TESTIMONY OF STATE OF CONNECTICUT DEPARTMENT OF AGRICULTURE

Testimony of Joseph J. Dippel, Director, State of Connecticut Department of Agriculture Farmland Preservation Program:

1. I have been employed by the State of Connecticut, Department of Agriculture (the "Department"), as Director of the Farmland Preservation Program (the "Program") for the past 15 years. Prior to my promotion to Director, I was a Property Agent in the Farmland Preservation Program for 7 years. I received my Bachelor of Science degree from the University of Connecticut in 1979, with a major in Agricultural and Natural Resource Economics.

2. My responsibilities as Director of the Program include project review, negotiations, regulation, oversight and stewardship for the Program.

3. In 1996, the Department purchased the development rights, as defined by Connecticut General Statutes ("C.G.S.") section 22-26cc, to property owned by Lewis A. and Truda A. Tanner in Warren, Connecticut. The Tanners conveyed the easement with warranty covenants to the State of Connecticut. The purchase price for the conservation restriction on 181.788 acres was $727,152.00. The conveyance was recorded on April 3, 1996 in Volume 46 at pages 984 through 990 of the land records of the Town of Warren (the "Deed"). The Tanner property subject to the state's easement, consisting of three parcels of land, is more particularly bounded and described on a certain map or plan entitled "181.788 +/- Acres, Survey Plan Prepared For State of Connecticut, Department of Agriculture, Farmland Preservation Program, Property of Lewis A. Tanner, Truda A. Tanner, Rabbit Hill Road, Jack Corner Road, Warren, Connecticut, January 1996, Scale 1" = 200', T. Michael Alex, L.L.S. #15462, Washington, Connecticut" (the "Survey") and is recorded in the Town of Warren land records as map #634, Received April 3, 1996 (the "Property"). A certified copy of the Deed of Conveyance is appended to my Testimony.

4. Under the Department's statutes, the term "Development rights" as defined by C.G.S. section 22-26bb(d) means, "...the rights of the fee simple owner of agricultural land to develop, construct on, sell, lease or otherwise improve the agricultural land for uses that result in rendering such land no longer agricultural land...". Pursuant to section 22-26bb(h) "Restricted agricultural land" means "land and the improvements thereon for which development rights are held by the state of Connecticut." Pursuant to section 22-26bb(i) "Restriction" means "the encumbrance on development uses places on restricted lands as a result of the acquisition of development rights by the state of Connecticut."

5. The agricultural restriction that exists on the Tanner farm also is considered a "conservation restriction" under other statutes the purpose of which is to protect, among others, the Department's interests in preventing development or destruction of agricultural land. A

"conservation restriction" as defined by C.G.S. section 47-42d means, "...a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state...whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use."

6. After acquiring the Development Rights to the 181.788 acres of the Tanner farm, the Department prepared a Notice of Acquisition dated March 1, 1996, which was recorded on April 3, 1996 in Volume 46 at pages 991 through 994 of the land records of the Town of Warren. C.G.S section 22-26cc(b) states that "...[u]pon such filing, the owner of such agricultural land shall not be permitted to exercise development rights with respect to such land, and such development rights shall be considered and deemed dedicated to the state *in perpetuity* [emphasis added]..." A certified copy of the Notice of Acquisition is appended to my Testimony.

7. Further, section A(4) of the above-referenced Deed from the Tanners to the State of Connecticut reiterates that the "...development rights are considered and deemed wholly and exclusively dedicated to the State of Connecticut *in perpetuity* [emphasis added]..."

8. Paragraph B(5) of the Deed clearly states that the only development rights retained by the Tanners was to "...preserve, maintain, operate or continue the Premises as agricultural land..." which includes: (a) the right to place one residence for persons "directly incidental to farm operation" within Area "A" on the Survey; (b) "facilities for the storage of equipment used on the premises and products of the premises or processing thereof"; or (c) "such other improvements, activities and uses thereon as may be directly or incidentally related to the operation of the agricultural enterprise..."

9. The proposed use of the property as a telecommunications facility is not a residence within Area "A" on the Survey, it is not for use as storage for equipment used on the premises or for products of the premises or processing thereof, and is not directly or incidentally related to the operation of the agricultural enterprise. The proposed use as a telecommunications facility is a commercial, non-agricultural use. The Tanners do not own the right, specifically, the development rights, to allow such a use on Site A as proposed by the SBA Towers II, LLC application (CSC Docket No. 378) (the "Application") . SBA Towers II, LLC has conceded in its Application that the Tanners "sold development rights" by virtue of the Deed, which the applicant has appended to its Application along with the above-referenced survey. The development rights for such proposed use are clearly owned by the State of Connecticut.

10. I note for the record that, on September 10, 2005, a Notice of Lease (the "Notice of Lease") was filed in the Warren Land records in Volume 69 Pages 316 to 324, by and between Lewis A. Tanner and Truda A. Tanner, as Landlord, and Optasite Inc., of Worcester, Massachusetts, as Tennant, for the building and construction of a Communications Facility, for a portion of the Property. Only Site A of the application is delineated on the Notice of Lease.

11. A redacted copy of the Land Lease Agreement by and between Lewis A. Tanner and Truda A. Tanner as Landlord and Optasite, Inc, of Worcester, Massachusetts, as Tenant, dated September 16, 2005 (the "Lease") for the Property and an Amendment to Land Lease Agreement by and between Lewis A. Tanner and Truda A. Tanner, as Landlord, and SBA Towers II LLC, as Tenant, dated April 7, 2009 (the "Amendment"), for a portion of the Property were filed by the Applicant with the Connecticut Siting Council. The State of Connecticut, owner of the development rights was not a party to the Lease or the Amendment.

12. Clearly, even the most cursory examination of this document confirms that the Lease proposes a commercial, non-agricultural use. The Lease violates both the terms of the statute and the covenants of the Deed.

13. The use of Site A of the Application as a telecommunications facility will negatively impact the Property. "Agricultural land" as defined by C.G.S. section 22-26bb(a) includes "adjacent pastures, wooded land, natural drainage areas and other adjacent open areas". Paragraph A(3) of the Deed states that "[n]o use shall be made of the Premises, and no activity shall be permitted or conducted thereon which is or may be inconsistent with the perpetual protection and preservation of the land as agricultural land, and no activity shall be carried on which is detrimental to the actual or potential agricultural use of the Premises, or detrimental to soil conservation, or to good agricultural management practices." Even if no fields under active cultivation are disturbed, the reduction in natural drainage areas and forested areas will have a detrimental effect on the protections afforded the Property by virtue of the restrictions imposed by the State's acquisition of the development rights to that land. It is important to bear in mind that the legislature has pointedly stated in its legislative finding in section 22-26aa that "unless there is a sound, state-wide program for its preservation, remaining agricultural land will be lost to succeeding generations and that the conservation of certain arable agricultural land *and adjacent pastures, woods, natural drainage areas and open space areas* is vital for the well-being of the people of Connecticut."

14. Ours is a soils based program. It is probable that the communications facility and right-of-way, if sited on Site A, will disturb prime farmland and/or statewide important farmland. C.G.S. section 22-26bb(g) defines prime farmland as "soils defined by the United States Department of Agriculture as the best suited to producing food, feed, forage, fiber and oilseed crops. Statewide important farmland is defined by the United States Department of Agriculture as soils that, in addition to prime farmland, are of statewide importance for the production of food, feed, fiber and oilseed crops. Regardless of their specific character, however, the land at issue has been acquired for the specific purpose of restricting its development and making it available in perpetuity for agricultural and conservation uses outlined above by the legislature.

15. On or about, March 2, 2009, the Department became aware of a filing by SBA Towers II, LLC of the Application to site a communications facility on the Tanner Farm. The Application clearly states that, should Site A be approved by the Siting Council, the applicant intends to site its facility on land subject to the Department's preservation restriction. However, C.G.S. section 47-42d(b) states that "...[n]o person shall file a permit application with a state or local

land use agency...relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction not later than sixty days prior to the filing of the permit application." No such written notice of the Application was ever received by the Department pursuant to this statute.

16. I am aware that the Siting Council's statutes allow it to make a finding that a telecommunications facility proposed to be installed on land subject to an agricultural restriction under the Department's statutes "will not result in a material decrease of acreage and productivity of arable land." C.G.S. section 16-50p(a)(3)(G). The ability of the Siting Council to make such a finding, however, cannot detract from the fact that the Tanners do not own the development rights to the land at issue; the State of Connecticut does, and SBA Towers II, LLC does not have the State's agreement to construct the facility. Without permission of the owner of the development rights, the ability of the Siting Council to determine that Site A is a good location for a telecommunications tower is meaningless. In making such a regulatory determination, it is assumed that the applicant possesses the legal right to develop the site. I note that pursuant to section 16-50p(g), the Siting Council is not required to grant a certificate just because the applicant "may already have acquired land or an interest therein for the purpose of constructing the facility which is the subject of its application." It would seem obvious from the thrust of that language that, if the applicant has *no* acquired land or interest in that land, and the owner or, as in this instance, the owner of the development rights objects, then the Siting Council *is* required to reject the application.

17. Finally, while acknowledging that Site A is proposed on agriculturally restricted land, SBA indicates that it intends to "create" new farmland on the Property "thereby resulting in a net increase of arable lands as a result of the construction of Site A." It believes that this commitment satisfies section 16-50p(a)(3)(G). Aside from the fact that it here is no logic to this proposal, because it cannot compensate for the destruction of that land which is to be preserved in its restricted state in perpetuity, it adds no new farmland. The result is not a true gain but only a *loss* of farmland from the Department's program.

Joseph J. Dippel

STATE OF CONNECTICUT)
) ss. Hartford, CT May 14, 2009
COUNTY OF HARTFORD)

Subscribed and sworn to before me, this 14th day of May, 2009.

Lance Shannon
~~Commissioner of the Superior Court~~
Notary Public
My commission expires: 9/30/2013

{Notarial Seal}