

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL §27-1301 *et seq.*

In the Matter a Remedial Program for

**ORDER ON CONSENT AND
ADMINISTRATIVE SETTLEMENT
Index No. CO 5-20221028-78**

DEC Site Name: CTI Agri-Cycle

DEC Site No.: 558043
Site Address: 308 & 311 Belle Road; King Road
Washington County
Buskirk, NY 12028

Hereinafter referred to as "Site"

by:

CTI Agri-Cycle LLC, Agri-Cycle of Washington County,
and Robert Wilmot

Hereinafter referred to as "Respondents"

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of the Environmental Conservation Law ("ECL") and the New York State Finance Law ("SFL"), and such laws provide the Department with authority to enter into this Order on Consent and Administrative Settlement (the "Settlement Agreement" or "Order")

2. A. The Department is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the ECL and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, ECL 3-0301 and SFL Section 97-b, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

3. Respondents CTI Agri-Cycle LLC and Agri-Cycle of Washington County are considered potential responsible parties ("PRPs") of the CTI Agri-Cycle Site ("Site"). The Site is not currently listed on the Registry of Inactive Hazardous Waste Disposal Sites

(the "Registry") in New York State. The Site is anticipated to be placed on the Registry following the implementation of this Order.

4. Robert Wilmot is the sole owner of both CTI Agri-Cycle LLC as well as Agri-Cycle of Washington County Inc.

5. CTI Agri-Cycle LLC entered into the Brownfield Cleanup Agreement (Index No.: C558043-04-20) with the Department to perform a Remedial Investigation ("RI") at the Site.

6. Another entity, CTI Demonstration Farm, was also a party to the BCA and formerly terminated its involvement in the Brownfield Cleanup Program (BCP) due to Chapter 7 bankruptcy. Robert Wilmot had not interest, or control over CTI Demonstration Farm.

7. The Brownfield Cleanup Agreement was entered into with the Department by the prior ownership of CTI Agri-Cycle LLC, without consent or input for the current ownership.

7. The site was a permitted compost facility that accepted a number of compostable wastes, particularly paper sludge and yard waste. In 2017, sampling performed by the Department found the presence of per- and polyfluoroalkyl substances (PFAS) in the paper sludge.

8. Ultimately, the site was admitted in the BCP, and a Remedial Investigation work plan was submitted and approved by the Department.

9. Sometime in 2022, CTI Agri-Cycle was sold to the individual respondent Robert Wilmot. At this time Robert Wilmot and CTI Agri-Cycle submitted an Ability to Pay form to the Department for review.

10. Pursuant to the legal authorities cited herein, the Department has incurred costs, and anticipates the need to incur additional costs, paid from the hazardous waste remedial fund for the implementation of a Remedial Program at the Site. These expenditures are authorized by and in conformance with relevant and applicable State and federal law.

11. Respondents and the Department agree that the objectives and conditions of this Order are for: (i) Respondents to pay a portion of the Department's past and future response costs at the Site from proceeds of a future sale of the Site; (ii) the termination of the Brownfield Cleanup Agreement; (iii) Respondents to grant an Environmental Easement to the Department for the Site as provided for in ECL Article 71, Title 36; (iv) the Department to release and covenant not to sue the Respondents, its members, successors, and assigns for the investigation and remediation of the Site and for the reimbursement of Site-related response costs; (v) the Department to release and covenant not to sue the Respondents for the investigation and remediation of the Site and for the reimbursement of Site related response costs whether such liabilities arise

directly or indirectly, and whether they arise out of statute, tort or contract; (vi) the Department to provide Respondents with contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and/or any other applicable federal or state law for matters addressed by this Order since Respondents has demonstrated to the Department's satisfaction that it will not have the ability to pay for the investigation and cleanup of the Site.

12. Respondents consent to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site that occurred prior to Respondents' ownership or operation of the Site; and/or (iii) an acknowledgment that such release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

13. Solely regarding the matters set forth below, Respondents hereby waive any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondents pursuant to this Order.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Site Specific Definition

Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 and/or regulations promulgated thereunder shall have the meaning assigned to them under said statute and regulations, or amendments thereto. The following items shall have the following meanings:

A. The Site: The Site subject to this Order consists of a portion of the site with the assigned number 558043. The Site subject to this order consists of approximately 73.42 acres, and is as follows:

Subject Property Description (Exhibit "A" is a map of the Site)

Tax Map/Parcel No.: 271-3-10
Street Number: 311 Belle Road, Buskirk
Owner: Agri Cycle of Washington County, Inc.

B. Effective Date: This Order will become effective when signed by the Commissioner or his designee.

C. Respondents: Respondents means CTI Agri Cycle LLC, Agri-Cycle of Washington County Inc., and Robert Wilmot. For only the purposes of the Release and Covenant Not to Sue in Section VI.A and Contribution Protection in Section VI.D,

Respondents shall also mean all principals, members, shareholders, officers, and directors of Respondents.

II. Termination of Brownfield Cleanup Agreement

A. Commencing on the Effective Date of this Order, the Brownfield Cleanup Agreement (Index No.: C558043-04-20), shall be terminated.

B. To date, a balance of \$13,495.73 for costs associated with the Brownfield Cleanup Agreement, have not been paid. This outstanding balance will be deemed paid in full upon receipt of the first payment as set forth in Section VII below.

III. Payment

A. Commencing on the Effective Date of this Order, the Respondents, their principals, agents, executors, employees, attorneys, successors, and assigns, shall refrain from using the Site, or such other property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the investigation and/or remedial measures to be performed on the Site.

B. Respondents must include a payment for past costs and anticipate future costs in the amount of fifty-five thousand dollars (\$55,000). Details on the timing of this payment are set forth in Section VII below.

IV. Appropriate Care/Cooperation

While in ownership of the Site, Respondents shall exercise appropriate care with respect to the contamination at and emanating from the Site; shall cooperate fully with the Department in its implementation of any response actions necessary to address contamination at an emanating from the Site and shall not interfere with such response actions; and Respondents, any parent company, successors and assigns, shall ensure that any development activities on the Site are in compliance with applicable local, State and federal laws and regulations, including but not limited to 6 NYCRR §§ 375-1.11 and 375-2.11.

V. Access

A. Commencing on the Effective Date of this Order, Respondents shall provide the Department and its agents, employees, contractors, and subcontractors (collectively its "Representatives") or alternatively, any Responsible Party obligated to remediate the Site, with access to the Site at all reasonable times for the purposes of performing site investigation, sampling and remedial activities. The Department and/or its Representatives shall make good faith efforts to notify Respondent or Respondent's authorized representative prior to entering the Site and, to the extent possible and reasonable, avoid interfering with business activities at the Site.

B. Subject to V.A above, the Department and its Representatives will enter the Site for the performance of work thereon for one or more of the purposes set forth in Environmental Conservation Law ("ECL") Sections 27-1309(3)-(4) and 27- 1313(8), and particularly for the purpose of conducting remedial activities at the Property. This is not a notice that the Department intends to acquire the property nor is it an offer to acquire it.

C. Subject to V.A above, Respondents will permit entry on and use of the Property by the Department and its Representatives (or any Responsible Party obligated to perform remedial work) to:

- (i) Operate work areas;
- (ii) Remove therefrom any material generated from the Department's remedial activities;
- (iii) Carry on any activity necessary for the investigation and remediation of the Property, including site management (as necessary), together with the rights at all times during the duration of this Order of ingress, egress and regress by the Department and its Representatives;
- (iv) Collection of soil, groundwater and/or soil vapor and indoor air samples; and
- (v) Perform site restoration activities, including but not limited to, placement and grading of clean backfill, replacement in kind of disturbed driveway and parking lot areas, replacement in kind of disturbed concrete sidewalks and walkways, replacement in kind of Property fencing, reseeding of disturbed areas and replacement in kind of disturbed vegetation. All areas of the Property disturbed by the Department's remedial activities will be restored to pre-existing conditions.

D. While still in ownership of the Site, Respondents shall take reasonable steps to ensure that any lessees and sublessees of the Site provide the Department and its Representatives with Site access.

VI. Environmental Easement

A. Respondents shall submit to the Department for approval, an approvable Environmental Easement ("EE") to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR § 375-1.8(h)(2) for the Site and is based on the model EE.

B. The Environmental Easement executed by Respondents shall comply with the requirements of 6 NYCRR § 375-1.8(h)(2) and DEC Program Policy DER-33/Institutional Controls: A Guide for Drafting and Recording Institutional Controls, issued December 3, 2010 ("DER-33"). A model EE is attached as Exhibit "B" to this Order.

C. Upon acceptance of the EE by the State, Respondents shall file and record the EE in compliance with ECL § 71-3605(8).

D. Within ten (10) days of recording the EE with the Washington County Clerk's Office, Respondents shall submit proof of recording to the Department.

VII. Payment

A. The fifty-five thousand dollars (\$55,000) payment required by Paragraph II above, must be made in thirty-six (36) installments. The first payment of \$20,000.00, must be delivered with Respondents' signed Order. The second payment of \$1,000.00 must be made by November 15, 2023, with subsequent payments of \$1,000.00 to be paid by the 15th of every month thereafter. These payments can be made either by (1) Electronic Fund Transfer ("EFT") to the New York State Department of Environmental Conservation account in accordance with the Department's current EFT procedures, or (2) by certified or bank check, payable to "New York State Department of Environmental Conservation" mailed to:

Kieran McCarthy, Esq.
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway – 14th Floor
Albany, NY 12233-1500

VIII. Release and Covenant Not to Sue

A. Upon the Department's receipt of Respondents' full payment pursuant to Section II and V, above, of this Order, Respondents shall not be liable to the Department upon any statutory or common law cause of action arising out of the presence of any contaminants in, on, to or emanating from the Site at any time before the effective date of this Order, provided that: (1) Respondents continue to exercise appropriate care and cooperation as required in Section III; and (b) Respondents continue to allow access as required in Section IV.

B. The terms of this release are consistent with those governing the issuance of a Certificate of Completion, including limitations, reopener provisions and extension to successors and assigns, found in 6 NYCRR § 375-2.9.

C. The liability protections set forth in this section shall extend to successors or assigns through acquisition of title to the Site and to a person who

develops or otherwise occupies the Site; provided that such persons act with due care and in good faith to adhere to the requirements of relevant institutional controls, including but not limited to a Site Management Plan and an Environmental Easement; and provided that such successor in title, lessee, or lender did not generate, arrange for, transport, or dispose, and did not cause the generation, arrangement for, transportation, or disposal of any contamination located at the Site, and did not previously own the Site.

D. Respondents shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5), and as provided in the provisions set forth in 42 U.S.C. Section 9613 (f). The matters addressed pursuant to and in accordance with this Order and agreement, as that term is used in ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5), include any and all past or future claims for response costs of removal or remedial action incurred not inconsistent with the National Contingency Plan within the meaning of CERCLA § 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), that the Department has incurred or may incur in responding to the release and/or threatened release of hazardous wastes at the Site, as well as any and all past, present, or future federal, state or common law claims, including prejudgment interest accrued thereon, that were, or could now or hereafter be, asserted by the State against Respondents arising out of or in connection with the disposal, release or threat of release of hazardous wastes at, from, or from the Site, including but not limited to any claims regarding off-site contamination that may be emanating from the Site, may have emanated from the Site or may emanate in the future from the Site, whether incurred or to be incurred by the State.

E. The Department hereby reserves all of its respective rights concerning, and such release and covenant not to sue shall not extend to, any further investigation and/or remedial action the Department deems necessary due to:

- Respondents' failure to implement this Order to the Department's reasonable satisfaction; or
- Fraud committed by Respondents in entering into or implementing this Order.

F. Additionally, the Department reserves all of its rights, and any such release and covenant not to sue shall not extend to Respondents, if Respondents cause or allow a release or a threat of release of any hazardous waste (as that term is defined at 6 NYCRR § 375-1.2[w]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than the contamination existing at or from the Site upon the effective date of this Order (the "Present Contamination").

G. Notwithstanding any other provision in this release and covenant not to sue:

- If, with respect to the Site, there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and

Spill Compensation Fund against any party, nothing in this Order shall be construed or deemed to preclude the State of New York from recovering such claim against any liable party;

- Except as provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resource damages) with respect to any part, including the Respondent.
- Nothing contained in this Order shall prejudice any of the Department's rights to take any investigatory or remedial action it deems necessary if Respondent fails to comply with this Order or if contamination other than the Present Contamination is encountered at the Site.
- Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- Nothing contained in this Order shall be construed to affect the Department's right to terminate the Order and this "Release and Covenant Not to Sue" under the terms of the Order at any time during its implementation if it is determined, after a due process proceeding, that Respondent failed to comply with the Order's terms and conditions.

H. Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that: (1) Respondent may have against anyone other than the Department, including but not limited to rights of contribution under Section 113(f)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3); and (2) the Department may have against anyone other than the Respondent.

I. Except as otherwise provided in this Order, Respondents specifically reserve all rights and defenses under applicable law respecting any assertion by the Department or other party of remedial liability and/or natural resource damages against Respondents, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, hearing, appeal and to any other due process. The existence of this Order or Respondent's compliance thereto shall not be construed as an admission of any liability, fault, wrongdoing, or breach of standard of care by Respondents and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action which shall inure to the benefit of any third party.

IX. Communications

A. All written communication required by this Consent Order shall be transmitted by United State Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from the Respondents shall be sent to:

Alexander Klein, DEC Project Manager
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233
alexander.klein@dec.ny.gov

Kieran McCarthy, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-1500
kieran.mccarthy@dec.ny.gov

2. Communication from the Department to Respondents shall be sent to:

Robert Wilmot
1078 Ash Grove Rd
Cambridge NY 12816
RobertNWilmot@hotmail.com

With a copy to:

Erika Sellar Ryan
Kelly & Sellar Ryan
18 Gray Avenue
Greenwich, NY 12834
esr@ksrp LLC.com

B. The Department and Respondents reserve the right to designate additional or different addressees for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph on in Paragraph I.

X. Termination

Should the release and covenant not to sue in Section VIII.A herein become null and void, *ab initio*, due to fraud in the execution or implementation of this Order or because the Department, after a due process proceeding, establishes that Respondents fail to materially comply with any provision of this Order, then neither this Order nor its termination shall affect any liability of Respondents to pay costs incurred by the State, except for any State costs paid through the date of the breach, including costs to

implement removal and remedial actions, interest, enforcement, and any and all other response costs, as defined in CERCLA.

XI. Miscellaneous

A. The terms of this Order, including the release from liability, shall inure to the benefit of Respondents and its members, successors, and assigns. Any change of ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondents responsibilities under this Order.

B. The Section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

C. The terms of this Order shall constitute the complete and entire agreement between the Department and the Respondents concerning the actions required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondents of their obligations to obtain formal approvals as required by this Order.

D. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13 or in regulations promulgated thereunder shall have the meaning assigned to them under such statute or regulations.

E. Respondent's obligations under this Order represent payment for or reimbursement of removal or response costs and shall not be deemed to constitute a fine or penalty.

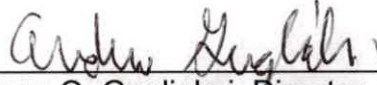
F. This Order may be executed for the convenience of the parties thereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

G. The effective date of this Order is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: 11/10/2023

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Andrew O. Guglielmi, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT
[INDEX No.]

Respondent, **CTI Agri-Cycle LLC**, hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.


CTI Agri-Cycle LLC

By [Signature]:

Name [Print]:

Title:

Date:


Robert Wilmot
Managing Member
10/31/23

Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF Washington

On the 31 day of October, in the year 23, before me, the undersigned, personally appeared Robert Wilmot, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Vicki Hunter

Notary Public

Vicki A. Hunter
Notary Public, State of New York
No. 01HU4974998
Qualified in Washington County
Commission Expires April 9, 2027

Respondent, **Agri-Cycle of Washington County**, hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

Agri-Cycle of Washington County

By [Signature]:

Name [Print]:

Title:

Date:

[Signature]
Robert Wilmot
President
10/31/23

Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF Washington

On the 31 day of October, in the year 23, before me, the undersigned, personally appeared Robert Wilmot, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Vicki Hunter

Vicki A. Hunter
Notary Public, State of New York
No. 01HU4974998
Qualified in Washington County
Commission Expires April 9, 2024


Respondent, **Robert Wilmott**, hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

Robert Wilmott

Signature:

Name [Print]:

Date:


Robert Wilmott
10/31/23

Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF Washington

On the ^m31 day of October, in the year 23, before me, the undersigned, personally appeared Robert Wilmott, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Vicki Hunter

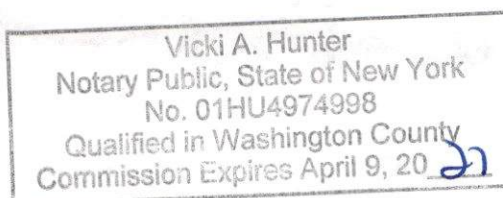
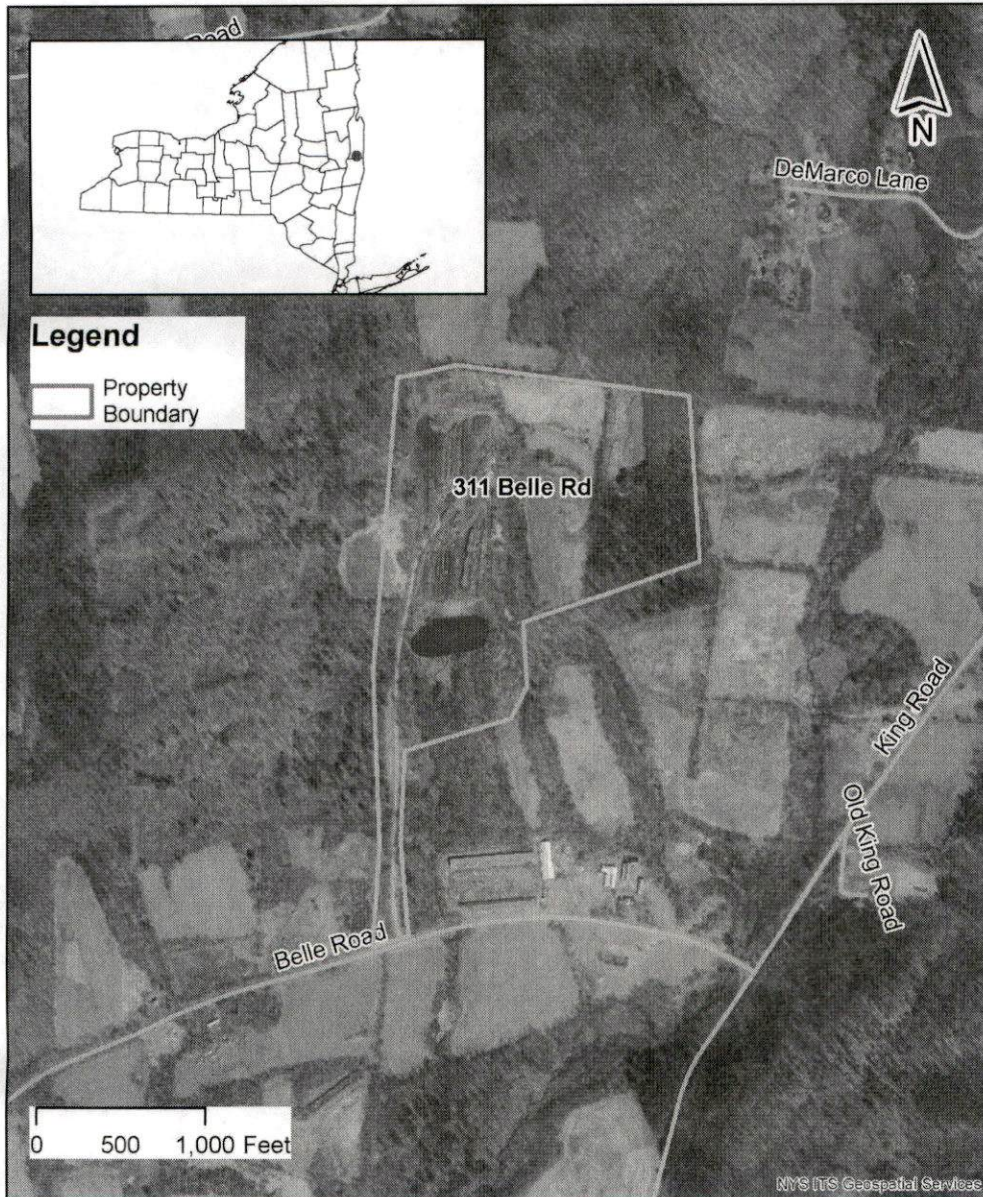


Exhibit "A"

Site Map



Department of
Environmental
Conservation



CTI Agricycle
311 Belle Road
Buskirk, Washington County
Site No. 558043

Exhibit "B"

Sample Environmental Easement