STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Agricultural Lands Preservation Commission
c/o Department of Environmental Management
235 Promenade Street
Providence, RI 02908

AGRICULTURAL LANDS PRESERVATION COMMISSION
Minutes of the Thursday, June 28, 2016 meeting FINAL

COMMISION MEMBERS PRESENT: Kevin Nelson, Everett Stuart, Martha Neale, Ken Ayars, Dave Wallace, Jon Reiner

COMMISSION MEMBERS ABSENT: George Mason

STAFF: Michelle Sheehan – DEM, Lauren Farley – DEM, Attorney Susan Forcier – DEM, Joseph Bachand - NRCS

GUESTS: Attorney Christopher D'Ovidio representing Little Compton resident Brian Eliason; Attorney Nicole J. Benjamin representing Dionysus Acquisition LLC d/b/a Carolyn's Sakonnet Vineyards; Vito Buonomano, Owner of Northeast Solar & Wind Power, LLC; Jesse Robertson-Dubois, New England Director of American Farmland Trust

The meeting was called to order at 4:15 at USDA, 60 Quaker Lane, Warwick, RI by Kevin Nelson, Vice Chair.

On a motion by K. Ayars and a second by E. Stuart, the Commission voted unanimously to approve of the minutes of the meeting of 5/19/16.

On a motion by K. Ayars and a second by D. Wallace, the Commission voted unanimously to address agenda item #4 first.

Sakonnet Vineyards, Main Road, Little Compton. Potential violation of Deed to Development Rights. Review of letter from DEM legal counsel. Discussion and possible action. M. Sheehan referred to documentation received June 26th-27th and distributed to the Commission prior to the meeting. An operations plan was received from Dionysus Acquisitions, LLC for the 2016 Summer Concert series. An email was received from a Vineyard property abutter. A letter was received from Natural Resource Services, Inc. regarding a soil evaluation completed by soil scientist Edward J. Avizinis at the request of Dionysus. E. Stuart summarized the findings which stated that the USDA NRCS taxonomic classification of the soils remained unchanged. The report failed to address the bulk density of the soil related to parking practices and conservation values were not considered. Although it was reassuring that the soil classification was correct, the field examination was otherwise of little use. Commission members concurred. J. Bachand said that NRCS soil scientists will do their own investigation to determine if mitigation is needed and that the site visit will be scheduled in the next month. N. Benjamin spoke of developments since the last meeting. The Little Compton Town Council issued to Dionysus an Entertainment License valid through September 8, 2016. She referred to the soil report which stated that there was no evidence of erosion and any affected vegetation could readily be restored. Despite the issuance of the provisional license, the LC Town Council is still in need of a written statement that the entertainment activity is consistent with the terms of the DDR. N. Benjamin contended that the pergola is an agricultural building allowed in the terms

of the DDR and that the associated concerts promote the perpetual protection of the agricultural lands and are beneficial to preservation by attracting the community and ensuring the Vineyard will remain successful. E. Stuart asked if the pergola is critical for holding concerts. N. Benjamin said it was not and concerts were held on the property prior to its construction. C. D'Ovidio stated that despite Dionysus being issued a provisional license valid through September 8th, the Town Council has received no letters of affirmation from ALPC or the LCACT that the activity at the Vineyard is consistent with DDR terms. Is it possible that ALPC issue a statement to LC that to date they are unable to provide this affirmation? He contends the twice weekly concerts with hundreds of participants are not festivals or special events, allowed by the Right to Farm Act. N. Benjamin referred to an affidavit from Sakonnet Vineyards General Manager previously submitted to ALPC stating that there is a direct correlation between the concerts and sales of wine and the Vineyard is committed to the agricultural nature of the property. The issue will not be addressed by the LC Town Council again until Sept. 8 and it is her hope that an agreement can be reached that will allow ALPC to issue requested statement that the activity is consistent with the DDR. K. Nelson reviewed with Commission members the proposed letter of violation drafted in conjunction with DEM legal advice. Two violations are noted: 1.) The pergola was constructed without prior requisite ALPC approval. 2.) The primary use of the structure is not "marketing products" or "activities usually associated with the retail operation of a vineyard". The draft letter states that Dionysus has 30 days to cure the violations. Commission members discussed if the violation letter should be issued in its current version or with revisions. D. Wallace and M. Neale expressed concern about determining that concerts are not a "marketing" activity. The Commission determined the violations shall be addressed separately.

On a motion by E. Stuart and a second by K. Ayars, the Commission voted unanimously to find that Dionysus Acquistions, LLC was in violation of the terms of the DDR for failing to request prior permission of the ALPC for the construction of the bandstand.

K. Ayars spoke of both state law and Right to Farm Act cases that seek balance between activities that are primarily for agricultural use and those with ancillary uses. For discussion purposes, J. Reiner made a motion, seconded by M. Neale that Carolyn's Sakonnet Vineyards is in violation of the terms of the DDR for the actual construction of the bandstand, which is not for agricultural purposes. Discussion involved whether concerts constitute primary or accessory land use related to the specific provisions of the DDR. The DDR outlines the types of structures that are permitted on the protected Premises. Section A(1) of Exhibit A, allows for "a building to be constructed in the agricultural production area comprised of lots 8-5, 8-9, or 8-12 of the Premises, which primary use shall be marketing products produced or value added on the farm or from other activities usually associated with the retail operation of a vineyard, which building shall be subject to the approval of Grantee under Section A hereof." Secondly, Section B(2) allows for "the construction or placing of buildings, structures, or parking areas for agricultural purposes, including buildings for related retail sales…". N. Benjamin stated that Dionysus has satisfied Section C(2), "that said use, activity, structure or building shall not defeat or derogate from the intent of this covenant to provide for the perpetual protection and preservation of agricultural lands…" The term "value added" is not defined in the DDR and therefore subject to the Commission's determination of meaning. N. Benjamin believes there is a way to work with the ALPC to make structure compliant and clearly within the meaning of "agricultural purposes" and "primary use shall be marketing products…" B. Richmond stated that the LCACT offered Dionysus a route to compliance by agreeing that bandstand structure would be the one marketing building allowed in DDR. N. Benjamin stated this is not the type of building contemplated in Par. B(2). K. Nelson re-iterated that there is a finding of violation on the first issue, construction of the structure without prior permission. On the second issue the Commission is not prepared to

issue notice without additional information to be provided by Dionysus. There are two questions that need to be answered about the bandstand/pergola. One: Is it for agricultural uses and related retail sales? Two: is its primary use for marketing products and other activities usually associated with the retail operation of a vineyard? C. D'Ovidio asked to be provided additional information or documents received by ALPC seven days in advance of the next meeting.

On a motion by K. Ayars and a second by D. Wallace, the Commission voted unanimously to authorize K. Nelson to work on violation letter with DEM assistance.

Review the ALPC Alternative Energy Policy. Discussion and possible action. K. Ayars stated that the Office of Energy Resources has requested a meeting with DEM prior to ALPC voting on policy. Additionally, in an effort to build robust record on matter a representative from American Farmland Trust (AFT) was at meeting to provide input on the draft policy. M. Sheehan stated that she spoke with bond counsel, whose services are contracted by the State. They are pleased a policy is in development but cannot offer a formal opinion without a contract.

V. Buonomano on behalf of Simmons Farm asked that an updated proposal regarding the farm's solar project be heard at the next ALPC meeting. K. Nelson asked that a written request to the ALPC from the landowner be submitted prior to meeting in order for it to be added to agenda.

Jesse Robertson-Dubois of AFT spoke to the Commission regarding the work of AFT relative to alternative energy policy on protected farms. AFT is a national organization founded in 1980 and dedicated to protecting farmland, keeping farmers on the land, and promoting sound farming practices. AFT recognizes the importance of renewable energy policy in impacting all three areas of that mission and believes that solar photovoltaics have the potential to positively influence land protection efforts, support farm profitability, and improve the environmental performance of farms. But the policy details must be carefully designed to achieve all around positive outcomes. He suggests three principles should be considered by ALPC in their policy development. Solar facilities proposed primarily to support the energy needs of the farming operation should be allowed with appropriate review standards to ensure long-term compatibility with the continued use of the preserved farmland. These are accessory uses and should be treated that way. Existing permanently-protected lands should remain off-limits to new commercial solar development unless specifically allowed by the terms of the DDR. Renewable energy policy should not look to protected land as inexpensive sites for solar development. Instead should seek to leverage the predictable revenue stream from solar to achieve permanent preservation of additional farmland for dual agricultural and solar use. Regardless of whether proposed for on-farm-use or commercial electricity production, solar facilities should not displace agricultural uses on prime and important farmland soils, nor impair the capacity of the soil. Solar facilities on farmland should be designed, installed and decommissioned in a manner that protects the soils, while simultaneously accommodating continued agricultural use. This principle includes solar facilities on both preserved and unprotected farmland. In Europe and the UK it is common for sheep and other livestock to graze under solar panels and there are a few examples of cropping within solar photovoltaic systems. Local and regional efforts are also underway. The Massachusetts Department of Agriculture has issued a RFP for a special energy grant to develop and research models of dual-use solar with high-value crops. Reviewing the available research, it is clear that well-designed solar photovoltaic systems can in some cases be compatible with ongoing productive agricultural use. In adopting a policy for consideration of solar on preserved farms, the ALPC should work to treat solar consistent with other accessory farm uses. MA, CT and VT allow on-farm energy production in support of farm uses. In these cases, the programs review the proposal to minimize the impacts to prime and important soils and agricultural operations, but

consider the solar installation to be equivalent to other agricultural infrastructure. An important detail is to include review of any contracts or leases if the facility will be owned or operated by an entity other than the farm, as these can vary considerably in their specifics and impact. Review and approval of decommissioning plans is essential to ensure that any ground-mounted system doesn't permanently impair the agricultural productivity of the farm. In MA and CT, on-farm use is requires 50% or more of the energy to be consumed on-farm. Both states limit the impacted area to no more than 5% of either the total acreage or of the prime soils, and MA imposes an additional 5-acre cap. These thresholds apply to all farm infrastructure, not specifically commercial solar. In VT, on-farm use includes only facilities scaled to match the energy needs of the farm, but they have additional authority to approve larger compatible installations as "rural enterprises" as long as they do not detract from the purposes of the easement. VThas imposed a cap of the greater of 1% of the easement area or 1 acre with the authority to approve larger facilities in exceptional circumstances. In policy discussions, the cap was proposed to allow up to 2x the electrical needs of a larger dairy farm, similar in intent to the MA & and CT programs in requiring 50% on-farm use. For facilities scaled beyond the needs of the farm, VT specifically prioritizes systems that include agricultural use of the impacted land and considers an extensive array of additional resource impacts. The ALPC should maintain the bright line established by these other programs: solar is an acceptable means of renewable energy production on preserved farms when it is intended to serve the energy needs of the farm operation. As such it must be sited, constructed, operated and decommissioned in a manner that minimizes the impacts to agricultural soils and productivity, as well as other important protected resources such as viewsheds and sensitive habitats. Commercial energy development should not be sited on protected farms – any installation needs to primarily service the intent of the Deed to Development Rights and be an "auxiliary use". RI may have an opportunity to lead in developing guidance for including farmland preservation in renewable energy development on unprotected farmland. Large-scale, ground-mounted solar farms could be designed and commissioned to accommodate continued agricultural use of land otherwise at risk for more destructive forms of development. Such an approach could make partners of renewable energy advocates and agriculture, proactively securing permanent preservation of additional farmland for innovative dual agricultural and solar use.

Review of current ALPC budget: M. Sheehan provided update on current budget. The current balance remains unchanged at $2,932,167.00. $160,000 to Cesario in N. Smithfield has closed. Current project commitments are $172,000 to Andrews in Exeter, $150,000 to Rippin in N. Kingstown, $550,000 to Bailey, $185,000 to Regnier/Fletcher Road, $200,000 to Whaley Farm in South Kingstown, $1,000,000 to Adams in Exeter, $330,000 to Broadwall in Coventry, $233,333 to Hibbad in Tiverton and $200,000 to Dawson in Little Compton. Current overhead commitments (appraisals and survey) total $85,000.

Status update of farms in negotiation
Adams, Glen Rock Road, Exeter – The Nature Conservancy requested $4500K from the Champlin Foundations. Their response will likely be available before next ALPC meeting.

West Wind Farm, Reservoir Road, North Smithfield. Request to install a temporary solar array on one acre of this protected farm. Discussion and possible action. Item deferred

Simmons Farm, West Main Road, Middletown. Request to install a solar farm on 10 acres of this protected farm. Discussion and possible action. Item deferred

Harmony Farm, Saw Mill Road, Glocester. Request to subdivide a portion of this protected farm for sale to another farmer. DEM legal counsel recommended allowing request since the farm consists of two pre-existing separate lots of record. The DDR does not require the owner to convey such pre-existing lots of record together.

On a motion by M. Neale and a second by J. Reiner, the Commission voted unanimously to approve request from Harmony Farms in North Scituate to convey an existing lot of record separately from the remainder of the protected farm in accordance with DEM legal advice.

Scoring New Applications:
a. Phoenix Rising Farm, Pound Hill Road, North Smithfield – deferred (soils determination forthcoming)
b. We Ride Horse Farm, Curtis Corner Road, South Kingstown - This farm was scored by the Commission and achieved an average score of 40.

As the minimum score for acceptance into the program is 35. E. Stuart made a motion seconded by D. Wallace to accept the farm into the program. The motion passed unanimously.

Amendment policy. Update on development of the policy. M. Sheehan provided update. The policy is based on research by DEM staff and modelled after other amendment policies from land trusts around the country, many of which benefited from the advice of the Land Trust Alliance. The policy reflects the requirement by the IRS, that if tax-exempt entities would like to retain such status and to allow charitable deductions, then the conservation restriction in question must be perpetual in nature. Any amendment that threatens this perpetuity should not be allowed. A majority of the farms protected by ALPC likely involve a charitable donation by the landowner. In addition, amendments cannot confer a prohibited private benefit. An Amendment to RIGL 34-39-5 (relating to amendments of "conservation restrictions) passed during this legislative session and states that any amendment that "materially detracts" from the conservation purposes of the conservation restriction must provide a net gain in the conservation purpose for which it was intended. The ALPC draft amendment policy accounts for these legislative changes. The Commission requested time to review Amendment policy prior to adopting it.

Subdivision prohibition in the Deed to Development Rights. Discussion and possible action – M. Sheehan presented and provided sample language from other states. The Commission discussed whether to take out this provision or make optional in DDR and will continue the discussion at the next meeting.

Farmland Acquisition Program: brief update on progress with the Rules & Regulations – M. Sheehan provided update. Regulatory process is underway and public workshop is to be scheduled in July. A critical amendment passed this legislative session that was needed to prevent municipalities from purchasing the subject farmland via right of first refusal.

NRCS Agricultural Conservation Easement Program: update on program: J. Bachand provided update. Wells, Whaley and Madison are on track and should close soon. NRCS-RI hopes their successful efforts to correct defects in their files will result in larger allocations from national office in future years. This year three parcels in Warwick were funded. J. Bachand requests DEM submit documentation asking to defer one unfunded parcel for consideration in upcoming funding round.

There being no further business, on a motion by M. Neale, seconded by D. Wallace, the Commission voted unanimously to adjourn the meeting at 6:30.

Respectfully submitted by Lauren Farley