

DRAFT MINUTES  
PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT  
COUNCIL MEETING  
MARCH 18, 2010

Room 106, DATCP  
2811 Agriculture Drive, Madison, Wisconsin

**Item #1        Call to Order: open meeting notice, roll call**

Tom Lyon called the meeting to order at 10:00 am. The meeting was properly noticed. Council members present were Kenn Buelow, Doug Caruso, Randy Craig, Laura Daniels, Mike Dummer, Patty Endres, John Koepke, Keith Langenhahn, Thomas Lyon, Dan Poulson, Deb Reinhart, and Rick Stadelman.

**Item #2        Approval of January 21<sup>st</sup>, 2010, Meeting Minutes**

The Council approved the minutes from the January 21<sup>st</sup>, 2010, meeting without changes.

**Item #3        Public Appearances**

There were no public appearances.

**Item #4        Updates**

Vicki Elkin stated that 2010 application materials are ready for release. The Department has been notified that some cooperating entities are ready to apply. The Department decided to move up the original application deadline by 6 weeks to better meet the federal Farm and Ranchland Protection Program (FRPP) deadlines. Elkin also reminded the Council that the next meeting is planned for July 15.

Lisa Schultz added that an announcement was made in the department's Working Lands newsletter and an email was sent to the distribution list regarding the opening of the PACE application period.

Elkin then updated the Council on the status of the Agricultural Enterprise Area (AEA) program. At the end of February, the department received 12 petitions totaling over 200,000 acres. Elkin also passed out map of where the proposed AEAs are located.

Schultz stated that the Department is in the process of organizing workshops for those interested in applying to the PACE program. The workshops will occur in April and early May.

Dan Poulson encouraged more communication to the public about the PACE program and the Working Lands Initiative programs in general. Rick Stadelman provided a brief update regarding the efforts of the Wisconsin Towns Association and the Department to educate local governments and landowners about the new programs.

## **Item #5 Farming with Easement**

Bob Uphoff, a hog farmer from the Town of Dunn in Dane County spoke to offer his experience with the purchase of agricultural conservation easements and farming with an easement on the land. Uphoff explained that the easement placed on his land lists permitted uses and those which are not allowed. He clarified that the easement does not require public access and does not restrict the type of agriculture that can be performed on the land.

Uphoff then proceeded to describe the easement on his farm. The easement covers 134 acres and includes a building envelope and an overall limit of impervious surface on the property. These are fairly generous and meant to allow Uphoff enough flexibility to expand his operation and adapt new technologies in the future. Uphoff said that the easement has not interfered with his operation. Instead, easements have been a real benefit because they have kept development at bay. Of the 1,000 acres Uphoff farms (most of it is rented), roughly 800 acres are under easement.

Uphoff said that the compensation that he received from the easement enabled him to expand the acreage of his farm. Other farmers in the town have used the proceeds from easement sales to pay off debt, buy new equipment or plan for their estate.

Uphoff then answered questions from the Council. Stadelman asked if development has jumped over his protected properties. Uphoff stated that this has not happened due to the Town of Dunn's strong land use plan, and that the easement is a great tool but will not stand by itself. The land use plan and the commitment by the Town to implement that plan is a big part of making the easements successful.

## **Item # 6 Jim Welsh – Summary easement terms & restrictions**

Jim Welsh from the Natural Heritage Land Trust (NHLT) presented information about agricultural easements on working lands. He provided a definition of key terms, basics of easements, and an overview of typical restrictions, rights, and responsibilities, focusing primarily on the requirements of FRPP.

Keith Langenhahn asked if the landowner must harvest timber under a Forest Management Plan. Welsh answered that in their program landowners must because they want to make sure that the timber is being managed under an approved plan. Patty Endres asked whether it was possible to remove part of the land from the easement. Welsh stated that the easement should have amendment clauses, but the easement is not intended to change, and does not have to cover the entire property. Endres asked if composting sites are allowed and Welsh stated that under the FRPP easement, the landowner could not bring materials onsite to compost unless those terms were included in the easement document. Kenn Buelow asked for clarification regarding manure digesters. Welsh stated that under FRPP, a landowner is not able to bring material in outside of the farm, but the state could develop different requirements.

Elkin stated that the state's agricultural use definition is broader than the federal definition and asked Welsh whether allowable uses have been a sticking point. Welsh stated that the easements implement by NHLT have followed FRPP requirements and that allowable uses on the farmstead should be a discussion point with the landowner.

Lyon questioned if farmers markets would be allowed. Peggie James stated that such markets could be considered a cottage industry but the FRPP easement does not typically allow more than three parking spots. Poulson expressed concern that this could be a problem for some agricultural operations, which at certain times during the year have many more than three cars on their property.

Kathy Pielsticker reminded the Council that DATCP is not obligated to follow the FRPP requirements and that potential restrictions should be thoroughly discussed and considered. An overall goal of the program should be to encourage agricultural development that adds value to commodities and other types of enterprises on or near the farm.

LUNCH

#### **Item # 7 Possible DATCP Easement terms**

Elkin presented possible easement terms to the Council that DATCP might include in the state's model easement. She asked the group if there were concerns with dividing the easement into a farmstead area and an agricultural area. The Council discussed potential size limitations on the farmstead area. Stadelman expressed concern about overly limiting the farmstead area size because flexibility might be needed in that area in the future. Deb Reinhart agreed that farmers must have enough flexibility within the farmstead area that will allow them to generate an income. John Koepke expressed some concern about how the farmstead area will be delineated around existing buildings to accommodate the changes farm buildings and practices experience with time. Mike Dummer suggested simply stating the percentage of the land that could be impervious surface but not designate an area of the land for this. Elkin responded that the state needed to be sure they were protecting the land and prime soils. Schultz added that eliminating a farmstead area could present monitoring challenges. Elkin reminded the group that the easement could designate more than one farmstead area. The Council discussed raising the potential impervious surface from the current FRPP limit. Lyon proposed making the limit 5 acres or 4% of the land. Dummer agreed that the FRPP limit should be increased. James added that landowners can apply for waivers of the FRPP 2% restriction.

The Council then discussed landowner compliance with NR 151 and ATCP 50. Schultz stated that landowners will need to have some form of conservation plan to be eligible for the program. The Council agreed that if NR 151 and ATCP 50 change over time, the landowner should be required to continue to meet these standards.

Elkin then directed the Council to consider the number of dwellings on the property. FRPP allows at least one and sometimes two in the farmstead area. Patty Endres asked

how FRPP allows dwellings for employees. James said employee housing is typically included in the farmstead area.

The Council then discussed commercial activity on eased properties. Elkin noted that the state's definition of agricultural use is broader than the FRPP program and asked whether DATCP should use Wisconsin's statutory definition. Koepke asked if the state would purchase easements on properties with existing wind turbines. Stadelman responded that in the future, the state will need to place wind turbines away from residential areas. Stadelman also expressed concerns regarding FRPP's limitations on using materials produced outside of the eased property. There are commercial aspects to biomass and other agricultural initiatives where a cooperative effort is necessary. The program should allow for cooperative, related ventures that promote working lands.

Stadelman then asked if mineral rights have presented a problem with FRPP. James stated that it had not yet been a problem with any easements she had handled. Schultz stated that under the CREP program, any claims to the property such as sold mineral rights were either bought back or subordinated. Buelow expressed concern that the mining restrictions in the FRPP easement prohibited a farmer from mining sand for livestock bedding.

Lyon asked if there was any further discussion on the possible easement terms and informed the Council of the need to finalize something in the next few weeks. Schultz added that the state was looking for recommendations that could put into the draft easement and the document could be altered in the future. Lyon stated that DATCP would send out a final draft by email and Council members could offer their reactions.

#### **Item #8      April Workshops**

Schultz stated that DATCP is planning to hold PACE workshops in several counties around the state and asked the Council to help advertise and attend a workshop if possible. Schultz said that she would email workshop details and registration information in the coming weeks.

#### **Item #9      Easement Video**

Staff screened a video on conservation easements to see if it might be appropriate to use in the workshops. Council members commented that the location and type of agriculture depicted in the video would not be relevant to the PACE program.

Lyon adjourned the meeting at 3:10 pm.

Prepared by: AV  
June 8, 2010