



**Land for Maine's Future Program**

Minutes of the Meeting

**November 13, 2018**

32 Blossom Lane, Marquardt Building, Room 118

Augusta, Maine

**Board Members Present:**

Fred Bucklin, Lisa Turner, Commissioner Chandler Woodcock, Commission Walter Whitcomb, Don Kleiner, and Commissioner Patrick Keliher (Chairman)

**Staff Members Present:**

Sarah Demers, Tom Miragliuolo, R. Collin Therrien, and Tammara Roberts

**Others:**

Robert Marvinney, DACF  
 Matt Nixon, Maine Coastal Program, DMR  
 Liz Petruska, DACF, BPL  
 Jeff Romano, MCHT  
 Aaron Dority, Frenchmen Bay Conservancy

Deirdre Gilbert, DMR  
 David Rodrigues, DACF  
 Bethany Atkins, MDIFW  
 Stephanie Gilbert, DACF

**1. Welcome and Introductions:**

Commissioner Patrick Keliher, Chairman, called the meeting to order at 1:05 p.m., welcomed everyone, and asked for introductions.

**2. Minutes:**

Chairman Keliher, asked if there were any correction needed to the minutes. With no discussion or opposition, the Chair called for a motion to accept the September 25, 2018 meeting minutes.

**Motion to accept minutes:** Don Kleiner motioned to accept the minutes which was seconded by Fred Bucklin. The vote was unanimous.

**3. Bond Balances -LMF Director: Sarah**

Status of Funds		
ATTACHMENT A		
As of September 30, 2018		
Authorized	Bonds To Be Sold	Cash on Hand
PL 2009, Ch. 645		
C&R	\$0	\$3,040,064
Farmland	\$0	\$383,559
Working Waterfront	\$0	\$276,857
<b>Funds Remaining</b>	<b>\$0</b>	<b>\$3,700,480</b>
PL 2011, Ch. 696		
C&R, Farmland, WWF	\$0	\$3,175,000
<b>Total Funds Remaining</b>		<b>\$6,875,480</b>

Status of Funds	
Water Access	
<b>Water Access Funds - Board Allocation 11/09/2017</b>	
2009 Bond	\$192,500
2011 Bond	\$307,500
<b>Total</b>	<b>\$500,000</b>
Head of Tide Park II	\$50,000
Pettegrow Point	\$160,000
Lubec Boat Launch	\$54,000
Mailbox Pool	\$21,555
<b>Funds Remaining</b>	<b>\$214,445</b>

The Board has \$6,875,480 cash on hand. Sarah provided an updated handout and reported that there is over \$200,000 available for Water Access projects that can come in at any time.

**4. Project Allocations & Status – Land for Maine's Future Director:**

Active Projects		Allocations
C&R	13	\$3,127,350
Farmland	2	\$163,000
Water Access	2	\$181,555*
Working Waterfront	2	<u>\$421,500</u>
TOTAL	20	\$3,893,405

\*Mailbox Pool added to Water Access

Of the allocated projects, we have 13 active C&R projects, 2 Farmland projects, 2 Water Access projects and 2 Working Waterfront projects which are older inactive projects that DMR will be withdrawing their support from. The \$421,500.00 allocated for Working Waterfront projects will roll back into the fund and become available for future projects.

Fred re-stated that there is a total of approximately \$6.8 million, on hand with approximately \$3.9 million allocated toward projects.

Sarah confirmed that approximately \$3.9 million has been allocated, but the \$421,000 for working waterfront projects will be coming back and will be available for new projects.

**5. Board Notifications & Approvals – LMF Director:**

**A. Branch Lake Amendment** – The Branch Lake property (447 acres) was acquired in 2009 by the City of Ellsworth with funding from LMF for watershed, habitat and scenic protection purposes forest management and recreational access purposes. Branch Lake serves as the City’s public water supply. Recognizing the City’s multiple use mandate, project partners agreed that Frenchman Bay Conservancy would hold an easement on the property to ensure its permanent protection. DACF- BPL is the Third-Party Holder, an indication of the State’s commitment to seeing this property protected.

Request: The City of Ellsworth has asked to amend the conservation easement to reconfigure the Drinking Water Treatment Expansion Area and Drinking Water Effluent Irrigation Area located within the easement.

DACF-BPL and LMF Board must provide approval of an easement amendment. The Maine Attorney General’s office determines whether easement amendment requires court approval.

Overview:

- The total acreage of the 2 areas combined will not change, but the allocation of acreage and location would be adjusted by the amendment.

Steps taken by DACF-BPL as DSA and Third Part Easement holder:

- Determine why the amendment is needed, consult with State resources to understand the problem and proposed solution;
- Site visit and consultation with easement holder, LMF staff, AG
- Participated in Advisory Committee meeting, as required by the CE

DACF-BPL Findings:

- Proposed use is consistent with the Purposes of the CE. Reconfiguration will not have a negative impact greater than what was originally proposed.
- Amendment is a reconfiguration, not a change in use. Reconfigured lots are in substantially the same location and total acreage for water treatment uses will not increase.
- Reconfiguration potentially strengthens water quality by creating a 250' setback from Branch Lake.
- Proposed reconfiguration is consistent with the requirements of the LMF Project Agreement and documented Board intent to have these uses located 250' back from the shore.

DACF-BPL Recommendation to LMF Board:

To approve the proposed amendment to reconfigure the Drinking Water Treatment Area and Drinking Water Effluent Irrigation Area subject to the following conditions:

- FBC must determine whether the amendment will result in a change in the value of the 3 land use areas of the Protected Property (DW Treatment Expansion Area, DW Effluent Irrigation Area, Watershed Protection and Recreational Reserve Area). This was recommended by the AG office.
- Reconfigured lots must be surveyed and monumented;
- Reconfigured lots must be in compliance with all local, state and federal rules and regulations;

**Motion:** Commissioner Whitcomb made a motion to accept the DACF-BPL recommendation and require FBC to prepare an updated survey and legal description to be recorded with the re-stated LMF Project Agreement and conservation easement. This and all other due diligence items required by DACF-BPL and LMF must be reviewed and approved prior to recording. The motion was seconded by Commissioner Woodcock.

With no further comments, questions or objections, Chairman Keliher called the vote

**Vote:** The vote was unanimous.

**B. BPL Funding request for Androscoggin Riverlands State Park Survey**

LMF funds contributed to multiple park additions in 1990s through 2007. Recent surveyor research has determined that the survey completed after closing inaccurately referenced an historic line. A new survey will be undertaken to resolve the line location and and disputes with abutters.

Requested: BPL has requested that LMF contribute \$12,500\* about half of the \$25,000 cost to survey the line.

**\*LMF bond funds may not be used for post-closing expenditures, however donated funds may, per guidance from State Controller's office.**

Don: Should we pay for the whole cost of the survey if it is an LMF error, and not the Commissioner or Department?

Sarah: I don't believe you could consider this is an LMF error. The situation arose due to decisions made at the Bureau of Parks and Lands.

Commissioner Whitcomb: I believe this was something that occurred well before any of us were around.

**Motion:** Lisa Turner made a motion that LMF contribute \$12,500 toward the \$25,000 cost of the survey. The motion was seconded by Fred Bucklin.

Chairman Keliher asked for discussion of the motion.

Commissioner Woodcock stated that he is sympathetic to Commissioner Whitcomb's situation and feels LMF should pay the whole amount seeing as this will be a complicated and expensive survey.

Discussion ensued on whether to amend or withdraw the motion.

**Motion amendment:** Commissioner Woodcock offered a friendly amendment to the motion to increase the amount from \$12,500 to \$25,000. Lisa Turner accepted and Fred Bucklin seconded the amendment.

With no further questions or comments, Chairman Keliher called for a vote.

**Vote:** Passes unanimously

### **C. LMF Agriculture Easement Overview**

Sarah began the discussion by giving the Board an overview of how farmland as a priority resource is referenced in LMF statutes and bond language and clarified that funds for farmland protection are held in the Land for Maine's Future fund account along with funds for all Conservation & Recreation projects.

Staff have been working to update the Ag. easement shell to reflect the fact that the two projects selected will not be using federal NRCS funds as match. The revisions made are intended to provide clarity and make the document more reader friendly, particularly for landowners. No changes to policy issues such as commercial energy generation, farming of regulated substances, limits of impervious surfaces.

Overall, no substantive changes to the CE, with the exception of the elimination of the State's 3rd party enforcement rights, which were intended to provide protection of bond funds in the event of future violations, amendments/changes in use.

#### Next Steps

- Additional work by LMF and State staff is planned to streamline and clarify required notices and approvals by the State.
- Adjusting the IRS language regarding proceeds in the event of a termination of the easement as

additional guidance is available pending IRS litigation. The IRS issue may affect 1 of the projects, and could affect landowners in the future. Given the IRS issue, it is possible we will have additional negotiations with the land trust and sellers on how to minimize their risk.

- Review final document with the State staff and the AGs office.

Discussion followed on specific easement terms, with the following topics being hi-lited as most important:

- Easement terms should not limit future farm viability;
- Clarification on what constitutes impervious surface;
- The amount of allowed impervious surface (currently 3%) should include a process for requesting an expansion in the future;
- Building envelopes should be used for housing, with farm structures allowed anywhere on the property.

#### **D. 2019 Proposed Board Meeting Schedule**

Chairman Keliher dismissed himself from the meeting and asked Commissioner Woodcock to take over as Chairman while he was out.

Discussion ensued on the proposed meeting dates, with a change agreed upon by all to move the November meeting from November 26<sup>th</sup> to November 19<sup>th</sup>.

##### 2019 LMF Board Meetings

January 29, 2019

March 25, 2019

May 21, 2019

July 23, 2019 - Site Visit

September 24, 2019

November 26, 2019 – Changed to November 19, 2019

Chairman Woodcock asked for a Motion.

**Motion:** Don Kleiner moved to accept the 2019 Board meeting schedule with one change, as discussed, to the November meeting date. The motion was seconded by Lisa Turner.

**Vote:** With no further discussion, the vote was unanimous in favor.

#### **E. Working Waterfront Access Protection Program – DMR Staff**

Matt Nixon from the Department of Marine Resources gave an overview of the Working Waterfront Access Protection Program.

WWAPP Purpose: To provide protection to strategically significant working waterfront properties whose continued availability to commercial fishing business is essential to the long-term future of this economic sector.

##### Working Waterfront Covenant and Right of First Refusal:

- Mechanism for permanent protection

- Forever protects and preserves the property to ensure its availability and affordability for commercial fisheries operations
- The covenant “runs with the land” and is binding upon the Grantor, its successors, and assigns in the event of any transfer, sale or foreclosure of the Protected Property.
- Limits future sale price to future appraised commercial fisheries value.

Proposal Evaluation Criteria and Scoring:

Economic Significance of the Property:	20 pts
Alternative Properties in the Vicinity:	15 pts
Degree of Community Support:	10 pts
Level of Threat of Conversion:	20 pts
Utility of the Property for Commercial Fisheries Business:	20 pts
Capacity for new shore side jobs	<u>15 pts</u>
	100 pts

How is Award determined?

- Not a grant, but the sale price of future development rights.
- Amount determined by a standardized working waterfront appraisal.
- Appraisal has been reviewed by a review appraiser, then approved by LMF Board.
- Applicants typically use money for investment in property or business, but are not required to do so.

Due Diligence Requirements

- Business plan (accompanies application)
- Required 1:1 match by applicant
- Appraisal reviews by peer appraiser and LMF Board committee
- Clear title – title insurance policy
- Environmental Site Assessment (ESA) required
- Survey – recorded at closing
- Covenant language agreed by Grantor and Holder
- Property taxes paid up-to-date at closing
- Mortgage holders subordinate their interest

Program Impacts (2006-2015)

- 25 properties
- 36.4 upland acres
- ~670 fishing boats, 1100 fisherman, 1200 families
- Annual landings valued at ~\$48 million
- Awards range \$35,000 - \$340,000

Award Winners:

- 10 fishing co-ops
- 8 private buying stations
- 3 municipal wharves
- 3 parcels held by NGOs
- 1 fishing family property

WORKING WATERFRONT 2008- 2018				Total
Completed Project Name	Year	Town	County	Acres
Holbrook's Wharf	2008	Harpswell	Cumberland	0.8
Port Clyde Fisherman's Coop	2008	St George	Knox	0.8
Davis Wharf	2009	Tremont	Hancock	0.6
Vinalhaven Coop	2009	Vinalhaven	Knox	1.0
Town Landing, Isle Au Haut	2009	Isle Au Haut	Knox	0.4
Roberts Wharf	2009	Boothbay	Lincoln	1.9
Bremen Coop	2009	Bremen	Lincoln	12.0
Pemaquid Fisherman's Coop	2009	Bristol	Lincoln	4.5
Potts Harbor - Bibbers Wharf	2010	Harpswell	Cumberland	0.5
Sprucehead CoOp	2010	S.Thomaston	Knox	0.3
Owls Head - Ship to Shore Co-op	2010	Owls Head	Knox	0.3
Fishermen's Heritage Coop	2010	Friendship	Knox	1.0
FriendShip Lobsterman's Coop	2010	Friendship	Knox	1.0
The Wharf on Johnson Bay	2010	Lubec	Washington	1.0
John Hancock Wharf	2010	York	York	0.5
Pine Point - Scarborough	2011	Scarborough	Cumberland	2.0
North End Lobster Co-op	2011	Westport	Lincoln	4.61
Moosabec Mussel	2012	Jonesport	Washington	0.8
Quoddy Bay Lobster	2012	Eastport	Washington	0.94
Great Wass Lobster & Bait Co., Inc.	2013	Beals	Washington	1.0
J.O. Brown	2013	North Haven	Knox	1.1
Maine Fresh Lobster	2013	Bremen	Lincoln	3.1
South Bristol Coop	2013	South Bristol	Lincoln	1.3
Beals Town Landing	2014	Beals	Washington	0.5
ANR Enterprises, (a/k/a Millers Wharf)	2016	St. George	Knox	0.36
<b>Totals</b>				<b>42</b>

Sarah: At their November 9, 2017 meeting, the LMF Board voted to allocate \$969,357 toward Working Waterfront Protection Projects. At that time, 6% was set aside for legal expenses, inventories and access improvements, sometimes called “legal and all other” costs. Since that time, our legal fees through DOT have increase by 100%, we were getting the deal of the century, now we are just getting a good bargain. Recommend that the Board adjust the amount set aside from 6% to 10% of a project’s Board allocation to reflect the changes in our legal fees. The good news is if we don’t use it all for legal fees we can re-allocate for use on projects.

**Motion:** Fred Bucklin made motion to change the set aside amount from 6% to 10% for working waterfront projects. Commissioner Woodcock seconded the motion.

Don Kleiner inquired whether this was an overly cautious estimate for expenses.

Sarah responded that this is not overly cautious. If I were being extremely cautious I would have recommended 15% set aside. We’re seeing our legal expenses more than double, but we are not doubling the percentage to be set-aside for these costs.

Lisa Turner asked whether we have more money available than the \$969,357 that was previously set-aside by the Board.

Sarah responded that we have approximately \$3.4 million total in funds that are not yet allocated to projects. Of that \$3.4 million we have \$220,000 set aside for water access projects, \$400,000 for farmland, \$969,357 is for working waterfront.

Lisa: If we are telling people we are giving away money, \$969,357 for projects doesn't seem to be enough to put staff through the process.

Chairman Keliher asked for a vote to change the set aside amount from 6% to 10%.

**The vote was unanimous.**

**Motion:** Lisa Turner made a motion to increase the allocation for Working Waterfront Project from \$969,357 to \$2 million. Fred Bucklin seconded the motion.

Chairman Keliher asked for questions or comments.

Commissioner Woodcock inquired what the balance of LMF un-allocated funds would be if \$2 million were directed to Working Waterfront projects.

Collin replied that approximately \$1,275,000 would be unallocated.

Sarah: I guess my one consideration is the capacity of our legal staff and at the Department of Marine Resources. It may be helpful to stagger the projects, so we can select a first round and then second round.

Chairman Keliher agreed it might be necessary for us to have 2 rounds. Depending on how they come back.

Sarah stated she wanted to make sure the Board's expectations were aligned with the capacity of the Program to carry out their decision.

Chairman Keliher reminded everyone that there is a motion to increase LMF funds to \$2 million for Working Waterfront Projects.

**Vote:** Motion passes unanimously

Don Kleiner requested a report from the Department as to the reality of what we have just done?

Dierdre Gilbert, DMR, responded that the Department is ready to start just as soon as we have the Board's approval.

Sarah noted that the Board has two more decision to make on this topic.

Past practice has been that once the appraisal was completed, the appraisal then goes to a review appraiser contracted by LMF to conduct a USPAP compliant desktop review. The AOC then reviewed the appraisal and appraisal review report. We can continue that process, or we can have it go directly to the AOC, and follow the more traditional process that we use for all other appraisals. We wanted to check in the Board to see if there is a preference.

Lisa asked what the typical or average cost of a review appraisal is.



Sarah replied that in the past they have cost in the range of \$800 to \$1,200.

Fred responded that that was a very fair price.

At this time, Fred then reminded the Board that this (November) is his last meeting as an official member of the board.

Chairman Keliher responded that he hasn't seen any recommendations to replace Fred, so you may be stuck with us.

Fred responded that he is supportive of hiring a review appraiser.

Commissioner Woodcock stated that he would like to put on record that there have been comments and criticisms about LMF appraisals in the past, considerable comments, to the point where the Governor entered into the process on some of those occasions. I would like to compliment Fred and the members of the AOC. I think they have regenerated significant faith in the appraisal process. This group and the public owe a debt of gratitude to you Fred. It is an important part of our work. Thank you, Fred.

Chairman Keliher noted that using a review appraiser is being recommended by the Chair of the AOC.

With no opposition to using this approach, Sarah states that third party review by a contracted review appraiser will continue, and the appraisal will then go to the AOC for approval and recommendation to the Board.

The next question for the to the Board, for the majority of Working Waterfront grant review process, a board member hasn't been involved. Is there a member of the Board that would like to be involved in the upcoming process?

Lisa Turner responded that she would love to be involved. There was no opposition.

Sarah noted the next item is an approval from the board to issue a call for Working Waterfront proposals. This is a conditional approval for the 2018 Working Waterfront Access Protection Program Workbook, pending any changes discussed today. The final approval would be made by email after the board reviews the final document. This is the same process we took with the Conservation and Recreation projects. A conditional approval, then review the workbook one last time, with a final approval of the workbook and a publicized call for proposals and a public notice as well.

**Motion:** Don Kleiner made a motion for conditional approval of the 2018 Maine Working Waterfront Access Protection Program Workbook pending final changes and final approval to be made by email. Lisa Turner seconded the motion.

Chairman Keliher asked for questions, comments? Seeing none he called for a vote.

**Vote:** Passes unanimously.

## **A. Staff Updates – LMF Director**

**Legal Services** – changing – had one attorney retire, left us with a single attorney for all Land for Maine's Future projects and other state projects. Understanding that isn't feasible, MaineDOT, who contracts our attorneys, is seeking approval from the AG's office for 3 additional attorneys. This will increase the number of attorneys available to us, but it will also significantly increase our legal rates to more than 2 times what we have been paying.

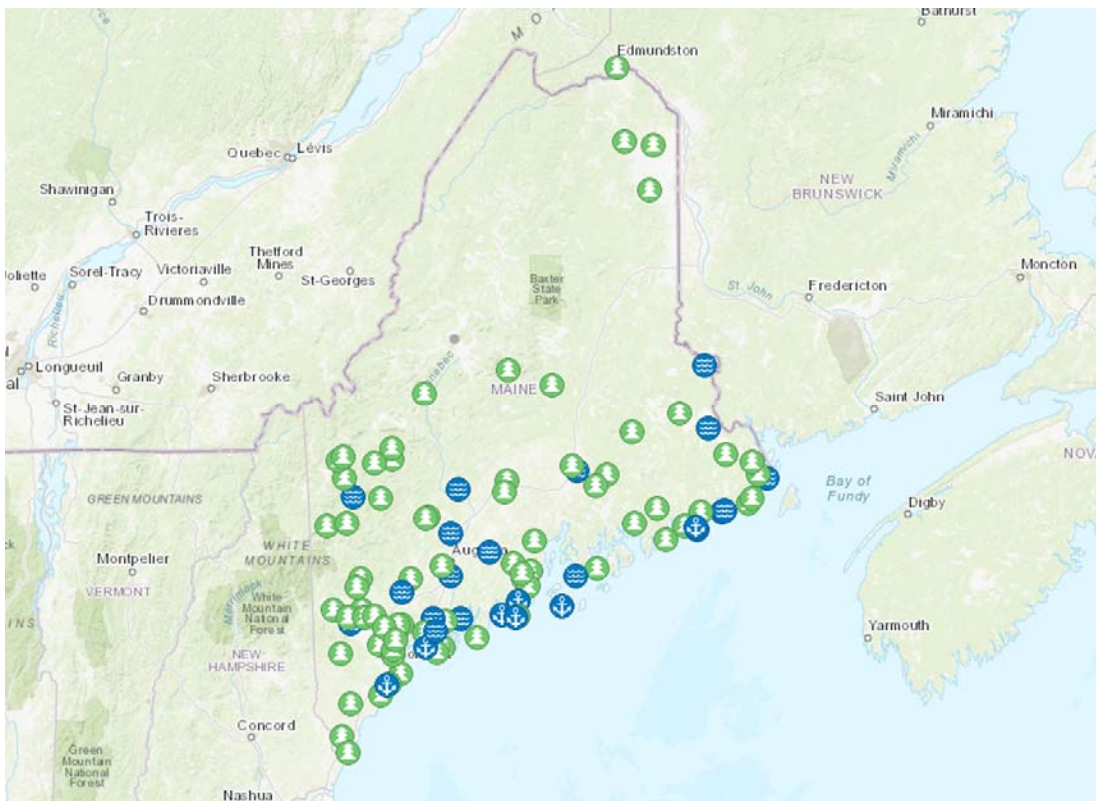
Lisa: That would be a contract employee not a state employee?

Sarah: Correct, contracted through the Department of Transportation.

**Amendment/Changes of Use Committee:** The Committee hasn't met since our last board Meeting. The Branch Lake Amendment process was a good one to form some recommendations, for future processes.

**Biennial Report:** We will be preparing a Biennial Report to be presented to the Board at our January meeting.

**LMF Project Viewer:** Progress has been made in adding more projects. We hope to have this live on the LMF website in January 2019. Map below shows the number of projects that will be displayed.



**Motion:** Chairman/Commissioner Woodcock made the motion to adjourn, seconded by Don Kleiner. The meeting adjourned at 3:15 p.m.