared with the public and all details may be disclosed to the public under the Freedom of Information Law.

Attachments

- Appendix A: Project Evaluation Criteria
- Appendix B: Due Diligence Checklist
- Appendix C: Term Sheet
- Appendix D: Appraisal Standards
- Appendix E: Survey Title Block Requirements
- Appendix F: Notice of Grant
- Appendix G: Baseline Documentation Template Checklist

Appendix A

Complete Project Evaluation Criteria - FCELT 2023 (Round 2)

Conservation Values: This considers the project's overall protection of forests and other existing and future conservation benefits including ecosystem services and resilience values in the context of the durability of those benefits.

- What are the project's principal conservation values? What is the project size, landscape setting, and what is the percentage of forest cover and the composition of the forest being protected? What are the climate resilience attributes of the forest (eg. how diverse is the forest and the land and its topography)? What rare or significant species, habitats or natural features are present? Reference [NY Natural Heritage Program](#), [New York Wildlife Action Plan](#), species listed as threatened or endangered under the federal [Endangered Species Act](#) and/or included on [New York State's Endangered, Threatened and Special Concern Species List](#).
- What ecosystem services and resilience values does the project offer (e.g. resiliency to extreme weather events)? To what extent does the applicant clearly articulate these benefits? What are the project's scores from the Resilient Land Mapping Tool? How do other tools or measures of long-term climate resilience, or other local or regional resource studies, conservation plans, or inventories support or prioritize the ecosystem services and resilience values offered by this project?
- How durable are the conservation values (particularly the forest and its diversity) likely to be over time? To what extent is the project exposed to risks that could impact the conservation values including the project's ecosystem services or resilience values, such as sea level rise, weather, invasives, or other impacts to resilient landscapes, such as future development, that could block connectivity?
- To what extent does the project strategically leverage conservation and resilience across a larger area, such as by enhancing connectivity or removing a specific threat to landscape-scale connectivity and/or resilience? To what extent does the project fill a gap in, expand, or otherwise complement existing conservation efforts? To what extent is/are the landscape setting(s) under-represented among existing nearby conserved lands? How clearly are these factors illustrated (e.g. maps)?
- How does the project address existing conservation priorities as identified in the New York State Open Space Plan, the New York State Wildlife Action Plan, and the New York State Forest Action Plan or other established conservation plans?
- How well does the applicant address proposed (reserved), current, and former uses, practices, and improvements on the protected property and do limits thereto (e.g. structures, envelopes, square footage, commercial uses, events, roads, utilities, subdivision, etc.) seem consistent with conservation values (e.g. do these uses negatively impact the conservation values of the project)? What forestry management activities will be permitted?
- Are the limits also adequate in the context of protecting the durability of climate resilience and ecosystem services? How does the applicant propose to balance the need for limitations on resource management with the need to provide flexible resource management approaches for climate adaptation? If timber harvest is contemplated, how will it be consistent with climate resilience?

Feasibility and Readiness: This considers the project's technical design, likelihood of success and ability to be completed within the grant period.

- Does the project meet or exceed the eligibility requirements?
- What level of due diligence has already been performed (e.g. Title research, valuation, survey, environmental, etc.)? What has the applicant done to confirm availability of access to the property? To what extent has the applicant researched third party rights, trespass, mineral severance, timber leases, mortgages or other complicating factors? If such factors exist, does the applicant have a reasonable plan to rectify the issues?

- What significant contingencies or other complicating factors exist (e.g. contract contingencies, appraisal contingency, or financial, environmental, technical, or logistical issues)? How likely are these factors to delay or undo the project? Has the applicant adequately described the complicating factors and their ability to address them?
- Does the applicant demonstrate sufficient financial commitment either from the landowner, donors, or its board of directors to satisfy or exceed the match requirements (and, if not, a reasonable plan to obtain the commitment and funds)? Applicants should clearly identify the sources and status of all matching funds and demonstrate they will work diligently to locate and secure leveraging funds.
- Does the applicant have, or will the applicant have, sufficient commitment from the landowner to complete the project (e.g. is there a signed contract to purchase or some commitment from the landowner indicating the landowner will not list the property for sale during the grant period)?
- Is the proposed budget well researched (e.g., likely to appraise as anticipated) and supported and appropriate to the scale of the project?

Urgency and Threat of Conversion:

- How great is the risk of forest conversion, division, or fragmentation? Have these landscape settings experienced high levels of land use conversion? Why is it urgent to protect this property now? What about this project makes the forest particularly important to conserve in this round versus a future round (e.g. the property is or will be actively placed on the market for sale; the landowner has not completed legacy planning; developers have expressed written interest and relevant infrastructure is nearby)?

Stewardship: This considers land management and stewardship, both for current and desired future conditions, and the organization's focus on forest conservation and climate resilience as a conservation strategy and organizational priority (including the organization's capacity to carry out such strategies and priorities).

- Specify any short-term (high priority) and long-term stewardship needs (e.g. invasives, trail building, etc.) for the project and plans to address them. How likely are the forest and other conservation values to persist or be impaired over time in light of a changing climate? Has the applicant demonstrated a viable strategy for addressing the project's stewardship needs? Specifically, how will the conservation easement allow for the flexible and dynamic stewardship necessary for climate challenges and adaptation? For example, when sustainable forestry practices are undertaken, how will they be managed? Does the applicant have capacity, expertise and/or partnerships commensurate to the proposed project?
- If applicable, does the applicant have sufficient organizational capacity and expertise to work with the landowner to manage and steward the property, including restoration projects, invasive species removals, providing technical assistance, etc.?
- Has the applicant substantiated that its stewardship funding for the proposed project is sufficient (documentation of methodology/calculation will be required in the application process)? How likely is the applicant to have secured such stewardship resources at the time of closing?
- Does the organization have a track record and/or stated key organizational focus (mission, strategic plan, etc.) of prioritizing forest protection and climate resilience? Does the project specifically advance such goals?

Community Benefits: This considers the project's benefits to communities including climate resilience-related community benefits.

- Does the project directly build community resilience to climate impacts or will it help the community adapt to a changing climate? Examples could include but are not limited to: securing or strengthening community access to water; protecting cold water streams; decreasing risk from and/or enhancing resilience to flooding, wildfire or other hazards; providing responsible siting opportunities for renewable energy (if applicable); and bolstering sustainable, local economic activities.
- Does the project provide opportunities for public or landowner engagement around issues of forest stewardship or climate resilience? Does the applicant indicate an intention or plan to undertake such engagement?
- Does the project entail meaningful collaboration with local communities? Have they been engaged in the project's conception, design and/or intended outcomes? Have they invested time, money or other

resources?

- Does the project have potential to catalyze additional forest land and climate resilience protection work in the area? Does the applicant indicate an intention or plan to undertake such additional work?
- If the project includes or prohibits public access, does the applicant explain why it is appropriate in the context of the project and overall forest protection? If public access is prohibited entirely (or on parts of the property), how well did the applicant explain any public benefit derived from such exclusion (e.g. buffers adjacent lands that offer public access)? Reasons for allowing access could include that it provides complimentary new public access or formalizes and protects current (informal) public access.
- If the project includes the ability to construct renewable energy improvements, does the applicant explain why it is appropriate in the context of the project and overall forest protection?

Appendix B: Due Diligence Checklist - FCELT Round 2 (2023)

The Alliance will use this information, in collaboration with the New York State Department of Environmental Conservation (DEC) and awardees, to measure progress on deliverables that will trigger grant payments. **Please note that in addition to the Alliance's review and approval of all documents, DEC may review and approve the following documents: survey map, appraisal, title insurance report and commitment, and conservation easement.**

During Due Diligence Period

Title

- Preliminary title report and relevant supplements/updates. Awardee provides an analysis of title exceptions and plan to remedy. Survey map must be provided at time of DEC title report review.
- Landowner owns all mineral rights – YES__NO__
 - If NO, state plan to address
- Landowner owns all timber rights – YES__NO__
- Mortgage(s) and/or other liens exist on the protected property – YES__NO__
 - If YES, state plan to subordinate
- Third-party rights to access or use protected property – YES__NO__
 - If YES, state purpose of lease and term
- Can landowner provide, via easement, legal access for awardee to monitor protected property?
YES__NO__
 - If NO, state plan to address

Contract Documents

Provide at least one:

- Fully executed Purchase and Sale Agreement
- Option or landowner letter affirming intent to sell or bargain sale easement and timing

Draft Conservation Easement

- Follows term sheet provided and the crosswalk form between term sheet and CE is attached

Maps

- Awardee provides map of protected property with:
 - a. Awardee name, date, project title, grant number
 - b. North arrow/legend
 - c. Graphical scale
 - d. Title exceptions
 - e. Infrastructure
 - f. Building envelopes and/or exception areas
- Landscape map showing adjacent conserved lands, major landscape features, etc.

- Must be at scale that adequately reflects project size and detail
- Should be submitted as a PDF

Appraisal

- See FCELT Appraisal Standards, Appendix D of the Request for Applications

Environmental Assessment

All awardees must provide a staff or professionally prepared environmental assessment report of existing property conditions prior to conservation easement acquisition

- Sources of information should include interviews with the landowner and any tenants, public records including environmental websites and databases, title reports and appraisals, and any known reports or studies of the protected property

Survey

- Must be in accordance with the Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors
- Legal description must match deed or protected property if not protecting the entire parcel.
- Encroachments or other concerns must be identified
- Property subdivisions (if applicable) must be shown
- Must be certified to the: a) Awardee; b) New York State Department of Environmental Conservation with Grant Number Listed; and c) Title Insurance Policy holder with Title Policy Number Listed (see Survey Title Block Template attached to RFA)
- Title commitment must be provided at time of survey map review
- Map title block must contain DEC unique grant ID and identify that purchase is pursuant to the grant program

Match

- Identifies sources, status and amounts

Management and Stewardship

- Management Plan or Stewardship Plan, or summaries of such intended plans, if applicable.
- Quantifies awardee's annual stewardship costs; identifies methodology(ies) used to estimate such costs, consistent with Alliance guidelines

Approximately 60-30 Days Prior to Closing

- Board resolution approving the acquisition
- Escrow information, including escrow company name, individual contact, agent's address, telephone, email address and wiring instructions
- Final conservation easement including Notice of Grant, and any other instruments to be recorded at closing, including any deeds of right or other instruments required by funders
- Forest Management Plan, if applicable
- Evidence of all match funding secured and available for deposit into escrow before or at closing
- Documentation of all match and reimbursable costs (at least 2 weeks prior to closing)

- Baseline documentation report to be signed by landowner or if conditions prevent, schedule for finalizing *
- Final Title Commitment (approximately 1 week prior to closing)
- Outstanding items from list above

At Closing

- Executed escrow instructions
- Executed conservation easement
- Executed Notice of Grant
- Executed Baseline Acknowledgment
- Executed settlement statement
- Executed real estate tax form(s)
- Executed mortgage and/or other lien subordination documents, if any
- Any other instruments recorded at closing
- Final markup title report and commitment, if any (if exceptions appear that were not reviewed and approved by the Alliance, closing must be delayed until approved)

Post-Closing

- Final signed closing documents and settlement statements
- Final title policy (with all objectionable exceptions removed)
- Signed baseline documentation
- Recorded documents. Confirmation and documentation that deed and notice of grant were recorded at County Clerk's office
- Confirmation from the awardee that it has recorded the acquisition in the National Conservation Almanac, the National Conservation Easement Database, NY Protected Area Database and other relevant data repositories, as appropriate, along with all required information on spatial extents, transaction details and funding information
- Management Plan(s), if applicable
- Forest Management Plan, if applicable. If timber harvests are conducted, they must be done under the supervision of a certified/consulting forester
- Registration of CE with DEC
- Proof of stewardship contribution
- Final Report and Final Report Budget with receipts for all expenses

*NOTE: For the FCELT program, the Baseline Documentation Report, along with the standard sections, must describe the project's climate resilience characteristics.

Appendix C: Term Sheet

Forest Conservation Easement for Land Trusts 2023 (Round 2)

NYS EPF Funded Grants

January 26, 2023

Introduction

The purpose of this term sheet is to provide guidance to applicants as to those conservation easement elements that New York State Department of Environmental Conservation (“DEC”) requires, at a minimum, to be addressed in the final conservation easement document for the Forest Conservation Easement for Land Trusts program. Exact wording is given in the few instances where exact wording is required, otherwise the element should be worded as determined by the awardee's attorney and other professional advisors. DEC and The Land Trust Alliance will be reviewing the wording of the conservation easements. See [FCELT webpage](#) for a list of resources to assist with Conservation Easement drafting.

All awardees must ensure the following:

- 1) Conservation Easement is under provisions of New York State Environmental Conservation Law (ECL), Title 3 of Article 49 and is in perpetuity.
- 2) Forests must cover at least 50% of the Protected Property. Lands used for agriculture cannot exceed 25% of the Protected Property.
- 3) Land Trust must be accredited by the Land Trust Accreditation Commission; in the event the awardee fails to maintain or otherwise loses its accredited status, the State may require that the Conservation Easement be assigned to an accredited land trust or eligible public body.
- 4) Awardees should confer with their legal counsel, be familiar with Land Trust Alliance Practical Pointers documents, and Grantors should be made aware that they cannot rely upon any other guidance than that of their own legal counsel.
- 5) NOTE for awardees: Any reference herein to uses being allowed “with Grantee approval,” or when “consistent with the Conservation Easement” (or similar language) shall be at the Grantee’s sole discretion and in writing.

Conservation Easement must use the structure outlined below:

- Recitals
- Definitions
- Purposes Of The Conservation Easement
- Restricted Uses And Practices
- Grantee’s Affirmative Rights
- Grantor’s Permitted Uses and Rights
- Enforcement
- Administrative Provisions

Conservation Easement Minimum Requirements

Please Note:

- The parenthetical “(mandatory)” means the element must be addressed by the Conservation Easement and worded as determined by the awardee's attorney and other professional advisors.
- Exact language is required when indicated by (“exact”).

- The elements labeled “(optional)” may be disregarded unless desired by awardee or the contemplated use will occur on the Protected Property (in which case the element must be addressed).
- For all other elements, awardees may draw from their own templates.

1) Recitals

- Describe the Protected Property subject to this Conservation Easement and as defined in Schedule A and set forth encumbrances and exceptions to title in Schedule B attached to the Conservation Easement (mandatory).
- Set forth the intention to preserve and limit the uses and development of the Protected Property in perpetuity (mandatory).
- Provide that Grantee is authorized to accept and hold the Conservation Easement to protect property important to the conservation of natural resources under the provisions of New York State ECL, Title 3 of Article 49 (mandatory); and
- Include this clause: (exact) Said Conservation Easement is acquired with funding received by the Grantee under a grant funded by the New York State Environmental Protection Fund in accordance with Round 2 of the Forest Conservation Easements for Land Trusts Grant Program 2023 (“Grant”), Grant No. FCELT-R2-2023-(County#), from the Land Trust Alliance to the Grantee, awarded under contract C012269 between the New York State Department of Environmental Conservation and the Land Trust Alliance, for purposes of forest conservation. Upon recording of this deed, all use of the property is and shall remain subject to the terms and conditions described in the Notice of Grant attached hereto as Schedule _____ and recorded herewith.

2) Definitions

- “Grantee” (exact). The Party identified as Grantee in the preamble, its officials, employees, contractors, successors, assigns, authorized agents, personal representatives, tenants, and occupants, and where specifically set forth herein licensees and lessees of Grantee.
- “Grantor” (exact). The owner(s) in fee simple of the real property that is subject to this Conservation Easement. The term “Grantor” shall include Grantor, its successors, heirs and assigns, and its authorized agents, personal representatives, tenants, occupants, contractors, and employees, and where specifically set forth herein, licensees and lessees of Grantor.
- “Protected Property” (exact). The lands subject to this Conservation Easement, more particularly described in Schedule A.
- “Forestland” (exact). Land at least 10 percent stocked by forest trees of any size.
- “Forests” (exact). An ecosystem characterized by a more or less dense and extensive tree cover, often consisting of stands varying in characteristics such as species, composition, structure, age class, and associated processes, and commonly including meadows, streams, fish, and wildlife.
- “Forest Management” (exact). Forestry practices, including harvesting of a forest, woodland or plantation and other types of cuttings planned as part of a deliberate forest management program, the construction, alteration or maintenance of wood roads, skidways, landings and fences, and related research and educational activities.
- “Sustainable Forestry” (exact). Forest Management activities that achieve sustainability by practicing a land stewardship ethic that, when commercial production and/or harvesting of Forest Products is not a prohibited use, integrates the production of an economic return through sustainable commercial production and/or harvesting of Forest Products with the conservation of soil, air and water quality, Biological Diversity, wildlife and aquatic habitat, recreation potential, and aesthetics. Forest Management activities on the Protected Property are considered sustainable if long-term harvest levels, although variable, are consistent with appropriate growth and yield models in an approved Forest Management Plan or Forest Certification Program.

- h. "Forest Management Plan" (exact). A working guide, prepared by a professional forester, that allows the landowner to maximize a mix of forest benefits, including wildlife, timber, recreation, aesthetic value and other benefits.
- i. "Forest Certification Program" (exact). A market-based, non-regulatory forest conservation tool designed to recognize and promote environmentally responsible forestry and sustainability of forest resources. The certification process involves an evaluation of management planning and forestry practices by a third-party according to an agreed-upon set of standards. These standards include measures to protect water quality, biodiversity, wildlife habitat, species at risk and forests with exceptional conservation value.
- j. "Forest Products" (exact). All products derived or extracted from the forest on the Protected Property, including, without limitation, ginseng, trees, logs, poles, posts, pulpwood, firewood, chips, seeds, pinestraw, stumps, seed cones, shrubs, herbaceous vegetation, barks, limbs, branches, gum, tree sap, and mushrooms.
- k. "Biological Diversity" (exact). The variety and abundance of life forms, processes, functions, and structures of plants, animals, and other living organisms, including the relative complexity of species, communities, gene pools, and ecosystems at spatial scales that range from local to regional to global.
- l. "Agricultural Use" (exact - only for Conservation Easements that allow for agriculture). Those activities necessary to: produce Crops, Livestock and Livestock Products; or use the Protected Property as a "Farm Operation" to the extent permitted by this Conservation Easement; or be actively enrolled in any federal or state or local program whose intent is to temporarily suspend (for a specified period of one or more years or crop seasons) the production of Crops, Livestock and Livestock Products for the stipulated purpose of soil and water conservation, wildlife habitat, or similar conservation purpose; or manage the Property or a portion thereof in a fallow or otherwise idled manner provided such management is contained in a conservation plan.
- m. "Farm Operation" (exact - only for Conservation Easements that allow for agriculture). Shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter OR (mandatory) insert the actual current definition wording.
- n. "Crops, Livestock and Livestock Products" (only for Conservation Easements that allow for agriculture) (exact) shall be defined pursuant to Article 25-AA of the AML (Agriculture and Markets Law 301), or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter OR (mandatory) insert the actual current definition wording.

3) Purposes of the Conservation Easement

- a. Limit division and forest fragmentation (mandatory). To prohibit division of the Protected Property to keep the Protected Property intact and under one ownership to prevent the fragmentation of the Protected Property.
- b. Limit use and development (mandatory). To limit the development of the Protected Property and prevent residential, commercial, industrial and Agricultural Uses of the Protected Property, except as permitted by this Conservation Easement.
- c. Conserve natural resource values (mandatory). To protect the scenic and natural resource values associated with the Protected Property including: native flora and fauna and the ecological processes that support them; diverse forest types and conditions; wildlife habitat; soil productivity; biological diversity; water quality; and wetland, riparian, and other aquatic habitats as well as the scenic vistas of undeveloped land from public roads.
- d. Ensure sustainable forestry and prevent conversion of Forestland (mandatory). Prohibit conversion of forest to other uses; ensure that the Protected Property remains in a healthy, forested condition; (if

the Grantor wants to retain the right to produce Forest Products) to ensure that the Protected Property remains available for Sustainable Forestry and the associated production of Forest Products; and to promote and support the continued management of the forest resource on the Protected Property.

- e. Ensure Agricultural Use is consistent (mandatory only for conservation easements that allow for agriculture) with conservation values of this Conservation Easement. To allow for Agricultural Use consistent with the Conservation Easement.
 - f. Uses Not otherwise conveyed or limited (optional). Include a clause that allows such uses if they are consistent with the Conservation Easement (note - if this optional term is used, then the concept in the following sentence is mandatory). For such uses that have more than de minimis adverse impact to the Forests on the Protected Property, Grantee shall provide DEC written notice and the opportunity to comment within thirty (30) days of receipt of such notice.
- 4) Restricted Uses, Improvements, and Practices – Avoid restrictions that the land trust cannot monitor and enforce.
- a. Retention of forest resource (mandatory). Except as provided by this Conservation Easement, the existing Forestland of X acres shall be maintained as Forestland and not converted to non-forestry purposes.
 - b. Prohibit residential, commercial, or industrial uses (mandatory) except as permitted by this Conservation Easement (see section 6). Such exceptions may include a building area, farm stand, maple syrup production, sustainable forestry, or other similar uses, provided that any such use (and access thereto) must be located to prevent or minimize impacts to Forestland and must be located on the perimeter of Protected Property or other areas consistent with the Conservation Easement as permitted by Grantee, all to protect the Protected Property from conversion to other land use types.
 - c. Prohibit recreation and education improvements except as permitted by the Conservation Easement. Improvements must be located to prevent or minimize impacts to Forestland and be consistent with the Conservation Easement in Grantee's sole discretion.
 - d. Development and building rights extinguished (mandatory) except as permitted by the Conservation Easement.
 - e. Prohibit or limit division or conveyance of rights (mandatory) to keep the Protected Property intact and under one ownership and prevent fragmentation and to prohibit modification or conveyance of easements, right of ways or similar documents unless the proposed conveyance is consistent with the Conservation Easement.
 - f. Limit improvements, buildings and structures (mandatory) to existing improvements and prohibit constructing new improvements except limited improvements associated with: a) Forest Management improvements; b) Agricultural Use structures, as defined in 9 NYCRR § 577.2, in conservation easements allowing agriculture; and c) those improvements specifically agreed to with the Grantor and as consistent with 6.d. herein.
 - g. Limit utilities and utility access (mandatory). Limit the construction or presence of utility improvements (including wind and solar power), and equipment (including towers), and access thereto to those approved by Grantee or for service to existing or new building areas (intent is to limit and specifically define existing and future utility and utility access development) consistent with New York State ECL, Title 3 of Article 49, the purposes of the Conservation Easement, and in support of Grantor's permitted uses. Any such use (and access thereto) must be located to prevent or minimize impacts to Forestland and must be located on the perimeter of Protected Property or other areas consistent with the Conservation Easement as permitted by Grantee.
 - h. Forest products harvesting (mandatory where forest harvests are permitted), except as noted in Section 6.a.i.1 below, requires a Forest Management Plan ("FMP") submitted to and approved by the Grantee, and the FMP must be prepared and overseen (including harvest managed) by forester who is certified by the Society of American Foresters or successor organization as is later created, or has a

bachelor degree in forestry from a school accredited by the Society of American Foresters, or a Cooperating Consulting Forester with the DEC, or a qualified forester approved by the Grantee in writing in advance.

- i. Prohibit all types of waste disposal on the Protected Property (mandatory) except for forestry and agricultural handling of animal and vegetation waste which shall be in accordance with sound agricultural and forestry practices and in a manner consistent with a management plan and all applicable local, state or federal laws and regulations.
- j. Prohibit mining or limit mining to only sand and gravel used on the Protected Property (mandatory). Prohibition shall be against mining of any size. Sand and gravel extraction may be permitted, but size and location shall be defined, exclude riparian areas, and be for use on the Protected Property only. Note: If the Grantor wants to take a tax deduction, there likely should be a prohibition on all surface mining, including for any sand and gravel extraction.
- k. Prohibit new dams (mandatory). Limit to existing use only.

5) Grantee's Affirmative Rights

- a. Right to enter (mandatory). Grantee shall have the right of entry to the Protected Property for inspections upon reasonable notice. [OPTIONAL - with _____ (___) hours prior notice to Grantor Written notice not required and no notice required when monitoring is done via remote aerial monitoring]]. Give Grantee the right to enter the Protected Property for monitoring and inspections, including use of motor vehicles on existing paths, trails, and roads sufficient to support the motor vehicle use without damage to the Protected Property. If immediate entry is required to prevent, terminate, or mitigate a violation, then such notice shall not be required.
- b. Emergency actions (mandatory). Provides Grantee the right, at its discretion, to enter the Protected Property in an emergency. Such right shall not impose any obligation or legal responsibility on Grantee, except as to conditions created by Grantee.
- c. Right to provide for public access and use (optional). May include but not be limited to hiking, biking, snowshoeing, cross-country skiing, horseback riding, hunting, trapping, fishing, camping, snowmobiling, boating and use of motor vehicles.
 - i. Non-motorized access and recreational uses
 - ii. Motorized access and recreational uses – identify roads and trails
 - iii. Public camping
 - iv. Public hunting, fishing and trapping
 - v. Public access to adjoining protected lands
- d. Public recreational amenities and improvements (optional). Right for the Grantee to construct, install and improve amenities for public use associated with the acquired recreation rights. Can include, but not limited to roads, lean-tos or weather shelters, boat launches, campsites, trails, bridges, signs, fences, gates and barriers, etc.
- e. Management of public recreational rights (optional). It is the responsibility of Grantee to manage the public recreation on the Protected Property.
 - i. Recreation management plan may be prepared to manage public use
 - ii. Include costs required for shared road maintenance.
- f. Grantee's duties and responsibilities for roads, trails, bridges, culverts, parking lots, boat launches and campsites open to public use (optional).
 - i. Repair and correct those amenities solely for public use
 - ii. Public use suspended due to weather
 - iii. Public use suspended due to lack of funding
- g. Right to manage fish and wildlife resources (optional). Provides Grantee the right with Grantor approval to conduct fish and wildlife projects on the Protected Property.

- h. Right to conduct biological surveys, scientific studies and forest health monitoring (optional). Provides Grantee the right to enter the Protected Property to survey for biodiversity, monitor for forest health and conduct other studies with Grantor approval.
 - i. Marking boundaries and providing keys and combinations (optional). Provides Grantee the right to identify the Protected Property as having a Grantee Conservation Easement. It requires Grantee to provide keys to Grantor for any locked gates erected by Grantee.
 - j. Grantee's right to sand and gravel (optional). Allows Grantee to use sand and gravel, with defined size and location, from the Protected Property for construction and maintenance of any recreational amenities with Grantor approval. If the Grantor wants to take a tax deduction, there should be a prohibition on all surface mining, including for any sand and gravel extraction.
- 6) Grantor's Permitted Uses and Rights – Avoid permitted rights that the land trust cannot monitor and enforce. Outparcels not encumbered by the Conservation Easement must be on perimeter of the Protected Property and not be on Forestland.
- a. Forest management activities (mandatory). Conduct Forest Management under a professional FMP consistent with the Conservation Easement.
 - i. Approval of Forest Management activities. Grantor's right to conduct Forest Management activities on the Protected Property shall be subject to prior written approval of the Grantee, as follows:
 1. Commercial or non-commercial timber stand improvements and commercial or non-commercial harvesting operations shall be carried out in accordance with (i) a third-party Forest Certification Program (i.e., Forest Stewardship Council, Sustainable Forestry Initiative; American Tree Farm Program), or (ii) a FMP and harvest plan prepared and overseen (including harvest managed) by a forester who is certified by the Society of American Foresters or successor organization as is later created, or has a bachelor degree in forestry from a school accredited by the Society of American Foresters, or a Cooperating Consulting Forester with the DEC, or a qualified forester approved by the Grantee in writing in advance. Any Forest Certification Program or FMP must submitted to and approved by the Grantee. Harvesting operations will comply with the most recent New York State Forestry Best Management Practices for Water Quality or its equivalent. Provided however, that no third-party Forest Certification Program or FMP or harvest plan or approval shall be required to harvest up to ten (10) standard cords of firewood annually for Grantor's personal use, to remove trees that have fallen, dead, diseased, or dangerous, or for the cutting of trees to establish trails or access roads for Forest Management activities.
 2. Permanent Forest Management improvements (allows for new and existing improvements associated with Forest Management activities only, where these improvements prohibit residential use.) Requires notification of Grantee, and review and approval by Grantee to exercise right.
 3. Identify the types of Forest Management activities the Grantor wants to conduct and determine the associated improvements that would be required. For example, syrup production (Maple, Birch etc) may require building a "Sugar House".
 4. Temporary Forest Management improvements (allows for clearly defined temporary Forest Management improvements). For example - use of a portable sawmill.
 - b. Agriculture (mandatory for conservation easements that allow for agriculture). Grantor may continue to use a portion, limited to no more than twenty-five (25) percent of the Protected Property for Agriculture Uses. The Agricultural Use of the Protected Property shall not interfere with Grantee's Affirmative Rights and be consistent with the Conservation Easement. Prohibit conversion of Forestland to agriculture even if agriculture not using 25%.

- c. Right to lease (optional). Only applicable to situations where the Grantor wants to retain the right to lease the Protected Property for limited durations for outdoor recreation (such as hunting) or agriculture (and only on portion of the Protected Property where agriculture is allowed). Must be consistent with the Conservation Easement.
- d. Non-forestry improvements; building areas; access and utilities (mandatory). Identify all existing improvements and any future requirements. The Conservation Easement may provide for the following:
 - i. Existing or new residential buildings, garages, barns, utilities, roads, drives, and septic systems, etc. Identify existing or planned improvements within specific limited building areas, outside of forested areas or otherwise located to minimize impacts to forested areas and other conservation values.
 - ii. Buffers for new improvements, waterbody and wetland buffers. Must comply with all federal, state and local laws/restrictions regarding new structures. No improvements in areas designated as undevelopable, Critical Environmental Areas or Special Treatment Areas (i.e. areas with unique geological features, wetlands or habitat for endangered species) as depicted in the baseline documentation report.
 - iii. Access road, improvements and utility corridors. Existing rights-of-way to utilities, adjacent properties, and outparcels, or existing or new rights-of way to building areas and for Agricultural Uses and improvements, and for forestry access (for heavy equipment).
- e. Emergency actions (mandatory). Grantor retains the right to take emergency actions to protect the Protected Property.
- f. Gates, barriers, fences; keys, combinations; marking boundaries (mandatory). Grantor retains rights to re-post boundaries, erect gates etc. Newly marked boundaries must be confirmed in advance with Grantee. (optional) The Parties shall provide one another with keys or combinations necessary to open gates and to allow access through such barriers.
- g. Preserving water quality (mandatory). Grantor may take actions, including the maintenance or removal of existing dams and impoundments, to preserve and enhance water quality and reduce erosion with Grantee approval.
- h. Right to sand and gravel (optional). Subject to the limitations of 2.i. Shall only be for use on the Protected Property of the Grantor. If the Grantor wants to take a tax deduction, there should be a prohibition on all surface mining, including for any sand and gravel extraction.
- i. Natural resources benefits (optional). Grantor may, with Grantee approval, create and retain rights to ecosystem services benefits, credits, and compensation. The use must be consistent with the Conservation Easement which shall be determined at Grantee's sole discretion. (e.g., carbon credits)
- j. Right to convey the entire Protected Property as one unit only (mandatory). Grantor may sell, transfer, or otherwise convey the entire Protected Property as one entire unit only, subject to the Conservation Easement. There may be rare instances where it may be appropriate to draft the Conservation Easement to allow for a portion of the Protected Property to be subdivided and conveyed to the Grantee or a third party. These instances will be handled on a case-by-case basis.
- k. Right for limited renewable energy improvements (mandatory if renewable energy is permitted) consistent with the Conservation Easement at Grantee's sole discretion and located to prevent or minimize impacts to Forestland on the Protected Property.

7) Enforcement

- a. Inspections (mandatory).
- b. Notice to cure (mandatory).
- c. Dispute resolution (mandatory). No arbitration.
- d. Force majeure/acts of third parties (mandatory).
- e. Failure to act (mandatory).

- f. DEC right to enforcement (mandatory). DEC has the right but not the obligation for enforcement. If Grantee fails to regularly inspect or enforce the terms of the Conservation Easement, or if Grantee is no longer accredited by Land Trust Accreditation Commission, then DEC has the right but not the obligation to inspect and enforce the Conservation Easement. DEC has the same right to enter the Protected Property as the Grantee under Section 5(a) of this Conservation Easement.
 - g. Restoration (mandatory). Grantee has the right to restore Protected Property
- 8) Administrative Conditions
- a. Construction and interpretation (mandatory). Distinguishes between titles for ease of document use and the Conservation Easement content/provisions.
 - b. Baseline documentation (mandatory). The requirement for a report of the current condition (baseline) of the Protected Property, at the time of closing, for monitoring purposes. Can be at Grantee's sole expense. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the Grantor and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing.
 - c. Notice, Review and Approval Process (mandatory). The procedure for review and approvals and who officially written notice should be sent to.
 - d. Regulatory Authorities, Compliance with Law (mandatory). Clarifies that Conservation Easement does not replace compliance with laws.
 - e. Reconveyance If Grantee ineligible (mandatory). Should the Grantee at any time become or be deemed by a court to be ineligible to hold the Conservation Easement for any reason, then Grantee shall immediately assign the Conservation Easement to another appropriate organization at no charge.
 - f. Severability (mandatory). If any part of the Conservation Easement is struck down by a court, the remainder of the Conservation Easement stays enforceable.
 - g. Amendments or Modifications (mandatory). Required by New York State ECL, Title 3 of Article 49 allows for future amendments to the document with conditions and upon review and written approval of DEC and Grantee.
 - h. Proceeds and Extinguishment clauses (mandatory). Repeat verbatim the Treasury Regulations.
 - i. Grantor Covenants (mandatory). Must include a statement that the Protected Property is free from encumbrances, except as provided on Schedule B attached hereto and made a part hereof.

DEC in consultation with the Land Trust Alliance designed this material to provide accurate, authoritative information about the subject matter covered with the understanding that DEC and the Land Trust Alliance is not engaged in rendering legal, accounting, tax, or other professional counsel. If a land trust or individual requires legal advice or other expert assistance, they should seek the services of competent professionals.

Appendix D

Standards for Real Property Appraisal of Awarded Grant Projects FCELT Round 2023 (Round 2)

- Appraisals **must** be written in accordance with the most recent publication of the Uniform Standards of Professional Appraisal Practice (USPAP).
- Appraisals **must** be presented as an Appraisal Report, formerly referred to as a Self-Contained Appraisal Report or Narrative Report.
- Appraisals **must** be prepared by a Certified General Appraiser.
- Appraisals **must** list The Land Trust Alliance (Alliance) and New York State Department of Environmental Conservation (DEC) as an intended user.
- Two appraisals are required when the State's contribution to the land exceeds \$500,000 and exceeds 75% of the purchase price. Both appraisals need to share the same effective date of value. If a second appraisal is secured at a later date, the second appraisal needs to be completed with a retrospective date of value which matches that of the first appraisal.
- Appraisals effective date of value **must not** be older than 1 year from the date of a fully executed contract of sale. If an appraisal report is completed after the sale of the subject property to the applicant, the appraisal must be completed with a retrospective date of value which matches the first appraisal (if one exists), or matches the contract of sale (if there is no pre-existing appraisal, or there is no appraisal within the 1-year period prior to the contract of sale).
- Appraisals **must** adhere to *DEC Guidance for the use of Hypothetical Conditions*
- Appraisals of Conservation Easements **must** not be finalized until after the easement language has been reviewed and approved by the Alliance.
- Appraisals of Conservation Easements **must** include a before and after valuation. Appraisals of Conservation Easements using a direct valuation approach will not be accepted.
- Appraisals of Conservation Easements **must** include all appropriate assumptions and limiting conditions while also adhering to *DEC Guidance for the use of Hypothetical Conditions*.
- Failure to adhere to any one of these standards may result in the rejection of the appraisal report.

Guidance for the use of Hypothetical Conditions

Hypothetical Condition

The Uniform Standards of Professional Appraisal Practice (USPAP) defines a hypothetical condition as: *“A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results but is used for the purpose of analysis.”*

Comment: Hypothetical Conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis

Before an appraiser can use a hypothetical condition in an appraisal assignment the appraiser has to satisfy all the following conditions as set forth by USPAP:

- Use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison, and
- Use of the hypothetical condition results in a credible analysis
- Clearly and conspicuously state all hypothetical conditions
- State that their use might have affected the assignment results

There may be circumstances where appraisers need to use hypothetical conditions in their assignments. If the appraiser determines that hypothetical conditions are necessary, they must contact the Alliance for prior **written approval**. The appraiser **must** consult with the Alliance and the client before use of a hypothetical condition in an appraisal report completed for a grant project. The Alliance may reject an appraisal report if the appraiser delivered the report with a hypothetical condition, which was not previously approved by the client and the Alliance.

Definitions of Common Appraisal Terms

Appraisal - The act or process of developing an opinion of value; an opinion of value. (USPAP, 2020-2021 ed.)

Appraisal Report - Any communication, written or oral, of an appraisal that is transmitted to the client upon completion of an assignment. (USPAP, 2020-2021 ed.)

Appraisal Review - The act or process of developing an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment. (USPAP, 2020-2021 ed.)

Before and After Rule – A procedure in which just compensation is measured as the difference between the value of the entire property before the taking and the value of the remainder after the taking. (*The Dictionary of Real Estate Appraisal*, 7th ed.)

Client - The party or parties who engage an appraiser by employment or contract in a specific assignment, whether directly or through an agent. (USPAP, 2020-2021 ed.)

Comparables - A shortened term for similar property sales, rentals, or operating expenses used for comparison in the valuation process. (*The Dictionary of Real Estate Appraisal*, 7th ed.)

Conservation Easement - An interest in real estate restricting future land use to preservation, conservation, wildlife habitat, or some combination of those uses. A conservation easement may permit farming, timber harvesting, or other uses of a rural nature as well as some types of conservation-oriented development to continue, subject to the easement. (*The Dictionary of Real Estate Appraisal*, 7th ed.)

Date of Report - The date on which the report is transmitted to the client. (*The Dictionary of Real Estate Appraisal*, 7th ed.)

Deed Restriction – A provision written into a deed that limits the use of land. Deed restrictions usually remain in effect when title passes to subsequent owners. (*The Dictionary of Real Estate Appraisal*, 7th ed.)

Effective Date - The date to which an appraiser's analyses, opinions, and conclusions apply; also referred to as *date of value*. (USPAP, 2020-2021 ed.)

Encumbrance - Any claim or liability that affects or limits the title to property. An encumbrance can affect the title such as a mortgage or other lien, or it can affect the physical condition of the property such as an easement. An encumbrance cannot prevent the transfer of possession, but it does remain after the transfer. (*The Dictionary of Real Estate Appraisal*, 7th ed.)

Extraordinary Assumption - An assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions. (USPAP, 2020-2021 ed.)

Highest and Best Use – The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity. (*The Appraisal of Real Estate*, 14th ed.)

Hypothetical Condition - A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis. (USPAP, 2020-2021 ed.)

Intended User - The client and any other party as identified, by name or type, as users of the appraisal or appraisal review report by the appraiser based on communication with the client at the time of the assignment. (USPAP, 2020-2021 ed.)

Market Value – The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (1) Buyer and seller are typically motivated;
- (2) Both parties are well informed or well advised, and acting in what they consider their own best interests;
- (3) A reasonable time is allowed for exposure in the open market;
- (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(12 C.F.R. Part 34.42(g); 55 *Federal Register* 34696, August 24, 1990, as amended at 57 *Federal Register* 12202, April 9, 1992; 59 *Federal Register* 29499, June 7, 1994)

Restrictive Covenant - A private agreement that restricts the use or occupancy of real estate that is part of a conveyance and is binding on all subsequent purchasers. (*The Dictionary of Real Estate Appraisal*, 7th ed.)

Sales Comparison Approach - The process of deriving a value indication for the subject property by comparing sales of similar properties to the property being appraised, identifying appropriate units of comparison, and making adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison. (*The Dictionary of Real Estate Appraisal*, 7th ed.)

Uniform Standards of Professional Appraisal Practice (USPAP) - In the United States, professional standards, developed for appraisers and users of appraisal services by the Appraisal Standards Board of The Appraisal Foundation, that are required for use in federally related transactions. Compliance with USPAP is also required in certain appraisals by state certification and licensing board. (*The Dictionary of Real Estate Appraisal*, 7th ed.)

Appendix E
FCELT 2023 (Round 2)
Survey Title Block

M A P

OF AN ARTICLE 49 CONSERVATION EASEMENT
TO BE ACQUIRED
BY A GRANT FUNDED THROUGH THE
NEW YORK STATE ENVIRONMENTAL PROTECTION FUND
BY A PARTNERSHIP OF THE
THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND THE
LAND TRUST ALLIANCE

TO BE ACQUIRED BY

(Name of Awardee)

FROM

(Name of Seller or Grantor)

UNDER

(Grant Number: XXXXXXXXXXXX)

SITUATE

(Patent Lot Numbers if known)

(Patent Allotment if known)

(Patent Name if known)

Town of XXXXXXXXX

County of XXXXXXXXXX

State of New York

0

GRAPHIC SCALE



(IN FEET)

1 i ch = 300 ft.

Appendix F
FCELT 2023 (Round 2)

EXHIBIT _____

NOTICE OF GRANT AGREEMENT

THIS NOTICE, dated ____ day of _____, 202_, is made by the
_____, (hereinafter "Grantee") whose address is
_____.

WITNESSETH

WHEREAS, the _____ has acquired a conservation easement over certain real property located in the Town/Village of _____, County _____, State of New York, Tax Map District _____, Section _____, Block _____ and Lot _____, which real property is more particularly described above in Schedule _____ annexed hereto (hereinafter "Protected Property"); and

WHEREAS, the _____ has been awarded a grant funded by the New York State Environmental Protection Fund in accordance with Round 2 of the Forest Conservation Easements for Land Trusts Grant Program 2023 ("Grant"), Grant No. FCELT-R2-2023-(County #), awarded under contract C012269 between the New York State Department of Environmental Conservation and the Land Trust Alliance, for purposes of forest conservation;

NOW, THEREFORE, Notice hereby given to any party having a right, title or interest in the Protected Property, now or in the future, that, in addition to the terms of this conservation easement, the following provisions are perpetual and run with the land:

1. The Protected Property may be subject to inspection upon the request of the New York State Department of Environmental Conservation to ensure compliance with the terms of this conservation easement.
2. In the event the Grantee does not maintain or otherwise loses its status as accredited by the Land Trust Accreditation Commission; the State of New York may require the conservation easement be assigned to an accredited land trust or eligible public body.

Grantee _____

By: _____

Print Name _____

Its: _____

State of New York

County _____

On the _____ day of _____ month in the year 202_ before me, the undersigned _____ personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed in the same in the signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed in the instrument.

Notary Public

(Notary Public Stamp Here)

Appendix G FCELT 2023 (Round 2)

FCELT Baseline Documentation Report Checklist

- Date of completion
- Documentation of the conservation values and public benefits, including written descriptions along with related maps and photographs as necessary to monitor and enforce the conservation easement.
- Documentation of existing conditions that relate to the easement's restrictions and reserved rights, including written descriptions and related maps and photographs as necessary to monitor and enforce the conservation easement.
- Information on the location of the easement
- Property description (an address is not sufficient; must be a full description)
- Dated signatures of the landowner and land trust acknowledging that both attest to the accuracy of the information contained in the report (the land trust must have the baseline signed by the time of closing of the conservation transaction).