Minutes of the WAC Easement Committee Meeting
March 3, 2021 via Zoom

**Members Present via Zoom:**
Tom Hutson, Committee Chair
Dave Cammer, Committee Vice-Chair
Bud Gladstone
John Verhoeven
Fred Huneke
John Riedl
Jeff Graff, NYC DEP

**Members Absent:** None

**Others Present via Zoom:**
Rob Birdsall, Easement Program Stewardship Coordinator
Josh Gorman, Easement Program Acquisition Coordinator
Suzie Seymour, Easement Program Executive Assistant
Serena Orleski, Land Conservation Acquisition Specialist
Dennis Heinz, Land Conservation Stewardship Specialist
Troy Bookhout, Easement Program Conservation Planner
Arlene Weissman, NYC DEP
Duncan Schmitt, NYC DEP
Ryan Naatz, Interim Executive Director
Dave Cannata, DEP Ag Leasing
Nate Townsend, Whole Farm Planning Coordinator

**Public Attendees:**
Kristin Janke Schneider, Delaware County Planning

**I. CALL TO ORDER**
Meeting Called to Order at 10:10 am.

**II. APPROVAL OF MINUTES**

\*Motion to approve the Minutes of the February 3, 2021 public meeting of the Easement Committee.
Motion: Bud Gladstone
Second: Fred Huneke
**Motion Carried**

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III. ADDITIONS/DELETIONS TO PUBLIC AGENDA
None
Addition to Executive Agenda: DEP LAP Acquisition of properties with WFPs

IV. CHAIR'S REPORT / PROGRAM MOTIONS
Tom H. urged Committee members to read the comments from Phil Bein, Watershed Inspector General, concerning the NASEM Review.

V. DISCUSSION ITEMS
1. Town of Middletown Eminent Domain proceedings update
Rob reported that the Order was issued and the 21.7 acres are now owned by the Town of Middletown. Rob added that he’s had some correspondence with partnering agencies to try to keep lines of communication open regarding the implementation schedule and stewardship concerns along the Right of Way. The question of valuation is still unresolved. Ryan has reached out to Kevin Young on multiple occasions but we still have not received any formal correspondence from the Town of Middletown regarding compensation. He said it’s the general understanding at staff level that the valuation component takes place in Phase 2 of eminent domain proceedings. Since we don’t have an attorney to guide us through the process we’re somewhat unsure of what should be happening next. Rob added that there are very limited resources remaining in CAT487 to be able to use HH&K for this matter. Jeff responded that the CAT403 budget amendment that WAC submitted is being finalized and that there is a line item for legal services that will be funded through CAT450. He added that the next step is for WAC to submit paperwork for subcontractor approval for new legal counsel. Arlene said since this is for legal counsel and doesn’t go through the regular subcontractor, it should go through much quicker. Rob said he and Josh have been working with Wendy and the process is underway to submit the paperwork. Rob said right now we’re waiting for the Town of Middletown to present WAC with a fair market value appraisal/offer. Arlene suggested getting legal counsel in place so WAC is ready when we do receive that offer. Ryan said the most noteworthy point in the email he forwarded to Committee is that Kevin has failed to document any of this in writing. Ryan added that in their last discussion, Kevin asked that any reimbursement be contingent on WAC’s commitment to holding Mr. Moriarty harmless and thus only being reimbursed for the portion of the takings of the conservation easement. Ryan advised him that is not necessarily how the Deed reads and explained what was subject to the language within the Deed which may be a reimbursement by both the 21 acres of the conservation easement and the agreement that the Town and Mr. Moriarty struck for the purchase of the property. Ryan said he doesn’t feel it’s in good faith to ask us to waive that or to ignore certain terms and conditions of the Deed. He will provide more information when we have the 403 budget approved and obtain legal counsel.

2. NAS Stakeholder Comments
Serena gave an overview of the February 25th Stakeholder’s meeting. The clock is running on DOH’s 60-day public comment period. WAC is currently discussing if anything additional will be submitted. Dave Warne informed the group that there’s going to be some working group meetings for stakeholders on some of the more “commented on”
topics including LAP. We should be looking for invites to those meetings in the near future.

3. Commercial Camping on WAC Easements
Rob provided an update to the issue of commercial camping which we’ve permitted in the past through waivers. The Waiver Guidelines have been completed and two other draft guidelines related to this topic have been approved and are waiting to be forwarded to legal counsel when we can do so. He added that he has received three inquiries in the last two weeks and we may see another request in the next month or two. He does not see this type of recreational activity going away. He reminded Committee that late last year we postponed a request from Mark and Nancy Stoop until we had legal counsel to review the issue. Jeff asked Rob how he’s positioning these requests with landowners. Rob replied that he tells them it’s been discussed at length by our Easement Committee; the letter sent to Mark and Nancy Stoop informed them that it’s prohibited by the terms of the Easement. He also tells landowners that we have allowed them in the past through a waiver but that’s a practice that we’ve recently gotten away from. He said it puts staff in a difficult and unclear position since the EC hasn’t taken a stance one way or the other. He said since Committee approved two draft guidelines related to this issue a few months ago to forward to legal counsel, it indicates that Committee is still interested in pursuing a resolution on some level within the terms of the Easement. Rob said he will be looking for guidance from Committee as these requests are brought forward. Bud asked DEP’s opinion. Jeff responded that the opinion from Mike Sterthous is that it’s prohibited by the easement and didn’t feel that an amendment or waiver was a good option. He proposed discussing further once WAC has new legal counsel on board.

John V. asked how Yurts would be classified since people live in them year round. Rob replied that under the Ag CE it would depend on what it’s used for and whether or not there are utilities hooked up; could be a rec structure, rural enterprise or residence. It would probably be easier to handle under a Forest CE since it doesn’t address what buildings are used for. John said there are several in the area; Rob said he hasn’t seen any of these on an eased property yet.

VI. STEWARDSHIP MOTIONS
1. Conor Crickmore (PID #6003.02) – Agricultural Solar Array
✓ Motion to approve the solar array request on the Conor Crickmore conservation easement property (PID #6003.02) as described and detailed in the Memorandum dated 2/17/2021, from Stewardship Coordinator, Rob Birdsall.
Discussion: Rob presented his memo dated February 17, 2021 along with supporting documents. Staff has reviewed and this request is consistent with both the Easement and Guidelines, falling under section 4-G of the Easement for locating towers and communication devices. The solar panels will be used to supplement electricity usage and power his organic farm and greenhouses. Tom H. said he noticed the location is outside the ADA and closer to the river and asked about potential flooding. Rob replied that the location

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is a little higher ground and ideal for absorbing sunlight; the panels will be on pedestals so flood damage wouldn’t be a consideration.

Jeff pointed out that the guidelines are ~10 years old and there is no reference to section 2-A, Accessory Buildings and Improvements. He added that solar panels are not specifically called out in the Deed and suggested WAC should think about updating the Guidelines to address handling solar panels outside the ADA for a residence. The question was raised if these solar panels will be providing energy only for agricultural activities or if some of it will be going to the residence. Rob confirmed that the primary purpose of these solar panels is for providing energy to agricultural activities so DEP is ok with approving this request. Rob said he is agreeable to reviewing and updating the Guidelines. Fred asked if the solar array is partially outside the ADA; Rob replied that it will be 100% outside the ADA which is why this activity request is being brought to Committee for approval. Jeff asked if they will be charged for square footage toward the aggregate allowed outside the ADA. Rob said he has done extensive research and hasn’t found any conclusive evidence that solar panels are considered pervious or impervious so he doesn’t have a definitive answer at this time. Jeff said according to the clause in 4B, Ag Buildings and Improvements, they are an improvement or accessory to an Ag building and should be included. He added that it’s not really about whether they are pervious or impervious, but more about square footage being removed from agriculture. Rob said he’ll take photos and make calculations when the panels go in and added they should be included in an updated guidance document. Ryan suggested looking back at the EC minutes from 2014 when Committee discussed this issue relative to Tilly Foster; it was discussed that they are mounted on a post and more akin to a sign or fence post. Committee also discussed how/if we would be accounting for the square footage relative to the 5,000 square feet. Rob said that Committee previously approved a wind turbine outside the ADA on one of the Coombe easements with specific verbiage that we would not charge for this type of associated improvement. He said he’s open and flexible as to how best to handle these requests going forward.

Motion: John Riedl
Second: John Verhoeven
**Motion Carried**

2. PID #6129-00 – Rural Enterprise Request
Discussion will be in Executive session with a vote when we return to Public session.

VII. STEWARDSHIP UPDATES
1. CAT 450 5-year Review
Josh said Staff has been working to gather and analyze data and is on track to meet the deadline of March 31 to provide that data to DEP. Duncan said this is an opportunity to look at WAC’s stewardship costs for the last 5 years and develop a framework to look at costs for the next 5 years. DEP’s report is due in September; Duncan thanked Josh for collecting the WAC data and working on this to help DEP meet their deadline. Duncan added that in 5 years there will be a 10-year review with an independent consultant to look at the adequacy and efficiency of the endowment.

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John R. left the meeting at this time.

VIII. EXECUTIVE SESSION

Motion to go into Executive Session at 10:58 am to discuss Project Acquisition Motions, Acquisition Updates, Violations/Pending Litigation, and Other Business.

Motion: Dave Cammer
Second: Fred Huneke
**Motion Carried**

Kristin was moved to the “waiting room” for Executive session.

Motion at 11:56 am to go out of Executive Session

Motion: Dave Cammer
Second: Jeff Graff
**Motion Carried**

Kristin was brought back to the meeting.

PID #6129-00 – Rural Enterprise Request

Motion to approve the request to construct a new Rural Enterprise building located within the Acceptable Development Area as presented and described in the (PID #6129-00) New Rural Enterprise Structure memo dated 2-16-2021.

Motion: Dave Cammer
Second: Bud Gladstone
**Motion Carried**

IX. VIOLATIONS / LEGAL UPDATES

1. None

X. ACQUISITION PROGRAM MOTIONS

Ag Conservation Easements

None

FCE

None

XII. Meeting adjourned at 11:57 am

Next meeting date: Wednesday, April 7, 2021

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