



**Land for Maine's Future Program**

Minutes of the Meeting

**October 25, 2016**

32 Blossom Lane, Marquardt Building, Room 118

Augusta, Maine

**Board Members Present:**

Neil Piper, Fred Bucklin, Brad Moll, Robert Meyers, Lisa Turner, Commissioner Walter Whitcomb, and Commissioner Chandler Woodcock (Acting Chair)

**Board Members Absent:**

Commissioner Patrick Keliher (Chair) and Harry Ricker

**Staff Members Present:**

Sarah Demers, R. Collin Therrien, and Tom Miragliuolo

**Others:**

Lisa St. Hilaire, Maine Department of Agriculture, Conservation & Forestry

Bob Marvinney, Maine Department of Agriculture, Conservation & Forestry

Rob Wood, The Nature Conservancy

Laurie Rowe, Maine Department of Transportation

Rhobe Moulton, Maine Department of Transportation

Bethany Atkins, Maine Department of Inland Fisheries & Wildlife

Ryan Robicheau, Maine Department of Inland Fisheries and Wildlife

Jeff Romano, Maine Coast Heritage Trust

Theresa Kerchner, Kennebec Land Trust

Sue Bell, Kennebec Land Trust

Eliza Donoghue, NRCM

Jesse Studley, Legacy Appraisal Services

Kevin Miller, Portland Press Herald

Jim Norris, Small Woodlot Owners Association of Maine

- 1) **Welcome and Introductions** - Acting Chairman, Commissioner Chandler Woodcock called the meeting to order, noted Chairman Keliher was absent and that he was asked to chair the meeting.
- 2) **Minutes** – *Motion*: A motion was made by Neil Piper and seconded by Brad Moll to accept without objections the September 13, 2016 Minutes of the Meeting. Board vote was unanimous.
- 3) **Bond Balances** - Sarah noted that LMF's balance of remaining P.L. 2007 funds will be directed to Maine Natural Areas Program's completion of post-acquisition inventories for LMF's

completed round 6 and round 7 projects as per statute. Sarah presented and explained the status of bond fund balances as summarized in the following tables.

| <b>Status of Funds</b>                  |                         |                      |
|---|-------------------------|----------------------|
| ATTACHMENT A                            |                         |                      |
| As of September 30, 2016                |                         |                      |
| <b>Authorized</b>                       | <b>Bonds to be Sold</b> | <b>Cash on Hand*</b> |
| PL 2007, Ch. 39<br>C&R and Farmland     | \$0                     | \$7,658              |
| <hr/>                                   |                         |                      |
| PL 2009, CH. 645                        |                         |                      |
| C&R                                     | \$3,250,000             | \$2,454,551          |
| Farmland                                | \$0                     | \$ 387,693           |
| Working Waterfront                      | \$0                     | \$ 277,238           |
| <b>Funds Remaining</b>                  | <b>\$3,250,000</b>      | <b>\$3,119,482</b>   |
| <hr/>                                   |                         |                      |
| PL 2011, Ch. 696<br>C&R, Farmland, WWF  | \$3,000,000             | \$500,000            |
| <hr/>                                   |                         |                      |
| <b>Funds Remaining</b>                  | <b>\$6,250,000</b>      | <b>\$3,627,050</b>   |
| <hr/>                                   |                         |                      |
| *Subject to end of month reconciliation |                         |                      |

4) **Project Allocations & Status**

(Note: these are funds that have been allocated to active projects.)

| <b>Project Allocations &amp; Status</b> |    |                    |
|---|----|--------------------|
| <b>Active Projects</b>                  |    | <b>Allocations</b> |
| C&R                                     | 16 | \$4,197,375        |
| Water Access                            | 3  | \$ 235,000         |
| Working Waterfront                      | 3  | <u>\$ 621,500</u>  |
| <b>TOTAL</b>                            |    | <b>\$5,053,875</b> |

Sarah noted that an additional \$2 million dollars from the 2009 bond have been transferred to LMF accounts, however, this action happened in October 2016, subsequent to the issuance of the

September month-end financial report. The summarized balance of bond funds available through the end of September 2016 as identified on Attachment A does not include these recently added funds.

Using Attachment A as a reference, the balance of “cash on hand” funds remaining is \$3,627,050 PLUS the additional \$2,000,000, for a total of \$5,627,050, which should be sufficient for current allocations and associated legal expenses.

An additional \$250,000 has been requested for FY17 Q3, but LMF has not yet received confirmation that these funds will be transferred.

Neil Piper: What remains un-allocated? Sarah Demers: Approximately \$1.3 million for Farmland, \$1.2 million for Working Waterfront and \$1.5 million of Conservation & Recreation funds remain un-allocated.

## **5) Access Improvement Grants**

When the LMF Board met in July of 2014, prior to the allocation of Round 8 LMF Bond Funds, they voted to take 5.5% of funds to cover legal expenses, access improvement grants and biological and historical inventories, as per statute.

MRS Title 5 Ch. 353 Sec 6203 3, Fund Proceeds: the proceeds of the Land for Maine’s Future Fund may be applied and expended to:

When interest in land is acquired with proceeds from the Land for Maine’s Future Fund, fund minor capital improvements on such lands and on adjoining lands in the same ownership or under the same management to improve accessibility, as long as these improvements do not exceed 5% of the appraised value of the acquired property.

The LMF Board voted to

1. Set aside 2% of all available Conservation and Recreation and Water Access funds, to be used for access improvement grants, and
2. Set aside an additional 2% for access improvements that enhance access for people with disabilities.

Sarah suggests an administrative change to make the language consistent with the practice. The problem with the language is that if \$1.5 million is allocated for a project (e.g., Seboomook), and that project is withdrawn, does LMF still have the 2% set aside for access improvements? According to the current board vote, yes. This change will clarify what is set aside.

Nine projects are currently eligible to request Access Improvement funds (Working Waterfront and Farmland projects are not eligible based on statute and workbook).

Staff recommends the following clarification:

For remaining Round 7 and all Round 8 C&R and Water Access projects, set aside and make available an amount equal to 2% of the LMF funding contribution for access

improvements. Retain an additional 2% for access improvements that enhance access for individuals with disabilities.

This change will make the language consistent with the practice and Sarah notes it is easier on LMF staff regarding workflow and planning, to have Access Improvement grant proposals submitted within a specific timeframe versus having applications submitted intermittently, one at a time. Sarah offered Crooked River Forest, which closed February 2016, as an example of how funds are tracked.

Neil Piper: What you are proposing is 2% project by project versus a single lump sum, so that a project is limited to the amount that is initially set aside?

Sarah: Correct. The 2014 guidance document adopted by the Board reflects 2% of the LMF bond allocation is to be available for access improvements and this is the current practice. The applicant has one year to apply for these access improvement funds.

From the October 5, 2016 Memo to the LMF Board Members regarding LMF Access Improvement Grants:

Below is a table depicting the projects that have closed in the last year and the funds available for access improvements.

| <b>Project Name</b>                                    | <b>LMF Allocation</b> | <b>Access Improvement Funds Remaining (2%)*</b> | <b>Closing Date</b> |
|--|-----------------------|---|---------------------|
| Central Maine Sportsman's Access                       | \$500,000             | \$10,000  | 12/21/15            |
| Save Eagle Bluff                                       | \$61,000              | \$290   | 1/12/16             |
| Kennebec River Estuary – Fawcett                       | \$142,318             | \$2,846   | 1/21/16             |
| Crooked River Forest                                   | \$400,000             | \$8,000   | 2/11/16             |
| Cold Stream Forest                                     | \$1,500,000           | \$30,000  | 3/25/16             |
| Kimball Pond   | \$90,000              | \$406   | 4/7/16              |
| Merritt Cove   | \$194,500             | \$3,890   | 9/23/16             |
| Knight's Pond  | \$225,000             | \$4,500   | 10/19/16            |
| Pleasant Bay Wildlife Management Area – Big Dick North | \$298,500             | \$5,970   | 03/03/16            |
| <b>Total</b>   |                       | <b>\$65,902</b>                                 |                     |

Fred Bucklin asked about the access improvement funds for projects that closed last year, noting that \$290 for Save Eagle Bluff seems a small amount.

Sarah notes that 3.5% is set aside for legal expenses and inventories, but if the project overspends these funds, it then draws from the 2% set aside for access improvements (though not vice-versa). Fred noted the small amount again for Eagle Bluff. Sarah said a small amount could make the difference to finishing an access project such as a parking lot. Collin Therrien noted that when the initial project application was submitted in response to LMFB's "call for proposals", back in 2014, the staff and Board reviewed it to make sure that the property actually provided access. Some projects may not ask for access improvement funds. Not all projects are competing for the full amount of access improvement funds remaining (here the \$65,902), but rather for their allocated amount.

#### Discussion:

- Neil Piper: This 5.5%, it was a policy decision?
- Sarah: Yes, the LMF Board voted on that amount in July 2014 before selecting finalists and making project allocations.
- Neil: Can they flip their amounts for access versus all other?
- Sarah: No. The 3.5% and 2.5% was voted by the Board. The Board determines these set-asides based on past experiences. Sarah will recommend in the future that this amount gets increased for easement projects, because legal costs are often higher and for very small allocations, which yield a smaller than necessary set-aside allocation.
- Neil: They can't take the full 5.5?
- Sarah: No.
- Lisa Turner: 12 months is a short amount of time. If the property becomes popular, you might need longer than 12 months for an access project.
- Sarah: The applicant has 12 months from the closing date to apply for these funds, and then 2 years to implement the access improvements. We are coming up on the 12 month mark for many of these.
- Neil: Historically, have applicants used their access funds? What's the history of use?
- Sarah: It's a mixed bag. A project may already have sufficient access. It's really project specific.
  
- Fred Bucklin: How was the 2% determined?
- Sarah: Based on experience over time and a desire to maximize the amount of funds available for acquisitions versus the cost to improve access.
- Fred: I believe our goal is to provide better access to public lands. Is 2% enough? Wants to be sure public has access, and gave example of a nice trailhead with 5 parking spaces, but there should be more.
- Neil Piper: If, on a project, 2% = \$1,000, but they need \$2,000 for the parking lot, and they're adding 3 handicap accessible spots, can they then apply for 4%?
- Sarah: Yes, that is the intention.

Chandler Woodcock: There are two topics of discussion in front of the Board. The first is a recommendation requiring a vote, is the Board comfortable with this?

*Motion:* A motion was made by Fred Bucklin, and seconded by Bob Myers, to accept the language change proposed by the director:

For remaining Round 7 and all Round 8 C&R and Water Access projects, set aside and make available an amount equal to 2% of the LMF funding contribution for access improvements. Retain additional 2% for access improvements that enhance access with disabilities.

The board vote for approval was unanimous.

There was general consensus with the second recommendation that LMF staff will review and revise, if necessary, the 2014 guidelines for Access Improvement grants and presented to the Board to discuss and adopt at its next meeting in December 2016. The Board will then establish Access Improvement grant review committee at the December meeting.

Chandler noted that Board members will be needed to volunteer for this grant review committee.

## **6) Board Notifications and Approvals**

### **6a) Tide Mill Farm Conservation Easement**

Sarah noted Tide Mill Farm in Edmunds was a conservation easement purchased with LMF funds in 1990. At that time, 100% of the LMF funds went to purchase costs. MDIFW holds the easement, of 1,150 acres.

MDOT's 2015 bridge project resulted in takings of ~1.5 acres, and the takings compensation was returned to the landowner. MDOT plans for 2016 upgrades to US Route 1 that will impact additional acreage. This was a joint proposal between LMF, MDIFW, and MDOT regarding the takings on these easement lands. The LMF attorneys recommend the takings process as it is better than amending the easement to accommodate new or expanded ROW and the takings process results in clear boundaries for the landowner and easement holder, and there are fewer concerns regarding future impacts to the easement land. Additionally, we have been through and are comfortable with DOTs takings process.

LMF and MDIFW staff have met with MDOT and have already asked them to minimize impacts to the easement lands by containing as much of the impacts as possible within the existing ROW. However, LMF and MDIFW need confirmation from MDOT regarding beginning and end of construction in order to determine the duration of the temporary easements that will be granted.

Commissioner Chandler Woodcock notes that MDIFW has had a good relationship with MDOT and is confident that this will happen.

- Neil Piper: Is compensation determined for fee and easement rights?
- Sarah: This easement calls for any compensation related to a taking by eminent domain to go to MDIFW, which is unusual, given LMF contributed 100% of the funding to acquire the easement. These days, a similar scenario would have the compensation going back to LMF.
- Ryan Robicheau: explained how the previous Tide Mill Farm related MDOT takings process was implemented.
- Sarah: MDOT will present MDIFW and the landowner with an offer based on an appraisal which determines how they came up with offer. The MDOT base offer is \$500, even for compensation that is appraised below that.
- Neil: I'm familiar with this property and the bridge issue. There is puckerbrush on either side of the stream, so requiring improved access there is not a significant issue for me. Most people will not want to access through the puckerbrush.

MDIFW has several recommendations to the LMF Board.

1. Temporary Construction Easements: we need to have a clear understanding from MDOT what constitutes the start and end of construction timeframes and a termination of these rights. Also need confirmation that the area will be returned to pre-construction conditions to landowner and MDIFW's satisfaction and in compliance with the Conservation Easement.
2. Drainage Easements: Granting of new and expansion of existing permanent easements is prohibited by the easement. These should be included in the takings process.
3. MDOT to provide MDIFW and LMF with an updated legal description of the property line impacted by the takings.
4. Impacts are proposed to the current "Little Augusta" hand carry water access launch. Site to be returned to existing (or improved) condition for public access, to MDIFW's satisfaction.
5. Revisit MDOT's commitment that the old roadway of the replaced bridge would be improved for public access to the stream. According to reports from Regional staff and through pictures provided, it looks as if access improvements to this area that were verbally agreed upon by MDIFW and MDOT were not implemented.

*Motion:* A motion was made by Lisa Turner and seconded by Neil Piper, to approve the reduction of acreage of Tide Mill Farm Conservation Easement as proposed by and as a result of takings by the Maine Department of Transportation and to accept this action. Fred Bucklin abstained as MDOT is one of his clients.

*Vote:* 5 approved (Neil Piper, Brad Moll, Robert Meyers, Lisa Turner, Commissioner Whitcomb), 1 abstained (Fred Bucklin)

## **6b) Office of Policy and Management**

AOC Chair report on the Howard Hill appraisal review.

Neil Piper, chair of the Appraisal Oversight Committee reported that the committee met at least two times, and the meetings were attended by the applicant and their appraiser. In addition to the meetings, there was follow up communication and requests for additional information that resulted in a lively discussion, because of different properties and different opinions on the value of these properties. As a result, after an extensive review, the committee voted unanimously to accept the report valuation for Howard Hill, with concerns about its highest and best use. The committee accepted the report valuation with reservations.

- Fred Bucklin, in reference to Attachment B, LMF Active Projects Allocations (*the colorful spreadsheet*). So we're proposing the Board approves 30% of the projects appraised value?
- Sarah: yes, approximately 30%
- Fred: we worked hard on this. Three additional appraisals have been done for this property, all of which determined that the highest and best use is as a residential subdivision. This is a speculative highest and best use, as other similar properties in the area determined to have residential subdivision as highest and best use have not in fact been subdivided or developed. There is a history of properties like this in this area just sitting here and believes there is a reason for this. Fred does not feel that an LMF allocation of 30% toward a speculative appraised value is a good investment of LMF funds. He supports the project but feels the Board should spend less due to the speculative nature of the highest and best use as a residential subdivision. He believes that protecting the investment is a safer position for LMF. Not sure what that number should be, but proposes 10% of the appraised valuation, for an allocation of \$109,000.
  
- Neil Piper: Should we finish OPM, and should the Board accept the Appraisal Oversight Committee's recommendation?
  
- Sarah: Yes, the LMF Board, in response to the memo from the Office of Policy and Management (OPM), has approved and accepted the appraisal for Brave Boat Harbor and has evaluated the concerns related to Clapboard Island. The AOC has provided a report on Howard Hill which the Board needs to act on.
- Chandler: Does the Board accept the AOC's recommendation to accept with reservations the Howard Hill appraisal? And, does the Board want the Director to submit a memo to OPM reporting on the Board's findings?

*Motion:* A motion was made by Fred Bucklin and seconded by Lisa Turner to accept the Appraisal Oversight Committee's report on the Howard Hill appraisal and to send the Office of Policy Management a report of the Board's findings on the Howard Hill, Brave Boat Headwaters and Clapboard Island projects.

*Vote:* Unanimous approved (Neil Piper, Brad Moll, Robert Meyers, Lisa Turner, Fred Bucklin, Commissioner Whitcomb)

Continuing discussion about the Howard Hill project, Fred Bucklin noted he wants to see this project completed to the satisfaction of LMF and of KLT as it has dragged on too long.



*Motion:* A motion was made by Fred Bucklin and seconded by Brad Moll to allocate \$109,000 of LMF conservation and recreation funding to KLT for Howard Hill.

Discussion:

- Neil Piper: Notes that there is a stringent process for approval of projects: a committee scores the projects and another committee recommends the award amount based on merits of the project. Changing the rules of how this process works midstream is concerning. The allocation granted for this project was based on the original information from the proposal and he doesn't see that additional information justifies a new process at the 11<sup>th</sup> hour as it is not fair to the applicant or the process. There is a well-documented process that was followed and changing the rules would damage LMF.
- Fred Bucklin: This discussion is based on the uniqueness of the property and of prior appraisals. I don't know how in-depth the original process was, only what I saw when I did my own investigation of the appraisal and highest and best use determination. As an investor, I would pay much less than the appraised value of this project due to the speculative nature of its highest and best use.
- Sarah: In an effort to respond to Fred's comments as well as Neil's concerns about sticking with the process used by the Board to make award allocations, the Board could consider using the Attachment B spreadsheet which shows the Round 8 project requests from LMF and the Board's allocation. In making their allocations, the Board considered 1) the total amount requested, 2) what the Nominations Committee recommended for a funding level, and then made allocations factoring in scores, among other things. Generally speaking, projects with the highest scores got 100% of what they asked for, and those with middle scores got between 50% and 75% of what they asked for. Allocations are not made as a percentage of the appraised value.
- Fred: This is a good solution
- Lisa Turner: Some new data has been brought by KLT by other appraisers. The property appears better suited for four kingdom lots rather than the sub-division that has been approved for 20 years, but never developed, and there is not a robust real-estate market in Augusta. Reducing the LMF investment on this and preserving the property makes sense. Overpaying for lots doesn't make sense, as we won't be able to conserve as much land if we overpay for properties.
- Neil: The appraisal committee approved the \$1,090,000 value. We are making the decision based on that approved value.. To cut back on the allocation now, when we have gone through an extensive process, undermines the fundamentals of this Board's work and the program.
- Chandler Woodcock: Is there further discussion on the motion of 10% of the appraised value?
- Fred: I'm not sure this is the right number

- Brad Moll: Didn't we (AOC) accept the appraisal *with reservations*?
- Sarah: Yes, the AOC accepted with reservations, so this discussion is appropriate. By statute the Board has to accept the appraisal before it can make any final allocation of funds to the project.
- Neil: We accepted with reservations. OPM brought up the quality of the appraisal, we reviewed it and found there were no errors or omissions identified that would change the appraised value.

An audience member, Jeff Romano from MCHT, inquired on the Board's process – is it following Roberts Rules of Order? The Board previously approved ~\$337,000 allocation, how can it change that now?

- Chandler Woodcock responds: As with the legislature, no, Board is bound by a previous Board. This discussion is within the bounds of this Board. Woodcock made a point of order that this is a Board discussion and the public will not be asked to participate in this portion of the discussion.
- Neil: So this is a new motion to change the allocation of what was previously approved?

Audience member Jim Norris from SWOAM, voiced his concern with the Board Chairman limiting public participation in the discussion. As a prior LMF Board member, Jim doesn't recall the public ever being restricted from participating in the Board discussion.

- Chandler Woodcock responds: The chair of the Board can determine the level of public participation, and notes there is a motion on the floor.

*Motion:* A motion was made by Fred Bucklin and seconded by Brad Moll to allocate \$109,000 to KLT for Howard Hill.

*Vote:* 5 approved (Fred Bucklin, Lisa Turner, Brad Moll, Robert Meyer, Walt Whitcomb), 1 opposed (Neil Piper)

- Neil Piper: What will happen now? How will we let KLT know about this change in amount?
- Sarah: the staff will prepare a letter to the applicant noting that the AOC reviewed new information about the valuation of the property and factored this in the adjusted allocation amount.
- Lisa Turner: also partly because new information was presented
- Neil: May I make a motion that a larger amount be considered?
- Chandler: No. The prevailing side must offer the motion
- Fred: I did not intend the number to be solidly 10%, but rather to open the topic for discussion. He liked Sarah's mention of 50% of the amount requested.

*Motion:* A motion was made by Fred Bucklin to change the amount to 50% of the amount requested, meaning an allocation of \$225,000. There was no second. The motion failed.

*Motion:* A motion was made by Lisa Turner and seconded by Fred Bucklin to change the amount to 15% of the appraised value, translating to an allocation of \$163,500.

Discussion:

- Neil Piper requested that the record reflect his feeling that this process is disagreeable and not based on fact or good process. He is not seeing any documentation that the original allocation is not good. Wants the public to know that this is not an acceptable way to handle funds for these projects. The arbitrary nature of the process being undertaken today undermines the credibility of this Board and of the bond funding.
- Fred: Asks that the record shows he disagrees with Neil's statement.
- Lisa: We are just trying to find middle ground. If the public finds the Board's process to be arbitrary and capricious, then so be it.
- Sarah: the typical process for determining a preliminary allocation is not based on the appraised value but on an estimated value. Once the Board receives and accepts the appraisal, the LMF preliminary allocation may be adjusted. While adjustments to the Board's allocation are not unheard of, such adjustments are typically due to a decrease in the appraised value in order to ensure the applicant is providing sufficient match and LMF does not contribute more than the percentage allowed by the Bond.
- Neil: This appraisal had an extensive review process, and I would prefer that if the Board is going to make a decision to reduce the amount that they review the original proposal and scoring information that was used by the Board to make their original allocation.

*Vote:* 5 approved (Fred Bucklin, Lisa Turner, Brad Moll, Robert Meyer, Commissioner Walt Whitcomb), 1 opposed (Neil Piper)

Neil Piper left the meeting after the vote.

### **6c) LMF Biennial Report**

Sarah noted that staff typically prepares a Biennial Report that follows the statutory requirements and includes information on the following:

- Expenditures of LMF Bond funds during the reporting period;
- Revisions to the strategies and guidelines;
- Description of access to land acquired; if land does not include guaranteed public vehicular access, the Board must provide justification and a plan for efforts to acquire guaranteed public vehicular access;
- Summary of the Board's experience during the reporting period with projects;
- Summary by County of the expenditures made by the Board and acreage conserved through acquisition of fee or less-than-fee interest during the report period and cumulatively;

- Maps based on available information at a statewide level that show federal, state, and other public lands and permanent interests in lands held for conservation purposes. The maps must also provide a representation of the amount of land affected by conservation easements

Director recommends the following:

Staff to develop a draft of the Biennial Report for Board review at December meeting, with option to approve in December or later if necessary.

Walt Whitcomb noted that lots of reports to the legislature are required of DACF, but for the LMF process, one that is very much in the public eye, it is an immense amount of work for information that is already publicly available. Not suggesting that LMF shouldn't write the report for December, but may be something for consideration for the future.

## 7) Staff Updates

### LMF Closings:

- Merritt Cove, Water Access site, Addison, Washington County (9/21/2016)
- Knight's Pond, Conservation & Recreation project, Cumberland and North Yarmouth, Cumberland County (10/18/2016)

### Working Waterfront projects

Sarah put together a document with photographs and text from developed by contractor Jerry Monkman for the following working waterfront projects: Spruce Head Fisherman's Co-op (South Thomaston); Potts Harbor Lobster (Harpwell); Miller's Wharf (Tenants Harbor); Moosabec mussels (Jonesport); Friendship Lobster Co-op (Friendship); Great Wass Lobster (Beals); Vinalhaven Fishermen's Co-op (Vinalhaven); and Pine Point (Scarborough). This document was handed out to the Board and will be made available on the LMF and other websites.

The next Appraisal Oversight Committee meeting is November 8, 2016.

The next LMF Board meeting is December 6, 2016.

*Motion:* Commissioner Walter Whitcomb motioned to adjourn, Lisa Turner seconded,

*Vote:* unanimous (4 in favor, Brad Moll, Robert Meyers, Lisa Turner, Fred Bucklin);  
ADJOURN ~3:00 PM