



## Long Creek Watershed Management District Board of Directors' Meeting

Minutes from April 14, 2021 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 conference ID: 613 480 225#.

1. **Call to Order:** Mr. Dillon call the meeting to order at 9:00a.m.
2. **Roll Call:**
  - a. Attendance: Curtis Bohlen, Fred Dillon, Sean Donohue, Eric Dudley, Brian Goldberg, Craig Gorris, Kerem Gungor, Will Haskell, Susan Henderson, Ed Palmer, Doug Roncarati
  - b. Absent: Angela Blanchette, Arthur Colvin
  - 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 26, 2021 meeting.
  - b. **Mr. Haskell made a motion to approve the January 26, 2021 Board meeting minutes. Mr. Dudley seconded the motion. The motion carried unanimously.**
4. **Treasurer's Report:**
  - a. Mr. Bohlen reviewed the March Financial Report.
  - b. Mr. Brewer noted that he and Mr. Carney are working with the Maine Department of Environmental Protection ("Maine DEP") to clear up the permit status of several properties that are being developed, are in transition, or are out of compliance. This includes resolving past due assessments.
  - c. Mr. Carney noted that as the next general permit is developed Maine DEP is looking at ways to clarify processes for property transfers and collection of assessments.
  - d. Mr. Carney said there may be some discussion on how past-due landowner assessments are collected.
  - e. Maine DEP has taken the lead on collections, however, there may be a way for the District to collect assessments.
  - f. Mr. Goldberg asked if there is a way to cancel general permits for nonpayment.
  - g. Mr. Carney noted that there is currently a clause in the Participating Landowner Agreements that allows the District to terminate an agreement with a Participating Landowner for default, which includes nonpayment of assessments.
  - h. Mr. Palmer said the collection of fees needs to be discussed with Maine DEP because allowing accumulation of unpaid assessments without enforcement action is causing other landowners to not want to participate.

- i. Mr. Katsiaficas raised the possibility of the District having lien authority for past due assessments similar to what municipalities have noting, however, that this could result in an adversarial relationship between the District and landowners.
- j. A discussion ensued on the collection of past due assessments. In the interest of time, it was decided that the discussion be schedule as an agenda item for a future meeting.

**5. Follow up from January 26, 2021 Executive Session, Executive Director, Annual Performance Review:**

- a. Mr. Dillon asked the Board to recall that at the last meeting it was voted that the Executive Director will accrue up to 40 hours of sick leave annually.
- b. Mr. Dillon said that it was left unresolved as to whether the Executive Director would be entitled to "cash out" sick leave upon leaving employment with the District, and, if so, should there be a limit on the amount of reimbursement for accumulated sick leave.
- c. Mr. Bohlen noted that the University of Southern Maine distinguishes between paying out accrued sick time from paying out accrued vacation leave. Vacation time is reimbursed, while sick time is not reimbursed.
- d. Mr. Gorris noted that his company caps payout of sick leave at four weeks.
- e. Mr. Palmer noted this under his company's policy sick time and vacation time are combined as "paid time off."
- f. In the interest of time, Mr. Dillon and Mr. Carney agreed to discuss the issue before the next meeting and will bring a specific proposal to the next meeting.

**6. Participating Landowner Request(s):**

- a. Mr. Carney noted that under Section 5(b)(2) of the Participating Landowner Agreements a landowner may request that the Board approve a monthly payment schedule for annual assessment payments.
- b. Mr. Carney advised that GGP-Maine Mall L.L.C. has requested a monthly payment schedule.
- c. **Mr. Haskell made a motion to approve a monthly Annual Assessment payment schedule for GGP-Maine Mall L.L.C. in accordance with Section 5(b)(2) of the Participating Landowner Agreement. Mr. Roncarati seconded the motion. The motion carried unanimously.**

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

- a. Mr. Carney explained that LCWMD's current contract with A Partner in Technology ("API"), LCWMD's information technology contractor, expired at the end of February.
- b. Mr. Carney noted that API 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. API carries \$1,000,000 in Automobile Liability insurance.
  - e. 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.
  - f. 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.
  - g. **Mr. Haskell made a motion to authorize the Executive Director to enter into a Services Agreement with A Partner in Technology with Automobile Liability insurance in the amount of \$1,000,000, combined single limit, based upon A Partner in Technology representing and warranting that the work under the Services Agreement will be performed remotely. Mr. Roncarati seconded the motion. The motion carried unanimously.**
- 8. Sole Source Purchase, Contech Engineered Solutions LLC, Filterra Media:**
- a. Mr. Carney introduced the sole source purchase request with Contech Engineered Solutions LLC ("Contech"), which is the vendor of proprietary Filterra stormwater treatment units.
  - b. Mr. Carney noted that the District is responsible for the annual maintenance of approximately two dozen Filterra units. During annual maintenance some of the proprietary filter media contained within the units is scraped off if it is dirty. Over time, the media layer slowly becomes depleted and eventually replenishment of the media is required.
  - c. The Filterra units are now between five and ten years old. During inspections in 2020, it was noted that several of the Filterra units needed to have the media replenished to the original design depth.
  - d. The Filterra media is a proprietary product of Contech, therefore, Contech is the sole source for the media.
  - e. Contech offers significant discounts as volume purchased increases. Based on the District's needs and available volume discounts Mr. Carney recommended that ten tons of media be purchased. Ten tons should allow immediate needs to be met with the potential for some media to be left over for future use.
  - f. **Mr. Haskell made a motion to authorize the Executive Director to purchase ten tons of replacement Filterra media in the amount of \$8,530 from Contech Engineered Solutions LLC. Mr. Roncarati seconded the motion. The motion carried unanimously.**

**9. Change Order, South Branch Gravel Wetland BMP, Geotechnical Services, GZA GeoEnvironmental, Inc.:**

- a. Mr. Carney asked the Board to recall that the Board approved a sole source services agreement with GZA GeoEnvironmental, Inc. ("GZA") for geotechnical engineering services related to the South Branch Gravel Wetland BMP Project.
- b. Mr. Carney noted that GZA's proposal, upon which the approved agreement is based, assumed that GZA could complete the work on the basis of geotechnical boring reports dating from 1994 which were provided to the District by the site owner. The 1994 pertains to a potential expansion of the commercial development from that time. GZA's proposal specifically excluded any new soils boring.
- c. GZA's initial analysis reflects that there does not appear to be a slope stability issue in the immediate area for which the 1994 soil borings are available. However, applying the 1994 soil boring data to the area of the project along Philbrook Avenue reflects that there may be a slope stability issue in that area.
- d. GZA has suggested two paths forward: (1) continue with the analysis using the available soil boring data which will likely show a slope stability issue along Philbrook Avenue; as a result the project design would need to be modified to account for the slope stability issue; or (2) conduct additional soil borings to provide additional soil boring data in the area immediately adjacent to Philbrook Avenue; the additional soil boring data could show there is no slope stability issue along Philbrook Avenue or could confirm there is a slope stability issue along Philbrook Avenue.
- e. Mr. Gungor asked whether the project design could be changed rather than drilling.
- f. Mr. Carney suggested that the design engineer would likely need the soil boring data either way, because the soil boring information would be needed to determine in what way the design would need to be modified.
- g. Mr. Carney noted that modifying the design might require a less steep slope, which would affect the treatment volume of project given the tight footprint in which the gravel wetland is being constructed. Maine DEP's stormwater manual typically expects a 1" storm treatment volume for a gravel wetland, however, the Long Creek Watershed Management Plan already acknowledges that only approximately .6" of treatment will be possible given the size of the project area. Any further loss of volume will further reduce the project's treatment potential.
- h. Ms. Henderson suggested that we need to be maintain as much treatment volume as possible to be prepared for climate change as the intensity of storms increase.
- i. Mr. Bohlen noted that his recent analysis of rainfall data does reflect more intense storm events.
- j. Mr. Roncarati suggested upstream subsurface storage could be installed if additional storage capacity is needed.
- k. Mr. Carney said upstream storage would be possible in the future. In addition, upstream sub-catchments could be disconnected from the gravel wetland if future upstream BMPs are constructed given that the project includes installation of a bypass pipe into which future BMPs could be routed.
- l. **Mr. Haskell made a motion to authorize LCWMD's Executive Director to enter into a Change Order with GZA GeoEnvironmental, Inc. in an amount not to exceed**

**\$11,000 to perform exploratory borings and lab testing to supplement the geotechnical analysis of the South Branch BMP retrofits project gravel wetland. Mr. Gungor seconded the motion. The motion carried unanimously.**

**10. Private BMP Incentive Program Application(s):**

- a. Mr. Carney explained that the first three applications received by the District under the Private BMP Incentive Program Request for Proposals are on today's agenda for consideration.
- b. The applications are from GGP-Maine Mall L.L.C., the City of South Portland, and Toddle Inn Westbrook Real Estate, LLC.
- c. Mr. Carney advised that he reviewed the applications in accordance with the request for proposals and that he determined that the GGP-Maine Mall L.L.C. was complete and ready to be voted on.
- d. The GGP-Maine Mall L.L.C. application is for a heated sidewalks project that was mostly completed at the time of the application.
- e. Mr. Carney explained that he scored the application in accordance with the request for proposals, with the application scoring 85 points, and determined the project was eligible for the maximum award of 75% of the project cost subject to a cap of \$50,000.
- f. Mr. Carney suggested that the Board approve the award subject to the applicant agreeing to provide documentation of the construction cost and five-years' worth of data to determine annual operating and maintenance costs.
- g. Mr. Goldberg asked if there was a separate meter on the breaker for the heated sidewalks to determine electricity usage.
- h. Mr. Gorris said that a secondary meter could be installed on the breaker for the heated sidewalks.
- i. Mr. Gungor asked if construction cost of \$45 per square foot, based on the total project cost versus the square footage of the heated areas, was accurate.
- j. Mr. Carney responded that the calculation was accurate, but that it should be noted a substantial cost of the project involved supplementing the Maine Mall power supply. Other projects may have a lower cost per square foot if the power supply aspect of the project is not necessary.
- k. **Mr. Goldberg made a motion to award \$50,000 to GGP-Maine Mall L.L.C. for its heated sidewalk project subject to the requirements that GGP-Maine Mall L.L.C. agrees to provide documentation to calculate the price per square foot construction cost, install a separate electric meter on the breaker for the heated sidewalks, and provide five years of documentation on maintenance and operating costs. Mr. Haskell seconded the motion. The motion carried unanimously.**
- l. With respect to the City of South Portland and Toddle Inn Westbrook Real Estate, LLC applications, Mr. Carney determined that the applications are not complete. However, Mr. Carney requested that the Board consider earmarking funds for the two applications so the applicants could pursue the additional engineering work that would be needed to complete the applications.

- m. Mr. Carney explained that the City of South Portland and Toddle Inn Westbrook Real Estate, LLC applications are both structural BMP projects that require substantial engineering work. Completion of the engineering work is necessary in order to complete the applications.
- n. Mr. Carney said earmarking funds for the projects would give the applicants confidence to invest in the engineering costs of the project without concern for the program funds being exhausted before the applications could be submitted and acted.
- o. Mr. Goldberg said he did not think earmarking funds would be fair to future applicants because this methodology was not provided for in the request for proposals, which requires completed applications to be submitted in order to be considered by the Board for an award of funds.
- p. Mr. Bohlen suggested that the applications could be broken into two parts, one for engineering and design costs, and a second for construction costs. This would lessen the financial risk for the applicants.
- q. There was a consensus that funds not be earmarked for the projects pending the submission of final applications because it was not contemplated in the RFP.
- r. Mr. Carney agreed to discuss the Board's position with the applicants.

**11. Revisions to Rules and Regulations and Documentation of Internal Financial Control**

**Structure:** In the interest of time this agenda item was tabled for a future meeting.

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

**13. Next Meeting:** Mr. Carney agreed to send a poll to the Board to determine the date of the next meeting.

**14. Adjourn:** The meeting adjourned at 11:09a.m.

Board attendance and voting record:

Member	Attendance	Approval of January 26, 2021 Minutes	GGP-Maine Mall L.L.C. Monthly Payment Schedule	A Partner in Technology Insurance Requirements	Contech Engineered Solutions LLC Sole Source Purchase Request	GZA GeoEnvironmental, Inc. Change Order	GGP-Maine Mall L.L.C. Private BMP Incentive Program
Blanchette	N	—	—	—	—	—	—
Bohlen	Y	Y	Y	Y	Y	Y	Y
Colvin	N	—	—	—	—	—	—
Dillon	Y	Y	Y	Y	Y	Y	Y
Donahue	Y	Y	Y	Y	Y	Y	Y
Dudley	Y	Y	Y	Y	Y	Y	Y
Goldberg	Y	Y	Y	Y	Y	Y	Y
Gorris	Y	Y	Abstain	Y	Y	Y	Abstain
Gungor	Y	Y	Y	Y	Y	Y	Y
Haskell	Y	Y	Y	Y	Y	Y	Y
Henderson	Y	Y	Y	Y	Y	Y	Y
Palmer	Y	Y	Y	Y	Y	Y	Y
Roncarati	Y	Y	Y	Y	Y	Y	Y