



## Long Creek Watershed Management District Board of Directors

Minutes from March 31, 2020 Meeting

Location: Remote participation due to COVID-19; members of the public may participate in the meeting telephonically by calling (207) 352-4212 and entering the conference ID: 159 863 601#.

1. **Call to Order:** Mr. Dillon called the meeting to order at 9:02a.m.
2. **Roll Call:**
  - a. Attendance: Angela Blanchette, Curtis Bohlen, Arthur Colvin, Fred Dillon, Sean Donohue, Eric Dudley, Brian Goldberg, Craig Gorris, Will Haskell, Susan Henderson, Taylor LaBrecque, Doug Roncarati, Michael Vail
  - b. Absent: Ed Palmer
  - c. Staff/Guests: Peter Carney (Long Creek Watershed Management District), Jim Katsiaficas, Esq. (Perkins Thompson), Chris Brewer (Cumberland County Soil & Water Conservation District)
3. **Review of Board Meeting Minutes:**
  - a. The Board reviewed the minutes from the January 30, 2020 meeting.
  - b. **Mr. Haskell made a motion to accept the minutes from the January 30, 2020 meeting. Mr. Roncarati seconded the motion. The motion carried unanimously.**
4. **Treasurer's Report:**
  - a. Mr. Bohlen reviewed the February Financial Report, noting there was not a lot of activity in February.
  - b. Mr. Brewer confirmed that there was not much activity in February, but he advised expenditures will increase in March as a result of the South Branch BMP engineering design services contractor having begun to submit invoices for that work.
  - c. Mr. Brewer noted that seven default notices were sent pertaining to second half of fiscal year 2021 assessment invoices sent in January, which is about typical.
5. **Long Creek Watershed Management Plan, Proposed Amendments:**
  - a. Mr. Carney provided background on the development of the proposed conditions for the third permit cycle of the Long Creek General Permit included in today's Board packet.
  - b. Mr. Carney advised the he, Mr. Dillon, and Mr. Katsiaficas had met to discuss the content of the next Long Creek General Permit.
  - c. Mr. Carney reviewed the additional provisions that are being recommended for inclusion in the next Long Creek General Permit, which are included in numbered paragraph 4 of the attachment in the Board packet.
  - d. The new conditions include a study to determine the effectiveness of constructed project relative to water quality data, convening an expert review panel to make recommendations for future actions, developing a plan of action and implementation timetable based on the evaluation by the expert review panel, developing a model land use ordinance to address stormwater impact of new development and redevelopment, and implementing a grant incentive program to encourage adoption of innovative practices to restore water quality by private landowners.

- e. These requirements would be in lieu of identifying any new construction projects for the third permit cycle.
- f. Mr. Goldberg expressed concern that we need to make sure that we stay vague enough to not commit the organization to any specific spending at this time concerning the proposed grant program given the uncertainty created by the coronavirus situation.
- g. Mr. Katsiaficas said he will modify the grants program language to address Mr. Goldberg's concern.
- h. Mr. Roncarati asked whether, for communities with Long Creek as in impaired stream included in their MS4 permit, the recommendations for new permit conditions will be strong enough to ensure MS4 compliance?
- i. Mr. Roncarati said that maybe the MS4 municipalities will need to do additional work.
- j. Mr. Katsiaficas recommended looking into whether the Long Creek Watershed is exempt from the MS4 permits because it has its own permit.
- k. Mr. Donohue noted that this is what MTA is already doing with respect to MTA's MS4 permit, noting that MTA is only reporting what is required in the Long Creek General Permit for activities in the Long Creek Watershed.
- l. Mr. Carney noted that under the Long Creek General Permit, page eighteen, "relationship to other permits," the requirements of the Long Creek General Permit replace the following general permits, MTA, MDOT, and small MS4.
- m. Mr. Katsiaficas noted that small MS4 permits could impact what is included in the LCWMD permit.
- n. **Mr. Goldberg made a motion to approve amendments to the Long Creek Watershed Management Plan and present the amendments to the U.S. Environmental Protection Agency and the Maine Department of Environmental Protection for approval and incorporation into the Long Creek Watershed Management Plan. Mr. Donohue seconded the motion. The motion carried unanimously.**

**6. Cumberland County Soil & Water Conservation District, Services Agreement, Notice of Termination:**

- a. Mr. Carney noted this issue was on the agenda for the March 17 Board meeting, which was cancelled due to the coronavirus.
- b. Mr. Carney advised that both LCWMD and CCSWCD acknowledge the need to update the services agreement.
- c. The agreement renews automatically concurrently with the cycles of the Long Creek General Permit unless LCWMD provides notice to CCSWCD at least 90 days prior to the renewal date.
- d. The current Long Creek General Permit expires on June 21, 2020, therefore, the deadline to provide CCSWCD with Notice of Termination was March 21, 2020.
- e. Because of the Board's inability to meet on March 17 to discuss this issue, Mr. Carney consulted Mr. Dillon and it was decided that Mr. Carney should send the notice of termination prior to the March 21 deadline and have the Board ratify that action.
- f. In the meantime, Mr. Carney, Mr. Brewer, and counsel for both organizations have been working on drafting a new services agreement with the expectation that the new agreement will be in place prior to June 21.
- g. **Mr. Vail made a motion to ratify termination of the Services Agreement between the Long Creek Watershed Management District and the Cumberland County Soil & Water Conservation District dated March 19, 2010. Ms. Henderson seconded the motion. The motion carried unanimously.**

**7. GZA GeoEnvironmental, Inc., Data Analysis Services Agreement, Change Order No. 1:**

- a. Mr. Carney provided background on the change order request.
- b. At the end of the approximately \$50,000 contract GZA started to run out of budget. GZA completed the scope of work but asked for an after-the-fact change order to cover the overage which GZA values at approximately \$9,000.
- c. Mr. Bohlen and Mr. Carney discussed the request and determined that certain aspects of the request were debatable as to whether they were included in the original scope of work, while other costs were related to unanticipated circumstances (*e.g.* data quality assurance/quality control issues, unstable electronic file due to file size).
- d. Mr. Carney proposed to GZA a change order for the costs related to unanticipated circumstances in the amount of \$4,452, but not the other costs, to which GZA agreed.
- e. **Mr. Bohlen made a motion to authorize the Executive Director to enter into a change order to the Watershed Monitoring Data Analysis Services Agreement dated June 3, 2019 with GZA GeoEnvironmental, Inc. in the amount of \$4,452. Mr. Roncarati seconded the motion. The motion carried unanimously.**

**8. Maritime Farms & Land Management, LLC, Pavement Sweeping Services Agreement, Change Order No. 7:**

- a. Mr. Carney noted that over the winter the pavement sweeping “dashboard” (database) was reviewed and it was determined that several parcels should be added to the sweeping scope of work for various reasons.
- b. The new parcels add approximately 40 acres of pavement to the current 265 acres under management for sweeping resulting in a new total of 305 acres under management by LCWMD for pavement Sweeping. The current services agreement with Maritime Farms & Land Management, LLC includes 265 acres.
- c. The revised calculation includes primarily new development and redevelopment projects and parcels no longer performing their own sweeping.
- d. The figure includes non-compliant landowner parcels, however, while the change order adds these parcels to the scope of work they will not be assigned to the contractor until the parcels come into compliance.
- e. The value of the additional work for calendar year 2020 is approximately \$19,812.35.
- f. **Mr. Roncarati made a motion to authorize the Executive Director to enter into a change order to the Pavement Sweeping Services Agreement dated May 17, 2017 with Maritime Farms & Land Management, LLC to add approximately 40 acres of pavement to the scope of work. Mr. Haskell seconded the motion. The motion carried unanimously.**

**9. A Partner in Technology, Approve Contract with Revised Insurance Limits:**

- a. Mr. Carney advised that LCWMD’s current contract with A Partner in Technology (“API”), LCWMD’s information technology contractor, is nearing its termination date at the end of this month.
- b. Mr. Carney noted that API manages LCWMD’s water quality monitoring database and provides day-to-day on-call support to address LCWMD’s information technology needs.
- c. Mr. Carney advised that a new contract with a not to exceed limit of \$2,500, the monetary limit for the Executive Director to enter into contracts without competitive bidding, has been prepared for API for continued information technology support services.
- d. LCWMD typically requires contractors to carry \$2,000,000 in General Liability insurance and \$2,000,000 in Automobile Liability insurance.

- e. API carries \$1,000,000 in Automobile Liability insurance.
- f. Mr. Carney noted that for API's prior contracts with LCWMD the Board authorized modifying the Automobile Liability insurance requirements in the Services Agreement with API from \$2,000,000 to \$1,000,000, based upon API's work being performed remotely.
- g. Mr. Carney referred the Board to the proposed motion in today's Board packet for action on this item, which would authorize the District's Executive Director to enter into a Services Agreement with API with Automobile Liability insurance in the amount of \$1,000,000, combined single limit, rather than the typically required \$2,000,000, based upon API representing and warranting that the work under the Services Agreement will be performed remotely.
- h. **Mr. Colvin made a motion to authorize the Executive Director to enter into a Services Agreement with API with Automobile Liability insurance in the amount of \$1,000,000, combined single limit, based upon API representing and warranting that the work under the Services Agreement will be performed remotely. Mr. Goldberg seconded the motion. The motion carried unanimously.**

#### 10. COVID-19 and Participating Landowners' Annual Assessments:

- a. Mr. Carney noted that an issue has been raised with respect to Participating Landowner assessments for Fiscal Year 2021 given the current coronavirus situation.
- b. Mr. Carney noted that many tenants within the watershed are requesting rent deferment, abatement, or forgiveness, or sill simply not be in a position to pay rent. This will in turn create financial difficulties for landowners.
- c. Mr. Gorris provided detail on the issue as it relates to the Maine Mall and asked the Board to consider allowing for flexibility around payment of assessments for Fiscal Year 2021.
- d. Mr. Gorris said his company, the operator of the Maine Mall, is trying to navigate the issue of how they can best work with their tenants to ensure rent payments and the viability of the businesses in the mall. Some mall tenants will be closing due to this issue.
- e. Mr. Bohlen noted that we have sufficient cash on hand to make up for any short-term downturn in income, furthermore, ensuring the long-term financial viability of business in the watershed will benefit LCWMD because once the economy improves business will still be able to pay assessments if they are still around.
- f. There was a consensus that something should be done to provide financial relief to landowners, the Board debated whether this should be a deferment or payment or a forgiveness of some amount of the assessment.
- g. A consensus developed that the first-half assessments for Fiscal Year 2021 should be forgiven.
- h. **Mr. Haskell Made a motion to assess the Full Fiscal year 2021 assessment based on the provisional budget adopted by the Board, to abate the first-half fiscal year payment, with the second half assessments being assessed and paid in accordance with the typical invoicing schedule. Mr. Goldberg seconded the motion. The motion carried unanimously.**

#### 11. Contractor Assignments During COVID-19:

- a. Mr. Carney asked the Board for guidance on how to proceed with contractor work during the coronavirus limitations, specifically, the catch basin cleaning contract has asked whether it can start work this week.
- d. Mr. Carney noted that three of the municipalities are continuing with maintenance work as long as social distancing is implemented.
- b. Portland and South Portland continuing to work, taking advantage of light traffic.

- c. Westbrook is continuing to work, with workers traveling in two separate vehicles. Westbrook uses a stetco for catch basin cleaning which can be operated by one person. This may not be possible for the LCWMD catch basin contractor if they use a vactor, which requires more than one person to operate.
- d. Scarborough crews are not going out to perform discretionary work, but only to perform emergency repairs.
- e. Mr. Katsiaficas noted that maintenance and operation of wastewater infrastructure is considered critical infrastructure under the Governor's shut-down order.
- f. Mr. Carney noted that pavement sweeping is currently in progress, the sweeper operator usually works alone. The catch basin contractor would like to start work this week.
- e. The Board arrived at a consensus that the catch basin cleaning contractor should be allowed to start work as long the contractor feels comfortable doing the work.
- f. Mr. Katsiaficas advised that the contractor should be informed that if at any time for health or safety reasons – sick workers or possibility of infection – the contractor feels uncomfortable starting or continuing with the work, they should let us know and we will consider it a force majeure situation with no negative financial consequences to the contractor for inability to work for a reasonable period. This includes extending the contract termination date.

## **12. South Branch BMP Retrofits:**

- a. Mr. Carney advised that design engineering work on the South Branch BMPs is moving forward.
- b. The work is essentially broken down into two parts: (1) the design for the gravel wetland retrofit adjacent to T.J. Maxx; and (2) the feasibility study pertaining to optional upstream BMPs.
- c. Mr. Carney advised that the upstream BMPs identified through the feasibility study would be beneficial to the gravel wetland because the space to construct the gravel wetland is very small relative to the size of the catchment area to be treated.
- d. In addition, Mr. Carney advised that the footprint for the proposed gravel wetland encompasses some space on the adjacent GGP parcel. This footprint overlaps the GGP maintenance pad on Philbrook Avenue, which is used to store landscaping material and equipment. This pad sits right above Long Creek so it is not an ideal location.
- e. Mr. Carney has been discussing with Mr. Gorris the possibility of relocating the GGP maintenance pad at LCWMD's cost.
- f. Mr. Carney noted the treatment volume for the gravel wetland is a challenge because the original volume calculation was a rough estimate and did not take into account things such as a forebay, side-slopes, safety benches.
- g. The feasibility study provided a menu of options to pursue with the cost ranging from tens-of-thousands of dollars to "the sky is the limit."
- h. Some of the options included Filterra tree boxes, modular wetlands, underground storage/treatment, and porous pavement.
- i. Any additional work could be included as bid alternates, however, a change order will be required to engineer any of the supplemental BMPs.
- j. At this time, we could ask for some of the small items to be designed, for example, the tree islands and modular wetlands.
- k. Mr. Donohue noted that 30% design is a significant milestone in the design process and we may want to review the preliminary design plans with the permitting agencies at this point.

- l. Mr. Carney said Jeff Dennis from Maine DEP will be consulted to get his input on the proposed design and supplemental BMPs, and then we can discuss the design with permitting staff.
- m. There was a consensus to move forward with the gravel wetland design and to make a request of the engineering design services contractor for a cost estimate for designing some of the supplemental BMPs to augment the gravel wetland.
- n. Mr. Goldberg requested that an estimate of the cost of moving the GGP maintenance pad also be developed.

**13. Public Comment(s):** None.

**14. Next Meeting:** Mr. Carney will send an email poll to determine the date and time of the next Board meeting.

**15. Adjourn:** The meeting adjourned at 11:07a.m.

Board voting record:

Member	Attendance	January 30, 2020 Minutes	Plan Update	CCSWCD Notice	GZA Change Order	Maritime Change Order	API Approval	COVID-19 and FY2021 Payments
Blanchette	Y	Y	Y	Y	Y	Y	Y	Y
Bohlen	Y	Y	Y	Y	Y	Y	Y	Y
Colvin	Y	Y	Y	Y	Y	Y	Y	Y
Dillon	Y	Y	Y	Y	Y	Y	Y	Y
Donahue	Y	Y	Y	Y	Y	Y	Y	Y
Dudley	Y	Y	Y	Y	Y	Y	Y	Y
Goldberg	Y	Y	Y	Y	Y	Y	Y	Y
Gorris	Y	Y	Y	Y	Y	Y	Y	Y
Haskell	Y	Y	Y	Y	Y	Y	Y	Y
Henderson	Y	Y	Y	Y	Y	Y	Y	Y
LaBrecque	Y	Y	Y	Y	Y	Y	Y	Y
Palmer	N	—	—	—	—	—	—	—
Roncarati	Y	Y	Y	Y	Y	Y	Y	Y
Vail	Y	Y	Y	Y	Y	Y	Y	Y