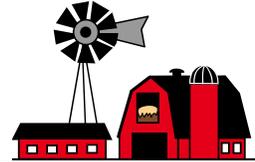




**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**  
**Agricultural Lands Preservation Commission**  
c/o Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908



**AGRICULTURAL LANDS PRESERVATION COMMISSION**

**Meeting Notice and Agenda for**  
**Thursday, September 15, 2016 at 4:00 pm**

**COMMISSION MEMBERS PRESENT:** Kevin Nelson, Everett Stuart, Martha Neale, Ken Ayars, Dianne Lynch

**COMMISSION MEMBERS ABSENT:** George Mason, Dave Wallace, Jon Reiner

**STAFF:** Michelle Sheehan – DEM, Lauren Farley – DEM, Attorney Mary Kay – DEM,

**The meeting was called to order at 4:00 at USDA, 60 Quaker Lane, Warwick, RI by Kevin Nelson, Vice Chair.**

**On a motion by M. Neale and a second by D. Lynch, the Commission voted unanimously to approve of the minutes of the meeting of 8/18/2016 with minor revisions.**

**Review of current ALPC budget:**

M. Sheehan provided update on current budget. The current balance \$3,132,167.00. Current project commitments are \$172,000 to Andrews in Exeter, \$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. Current overhead commitments (appraisals and survey) total \$85,000.

**Status update of farms in negotiation:**

- a.) Adams, Glen Rock Road, Exeter: Site visit by Champlin Foundation went well. The ALPC request for funding will be considered at their November meeting. P&S Agreement is forthcoming. Closing will likely be in late spring / early summer 2017.
- b.) Broadwall Farm, Coventry: Property is currently being surveyed. December 2016 anticipated closing.
- c.) Hibbid, Tiverton: ALPC commitment currently \$233,333.00. Project is stalled. ALPC may want to consider de-committing funding
- d.) Whaley Farm, South Kingstown: S. Kingstown led project with NRCS funding. 2016 anticipated closing.
- e.) Bailey, East Greenwich: Stalled
- f.) Regnier, North Kingstown: N. Kingstown led project with NRCS funding. 2017 anticipated closing.

**Amendment policy. Update on development of the policy. Chuck Allot from the Aquidneck Land Trust presented.**

C. Allot addressed ALPC. He has been the ED of ALT for 4 years. He was a founding member in 1990. Many conservation minded tax practitioners claim that conservation easement tax deductions are under attack by the IRS based on minor technicalities like the delayed recording of related mortgage subordinations and language in amendment clauses. Easement modifications and amendments are increasingly troublesome for the IRS. Scrutiny is based in rare instances of fraud. Detractors believe that changing terms in CEs negate their lasting effect. Supporters believe that flexibility is important for protection in perpetuity and even well-drafted documents cannot foresee changes in future circumstances. The Land Trust Alliance recommends that land trusts use amendment clauses that are consistent with the overall purpose of the CE. LTA accredited trusts are required to have a written policy on amendments. New guidance from the IRS is forthcoming. The LTA intends to engage the IRS and advocate for the right of conservation organizations to have the ability to thoughtfully amend their easements. According to the IRS, any amendment provision, regardless of the specific language used, would mean that the easement is not perpetual as required by law. It is uncertain where the IRS will end up regarding tax deductions on CE's with amendment clauses. If the power to amend CE's is going to be recognized by the IRS it will likely require that 1.) There is a legal authority reviewing the amendments and they are not solely between the two contracting parties. RIGL already requires this. 2.) There are clear rules as to which provisions may or may not be modified. These would be included in robust amendment policy. The LTA published a Manual regarding amending CE's in 2007. It will be updated in 2017. ALPC draft provisions are similar. An increase in net conservation benefit (vs inconsequential benefit) is important to ALT. Private benefit / inurement is difficult to judge. IRS is mostly concerned with insider deals in this context. If the IRS determines that an amendment creates impermissible private inurement, the IRS could revoke an organization's tax exempt status, but this is very rare. IRS has jurisdiction about private benefit even if no tax deduction was sought. ALPC may want to consider reference to its amendment policy and RIGL 34-39-5. There is no definition for "materially detract". An organization may seek a "comfort letter" from AG rather than going to court when a potential amendment is significant. The AG has issued these in the past but there is no legal requirement for them to do so and therefore no guarantee that this practice can be counted on in the future. If a CE has multiple holders, the party with the strictest policy would take precedence. ALPC members will consider the draft policy and potentially formally vote to accept it at next meeting.

**Review the ALPC Alternative Energy Policy. Discussion and possible action.**

M. Sheehan reviewed potential ALPC policy language and the policies of other states in the region. MD is the only state that allows commercial energy generation on protected farmland as a result of legislation passed in 2015. MD also requires an amendment to DDR and landowners must pay related costs. Similar provisions would need to apply in RI. ALPC is not able to craft a policy without a much more elaborate process. NJ, MA, CT, VT and NY allow some commercial generation with varying limitations. They have detailed policies regarding siting, decommissioning, transparent agreements with solar companies and board reviews. Protected farms with NRCS funding are not eligible per federal prohibition. The RI OER recommendation is in line with ALPC draft policy. RIGL Conservation Amendment legislation is a barrier to more liberal policy due to "net benefit" provision. Commission members discussed the language and provisions pertaining to incidental energy generation limitations. ALPC members will continue to consider the draft policy and take action at subsequent 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. Deferred**

**Simmons Farm, West Main Road, Middletown. Request to install a solar farm on 10 acres of this protected farm. Deferred**

**Sakonnet Vineyards, Main Road, Little Compton. Review of plans submitted by Dionysus Acquisition, LLC for the pergola. ALPC members receipt of plans. Staff will notify Sakonnet Vineyards attorneys.**

**Farmland Acquisition Program: brief update on progress with the Rules & Regulations**

Third meeting that will incorporate suggestions and thoughts generated at prior meetings will be held at a time / location to be determined.

**NRCS Agricultural Conservation Easement Program: update on program** NRCS staff did not attend meeting.

**On a motion by K. Ayars and a second by D. Lynch, the Commission voted unanimously to adjourn at 5:30.**

Respectfully submitted by Lauren Farley, DEM staff