



**New Hampshire Council on
Resources and Development**

FINAL MINUTES – January 20, 2022

MEMBERS PRESENT

Taylor Caswell, Chair, Commissioner, NH Department of Business and Economic Affairs
Shawn Jasper, Commissioner, NH Department of Agriculture, Markets & Foods
John Martin, Designee, NH Department of Health and Human Services
Adam Smith, Designee, NH Department of Transportation
Joseph Bouchard, Designee, NH Department of Administrative Services
Tracey Boisvert, Designee, NH Department of Natural and Cultural Resources
Mark Sanborn, Designee, NH Department of Environmental Services
Amy Clark, Designee, NH Department of Education
Ben Frost, Designee, NH Housing Finance Authority

OTHER PARTICIPANTS

Paula Bellemore, NH Land and Community Heritage Investment Program
Allen Brooks, NH Department of Justice
Steven Walker, NH Conservation Land Stewardship Program
Matt Leahy, Society for the Protection of New Hampshire Forests

I. ROLL CALL AND INTRODUCTIONS

The meeting was opened at 3:03 P.M. by Chairman Caswell. Council members and guests then introduced themselves.

II. MINUTES

- A. Approval of November 8, 2021 draft minutes

MOTION: On a motion by Commissioner Jasper, seconded by Mr. Sanborn, the November 8, 2021 minutes were approved unanimously by the Council with Ms. Clark and Mr. Frost abstaining.

III. LAND & COMMUNITY HERITAGE INVESTMENT PROGRAM (LCHIP)

- A. Request for distribution of Community Conservation Endowment monitoring funds

Paula Bellemore, Executive Director of LCHIP, stated that LCHIP annually comes before the Council to seek approval to expend monies from the Community Conservation Endowment (CCE) fund. In 2021 LCHIP put \$390,000 into the CCE. At the end of November (2021) there was a balance of \$7.5 million in the account. She noted that the purpose of the CCE is to support monitoring of LCHIP supported conservation and historic resources by state agencies, non-profits, and municipalities across the state. LCHIP does so by providing mini grants for successful completion of monitoring of these properties. Since 2013 LCHIP has been paying out \$200 per share. This year LCHIP is proposing increasing the amount to \$250 per share, which is still a nominal fee for an organization going to monitor a property, photo document historical resources inside and outside of it, and providing extensive written documentation. LCHIP will likely consider another increase over the next five years, but for now plan to stay at \$250. Ms. Bellemore said she plans to bring this request to the LCHIP Board of Directors meeting on April 4, 2022 as the January meeting was postponed.

Ms. Bellemore requested approval to expend up to \$120,000 from the CCE for this purpose.

In response to a question from Mr. Bouchard, Ms. Bellemore stated that an example of a high-risk project would be a land conservation agricultural project as they are particularly difficult to monitor due to more complex terms and because the use is constantly evolving. Larger tracts are also more difficult to monitor. For history resources, a lot of time it is compatibility of use. Historical preservation has a lot of restrictions on the use of the building which usually requires a more hands on approach.

Mr. Smith asked how long the cost per unit has been \$200. Ms. Bellemore responded that it is has been \$200 since 2013.

MOTION: Commissioner Jasper mad a motion seconded by Mr. Sanborn to approve a unit value increase from \$200.00 to \$250.00, and expenditure of up to \$120,750 from the LCHIP Community Conservation Endowment for the purpose of supporting acceptable and timely monitoring of LCHIP-assisted resources by state agencies, local municipalities, and qualifying nonprofit corporations in 2021, contingent upon approval by the LCHIP Board of Directors. The motion was approved unanimously by the Council.

IV. LAND CONSERVATION INVESTMENT PROGRAM (LCIP)

A. Monitoring Update

NH DOJ Assistant Attorney General Allen Brooks reminded the Council that it oversees land obtained through the LCIP program. 16 years ago, Council members would have had no idea that it oversees conservation land because the land acquired by the LCIP program was managed by other state agencies with no issues. As issues arose, LCIP properties did come before the Council. The first LCIP property was Haunted Overload, over a question of whether a haunted amusement park could partially be located on LCIP conservation land. The Conservation Land Stewardship Program after wrestling with this question realized that the Council was the body that had to decide. The Council investigated the issue and eventually decided the haunted amusement park had to be moved to another site.

The Wild Goose boat ramp was the next issue the Council had to deal with. The issue started with Fish & Game saying they wanted the boat ramp and then saying they didn't want the boat ramp unknowingly without consulting the Council. Attorney Brooks said that state agencies such as Fish & Game simply administer oversight of the land, but the Council maintains ownership. The Council again oversaw this process and came to a decision.

The next project was Nash Stream including the Kelsey Notch Trail. For many years DRED was managing this project and making good decisions without any oversight or engaging the Council. All this authority comes under RSA 162-C:6. The Council has some simple tasks as described, which are not so simple to implement. Paragraph III details the Council's oversight responsibilities: (1) look at conservation values of lands; (2) examine documents showing property transfers and intent of parties; (3) balance public access and conservation. Wild Goose taught us that that balancing act is discretionary. Attorney Brooks said he won both cases before the NH Supreme Court that the Wild Goose boat ramp should be built and then when it wasn't going to be built based on successfully arguing that these were both policy decisions for the Council and not the Court to decide.

Attorney Brooks stated that this leads us to today, where there is an issue up in Tamworth (not sure if on today's meeting agenda) where there was a property transfer which shouldn't have taken place under the conservation easement. The landowner is working on an amendment to the conservation easement, to bring this issue into compliance. The Council will have to evaluate this proposed amendment to the conservation easement under paragraph III. Conservation easements that are for public benefit are also

subject to the charitable trust law and must gain approval by the Probate Court. Attorney Brooks said that the Council will have to have some legal discussions about this at a future meeting.

Attorney Brooks said that the Council dealt with a similar issue up in Canaan at the Polo Grounds. He reminded the Council that typically with conservation easements you are not allowed to subdivide land and sell land into separate ownerships. For example, if there are four lots in separate ownership you can't sell off two of the lots. That is what happened up in Cannon and Tamworth. He said that the more times conservation easements get subdivided, the more landowners you must monitor, which makes compliance more difficult.

Chairman Caswell asked if there is a robust process for undertaking this review beyond just distributing documents to Council members to review and discuss. Attorney Brooks responded that the statute doesn't set out a specific process beyond that the conservation commission needs to be notified 30 days in advance. He said he did notify the Tamworth Conservation Commission of this issue, but this is one of the reasons why he didn't want this item on today's meeting agenda to give the Conservation Commission adequate time to review.

Attorney Brooks said he learned from prior cases that typically it takes more than one meeting to get through these issues since RSA 91-A doesn't allow for Council members to discuss this meeting outside of Council meetings. It is unlikely that the Council will receive all the information it needs to make an informed decision in one meeting.

Ms. Boisvert asked Attorney Brooks if it would be helpful to review the part of the statute which prohibits the Council from disposing of conservation land through the surplus land review process. Attorney Brooks responded that Paragraph III states the Council can exchange interests in state-owned conservation lands if conservation values would otherwise be degraded without such action. Ms. Boisvert clarified that she was referring to Section 10. Attorney Brooks said there is another applicable section of the statute which he will go over in more detail at a future meeting. He said that this came up with the Sewalls Falls Bridge. He also noted that the Department of Transportation has a specific process for determining public benefit. He said there are specific processes for seeking General Court approval through the legislature when required.

Attorney Brooks noted that RSA 91-A doesn't apply when meeting with him as individual Council members or as a collective body. He clarified that he didn't think it was necessary to make today's meeting a non-meeting since everything he spoke about was public information.

He said he would provide further information on this matter prior to the next Council meeting.

V. OTHER BUSINESS

A. Annual Nash Stream Forest Reports

Ms. Boisvert said that DNCR submitted the Annual Nash Stream Forest Report. She clarified that Nash Stream is the largest LCIP acquisition of almost 40,000 acres of land in the North Country, owned in fee by the state, and managed by DNCR. The Annual Report included in today's meeting packet is being submitted to the Council because of a vote by the Council on December 8, 2016, relative to the use of OHRVs in Nash Stream. One of the requirements of this action was for DNCR to submit an Annual Report on OHRV use in Nash Stream to the Council. Ms. Boisvert noted that she circulated an updated version of the Annual Report, which should be considered the official version, which corrected erroneous trail counter data which was in the original Annual Report. She said the packet also contains other documentation relative to action that the Council took on March 11, 2021, which includes providing trail counter data on OHRV use on the Kelsey Notch Trail. Initially OHRV use was approved on the Kelsey Notch Trail as part of a three-year pilot. On January 14, 2021, the Council extended the Kelsey Notch

Pilot for an additional two years. At the March 11, 2021 meeting the Council asked for additional information to be included in the Annual Report. The agreement, which is also part of the packet, between Fish and Game, the DNCR Trails Bureau, and the Division of Forests and Lands to cooperatively manage OHRV use in Nash Stream was updated as of October 2021 to contain some of these new monitoring conditions and update the parties to the agreement.

Ms. Boisvert said she wasn't prepared to answer additional questions about the content of the report, but said she could reach out to DNCR colleagues to get answers to specific questions.

In response to a question from Chairman Caswell, Ms. Boisvert said the Council's approval of OHRV use on Kelsey Notch Trail was effective until January 2023. At that time the Council will have to decide whether to close the trail to OHRV use, allow the trail to remain open to OHRV use or request additional information.

Steven Walker introduced himself as director of the Conservation Land Stewardship Program, which is administratively attached to DAS. Mr. Walker said if Council members want to learn more about the CLS program he suggested they review the LCIP's Annual Report, which Mr. Walker presented to the Council last fall, or reach out to him directly.

Meeting adjourned at 3:28 P.M.