

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
Civil Action, Docket No. BANS-CV-2020-80

JAMES P. GARLAND, of Columbus, County)
of Franklin, State of Ohio, **IRVIN C. (“BUZZ”)**)
CAVERLY, of Corinth, County of Penobscot,)
State of Maine, and **JOHN F. LOYD, JR.**, of)
Harpwell, County of Cumberland,)
State of Maine,)

Plaintiffs)

v.)

AARON M. FREY, ESQ., in his capacity as)
Attorney General for the State of Maine, of)
Augusta, County of Kennebec, State of Maine,)

Defendant)

and)

THE TRUST FOR PUBLIC LAND and the)
BAXTER STATE PARK AUTHORITY,)

Parties-in-Interest)

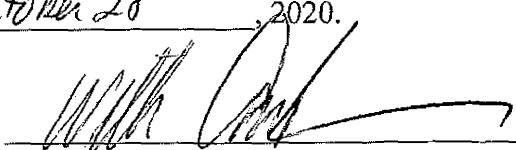
ORDER

This matter comes before this Court pursuant to the Complaint filed by Plaintiffs James P. Garland, Irvin C. Caverly, and John F. Loyd, Jr., seeking, *inter alia*, modification of the Baxter Park Wilderness Fund (the “Trust”) pursuant to 18-B M.R.S. § 412. Notice and opportunity for hearing having been provided to the Defendant and all Parties-in-Interest, the parties hereto consent to the entry of the following order:

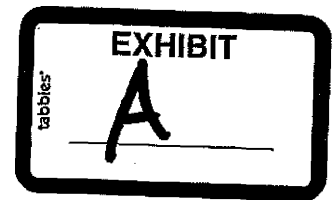
- A. The previous contributions of assets to the Trust were duly accepted by Governor John E. Baldacci on behalf of the State of Maine, the assets so contributed have since then been held in a charitable trust for the benefit of Baxter State Park, and the Commissioners appointed pursuant to the Executive Order signed by Governor John E. Baldacci on August 23, 2007, or appointed by a subsequent Governor of the State of Maine, have custody of the assets presently held by the Trust;

- B. The Trust is hereby RENAMED the "Baxter Park Wilderness Fund Trust;"
- C. The Trust is hereby MODIFIED so that it shall henceforth be governed by the terms and conditions stated in the AMENDED AND RESTATED INDENTURE OF TRUST, attached as *Exhibit A*;
- D. James P. Garland, Irvin C. ("Buzz") Caverly, and John F. Loyd, Jr., (the "Trustees") are APPOINTED as Trustees of the Trust, each to serve for the terms described in, and otherwise in accordance with, the terms and conditions stated in the AMENDED AND RESTATED INDENTURE OF TRUST;
- E. The Trustees are hereby vested with all of the rights, powers, authority, and privileges granted by the AMENDED AND RESTATED INDENTURE OF TRUST and by statute, including, but not limited to, the Maine Uniform Trust Code, and by general rules of law to manage, administer, and distribute any assets held at any time by the Trust without authorization or further order of the court;
- F. The Baxter State Park Authority is hereby AUTHORIZED to appoint successor Trustees in the manner described in the AMENDED AND RESTATED INDENTURE OF TRUST; and
- G. All of the costs of this proceeding, including reasonable attorney fees, shall be paid as an administrative expense of the Trust.

Dated at Bangor, Maine, this October 28, 2020.


Justice, Maine Superior Court

ORDER/JUDGMENT ENTERED IN THE
COURT DOCKET ON: 10-30-2020



BAXTER PARK WILDERNESS FUND TRUST

THIS AMENDED AND RESTATED INDENTURE OF TRUST is by and among The Trust for Public Land, a nonprofit, tax-exempt charitable organization with a place of business in Portland, Maine ("TPL"); and James P. Garland of Bexley, Ohio, Irvin C. Caverly of Corinth, Maine, and John F. Loyd, Jr. of Harpswell, Maine, all in their capacity as Commissioners pursuant to an instrument signed by Maine Governor John E. Baldacci on August 23, 2007.

RECITALS

WHEREAS, in the summer of 2007, TPL made a gift in the original amount of approximately \$3.2 million for the purpose of establishing a fund (the "Fund") that was intended to provide income for the maintenance and operation of Baxter State Park;

WHEREAS, by instrument dated August 23, 2007, Governor Baldacci accepted the gift on behalf of the State of Maine and established a Commission comprised of three members "to have supervisory and investment authority" over the assets contributed by TPL;

WHEREAS, the assets so contributed have since been held in trust for the benefit of Baxter State Park, and the Commissioners appointed pursuant to the instrument executed by Governor John E. Baldacci on August 23, 2007, or appointed by a subsequent Governor of the State of Maine have custody of the assets presently held by the Fund;

WHEREAS, the current members of the Commission are James P. Garland, Irvin C. Caverly, and John F. Loyd, Jr.;

WHEREAS, the proceeds of the initial gift from TPL, as well as subsequent contributions to the Fund, have been held in one or more investment accounts that are under the control of the Commissioners and are registered under the Employer Identification Number of the State of Maine;

WHEREAS, concerns have recently come to light that call into question the legal classification of the Fund and the Commission's supervisory and investment authority;

WHEREAS, TPL and the Commissioners desire to enter into this Amended and Restated Indenture of Trust in order to address these concerns, and to otherwise establish, confirm, ratify and delineate the Commissioners' supervisory and investment authority with respect to the Fund.

ARTICLE 1.

1.01 Name of Trust. This Trust shall be known as the **Baxter Park Wilderness Fund Trust**, herein referred to as the "Trust."

ARTICLE 2.

2.01 Settlor. The Settlor of this Trust is The Trust for Public Land.

2.02 Trustees. The Trustees of this Trust are James P. Garland, Irvin C. Caverly, and John F. Loyd, Jr.

ARTICLE 3.

3.01 The Trust Estate and Funding. Upon Order of Court approving this Amended and Restated Indenture of Trust of the Baxter Park Wilderness Fund Trust, the Commissioners will transfer and deliver to the Trustees the assets identified on Exhibit A, attached hereto and made a part hereof, being all of the assets of the Baxter Park Wilderness Fund (the "Trust Estate"). In addition to the assets transferred by the Commissioners to the Trustees, from time to time the Trustees may accept such other assets as they, in their sole discretion, deem to be in the furtherance of the purposes of this Trust.

ARTICLE 4.

4.01 Trust Purposes. The Trust is established exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 as amended (the "Code") and exclusively for the benefit of Baxter State Park within the meaning of Section 509(a)(3) of the Code; provided that, in all events the Trust:

(a) Shall at all times be operated exclusively for the above enumerated purpose;

(b) Shall be operated, supervised or controlled in connection with Baxter State Park; and

(c) Shall not be controlled directly or indirectly by one or more disqualified persons (as defined in Section 4946 of the Code as including substantial contributors) other than foundation managers and other than one or more public charities described in Section 509(a)(1) or 509(a)(2) of the Code.

Notwithstanding any other provision of this Amended and Restated Indenture of Trust, the Trust shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of the Trust or Baxter State Park. Further notwithstanding, the assets held by this Trust are not intended to constitute permanent funds held in trust by the State, as that term is used as of the date of execution of this Amended and Restated Indenture of Trust, and which would otherwise be subject to the regulation pursuant to Title 5, Chapter 7 of the Maine Revised Statutes.

4.02 Trust Activities. The Trust shall continue to fulfill the goals recited in said instrument signed by Governor John E. Baldacci on August 23, 2007 accepting on behalf of the State of Maine a donation from The Trust for Public Land representing the initial funding of the Baxter Park Wilderness Fund; and, in particular, to support Baxter State Park (the "Park") as follows:

(a) The Trustees shall invest and reinvest the assets of the Trust. Through the production of income, capital appreciation, and the conversion of small but regular sums of Trust income to Trust principal, the Trustees shall attempt to establish and maintain an ever-increasing source of funds for the Park and hope the Fund will make Park user fees more affordable;

(b) At least quarter-annually the Trustees shall make distributions to the Baxter State Park Authority (the "Authority") in amounts to be determined by the Trustees, to be expended by the Authority for the purposes of the Park as the Authority shall determine;

(c) The Trustees, at their discretion, may fund specific needs and programs of the Park identified by the Authority; and,

(d) At the discretion of the Trustees the Trust may accept contributions from third parties, provided these contributions do not carry conditions that purport to limit how the Baxter State Park Authority may use disbursements from the Trust.

ARTICLE 5.

5.01 Trustees. There shall be three (3) Trustees who shall be appointed by the Authority. Trustees shall be persons who have demonstrated an interest in the preservation and future of the Park and, although not exclusively, be persons who have backgrounds in the fields of investment, accounting, banking, insurance, or law. At no time during a Trustee's term shall that Trustee be a Park or State of Maine employee or hold an elected or appointed position in Maine state government. At no time shall more than two Trustees be members of the Park Investment Committee. The Authority shall appoint a Trustee to complete the uncompleted term of any Trustee who does not complete his or her term for any reason.

5.02 Each Trustee shall serve a three (3) year term. The terms of the Trustees shall be staggered such that the Authority shall appoint one Trustee each year. Notwithstanding language herein to the contrary, each Trustee shall remain in office until being reappointed or until his or her successor has been appointed and has accepted such appointment. There shall be no limit on the number of terms a Trustee may serve.

5.03 The Trustees named herein were previously appointed by the Governor of the State of Maine as Commissioners of the Baxter Park Wilderness Fund. Their terms expire as follows: James P. Garland, August 23, 2020; Irvin C. Caverly, August 23, 2020; and, John F. Loyd, Jr., August 23, 2021.

5.04 Trustees shall receive no compensation for their services as Trustees; provided, however, that the Trustees shall be reimbursed for their reasonable expenses incurred in carrying out their duties as Trustees.

5.05 A Trustee may resign by giving written notice of resignation to the Authority and the other Trustees.

5.06 In the event of resignation by, or death or removal of, a Trustee the Authority shall appoint a successor Trustee to complete the term of such Trustee.

5.07 The Authority may remove a Trustee.

ARTICLE 6.

6.01 Professionals, Brokerage Firms, and Investment Advisor(s). The Trustees shall endeavor to keep investment expenses to a reasonable minimum.

The Trustees may engage investment advisors, custodians, and securities brokers. The Trustees may also engage accountants, legal counsel, and such other professionals as they deem appropriate and necessary.

ARTICLE 7.

7.01 Trustees Authority. The Trustees shall have all of the duties, powers, and authority imposed by, and enumerated in, the Maine Uniform Trust Code and the Maine Uniform Principal and Income Act and in addition thereto, and not in limitation thereof, the Trustees are authorized to care for, manage and control the Trust Estate with full power:

(a) To invest and reinvest and to keep and maintain all or part of the Trust Estate invested in individual securities or instruments and/or in one or more Common Trust Funds, mutual funds, cash accounts, or any other prudent investment instruments or vehicles.

(b) In all matters to administer and invest the Trust Estate as fully and freely, subject to the types of investments heretofore stated, as an individual owner might do, without further restrictions except those enumerated in Title 18-B M.R.S. § 801 *et seq.* and the Maine Uniform Prudent Investor Act, 18-B M.R.S. §901 *et seq.*

(c) By way of expansion of the foregoing powers and not in limitation thereof, the Trustees shall have those powers set forth in Titles 18-B M.R.S §8-815 and §816.

7.02 The Trustees may interpret this instrument and amend and modify its terms as they deem prudent and necessary to carry out the purposes of the Trust, subject to court approval when required by law. The Trustees shall notify the Baxter State Park Authority, with a copy to the Office of the Attorney General, of any proposed amendments or modifications to this instrument.

7.03 Decisions by, and actions of, the Trustees shall be by an affirmative vote of at least two Trustees unless there is only a single Trustee, pending appointment of other Trustees by the Authority, in which case said single Trustee shall have the authority to act.

ARTICLE 8.

8.01 Trustees' Standard of Care and Duties: The Trustees shall adhere to the Standards of Care set forth in 18-B M.R.S. §901 *et seq*, the Maine Uniform Prudent Investor Act.

8.02 The Trustees shall maintain complete and accurate financial statements, accounts, and records of all actions taken by the Trustees and, not less often than semi-annually, the Trustees shall provide to the Authority an accounting and report of the Trust's financial and other activity since the date of the most recent previous accounting and report. Such accounting and report shall include a copy of the Trust's portfolio, income earned, changes in market value, and distributions made. Annually, the Trustees shall offer to meet with the Authority to review Trust activity.

ARTICLE 9.

9.01 Indemnification. The Trustees are hereby indemnified in respect of any and all matters or actions for which indemnification is permitted by the laws of the State of Maine, including without limitation, liability for expenses incurred in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative. The Trustees may purchase and maintain insurance on behalf of the Trustees to insure against any liability asserted against and incurred by a Trustee arising out of his or her status as a Trustee.

ARTICLE 10.

10.01 Exempt Activities. Notwithstanding any other provision of this instrument, no Trustee, employee, or representative of the Trustees shall take any action or carry on any activity on behalf of the Trust not permitted to be taken or carried on by an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 and its regulations as they now exist or as they may hereafter be amended

ARTICLE 11.

11.01 Prohibition Against Sharing Trust Income or Principal. No part of the net earnings and principal of the Trust shall inure to the benefit of any Trustee or any private individual (except that reasonable compensation may be paid for services rendered to or for the Trust in carrying out one or more of its purposes), and no Trustee or any private individual shall be entitled to share in the distribution of any Trust assets in the event of the termination and liquidation of the Trust estate.

11.02 Distribution of Assets Upon Termination. Upon the termination of the Trust or the termination of its activities, the assets of the Trust remaining after the payment of all its liabilities shall be distributed exclusively to one or more organizations, to be identified by the Trustees, that are then organized and operated exclusively for the purposes of supporting Baxter State Park that then qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 12.

12.01 Miscellaneous.

(a) State Law to Govern. This Trust Agreement and the trust created hereby shall be construed, regulated, and governed by and in accordance with the laws of the State of Maine.

(b) Counterparts. This trust agreement may be executed in counterpart originals; and, electronic and facsimile images of original signatures are as effective as original signatures.

[signature pages to follow]

WITNESS:

The Trust for Public Land, Settlor

By _____

Its _____

STATE OF MAINE

_____, County

_____, 2020

Then personally appeared the above-named, in his/her capacity as the _____ of The Trust for Public Land, duly authorized, who acknowledged before me that he executed the foregoing instrument as his/her free and voluntary act and deed as Settlor.

Before me,

Notary Public/Attorney at Law

James P. Garland, Commissioner and
Trustee

STATE OF MAINE

_____ County

_____, 2020

Then personally appeared the above-named James P. Garland who acknowledged before me that he executed the foregoing instrument as his free and voluntary act and deed as a Commissioner and as a Trustee.

Before me,

Notary Public/Attorney at Law

Irvin C. Caverly, Commissioner and
Trustee

STATE OF MAINE

_____ County _____, 2020

Then personally appeared the above-named Irvin C. Caverly, Jr. who acknowledged before me that he executed the foregoing instrument as his free and voluntary act and deed as a Commissioner and as a Trustee.

Before me,

Notary Public/Attorney at Law

John F. Loyd, Jr., Commissioner and
Trustee

STATE OF MAINE

_____ County _____, 2020

Then personally appeared the above-named John F. Loyd, Jr. who acknowledged before me that he executed the foregoing instrument as his free and voluntary act and deed as a Commissioner and as a Trustee.

Before me,

Notary Public/Attorney at Law

SCHEDULE "A"

Trust Assets