



Long Creek Watershed Management District Board of Directors
Minutes from September 21, 2016 Meeting¹
Location: Scarborough Town Office, Council Chambers B, Scarborough

1. Mr. Dillon called the meeting to order at 9:05 am.

2. Roll Call

- a. Attendance: Curtis Bohlen, Fred Dillon, Brian Goldberg, Peter Newkirk, Ed Palmer, Doug Roncarati
- b. Absent: Dan Bacon, Tom Blake, John Branscom, Arthur Colvin, Craig Gorris, Adam Pitcher, Michael Vail
- c. Staff/Guests: Pete Carney (LCWMD Executive Director); Aubrey Strause, and Chris Brewer, (Cumberland County Soil & Water Conservation District); Julianne Ray (Perkins-Thompson; sitting in for Jim Katsiaficas); Aimee Mountain (GZA GeoEnvironmental); Bruce VanNote (Maine Turnpike Authority, sitting in for Mr. Branscom)

3. Executive Director Update

- a. Banking authority is now in place, so Mr. Carney can sign checks and has access to the accounts. Mr. Bohlen will continue to sign checks for CCSWCD invoices (due to financial controls requirements that checks to CCSWCD be signed by the Treasurer) and review CCSWCD invoices in conjunction with Mr. Carney.
- b. Technology:
 - i. Mr. Carney is migrating his email from the webserver (hosted at Godaddy.com) to Office 365, which will increase storage capacity.
 - ii. Mr. Carney has set up a SharePoint site. This is separate from the SharePoint site used by CCSWCD, but select CCSWCD staff have access to Mr. Carney's SharePoint in order to share resources and collaborate on files. Board members can be provided access, if they are interested.
 - iii. Mr. Brewer is setting up the Documents library in Mr. Carney's SharePoint site to mirror the structure used by CCSWCD for files and invoicing and the LCWMD billing structure.
- c. Revisions to the Watershed Management Plan (WMP)
 - i. Data analysis: Mr. Carney, Mr. Bohlen and Mr. Newkirk will meet with Maine DEP's Don Witherill and Jeff Dennis in Augusta, ME, on 9/22/16 to discuss how existing Long Creek monitoring data should be analyzed, and discuss how the department will determine if the project has met its restoration goals. They will also request that someone at DEP be active in reviewing/modeling Long Creek data. If this request is not granted, the group may ask a graduate student compile the review.
 - 1. Mr. Carney said that a comprehensive analysis of data is the first step to understanding whether any update of the WMP should be completed. He said that while much of the WMP is narrative and flexible, other documents

¹ Minutes are for reference only, no official actions were taken due to a lack of a quorum.

incorporated by reference into the Long Creek General Permit are more rigid and measuring compliance could be rigid. Different DEP staff are in charge of this now than when the program was developed, and those staff may have a different view of the project.

2. Mr. Newkirk gave the example of needing to document the department's intentions: does the permit say that DEP has the responsibility to be involved in the monitoring and the assessment of the data? Or at least more involved than they are at the present time? Is this something that the LCWMD can contest if DEP doesn't provide the assistance we need? Traditionally, LCWMD has received informal input from Jeff Dennis compiling the previous data Monitoring Plan (MP). DEP will be making the decision on attainment based on the invertebrate community.
 - ii. Mr. Dillon worked on the original Long Creek Watershed Management Plan and recalls that DEP always intended to stay "hands off" with implementation of the WMP. Mr. Bohlen added that while DEP will determine compliance, that monitoring and the process is up to LCWMD.
 - iii. Mr. Bohlen pointed out that the LCWMD needs to work closely with DEP because of the relationship between DEP and USEPA.
 - iv. Mr. Newkirk has spoken with water quality modeler Rob Mohlar at DEP, who reports that he has the time and is interested in helping with the data review process, and has the expertise that the LCWMD needs.
 - v. Mr. Carney stated that compliance is a moving target. How the DEP determines compliance may not be the same as how EPA determines compliance (even Augusta and Portland offices of DEP may have different thoughts on this subject), so we need to work with both DEP and EPA. However, both agencies will likely look at the same physical points, so we need to make sure sampling locations are consistent with previous locations and ensure consistent data monitoring, especially when they are evaluating attainment. He suggests making a recommendation on what the measure of compliance (4 years from now) should be and getting approval *from* the agencies, rather than asking for their definition because the answer may differ depending on who is responding to the question. We need to make sure decision makers at both DEP and EPA are on board with how compliance will be determined.
 - vi. Mr. Roncarati stated that obtaining clarification *now* on which entity (DEP or EPA) has the ultimate authority will help us in 2020. We need to tell DEP that we see them as a partner.
 - vii. Mr. Dillon pointed out that the WMP was approved before the Impervious Cover Total Maximum Daily Load (TMDL) report was compiled, so there is a variance there.
- d. In 2012, by state statute, a 0.3-mile section of Long Creek in Westbrook that was Class B was reclassified to Class C water quality standards, like the rest of Long Creek. Approval of this statutory change was sought through the TMDL process and submitted to USEPA. This reclassification was rejected by EPA in 2015. As such, this section of the creek currently remains Class C under Maine statute, although it is sandwiched between two Class B sections. The current classification of this segment needs to be clarified in any revisions made to the WMP; he suggested that this issue won't disappear and should be cleanly addressed.

- i. Mr. Dillon expressed a concern that because of the strained relationship between DEP and EPA, it is not clear which entity will have final jurisdiction in 2020.
- ii. Mr. Bohlen stated that both parties are frustrated; however, they both want to work together, and they are moving forward cautiously.
- iii. Mr. Roncarati stated a concern that EPA will revoke delegated authority.
 - 1. Mr. Carney indicated that this is highly unlikely, due to reduced staff in EPA Region 1, combined with the trend seems to that the last few states where EPA has delegation are moving toward accepting delegation at the state level instead- the trend is away from EPA as the authority.
 - 2. Ms. Strause concurred, saying that in conversations with Governor LePage after he suggested that NPDES delegation in Maine should to go back to EPA, that his administration does not truly want this.
- e. Mr. Carney provided insight on DEP's responsibilities based on the permit:
 - i. Navigating the complex layers of the LCWMD General Permit is difficult because of the many supporting documents (PLA, Permit, WMP, O&M Plans). These were developed at different times over the first few years of the permit (2009, 2011, 2013) so some items are not consistent between them.
 - ii. The question, "What are LCWMD's responsibilities for annual maintenance on parcels?" has initiated this review.
 - 1. Through the process of trying to answer the question, Mr. Carney and CCSWCD staff found that some of the documents have discrepancies.
 - 2. Mr. Carney met with Mr. Katsiaficas separately to discuss private BMP inspection responsibilities and LCWMD line inspection/jetting responsibilities that vary through permit documents.
 - 3. Mr. Katsiaficas told Mr. Carney that he will continue to navigate these questions through the documents and will give his legal opinion on these questions at the October meeting.
 - 4. Mr. Carney said that he hopes to provide a flow chart method for navigating the documents when additional questions arise. This review will also provide a basis to clarify some of these issues while evaluating the WMP.
 - a. Mr. Carney suggested that supporting documents be updated at the same time the WMP is updated, to eliminate the inconsistencies.
 - 5. Mr. Dillon suggested that the structure and elements of the MS4 Permit be incorporated into document revisions.
 - iii. Previous revisions to the documents were completed differently in the past. Some requests were submitted formally and other requests seem to have been less formal.
 - 1. Example: the two-page approved Inspection & Maintenance Plan in DEP's files looks slightly different than the one in the CCSWCD files. While the substance of the document is the same, the DEP copy has the word "FINAL" at the top. This document served as the basis for what became the framework for the parcel-specific O&M plans, provided to Participating Landowners (PL).
 - 2. CCSWCD staff are working with Pete and DEP to locate formal approvals.
- f. Development Review
 - i. Mr. Carney is compiling a guidance document for completing both site and stormwater reviews of proposed development/redevelopment of Long Creek parcels.

- ii. He has been talking with DEP and the municipalities to determine which entity has specific review authority (DEP has delegated authority to some municipalities).
- iii. DEP, Portland, South Portland and Scarborough have agreed to provide applications to LCWMD as they receive them. (Conversations with South Portland had been initiated by CCSWCD in July for the same end goal)
- iv. Mr. Carney will be following up with Westbrook to make the same request.
- g. Internal Controls
 - i. Mr. Carney and Mr. Brewer are collaborating with Mr. Bohlen to update the Internal Controls document to streamline activities, revise timelines for review, reflect current practices, and utilize digital/online technology in place of the paper system in place when the original document was developed.
- h. Larger Picture Thoughts
 - i. As we move forward, Mr. Carney suggested that the Board consider how to increase public participation, because most of the public doesn't know there is a creek hidden behind the buildings.
 - ii. There are many opportunities to increase public awareness by highlighting the restoration effort, connecting to the trail systems, public transportation and public infrastructure. (e.g., can we provide public access or a trail though the Main Stem as part of that restoration effort?) What do we want to turn over to the public in five years?
 - iii. This increased visibility may help prevent some of the encampments we find at some BMPs.
 - iv. BMP signs should be developed to promote the restoration effort and detail the water quality improvements provided by the BMPs.

4. Financial Report

- a. Mr. Bohlen presented the August Financial Report and highlighted to other Board members that the report reflects recent authorized expenditures that were not originally budgeted, including salary, equipment, and expenses for the Executive Director.
- b. Mr. Brewer provided additional details on the following:
 - i. July landowner assessment invoices are now more than 60 days past due. Mr. Brewer mailed Notices of Default to the PLs listed in the report. Alison Moody (DEP) will follow up with the PLs.
 - ii. Mr. Brewer learned that Parcel 126 was sold in December 2015. The new PL did not complete a Notice of Intent to comply with the General Permit, and Alison Moody is working with the new PL for compliance. There is an outstanding balance of \$5,287.29 for the parcel. The balance includes the past due balance from the previous owner (\$1,728.34) plus the current PL balance (\$3,561.95, which includes \$228.35 in late fees). Communications with the new PL have been positive, and the PL has agreed to pay the past due balances including the previous PL's fees; however, they have requested that the Board waive the late fees of \$228.35. The new PL will seek reimbursement from title insurance for the previous PL's balance, because this should have been addressed during the closing. Action could not be taken at this meeting due to lack of quorum, so Mr. Brewer will make this request at the October meeting.

- iii. Accounts Payable is higher than usual, owing to several CCSWCD invoices that were not paid as of the date of the report. Mr. Bohlen has been working with Mr. Carney to review these, so that Mr. Carney can perform reviews in the future. CCSWCD's June and July invoices have been paid since the report was compiled.
- iv. The Fiscal Year 2016 Financial Audit is underway. The field visit by Smith & Associates is scheduled for September 27, and the draft report should be completed before the October Board meeting.

5. Assessment Revaluation Process

- a. Ms. Strause reported that during the 2016 annual parcel inspections, CCSWCD staff documented increases in impervious surface area on several PL parcels as compared to the area used to calculate the assessment. Through the Participating Landowner Agreement, CCSWCD staff are required to re-evaluate the parcels and adjust their assessments to ensure that all PLs are charged equitably, although this has not ever been done. She informed the Board that these landowners were already made aware of the changes on the parcels, and the impact to their assessments, as the observation was made during annual parcel inspections where they were present.
- b. Mr. Dillon agreed that CCSWCD staff should proceed with revising impervious in the assessment calculations to match actual conditions, because periodic revaluations have precedent in similar programs in throughout the state.
- c. Mr. Dillion suggested that CCSWCD staff request CAD drawings from development or redevelopments to incorporate into the GIS and use these as the basis for calculations.
 - i. Ms. Strause replied that staff have already taken detailed measurements and incorporated these into GIS, so the assessments should be easy to revise. She added that CCSWCD's GIS analyst has the ability to compare the impervious surface layer to previous versions and see what other parcels (including non-participating) may have changed.
- d. Mr. Bohlen agreed, saying that CCSWCD need to remain consistent with the trigger for these revaluations, whether those are the annual inspections or notifications from PLs, for fairness to all PLs.

6. Water Quality Monitoring Report.

- a. Aimee Mountain from GZA updated the Board on the present monitoring contract (her presentation is attached to these minutes).
- b. Ms. Mountain's presentation included the following suggestions:
 - i. In future contracts, the previous contractor should be included in both the kick off meeting and the mid-year check-in with the new contractor, to ensure transfer of institutional knowledge. Mr. Goldberg recommended this be a requirement specified in the next contracting period. This requirement is a common practice in this type of data collection contract.
 - ii. Institutional knowledge needs to be captured in the Quality Assurance Project Plan (QAPP) to provide valuable information for field implementation, equipment deployment, etc. The group noted that the QAPP is scheduled to be updated and revised by the TAC. Ms. Mountain will be a member of the TAC working on this and other monitoring-related issues.

- iii. Stormwater Sampling can be a challenge due to the variability of the stream. The rising stage samplers usually only fill in the lower sections of the watershed where stormflow is higher because of more impervious cover. This means that some samplers don't fill because the water level isn't high enough. Due to this variance, it is recommended that the Technical Advisory Committee (TAC) evaluate and determine if this method will provide the best data.
- iv. Due to low flow conditions this summer, there is a gap in collected data: the sondes were submerged in sediment because water was so low.
 - 1. Mr. Bohlen stated that data evaluations are to determine patterns, small gaps in data are not a problem as long as statistical models can be used to determine overall trends.
 - 2. Mr. Dillon confirmed that he has the same issues with samplers, for the same reason.
- v. The weather station at EcoMaine is not providing consistent data. This issue is known to CCSWCD, who will present information and recommendations after Ms. Mountain's presentation.
- vi. Biomonitoring (counting macroinvertebrates) is the standard that success of the Long Creek project will be measured on. Currently, these assessments are scheduled for 2018 and 2020. Ms. Mountain recommended that the TAC consider adding more biomonitoring evaluations to the Monitoring Plan (MP), and consider if using kick nets rather than full habitat assessments will provide the necessary data and provide a more useful milestone of progress.
- vii. There is an issue uploading one subset of data to the database. Ms. Mountain is working with AMEC to address this issue. Ms. Strause confirmed that the specific type of data that is being resolved is a very small part of the data collected: most data has been successfully uploaded.
- viii. Mr. Dillon asked what kind of access the public has to the monitoring database.
 - 1. Mr. Brewer responded that the public access only includes the "stop light" information, which goes through a triple-level of QA/QC.
 - 2. Mr. Bohlen agreed that the level of data available to the public was very carefully designed, because the levels of access can get complex based on needs, intentions, and the varying abilities of the public to interpret such data.
- ix. Ms. Mountain recommended that the MP and the QAPP be evaluated annually and updated as needed.
- c. Mr. Palmer expressed disappointment with the recent loss of data due to sedimentation.
 - i. Mr. Bohlen said that this type of data loss happens occasionally in many monitoring programs, because it is difficult to anticipate all variables that could lead to problems in the field. Sediment-laden low flows have been a problem for many programs this year.
- d. Mr. VanNote asked why there is so much data collected if bio assessments are the final measure for success?
 - i. Mr. Bohlen stated LCWMD needs to collect the other data to evaluate how LCWMD can build better habitat or provide treatment in order to produce water quality to a level that makes the stream inhabitable to macroinvertebrates.

7. EcoMaine Weather Station

- a. Ms. Strause provided a memo to the Board regarding the station as a handout (attached to these minutes).
- b. Ms. Mountain notified CCSWCD staff that there were gaps in the data from the weather station deployed at EcoMaine, which is owned by LCWMD, because its batteries were dying very quickly.
- c. CCSWCD staff received permission from Mr. Bohlen and Mr. Bacon to replace the station at a cost of \$800. However, after CCSWCD and GZA staff evaluated the data, it became apparent that the station may not be needed, because weather data is also collected at the Portland International Jetport (PWM) from NOAA's equipment, which has better calibration and maintenance.
- d. Use of the second weather station at EcoMaine is done per a requirement in the current MP.
- e. Analysis of a limited data set shows that there are limited variances between the stations. This is likely due to the fact that the stations operate differently, and that the stations are calibrated and maintained in very different ways (the EcoMaine station is not calibrated and the PWM station is calibrated by NOAA).
- f. Mr. Bohlen stated that the data indicates that it appears collecting data from two points is no longer necessary. The original concept was to measure summer convective storms (i.e. thunderstorms), to see if there were trends showing variances in rain fall from the western and eastern portions of the watershed. The data indicate to him that these types of storms are rare and it probably isn't necessary to replace the equipment and continue collecting two data points.
- g. The consensus of the members present was to not replace the weather station at this time, but to have the TAC consider this. The TAC may decide that the station is unnecessary (and remove this requirement from the MP) or may decide that it is needed (and recommend that the equipment be replaced).

8. Team Update

- a. Main Stem Restoration Project
 - i. A stream mile walk will be scheduled in October to look at outfalls, infrastructure and related inputs from the stream level perspective. This has been done in the past for other branches of the stream, although it is not required. Mr. Dillon, Mr. Newkirk, and Mr. Bohlen are interested in joining the walk. Once the date is finalized the Board, will be notified so they can join if they have time and interest.
 - ii. Aubrey has obtained a copy of a contracting mechanism used by Maine DOT and other organizations that may serve as a good template for Main Stem. She will present this idea to Mr. Carney before sending it to Mr. Katsiaficas.
 - iii. Aubrey will contact the Design Team Subcommittee to schedule a meeting to review the technical Request for Qualification documents.
- b. South Branch Restoration Project
 - i. CCSWCD staff compiled a limited HEC-RAS scope of work that will be provided to the subcommittee for review.
 - ii. CCSWCD Staff will be conducting the soil probe and sediment sampling to provide additional input for the HEC-RAS model.

- iii. CCSWCD staff is compiling a cost estimate to provide the HEC-RAS model. The Subcommittee can decide whether to use CCSWCD or seek third-party bids.
- c. Inspection and Maintenance RFP
 - i. Ms. Strause presented the draft inspection logs, Standard Operating Procedures (SOP), and maintenance logs for the 18 different Long Creek owned BMPs.
 - ii. Mr. Goldberg expressed concern that it may cost more than the Board expected to compile this amount of detail for this RFP. Ms. Strause agreed that it took longer to put the RFP together than she'd estimated. He requested that CCSWCD staff seek guidance from the Board when a task starts to take more time than initially estimated; Ms. Strause agreed.
 - iii. Mr. Newkirk questioned if the SOPs are more stringent than necessary and should be called specifications instead of SOPs. For example, can a contractor bid on a project if they don't have the "required" equipment but they do have alternative equipment that can complete the task? He asked if this interferes with the contractor's 'means and methods' of doing the work.
 - 1. Mr. VanNote stated that SOPs of this nature (methods-driven vs. result-driven) are frequently used in the environmental field because of the delicate nature of the systems and their connection to water resources. Mr. VanNote observed that these SOPs are like method-driven specifications.
 - 2. Mr. Roncarati added that the term SOP is commonly used in stormwater management, and that this detail is required to avoid a scenario where a contractor does not have the equipment to perform the task described. SOPs are generally less restrictive than specifications.
 - 3. Ms. Strause appreciated the feedback and will review the SOPs to remove language that could be overly restrictive to smaller, local contractors, replacing "required" with "recommended", "suitable equivalent", or "with approval". She said the intent of the SOPs is to ensure that the LCWMD is receiving the most efficient and cost effective maintenance services possible.
- d. Inspections Update
 - i. CCSWCD staff continue to send out 2016 Inspection Reports to PLs, starting with priority reports where corrective actions have been identified.
- e. Contract Check In
 - i. Mr. Brewer has been talking with AMEC/Foster Wheeler regarding the Database Maintenance and Migration Agreement, which was approved during the August meeting. He reported that he is working with Binks Colby-George to further refine the scope of work, because Mr. Colby-George has learned that AMEC currently has no method to bill for hosting the site database. The revised scope will not include migrating the database, however it will still include maintenance services and the creation of the management manuals.
 - ii. All active contracts are on schedule and performing as expected.
- f. Project Closeouts
 - i. A 36-page punchlist for the GGP Gravel Wetland was sent to Gorham Sand and Gravel. A field visit with Mr. Carney, Ms. Strause and representatives from Gorham Sand and Gravel is scheduled for September 23, onsite.
- g. Landowner Updates:

- i. CarMax final review documents were sent to DEP this week.
- ii. Husson University: Mr. Carney and CCSWCD staff recently met with Husson to discuss their parcel. CCSWCD will follow up about their assessment and potential stormwater treatment options.
- iii. 192 Western Ave: Mr. Carney has reviewed the documentation and determined that the proposed treatment designs are over Chapter 500 standards. There is no need to make suggestions for alternative treatment options.
- h. Ms. Strause took a moment to thank Mr. Palmer, Mr. Dillon and Mr. Newkirk for their assistance with the EWRI/LID Conference Tour.

9. Maine Mall Road Porous Pavement

- a. Mr. Newkirk has been notified that the repair of the section of porous pavement damaged by a water main break last year will be completed by Shaw Brothers and will be scheduled in the next few weeks. Mr. Newkirk will be on site when the repairs are installed.

10. Public Comments: None

- 11. Next Meeting:** The next meeting will be held on October 27, 2016 at 9:00am at Sable Oaks Marriott. Mr. Palmer will confirm with Mr. Brewer.

12. Adjourn: Meeting adjourned at 11:36 am.