

Watershed Agricultural Council

Agriculture ♦ Forestry ♦ Conservation Easements ♦ Economic Viability

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Minutes of the WAC Easement Committee Meeting March 2, 2022

Members Present via Zoom:

Tom Hutson, Committee Chair
Dave Cammer, Committee Vice-Chair
Fred Huneke
John Riedl
Bud Gladstone
John Vickers, NYC DEP

Members Absent:

John Verhoeven

Others Present via Zoom:

Josh Gorman, Easement Program Acquisition Coordinator
Dennis Heinz, Land Conservation Stewardship Specialist
Mike Morales, Land Conservation Stewardship Specialist
Troy Bookhout, Easement Program Conservation Planner
Serena Orleski, Land Conservation Acquisition Specialist
Ryan Naatz, Executive Director
Jeff Graff, NYC DEP
Duncan Schmitt, NYC DEP
Michael Vander Werff, NYC DEP
Dudley (Lee) Harris, DOI
Karl Gockel, WAC Council Member

Public Attendees:

Paul Kaczmarczyk, NYS DOH
Nick Carbone, Delaware County Planning

1. CALL TO ORDER

Meeting Called to Order at 10:01am.

II. APPROVAL OF MINUTES

**Motion to approve the Minutes of the February 2, 2022 public meeting of the Easement Committee.*

SO 03/02/22

EC Mtg

Motion: John Riedl
Second: Bud Gladstone
Motion Carried

III. ADDITIONS/DELETIONS TO PUBLIC AGENDA

Per Josh: addition under stewardship updates, Troy will comment on Houshmand project.

IV. CHAIR'S REPORT / PROGRAM MOTIONS

Tom thanked Josh for his years of service and wished him all the best at the Nature Conservancy.

V. DISCUSSION ITEMS

1. Policy for Temporary Commercial Events and Activities

Josh presented this. Over the last several years, Staff have been trying to deal with temporary commercial events and how they fit into the template Deed of CE, in regard to agritourism events and the Tilly Foster concerts. Recently, Staff received an initial request for events (concerts) at Tilly Foster. Josh continued: I brought up the Maryland Environmental Trust (MET) policy for temporary events/commercial activities as a potential way to vet those activities and their impacts, or potential impacts. This is a unique idea that might be something WAC could or would want to develop to help process these requests. That is why we are sharing this as an idea - to see if WAC is interested in developing something similar. Tom stated: might be open to modifications. Josh: again yes, meant to be shown as an example of how EC might proceed. The MET policy is up on the LTA's Learning Center. If Committee is interested, Staff would certainly modify to WAC's mission and conservation easement terms. Bud: gave an example of being approached to hold a wedding, by non-family member for profit, outside the ADA, near pond. As he understands it, currently not allowed, but this is perhaps something that could be. Josh replied, the policy would look at identifying any conflicts and assessing whether they are de minimis in nature, how [they] affect conservation purposes. He agreed with Bud, each unique event has to be analyzed against the Deed of CE, but a lot of grey areas. For instance, temporary structures. This could provide a framework for Staff to analyze. He continued: we did pass a Waiver and Amendment Guideline in 2020; that is the tool that I forwarded to Tilly Foster. It is somewhat burdensome, however, as that guideline basically mirrors an Amendment request process. Additionally, there are mutual benefits to agritourism based activities and could be analyzed through a policy like this. Tom inquired about liability. Josh responded: that is for the landowner's consideration, this is for WAC – could these events be allowed at a small scale, if de minimis in nature and do not affect conservation purposes. John V. asked: how does the MET's Deed of CE compare to ours? Is there something that allows this kind of activity that perhaps ours does not? Josh replied: our (WAC) policy would have to be in terms of our Deed of CE; it is really looking at the grey areas of the document. For instance, temporary structures, things of that nature, or we have been talking about septic systems for over a decade and whether or not port-a-potties are allowed for temporary events. Mike stated: we are trying to do some forward thinking. Troy recently presented on the former Lenny Piper farm, with the brewery coming in, that could be similar to Tilly Foster with temporary type events occurring. Today we are exploring the idea/starting the conversation. Tailoring it to our Deed will have to occur if Committee is on board with moving forward. He

continued: we will see more and more of this as our portfolio changes hands. Tom mentioned his support for agritourism. Serena added: to expand on what Mike was referencing, this is Staff trying to come up with a better way. We know it is problematic how we have been handling events at Tilly Foster. There is also a missed opportunity, to build a better relationship with that landowner. Staff discussed how we could be attending these events and tabling to educate, for instance. We found an example of how another Land Trust is handling this situation and are asking if Committee would be interested in Staff spending some time to see if we could come up with a similar policy. She continued: as John V. stated, it would relate back to our Deed and as Josh stated it could address some of the grey areas to be a more workable solution in the future. Tom agreed. Dennis added: having guests coming to the farm, is an area that the easement falls to address. Obviously if someone is residing in the home, they are using those facilities. Guests cannot be assumed to have that same access, so have to accommodate for that. It's a shortcoming, if you want to promote these events, have to accommodate it. Group mentioned farm tours, BMP construction where OSHA requires a bathroom for crew; there are multiple reasons you may need a port-a-potty on a property. Bud inquired: temporary structures could be taken advantage of; want to make sure it is properly addressed. John V. stated that he follows this; what if something is set up in spring and doesn't come down until fall. What happens if they are doing it every weekend? Mike stated: in the policy it does limit the number of events, for instance to say no more than 10 (on an annual basis). Wouldn't be an every weekend thing. Tilly Foster, for example, does 10 concerts a season. Josh stated: the policy would set parameters that Staff are comfortable with. Perhaps a working group would develop this with Staff over time. Today's intention was just to give an example and see if EC was comfortable with exploring. Tom and Dennis: the requests do not stop and we still do not have a plan in place. Either we are for the events or not. All agreed; discussion ensued. Will keep on agenda for next month.

VI. STEWARDSHIP MOTIONS

1. PID #6156 – Emerald Isle, LLC–Right-of-Way Request

**Motion to approve the Right-of-Way request for the revised Transmission Easement as provided by the New York State Electric & Gas Corporation (NYSEG).*

Motion: John Riedl

Second: John Vickers

****Motion Denied**** (by all Committee members)

Discussion: Dennis presented a power point, reminding EC of the parameters of the proposed project. He included a history of the request and “areas of conflict,” for instance the use of pesticides. He mentioned the inclusion by NYSEG of their “Long Range Right-of-Way Management Plan” (Vegetation Management Plan) as an approved Forest Management Plan. This inclusion tacked on an additional approval, as FMPs need EC approval. “If you are to approve of the Transmission Easement request, you must first approve of the Forest Management Plan request because one is contingent upon the other.” Dennis then highlighted relevant sections from the Deed of CE (in regards to FMPs). John V. inquired if a FMP would typically be approved on a case by case basis. Dennis replied yes, then highlighted the Forest Management Plan Guideline and WAC Forestry Handbook. His presentation continued: “The handbook

outlines extensive criteria that is required in order for a FMP to meet the minimum standards for approval,” and “as presented the Vegetation Management Plan does not meet the minimum standards as outlined in WAC’s Forestry Handbook.” NYSEG is seeking an FMP approval because they are requesting to utilize pesticides on the Easement property. Dennis continued the presentation with terms to consider (from Deed of CE) and a reminder to think of the FMP request on its own merit. He ended the presentation and asked for input. Tom stated he was uncomfortable with the Vegetation Management Plan and inquired about next steps. Dennis stated, this request was first received from Mr. Merritt last year and asked, on his behalf, that EC come to some form of deliberation; that a decision be made today. John V. complimented Dennis on his logic in going through the Vegetation Management Plan as compared to the stated purpose of the CE and the requirements for forest management. He continued: quite frankly, they are at odds. We all know what they do underneath the transmission lines; they do not want a forest under the land . . . NYSEG will prevent [it] mechanically or with the use of pesticide. He doesn’t see how this transmission easement passes our Deed of CE requirements and restrictions. Bud brought up the issue of eminent domain; where we would lose control. Tom stated: he would think so, perhaps if we could restrict it to mechanical? Dennis stated, when we first met with NYSEG and identified some issues– the revision that they submitted, which included the Vegetative Management Plan as the Forest Management Plan, was not something we (Staff) were aware of until receiving documents. Otherwise, there may have been an opportunity to inform of some standards in the handbook, that opportunity never occurred. John V added: to go back to Bud’s comment, if we do deny this motion, NYSEG could very well come back through eminent domain to take this. We’ve made an investment in this property to preserve the conservation and so if it does go that path, then that it is the proper way to extinguish that investment and there is some compensation for the loss that we could invest somewhere else. Fred and Dennis also related some concern with RPA (includes some CREP area). Dennis continued: we haven’t touched that issue or potential impacts of construction; this has to happen first. Fred: so if we were to grant the ROW, it no longer would fall under the regulations of forest management but it would be ROW management? Dennis: the use area, related to terms of the CE, is not changing, regardless if you develop a ROW. The restrictions remain intact. Serena stated, to bring it back to the decision to make today: we received back from NYSEG their response to our edits to the Transmission Easement. One of the few things that we were concerned with, as a Staff, was the use of pesticides. There were also other areas of concern, where NYSEG did meet our requests. However, when it came to pesticides, their (NYSEG) response was to include a general boilerplate Vegetation Management Plan. Our Staff is concluding that is not equal to our FMP; it does not meet guidelines. We have to work with what we have in front of us. Are we comfortable with what NYSEG has presented? If the answer is no, perhaps there are repercussions/follow-up but we can’t make that call today regarding eminent domain or project NYSEG’s response. Dennis concluded: NYSEG’s plan is general in tone; the handbook states FMPs must include site specific information. Simple things, such as landowner address, are not currently present. John R. compared this to Moriarty. Dennis: stated he wanted to clarify, it is not the same. In Moriarty, a sewage treatment plant is not

contemplated in the Deed of CE; a utility easement is contemplated. That is how they are different. John R.: does see some parallels, we cannot say yes to something that is not allowed. The time has come for a vote. Bud inquired if herbicides are pesticides. John V. clarified yes. Bud: is there a grey area; if we do not find a happy medium it potentially goes to eminent domain and we lose any control. Fred agreed, and from a water quality standpoint we have lost (if goes to eminent domain). Discussion continued amongst members. Dennis stated: need to view Forest Management Plan on its own merit. We could talk to NYSEG and ask them to check all the boxes but at the end of the day is Committee comfortable with approving a FMP that clears a swath of a forest. Would that be approvable in any other circumstance? Is Committee comfortable with what will be occurring? Dave stated he agreed it is time to deny request, possibly eminent domain, and move on. Serena: perhaps today, we do not need to go there. Just need to decide upon NYSEG's response. If you chose to deny today; we can't make assumptions about the future. NYSEG may ask to again engage, not advocating for that either. Fred inquired about the acreage involved. Dennis responded, approx. 5 acres. Fred: shouldn't present much of a problem to utilize mechanical removal. Josh: to Serena and Dennis' point – those discussions might happen after this, but today what is before you does not meet standards. For today, seems we know the path forward and then we see what comes next. Dennis replied: they are able to request an action as many times as they would like. Discussion ensued: members of EC seemed open to future discussions if another request occurred but ultimately decided to vote and deny today.

VII. STEWARDSHIP UPDATES

1. PID # 6059 – Argyle Farm & Properties, LLC – Stream Work: Staff Approval

Mike presented this. In February, Easement Staff approved stream work. Collaborated with Ag Program, as it is an Ag BMP - installing a new spring water collection system. This included sub surface pipeline underneath a blue line stream (to pasture). DEC permit approval is in hand, as well.

2. PID #6160 – Ronald L. Frisbee – Forest Harvest Plan: Staff Approval

Dennis presented this. Received an email from Ron, who is a forester by trade. He developed his own Forest Harvest Plan, using our template form. Forestry Staff reviewed and it met our (WAC) standards; so that was approved. Plan is for controlling certain species (disease); not a harvest, perse.

3. PID #6106 -- John Houshmand (Cowan) – FADA update

Troy presented this. Received all the packet material for FADA siting and subdivision request. Received the amendment after packet deadline that is one of the reasons why you do not see it here today. The other reason is, it needs attorney review. Should be bringing forth next month. Serena, Mike and I reviewed; seems to be moving forward.

VIII. EXECUTIVE SESSION

None; Executive Session not needed for today's meeting.

IX. VIOLATIONS / LEGAL UPDATES

X. PROJECT ACQUISITIONS (DISCUSSION IN EXECUTIVE SESSION)

ACE Project Motions

None

FCE Project Motions

None

Updates

None

XI. DISCUSSION / OTHER BUSINESS

John V. requested an update from Michael on approving LGT services. Michael stated: Letter approved, was sent to Dave Warne for signature as the CAT-403 contract does require a higher letter of signature for legal services. Hope to have that returned ASAP.

XII. Meeting adjourned at 11:08am

Next meeting date: Wednesday, April 6, 2022 @ 10am (Location: TBD)