

South Portland Conservation Commission

TO: Tom Coward, Mayor
Members of City Council

DATE: November 12, 2010

SUBJECT: Freshwater Wetland Compensation Fund Priority List

Section 27-153(f) (2) of the City Ordinance sets forth planning and management responsibilities for use of the Freshwater Wetlands Compensation Fund (the “Compensation Fund” or “Fund”)¹. The Ordinance requires the Conservation Commission to “periodically prepare a list of projects” for which Compensation Fund monies are to be used. In coming up with this list, the Commission is required to consult with the Planning Board, and also to be guided by studies or other work done by the City to establish priorities for protection and/or restoration of freshwater wetlands or other uses of the Fund².

This memo presents the Commission’s initial proposal pursuant to Section 27-153(f) (2) of the City Ordinance.

As you deliberate on this matter and the Conservation Commission’s proposed approach as set forth in this memo, there are several things we ask you to bear in mind. First, this is a new program. This section of the Ordinance was introduced in March 2008, and this is the Commission’s first attempt at implementing its terms and making a proposal to City Council pursuant to the Ordinance. Second, although the Commission came up with the approach outlined below after considerable review and discussion, we are nevertheless seeking feedback from City Council on this matter.

This memo presents the Commission’s initial proposal pursuant to Section 27-153(f) (2) of the City Ordinance. The Commission has voted (and the Planning Board has concurred) to allocate Compensation Fund capital by focusing on freshwater wetland projects in two watersheds on the following priority basis:

- 1. Trout Brook**
- 2. Barberry Creek**

¹ The Compensation Fund is made up of fees paid to the City by property owners who alter freshwater wetlands or fail to provide adequate buffer zones as part of certain development activities. Section 27-153(d) (1) and (f) (1).

² The Fund is managed as a separate designated sub-account of the City’s financial management system. As of May 2010, there was approximately \$61,000 in the Fund. The City Planning Department estimates that approximately \$21,000 could be deposited into the Fund by year-end.

The purpose of this memorandum is to explain how the Commission came up with these two areas. If you decide to approve our proposed approach, the next step calls for the Commission to work with Water Resources Department to develop and submit to the City Manager a schedule and implementation plan that addresses the following:

- How we propose to use Fund resources for projects (for example, erosion control measures, vegetative plantings, culvert repair, etc.);
- Coordinating efforts with other potential funding sources, such as the Clean Water Act Section 604 and 319 grant programs (discussed below in the *Issues* section of this memo);
- The results we expect to see over time; and
- How we plan to measure those results.

The Commission's rationale for prioritizing projects under the Compensation Fund ordinance is set forth below, along with several policy issues we will begin to explore with the Planning Board and Open Space Committee, and City Departments as we implement the Compensation Fund program.

Rationale for Prioritizing Trout Brook and Barberry Creek

In 2009, the Commission retained Sebago Technics to come up with a list of potential Compensation Fund projects. In January 2010, Sebago Technics submitted a report to the Commission (**Tab A**) which identified 256 parcels in the City which might be Compensation Fund project candidates (132 publicly owned and 124 privately owned). However, the contract did not require Sebago Technics to develop or apply a set of ranking criteria to this list of candidate areas.

The Commission believed that having a contractor do a rigorous ranking of several hundred locations may result in a neatly ordered list, but given the current (and projected) size of the Fund, we think such a ranking effort would be a waste of resources, since most of the sites would have virtually no chance of being addressed in any meaningful way, for the simple reason that the Fund itself is limited. The Commission recommends that we instead spend Compensation Fund resources on actual improvements to critical habitat and minimize additional spending on more consultant reports.

Over the past several months, the Commission has met with the Planning Board, Pat Cloutier and Tex Haeuser to discuss alternative approaches. They all have voiced support for our proposal (memos of support are included as **Tab B**).

We are proposing to address Trout Brook/Sawyer Marsh first for expenditure of Fund resources based on the following rationale:

- Both the Trout Brook/Sawyer Marsh and Barberry Creek watersheds represent obvious 'targets of opportunity' for the City because, just like Long Creek, both tributaries are

now classified as “Urban Impaired Streams” by the Maine Department of Environmental Protection (DEP). The Commission strongly believes it is an appropriate goal to restore these streams and get them off the DEP list of Urban Impaired Streams;

- Trout Brook itself is a highly visible natural resource in the City, as it channels through residential neighborhoods and schools, and the upper and lower reaches of the impaired segment of Trout Brook are part of two public/private initiatives – the Friends of Mill Creek and Sawyer Pit Committee efforts;
- The Sebago Technics Master List identifies more than 20 public and private locations within the Trout Brook watershed (see e.g. pages 5 and 9 of the Sebago Technics report and Table A2-2 and **Tab C**). Only after completing the Section 604 water quality management planning process (discussed below in the *Issues* section) will we be able to determine where Compensation Fund activities will yield the best ‘bang for buck’ in the Trout Brook watershed;
- A list of restoration/enhancement projects within the Trout Brook watershed could be defined, budgeted and implemented fairly efficiently;
- Trout Brook/Sawyer Marsh represents a very good “partnering” candidate with Cape Elizabeth (i.e. we could combine resources of both communities to achieve a worthwhile goal in an area of common interest); and
- Long Creek is also on the Master List, and would probably rank high using a rational prioritization scheme, but Fund resources are clearly dwarfed by the \$15 million watershed improvement program currently underway for Long Creek.
- The Trout Brook watershed has been fairly well-characterized in ecological terms. Virtually everyone we have spoken with – including local experts, Maine DEP biologists, consultants, and others – believes that the time is right to move from a “science fair” mode towards an “action & measure results” mode³.

Issues

During its deliberations, the Commission identified two issues which City Council should consider when reviewing the Commission’s proposal:

- *The scope of the Ordinance.* As set forth in the City Ordinance, the specified uses for the Fund are primarily for:

³ The Commission has devoted a significant amount of time deliberating how to set priorities under the Compensation Fund, which included meeting with the following: (1) Don Kale & Jeff Varricchione, Maine Department of Environmental Protection; (2) Steve Walker, Maine IF&W; (3) Tex Haeuser, Planning Department.; (4) Pat Cloutier, Water Resources Dept.; and (5) Jon Dore, South Portland Land Trust.

“(a) the restoration of previously degraded wetlands, (b) the enhancement of existing wetlands, (c) the preservation of existing freshwater wetlands or upland buffers, (d) the creation of freshwater wetland from non-wetland upland area, or (e) storm water improvements that relate directly to a freshwater wetland”. Section 27-153(f) (2).

This language presents two questions which the Commission hopes to have clarified: (1) In light of the definition of “freshwater wetland” within Section 27-55 of the Ordinance which appears to exclude areas such as “river, stream, or brook,” can Compensation Fund resources be spent on projects in and around Trout Brook and Barberry Creek such as stream bank stabilization or non-wetland erosion control measures?; (2) Are Compensation Funds intended to be used strictly for “freshwater” wetlands projects and not for potential projects involving estuarine wetlands?

- *Current and future Compensation Fund resources may not be sufficient to achieve measurable improvements to wetland habitat areas in the Trout Brook watershed.* As noted earlier, there is currently only around \$60,000 in the Fund (**Tab D**), and by the end of 2010 the Planning Department forecasts the Fund may reach \$80,000. The Commission has encouraged the Water Resources Department to apply for water quality management grants under the Clean Water Act (the so-called Section 604 and 319 grants). In October, the Maine DEP awarded a \$35,000 Section 604 grant to South Portland to develop a water quality management plan for Trout Brook. Once that plan has been developed, South Portland will then be eligible to apply for and receive habitat restoration funds through the Section 319 grant process.

Developing a Water Quality Management Plan for Trout Brook (and eventually Barberry Creek) will make South Portland eligible for grant funding under Section 319 of the Clean Water Act. Section 319 funds could leverage our existing Compensation Fund, enabling South Portland to carry out more robust restoration activities in the watershed.

Commission Recommendation

The Commission recommends that the City Council approve the priority list and authorize the Water Resources Department and the Commission to:

- *Develop an implementation plan, budget and schedule for restoration and enhancement of Trout Brook/Sawyer Marsh; and*
- *Submit an annual report to City Council and the City Manager on progress and Fund expenditures.*

Thank you for giving this your attention. We look forward to hearing from you.

Respectfully Submitted by the Conservation Commission,

David H. Critchfield, Chairman

cc: Tex Haeuser, Director, Planning Department
Gerard Jalbert, Chairman, Planning Board
Pat Cloutier, Director, Water Resources Department
Members of Conservation Commission

Attachments

- Tab A. Wetland Compensation Fund Planning Report; Sebago Technics, Inc.; 2010.
- Tab B. Memos of Support
- Tab C. Trout Brook candidate locations, from Sebago Technics report – private parcels
- Tab D. Compensation Fund current account balance, as of October 2010

TAB A

TAB B

TAB C

TAB D