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September 6, 2017

Town Board
Town of East Hampton
159 Pantigo Road
East Hampton, NY 11937

Re: Vanishing Beauty
Request for Immediate Moratorium

To the Town Board:

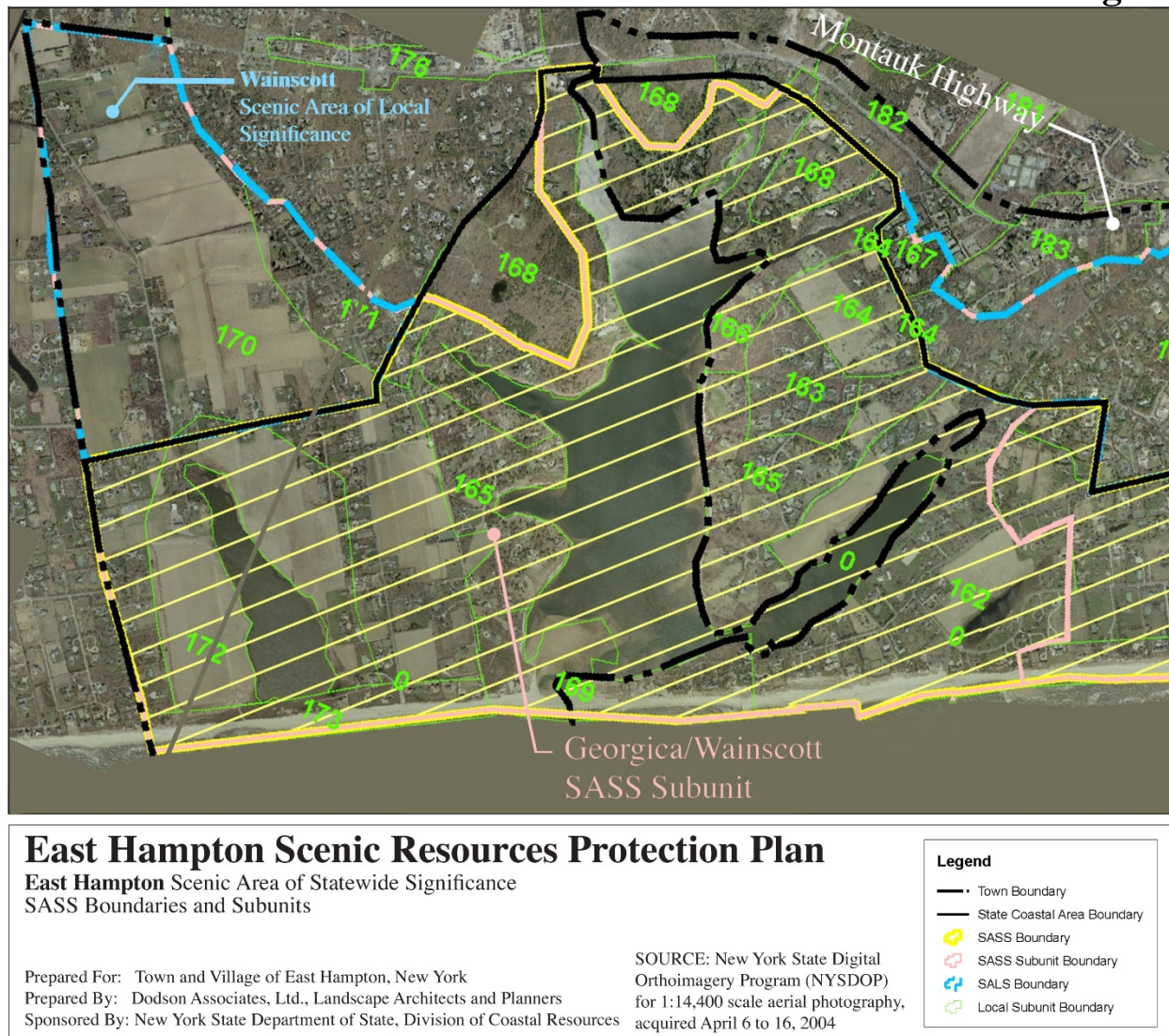
Why is the Town Board failing to protect the few remaining pastoral views in Wainscott which are under imminent threat of being lost? These rural landscapes are all located within the Agricultural Overlay which extends from Wainscott Main Street northward to Montauk Highway and from Town Line Road eastward to Sayre's Path.

This Agricultural Overlay is specifically identified within the East Hampton Scenic Resources Protection Plan (2010) as the Wainscott Scenic Area of Local Significance ("Wainscott Scenic Area"). As such, it contains scenic views of importance to the rural character of the Town of East Hampton (please see Fig A overleaf).



The Town of East Hampton Code ("Town Code") § 255-3-35, mandates that: "No lot or land wholly or partly in the Agricultural Overlay shall be subdivided, either by formal subdivision or by waiver, except as provided for in Chapter 193 of this Code".

Chapter 193 is the Open Space Preservation Law (Town Code § 193-1-15). Its purpose is to promote “the health, safety and general welfare of the people of the Town of East Hampton ... by encouraging the preservation of natural and open lands in order to achieve the ... preservation of scenic and aesthetic qualities of land, to preserve the visual amenities of open lands in the Town of East Hampton, in order to protect the rural character and scenic beauty which is the cornerstone of the town's resort economy and the essence of East Hampton's sense of place”

Fig A.

Subdivision of 55 Wainscott Hollow Road

The Town recently approved a subdivision of a property located at 55 Wainscott Hollow Road which violates both NY State Law and the East Hampton Town Code.

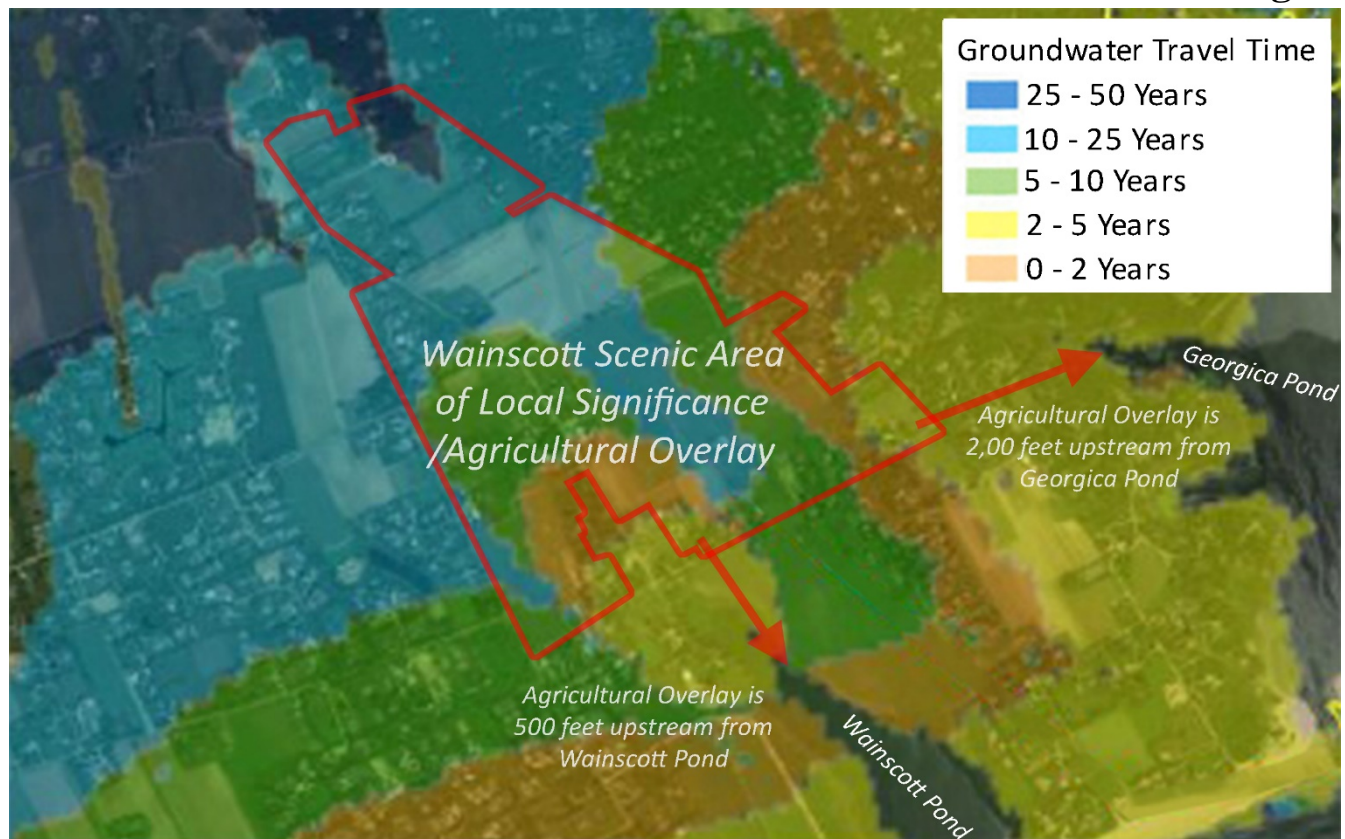
According to the NY State Environmental Quality Review Act (SEQRA), any action that adopts “changes in the allowable uses ... affecting 25 or more acres” is a Type I action (SEQR §617.4(b)(2)).

The area of the subdivision at 55 Wainscott Hollow Road is 40 acres (according to SCTM # 300-197-004-02.01). As this subdivision exceeded 25 acres, it is therefore, defined to be a Type I action under New York State Law SEQR §617.4(b)(2).

The subdivision also violates the East Hampton Town Code. Given that 55 Wainscott Hollow Road lies wholly within the Wainscott Scenic Area/Agricultural Overlay, the Town Board exceeded its authority by resolving to accept a grant of agricultural easement and subdivision of the property without sufficiently protecting the “rural character and scenic beauty” for “the people of the Town of East Hampton”. The Town instead handed one of the most beautiful scenic vistas on eastern Long Island to private developers. Please refer to my letter to the Town Board of August 14, 2017 (attached). I have not received a reply to this letter.

Furthermore, the Wainscott Scenic Area/Agricultural Overlay is just 500 feet upstream from Wainscott Pond and 2,000 feet upstream from Georgica Pond. Sections of this scenic area are also within the fastest category of groundwater travelling time (0-5 years) to both Wainscott Pond and Georgica Pond (please see Groundwater Travel Time in Fig B below).

Fig B.



Given that the Wainscott Scenic Area is within close proximity to both Wainscott Pond and Georgica Pond within the Georgica/Wainscott SASS Subunit (see Fig A) –

- 1) Why was the 55 Wainscott Hollow Road subdivision not classified as a Type-I action pursuant to both NY State Law, SEQR §617.4(b)(2) and the Town Code, §128-3-20 (1) & (3)?
- 2) Why was the applicant for the 55 Wainscott Hollow Road subdivision not required to file an Environmental Assessment Form pursuant to SEQR §617.6 (a)(2) and the Town Code §128-3-20 (1)?
- 3) Why did the Town not consider whether the Applicant is required to submit a full Environmental Impact Statement (EIS) pursuant to SEQR §617.7 and the Town code §128-2-30 A?

Other Grants of Easements/Reserves

Within the Wainscott Scenic Area, there are fourteen reserve easements comprising approximately 142 acres (53%) of the total land area (please see table overleaf). These reserve easements were entered into for the specific purpose of preserving rights to “open space”, “open areas” or “open lands” in accordance with authority granted the Town under N.Y. General Municipal Law § 247. Where the space is closed, §247 does not apply and if the Town granted an easement in such case, it unlawfully exceeded its authority.

Of these reserves, only 41% remain “open” such that the public can appreciate the scenic beauty of how East Hampton once looked only a few decades ago. These pastoral vistas offer some of the most magnificent streetscapes and rural views on eastern long Island.

Surveys & Suffolk County Tax Maps			
Description	SCTM #	Type of Preservation	Acreage
3720 Montauk Hwy	300-196-1-08.13	Reserve Area	1.8
4 Sayre's Path	300-196-1-08.12	Recreational Reserve Area	2.3
11 Town Line Rd (A)	300-196-1-08.11	Agricultural Reserve Area	14.2
11 Town Line Rd (B)	300-196-1-11.06	Agricultural Reserve Area	3.1
11 Town Line Rd (C)	300-196-1-11.07	Agricultural Reserve Area	3.1
55 Wainscott Hollow Rd	300-197-4-02.01	Agricultural Reserve Area	28.1
65 Wainscott Hollow Rd	300-200-1-01.00	Peconic Land Trust Conservation Easement	4.4
97 Wainscott Hollow Rd	300-200-1-09.04	County of Suffolk Development Rights	17.7
Wainscott Main St	300-200-1-15.09	Reserve Area "B"	24.1
31 Wainscott Main St	300-200-1-04.01	East Hampton Town Conservation Easement	15.3
7 Osborn Farm Lane	300-197-4-12.00	County of Suffolk Development Rights	12.2
55 Town Line Road	300-199-1-01.05	Scenic Easement (50-foot wide)	1.0
55 Town Line Road	300-199-1-01.05	Agricultural Easement "A" & "B"	11.1
63, 67 & 71 Town Line Rd	300-200-1-03.06	Agricultural Reserve Area	3.8
Number of reserves: 14		Total Acreage	142.1
Reserve / Overlay: 53%		Total Acreage of Agricultural Overlay	270.0

These picturesque sightlines of the remaining rural vistas on eastern Long Island are worth preserving.



The Town, however, has permitted the once-common pastoral reserves to be enclosed for private purposes. The majority of the reserves have been privatized within the Wainscott Scenic Area. Where closed reserve easements have been granted by the Town, the Town has acted *ultra vires*. Where reserve easements were enclosed for private use regardless to the grant of easement, the owner is contravening the grant of easement which was entered into for public benefit.

The map overleaf (Fig C), shows the rural vistas within the Wainscott Scenic Area that are currently closed to public view. In all, 59% of once-open pastoral landscape is now closed.

The Double-Hedge

One such rural vista that has been closed contrary to its Grant of Agricultural Easement (1984), for example, is 55 Town Line Road, Easement “B” (SCTM # 300-199-01-01.05).

To eliminate the public view of Easement “B”, a twenty-foot double hedge of privet and cypress has been permitted despite the Town being notified in writing by the Wainscott Citizens’ Advisory Committee (WCAC) in April 2016. The Grant of Agricultural Easement requires that the “use and development ... forever be restricted to ... agricultural operations and activities ... designed and intended to promote and enhance open, undeveloped land.

Fig C.



It is difficult to argue when looking at a twenty-foot tall wall of impenetrable foliage behind which lies an easement that has been closed-off to public view, that the hedge is designed to “enhance open” space (please see Fig D below).

Fig D.



It is staggering, therefore, that we are soon to lose over half of the remaining rural vistas within the next twelve to eighteen months.

When taking into account recently approved plans and plans currently under consideration by the Town, eighty percent (80%) of the once-open rural vistas will be closed-off to public view.

Where the Town has allowed for most of the reserve easements within Wainscott to be shrouded by ever taller hedges of privet or cypress, there is no doubt that it is favoring private interests contrary to the public interest. Public resources and tax dollars are being spent by the Town for private benefit – not for public benefit.

How possibly can the “rural character and scenic beauty” of Wainscott be protected for “the people of the Town of East Hampton”, when the Town permits the systematic theft of rural landscapes of scenic beauty?

If current planning is allowed to proceed, more “open” rural vistas will be closed to public view, thereby cutting-off the people of East Hampton from seeing 80% of the rural vistas. The map below (Fig E), shows the number of rural vistas that soon will be closed-off to public view.

Should the Town continue to ignore New York State Law (SEQR §617), the Town Code, and allow breaches of easements, there will remain just one rural vista open to the public (marked 4 in Fig E overleaf).

Fig E.



The Privet Farm

A further example of a scenic easement which may be lost to public view is the Agricultural, Scenic and Conservation Easement (dated August 1, 2007 “Hand Easement”), located at the northeast corner of Wainscott Main Street and Town Line Road. On January 6, 2017, an application was filed with the ARB for a deer fence. Although the ARB approved “an 8 ft black metal fence”, the applicant is instead installing a deer fence with pressured-treated wooden poles. Of greater concern, however, is that the application states that the applicant is “proposing a privet farm.”

If a “privet farm” is permitted to grow privet tall enough to obscure the scenic view, the farm would be in contravention of the Hand Easement which stipulates that “no ... vegetative screening shall be ... installed within the perimeters of the Agricultural Easement described herein” [emphasis added] (paragraph 2.(c)(B)(ii)).

Furthermore, the Hand Easement requires that the “use and development ... shall forever be restricted to ... agricultural operations ... as designed and intended to promote and enhance open, undeveloped land (paragraph 2.(a)(i)).

Finally, if large privet was systematically removed for transplanting with its necessary root-ball intact, this would constitute a prohibited “repeated removal of topsoil from the burdened premises” (Hand Easement, paragraph 2.(b)(iv)). If substantial amounts of soil were to be permitted to leave the property, future conventional farming will be compromised.

Conservation Laws Ignored & Public Denied Information

Finally, there is an easement for enhanced rights currently under consideration by East Hampton Town. This easement relates to two properties located at 7 Osborn Farm Lane and 97 Wainscott Hollow Road (SCTM # 300-197-04-12.00 and SCTM # 300-200-01-09.04 collectively “Dankowski Properties”). Both these properties are within the Wainscott Scenic Area/Agricultural Overlay (please see Fig A & E). The combined area of Dankowski Properties is 29.9 acres (per the Suffolk County Tax Maps).

As is the case with the illegal subdivision of the property at 55 Wainscott Hollow Road, according to the NY State Environmental Quality Review Act (SEQRA), any action that adopts “changes in the allowable uses ... affecting 25 or more acres” is a Type I action (SEQR §617.4(b)(2)).

As the proposed purchase of enhanced rights for the Dankowski Properties exceeds 25 acres, it is therefore, defined to be a Type I action.

The Dankowski Properties are also within close proximity to Wainscott Pond and Georgica Pond within the Georgica/Wainscott SASS Subunit (please see Fig A) and are required, therefore, to be classified as a Type-I action pursuant to the Town Code §128-3-20 (1) & (3).

A full Environmental Assessment Form (EAF) is also required to be filed so that due consideration may be given as to the applicability of an Environmental Impact Statement (pursuant to the Town Code §128 & SEQR §617.

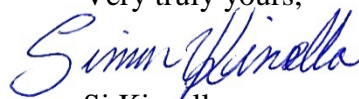
It was noted at the public hearing (on July 20, 2017) that neither soil nor well-water samples taken from the Dankowski Properties were tested. Testing is standard practice.

Furthermore, the Town intentionally withheld pertinent information from the public. A public hearing was convened on July 20, 2017. The subject of the public hearing was the acquisition of enhanced rights for the Dankowski Properties by the Community Preservation Fund.

At no time was a draft or detailed outline of the enhanced rights disclosed to the public nor was there any disclosure of how, if at all materially, these enhanced rights differ from the Deed of Development Rights (dated March 15, 1983) which had been bought previously for the same property. The public was not informed, therefore, and could not comment substantially on the proposed \$4 million purchase of rights which were similar to ones that had already been purchased. It is impossible for there have been a legal public hearing on the acquisition of enhanced rights, therefore, without disclosure of those enhanced rights.

To preserve what little is left of the rural vistas and scenic beauty on eastern Long Island, I respectfully request that the Town impose a moratorium on development within the Wainscott Scenic Area/Agricultural Overlay until such time that the rural character and heritage of Wainscott can be preserved for future generations.

Very truly yours,



Si Kinsella

c/c: Larry Cantwell, Supervisor
 Peter Van Scoyoc, Deputy Supervisor
 Kathee Burke-Gonzalez
 Sylvia Overby
 Fred Overton
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 159 Pantigo Road
 East Hampton, NY 11937

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Residents of Wainscott Pond
 The Georgica Association
 Wainscott Citizens' Advisory Committee (WCAC)

Trustee Rick Drew, East Hampton Town Trustees
 Executive Director Sara Davison, Friends of Georgica Pond Foundation, Inc.
 Professor Christopher J. Gobler, Ph.D., Stony Brook University
 Executive Director Nancy Kelley, The Nature Conservancy, Long Island Chapter
 New York State Assemblyman Fred W. Thiele, Jr.
 Senator Thomas F. O'Mara, Chair, Environmental Conservation Committee
 Senator Brad Hoylman, Environmental Conservation Committee
 Commissioner Basil Seggos, Department of Environmental Conservation
 Editor David E. Rattray, The East Hampton Star

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August 14, 2017

Town Board
Town of East Hampton
159 Pantigo Road
East Hampton, NY 11937

Re: Agricultural Conservation Easement for
55 Wainscott Hollow Road

To the Town Board:

I received an email on August 11 from a Town Board member with regard to the property located at 55 Wainscott Hollow Road (“Property”). It reads – “The proposed lot layout leaves roughly 450 ft. of unobstructed viewshed at the center of the lot. Therefore the Board does not feel that the public vista will be compromised by the subdivision.” This is deceptive as it is untrue.

Of the 450-foot viewshed, approximately 200 feet is currently obstructed to such an extent that the public cannot see the scenic rural viewshed from Wainscott Hollow Road (please see Appendix A, B and C). Furthermore, the Grant of Agricultural Easement (“Easement”) does not require that existing visual obstructions be removed. Although the subdivision plan states that the existing structures are to be removed, it remains silent as to the other visual obstructions, but regardless, the subdivision plan is not a part of the Easement and the Applicant is not bound by the subdivision plan as it is by the Easement. The Easement also expressly permits new construction of agricultural buildings and other visual obstructions, such as hedges, that would obscure the viewshed from public sight.

After subtracting the 200 feet of currently obstructed viewshed from the length of the boundary line along Wainscott Hollow Road, there remains 1,010 feet which is currently a publicly open scenic viewshed (see Appendix D). If the Easement is permitted to go ahead, three houses will be built along the Wainscott Hollow Road boundary line, thereby reducing the total open space to just 250 feet – or less than 5% of the Property’s total boundary line – and even this is legally permitted to be hidden from public view pursuant to the Easement.

Where the Easement permits the Applicant to completely deny the public from viewing the scenic vista, it is egregious for the Board to maintain that it does not “feel that the public vista will be compromised...”

For the Town to exercise the authority granted it under §247 to acquire the Easement, it is first necessary that the acquisition be of rights to “open space”, “open areas” or “open lands”. Where the space is not “open”, but materially hidden from public view as is the case here, §247 does not apply.

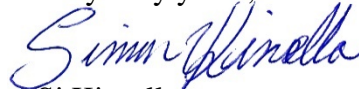
The purpose of this Easement is effectively a private one, exclusively for the seven properties which are part of the same development and the few properties immediately adjacent to the “burdened premises”. The benefit is a private one, not a public one.

The Easement fails to protect the public interest in preserving one of the last remaining scenic vistas of rural beauty in Wainscott (see Appendix D), and is contrary to the public interest insofar as it permits the entire scenic rural vista of the Property to be hidden from public view. The Easement, for example, conspicuously fails to prohibit hedges, of which some within Wainscott are over 20 feet tall. Such hedges completely sever the public from the scenic vista thereby substantially diminishing the rural character of Wainscott and causing irreparable harm to the Wainscott community (see Appendix F).

Finally, paragraph 3(D) on page 7 of the Easement is an agglomeration of words without a discernable subject or predicate, and therefore, cannot constitute part of a legal instrument in New York State.

Seeing as the Board has not signed the Grant of Agricultural Conservation Easement and does not have authority pursuant to §247 of the New York State General Municipal Law to sign the Grant of Agricultural Conservation Easement, I respectfully submit that the Board cannot proceed with the Grant of Agricultural Conservation Easement in its current form.

Very truly yours,


Si Kinsella

c/c: Larry Cantwell, Supervisor
Peter Van Scoyoc, Deputy Supervisor
Kathie Burke-Gonzalez, Board Member
Sylvia Overby, Board Member
Fred Overton, Board Member
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Wainscott Citizens' Advisory Committee (WCAC)
Environmental Sub-Committee (ESC)







