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Land and Water Resources Council

2003 Annual Report

JAN 20 2004

to

Governor John Elias Baldacci

and the

Joint Standing Committee on Natural Resources

of the

121st Maine Legislature

Second Regular Session

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December 2003

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INTRODUCTION

The Land and Water Resources Council ("Council") submits this annual report to the Governor and the Maine Legislature's Joint Standing Committee on Natural Resources in accordance with 5 M.R.S.A. §3331, sub-§4. This report describes the Council's activities in 2003 and notes activities that the Council anticipates in 2004.

In 1993, the Maine Legislature established the Council to advise the Governor, the Legislature, and state agencies in the formulation of state policy regarding natural resources management to achieve state environmental, social, and economic objectives. The Legislature has conferred on the Council, originally established by Executive Order, broad authority to consider natural resources issues of statewide significance and to counsel the Governor and Legislature on policy options for management and protection of natural resources. *See* 5 M.R.S.A. §3331, sub-§2. The Council's agenda includes matters assigned to it by the Legislature or the Governor, as well as projects initiated at the request of a state agency or by the Council itself.

COUNCIL MATTERS IN 2003

In 2003, the Council focused on the following matters with which it has been involved for several years. In addition, the Council explored options for carrying out its statutory mission more efficiently and effectively and made corresponding adjustments to its process.

Exploring River Restoration Approaches

In 2002, the Council initiated an effort to review the State's policies and practices related to dam removal and directed SPO to lead this effort by convening a wide spectrum of stakeholders to form a Dam Removal Policy Advisory Committee ("Advisory Committee"). On January 3, 2003, the Council reported to then Governor Angus King and the Legislature's Natural Resources Committee on the Advisory Committee's preliminary recommendations. The Advisory Group recommended continuation of its efforts and suggested a list of issues to be addressed in any subsequently adopted state policy regarding dam removal.

Governor Baldacci, in a memo dated June 25, 2003, requested the Council to look at potential "gaps in the state's current approach to restoration" and "provide recommendations on the how the state, in partnership with businesses, river communities and other stakeholders, can accelerate our collective efforts to restore Maine rivers" by January 1, 2004. The Council determined to address issues related to dam removal policy in the context of the survey called for by the Governor's memo and directed SPO to coordinate this effort. In consultation with the Council, SPO established several working groups to assess issue areas identified in the Governor's charge to the

Council. A number of members of the Advisory Committee have participated on the working group focused on dam removal procedures.

At the Council's December 11, 2003 meeting, SPO staff provided a progress report on this assessment, known as Exploring River Restoration Approaches in Maine. In light of progress to date, SPO staff recommended that the Council ask the Governor for an extension, until February 16, 2004, to accommodate completion of the working groups' efforts and the Council's consideration of any resulting recommendations. The Council agreed to request such an extension.

Smart Growth

At the Council's March 13, 2003 meeting, SPO staff briefed the Council on SPO's recently completed evaluation of the State's Growth Management program. State law requires SPO to evaluate the program every four years, with assistance from the Council's member agencies. The evaluation report, titled *We Have A Choice* (SPO, February 2003), is available online at www.state.me.us/spo/landuse/whatsnew/index.php.

In order to help align on-going Smart Growth initiatives with the Governor's priorities, SPO staff requested that the Council focus its efforts, assisted by an inter-agency coordinating committee, on development of recommendations for the Council on short, intermediate, and long term priorities regarding:

- Coordination of state agency capital planning and investment;
- Consistent standards for grant preferences supportive of Smart Growth objectives;
- Enhancement of the State's natural resources regulatory framework to facilitate simultaneous consideration of multiple resources issues and their relationships, and potential sprawl inducing effects;
- Support for compact patterns of development; and
- Data collection to measure success in meeting Smart Growth objectives.

SPO, as chair of the Council, agreed to meet with the Governor's office to provide a briefing on Smart Growth efforts and to confirm appropriate policy direction. SPO also agreed to facilitate coordination among the Council, state agencies, and others as appropriate on Smart Growth issues addressed by the Council.

In October 2003, Governor Baldacci tasked SPO with working with state agencies and others to develop elements of a regionalization and smart growth agenda, potentially involving proposed amendments to existing law or policies and new approaches from other states, for his consideration in December 2003. The Governor requested that the elements proposed be tailored to one or more of the following objectives:

- Maximization of investments in public infrastructure (e.g., fully using existing capacity in roads, schools, water and sewer infrastructure, and public facilities).
- Delivery of services more effectively by fostering regional efficiencies (e.g., school administration and municipal services; new models of regional investment and governance).
- Investment in the State's service center communities (e.g., economic development incentives, housing, roads, and public buildings and facilities).
- Provision of needed workforce housing and giving people of all incomes an opportunity to own their own home (e.g., expand the availability of affordable, compact housing near where people work and go to school, develop mechanisms to reward people for choosing to live near where they work).
- Prevention of the loss of additional farm and forest land, fisheries, and working waterfronts (e.g., reduce development pressures and strengthen the competitiveness of these industries, reform tax policies to ease the financial burden of retaining and maintaining these lands and industries).
- Engagement and support of private sector involvement with smart growth (e.g., educate developers about smart growth, municipal officials about barriers, target incentives, remove disincentives, etc.)

SPO is currently developing suitable policy recommendations. The Council anticipates that in the coming year, following additional policy direction from Governor Baldacci, it may be involved in coordinating development and implementation of select "smart growth"-related initiatives.

Downeast Salmon Rivers: Low Flow study

At the Council's August 14, 2003, meeting, the State Geologist from the Maine Department of Conservation, Maine Geological Survey ("MGS") explained the need for \$23,100 to fund the state share of the final year of the five-year Eastern Maine Rivers Low-flow study. MGS has led state efforts related to design, conduct and interpret this study, which was a product of the Council's work in coordinating the State's multi-year Atlantic salmon conservation plan. This study is a recommendation of the Downeast Salmon Rivers Water Use Management Plan and was included to support water management planning and the permitting of water withdrawals.

As in past years, Council members agreed to work together to provide funds needed to complete this five-year study. The State Planning Office agreed to provide \$5000 budgeted for this purpose. The Maine Department of Transportation also agreed to contribute \$5000. DEP and DIFW each indicated that they would also contribute if and as able to close the deficit.

Aquatic Invasive Species - DEP Herbicide policy

At the Council's March 13, 2003 meeting, the Maine Department of Environmental briefed the Council on DEP's draft policy regarding use of aquatic herbicides to control invasive aquatic plants. DEP staff explained that the policy, which DEP shared and discussed with pertinent staff at DIFW, DOC, DAFRR, and DHS, articulates current DEP practice. DEP further clarified that the policy focuses on "restoration" through substantial suppression of the invasive plant and calls for a DEP discharge license, with opportunities for public notice and comment, to authorize use of aquatic herbicides.

This consultation reflects on-going efforts among DEP, DIFW, and other natural resources agencies, at times with the involvement of the Council, to coordinate state efforts regarding prevention and management of aquatic invasive species.

Land Use Mediation Program: 2003 Report

In its December 1, 2003 letter, the Council reported on activities of the State's land use mediation program in accordance with 5 MRSA §3331, sub-§5. A copy of that report is attached.

Lakes Heritage Trust Fund

5 MRSA §3331, sub-§5 authorizes the Council to manage the Lakes Heritage Trust Fund and requires the Council to include in its annual report "an accounting of all donations to and expenditures from" the Fund. In 2003, the Fund received no donated or other funds and the Council made no expenditures from the Fund.

Process Adjustments

At its April meeting, the Council focused discussion on its statutory mission, current and potential future projects, and its role in relation to the Energy Resources Council and other forums for discussion among the State's natural resources agency commissioners. Following this and related cabinet-level discussions among Council members, the Council has agreed on several adjustments to its procedures that reflect and support the shared goal of using the Council process efficiently and effectively in accordance with its statutory mission as a decision-maker level, public policy forum for consideration and coordination of state agencies' actions on select natural resource-related issues.

The Council has agreed to focus on serving as a policy forum on issues that involve multiple state agencies with potentially conflicting missions or mandates, and that are of interest to stakeholders outside of state government. Natural resources agency commissioners intend to use their cabinet-level discussions to identify issues that are ripe for consideration by the Council and to help guide Council actions on matters assigned to the Council by the Legislature or Governor.

In light of the efficient and targeted use of the Council forum that is anticipated, the Council further agreed on the following adjustments and clarifications to its deliberative process:

- The Council will schedule quarterly meetings (in accordance with its authorizing legislation), as opposed to monthly meetings as it has done in recent years. The Council may schedule and hold additional meetings as need dictates. Between meetings, the Council will rely on lead staff to manage and ensure continued progress on Council matters.
- SPO will schedule matters for consideration by the Council at key points, e.g., approval of work plans and approval of recommended legislation or legislative reports, where concerted direction from or decision by Council members is needed. For each Council matter, the Council will designate a lead agency and staff person who will be asked to prepare a basic work plan and timeline so that the nature and timing of these key decision points can be identified and agendas planned accordingly.

Upcoming Issues in 2004

At its meetings in March, April, and August 2003, the Council discussed possible issues on which to focus its efforts in the coming year in the context of the broader discussion, referenced above, on the Council's mission and role. From those and follow up discussions, the following emerged as topics on which the Council, as needs dictate, may focus in the coming year:

- Decision on recommendations to the Governor regarding gaps in current river restoration laws and programs (completion of the above noted assessment process)
- Development and coordination of inter-agency actions to address points in the Governor's "smart growth" agenda
- Coordination of activities associated with the State's Atlantic Salmon Conservation Plan with those in the federal recovery plan
- Consideration of options for addressing the relationship between municipal regulation and implementation of state programs
- Coordination of natural resources agencies' review and comments on the National Ocean Commission report

The Council anticipates that the Natural Resources Industries Conference sponsored by Governor Baldacci may identify additional issues for its consideration in the coming

year. In addition, the Interagency Task Force on Invasive Plants and Nuisance Species established by 38 MRSA §1871 continues to meet and may have additional policy recommendations for the Council to consider in 2004.

CONCLUSION

The Council has proven an effective forum for development and communication of consistent state positions on issues and policies that have statewide natural resources implications and that require coordination among multiple agencies. During 2003, the Council focused in part on adjustments to its process and refocusing of its efforts in relation to other state policy forums. With these adjustments, the Council intends to carry out its statutory mission more efficiently and effectively.

As in past years, the Council's work was enabled, benefited from, and continued to promote close collaboration among the State's natural resources agencies. The Council thanks members of the public and federal and state government personnel for their hard work and participation in council meetings, and the stakeholder meetings, study commissions, and other public policy development initiatives whose recommendations often inform and enlighten the Council's discussions and decisions.



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JOHN ELIAS BALDACCI
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MARTHA E. FREEMAN
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December 1, 2003

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RE: Report of the Land and Water Resources Council on the Land Use Mediation Program

Dear Governor Baldacci, Mr. Boulter, Mr. Glessner and Ms. Kenty:

This letter constitutes the Land and Water Resources Council's ("LWRC") report to the Governor, the Administrative Office of the Courts, the Executive Director of the Legislative Council and the Director of the Court Alternative Dispute Resolution Service on the operation and effectiveness on the Land Use Mediation Program ("Program"). 5 M.R.S.A. §3331, sub-§5 (copy attached) specifies that the LWRC's report "list the number and types of mediation requests received, the number of mediation sessions conducted, the number of signed mediation agreements, a summary of the final disposition of mediation agreements, a narrative discussion of the effectiveness of the program as determined by the council, a summary of deposits and expenditures from the land use mediation fund created in Title 4, section 18-B, subsection 10 and any proposals by the council with respect to the operation, improvement or continuation of the mediation program." *Id.* This report covers the period from the LWRC's most recent report on the program, dated November 15, 2000, to date.

In response to the State Planning Office's inquiry on November 12, 2003, Ms. Kenty indicated that the Court Alternative Dispute Resolution Service received one formal request for mediation under the Program during the period covered by this report. The Application for Mediation was filed in the York County Superior Court in March, 2003. It concerned a matter with the Town of Kittery, which declined to participate. As a result, the Program conducted no mediation sessions and generated no signed mediation agreements during this period. Similarly, during this period there were no deposits to or expenditures from the land use mediation fund created in Title 4, section 18-B, subsection 10. Ms. Kenty advises that her office does periodically receive telephone inquiries about the land use mediation program.

OFFICE LOCATED AT 184 STATE STREET, AUGUSTA, ME.

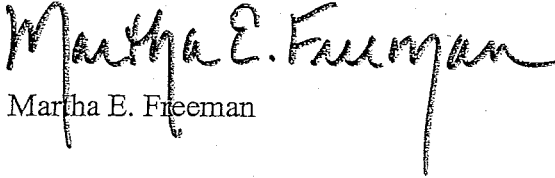
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At its December 11, 2003 meeting, the LWRC is scheduled to discuss the Land Use Mediation Program. The LWRC may supplement this report with any recommendations that result from that discussion.

Please let me know if you need additional information or would like to discuss this matter further. Thank you for your consideration.

Sincerely,


Martha E. Freeman

MEF/eic

cc: Members, LWRC