



The Eastern Trail Management District

Arundel • Biddeford • Eastern Trail Alliance • Eliot • Kennebunk • Kittery • North Berwick
Old Orchard Beach • Saco • Scarborough • South Berwick • South Portland • Wells
Stephen Huntress, President • Jim Gailey, Vice President • Dan Fleishman, Secretary • Bruce Gullifer, Treasurer

Board of Directors Meeting Notes Wednesday, February 8, 2006 Kennebunk Town Hall

Attendees:

John Andrews, ETA; Harry Tomah, Wells; Dan Fleishman, Arundel; Bruce Gullifer, Scarborough; Bob Hamblen, Saco; Terrence Parker, South Berwick; Mike Claus, Kennebunk; Jim Long, OOB; Brandon Gillard, ETA; Dan Letellier, Biddeford; Steve Workman, Consultant

Notice given - unable to attend: Mac Sexton, legal; Dan Blanchette, Eliot; Stephen Huntress, Kittery

7 voting members needed for a quorum

I. Welcome & Introductions

- Steve Workman called the meeting to order at 8:35am

Minutes taken and prepared by: Steve Workman
Board Approved: _____

II. Presidents Report

- No Report

III. January 11, 2006 Meeting Minutes

- Minutes accepted by consensus.

IV. Agenda Items

A. Executive Session

- Dan Fleishman and John Andrews moved that the Board go into executive session at 8:45am, as allowed under Article 7.1 of ETMD Bylaws & in accordance with M.R.S.A. Ch. 13, Title 1§405-C for the purpose of discussing ongoing easement negotiations between Granite State Gas Transmission.

All Approved (8)

- Mike Claus and John Andrews moved that the Board end executive session at 9:04am.

All Approved (10)

B. Construction Projects

1. OOB Project

- **GSGT** - There have been two recent meetings with GSGT. A site visit two weeks ago and a conference call February 3 in order to review preliminary design plans, GSGT work plans for 2006, project schedule coordination and issues related to the relocation of the gas pipeline. GSGT does have some work of its own to do between Cascade Rd and Mill Brook; however, it is not clear what the full extent of that work is. GSGT reviewed all three proposed options for the crossings and has indicated that all have significant impact to the pipeline. The working assumption has been that the total re-grade

option was the most advantageous and would ultimately be selected. GSGT has estimated that approximately 800 feet of pipe will have to be relocated and that the relocation would have to occur before the majority of our work is undertaken. GSGT provided a preliminary cost estimate of \$250,000 (+/- 30%) required to do the relocation and that does not include any land rights acquisition work that may be needed. GSGT has a very small easement in this area and the most logical solution is to run the new pipe away from all impact created by the construction of the trail. We are looking at land issues now to determine what steps may need to be taken to secure additional land rights.

- **Mill Brook/Old Cascade Rd. Crossings Options** – Three options for crossing Mill Brook & Old Cascade Road were developed during preliminary design. If the project is to go to construction this summer it is now necessary to select an option for final engineering. Steve stated that feedback from the gas company and a comparison of the pro's and cons of each option leaves only one choice. Steve recommended that we pursue the re-grade option. The following is a summary of each option.

1. **Super Structure** – Requires two bridges to span existing grades. Mill Brook Bridge is 180' and Old Cascade is 54'. The current location of the gas pipeline will prohibit the construction of the piers and abutments. This option does not address the steep grade down to Cascade Rd or from the parking area to the trail, erosion problems at Old Cascade Rd, security site lines from Cascade Road and difficult terrain to install effective access controls. May require the relocation of a high tension utility pole. Ultimately would require some gas pipeline relocation at an undetermined cost. Estimated cost for just this section and without utility relocation costs is \$534,000
2. **Box Culvert** – 10x10 box culvert at Mill Brook and 54' bridge at Old Cascade Rd. This option requires significant fill after installation of the culvert in order to bring the grade up to the current levels on each side of Mill Brook. GSGT has indicated that they will not allow that amount of fill on top of the existing pipe. This option will require significant permitting because of the impact to the Brook and will likely be rejected by DEP as alternative options exist. The culvert will require regular maintenance to keep it clear of debris to avoid a repeat of the build up that destroyed the area in the 90's. This option does not address the steep grade down to Cascade Rd or from the parking area to the trail, erosion problems at Old Cascade Rd, security site lines from Cascade Road and difficult terrain to install effective access controls. May require the relocation of a high tension utility pole. Ultimately would require some gas pipeline relocation at an undetermined cost. Estimated cost for just this section and without utility relocation costs is \$303,000 making it the cheapest option on paper.
3. **Re-Grade** – Requires a steady reduction of about 900' of existing grade from before Mill Brook to Cascade Road and a 150' Bridge over Mill Brook. Requires the relocation of approximately 800' of gas pipeline. It eliminates a bridge at Old Cascade Road, avoids any significant impact to Mill Brook and should be eligible for a DEP Permit by Rule. It will improve the existing grade and width of Old Cascade Road at the trail crossing, improve runoff management and reduce erosion. It will reduce the grade between Old Cascade Rd and the parking area and the parking area to the trail. It will open up sight lines from Cascade Road and allow for better access management thus improving security. It requires the removal of significant fill material that could be stock piled for future projects or sold to the contractor to reduce construction costs. It requires the relocation of a high tension utility pole. Estimated cost for just this section is \$439,000 before utility relocation costs. Approximately \$250,000 for GSGT relocation and an undetermined cost to relocate the CMP pole. Total estimated cost of \$689,000 without CMP.

- Terrence Parker and Jim Long moved that the Board endorse “Option 3 – Re-Grade” for the crossings of Mill Brook and Old Cascade Rd under the OOB Project.”

All Approved (10)

- **Aube Property** – Bob Hamblen reported that the sale of the Aube property did not go through and that the land is back on the market. Several buyers are interested. It was felt that perhaps meeting with the Aube's to discuss the property and how it will benefit the ET may be helpful in getting an easement or the land in fee regardless of the sale process. Steve W will work more with Bob Hamblen on this in the future.

- **Project Funding** – As anticipated, the allocated funds for the project are not adequate to meet projected construction costs. The following is an analysis of projected expenses and resources. Construction cost estimates are only carrying a 12% contingency and with construction costs increasing it is not expected that we will see a significant reduction in these

costs after receiving bids unless competition of the work is really tight. The utility relocation costs remain a significant variable. Construction funding will be discussed in greater detail under Item IV.C.

- John Andrews proposed that the project could end at Milliken Mills Road if there is not enough money to go all the way to Cascade Road. Milliken Mills would provide a connection to Rte 98/Cascade Road which would bring riders down into OOB and connect with the existing on-road route. Milliken Mills does not have a high volume of traffic. It was the consensus of the Board to adopt this as an alternate plan for the project if Steve is not able to reduce construction cost estimates, find additional money and negotiate a more equitable cost to relocate GSGT's line.

2. Scarborough Project

- MDOT has notified Steve that the project was randomly selected for an audit of Davis Bacon federal wage rate compliance. At the time of this meeting Steve had not been provided with all the details of what will be needed or what he will have to do; however at a minimum it will include a review of CPM's certified payroll that the ETMD receives, reviews and files as well as documentation of any CPM employee interviews that Steve conducted about their compensation during the project.

- CPM has requested partial release of the contract retainage based upon substantial completion of the work and assurance that the bridge coating will be repaired the spring. Steve believes that this is a reasonable request, but he will retain approximately 5,000 to insure that final cleanup is done in the spring. Steve also expressed concern about releasing all money until CPM provides the actual plan for repairing the bridge coating rather than an assurance that it will be fixed. The Board advised Steve that it was ok with releasing funds as long as money was withheld to cover the spring cleanup and an amount to cover the topcoat repair.

3. South Portland Connector Project

- WSA has completed the development of possible routes, evaluation matrix and cost estimates for each route. The steering committee met on Friday, February 3 and reviewed the data. A significant development in the struggle to make the connection is that the Sanborn Family has submitted a development plan to the Town of Scarborough. The plan is now under review and the Town will ask for an easement or land to make the Nonesuch crossing and connection to Pleasant Street. After reviewing the data and considering issues connected with each possible route it became clear that there were only two real options for connecting the route from Pleasant Street to Wainright Complex. One connection is by Rigby Rd and the other is by Pond View Drive. Steve directed WSA to focus energy on revising cost figures for and evaluation of these two options plus the Nonesuch Crossing to Pleasant Road.

- **Public Hearing** - The second and final public meeting will be on Monday, March 6 at 7:00pm in the Council Chambers at Scarborough Town Hall. WSA will present all the findings of the study then focus on the two selected options that are most viable. The hearing will be advertised by legal advertisement in the Maine Sunday Telegram, as a public service announcement to other local papers for them to publish at their own discretion. A notice will be mailed to residents along the targeted routes.

- **Construction Funding** – The final product of this study will be a single identified route with construction cost estimates. This information will allow us to begin making applications for construction funds. Based on rough cost proposals and the two most viable identified routes the cost for final engineering and construction will be approximately 1.7 million. This section is just under a mile, but one of the most challenging on the entire trail and requires several big structures to avoid wetlands, active rail lines and congested streets.

4. Desfosses Project

- No change to the trail itself as construction is in winter shutdown.

- **Management Complaint from Desfosses** – The Desfosses Family, through its attorney Alan Beagle, issued a letter to the Town of Scarborough and the ETA stating that the two parties were in breach of their management obligations because there was ATV usage, trash being dumped and people target practicing along the trail [[See Attachment IV.B.4](#)]

for the Desfosses Letter]. Bruce Gullifer reported that the Town has already removed the trash and put up jersey barriers with trail closed signs at trail entrances. It was noted that the trail is still under construction and not officially open to the public. Steve advised that the contractor should have some obligation for securing its job site until the Town accepts the work. Efforts will be made to discuss the problem in more detail with the Desfosses and to rectify future problems.

5. Saco River Crossing Project

- Engineering RFQ delayed in anticipation of aerial photographs with tax map overlays for the corridor, a list of town owned sites along the river and a list of any current or planned spur connections to the ET from both Biddeford and Saco.

C. Construction Funding for the ETMD Work Plan through 2009

• The ETMD is beginning to face a significant challenge in funding construction projects. Under the current work plan, the ETMD has scheduled projects through the 08/09 funding biennium. These are, the OOB Project, Turnpike Crossing Project, Saco River Crossing Project and South Portland Connector Project. Each of these projects has at least one crossing challenge that will require an expensive structure and most have several. These structures significantly increase the total cost of engineering and construction. Based on past MDOT TE awards the ETMD usually receives around a million dollars per biennium for projects. Each of the projects above carry an estimated price of over a million. Based on current available funds the ETMD will not be able to fund complete construction of the OOB Project. Based on previous funding levels Steve does not expect that the ETMD will be able to fully construct any one of the three remaining projects that it currently expects to be ready for construction in the 08/09 biennium. The following is an analysis of cost estimates and funding of each of the above identified projects:

OOB Project

| | |
|----------------------------|------------------|
| 04/05 TE Award (Secured) | 660,000 |
| Engineering (per contract) | (79,602) |
| Construction Base Trail | (610,000) |
| Construction Crossing (#3) | (700,000) |
| Analysis | (789,602) |

Turnpike Crossing Project

| | |
|--------------------------------------------|--------------------|
| MDOT Engineering Funding (secured) | 300,000 |
| Engineering (Est.) | (136,700) |
| Trail Construction (Est. – without bridge) | (1,251,300) |
| Turnpike Bridge | (1,200,000) |
| MTA Bridge donation | 1,200,000 |
| Analysis | (1,088,000) |

Saco River Crossing Project

| | |
|------------------------------------------|--------------------|
| MDOT Engineering Funding (secured) | 250,000 |
| Engineering (Est.) | (250,000) |
| Trail Construction (Est. without bridge) | (1,000,000) |
| Saco River Bridge | (1,200,000) |
| Analysis | (2,200,000) |

South Portland Connector Project

| | |
|---------------------|--------------------|
| Engineering (Est.) | (200,000) |
| Construction (Est.) | (1,500,000) |
| Analysis | (1,700,000) |

• Steve has begun the process to identify potential funding sources to meet the identified deficit or construction costs. The following are sources that the ETMD currently is looking at:

- 1 million Federal ET earmark [Secured, released at 20% (200,000) per year] - \$400,000 should currently be available
- MDOT 08/09 TE Awards – application process not started yet
- MDOT Safe Routes to School (new funding stream) – application process not started yet
- Municipal construction appropriations
- PACTS 08/09 Bike/Ped Project Funding – application due Feb 17, limited to PACTS area

• Other identified potential sources:

- CMAC funds

- Use of National Guard for construction
- Based on the above sources Steve outlined the following funding plan:

OOB Project – Immediate Need

Option 1

Complete engineering Pine Pt – Cascade Rd

Construct Pine Pt up to Mill Brook approach in summer 06 supplementing the available funds with approximately 100,000 from the earmark funds.

Apply for Construction funds for 08/09 for Mill Brook to Cascade Rd

Analysis: May not receive funding in 08/09. Delays total project completion by at least 2 years. Requires multiple construction contracts.

Option 2

Complete engineering Pine Pt – Cascade Rd

Construct Pine Pt – Cascade Rd starting in summer 2006

Additional funding required:

- 400,000 from earmark funds (equals 40%) (may have additional amount available by fall 06)
- OOB (minimum) appropriation for work required on Old Cascade Rd (app. 15,000)
- Scarborough appropriation for Blue Pt Parking Area & Peterson Field Spur (app. 50,000). Possible reduction of contribution by using DPW force to construct parking area.
- SWQPP Grant – waiting for decisions about the fit of this project with the program
- Other environmental impact grant – None identified yet
- Reduction of GSGT relocation charge based on equity
- Lobby for CPM to do relocation(s) as a donation
- Structure construction contract with alternates that will allow specific pieces of work to occur if funds become available

Analysis: Identified funds could bring an additional 465,000 to the project, reducing the estimated cost deficit to 325,602 which could be further reduced by reduction in utility relocation costs. Other pending options would be an environmental impact grant and an increase in municipal contributions. There is still a possibility that there will not be enough funds to finish this project under one construction contract.

- It was the consensus of the Board that Option 1 for the OOB Project was the only realistic course of action for funding the project; however, Steve was directed to continue to explore options that would allow for total construction. He was directed to make every effort to get GSGT to provide a more equitable cost for the relocation of its line.

Turnpike Crossing Project

Start engineering summer 2006

Construction 08/09

Apply balance of earmark funds (400-600,000) toward construction

Assumption of MTA bridge donation

TE Application 08/09 for additional construction funds (490,000 to 690,000 pending use of earmark)

Municipal appropriations?

Analysis: The visibility of this project, the three-town impact and the pending MTA donation make this project high priority. Final engineering cost estimates will likely bring significant cost increases from current estimates and will require additional funds or reduction of scope.

Saco River Crossing Project

Start engineering spring 2006
 Construction 08/09 or 10/11?
 TE Application 08/09 or 10/11?
 Municipal appropriations?

Analysis: The Saco River bridge significantly increases the cost of this project knocking it outside what we usually see funded by TE awards. If TE funds were successfully gained it would probably mean that it is for partial funding and is the only project funded in that particular biennium.

South Portland Connector Project**Option 1**

Complete Engineering & construction 08/09 – app. 1.7 million
 PACTS Bike/Ped 08/09 Funding Application– 20% match required
 Scarborough & South Portland appropriation to provide match (app. 340,000)
 Additional municipal appropriation to fill funding limits of PACTS

Analysis: Steve is in the process of determining what the typical limit of funding for a PACTS project is. Steve anticipates that this project is too large for it to fund in total. This means that the municipal contribution would need to be higher.

Option 2 – Phased Construction**Phase 1**

Fully engineer 08/09
 Construct Nonesuch to Pleasant Street 08/09 – app. 800,000
 PACTS Bike/Ped 08/09 Funding Application – 20% match required
 Scarborough to provide match (app. 160,000)

Phase 2

Construct Pleasant Street to Wainright Complex– app. 1 million
 TE Application 10/11
 Scarborough & South Portland appropriation to provide any match
 Possible reduction of cost if DPW force(s) build connection between Wainright and Pleasant St.

Analysis: Makes the project more manageable, but delays complete construction of one of the most critical links to at least 2010.

• **PACTS Grant** - Bob Hamblen and John Andrews moved that the Board authorize and endorse a PACTS 08/09 bicycle/pedestrian project application toward funding of construction of the South Portland Connector Project.
All Approved (10)

D. MDOT Project Deferment List

• Since the last ETMD meeting has been talking with Dan Stewart, Bike/Ped Coordinator at MDOT. Dan reported that the rumored percentages of TE cuts are not completely accurate, but that TE did get hit pretty hard. He agrees that there is some concern about 08/09 funding, but explained a new funding stream called Safe Routes to School which will help soften the TE reduction. Steve indicated that the ETMD was still going to send a letter expressing concern for the future funding of trails, but that it would not cite specific percentages of cuts. Dan and Steve also talked about improving communication between his office and ETMD and ways to prevent a repeat of the deferment debacle.

• Bob Hamblen expressed concern that Steve had not yet sent the letter out to the Commissioner. Steve indicated that he was going to try to get the letter out before he leaves for vacation.

E. Finances**1. Finance Report for January 2006**

- The January 2006 Finance Report was tabled because the bank statement has not yet arrived.

2. 06-07 Membership Fee

- Steve reported that he is making final revisions to the December 2005 State of the Trail report. He reported that he only received written feedback from one director and that if anyone had any other comments they needed to send to Steve ASAP.

V. ETA Report

- No report was given because of time constraints.

VI. Consultant Report

- Nothing additional to add

VII. Next Meeting: March 8, 2006**VIII. Adjourn – 11:15am**

BEAGLE & RIDGE, LLC
ATTORNEYS AT LAW

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February 6, 2006

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Attn: John Andrews, President
Eastern Trail Alliance
P.O. Box 250
Saco, Maine 04072

Attn: Ronald Owens, Town Manager
Town of Scarborough
P.O. Box 360
Scarborough, Maine 04085-0360

Re: Hillcrest Retirement Community Expansion Trail Easement:
Notice of Compliance Failure

Dear John and Ron:

With regret, I write on behalf of the Desfosses, grantors of the Hillcrest Retirement Community Expansion Trail Easement, to give notice of failure to comply with the terms of the Hillcrest Retirement Community Expansion Trail Easement ("Easement") dated April 6, 2005 and recorded in the Cumberland County Registry of Deeds at Book 22557, Page 276. The Desfosses are discouraged and concerned that neither the Town of Scarborough nor the Eastern Trail Alliance ("ETA") have enforced the required restrictions of use upon the Hillcrest portion of the Eastern Trail (the "Trail") during the short time since construction the trail has been available for use. The failure of enforcement concerns the three following problems:

1. ATV vehicles have been frequently using the Trail. Their use has been observed by residents of Hillcrest Retirement Community who were walking on the trail, and in at least five instances during the past month complaints have been given to the management of Hillcrest Retirement Community. Theresa Desfosses telephoned John about this use, and in response John stated that the use by ATV vehicles was "hard to control." The Desfosses have seen no evidence that either ETA or the Town has pursued any enforcement of the use restriction against ATV vehicles.

2. Persons using the Trail have been target shooting from the Trail at cans they have hung from trees or Jersey barriers on Hillcrest property. Residents of Hillcrest have observed the cans hanging from the trees and Jersey barriers, and one of the cans was delivered to the Community office. Residents have also observed persons on skis carrying rifles along the Trail. My understanding is that the target shooting has generally been by BB or pellet guns, although the Desfosses are not certain which weapons are being used. Understandably, the

residents of Hillcrest are very concerned about this use of the Trail. Theresa Desfosses reported the existence of target shooters on the Trail to the Scarborough Police, and the Scarborough Police questioned her as to the ownership of the Trail and the right of the target shooters to be there. Apparently, the Scarborough police have not been informed regarding enforcement of the use restrictions.

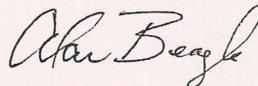
3. A couple weeks ago at the end of the Eastern Road near the trail someone deposited ten bags of trash and a truck door. In this regard the Easement (Section Six, second paragraph) provides, "Holder shall also take reasonable steps to keep the Premises free of litter, such as cans and paper good."

The Desfosses family will not tolerate such uses of the Trail as described in the first two sections above. The third problem is not at this point as fundamentally troublesome to the Desfosses family as the above two uses, but is certainly irksome. As you know, the enforcement of the provisions of the limited use of the easement was of great concern to them at the time of the granting of the easement, and they were assured that the Town and ETA would vigorously enforce the use restrictions, including that the Trail would not endanger or create a nuisance to the occupants of Hillcrest and not be used by any ATVs or other off-road vehicles. I recall Theresa describing to Ron the vigorous enforcement action she had been required to take in earlier years to stop trespassers from inappropriate activities (vehicle racing, trash depositing, partying) on the former railroad bed. The commitment of the Town and ETA to limit the use is expressed in Section 3 of the Easement, "These limitations upon use are of paramount importance to Grantors and shall be rigorously followed and enforced by Holders at all times."

This letter is being sent pursuant to Section 11 of the Easement, and the failure of the Town and ETA to comply with the terms of the Easement within the next thirty (30) days or less (in the case of public health and safety from the target practicing) will constitute a default under the Lease. The actions of some of the people using the Trail obviously seem to demand that the use of the Trail be monitored on a regular basis, probably by the Scarborough Police, posting occur, the cans which have been hung from trees and barriers be cleaned up and removed, the Police Department alerted to respond immediately if any future report is received concerning firearms on or near the Trail, and that some type of physical obstructions be located on and along the trail to prevent its use by ATVs. Regarding the trash, the Desfosses family is open to your suggestions regarding steps the Town and ETA will promptly take to prevent and clean up (to the extent it occurs) such dumping in the future.

Please consider the above, make the necessary investigation you feel appropriate, and then communicate with me as to the actions which will be taken by the Town and ETA to "rigorously enforce" the Trail use restrictions.

Very truly yours,



C. Alan Beagle

CAB/db

Cc: Theresa Desfosses