Boardman River Dams Committee
Meeting Minutes
July 25, 2006; 6:00 – 8:00 PM

Attendees:

Please refer to the meeting agenda and supporting documents which were reviewed at this meeting. Minutes, agendas, and supporting documents are located on the website:
http://www.theboardman.org/b/category/brdcarchive

Boardman River Dams Committee Statement of Purpose:
“To engage all interests in assessing and recommending the fate of the dams on the main stem of the Boardman River based upon a thorough analysis of options, including long and short-term economic, social, environmental, aesthetic, transportation and ecological impacts upon the community, individuals and riparian owners.”

1. RFQ Team Recommendation and Implementation Team Action

Implementation Team members present: Todd Kalish, Dennis Aloia, Joe Kaltenbach, Richard Lewis, Brett Fessell, Burr Fisher
After a review of the Implementation Team “thumb check” process, which is used to determine consensus, Sarah Johnston, Chair of the interview team, presented the recommendation as follows: Recommendation: The Interview Team recommends the consulting team led by Environmental Consulting and Technology, Inc. (ECT) be retained to proceed to the scope of work development stage.

Michael Donahue, Technical Advisor, reviewed the process and timeline leading to the recommendation:

• October 4 2005 – January 26 2006: 6 public meetings over 4 months to develop RFQ
• January 31: Nominees for RFQ Review Team requested
• February 14: Pre-bid meeting for RFQ responders
• February 28: RFQ Review Team Finalized
• March 28: RFQ Team progress report to BRDC
• April 25: RFQ Team progress report; BRDC receives information on Qualifications Based Selection Process
• May 17: Informational meeting to discuss pending RFQ Team recommendation
• May 30: IT vote to accept RFQ Team recommendation to follow QBS process, interview top three teams; IT vote to approve Interview Team comprised of Any IT member who desires to participate and 3 members of the RFQ Review Team
• RFQ Team selects representatives for Interview Team
• June 27: BRDC Open Meeting/Top 3 teams interviewed
• June 30: Interview Team recommendation drafted
• July 25: Interview Team recommendation to IT presented
The complete recommendation was reviewed and presented to the Implementation Team as follows:

**Recommendation:**
- The consultant team led by Environmental Consulting and Technology, Inc. (ECT) is best suited to perform the engineering and feasibility study.
- A draft scope of work and cost estimate developed for review and approval by the Boardman River Dams Committee and Implementation Team.
- Should the negotiation be unsuccessful for any reason, the Implementation Team should contact the other finalists (Corradino Group, MACTEC) and initiate a process to select one of those two firms.

Additionally, the Interview Team recommends the securing of the following commitments from ECT:
- Don Tilton must maintain an active project management role in both the technical and public/government liaison components of the project.
- Additional aquatic/fisheries biology expertise must be added to the team to strengthen its understanding of aquatic issues and options related to this project.

ECT responded in writing with their acceptance of the aforementioned conditions, stating:

“As an officer of ECT, Don Tilton is responsible for establishing our corporate mission, goals, and objectives; as well as setting the values we embrace in all of our projects. ECT has a longstanding tradition for its officers to be directly involved in our projects. The Boardman River Study is Dr. Tilton’s highest priority and he will be very proactive in the management of our efforts for the duration of the study serving as a co-project manager. He will have a continuing presence in the project, including participation in key meetings with the Implementation Team, the Boardman River Dams Committee, as well as any other key meetings.

In our proposal and during the interview, we have made a commitment to augment our team with local expertise, and strong familiarity with the Boardman River, to best serve the needs of the community. We stand by this commitment and are actively pursuing opportunities to strengthening our team in all areas, including fisheries management.”

**Discussion:**
River property owners were not represented on the Interview Team and a request was made to keep in mind the stated goal of having, on each team, all stakeholder groups represented. In response, it was noted that the Interview Team membership was determined and approved at the May 30th BRDC meeting and included representation from the RFQ Review Team, which was complete in its membership.

**Discussion:**
The Interview and RFQ Review Teams were thanked for their time and efforts. Members of the Implementation Team remarked that the process was exhaustive and involved the public at every step. The process worked, provided a thorough analysis, and resulted in solid recommendations. Implementation Team members also involved with the interview process noted that comments from the public who attended the interviews were taken seriously and those constituents who attended the interviews were thanked for their time and input. It was clear that the interviews were an important step, though all three firms interviewed were qualified to conduct the Engineering and Feasibility Study. The interviews revealed that ECT could work well with property owners and others in the public.

**ACTION:** Six members of the Implementation Team being present, a unanimous decision was reached to accept the recommendation as read.

**Discussion:**
The ECT Team was introduced to the BRDC. Scott Parker, Project Manager, expressed that they are looking forward to working with the community as decisions of the future are made and expressed appreciation of the trust expressed in ECT. Members of the ECT team present included: Scott Parker, Don Tilton, Sanjiv Sinha, Zachare Ball, Chuck Brumbaugh, Jeff Edwards, Jim Hegarty, Doug Workman, Heather Skyfarth and Charles Wolverton.
2. Process to Move Forward and Selection of Scoping Team

Michael Donahue, Technical Advisor, continued with this portion of the recommendation:

**Recommendation:**

The Interview Team recommends:

- The RFQ Review Team remain intact through contract negotiations and development of the Scope of Work (Scoping Team)
- Mike Donahue serve as technical coordinator and primary contact for contract negotiations and development of a draft scope of work
- Additional assistance to the Team will be provided by the Army Corps of Engineers and Russ and Leslie Knopp, Traverse Management Resources

**ACTION:** Six members of the Implementation Team being present, a unanimous decision was reached to accept the recommendation.

**Discussion:** Review of proposed (tentative) timeline:

- August 15: Consultant Team draft basic outline for review by RFQ/Scoping Team
- August 22: Scoping Team Review
- August 29: Present draft to BRDC
- August 30 – September 15: Posted for public comment
- September 19: Scoping Team Review
- September 26: Present recommendation to IT for approval

Clarification was provided that the draft Scope of Work will include involvement with the ECT Team.

3. Property Owners Issues Team Recommendation

In response to the Implementation Team's request for a cost estimate and scope of work from the law firm of Varnum, Riddering, Schmidt and Howlett, such has been received and is presented. Jim McIntyre, acting spokesperson for the Property Owners Issues Team provided process recap and scope of work questions, cost estimate and timeframe as follows:

- February 2006: POIT begins meeting process
- POIT requests qualifications statements from firms responding to RFQ
- April 25 2006: POIT recommends firm of Varnum, Riddering, Schmidt and Howlett, Attorneys at Law be retained
- April 25 2005: IT approves recommendation with request for more succinct scope of work, cost estimate and interview before funding would be approved.
- POIT, with assistance from URS prepares Scope of Work
- May 24 2006 POIT receives draft Scope of Work for comment; requests representative of Varnum Law attend POIT meeting to discuss qualifications and process options.
- June 2 2006: Certified letter sent to Boardman Pond property owners to encourage participation in process and attendance at next meeting
- June 14 2006: POIT meets with Nyal Deems, representing Varnum Law, votes to recommend firm and requests cost estimate and timeframe
- June 28 2006: Varnum response to request received

Within the Scope of Work there are six key questions to address:

1. In the event that bottomlands are exposed, what is the ownership status of each of the above scenarios?
2. What, if any, are the limitations associated with any prospective use, development of, and access to those bottomlands?
3. Should ownership be assigned to an entity other than the property owner, what standing would the property owner have in determining prospective use, development of, and access to those bottomlands?
4. Should ownership be assigned to the current property owners, what implications exist with respect to property taxes?
5. Is “to the water’s edge” an overriding issue as stated in current owner abstracts?
6. Do property owners have any legal recourse in the event that dam removal/ modification activities adversely affect property values?

The Scope of Work includes:
• A thorough review of state statutes and case law, with an explanation as to their relevance to the Boardman River;
• A thorough review and consideration of the existing opinion of the county legal counsel;
• A clearly stated opinion, in layperson’s terms, that will guide Subcommittee discussion;
• Availability, upon request, to present outcomes and respond to questions at a meeting of the Boardman Property Owners Subcommittee and/or Boardman River Dams Committee

The Cost Estimate and Timeframe from Varnum states that this process will take approximately 90 days and the cost is estimated at $20,000 - $25,000.

Discussion: This was considered an issue that needed to be acted on more quickly than through the Engineering and Feasibility Study, thus it was decided to do this outside of and before the E&F study. It will be negotiated out of the ECT Scope of Work. Further questions arose as to the timing of this expenditure and the possibility of waiting until a determination is made regarding the fate of the dams. Property Owners replied that in addition to the risk involved with having to settle property matters in a short time if the decision were made to remove the dams, that also there is discussion that the Boardman Pond may have to be drawn down in the near future to comply with DEQ requirements, so getting this legal opinion soon is important. Additionally, a determination of ownership may prove useful as the study moves forward and allows opportunity for discussion between the parties involved, which is likely in the best interest of both property owners and the County. This opinion was requested to give property owners a comfort level of where they stood if the dams were removed. If there is a finding that is adverse to the property owners, this allows time to negotiate and abridge problems. Further discussion ensued regarding the use of a title company, rather than attorneys to do the title investigation. It was suggested that the title search will need to go farther back in history than usual and a recommendation was made to use a title company that is used to building verbatim abstracts. The question arose as to whether Varnum will simply make a legal statement or provide assistance negotiating outcomes? The assumption is that Varnum will get into detail with some scenarios and options.

Recommendation:
The Property Owners Issues Team requests the Implementation Team accept the Scope of Work, Cost Estimate and Timeframe as proposed.

ACTION: Six members of the Implementation Team being present, consensus was reached to accept the recommendation with the following changes:
1. The title investigation should be completed by a title company, preferably with a local presence, that prepares verbatim abstracts as a normal course of their business.
2. Clarification should be made that Varnum should address scenarios for ownership as part of their review

4. Call for Committee Co-Chairs & Training Plan
To encourage more citizen leadership for each team, 2 people representing each team currently existing, plus 4 additional people who will serve on future teams are being sought for Co-Chair positions. A chief charge of the Team Chairpersons is to strengthen communication between teams. Support and training will be provided, including facilitation principles and techniques. Please refer to the roles and responsibilities for Co-chairs on our website: http://theboardman.org/d/co-chair.pdf
5. Other Business

- **Update regarding Boardman Pond**

  Dennis Aloia, Grand Traverse County Administrator recapped the following: At the Property Owners meeting, June 14, Jim Pawloski, Michigan DEQ, indicated that there is discussion regarding what the DEQ will require of the County in order to take over responsibility of the Boardman Dam. They expect to drawdown the pond to some unspecified level. The spillway capacity is not nearly enough to meet the state guidelines for a flood. Even if the pond was drawn all the way down, that still doesn’t meet the state guidelines for a 200 year flood. It appears that the DEQ will draw down the pond, at some unspecified date. The DEQ may also require the county to sign an agreement stating that when the Engineering and Feasibility study is done, the County will either eliminate the dam or expand the spillway to meet DEQ requirements. Aloia stated that the County is less concerned about signing a long-term commitment, because it allows the research to be done in the E&F study, than any drawing down of the pond at this time. The County has sent a letter stating this to the DEQ and are waiting for a reply. The County would like to have a meeting with representatives from the DEQ to discuss and possibly negotiate options; the preference would be that the meeting is open to the public. This has not yet been determined, however.

  **Discussion:** Many questions were raised regarding the timing of the proposed drawdown and the Engineering and Feasibility Study. It is felt that the Study is designed to answer this question specifically and there is confusion and concern that the DEQ would require any action before the study. While ECT could study this issue first, from the standpoint of safety, Traverse City Light & Power does agree that the dam does not meet the regulations of the State.

  Timing is also a concern and there are questions regarding whether any requirements would be enforced prior to the surrender of the FERC license. There may also be implications with USACE involvement if there were to be a delay in license surrender. Traverse City Light & Power is moving forward with license surrender.

  **Why is there such a difference between the FERC and DEQ requirements?** In reply, the FERC requirements are actually stricter, but they have held off enforcing these requirements. While FERC would have begun enforcement with the Brown Bridge Dam, the enforcements would eventually be mandated for all dams. FERC has, up to this point, accepted the spillway at Boardman Dam because it is “as it was designed”; however the approximately 40 foot of head makes the Boardman Dam a “high hazard dam.”

  The public will be kept informed of any decisions and/or public meetings and an update on this situation will be provided at the August 29th BRDC meeting.

6. Agenda Items for Next Meeting

Fiscal Team Update
Boardman Pond update
Scope of Work Update

Meeting adjourned at 7:38 PM

Submitted: August 1, 2006
Jennifer Jay, Project Assistant
Phone: 231-995-2617
Email: jjay@nmc.edu