Minutes of the WAC Easement Committee Meeting
October 6, 2021

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

Members Absent: N/A

Others Present via Zoom:
Rob Birdsall, Easement Program Stewardship Coordinator
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, Interim Executive Director
Duncan Schmitt, NYC DEP
Dave Tobias, NYC DEP
Tom Pavlesich, WAC Forestry Program Director

Public Attendees:
Morgan Tarbell, NYS DOH
Paul Kaczmarczyk, NYS DOH
Nick Carbone, Watershed Affairs

1. CALL TO ORDER
Meeting Called to Order at 10:02 am.

II. APPROVAL OF MINUTES
*Motion to approve the Minutes of the September 1, 2021 public meeting of the Easement Committee.
Motion: Bud Gladstone  
Second: Dave Cammer  
**Motion Carried**

III. ADDITIONS/DELETIONS TO PUBLIC AGENDA  
1. Easement violation summary (Executive Session) – PID 6293  
2. Easement Program Dashboard – 3rd quarter 2021  

Discussion: Rob introduced this. These were emailed to the committee yesterday. No motions associated, all are updates. Fred inquired about the Success and Challenges Report. Rob replied: it is generally for the Committee to read through, but if you have questions or comments happy to speak to it. Josh added this would be best discussed in Executive Session.

IV. CHAIR’S REPORT / PROGRAM MOTIONS  
Tom stated it is unfortunate that it is Rob’s last day and he will be missed. Rob thanked his co-workers and the Committee for the work done together. Josh commented that there no program motions.

V. DISCUSSION ITEMS  
1. CAT 450 5-year Review:  
This has been a standing agenda item; DEP working on their reporting requirements. Josh asked Duncan or Jeff if they wished to comment. Duncan stated: there is a report drafted and it is being reviewed; next step is to pass to WAC – not sure how soon that will be.

2. Phoenix, Laura (PID 6137) – Ag. Building Request  
Rob introduced this and stated it is merely for discussion. Looking to clarify some internal processes. He continued: Laura Phoenix easement; she recently had an Agricultural BMP in her Whole Farm Plan that was going to be placed on another property. Her plan has been revised to place the barnyard onto her eased property. Barnyard is off the south end of her riding arena. ADA is tight to the riding arena - 80% of the structure will be outside ADA. That is fine by the terms of the easement, however, if over 5000 sq. ft. cumulative (since we closed on the easement) the Easement Committee has to approve that. The point of this conversation is: how does EC want us to handle Agricultural BMPs when they are over 5,000 sq. ft.? The Ag Committee placed a contingency motion on this plan approval until the Easement Committee has also approved it; this is not the way we have handled this in the past. Not opposed to it but typically speaking when a BMP is planned to when it is built is usually a fair amount of time and things do change. It’s a reason for potentially not making contingency motions at Ag Committee. Rob continued: otherwise OK with approving in the planning phase. Typically we contemplate approval in the implementation phase when the technician and farmer are actually working on the design. Again no motion today. Staff are OK if you want us to plan in planning phase with the 90’ X 75’ size or we could do later when actually assigned to a technician. Dave T. asked: could the Committee see maps, since the easement is dual purpose Ag & water quality protection, which include stream and...
steam buffers and perhaps some Ag as well (like Whole Farm Planning design issues), to make a better decision. Rob replied: regardless of when a building over 5000 sq. ft. [request] is brought, there is a guideline in place and fairly stringent standards for the mapping requirements. This isn’t a request, at this time, however, the guidelines we have in place for EC approvals would require things that you are talking about. He continued: this is more of a timing issue. Planning or Implementation - which is best for the EC to contemplate these approvals? Troy stated: Dan Flaherty approached him about this project during the planning process. Dan felt the best place for water quality is where he placed it; Troy advised him of the approval process at that time. In this case Dan F. was ahead of the game. During the Ag Committee presentation, it was brought up [the easement question]. Troy said not thinking of repercussions he suggested the contingency. He continued: like Rob stated, the question is when do we want to approve it? When it is planned or when it is designed (as to be aware of any changes)? Rob stated: would like to add that Ag Program staff have been extremely diligent in communicating with the Easement team. Troy is certainly the liaison for that effort. In a typical year we coordinate with them on dozens of projects. Rob believes the guideline, for this type of Activity Request, says that we would need the final stamped design in hand in order to approve, and understand that doesn’t occur until it is up for implementation. Planning and implementation have much time between them generally speaking. Bud asked – but wouldn’t it be better for Ag Program/ planners to know if it is acceptable? Why design one thing and then EC say it doesn’t work? Rob: we do not oppose that; if we want to operate that way, we can do that. Josh: Rob is asking are we changing that process. Jeff commented: if you are just asking us for general feedback, it would seem to make sense at the planning stage to get input from Committee members to see if there are any issues/concerns and then if no objections/concerns, once designed move for final approval. Rob: Staff could come to committee with brief outline against the guidelines and we could work with planners, as needed. Fred and John R. agreed that could be beneficial. Rob added that checkpoint has been in place, with Troy being the liaison at peer review [in Ag Program] but he likes getting Committee’s eye on it. Troy will need to funnel these things to EC for discussion in the public session. Troy then again discussed specifics of Phoenix. Rob ended by stating he appreciated the feedback and direction. Tom asked if this project [Phoenix] will use up all her square footage … Troy replied yes, that is why we are here discussing an approval, but well within the guidelines for 2%.

VI. STEWARDSHIP MOTIONS

1. Michael Moriarty (PID # 6094) Stream Work Request

*Motion to approve the Michael Moriarty (PID #6094) Stream Work Request (Culvert Bridge South pipe-arch, Culvert Replacement) activity request dated September 9, 2021 as described in the staff memo and attached materials dated September 20, 2021.

Discussion: Mike presented this. Stream work is associated with a 20 ft. wide ROW which will be going to New Kingston wastewater treatment facility through easement property. Oddly the new Moriarty property line is the centerline of the stream, so the culvert bridge that he requested is just looking for approval for the southern portion still
on his property. Again, associated to the 20 ft. wide ROW taken by eminent domain for New Kingston wastewater treatment facility. Mike reminded EC that the design and map location is included in the packet. Rob added: the request meets guidelines and we would recommend this for approval. Fair to say that all parties are in agreement for WAC to process this as an activity request today. Mike stated there will be a DEC permit involved for this project that Lamont Engineers will handle.

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

VII. STEWARDSHIP UPDATES

1. Emerald Isle LLC (PID #6156) - Utility Easement

   - Dennis presented a power point (with several visual aids). *A copy of that presentation is saved in Easement Program files.* He emphasized: this is a multi-faceted project. He made clear there is no associated motion today . . . this is an update for Committee. Dennis concluded by stating staff recommends that the findings and concerns be shared with NYSEG so that all parties involved can assist in drafting a Final Transmission Easement consistent with the CE terms. He then opened the floor for questions.

   - Rob thanked Dennis for such a detailed presentation. Jeff asked Rob to share questions he previously sent. Dennis stated that while he didn’t address those specifically he did add some points throughout his presentation related to Jeff’s questions, such as: if there is language related to the conversion of a Use Area. Jeff highlighted that DEP previously had a discussion with staff. He continued: primarily, when you look at the proposed ROW and its size and the affected Use Areas, one of our concerns if you look at section 3.b (the Use Area section of the Deed of CE) it basically says the activities or uses have to be consistent with the conservation purposes and the purpose is to conserve forestland (number one). He continued: then if you go to the FCEA section it identifies the forested area as it appears on the survey. Within that surveyed forested area landowners have the right to harvest timber but what is being proposed here, when you clear-cut an area for a ROW that size, while the activity of TSI is certainly a tool for managing forest eventually the TSI will regenerate into forest. If you clear cut it and prevent regeneration, through the terms of a proposed ROW (herbicide application, maintenance), that is a different use all together. It is converted from forestry to a permanent ROW, and if the purposes of the easement is to conserve forest, obviously it would seem inconsistent with the terms generally. He continued: additionally, both the right-of-way and towers and communications clause need Grantee approval. Grantee approval has to be consistent with the conservation easement. So if you have an established forest area identified in a survey that allows for certain uses within that, this seems inconsistent generally with the overall purpose to conserve forestland. Tom P. then directly addressed some of Jeff’s previous questions. He spoke to perceptions of forestland. Young forestland is still forestland. In this situation, by clear-cutting you will allow the forestland to start its successional process over from the grassland/shrub land and maintain it in a condition of young forest. Although you are not seeing large tall trees, doesn’t mean there isn’t a forest. This area would be perpetually kept in this stage of succession. Forest
management is essentially manipulating this natural process for a goal. For instance, if looking to maximize sequestration of carbon on site you would maintain a young forest. In this case, would be manipulating the forest process to be compatible with utility line. Jeff inquired about the baseline document created at closing, which documents forestland as stated in survey. It seem the terms of the proposed utility give NYSEG the right to maintain it as ROW, not as an early successional forest. Yes landowners are allowed to engage in clear cuts and TSI to manage their forest but it seems to be a distortion to say a ROW is a way to manage early successional growth. NYSEG will maintain it for the ROW; could brushhog it and keep it clear, for instance. Inconsistent with forest conservation, it is converted to a different use. Tom stated: he reviewed DEP land use cover data (GIS) remote sensing to quantify and quality land use types in the watershed. He went and viewed other ROW corridors: DEP classifies the land use (under ROWs) as brushland, forested land (to some extend), and shrub-land. The DEP is not classifying right-of-ways as a distinct land use. They also classify these ROWs as pervious, which would indicate they are compatible for water quality. Do not necessarily agree that this is being converted to a developed land use. The ecological condition with these ROWs is consistent with forest succession. Jeff stated that is outside what we call “the four corners” of the text of the easement. That is a general analysis of land use classification. He stated, here you have to read it through the lens of the easement; challenging to apply external analysis that disregards the language of the Deed (If you read clauses for Use Areas/FCEA). Jeff continued: other consideration, the language proposed by NYSEG in the Facilities Clause lists a whole host of improvements, and the attorney indicated that buildings are not allowed, not limited to the proposed immediate construction. It grants to NYSEG the ability to put any and all, per the easement language, of those facilities/structures anywhere within the ROW for purposes of transmitting power (in the future). The inconsistencies in language of the NYSEG Transmission Easement and our Deed of CE are of concern. Fred asked: can NYSEG seize this property by eminent domain? Jeff stated: he believes they have the authority to do that, granted by the state. Fred continued: I am not sure what NYSEG’s end game is; but if important to them and they can seize it by eminent domain it would be better for all concerned (us especially) to maintain some kind of control over how they did it … if they take by eminent domain they can do whatever they want with it … better to have some control. Bud added: do not want another Moriarty situation. Jeff stated: easements are statutory, eminent domain is a superior interest in any property. Eminent domain is a process with scope and limitations and associated permits for environmental aspects. Not sure if one or the other will have better or worse environmental impacts. Not sure Grantee can overreach to adjust to that concern. Dennis stated that he agreed with Fred’s point … it is in our best interest to be involved, so that we can enact some restrictions or limitations to what NYSEG is proposing. Goal being - so we can do it in a manner more consistent with conservation purposes. Rob reminded committee that is a status update, good to hear everyone’s concerns and points. Staff are in the midst of due diligence; we are trying to navigate best we can. All of the things communicated today, NYSEG has not heard. Again, Staff recommendation: it’s a good idea to share the conflicts and concerns with NYSEG to give them the opportunity to come in compliance with the Deed of CE and then present that product to EC. The product is not final here, getting some good
direction on what we need to do to make it final. Rob stated he’s hopeful that Jeff and DEP team are open to the fact that this could come into compliance. Dennis agreed, it is our due diligence as a staff whenever we receive a request to see if it conforms to the terms of the easement. Fred commented generally on the history of the program and how that might relate to this project. John R. stated he felt Dennis provided a road map to allow the ROW that NYSEG has presented. His position is he would like to use that road map to let it happen or perhaps the next time we get together we decide to not allow it. Should not waste time. Go with the road map and approve it, but if there is a Committee Member that can’t live with that need to tell them soon, not six months from now. Bud added: differences between Moriarty and Merritt. Land use will not change in Merritt other than cutting a clear path for the power line, Moriarty was total change from agriculture to a septic system. Dave C: agreed with Fred and John; better to work with them. John V. added there should be some way to come to a compromise on the timber removal. Tom added his support. Duncan commented: Agree with 99% of what everyone is saying. He complimented Dennis for an awesome presentation. He felt the attorney guidance was low because it was so brief … it is saying to approve this, you need to be comfortable with the impacts on conservation values. Attorney is advising committee to weigh the pros and cons. Duncan continued: that is a process that needs to keep happening. Tom agreed, definitely a work in progress. Fred asked: does DEP feel that we can work something out? Jeff replied: I don’t know – the redline edit to the Transmission Easement was still highly problematic, whether or not NYSEG will modify Facilities Clause language to not project into the future such abilities to manage right-of-way is highly problematic. It is not so much a conversion of land use but rather the conservation purposes issue. Does not seem consistent with four corners of the easement. Jeff stated, for the record, express concerns about impact to conservation purposes, concerns over the facilities clause language as it stands, and details of impact to RPA … at this point do not appear to be compatible with the Deed of CE. Whether or not all those things can be addressed is to be determined. Would have to see additional revision to the Transmission Easement and so forth to be able to give a more specific answer. Rob added: no one on this call seems willing to say this is ready to be approved, but it is not ripe to deny. Therefore, we are looking to the recommendation. Dennis presentation was very good, showed where we are in the process and pointed out the concerns we have. Staff should have the opportunity to relay those to NYSEG and bring back for conversation.

VIII. EXECUTIVE SESSION
Rob reported that Nick Carbone left meeting.

❖ Motion to go into Executive Session at 11: 21 am to discuss Violations/Legal Updates, Project Acquisition Motions, Acquisition Updates, and Other Business.
   Motion: Fred Hunke
   Second: Bud Gladstone
   **Motion Carried**
Motion at 11:33 am to go out of Executive Session.
Motion: Dave Cammer
Second: John Riedl
**Motion Carried**

IX. VIOLATIONS / LEGAL UPDATES

X. ACQUISITION PROGRAM MOTIONS / UPDATES

Ag CE
None

FCE
None

Updates
Josh Gorman

XI. DISCUSSION / OTHER BUSINESS

XII. Meeting adjourned at 11:35 am
Next meeting date: Wednesday, November 3, 2021 @ 10am (Location: TBD)