

**Draft
Meeting Summary
Long Creek Restoration Project
Public Meeting for Stakeholders
June 10, 2008
Marriott Sable Oaks, South Portland**

Introductory Matters:

Ed Palmer, General Manager of the Marriott, welcomed participants. Ann Gosline, Project Facilitator, thanked Mr. Palmer and the Marriott for hosting this meeting. She thanked Mr. Palmer and David Russell from Fairchild Semiconductor for their personal commitment and their Companies' generous support during the Project.

South Portland City Councilors James Hughes and Tom Blake welcomed meeting participants. Westbrook City Engineer Eric Dudley, Portland Director of Public Services Michael Bobinsky, and Scarborough Town Manager Ron Owens all indicated their municipalities' commitment to the Project.

Jerry Jalbert, Steering Committee member, noted that the Project has broad participation from municipalities, land owners, and non-profit organizations. He reported that Project partners have agreed to this mission: "to identify and implement a cost-effective, environmentally-responsible, and equitable plan for restoring and protecting Long Creek and its watershed."

Presentation by Technical Consultants

The Project's Technical Consultants presented a PowerPoint presentation concerning water quality standards, current problems with the stream, and their work in identifying opportunities for addressing the causes of water quality problems. They also explained the economic and environmental benefits of developing a collaborative plan to address water quality issues. (See PowerPoint.)

Project's Discussions to date on Funding Approaches

Chris Hall, Vice President, Portland Regional Chamber, and Steering Committee member, discussed the Project's work in exploring funding approaches. He noted as follows:

This Project presents the opportunity to implement an approach that will be better for the environment and cheaper for landowners, and we get some added community benefits as well -- but we will not get there unless we let go of the old default of parcel-by-parcel permits. By participating in this process, landowners can collectively make their needs known early on, and make the approach successful.

The Project is addressing a number of questions:

- How much will stream restoration cost?
- How are we going to pay for it?

- How are we going to administer it?
- How do we govern it to ensure that all local and state rules line up?

The Project will also attempt to maximize available state, federal and grant dollars. State bond money can be used to leverage other funding sources.

The Project is also researching how others around the country are dealing with these problems. The stormwater fee approach is emerging as an option. The Project will look at whether this approach could work in Maine, and in this community, which will need to participate on a broad basis in order for it to be successful. Others who are dealing with this around the country have found that an umbrella entity can coordinate stormwater measures, perform administrative tasks, educate landowners and the public, and ensure that measures are implemented. It is also important to set up a stormwater group including private landowner representatives to advise the effort. The approach the Project develops will be more robust and have a better chance of being successful if there is broad participation in the process.

The guiding principles in evaluating funding and administrative approaches are:

- Needs to work
- Cheaper through planning and cooperation
- Fair – need to walk away saying, “I don’t love it, but it will work.”
- Efficient
- Cost-effective

Q: Will municipalities be required to address stormwater issues on public roads and property?

A: The planning process is looking at both municipal and state drainage structures and stormwater retrofits will be identified for both public and private infrastructure.

Q: Have there been studies done that say what types of pollution are a problem and where they come from?

A: Information on these issues is available on the website.

Comments by Maine Department of Environmental Protection Commissioner

Maine Department of Environmental Protection (MDEP) Commissioner David Littell provided an update on the status of legal requirement in the watershed. He explained:

- Studies indicate that ½ century ago, there was effective habitat in this watershed. Development, which has led to 34% impervious cover, has impaired the stream so that it no longer provides effective habitat. MDEP has more data for Long Creek than for any other watershed.
- The best way to restore water quality is to have broad group of municipalities, landowners and other stakeholders develop a plan to clean up the stream. This will lead to the best, lowest cost plan. A plan generated by the U.S. Environmental Protection Agency (EPA) in Boston, or even by MDEP in Augusta, is less likely to meet the communities' needs than a locally-generated plan.

- DEP recognizes South Portland's leadership, both on CSO abatement, and in pulling the communities together to develop such a plan, which is on track to be completed by fall.
- The Conservation Law Foundation has filed a petition with EPA asking EPA to exercise "Residual Designation Authority" under the U.S. Clean Water Act. If EPA does so, owners of existing development will be required to address water quality issues resulting from stormwater discharges from their properties. It is evident that EPA is going to make such a designation in this watershed.
- There are many questions under state and federal law concerning bringing Long Creek into compliance with required water quality standards. What is a reasonable timeframe for compliance? What is reasonable to ask of landowners? Stakeholder input is important in making these decisions, which the planning process can provide.
- MDEP will respect the process of developing of the plan, and then MDEP will evaluate the plan to ensure that it meets the needs of the stream. The plan will need to provide for addressing water quality needs within a reasonable timeframe. There should be a plan and intent to start construction projects next summer and goals to begin laying out future construction projects.
- Everyone will need to contribute to the solution – how responsibility is allocated can be determined by the community. These problems will cost a lot more money if addressed on an individual parcel by parcel basis. In other states, failure to address these issues has not played out well.
- MDEP will be a partner in this, providing limited funding, as available.

Q: When you talk about permits, are you talking about permits for current landowners?

A: This is what is being decided now, by EPA. EPA will determine what level of property is required to have a permit under Residual Designation Authority. Because MDEP is delegated for stormwater management, administration will be handed to MDEP and MDEP will work with stakeholders to determine if others should be brought in. Landowners will work with MDEP rather than EPA to negotiate their permit. MDEP's preference is to allow for flexibility to negotiate with stakeholders.

Q: Does any science exist that if we do A, B, and C, in the end the goal will be attained?

A: Yes. The stream will be clean in the end. There is science that supports cleaning the stormwater and treating the flow. There are pollutants you expect to see in stormwater and you can treat them. This is a complex system, with a lot of properties. There is a target for reducing effective imperviousness. This does not mean tearing up pavement, but does mean installing buffer strips, rain gardens, etc. There are over 200 Best Management Practices (BMPs) that have been shown to be effective. One needs to determine property by property what BMP is the best fit. It is a complex system, but we can clean up the stream.

Q: It seems that impairment is a function of our using automobiles. Is there is a way to capture some of the gas tax to fund these projects?

A: From policy perspective, that makes a lot of sense. There is a constitutional limit on how the gas tax is used in this state, which would need to be addressed. Funding from the gas tax is probably not the most likely source, but we are not taking anything off the table. We will

certainly seek to work through the federal system. It is feasible and workable to develop a plan that will work for this stream without hindering development

Q: Salt that comes off the pavement is a big problem. How can that be addressed?

A: Municipalities will be a big player because of the roads. The Maine Department of Transportation and the Maine Turnpike Authority will be dealing with these issues as well

Q: What do we do about those who are not in the room and fight this?

A: It is anticipated that permitting requirements will be set up so that those parties that participate in an approach implemented as a result of the planning process will be considered permitted and therefore be shielded against citizen suit. Those parties that do not participate in the approach set up by the plan may find that development is held up in court for many years. Holding up development is not good for Maine, or for the environment.

Input, Comments by Participants

Meeting participants met in small groups to address the two questions set out below. Comments have been summarized and grouped by topic:

Question 1: The Long Creek Restoration Project is developing objectives and guiding principles for the draft plan. As we work toward developing a plan, we have talked about the importance of:

- **Restoring the stream**
- **Making the plan cost-effective for businesses, organizations and municipalities**
- **Helping landowners pool their knowledge and resources to keep costs as low as possible**
- **Fair allocation of costs**
- **Certainty & ability to plan for expenditures**
- **Ease of administration (paperwork, reporting, etc.) of businesses and municipalities**
- **Providing access to low cost loans**

What is important to you?

Responses/Comments:

Keeping Costs Down (Cost effectiveness): comments and questions

- Important to reach attainment without affecting landowners' cost of business
- Collaboration could greatly keep down the cost of reaching attainment
- Focus on immediate pollution fixes – i.e., providing landscapers with educational materials (pesticides, waste removal companies)
- First, identify low hanging fruit– look at what can be done now – include regular maintenance
 - safer pesticides and fertilizers
 - dumpster placement
 - sweeping

- Work at sub-watershed level for outreach may be good strategy for getting low hanging fruit– divide into neighborhoods that already exist – Foden Rd, for example – i.e., work by business parks
- prioritize improvements – areas without treatment vs. recent development, “pods” of development - high density development vs. low density
- Use best technology – something that will work and be inexpensive/worth the money
- Encourage collaboration with others to reduce costs – such as sharing street sweeping, discounts for vortechnic system.
- Look at small things that can easily be done before the larger things
- Determine whether old stormwater systems are still working (inherited, for example)
- Allow landowners to do mitigation, but not have engineer to design it.
- Provide carrots over sticks for early participants (a reward)
- Identify loans and grants – revolving loan fund (local)
- Pair grants/loans to those whose economic scales are different (GGP vs mom & pop) – match loans according to need – loans could be administered at the local level.
- Shared treatment facilities - how do we get there? Provide legal help for landowners.

Fair Allocation of Costs, Fee Structure: comments and questions

- Equity is important to get buy-in
- I don't want to be paying for someone else's stormwater
- Plan's equity component should be developed first so stakeholders have opportunity to weigh in
- Consider fair costs in relation to how much people pollute
- Should be able to do more than required and get "green credits"
- Should properties be grandfathered? They did what they were supposed to do
- How will impacts of different areas be quantified in an equitable way?
- Allow landowners to do their own mitigation rather than pay a fee
- Provide options for mitigation or stormwater utility so landowner has a choice
- State & local government needs to lead private sector by example (don't ask business to do unfair amount of work)
- Consider residential responsibility
- Consider that South Portland is a service center for the area, people come from surrounding communities, contribute to pollution. Capture costs by parking garage fees, like Old Port?
- Look to gas tax – significant element of degradation is associated with vehicular traffic

Phase-in, Other Comments on Affordability to Landowners

- Make sure costs are not imposed all at once
- Can't impose immediately on tenants - may leave
- Use the ADA Act as an example for retrofitting – if property value is above a certain amount, improvements are required - Cap improvements to not make it a burden
- We are all working with "tight pockets"

- Under a net lease, it may be better for landowners if they are obligated to do something, because they can pass the cost on to tenants. Sometimes per-parcel requirements are better and can be managed as the cost of doing business.
- Taxes, but not fees can be passed on under some lease arrangements
- Some larger landowners may not have the financial resources to address stormwater problems, especially if their property was developed before stormwater requirements were put in place.

Education, Process

- Reach out to avoid having objectors turn up at the 11th hour of the process
- Need to educate business owners to get buy in
- Most people do not realize that there's a problem. You can't solve a problem or claim you've cleaned up something until people understand that there is a problem. Must get more people involved.
- Let the business owners know what the city is doing – city leadership by example
- Make sure that state and municipal BMP installations are well publicized – so that businesses can see they're leading by example. “We're invested, we're already doing it.” Lends credibility to recommendations/requests that landowners participate in the same way.
- We can educate the community. Explain some of the benefits -- as a stand alone it's not a benefit.
- Should send out a very specific notice saying your property is in this watershed and is affected.
- Need strong educational component to consumers who come here

Questions, Need for Clarity

- Defining the problem – “water quality of Long Creek not meeting standards.” Explain whether the goal is to address water quality in the stream – or – prevent degradation downstream
- Time Frame of the plan – make it concise for landowners
- Would like to see a study to see what has caused this damage. Not sure what has caused all of the damage. Would like information on contamination and whether all the water sites have been tested. Who is really responsible?”
- What's the legal frame work for this? Need a basic summary of the genesis of this Project. Was the whole process precipitated by a petition?

Concerns, Comments

- At end of day, money is lacking
- Must consider public safety (roads, de-icing).
- No guarantees that efforts will lead to attainment of water quality standards
- How will we know when attainment is reached? Studies and standards keep changing.
- We have been discussing this for 25 years. I'm tired of talking about it.

- In 1984 the pond was barren, now it has lilies and a great deal of growth. It's a lot better than it was in 1984. Long Creek was never a trout stream and never will be.
- We can spend our energy pointing the finger or working together to fix the problem.
- We insist on a collaborative process
- Most landowners will do the right thing. Will landowners who refuse to participate and refuse to deal with stormwater be required to do so? By whom and how?
- Permit - do not compliance us to death!
- Nothing in plan states compliance will be required on a property by property basis – going to be larger approach
- Each person should figure out what to do at their own site. If each person would do that, it would help solve the problem.
- Have a big issue to deal with – let's deal with it positively.
- Reaching attainment in Long Creek doesn't mean reaching attainment for Clark's Pond. It is not fair to look to Clark's Pond for threshold, because Clark's Pond is affected by impervious surface and an urban impaired stream that are not part of this watershed and study.
- Work upstream to Clark's Pond, rather than downstream
- Every branch in Long Creek has different issue

Question 2. The Long Creek Restoration Project has also been thinking about benefits that could come out of this Project Are there ways that this Project could benefit you as a property owner, resident, business person, or your employees? In working on the plan, we have talked about the potential for the Project to:

- o **Make the area more attractive to visit and shop, work and live**
- o **Provide area citizens with access to trails, natural areas and the stream**
- o **Recreation at Clark's Pond, fishing in stream**
- o **Provide business opportunities to companies providing stormwater expertise and services**
- o **Increased valuation of property**

Do you think we should try to achieve these or other benefits as we undertake this process?

- Brokers deal with selling property – there's no need for more advertising on properties that already have good qualities. Tenants don't care as much about these issues.
- Infrastructure, transportation, permits, zoning, etc. more important to developers
- Nice for the area, but new practices won't bring new people in – brokers can do their jobs without stream/environmental improvements – properties sell on their own.
- Plan is nice/important for area but will not affect some specific properties that are already appealing. Trails, picnic areas, shading, trees may be a plus but not a necessity. Won't bring more people in to shop.
- It would help if we could make it easier/cheaper for shoppers to come to the area – public transport – transit options?
- Parks might help
- Trails network, publicize access
- Maybe there aren't any benefits – should accept Long Creek as conduit?
- Anything that improves aesthetics is a plus

- If plan addressed legal obligations and improved aesthetics, it would be a good thing
- Parking is designed for two busiest days of year – lots most of time are vacant – Could address through transit or structured parking. But no payback for developers
- Benefit to business is avoidance of cost and benefit to customers (example is parking garage at Mall. Would need municipalities and or the state to do this, but benefit would be far reaching).
- The greening of the area would be a draw to customers and tenants. Tax benefits for going green could be a good idea.
- Greening also includes energy efficiency measures – education to business community of benefits of such measures are important – avoiding energy costs – avoiding regulation/enforcement from DEP, addressing legal obligations
- Providing a "green" face to the mall area will have benefits
- Going green adds value to properties in the watershed
- Best bang for buck is to act early and avoid costs down the road
- Service areas serve the larger community
- Help businesses “appear green”
 - o clean up backyard & community
 - o customers want to see green stuff
- Develop program to certify “stewards of Long Creek” or something to that effect -- Recognize businesses for cooperating and doing a good job.
- Participation in this process, publicity can be a benefit to private entities and public agencies, and build relationships