

RESOLUTION NO. 2015032

RE: AUTHORIZING A PERMANENT EASEMENT FROM IPE ASSET MANAGEMENT, LLC., FOR THE PROJECT IDENTIFIED AS DEGARMO ROAD (CR 43) REHABILITATION OF BRIDGES PO-17X & L-43 OVER WAPPINGERS CREEK, TOWN OF LAGRANGE, DUTCHESS COUNTY

Legislators HUTCHINGS, BOLNER, BORCHERT, MICCIO, WEISS, FARLEY, and SAGLIANO offer the following and move its adoption:

WHEREAS, the Department of Public Works has proposed the project identified as Degarmo Road (CR 43) rehabilitation of Bridges PO-17X and L-43 over the Wappingers Creek in the Town of LaGrange, Dutchess County, which project includes the acquisition and/or permanent easement of portions of certain properties, and

WHEREAS, the Department of Public Works has determined that the improvement project: (1) constitutes a Type II Action pursuant to Article 8 of the Environmental Conservation Law and Part 617 of the NYCRR ("SEQRA"), and (2) will not have a significant effect on the environment, and

WHEREAS, the Department of Public Works has made a determination that in order to improve said bridges, it is necessary to acquire a permanent easement of a portion of property presently owned by IPE Asset Management, LLC., and

WHEREAS, the acquisition of a permanent easement is a portion of parcel number 133400-6261-02-828898-0000, described as 3,189 square feet more or less as shown on Map No. 7, Parcel No. 7, a copy of which is annexed hereto, and

WHEREAS, the Agreement to Purchase Real Property (Permanent Easement) for the necessary real property is attached hereto, and

WHEREAS, the Commissioner of Public Works has recommended that the subject property, Permanent Easement, be purchased for the sum of \$861.00, plus up to \$1,000.00 for related expenses, and that the terms and conditions of the Agreements be carried forth, now, therefore, be it

RESOLVED, that the County Executive is authorized to execute the Agreement to Purchase Real Property (Permanent Easement) in substantially the form annexed hereto and all documents in connection with this acquisition, and be it further

RESOLVED, that on the submission by the property owner of an easement/deed to the aforementioned land, which shall include the terms and conditions of the Agreement to

Purchase Real Property (Permanent Easement), and such other documents as may be necessary to convey free and clear title to the County of Dutchess, that payment be made to the property owner in the sum of \$861.00 for the Permanent Easement, that the County reimburse Grantor for fees associated with the Release of Mortgage application, if any, and pay all necessary transfer tax and filing fees, and be it further

RESOLVED, that the terms and conditions of the aforementioned Agreement to Purchase Real Property (Permanent Easement) be carried out by the Dutchess County Department of Public Works.

CA-022-15

CAB/kvh/R-0941-B

1/14/15

Fiscal Impact: See attached statement

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 9th day of February, 2015, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 9th day of February, 2015.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS *(To be completed by requesting department)*

Total Current Year Cost \$ 1,861

Total Current Year Revenue \$ _____
and Source

Source of County Funds (check one): Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other (explain).

Identify Line Items(s):
H0451.5120.3008

Related Expenses: Amount \$ 1,000

Nature/Reason:
Anticipated Administrative Costs and Fees.

Anticipated Savings to County: _____

Net County Cost (this year): \$1,861
Over Five Years: _____

Additional Comments/Explanation:

This fiscal impact statement pertains to the accompanying resolution request for authorization to acquire a permanent easement to a 3,189+/- Square Foot parcel from IPE Asset Management, LLC. for a consideration of \$861.00, identified on Map 7, Parcels 7, in connection with the project identified as Degarmo Road (CR 43) Rehabilitation of Bridges PO-17X & L-43 Over Wappinger's Creek.

Related expenses in the amount of \$1,000 are included in the Total Current Year Costs.

Prepared by: Matthew W. Davis

EX. 2929

Background
2015032

ADVANCE PAYMENT AGREEMENT TO PURCHASE REAL PROPERTY
(PERMANENT EASEMENT)

Project: DEGARMO ROAD (CR43) REHABILITATION OF BRIDGES PO-17X & L-43 OVER
WAPPINGERS CREEK

Map: 7

Parcel: 7

This Advance Payment Agreement by and between IPE ASSET MANAGEMENT, LLC, hereinafter referred to as the "Seller", and the COUNTY OF DUTCHESS, hereinafter referred to as the "Buyer", pertains to that portion of real property interested required for public right of way purposes only.

1. **PROPERTY DESCRIPTION.** The Seller agrees to sell, grant, convey a Permanent Easement to a 3,189+/- square foot parcel located on the east side of CR43, DeGarmo Road, in the Town of LaGrange, Dutchess County, New York, further described as:

Being a portion of those same lands described in a deed filed in the Office of the Dutchess County Clerk for Dutchess County, New York as document number 02 2005 5768 with the address of Overlook Rd. (tax grid # 133400-6261-02-828898-0000) and being the same lands designated as Map 7, Parcel 7 on Exhibit "A" attached hereto.

2. **IMPROVEMENTS INCLUDED IN THE ACQUISITION.** The following improvements, if any, now in or on the property are included in this Advance Payment Agreement: none
3. **PURCHASE PRICE.** Whereas, the Seller and the Buyer cannot agree upon the value of the real property interest and the legal damages, the Buyer is willing to pay an amount equal to the amount determined by the Buyer to be the value of the real property interest to be acquired and the legal damages. This amount is EIGHT HUNDRED AND SIXTY-ONE DOLLARS (\$861.00). This price includes the real property interest described in Paragraph one (1) and the improvements described in Paragraph two (2), if any. The seller agrees, as a prerequisite to such advance payment, to execute and to deliver or cause the execution and delivery to the Buyer of all formal papers which the Buyer deems necessary to authorize payment and to secure to the Buyer a full release of all claims (other than the claim of the Seller) by reason of the acquisition of the aforementioned real property interest with improvements.
4. **PAYMENT.** Payment is to be made upon approval of this agreement by the Buyer after authorization by appropriate administrative and legal entities, as may be required by statute, and after Buyer has provided all papers necessary to convey clear title and release all third party claims to the advance payment proceeds.
5. **CLAIM.** Pursuant to New York State Eminent Domain Procedure Law, the Seller hereby reserves the right to file a claim with the Supreme Court, held in the judicial district where the real property is situated, or if a claim has been filed, reserves the right to prosecute said claim, it being understood, however, that any such claim shall be filed within one (1) year after title to the aforementioned real property interest is conveyed. It is agreed that, if the Supreme Court finds the value of the real property interest acquired is equal to or exceeds the advance payment amount, the amount of such advance payment shall be deducted from the amount so found by the court or, in the alternative, the award of said court shall be in the amount of the excess, if any, over and above the advance payment amount. In the event the amount so found by the court is less than the amount of said advance payment, the Buyer, upon application made to the court on at least eight days notice to the Seller, may request the difference between the award as found by

the court and the amount of said advance payment. This Paragraph 5 of this Advance Payment Agreement shall not merge into the deed and shall survive the conveyance of the aforementioned real property interest.

6. **FILING.** It is understood and agreed by and between the parties hereto, that pursuant to statute, if no claim is filed by the Seller in the Supreme Court within one (1) year after title to the aforementioned real property interest is conveyed, then, upon the expiration of that time, this Advance Payment Agreement shall automatically become a Purchase Agreement in full and complete settlement of all claims without further ratification, approval or consent by Seller and Seller shall be deemed to have released Seller's claim against the Buyer.
7. **TITLE DOCUMENTS.** Buyer will pay for and furnish to the Seller an acquisition map.
8. **MARKETABILITY OF TITLE.** Buyer shall pay for curative action, as deemed necessary by the Buyer, to insure good and valid marketable title in fee simple and/or permanent easement to the property. Such curative action is defined as the effort required to clear title, including but not limited to attending meetings, document preparation, obtaining releases and recording documents. The Seller shall cooperate with the Buyer in its effort to clear title and shall be responsible for the cost to satisfy liens and encumbrances identified by the Buyer. Said cost shall either be deducted from the amount stated in paragraph three (3) by the Buyer, or paid by the Seller out of its own funds and paid to the appropriate party.
9. **RECORDING COSTS, TRANSFER TAX & CLOSING ADJUSTMENTS.** Buyer will pay all recording fees and the real property transfer tax. The following, as applicable and as deemed appropriate by the Buyer, will be prorated and adjusted between Seller and Buy as of the date of conveyance: current taxes computed on a fiscal year basis, excluding delinquent items, interest and penalties; rent payments; current common charges or assessments.
10. **RESPONSIBILITY OF PERSONS UNDER THIS AGREEMENT; ASSIGNABILITY.** The aforesaid terms, agreements and understandings shall bind and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.
11. **ENTIRE AGREEMENT.** This Advance Payment Agreement when signed by both the Buyer and the Seller will be the record of the complete Advance Payment Agreement between the Buyer and Seller concerning the condemnation of the property. No verbal agreements or promises will be binding.
12. **NOTICES.** All notices under this Advance Payment Agreement shall be deemed delivered upon receipt. Any notices relating to this Advance Payment Agreement may be given by the attorneys for the parties.
13. **PROJECT RELATED IMPROVEMENTS.** The following improvements will occur within this permanent easement: This permanent easement is being exercised for the purpose of a work area in connection with the grading of side slopes to meet the existing ground, turf establishment, placement of temporary erosion and sediment control and for future maintenance and repair of the bridge and surrounding creek channel and embankments.
14. **ADDENDA.** The following Addenda are incorporated into this Advance Payment Agreement:
[] Temporary Easement [] Cost to Cure [] Other _____

15. CLOSING DATE AND PLACE. Transfer of title shall take place at the Dutchess County Attorney's Office, or other mutually acceptable location, or by mail, on or about March 2, 2015.
16. EXECUTION OF THIS AGREEMENT BY FAIRVIEW BLOCK AND SUPPLY COMPANY FORMERLY KNOWN AS FAIRVIEW BLOCK COMPANY AND ARTHUR ACKERT, SR. Fairview Block and Supply Company formerly known as Fairview Block Company and Arthur Ackert, Sr. disclaim any interest in the real property which is the subject of this Agreement but as accommodation to the Buyer, the County of Dutchess, consent to the conveyance of the Permanent Easement described herein by IPE Asset Management, LLC to the Buyer. This consent and execution of this Agreement, and the Permanent Easement, by Fairview Block and Supply Company formerly known as Fairview Block Company and Arthur Ackert, Sr. shall not constitute an admission of any interest in the property and cannot be introduced into evidence in the pending action between IPE Asset Management, LLC and Fairview Block and Supply Company formerly known as Fairview Block Company and Arthur Ackert, Sr. or in any other action of for any other purpose.

IN WITNESS WHEREOF, on this _____ day of _____, 2015, the parties have entered into this Advance Payment Agreement.

Seller: _____
IPE Asset Management, LLC

Buyer: _____
County of Dutchess

BY: _____

Title: _____

Fairview Block and Supply Company
f/k/a Fairview Block Company:
BY: _____

Title: _____

Arthur Ackert, Sr.

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Carol A. Bogle
Chief Assistant County Attorney

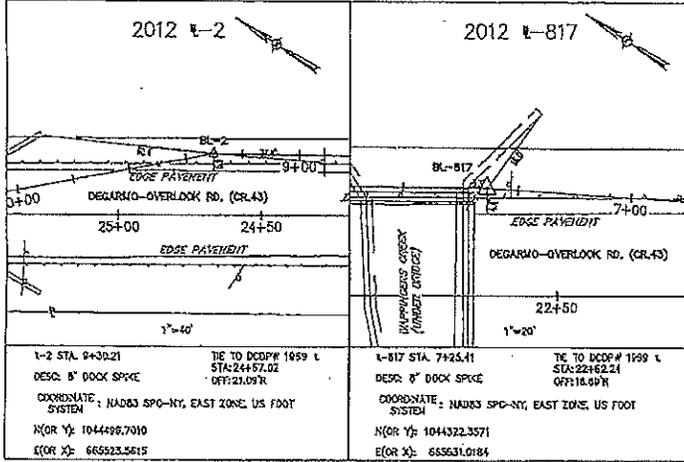
Robert H. Balkind, P.E.
Deputy Commissioner of Public Works



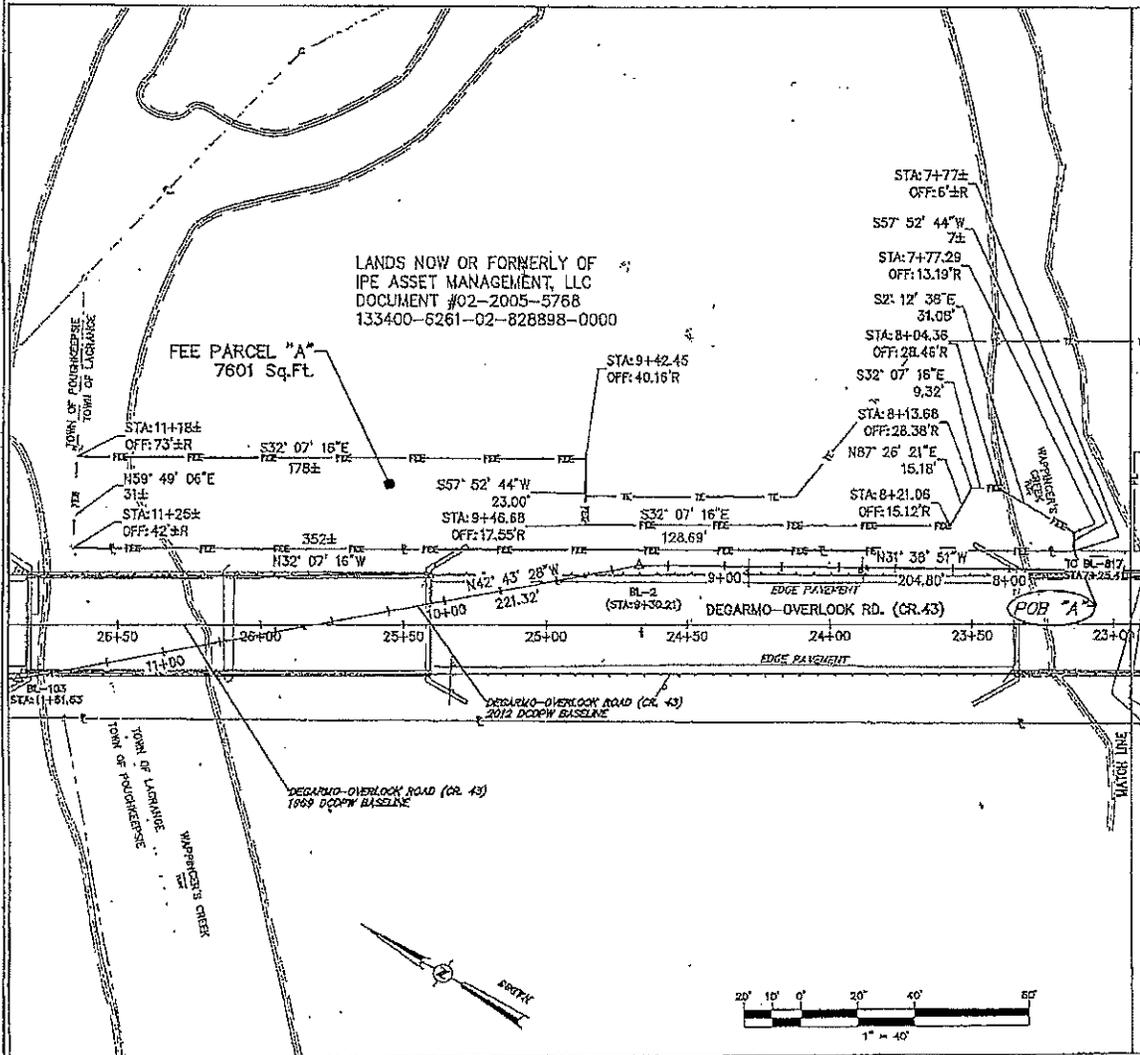
EXHIBIT A
 COUNTY OF DUTCHESS
 DEPARTMENT OF PUBLIC WORKS
 ACQUISITION MAP

MAP NO. 5
 PARCEL NO. 5A,5B
 SHEET 1 OF 3

DEGARMO RD (CR-43) REHABILITATION OF BRIDGES P017X & L-43 OVER WAPPINGERS CREEK



ACQUISITION DESCRIPTION:
 Fee Acquisition
 Portion of Real Property Tax
 Parcel ID No. 133400-6261-02-828898-0000
 Town of LaGrange
 County of Dutchess
 State of New York
 REPUTED OWNER:
 IPE Asset Management, LLC
 45 Sarah Dr
 Farmingdale NY 11735



ORIGINAL OF THIS MAP (SHEETS 1 & 2)
 ARE ON FILE AT THE OFFICES OF THE DUTCHESS
 COUNTY DEPARTMENT OF PUBLIC WORKS

MAP NUMBER 5
 REVISED DATE _____
 DATE PREPARED 08-23-2014

PREPARED BY JF

CHECKED BY MB

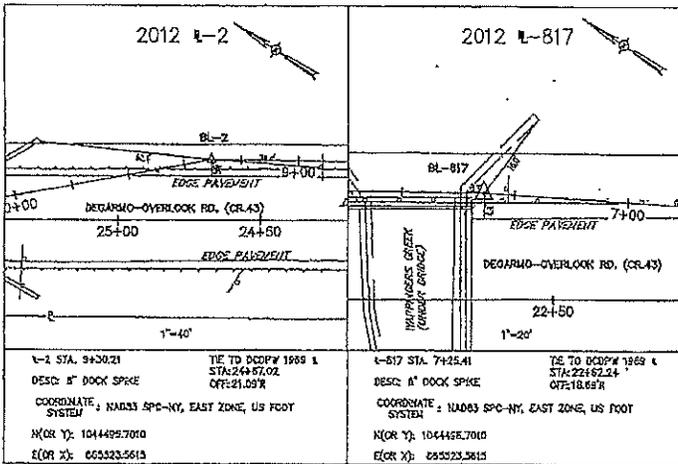
FINAL CHECK BY SJA



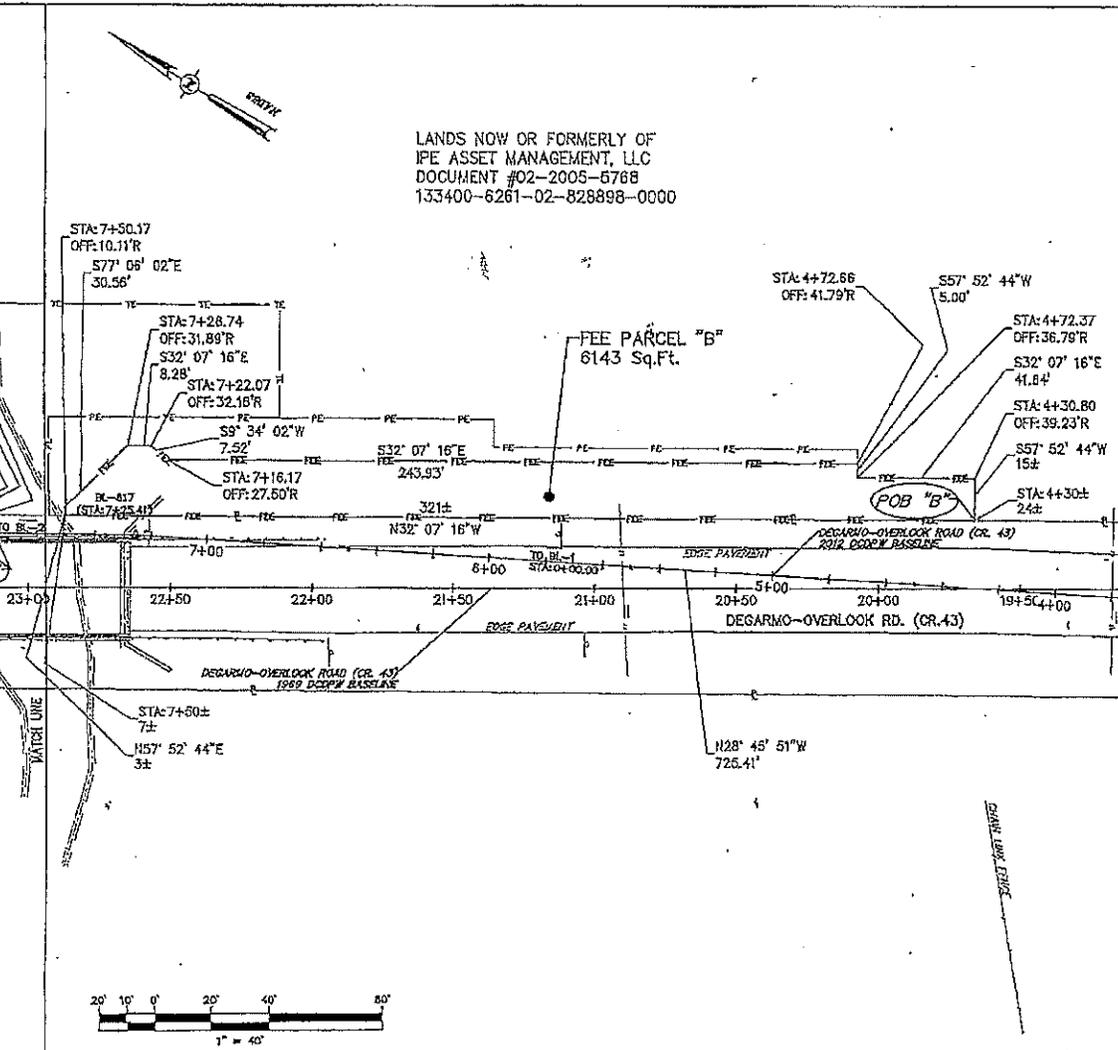
EXHIBIT A
 COUNTY OF DUTCHESS
 DEPARTMENT OF PUBLIC WORKS
 ACQUISITION MAP

MAP NO. 5
 PARCEL NO. 5A,5B
 SHEET 2 OF 3

DEGARMO RD (CR-43) REHABILITATION OF BRIDGES P017X & L-43 OVER WAPPINGERS CREEK



ACQUISITION DESCRIPTION:
 Fee Acquisition
 Portion of Real Property Tax
 Parcel ID No. 133400-6261-02-828898-0000
 Town of LaGrange
 County of Dutchess
 State of New York
 REPUTED OWNER:
 IPE Asset Management, LLC
 45 Sorah Dr
 Farmingdale NY 11735



ORIGINAL OF THIS MAP (SHEETS 1 & 2)
 ARE ON FILE AT THE OFFICES OF THE DUTCHESS
 COUNTY DEPARTMENT OF PUBLIC WORKS

MAP NUMBER 5
 REVISED DATE _____
 DATE PREPARED 05-23-2014

PREPARED BY AF

CHECKED BY JB

FINAL CHECK BY SJA



**EXHIBIT A
COUNTY OF DUTCHESS
DEPARTMENT OF PUBLIC WORKS
ACQUISITION MAP**

MAP NO. 5
PARCEL NO. 5A, 5B
SHEET 3 OF 3

DEGARMO RD (CR-43) REHABILITATION OF BRIDGES P017X & L-43 OVER WAPPINGERS CREEK

FEE PARCEL "A"

A fee acquisition to be exercised in, on and over the property above delineated and hereinafter described for the purpose of construction access, grading, installation and future maintenance of stone slope protection, drainage structures and steel sheet piling, tree removal, debris clearing and slopes in and to all that piece parcel of property designated as Parcel No. 5A, situate in the Town of LaGrange, County of Dutchess, State of New York, as shown on the accompanying map and described as follows:

BEGINNING at a point on the easterly boundary of the existing Dutchess County Rt. 43 (Degarmo-Overlook Rd.) said point also being 6± feet distant easterly, measured at right angles from station 7+77± of the hereinafter described survey baseline for the reconstruction of bridges P017X and L-43, said point also being the southwesterly corner of the herein described Fee Parcel; thence northerly along the easterly highway boundary, N 32° 07' 16" W 352± feet to a point 42± feet distant easterly, measured at right angles from station 11+26± of said baseline; thence following the centerline of the Wappingers Creek along the northerly line of the lands of IPE Asset Management, LLC, N 59° 49' 06" E 31± feet to a point being 73± feet distant easterly, measured at right angles from station 11+18± of said baseline, thence through the lands of IPE Asset Management, LLC following seven (7) courses and distances, (1) S 32° 07' 16" E 178± feet to a point 40.16 feet distant easterly, measured at right angles from station 9+42.45 of said baseline, (2) S 57° 52' 44" W 23.00 feet to a point 17.55 feet distant easterly, measured at right angles from station 9+46.68 of said baseline, (3) S 32° 07' 16" E 128.69 feet to a point 15.12 feet distant easterly, measured at right angles from station 8+21.06 of said baseline, (4) N 87° 26' 21" E 15.18 feet to a point 28.38 feet distant easterly, measured at right angles from station 8+13.68 of said baseline, (5) S 32° 07' 16" E 9.32 feet to a point 28.46 feet distant easterly, measured at right angles from station 8+04.36 of said baseline, (6) S 2° 12' 38" E 31.08 feet to a point 13.19 feet distant easterly, measured at right angles from station 7+77.29 of said baseline, (7) S 57° 52' 44" W 6± feet to the point or place of beginning.

Containing 7,601 square feet of land more or less.

FEE PARCEL "B"

A fee acquisition to be exercised in, on and over the property above delineated and hereinafter described for the purpose of construction access, grading, installation and future maintenance of stone slope protection, drainage structures and steel sheet piling, tree removal, debris clearing and slopes in and to all that piece parcel of property designated as Parcel No. 5B, situate in the Town of LaGrange, County of Dutchess, State of New York, as shown on the accompanying map and described as follows:

BEGINNING at a point on the easterly boundary of the existing Dutchess County Rt. 43 (Degarmo-Overlook Rd.), said point also being 24± feet distant easterly, measured at right angles from station 4+30± of the hereinafter described survey baseline for the reconstruction of bridges P017X and L-43, said point also being the southwesterly corner of the herein described Fee Parcel "B"; thence northerly along the easterly highway boundary, N 32° 07' 16" W 321± feet to a point 7± feet distant easterly, measured at right angles from station 7+50± of said baseline; thence the following eight (8) courses and distances through the lands of IPE Asset Management, LLC; (1) N 57° 52' 44" E 3.40 feet to a point being 10.11 feet distant easterly, measured at right angles from station 7+50.17 of said baseline, (2) S 77° 06' 02" E 30.56 feet to a point 31.89 feet distant easterly, measured at right angles from station 7+28.74 of said baseline, (3) S 32° 07' 16" E 8.28 feet to a point 32.16 feet distant easterly, measured at right angles from station 7+22.07 of said baseline, (4) S 8° 34' 02" W 7.52 feet to a point 27.50 feet distant easterly, measured at right angles from station 7+16.17 of said baseline, (5) S 32° 07' 16" E 243.93 feet to a point 41.79 feet distant easterly, measured at right angles from station 4+72.66 of said baseline, (6) S 57° 52' 44" W 5.00 feet to a point 36.79 feet distant easterly, measured at right angles from station 4+72.37 of said baseline, (7) S 32° 07' 16" E 41.64 feet to a point 39.23 feet distant easterly, measured at right angles from station 4+30.80 of said baseline and (8) S 57° 52' 44" W 15± feet to the point or place of beginning.

Containing 6,143 square feet of land more or less.

The above mentioned survey baseline is a portion of the 2012 survey baseline for the rehabilitation of bridges P017X and L-43 over Wappingers Creek, as shown on a map and plan on file in the office of Dutchess County Department of Public Works and described as follows:

Beginning at station 0+00.00; thence N 28° 45' 51" W 725.41 feet to station 7+25.41; thence N 31° 38' 51" W 204.80 feet to station 9+30.21; thence N 42° 43' 28" W 221.32 feet to station 11+51.53; thence N 34° 47' 44" W 586.34 feet to station 17+37.76.

I hereby certify that the property mapped above is necessary for this project, and the acquisition thereof is recommended.

Date Dec 15 20 14

Noel H.S. Knille, AIA, ASLA
Commissioner of Public Works

Recommended by:

Date 12/11 20 14

Robert H. Bolkind, P.E.
Deputy Commissioner of Public Works

"Unauthorized alteration of a survey map bearing a licensed land surveyor's seal is a violation of the New York State Education Law."

I hereby certify that this map is an accurate description and map made from an accurate survey, prepared under my direction.

Date May 23 20 14



STEVEN J. ALEX Land Surveyor
P.L.S. License No. 050016
THE CHAZEN COMPANIES
21 FOX ST. POUGHKEEPSIE, NY

MAP NUMBER 5
REVISED DATE _____
DATE PREPARED 05-23-2014

McKinney's Consolidated Laws of New York Annotated
Environmental Conservation Law (Refs & Annos)
Chapter 43-B. Of the Consolidated Laws (Refs & Annos)
Article 8. Environmental Quality Review (Refs & Annos)

McKinney's ECL § 8-0101

§ 8-0101. Purpose

Currentness

It is the purpose of this act¹ to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state.

Credits

(Added L.1975, c. 612, § 1.)

Notes of Decisions (197)

Footnotes

1 This Article.

McKinney's E. C. L. § 8-0101, NY ENVIR CONSER § 8-0101

Current through L.2014, chapters 1 to 550.