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## STEERING COMMITTEE MINUTES

Thursday, September 17, 2015

Arcadia Wildlife Sanctuary 127 Combs Rd, Easthampton, MA

Attendance on record at MLTC

- 1) **Meeting called to order by Lisa Vernegaard, MLTC Steering Committee Co-Chair**
  - a) Lisa thanked MA Audubon for hosting. Jonah Keene (MA Audubon Arcadia director) welcomed all and gave a brief history and description of this flagship sanctuary, including mentioning the Nature Preschool.
  - b) Introductions around the table.
  
- 2) **Minutes of May 15, 2015**
  - a) Cynthia moved and Judy Eisenman seconded to approve minutes as written. No discussion.
  - b) Vote unanimous.
  
- 3) **Massachusetts Food System Plan – Cris Coffin, New England Director, American Farmland Trust (1 handout)**
  - a) Update given on the MA Food System Plan and its goals and recommendations on all aspects of the state's food system. Cris thanked all the land trusts that were involved in this work. These five goals were discussed as described in the hand out which include:
    - i) Goal 1 Farmers will be able to sustain economically viable operations on their land.
    - ii) Goal 2 More land will be in active agricultural use, and farmers will have more secure access to land
    - iii) Goal 3 More farmland and prime farmland soils will be permanently protected.
    - iv) Goal 4 Farmers will be supported in contributing to a healthy environment.
    - v) Goal 5: Affordable land will be available for urban agriculture.
  - b) Public comment period will start on October 23rd. Please email Cris (ccoffin@farmland.org) with any comments prior to deadline.
  - c) Launch date: October 23<sup>rd</sup>, 9:30AM at the State House. All welcome.
  - d) There is a move in the legislature to create a food and farm caucus. Also an effort to create a coalition of all stakeholders for farming, including urban and rural providers. Winton Pitcoff coordinating. See <http://www.mafoodplan.org/> for more information.
  - e) Cynthia asked how this linked with MA Food Vision. Cris noted that the vision was a start but did not include an implementation plan, and, not all stakeholders agreed.
  - f) There was a question about a goal for "locally" sourced food and she noted that there are not specific targets in the plan. Ultimate goal for the plan is to present to governor.
  - g) Rich H. noted that there are components of this plan that will require legislation to implement.
  - h) Farm community is possibly promoting an Omnibus Farm Bill this fall.
  - i) Judy E. spoke in favor of including the following issues: waste management; GMOs; organic and impact of farming on land. Cris noted that GMOs intentionally not included given the heated debate and the goal was for this to be a consensus document; food waste is included; organic and IPM (Integrated Pest Management) Cris acknowledged that the benefits of organic should be further discussed.
  - j) Next Tuesday at 1P, Sep. 22nd there is a hearing on a GMO bill before the Environmental and Agricultural Committee (Gardner Hall at the State House).
  - k) Cynthia H. suggested APRs and the role of Land Trusts both be included given their role in protecting farm land.
  - l) Specific discussion about quantifying agricultural land goals in acreage to define success. Making more land eligible for APR program mentioned. Discussed need for APR program flexibility in conservation methods, and, for exurban, suburban regions with smaller parcels.
  - m) Plea for an agricultural related CRs. Plea for incentives for preserving and disincentives preventing farmland development, and, plea for ROFR (Right of First Refusal) for prime soils regardless of Chapter 61 status.

- n) Also noted that solar was discussed in document.
- o) Cris called for volunteers to discuss further before October.

[10:47 Kathy Orlando arrived and assumed chair]

**4) Charitable Trusts on Conservation Property – Mike O'Neill, McGregor & Legere (3 handouts)**

- a) Mary Griffin introduced Mike O'Neill who gave an overview of charitable trusts and gave case examples related to dispositions of donated land.
- b) Charitable Trusts definition discussed with overview of MGL Chapter 203E (2012) noting the possible sections relevant to land trusts.
- c) Courts may modify terms of the trust; attorney general enforces terms and conditions in the Trust, or the parties to the gift;
- d) Charity must register with AG office and file annual reports, including audited financial report if \$200K dollar threshold (federal threshold) met (excluding value of donated lands);
- e) MGL Chapters 59 and Chapter 68A also discuss definition of a charitable organization.
- f) Three requirements: First, be a nonprofit organization and so noted in bylaws; Second, must fit into one of the broad categories of public benefit; and third, must benefit an indefinite number of people (vs. a small group).
- g) Tax exempt issues discussed in terms of public benefit; so noted that conserving land that restricts public access does have public benefit (land must be "occupied"), and, court said that it is "occupied." LTs should have mission and articles of organization clearly state which lands are included e.g., habitat, water resources, historic features, view shed, etc., and, the instrument of conveyance needs to be as specific as possible about these benefits.
- h) Discussion of gifts to charitable organizations: can be given for general or specific purposes. IF a conditional gift, the recipient must hold under an impressed charitable trust. If a gift is made as a general gift, can the organization restrict it? AG would allow restriction as the organization has discretion to determine use. See (F.A.S.B.I. rules)
- i) Gifts should have documentation that's as specific as possible, e.g. CR, as to what's allowed and not allowed and reserved rights and need for specific and durable language.
- j) More cases discussed including the Prouty Garden case at Children's Hospital (CH): garden was given to CH as a garden (includes one of the largest redwood trees in MA) to be used by terminally ill children; CH plans to demolish for new building. A plaque in the garden states that Mrs. Prouty intended to keep this as a garden as long as the hospital exists. AG has been requested to enforce the terms of the gift.
- k) Modification of a gift can be done if donor allows; if donor deceased, court with AG can modify.
- l) If land donated to a LT with no restriction, LT can use for accomplish mission including selling the land. Donor intent is very important. Charitable purpose must remain dominant.
- m) Question about "trade land" where donation is intended to be sold for benefit of LT. Should have letter and clear language that the benefit goes to the LT, and, mission. What about land acquired with donations from abutters? Solicitations have to be truthful regarding intent.(see <http://www.mass.gov/ago/doing-business-in-massachusetts/public-charities-or-not-for-profits/information-for-existing-charities/faqs-about-charities.html>)
- n) Questions about eminent domain which trumps state law. A party has no right or authority to enter private or municipal property without consent. Noted that there is language in the statute concerning surveyor access that allows a surveyor to mark a boundary even if they need to step on the private/muni property to mark the boundary.
- o) Questions about Article 97 lands and who does AG represent: the public interest and the Commonwealths interest. Long Wharf mentioned; proposed restaurant not substantial enough to invoke Article 97. A superior court judge ruled that US district court ruled that original intent.

**5) Northeast Expansion Pipeline – Leigh Youngblood, Mount Grace Land Conservation Trust**

- a) Update given and resources available to LTs and landowners noted.
- b) 110 conservation parcels on NED (Northeast Energy Direct) pipeline route of which 85 ac are Art. 97, additional land needed for compressor stations which support the pipeline.
- c) Rep. Garrett Bradley has filed a bill regarding pipeline use of Article 97 land in Sandisfield, MA for the Connecticut Expansion pipeline. TTOR, MA Audubon and ELM asking Rep. Garrett Bradley to withdraw bill. Bob W. noted the conservation and historic value of affected property is very significant. [http://www.masslive.com/politics/index.ssf/2015/08/eastern\\_mass\\_rep\\_files\\_bill\\_to.html](http://www.masslive.com/politics/index.ssf/2015/08/eastern_mass_rep_files_bill_to.html)

- d) FERC policy and Dept of Public Utility legal positions discussed. (Have until October 16th to write to FERC about pipeline.)
- e) A Guide to Electricity Markets, Systems, and Policy in Massachusetts prepared by Conservation Law Foundation on behalf of the Boston Green Ribbon Commission, September 2015 noted.

**6) Solar Development Siting Proposals for Farmland – Janet Morrison**

- a) Discussion on placement of solar installations on farm land vs. on industrial sites or other disturbed locations such as Brownfield sites
- b) Current policies support solar. Commercial (vs. residential) solar installations require approximately 5 a/cs. Most on farm land are independent of power needed for farm operations.
- c) Farmers are being drawn by financial advantages of converting farm land into solar. Some installations are stripping soils and removing valued farm land.
- d) Noted that MGL Chapter 40A, Section 3 (Zoning statute) exempts solar from zoning regulations; other changes in use would need a use variance which has a high bar protecting agricultural ; not the case with solar. Discussed need to improve strategy for siting.
- e) Kurt Gaertner, Director of Sustainable Development, Energy & Environmental Affairs (EEA) spoke and noted that the Commonwealth supports solar, but, needs to improve strategy for site placement. Mary G. and Kathy O. thanked Kurt for attending.
- f) EEA encourages communities to be pro-active on siting solar in preferable locations to protect land desired for conservation, and agricultural land. Comment about need for a legislative action to resolve statutory issues.
- g) EEA has done several things to encourage solar with financial incentives. Progress is being made with SREC II on siting improvements. Goal is to strike a balance between energy and environment (conservation). Decrease financial incentives for large ground mounted arrays. EEA draws line at 1MW for large vs. small installations.
- h) Cynthia H. noted meetings about large installations proposed in Barre are scheduled.
- i) Mary G. questioned financial efficiency associated with large installations vs. small. Is the difference in SREC II credit large enough to cover the cost? EEA is looking at match between credit and MW.
- j) Are there codes that prevent soil stripping with installations? Suggestion should have such. Canada noted for decommission requirements. IF companies required to restore soils; would be a disincentive to disturb with installation.
- k) If there's a legislative fix for solar siting, it must include Ch 184 as there's no reasonableness standard in this section. EEA interested in orchards, forests, and farm land protection from solar siting.
- l) Gerry Palano, Alternative Energy Specialist, Conservation & Technical Assistance at MDAR encouraging clean energy projects and verbally recommending to install roof mounting and non-productive land for solar use. Incorporating advice in APR program literature.

**7) EOEAA Update - Bob O'Connor, Land and Forest Policy Director**

- a) Grant applications: 45 PARC; 15 LAND; 18 Conservation Partnership, and, Bob noted that Cons Partnership apps were superior; close to having recommendations for next year's funding; bond hearing today for EEA's budget.
- b) Bob thanked Irene Del-Bono for continued work as a volunteer in reviewing CRs; Noted work load for CR reviews being re-distributed amongst existing staff given retirements.
- c) Request for a new CR model as required for CPA funded acquisitions
- d) Bond cap is \$46Million; agencies should be getting budgets soon;
- e) CLCTs now booking for CY 2017; Melissa will be working on land and water conservation fund for next fall for cities and towns; priorities for lower income communities.
- f) Tree planting desired by current administration; communities partnering with LTs to implement community-based tree planting. Bob noted value of tree planting where land conservation not an option and building trails on protected lands to engage public to demonstrate public benefit.

**8) MLTC Reports Mary Griffin, Executive Director update**

- a) Speakers thanked and good turn-out noted
- b) MLTC membership up from last year with biggest increase in individuals, friends and professionals, and, plea made for renewal not be delayed until spring.

- c) Mary gave an update on Executive Order 562 process concerning regulations in the Commonwealth: MLTC, MACC and Mass Rivers wrote a letter to Rachel Madden, EO of Admin and Finance requesting preservation of existing regulations e.g. wetland bylaw et al, that protect environment. See massland.org for copy of letter. Listening sessions will occur in October.
- d) MLTC continues to do outreach and advocacy work concerning ELM collaborative; climate adaptation coalition; state funding for conservation
- e) Working with LTA to sign a MOU to co-host training workshops for the AVLTS (All Volunteer LTs)
- f) Date for next year's MLCC: Saturday, April 2nd; Theme: Managing for Success (Stewardship and Organizational management) at Worcester Technical HS
- g) Meeting of attorney MEDs panel upcoming
- h) Enews and Amy acknowledged; 2400 subscribers with an above average open rate, and, financial support of NEES work summarized and thanked.
- i) Financial report on behalf of John Page summarized. MLTC financially stable this year.

**9) Legislative Update – Jennifer Ryan, Director of Policy, The Trustees of Reservations Information**

- a) Upcoming Oct. 6th rally on CPA occurring at Statehouse for 15th anniversary
- b) Tax credit: tentative good news that increased cap from \$2m to \$5m
- c) Environment committee doing a mash-up on ag bills; update to follow
- d) Zoning reform hearing occurred recently, and, again noted Article 97 legislation pending for CT pipeline project. TNC and MA Audubon working with legislators.

**10) LTA Update –Rebecca Washburn; Land Trust Alliance**

- a) LTA Rally: Massachusetts has the largest attendee numbers
- b) New steward reserve calculator to assess what stewardship reserves should be; link will be sent to MLTC
- c) Link on LTA website on resources on climate change for LT use
- d) LTA will do LT census in 2016 concerning their work. 30% smaller than past surveys
- e) Revision of LTA Standards & Practices: input will be requested next summer; direct feedback to Sylvia Bates
- f) Grants available for LT evaluation and implementation concerning accreditation work.

1:26PM Adjourn: Rita moved, Amy J. seconded. Unanimous.

Respectfully submitted,

Rita Gibes Grossman