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MLTC STEERING COMMITTEE MEETING

Meeting Minutes

Friday, September 16, 2016
U.S. Fish and Wildlife Center
300 Westgate Center Drive, Hadley, MA

Attendees: Attendance on record at MLTC office.

Hand-outs: Minutes of May 13th meeting (see www.massland.org/news); Agenda; TNC Policy Update for MLTC: Sept. 2016; Flyer for MLTC & LTA workshop “Ending the Chase” on Sept. 21st

10:11 A.M. Rich Hubbard, MLTC Board Chair, on behalf of Kathy Orlando, MLTC Steering Committee (SC) Chair called the meeting to order. Rich Hubbard welcomed everyone and led the round of introductions.

- 1) **Minutes of May 13th meeting:** Rich H called for discussion and hearing none, Andy M moved and Henry W seconded to approve the minutes. **VOTE:** Unanimous.

- 2) **Westford APR. Marylynn Gentry, MLTC Executive Director, gave an update.**
 - a) **Background:** In the late 1990s, the Town of Westford acquired an APR on a 3 acre parcel known as Drew Gardens. This APR is held by the Board of Selectmen (BoS) who have sole enforcement authority. She noted this as unusual. Once an active farm and farm stand, the property (which includes an additional 6 acres under two APRs), fell into disrepair and was recently acquired for over \$600,000 by a Groton developer who has proposed building a farm-to-table restaurant (> 26,000 SF) on the 3 acre property. Of note, the Town waived its right of first refusal on the sale. Westford’s Town Counsel (Kopelman and Paige) advised the BoS that this did not constitute a change in use; in conflict with other authoritative opinions that it does.

 - b) **Action requested:** MLTC has been asked to write a letter to the BoS by Sept. 28th in support of the APR so as not to allow the proposed development. Rich H said SC needs to decide whether and how to get involved, and, any MLTC action would require a Steering Committee vote. Discussion ensued:
 - i) The Mass Dept. of Agricultural Resources (MDAR) has opined that this is a change in use and is not a compatible with the APR.
 - ii) Elizabeth W noted this is an Article 97 issue and an APR amendment issue. Both would need to be addressed through appropriate process as Chapter 184 invoked perpetual protection and noted that the Attorney General (AG) would need to be involved.
 - iii) Doug Muir, an attorney retained by William and Marion Harmon, argues that this use would not be allowed by the APR.
 - iv) The Westford BoS is focused on an APR amendment and is asking Town Meeting (TM) for a vote. Discussion on role of AG and possible AG action. Marylynn G clarified that this is a process issue.
 - v) Mark R described an APR issue on the Cape and learned that State can mandate land to be farmed. Ray believes that as a community, we must stand up for perpetuity. If paving on agricultural land, a release would be required.
 - vi) Rob W reinforced that our focus should be on process. Kathy O summarized that SC needs to advise the board. Rob W requested more research be done prior to making recommendation.

 - c) Mark R moved and Rob W seconded a motion for the MLTC board to send the letter to the BoS. Marylynn will draft the letter and circulate to the Board with a deadline for feedback being Wed. 9/21.
VOTE: Unanimous

10:28 (Kathy Orlando arrived and assumed chair)

- 3) **Kurt Gaertner, EEA Director of Sustainable Development update.**

- a) Kurt G thanked the LT community for feedback on regulation updates per Executive Order (EO) 562.
- b) Noted that Secretary Beaton is aware and concerned about solar array siting on open land.
- c) The Dept. of Energy Resources (DOER) updated standards should be positively received.
- d) He noted that today Gov. Baker to be signing an EO on climate change. It has three sections: mitigation, adaptation and resilience. Concerns about transportation sector on regional level for mitigation. Requires a climate change plan by each agency. Full EO will be out later today.
- e) Katy E asked whether natural gas vehicles were included in the transportation section and they are not as the goal is to use electric thereby reducing fossil fuel use.
- f) Kurt G clarified that Solar Renewable Energy Certifications (SREC) program encouraging use of solar on appropriate, disturbed sites vs. undeveloped land and there's a plan to reform program to incentivize appropriate siting with a draft to be out this month in response to Katy E's questions.

4) Bob O'Connor and Executive Office of Energy and Environmental Affairs (EOEEA) Update.

- a) 12,600 acres protected this past year. The Commonwealth protected a 1/3 of million acres since 2000 for a total of 1.333 million acres protected. Bob O congratulated everyone on this achievement.
- b) Over 75 applications received for Dept. Conservation Services including LAND and PARC grants.
- c) Landscape Partnership Program and Drinking Water Supply Protection grants were announced last week and application period will close in early December.
- d) Legislative session closed, but, approximately 70 Article 97-type bills passed with the goal for mitigation in each. He noted that both the EEA and Governor's office are supportive of Article 97 issues.
- e) Martha Reicher has posted a new Conservation Restriction (CR) model on the website (unlocked). Please start with this CR model and redline as appropriate for new CRs.
- f) Denise Perez hired to work on CRs. (2 years of law school experience & hired before hiring freeze.) Rich H asked for an update on the Long Wharf issue in Boston (protection under Land and Water Conservation Fund challenge) State and City are working together to assure resolution.
- g) Quincy Housing Auth. property will get 800 trees as part of the \$8M/year statewide tree planting.
- h) Ray L asked if there's been any action to institute a fossil fuel tax. Kurt G said that many of the studies show a positive outcome; however, Gov. Baker sees it as a new tax and currently is not in favor.
- i) Ray L made a plea for incentivizing solar charging stations.

5) Westford APR: Juliette Mount from Drew Gardens Task Force in Westford (Arrived after item 1).

- a) She noted that she was the only abutter allowed on Task Force and provided additional background:
 - i) BoS dealing with standards and APR enforcement on this APR written more than twenty years ago.
 - ii) She noted that the developer bought the property in disrepair after the winter of 2015. Developer's Farm-to-table 40K SF restaurant with over 50K SF parking lot defeated by 5 votes at Westford TM.
 - iii) Task Force making progress by slowing down the process.
 - iv) Press coverage by the Boston Globe has bringing attention to the issue siting inappropriate usage.
 - v) Respected attorneys, including Buzz Constable, have weighed in to support APR.
 - vi) The Task Force would welcome input from MLTC on issue of perpetuity and suggested that MLTC members should educate their enforcement agencies and land owners on APRs.
 - vii) BoS is under much pressure from developer and attorney. BoS is trying to do the right thing.
 - viii) Currently a warrant article to allow restaurant as retained right for TM on Oct. 17th pending BoS action in September. Uncertain whether this will go forward. TC has advised BoS a majority vote at TM would be needed. Task Force has convinced BoS that they need a second legal opinion. Also noted that the original APR signed by the Commissioner of Agriculture.
 - ix) Jesse R-D asked if BoS planned to revise APR without the MDAR Commissioner's signature.
 - x) Bob O'C mentioned that an Agricultural Omnibus bill, which did not pass, started to address the issue of easement holders and enforcement issues and Christa recommended that MLTC have a clearinghouse list of APRs held by towns noting owners. Furthermore, Ray L requested that Mass GIS be updated to reflect land under easement.
 - xi) MLTC is being asked to send their letter to Town Manager, BoS, and cc to Task Force and state legislators and AG. Kathy O thanked Juliette M for attending and updating the SC.

6) Land Trust Alliance (LTA) update by Kevin Case.

- a) Kevin introduced Colin Atkins, new intern at LTA who is former MassLift intern now working with MLTC until December on next generation involvement in conservation; Enews; liaison between LTA and MLTC and on the workshops targeted at small, especially AVLTS.
- b) Federal policy: Tax shelter issues new legislation to reduce abuse to be introduced. The tax shelter scheme distributes tax benefits to LLC landowners using inflated appraisals. Georgia has been the "hotspot" for this issue. Sen. Chris Murphy from CT is the lead legislator.
- c) LTA Rally from Oct. 27th – 30th is in Minneapolis and noted 2018 Rally will be in Pittsburgh.
- d) Kevin promoted LTA's 2 min video contest and noted that the winner gets to direct \$10K to a LT. Goal of contest is to engage LT members in conservation while providing fundraising for LTs.
- e) Standards and Practice (S & Ps) revisions are underway and 6 month comment period closed 9/15. A 20 member advisory team meeting on Sep 28th to review all comments. Jane Calvin from Massachusetts will bring additional comments but get them to her ASAP. Comments placed through "Ethleo" on LTA website are visible even though new comments cannot be added. **Timeline:** New draft mid-October with release/comments through mid-December; Board review in Feb.; March release.
- f) **Accreditation:** proposed break period to allow time to incorporate S & Ps. **If your LT is in the renewal process now or within next 12 months, check timeline.** 2020 accreditation uses new S&Ps.
- g) Mark R expressed concern about the practice on appraisals and clarified that the LT can only advise an owner to get another appraisal if inflation is suspected. Ray L suggested that LTs should clarify landowner intent early in process and Elizabeth W noted that a (2004-17 letter) ruling says that landowner is responsible for getting an appraisal.
- h) Kevin noted there's a new CR amendment handbook coming out and pointed out that the IRS will not allow easements with amendment clauses be used for tax deduction transactions. CT has taken IRS stance seriously and is responding with amendment guidelines. Ray suggests MLTC encourage LTA to take a strong stance on this.

7) APR program update – Jesse Robertson-Dubois, American Farmland Trust (AFT)

- a) There is a queue of APR applications in need of \$12M to fund. A suggestion to freeze new applications through FY 2018 to allow time to process backlog of existing applications was withdrawn after conservation community explained the importance of keeping the process open. Long waiting lists can be managed if all aware of the timeframes and wait list demonstrates demand for the program and need for more funding. Due to the fiscal climate and changes in USDA Farm Bill programs, funding has been reduced on both the state and federal levels. Currently awaiting a federal rule update.
- b) Every state project must fit into the federal process and there's limited state funding. It was suggested that there be two tracks, one for projects that fit the federal process and one for those that don't, so that the state can maximize the federal funds and protect important farms that do not fit the federal program. In the past when there was more state and federal funding the federal program was able to fund projects that were important to the state even when they did not rank highly on the federal criteria.
- c) AFT wants to hear from the LT community on policy changes and suggestions for how to best engage with departments of agriculture. Rich H asked if staffing issues are contributing to the delay as one of the long-time APR staff retired a year ago and has not been replaced.
- d) Noted that the federal program now prohibits LT pre-acquisitions of APR land. In the past, LT's played an important role using pre-acquisition. Working with the federal program and legislators to make that possible again is a priority. Rich H said LT community wants to assist in making APR program strong and accessible, and, suggested a possible meeting with the federal stakeholders. Jesse noted that the major issue is funding. Kathy O emphasized that LTs can leverage private money, including foundation funds, to enhance the State program. She noted that LTs can work with the State program to increase public funding. Jesse R-D said the program was under pressure to leverage public money on every project, and that the need greatly exceeds the state and federal funds that are available. The current process doesn't allow the LT community to leverage their fundraising to maximize additional resource for the State program and the federal match. Part of the problem in MA is not being able to get Federal dollars due to administrative process barriers.

- e) Bob O'C noted that it might be possible to access federal funding through the Regional Conservation Partnership Program (RCPP) and noted that some aspects of the Natural Resource Conservation Service (NRCS – Federal) program work are done by State staff under that program and can be covered by the Federal program. Rich H suggested applying for this funding for the backlog. Rich H also noted that New England needs additional funding designations similar to those used for the Everglades or Yellowstone.
- f) Kurt G asked for more clarification about staffing issues on the state level being inadequate and how to capture federal funding for APR process. New Hampshire was given as an example and their quick ability to get primary and secondary allocations for funding because LTs had projects ready to begin. It was noted that in the past, MA LTs used to be able to achieve similar results. Jesse R-D suggested that the State front load the agricultural acquisition process and LTs assist.
- g) Jesse noted increased Right of First Refusal (ROFR) activity on agricultural lands. About 22 ROFR notices had been received by MDAR over the last couple of years, but MDAR has only assigned that ROFR twice.
- h) Discussion focused on eligible farmer buyers and the process for engaging LTs to leverage their support for farmland protection. Concerns expressed about the process of who decides who is an eligible buyer for farm land and the APR. Rich H said that the LT community does not want to be in the business of competing with farmers for agricultural lands and he advocated for lease/purchase programs from LTs to farmers when the farmer can't afford to buy the land outright.
- i) Kathy O suggested that there could be two types of offers:
 - i) A conditional offer where if the proposed buyer did not meet MDAR approval, the offer was retracted and the farmer/seller would find another appropriate farmer buyer for MDAR approval; and
 - ii) An unconditional offer where it was understood that if the buyer did not meet MDAR approval MDAR would exercise its ROFR and find an alternate buyer itself.
 - iii) Differentiating these alternate routes would ensure that farmers/sellers who want to find successor owners for their land are able to do so which may save MDAR staff time. And, MDAR staff could find the successor buyers for the APR.

8) MLTC update from Marylynn Gentry.

- a) The treasurer not in attendance, but, MLTC appreciates memberships and is currently in black.
- b) Marylynn clarified that she's now the permanent ED, not interim.
- c) Kara Campbell, the new Outreach Coordinator who will be working on workshops; Enews and revamping web site. She's a degree in environmental conservation and completed an internship at the Community Preservation Coalition.
- d) September 30th Advocacy Working Group meeting and land tax credit is on the agenda.
- e) Workshops:
 - i) Ending the Chase: Finding Funding and Engaging the Next Generation, September 21 at Clark University.
 - ii) Stewardship Workshop on Nov. 14th in Stockbridge
 - iii) Communication Workshop at Cape Cod Convocation the first weekend in February.
- f) LTA Rally dinner for Massachusetts for Saturday night of the weekend. Details TBD.
- g) Marylynn encouraged everyone to review policy updates HO as Steve Long not able to attend today.

9) Katy Eiseman, Pipeline Awareness Network for the NE (PLAN): Update on pipeline proposals.

- a) Katy provided an update on the four active projects including Kinder Morgan's (KM) project in Sandisfield through the Otis State Forest. Noted that the Article 97 legislation stayed in committee. Administrative legal proceedings by Tennessee Gas to get access to the Otis SF land stating their FERC certificate pre-empts Article 97. State is going through compensation process with KM to set mitigation amounts. The LT community should reach out to the AG on this issue and noted the AG's role is to defend the Commonwealth in this lawsuit. Currently, the legislature is getting pressured by public and LT community to not dispose of the protected land.
- b) When asked about the water safety issues, Katy E said KM says state regulations are preempted by Federal Natural Gas Act. Goal to reinforce the water quality regulations.

- c) Currently, tribal consultations to identify the First Nation historic and sacred sites in Sandisfield on all the land affected by the pipeline. SPECTRA: w. Roxbury project almost completed construction. Atlantic bridge project in Weymouth which is denying based on wetland protection and coastal issues.
- d) ACCESS NE would affect 40 Article 97 parcels.
- e) Massachusetts Supreme Judicial Court struck down ratepayers paying for capital cost of new pipeline infrastructure.
- f) ENBRIDGE just bought SPECTRA and they plan to file this fall.
- g) Ongoing proceedings with electric rate payer and Conservation Commissions. Strategy of using public filings to market for gas need being
- h) See web site: www.plan-ne.org to learn more and Katie E. made a plea for donations. Judy E asked how the public can be helpful. The appeal of the Water Quality permits has temporarily stayed clearing where things stand, and, activities are stopped. Hearing on Sep 29th in Boston's Federal District Court on where the appeal should be heard.

12:58 PM Rich H moved to adjourn the SC meeting and Rita G seconded. **VOTE:** Unanimous.

Respectfully submitted,

Rita Gibes Grossman