

LAKES MANAGEMENT ADVISORY COMMITTEE
NH Lakes Management and Protection Program



New Hampshire Department of Environmental Services
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MEETING MINUTES
January 25, 2008
DES Conference Room
9:00 a.m. - 1:00 p.m.

Members present:

Phil O'Brien, Chair
Wendell Berry
Jim Haney, Ph.D.
Diane Hanley
Mark Hemmerlein
Mitchell E. Kalter
Bob Spoerl for Shari Colby
Dari Sassan for Jen Czysz
Larry Sunderland, Vice Chair
Michele L. Tremblay

Representing:

NH Lakes Association
NH Business and Industry Assn
Scientific Community, UNH
Conservation Commissions
Commissioner, DOT
NH Fish & Game Commission
Commissioner, DRED
Director, Office of Energy & Planning
Conservation Community
State Conservation Committee

Term:

August 1, 2009
July 8, 2010
August 22, 2010
August 22, 2010
Indefinite
August 22, 2009
Indefinite
Indefinite
September 19, 2010
August 1, 2009

Members not present:

Mark Gallagher
Ken Jordan
Fred Murphy
Steve Perry
Ken P. Wilson
Vacant
Vacant
Vacant

Commissioner, DOS
NH Association of Realtors
Planning Board
Director, Fish & Game Dept.
NH Marine Dealers Association
Tourism Industry
Elected Municipal Official
Commissioner, Dept. of Agr., Markets & Food

Indefinite
June 27, 2008
August 1, 2008
Indefinite
August 22, 2008
Expired
Expired
Indefinite

Staff Present

Jacquie Colburn
Laura Weit
Darlene Forst
Carolyn Guerdet

Lakes Coordinator, Watershed Management Bureau (WMB)
Asst. Planner, WMB
Shoreland Program Coordinator, Wetlands Bureau
Admin. Asst., Water Division

Guests

Derek Durbin

NH Lakes Association

The Meeting Was Called to Order

- As the committee awaited the arrival of Chairman O'Brien, Vice Chairman Sunderland called the meeting to order at 9:06.

I. Opening

II. Key Discussion Issues

1) Shoreland Protection Act – Update – Darlene Forst

Darlene reviewed the 2007 legislative amendments, the ongoing outreach and education efforts, the proposed administrative rules, and the bills presently before the Legislature, regarding the Comprehensive Shoreland Protection Act (CSPA). The newest set of administrative rules will be available February 1, 2008 and they will be posted on the DES website.

Over 1300 miles of new rivers have been added to the protection/jurisdiction of the Act. The department hopes to have a GIS map of the jurisdictional bodies of water in each town within the next few months.

The high water mark for each body of water is being updated as time permits. Forestry, agriculture, public water supplies are still exempt from the CSPA. Darlene provided an overview of all of the setbacks in the Act as of April 1, 2008. She explained that the new 50' primary building setback will be consistent across the State. Darlene reviewed the 50' natural woodland buffer and the 50 point system to count trees. She explained that the impervious surface limits are based on the total area of the lot and the options that can be used to allow for greater impervious surface. Tidal waters have a larger tidal buffer zone and are under wetlands jurisdiction, not a shoreland permit. Since there is a new shoreland permit required in the law, construction must have been started by April 1, 2008, which does not include just a foundation hole to avoid the need to obtain a shoreland permit. DES cannot override a more stringent local ordinance. Towns cannot issue variances or waivers for the minimum standards of the CSPA, only DES has that authority. The state is now the first permitting source before going to the towns. This will increase the work load of DES. Local notification is required by rule and it only needs to be signed by the town clerk so the town is aware of what is being permitted within the town. Urban exemption from the Act is still intact and the department is encouraging some municipalities to acquire this exemption as the waterfront is already significantly altered and/or developed.

Darlene pointed out that the department continues to work on all elements of the Act and continues to seek the input of affected parties. DES is currently forming a homeowner workgroup to hear their concerns. The NH Shorefront Organization, the NH Lakes Association, and the NH Rivers Council will be contacted to have them send representatives. NH LAKES and NH Rivers Council are helping DES with the outreach materials which should be ready soon. The department and partners hope to hold hands-on, in-the-field workshops to demonstrate how the Act and administrative rules will be applied. There is a possibility of photo documentation or webinar for further training. Every avenue possible is being used to disseminate the new information.

2) Lake-Related Legislation

Derek Durbin arrived to discuss lake related legislation. A handout summarizing all pertinent bills was distributed.

SB 406 – relative to exempting the Town of Wakefield from the set-back requirements of the shoreland protection act. The Senate Energy, Environment and Economic Committee issued a report on January 24, 2008 recommending the bill be Inexpedient to Legislate (ITL). It will be heard by the Full Senate on January 31, 2008.

SB 417 – relative to changes to the shoreland protection act regarding the waterfront buffer and impervious surface limitations. This bill has been tabled. The RMAC submitted a letter in support with some concerns noted. There is a meeting between the NH Shorefront Organization and DES this afternoon. Derek encouraged LMAC members to look at the NH Shorefront website to get an idea of who they are and what their purpose is.

HB 1473 – restricting the placement of fertilizer within 250 feet of the reference line of any property. DES is tracking this bill.

Mark H. noted the Alteration of Terrain and CSPA regulations have some serious overlap.

Chairman O'Brien arrived at this time. At this point forward a quorum was present.

The Rivers Management Advisory Committee (RMAC) reviewed the Joint Meeting Minutes of December 23, 2007 and had one correction - to remove Johanna Lyons from those present.

- **Larry Sunderland made a motion to approve the minutes of the Joint Meeting of the LMAC and RMAC on December 23, 2007, second by Diane Hanley. Vote was unanimous.**
- **Diane Hanley made a motion to approve the minutes of the LMAC on December 23, 2007, second by Larry Sunderland. Vote was unanimous.**

SB 358 – relative to mooring permits. This bill would authorize the Commissioner of the Department of Safety to consider the following factors: 1) size of the body of water, 2) public safety, 3) the maintenance of residential, recreational, and scenic values, 4) the variety of uses of the body of water or the applicable

portion, 5) the environment and water quality, 6) threatened and endangered species, 7) the number of people affected, either directly or indirectly, and the availability and practicality of enforcement when adopting rules requiring mooring permits on public waters. An amendment may be added.

- ***Michele L. Tremblay made a motion to submit a letter of testimony in support of SB 358, second by Diane Hanley. Vote was unanimous.***

SB 380 – relative to petitions for boating rules. This bill would make it more difficult for residents or property owners to submit a petition to the Department of Safety requesting changes to maximum boat speed limits or prohibiting or restricting ski craft by increasing the number of petitioners from 25 residents to ten percent of the registered voters in each town that border a lake, pond or river.

- ***Michele L. Tremblay made a motion to oppose this bill for several reasons, it is more difficult to initiate the process and places an undue burden on citizens, second by Larry Sunderland. Vote was unanimous.***

SB 406 – relative to exempting the Town of Wakefield from the set-back requirements of the shoreland protection act.

- ***Michele L. Tremblay made a motion to submit a letter to the sponsor of SB 406 indicating that the LMAC opposes the legislation as presented, second by Jim Haney. Vote was unanimous.***

SB 158 – relative to review of activities affecting surface waters. This bill would require DES to certify federal licenses, permits, or registrations that result in a surface water discharge to comply with state surface water quality standards, thus making NH statutes consistent with Section 401 of the Clean Water Act. This bill was carried forward from the 2007 Session. The LMAC requested Paul Currier send an email explanation to the Committee regarding this bill. The LMAC decided to track this bill.

HB 1295 – establishing a Commission to study issues relating to stormwater. This bill would establish a Commission to study: 1) the effects of stormwater and stormwater management on water quality, water supply and quality, terrestrial and aquatic habitat, flooding and drought hazards, 2) the relationship between land use change and stormwater, 3) the relationships among and adequacy of federal, state and local regulations and practices that pertain to stormwater management, 4) state and municipal infrastructure construction and maintenance practices, 5) the role of design, construction, and maintenance practices by residential, commercial, and industrial property owners, and 6) the effects of climate change on stormwater and stormwater management. The proposed amendment would remove the LMAC from the Stormwater Commission.

- ***Michele L. Tremblay made a motion to add the LMAC as a representative to the Stormwater Commission, as Jim Haney has a high degree of technical expertise which would greatly inform the discussions and decisions of the study commission, second by Mitch Kalter. Vote was unanimous.***

Chairman O'Brien will call Representative Spang, the sponsor of the bill.

HB 1473 – restricting the placement of fertilizer within 250 feet of the reference line of any property. The way this bill is currently written is confusing. It attempts to restrict the type of fertilizer within 250 feet of the reference line to limestone, but it goes on to say that 25 feet beyond the reference line, low phosphate, slow release nitrogen fertilizer or limestone may be used on lawns. There has been an amendment.

HB 1581 – relative to the formation of stormwater utility districts. This bill would allow municipalities to create stormwater utilities similar to water or wastewater utilities and raise needed funds through user fees for required maintenance and stormwater system improvements. Michele will sign in at the hearing in support if she is available.

HB 847 – relative to general rules for vessels operating on water (for Lake Winnepesaukee). This bill would establish a 45 mph boat speed limit during daylight hours and a 25 mph boat speed limit at night on

all public waters. It would also require any convictions become part of the violator's motor vehicle driving record. This bill was carried forward from the 2007 Session. The LMAC will track this bill.

HB 1263 – relative to existing property uses. This bill would exempt any property from regulations, ordinances, codes or laws as long as the property was used, improved, altered, or built upon for seven years or longer.

- ***Michele L. Tremblay made a motion to submit a letter in opposition of HB 1263, second by Jim Haney. Vote was unanimous.***

A public hearing was held on January 22, 2008, with an Executive Session scheduled for January 29th. If the bill goes to the Senate the LMAC will submit a letter in opposition to the Senate. Larry S. will call the municipal and county government chair.

SB 384 – relative to failing septic systems prior to the sale of waterfront property. This bill: 1) requires a site assessment study to identify remedial actions necessary, 2) adds a section to the site assessment study, and 3) requires a septic disposal system designer to report remedial actions to the department of environmental services and the local health officer. The RMAC submitted a letter in support. A public hearing was held on January 15th. The bill is still in Committee, the LMAC will track.

HB 1254 – relative to the ability of towns to regulate the storage and use of deicing chemicals. The LMAC requested Paul Currier to forward an explanation of the bill to the Committee.

3) 710 Commission

Mitch K. reported on the January 22nd meeting of the Commission; the focus of the meeting was the presentation by the state agencies regarding the sub-committee's report on state-owned lands. It was noted that at the meeting that many of the legislative members of the Commission were not present to hear the sub-committee report. Mitch said that the Commission chairman wants to have the data in, see what the data presents, work on conclusions and then go from there. Mitch explained that the Commission is still taking public testimony at its meeting and that the attorney representing 18-Mile Point has asked to address the Commission at their next meeting.

A copy of the cover page of the sub-committee report was distributed to the LMAC. Jacquie then provided a brief overview of the report of the sub-committee, which addressed the six questions posed by Alice Chamberlain in the letter sent to agency heads in October of 2006.

Phil O. suggested having the LMAC (and RMAC) subcommittee meet to structure a recommendation for the Commission's consideration to group the legislative and the interim report charges and that the 710 Commission establish subcommittees to work on these charges since the 710 Commission must report to the Legislature on November 1, 2008. The LMAC agreed that this would be worth pursuing.

4) Sustainability Initiative

Chairman O'Brien and Chairman Kimball, of the Rivers Management Advisory Committee finalized the Sustainability Initiative and met with the DES Commissioner on January 17, 2008. In attendance were Steve Couture, Laura W., Jen R., Jacquie C., and Vince Perelli, head of the department's strategic planning process. The Commissioner was very impressed with the work of the LMAC and RMAC and extended his thanks to all, individually, and to the committees. It was a good hour and a half meeting in which he shared the following:

- 1) felt the initiatives were more a set of goals
- 2) concurs with the three significant issues listed, each were discussed with him, and he made suggestions on how to move forward and who else to work with
- 3) Ken K. emphasized it is time to take action and not develop another report
- 4) Encouraged coordination with the DES strategic plan, the state water plan, the land and water project, and all other applicable on-going initiatives.
- 5) Suggested focusing on two or three of the eight significant issues, in particular those that may need funding or financial appropriation by this June to be included in the budget.
- 6) Laura, Steve, Jen, and Jacquie will be discussing Monday, how to proceed with the whole process.

Laura added that the Commissioner is very aware of the timetable for submitting legislation to amend existing statutes or create new ones. The timetable is to develop recommendations by September 2008 and highlight those with funding and legislative changes needed. Jacquie and Steve will talk with the Commissioner about staffing needs.

5) Ossipee Lake Natural Area - Update

Commissioner Burack, Jared Teutsch of NH LAKES and Chairman O'Brien sent a letter to Commissioner Bald with the Department of Resources and Economic Development (DRED) on January 11th to offer assistance regarding the management of the Lake Ossipee Natural Area. There are many overlaps of interest and responsibility among state agencies and organizations. Michele noted that per her recommendation the LMAC should convene the group. Don Kent, administrator of the Natural Heritage Bureau at DRED has offered to give a presentation to the LMAC at its February meeting.

Jim H. suggested looking at the success of the Parker River Refuge at Newburyport, a natural area with limited public access. Bob Spoerl suggested emailing Don Kent with specific questions that he could address at the February meeting.

6) Economic Value Study - Update

Jacquie distributed the Economic Value Study brochure and will give a presentation at a future meeting. The brochure highlights the findings of the final phase of the study. This information was developed as a result of the interviews that were conducted with individuals who were boating, fishing, and swimming at 75 public and quasi-public sites across the State during the summer of 2006. The study found that 1) there would be an impact on the state's economy and 2) respondents would change their behavior if water quality or quantity changed. Jim H. noted that based on the survey results - views and scenery are almost as important to people as water clarity. Jacquie said 3,000 brochures were printed and she acknowledged and thanked Josh Cline, Director of the NH Rivers Council for the layout and design work. The brochure and all phases of the study are available on the NH LAKES website. DRED did support the fourth and final phase and Jacquie wanted to thank them also.

III. Other Business

1) Future agenda items:

The NH Lakes Association announced in early December the cooperative project with UNH called "A Comprehensive Lake Classification Study." This will be presented at the February LMAC meeting.

Don Kent's presentation on the Ossipee Lake Natural Area will be held in February.

Jim H.'s presentation from last month will be available on the website.

Chairman O'Brien thanked Bud B. for his participation on the Water Quality Standards Committee.

Jim H. mentioned that he and Jacquie will be teaching a class at UNH that will be focused on Mirror Lake, which had a fairly serious cyanobacteria bloom that appears to be linked to the Wolfeboro sewage treatment plant. They will also be working on Willand Pond with toxic cyanobacteria in it. He will update the Committee on what they find. A possible student presentation could be given in the spring.

2) Action Item Review

- a) Send link to the CSPA rules package after February 1st.
- b) Call Ken and Michelle as who should be participating from the RMAC relative to the HB 710 Commission
- c) Write letters of testimony
- d) When response is heard from Commissioner Bald relative to DRED's response to our letter it will be distributed to the full committee.
- e) May have a meeting with the Sustainability Initiative subcommittee.
- f) Have DES assess the Alteration of Terrain requirements with the new CSPA amendments.

➤ **Motion to adjourn made by Larry S. and second by Mitch K. Meeting was adjourned at 12:30 p.m.**