



Long Creek Watershed Management District Board of Directors

Minutes from June 11, 2019 Meeting

Location: South Portland Water Pollution Control Facility, 111 Waterman Drive,
South Portland, Maine

1. **Call to Order:** Mr. Dillon called the meeting to order at 9:08a.m.
2. **Roll Call:**
 - a. Attendance: Arthur Colvin, Fred Dillon, Sean Donohue, Eric Dudley, Brian Goldberg, Will Haskell, Susan Henderson, Doug Roncarati, Michael Vail
 - b. Absent: Angela Blanchette, Curtis Bohlen, Craig Gorris, Taylor LaBrecque, 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 May 21, 2019 meeting.
 - b. Mr. Dillon noted that in paragraph 6(m) the abbreviation "RPF" should be "RFP."
 - c. **Mr. Haskell made a motion to accept the minutes from the May 21, 2019 meeting, with the correction noted by Mr. Dillon. Ms. Henderson seconded the motion. The motion carried unanimously.**
4. **Treasurer's Report:**
 - a. Mr. Brewer reviewed the May Financial Report.
 - b. Mr. Brewer noted that we are approaching the end of fiscal year and expenditures are lower than budgeted in Fiscal Year 2019, which is partly the result of having not performed anticipated construction in Fiscal Year 2019.
 - c. Mr. Brewer noted that the Maine Department of Environmental Protection is pursuing unresolved payments.
5. **Accept Best Management Practices Easement Deeds, Main Stem Restoration Project:**
 - a. Mr. Carney provided background on the easements included in today's Board packet which pertain to construction of the Main Stem Restoration Project.
 - b. Mr. Carney said nine properties are implicated in the construction project, for which eight easements and one temporary permission letter are necessary to carry out construction.
 - c. The easement, or permission letter, grantors are: J & L Limited Liability Company; NECG Mallside BH LLC; Herbert E. Ginn and Adah P. Ginn; GMG, LLC; Central Maine Power Company; Colby E. Marvin, Saco Trust; 341 Park, LLC; and Cornerbrook LLC.
 - d. Mr. Carney noted that six of the eight easements are from participating landowners and two are from non-participating landowners. The non-participating landowners are J & L Limited Liability Company and Central Maine Power Company.
 - e. Mr. Carney noted that the easement with J & L Limited Liability Company was resolved by Mr. Katsiaficas and Julie Ray at Perkins Thompson working with J & L Limited Liability Company's attorney. J & L Limited Liability Company's attorney had some comments, but the principal was very willing to voluntarily provide the easement for project, was glad to help, and was genuinely very interested in the project.

- f. Mr. Carney noted that Central Maine Power was very cooperative, the easement just took time to go through their corporate review process.
- g. The easements are based on the templates attached to all Participating Landowner Agreements. Participating Landowners accept the terms of the easement template when signing the Participating Landowner Agreement. Some flexibility is used when negotiating easements with non-participating landowners.
- h. Mr. Katsiaficas advised the Board that, as a public entity, the Long Creek Watershed Management district (hereinafter "LCWMD") needs to accept the easements through its legislative body, that is its Board of Directors.
- i. **Mr. Colvin made a motion to accept the above-referenced Best Management Practices Easement Deeds. Mr. Vail seconded the motion. The motion carried unanimously.**

6. License and Indemnification Agreement, Maine Mall Road and Gorham Road "Specified BMP Structures":

- a. Mr. Carney provided background on the proposed License and Indemnification Agreement (hereinafter "Agreement").
- b. Mr. Carney advised that last summer when looking into replanting trees for the Gorham Road median project he looked for LCWMD's authority to conduct the replanting.
- c. Mr. Carney advised that he found in LCWMD's records a draft of the proposed Agreement, but he could not find an executed copy of the Agreement.
- d. Mr. Carney inquired with Mr. Dillon as to whether the City of South Portland had a signed copy of the Agreement on file.
- e. Mr. Dillon and his colleagues checked the City of South Portland's files, but they could not locate a signed copy of the Agreement.
- f. Mr. Carney's research found that the Agreement was an agenda item for the South Portland City Council in 2014, and that the minutes from that meeting reflect that the City Council approved the Agreement. It appears the Agreement was not signed after City Council approval.
- g. The City of South Portland determined that because the City Council had already approved the Agreement it could be signed by the current City Manager. The City Manager subsequently signed the Agreement.
- h. The motion in front of the Board today would authorize the Executive Director to sign the Agreement on behalf of LCWMD and receive the benefits and accept the obligations therein.
- i. **Mr. Vail made a motion to authorize the Executive Director to enter into the Agreement with the City of South Portland to provide LCWMD with a license to construct, inspect, maintain, repair, and replace the "Specified BMP Structures" identified in the agreement. Mr. Goldberg seconded the motion.**
- j. Prior to a vote, Mr. Roncarati asked whether LCWMD was assuming any obligations related to structural Best Management Practices (hereinafter "BMPs") constructed by entities other than LCWMD by signing the Agreement.
- k. Mr. Katsiaficas responded that the Agreement pertains only to BMPs constructed by LCWMD.
- l. **The motion carried unanimously.**

7. Financial Audit Services Agreement Award:

- a. Mr. Carney noted that LCWMD's organizational documents require that LCWMD's financial statements be independently audited at the conclusion of each fiscal year.
- b. Mr. Carney noted that the three-year contract with LCWMD's most recent auditor, Smith & Associates, CPAs, expired following the end of the 2019 Fiscal Year audit.
- c. LCWMD, therefore, issued a Financial Audit Services Request for Proposals (hereinafter "RFP") on March 20, 2019 for a new financial audit services contract.
- d. The scope of work in the RFP is the preparation of audited financial statements for LCWMD's Fiscal Year 2019 and Fiscal Year 2020.
- e. Mr. Carney noted that the prior contract was for a term of three years, but the scope of services was limited to two years in this instance so that the end of the contract coincides with the end of the current permit cycle in June 2020. The length of subsequent contracts can then be tied to the length of the next permit cycle.
- f. Proposals in response to the RFP were due on May 9, 2019.
- g. Mr. Carney noted that two proposals were received, one from Purdy Powers & Company and one from Smith & Associates, CPAs.
- h. The Purdy Powers & Company proposal cost was \$14,800, or \$7,400 annually.
- i. The Smith & Associates, CPAs proposal cost was \$10,400, or \$5,200 annually.
- j. Mr. Carney and Mr. Brewer scored the proposals in accordance with the criteria in the RFP.
- k. The average score for Smith & Associates, CPAs was 93 out of 100 points, and for Purdy Powers & Company, 78 out of 100 points. The scoring summary was reviewed at the meeting and is attached as **Exhibit A** to these minutes.
- l. Mr. Carney advised that he was able to check three references for Purdy Powers & Company, who all spoke highly of Purdy Powers & Company.
- m. Mr. Carney advised that he was only able to get in touch with one reference for Smith & Associates, CPAs, who spoke highly of Smith & Associates, CPAs.
- n. Mr. Carney advised that he had contacted both proposers to ensure that they can meet LCWMD's insurance requirement, which are \$2 million general liability, \$2 million automobile liability, and \$1 million professional liability.
- o. Neither proposer was able to provide a definitive answer on the insurance coverages, but both were in the process of checking with their insurance companies.
- p. Mr. Carney notes that Smith & Associates, CPAs signed and provided the required "bid form" which by signing Smith & Associates, CPAs agreed that they could meet the insurance requirements.
- q. Mr. Carney noted that Purdy Powers & Company had not provided the signed "bid form," but in a conversation with Purdy Powers & Company's principal, the principal believed that Purdy Powers & Company had more than adequate insurance.
- r. Mr. Carney advised the Board that he wanted to ensure that the Board was comparing "apples to apples" when considering the proposals. It has been LCWMD's prior experience that the annual cost of \$1 million in umbrella liability is around \$1,000 to \$2,000 annually.
- s. It was the Board's primary position that the selected proposer should provide the services at the price stated in the proposal, with the insurance requirements as stated in the RFP.
- t. As a fallback position, the Board authorized the Executive Director to lower automobile insurance limits to \$1 million, if necessary, to obtain a contract.

- u. Based on the scoring criteria and cost of each proposal, the Board agreed to award the contract to Smith & Associates, CPAs.
- v. **Mr. Vail made a motion to authorize LCWMD's Executive Director to enter into a Services Agreement with Smith & Associates, CPAs in an amount not to exceed \$10,400 to perform financial audit services in accordance with the Financial Audit Services Request for Proposals issued by LCWMD on March 20, 2019. The award is contingent upon Smith & Associates, CPAs meeting the insurance requirement as stated in the RFP, unless it would preclude arriving at an agreement, under which circumstance the Board authorized lowering the automobile insurance limit to \$1 million. Mr. Dudley second the motion. The motion carried unanimously.**
- w. Prior to the conclusion of the meeting, Smith & Associates, CPAs sent an email stating that they are able to meet the insurance requirements in the RFP at the price indicated in their proposal.

8. Approve Fiscal Year 2020 Budget:

- a. Mr. Carney noted that LCWMD's organizational documents require that the Board adopt a final budget no later than July 1 of each year for the following fiscal year. The fiscal year runs from July 1 to June 30 of each year.
- b. Mr. Carney noted that the Board provisionally adopted a Fiscal Year 2020 budget in January which was used as the basis for the estimate of expenditures provided to landowners in February for Fiscal Year 2020, also as required by LCWMD's organization documents.
- c. Mr. Carney advised there are three relevant documents in today's Board packet, the Budget Narrative, the budget overview, and the long-term cash flow statement.
- d. The narrative provides an explanation for each expense, the budget overview reflects anticipated income of \$1.5 million and \$2.39 million in expenditures in Fiscal Year 2020.
- e. The cash flow statement reflects that at the end of Fiscal Year 2020 LCWMD will have approximately \$2.5 million in unallocated funds in the bank.
- f. Mr. Carney noted that the budget was reviewed with members of the Finance Committee, which included Mr. Goldberg, who is in attendance today.
- g. Mr. Goldberg provided the Finance Committee's view of the budget, characterizing it as straightforward.
- b. Mr. Carney noted that the significant differences between the February estimate and the version of the budget before the Board today is shifting of funds due to changing the timing of the remaining construction projects.
- c. Mr. Carney summarized the revisions since February as moving construction costs for the Main Stem Restoration Project to Fiscal Year 2020, which had previously been allocated in Fiscal Year 2019. In addition, the budget for the Main Stem Restoration Project budget was lowered from \$800,000 to \$630,000, reflecting the reduction in fill removal anticipated for the project as the result of hydrologic modeling.
- d. Furthermore, the budget for the Hannaford Basin project was increased to reflect 2019 construction dollars, resulting in an increase in construction cost from \$415,000 to \$590,000.
- e. Mr. Haskell asked whether the construction cost for the Main Stem Restoration Project accounted for the current premiums for construction prices being encountered in the market, and whether the timing of a request for proposals for construction would reasonably allow time for bidders on the project, who may already be busy for the year.
- f. Mr. Carney noted that Chris Baldwin, of CCSWCD, performed the updated construction cost calculation for the Main Stem Restoration Project and to the best of his ability he accounted

for current construction pricing. Mr. Baldwin, however, is not able to account for subjective price increases related to “dealer markup” which are too speculative to consider.

- g. Mr. Carney further responded that because the construction request for proposals will be crafted in such a way as to require prior experience in stream restoration work it is not anticipated that traditional large contractors will be submitting proposals for this work. It is more likely that small-to-medium-sized contractors with specialized experience in stream restoration will be drawn to respond to the request for proposals.
- h. Mr. Donohue recommended that the permit applications request the longest possible window to construct the project to provide potential contractors with greater flexibility with timing, which may result in more bids and more favorable prices.
- d. Mr. Carney noted that the Chloride Committee and South Branch Committee met jointly to make a final recommendation on pursuing the Hannaford Basin project given the level of chlorides in the South Branch.
- e. The Committee members recommended pursuing the Hannaford Basin project for the following reasons: (1) meeting goal of treating 150 acres as identified in the Long Creek Watershed Management Plan; (2) treating pollutants other than chlorides; and (3) chlorides are not an issue that LCWMD can solve on its own in a vacuum. The chloride issue is a state-wide, regional, and nation problem that needs to be solved on a larger scale. We need to do what we can to treat pollutants while the chloride issue is worked out on a larger scale.
- f. Mr. Roncarati, who participated in the Chloride Committee and South Branch Committee meeting, affirmed Mr. Carney’s summary of the meeting.
- a. **Mr. Dudley made a motion to approve the Fiscal Year 2020 budget. Ms. Henderson seconded the motion. The motion carried unanimously.**

9. Public Comments: None.

10. Next Meeting: The next meeting will be held on August 15, 2019 at 9:00a.m. at the Maine Turnpike Authority, pending confirmation of room availability by Mr. Donohue.

11. Adjourn: The meeting adjourned at 10:32a.m.