

Eastern Trail Management District Board of Directors Agenda
February 14, 2007 • 8:30 – 10:30 am
Kennebunk Town Hall

Most of the items listed under “Agenda Items” will have an attached sheet that provides information including background, necessary attachments, staff recommendations and proposed motions. This should allow you to be better prepared and reduce the amount of time that I need to talk thus allowing more focus on the actual issues.

I. Welcome & Introductions

II. President Report – As needed

III. Approval of Minutes

- A. Minutes for January 10, 2007 approved as written or as amended

IV. Agenda Items

A. Finances

- 1. Finance Report for December 2006 accepted by consensus
- 2. Finance Report for January 2007 accepted by consensus
- 3. FY 05/06 Audit
- 4. Annual Report & Membership Fee 07/08
- 5. Federal Transportation Funding - FYI
- 6. Impact Fee to fund Trails? - FYI

B. Executive Director Transition

- 1. Hiring Process Update
- 2. Executive Director Job Description
- 3. VA On the Job Training Program – Mike Claus
- 4. Thank you Party for Workman – Thursday, February 15

C. Trail Projects

- 1. Scarborough Project Close-out
- 2. OOB Project
- 3. Kittery Dennett Road Project
- 4. Wells Project Proposal
- 5. Trail Easements Subcommittee

D. Trail for a Healthy Maine Bond

- E. ETA Report – For items related to the events and activities of the ETA or its members

V. Consultant Report – As needed

VI. Next meeting March 14, 2007 8:30am – 10:30am

VII. Adjourn

2007 Meeting Schedule (Second Wednesday of the month)	
January 10	February 14
March 14	April 11
May 9	June 13
July 11	August 8
September 12	October 10
November 14	December 12

ETMD Agenda Commentary

Agenda Item: IV.A.3 Agenda Item: FY 05/06 Audit

- Workman completed work with R.H.R Smith for the 05/06 Audit. Smith is working to provide a final report for the Board meeting; however, Workman needs to review a draft report and potential revisions which might not make this possible. Workman will at the very least have an update, but if the report is complete the Board will be asked to review and adopt the finding of the report.
- **Proposed Motion:** Move that the Board accept the Review of Books for FY 05/06 conducted by R.H.R Smith & Company.

Agenda Item: IV.A.4 Agenda Item: Annual Report & Membership Fee 07/08

- The annual report for 2006 has been completed. The report has been mailed to ETMD municipal managers, councils and Boards as well as ETMD State & Federal Representatives. Directors are asked to bring packets of the report back to deliver to their local conservation committees, Bike/Ped committees and to be made available for the general public. The initial round of sent copies was in color. To save cost, black and white copies have been made for general distribution.
- A packet containing the membership fee letter, ETMD Membership Agreement and Annual Report was sent out to all municipal members the week of January 22. [\[See Attachment IV.A.4 – Membership Fee Letter\]](#)

Agenda Item: IV.A.5 Agenda Item: Federal Transportation Funding - FYI

- Last week, the House of Representatives passed a continuing resolution to approve federal government spending through the September 30 end of the current fiscal year. It is anticipated that the Senate will adopt this bill in the coming week, and President Bush has indicated he will sign it in to law before the current stopgap spending measure expires on February 15.

Under this continuing resolution, the federal transportation investments guaranteed under SAFETEA-LU will be honored at their full, guaranteed levels. This includes a record-setting \$9.0 billion federal transit program, with funding increases scheduled for all Federal Transit Administration (FTA) formula grant programs.

The increases in transportation spending are a welcome feature of this resolution, as most federal spending will be frozen at FY 2006 levels. Members of the House of Representatives should be thanked for their attention and consideration in honoring the SAFETEA-LU guarantees, as there has been much pressure to freeze transportation spending along with the rest of the domestic budget. Our friends at the American Highway Users Alliance, as well as other major transportation organizations, should be thanked for the extra efforts they made to assure that transit spending increases would be guaranteed.

A central feature of this resolution is its treatment of the thousands of projects with specifically designated spending, or "earmarks." These types of projects are handled differently in different parts of the bill. Many federal programs historically featured earmarks are slated to have federal agencies make their own funding determinations this year. In the federal transit program, the resolution very clearly directs FTA to honor the new fixed-guideway systems ("new starts") projects that were specifically authorized under SAFETEA-LU. It appears that the Section 5309 bus and bus facility projects specifically authorized for FY 2007 under SAFETEA-LU also will be funded under this resolution, but it is less clear how any remaining balances in the Section 5309 program would be distributed.

Agenda Item: IV.A.6 Agenda Item: Impact Fees - FYI

- Impact Fees are a one-time fee paid by a developer when constructing a new facility or the expansion of capacity of an existing facility. There is a specific criterion by which the municipality can impose such a fee which compares increased usage of a municipal system with the cost to provide the increase capacity for that municipal system. I think this is important for the ETMD to be aware of because it, along with Contract Zoning, can be another way in which trail development can be supported in a local municipality. The ETMD may want to advocate strongly for impact fees that support local pedestrian and bicycle facilities. An example of a successful ET use of one of these tools was the construction of the Desfosses section of trail through Scarborough’s Contract Zoning. I recently attended a seminar on Impact Fees conducted by SMRPC and have included some of that information with the agenda. For more information you may also go to the SMRPC site at www.smrpc.org. [\[See Attachment IV.A.6 – Impact Fee Information\]](#)

Agenda Item: IV.B.1 - Executive Director Transition - Advertisement

- The following ad was placed in the Portland Press Herald (Sunday state-wide edition):

The Eastern Trail Management District, a non-profit corporation comprised of participating municipal members and the Eastern Trail Alliance, seeks qualified candidates for the position of part-time Executive Director. The goal of the ETMD is to establish a four-season, multipurpose, transportation and recreation trail between Portsmouth, New Hampshire and South Portland, Maine.

The Executive Director is responsible for leading the ETMD, administering its finances, trail operations, and our relationships with other agencies for support to build and maintain the Eastern Trail.

QUALIFICATIONS: B.A. or B.S. degree and 5 to 8 years experience leading people and managing budgets in an organization serving multiple constituencies. Candidates must be able to demonstrate personal and professional ability to affirm and uphold the values of the Eastern Trail. Resume and cover letter submitted to bhamblen@sacomaine.org is preferred. They may also be sent to:

ETA-ETMD
P.O. Box 250
Saco, ME 04072.

The application deadline is Feb. 23, 2007.

The Eastern Trail Management District is an equal opportunity employer and does not discriminate in regard to race, sexual orientation or gender identity.

Agenda Item: IV.B.2 - Executive Director Transition – ED Job Description

- Workman was asked to develop a job description for the ED position based on the work that he has been doing. The attached version is Workman’s without any input from the subcommittee or Board. [\[See Attachment IV.B.2 – Executive Director Job Description\]](#)
- In order to evaluate wages for a potential employee for ETMD the Board is asked to review the 2006 Maine Association of Non-Profit’s “Report on Nonprofit Wages & Benefits in Northern New England”. The Report will be sent under separate cover as a PDF and Workman will have a few hard copies at the meeting for those that do not wish to print all 19 pages. [\[Attachment IV.B.2 by Reference – Wage & Benefits Report\]](#)

Agenda Item: IV.B.4 - Executive Director Transition – Thank you Party for Workman

- To thank Steve Workman for his many accomplishments since way before the ETMD was founded and many successful projects since then, ETMD and ETA are hosting a going away party in Steve’s honor. All past trustees of ETA or ETMD, friends of Steve, government officials, vendors, are welcome to attend. Please forward with dist list removed.

Date: Thursday 15 February at 6 PM

Where: Robert’s Grill on Rt. 1 Kittery. See: <http://www.robertsmaine.grill.com/>

From the north, take the Maine Turnpike south. Immediately after the York Toll Plaza take exit 7 (the Berwicks, York, Rt. 91) Follow Coastal Rt. 1 south for 4.5 miles to Robert’s on your LEFT. (From Kittery Trading Post, it’s about ½ mile east on Rt. 1 and other side of the road.)

We have a private 2nd floor dining room with cash bar on the 1st floor.

Social anytime after 5pm

Dinner at 6:00

Order from the attached menu. Individual checks will be provided. (I’m sure the staff would appreciate cash instead of credit cards, if you have it with you.)

PLEASE RSVP by Wednesday Noon Feb 14th ff you plan to attend dinner, send John your expected menu items to help the kitchen plan. (You may, if you wish, or forget, change your selection when waitstaff take our orders.)

Agenda Item: IV.B.5 - Executive Director Transition – Project Contract(s) with Workman

- Workman has been advised that the ETMD will contract with him to complete the OOB Project, Kittery Dennett Road Project and the Scarborough Close-out Project at his current contractual rate (52.50/hr). Each project will require its own contract in order to comply with MDOT policies that will allow ETMD reimbursement for project management. These will be sole-source contracts which mean under \$25,000 and therefore do not require ETMD to do a qualification based bid selection. After February 16 all Workman’s ETMD obligations end so in order to continue progress on these project a contract should be in place ASAP.
- **Proposed Motion:** Move that the Board authorize the President to negotiate and enter into project specific contract agreements with Workman Management Consulting for the OOB Project, Kittery Dennett Road Project and the Scarborough Project Close-out.

Agenda Item: IV.C.1 – Trail Projects – Scarborough Close-out

- All construction and remediation on the Scarborough Project has been completed since mid December. In mid January CPM Constructors provided support information that Workman had requested during the remediation to support the original coating order. That information has been provided to WSA and TYLN so to determine if CPM’s team followed our coating specifications. While the evaluation is being conducted Workman has been working with the WSA Team to resolve cross claim issues involving the engineering team so that when final negotiations with CPM are conducted ETMD will be better positioned to make its own determinations. WSA and TYLN positions on claims are being handled by executives within each company because of the high cost of the claims that are pending. There are several pending dates for conference calls, including February 14 and CPM has committed to meeting whenever we can assemble everyone during the final two weeks of February.

Balances being retained:

WSA (Engineering) \$18,392
 CPM (Construction) \$91,769

Claim totals – Provided as general reference – NOT to be taken as final concrete values or numbers

Total Change Orders to Project (less three pending claims includes topcoat claim)	\$191,020
Total increase to project cost not currently covered	\$47,873
Three pending claims (estimated value)	\$35-40,000
Liquidated Damages against CPM (86 days @ 325 per day)	\$27,950

Agenda Item: IV.C.2 – Trail Projects – OOB Project

- The construction bid documents package is almost complete and should be in review by MDOT prior to the Board meeting. MDOT reserves a two-week review period for submittals; however, Andy MacDonald has indicated that he will do his best to turn things around faster to help us stay on our Spring construction schedule. While MDOT is reviewing documents, final preparation for bid advertisement, site meetings, bid opening, etc will be completed. Estimated time to release of the bid is two to three weeks – end of February/First of March.
- GSGT to date has elected not to respond with objection to or execution of the co-location agreement for this project. The agreement is identical to the previously executed one for the Scarborough Project. ETMD is moving forward with the project without this co-location agreement because we are not required by state or federal regulations to hold such agreement and we have met all other notifications and plan submittals; in fact, we have followed the terms of the co-location despite the lack of an executed agreement. I expect that GSGT will move on the execution once they see us moving forward and as always I believe the ETMD's position should be one of willingness to enter into this agreement and work with GSGT rather than against.

Agenda Item: IV.C.3 – Trail Projects – Kittery Dennett Road Project

- Workman has held preliminary meetings with Kittery Town Manager, Jon Carter and Public Works Director, Rick Rossiter regarding the construction of this project in the spring and summer. The project was conceived to utilize the Kittery DPW Force because of significant cost savings. Rossiter reported that he would put the project into his spring/summer work plan and that work would proceed as appropriate. This is a federal/state funded project so all the normal requirements exist including public hearings. ETMD will have to justify the use of the public works force before it will be allowed to use it which is standard protocol and not hard to justify given the cost savings provided by Kittery DPW. After approval ETMD will contract with Kittery just as it would with any other construction company.

Agenda Item: IV.C.4 – Trail Projects – OOB Project

- Workman has completed a site inspection of trail in Wells and has developed a presentation with a recommendation for a section that could possibly be constructed without much delay. Two factors that do complicate all the trails in Wells is that all (or most) of the land is owned in fee by GSGT requiring at least a project specific agreement. Second, is that GSGT has already decreed that it will only allow construction on its line by certified and insured construction companies, not municipal forces. More information will be provided at the meeting.

Agenda Item: IV.C.5 – Trail Projects – Easements Sub Committee

- The easement subcommittee has held its first meeting. [\[See Attachment IV.C.5 – Minutes\]](#)

Agenda Item: IV.D – Trails for a Healthy Maine Bond

The following was provided by Andrews by email dated 1-31-07

- **Background** - A successful 2007 Trails for a Healthy Maine Bond is looking up. During the past two weeks we've realized the need by comparing THM efforts to some of the other bond efforts in particular, the new-in-2007 Riverfront Bond Coalition. Jeff Miller, Executive Director of Bicycle Coalition of Maine (BCM), and I attended Riverfront's State House press conference earlier this month. We left convinced THM must do the same. In pursuit of that goal we realize THM needs the support of a professional lobbyist. As one duty, the lobbyist would organize the press conference. Jeff found, and recommended a candidate. He and I interviewed Lauralee Raymond Jeff's candidate lobbyist. Her proposal and resume are attached. (Later in the day Senate President Beth Edmonds endorsed Lauralee's professional skill.)

- **THM Progress** - Following the THM Steering Committee meeting, I visited the State House where I was able to speak with more than 7 members of the Legislature and State Treasurer David Lemoine. (As an OOB attorney David was key to

receiving a 1-mile trail easement from CMP.) I had lunch with three of legislators including Rep Chris Babbage (D-Kennebunk) and Walter Wheeler (D-Kittery). Later, I asked Rep. Linda Valentino (D-Saco) who serves on the Appropriations Committee if she would serve as THM lobbyist within her committee. Linda has long supported the THM Bond and the ET. This is her second term in the Legislator and her first on Appropriations. The THM final success: Jeff arranged a 15-minute meeting with Senate President Beth Edmonds in her office where she shared her thoughts on how we can succeed with THM.

Last week BCM's Board voted to provide significant funding for the lobbyist, IF THM supporters can raise \$10K in pledges before February 8th, next Thursday. THM needs support from any source including: trail organizations, foundations, individuals and YOU. We need your help obtaining pledges in any amount.

- **Jeff Miller's Perspective on 2007 THM Success** - In 2005 legislative session we made it much further than most asked with a favorable vote from the Transportation Committee (8-2) before it was killed in the Appropriations Committee (along with over 95% of the bonds due to a particularly vicious politically charged session that had more to do with Gubernatorial politics than anyone expected). This year several more things are going in our favor. It is expected that as much as \$300 million in bonds is likely to be approved (based on broadly excepted guidelines about indebtedness). The Chairman of the Transportation Committee (Senator Denis Damon) is the Sponsor of the bond and 1/2 of the Transportation Committee are signed on as co-sponsors. Building on our successes of 2005, we now have nearly 200 endorsing organizations and businesses. However, we also realize with well over \$1 Billion of bonds proposed we have a uphill battle to get the Trails Bond approved by the legislature and out to Maine voters. We also realize that our collective lobbying experience and ability is very limited and that to get a bond of this size we need to get smarter and more serious and have a lobbyist representing us at the statehouse. We have a excellent prospect with Moose Ridge Associates and their extremely well known and well regarded lobbyist Lauralee Raymond who are willing to work with us and extend nonprofit rates to us.



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January 19, 2007

John Bubier
Biddeford City Hall
205 Main Street
Biddeford, Maine 04005

Example of personalized letters
sent to all municipal members

Dear John,

Please accept this letter as an official request for the City of Biddeford to appropriate \$5,000 for its 2007-08 membership fee in the Eastern Trail Management District. This represents a zero percent increase since fiscal year 2003. The ETMD is sensitive to the challenging economic times and is working to keep increases to a minimum. However, with eight miles of trail constructed and open to the public and another 15 miles in final engineering and construction, the ETMD must address the cost of trail maintenance and inflationary costs impacting our operating budget (insurance, labor, materials, etc.).

The ETMD is also asking each member community to appropriate an additional \$1,000 for a trail maintenance reserve fund. It is common practice for municipalities to use reserve accounts to prepare for future high cost expenditures. The ETMD proposes to adopt this practice and create a maintenance reserve fund so that it can meet current needs while slowly building a reserve for both emergency and expanded future maintenance costs. Currently, the ETMD has no reserve funds; its annual operating budget provided by member communities is generally depleted by the end of the fiscal year. If the current course is maintained, the ETMD and member municipalities are in jeopardy of defaulting on their shared maintenance obligations because of lack of funding. It will not be possible for the ETMD to continue to operate under a zero percent increase in future years. However, we feel steps like the establishment of the maintenance reserve fund and in-kind services from municipalities will help to minimize future increases.

Responsibility for trail maintenance, like trail construction, was originally conceived and memorialized in the Membership Agreement for the Eastern Trail Management District [copy enclosed] as the responsibility of the District. At the time that the agreement was negotiated, presented to the municipalities and adopted it was fully understood that the ETMD was to carry out its duties on behalf of the municipalities, not independent of them. The municipalities recognized that sharing the burden amongst 12 communities would significantly reduce the cost that any one municipality would have to pay if it was to construct and maintain its own section of trail independently. To that end the municipalities recognized that there would be rising costs associated with the expanding trail system; however, that it could help to reduce the amount of direct financial contribution by providing in-kind services when appropriate. An example would be the Town of Scarborough which has appropriated over \$200,000 in additional funds for construction and maintenance and countless hours of in-kind services helping the ETMD to construct and maintain the trail.

Our goal is to construct the 55 miles of off-road trail from Kittery to South Portland. To date we have completed trail in Scarborough, on-road improvements in South Berwick and the City of South Portland has constructed most of its section. We have secured funds for additional construction through 2009 in Scarborough, Old Orchard Beach, Saco,

Biddeford, Arundel, Kennebunk and Kittery. We are currently looking for funds to pay for additional construction in Wells, the Scarborough-South Portland Connector and to undertake the Kittery, Eliot, York, and South Berwick Gap Study.

As we begin the New Year we are asking members to ensure that they have a director and alternate appointed to represent them on the ETMD Board and that such persons are fulfilling their obligations. Currently, your director is Dan Letellier with an attendance record of 5 out of 12 meetings for calendar year 2006. Your alternate is Jeremy Hargreaves with an attendance record of 0 out of 12 meetings for calendar year 2006.

A secure coalition of municipalities is vital to the success of the ETMD. Your annual contribution leverages federal and state funds that we have been told would not have been possible without this collaboration. The ETMD does not seek general construction funds from its municipal members; this money instead comes from federal and state sources. The commitment that we make to secure these funds is that we will manage the project and that we will maintain completed projects for a minimum of 20 years. Your annual contribution goes primarily toward these two categories and without it we would not be in a position to accept the awards. The benefit to each municipality to maintain the ETMD to plan, construct and maintain the Eastern Trail is significant. Together, we can realize the Eastern Trail and provide our residents with this transportation and recreation opportunity that will last for generations to come. Enclosed you will find our 2006 Annual Report, with information about what the ETMD has been doing on your behalf.

Please accept this as an official request to also meet with your council/board and budget committee to further discuss appropriation of the membership fee and the trail maintenance funds. In the meantime, I encourage you to contact me directly with any questions or concerns.

Sincerely,

Robert Hamblen
ETMD President

Saco City Planner
300 Main Street
Saco, Maine 04072
207-282-3487
bhamblen@sacomaine.org

encl.

**Eastern Trail Management District Executive Director
Responsibilities**

Attachment IV.B.2

I. General

The Executive Director is responsible for the day-to-day operation of the District and the Eastern Trail. District duties generally occur Monday-Friday, but require a combination of day and evening hours. The Trail is in operation year-round, 7 days per week, and 24 hours per day which has the potential to create additional night and weekend obligations. The following tasks outline the ED position; however, additional tasks will be required as assigned by the ETMD President as situations require.

II. Skill Requirements

A. General

- Strong verbal & written skills
- Facilitation skills
- Effective organizational skills
- Mediation skills
- Knowledge of government systems; especially municipal
- Valid driver's license
- MDOT Certified Local Project Administrator (project management only)

B. Computer

- Microsoft Office: Word, Excel, PowerPoint
- Adobe Acrobat
- QuickBooks
- Preferred: Adobe PageMaker, Illustrator or equivalent, MS Project

C. Physical

Able to walk on road and off-road surfaces for medium to long distances
Able to operate tools used for minor maintenance: chainsaw, rake, shovel, etc.
Able to lift low to medium weight items

II. Administration

A. Corporate Care

- Prepare & file annual report for State of Maine
- Insure compliance with By-Laws & policies; propose revision as necessary
- File other legal paperwork as may be necessary from time to time
- Maintain District records

B. Board of Directors

- Maintain Board of Directors and Alternates Directory
- General board communications
- Attend board meetings
- Prepare meeting agendas and take & type meeting minutes
- Attend and provide support to subcommittee meetings as necessary
- Secure and setup/cleanup meeting sites
- Mediate Board (director) concerns with applicable policies, procedures, realities, etc.

C. Finances

- Manage bank accounts (signature cards, corporate resolutions, open/close research types of accounts, etc)
- Management Accounts Payable and Accounts Receivables
- Track all District finances using QuickBooks
- Prepare annual operating budget
- Prepare monthly reconciliation and finance reports
- Coordinate the annual audit/agreed upon procedures with contracted auditors
- File all necessary paperwork with the IRS & Maine State Revenue Service
- Develop a long range financial plan for the District including reserve accounts and forecasts
- Make financial recommendations to the Board
- Research and apply for grants for operating expenses and projects
- Research endowment or other long-term support options for the trail
- Manage annual membership fee process

D. Operation

- Draft policies to govern all aspects of District operation as needed
- Implement and track progress of ETMD Strategic Plan
- Hold regular meeting with the president
- Maintain District Insurance
- Remain current on government policy or legislation that could impact the District or Trail and make recommendations to the Board for appropriate action.
- Facilitate maintenance and update of the ETMD website
- Coordinate and oversee professional and volunteer work being done to further the objectives of the District

III. Trail Management

- Develop, revise, and implement the Trail Management Plan
- Perform inspection of trail facilities and appurtenances on a quarterly basis during off-season & monthly during peak season.
- Research and evaluate materials and methods for trail construction, maintenance and management
- Purchase services, equipment and materials for trail maintenance
- Coordinate and oversee all maintenance Work (municipal, professional and volunteer)
- Undertake minor maintenance tasks such as sign replacement, brush/debris clearing, spot painting, etc.
- Maintain relationship with landowners and utility companies
- Work with law and rescue agencies to insure adequate coverage for the trail
- Respond to trail user issues

IV. Trail Project Planning

- Perform site visits and gather data so that Trail segments can be evaluated to gauge scope and readiness
- Develop evaluation criteria for potential projects
- Right of Way negotiations
- Utility negotiations
- Secure funding for projects
- Conduct public/user workgroups as necessary to support project viability

V. Advocacy

- Prepare the ETMD State of the Trail Annual Report
- Maintain and work with the Eastern Trail Alliance
- Mobilize ET members and advocates to support the Trail as necessary
- Maintain relationship with the East Coast Greenway Alliance
- Meet with local, state and federal officials to advocate for support of trail initiatives
- Attend municipal council and board meetings to report progress and advocate for District & Trail needs
- Participate in local and state transportation planning initiatives
- Participate in local and state trail advocacy (coalition) initiatives
- Work with and support trail initiatives that connect or will increase the capacity of the Eastern Trail
- Develop and maintain public relation materials for the ETMD and Trail

VI. Construction Project Management

The role of the project manager is best described as the total management of all aspects of the project from kick-off to closeout. The PM is the hub through which all other parties (MDOT, ETMD, Contractors, Consultants, etc.) should work through. Tasks increase and decrease according to the unique nature of each project.

- Negotiate MDOT Project Agreement
- Develop project budget
- Finalize ROW issues/agreements
- Utility communication and certification (non-effected utilities)
- Utility coordination and negotiation (effected utilities)
- Develop qualification based bid for engineering services
- Develop (low cost) bid for construction services
- Manage bid process; evaluate bids, interview potential consultants
- Supervise and coordinate all consultant work

- Coordinate and facilitate public meetings/hearings
- Function as liaison between MDOT, consultants, contactors and the Board
- Track and approve all project related expenditures
- Invoice MDOT for reimbursement of all qualifying project expenses
- Develop and submit required MDOT reports
- Coordinate and facilitate project meetings
- Respond to daily consultant questions about design and construction
- Provide on-sight supervision (when appropriate) and inspections (some technical) of all construction work
- Work with engineers on all aspects of permitting
- Coordinate design and construction issue with the local municipality
- Coordinate legal work
- Landowner (abutter) relations – communication, special situations, mediation, etc.
- Maintain project records

February 5, 2007

OVERVIEW OF IMPACT FEES

This overview discusses impact fees and how we can evaluate how they may be able to be used to offset the costs of the development of additional or expanded facilities to meet the needs of a growing population or needs created by development.

1. What is an impact fee?

An impact fee is a one time charge paid by new development to cover a share of the costs for new or expanded facilities needed to service the development. It is a fee and not a tax. The impact fee shifts some or all of the cost of providing facilities needed to service new development from the general property taxpayer to the development creating the need for the new capacity.

2. What can impact fees be used for?

The use of impact fees is governed by state law. Impact fees can only be used for municipal or school infrastructure. The state law lists facilities such as waste water facilities, water facilities, solid waste facilities, fire protection facilities, roads, parks, open space, schools, etc.

Impact fees can be used to pay for facilities that have already been built or for facilities that are planned to be built in the future as long as they create capacity to service future development.

3. What can impact fees not be used for?

Impact fees cannot be used for maintenance or operations. They cannot be used to replace existing facilities unless there is an expansion in the capacity of the facility and then only the cost of the increased capacity is appropriate for an impact fee. Impact fees cannot be used to correct existing deficiencies.

4. What limits does the state place on the use of impact fees?

State law in Maine is reasonably restrictive in terms of how impact fees can be

used. The limits include:

- the fee must be related to the cost of an improvement necessary to serve the development
- the fee must be proportionate to the share of the new or expanded capacity used by a development
- the fee must be used for specific identified improvements
- the fee must go into a separate account and be used only for the purpose collected
- the improvement for which the fee is collected must be made in a timely manner in accordance with the Town's Capital Improvement Plan
- the impact fee must be refunded if the improvement is not constructed within a reasonable period, typically ten years

5. What are the key tests for the legal use of impact fees?

The use of impact fees must generally meet three key legal tests:

1. *The fee must be used to pay for capacity that is needed to accommodate growth and development.* For example, an impact fee to pay for the development of a new recreational area to accommodate growing demand for youth league fields due to increased participation as a result of residential development is probably appropriate but a fee to build a parking lot and concession stand/rest rooms at an existing recreational area that does not expand the capacity of the facility probably is not.

2. *The amount of the fee must be proportionate to the share of the capacity used by the development.* If the Town used impact fees to say upgrade a sewer pump station to increase its capacity from 10 cfs to 20 cfs, a development that uses 1 cfs of this additional capacity should pay 10% of the cost of the upgrade.

3. *The development paying the impact fee must benefit from the improvement made with the fee.* If a residential subdivision pays an impact fee for traffic improvements, the improvement must be of benefit to them. For example, reconstruction of an intersection on the main road leading to the subdivision that increases the capacity of

the intersection would probably be OK but an improvement to a road on the other side of town would probably not meet this benefit test.

6. How can we decide for what facilities impact fees are appropriate?

Here is a list of questions that can be used to help decide if the use of an impact fee is appropriate:

- is the improvement an infrastructure facility or capital improvement within the meaning of the state law?
- will the improvement result in an increase in capacity?
- is the need for the additional capacity the result of growth and development?
- will the occupants/users of the new development that pays the impact fee be reasonably able to utilize the new capacity?

7. Who should pay an impact fee?

The basic principle of impact fees is that the development activity that is creating the need for the new or expanded capacity should pay the impact fee. For example, an impact fee to pay for expanded school capacity should be paid by residential uses but probably not by nonresidential uses. And residential uses such as elderly housing that do not generate school enrollments should probably not be subject to such a school impact fee. An impact fee for an upgraded sewer pump station should be paid by any development that generates new or increased sewage flows that would go through the pump station but a development that has an on-site disposal system or is located on the other side of town and does not use the pump station should not.

Title 30-A, §4354, Impact fees

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PLEASE NOTE: The Revisor's Office cannot provide legal advice or interpretation of Maine law. If you need such legal assistance, please contact a qualified attorney.

§4354. Impact fees

A municipality may enact an ordinance under its home rule authority requiring the construction of off-site capital improvements or the payment of impact fees instead of the construction. Notwithstanding section 3442, subsection 2, an impact fee may be imposed that results in a developer or developers paying the entire cost of an infrastructure improvement. A municipality may impose an impact fee either before or after completing the infrastructure improvement. [1991, c. 722, §8 (rpr); §11 (aff).]

1. Construction or fees may be required. The requirements may include construction of capital improvements or impact fees instead of capital improvements including the expansion or replacement of existing infrastructure facilities and the construction of new infrastructure facilities. [1999, c. 776, §11 (amd).]

A. For the purposes of this subsection, infrastructure facilities include, but are not limited to:

- (1) Waste water collection and treatment facilities;
- (2) Municipal water facilities;
- (3) Solid waste facilities;
- (4) Public safety equipment and facilities;
- (5) Roads and traffic control devices;
- (6) Parks and other open space or recreational areas; and
- (7) School facilities.

[1999, c. 776, §11 (amd).]

2. Restrictions. Any ordinance that imposes or provides for the imposition of impact fees must meet the following requirements. [1991, c. 18, §2 (amd).]

A. The amount of the fee must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development or, if the improvements were constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development.

[1991, c. 18, §3 (amd).]

B. Funds received from impact fees must be segregated from the municipality's general revenues. The municipality shall expend the funds solely for the purposes for which they were collected.

[1989, c. 104, Pt. A, §45 and Pt. C, §10 (new).]

C. The ordinance must establish a reasonable schedule under which the municipality is required to use the funds in a manner consistent with the capital investment component of the comprehensive plan.

[1989, c. 104, Pt. A, §45 and Pt. C, §10 (new).]

D. The ordinance must establish a mechanism by which the municipality shall refund impact fees, or that portion of impact fees, actually paid that exceed the municipality's actual costs or that were not expended according to the schedule under this subsection.

[1989, c. 104, Pt. A, §45 and Pt. C, §10 (new); c. 562, §17 (amd).]

**Eastern Trail Management District
Minutes of Easement Subcommittee Meeting
Feb. 8, 2007**

Attendees:

Members: John Andrews, Bob LaNigra, Bob Hamblen and Aaron Shields

Absent: Joe Kline

1. Review of Easement Subcommittee Task and History of Previous Easements:

- * John reviewed the history of easements in general and his previous emails summarizing his perspective on which easements are needed to build the ETA. Two priorities were identified, as shown below.
- * The conceptual trail corridor options map for the Scarborough section between the Desfosses trail and Wainwright Rec. Complex in SP was reviewed. Since all three options are dependent on getting an Easement from the Sanborn family, we will concentrate our initial efforts there.

2. Sanborn Property in Scarborough:

- * John explained that he had discussions with the Sanborn family, several years ago, and that Mark Sanborn, who represents the family, was receptive to discussing an easement. Ownership of the land is shared by 5 or 6 cousins, which could create a problem.
- * It was agreed that John and Bob will contact Mark Sanborn and try to meet with him when he next visits his company in Portland. He resides in MA.
- * Bruce Gullifer of the Scarborough Community Svcs. will be notified of our plans and we will look for any input or assistance he may provide.
- * An attorney will be needed once an easement is agreed upon.
- * Depending on the outcome of the meeting, we will then have to decide whether the trail should proceed along the recommended Option 3 Eastern RR Corridor or be diverted along the scenic Option 4 Hannaford route.

3. Granite State GT/NiSource Corp. Easements from Biddeford to Kittery:

- * Discussions with GSGT/NSC have lapsed for many years and must be resumed. Most of the people that John and Steve Workman have previously contacted are probably no longer in the same positions.
- * John will talk with Steve to get an up-date on his contacts with GSGT/NSC. John also will call someone he knows that has gotten approvals from NSC for easements in the Midwest, where NSC is located. If they can grant easements for trails in the Midwest, they should be receptive to easements here.
- * John and Bob will contact GSGT/NSC at some point to discuss easements for the sections from Biddeford to Kittery. This section is the longest and would account for the majority of trails needing easements.

4. Adjournment:

- * Next meeting may be scheduled at the end of an ETMD meeting. In the interim, we will communicate via email.

Submitted by: R.M. LaNigra—Dated Feb. 8, 2007