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## **2014 Fall Steering Committee Meeting Draft Minutes**

**Friday, November 21, 2014 ~ 12:30 PM - 3:30 PM**

**At Brigham Hill Community Barn  
37 Wheeler Road, No. Grafton, MA**

### **12:34 PM - Call to Order, Welcome, and Introductions – Kathy Orlando, MLTC Steering Committee Chair**

- Kathy Orlando requested everyone renew their MLTC membership
- Minutes of September 12<sup>th</sup>:
  - Ed Becker moved, and, Don MacIver seconded to approve minutes of Steering Committee Minutes of Sept 12, 2014
  - Discussion ensued: Jan Morrison requested a clarification on the discussion about the Landscape Partnership Grant process: Is there a way to reduce or delay upfront costs of Landscape Partnership grants. Discussed having a two tiered process: put together a proposal, get an approval for the estimate; then proceed. Then, could the due diligence costs be covered by the funding?
  - Lisa V. moved to accept the Sept. 12th minutes as amended; Ed B. 2nded. Approved.

### **12:45 PM - Article 97 and How it is Affected by Federal Eminent Domain - Corey McGehee & Karen Dildei, Harvard Law School: Emmett Environmental Law and Policy Clinic**

“Massachusetts Lands, Pipelines and FERC (Federal Energy Regulatory Commission)”

- Significant number of Article 97 conservation lands impacted by the Northeast Direct Energy Project proposed by Tennessee Gas Pipeline and Kinder Morgan. The applicants have begun the project review process with FERC.
- FERC Authority and Pre-emption
  - State laws generally are preempted, but, the applicant has committed to the Article 97 process. Given that Art. 97 is in the Massachusetts State Constitution and that it was created to protect natural resources, a change in use for Article 97 land requires the State authority, the legislature, to have row call vote with 2/3rds majority vote in favor.
  - Natural Gas Act and FERC essentially have the authority to override the State constitution, and, the Supreme Court has ruled that FERC has exclusive jurisdiction over interstate commerce.
  - Provided an overview of the MA legal infrastructure; preempted safeguards for public lands and conserved areas which included: Constitutional provisions: Article. 97; MGL: Chapter 184; 31&32 (Municipal); Chapter 40 15A; Common Law: public trust doctrine; legal infrastructure by land type also shown
- Historical review of Article 97 given; acquisition provision goes back to 1780 for conservation land and later updates included water and established a right to a clean environment; reviewed legislation concerning role of municipalities and common law.
  - Natural Gas Act authorizes FERC project approval; must demonstrate public convenience and necessity
- Engaging in FERC process:
  - All comments and letters FERC should be as specific; request that applicants adhere to Article 97 process; that there be no net loss of any conserved land
  - Participate in project "open houses"
  - Establish Intervener status in FERC Process (retains ability to appeal)
  - Coordinate with / do outreach to: municipalities; constituents, governor, EOEEA agencies, federal legislators

**Discussion and Q & A on presentation (noted that slides will be on MLTC website):** Robust Q&A discussion; highlights:

1. **What is the role of the AG in upholding statutes?** Could play advisory role, but, no power as a matter of the law.
2. **KM said they will abide by the Article 97 process. How will this affect outcome?** FERC could authorize mitigation measures; should FERC be encouraged to do so, however, need to specify a net loss condition.

3. **Can FERC issue a permit without getting 401 addressed?** FERC is lead agency; they ask all other agencies to submit their permits; doesn't have any weight, but, could assist FERC in conditioning the certificate; After FERC issues this permit, another permit for construction required;
4. **In regard to other federal statutes: some lands (fee or interest) were acquired with federal funds. Can that come into play?** Relevant question needs to be addressed.
5. **What are the key findings needed for a certificate to be issued?** Determination of public need not based on economic factors; that is public benefit will be outweighed by negative financial impacts; will look at price impact; land values; if NEPA process successful, will probably go forward.
6. **What about impact on eco system services: financial value; studies have been done about this (e.g. TPL)?** Certainly something that FERC can take into account; FERC has a lot of discretion, into looking into this.
7. **What is the scope for the project for considering alternatives?** Reasonable alternatives have to be considered. Regulations have not been changed to include climate change:
8. **Timeline: a lot of comments being submitted now in the pre filing process; important as it establishes record; comments will need to be re-filed once FERC draft EIS is out.**
9. FERC does consider the amount of Eminent Domain to be exercised for any given route as one of the adverse factors...the higher the ED, the higher the amount of public benefit will have to be shown.
10. Detailed questions about eminent domain and discussion thereof.
11. **To what extent do the other pipeline projects in the region influence this proposal?** Multiple pipelines in the works and they need to be taken into consideration for determination of public need.
12. **What about Natural Historical Resources?** Cannot have any adverse consequences to historic properties, or, to eligible historic properties.
13. Rich noted that if this is approved, could have dire consequences for future of conserved lands and yet unforeseen uses.  
Presentation online at:  
[www.massland.org/files/KMPipeline\\_ConservationLands\\_Presentation\\_HarvardLaw.pdf](http://www.massland.org/files/KMPipeline_ConservationLands_Presentation_HarvardLaw.pdf)

#### **1:46 PM - Northeast Direct Pipeline – Rich Hubbard, MLTC**

- MLTC is an active member of New England Energy Solutions, an expert attorney has been retained to work specifically on the legal issues with the FERC process. Have filed in Maine for status as Party to Proceedings; NEES approach is to: 1) demonstrate that pipeline is not needed; 2) If case made that it is needed, then not on Article 97 land. 3) IF pipeline approved, mitigate all damage to affected parcels.
- MLTC will have model letters available for LTs to use in near future
- Important for all communities and regional stakeholders to stay united in opposition.
- Noted that Kinder Morgan is actively engaged in publicity and courting support by donating money to hospitals and chambers of commerce; similar campaign tactics used by the casinos: focused on promoting jobs and using damaged sites for vs. consequences of gambling.
- Broader issue raised of using fracked gas; its lack of benefit to the state; costs
- Leigh noted that letter writing campaign beginning on Nov. 30th to legislators about Article 97.

#### **2:00 PM - CRs and the Homestead Act – Irene Del-Bono, DCS; Kathleen O'Donnell, MLTC Board; Alain Peteroy, Franklin Land Trust**

Presentation and discussion of recent changes to the Homestead Act and how conservation restrictions are affected.

- Homestead Act designed to protect a debtor's assets, need to leave enough to the debtor to survive.
- As of 2011, State has an automatic homestead; protects up to \$125K of one's home.
- Discussion on bankruptcy impact on a property where the LT owns CR: LT must be involved as the sale could make the CR disappear.
- IF LT is looking at a property with a building envelope, do a formal declaration of homestead with a sketch plan limiting "homestead" to the home building envelope; can record what the "homestead" is excluding property. IF CR done; re-record with homestead on it. A CR that's on record, do a homestead anyway. \$35 to record it. A typical Homestead with book and page number and sketch.
- Irene reviewed landowner rights balanced with LT rights on property affected by conservation restriction. Needs legal scrutiny, and, advanced planning anticipating possible bankruptcy in perpetuity.

- New law applies to financial protection of ex-spouse, children up to age 21 and domestic partners. LT needs to consider all legal details, current and future regarding what is covered under the CR, how recorded and protected as this new law has yet to be interpreted by case law.
- LT should get a Homestead Release when doing a conveyance. Discussion of CLCT and IRS.
- If your LT gets a notice, respond promptly. Homestead law says debt is subject to mortgage and other encumbrances; CR is such an encumbrance. New law has a lot of protections for home owners; and very generous exemptions for disabled and seniors over 62.
- Mark: will CRs be approved if there's not a clarification for homestead issues? Forest Legacy program requires a release on the CR property. For CLTC deeds, need to get a release from all stakeholders entitled to homestead. Jan M. suggested a process: put the homestead on after CR done. Let the land owner have the chance to keep all land. Discussion about land owner protections; LT exposure; Mark R. suggested MLTC attorney panel make a recommendation. Note: topic will be discussed at the next MEDS meeting, January 20, 2015.

## **2:30 PM - Legislative Update –**

### **Steve Long, Director of Government Relations, The Nature Conservancy**

Information on current legislation and budget, recent election, etc. was distributed handed in Policy Update (see attached):

**Chris Coffin, American Farmland Trust:** rumors of cuts to Farm Bill's conservation programs including ACEP; new rules on Federal Conservation programs coming out in December and will be open for comments; consider becoming a member of The State technical committee: USDA: NRCS as it would be a valuable opportunity to have an impact. Stakeholder engagement announcement: work groups being established by Mass Food Policy Council to discuss land use for agriculture: Contact Chris if you wish to become involved or to learn more: [ccoffin@farmland.org](mailto:ccoffin@farmland.org).

**LTA Update –** Kevin Case/ Rebecca Washburn not in attendance

## **3:12 PM - EOEEA Update - Bob O'Connor, Land and Forest Policy Director**

- Voiced support for Irene's conservative approach on CLTC; believes in avoids problems in the future
- 39 grants: 19 PARC; 12 LAND; 6 conservation partnership; 2 drinking water supply. \$10M total; regional rollouts events.
- Common backyard: new playground initiative for cities
- Exceeded 100 Conservation Partnership grants (102) in last 8-9 years. Plan to release new grants; applications deadlines by March; plan for briefings.
- Interesting statistic for Patrick administration concerning all land protected in past 8 years, 1.7million or 25% has a 10 minute walk to a playground, park or conserved land (1/2 parks; 1/2 conservation land)
- Statistics for FY 14 ending July 1st: 14K acres protected [4K in drinking water; 3K habitat; 2300 key sites (top 10 most important sites); 3400 prime ag soils]
- Score card for No Net Loss Article 97: 190 articles signed into law to meet no net loss policy. 1431 acres added vs. 1047 lost; ~ 45-50 laws per session. Plan to release final report on land conservation in December.
- Gov. Patrick will be signing an environmental justice executive order on Tuesday at 9AM. All environmental justice census tracts marked; give an extra environmental review in these areas. Requires that there will be an EJ director at EOEEA.

## **3:28 PM - MLTC Reports**

- MLTC Coordinator Kathy McGrath requested everyone sign in, and, please respond to annual appeal.
- Kathy M. reported on 2015 Mass Land Conservation Conference:
  - Planning is in full progress for the 25th MLCC
  - Save-the-date: March 21<sup>st</sup> in Worcester
- Introduced Michelle Kozminski new intern at MLTC
- John Page, Treasurer update:
  - Budgeted revenue at \$135K; currently at \$128K with anonymous donors; pending annual appeal
  - Budgeted \$131K expenses; currently a little bit above; may have a small surplus or deficit pending a grant.
- MLTC President Rich Hubbard:
  - Seeking a new board member recommendation from the SC to replace Mike Lach

- New Executive Director will be FT vs. PT. Candidates will have until Friday, Dec. 12th to send in applications.

**3:30 PM - Adjourn** Rich H. moved and Chris C. seconded; Adjourned