

## **Appendix H – Meeting Minutes**

- H1. Full Commission Minutes
- H2. Regulatory Authority Subcommittee Meeting Notes

**H1 – Full Commission Meeting Minutes**  
**from**  
**New Hampshire House Bill 1295**  
**Chapter 71 Laws of 2008**  
**Stormwater Study Commission**

**Meeting Dates**

September 4, 2008  
October 6, 2008  
November 3, 2008  
December 1, 2008  
January 5, 2009  
February 2, 2009  
April 6, 2009  
May 4, 2009  
June 1, 2009  
July 6, 2009 August 3, 2009  
September 14, 2009  
October 5, 2009  
November 2, 2009  
December 7, 2009  
January 4, 2010  
February 1, 2010  
March 1, 2010  
April 5, 2010  
May 3, 2010  
June 7, 2010  
June 28, 2010  
August 30, 2010  
October 4, 2010

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY ISSUES RELATING TO STORMWATER**

September 4, 2008 – 1:00 pm  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: Dari Sassan	NH Office of Energy and Planning
Vice Chair: Judith Spang	NH House of Representatives
Charlie Hood	NH Department of Transportation
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Joe Robertie	NH Timber Owners Association
Donald Sienkiewicz	Home Builders and Remodelers Association
Newb LeRoy	Association of General Contractors of NH
Eric Stohl	NH House of Representatives
David Borden	NH House of Representatives
Dave Danielson	NH Association of Regional Planning Commissions
Steve Kahl	NH Lakes Association
Paul Currier	NH Department of Environmental Services

**Others Present:**

Derek Durbin	NH Lakes Association
Timothy Fortier	McLane Law Firm
Dana Bisbee	Pierce Atwood LLP
Ted Diers	NH Department of Environmental Services
Greg Stratis	Northeast Concrete Products Association
Jamey Robichaud	Northeast Concrete Products Association
Jennifer Czysz	NH Office of Energy and Planning

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
Joel Anderson	NH House of Representatives Staff

**I. REVIEW OF COMMISSION DUTIES**

**Rep. Judith Spang** reminded everyone to sign in and then read the duties of the Stormwater Commission as they appear in the HB1295:

*71:3 Duties. The Commission shall study:*

- (a) The effects of stormwater and stormwater management on water quality, water supply and quantity, terrestrial and aquatic habitat, flooding, and drought hazards.*
- (b) The relationship between land use change and stormwater.*

- (c) *The relationships among and adequacy of federal, state, and local regulations and practices that pertain to stormwater management.*
- (d) *State and municipal infrastructure construction and maintenance practices.*
- (e) *The role of design, construction, and maintenance practices by residential, commercial, and industrial property owners.*
- (f) *The effects of climate change on stormwater and stormwater management.*

**Rep. Spang** gave a general overview of the Commission's responsibility:

- to investigate the issues and concerns related to stormwater;
- to come up with solutions by looking at what is already in place and asking if it is doing what we need; and,
- to look at existing and future resources for further addressing the problem.

## II. INTRODUCTIONS

Commissioners, staff, and attendees introduced themselves by name and representation.

## III. DESIGNATION OF CHAIR AND VICE CHAIR

**Rep. Spang** informed the Commission that it needed to elect a Chair and a Vice Chair and requested nominations.

Nomination of Mr. Dari Sassan for Commission Chair was brought forward by **Rep. Borden** and seconded by **Rep. Spang**. **All approved and none opposed.**

Nomination of Judith Spang for Commission Vice Chair was brought forward by **Mr. Kahl** and seconded by **Rep. Borden**. **All approved and none opposed.**

## IV. STORMWATER PRESENTATION

**Mr. P. Currier** and **Ms. McCarthy** presented a slideshow giving an overview of the impact stormwater has on water quality and hydrology, and describe potential solutions to address stormwater problems as a starting point for discussion. (see attached pdf presentation 20080904\_Stormwater Legislative Committee Overview).

## V. QUESTIONS AND DISCUSSION

**Mr. E. Currier** asked about the type of calculations that engineers use to determine the amount of runoff that will be generated from a development activity because some developers, engineers calculate stormwater runoff coefficient to be the same for pre-development as for post-development. He stated that retention ponds are constructed that are supposed to treat the water, but that there seem to be problems with them in some cases. **Mr. P. Currier** responded that engineers use fairly standard methods, such as HydroCAD or other software programs, which use the NRCS (formerly SCS) Curve Numbers. He described the general concept of the NRCS Curve Number Method.

**Mr. Danielson** stated that there seem to be numerous different audiences for this issue. For example the small MS4 communities [communities with “urbanized areas” as defined by the 2000 Census that are regulated by the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit], are facing permit requirements and need to come up with funding to meet them.

**Mr. E. Currier** stated that farmers are concerned with development because when development comes in their stormwater usually ends up on farm land, often adjacent to parcels under agricultural use. This decreases the value of the adjacent property, especially if drainage problems impact farm crops. He gave the example that apples like dry conditions. If a development increases the runoff to an apple orchard, it could affect the crop.

**Mr. Danielson** stated that the impact of stormwater management on economic development needs to be considered.

**Mr. Kahl** stated that MS4 communities are in a reactive mode. He would like to see public outreach or social marketing for other municipalities not regulated under the MS4 permit to be proactive.

**Mr. Kahl** states that while typical stormwater pollutants such as sediment, nutrients, and bacteria were discussed in the presentation, chlorides were not. He asked if the impacts and management of chlorides me be something the Commission should discuss. **Mr. Hood** said that he represents DOT on the Commission and that he would like to discuss chlorides because it is an issue they face regularly. **Mr. Danielson** added that DOT is pressuring towns to cut back on salt use because there is pressure on DOT to reduce salt use. **Ms. Ebel** said that in her town, the town was pressuring DOT to use less salt.

**Ms. Ebel** described the process that her town (New London) went through to develop subdivision regulations to incorporate low impact development (LID) techniques. It took a considerable amount of money and they discovered that many engineers are resistant and more concerned with peak stormwater runoff than with total runoff volumes. She gave two examples of a hospital and Colby Sawyer College (both in New London) wanting to install porous asphalt in parking lots. The asphalt contractor didn’t want to bond their porous asphalt work so they ended up not being able to use it. They used porous concrete instead.

**Mr. LeRoy** questioned if changes in regulations could impact existing facilities and asked the Commission members to consider the potential impact to existing facilities. He stated that new development and existing facilities are different things. Existing facilities are covered by the EPA through it’s MSGP – 2000 stormwater permitting process. **Mr. Danielson** responded by describing how the new utility law (HB 1581, An act relative to the formation of stormwater utility districts) allows municipalities to design their own local regulations.

**Rep. Spang** described another issue she is involved with related to Great Bay. She stated that Great Bay is in a dangerous condition and that the ecosystem is in dire straights: the eelgrass is dying back, shellfish are suffering, and the tributaries to bay are no longer navigable. In large part, said **Rep. Spang**, it is related directly to stormwater, sediment, and nutrients coming off of the land. It is an example of what happens on a watershed basis if we don't address the stormwater problem.

## VI. FUTURE STRUCTURE/ACTIVITIES OF COMMISSION

**Chairperson Sassan** started a discussion on the approach of the Commission and setting meeting topics and dates. He suggested a case study on local ordinances from New London. **Rep. Spang** agreed that Karen Ebel is in a unique position to talk about what a planning board goes through when working with a developer to implement LID.

**Mr. Danielson** suggested looking at the action items that are listed in the bill text and see if the Commission can address those items. He suggested that the Commission use the time between meetings to think about prioritizing the action items.

**Mr. P. Currier** suggested an overview presentation of the existing regulatory framework of state, federal and local regulation. The Commission would then consider whether it is adequate. Are there weak spots? Are there places for improvements?

**Mr. Kahl** asked if a website could be created for meeting materials. Chairperson Sassan and Ms. McCarthy will look into it.

**Ms. Ebel** asked if Mr. Robert Roseen from the UNH Stormwater Center would be speaking to the Commission. She suggested that for non-engineers, a general presentation on peak flows, calculating drainage, and other stormwater topics could be given. She mentioned that Michael Simpson from Antioch is working on adapting to the existing impacts of climate change and that it might be worthwhile for the Commission to hear him speak.

**Mr. Pelletier** stated to the Commission that the MS4 permit work is a done deal. It is something the Commission can't change. Instead, he continued, the Commission should think about 1). How to help municipalities? and 2).How to retrofit existing development? He added, the Commission should think about where NH goes from here. NH is continuing to grow. How do we want to grow? Stormwater is going to be an issue. There has been a significant increase in peak and shorter durations of storm events. At the end of the day, we know that there is an increase in the number of storms and an increase in flows. How does NH want to change from this point on? A big issue is redevelopment. Mr. Pelletier

gave an example of all of the big box stores being torn down. He went on to state that the State regulations aren't all that far reaching. Even the Alteration of Terrain Program doesn't regulate stormwater on individual lots.

**Chairperson Sassan** suggested that the next meeting be used to get organized and go through the duties of the Commission and how to address the duties, meeting by meeting. He also states that he would contact Mr. Rob Roseen to try and schedule a presentation providing an overview of the principles and applications of Low Impact Development (LID).

**Chairperson Sassan** asked that everyone look at their schedules to see if this meeting day of the month and time worked so the Commission could schedule regular meetings. He also explained the time frame that the Commission is under. An interim report (progress report) is due November 1, 2008 with a final report due November 1, 2009. He stated that he will communicate to the Commission through email and requested that the Commission members include their email on the sign in sheet if they didn't already. Meeting attendees who want to be notified of future meetings should put a check mark next to their name.

**Ms. Ebel** asked if it is OK to send a representative if a Commission member is unable to attend. **Chairperson Sassan** responded that the representative wouldn't count toward a quorum, but that sending a representative is fine.

**VII. FUTURE MEETING DATE**

<u>Date</u>	<u>Time</u>	<u>Location</u>
October 6, 2008	10:00am	LOB* room 305

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**VIII. ADJOURNMENT**

At 2:45pm, **Rep. Spang** brought motion to adjourn forward. **Ms. Ebel** seconded. **All voted in favor.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY ISSUES RELATING TO STORMWATER**

October 6, 2008 10:00am  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: Dari Sassan	NH Office of Energy and Planning
Vice Chair: Judith Spang	NH House of Representatives
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Joe Robertie	NH Timber Owners Association
Donald Sienkiewicz	Home Builders and Remodelers Association
Newb LeRoy	Association of General Contractors of NH
Dave Danielson	NH Association of Regional Planning Commissions
Steve Kahl	NH Lakes Association
Paul Currier	NH Department of Environmental Services
Chris Devine	NH Local Government Center
Rob Roseen	University of New Hampshire Stormwater Center
Amy Manzelli	Business and Industry Association of NH
Carl Paulsen	NH Rivers Council
David Cedarholm	NH Public Works Association

**Others Present:**

Mark Hemmerlein (for Charlie Hood)	NH Department of Transportation
Kevin Nyhan	NH Department of Transportation
Cordell Johnston	NH Municipal Association
Jamey Robichaud	Northeast Concrete Products Association
Jennifer Czysz	NH Office of Energy and Planning

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
Joel Anderson	NH House of Representatives Staff

**I. ROLL CALL AND INTRODUCTIONS**

**Chairperson Sassan** called the meeting to order at 10:05am. Commissioners, staff, and attendees introduced themselves by name and representation.

**II. APPROVAL OF MINUTES FROM SEPTEMBER 4, 2008 MEETING**

**Mr. LeRoy** brought the motion forward to accept the minutes from the September 4, 2008 meeting. **Ms. Ebel** seconded the motion. **All approved and none opposed.**

**III. PRESENTATION**

**Mr. Rob Roseen**, Commission member and director of the UNH Stormwater Center, presented a slideshow titled “Stormwater Management, Community Resiliency, and Climate Change” ([http://www.nh.gov/oep/legislation/2008/hb1295/documents/stormwater\\_management\\_community\\_resiliency\\_and\\_climate\\_change.pdf](http://www.nh.gov/oep/legislation/2008/hb1295/documents/stormwater_management_community_resiliency_and_climate_change.pdf)). The presentation focused on redefining low impact development practices beyond water quality and small storm management. Stormwater management strategies used to reduce runoff volumes associations with land use changes can also be used to manage the increases in storm depth from climate change. **Mr. Roseen** stated that there are parts of the state that have experienced 20-25% population growth in the last 10 years. Storms in New Hampshire are roughly 30-60% larger, so the design storms used for the last 50 to 100 years are now out of date. This means that much of the infrastructure is under capacity by as much as 35%. To resize the infrastructure would essentially require all of the infrastructure to be replaced, similar to combined sewer overflow (CSO) separation, which is not practical. Instead, focus should be on decreasing the burden on existing infrastructure through stormwater management that reduces runoff volume.

**Mr. Roseen** explained that conventional stormwater management practices such as retention and detention ponds and other conveyance practices focus on peak runoff control. There is little focus on volume control, achieved by getting water back into the ground. Low impact development designs treat the first inch of runoff, reduce runoff volumes through infiltration, and provide extended detention for smaller storms. Peak runoff control is still done for the larger storms.

**Ms. Manzelli** asked what is meant by a “1-inch rainfall event”. **Mr. Roseen** explained that 92% of the storms over the last 100 years have been 1-inch or smaller. Stormwater management systems that are sized for a 1-inch storm will capture roughly 90% of the storm flows. The first inch of runoff is the dirtiest so when designing for stormwater treatment, the 1-inch storm is used. From a flooding and public safety perspective, the 25-year storm is still used for peak control.

**Mr. Cedarholm** asked what **Mr. Roseen** meant earlier when he mentioned municipal resiliency. **Mr. Roseen** explained that lack of resiliency is the inability to adapt to an extreme event. If a municipal infrastructure is at capacity, there is very little resiliency.

**Mr. Roseen** stated that most stormwater treatment devices fail two-thirds of the time for some water quality constituent. This means the stormwater management strategies used over the last 30 years, which focused primarily on water quantity and flood control, are actually contributing to water quality problems. This has resulted in stormwater management practices degrading water quality. Roughly 66% of the time, the water quality coming out of the system is worse than the water quality going in for some water quality parameter.

The LID subdivision project at Jordan Cove in Connecticut that compared a conventional vs. a LID subdivision was presented. The data from the LID subdivision shows that an increase in impervious surface resulted in no change in runoff volume. There was actually less runoff in the post-development in the LID subdivision. This is what the UNH Stormwater Center has been seeing in their models. This is because sites with existing poor soils are actually creating more storage on site than existed previously.

This means that development can occur while still maintaining watershed health and protecting aquatic habitat.

**Mr. Sienkiewicz** asked how it is possible to increase impervious surfaces and not increase runoff. **Mr. Roseen** explained that this happens by implementing Low Impact Development (LID) techniques that reduce the impact of the impervious surfaces. He also described the difference between the runoff from a conventional parking lot and a porous parking lot and showed the corresponding data from the UNH Stormwater center.

The Commission members discussed porous pavements and posed questions to Mr. Roseen. Concerns were raised on the issue of maintenance, quality control, and cold climate performance. **Mr. Roseen** explained that at the UNH Stormwater Center they expected to see reduced infiltration rates for the porous asphalt parking lot in the winter. Instead the rainfall thawed the frozen media and the pores in the pavement remained open and still had hydraulic capacity. In addition, most vegetated LID systems provide excellent removal in the winter months. The UNH Stormwater Center also observed a tremendous amount of excess salt on their porous asphalt parking lot. They studied the comparison of salt application on conventional versus porous asphalt parking lots and found that less salt, up to 75% less, is needed on porous asphalt parking lots than conventional parking lots. They also found that the braking capability in cold climates is better on unsalted porous asphalt than on salted conventional pavement. **Mr. Roseen** explained that porous pavement installation has an additional cost due to the greater depth of sub-base, but that this additional cost is offset by the reduced cost of catch basins, pipes, and other infrastructure not required in a porous system. Cost savings range from 15-80% for LID versus conventional systems.

**Mr. E. Currier** asked if porous concrete has the same benefits. **Mr. Roseen** replied that they are similar. Concrete has added structural benefits, but they don't have the cold climate benefit because they are lighter in color than porous asphalt. They can perform better in cold climates if they are tinted. **Mr. E. Currier** asked if the cost factor is the same. **Mr. Roseen** explained that asphalt has been more competitive than concrete, but asphalt prices are high right now. Concrete is now getting more competitive.

**Mr. Paulsen** asked if there are options for LID chloride controls. **Mr. Roseen** explained that nothing treats chlorides. Chloride remediation won't be a technology solution. The solution could be an alternative deicer or source control or a switch back to sanding the roads. Management practices can remove sand, but they can't remove chlorides.

**Ms. Ebel** asked if porous pavements clog with sand. **Mr. Roseen** answered yes and explained that transition areas clog more frequently. **Mr. Cedarholm** asked about porous pavement performance with ice storms. **Mr. Roseen** said that porous lots will ice up too.

**Rep. Spang** asked about the cost and availability of the pavement itself. **Mr. Roseen** stated that it is approximately 15% higher than conventional. The availability is getting better. Concrete is easier to get.

**Mr. Sienkiewicz** asked about the use of porous pavement on slopes. **Mr. Roseen** said that he doesn't have good data on slopes, but that it can be designed with "steps" underneath it. There is going to be some point where the infiltration rate, combined with slope, is going to create runoff.

**Mr. LeRoy** presented the Commission with a document produced by the National Asphalt Pavement Association titled “Porous Asphalt Pavements” and requested that the Commission staff copy the document and send it to the membership.

#### IV. DISCUSSION OF FUTURE MEETING TOPICS AND DATES

**Chairperson Sassan** passed around a handout titled “HB1295 Stormwater Commission Action Plan” and proposed a process to complete the duties of the Commission. He proposed that duties a, b, and f are in progress as a result of the presentations and discussion from the September 4, 2008 meeting as well as from recommendations for future presentations. The proposed action plan document outlines a process to complete the remaining duties c, d, and e. **Chairperson Sassan** described the proposed process to the Commission and stated that developing a goal statement could be a first objective and an item to complete during this meeting.

**Rep. Spang** asked if it would be possible for a copy of the stormwater chapter from the draft Water Resources Primer to be emailed to the Commission members. **Mr. P. Currier** said that he would check, but that it is out to a volunteer review committee right now. After review comments are incorporated he may be able get it to the Commission. **Rep. Spang** would like to see if there is relevant information in the introductory chapters as well.

**Mr. E. Currier** asked the Commission to consider looking at the impacts on farmland. **Chairperson Sassan** asked if Mr. E Currier had a proposal to best address that. **Mr. E. Currier** explained that his experience has been with stormwater that goes onto farmland from adjacent development and when the development creates wetlands in places where wetlands are not wanted. **Chairperson Sassan** asked if there is existing research that could be referenced in our interim or final reports. **Mr. E. Currier** said he doesn’t have research, but that it is something they are seeing more of, in particular along the Massachusetts border. The farmers in southern New Hampshire have more of a concern than those in the northern part of the state. **Chairperson Sassan** informed Mr. E. Currier that his feedback would be requested on the draft reports to insure that his concerns were represented. **Mr. Cedarholm** suggested that the Commission look at the opposing viewpoint of the impact that agriculture has on stormwater, and suggested looking at the two issues together. **Mr. Roseen** stated that agricultural issues should be looked at in duty b. **Mr. P. Currier** stated that there is existing literature on the impacts of development on agriculture and the impact of agriculture on stormwater because it is a big issue in other parts of the country.

**Mr. LeRoy** asked if there is anything Mr. P. Currier can do to assist those who need to comply with the MSGP-2008 (Multi-Sector General Permit – 2008). **Mr. P. Currier** said he’ll see what he can do.

**Chairperson Sassan** suggested working on a goal statement for the Commission. **Mr. Danielson** said that he isn't sure of the intent of the legislature, but he has gone over the duties of the Commission and doesn't see an outcome that is requested. All he sees is a study that gets presented. **Chairperson Sassan** proposed that a thorough study includes sound, implementable recommendations. As a starting point for discussion, he suggested a stated goal of bringing to the purview of every landowner, the responsibility for the management of stormwater. On a parcel-by-parcel basis there is no net increase in stormwater from the pre-developed to the post-developed condition or, participation in a stormwater community system, such as a stormwater utility. **Mr. Danielson** said that a similar statement was brought up in the town of Bedford and the residents saw it as a taking of land. He suggested that when structuring language like this, public perception needs to be considered.

**Ms. Manzelli** asked about the owners that are already regulated and how those regulations interact with other regulations. She would like to see how all of the regulations fit together. **Mr. Danielson** suggested that DES could look at and interpret the federal and state regulations fairly easily. The local regulations also need to be looked at, but that is a much more difficult task because they are great different between the municipalities.

**Rep. Spang** suggested that the Commission be pragmatic and start from the bottom up to identify the problems, find solutions, and look at the regulations. **Mr. E. Currier** agreed that it is excellent to start from the ground up, but it is a problem when engineers are using the same runoff coefficient for pre-development as for post-development.

**Chairperson Sassan** suggested that the Commission recognize the different land use and regulatory situations that exist in the state. These include both urban and rural areas, MS4 communities, and development that requires Alteration of Terrain permitting. The Commission could research each situation one by one and ask the questions that Rep. Spang suggested. What are the problems on the ground? What's in place now that is working? What is not working? **Mr. P. Currier** agreed with the approach and added the MSGP-2008 and all other permits that are regulated under EPA's National Pollutant Discharge Elimination System (NPDES) program. He suggested that the Commission consider each of these situations in two parts. 1.) regulations when the landscape changes and 2.) appropriate actions for the built out landscaping as it is – re-development.

**Mr. Roseen** stated that the Commission needs to address the variability in local government stormwater programs because local control is essential. The state and federal authority represent a fairly small amount of the stormwater management in the state. There needs to be emphasis on producing resources and recommendations for local municipalities. **Chairperson Sassan** mentioned the Innovative Land Use Guidance document with model ordinances for municipalities and suggested that there might be other resources that could be

pulled together. **Mr. P. Currier** stated that he thinks that the major issue, especially with small municipalities, is not the availability of resources, but the ability or capacity of the some municipalities to actually use the resources. **Mr. Danielson** stated that the Regional Planning Commissions are a resource for those municipalities. Technical assistance and ordinance development are items that the RPC's could assist with. **Ms. Ebel** added that there is very little going on in rural areas. They are using old methods and she sees a need for model ordinances as well as education at the local level.

**Chairperson Sassan** directed the members back to setting a goal of the Commission and suggested the goal of bringing the responsibility of stormwater management to every property owner in New Hampshire.

**Mr. Sienkiewicz** stated that the Commission has talked a lot of recommending model ordinances and increasing education and outreach resources for municipalities, but that local governments have high turnover, are often understaffed, and often have volunteer planning boards. They need more than ordinances and education. He explained that homebuilders [who work in more than one municipality] have a difficult time with widely varying municipal regulations, and where, as in the stormwater/water quality arena, there is a strong basis in science for uniform regulations across the state, and little justification for regulations which vary from municipality to municipality, a uniform state regulatory scheme makes sense because it provides predictability in permitting and uniformity in results, and is not dependent on the technical competence or vigilance of a given planning board. Stormwater quality and quantity management is science-based and he feels there is potential for state level regulation. He added that would not see the Commission as a success if education and model ordinances are the only recommendations of the Commission. The Commission members agreed that there need to be recommendations beyond education and resources. **Mr. Roseen** stated that the Commission needs to understand the difficulty with the local government volunteer boards and other municipal government challenges because the bulk of stormwater management occurs at the municipal planning board and zoning board level.

**Mr. Kahl** made special emphasis that ecology does not acknowledge town borders.

**Mr. P. Currier** said that he feels the topic is very productive one for the Commission to work on. The state septic system program is a successful example of a statewide program that interacts with municipalities. Those relationships already exist and the Commission should talk about the merits of the process with stormwater.

**Mr. Danielson** told the Commission that there is more technical ability in the RPC's than people realize. He stated that the public works directors and road agents are very concerned about more regulations coming their way. They are the

ones who have to deal with the budget impacts. If the responsibility is moved further away from the towns' authorities, they may become more suspicious. The support should be close to the towns.

**Mr. Cedarholm** has worked with the city of Durham to develop an ordinance using the DES model ordinance. He had great success bringing it to the planning board, but the ordinance had to be approved by the town council. The town council saw the ordinance as having potential to slow down economic development, which the council doesn't want to do. The council asked if the city could have an ordinance that tells people to develop stormwater management systems that meet state and federal regulations.

**Mr. Hemmerli** stated that if regulatory authority is moved from the local to state level, there are some differences that need to be recognized between site development and linear transportation development. There is a big difference in those situations. It is difficult to take site development regulations and apply them to linear projects. Linear project constraints need to be incorporated into the regulations.

**Mr. E. Currier** suggested the Commission consider that the impact of stormwater in different areas of the state have different value. For example, the impact of stormwater on farms up north may not be as great as the impact on a farm closer to the Massachusetts border. He thinks the towns should be the regulatory authority.

**Rep. Spang** asked the Commission if they want to start at the level of the regulations or if they want to start where the largest amount of stormwater problems are and then focus on what needs to be done there. **Chairperson Sassan** asked the Commission to look at the situations (e.g., MS4, urban, rural, Alteration of Terrain, MSGP) and tackle each one on a meeting-by-meeting basis to investigate the problems, the barriers, determine what is in place, determine any overlaps in state, federal, and local regulations, and then come up with recommendations for each of those scenarios.

**Ms. Manzelli** asked if there is room in the proposed process for land uses that aren't listed or don't fit into these categories. **Chairperson Sassan** responded that he hopes the categories will be named in such a way that everything is included.

**Mr. Danielson** asked if Mr. Roseen were looking at it, wouldn't the problem areas be thought of as those with the most impervious cover and wouldn't those be mostly MS4? **Mr. Roseen** said in most cases that is right, but not always.

**Mr. P. Currier** suggested going back to the idea of a goal statement and repeated what Chairperson Sassan had proposed to have no net addition of volume or pollutants on a parcel-by-parcel basis. If the Commission could agree on a goal statement, they could then focus on how to accomplish the goal. **Mr. Sienkiewicz**

suggested that parcel-by-parcel language may not work. **Chairperson Sassan** agreed that there is a potential for “parcel-by-parcel” to be misunderstood. In a dense village center, you may not need or want to retain the stormwater at that site, but there still is a responsibility of the property owners to participate in a cooperative system such as a stormwater utility. **Mr. P. Currier** agreed and said that this brings up the idea of trading. **Mr. Roseen** suggested the clarification that it is parcel-by-parcel on a watershed basis.

**Chairperson Sassan** asked the members to go back to the idea of generating a goal statement. **Mr. Kahl** repeated the idea of no net addition in stormwater volume or pollutants for new development and asked what would be the requirement for existing development. Would it require net reductions?

**Rep. Spang** said that she would like to go for a softer goal such as “work toward approaches for reducing impacts”. **Chairperson Sassan** suggested the goal statement, “To bring the responsibility of stormwater management to every landowner in the state of New Hampshire. The net impact of new development will result in no increase in volume or quality from pre-developed conditions.” And then a third sentence dealing with existing development.

**Mr. Sienkiewicz** asked if it is necessary to establish a goal statement. He thinks it may be too early. **Mr. Paulsen** agreed.

**Mr. Hemmerlien** said that ultimately, the goal of the Commission is to make recommendations to the legislature and to look at existing regulations.

**Chairperson Sassan** asked the Commission members if they want to go forward with addressing each situation (MS4, urban, rural, Alteration of Terrain (AoT), MSGP) and begin discussions from the ground up, as previously described. The proposed situations would fall under six categories: urban MS4, urban non-MS4, rural AoT, rural non-AoT, MSGP-2008, construction general permit (CGP).

**Mr. P. Currier** suggested not spending a lot of time on construction phase controls and to focus on post-construction. **Mr. Roseen** agreed. **Mr. LeRoy** disagreed, saying there is some overlap. **Rep. Spang** stated that the failure of federal regulations is a big problem and cited lack of inspections. **Mr. Cedarholm** explained that, from a local ordinance perspective, the construction phase controls are more acceptable than post-construction controls.

**Chairperson Sassan** asked the Commission to agree to looking at each situation one-by-one and asking the questions outlined in the handout. **Ms. Manzelli** asked to add a question on the regulatory framework for each of the situations according to duty c. of the Commission. All agreed.

**Rep. Spang** reminded the Commission members that the charge of the Commission is not only to look at and make recommendations on regulations.

**Chairperson Sassan** agreed that regulations shouldn't be the only focus and stated that, in addition to regulations, the Commission members have discussed education, cap and trade (offset) programs, incentives, seeking funding, Regional Planning Commission involvement, economics, and stormwater utilities, which makes it apparent that the Commission is not focused solely on regulation.

**Mr. Danielson** stated that the idea of a "rain tax" must be addressed. Some people think that the government has no right to regulate stormwater. There needs to be education. **Rep. Spang** agreed that education should be one of the Commission's recommendations. **Mr. Roseen** asked to add to the list of recommendation the idea of redefining the issue in terms of cost. Cost is the bottom line. If there was a document that shows the economic incentives for early adoption and talks about it in terms of costs and economic incentives there could be greater support. **Rep. Spang** also added that local governments not wanting to limit development and see stormwater management and local controls as limiting need to be addressed. **Mr. Cedarholm** explained that he sees innovative development come forward in Durham without ordinances. If people were only doing what state and federal regulations require (as was suggested by the town council), it would be a big step backward. Innovative design hasn't been a deterrent to development in Durham. It isn't a big cost in the big scheme.

**Chairperson Sassan** asked for informal agreement to make the topic of future meetings these situations as a way to pull out information in these environments. All agreed. **Rep. Spang** asked to make sure that each land use type is represented. **Chairperson Sassan** suggested that at the end of each meeting, the Commission agrees on each land use will be covered at the next meeting. He asked if the Commission would like to invite Michael Simpson from Antioch for the next meeting. **Mr. P. Currier** asked if the Commission should spend time at the next meeting to go over the existing regulatory framework and the interaction between regulations for each land use. **Mr. Kahl** suggested that DES put together a presentation on regulation for the next meeting. The Commission also agreed to invite NH Fish and Game to present on the wildlife and habitat impacts at the next meeting.

#### **FUTURE MEETING DATE**

**Chairperson Sassan** asked if the first Monday of the month at 1pm works for Commission members to schedule regular meetings. All agreed to this day and time.

<u>Date</u>	<u>Time</u>	<u>Location</u>
November 3	1:00pm	LOB 305
December 1	1:00pm	LOB 305

**Chairperson Sassan** informed the Commission of the next Land Use Commission meeting date and agenda, which is on October 21 at 9:00 am in room 305 of the Legislative Office Building.

**V. DISCUSSION OF INTERIM REPORT**

**Chairperson Sassan** informed the Commission members that he and Jillian McCarthy will work on the interim report, which is due before the Commission meets again. His understanding is that it doesn't need to be lengthy and that if the report clearly describes what has been done so far and lays out a road map for future work the reporting requirements should be fulfilled. He asked the Commission members if it would be OK to submit a draft of the report to the Commission members for their review a week before the report is due. The Commission members gave an informal approval.

**VI. ADJOURNMENT**

At 12:15pm, **Rep. Spang** brought motion to adjourn forward. **Mr. P. Currier** seconded. **All voted in favor.**

**DRAFT MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

November 3, 2008 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: Dari Sassan	NH Office of Energy and Planning
Vice Chair: Judith Spang	NH House of Representatives
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Newb LeRoy	Associated General Contractors of NH
Dave Danielson	NH Association of Regional Planning Commissions
Steve Kahl	NH Lakes Association
Chris Devine	NH Local Government Center
Rob Roseen	University of New Hampshire Stormwater Center
Carl Paulsen	NH Rivers Council
David Cedarholm	NH Public Works Association
David Borden	NH House of Representatives
Charlie Hood	NH Department of Transportation

**Others Present:**

Ted Diers (for Paul Currier)	NH Department of Environmental Services
Jamey Robichaud	Northeast Concrete Products Association
Ari Pollack	Gallagher, Callahan & Gartrell
Doug Bechtel	The Nature Conservancy
Kathryn Fox	Environment NH
Michael Simpson	Antioch University New England

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**I. ROLL CALL AND INTRODUCTIONS**

**Chairperson Sassan** called the meeting to order at 1:09 PM.

**II. APPROVAL OF MINUTES FROM OCTOBER 6, 2008 MEETING**

Ms. McCarthy reviewed the following recommended changes to the draft minutes:

- The addition of a website link on page 2 to Mr. Robert Roseen's presentation at the October 6<sup>th</sup>, 2008 Stormwater Commission meeting.

- A clarification of Mr. Sienkiewicz's statement on page 6.

**Mr. Danielson** brought the motion forward to accept the minutes from the October 6, 2008 meeting. **Rep. Spang** seconded the motion. **All approved and none opposed.**

### III. PRESENTATION 1

**Mr. Ted Diers**, from the Department of Environmental Services, presented a slideshow titled "NH Water Primer and Stormwater Permitting at NHDES."

[http://www.nh.gov/oep/legislation/2008/hb1295/documents/stormwater\\_permitting\\_at\\_nhdes.pdf](http://www.nh.gov/oep/legislation/2008/hb1295/documents/stormwater_permitting_at_nhdes.pdf)

The presentation focused on the draft NH Water Primer being developed by DES as well as the existing state and federal permitting structure related to land disturbance activities and stormwater discharges.

**Mr. Diers** explained that the NH Water Primer is the first attempt at a statewide water resources plan. The introductory chapter provides overarching information on how each of the individual chapters fit together. The individual chapters then go into greater detail on each topic. **Ms. McCarthy** informed the Commission members that a draft of the Stormwater Chapter was provided in their meeting materials and that a final version will be available at the end of November. **Mr. Roseen** questioned if the stormwater chapter should contain more information on the Multi-Sector General Permit (MSGP) 2008 and Total Maximum Daily Loads (TMDLs). **Mr. Cedarholm** stated that the Municipal Separate Storm Sewer System (MS4) permits may also be linked to TMDLs and that this could have a big impact on the permits.

**Mr. Diers** continued his presentation and moved to the topic of state and federal permits related to stormwater. He presented summary information on the NH Alteration of Terrain (AoT) Permit, the National Pollutant Discharge and Elimination System (NPDES) MS4 permit, the NPDES Construction General Permit (CGP), and the Multi-Sector General Permit.

**Mr. Sienkiewicz** pointed out that both the AoT permit and the CGP involve construction site runoff and post-construction runoff controls and questioned if this is overlap. **Mr. Diers** responded that communities subject to the MS4 permit need to develop regulations for post-construction and construction-phase runoff controls and stated that this is particularly important where no other state, federal, or local regulations apply. **Mr. Cedarholm** added that MS4 communities must adopt rules for sites greater than one acre as a minimum. **Mr. Sienkiewicz** stated that this requirement closes the gap between the MS4 permit and the AoT permit.

**Mr. Diers** explained that, because New Hampshire is not a delegated state, the NPDES CGP is administered by EPA. DES issues a general 401 Water Quality Certification for the overall general permit and that individual projects could be

pulled out of the general permit or could require an individual 401 Certification under certain circumstances. He gave the example that the state may want to look more closely at projects near impaired waters or outstanding resource waters. **Mr. Diers** further explained that if a project does not trigger one of the state permits, the state would not necessarily be notified of a project. The Commission members offered examples of projects that may be subject to the CGP, but would not trigger a state permit including installation of a tennis court. **Mr. LeRoy** suggested the possibility of requiring applicants to file a copy of their Notice of Intent (NOI) to the state at the same time it is submitted to EPA. **Mr. Danielson** asked if DES has considered administering the NPDES CGP. **Mr. Diers** said that it had been discussed, but it is not something DES wants to do. It would require more resources than DES currently has and would be costly.

**Mr. Diers** then discussed the Multi-Sector General Permit (MSGP) and said that he doesn't know a lot about the permit. **Mr. LeRoy** told the Commission that the 2008 MSGP was just issued, which requires a new NOI to be filed by January 5, 2009 and a new Stormwater Pollution Prevention Plan (SWPPP). The sampling requirements are the same. He stated that it is going to be more difficult to obtain coverage under the 2008 MSGP. Unlike other permits, this deals with existing development. He gave examples of companies that currently require coverage under the MSGP including Pike Industries, Audley, and Precision Lumber. **Mr. Danielson** asked if it also includes commercial development. **Mr. LeRoy** responded that it can include some commercial depending on the situation. He said that it excludes shopping plazas and malls, but includes airports. Parking lots are typically not brought into the permit unless the parking lots are used for vehicle storage. **Mr. Cedarholm** added that it also includes some municipal operations. **Mr. LeRoy** explained that monitoring and inspection requirements typically result from a complaint. **Mr. Roseen** added that the permit requires self-monitoring and stated that the big change between the previous MSGP and the 2008 MSGP is that the 2008 MSGP links to TMDL.

**Mr. Diers** then moved to a discussion on permitting context. He stated that DES only permits what comes in the door. DES has jurisdiction based on what people want to do. He also said that where to locate a project is decided before DES gets a permit. He explained that state permits can happen before, at the same time, or after the local permit decisions; this is different for each town and that permit decisions are based solely on statutes and rules. DES has guidance and policy, but ultimately, decisions are based on statutes and rules. He stated that some permits are formulaic and some are interpretive, and some have a federal component. **Rep. Spang** asked if permit applicants need to show the least impacting alternative. **Mr. Michael Simpson** responded that this is needed to wetland permits. **Ms. McCarthy** added that the draft Alteration of Terrain rules incorporate the Antidegradation provisions of the NH Surface Water Quality Standards, which includes an alternatives analysis for proposed water quality degradation.

**Mr. Diers** explained that there are a lot of places within the existing permitting process where projects can be adjusted, through providing comment, setting conditions to a permit, appeals, and inspection for compliance. He concluded by saying that although these regulations and permits exist, there are many ways outside of regulations to address stormwater management concerns.

**Mr. Danielson** stated that most Regional Planning Commissions (RPCs) have master plans for their regions. These plans could be considered for answering the question of where development should go.

#### IV. INTRODUCTIONS

**Chairperson Sassan** requested that Commissioners, staff and attendees introduce themselves to Mr. Simpson by name and representation.

#### V. PRESENTATION 2

**Mr. Michael Simpson** from Antioch University New England gave a presentation titled “Water from the Hills.”

[http://www.nh.gov/oep/legislation/2008/hb1295/documents/water\\_from\\_the\\_hills-preparing\\_our\\_communities\\_for\\_change.pdf](http://www.nh.gov/oep/legislation/2008/hb1295/documents/water_from_the_hills-preparing_our_communities_for_change.pdf)

The presentation focused on research he has conducted on culvert sizing. He stated that, historically, stormwater management structures, including culverts, were sized for the 24 hour, 25-year storm event. New Hampshire has seen many 100-year storm events in the last few years that have resulted in bridge washouts and loss of life. He described the multi-tiered research analysis. The first step was a build-out analysis for the White Brook watershed using a build-out model and based on city and town zoning density. He and his research team studied flow characteristics at each culvert and the relationship and influence of culverts upstream. He noted that they found in flooding events, sediment could have a greater economic impact than water. As part of the build-out analysis, they measured all of the culverts and slopes and reversed engineered the culverts to determine what level of storm events they were designed for and went further to determine what size the culverts should be. They recognized three reasons for a culvert being undersized: 1) the culvert was very old and there was no design used for sizing; 2) the culvert was designed based on the “Green Book” [Rockingham County Conservation District. *Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire*. August, 1992.]; or 3) the landscape had changed to include more development and increased impervious cover since the culvert was designed.

Phase 2 and the multi-tiered analysis looked at climate impacts. They used the A2 model, which **Mr. Simpson** identified as being slightly pessimistic, that is based on carbon dioxide loading. He stated that climate change induced increases in rainfall amounts would disproportionately increase the frequency of the most intense storms. He explained that we are seeing an increase in storm frequency

by about 30% and that in the future, between 2046 and 2076, the 250-year storm event will come with a frequency of the historic 25-year storm event.

**Mr. Simpsons** discussed the tools for adapting to these changes. He stated that many people believe that anthropogenic climate change is not real. Regardless of the cause, even the most conservative carbon dioxide model shows that by mid-century, around 2040, there will be an increase in carbon dioxide in the atmosphere. **Mr. Simpson** stated his concern that at the municipal planning board level, where land use decisions are made, there is a failure to see how the incremental, small decisions have a cumulative impact over time.

**Mr. Simpson** closed with future research needs explaining that the analysis to date has been done in rural areas because the data is based on the best data available from Granite. To do an analysis in an urban environment they need much more refined elevation data.

**Rep. Borden** asked if the model they developed can be used more quickly and cost effectively for each town. **Mr. Simpson** responded that the model is almost there, but in order to determine a culverts capability, it needs to be reverse designed. He explained that the methodology can be used anywhere, but the numbers can't be used everywhere because rainfall is different in different regions.

**Mr. Cedarholm** explained when he and his crew replace culverts they need to decide which to replace first. In some situations he is happy that he has some small upstream culverts because they hold back some water. They need to replace the downstream culverts first in order to have them handle the higher flows when upstream culverts are replaced. **Mr. Simpson** responded that culverts are not designed to be dams, adding that a failure could be catastrophic.

**Mr. Danielson** asked how to get local planners to begin to think on a macro scale and to plan regionally. **Mr. Simpson** agreed that a regional perspective is necessary because stormwater is not contained within municipal boundaries.

**Ms. Ebel** stated that just putting in a bigger culvert is not the only issue; a lot of education needs to be done to teach public works. **Mr. Simpson** said that there are different "lenses" to look through for each culvert. There are many objectives including geomorphology, wildlife, etc. **Ms. Ebel** added that municipalities sometimes use the Regional Planning Commissions (RPC)s and sometimes do not. Some towns pay dues, other do not. She asked how RPCs can be strengthened to help deal with these issues. **Mr. Danielson** responded that RPCs allow towns access to a tremendous amount of information and that the RPCs depend on each other. **Ms. Ebel** said that some states require RPCs to be involved. **Mr. Danielson** informed the Commissioners that there has been no increase in RPC funding since 1988.

**Mr. Kahl** stated that replacing culverts is a reactive process. The Commission needs to look at a proactive approach such as increasing buffers and other incentives for people to reduce the amount of lawn and pavement. **Mr. Simpson** responded that they have looked at proactive approaches, such as low impact development (LID), but that the presentation focused on culverts because it is something that people can understand. **Mr. Roseen** added that the land use and proactive approach is the next logical step. He stated that economic incentives for proper land use planning and LID approaches, as well as cost-based incentives for communities are needed so they still see economic incentives for moving forward.

**Mr. Danielson** told the Commission that, at the time, the planning boards thought they were doing great things. They thought they were on the cutting edge, although he can recognize now that some of the decisions they made were not right. The things that are being discussed now were not even on the map. The Commission needs to also look into the future and ask what will be the best decisions twenty years down the road.

**Mr. Doug Bechtel** informed the Commission that he has been involved in a culvert assessment in the Ashuelot River watershed and that they will begin meetings with watershed towns and the RPC. He asked Mr. Simpson what he would ask a local road agent about fixing a failure. **Mr. Simpson** responded that he would first ask the road agent what happened. He encourages “train the trainer” programs for DPW staff to train each other. The Technology Transfer program at UNH was mentioned as a training option as well.

**Mr. Simpson** said that his research will continue and that he is most interested in dams and floodplains. He explained that anytime water moves, sediment moves, and when sediment moves, phosphorus moves. Controlling water quantity is driving erosion control and ultimately control of nutrients. **Rep. Spang** asked him more about the issue of dams and floodplains. **Mr. Simpson** explained that he is talking about small dams that act similar to culverts.

**Mr. Diers** asked him if, and where, he sees places in which the permitting structure limits the ability to do what needs to be done to address culverts or other stormwater issues. He gave the example that road agents can replace the same size culvert without having to deal with DES. **Mr. Simpson** responded that he has concerns that the draft Alteration of Terrain rules uses the historic 10-year storm event, based on old data. He also mentioned that the draft rules have a 10% effective impervious cover (EIC) requirement, which is very good and important, but none of the rules are looking at the future.

**Mr. Sienkiewicz** stated that he is impressed in a bad way about how much influence the fire department and road agents have on subdivision regulations. He stated a take-home point from Mr. Roseen’s presentation at a previous meeting, that the land use side has to be pushed. The landscape needs to be made more resilient. **Mr. Roseen** added that the cost needs to be put more equally on

developers and owners and not only on municipalities. Many of the approaches for stormwater management add value to a property. **Mr. Sienkiewicz** responded that upping the regulations for new construction only puts unfair burden on new construction. **Mr. Danielson** stated that is where stormwater utilities come into play.

**VI. DISCUSSION OF FUTURE MEETING TOPICS AND DATES**

**Chairperson Sassan** asked the Commissioners to confirm that the first Monday of the month at 1pm works to schedule regular meetings. All agreed to this day and time.

Date	Time	Location
December 1, 2008	1:00pm	LOB 305*
January 5, 2009	1:00pm	LOB 305*
February 2, 2009	1:00pm	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**VII. POTENTIAL INVOLVEMENT OF REGIONAL PLANNING COMMISSIONS**

**Chairperson Sassan** read the following excerpt from an October 17, 2008 email from Mr. Sienkiewicz to the Commission:

*Dave Danielson followed up my comment with a comment which the minutes reflect as "Mr. Danielson told the Commission that there is more technical ability in the RPC's than people realize. He stated that the public works directors and road agents are very concerned about more regulations coming their way. They are the ones who have to deal with the budget impacts. If the responsibility is moved further away from the towns' authorities, they may become more suspicious. The support should be close to the towns."*

*I agree that there is quite a bit of technical ability in the RPCs. I am glad to be reminded that there is - potentially - both a useful resource and a potential intermediate level of permitting authority between the State and the localities.*

*I would, and I believe builders generally would, like to see the RPCs have more influence in the permitting process - IF it replaced, and didn't simply add to, areas to which the municipalities are already attending. On something like stormwater, uniform state regulations can be digested by professionals at the RPCs and explained to their constituent municipal boards and road agents. The fundamental hindrance to RPCs, as I understand it, is that they are largely funded by their member municipalities, whose participation is more or less voluntary. The municipal board members can choose to listen to (or ignore) the professionals at the RPC just like they can with the State, wherever there are no laws that supersede local permitting authority. I think the "technical assistance" model that our RPCs work under would only get good, uniform results across the State if the RPCs had significant funding, independent of the towns, AND the*

*towns all had board members who stayed in their positions a long time AND were open to receiving the advice of and training from the RPCs. Might only work if each municipality had a staff planner, too.*

*I welcome Commissioners' thoughts.*

**Mr. Sienkiewicz** told the Commission that he still stands by his statement and welcomed discussion. **Ms. Ebel** stated that she thinks it would be good to strengthen the hand of the RPCs. Towns are not currently required to be a member of and RPC and some towns do not have planners. She felt it would be beneficial to get a situation where there is a required linkage between the towns and the RPCs. **Mr. Danielson** stated that the RPCs would support that added responsibility, but they would need more funding. He also stated that funding is not consistent between the RPCs. **Ms. Ebel** explained that if a town is a member of an RPC, they are supposed to send two representatives, but sometimes this doesn't happen. **Mr. Paulsen** noted that this isn't a specific duty of the Commission, but asked if the Commission will look at possible funding mechanisms. **Ms. Ebel** added that this issue gets to the fact that water doesn't adhere to municipal boundaries, and more stormwater planning should be done regionally.

**Rep. Spang** stated that RPCs cannot provide as many services as they would like to with the current dues. Towns are afraid to ask for assistance from the RPCs because they are afraid of increasing the fee. **Mr. Danielson** responded that everyone would like to get services for free. **Ms. Ebel** asked how fees are calculated. **Mr. Danielson** answered that dues are calculated differently for each RPC. Manchester's fee for example, has been \$0.67 per person for the last fifteen years. **Ms. Ebel** answered that, that for example, New London pays \$5,000 per year for its dues, but is charged separately for RPC services. **Rep. Spang** suggested that this could be a better conversation when and if the Commission determines that there is something they want the RPCs to do. **Chairperson Sassan** noted that the RPC issue would be readdressed and asked if there is a good model in place where RPCs have a clearly stated role in permitting in New Hampshire. **Mr. Danielson** said no, the RPCs have no authority, but that he will try to find an example outside of New Hampshire. **Ms. Ebel** asked if the Commission can look at regional stormwater planning, but noted that although the RPC's work on a larger, regional level than the town, the RPCs do not follow watershed boundaries. She opined that stormwater planning should be done on a watershed basis to the extent possible.

#### VIII. FUTURE SCHEDULE

**Chairperson Sassan** informed the Commission that there are eleven more meetings. He proposed a work schedule, which would allot one meeting for each of the five permitting scenarios, four meetings to make hypotheses, recommendations, and discussions, and the last two meetings for the final report. He asked if the Commission agreed with this approach. **Mr. Cedarholm** asked if the interim report had been submitted. **Chairperson Sassan** stated that the

interim report had been submitted and that he was going to sign it after the meeting. **Mr. Cedarholm** explained that, based on the email correspondence, it not clear that stormwater may not be under municipal authority. **Chairperson Sassan** responded that it is obviously a topic of interest that should be addressed in future meetings, but that it had not been discussed at a previous Commission meeting and was therefore not included in the interim report. **Mr. Danielson** asked Rep. Spang, because of her experience with other study Commissions, if the interim report is consistent with others. **Rep. Spang** answered that it is consistent and meatier then most interim reports.

**Mr. Danielson** brought forward a motion to approve the interim report. **Mr. Paulsen** seconded. **All approved and none opposed.**

**Chairperson Sassan** asked the Commissioners to go back to the process of the meeting schedule. **Ms. Ebel** questioned if each topic needs a full meeting. **Chairperson Sassan** said that he thinks that each topic will need a full meeting and thinks that meetings may need to be longer to provide sufficient time. **Ms. Ebel** stated that the five scenarios agreed upon at an earlier meeting really focus only on permits, and expressed concern that other important aspects of stormwater treatment, such as dunes and the placement and replacement of road culvert, especially on town roads, might be overlooked. **Chairperson Sassan** asked the Commissioners to keep in mind that the five scenarios approach is simply a way to break up the landscape. He added that the Commission is fortunate to have appointees from a broad, all-encompassing range of stakeholders and that the Commission will rely on that broad knowledge base to ensure that issues, which do not fall neatly within one scenario or another, are also brought forward. He added that if the Commission gets through the nine questions established to study each of the scenarios and realize that information is missing or there are additional questions, there will be opportunity to address it further.

#### **ADJOURNMENT**

At 3:34 PM, **Rep. Spang** brought motion to adjourn forward. **Mr. Sienkiewicz** seconded. **All voted in favor.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

December 1, 2008 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: Dari Sassan	NH Office of Energy and Planning
Vice Chair: Judith Spang	NH House of Representatives
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Newb LeRoy	Associated General Contractors of NH
Dave Danielson	NH Association of Regional Planning Commissions
Chris Devine	NH Local Government Center
Rob Roseen	University of New Hampshire Stormwater Center
Carl Paulsen	NH Rivers Council
David Cedarholm	NH Public Works Association
David Borden	NH House of Representatives
Charlie Hood	NH Department of Transportation
Michael Trainque	American Council of Engineering Companies
Paul Currier	NH Department of Environmental Services
Joe Robertie	NH Timber Owners Association
Amy Manzelli	Business and Industry Association of NH

**Members Absent:**

Jacalyn Cilley	NH Senate
Steve Kahl	NH Lakes Association
Eric Stohl	NH House of Representatives

**Others Present:**

Barbara McMillan	NH Department of Environmental Services
Jeff Andrews	NH Department of Environmental Services
Peter Abdelmaseh	Northeast Concrete Products Association
Joel Anderson	NH House of Representative Staff

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**I. ROLL CALL AND INTRODUCTIONS**

**Chairperson Sassan** called the meeting to order at 1:08 PM. Chairperson Sassan summarized the meeting agenda. Noting new members and attendees, he

requested that Commissioners, staff and attendees introduce themselves by name and representation. Introductions were made around the room.

## II. APPROVAL OF MINUTES FROM NOVEMBER 3, 2008 MEETING

Ms. McCarthy reviewed the following recommended changes to the draft minutes:

- Corrections to the section numbering.
- The addition of Ms. Ebel's edits to clarify her statements on page 8 and 9 of the draft minutes.

**Rep. Spang** brought the motion forward to accept the minutes as amended as per Ms. Ebel's comments from the November 3, 2008. **Mr. Danielson** seconded the motion. **All approved and none opposed.**

## III. PRESENTATION 1

**Ms. Barbara McMillan**, from the Department of Environmental Services, presented a slideshow titled "Small MS4 General Permit". Ms. McMillan works in the Watershed Management Bureau doing watershed outreach and education in the Watershed Assistance Section. Over the last four years, she has been involved with the stormwater coalitions on outreach and education.

[http://www.nh.gov/oep/legislation/2008/hb1295/documents/small\\_ms4\\_general\\_permit.pdf](http://www.nh.gov/oep/legislation/2008/hb1295/documents/small_ms4_general_permit.pdf)

The presentation focused on federal stormwater permits, primarily the Municipal Separate Storm Sewer System (MS4) permit, and included information on the New Hampshire Stormwater Coalitions, which formed as a result of the MS4 permit.

**Ms. McMillan** provided a summary on the federal Phase I Stormwater Regulations, which included industrial activities associated with stormwater discharges, large municipal separate storm sewer systems (defined as  $\geq 250,000$  people), and medium municipal separate storm sewer systems (defined as between 100,000 – 250,000 people). New Hampshire didn't fall under Phase I due to the smaller size of the municipalities. **Ms. McMillan** then provided background on the federal Phase II stormwater permits, which began in 2003 with 3 five-year permits. All permits in New Hampshire are issued and overseen by the US Environmental Protection Agency (EPA) because New Hampshire is not a designated state. There are about five states in the country that are not delegated. Massachusetts is also not a delegated state. New Hampshire does not oversee the permit, but does keep track of what is going on some level.

The Phase II Stormwater Program includes the Construction General Permit (CGP), the Multi-Sector General Permit (MSGP), and the MS4 permit. The CGP is required for construction activities with a disturbance of one acre or greater and requires that the owner/operator develop a stormwater pollution prevention plan

(SWPPP). The MSGP is required for municipal industrial facilities, such as municipal transfer stations or recycling stations or vehicle maintenance facilities. In 2008, the MSGP will also be required to do a SWPPP, similar to the CGP. For construction activities, the SWPPP identifies the type of pollutants potentially discharged from the site and involves coming up with BMPs to manage the pollutants coming off of the site. **Ms. McMillan** introduced Mr. Jeff Andrews of the NHDES Waste Management Bureau, who reviews the permits that come in and is the point of contact for the permits she is discussing in her presentation.

**Mr. Sienkiewicz** asked if the MSGP applies to only industrial activities conducted by a municipality or if private industrial activities are subject to the permit as well. **Ms. McMillan** deferred the question to Mr. Andrews. **Mr. Andrews** explained that Phase I is the original part that included heavy manufacturing, light manufacturing, and a few other things that EPA defined as having stormwater associated with industrial activity. This includes vehicle salvage yards and recycling facilities, for example. Phase II is when municipalities were brought in and currently, only the transfer stations that do recycling, are included.

**Ms. McMillan** continued her presentation with a more detailed discussion of the MS4 or small MS4 permit. There are 45 municipalities that fall under the small MS4 permit (handout, available online at [http://www.nh.gov/oep/legislation/2008/hb1295/documents/phase\\_II\\_handout.pdf](http://www.nh.gov/oep/legislation/2008/hb1295/documents/phase_II_handout.pdf)). These are municipalities that have “urbanized areas” as defined by the 2000 census. Seven towns received waivers. 38 towns are involved in the permit and 4 non-traditional municipalities such as DOT and UNH. The original MS4 permit was a five-year permit and expired on May 1, 2008. Municipalities are still following their old permit until the new permit is issued. **Ms. McMillan** pointed out that there are many municipalities that fall under the permit that are not what is typically considered urban. Many of them are actually fairly rural. In addition, some urbanized municipalities, such as Concord and Franklin, are not included under the permit. EPA has recognized this and plans on redoing the census data in , changing the configuration to include the larger municipalities. **Mr. Sienkiewicz** asked if the more urbanized municipalities were not part of the permit because of they had lower densities. **Ms. McMillan** answered yes and explained that some of the coalition members were not happy about it because they are large cities and have many of the same stormwater issues that the other members have.

**Ms. McMillan** explained that, under the MS4 permit, municipalities must develop a stormwater management program, which includes the submittal of a notice of intent (NOI) to EPA and describes how they intend on meeting the requirements of the permit. The permit requirements include six minimum control measures and a timeline for reporting. The six minimum control measures include:

- 1) Public education and outreach;
- 2) Public involvement and participation;

- 3) Illicit discharge detection and elimination;
- 4) Construction site storm water runoff control;
- 5) Post-construction management; and
- 6) Pollution prevention and good housekeeping.

Annual reporting is required to EPA.

**Ms. McMillan** then discussed the stormwater coalitions in New Hampshire. There are three coalitions, Nashua, Seacoast, and Manchester. The coalitions are made up of municipal representatives who coordinate stormwater within the municipality. This could be a town stormwater coordinator if they have one, the DPW director, or recycling coordination. The coalitions meet approximately once a month. The primary focus of the coalitions is meeting the permit requirements. The coalitions allow for opportunities for networking, collaboration and coordination. They also are able to vent and bond over the permit requirements. Initially the coalition members got together and complained about the permit, calling it an unfunded mandate and saying that there was no support in the communities to do it. It slowly transformed at later meetings into a couple of towns saying that they had submitted their NOIs. Then it became an opportunity to report on success stories on what they were accomplishing. **Ms. Ebel** asked if the coalitions are created by state statute. **Ms. McMillan** answered that they are not. There is no jurisdiction. Originally, NH DOT took the lead on forming these groups to help meet their permit requirements by facilitating these groups, but there is no formal jurisdiction. Towns appoint representatives and are then able to check off on their permit that they participated in these coalition meetings. **Ms. McMillan** explained that there are no other venues for these municipalities to get together to discuss this particular issue. Coalitions have worked on collaborative projects, conferences, presentations, roundtables, and legislation, including the recent stormwater utility legislation.

**Ms. McMillan** went through each of the minimum control measures to better get the point across that the MS4 permit is more than just a permit that is issued; it is a program. An important note is that Section 319 Nonpoint Source funding to address nonpoint source pollution problems is no longer available for MS4 communities to implement components of their permit. The public education and outreach component of the new permit will require a more targeted, local message specific to the municipality, such as a particular pollutant of concern in that area and they must have a method to evaluate the effectiveness of their education and outreach efforts. The new permit may also require wet weather monitoring in addition to dry weather illicit discharge investigations. This requires much more time, work, and expertise and will be challenging for the municipalities to achieve. **Ms. McMillan** described the requirements for the construction site runoff control and post-construction runoff control and stated that they are similar to the requirements of the CGP. They have been advised by EPA to do this through regulation and ordinances as well as training to local contractors. A major barrier to the two construction-related control measures has been presenting

to the community that an ordinance or regulation is needed to control stormwater. The support from decision makers has been lacking.

**Ms. Manzelli** asked how this requirement fits into the CGP or the state Alteration of Terrain permit. She asked if there is overlap. **Ms. McMillan** explained that these two construction-related control measures are a local control for the construction general ~~construction~~ permit. There has been coordination between the MS4 permit construction-related controls and the alteration of terrain permit showing how the permits work together. **Mr. Andrews** added that he believes EPA's long term goal with this is to have the MS4 communities have their own erosion and sediment control programs to mirror the construction general permit so that projects in those communities will only need to do what the municipality requires and won't need to do anything more than file and NOI for the federal permit. The towns can regulate smaller than the one-acre size as well. **Mr. Sienkiewicz** asked for clarification that the towns can regulate a smaller disturbance than one acre, but that the CGP only regulates down to one acre. He asked if there is an upper limit. **Mr. Andrews** confirmed that towns can regulate smaller than one acre and that there is not an upper limit. For the CGP, if a project disturbs more than one acre, it requires a permit. **Ms. Manzelli** asked if the towns, regardless of the size of a construction project, could regulate projects more stringently, but not more lax than the federal regulations require. **Mr. Andrews** confirmed this. **Rep. Spang** asked what would happen if a town refused to comply with implementing the construction and post-construction ordinances. **Ms. McMillan** responded that this question is often the first asked by the City Council. If a town did not comply with one of the control measures, it would mean that they weren't meeting the permit requirements. To date, EPA has sent out letters indicating that the town is not meeting the permit requirements and directing them to meet the requirements and they have issued one fine to the town of Atkinson due to failing to file their annual reports. It is uncertain if additional enforcement will come.

**Dr. Roseen** asked that since New Hampshire is not a delegated state, if the towns meet the federal requirements, they don't have to develop a construction site runoff control program. **Ms. McMillan** confirmed. **Dr. Roseen** then asked how many MS4 towns have complied with this part of the permit. **Ms. McMillan** said that she polled the stormwater coalitions to get rough numbers and estimated that about 50-70% have something going on toward addressing the erosion and sediment control requirement. She mentioned that this requirement and the post-construction requirement seem to be the most difficult for municipalities. She added that around 20% actually have ordinances adopted. **Dr. Roseen** asked if the estimates for the MS4 towns was reflective of what municipalities are doing statewide. **Ms. McMillan** stated that she thinks non-MS4 communities are doing less than MS4 communities. There is a lack of awareness and the lack of requirements for municipalities that are not MS4 communities. In her outreach and working with municipalities on the seacoast, she has experienced that there is a lot less awareness in communities that are not MS4-communities.

**Chairperson Sassan** asked for clarification that there is only a percentage of MS4 towns that have erosion and sediment control programs in place currently. **Ms. McMillan** answered that many MS4 towns have programs in place, but may not have ordinances adopted. She explained that if they don't have an ordinance in place, they are automatically out of compliance with the permit. **Mr. Cedarholm** clarified that it doesn't necessarily have to be an ordinance; it could be regulation to satisfy the permit requirement. **Ms. McMillan** added that some municipalities went through their existing regulations to determine where there may be holes to fill to meet this requirement. She has a list of what EPA is looking for in the ordinance or regulation to meet the permit requirement.

**Mr. Danielson** explained that he is troubled by the lack of enforcement if a town does not meet a permit requirement. He said that it sounds like, with the exception of the Atkinson example, very little is done. **Ms. McMillan** stated that there have been other notifications to towns, but she only knows of one other letter to Seabrook. **Dr. Roseen** stated that it sounds like 80% of the permits are potentially out of compliance. **Ms. McMillan** explained that, technically, they are out of compliance, but if they are able to report to EPA and describe how they are working toward compliance, EPA is satisfied. **Mr. Danielson** stated that the MS4 permit seems to use moral tools for their enforcement as opposed to punishment. The moral tactic is that the permit requirements are good things to do. If you don't do it, there is no punishment. **Ms. McMillan** responded that there is still a fear that EPA will do enforcement and **Mr. Danielson** responded that it is only an implied threat. He asked what if Atkinson tells EPA that they are not going to pay the fine. This is important to understand as the Commission goes forward and tries to determine how to deal with this. **Dr. Roseen** mentioned that this discussion is about compliance with the first permit, which was much easier than what the new permit is going to be. **Mr. Cedarholm** added that with the first permit, EPA didn't really have enforcement in place. It has been made clear by EPA that the second permit will have increased enforcement actions. **Mr. Danielson** added that in Worcester, MA has estimated that in order to come into compliance with the new regulation they will have to spend over one billion dollars. The Public Works Director said that there is something wrong and that they can't do this. He asked to come up with a more holistic look at what they're doing instead of a regulation type approach.

**Ms. McMillan** continued her presentation explaining the post-construction requirements of the MS4 permit. She stated that around 20-30% of the towns have adopted ordinances and recognize that they need to look at low impact development (LID). She stated that the barriers to this requirement are a lack of support from communities, lack of enforcement from EPA, and lack of on-the-ground examples of LID. One barrier that seems to be going away is that the science of LID is new. There is more information out there and the work that the UNH Stormwater Center is doing is filling that need.

**Ms. McMillan** summarized her general observations and comments and stated that the needs of municipalities are diverse. There is a different level of knowledge between towns, planning boards, and councils. The coordinators lack support from the state and from EPA. The municipal priorities for water are often first comes drinking water, second comes wastewater, and last comes stormwater. The MS4 permit falls short because it does not require controls for construction activities under one acre. In order to regulate less than one acre, municipalities have to develop their own programs. She also stated that MS4 communities are just a small part of the state. There are many towns that contribute to stormwater problems, but they aren't regulated under the MS4 permit. When listing ideas that may help support municipalities meet the MS4 permit requirements, stormwater utilities were discussed. She mentioned that although this is listed as an idea that may help, many towns might oppose stormwater utilities because they feel it discourages development. **Ms. McMillan** also explained that there is a question of the authority of municipalities to regulate stormwater.

**Dr. Roseen** mentioned that the Commission has previously discussed the issue of authority and asked how that can be resolved. He asked if we need a formal interpretation of the Rules or a clarification of the Rules. **Ms. McMillan** responded that the authority issue has been a problem all along. The Local Government Center (LGC) was the first group to say that they didn't see the legal authority for municipalities adopting these ordinances. She stated that she isn't sure if it is just education that needs to be done, or if actual changes to the Rules need to be made to give municipalities the authority. **Dr. Roseen** asked if the federal Phase II stormwater program gives the authority for municipalities to regulate stormwater through ordinance. **Ms. McMillan** responded that state authority is needed as well. **Mr. P. Currier** explained that municipalities only have the authority given to them by the legislature and it is not clear that there is any authority for stormwater that meshes with the Phase II requirements. **Mr. Danielson** mentioned that the comment that was made previously about stormwater utilities makes it clear that some do not understand what the stormwater utility legislation was. It was an enabling act, which means that they can establish a utility if they choose, but do not have to. The legislature has to understand who is going to pay for stormwater. Is it going to be that everyone pays equally or that everyone pays proportionally to the amount that they contribute? That is what the stormwater utility does, but it is voluntary.

**Mr. P. Currier** stated that independent of a utility, the issue is whether a municipality, in the absence of a utility, has the authority to adopt ordinances. **Chairperson Sassan** added that the most comprehensive answers on authority came from Eric Williams from NH DES, who assisted with the development of the Innovative Land Use Techniques Handbook, which includes model ordinances for stormwater. Mr. Williams listed in his email the legislation that he believes enables municipalities to manage stormwater. **Chairperson Sassan** suggested that the Commission might want to invite him to the next meeting. He questioned if the Commission is dealing with two issues. The first being the issue of local

stormwater ordinance separate from the Phase II Program and the second being whether EPA has given municipalities the authority to create ordinances. **Mr. Danielson** clarified that EPA cannot give that authority. **Chairperson Sassan** gave the example that if EPA stated municipalities of a certain population density in the United States may regulate road salt application rates so as not to degrade public waters, would it still require the NH legislature's okay for towns to do this? **Mr. P. Currier** answered that in virtually all cases, the state legislature needs to take appropriate action to be able to implement the federal regulation. This involves the creation of enabling legislation at the state level. **Mr. Danielson** added that the Commission is talking about ordinances and his understanding is that the planning board can adopt regulations, not necessarily ordinances, and can waive or not waive. And ordinance is something that a planning board cannot adjust unless it goes to the zoning board of adjustments. **Mr. P. Currier** explained that there are two things, the land use and subdivision regulations, which the planning board has authority to adopt, involve development and change of the landscape. Regulation of stormwater on the existing landscape in the absence of a planning board action or a site plan review, the mechanism for the authority is much less clear. **Ms. Ebel** agreed with Mr. P. Currier and added that in New London, they passed LID regulations pursuant to the authority given to municipalities by the state to regulate developments, which includes drainage. The LID regulations were an extension of the drainage regulations. She revisited the statute regarding site plan regulations and found very specific language about drainage. **Rep. Spang** stated that an LSR was filed for fluvial erosion hazard zoning that came out of the flood Commission. There is an opportunity to expand to be more general to cover stormwater. **Mr. P. Currier** asked if it would be appropriate for the Commission to ask the Attorney General's office to give assistance in understanding the authority. **Mr. Anderson** responded that the Attorney General has gone before other Commissions. They may not provide a formal opinion, but instead would present to the Commission. **Ms. Ebel** asked what Commissions do in this situation when there is a legal question. **Rep. Spang** explained that the Groundwater Commission has had the Attorney General speak. They have also contacted a few different attorneys to give their differing opinions about specific groundwater regulations. The Stormwater Commission can do what they want to get a legal opinion. **Dr. Roseen** stated that the topic of authority is a very important one and that he doesn't know if the Commission can go forward with studying and making recommendations until authority is determined.

**Chairperson Sassan** recommended that authority be the topic of the next Commission meeting. He added that he feels like there are two issues. The first being the authority issue being discussed and the other being that EPA has not clearly sent the message to the state legislature as to what it should be enabling. **Mr. P. Currier** responded that EPA assumes that municipalities have the ability to do what the federal law requires. **Chairperson Sassan** asked if that is the case in most states. **Mr. P. Currier** responded that he believes that is the case in most states. **Mr. Sienkiewicz** added that the cheat sheet for the Phase II permit,

provided by Ms. McMillan, says an ordinance or other regulatory mechanism to require erosion and sediment control as well as sanctions to ensure compliance to the extent allowable under state, tribal, or local law. EPA assumes that municipalities have state authority to do what the federal law requires, but maybe the state doesn't want municipalities to have that authority. This is an interesting potential tug of war. **Mr. P. Currier** explained that the Town of Milford is regulating stormwater under the authority of public health statutes. The Milford Public Health Officer thought this was a stretch to take sewers, drains, and sewage to regulating stormwater, where there is no sewage involved.

**Ms. Ebel** stated that the issue of authority is important, but there is also a lot of work to do to understand what happens with stormwater in the state that she hopes the Commission will spend most of their time on that and not too much on the authority issue. **Mr. Danielson** responded that the MS4's under EPA are what people are focusing on, but what Ms. McMillan pointed out in her presentation is that a lot of the problems are in municipalities that are not included in the MS4 areas. If the Commission agrees that stormwater is important, it shouldn't be confined to just the MS4 area, but the entire state. Then the next issue is the authority. It comes back to the moral issue. Stormwater management should be done because it is good to do, but who is going to pay for it. There is going to have to be a balance between studying stormwater and understanding authority. **Ms. Ebel** clarified that of the remaining Commission meetings, she would like to see one meeting spent on the issue of authority and the rest of the meetings using the agreed upon approach to meet the duties of the Commission. **Rep. Spang** notified the Commission that she put in a bill to extend to Commission another year. **Ms. Manzelli** stated that the Commissioners have had an opportunity to express their opinions on the authority issue and that additional discussion on the topic by the Commission without outside guidance. She recommended getting in touch with the Attorney General's office, DES, and towns who have been through this issue. **Chairperson Sassan** agreed and noted that the Attorney General, Eric Williams from DES, and the Local Government Center will be conferred with. **Ms. Manzelli** added that she feels the question to be asked is "What, if any, authority do New Hampshire municipalities have to regulate stormwater." **Mr. Roseen** added, "...and what do we need to ensure that", stating that the comment in the earlier email dialog was that it might not yet understand what needs to be done to move forward for enabling legislation. **Chairperson Sassan** asked the Commission if EPA has given clear enough information for the state legislature to allow towns to comply with the Phase II program. **Mr. Cedarholm** stated that EPA has given information to the MS4's. **Dr. Roseen** added that there is a disparity on the state element versus the federal element. Even though the state doesn't implement regulations or ordinances, it does not mean that the federal government can't come and enforce it. There is still a federal enforcement component even if the towns don't have the authority to enact a stormwater ordinance it doesn't obviate the requirement for Phase II compliance.

**Ms. McMillan** continued her presentation and described the potential availability of funds from the Section 319 program to award to four municipalities to conduct a feasibility study for the development of a stormwater utility in each of those municipalities. Manchester and Franklin have done feasibility studies and there is a great need for such studies in other towns, but the cost can be \$20,000 to \$30,000. In addition, Manchester spent another \$225,000 to put the utility in place. **Ms. McMillan** explained that she is currently involved with the Clean Watershed Needs Survey, which typically comes every four years from EPA and has to do with the state revolving loan fund and other legislative activities. The needs and the costs for NH communities for wastewater treatment are assessed. EPA encourages the inclusion of stormwater in these assessments and to also allow the state revolving loan funds to go toward stormwater capital needs. She is working with the stormwater coalitions to determine what the needs are. She believes a Rule change will need to be made. In addition, there may be an increase in funding to the Department of Public Works and an opportunity to pass through funds and the Clean Water Needs Survey may be used to allocate the funds.

**Ms. McMillan** moved to the topic of enforcement of the MS4 permit and explained that it is her understanding that with the new permit, there will be more enforcement. She added that there might be an increase in the number of New Hampshire regulated communities in the future. She emphasized that although this is called a permit, it is not as simple as getting a one time permit and being done. It is an ongoing process. It is a five-year permit with annual reporting. **Rep. Spang** asked Ms. McMillan to clarify her statement that the number of New Hampshire regulated communities will increase, did she mean the number of communities subject to the MS4 permit. **Ms. McMillan** responded yes, that EPA will use the new census in 2012 or 2013 and they will change the definition. **Dr. Roseen** asked if Ms. McMillan has a feel for what the substantive changes are with the new permit. **Ms. McMillan** responded that Thelma Murphy from EPA has been good at getting the information out to the communities. There is a continuation of what communities are doing under the old permit, completion of their illicit discharge program with the addition of wet weather monitoring, and they need to be a lot more targeted with their outreach. One that she didn't mention is that communities need to consider including any approved total maximum daily load studies (TMDLs) into their permit. **Mr. Roseen** asked if there is a water quality monitoring component in the post-construction runoff controls for the new permit. **Ms. McMillan** and **Mr. Andrews** indicated that the wet weather monitoring was the only monitoring that they new would be included, but that Thelma Murphy is available to ask questions. **Chairperson Sassan** asked if the same issue of authority come up in regard to TMDLs. If a TMDL calls for a reduction in a certain pollutant do the towns have their hands tied by what is enabled. **Mr. P. Currier** stated that he believes the answer is yes, and explained that DES has always held the position that if you own a pipe, you own what comes out of that pipe. State law requires that discharges comply with state water quality standards. Therefore, if a municipality owns a drainage

system, they are responsible for meeting water quality standards where that system discharges to a surface water. He explained that there are, however, many places in a municipality where there is no community owned drainage system, but nevertheless there is stormwater that is discharged to surface waters that should be managed. That is where the gray area is. **Chairperson Sassan** asked for clarification that if a community owns a pipe, there is clear authority for a municipality to regulate land use. **Mr. P. Currier** stated that DES's position is that the municipality can do whatever they need to do to ensure that the discharge from the pipe complies with water quality standards. **Mr. Cedarholm** asked if that also applies to culverts. **Mr. P. Currier** responded yes and then clarified that culverts are a gray area.

**Chairperson Sassan** asked the Commissioners to refer to the questions listed on the agenda and asked that the Commission run through the questions regarding the MS4 permit. He recognized that the authority issue is obvious and the Commission can plan to address that at the next meeting. He asked, based on the presentation by Ms. McMillan and the discussion, what is working and what is not working with the MS4 program related to stormwater management. **Dr. Roseen** suggested that the current programs are really at the beginning in some ways even after the first five-year permit. There is still no real water quality monitoring, which is a basic element of Clean Water Act compliance, and he is waiting to see if any water quality monitoring will be required with the next permit, particularly related to TMDLs. Currently, compliance is based on whether communities are, for example, stenciling storm drains and doing their outreach and education. Compliance is not based on whether water quality is better, which is ultimately the purpose. He feels there is a long way to go still. **Mr. Sienkiewicz** responded that he doesn't disagree with Dr. Roseen. He mentioned Dr. Roseen's earlier comment that regardless of the authority issues, municipalities are still subject to federal law and federal enforcement of the law. As a practical matter, the Stormwater Commission has to determine the most effective and most efficient way to get the water cleaned up as it relates to stormwater. EPA may never have enough funding or staff to do clean water enforcement here. The law might be the law, but it just sits on the books. **Mr. P. Currier** brought two points. The first is the regimen that EPA calls for in the MS4 notice of intent is somewhat artificially constraining to urban compact areas; the same regimen is good for everyone. The second is related to TMDLs. He offered to circulate a map of NH surface water from the 2008 assessment that were determined to be impaired by stormwater and subject to a no additional loading requirement. There are a substantial number of waters that do not meet water quality standards, primarily concentrated in the southern tier and the seacoast, and the reason is directly related to stormwater. He explained that the issue can be separated into two pieces 1) how do we keep the waters that are not on the impaired waters list from getting on the impaired waters list, and 2) how do we reduce the impact of stormwater on areas already impaired by stormwater. The first is easier to deal with and the Commission already discussed the idea of putting requirements on landscape change, regulated by town boards, to the effect

that when the landscape changes there is to be no additional loading, no increase in volume, and no increase in peak. The second is a more difficult question because the areas with existing impairments are already built areas. **Rep. Spang** asked how we can assure communities that by enacting some of the no impact regulations that we're suggesting that it won't kill development and their tax base. **Mr. P. Currier** responded that, at least for state Alteration of Terrain regulated projects, there are provisions which implemented the no additional loading, no increase in volume and peak runoff, and ended up removing them for further work based on feedback DES received during development of the regulations. DES's experience has been that it is perfectly possible to develop the landscape and meet those requirements. It does result in less dense development in the landscape. This may mean that in order to level the playing field, it would be highly desirable to have some statewide standardization of landscape change so that a community who decides to implement that is not placing themselves at a disadvantage for development. **Rep. Spang** asked if the AoT Rules would provide that statewide level playing field when it is resolved in the Rules. **Mr. P. Currier** said that when the issue is resolved and added back into the AoT Rules, there would be a level playing field for projects subject to the AoT permit, projects that disturb greater than 100,000 square feet or 50,000 square feet in the protected shoreland. There are many projects that go before the local boards that are much smaller than 100,000 square feet. The impact on stormwater is cumulative. If there are a lot of smaller projects that are under the state radar, there will be deterioration of surface water quality. **Rep. Spang** formally identified two barriers being:

- 1) There is a myriad of small projects that are not consistently regulated, and
- 2) There is a potential impact on the economy from bringing in stormwater controls and specifically,

There needs to be a level the playing field among the communities. The broader context of this is that people will say that NH is driving business out of the state. **Dr. Roseen** commented that the Commission needs to educate itself on some of these issues and stated that there is a lot of good information out there. He added that New Hampshire is slow to implement some of this, but it is being done in a lot of other areas. He explained that he was in the Pacific Northwest last week and the city of Portland was estimating that 35% of their development is done using this type of development strategies. They use these strategies as cost effective approaches for combined sewer overflow (CSO) controls, and many other things. The Commission needs to frame the argument that this can be done in ways that can benefit all. These strategies will allow for development and maintained water quality, and give developers increased value to their properties. **Ms. Ebel** explained they have not had much resistance from developers in response to the LID regulations in New London. She stated that developers are actually embracing the regulations. They have not found LID to be more expensive than what they would have to do otherwise. In New London they have seen an increase in the density of development because developers have been able to use the LID regulations to keep more drainage on site than they would have been able to otherwise. This was a surprising result and developers have not argued against LID. **Ms. Ebel** explained that she revisited the pervious

concrete parking lot at the New London Hospital and had an opportunity to ask about cost. It was more expensive to install, but they avoided detention ponds and other practices that they would have had to use. She asked about salt, maintenance costs, and other things and it turned out that overall, it was not that much more costly to install. She isn't sure that economically, the push for LID and other regulations it will be that bad. The Commissioners agreed that this information, and examples like it, needs to be readily available. **Dr. Roseen** stated that cost is the number one question that people ask about LID. **Mr. P. Currier** added that there is a difference between residential projects and commercial projects and it depends a lot on the value of the land. **Ms. Ebel** stated that it couldn't be assumed that LID will invariably have a greater cost over conventional treatment. **Mr. Sienkiewicz** commented that the Commission should be wary of having environmental protection be the only land use driver. For example, it isn't always going to be the case that LID is cheaper. If that was the case, LID would have been done all along, but it is cheaper to pipe the water off onto a neighbor's site. He stated that he is a residential developer and in residential development, if environmental quality is the primary driver, it will result in less density. He explained that he is developing a hilltop site and has found that LID is very difficult. He has run numbers and found that using 100% LID compared to piping it off site is dramatically more expensive, primarily because it is a hilltop site. In terms of land use planning, there are a lot of good reasons to put people densely together in places that might be difficult or impossible to mitigate up to perfect water quality. The Alteration of Terrain Rules that said basically there would be no water quality deterioration, which the homebuilders pushed back hard, was basically saying that some lots are developable and some lots are not, depending on the density. In his opinion, that is not the way to do land use planning. Existing infrastructure needs to be considered along with other existing benefits to guide development. Preserving or improving water quality in those locations is a very important consideration, but not the only consideration. He is concerned that the Commission is at risk of letting the environmental quality consideration be the only driver and stated that we are too cowardly to do land use planning otherwise. **Mr. P. Currier** responded that, within the context of water quality, there is a mechanism to work through situations like that. The federal Clean Water Act allows degradation of high quality waters as long as there is a good reason to do it. There is also a possibility of trading within a watershed where there is a site that makes sense to develop for a number of reasons, none of which have to do with water quality. If you look at the watershed as a whole, you can figure out where some tradeoffs would allow certain localized degradation while preserving something else. He thinks that it can work within the current mechanisms, but stated that there is a need for a standardized process to make it work at the local level.

**Mr. Cedarholm** stated that a program that does work is the land development practices and involving land use planning boards and land use regulations. There are intelligent people on planning boards really thinking about how to manage and plan the community, but management of existing infrastructure falls short.

Without that site plan review and the opportunity to involve the planning board, there is a limited opportunity to improve water quality. As a follow up to what Mr. Sienkiewicz was saying about putting development where it makes sense, encouraging redevelopment is a way to bring areas back to life and at the same time incorporates LID and the opportunity to improve water quality.

**Chairperson Sassan** asked how the Commission could integrate this concept with its work. **Mr. Roseen** responded that the Commission needs to put stormwater in the context of the larger land use decisions. Stormwater is one small piece. He has heard LID described as candy for developers because it does exactly what Mr. Cedarholm and Mr. Sienkiewicz described. It enables projects to go forward that would otherwise have been limited for other reasons in many cases. It is a tool for developers. His opinion is stormwater needs to be kept in the context of the larger land use planning. It is not going to replace other elements such a land conservation or good infrastructure planning for example. **Rep. Spang** asked Mr. P. Currier if he would explain “residual designation authority”. **Mr. P. Currier** explained that there are a number of projects in New England where impairments exist and therefore the existing, developed landscape needs to be retrofitted with BMPs. It is happening around Lake Champlain and in the upper Charles River watershed, and in South Portland, Maine in the Long Creek watershed. There is a provision of the federal Clean Water Act that allows EPA or the delegated NPDES permit authority to permit stormwater lot by lot in areas where there are water quality violations. EPA is doing that in Massachusetts in the Upper Charles River watershed for phosphorus. EPA is the permitting authority in Massachusetts and they are issuing a general permit that gives a phosphorus allocation for each commercial lot over two acres and leaves it up to the owner of the lot how they retrofit BMPs in order to achieve the loading reductions. **Rep. Spang** stated that the astonishing thing is that it is existing uses. It is not a permit for new uses. **Mr. P. Currier** added that the Great Bay watershed is going to be identified as impaired for nitrogen, which is a stormwater component. This will basically put the entire Great Bay watershed in the same situation as the Upper Charles. Half of the loading of nitrogen into Great Bay comes from nonpoint sources from the existing landscape. Much of the Great Bay watershed does not have a lot of development currently. There is going to be a push in the watershed for reduction in loading from stormwater. **Rep. Spang** asked how this would be pushed. **Mr. P. Currier** responded that potential residual designation could be used, but he thinks a better idea is to figure a way to enhance the education and outreach component and create a mechanism that levels the playing field so municipalities can administer their land use regulations for nitrogen reduction with technical assistance and specifications provided at the state level. He stated that the first thing to do is implement a no additional loading requirement to not make the situation worse while determining what to do to reduce the impact from existing development. The next step is to find mechanisms to actually reduce those loadings as projects come up for redevelopment and have to go before the planning board. **Mr. Paulsen** stated that holding the loading is not just a good thing to do; it is required by the Clean

Water Act. A project may contribute a pollutant that is causing an impairment to an impaired waterbody. He added that one of the issues Mr. Sienkiewicz alluded to is that if there is an impairment, there is no permitting of any new activities that involve those pollutants. That is a problem from a development standpoint. If you clean up the waterbody or prevent the pollution in the first place, then you maintain the ability to develop there. If it is impaired, the ability to develop there is lost. **Mr. Sienkiewicz** asked if it is possible to impair a non-impaired waterbody if there is a good economic reason to do so and what the mechanism is to do that. **Mr. P. Currier** responded that the mechanism for all of this is the Antidegradation policy, but that a non-impaired water is not allowed to be impaired. The New Hampshire regulations require a 10% reserve. You can use up the assimilative capacity of a waterbody to the 10% reserve.

**Ms. Ebel** asked Ms. McMillan if EPA uses a watershed approach to implementing the MS4 permit or is it municipality by municipality. **Ms. McMillan** stated that they are trying to by incorporating TMDLs into their permits. She thinks they would like to approach it for a watershed point of view. Their outreach is encouraging more of a watershed approach, but this is difficult since they are regulating the individual municipalities. **Mr. Andrews** added that EPA can issue general NPDES permits based on political boundaries or geographic areas of states. If they wanted to, they could issue a permit based on a watershed and they might get there in future permits. There was a recent National Resource Council report that came reporting that there are a lot of flaws in the current federal stormwater program. One of their recommendations was to have a watershed-based NPDES permit in the future. **Ms. Ebel** explained that she feels a watershed approach would be better to manage stormwater instead of municipality by municipality. She would like the Commission to keep the idea of watershed planning in mind. **Mr. P. Currier** agreed that it is a great idea and stated that the problem is the political boundaries getting in the way. **Ms. Manzelli** added that it would be easier if there were a level regulatory playing field at the state level with uniform regulations. **Mr. P. Currier** elaborated on his earlier suggestion that if the state could provide technical specifications and, possibly for smaller municipalities that don't have a planning staff or engineering staff, could provide some circuit rider assistance, it would level the playing field. It would also allow facilitate watershed-level perspective because a circuit rider would have the ability to look across municipalities. **Ms. Ebel** added that the Commission had previously discussed using the RPCs to help with that. **Rep. Spang** asked if 319 money could be used to test the idea of a circuit rider. **Ms. McMillan** responded that the 319 program has become very strict in how funds can be spent and that it isn't likely. **Mr. P. Currier** suggested that maybe Coastal Program funding could be used if the Great Bay watershed was used as a pilot.

**Chairperson Sassan** brought the Commission back to the list of questions to be answered and recognized that they have moved through the first two. He requested feedback from the Commission as to whether they should continue going through the questions today or at a future meeting. **Mr. LeRoy** offered his

opinion to hear from the Attorney General's office before going on to discussing possible solution. **Dr. Roseen** recommended also hearing from a representative of the Flood Commission and the Land Use Commission. **Rep. Spang** said that the Land Use Commission is also requesting an extension.

**Chairperson Sassan** informed the Commission that it has been difficult to coordinate a presentation from NH Fish and Game. John Magee of Fish and Game sent a few scientific journal articles to Ms. McCarthy and asked if the Commission would be comfortable with having those circulated and reviewed to serve as the education on stormwater impacts to fish and wildlife. **Ms. Ebel** asked if they could review the articles first and then decide if they were sufficient. **Chairperson Sassan** will have the articles distributed to the Commission members. **Chairperson Sassan** requested the opinion of the Commission on having a dam and road construction and maintenance sub-committee. He explained that Ms. Ebel had pointed out that there are some gaps in the land use scenario the Commission is using and this sub-committee would serve to fill that gap. He added that roads area a huge source stormwater and the Commission currently doesn't have a meeting topic designated for that. **Mr. Sienkiewicz** clarified what Ms. Ebel stated earlier in the meeting about studying stormwater, that she meant investigating what is really happening and what activities are contributing to the problem the most. He asked if the stormwater impact from various activities on water quality degradation is known. **Dr. Roseen** and **Mr. P. Currier** answered yes, there is good information on that. It is land use specific and there is a decent understanding of what the pollutant loadings are by land use type. **Mr. Sienkiewicz** stated that he would feel more comfortable making a decision on the need for sub-committees if he was presented more information on what activities should be looked at more closely and what activities should possibly be let off the hook. **Mr. P. Currier** responded that it would be a fairly simple presentation to put together. **Chairperson Sassan** asked if roads were a big enough issue to form a sub-committee. **Dr. Roseen** proposed that the Commission keep the discussion of roads in the full Commission because of the time extension. Response was favorable.

**Ms. Manzelli** recalled that the five scenarios to look at are MS4 permits, Alteration of Terrain permits, the Construction General Permit, the Multi-sector General Permit, and activities less than one acre that are not subject to state or federal stormwater regulations. Even though roads do not exactly fit less than one acre, it could be discussed there. In the interest of filling the gaps, **Ms. Manzelli** asked if there are other topics that should be discussed. **Chairperson Sassan** agreed that the fifth scenario was intended to be a catch all and that the expertise of the Commission would be used to make sure there are no gaps.

**Rep. Borden** expanded on Ms. Ebel's comment regarding things that the Commission still needs to know. He stated that the situation is not static. The Commission is not trying to learn everything possible about the existing state of stormwater, and noted that we are living in a world where the amount of carbon in

the atmosphere is accelerating. He stated that problem is not on a straight line. What might be perfectly acceptable to build in a place right now, might be a very unwise place to have put development in ten years. The Commission needs to be thinking about the world we are emerging into where the flood-drought patterns are likely to change or increase over time. The flood-drought pattern is new now, but it's not static and it's likely to get worse. The Commission needs to be thinking about "what-if" scenarios for rougher times.

**Chairperson Sassan** stated that he has received emails with good information on what is going on in other states. He asked the Commission how the activities going on in other states should be addressed. **Ms. Ebel** asked if DES monitors other states. **Mr. P. Currier** offered for Ms. McCarthy to put together a summary of what other states are doing. **Chairperson Sassan** mentioned that Jen Cysz, the OEP Representative to the Land Use Commission has discussed doing a similar project for the Land Use Commission and possibly having representatives from those states present. **Mr. LeRoy** asked if those emails could be forwarded to the committee. **Mr. P. Currier** said that they would organize the emails and send them out.

#### IV. DISCUSSION OF FUTURE MEETING TOPICS AND DATES

**Chairperson Sassan** asked the Commissioners to confirm that the first Monday of the month at 1:00 PM works to schedule regular meetings. All agreed to this day and time. He notified the Commission that if the Concord School District is closed due to inclement weather that the Commission will not meet.

**Mr. P. Currier** asked if the lawyers would be coming to the next meeting. **Chairperson Sassan** asked if the Commission wants a presentation or if a written response would be sufficient. The Commission agreed that getting a written response from the AG's office is unlikely, and that a list of specific questions should be provided. **Chairperson Sassan** said that we would request that a representative from the Flood Commission also come to the next meeting. **Ms. Ebel** asked why John Magee from Fish and Game is not coming. **Chairperson Sassan** responded that it was in part due to a scheduling issue, but also that the topic isn't something that Fish and Game feels they have addressed head on. He added that Mr. Magee was willing to present and is willing to present in the future. **Rep. Spang** mentioned an article on the impact of sediment on eel grass and aquatic life that might be useful. She feels that it covers the topic very well and doesn't feel that a separate presentation would be necessary. **Mr. Cedarholm** added that Phil Trowbridge of DES wrote a report on nutrient loading in Great Bay that he will send to Ms. McCarthy and Chairperson Sassan.

Date	Time	Location
January 5, 2009	1:00pm	LOB 305*
February 2, 2009	1:00pm	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**V. ADJOURNMENT**

**Representative Spang** made a motion to adjourn. And **Mr. Sienkiewicz** seconded. All approved.

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

January 5, 2009 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: Dari Sassan	NH Office of Energy and Planning
Vice Chair: Judith Spang	NH House of Representatives
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Dave Danielson	NH Association of Regional Planning Commissions
Chris Devine	NH Local Government Center
Rob Roseen	University of New Hampshire Stormwater Center
Carl Paulsen	NH Rivers Council
David Cedarholm	NH Public Works Association
Charlie Hood	NH Department of Transportation
Michael Trainque	American Council of Engineering Companies
Paul Currier	NH Department of Environmental Services
Amy Manzelli	Business and Industry Association of NH
Steve Kahl	NH Lakes Association

**Members Absent:**

Jacalyn Cilley	NH Senate
Eric Stohl	NH House of Representatives
Newb LeRoy	Associated General Contractors of NH
David Borden	NH House of Representatives
Joe Robertie	NH Timber Owners Association

**Others Present:**

Doug Bechtel	The Nature Conservancy
Jennifer Gilbert	NH Office of Energy and Planning
Collis Adams	NH Department of Environmental Services
Lori Sommer	NH Department of Environmental Services
Steve Couture	NH Department of Environmental Services
Ted Diers	NH Department of Environmental Services
Joel Anderson	NH House of Representative Staff
John Magee	NH Fish and Game Department
Harold Janeway	NH Senate

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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## I. ROLL CALL AND INTRODUCTIONS

**Chairperson Sassan** called the meeting to order at 1:06 PM. Chairperson Sassan requested that Commissioners, staff and attendees introduce themselves by name and representation. Introductions were made around the room.

## II. APPROVAL OF MINUTES FROM DECEMBER 1, 2008 MEETING

**Ms. McCarthy** recorded changes noted by the Commission.

1. Page 4, First full paragraph: change “statue” to “statue” in the sentence, “**Ms. Ebel** asked if the coalitions were created by state statute”.
2. Page 5, first full paragraph, third sentence change the order of wording from “general construction permit” to “construction general permit”.
3. Page 5, last paragraph, first sentence: change “Mr. Roseen” to “Dr. Roseen”.

**Dr. Kahl** brought the motion forward to accept the minutes as amended as per Commissioners’ comments from the December 1, 2008. **Ms. Ebel** seconded the motion. **All approved and none opposed.**

## III. DISCUSSION OF NEXT MEETING

**Mr. Danielson** asked if there would be follow up on the question of municipal authority as discussed at the December 1, 2008 meeting. **Chairperson Sassan** responded that the next meeting would have representatives from the Attorney General’s [AG] Office, the Local Government Center [LGC], and Eric Williams from NH Department of Environmental Services. **Rep. Spang** added that all of the Commissions questions related to authority were compiled and emailed to the AG’s Office and the LGC. The AG’s Office responded that they are not responsible for implementing municipal regulations, but that they will attend the meeting and join the discussion.

## IV. PRESENTATION ON THE FLOOD COMMISSION FINAL REPORT – STEVE COUTURE, NHDES

**Mr. Steve Couture**, from the Department of Environmental Services, presented a slideshow titled “Presentation to: HB 1295 Commission to Study the Issue of Stormwater Management”, which described the work and outcome of the Flood Commission established under HB 648. Mr. Couture manages the Rivers Management Program at DES, but he presented to the Commission as a representative of the Flood Commission. **Mr. Couture** explained that the Flood Commission formed as a result of the flooding in 2005 and 2006. The Flood Commission held one meeting that was specifically focused on stormwater. **Mr. Couture** presented the Key Findings related to stormwater that were included in

the Flood Commission's final report. Key Findings included the following identified needs related to stormwater:

- Limit the new construction of critical or state facilities in fluvial hazard zones.
- Establish a state-level regulatory approach for floodplain management.
- Increase ability for the state and municipalities to manage stormwater.
- Ensure that bridges and culverts are adequately sized.
- Increase education and outreach to communities regarding floodplain management and insurance options.

During the presentation **Mr. Couture** explained that the Flood Commission recommended that any new state facility exceeding 5,000 square feet in size would need to implement low impact development practice to meet stormwater volume and flow limits. He stated that this has not yet been implemented at the state level, but it is at the federal level and the Stormwater Commission might want to consider this item to move forward.

**Mr. Couture** described the Flood Commission's recommendation of a state-level regulatory approach for floodplain management. He stated that FEMA recommended that the state develop watershed-specific HEC-RAS models across the state to assist in understanding flood flow characteristics and how land use and climate changes are affecting flood prone areas. This type of modeling could also determine critical flood storage areas needed for protection from development. The State could use it as a basis for build-out analysis. This would also allow the cumulative impacts of stormwater over time to be incorporated into the state regulatory mechanism, possibly through the Alteration of Terrain program. **Rep. Spang** stated that this seems like such a large item that it might not be possible to implement. **Mr. Couture** responded that it might not be possible, but because FEMA made the recommendation and the US Geological Survey expressed interest, they included it. He stated that many more details would be needed before it could be implemented. **Rep. Spang** asked if the Flood Commission discussed doing this on a site-specific basis. **Mr. Couture** responded that there was discussion about Alteration of Terrain projects needed to run an individual HEC-RAS. **Mr. P. Currier** stated that HEC-RAS needs to be run river-by-river and added that there is a lot of information out there already from the HEC-RAS analysis done by FEMA in the 1970's. **Rep. Spang** asked if the flood plain has changed since the 1970's. **Mr. Cedarholm** responded that if USGS moves forward with new topographic maps, the 1970's FEMA HEC-RAS data could be easily updated.

**Mr. Couture** stated that the Flood Commission defaulted many issues to the Stormwater Commission including: limitations on impervious cover, state facility requirements, and climate change impacts. He also stated that some of the recommendations from the Flood Commission are in place, such as the enabling legislation for stormwater utilities. Additional recommendation, yet to be implemented include:

- DES and OEP should provide technical assistance program for communities.
- Continue support for DES and Regional Planning Commissions Innovative Land Use Controls stormwater ordinance.
- Encourage municipalities to submit stormwater infrastructure needs to DES as part of the 2008 Clean Water Needs Survey.
  - Fund stormwater infrastructure improvements through the State Revolving Fund and State Aid Grant programs.
- Develop a multidisciplinary team to assist communities who request help to improve floodplain management, possibly based on the Natural Resources Outreach Coalition [NROC] model.
- Department of Transportation [DOT] should address climate change and impervious surface effects when updating its *Manual on Drainage Design for Highways*.

**Mr. Couture** described the NROC model of community assistance to the Commission. It is a process for municipalities to get planning technical assistance. If they successfully apply, the assistance is committed to that community for a guaranteed amount of time. The NROC model is very goal oriented and stays focused on the established goals. There may be an opportunity to create that type of NROC model to provide technical assistance to communities. **Rep. Spang** asked if “opportunities” means funding opportunities. **Mr. P. Currier** explained that small pots of money from sources such as UNH Cooperative Extension and NHDES Section 319 Nonpoint Source Funding could be used to leverage larger pots of money. **Mr. Diers** of the NHDES Coastal Program explained that a third party assessment of the NROC program was conducted and it was determined that it costs approximately \$160,000 per year to run it. This sum includes in-kind contributions and funding for a coordinator position, as well as trying to allow between \$5,000 and \$10,000 for each community to be used toward funding a project after they complete the program. He stated that NROC is a very intensive program that contracts with only three communities per year. The small number per year is reflective of the intensity of the program and the resources available. **Mr. Couture** added that the National Park Services has a similar program to provide assistance on a focused effort, but it is not tied to funding. Instead, applicants apply for services such as assistance with trails or grant writing. He stated that only a few people at the state level in New Hampshire provide technical services and the best way to get those services out to the public needs to be determined.

**Mr. Couture** described the implementation of Flood Commission recommendation to date, including:

- LSR 207 to include fluvial erosion hazard ordinance into the Innovative Land Use Controls statute.
- LSR 743 to authorize lieu of fee option for wetlands for projects that impact floodplains and stream channels.
- Inventorying state land in 100 & 500-year floodplains.

- Inclusion of 100-year floodplains in new AoT rules. In Zone A the applicant will have to model the floodplain.
- Commission findings/ recommendations included in OEP *Floodlines*, DES newsletter, and Dept. of Safety's electronic newsletter.
- Report to be referenced in Climate Change Task Force Report, Adaptation Chapter and findings/recommendation to be considered in Climate Change Adaptation plan.

**Rep. Spang** asked what would need to be done for the Alteration of Terrain modeling in the 100-year floodplain. **Mr. Couture** explained that the model is to make sure that there is no increase in flood elevations upstream or downstream of the site, that all culverts in the 100-year flood plain must be sized to pass the 100-year event, and that an erosion analysis must be performed. **Chairperson Sassan** asked if the recommendation was considered in the recently adopted Alteration of Terrain rules. **Mr. Couture** responded that it was not considered because the timing was off. He added that changes to the Alteration of Terrain Rules are anticipated for early 2010 at which time this addition could be made.

**Ms. Manzelli** stated that the executive summary of the Flood Commission Report states that the current 100 and 500-year floodplains are incorrect because climate change. Steve stated that DES is trying to obtain funding for statewide LiDAR (Light Detection and Ranging) for all communities to use to update their flood plain maps. That request has been scaled back, however; in an attempt to receive funding for LiDAR acquisition in the Coastal Watershed. **Dr. Roseen** stated that changes in rainfall depth would not require change in modeling and asked if DES is considering adopting new rainfall data. **Mr. Couture** responded that adopting new rainfall data was discussed early on in the Commissions efforts, but it fell under the radar screen.

**Mr. Danielson** asked who has the responsibility in determining the downstream impact of development. **Mr. Couture** explained that the developer must submit data for DES to review. **Mr. P. Currier** added that there are also secondary impacts that are reviewed under the wetlands statute. **Mr. Danielson** stated that the current development of regional impact legislation would give planning Commissions the authority to review development for specific regional impacts and would include a fee. It is currently procedural legislation and doesn't include stormwater. The Commission discussed that stormwater should be included in the regional impact review. **Rep. Spang** added that a municipality, other than the municipality involved, should be given an opportunity to assess for regional impacts and that possibly an amendment should be made to include that. **Mr. Sienkiewicz** asked if the Development of Regional Impact (DRI) has a definition of "impact". **Mr. Danielson** responded that "impact" is not defined. It could be education or it could be economic. **Mr. Danielson** informed the Commission that he will look into it and stated that if a project has a downstream impact, it should be studied more clearly. **Ms. Ebel** stated that this gets back to a watershed scale and added that the regional impact needs to be reviewed on a regional basis.

**Mr. Sienkiewicz** stated that if a project triggers an Alteration of Terrain permit, it will be reviewed and he is not sure that adding a regional review is necessary. He added that a regional impact statement is not a way to regulate. **Dr. Roseen** stated that the trigger for an Alteration of Terrain permit is 100,000 square feet of disturbance and gave a 50 foot wide and 200 foot long road as an example stating that roads can go in without a permit review if no houses are proposed. He suggested that the state might want to lower the 100,000 square foot trigger and propose a change to the Alteration of Terrain rules. He stated that this would increase the number of projects getting reviewed, and added that the smaller projects should be reviewed by EPA. **Mr. P. Currier** suggested having municipalities use the same performance requirements as the Alteration of Terrain permit, but for municipalities to receive technical assistance to allow them to conduct their own reviews. **Mr. Sienkiewicz** stated that the homebuilders' preference would be to not have overlapping or filling of Alteration of Terrain loopholes with municipal authority. He suggested having the Alteration of Terrain program regulate the smaller scale development projects as well. He added that an NROC style of technical assistance would take an extremely long time to cover all of the municipalities in the state. Municipalities already pay for third party review of plans. **Dr. Roseen** asked if there is another way to regulate stormwater than at the municipal level. **Mr. P. Currier** suggested that the state could provide performance specifications that can be adopted by municipalities and encourage municipalities to adopt them. **Chairperson Sassan** asked if the performance specifications would come with incentives for adoption. **Mr. P. Currier** responded yes. **Mr. Sienkiewicz** stated that state incentives would require state money to give.

**Rep. Spang** suggested that the Commission watch a documentary about water infrastructure done by Penn State University called "Liquid Assets" that discusses how 80% of the nation's water infrastructure will soon be obsolete and need replacement. She asked if the impacts on existing infrastructure and the burden on it are being looked at in new development, and if there is a role the state could play in making sure infrastructure doesn't decline. **Dr. Roseen** stated that this is a big discussion beyond water quality. He added that climate change issues are clearly not being addressed and there is no consensus on how to deal with it. He explained that municipalities that are regulating the amount of stormwater added to municipal storm sewer systems that are using old rainfall depths are underestimating the impact. He stated that new rainfall depth data needs to be used. **Mr. P. Currier** stated that performance criteria should be to maintain the existing condition for runoff volume and to maintain the hydrograph, but the impact of climate change needs to be considered since it will put more water in those pipes anyway. **Mr. Cedarholm** offered a response to Rep. Spang's question regarding infrastructure. He stated that the municipal perspective is if it's not broken, don't fix it. The new Municipal Separate Storm Sewer System [MS4] permit that was just issued will require inspection of existing infrastructure, which is a step in the right direction. **Mr. Cedarholm** stated that

the new permit also requires that if a project proposed to discharge to an impaired water, the developer will need to show that the project will have no impact on the impairment. **Dr. Kahl** stated that if the responsibility is on the developer to prove there is no water quality impact and they're using old rainfall data and old floodplain elevations, the impact will be underestimated. **Mr. P. Currier** responded that a state framework to be able to update the data is needed. **Mr. Couture** added that a Climate Change Task Force, headed by DES, was established and that it is finishing its final report. He added that it will be developing a post-report adaptation plan and that the Stormwater Commission may want to be involved with it.

**Rep. Spang** stated that the Commission has not discussed the role of dam management on managing stormwater. **Mr. Couture** responded that when it came to floodplain management, the Flood Commission decided the existing dams will be maintained, but in the future, dams should not be used for flood management. Most dams are designed for water resources management and recreation.

**Dr. Roseen** asked whom the Commission should contact on climate change and the timeframe for the adaptation plan. **Mr. Couture** recommended contacting Sherry Godlewski at DES. **Mr. Diers** stated that the "plan" is more of a list of recommendations at this point and that four or five out of approximately 20 recommendations involve stormwater.

**Dr. Kahl** stated that when a development is proposed in a floodplain, it almost always meets the 100-year floodplain requirements. He added that municipalities have to adopt minimum requirements set by FEMA. **Mr. P. Currier** stated that FEMA's minimum requirements are that the lowest livable floor has to be above the 100-year floodplain, which is very different from restricting development in the floodplain. **Dr. Kahl** added that the floodplain maps are outdated and stated that if a development has a significant increase in impervious cover and an increase in runoff, it could cause downstream communities to not meet the 100-year floodplain requirements. **Mr. Couture** responded that there is currently no requirement to maintain volume and peak flows. **Ms. Gilbert** of the NH Office of Energy and Planning explained that "freeboard" is the most common requirement and typically two to three feet of freeboard above the floodplain is required. **Rep. Spang** asked if municipalities can opt out of those requirements. **Ms. Gilbert** responded that some communities do not want to participate. This means that homeowners in those communities cannot get flood insurance. **Rep. Spang** asked for clarification the type of impact Mr. Couture was referring to in his comment that development cannot have an impact upstream or downstream of a project. **Mr. Couture** responded that there cannot be an increase in flood elevation. This is accomplished through flood storage and erosion potential needs to be considered. A development project may be able to meet the elevation, but the erosion potential of the area shouldn't allow it.

**Mr. Couture** informed the Commission that the Flood Commission is no longer active, but if there are general questions, the Commission can contact the most appropriate member of the Flood Commission. If a more formal interaction is necessary, the Flood Commission Chair, Rep. Anderson, should be contacted.

**Ms. Manzelli** asked if states that have had debilitating floods have requirements that are more stringent than the minimum. **Ms. Gilbert** responded that states mostly have freeboard requirements and added that the Association of Floodplain Managers ([www.floods.org](http://www.floods.org)) has information on what states are doing beyond the minimum. **Mr. Couture** added that Vermont had major flooding in the 1990's and started a flood Commission, which began their fluvial morphology program. After ten years, they now have a law that the state has to be used to advise the municipality when the municipality adopts ordinances.

**Chairperson Sassan** asked if anyone had thoughts on Rep. Spang's question about the ability of existing infrastructure to handle increasing loads. He suggested that some of the data gathering that would go along with the formation of a stormwater utility could serve to answer some of those questions.

## VI. DISCUSSION OF THE EFFECTS OF LAND USE ON WATER QUALITY, AQUATIC HABITAT, AND BIOTA – JOHN MAGEE, NH FISH & GAME

**Mr. Magee** of the New Hampshire Fish and Game Department submitted a draft paper to the Commission titled *Summary of the Effects of Land Use on Water Quality, Aquatic Habitat and Biota*.

[insert web link](#)

**Mr. Magee** informed the Commission that he also submitted the draft paper to the Land Use Commission. He explained that he used impervious surface as a surrogate for stormwater throughout the paper. **Mr. Magee** presented a summary of his paper to the Commission. He explained that there is a lot of information on the topic. Mr. Magee said that there are hundreds of peer-reviewed literature sources that all conclude that an increase in impervious cover directly correlates to a decrease in water quality, habitat, and aquatic life. He stated that this correlation is extremely well document, but what isn't well documented it the threshold of impervious cover in a watershed that begins to impact water quality. A study in Maryland shows impacts at four percent. Ten percent is often cited as the threshold and newer studies indicate that impacts are seen at less than ten percent. **Dr. Roseen** added that a study conducted by USGS in the New Hampshire seacoast showed similar results of 4% and then a big line indicating impacts. **Mr. Magee** continued to discuss the impacts and explained that changes in hydrology from development can lower the water table and decrease the availability of groundwater to maintain base stream flows and supply drinking water. He stated that not all activities are currently regulated, particularly small-scale disturbances. He gave the example that nothing prevents him from building

a shed at his house and that nothing in the current regulations require the 12 to 13 homes in his neighborhood to manage stormwater.

**Mr. Magee** informed the Commission that he could provide additional information on the impact of stormwater on habitat if given more time. **Chairperson Sassan** responded that Mr. Magee had covered the basic duty to study the impact of stormwater on aquatic and terrestrial habitat, and asked the Commission if there were additional questions they would like Mr. Magee to respond to. **Rep. Spang** asked about a presentation on siltation. **Dr. Roseen** asked if Mr. Magee had come across recommendations for the width of riparian buffers to protect aquatic habitat. **Mr. Magee** responded that in general, the greater the buffer width, the less the impact. **Dr. Roseen** asked if it could be as simple as saying that if a buffer is restored it would restore aquatic life or if there are certain buffer widths or a certain percentage of impervious cover that related to a certain reduction in impact. **Mr. P. Currier** stated that there is a difference between connected and disconnected impervious cover. **Dr. Kahl** stated that first order streams need buffers and that impacts are coming from currently unregulated first order streams. He added that this is a regulatory problem. **Rep. Spang** stated that the Comprehensive Shoreland Protection Act [CSPA] put some requirements on impervious cover. **Mr. P. Currier** added that the impervious cover requirements are only within the buffer. **Rep. Spang** stated that there is a flip side because some species require floods. **Mr. Magee** agreed and gave the example that the Silver Maple requires flooding to bring nutrients. **Mr. Magee** stated that there is a problem where floodplains are no longer connected to the stream and gave Nash Stream as an example. They are seeing impacts to native brook trout. The water quality and habitat are okay, but changes to the stream channel and stream dynamics have changed so much that it isn't supporting the brook trout. In response to Dr. Roseen's question, **Mr. Magee** answered that it may be difficult to determine that X% impervious cover requires X width of buffer to mitigate the impacts of the impervious cover because land uses have such different impacts. **Mr. Cedarholm** added that he is wary of when a certain buffer width is specified. He stated that stormwater can find a way to channelize through a buffer and that municipalities rarely go out to see if the buffer is working or if there is channelized flow. **Dr. Roseen** responded that it's important to say that buffers can help where they work, but they aren't the only solution. **Ms. Manzelli** stated that the conversation is getting circular and is going back to the issue of engineering for the 100-year floodplain elevation or the old rainfall data.

**Mr. Paulsen** asked Mr. Magee if he has come across low flow impacts and studies looking at the impact of low flow on habitat such as reduced base flows in dry weather and the ability to support aquatic life. **Mr. Magee** responded that Dr. Tom Ballestero at UNH might have information on that. **Dr. Roseen** added that a good example is in the state of Vermont where they are using hydrology as a basis for Total Maximum Daily Load [TMDL] studies. Hydrology is being used as a surrogate contaminate instead of impervious cover. They establish a boundary of

low flows and high flows. He asked if there is one contaminant that could be used as a surrogate and posed the question, what needs to be regulated to manage stormwater. **Mr. P. Currier** responded that the focus should be on nutrients and total suspended solids [TSS]. **Mr. Paulsen** added that salt is another important contaminant to look at and that the worst violations for salt were in low flow conditions because there was no dilution factor. **Dr. Kahl** gave two local examples of impervious cover thresholds in southern Maine and in literature review. He explained that some studies show 15% impervious cover is the threshold for impacts to water quality, but those higher percentages are in areas like Washington D.C. and New Jersey that are highly urbanized areas where it is very difficult to get into detail. It is more likely that there are impacts to water quality between 4% and 6%. This is from looking primarily at water quality and biota. There is an advantage to looking at impervious cover as a surrogate because it is visible and measurable. **Dr. Roseen** added that effective impervious cover has to be considered and defined. **Mr. P. Currier** stated that effective impervious cover is currently defined by techniques that, if implemented, are considered to “disconnect” a specific area of impervious cover from the drainage network. He added that impervious cover is something that people can understand. **Chairperson Sassan** asked if impervious cover can be assigned a value, he gave the example of a roof being 100% impervious. **Dr. Roseen** and **Mr. P. Currier** explained that it what curve numbers use. **Dr. Kahl** added that lawn may not be impervious cover, but that is isn't included in a buffer strip.

**Chairperson Sassan** told Mr. Magee that the Commission would take him up on his offer to present more information and requested that the Commission members submit their questions for Mr. Magee to Ms. McCarthy or Chairperson Sassan. **Ms. Manzelli** asked if Mr. Magee could look into greater ecosystem impacts because of habitat impacts, such as less diversity or more species with lower quality. **Dr. Kahl** asked about the smaller scale changes in macroinvertebrates and the impact on fish. **Mr. Magee** responded that there is a general link between a change in macroinvertebrate populations and a change in fish, but there is a possibility that the fish species are changing from the same environmental stressor that is changing the macroinvertebrate population and so a direct cause and effect relationship may not be possible to determine. **Ms. Ebel** stated that in journal articles, researchers had a difficult time knowing what the original state of the stream was. She asked if an urban stream gets a new buffer, will the stream come back and is that the goal. **Mr. Magee** responded that urban stream and rivers are pretty resilient and very site specific. **Mr. P. Currier** added that EPA has been encouraging states to create biological indices to rank rivers and streams and define best condition or “undisturbed condition”. He stated that a point can be set for different land uses to be the best condition.

**Mr. E. Currier** asked if engineers are required to calculate and consider the impact of the change in land use. **Mr. P. Currier** responded that empirical coefficients were developed by USDA. **Mr. E. Currier** added that a study was

done by DES in Great Bay on the runoff of nutrients into streams and that agriculture was far less of a source of nutrients than urban runoff.

**VII. DISCUSSION OF FUTURE MEETING TOPICS AND DATES**

**Chairperson Sassan** informed the Commission that the next meeting is on February 2m 2009 at 1:00pm in room 305 of the Legislative Office Building. Representatives from the AG's Office, the Local Government Center, and Eric Williams from DES will attend the meeting to discuss the issue of municipal authority to manage stormwater with the Commission.

Date	Time	Location
February 2, 2009	1:00pm	LOB 305*
March 2, 2009	1:00 PM	LOB 305*
April 6, 2009	1:00 PM	LOB 305*
May 4, 2009	1:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**VIII. ADJOURNMENT**

**Ms. Manzelli** made a motion to adjourn. **Mr. P. Currier** seconded. All approved.

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

February 2, 2009 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: Dari Sassan	NH Office of Energy and Planning
Vice Chair: Judith Spang	NH House of Representatives
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Dave Danielson	NH Association of Regional Planning Commissions
Chris Devine	NH Local Government Center
Rob Roseen	University of New Hampshire Stormwater Center
David Cedarholm	NH Public Works Association
Charlie Hood	NH Department of Transportation
Michael Trainque	American Council of Engineering Companies
Paul Currier	NH Department of Environmental Services
Amy Manzelli	Business and Industry Association of NH
Steve Kahl	NH Lakes Association
Newb LeRoy	Associated General Contractors of NH

**Members Absent:**

Jacalyn Cilley	NH Senate
Eric Stohl	NH House of Representatives
David Borden	NH House of Representatives
Joe Robertie	NH Timber Owners Association
Carl Paulsen	NH Rivers Council

**Others Present:**

Mark Hemmerlein	NH Dept. of Transportation
Eric Williams	NH Dept. of Environmental Services
Paul Sanderson	NH Local Government Center
Bill Hounsell	Hounsell Consulting
Allen Brooks	NH Dept. of Justice, Attorney General's Office

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**I. ROLL CALL AND INTRODUCTIONS**

**Chairperson Sassan** called the meeting to order at 1:02 PM. He informed the Commission that the topic of the meeting's agenda is the issue of municipal authority to manage stormwater. Chairperson Sassan requested that Commissioners, staff and attendees introduce themselves by name and representation. Introductions were made around the room.

## II. APPROVAL OF MINUTES FROM JANUARY 5, 2008 MEETING

**Mr. Danielson** made motion to approve the minutes from the January 5, 2008 meeting. **Rep. Spang** seconded the motion. **All approved and none opposed.**

## III. DISCUSSION OF MUNICIPAL AUTHORITY

**Chairperson Sassan** introduced Mr. Eric Williams, from the NH Department of Environmental Services, Mr. Paul Sanderson from the Local Government Center, and Mr. Allen Brooks from the Attorney General's Office and stated that they agreed to attend the meeting to assist the Commission in answering the set of questions that the Commission put together regarding municipal authority to manage stormwater. **Chairperson Sassan** explained that the questions on the handout would be used to guide the discussion.

See Handout:

**Mr. Eric Williams** began the discussion by going through the handout and explaining the pertinent statues that were used by DES and the Local Planning Commissions when they developed the new Innovative Land Use Guide.

**Mr. Williams** explained that the first statute is under the basic zoning enabling legislation (RSA 674:17). He specifically mentioned sub-sections (c) and (h), which are *to promote health and general welfare* and *to assure proper use of natural resources and other public requirements*. He explained that the issues related to stormwater, such as flooding, are issues of health and general wellbeing. **Mr. Williams** then discussed RSA 674:21 Innovative Land Use Controls. Under sub-section (h) it states that *Innovative land use controls may include, but are not limited to performance standards*. He explained that a municipality can establish an ordinance based on an end condition, but not how that end condition is met and gave the example that development projects must infiltrate the first inch of rainfall. He specified that any ordinance must be in the municipality's Master Plan. **Dr. Roseen** asked how well defined "performance standards" is in the statute. **Mr. Williams** answered that none of the innovative land use controls are very well defined with the exception of sub-section (k), *Inclusionary Zoning*.

**Mr. Williams** then explained there are clear references to stormwater under RSA 674:35 Power to Regulate Subdivisions and RSA 674:44 Site Plan Review

Regulations, which describe the municipal authority to approve or disapprove installation of *other utility mains, piping, connections or other facilities within subdivisions...* and municipal authority to *guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of (1) Inadequate drainage or conditions conducive to flooding of the property or that of another.* **Mr. Williams** explained that the municipal authority to require maintenance is not as clear in the statute. He gave the example of a commercial mall that required the development and implementation of an operation and maintenance plan as part of the permit approval. He asked if it would be a violation of their approval if they did not follow the plan.

**Mr. Williams** then discussed RSA 149-I:6 Bylaws and Ordinances, which enables municipalities to establish utilities for proper maintenance and operation of stormwater systems. He stated that he is uncertain if a municipality does not have a utility established, if they can still use this statute as authority to adopt ordinance and bylaws for stormwater management. He stated that is has been referenced in this way without a municipality having an established utility.

**Mr. Williams** then discussed RSA 485-A:3 Policies, which the city of Manchester cited when adopting its stormwater regulations. It specifies that *the department shall, in the administration and enforcement of this chapter, strive to provide that all sources of pollution within the state shall be abated within such times and to such degrees as shall be required to satisfy the provisions of state law or applicable federal law, whichever is more stringent.* **Rep. Spang** asked if this only applies to communities subject to the EPA Municipal Separate Storm Sewer System (MS4) permit. **Mr. Williams** responded that, according to Manchester's reasoning, yes, it would only apply to MS4 communities because they are required to meet the more stringent federal permit requirements.

In regard to the final question posed by the Commission, *is it legal to alter the volume and direction of flow from one tract to another,* **Mr. Williams** said that he is often asked what the state can do help a property owner who's land is being flooded by a neighbor that has changed their drainage on an adjacent lot. The only answer he has been able to find in statute is under RSA 498:6 Water Rights, which dates back to 1885. It states that it is a civil issue and must be addressed in court. **Mr. E. Currier** asked if a municipal or state road can direct drainage to private property. **Mr. Williams** restated that RSA 498:6 is the only statute he has been able to find and it basically says that the parties involved need to go to the supreme court.

**Mr. Williams** said that he saw a questions asking where overlap exists in local, state, and federal regulations and explained that there is overlap and there are gaps. He gave the example of the EPA Construction General Permit (CGP) with its one acre disturbance threshold and the NH Alteration of Terrain (AoT) Permit with its 100,000 square feet of disturbance limit. He stated that municipalities

sometimes feel that even the 1 acre threshold is too big and they want to adopt local regulations or ordinances to regulate at a smaller scale.

**Mr. Paul Sanderson** introduced himself to the Commission as a staff attorney at the Local Government Center. He also explained that he is a selectman in Greenland, NH, which is a small MS4 community and was previously a hearing examiner for the NH Department of Transportation. In response to the first question on the handout regarding municipal authority, **Mr. Sanderson** reminded the Commission that New Hampshire is not a home rule state. He explained that municipalities only have the authority that is given to them from the state legislature in statute or that can be found in case law. He stated that he agrees with the materials that Mr. Williams provided. He explained that municipal zoning regulations do not govern over government uses such as town hall, public schools, public works and roads. He further explained that they do not cover pre-existing, non-conforming uses such as roads, buildings, or other development completed prior to establishment of zoning regulations. He stated that these are gap areas that existing regulations do not cover.

**Mr. Sanderson** informed the Commission that the duty of town selectmen is to regulate the road systems under RSA 4111 and 4717 and that the planning board does not see or have authority to regulate road projects. He explained that the road system includes the actual road and the right of way containing signs, bridges, and other road structures. He stated that 80% of the roads were created by “prescription” and explained that prescription means that the roads were created long ago because they were simply being used. He explained that the right of way for these roads is often not clearly defined. **Mr. Sanderson** also explained that RSA 236:13 is the driveway statute. Section IV states that driveways are under the jurisdiction of the planning board. At the state level, driveway drainage is dealt with by the DOT.

**Mr. Sanderson** explained that for small MS4 communities, water either comes from private property to an MS4 or goes from roads onto private property. He explained that for hundreds of years there has been a law in place to safely drain runoff onto abutting lands, but the drainage has not always been mapped because of limited resources. He explained that there is an issue with municipal or state government entering private property without permission. If drainage from a private property is suspected of contributing pollutants to a small MS4, the municipality cannot simply go out onto the property and take a sample without permission because of the fourth amendment rights.

**Mr. E. Currier** asked if farmland would be subject to land use restrictions, including wetland rules and regulations, if drainage from a roadway creates a wetland on the farm. **Mr. Sanderson** responded that roads are allowed to drain onto private lands as long as the drainage does not diminish the value and use of the land or unless the loss of value or use is compensated.

**Dr. Roseen** asked Mr. Sanderson to expand on the selectmen's right to regulate roadways, and if it is specific to drainage. **Mr. Sanderson** responded that the language is very general to regulate highways, which is interpreted to mean that they can regulate drainage. He emphasized that the highway is not only the pavement, but also the right of way as well as all three dimensions of the highway including the soil under it. **Dr. Roseen** asked if it is broad enough to cover water quality. **Mr. Sanderson** responded that it covers water quality as far as what is on the impervious cover. **Ms. Ebel** asked if there is case law supporting this and **Mr. Sanderson** responded that there is no case law.

**Mr. P. Currier** stated that if a municipality is regulated under the federal MS4 permit, and drainage from private property is entering the municipal drainage system, it is an illicit discharge and needs to be detected. **Chairperson Sassan** asked if all cases of "dirty water" into an MS4 are considered and illicit discharge. **Mr. Sanderson** responded that there are intentional and unintentional discharges. He gave the example of the trees that were cut after the recent ice storm and the debris from the cutting that ends up in the municipal drainage. He stated that the material will likely block culverts, but it is not an intentional or negligent act. **Chairperson Sassan** then asked if illicit discharges are defined to be intentional. **Mr. Sanderson** responded that it is EPA's authority.

**Mr. P. Currier** stated that illicit discharge may be the wrong term. He always thought that the owner of the pipe was the responsible party. He explained the scenario of a parking lot draining polluted runoff a municipal storm drainage system, which then flows into the state drainage system. If a water quality issue was identified, DES would go to DOT and tell them to fix it. DOT could then go to the municipality and tell them to fix it. The municipality could then go to the parking lot owner and tell them to fix it. **Mr. LeRoy** asked if the municipality can require the property owner to fix it if the parking lot has been there for a long time. **Mr. P. Currier** explained that DOT has the option of treating the polluted water at the end of the pipe or having the municipality clean it up before it reaches the state's drainage system.

**Mr. Danielson** stated that if a municipality adopts a stormwater utility, existing parking lots, as well as other types of development, would need to contribute to the utility in relation to their impact. **Mr. Cedarholm** stated that he does not believe that if a municipality establishes a stormwater utility that they have the authority to force parking lots to clean up. **Mr. Williams** responded that establishing a utility gives a municipality the authority to adopt ordinances. He gave an example that an ordinance could require that every property owner with a catch basin must clean parking lots every six months. **Mr. Cedarholm** stated that it depends on the municipality passing the utility.

**Mr. Mark Hemmerlien** asked what happens in the situation where there is private property draining to a roadway and what authority the DOT has. **Mr. Sanderson** responded that it is addressed case-by-case and investigated up the

drainage line to identify the polluter. DOT would need to investigate the property they have control of and would need permission through an administrative inspection warrant to investigate private property. **Dr. Roseen** added that if DOT is able to monitor where the drainage enters their property and identify that it contains pollutants, they can put the onus on the property owner to identify the source and there is no need to enter private property. **Mr. P. Currier** added that the state or a municipality does not have to allow everyone's drainage to enter their pipe or, if they do allow private drainage, they can specify the water quality of the drainage. **Mr. Sanderson** stated that it is not always possible to find a point of discharge onto a property. He gave the example of drainage from an entire subdivision that may still require an administrative inspection warrant to access the private property.

**Mr. Cedarholm** stated that the Stormwater Utility legislation in 149-I:6 applies to municipalities where sewage or stormwater is pumped or treated. He asked if someone could argue that a utility could not be established because stormwater is neither pumped nor treated in typical municipal drainage systems. **Mr. Williams** responded that even a grass-lined swale or a catch basin has the ability to settle large particles from stormwater and could be considered a form of treatment. **Mr. Cedarholm** continued by suggesting that the majority of references to drainage in the existing statutes are related to providing adequate drainage for the purpose of preventing flooding and providing a sufficiently large component to moving flood water away quickly. He stated that these statutes are not necessarily geared toward the concepts that the Commission is concerned with related to water quality and groundwater recharge. **Mr. Williams** responded that source control is a part of reducing flooding and is therefore part of achieving adequate drainage. He stated that if drainage is contributing to pollution, it is inadequate.

**Dr. Kahl** stated that a grassed ditch is considered treating stormwater and asked if untreated stormwater would be allowed by removing the grass ditch and replacing it with curbing. **Mr. Williams** responded that it would still be treated even though curbing and gutters are not preferred methods of treatment. **Dr. Kahl** asked about combined sewer overflows (CSOs) that stormwater flows into treatment plants. **Mr. Williams** responded that CSOs are regulated through EPA federal stormwater program and that separations are worked out municipality-by-municipality under their specific approaches. **Mr. P. Currier** added that the standard thought is that CSOs should be separated, but separation is not currently required. He gave the city of Nashua as an example of still having a CSO in the downtown area. He also emphasized the point made by Mr. Sanderson earlier that pre-existing conditions are not regulated and present a large gap. **Chairperson Sassan** asked if having a stormwater utility closes the gap of pre-existing conditions. **Mr. Williams** responded that he doesn't think the law is as clear as it could be, but that he believes it addresses pre-existing conditions. **Chairperson Sassan** then asked if a utility can be defined by the drainage divide and gave the example that native soils provide treatment. **Dr. Roseen** asked if a utility is more than a fee structure. **Mr. Williams** responded that a utility is more

than a fee structure because it allows a municipality to create ordinances. He stated that proper operation and maintenance of stormwater structure could be included under the ordinances.

**Mr. Hemmerlien** stated that a municipal sewer system and a storm drainage system are different. He explained that the flow of water cannot just be stopped because there are pollutants in it and added that upstream activities in the watershed cannot be controlled by the owner at the end of the drainage system. He asked how DOT can manage the quality of the drainage when they are not able to control any activities outside of the right of way. **Mr. P. Currier** stated that EPA thinks a municipality can regulate the drainage in an urban compact area and expects them to do so. He added that by not regulating drainage in urban compact areas, municipalities are violating federal law, however; New Hampshire does not have specific legislation enabling municipalities to do so. **Chairperson Sassan** stated that municipalities can choose to either break federal law or meet federal law by going beyond the enabling authority. **Mr. Williams** responded that the city of Manchester does not believe that they went beyond the enabling authority because of RSA 485-A:3.

**Mr. Brooks**, from the New Hampshire Attorney General's Office, added that in the situation where a municipality was not meeting a federal law because the state has not passed enabling legislation would fall back on the state. He stated that the state would have to deal with it. He believes that using RSA 485-A:3 could be legally challenged and stated that the actual sections of the rule, not only the purpose statement should be reviewed to determine the intent.

**Chairperson Sassan** reminded the Commissioners of another legal question they had asked regarding the authority of a municipality to manage stormwater versus to regulate stormwater. **Mr. Cedarholm** clarified that this question was in regard to the difference between stormwater management and drainage and regulating stormwater on existing sites. **Mr. Sanderson** explained a situation with a big box store in Greenland, New Hampshire. He said that the development was possible to design so the stormwater would be managed with the post-development having the same volume of stormwater as the pre-developed condition, but the design did not address water quality. He stated that managing for quantity and regulating for quality are done under site review and conditions subsequent to construction.

**Mr. Cedarholm** stated that it is easy to point out the authority of the various references included in the handout, but that there are always members of the town that will find the loopholes to say that the authority doesn't exist and they are able to convince others that the authority doesn't exist. All of the different pieces of authority scattered throughout the state statutes are not clear enough to convince municipalities. **Rep. Spang** added that a person should not have to go all over the statutes for answers and suggested that the Commission may want to consider writing a single, good statute to make it clear. **Chairperson Sassan** added that the statute could bring New Hampshire municipalities into compliance with the

federal regulations for MS4s. **Rep. Spang** added that this relates to the indirect impact of wetlands. She said she is interested in what Mr. Sanderson said about conditions subsequent to construction because she was lead to believe that conditions subsequent to construction were not allowed. **Mr. P. Currier** responded that at the state level, the 401 Water Quality Certification can be used to require subsequent conditions by putting limits or requirements on pollutant loading from activities from construction activities as well as post-construction operation. He added that the 401 Certification is issued by DES, but it is triggered by a federal permit.

**Dr. Kahl** asked about the advantage of a new statute for stormwater and asked if Mr. Sanderson or Mr. Brooks were aware of similar statutes in other states that the Commission could model. **Mr. Trainque** responded that Vermont might be a good example. **Mr. Sanderson** cautioned against using Maine because they are a home rule state.

**Ms. Manzelli** clarified the subsequent condition issue by explaining that during municipal site plan review or state permit review a permitting agency can impose a condition subsequent to construction meaning that, at the time the permit is evaluated the conditions are issued. She emphasized that this does not mean that conditions can be added subsequent to the permit being issued. **Mr. P. Currier** stated that the 401 Water Quality Certification says a certification can be modified after it is issued if, for example, the water quality standards change. **Ms. Manzelli** responded that the same is not true for municipal site plan review.

**Dr. Roseen** requested the opinion of the legal representatives on the state authority to impose stormwater requirements on the local level. He stated that the biggest challenge with stormwater management is that each municipality has its own regulations. He asked if there is any potential mechanism to enable a state to trickle down to the local level. He also asked how the state and federal regulations can better mesh. **Mr. Sanderson** responded that the state can set a floor that municipalities are required to meet, but he stressed that if a municipality does not have the resources to meet it, the responsibility would fall on the state. He added that the state would need to come forward with resources and assistance for municipalities. **Mr. Sienkiewicz** stated that the homebuilders do not want to see each municipality given the authority to set and interpret their own regulations and develop their own ordinances. He said they would rather see an extension of the state's Alteration of Terrain program. He added that he does not understand why water quality is something that each municipality should be able to decide. **Mr. Brooks** responded that he does not see anything legally wrong with the state setting a water quality floor, but agreed with Mr. Sanderson that it would come down to resources at the municipal level to comply with the state requirement.

**Ms Ebel** referenced the Comprehensive Shoreland Protection Act (CSPA) as an example of a statute that DES is supposed to be enforcing and stated that the town of New London put the CSPA in their local regulations, but that other towns have

not. She added that if the state had the authority to make a town adopt it, they should. **Mr. P. Currier** responded that it is a constitutional issue.

**Mr. Trainque** stated that the MS4 permit requirements are difficult to meet and they should not be used for a state “floor”. He added that resources are so different for each municipality. **Ms. Manzelli** agreed that the NPDES permits including the MS4 permit are getting tighter and suggested that the floor could be set as an either/or scenario. She elaborated that if a municipality is subject to the MS4 permit, it needs to meet the MS4 requirements and if a municipality is not subject to the MS4 permit, they need to, at a minimum, meet other uniform regulations set by the state. She added that at least the other municipalities would have uniform requirements even if they are less stringent than the MS4 permit requirements. **Mr. Cedarholm** suggested that if there is an impaired water within a municipality, that the municipality should be given additional authority to regulate. **Ms. Manzelli** stated that it should depend on the impairment because all waters are impaired for mercury in the state. **Mr. Cedarholm** recommended that the focus be on nutrient and chloride impairments. He stated that the draft 2008 MS4 permit has different requirements if a discharge is made to an impaired water. He gave the example that tracking and reporting of road salt use is required where there are chloride impairments.

**Rep. Spang** asked if there is a link to the problem of pre-existing condition. **Dr. Roseen** responded that the draft MS4 permit deals with pre-existing in terms of watershed loading. **Rep. Spang** asked if this is what EPA is using in the Charles River watershed. **Mr. P. Currier** explained that EPA is using residual designation authority in the Charles River watershed in Massachusetts. EPA is delegated to issue NPDES permits in several states including Massachusetts and New Hampshire. He explained that EPA has the authority in these states to issue permits to individual land owners through a general permit. Individuals submit notices of intent (NOIs) under the general permit. **Dr. Roseen** added that this is happening in in South Portland, Maine, in the Charles River watershed in Massachusetts, and in Vermont. He explained that EPA uses residual designation authority when water quality goals are still not being met because of existing conditions and they base is on impervious cover analysis. He added that mapping impervious cover is another requirements of the draft 2008 MS4 permit.

**Mr. Sienkiewicz** asked if the draft MS4 permit requires municipalities to adopt ordinances to the maximum extent under the law.

**Dr. Kahl** asked if Mr. Sanderson, Mr. Brooks, or Mr. Williams have any recommendations for the Commission to consider. **Mr. Williams** stated that it appears the current statutes are too vague. **Mr. Brooks** added that from the discussion, it sounds like the statute language may need to be more specific depending on the Commission’s objectives. He offered to look at the language once drafted. **Mr. Sanderson** stated that stormwater utilities are still new and that cities will have an easier time than smaller towns with adopting them. He

recommended focusing on incentives and education and outreach to municipalities as well as building partnerships. **Mr. Hounsell**, a member of the audience, recommended that the Commission follow the new stimulus bill. He said that CSO separation is a starting point, but that the real catalyst for action is money. He added that people want to clean up the water, but they just can't afford to do it.

**Dr. Roseen** proposed that the Commission dedicate an entire meeting to the issue of municipal assistance and funding for stormwater utilities so that municipalities do not only see money. He added that the Commission should work on ideas for incentives as well as increasing understanding that utilities help share the cost between new and existing development. **Ms. Manzelli** added that in regard to residual designation authority, she recommends New Hampshire try to improve water quality and address stormwater issues on its own before EPA steps in. **Rep. Spang** responded that it would be helpful if EPA came to explain it. **Mr. P. Currier** said that he agrees with Ms. Manzelli and that stormwater management is not about command and control, it's about education and offering carrots, technical assistance and funding. **Rep. Spang** recommended that the Commission establish objectives and determine which are mandatory and which are permissive. She added the objectives should be consistent with federal regulations.

**Mr. Hemmerlien** suggested that each Commissioner read through the draft 2008 MS4 permit.

**Mr. Roseen** said that there are federal requirements, but that he is still not clear on the issue of state authority. **Ms. Manzelli** summarized that the Clean Water act requires NPDES permits and requires states to set water quality standards. If the water quality standards are not met, it can be considered when a permit is issued. One type of permit is the MS4 permit under the NPDES stormwater program. Under the MS4 permit, municipalities are required to adopt an ordinance or regulation to address stormwater. The authority to adopt the ordinance or regulation is what is in question. **Mr. Sanderson** reminded the Commission to consider pre-emption. He stated that the federal standard is the floor and that the state can choose to be "cleaner" than the federal standards. **Mr. P. Currier** stated that DES reports to congress every two years with the 305(b)/303(d) surface water quality report.

#### IV. DISCUSSION OF FUTURE MEETING TOPICS AND DATES

**Chairperson Sassan** recommended that the Commission consider the formation of subcommittees to address the issues discussed. He stated that the Commission had mentioned at previous meetings that desire to stay in full Commission, but in order to divide the work and to move forward in an efficient manner, he recommends subcommittees. **Ms. Manzelli** agreed with Chairperson Sassan and suggested that the subcommittees report to the full committee. **Chairperson**

**Sassan** recommended that the subcommittees report to the full Commission at each meeting. He suggested that a subcommittee be formed for roads, municipal authority, and state uniformity standards and asked for the Commissioner's opinions. **Dr. Kahl** asked if municipal authority and uniformity are the same thing. **Mr. P. Currier** responded that municipal authority is what Ms. Manzelli described, the enabling authority for municipalities to manage stormwater and that the issue of uniformity is developing technical standards. He explained that there are two pieces to authority and added that there is authority under planning, which is more urgent because landscape change is happening now.

**Mr. Sienkiewicz** responded that he opposes enabling municipal authority to develop individual stormwater ordinances. He does not think there is authority to establish ordinances outside of a stormwater utility and suggested enacting legislation to administer or enforce MS4 requirements. He suggested then filling in the regulation gaps relative to existing development and roads. He added that the question of whether or not the Commission is going to recommend that municipalities be given authority to develop freestanding ordinances needs to be hashed out. He restated that he disagrees with municipalities having that authority because he thinks that is duplicates and overlaps other existing regulations and that the state may have to deal with those overlaps later. **Mr. P. Currier** stated that there are other ways to give authority and that the Commission needs to decide how.

**Ms. Manzelli** suggested that the Commission look at Dr. Roseen funding issue and asked if it should be discussed in the full Commission or in subcommittee.

**Chairperson Sassan** mentioned that the concept of stormwater polluters and the type and amount of pollutants that come from various activities has been brought up and requested as a presentation. **Rep. Spang** suggested using subcommittee to do homework so Chairperson Sassan and Ms. McCarthy do not have to do it all. **Mr. P. Currier** asked if the Commission had agreed on a subcommittee for municipal authority, a second for state uniformity standards, a third for funding issues, and a fourth for roads. **Chairperson Sassan** stated that he would put together a draft terms of reference for the subcommittees.

**Ms. Manzelli** suggested that roads might fit under the uniformity subcommittee. **Rep. Spang** stated that she thinks there will be very little to discuss for the funding subcommittee because there is very little funding available. **Mr. Trainque** responded that the Clean Water Act says that stormwater can be funded the same way as wastewater and now stormwater projects are able to be funded under the State Revolving Fund (SRF) loan program. **Mr. P. Currier** added that there will be money going in to SRF now and stated that the issue is technical assistance. **Chairperson Sassan** clarified that the funding subcommittee is not only money, but also looking at how to market utilities to municipalities.

**Ms. Ebel** asked if municipal authority legislation would only going to cover MS4 communities or if other municipalities would be given authority as well. **Dr. Roseen** responded that the authority would be for all municipalities and the uniformity may only be for non-MS4 communities. **Mr. Sienkiewicz** restated that he sees a problem with municipalities being enabled. **Ms. Ebel** explained that some towns get frustrated because the state works so slowly and that the towns would like to be enabled.

**Dr. Kahl** asked about new development versus existing development and if the Commission should focus on uniformity for new development. **Mr. Sienkiewicz** responded that many waterbodies are already not meeting federal water quality standards. He added that the water quality is not going to get better by regulating only new development.

**Mr. Trainque** stated that municipalities already spend money on stormwater in some way. He explained that a stormwater utility would benefit municipalities because it focuses resources on stormwater activities and funding. He informed the Commission that DES hosted meetings on the stimulus package where Harry Stewart, the Director of the DES Water Division, said that he wants to set up a work group for stormwater issues. He told the Commission that he asked Mr. Stewart to join one of the Commission meetings.

**Chairperson Sassan** informed the Commission that he and Ms. McCarthy would circulate proposals for the subcommittees as well as arrange for a presenter for the March meeting on the topic of stormwater pollution by land use. He reminded the Commission that he arranged to show the documentary titled "Liquid Assets" at 11:30am in room 305 of the Legislative Office Building on March 2n, prior to the next Commission meeting. **Chairperson Sassan** also mentioned that Mr. Trainque had sent several emails to the Commission and that he would consolidate those emails and distribute them for the Commission to discuss.

Date	Time	Location
March 2, 2009	1:00 PM	LOB 305*
April 6, 2009	1:00 PM	LOB 305*
May 4, 2009	1:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**V. ADJOURNMENT**

**Ms. Manzelli** made a motion to adjourn. **Mr. P. Currier** seconded. All approved.

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

April 6, 2009 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: Dari Sassan	NH Office of Energy and Planning
Vice Chair: Judith Spang	NH House of Representatives
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Dave Danielson	NH Association of Regional Planning Commissions
Chris Devine	NH Local Government Center
David Cedarholm	NH Public Works Association
Michael Trainque	American Council of Engineering Companies
Paul Currier	NH Department of Environmental Services
Steve Kahl	NH Lakes Association
Newb LeRoy	Associated General Contractors of NH
Carl Paulsen	NH Rivers Council
Joe Robertie	NH Timber Owners Association
L. Mike Kappler	NH House of Representatives
David Borden	NH House of Representatives

**Members Absent:**

Jacalyn Cilley	NH Senate
Rob Roseen	University of New Hampshire Stormwater Center
Charlie Hood	NH Department of Transportation
Amy Manzelli	Business and Industry Association of NH

**Others Present:**

Mark Hemmerlein (for Charlie Hood)	NH Dept. of Transportation
Joel Anderson	NH House of Representatives Staff

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**I. ROLL CALL AND INTRODUCTIONS**

**Chairperson Sassan** called the meeting to order at 1:04 PM and requested that Commissioners, staff and attendees introduce themselves by name and representation. Introductions were made around the room. It was noted that Rep. Mike Kappler was assigned to the Commission to replace Rep. Eric Stohl.

## II. APPROVAL OF MINUTES FROM FEBRUARY 2, 2009 MEETING

**Mr. Danielson** made motion to approve the minutes from the February 2, 2009 meeting. **Rep. Spang** seconded the motion. **All approved and none opposed; Mr. Paulsen and Rep. Kappler abstained due to their absence at the February 2, 2009 meeting.**

## III. PRESENTATION ON EVENT MEAN CONCENTRATIONS AND LAND USE

**Mr. P. Currier** presented to the Commission on the event mean concentrations of various land uses. He explained that event mean concentration (EMC) is defined by EPA as the total pollutant mass discharge divided by the total runoff volume. EMCs were developed by the EPA's Nationwide Urban Runoff Program (NURP) in the 1980's to serve as a national measure of the magnitude of urban runoff, specifically pollutant loadings. He explained that EMCs exist for all pollutants, but in regard to stormwater sediment, nutrients, bacteria, and metals are the pollutants of concern. EMCs vary depending on geography and from storm to storm. They can be used to generalize and estimate pollutant values per land use over time. He explained that the landscape type influences the EMC and in general as impervious cover increases, the event mean concentration increases.

**Mr. P. Currier** continued to explain that EMCs are used in modeling pollutants loads. He explained that there are many different pollutant loading models available and that NHDES is currently recommending that people use the Simple Method, which can estimate the change in pollutant loading between the pre-developed landscape and the post-developed landscape by breaking the landscape down into different types such as residential, commercial, highway and so on. He explained that the Simple Method uses annual loads for the pre-developed condition based on existing land use and post-development loads based on the proposed level of imperviousness and the proposed land use. To protect water quality, he explained that the desired condition is for post-development pollutant loading to be less than or equal to the pre-development loading. If meeting or exceeding the pre-development pollutant loading is not possible, and a waterbody is not an impaired water or an outstanding resource water, then the antidegradation policy applies. He explained that the draft Alteration of Terrain Program regulations did not require a pollutant loading analysis if a project proposed less than 10% effective impervious cover (impervious cover that contributes to runoff) and greater than 65% undisturbed cover. Meeting the "1065 Rule" would assume that the increase in loading would be minor and would not harm aquatic life.

## IV. PRESENTATION DISCUSSION AND QUESTIONS

**Mr. Sienkiewicz** asked if antidegradation is in the federal Clean Water Act. **Mr. P. Currier** responded that antidegradation is in the clean water act and that EPA requires states to adopt an antidegradation policy. He explained that antidegradation is implemented through the state water quality standards. He explained that antidegradation has not been well implemented. The primary mechanism for implementation is through the 401 Water Quality Certification, which applies to any application for a federal permit, including Army Corp permits and general permits. It was proposed in the draft Alteration of Terrain program administrative rules, but was removed prior to adoption. **Mr. P. Currier** explained that the NPDES Construction General Permit requires a 401 Certification from the state, but that a general 401 Certification gets issued for the general permit and individual projects do not get certified. **Mr. Sienkiewicz** stated that we the exact impact of a project isn't known because a pollutant loading analysis is not required. **Mr. P. Currier** agreed.

**Dr. Kahl** stated that 10% of a site can be impervious and 65% needs to be undisturbed and noted that there is 25% of the property remaining. **Mr. P. Currier** responded that 25% of the property can be developed, but cannot be impervious. **Mr. Paulsen** asked for the definition of effective impervious cover. **Mr. P. Currier** responded that effective impervious cover is impervious cover that contributes to site runoff and that disconnected impervious cover does not contribute to site runoff because it is infiltrated. **Rep. Spang** asked if it takes into account the proximity of the impervious cover to a waterbody. **Mr. P. Currier** responded that the simple method does not take location into account necessarily, although buffer strips are included in the model as a best management practice [BMP]. **Rep. Spang** asked if a pollutant loading analysis is required under the Alteration of Terrain program if the 10% effective impervious cover and the 65% undisturbed cover requirements are met. **Ms. McCarthy** responded that if the antidegradation sections had been adopted as part of the Alteration of Terrain Rules, meeting the 10% and 65% requirements would excuse an applicant from conducting a loading analysis. However, because those sections were removed from the rules before adoption, there is currently no requirement for effective impervious cover and undisturbed cover, or for a pollutant loading analysis under the Alteration of Terrain program.

**Mr. Paulsen** asked if the state would require a 401 Certification on Alteration of Terrain projects. **Mr. P. Currier** responded that because the Alteration of Terrain permit is not a federal permit, it does not need a 401 Certification. **Mr. Cedarholm** asked Mr. P. Currier where else he would like to see antidegradation implemented. **Mr. P. Currier** responded that he would like to see it implemented at the state and local level with requirements on maintaining the hydrograph by not increasing the intensity of runoff and also not increasing pollutant loading. **Dr. Kahl** clarified that using buffer strips as a BMP is not intended to reduce the amount of effective impervious cover, but to provide treatment to reduce the pollutant loading.

V. **PROPOSED WORK PLAN**

**Chairperson Sassan** stated that the focus of the Commission to date has been information gathering, and suggested that the Commission now put together a work plan and establish subcommittees to fulfill its duties. He explained that Dr. Roseen drafted a work plan and proposed subcommittees in a handout given out with the meeting documents. He stated that some Commission members expressed an eagerness in moving forward to make recommendations. He asked for recommendations on the number and type of subcommittees to be formed.

**Rep. Spang** stated that there will be a resources study committee established to study infrastructure and funding and asked if the Stormwater Commission should start the work on funding and hand it over to the committee when it begins work in November. **Chairperson Sassan** responded that Dr. Roseen was the lead on the finding topic and suggested that he might be chair of a funding subcommittee. **Mr. Cedarholm** stated that Mr. Roseen had agreed to chair a funding subcommittee if one were formed. **Dr. Kahl** asked if it is premature to find funding mechanisms without having recommendations to be funded. **Mr. Danielson** responded that part of the funding subcommittee purpose is to see what other states are going for funding. **Rep. Spang** agreed with Dr. Kahl that the needs should be identified before funding and planning can be done. **Mr. P. Currier** stated that there are two parts to stormwater, the existing development retrofits that require funding for infrastructure and new technology, and the new development that requires technical assistance to municipalities to ensure that development is designed to reduce stormwater impacts. He stated that Mr. Sienkiewicz recommended that a state level performance standard be established to assist municipalities. **Rep. Spang** stated that deciding what should be done should be the central subcommittee. **Mr. P. Currier** stated that DES says there can be no increase in loading from development projects, but there are actually no state permits in place to implement it. If a permit were to be developed, it would require substantial funding to administer it. **Rep Spang** asked about the problems with old pipes and infrastructure, which she thinks if more of a regulatory issue and not a funding issue. **Mr. P. Currier** responded that failing infrastructure is not necessarily due to being old, but because it was not designed for treatment.

**Mr. E. Currier** stated that the total phosphorus and total nitrogen EMCs listed in Mr. P. Currier's presentation showed agriculture to be one of the highest sources and asked if funding is available for agricultural activities. **Rep. Spang** asked if the nutrient loading is high because BMPs are not in place or because there is a lack of education and outreach or a lack of enforcement. **Mr. E. Currier** responded that education and outreach would benefit the farm community. **Chairperson Sassan** asked if there are BMP requirements for agricultural operations. **Mr. E. Currier** responded that there are requirements and farmers are trying to comply, but the requirements are dependent on the type of farming being done. **Chairperson Sassan** asked if the EMCs presented are reflective of agricultural land uses with BMPs or without. **Mr. P. Currier** responded that the EMCs are without BMPs being implemented.

**Mr. Hemmerlein** stated that there are requirements for retrofitting and for new development and that DOT does both. He explained that there are active DOT projects that were approved a long time ago. Some road and highway projects can take a long time and although they were approved several years ago, they are required to meet new regulations. He explained that sometimes there is not enough land available in road rights of way to meet the head requirements or for treatments areas. He also explained that for retrofits, they cannot simply change the grade of existing roads. He stated that funding needs serious consideration. He added that there is a lot of regulatory uncertainty right now and it makes it difficult to work. **Chairperson Sassan** stated that the funding subcommittee will look at both existing and new development.

**Chairperson Sassan** stated that a subcommittee for municipal authority had been suggested at previous meetings. **Mr. Hemmerlein** suggested that the subcommittee look at both state and municipal authority. He explained that authority varies greatly by municipality and municipal authority may not be the best approach. Municipalities that adopt lax regulations will have an unfair advantage over municipalities with strict regulations in attracting business. **Mr. Danielson** asked the Commission to keep in mind that planning boards should be involved. He suggested looking at a proposal to EPA from Region 1 to look at regulations and planning from a watershed perspective. **Mr. P. Currier** added that the work in the Great Bay watershed has included three regional planning Commissions because there are three regions in the watershed. **Mr. Hemmerlein** suggested looking at Maryland and Lake Tahoe as examples of regional efforts.

**Chairperson Sassan** summarized that there are to be three subcommittees, a funding subcommittee to look at existing and new infrastructure, a regulatory authority subcommittee, and a uniform performance standards subcommittee and questioned if the uniform standards should fall under the regulatory authority subcommittee. **Mr. P. Currier** suggested that the uniform standards subcommittee should be separate if the task is to suggest what the uniform standards ought to be. **Chairperson Sassan** stated that the uniform standards subcommittee would be science-based to develop recommendations for standards.

**Mr. Sienkiewicz** stated that it is difficult to separate what actually is to be done in regard to replacing infrastructure and how we regulate going forward. He suggested there are two distinct parts, the existing infrastructure and development, and the new, proposed development.

**Chairperson Sassan** stated that roads, chloride, and climate change had all been suggested as subcommittees previously and asked if they were still important to people. **Dr. Kahl** asked what other states are going and suggested that the Commission should not duplicate efforts. He mentioned that the climate change task force could address part of it. **Rep. Spang** asked how not addressing climate change would impact the Commission fulfilling its duties. **Chairperson Sassan**

stated that he thinks the duties have been addressed and that the Commission can pull information from the Task Force's report. **Mr. Paulsen** added that climate change clearly cannot be ignored, but that it can be woven into their recommendations. He also mentioned that there are non-regulatory barriers to stormwater management at the local level. He added that the state cannot simply create uniform standards and hand them over to the municipalities because it could be a 28A [unfunded mandate] issue. He explained that a big concern is that communities do not want to be the first on the block to implement regulations. **Rep. Spang** responded that aside from the subcommittees, the Commission needs to pull everything together and make recommendations, including addressing barriers. **Chairperson Sassan** recommended an outreach subcommittee. **Mr. Danielson** stated that the recommendations need to be made before they can conduct outreach.

**Mr. Sienkiewicz** asked if it is better to retrofit existing infrastructure or focus on new development, and suggested a subcommittee look at that if the answer isn't known. **Mr. P. Currier** responded that in general, the problem is the existing development, but that the current structure puts the burden on new development to maintain pollutant loading. He gave the Great Bay watershed as an example that 50% of the total nitrogen loading comes from stormwater and stated that studies in the Connecticut River watershed and the Merrimack River watershed show the same thing. The issues are due to the developed landscape. **Rep. Spang** added that there are also septic system issues in Great Bay and atmospheric deposition makes up a big part. She stated that Bill McDowall at UNH has been studying nitrogen loading in the Lamprey River watershed.

**Chairperson Sassan** stated that the funding subcommittee will be charged with determining how funds should be spent. **Mr. P. Currier** suggested that it might be possible to obtain estimated costs for new regulations, state technical assistance to municipalities, and retrofits for BMPs. **Chairperson Sassan** agreed that the cost information would be useful, but asked if cost would help prioritize actions. **Dr. Kahl** stated that if there are to be new regulations for existing development, new standards for new development cannot be ignored. **Rep. Spang** asked what the issue was with the new development standards being an unfunded mandate. **Mr. Sienkiewicz** explained that if every municipality has to implement the Alteration of Terrain program, they will put the review burden on the developer, which will draw out the permitting process. **Mr. P. Currier** suggested that unless funding is provided along with uniform standards, municipalities will resist. If uniform standards are going to work either the state will need to develop it and implement it, or the state will need to develop it and provide funding for municipalities. **Mr. Danielson** added that an additional option would be for municipalities to adopt stormwater utilities that can fund it.

**Rep. Spang** suggested that the subcommittees meet in succession and stated that she is concerned that the subcommittees are discussing funding and regulating things that haven't been identified yet. **Rep. Borden** suggested that a

subcommittee focus on defining the problem. **Rep. Spang** suggested that the NH Water Primer may be a good start. **Chairperson Sassan** suggested that a needs subcommittee be a one-meeting subcommittee to pull together all the needs identified to this point. **Mr. Cedarholm** asked that the Commissioners send their thoughts on what is needed to Chairperson Sassan or Ms. McCarthy.

**Rep. Kappler** suggested that the authority subcommittee look at the stimulus package on land and roads.

**Rep. Spang** suggested that everyone pick a subcommittee to join that would like to be engaged with. The Commissioners went around the room and selected a subcommittee to join. Chairs were nominated.

#### VI. OTHER BUSINESS

**Ms. McCarthy** provided a handout to the Commissioners that summarized the comments from municipalities, planning Commissions, and other organizations that DES received at the outreach events for the NH Water Resources Primer.

**Ms. Ebel** asked if the Commission was granted the one-year extension. **Rep. Spang** responded that she believes it passed the House.

**Mr. Danielson** informed the Commission that he will not attend the June 1, 2009 meeting.

#### VII. FUTURE MEETING DATES AND TOPICS

Date	Time	Location
May 4, 2009	1:00 PM	LOB 305*
June 1, 2009	1:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

#### VIII. ADJOURNMENT

**Dr. Kahl** made a motion to adjourn. **Mr. Cedarholm** seconded. All approved.

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

May 4, 2009 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: Dari Sassan	NH Office of Energy and Planning
Vice Chair: Judith Spang	NH House of Representatives
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Dave Danielson	NH Association of Regional Planning Commissions
Chris Devine	NH Local Government Center
David Cedarholm	NH Public Works Association
Michael Trainque	American Council of Engineering Companies
Steve Kahl	NH Lakes Association
Newb LeRoy	Associated General Contractors of NH
Carl Paulsen	NH Rivers Council
Joe Robertie	NH Timber Owners Association
L. Mike Kappler	NH House of Representatives
David Borden	NH House of Representatives
Rob Roseen	University of New Hampshire Stormwater Center
Amy Manzelli	Business and Industry Association of NH
Jacalyn Cilley	NH Senate
Mark Hemmerlein (for Charlie Hood)	NH Dept. of Transportation

**Members Absent:**

Charlie Hood*	NH Department of Transportation
Paul Currier	NH Department of Environmental Services

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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\*Representative sent in place.

**I. ROLL CALL AND INTRODUCTIONS**

**Chairperson Sassan** called the meeting to order at 1:08 PM. Commissioners and attendees introduced themselves by name and affiliation. It was noted that Rep. Mike Kappler was assigned to the Commission to replace Rep. Eric Stohl.

**II. APPROVAL OF MINUTES FROM APRIL 6, 2009 MEETING**

**Rep. Spang** made motion to approve the minutes from the April 6, 2009 meeting. **Dr. Kahl** seconded the motion. **All approved and none opposed.**

### III. SUBCOMMITTEE REPORTS

**Ms. Manzelli** reported that five of the twelve members of the Regulatory Authority subcommittee held a meeting, which focused primarily on the objective of the subcommittee. She stated that the outcome proposed by the subcommittee is to provide a concise and thorough written report of all the authority that exists today in regard to stormwater and to identify and briefly describe programs and source law. She added that they would default to the Needs subcommittee to analyze whether the laws are effective or ineffective. **Chairperson Sassan** responded that he thought the Regulatory Authority subcommittee responsibility would include identification of regulatory needs. **Rep. Spang** added that several of the Needs subcommittee submissions pointed to the Regulatory Authority subcommittee to identify the regulatory gaps. **Ms. Manzelli** responded that the Needs subcommittee could use the list of existing regulations, prepared by the Regulatory Authority subcommittee. The Needs subcommittee can then inform the Regulatory Authority subcommittee of the needs identified, and the Regulatory Authority subcommittee can assess whether the needs can be met through existing regulations or if there are gaps where additional regulation should be proposed. **Mr. Paulsen** added that the Regulatory Authority subcommittee will also look at wetland permitting to assess whether it adequately addresses stormwater, and clarified that regulations and permits will be evaluated to some extent in that subcommittee.

**Chairperson Sassan** stated that it was originally proposed that the Needs subcommittee would meet first to identify the stormwater needs and then go the Regulatory Authority subcommittee to build on the gaps identified. **Dr. Roseen** responded that he thought the Regulatory Authority subcommittee was going to identify the gaps and determine if there was a need for more comprehensive regulation. **Ms. Ebel** added that the Regulatory Authority subcommittee was also going to determine the extent of existing municipal authority to manage stormwater.

**Ms. Manzelli** explained that it is important to have a comprehensive statement identifying the programs that currently exist. She reminded the Commission that during the presentations on municipal authority, Mr. Eric Williams of DES distributed a handout that explained the existing regulatory authority, but then the Attorney General's office representative stated that the authority might not be as clear as it could be.

**Chairperson Sassan** stated that the Regulatory Authority subcommittee should first compile a list of existing regulation related to stormwater, and then determine the gaps where additional regulation could be proposed.

**Rep. Spang** stated that the Needs subcommittee was originally proposed to meet quickly, but that it appears the subcommittee has more to tackle than originally thought. She added that if the Needs subcommittee does end earlier than the other subcommittees, that members should join the remaining subcommittees.

**Senator Cilley** suggested that the Commission also look at other New England state regulations, to which **Chairperson Sassan concurred**. **Dr. Roseen** responded that he has experienced difficulty getting other states to respond, and mentioned Massachusetts in particular, because they are in the middle of figuring it out. **Senator Cilley** offered to request that the Senate Research Committee would research other state stormwater regulations. **Mr. Cedarholm** suggested that the state of New York would also be good to research. **Mr. Trainque** reminded the Commission that he sent around an email summarizing what a few other states in New England are doing.

**Mr. LeRoy** asked for Ms. McCarthy to send out an email with the descriptions and responsibilities of each subcommittee clearly identified. **Ms. McCarthy** read the subcommittee member lists.

**Dr. Roseen** reported that only he and Mr. Danielson attended the meeting of the Funding subcommittee. He explained that they discussed the responsibility of the subcommittee as identifying economic mechanisms, such as impact fees and stormwater utilities, that could be pursued at the state level. **Ms. Manzelli** asked if being pursued at the state level means that it is state funding or if it also includes funding from sources other than the state. She added that there seems to be federal money potentially available. **Dr. Roseen** clarified that currently, funding to manage stormwater does not exist in most cases. The Funding subcommittee would look at ways to generate new money for funding.

**Mr. Danielson** informed the Commission that there is currently a bill to amend the Water Pollution Control Act and the Safe Drinking Water Act, called the Water Infrastructure Financing Act. He explained that the purpose is to increase funding to implement the federal Clean Water Act over the next four years. He added that it is going into committee next week and has implications for funding stormwater with a number of different grant programs. He explained that he could not find stormwater explicitly mentioned in the bill text, but that it does mention combined sewer overflows (CSO's) and pollution control, and relates to waste water and drinking water. He will keep the Commission informed on this bill.

**Mr. Trainque** informed the Commission that the original Clean Water Act made allowances for funding in the SRF (state revolving fund) for both waste water and stormwater, but New Hampshire never added stormwater. He explained that a recent change, partly driven by the economic stimulus, now makes stormwater eligible for funding under the SRF. He added that the stormwater utility

legislation is very narrow and it may need modification to enable it as a funding mechanism.

**Senator Cilley** asked Mr. Danielson if there is a distinction made between waste water and stormwater in the new legislation with a separate fund for each. **Mr. Danielson** responded that he could not find stormwater specifically mentioned in the bill text, but that it does mention grants.

**Mr. Sienkiewicz** reported that the Needs subcommittee met once, but did not have a quorum. At the meeting, subcommittee members discussed putting together a needs statement based on the nine questions outlined in the Commission's Interim Report. He stated that he received responses from some members and he would like to gather more responses before the subcommittee meets again.

#### IV. OTHER BUSINESS

**Mr. Cedarholm** informed the Commission of a Frontline special titled "Poisoned Waters". He explained that it builds on the Penn State documentary, "Liquid Assets", that the Commission watched at the April meeting, by describing sources of stormwater pollution. **Dr. Roseen** added that it can be viewed online at PBS.org under the program Frontline.

#### V. SUBCOMMITTEE BREAK-OUT SESSIONS & REPORTING

The Commission members broke into their respective subcommittees and held work sessions for approximated 45 minutes. The full Commission re-grouped and gave reports on subcommittee work sessions.

**Mr. Sienkiewicz** reported that the Needs subcommittee needs to schedule the next meeting and subcommittee members will be responsible for brainstorming needs to bring to the meeting for discussion. **Ms. Manzelli** reported that the Regulatory Authority subcommittee will meet immediately prior to the next full Commission meeting. She stated that they will work to complete the spreadsheet of applicable programs and permits, including a description of the programs and when it applies. She explained that after the Needs subcommittee provides a list of proposed needs, the Regulatory Authority subcommittee will respond to the identified needs to determine if they are covered under existing authority.

**Chairperson Sassan** reminded the Commission that there needs to be a balance between making sure that all of the issues are being captured and making sure that the subcommittees are not taking on too much.

**Dr. Roseen** reported that the Funding subcommittee compiled a list of categories to look at including, developer incentives, such as a fee structure based on the degree of compliance with stormwater regulations, stormwater utility incentives with a state level stormwater utility fee that municipalities can opt out of. He explained that a municipal incentive could be funding that would go toward local

compliance with the MS4 permit and state stormwater mitigation fund to target locations in need of restoration. **Senator Cilley** stated that identifying the funding before identifying the needs is premature. **Dr. Roseen** responded that many of the funding ideas were based on needs identified in previous meetings and presentations and that the Funding subcommittee will make sure they match up with the identified needs that come out of the Needs subcommittee.

**Ms. Manzelli** requested that all email for subcommittees be send to the full Commission.

**Mr. Cedarholm** stated that Dr. Roseen only mentioned MS4 communities and asked if the Funding subcommittee will consider incentives for municipalities that are not MS4s. **Dr. Roseen** agreed that an incentive for non-MS4 communities would need to be identified. **Mr. Hemmerlein** stated that the Commission needs to consider that the MS4 program is a federal program.

**Mr. Cedarholm** stated that the stormwater utility legislation allows for intermunicipal stormwater utilities.

**Dr. Roseen** continued that a third category to consider is municipal stormwater utilities with an incentive to help them move forward such as technical assistance to help administer the program possible from the Regional Planning Commissions or paid for by the stormwater mitigation fund. **Mr. Danielson** added that redevelopment improvements would also be considered. **Rep. Spang** responded that redevelopment projects may not trigger an Alteration of Terrain permit, but that they are a great opportunity to mitigate for stormwater. She added that state money toward stormwater retrofits could be an incentive. **Mr. Sienkiewicz** asked if a permit would be required if someone renovated a mill yard, but did not disturb an acre. **Mr. Hemmerlein** responded that a permit would not be needed. **Mr. LeRoy** added that there is an exemption for redevelopment in shoreland. **Mr. Sienkiewicz** then stated that existing development is the primary problem with stormwater, yet there is a lot of redevelopment that is not required to get a permit.

**Mr. Danielson** responded that if a community has a stormwater utility fee based on impervious cover, a redevelopment activity that removed impervious cover would see a reduction in their utility fee, which is an incentive. He added that they only discussed incentives, and that most developers want to do the right thing. He stated that the Commission needs to identify ways to help them do the right thing. **Mr. Trainque** added that most stormwater utilities are structured to incorporate credits, which decreases the fee. **Mr. Cedarholm** stated that there might be incentives in land use and zoning. **Mr. LeRoy** added that zoning requires more parking spots than necessary and takes up space that could be used for stormwater treatment. **Mr. Cedarholm** responded that underground parking or buildings over parking areas can be used.

**Mr. Paulsen** stated that antidegradation requires no additional discharge of pollutants into an impaired waterbody. He explained that there is a workgroup talking about trading to allow a project to decrease loading in one area in order to increase loading in another. He asked what incentives there are to keep areas that aren't impaired clean.

**Mr. Hemmerlein** asked how smaller development projects that are below permit thresholds can be brought into the regulatory loop other than municipal authority. **Ms. Ebel** responded that site plan amendments gives opportunities for municipalities to ask for drainage improvements, but municipalities are afraid to ask for too much. She added that if there were funding available to help developers upgrade their drainage, they would be more willing and it would be easier for municipalities to request it.

**Mr. Danielson** asked if the number of parking spaces required in zoning is really needed. **Mr. LeRoy** responded that parking is determined based on the square footage of the business space it is serving and a study showed that there is much more parking required in zoning than is actually needed. **Dr. Kahl** added that the requirements for parking in zoning could be developed to provide an incentive for pervious pavements. He explained that Dr. Roseen stated in earlier meetings that a major barrier for pervious pavement is that there is not a big enough market for it, and that incentives to decrease imperviousness under new NH stormwater law could help develop the market for pervious paving options. **Ms. Ebel** explained that the town of New London negotiated with the hospital when they expended to include a section of pervious pavement. **Chairperson Sassan** stated that parking is currently the responsibility of each individual business owner, but that parking should be a community issue addressed in a municipal parking plan. **Rep. Spang** added that planning boards could request businesses to contribute to a community parking lot or garage. She explained that this would alleviate the concern about using up so much land for parking and added that even pervious pavement consumes natural land. She also stated that she is concerned with all of the abandoned shopping centers and thinks that there should be bonds to tear the parking out.

**Mr. Hemmerlein** stated that it sounds like the Commission is trying to give assistance to community planners and suggested that municipal planning boards could be a mechanism to increase education and awareness. **Mr. Danielson** added that planners have trainings and courses that they are required to take and that it would be beneficial to get this topic onto an agenda for technical training. **Ms. Ebel** reminded the Commission that not all towns hire planners.

**VI. FUTURE MEETING DATES AND TOPICS**

Date	Time	Location
June 1, 2009	1:00 PM	LOB 305*
July 6, 2009	1:00 PM	LOB 305*
August 3, 2009	1:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**VII. ADJOURNMENT**

**The motion was made to adjourn at 3:12pm, and was seconded. All approved.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

June 1, 2009 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: Dari Sassan	NH Office of Energy and Planning
Vice Chair: Judith Spang	NH House of Representatives
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Chris Devine	NH Local Government Center
David Cedarholm	NH Public Works Association
Michael Trainque	American Council of Engineering Companies
Steve Kahl	NH Lakes Association
Newb LeRoy	Associated General Contractors of NH
L. Mike Kappler	NH House of Representatives
David Borden	NH House of Representatives
Rob Roseen	University of New Hampshire Stormwater Center
Amy Manzelli	Business and Industry Association of NH
Mark Hemmerlein (for Charlie Hood)	NH Dept. of Transportation
Paul Currier	NH Department of Environmental Services

**Members Absent:**

Charlie Hood*	NH Department of Transportation
Dave Danielson	NH Association of Regional Planning Commissions
Carl Paulsen	NH Rivers Council
Joe Robertie	NH Timber Owners Association
Jacalyn Cilley	NH Senate

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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\*Representative sent in place.

**I. ROLL CALL AND INTRODUCTIONS**

**Chairperson Sassan** called the meeting to order at 1:12 PM. .

**II. APPROVAL OF MINUTES FROM MAY 4, 2009 MEETING**

**Rep. Spang** gave grammatical changes to Ms. McCarthy. **Rep. Borden** made motion to approve the minutes from the May 4, 2009 meeting with Rep. Spang's amendments. **Ms. Ebel** seconded the motion. **All approved and none opposed.**

### III. OTHER BUSINESS

**Chairperson Sassan** explained to the Commission that he was recently given a new program to manage under the stimulus package in his position at the Office of Energy and Planning and that the time requirements for managing that program are requiring him to step down as chair of the Commission. He requested nominations for a new chairperson.

**Rep. Spang** nominated Mr. David Cedarholm. **Dr. Kahl** seconded the nomination. **Ms. Manzelli** suggested that Mr. Cedarholm be given the opportunity to confirm his ability to meet the time commitment of being Commission Chair. **Mr. Cedarholm** responded that he is honored to be nominated, and explained that his workload is more than it has ever been. He explained that it may be difficult to take on chairing another group and asked for clarification of the duties of the Chair. **Chairperson Sassan** responded that the majority of the Chair's work is in organizing and facilitating meetings, as well as overseeing drafting the final report. He explained that the majority of the work remaining for the Commission to do is happening in the subcommittees. **Mr. P. Currier** added that the subcommittees' work, when completed, should be in a format that can easily be incorporated into the final report.

**Dr. Kahl** suggested that Ms. McCarthy could have an increased role in the Commission beyond taking the minutes. The Commission asked for Ms. McCarthy's opinion. **Ms. McCarthy** responded that DES is already representation on the Commission and that she does not feel it is up to her to expand her role beyond that of Commission staff. **Rep. Spang** responded that she, Chairperson Sassan, Mr. Cedarholm, Ms. McCarthy and the subcommittee chairs should meet and make sure that the work the subcommittee are doing are not duplicating efforts. **Mr. Cedarholm** indicated that he would accepted the role of Chairperson if there was an understanding that the subcommittee Chairs would share equally in the responsibility of preparing the Commission's final report. The subcommittee chairpersons indicated agreement with the condition and Mr. Cedarholm accepted the role of Chairperson. **Chairperson Sassan** made motion to accept Mr. Cedarholm as Commission Chair. **All approved.**

**Rep. Spang** made motion to formally recognize and appreciate Mr. Sassan for his work as chair.

### IV. SUBCOMMITTEE REPORTS

**Mr. Sienkiewicz** informed the Commission that the Needs Subcommittee developed a spreadsheet documenting the needs that had been identified through presentations, discussion, and other Commission materials. He stated that the spreadsheet will be sent out to the full Commission after the meeting.

**Dr. Roseen** reported that the Funding Subcommittee has a draft final product to circulate, which was sent out in an email to the Commission prior to the meeting.

He explained that the product represents a range of funding option to explore. He walked the Commission through the document, and explained each option. He explained that the purpose of the subcommittee is to identify primary funding mechanisms that can be used to fund the recommendation that come out of the Needs Subcommittee and added that these are option.

He explained that the first option is a state-wide stormwater fee. The Subcommittee proposes that this be administered on a municipal level, similar to the licensing fee for motor vehicles. He explained that the reason for a statewide fee is because there are significant political issues with passage of a local utility and a statewide stormwater fee would enable funding to go to both the state – in a stormwater mitigation fund – and the municipality to support their municipal stormwater program. He explained that there needs to be an element added for non-MS4 communities and added that most of the municipalities currently exploring utilities are MS4 communities.

**Ms. Manzelli** asked if the municipal component would not go toward MS4 communities. **Dr. Roseen** responded that the municipal component would go to all communities, as the stormwater fee would apply to everyone, but that there could potentially be a waiver for non-impaired watersheds. **Mr. LeRoy** asked what the acronyms “IC” and “EIC” stand for on the subcommittee’s handout. **Dr. Roseen** responded that they stand for impervious cover and effective impervious and explained that utilities often base their fees on impervious cover. He gave an example of a rooftop that drains directly to a storm sewer system as being effective impervious cover and disconnected impervious cover would be a roof that had a gutter downspout to an infiltration practice or other management practice so the stormwater generated does not enter the storm sewer system.

**Rep. Spang** asked if the state uses a model and not site specific information for the statewide fee if there will be pushback. **Mr. P. Currier** responded that utility fees are lot specific and use the actual square footage of impervious cover on a lot. **Rep. Spang** asked who is responsible for the impervious cover data. **Dr. Roseen** responded that it could be based on the tax record maintained by the municipality or if could be on a per lot basis using a GIS analysis, which involves photo interpretation. **Rep. Spang** suggested that obtaining the data could be difficult for small towns. **Mr. Sienkiewicz** stated that the impervious cover per lot is based on the footprint not the square footage of the building. **Mr. P. Currier** added that there is a built-in incentive for homeowners to accurately report on their properties. **Dr. Roseen** added that fee abatement could come into play by disconnecting areas of impervious cover.

**Mr. Sassan** asked if it would be better to IC and EIC as standard components of the property assessment process instead of having individual property owners prove what is on their site. He added that a portion of the stormwater fee generated could go toward this addition to the assessment. **Dr. Kahl** asked if there would be a threshold, and gave the example of 10% IC on a lot, that would

require no fee. **Dr. Roseen** responded that an IC threshold might be a good incentive to minimizing impervious cover and that it would be in line with how DES proposes to implement antidegradation. **Mr. E. Currier** asked if the stormwater fee would apply to agricultural activities. **Dr. Roseen** responded that there may need to be land use exemptions and agriculture might be one of them. **Mr. LeRoy** pointed out that a barn would not likely be connected to a storm drain system. **Mr. Sienkiewicz** responded that a barn could still be a problem. **Mr. P. Currier** added that if a barn drains to a stream it should be included. **Mr. Sienkiewicz** reminded the Commission that the intention is to try to spread out the responsibility of managing stormwater equally.

**Chairperson Cedarholm** stated that the distinction between impaired and non-impaired watersheds and the potential for a fee waiver for non-impaired watersheds is important. **Ms. Manzelli** cautioned the Commission to be careful with using the term “impairment” and gave the example of the entire state being impaired for mercury as an example. **Dr. Roseen** stated that stormwater impaired should be specified. **Mr. P. Currier** added that DES has a list of stormwater impaired waters of the state that is a subset of the 303(d) list of impaired waters.

**Mr. Hemmerlien** stated that the statewide stormwater fee discussion has focused on private property and asked how it would apply to roads, government and non-governmental organization properties. **Dr. Roseen** responded that roads may need to be addressed separately, but that government buildings would be included. He added that Augusta, Maine created a stormwater utility that included federal buildings because it is not a tax. It is a fee. **Mr. Sassan** asked if private roads would be included. **Dr. Roseen** responded that he is unsure as they have not discussed roads yet. **Ms. Ebel** asked if any other states have done this. **Dr. Roseen** responded that there are no states that he knows of that have implemented a statewide stormwater fee. **Chairperson Cedarholm** asked what this fee system is being modeled after. **Dr. Roseen** responded that it is being modeled after a stormwater utility model.

**Ms. Manzelli** asked what would happen to the stormwater utility legislation if a statewide stormwater fee passed. **Dr. Roseen** responded that the subcommittee did not discuss that, but if a municipality had its own utility, there could be an option for them to get a waiver or some other option to get out of the state program. **Dr. Kahl** added that this could be an incentive to municipalities to adopt their own utilities because the municipality would keep all of the funds generated by the fee instead of having to give the state a portion.

**Mr. Sienkiewicz** asked about implementing a watershed utility. **Mr. Sassan** stated that a watershed utility is fully enabled. **Mr. P. Currier** clarified that it is only fully enabled in the Coastal Watershed.

**Ms. Manzelli** stated that the statewide stormwater fee sounds like education funding where everyone pays into a state fund and then the state decides where

the money goes. **Dr. Roseen** responded that the subcommittee tried to address that concern by assigning ratios of the funds. He described that an option could be a one-time fee, such as an impact fee, that is paid with a building permit and explained that the fee could be abated if the project meets all state requirements and recommendations. He further explained that 25% of the fee would go to the state and 75% to the municipality. **Ms. Manzelli** asked if the 25:75 ratio would apply to the statewide utility as well. **Dr. Roseen** responded that it could. **Rep. Spang** asked if the funds generated by the fee could be used for infrastructure improvements. **Dr. Roseen** responded yes, that it could be used for infrastructure improvements in the same way that a municipality would use the funds from a municipal stormwater utility.

**Mr. Sassan** stated that there is a still a problem that 25% of the funds generated by a municipality go to the state and will be used in other municipalities. **Ms. Manzelli** added that there are some areas that are stormwater problem areas. **Mr. Sienkiewicz** added that inevitable funds generated in rural areas will most likely go to urban areas. **Mr. P. Currier** suggested that the state portion of the fund be managed by watershed, similar to the Wetland Mitigation Fund. **Mr. Hemmerlien** stated that stormwater practices and maintenance are the real funding concerns. **Mr. Sienkiewicz** explained that charging people first creates revenue and secondly it discourages people from doing the things that they're being charged for. He added that it would be great if people changed their land use practices so the fee would end up being small. **Dr. Roseen** added that an effective incentive would be to use a large fee, but that would likely prevent it from being approved. **Mr. Sienkiewicz** stated that the Needs Subcommittee is not able to identify hard numbers that are needed to fund actions. **Ms. Manzelli** responded that the duty of the Commission is to make suggestions that will help manage stormwater in the state. She added to the extent that the suggestions require funding, anything beyond making recommendations for funding mechanisms, should be the responsibility of the legislature.

**Mr. Hemmerlien** stated that the federal government model is just to give money for incentives, but the state doesn't have a funding source.

**Rep. Borden** stated that if legislation is needed, it should be crafted this summer. He added that it needs careful work, but there are great ideas. **Rep. Spang** stated that all the stakeholders need to be involved if and when the legislation is crafted.

**Mr. LeRoy** asked if there could be an exemption if a property was below a certain impervious cover threshold. **Mr. P. Currier** added that it would be an incentive for property owners to disconnect their impervious cover. **Ms. Manzelli** asked if there is literature on the correlation between water quality and impervious cover. **Mr. P. Currier** responded that there is extensive literature on the topic.

**Mr. Hemmerlien** asked if it was reasonable to charge everyone \$5.00 regardless of the amount of impervious cover they have, and let them do improvements to reduce or opt out of the fee. He suggested that an incentive could be a free rain garden or rain barrel. **Ms. McCarthy** responded that in a stormwater utility there are two common credit methods. She explained that one is to lower the fee based on reductions in impervious cover, and the other is similar to what Mr. Hemmerlien suggested, to give a one time credit of a rain barrel or similar practice. **Mr. Hemmerlien** added that by charging all properties the same fee, it would avoid the need for costly data gathering. **Dr. Roseen** responded that the data gathering part is important to be equitable and to build incentives. **Mr. Sassan** stated that he thinks a generous fee would not pass. **Mr. P. Currier** agreed and recommended having IC and IEC phased in with property assessment.

**Rep. Spang** stated that acceptance of a stormwater fee depends on the way it is worded and asked if people want to pay for necessary infrastructure repairs through an increase in property taxes or through a proactive way to adapt to increased stormwater management needs.

**Dr. Roseen** explained that he believes there are more incentives for commercial properties because redevelopment and improvements on existing development could reduce fees.

**Mr. Sassan** asked if there is a recommendation that the Commission could put forward that gets at Rep. Spang's comment on acceptance of a stormwater fee depending on how it is worded. **Rep. Spang** stated that DES is doing a good job and that the Local Government Center could be more involved. **Chairperson Cedarholm** stated that a major part of the new MS4 permit is education and outreach and that in the future, MS4 communities will have to evaluate the effectiveness of their education and outreach programs. He suggested that part of the recommendation could be to educate people on stormwater issues before implementing the fee.

**Ms. Ebel** stated that the Funding Subcommittee seems to have focused on the idea of utilities, she thought that they would also consider funding for technical assistance and other activities. She asked if the Funding Subcommittee envisions that every municipality will have a stormwater utility. **Dr. Roseen** responded that it does envision every municipality having a utility unless they see a waiver because there is no impairment. **Mr. P. Currier** stated that there are impairments on the Connecticut River, Great Bay, and the Merrimack River and that the watersheds for those systems all contribute to impairments. He explained that those watersheds essentially make up the entire, leaving very few municipalities eligible for waivers. **Ms. Ebel** asked if other Commissioners agree that the Funding Subcommittee should look at other funding sources and mechanisms other than stormwater utilities for technical assistance, outreach and education, and enforcement and inspection. The Commissioners all agreed that the subcommittee should look at other funding options in addition to utilities. **Dr.**

**Roseen** responded that they could add a section on all of these things with the same funding mechanism.

**Mr. Trainque** stated that when talking about utilities, they look at all of the things being discussed when they determine the fee. He explained that they need to decide the components that they want in their stormwater program and then determine the level of funding they need to implement the desired program. **Ms. Ebel** responded that her town would need technical assistance to go through the municipal regulations before they would be able to go forward with a utility.

**Mr. P. Currier** stated that there is some cost information from the Connecticut River TMDL project for Long Island Sounds and for the Merrimack River Combined Sewer Overflow Study that might be useful in preparing the final report. **Ms. McCarthy** informed the Commission that there are four municipalities in New Hampshire that were just awarded funding from DES to conduct feasibility studies including Manchester, Dover, Portsmouth, and Nashua. She added that Manchester has already conducted their feasibility study and this funding will go toward development of their implementation plan and outreach. **Mr. Trainque** added that he worked with Manchester and South Burlington in their stormwater utilities and he would be willing to present at it. **Mr. Sassan** suggested he present at the July Stormwater Commission meeting.

**Dr. Roseen** reviewed the rest of the handout including a Stormwater Mitigation Fund. **Mr. P. Currier** added that it could be an antidegradation buy-out program where a developer could use up some of the assimilative capacity and pay for it. **Dr. Kahl** stated that there is a problem with a one time fee that the wealthy can afford it and do what they want. He suggested that a regular fee should be used instead of a one time fee. **Dr. Roseen** stated that there needs to be a big fee as a disincentive and a regular fee would still be in place. **Mr. P. Currier** added that for impaired waters, there needs to be an accounting system in place, not only to verify that water quality is not getting worse, but that it's getting better.

**Mr. Sienkiewicz** stated that the stormwater mitigation fee option does not address existing development. **Chairperson Cedarholm** responded that the stormwater mitigation fee could be in addition to a stormwater utility. **Dr. Kahl** suggested that it all be lumped together under item #1 on the handout.

**Mr. Hemmerlien** stated that the Alteration of Terrain Program already regulates larger projects and suggested that lowering the threshold and tracking water quality could take a lot of staff and money.

**Dr. Roseen** explained that the final item would add an incentive to the Stormwater Utility enabling legislation (HB 1581) to include assistance from the state, likely a circuit rider for staff assistance to municipalities. **Ms. Ebel** volunteered to go to the assessor in her town to see how difficult it would be to add an impervious cover assessment to the standard assessment procedure.

**Chairperson Cedarholm** stated that it should not be difficult for municipalities who have impervious cover GIS layers. **Mr. Hemmerlien** responded that most municipalities do not have GIS. **Dr. Roseen** stated that the idea was to base this on municipal taxes.

**Ms. Manzelli** reported that the Regulatory Authority Subcommittee met before the full Commission meeting and that they will have a final chart of existing regulatory authority related to stormwater that includes federal, state, and general local authority. She invited the full Commission to provide input on the chart. She explained that once the Needs Subcommittee completes its work, the Regulatory Authority Subcommittee will look at what amendments or new legislation may be necessary and move toward drafting new or amending existing legislation.

**Mr. Sassan** informed the Commission that Ms. McCarthy will not attend the next meeting. **Rep. Borden** and **Rep. Spang** offered to take minutes at the next meeting.

**Dr. Kahl** stated that he feels the Commission recommendations should go for the big picture and then fine tune ideas to cover the majority of the identified needs. **Ms. Ebel** responded that the Needs Subcommittee identified and compiled a lot of needs, but that one solution may respond to multiple needs. **Dr. Roseen** added that the job of the next chair will be to limit the scope of the Commission and combine the ideas into a few good recommendations.

**V. FUTURE MEETING DATES AND TOPICS**

**Mr. Trainque** confirmed that he will present on the topic of stormwater utilities at the July 6, 2009 meeting.

Date	Time	Location
July 6, 2009	1:00 PM	LOB 305*
August 3, 2009	1:00 PM	LOB 305*
September 7, 2009	1:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**VI. ADJOURNMENT**

**Ms. Manzelli** made motion to adjourn. **Mr. Sienkiewicz** seconded. All approved. Meeting adjourned at 2:51pm.

**FINAL MINUTES  
HB 1295 COMMISSION TO STUDY THE ISSUE OF  
STORMWATER MANAGEMENT**

July 6, 2009 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH  
Rep. Judith Spang, scribe

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Michael Trainque	American Council of Engineering Companies
Newb LeRoy	Associated General Contractors of NH
Rep. David Borden	NH House of Representatives
Mark Hemmerlein (for Charlie Hood)	NH Dept. of Transportation
Paul Currier	NH Department of Environmental Services
Dave Danielson	NH Association of Regional Planning Commissions
Sen. Jacalyn Cilley	NH Senate
Joe Robertie	NH Timber Owners Association

**Members Absent:**

Dari Sassan	NH Office of Energy and Planning
Charlie Hood*	NH Department of Transportation
Carl Paulsen	NH Rivers Council
Jacalyn Cilley	NH Senate
Eber Currier	NH Farm Bureau
Chris Devine	NH Local Government Center
Steve Kahl	NH Lakes Association
L. Mike Kappler	NH House of Representatives
Rob Roseen	University of New Hampshire Stormwater Center
Amy Manzelli	Business and Industry Association of NH

**Commission Staff Absent:**

Jillian McCarthy	NH Department of Environmental Services
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\*Representative sent in place.

**Non-Members Present:**

Gene Forbes	Hoyle, Tanner and Associates (presenter)
Beth Sargent	Pennachuck Water Works
Joel Anderson	House staff

**I. APPROVAL OF MINUTES FROM MAY 4, 2009 MEETING**

Minutes of Previous Meeting: Approval Postponed, lacking a quorum. (It was later established that a quorum consists of half plus one of the appointed, filled seats.)

**II. PRESENTATION – GENE FORBES, HOYLE, TANNER and ASSOCIATES**

Presentation, Gene Forbes, Hoyle, Tanner and Associates on Stormwater Utilities, featuring work done in Vermont and planning for the Manchester, NH utility. (The Powerpoint presentation is available on-line)

Questions and Comments during the presentation:

**M. Hemmerlein:** Should the utility be municipal? Private? Regional? Or a statewide utility? There are advantages to having the community as a whole hooked into the utility, even those that are outside the utility service boundary, or the municipal boundary.

**G. Forbes:** The legislation passed last year needs to provide clarity on whether the utility is to be project specific, or municipality-wide. It is a responsibility of the community to pass clean water downstream to the rest of the watershed, whether financed through a tax or a utility. In general, NH's legislation needs work to improve clarity.

**J.Spang:** the bill was deliberately general and municipality-driven to avoid political opposition.

**J. Spang:** Should a developer pay a high "impact fee" for installing impervious surfaces to begin with (with subsequent owners paying an ongoing fee)? This would discourage the use of impervious in the first place.

**G. Forbes:** Subsequent owners of a property are still responsible for their runoff, whether they installed the impervious originally or not. Private roads should always be charged for. Some communities charge for public roads, some do not.

**D. Cedarholm:** Agriculture?

**G. Forbes:** In Vermont, farmers get credit against the fees for good BMP's and the program can provide for a rate modification if they are managing waste poorly.

**K. Ebel:** Is there a need to provide more detailed guidance in the statute to help the smaller communities that lack knowledgeable staff?

**G. Forbes:** Maine developed such models. But a cookbook approach prevents communities from wrestling with some important decisions. It is essential to start with a public understanding of the need (flood or pollution control) and then have the public decide how to fund it. It should never be asserted that state or federal regulations are forcing the utility onto the community, because these agencies in

fact do not dictate how the pollution prevention is to be paid for (taxes or utility fees).

**P. Currier:** The Section 319 program is giving money to Rochester, Portsmouth and Nashua to study the feasibility of a utility, and Manchester is receiving money to implement.

**D. Borden:** The Charles River Watershed group is advocating a giant “rain barrel” approach. How would this play into a utility?

**G. Forbes:** The model does not favor major technological solutions, since these require maintenance and ignore dealing with the sources of the problem.

**D. Cedarholm:** Rural areas don’t need the large sums of money that a utility provides, because of the scale and lack of infrastructure.

Mike Trainque will provide Jillian with the powerpoint for the web site, including the link to the Vermont enabling legislation.

### III. INTERIM REPORT DUE NOV. 1, 2009

Interim Report due Nov. 1, 2009 although the final report has been extended until 2010. The report could support a general legislative initiative. The Commission should have a rough draft of the final report finished by Nov/Dec. of ’09 and finished in April/May.

**J. Spang:** One of the Commission’s legislative members can draft wording for legislation, and if the Commission members, with their wide experience and perspective can vet it, the bill would be much better. Any legislation for the 2010 session is due in September, but (Joel Anderson confirmed) legislation coming from a Commission can be submitted later than this deadline.

One of the initiatives from the Commission might be to amend the Stormwater Utility legislation, as well as other issues coming forth in the next few months.

### IV. LAND USE DEVELOPMENT COMMISSION

What is its relationship with the Stormwater Commission? Overlap?

**P. Currier:** No, the LUD Commission is now just dealing with buffers and secondary impacts around surface water bodies, not stormwater *yet*.

**J. Spang** will contact the Chair, Rep. Gottling, to report to us on the Aug. 3<sup>rd</sup> meeting.

### V. SUBSEQUENT MEETINGS

We need to meet more. It was decided that we would meet for 4 hours once a month, for better continuity, rather than twice a month.

### VI. FUTURE MEETING DATES

The next meetings will be Aug. 3<sup>rd</sup> from 12:00-4:00 and Sept. 14<sup>th</sup> from 12:00 to 4:00. Members are invited to bring their lunches.

**VII. NEEDS MATRIX**

A very brief discussion took place on the needs matrix. **Members are urged to review the matrix before the next meeting** and provide D. Sienkiewicz with three things:

- a. Identify elements missing
- b. Identify elements that should be taken out
- c. Comment on which needs should be emphasized.

Comments should be put on the original, with suggestions italicized with the author's initials.

**The meeting adjourned at 3:10**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

August 3, 2009 12:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Michael Trainque	American Council of Engineering Companies
Newb LeRoy	Associated General Contractors of NH
Paul Currier	NH Department of Environmental Services
Joe Robertie	NH Timber Owners Association
Rob Roseen	University of New Hampshire Stormwater Center
Amy Manzelli	Business and Industry Association of NH
Eber Currier	NH Farm Bureau

**Members Absent:**

Dari Sassan	NH Office of Energy and Planning
Charlie Hood	NH Department of Transportation
Carl Paulsen	NH Rivers Council
Chris Devine	NH Local Government Center
Steve Kahl	NH Lakes Association
L. Mike Kappler	NH House of Representatives
Rep. David Borden	NH House of Representatives
Sen. Jacalyn Cilley	NH Senate
Dave Danielson	NH Association of Regional Planning Commissions

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Non-Members Present:**

Beth Sargent	Pennachuck Water Works
Susan Gottling	NH House of Representatives
Matthew Deane	NH Department of Environmental Services Intern

**I. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 12:10pm and announced a change in the order of the agenda.

## II. DEFINITION OF STORMWATER

**Mr. Leroy:** requested that the Commission define stormwater.

**Mr. P. Currier:** Stormwater is not defined in legislation.

**Chairperson Cedarholm:** The definition of stormwater from the DES *Innovative Land Use Planning Techniques Handbook* (Oct. 2008), is *Stormwater runoff is water from rain or melting snow that does not soak into the ground.*

The Commissioners agreed to remove the word “runoff” from the definition and to research a federal definition of stormwater that could be used.

## III. NEEDS MATRIX DISCUSSION

**Chairperson Cedarholm** explained that he inserted an additional section in the Needs Matrix to identify infrastructure needs and read his additions. He agreed to resend the Needs Matrix to the Commissioners with his additions. The Commission went through the Needs Matrix line-by-line for comments.

**Ms. Manzelli:** The Regulatory Authority subcommittee is working on researching all of the stormwater regulations that will address some of the regulatory needs identified in the matrix. The second task of the subcommittee will be to draft any new or revised legislation once the Commission decides on recommendations.

**Rep. Spang:** Where do TMDLs fit into regulating existing development.

**Mr. P. Currier:** TMDLs have broad authority, but it is an arduous process to implement.

**Ms. Manzelli:** Is there authority to go to properties that already have a permit?

**Mr. LeRoy:** If a property is not polluting, there is no authority.

**Mr. P. Currier:** TMDLs apply to properties that have existing permits and hydrology is also a factor in impairments, along with pollutants.

**Rep. Spang:** What about the authority to regulate large parking lots?

**Mr. P. Currier:** EPA extends authority through Residual Designation Authority (RDA), and gave the Charles River Watershed in Massachusetts as an example.

**Ms. Manzelli:** Does the RDA exclude residential subdivisions?

**Dr. Rosen:** The Charles River RDA is based on impervious cover and there are some exclusions.

**Chairperson Cedarholm:** Is RDA is a solution?

**Mr. P. Currier:** It is a solution only if we want EPA to regulate it. EPA Region 1 is the only region implementing RDA and the recent change in Region 1 administration may mean changes in how frequently RDA is used in the future.

**Ms. Manzelli:** When RDA came up before, the Commission decided that it would be better to come up with a New Hampshire specific solution.

**Mr. P. Currier:** EPA may not be able to handle the workload associated with RDAs.

**Chairperson Cedarholm:** The state regulates the 401 Water Quality Certification Program. Can RDA be similarly incorporated into state law?

**Mr. P. Currier:** A lot of authority already exists to regulate impaired waters. Antidegradation can always be used, but that it is difficult to implement.

**Rep. Spang:** Implementation is more likely if there is an active association like in the Charles River Watershed.

**Mr. P. Currier:** DES is funding a project in the Newfound Lake watershed to designate the lake as high quality with exceptional significant. This would require an antidegradation review and alternatives analysis for every development project, and social and economic justification if degradation was proposed. The Water Quality Standards Advisory Committee is working on Social and Economic Justification guidance. DES is currently using the EPA guidance, but that probably isn't what we want to use.

**Ms. Manzelli:** Would RDA only apply to impaired waters and do the measures have to be related to the impairment.

**Mr. P. Currier:** Yes, it would only apply to impaired waters, but there is a process for high quality waters that could work for other waterbodies.

**Dr. Roseen:** Are you [Mr. P. Currier] confident that RSA 485 a:12 gives sufficient authority to use the high quality water approach?

**Mr. P. Currier:** Would be happy to talk about impaired waters protection and high quality water protection at a later meeting.

#### IV. INTRODUCTIONS

Introductions were made around the room.

#### V. APPROVAL OF MINUTES

**Chairperson Cedarholm** explained that the minutes from the 6/09 meeting were not approved at the last meeting.

**Mr. Trainque** motioned to accept the minutes from the 6/1/09 meeting. **Mr. P. Currier** seconded. **All approved, none opposed.**

**Ms. Ebel** made motion to accept the minutes from the 7/6/09 meeting. **Mr. LeRoy** seconded. **All approved, none opposed.**

#### VI. LAND USE COMMISSION UPDATE

**Rep. Gottling** presented an update of the Land Use Commission Progress to the Commission.

The first task was getting all Commission members up to speed with the issues. They heard from three developers for different scales of development. They found gaps and overlap in local, state, and federal permitting.

The Land Use Commission has two focus areas:

- 1). Wetland setbacks – wetlands have sporadic setbacks and there may be a need to a state setback system.
- 2). Habitat fragmentation for wildlife – mid-level development found that local regulations stood in the way of developing.

They had presentations by:

- Tom Irwin & Will Abbott – Greenland decision, which they felt impacted DES jurisdiction over wetlands.
- DES
- DOT
- Jeff Taylor (EPA)
- OEP
- The Jordan Institute
- North Country field trip to Mt. Washington – this showed the Commission a lot more than was interpreted from paper and presentation and caused a few members to change their minds.

The Land Use Commission broke into three sub-committees:

- 1.) To report on on-going legislation
- 2.) To research other state and federal programs and policies in 10 areas (overall environmental policy, wetland regulations, smart growth, etc.) This is proving to be a monumental task and they may pare down to the areas that are most crucial to the issue.
- 3.) To work with HB 222 to determine wetland jurisdiction setbacks. They are looking at secondary effects and are struggling to come up with a way to look at any development within a to-be-determined proximity to a wetland and determine the potential to impact the wetland. They are hoping to use the update of the NH Method so that wetlands are consistently assessed.

**Mr. P. Currier:** The NH Method was developed by UNH Cooperative Extension as a way to rank categories of wetlands. It looks at the function and values of wetlands and sets thresholds for the values that come out of it to rank each wetland as low, mid, and high. Certain requirements may be triggered depending on the value.

**Rep. Gottling:** Many municipal maps showing wetlands are outdated. There are significant changes in hydrology and permits being issued for development in wetlands because the maps did not show wetlands in the project location. Not knowing where the wetlands are and having outdated wetland maps is a big problem.

**Chairperson Cedarholm:** Municipal planning boards have the authority to require wetland delineation by the applicant during site plan review.

**Rep. Spang:** What triggers a secondary impact review? Would they only do a secondary impact review on a certain value of wetland?

**Rep. Gottling:** No, a proximity to the wetland would have to be determined and if a project was within that proximity, a secondary impact review would be triggered. Depending in the value and ranking of the wetland, the development may need to meet certain requirements.

**Mr. LeRoy:** Is it anticipated that recommendations that come out of the Land Use Commission will require an increase in DES staff and if so how will this be funded?

**Rep. Gottling:** That needs to be answered, but the burden would most likely fall on the developer. The Commission has not focused on the funding issue yet. They have focused on how to determine appropriate buffers.

**Ms. Ebel:** How does the NH Method ranking work?

**Mr. P. Currier:** It's a scoring system of 1 through 10 in each category and then the score is aggregated.

**Ms. Ebel:** Some wetlands have long fingers and there may be a single wetland system with high value sections and low value sections. Buffers may need to be adjusted on the same wetland system.

**Chairperson Cedarholm:** It is anticipated that BMP requirements will be incorporated, including LID.

**Rep. Gottling:** It depends on how much detail goes into the legislation and how much goes into the rules. The CSPA [shoreland protection act] has been faulted because it was considered too specific, which has resulted in frequent amendments.

**Ms. Manzelli:** One reason the Stormwater Commission wanted an updated from the Land Use Commission was to see how the two are working in relation to each other. How many of the secondary impacts to wetlands are related to stormwater?

**Rep. Gottling:** Many of them are related to stormwater, but the focus of the Land Use Commission has been how development will trigger requirements.

**Mr. P. Currier:** A hope of the NH Method is to also quantify what might be lost of buffers are not protected.

**Rep. Gottling:** It would be helpful if the Stormwater Commission came up with buffers or restrictions that might cover a gap the Land Use Commission is not filling and send it to the Land Use Commission.

**Ms. Ebel:** Will the Land Use Commission determine what activities can be done within the buffer?

**Rep. Gottling:** There will need to be a balance between the state law and the rules.

**Dr. Roseen:** Will the buffers be limited to wetlands or apply to other surface waters as well?

**Rep. Gottling:** They will not apply to first, second, or third order streams.

**Dr. Roseen:** Maybe the Stormwater Commission could look at the gap between the Land Use Commission buffer recommendations and the CSPA.

**Mr. P. Currier:** The NH Method can be applied to all surface waters including vernal pools. The Surface Water Quality Standards apply to vernal pools, intermittent and ephemeral streams and wetlands.

**Rep. Gottling:** The Land Use Commission does not know where the funding will come from, but if we do not know where the wetlands are, the outcome of the Land Use Commission's work will not be effective.

**Chairperson Cedarholm:** Are prime agricultural wetlands included under the Land Use Commission?

**Rep. Gottling:** They were not specifically mentioned. The list of duties was enormous, so the Commission prioritized. In reality, the Land Use Commission should be integrated with the Stormwater Commission and environmental policy development like is being done in other states.

## VII. NEEDS MATRIX DISCUSSION

**Dr. Roseen:** If 485 A:12 is an arduous process, is there something less arduous?

**Mr. LeRoy:** Is this where a utility would come up?

**Chairperson Cedarholm:** If a municipality sets up a utility can it be used to regulate?

**Mr. P. Currier:** Not everyone's stormwater system is attached to the municipal stormwater system.

**Rep. Spang:** Isn't a utility a funding system with funding incentives?

**Chairperson Cedarholm:** There need to be special provisions for re-development and infill development because the trigger is often lower than 100,000 square feet. It is easy to make improvements to urban areas that are already 100% impervious. For example, roof runoff can be piped directly to a brook instead of running over a parking lot, picking up pollutants and then entering the brook. It doesn't get at the hydrology issue, but it does get at pollutants. Re-development might be to be separate from new development.

**Dr. Roseen:** What is the re-development threshold? They are facing this challenge in Massachusetts. Something is considered re-development if there is a certain percentage of increase in property value or if there is a reconfiguration of 5,000 square feet or more. This is in the Massachusetts and the Rhode Island statutes.

**Ms. Manzelli:** Projects are still limited to the one acre threshold.

**Dr. Roseen:** There might be a lower threshold for re-development.

**Ms. Manzelli:** Lowering the AoT threshold does not matter if it is new or re-development.

**Dr. Roseen:** We need some time to think about the re-development issue.

**Mr. LeRoy:** What about a situation like re-doing the Wal-mart parking lot or another activity that doesn't need an AoT permit?

**Ms. Ebel:** What about situations when there is the potential for drainage improvements to be made when re-doing parking lots, but there is no permit. It would be good for municipalities to have some authority to request improvements.

**Mr. P. Currier:** There needs to be incentives to owners for improving drainage.

**Ms. Manzelli:** It would be nearly impossible to pass legislation for impervious cover limitations in state law.

**Mr. Sienkiewicz:** It would be good to get the correlation between impervious cover and water quality.

**Rep. Spang:** Even if the Stormwater Commission doesn't draft impervious cover legislation as a recommendation, it would still be good for other groups and Commissions to see this information as a finding and be able to use it. It would be very difficult to limit impervious cover on a watershed basis, but there might be a better change on a site basis.

**Mr. P. Currier:** Impervious cover is included in Antidegradation. Tier 1 waters are required to have a 10% Percent impervious cover can be derived from aerial photography. A project in a watershed that the aerial photography analysis shows to have greater than 10% impervious cover would require an analysis showing no additional loading for development activities.

**Ms. Manzelli:** This doesn't impact re-development.

**Mr. P. Currier:** Re-development wouldn't be difficult, but it gets more difficult with new development.

**Chairperson Cedarholm:** Instead of requiring limits on impervious cover, there should be incentives to lower impervious cover.

**Mr. P. Currier:** Impervious cover is a rough estimate. What we should really care about is connected impervious cover. The 10% analysis could be used to see where the impervious cover is.

**Dr. Roseen:** Who would do the assimilative capacity analysis?

**Mr. P. Currier:** If there is only 10% undisturbed cover left, it would assume that the assimilative capacity is used up and an analysis would not be necessary.

**Ms. Manzelli:** This could introduce cap and trade. If someone needs to pave on their own property, they need to remediate elsewhere in the watershed.

**Ms. Ebel:** The overall goal is to facilitate watershed level stormwater planning. Impervious cover is only one component of it.

**Ms. McCarthy:** The country of New Zealand re-zoned all of their political boundaries to coincide with watershed boundaries in the early 1990's.

**Ms. Ebel:** We can't do that, but it does stress the importance of watershed scale management.

**Chairperson Cedarholm:** This is similar to the Southeast Watershed Alliance, which serves the purpose of getting all municipalities in a watershed together.

**Ms. Ebel:** It is consensus to say that we want to encourage watershed level planning.

**Mr. P. Currier:** RSA 483 envisions watershed planning. The statute was expanded from corridor plans to watershed plans. It has not worked very well because the local advisory committees haven't been able to lobby the planning boards.

**Mr. Sienkiewicz:** What do the counties do? Some states have abolished county level government. It is good to not forget that there is another level of government in the state.

**Mr. Trainque:** Watershed-based management is not unprecedented in this country. There are numerous examples out west and in Massachusetts with its inter-basin transfer program.

**Ms. Ebel:** Is there a regulatory need to encourage or require watershed planning?

**Chairperson Cedarholm:** There was some pretty innovative language in the original Southeast Watershed Alliance that included a scoring mechanism. A high score made a municipality eligible for additional funding, but it was removed.

**Mr. Sienkiewicz:** The Needs Matrix lists re-delineation of RPC boundaries to watershed boundaries, but RPCs don't have much authority.

**Rep. Spang:** Some RPCs have circuit riders. What about a stormwater circuit rider?

**Ms. Ebel:** But municipalities have to choose to use a circuit rider.

**Dr. Roseen:** A circuit rider is a good idea, but the qualifications would need to be specified to get the right people for the job.

**Rep. Spang:** There is a general problem that municipalities do not understand the importance of LID.

**Ms. Ebel:** DES should develop LID guidance.

**Mr. P. Currier:** The REPP [Regional Environmental Planning Program] is funded through DES and was set up to provide assistance to municipalities. Assistance could be provided through REPP.

**Ms. Manzelli:** The REPP program could be used for outreach for the *Innovative Land Use Techniques Handbook*.

**Ms. Ebel:** The problem is always funding at the local level. We can throw model ordinances at municipalities, but if they don't adopt and implement the ordinance it doesn't work.

**Mr. P. Currier:** Antidegradation could be incorporated into local ordinances, but it would still require funding.

**Ms. Ebel:** If you make people adopt a local ordinance, it doesn't cost anything except to enforce it.

**Chairperson Cedarholm:** If DOT does the 6” aerial photography, it wouldn’t take much to do a hydrologic analysis from that data.

**Mr. P. Currier:** The concept with Great Bay is to produce a model for nitrogen and determine how much an individual parcel contributes to the bay given its land use and placement in the watershed.

**Mr. Sienkiewicz:** Does it make sense to recommend that the state develop watershed-based hydrology models based on DOT aerials?

**Mr. P Currier:** It sounds like with a little more money to post-process the aerial photos and do an impervious cover analysis would be very beneficial.

**Chairperson Cedarholm:** Mr. Hemmerlen might not have meant 6” topography. Usually LiDAR is used for topography.

**Mr. P. Currier:** The NH Geological Survey would like to do LiDAR for the entire state.

**Chairperson Cedarholm:** Is the Residual Designation Authority [RDA] based on the federal Clean Water Act?

**Mr. P. Currier:** Yes, it goes EPA authority to implement NPDES permitting where there are impairments.

**Dr. Roseen:** The 401 Certification applies to federal permitted activities. RDA has the authority to over unpermitted activities.

**Dr. Roseen:** The Massachusetts re-development trigger is an increase of 50% in fair market value or if pavement is rehabbed, reconstructed, repaired, or improved, and is greater than 5,000 square feet or 5% paved surface. This is in the Mass general stormwater permit.

**Rep. Spang:** The first page of the Needs Matrix includes maintenance of stormwater LID practices.

**Mr. LeRoy:** DES enforcement personnel need more training.

**Mr. P. Currier:** We need a framework for contractors & other parties involved.

**Chairperson Cedarholm:** The MS4 permit requires training.

**Mr. P. Currier:** The federal Antidegradation rules could be made into state law. This would raise the profile and make NH consistent with the federal language. He will circulate the federal rule language.

**Mr. P. Currier:** AoT could review projects in flood plains up to a half acre foot.

**Mr. Sienkiewicz:** How is AoT the correct mechanism? Is it practical to replace storage capacity when the floodplain is developed?

**Dr. Roseen:** You can increase the ability of the soil to store with below surface storage.

**Mr. P. Currier:** The Flood Commission report deals with a lot of this. They identify a bandwidth around a stream and prohibit development within the bandwidth for state owned buildings. We could scratch the words “state owned”.

**Mr. Sienkiewicz:** We should tell the legislature to keep people out of the floodplains.

**Mr. E. Currier:** Floodplains are seasonal. Farms use them while they are inactive.

**Mr. Sienkiewicz:** There are no performance standards for best management practices. The stormwater manual contains guidelines, not mandates. There needs to be clean performance standards that are checked after implementation.

**Chairperson Cedarholm:** Specifications are different than performance criteria.

**Ms. Manzelli:** We should put off this point and determine clear terminology and more specific wording in a later meeting.

**Mr. P. Currier:** This point includes existing and proposed development. Existing development is less clear.

**Mr. Sienkiewicz:** It's fine for municipalities to have a role in a state scheme, but municipalities shouldn't be making their own rules.

**Ms. Manzelli:** The new MS4 permit requires municipalities to do something they may not have the power to do.

**Chairperson Cedarholm:** Municipal authority doesn't exist to manage stormwater, but is required when referring to impaired waterbodies without a TMDL.

**Chairperson Cedarholm:** In regard to the need to reduce the stormwater impacts from road construction and maintenance activities, road crews remove vegetation, but do not replace it. Post-construction BMP maintenance should be applied to road crew operations.

**Mr. Sienkiewicz:** AoT has exemptions for roadwork. DOT is exempt from AoT.

**Mr. P. Currier:** There have been improvements, but the main issue is the incentive to work despite rain. An erosion control certification program might help DOT and public works. Contractors can hire erosion control experts.

**Mr. LeRoy:** Contractors hire erosion control experts because the state doesn't want to do it.

**Chairperson Cedarholm:** Can minimum performance criteria be adopted through legislation or amending existing legislation? The real solution would be enabling municipalities to incorporate innovative land use planning as alternatives.

**Mr. Sienkiewicz:** Performance standards need greater uniformity and to be outcome-based.

**Chairperson Cedarholm:** Performance standards are more important with high quality water. Durham was re-zoned haphazardly and now some sections are light industrial. They are trying to incorporate performance standards for the newly zoned area and are struggling. Is there an existing mechanism to require performance standards?

**Mr. P. Currier:** There are eight criteria that DES can use their discretion to determine if a waterbody is high quality.

**Dr. Roseen:** Certain BMPs on the list of acceptable BMPs should be eliminated based on performance standards.

**Rep. Spang:** Is there research on problem streams?

**Mr. P. Currier:** There is a 3-5 year report that combines all the data that is being made more user friendly.

**Rep. Spang:** Can Antidegradation be used to go after communities that are failing to enact measure to improve water quality?

**Mr. P. Currier:** Not really. Generally, Antidegradation is applied on a project-specific basis. The town has no responsibility to implement it.

**Dr. Roseen:** Towns have an opportunity to impose it, but the authority issues need to be addressed.

**Rep. Spang:** It's not really useful to research the extent of LID. Why are municipalities resistant?

**Dr. Roseen:** We know why they are resistant, but we don't necessarily know how to overcome the resistance.

**Chairperson Cedarholm:** I'm afraid that requirements for LID may discourage development within municipalities.

## VII. FUTURE MEETING DATES AND TOPICS

Revisions to the Needs Matrix will be made for the next meeting.

Date	Time	Location
September 14, 2009	12:00 PM – 4:00 PM	LOB 305*
October 5, 2009	12:00 PM – 4:00 PM	LOB 305*
November 2, 2009	12:00 PM – 4:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

## VIII. ADJOURNMENT

**The meeting adjourned at 4:00pm**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

September 14, 2009 12:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
Karen Ebel	The Nature Conservancy
Donald Sienkiewicz	Home Builders and Remodelers Association
Michael Trainque	American Council of Engineering Companies
Newb LeRoy	Associated General Contractors of NH
Paul Currier	NH Department of Environmental Services
Rob Roseen	University of New Hampshire Stormwater Center
Amy Manzelli	Business and Industry Association of NH
Mark Hemmerlein	NH Department of Transportation
Chris Devine	NH Local Government Center
Steve Kahl	NH Lakes Association
Rep. David Borden	NH House of Representatives
Sen. Jacalyn Cilley	NH Senate

**Members Absent:**

Dari Sassan	NH Office of Energy and Planning
Charlie Hood	NH Department of Transportation
Carl Paulsen	NH Rivers Council ( <b>resigned</b> )
L. Mike Kappler	NH House of Representatives
Dave Danielson	NH Association of Regional Planning Commissions
Joe Robertie	NH Timber Owners Association
Eber Currier	NH Farm Bureau

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Non-Members Present:**

Elizabeth Sargent	Sheehan Phinney Capitol Group
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**I. APPROVAL OF MINUTES**

Approval of minutes was postponed until later in the meeting when a quorum was present.

**II. FEDERAL DEFINITION OF STORMWATER**

**Ms. Manzelli** reported that the federal definition of stormwater from 40CFR122.26(b)(13) is *Stormwater means stormwater runoff, snowmelt runoff and surface runoff and drainage.*

**Dr. Kahl** stated that this definition would not include irrigation runoff.

**Mr. Hemmerlein** added that the federal definition includes the term drainage where the state definition does not. He suggested that the state use the federal definition of stormwater for consistency.

**Rep. Spang** stated that drainage would include irrigation.

**Ms. McCarthy** added that the term “drainage” may need a definition.

### III. SUBCOMMITTEE REPORTS

**Dr. Roseen** reported that the Funding Subcommittee is waiting for the final product from the Needs Subcommittee before proceeding.

**Rep. Spang** responded that the Needs Subcommittee is waiting for comments from the full Commission before they complete their product.

**Ms. Manzelli** reported that the Regulatory Authority Subcommittee completed a list of stormwater regulations that captures what law exists today at the state, federal, and municipal levels that directly or indirectly effects stormwater. She invited the full Commission to comment.

**Ms. Manzelli** stated that there is an issue of whether or not stormwater is considered sewer or water under RSA 485 A:13, Water Discharge Permits. She recapped a memo from Richard Head explaining that stormwater is essentially sewer or waste.

**Ms. Manzelli** presented on the issue of municipal authority to regulate stormwater. She explained that under the new MS4 permit, there are additional requirements for regulating stormwater. She stated that municipalities likely do not have the authority to enact the kind of ordinances that the federal permit is going to require. She explained that in NH, municipalities can only do what the state gives them the authority to do. She agreed that the authority for municipalities to regulate stormwater under state law is probably, but that it is not clear enough.

To address the authority concern, the Regulatory Authority Subcommittee went through the memo provided by Eric Williams of NHDES that summarized the RSA’s that give municipal authority. She explained that the Regulatory Authority Subcommittee concluded that one can gather that municipalities can regulate stormwater under these statutes, but it is not clear in any one statute and all together they still do not cover it clearly. She further explained that the opinion of the Subcommittee is that municipalities do not currently have broad based authority from the state to manage stormwater clearly enough to meet the requirements of the existing and new MS4 permit.

**Dr. Roseen** asked which municipalities in NH have adopted stormwater ordinances.

**Chairperson Cedarholm** responded that Dover, Exeter, Portsmouth, Somersworth and Durham [draft] have stormwater ordinances and he is not sure about municipalities outside of the Coastal Watershed.

**Ms. Manzelli** asked for Commission consensus for the Regulatory Authority Subcommittee to develop a state statute to give municipalities the authority to meet the MS4 permit and asked for suggestions on how it be done. She asked if they should add the language “manage stormwater” onto RSA 3139(I)(f).

**Mr. Hemmerlein** stated that he thought adding that language to RSA 3139(I)(f) was attempted previously and failed.

**Ms. Manzelli** presented three options for new legislation to enable municipalities to manage stormwater:

- 1.) Legislation that gives municipalities authority to do whatever they need to in order to meet the MS4 permit. She asked what happens to municipalities who are not regulated under the NPDES MS4 in this situation.
- 2.) Legislation that gives all municipalities authority to manage stormwater regardless of whether they are required to do so under the MS4 permit.
- 3.) Legislation following the Maine example, which would enact a statewide law for municipalities to adopt a model stormwater ordinance, with some flexibility to address town-specific needs. She asked if the format of that statute should include a model stormwater ordinance.

**Ms. Ebel** stated that in Maine, the DEP drafted the model ordinance, not the legislature.

**Ms. Manzelli** responded that, using Maine as an example, the statute would enable DES to propose a model ordinance for municipalities to adopt.

**Mr. Hemmerlein** stated that the only reason municipalities are adopting stormwater ordinances is because they are required to do so under the NPDES program.

**Ms. Manzelli** responded that regardless of why they are adopting ordinances, NH has a stormwater problem.

**Dr. Roseen** stated that option 3 would get at:

- 1.) Giving municipal authority to implement the MS4 permit, and:
- 2.) Creating uniformity in the model ordinance by requiring municipal adoption. He added that the Commission keeps coming back to the idea of needing uniformity in managing stormwater across the state.

**Ms. Manzelli** explained that the types of authority given under RSA 3139 are those that you do not want to encourage uniformity, such as the right to enter into contracts.

**Rep. Spang** stated that by adding it to the list in RSA 3139 it is saying to manage stormwater however a municipality wishes and provides no guidance.

**Mr. Trainque** stated that in RSA 149(I) addresses waste water and has provisions to allow ordinances. He suggested that it could be added there. He explained that the federal Clean Water Act has provisions for funding waste water

and stormwater projects and that NH has just recently stated to do that under that ARRA stimulus program.

**Mr. LeRoy** asked if it goes in RSA 149(I) if it focuses more at new development and not existing development.

**Mr. Hemmerlein** reminded the Commission that Maine is a NPDES delegated state and they have a more streamlined process because they have control over the NPDES permits. He added that in NH, NPDES is administered by EPA and that it is more difficult to go through the permitting process in NH because a permit applicant has to work with both EPA and DES.

**Mr. P. Currier** added that NH is never likely to request NPDES delegation without staff or funding.

**Mr. Trainque** responded to Mr. LeRoy's comment and stated that he doesn't think 149(I) specifies new or re-development.

**Ms. Ebel** suggested finding out how the approach is working in the state of Maine.

**Ms. Manzelli** stated that the Regulatory Authority Subcommittee needs to think about the 149(I) idea and see if there is an existing model stormwater ordinance that could be used. She asked for other ideas to tackle the municipal authority issue.

**Dr. Roseen** suggested a two-pronged approach to first quickly address the issue of giving municipalities authority and then to develop the ordinance. He explained that the quick version would give authority to comply with MS4 permits and give authority to other municipalities who want it.

**Ms. Manzelli** stated that this would give them the authority to adopt different ordinances.

**Ms. Ebel** suggested that if the Maine example is followed there would need to be a date identified for DES to develop the model ordinances and a date for municipalities to adopt it.

**Mr. Hemmerlein** asked if the model ordinance would be a regulation.

**Ms. Manzelli** responded that the regulation would reference the model ordinance and that DES would review municipal ordinances.

**Mr. Devine** stated that many towns are concerned with steep slopes and are looking for guidance in limitations and requirements for developing on steep slopes. He stated that the Innovative Land Use Guide has developed a model ordinance for steep slopes.

**Ms. Manzelli** stated that the Regulatory Authority Subcommittee will meet and present at a future meeting.

**Rep. Spang** asked if the Subcommittee identified any other gaps when looking at all of the regulations.

**Ms. Manzelli** deferred to the Needs Subcommittee work, which identified several gaps.

**Mr. P. Currier** stated that he will check with Maine to see how this approach is working.

**Rep. Spang** added that it is easier to get an ordinance through town meeting if it is backed by the state.

**Sen. Cilley** asked at what point the Commission will discuss the issue of unfunded mandates.

**Ms. Manzelli** responded that the Funding Subcommittee is waiting for the Regulatory Authority Subcommittee and the Needs Subcommittee work before they consider the issue of unfunded mandates. She added that the Regulatory Authority Subcommittee will look further into the definition.

#### **IV. APPROVAL OF MINUTES**

Corrections to the minutes were recorded by Ms. McCarthy

**Mr. LeRoy** motioned to accept the minutes with corrections from the 8/3/09 meeting. **Ms. Ebel** seconded. **All approved, none opposed.**

#### **V. NEEDS MATRIX DISCUSSION**

The Commission provided comments on the Needs Matrix developed by the Needs Subcommittee. Ms. McCarthy recorded the comments and incorporated them into the matrix.

**Ms. McCarthy** offered to consolidate the information contained in the Needs Matrix and distribute it to the full Commission for future discussion.

#### **VI. FUTURE MEETING DATES AND TOPICS**

Consolidation of the Needs Matrix will be done for the next meeting. The Commission decided the October meeting will be a two hour meeting.

Date	Time	Location
October 5, 2009	1:00 PM – 3:00 PM	LOB 305*
November 2, 2009	1:00 PM – 3:00 PM	LOB 305*
December 7, 2009	1:00 PM – 3:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

#### **VII. ADJOURNMENT**

**The meeting adjourned at 4:02pm**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

October 5, 2009 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Dave Danielson	NH Association of Regional Planning Commissions
Joe Robertie	NH Timber Owners Association
Karen Ebel	The Nature Conservancy
Michael Trainque	American Council of Engineering Companies
Newb LeRoy	Associated General Contractors of NH
Robert Roseau	University of New Hampshire Stormwater Center
Mark Hemmerlein	NH Department of Transportation
Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate

**Members Absent:**

Dari Sassan	NH Office of Energy and Planning
Charlie Hood	NH Department of Transportation
Carl Paulsen	NH Rivers Council ( <b>resigned</b> )
L. Mike Kappler	NH House of Representatives
Eber Currier	NH Farm Bureau
Vice Chair: Judith Spang	NH House of Representatives
Donald Sienkiewicz	Home Builders and Remodelers Association
Paul Currier	NH Department of Environmental Services
Amy Manzelli	Business and Industry Association of NH
Steve Kahl	NH Lakes Association
Rep. David Borden	NH House of Representatives

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**I. APPROVAL OF MINUTES**

Approval of minutes was postponed due to lack of a quorum.

**II. SUBCOMMITTEE REPORTS**

**Dr. Roseen** reported that the Funding Subcommittee is waiting for the final product from the Needs Subcommittee.

**Ms. Ebel** reported that the Stormwater Needs Summary that Ms. McCarthy distributed to the Commission is the Subcommittee's work product and that the Subcommittee is waiting for comments from the full Commission.

**Mr. Danielson** stated that the Stormwater Needs Summary is very helpful and that that legislation could come out of it, but more direction is needed. He asked how the Commission is to make recommendations.

**Ms. McCarthy** explained that the purpose of the Stormwater Needs Summary document is to consolidate the list of needs identified by the Commission from presentations, guest speakers, and meeting discussions. She added that potential next steps would be to prioritize the needs listed and determine recommendations for legislation to address them.

**Dr. Roseen** stated that the list was generated by the Commission and discussed at previous meeting and should therefore not require much discussion.

**Mr. Hemmerlein** stated his concern for how many items are listed and how the Commission could address all of them.

**Dr. Roseen** recommended that the Commission not submit a long list, but instead work on crafting language to prioritize and move forward with recommendations.

**Mr. Danielson** recommended looking at funding and audiences to help prioritize the list of stormwater needs and emphasized the importance of watershed level planning.

**Mr. Hemmerlein** agreed that watershed level planning is important and potentially allows for trading. He added that his work on the chloride issue on the I-93 project has brought source control to his mind. He asked if the Stormwater Needs Summary addresses source control.

**Dr. Roseen** responded that source control is wrapped in with Low Impact Development (LID), buffer protection, and local ordinances.

**Chairperson Cedarholm** added that there needs to be an incentive for municipalities to adopt ordinances and cited the Southeast Watershed Alliance (SWA) as an example. He explained that the majority of municipalities interested in the SWA were there about sewer issues. He added that in Connecticut, they have taken total nitrogen out of the general permit and now have a separate permit specifically for nitrogen that allows for trading between communities. He explained that Connecticut focuses 100% on waste water treatment facility (WWTF) discharges, but that in New Hampshire, WWTF's contribute only about 19% of the total nitrogen problem to Great Bay with 60 – 70% from nonpoint sources. He explained that 25 or more communities in the coastal watershed are unsewered and need to realize that they still contribute to the nitrogen problem in Great Bay. He added that there will be nitrogen loading limits for the watershed.

**Dr. Roseen** asked how the loading limits for the watershed differ from a TMDL [total maximum daily load study].

**Chairperson Cedarholm** responded that DES does not want to do a TMDL because the level of detail required would take ten years or more. He added that DES is doing a modeling exercise.

**Dr. Roseen** commented that there is a difference between chloride and nitrogen because there is no reasonable treatment for chloride like there is for nitrogen. He reiterated Chairperson Cedarholm's point that 50% of the communities in the

SWA do not have WWTFs, but can still use structural source controls to reduce nitrogen loading from nonpoint source pollution.

**Mr. Hemmerlein** stated that the cost per pound per acre of impervious cover would be good to know. He explained that treatment plant upgrades are very costly, but so are structural stormwater best management practices.

**Dr. Roseen** responded that not all stormwater BMPs are costly and gave the example of vegetated buffers. He suggested that the Stormwater Needs Summary list and recommendations be presented to the SWA. He added that the SWA was originally identified as having potential to be a regional stormwater utility.

**Chairperson Cedarholm** stated that almost all of the WWTFs in the watershed are ready to sign off on 8mg/L discharge limits.

**Mr. Danielson** pointed out that the conversation is focused on the seacoast and that the problem is not localized to southeastern New Hampshire. He suggested that the Commission look at the various markets and audiences and determine who they want to address first. He added that a comprehensive approach is needed.

**Chairperson Cedarholm** responded that he agrees with a watershed-wide stormwater utility approach and pointed out that this is enabled in the SWA legislation. He explained that the Alliance has not yet established bylaws.

**Mr. LeRoy** asked if it would be better for municipalities to be the authority with Regional Planning Commissions overseeing it.

**Chairperson Cedarholm** stated that the SWA could be a funding source and that they would need to determine where the money would go and how it would go back to the municipalities. He added that there would need to be incentives for developers to use low impact development or other preferred methods of stormwater management.

**Mr. Danielson** stated that the Regional Infrastructure Improvement Zone is intended to encourage developers to participate in infrastructure improvements by offering a tax incentive.

**Mr. Hemmerlein** stated that states and EPA are already at the point of enforcing the federal Clean Water Act. He added that third parties, like the Conservation Law Foundation, will sue if projects are out of compliance.

**Dr. Roseen** responded that implementing stormwater utilities would be working toward compliance. He added that he will resend the Funding Subcommittee's work product which incorporated the ideas of incentives.

**Mr. Hemmerlein** stated that the BMP approach is not what works today and explained that for 401 Certifications, a pound for pound analysis is required.

**Dr. Roseen** suggested going back to Mr. Danielson's idea of looking at the various audiences and suggested looking at state and federal regulatory compliance and not worrying about the non-governmental organizations.

**Mr. Danielson** suggested looking back at the duties of the Commission as stated in the legislation and make recommendations based on the duties. He suggested

that the Commission take the list in the Stormwater Needs Summary and massage it to fit the duties and goals of the Commission.

**Sen. Cilley** stated that she would like to make sure there are no conflicting bills with the Land Use Commission.

**Ms. Ebel** responded that the Stormwater Commission decided to let the Land Use Commission take the land use topic identified in the Stormwater Commission duties. She added that she heard a stormwater bill went forward.

**Sen. Cilley** responded that she is working with a group to look at all of the Commissions, committees, and other groups to be able to better coordinate legislation going through. She added that there is not enough coordination going on.

**Sen. Cilley** recommended that time also be considered as an incentive in addition to money. She stated that time is almost as important as money and if a developer can get things moving quickly, through expedited permitting, they may be willing to do LID or other improvements. She added that there should be incentives and rewards for good corporate citizens. She suggested asking Tom Burack, the DES Commissioner, about the possibility of expedited permitting and if a piece of legislation would help DES to move that forward.

**Chairperson Cedarholm** responded that incentives are essential and suggested having the incentives spelled out up front so a developer can take incentives into consideration when planning. He explained that if a developer documents a water quality improvement in the city of Durham, the planning board approves the project.

**Mr. Hemmerlein** responded that approving a project only because a water quality improvement is documented is not consistent with the Clean Water Act because you cannot increase loading. He added that there is always the threat of not getting a permit and a developer is not going to risk not getting a permit.

**Mr. Danielson** stated that he gets frustrated that the managers are not making decisions. He explained that when he was working in Bedford a developer said that the whole thing comes down to attitude and that people have to stop looking at developers as the enemy.

**Chairperson Cedarholm** suggested that the Stormwater Needs Summary document is missing some real life examples to relate to each one of the items and present the problem more clearly.

**Ms. Ebel** suggested including the example from Durham that Chairperson Cedarholm explained at a previous meeting. She added that zoning boards have very strict rules that they have to follow and perhaps they can find a way to adjust or soften their requirements.

**Mr. LeRoy** responded that zoning board exceptions are based on demonstration of a hardship and if there is not a hardship, an exception is not granted.

**Dr. Roseen** suggested going through the Stormwater Needs Summary document.

**Ms. Ebel** asked Sen. Cilley for her opinion on the state of Maine's approach that would create a statewide model stormwater ordinance and require municipal adoption. She explained that the model ordinance would have minimum requirements and restrictions that municipalities could choose to strengthen.

**Sen. Cilley** responded that she agreed with the idea. She added that stormwater and water quality do not know political boundaries and if consistency throughout the state is desired, a statewide ordinance would make sense. She also added that developers and managers would benefit from having consistent, uniform standards to meet throughout the state. She stated that people get uncomfortable about the concentration of power with DES and the removal of their decision making power. She added that this could be approaching the CSPA [Comprehensive Shoreland Protection Act], which has been very difficult even though there were many stakeholders involved.

**Mr. Danielson** suggested that instead of DES developing the model ordinance that it should be a task of the Regional Planning Commissions who may be more likely to understand municipal concerns than DES.

**Ms. McCarthy** reminded the Commission that the Regional Environmental Planning Program, in cooperation with DES, put together a post-construction model stormwater ordinance as part of the *Innovative Land Use Handbook*, that could be used or at least be a starting point.

**Dr. Roseen** asked Sen. Cilley if she thinks this approach could work in New Hampshire.

**Sen. Cilley** responded that, for the sake of consistency, it could work if municipalities were able to tweak the language slightly for creativity and ownership of the ordinance. She stated that in her opinion, the best approach for New Hampshire is the approach Maine's took, which required municipal adoption of a statewide ordinance that allows for municipalities to make small adjustments. She added that we do not do a good job of quantifying the benefit of good environmental policy. She explained that environmental policy is often not expressed in economic terms. She stated that if the Commission and DES really support this idea, it will go through easier.

**Ms. Ebel** added that, in Maine, the RPCs helped the municipalities customize the ordinance language.

**Dr. Roseen** reminded the Commission that there has been significant discussion and tremendous support for uniformity thus far in the Commission's work. He suggested that the topic of uniformity in stormwater management across the state be captured as an action item and that the Commission move forward with the idea of uniformity in municipal ordinances. He added that the Commission has been told that any proposed legislation will likely fail without suggestions on municipal funding.

**Sen. Cilley** asked is stormwater improvement will affect the waste stream and reduce the burden on WWTFs.

**Dr. Roseen** responded that there could be a reduced burden on WWTFs, but only in a small number of municipalities that have combined sewer overflow

(CSO) systems. He stated that there could be a big economic reduction. He explained that the city of Portsmouth is reconsidering WWTF upgrades and is instead considering nonpoint source management.

**Mr. Trainque** added that the original federal Clean Water Act addressed wastewater and stormwater and that many states incorporated both into their State Revolving Fund (SRF), but that New Hampshire had only included wastewater until recently. He explained that funding is now available through the SRF program for stormwater.

**Sen. Cilley** explained that with the constrained state budget, municipalities already have less money from the state. She stated that municipalities are not yet able to set their tax rates and that they are already feeling burdened and would be resistant to the state asking them to do more. She added that a stormwater utility would be the way to go to generate funding.

**Dr. Roseen** responded that municipalities being burdened and needing a funding source is the reason why the Commission discussed implementing a utility at the state level with a sliding scale that allowed for exemptions.

**Sen. Cilley** stated that if stormwater is a real problem, it can be quantified and if it can be quantified, we can talk dollars and cents. She suggested telling the story of what stormwater is doing to the state in economic terms and added that flooding is an important part of the story.

**Chairperson Cedarholm** asked the Commissioners to review the Stormwater Needs Summary.

**Dr. Roseen** reiterated Sen. Cilley's points that any recommendation that the Commission crafts needs to address the economic impact, water quality, and flooding.

### III. FUTURE MEETING DATES AND TOPICS

Date	Time	Location
November 2, 2009	1:00 PM – 3:00 PM	LOB 305*
December 7, 2009	1:00 PM – 3:00 PM	LOB 305*
January 4, 2009	1:00 PM – 3:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

### IV. ADJOURNMENT

**The meeting adjourned at 3:10pm**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

November 2, 2009 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Karen Ebel	The Nature Conservancy
Michael Trainque	American Council of Engineering Companies
Newb LeRoy	Associated General Contractors of NH
Robert Roseen	University of New Hampshire Stormwater Center
L. Mike Kappler	NH House of Representatives
Amy Manzelli	Business and Industry Association of NH
Steve Kahl	NH Lakes Association
Dari Sassan	NH Office of Energy and Planning
Donald Sienkiewicz	Home Builders and Remodelers Association
Rep. David Borden	NH House of Representatives
Eber Currier	NH Farm Bureau

**Members Absent:**

Charlie Hood	NH Department of Transportation
Josh Cline	NH Rivers Council
Vice Chair: Judith Spang	NH House of Representatives
Paul Currier	NH Department of Environmental Services
Mark Hemmerlein	NH Department of Transportation
Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate
Dave Danielson	NH Association of Regional Planning Commissions
Joe Robertie	NH Timber Owners Association

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**I. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:05pm and announced that Rep. L. Mike Kappler was re-appointed to the Commission.

**II. APPROVAL OF MINUTES**

**Ms. Manzelli** made a motion to approve the minutes from October 5, 2009 meeting. **Mr. LeRoy** seconded the motion. **All approved and none opposed.**

**Dr. Kahl** made a motion to approve the minutes from the September 7, 2009 meeting. **Ms. Ebel** seconded the motion. **All approved and none opposed.**

**III. INTERIM REPORT**

**Chairperson Cedarholm** informed the Commission that the Commission's interim report was completed and submitted prior to the November 1, 2009 deadline. He thanked Ms. McCarthy for her work on the report.

#### IV. OTHER BUSINESS

**Ms. Manzelli** explained that the work products of the Regulatory Authority Subcommittee are considered final. She asked if they should draft a description of the work products.

**Chairperson Cedarholm** responded that the work products from the Regulatory Authority Subcommittee have not been discussed as a group and suggested that it be on the agenda for the next meeting.

**Ms. Ebel** asked for an explanation of the Regulatory Authority Subcommittee's scope of work.

**Ms. Manzelli** explained that the Subcommittee work includes two things:

- i. Identifying the existing regulations that currently apply to manage stormwater, and;
- ii. Based on the outcome of the Needs Subcommittee, drafting legislation to address the priority stormwater needs.

She explained that the first item has been completed and she will send it out to the Commission, and they are waiting until the full Commission prioritizes the stormwater needs before beginning to address the second item.

**Rep. Kappler** informed the Commission that he had been reading the Commission correspondence while he was out and he was surprised to see that the Commission had not discussed fluvial erosion hazards related to stormwater or the new fluvial erosion program. He explained that the town of Raymond is moving toward passing a fluvial erosion hazard ordinance.

**Mr. Sassan** responded that the Commission had decided earlier in the year, that the Flood Commission had addressed the issue of fluvial erosion.

**Rep. Kappler** suggested that the Commission review the work of the Flood Commission to see where they are in agreement. He agreed to contact the managers of the Fluvial Erosion Program at DES and provide information to the Commission.

#### V. STORMWATER COMMISSION VOLUNTEERS AT THE NH WATER AND WATERSHED CONFERENCE

**Ms. McCarthy** informed the Commission that she will be presenting a session on stormwater at the New Hampshire Water and Watershed Conference on November 20<sup>th</sup> and 21<sup>st</sup>. She explained that there is a hands-on portion of the session when the participants will review the list of stormwater needs identified by the Commission and prioritize them. She suggested that this would be a good opportunity to obtain input from stakeholders, outside of the Commission, and may assist the Commissioners in moving forward with recommendations. She asked for Commission members to contact her if they were willing to participate in the session and be available to respond to questions.

**Chairperson Cedarholm** responded that the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit was discussed at a recent Seacoast Stormwater Coalition meeting. He explained that the NH permit has not been issued yet, but that the Massachusetts permit is going to be watershed-based.

**Dr. Roseen** explained that the MA permit is going to be less stringent than originally thought and that it is watershed-based because it is all tied to TMDLs and the residual designation authority in three watersheds.

**Mr. Trainque** asked if the Interbasin Transfer Act played into the permit. He stated that it affects drinking water and waste waters and would likely affect stormwater as well.

**Dr. Roseen** responded that he did not know if the Interbasin Transfer Act played into the permit.

**Dr. Kahl** asked how EPA deals with the differences between municipalities in a watershed and communication between communities.

**Dr. Roseen** responded that he does not know and explained that when the stormwater permit was originally reviewed, it scored poorly because it was not a watershed approach.

**Chairperson Cedarholm** added that the non-structural requirements of the MS4 permit should be done by all municipalities as good practice, not only those municipalities regulated under the MS4 permit.

## VI. PRIORITIZING STORMWATER NEEDS DISCUSSION

**Ms. Manzelli** suggested that the list of stormwater needs be ranked numerically by each Commission member and be discussed at the next meeting.

**Dr. Roseen** added that everyone could rank the categories and then the sub-categories. He stated that each item on the list is important and that none should drop out completely, but that the Commission needs to prioritize and narrow the list. He offered to put together an electronic survey on Survey Monkey and send it out to the Commissioners.

**Mr. Sassan** suggested that the ranking be based on importance and legislative worthiness.

**Dr. Kahl** suggested that they be ruthless with ranking to avoid everything being top priority.

**Rep. Kappler** told the Commissioners that they should not worry about the number of bills that they recommend. He suggested having more bills with less content. He explained that one bad apple in a single bill addressing many categories will kill the whole thing.

**Ms. Ebel** asked if the Commission needs to have recommendations that touch on all of the Commission duties.

**Mr. Sassan** responded that he thinks it is fair to say that the Commission studies all of the topics specified in the legislation establishing the Commission and that they are moving forward with those that were determined to be priority.

**Ms. McCarthy** added that the final report can discuss all of the findings related to the duties and get into greater detail with the Commission's recommendations.

## VII. REDEVELOPMENT EXAMPLE

**Chairperson Cedarholm** asked Ms. McCarthy to explain the photos of the redevelopment project adjacent to the Winnepesaukee River in Laconia, NH.

**Ms. McCarthy** explained that the project was brought to her attention because the parking lot had been paved to the edge of the river bank. She explained that she contacted Laconia DPW to get a better understanding of the city review and approval process for this re-development project and if there were missed opportunities to improve stormwater management at this site. She explained that the Assistance DPW Director for the city responded, explaining that the project had gone through significant review at the city level and required the creation of a green space with stormwater treatment where there had previously been pavement. He further explained that there had been no increase in the amount of pavement on the site; it was simply re-paved over existing pavement.

**Chairperson Cedarholm** stated that he looked at the stormwater regulations for Laconia and thought they were very similar to Durham's regulations.

**Ms. Manzelli** stated that if she was the attorney for the city, she would say that it was a grandfathered project.

**Mr. E. Currier** suggested that if funding were made available to the developer that could have been put toward a buffer, pervious pavement, or other stormwater improvements that they may have been more willing to make the improvements.

**Dr. Roseen** responded that developers do not always want to do better stormwater management because they might be asked to do it in other places.

**Ms. Ebel** informed the Commission that a survey of the Oyster River Watershed was just completed and that it may be useful in addressing the topic of adapting to climate change.

**Dr. Roseen** explained that the project was a vulnerability assessment of culverts, crossings, and land use change and offered to send the report out to the Commissioners once it is complete.

**Chairperson Cedarholm** stated that the project did not evaluate the closed system in downtown Durham.

## VIII. FUTURE MEETING DATES AND TOPICS

Date	Time	Location
December 7, 2009	1:00 PM – 3:00 PM	LOB 305*
January 4, 2009	1:00 PM – 3:00 PM	LOB 305*
February 1, 2009	1:00 PM – 3:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**IX. ADJOURNMENT**  
**The meeting adjourned at 3:10pm**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

December 7, 2009 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
Michael Trainque	American Council of Engineering Companies
Newb LeRoy	Associated General Contractors of NH
Robert Roseen	University of New Hampshire Stormwater Center
L. Mike Kappler	NH House of Representatives
Steve Kahl	NH Lakes Association
Dari Sassan	NH Office of Energy and Planning
Donald Sienkiewicz	Home Builders and Remodelers Association
Eber Currier	NH Farm Bureau
Joe Robertie	NH Timber Owners Association
Mark Hemmerlein	NH Department of Transportation
Dave Danielson	NH Association of Regional Planning Commissions
Paul Currier	NH Department of Environmental Services

**Members Absent:**

Josh Cline	NH Rivers Council
Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate
Karen Ebel	The Nature Conservancy
Amy Manzelli	Business and Industry Association of NH
Rep. David Borden	NH House of Representatives

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Attendees**

Sally Soule	NH Department of Environmental Services
Shane Csiki	NH Department of Environmental Services

**I. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:07pm and introductions were made around the room.

**II. APPROVAL OF MINUTES**

**Mr. LeRoy** made a motion to approve the minutes from November 2, 2009 meeting. **Dr. Kahl** seconded the motion. **All approved and none opposed.**

**III. FLUVIAL EROSION HAZARD PRESENTATION – SALLY SOULE AND SHANE CSIKI, NHDES**

**Ms. Soule**, of the NHDES Watershed Assistance Section, and **Mr. Csiki**, of the NH Geological Survey, gave a presentation titled, *Reducing Fluvial Erosion Hazards through Improved Stormwater Management*. The presentation discussed the impact of watershed development on stream channels.

**Ms. Soule** explained that there needs to be stream channel equilibrium which is achieved when there is a balance between the volume of water and the sediment load in a river system. She explained that as development increases in a watershed, the volume of water in the river increases, which makes the river sediment-hungry and causes bank erosion as the river tries to increase its sediment load. She explained that in the opposite situation, there is aggradation, where sediment builds up because there is not enough water to move it.

**Ms. Soule** explained that the relationship between impervious cover and water quality are often discussed, but that changes in stream geomorphology in response to development and increases in impervious cover are rarely talked about. She explained that stream channels are always evolving and moving in response to environmental conditions, but when conditions become unnatural, such as after an increase in watershed development, stream channels become out of equilibrium.

**Ms. Soule** presented slides showing increasing levels of imperviousness the resulting stream condition. She explained that at 5% imperviousness, streams have relatively stable banks, decent habitat, and overhanging vegetation, but that when a watershed has 30% imperviousness, streams have down-cutting, active erosion, lateral stream channel movement, and exposed roots on vegetation.

**Mr. Csiki** discussed the Fluvial Erosion Hazard (FEH) Program in New Hampshire. He explained that after the floods in 2005, 2006, and 2007, which resulted in over \$75 million in damages, the FEH program was initiated to identify areas that are potentially sensitive to fluvial erosion in the state to better plan and minimize impacts from future events.

He explained that the program is based on the Vermont Rivers Management Program, which began fifteen years ago and includes protocols for assessing how prone a river is to movement. During a river assessment, ~~he explained that~~ the river is broken down into reaches and, within each reach, ~~they assess~~ various physical characteristics such as the amount of erosion, constriction by bedrock, and the presence of unconsolidated material are assessed. He explained that a reach is assigned a sensitivity rating based on the assessment, which can then be mapped.

He added that a model ordinance for fluvial erosion hazard areas has also been developed and will soon be adopted by the town of Raymond. The model ordinance restricts and manages how development happens in the FEH corridor. To date, he stated that a Fluvial Erosion Hazard Assessment has been completed

on the Exeter River and that they are finalizing the assessments on the Ammonoosuc and the Isinglass Rivers. He said that the next assessments will be done on the Cocheco and Lamprey rivers in 2010 and the Piscataquog and Souhegan rivers in 2011 and 2012. He explained at this point that they are scheduling assessments by request.

**Rep. Kappler** asked if volunteers could be used to complete the assessments.

**Mr. Csiki** responded that there are components of the assessment that could be done by volunteers, but that knowledge of fluvial geomorphology is necessary to complete the full assessment.

**Mr. Hemmerlein** asked if a time scale for erosion potential is predicted as part of the assessment. He explained that in order to be able to use the assessment as a management tool, it would be helpful to have some sort of probability for occurrence.

**Mr. Csiki** responded that if the assessment protocols being used do not predict the likelihood or timetable of occurrence. He added that there is a different protocol called the Bank Erosion Hazard Index protocol that can give a better prediction of that, but the NH protocols are not that in-depth.

**Mr. Danielson** asked if there is information on the actual and potential costs of erosion in New Hampshire and stated that the related costs are important to people.

**Mr. Csiki** responded that the only cost information they have is the estimated costs from the flooding events between 2005 and 2007.

**Dr. Roseen** asked if the assessment and mapping are done with the legal floodplain or the geomorphic floodplain.

**Mr. Csiki** responded that the geomorphic floodplain is used. **Ms. Soule** added that the FEH zone is what is used for the model ordinance, which references the assessment sensitivity maps.

**Dr. Roseen** asked how similar the FEH ordinance is to a stormwater ordinance and if there are volume limitations.

**Ms. Soule** responded that the FEH ordinance is not volume-based, but instead guides the location and placement of stormwater practices within the FEH corridor. She added that the FEH ordinance identifies the river corridor and portions that should avoid development.

**Mr. Hemmerlein** asked if the relationship between impervious cover and fluvial erosion hazard potential has been studied and if so, if there is a strong relationship.

**Ms. Soule** responded that the relationship has been looked at. **Mr. Csiki** added that so far, the assessments in NH have not been in highly urbanized areas. He stated that if an urban area has unconsolidated materials, it is likely to be sensitive.

**Mr. Danielson** stated that some people might think of the FEH zone and ordinance as a taking and asked if there was a saleable point to counter that argument.

**Dr. Roseen** suggested plotting the occurrence of the FEH zone with the 100 year floodplain and potentially it is already covered.

**Mr. P. Currier** responded that flood insurance only covers inundation, not erosion.

**Dr. Kahl** thanked them for not mentioning climate change because invoking climate change it implies that nothing can be done locally to control flooding which is largely an over-development issue.

**Chairperson Cedarholm** asked, aside from an ordinance or land use controls, what could be done in the river.

**Mr. Csiki** responded that there are additional uses for the assessment data stream restoration projects to identify what is happening up and downstream of a project site and for projects requiring wetland review to determine how a river system might respond to landscape changes.

**Mr. E. Currier** suggested that agricultural lands adjacent to rivers be maintained so the land is not lost to development.

**Dr. Kahl** emphasized that the agricultural lands should have riparian buffers.

**Mr. Trainque** asked if the protocol looks at sediment transport and deposition.

**Mr. Csiki** responded that the protocol requires photo documentation of location and extent, but there is not enough data collected to run sediment transport modeling.

**Mr. Danielson** stated that he envisions a situation where a downstream town has an ordinance, but an upstream town does not and there are adverse impacts to the downstream town due to development in the upstream town.

**Mr. Csiki** responded that it is a complex topic and a political one. He added that the best thing that can be done right now is education to get people to factor erosion hazards and downstream impacts into their decision making.

**Rep. Spang** asked if this could be wrapped into Regional Impacts and if the assessment information had ever been used that way.

**Ms. Soule** responded that the assessment data had never been used that way, but that it could be.

**Mr. Danielson** stated that there would need to be regional coordination.

**Rep. Spang** stated that there is a provision in regulation that identifies when a project has a regional impact.

**Mr. P. Currier** responded that there is a provision for regional impacts, but that other towns can only provide comment. He added that there is legislation this session to identify fluvial geomorphology as a designated use under the water quality standards.

**Dr. Kahl** added that when Lowe's proposed building in the floodplain in Plymouth, 'regional impact' was interpreted to mean economic impact, not environmental.

**Chairperson Cedarholm** asked if there is a way to prioritize the order of river assessments and how quickly a river can be assessed.

**Mr. P. Currier** responded that there 319 Program provided funding to do some of the assessments. **Ms. Soule** added that the 319 Program contributed funding for the Exeter River assessment and stated that being able to use 319 funding for assessments will be a cleaner process when the legislation on geomorphic integrity goes through.

**Chairperson Cedarholm** suggested that the Southeast Watershed Alliance could be a vehicle to have a regional approach.

**Mr. Danielson** suggested that the Regional Planning Agencies could be used as well.

**Dr. Kahl** asked if they could send the draft model FEH ordinance to the Commission.

#### IV. STORMWATER NEEDS SURVEY RESULTS

**Chairperson Cedarholm** announced that Ms. Manzelli is on maternity leave and will be absent from the Commission through February. He asked if a member of the Regulatory Authority Sub-Committee would be willing to fill in as subcommittee chair to keep it moving along.

**Mr. P. Currier** responded that the sub-committee reached a conclusion that there is no clear legal authority for municipalities to manage stormwater and that clarification is needed.

**Chairperson Cedarholm** asked Dr. Roseen to present the results of the Stormwater Needs Survey.

**Dr. Roseen** explained that municipal stormwater ordinances and regulations ranked first, followed by stormwater management practices. He listed the highest ranking needs for each category. **Ms. McCarthy** explained the results from the survey given to attendees at the 2009 Joint Water and Watershed Conference.

**Dr. Kahl** stated that the desire for consistency in managing stormwater statewide ~~is interesting~~ provides an opportunity for the Commission to act to provide such consistency.

**Mr. P. Currier** stated that the results can help shape to focus of Commission recommendations.

**Chairperson Cedarholm** suggested that the survey results be tightened up and sent out to a broader audience.

**Rep. Spang** asked what benefit there would be to having more people complete the survey.

**Chairperson Cedarholm** responded that it could direct the Commission's focus. **Mr. Danielson** added that it could tell the Commission what is not important.

**Mr. P. Currier** suggested tightening it up and then coming up with concise questions.

**Chairperson Cedarholm** agreed and suggested that it be on next month's meeting agenda.

**Dr. Roseen** suggested that the Commission take a step back and look at the timeline and products.

**Chairperson Cedarholm** asked if the Commission will hold a public hearing.

**Mr. P. Currier** responded that after the final report is submitted it typically when a public hearing is held. He added that the Commission is almost ready to start writing the report. He asked if the Commission should look more at the Maine model and work over and discuss the Maine language. He also added that any recommendations the Commission makes need to have funding to go along with them.

**Mr. LeRoy** asked if the Commission is responsible for drafting legislation as part of the final report.

**Mr. P. Currier** responded that it is best to include legislative language with the report so that the Commission recommendations are not misinterpreted.

**Dr. Roseen** suggested that the funding subcommittee meet again.

**Mr. P. Currier** responded that he has a brainstorm list of funding options that he will send to Dr. Roseen.

## V. FUTURE MEETING DATES AND TOPICS

Date	Time	Location
January 4, 2010	1:00 PM – 3:00 PM	LOB 305*
February 1, 2010	1:00 PM – 3:00 PM	LOB 305*
March 1, 2010	1:00 PM – 3:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

## VI. ADJOURNMENT

**The meeting adjourned at 3:15pm**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

January 4, 2010 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
Newb LeRoy	Associated General Contractors of NH
L. Mike Kappler	NH House of Representatives
Dari Sassan	NH Office of Energy and Planning
Donald Sienkiewicz	Home Builders and Remodelers Association
Eber Currier	NH Farm Bureau
Mark Hemmerlein	NH Department of Transportation
Dave Danielson	NH Association of Regional Planning Commissions

**Members Absent:**

Josh Cline	NH Rivers Council
Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate
Karen Ebel	The Nature Conservancy
Amy Manzelli	Business and Industry Association of NH
Rep. David Borden	NH House of Representatives
Michael Trainque	American Council of Engineering Companies
Robert Roseen	University of New Hampshire Stormwater Center
Steve Kahl	NH Lakes Association
Joe Robertie	NH Timber Owners Association
Paul Currier	NH Department of Environmental Services

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**I. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:10pm.

**II. APPROVAL OF MINUTES**

The minutes from the December 7, 2009 meeting were not approved due to lack of quorum.

**III. STORMWATER NEEDS PRIORITIZATION DISCUSSION**

**Chairperson Cedarholm** asked Ms. McCarthy to explain the updated Needs Survey provided by Dr. Roseen.

**Ms. McCarthy** explained that Dr. Roseen could not attend the meeting and that he asked her to share the following points:

- The survey results list the stormwater needs according to their rank.
- The top three ranking stormwater needs, municipal stormwater ordinances and regulations, stormwater management practices, and cost sharing and stormwater utilities, all fit well with the discussion of uniformity in managing stormwater across the state.
- The Commission may want to research the current status of each stormwater need including pending legislation.
- In order to move forward with recommendations, the Commission may want to look at what is needed financially, programmatically, and any new or amended legislation.
- Dr. Roseen anticipates starting up regular meetings of the Funding Subcommittee again before the next full Commission meeting.

**Chairperson Cedarholm** asked for questions or comments on the Stormwater Needs Survey summary prepared by Dr. Roseen.

**Mr. LeRoy** stated that the Commission needs get started on the final report and get everything in writing.

**Rep. Spang** agreed and stated that the Commission spent a lot of time on the Needs spreadsheet and that an executive decision needs to be made to move forward.

**Chairperson Cedarholm** explained that there was not a big spread in the ranking of stormwater needs and suggested that the survey be sent out to a broader audience of 50 to 100 people.

**Rep. Spang** responded that sending out the survey to a broader audience would be time intensive and the results would only be meaningful if people were knowledgeable on the subject. She asked if everyone felt confident in the Commission's understanding of the needs for managing stormwater or if they feel that they need to gather more information to move forward.

**Ms. Ebel** responded that she has mixed feelings about surveying a broader audience. She added that the Commission has done a year and a half of research and does not know that Commission needs to gather the opinions of more people in order to make recommendations.

**Mr. Sassan** responded that the Commission has gathered the data and has fulfilled the goal of examining the issue of stormwater. He added that they have looked at the topic broadly and he thinks that the ranked list of stormwater needs is accurate and that the Commission should begin tackling the identified needs beginning with the top ranked stormwater need of developing a statewide model stormwater ordinance.

**Chairperson Cedarholm** stated that his only concern with this type of ranking is if the Commission only focuses on the top three that the rest of the needs would look like they are not important.

**Rep. Spang** agreed with Mr. Sassan and stated that if the Commission focuses on the model stormwater ordinance, the Commission would be a success. She added that they should forget about legislation at this point and focus on doing a good job analyzing the issue and developing a good model ordinance to be shaped with DES and OEP in the fall.

**Ms. Ebel** added that the Commission may want to review Maine's approach to implementing a statewide model ordinance where the ordinance was developed by the state and the towns were required to adopt it and were given the opportunity to make it more stringent.

**Mr. Danielson** responded he thinks there will be a problem with funding.

**Mr. LeRoy** stated that the Commission needs to provide a final report to the legislature and that the report could include legislation.

**Ms. Ebel** stated that the model ordinance would not need to be as in-depth as the shoreland program.

**Chairperson Cedarholm** reminded the Commission that there is already a DES-written model stormwater ordinance that would be a good starting point. He asked if revising it is something for the Commission to do. He also asked if requiring adoption of an ordinance is something the Commission can do and if it is realistic.

**Rep. Kappler** stated that he thinks the Commission needs to stay at the state level and away from municipalities. He explained that it does not matter how much outreach is done because the public does not care and the local governments of surrounding towns do not care. He added that if a recommendation goes into statute, it needs to be at the state level with state enforcement and then let the municipalities run with it.

**Mr. Danielson** stated that he does not know political boundaries and that he feels very strongly about regional protection.

**Rep. Kappler** responded that it is very difficult to get regional cooperation. He stated that out of the 42 coastal municipalities that could join the Southeast Watershed Alliance (SWA), only 12 towns went to the first meeting. He added that the towns do not care.

**Mr. Danielson** responded that outreach makes a difference and that the municipalities must be familiar with each other in order to work together.

**Mr. Hemmerlein** stated that there needs to be a big ticket item and asked if the model ordinance needs to address volume, peak flow, and water quality. He stated that the smallest unit of development is the site level and that the mechanism is already in place for new development with site plan and subdivision review.

**Mr. Danielson** added that it needs to happen at the planning board review level.

**Rep. Spang** responded that it could be considered an unfunded mandate. She suggested that instead of telling municipalities and developers how they have to develop, to tell them what the end result should be, similar to Antidegradation.

**Mr. LeRoy** stated that, within that framework, municipalities would need authority to manage stormwater.

**Mr. Hemmerlein** asked how state-level Antidegradation can be applied to the municipal level. He asked where the line is drawn for compliance and stated

that right now, all you need is a building permit. He asked if it would be a component of the building permit.

**Mr. Sienkiewicz** responded that this approach sounds like if someone wanted to build a shed, they would need to hire a consultant to verify that they are not going to decrease water quality.

**Ms. McCarthy** explained that they are looking at this same issue at DES with high quality surface waters where municipalities want to maintain the existing high quality of their surface waters by potentially limiting pollutant runoff from individual properties. She explained that DES was concerned about the need for homeowners to hire consultants in order to verify that they were not degrading water quality by adding a shed or doing some other type of home improvement. As a result, she explained, DES is exploring the development of a “Low Impact Development Cookbook” for homeowners that would include fact sheets for stormwater best management practices that homeowners can install themselves along with a simple model that can be used to quantify their pollutant loading.

**Rep. Spang** stated that the Alteration of Terrain (AoT) program works by managing disturbances of over 100,000 square feet.

**Mr. LeRoy** added that the permit has big gaps.

**Mr. Sienkiewicz** stated that Massachusetts has a state clean water act that the conservation commissions enforce.

**Chairperson Cedarholm** responded that the AoT program permit trigger of 100,000 square feet of disturbance really only applies to subdivisions with ten lots or greater.

**Rep. Spang** added that it also applies to large parking lots.

**Ms. Ebel** stated that the Commission has been trying to get at the issue of uniformity in managing stormwater across the state. She explained that the idea of municipalities implementing antidegradation and being able to determine how they want to meet it does not promote uniformity. She added that towns could spend more time and money trying to figure out how to implement it. She suggested that DES has the scientific background to help municipalities figure out how to implement it.

**Mr. Danielson** responded that giving more to the state does not seem like the best way to go.

**Mr. Sassan** stated that to achieve uniformity, the state could feed legislation to the towns, but that the town can make it more stringent and once the ordinance is adopted, the town is responsible for enforcing it.

**Ms. Ebel** stated that if the Commission wants it to have teeth, it needs to come from the state level.

**Rep. Spang** stated that, at a public hearing, the Local Government Center would call it statewide zoning. She asked, if surface water is a statewide resource, why the state cannot protect it. She added that she was shocked when she learned that there were no statewide wetland setbacks.

**Ms. Ebel** suggested that the political concerns and scientific concerns related to stormwater be separated. She added that a lot of towns would welcome specific guidance because it would save them time and money on figuring out how to implement regulations.

**Chairperson Cedarholm** explained that, in Durham, they ended up abandoning the model ordinance and instead put all of the requirements from the model ordinance in the site plan review regulations.

**Mr. LeRoy** asked if everything in town is required to go through site plan review.

**Chairperson Cedarholm** responded that essentially everything needs to go through site plan review with the exception of single family homes. He added that towns can incorporate performance standards into their regulations.

**Ms. Ebel** responded that they can incorporate performance standards into their regulations, but they don't.

**Mr. Danielson** stated that the larger municipalities have more interest in state controls and that as you move farther away and into other counties, they might not want state control. He added that, in terms of water quality, it does not matter where they live because it is a common resource.

**Rep. Spang** explained that is why she thought a solution would be to regulate the affect or the end result instead of prescribing how it should be done.

**Mr. E. Currier** asked how changing the use of an agricultural activity to a different agricultural activity would be handled.

**Chairperson Cedarholm** responded that in Durham, it would be exempt because it would still be an agricultural use.

**Mr. Hemmerlein** stated that regulating the end result and saying that you cannot degrade water quality is very challenging.

**Mr. Sassan** asked Ms. McCarthy to explain Antidegradation and if it is too difficult to implement at the municipal level.

**Ms. McCarthy** explained that DES is has established an Antidegradation Rules Workgroup to incorporate the requirements of Antidegradation into the AoT program rules. She explained that they are in the middle of figuring out how it should be implemented and how permit applicants can provide verification that they are meeting Antidegradation. She added that once the Workgroup and DES complete their work, they will have a better idea on how it can be implemented at the municipal level. She stated that the Workgroup has been progressing very slowly and that there is a big learning curve with Antidegradation because it is such a complex topic.

**Chairperson Cedarholm** asked if the new MSGP restricts discharges to impaired waters unless there is proof that the discharge will not contribute to the impairment.

**Rep. Spang** stated that the expertise of DES should be used in determining if there is water quality degradation or the potential for it.

**Mr. Sienkiewicz** asked who is responsible for making the decision on building the shed on a single house lot. He stated that the municipal building inspector, not DES, is looking at that scale of development. He added that the discussion on implementing antidegradation and how it is in progress is a good reason to move forward with a model ordinance. He stated that there will be unfunded mandate problems with requiring municipalities to implement Antidegradation too.

**Mr. Danielson** stated that he think DPW directors will agree to do anything as long as they are given money to do it.

**Ms. Ebel** asked what municipalities will be asked to do and stated that most of the cost associated with the ordinance will call on the developer and planning boards. She added that they have been trying to promote gentler engineering practices and asked if Antidegradation promotes low impact development and other gentler engineering practices.

**Mr. Hemmerlein** stated that the NEPA (National Environmental Policy Act) says that you have to ask questions, but doesn't necessarily require you to control it, but to address it. He stated that we do not have the information at the next scale of development down from the AoT threshold.

**Mr. Sienkiewicz** stated that if the Commission says every municipality has to adopt an ordinance that addresses peak, total volume, and water quality, it still doesn't get at the issue of uniformity.

**Ms. Ebel** responded that most towns that have zoning already have regulations with peak flow and drainage requirements.

**Chairperson Cedarholm** stated that there are differences in how each town interprets their regulations. He explained that he was amazed when he looked at the Laconia regulations because they were nearly identical to Durham's. The only difference is that Durham's regulations have an additional paragraph that specifies that the DPW director makes the final decision.

**Mr. LeRoy** added that some municipalities do not have a DPW director and instead they have Road Agents.

**Chairperson Cedarholm** stated that he agrees with Rep. Kappler that something needs to be done at the state level, but that municipalities need to be able to decide whether or not to adopt an ordinance. He added that outreach needs to be done to promote better engineering and low impact development. He stated that there need to be more examples showing that LID works and is not a big added cost. He explained that his experience with the Southeast Watershed Alliance has shown him that outreach works. He explained that there are now 21 out of 42 communities who have participated in meetings when they anticipated only getting 8 communities to join in the first year. He stated that DES did the outreach for the SWA and it has worked. He asked what more can you do than encourage municipalities to adopt ordinances.

**Mr. Sienkiewicz** responded that you can require it.

**Chairperson Cedarholm** stated that he thinks requiring municipal adoption of an ordinance will not work.

**Mr. Sienkiewicz** responded that they will not know if it will work if they don't try. He stated that there needs to be uniformity and there needs to be a mandate. He explained that outreach can be done in a way that to build political support. He stated that outreach needs to inform the municipalities, developers, and other stakeholder that there is a new state law and it needs to lay out the reasons why, for example, the homebuilders and other stakeholder should support it and not fight it.

**Chairperson Cedarholm** suggested potentially lowering the threshold for the AoT permit.

**Rep. Spang** responded that this is beginning to converge with the Land Use Commission.

**Mr. Danielson** stated that the Water Infrastructure Finance Commission chair informed that Commission that they should be aware of the recommendations that come out of the Stormwater Commission.

**Rep. Spang** responded that if the Stormwater Commission is going to require municipalities to upgrade their water infrastructure, the Water Infrastructure Finance Commission should know.

**Mr. Danielson** stated that he feels the discussion has been focused on the southern part of the state and asked about the northern part of the state.

**Ms. Ebel** responded that she is more in tune with the northern municipalities and asked what Vermont does.

**Mr. LeRoy** responded that almost everything in Vermont goes through Act 250[?], which works well in Vermont, but it is overly regulatory and burdensome. He added that the regional review is like a mini-NEPA.

**Mr. Hemmerlein** added that Vermont looks at everything from wildlife to traffic flow questions.

**Mr. Danielson** asked what the Commission's final product is supposed to be.

**Ms. McCarthy** responded that the Commission is required to submit a final report by November 2010. She explained that she has put together a draft of the final report to provide a template for filling in the gaps.

**Mr. Sienkiewicz** asked if the Commission should work on writing the final report or work on ordinance writing.

**Ms. Ebel** responded that she was struck by what Mr. Sienkiewicz said about political views and support and thinks that the Commission needs to put together the findings and not worry so much about the politics.

**Rep. Spang** asked if they should also be looking at stormwater need two in the summary prepared by Dr. Roseen.

**Chairperson Cedarholm** asked which of the nine categories of stormwater needs requires significant funding. He stated that they are all associated with regulations and outreach, but there are not many that require a lot of money. He added that the biggest costs are likely to be administrative costs.

**Rep. Spang** asked where the nine categories came from.

**Ms. McCarthy** explained that when the Needs Subcommittee developed the spreadsheet of findings, she grouped the findings into broader categories. She explained that the titles of the categories or even the structure of the categories can be changed. She added that the top three ranking categories seem to stand on their own, but the remaining categories could be woven into the first three.

**Ms. Ebel** added that the summary of findings and the categories can all be tracked back to the original needs spreadsheet.

**Mr. Sienkiewicz** stated that he would like to have a work session to look at the existing DES model ordinance.

**Ms. Ebel** added that they should also look at the Maine statute and that she thinks it is a greater unfunded mandate to not have specific language in a model ordinance.

**Rep. Spang** stated that there cannot be both the option for municipalities to decide whether or not to adopt an ordinance and still achieve the goal. She added that they cannot give up on what is logical just because of political concerns.

**Mr. Sienkiewicz** added that there can be a careful political process to gain support.

**Rep. Spang** stated that there is much to be learned from the SWA and how, after DES explained the benefit of joining, more municipalities joined.

**Rep. Kappler** asked if municipalities have authority to manage stormwater.

**Ms. Ebel** responded that the opinions of the representatives from the Attorney General's Office and the Local Government Center were that clear authority did not currently exist.

**Mr. Sienkiewicz** stated that they need to be given authority.

**Mr. Hemmerlein** stated that the Commission is talking about three different levels; 'you may do it', 'you must do it', and 'here is how you have to do it'. He asked where the Commission is going to go with the recommendation.

**Mr. LeRoy** responded that instead of saying 'you must', they could say 'you should'.

**Ms. Ebel** responded that saying 'you should' is what is in place now and nothing is being done.

**Mr. Sienkiewicz** responded that he thinks they can argue against statewide zoning and unfunded mandates and that the regulations should say 'you may, you must, and here is how'.

**Mr. Hemmerlein** asked if the ordinance will get into the numbers.

**Mr. Sienkiewicz** responded that he would like to look at the model ordinance and the Maine statute before answering that question.

**Rep. Spang** explained that with SB222, which involved managing uplands, the more specific it got, the more opposition there was. She explained that they ended up with one sentence that said DES can look at upland impacts and there was still opposition. She suggested that they make the language as specific as possible and let the legislative process decide.

**Mr. Sassan** stated that the Commission can tackle both the stormwater needs of 1A (*Creating a statewide model stormwater ordinance and requiring municipal adoption, but allowing municipalities to adopt stricter and/or non-substantive provisions, subject to state approval with guidance of municipality's RPC*) and 1C (*Creating legislation that clearly enables municipalities to impose stormwater management regulations, including stormwater management improvements to existing development in hydrologically- or quality-impaired watersheds*). He stated that 1C will accomplish the 'you may and you must' and then the Commission can take their time on addressing 1A.

**Rep. Spang** stated that is the Commission feels that 'you must' is what needs to happen, then they should say 'you must'.

**Chairperson Cedarholm** responded that 'you must' is a possibility if there is an impairment.

**Mr. Danielson** suggested that the Commission provide an optimal piece of legislation and let the legislature work it over.

**Rep. Kappler** stated that he would say 'you must'.

**Rep. Spang** asked what else the Commission would like to work on besides the model ordinance.

**Chairperson Cedarholm** recommended they work on lowering the AoT threshold.

**Rep. Spang** asked about setting watershed impervious cover limits.

**Chairperson Cedarholm** stated that he thinks the SWA member communities will have a big influence on the other communities in the watershed.

**Ms. McCarthy** asked why the legislation that established the Southeast Watershed Alliance only included the coastal watershed. She asked if it would be beneficial for other watersheds to have alliances to promote regional stormwater management.

**Rep. Spang** responded that the SWA could be a good model for other watersheds if it is successful.

**Rep. Spang** suggested that the Commission also look at reducing the burden of existing infrastructure and spreading the cost of stormwater management and that they work with the Water Infrastructure Finance Commission to do so.

#### IV. FUTURE MEETING DATES AND TOPICS

Date	Time	Location
February 1, 2010	1:00 PM – 3:00 PM	LOB 305*
March 1, 2010	1:00 PM – 3:00 PM	LOB 305*
April 5, 2010	1:00 PM – 3:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

#### V. ADJOURNMENT

**The meeting adjourned at 3:15pm.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

February 1, 2010 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
L. Mike Kappler	NH House of Representatives
Donald Sienkiewicz	Home Builders and Remodelers Association
Eber Currier	NH Farm Bureau
Dave Danielson	NH Association of Regional Planning Commissions
Paul Currier	NH Department of Environmental Services
Karen Ebel	The Nature Conservancy
Rep. David Borden	NH House of Representatives
Robert Roseen	University of New Hampshire Stormwater Center
Steve Kahl	NH Lakes Association
Michael Trainque	American Council of Engineering Companies

**Members Absent:**

Josh Cline	NH Rivers Council
Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate
Amy Manzelli	Business and Industry Association of NH
Joe Robertie	NH Timber Owners Association
Newb LeRoy	Associated General Contractors of NH
Dari Sassan	NH Office of Energy and Planning
Mark Hemmerlein	NH Department of Transportation

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Attendees:**

Thomas Burack	Commissioner, NH DES
John Boisvert	Pennichuck Water Works
Paul Roberson	General Public

**I. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:10pm.

**II. COMMISSIONER BURACK'S REMARKS**

**Commissioner Burack** thanked the Commission members for participating in the Stormwater Commission. He explained that he intends to roll up his sleeves and personally engage in both the Stormwater and the Land Use Commissions. He explained that addressing the stormwater issue is critical for New Hampshire's

water quality and for shaping what the state will look like in the long term. He stated that he has attended high level meetings with other states and EPA and nonpoint source pollution is considered a national threat of high priority. He expects there will be growing attention at the national level. He added that he hopes the Commission can guide the development of a clear and strong regulatory framework for the state to address stormwater. He stated that DES will do internal brainstorming of ideas to bring to the Commission for consideration. He stated that he hopes to build consensus on the issues related to stormwater and nonpoint source pollution and that they can come out with constructive recommendations for the next legislative session to address the issues. He added that he hopes the Commission can answer the questions; why does stormwater need to be managed? What do we need to do? And How do we need to do it?

**Rep. Borden** stated that, in the Commissions deliberations, it has been difficult to understand the dynamics of the situation. He stated that the problem is evolving and that we know about floods, droughts, and sea level rising, but that the Commission is shooting at a moving target and the problem is accelerating. He added that the Commission needs all the help it can get to understand the dynamics of the problem.

**Chairperson Cedarholm** responded that the Commission doesn't necessarily know what the target is. He explained that the needs are all over the place and it has been difficult to narrow the focus because everything is equally important. He stated that the Commission needs to be cautious about too narrowly focusing their recommendations.

**Rep. Spang** added that the Commission needs to look at where the responsibility lies and stated that municipalities need to be included.

**Mr. Danielson** stated that all of the Commission's potential recommendations do not have to go forward in one session and suggested that they might be more acceptable if there was some leniency in the amount of time given to comply with any new legislation.

**Dr. Roseen** stated that even though there has been a wide range of issues discussed, there has been basic agreement on the issues and that the Commission can make big strides to improve the current situation. He added that the biggest challenge is going to be the political bravery necessary to get this through, in particular he emphasized the need for uniformity in managing stormwater will be challenging, but that there seems to be a common understanding of this need. He added that the current economic climate will be a challenge as well and that any recommendations will need to be coupled with a funding piece.

**Rep. Kappler** added that the push for better stormwater management needs to come from the state level. He explained that he sees towns working to abolish the conservation Commissions, avoid joining the Southeast Watershed Alliance, and other actions that are moving away from managing stormwater.

**Dr. Kahl** stated that imperviousness needs to be better understood as a tool for estimating water quality. He added that, from a technical perspective, a lot of ground can be covered by dealing with impervious surfaces.

### III. APPROVAL OF MINUTES

**Mr. Danielson** made a motion to approve the minutes from December 7, 2009 meeting. **Rep. Spang** seconded the motion. **All approved and none opposed.**

**Mr. Danielson** made a motion to approve the minutes from January 4, 2010 meeting. **Rep. Spang** seconded the motion. **All approved and none opposed.**

### IV. MODEL STORMWATER ORDINANCE DISCUSSION

**Mr. Sienkiewicz** stated that the model post-construction stormwater ordinance from the Innovative Land Use Guide addresses the three things that Mr. Hemmerlein said needed to address; peak flow, total volume, and water quality.

**Dr. Roseen** responded that the model is a good start, but that it does not go far enough. He specified that it is general and weak in terms of the trigger conditions and re-development. He explained that he chose the Nashua Regional Planning Commission's site plan review regulations instead, but that neither of them contain enough on redevelopment and suggested looking at Rhode Island and Massachusetts MS4 language for redevelopment. He added that he thinks the best approach is to go forward with strict ordinance language and let the process loosen it up.

**Mr. Danielson** suggested that the regional planning Commissions (RPCs) could review and promote a draft ordinance if the Commission developed one. He explained that this would first get feedback from the RPCs and second, it could be a way to get feedback from municipalities, address their concerns, and gain political support. He added that some RPCs would be amenable and others may push back hard, but it would be a good way to get immediate feedback.

**Dr. Kahl** stated that the ordinance could use a hint of seasoning from the Shoreland Protection Act, for example the ordinance says lawns and grass are pervious and does not mention buffer strips.

**Rep. Spang** stated that the RPCs' reactions might not be representative and she asked if there was a way to get out to the communities themselves. She asked if there were ways to reach out to communities, possibly through the Department of Public Works directors.

**Chairperson Cedarholm** responded that it is hard to get the DPW directors' attention and that it might be a different person for each town. He explained that he spent years working with the model ordinance and had one drafted for the city of Durham that went through an attorney, had planning board support, but when he brought it to the council it was 28 pages and they asked him if it could be simplified to say that state and federal regulations must be met.

He went on to explain that he has had success in Durham with using the regulations that state "All development must have adequate drainage in regard to stormwater". He stated that if development only had to comply with state or federal regulations, it would be going backward. He explained that instead of

moving forward with the model ordinance, they have been updating the stormwater portion of the site plan review regulations, based on the regulations for the Newington that the UNH Stormwater Center assisted with.

**Chairperson Cedarholm** stated that developers and planning board members want guidance and checklists to know what they are supposed to do and to give them a list of submittal requirements. He stated that the model ordinance does not provide specify submittal requirements. He explained that the draft site plan review regulations specify the submittal requirements, design standards, and distinguish between new development and redevelopment, with specific requirements for redevelopment. He explained that a stormwater management plan be submitted for any development with 10,000 square feet of disturbance and any development in an area that drains to an impaired water. He stated that they don't want to put up a roadblock to redevelopment and so they are questioning if a drainage analysis needs to be done if the redevelopment project proposes no significant changes. He stated that he will be sending the draft site plan review regulations to engineers for review.

**Rep. Spang** asked if Chairperson Cedarholm is expecting push back on the 10,000 square feet trigger.

**Chairperson Cedarholm** responded yes.

**Dr. Roseen** added that it is a matter of scale. He explained that Newington's disturbance trigger is 20,000 square feet, but they are looking at development like the Fox Run Mall, where Durham is looking at the Durham Market Place.

**Mr. Danielson** added that they have to think about the tax structure and look at it from an economic development standpoint.

**Dr. Roseen** responded that it can be address in a second step with a stormwater utility and incentives. He asked Chairperson Cedarholm if the draft regulations contained exemptions for activities like replacing a roof or repaving a parking lot.

**Chairperson Cedarholm** replied that if an activity requires site plan review, the rules would apply and added that if the activity was over 10,000 square feet of disturbance, it would apply. He added that he would like to go over four different development scenarios to make sure projects would not be prohibited if the draft site plan review regulations are adopted.

**Commissioner Burack** stated that he likes the idea of using best management practices as a substitute in place of a drainage analysis. He stated that he didn't see a definition of impaired waters and asked if you would want to have BMPs in place regardless of impairment status. In response to people in Durham asking why the ordinance can't simply require compliance with state and federal regulations, he replied that there are not strong state and federal requirements. He asked if the Commission had discussed developing state level stormwater regulations.

**Ms. Ebel** explained that she has been wrestling with the uniformity issue and asked if the Commission could discuss concepts on to how implement it with the Commissioner. She explained that the Commission initially looked into municipal authority to implement stormwater regulations and the conclusion was

that there is not clear regulatory authority for municipalities to manage stormwater. She explained that the Commission thought it municipalities should be enabled to manage stormwater and that they came across the Maine approach of the state drafting a model ordinance and requiring municipal adoption. She explained that municipalities had the option of tweaking the model ordinance and adopting it by a certain date, or if they missed the deadline, the state ordinance would go into effect. She added that the Regional Planning Commissions worked with the towns to develop their own versions. She explained that the Commission had a lot of discussion on how municipalities in New Hampshire would respond and thought that some would welcome it and some would be opposed. She thinks that if the towns were given a clear model, the municipalities would save money because they don't have to pay engineers and lawyers to figure out how to implement it, but she doesn't know how well the approach would work in New Hampshire.

**Commissioner Burack** responded that he has a lot to learn about the approach that Maine took and that he can talk to his counterpart in Maine.

**Ms. Ebel** specified that the approach in Maine was for municipalities to enforce the ordinance.

**Dr. Kahl** pointed out a difference between Maine and New Hampshire that in Maine, towns take ownership willingly; where in New Hampshire towns tend to say stormwater is a state issue.

**Commissioner Burack** suggested that the Commission start with answering the question of why is it so important to manage stormwater and added that if municipalities can agree on why, the state and municipalities can work together to address the what and the how. He stated that the issue of stormwater is at the convergence of land use law and environmental law. He explained that the Maine example used land use law to achieve an environmental standard and that New Hampshire has always used the approach of setting an environmental standard and saying that everyone has to meet it. He asked if the state can set a statewide environmental standard. He stated that he does not know what the right approach is to ultimately bring success in getting uniformity and quality new and redevelopment. He stated that Maine has statewide stormwater regulations, but New Hampshire does not we might want to ask why not and would they be appropriate. He added that Maine is a home rule state and that may play a part in the approach they took with the model ordinance.

**Rep. Spang** explained that New Hampshire is in an interesting position with municipalities because municipalities do not have authority to do everything and the issue of statewide zoning is always brought up.

**Dr. Roseen** added that municipalities are not enabled to meet some of the federal requirements for stormwater.

**Rep. Spang** continued that some municipalities do not trust selectmen and want state regulations.

**Ms. Ebel** added that when the Comprehensive Shoreland Protection Act came out, her town was very happy. She explained that they adopted it so they could enforce it at the municipal level instead of waiting for state enforcement.

**Commissioner Burack** responded that the easiest statutes to work with are those that are broadly worded, but with clear intent. He explained that the CSPA is a prescriptive way to enforce regulations and that he is not sure it is the best way to do it.

**Chairperson Cedarholm** suggested that this is a great subject for the Southeast Watershed Alliance to take a hold of. He explained that the Alliance could promote standard site plan review regulations. He added that a consistent zoning ordinance is being proposed with three towns in the Lakes Region and that they need to be able to show that, after the regulations are adopted, development is still happening and it is better development as a result of the regulations. He stressed that those examples are needed.

**Rep. Spang** added that there was the same conversation about the three towns in a groundwater meeting she attended earlier in the day. She asked how much of this discussion should go to the land use Commission.

**Commissioner Burack** suggested a joint meeting of the land use and stormwater Commissions. He added that the land use and stormwater pieces are interconnected and should fit together.

**Chairperson Cedarholm** agreed that the two Commissions should have a joint meeting and suggested that the sustainable funding subcommittee also be involved.

**Rep. Spang** suggested the joint meeting be held at DES where there is space to divide into separate tracks.

**Commissioner Burack** responded that DES will investigate the option for hosting a joint meeting.

**Chairperson Cedarholm** stated that it would be nice if a model ordinance also identified a suggested threshold and a place for the community to decide what is appropriate. He added that it would be helpful if it spelled out the areas a community would need to develop their own language.

**Dr. Roseen** added that it is difficult to create a one size fits all ordinance and explained that a town might want high density in some areas, but not in others. He suggested that multiple ordinances or sections within an ordinance for different land uses might be appropriate.

**Mr. P. Currier** explained that municipalities need to draft good ordinances and property owners need to take responsibility for what comes off of their properties regarding hydrology and water quality. He suggested the development of enabling legislation for municipal enforcement. He added that RSA 485:A implies the authority, but if the statute was clear that if you own the land, you own the stormwater, it would help.

**Chairperson Cedarholm** said that he has been looking at private parking lots and how often they have inadequate infrastructure. He asked about the potential for municipalities to update the infrastructure of private lots and if the town could take ownership of the infrastructure to make upgrades.

**Mr. P. Currier** responded that State Revolving Funds (SRF) are not available for those types of projects if a town took ownership of infrastructure.

**Dr. Kahl** stated that the model ordinance that was circulated from the Innovative Land Use Controls Handbook was command and control, but didn't include some of the incentives the Commission has discussed such as waiving a drainage analysis if pervious pavement is used or if a municipality has a stormwater utility that puts a fee on properties with greater than 10% impervious cover.

**Ms. Ebel** explained that since the development of the LID regulations in New London, people are finding that they can do more with their properties because there is less water to have to deal with.

**Mr. Trainque** added that stormwater utilities have built-in incentives.

**Dr. Roseen** informed the Commission that he is looking for additional members to join the funding subcommittee and that he hoped to meet in the next week.

**Ms. Ebel** asked what is happening with the regulatory authority subcommittee.

**Mr. Sienkiewicz** stated that the big question is what legislation needs to be drafted.

**Mr. P. Currier** responded that he has some ideas and explained that right now there is a question of whether stormwater is sewer or waste. He explained that he thinks it should be separate from sewer or waste. He added that another question is if a permit is needed to discharge stormwater, as well as property owner responsibility to manage stormwater.

**Rep. Spang** asked why stormwater discharges should not be permitted.

**Mr. P. Currier** responded that a permit would be command and control and managing stormwater is more about behavior change.

**Rep. Spang** asked if the Alteration of Terrain (AoT) Program permits stormwater.

**Mr. P. Currier** responded that the AoT program is basically a site plan review and does not focus as much on post-construction.

**Chairperson Cedarholm** added that if you say that someone owns the stormwater coming off their property, it includes everyone and all development, which covers much more than the AoT program.

**Mr. P. Currier** responded that EPA's Residual Designation Authority is basically doing that in every state around New Hampshire.

**Rep. Spang** asked what is wrong with command and control. She added that surface waters and their quality are a statewide resource and asked why there shouldn't be a statewide approach.

**Dr. Kahl** suggested that it might be best to have a voluntary approach with incentives and a back-up command and control approach.

**Mr. P. Currier** responded that there need to be both approaches on the table for the Commission to work over.

**Dr. Roseen** explained that the need for uniformity is such that builder and developers can do low impact development and better development practices, if the requirements to do so apply to everyone. He stated that he attends a major conference each year with around 12,000 attendees and only one to two sessions

are on water quality. He added that high end stormwater management is only done when it is required.

**Mr. P. Currier** responded that a state general stormwater permit could achieve that.

**Chairperson Cedarholm** responded that the state of New York issues a state pollutant discharge elimination permit (SPDES) that is a state general permit in certain watersheds. He thinks that the Southeast Watershed Alliance could do something similar.

**Ms. Ebel** stated that the Commission has discussed the problems of stormwater for the last 17 months and asked what they are going to do, what approach are they going to take and how are they going to decide.

**Mr. P. Currier** suggested that the regulatory authority subcommittee put together draft regulation and bring it back for the Commission to work over.

**Dr. Kahl** responded that the Commissioner asked why managing stormwater is important and asked if the Commission should put together an answer.

**Rep. Spang** suggested listing the pros and cons for each approach

**Mr. Sienkiewicz** agreed.

**Ms. Ebel** and **Dr. Roseen** stated that they feel the why is covered in the needs summary.

**Mr. Trainque** suggested looking at the federal Clean Water Act to answer the why.

**Chairperson Cedarholm** stated that, from a legislative perspective, there is the Clean Water Act and the 401 Water Quality Certification.

**Mr. P. Currier** added that there could also be a state process to discharge.

**Chairperson Cedarholm** added that there is the AoT program for bigger projects.

**Mr. P. Currier** emphasized that the AoT permit and the 401 Certification are not discharge permits.

**Rep. Spang** responded that, despite not being a discharge permit, the AoT program goes a long way toward regulating stormwater.

**Mr. P. Currier** agreed and added that there are ongoing discussions to include antidegradation in the AoT program.

**Rep. Borden** explained that he thinks the Commission needs to keep up with the hydrology science including dams and flooding. He asked if there is more for the Commission to study related to hydrology.

**Mr. P. Currier** responded that DES is in the process of writing stream crossing rules for geomorphology including performance standards and storm magnitude and he feels hydrology is being dealt with in that forum.

**Dr. Roseen** responded that storm magnitude might be something the Commission should look at.

**Ms. Ebel** stated that the Commission needs to decide how much they are going to look at the political piece as opposed to the stormwater piece. She explained that

the charge of the Commission was to look at the stormwater piece and make recommendations to feed the politicians and let them deal with the political piece.

**Rep. Spang** agreed.

**Dr. Kahl** asked if they Commission should vote on pursuing a statewide approach.

**Rep. Spang** responded that it is nice to offer options and explain the options and how they would work.

**Mr. P. Currier** responded that a statewide option for using a stormwater permit to regulate and enforce a standard is not a radical concept. He suggested pursuing a process that enables municipalities to manage stormwater and develop utilities and, if they choose not to, having a statewide process to regulate and manage stormwater.

**Chairperson Cedarholm** asked if it would be possible to do something like the New York SPDES permit.

**Mr. P. Currier** responded that it would be possible and they could adopt the federal permit as the state permit.

**Rep. Spang** asked who should write up the pros and cons list.

**Chairperson Cedarholm** asked Mr. P. Currier where the state permit would be done within DES and if there would be overlap with some part of the AoT program such as the drainage analysis.

**Mr. P. Currier** responded that from the Clean Water Act, EPA issues permits to everyone who has a straight pipe discharge and then requires and implementation scheme. He explained that there could be a similar state process for stormwater. He suggested consulting with the regulatory authority subcommittee to draft straw man legislation and have the Commission Review it for the next meeting.

**Rep. Borden** responded that the language doesn't need to be too specific, just rough concepts.

**Mr. Sienkiewicz** offered to write up a pros and cons list of the different approaches.

## V. FUTURE MEETING DATES AND TOPICS

Date	Time	Location
March 1, 2010	1:00 PM – 3:00 PM	LOB 305*
April 5, 2010	1:00 PM – 3:00 PM	LOB 305*
May 3, 2010	1:00 PM – 3:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

## VI. ADJOURNMENT

**The meeting adjourned at 3:10pm.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

March 1, 2010 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
L. Mike Kappler	NH House of Representatives
Donald Sienkiewicz	Home Builders and Remodelers Association
Paul Currier	NH Department of Environmental Services
Rep. David Borden	NH House of Representatives
Robert Roseen	University of New Hampshire Stormwater Center
Michael Trainque	American Council of Engineering Companies
Amy Manzelli	Business and Industry Association of NH
Joe Robertie	NH Timber Owners Association
Newb LeRoy	Associated General Contractors of NH
Mark Hemmerlein	NH Department of Transportation

**Members Absent:**

Josh Cline	NH Rivers Council
Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate
Dari Sassan	NH Office of Energy and Planning
Eber Currier	NH Farm Bureau
Dave Danielson	NH Association of Regional Planning Commissions
Karen Ebel	The Nature Conservancy
Steve Kahl	NH Lakes Association

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Attendees:**

Thomas Burack	Commissioner, NH DES
Joel Anderson	NH House Staff

**I. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:14pm.

**II. APPROVAL OF MINUTES**

**Ms. Manzelli** made a motion to approve the minutes from February 1, 2010 meeting. **Mr. P. Currier** seconded the motion. **All approved and none opposed.**

### III. DRAFT LEGISLATIVE LANGUAGE FOR STORMWATER COMMISSION DISCUSSIONS

**Mr. P. Currier** reviewed the draft legislative language document that was sent to the Commission. He explained that it is a collection of ideas for legislation that have come out of the Commission's work and includes:

- iii. Developing a statutory definition of stormwater that is separate from sewage or waste;
- iv. Specifying that owners of developed property are responsible for the stormwater runoff from that property;
- v. Enabling municipalities to regulate stormwater and develop bylaws;
- vi. Developing a statewide framework for managing stormwater through a statewide stormwater permit; and,
- vii. Developing a statewide stormwater utility with a local utility option.

**Commissioner Burack** asked if a statewide stormwater permit is different than a statewide stormwater standard.

**Mr. P. Currier** responded that a stormwater permit would be designed to meet water quality standards and that the water quality standards would be the performance specification for receiving waters. He added that the state or municipalities would administer the permit.

**Rep. Spang** responded that only relating stormwater to surface waters leaves out the potential impact to groundwater as well as changes in hydrology on neighboring properties. She gave the example of a new development that now floods adjacent property and stated that it would be nice to have a way to address this issue without the two parties having to go to court.

**Mr. P. Currier** responded that there are groundwater standards. He explained that RSA 485A covers both surface water and groundwater and added that 485C is the Groundwater Protection Act.

**Rep. Spang** asked how the groundwater statutes relate to stormwater.

**Mr. P. Currier** stated that they used to think it was bad to infiltrate stormwater because it would contaminate groundwater, but this opinion has flip-flopped. He stated that now they say to infiltrate as much as possible. He added that the focus on groundwater protection has been more on material storage and avoiding materials such as salts and hydrocarbons from soaking into the ground.

**Rep. Spang** asked about water sheeting off of a parking lot into an infiltration area.

**Dr. Roseen** responded that parking lot runoff is currently not regulated unless it is a 'hotspot' area, such as a gas station or material storage area. He added that it is under review in the I-93 expansion in particular because of the chloride issue.

**Mr. P. Currier** added that the data seems to be showing that the chance of groundwater pollution is lot. He stated that the same suite of pollutants is a concern with surface waters and groundwater and specified nutrients, metals, hydrocarbons, and chlorides. He added that the data shows increases in chloride in surface waters during low flow, which means that the chloride is coming from groundwater.

**Mr. LeRoy** stated that other states are requiring infiltration permits, but they are primarily for industrial facilities. He stated that the intent of the legislation looks like there would be no grandfathering.

**Mr. P. Currier** verified that the intention is that there would be no grandfathering.

**Chairperson Cedarholm** stated that the New Hampshire Stormwater Manual offers best management practices to address stormwater.

**Rep. Spang** asked if the best management practices need to go into statute.

**Mr. P. Currier** and **Dr. Roseen** responded that the best management practices can be specified in Rule, not in the statute.

**Rep. Spang** asked about the change in hydrology to a neighboring property as a result of development.

**Mr. P. Currier** responded that this piece of legislation could address that.

**Dr. Roseen** stated that the Alteration of Terrain (AoT) program currently has ½ acre-foot requirement for flooding, but that an appropriate trigger would need to be determined.

**Mr. P. Currier** stated that the 100,000 square foot trigger for an AoT permit is only in Rule, not in statute.

**Mr. Sienkiewicz** added that neither the statute nor the Rule say that DES cannot regulate below 100,000 square feet.

**Commission Burack** suggested that Amy Clark or Ridge Mauck of the DES AoT Program come in to discuss the changes that were made to the AoT Program Rules. He explained that the Rules were expanded to include more development, but did not require a paper permit. He added that he frequently gets calls about neighbors causing flooding and right now he has to tell them that it is a civil issue and DES cannot do anything about it.

**Rep. Spang** suggested that if a model ordinance is developed, that it addresses the issue of hydrology changes on adjacent property. She asked if someone can tell beforehand if a development will cause a problem on neighboring property.

**Chairperson Cedarholm** suggested a watershed model could be used to help predict if there would be an issue.

**Dr. Roseen** responded that you would not want to have to run a watershed model for every driveway. He added that the AoT program does this, but for bigger projects.

**Ms. Manzelli** stated that she is concerned with how the idea of enabling municipalities to regulate stormwater is presented. She stated that Commissioner Burack asked if the intent was to permit compliance with a standard, but the draft language does not include a requirement to address stormwater and it doesn't reference a standard that would need to be maintained.

**Mr. P. Currier** responded that the legislation is intended to be enabling legislation with a list of options for bylaws. He explained that it doesn't include a mechanism for uniformity and that the municipal ordinance and the statewide stormwater permit are two separate ideas that need to be blended together. He

added that enabling municipalities to regulate stormwater will allow them to comply with the federal stormwater requirements.

**Mr. Hemmerlein** stated that this idea seems to be taking a huge step toward delegation of the federal stormwater permit, but that it adds a potential third permit for someone to be able to develop.

**Mr. P. Currier** responded that the wastewater program has a separate state permit in statute, but adopted the federal permit as the state permit. He thinks the same could be done for stormwater. He added that a statewide permit could cover more because the federal permit only covers urbanized areas.

**Mr. Hemmerlein** stated that EPA is going to do away with ‘urbanized areas’ because it is too difficult to determine the boundary line. He added that EPA is looking at changing their stormwater program and is sending out a questionnaire to permit holders.

**Dr. Roseen** responded that it is very likely EPA will go to a watershed-based permit because a review of the federal stormwater program found that the permit was weak because it was not watershed-based. He explained that EPA could go to a watershed-based permit by connecting the permit to impairments.

**Ms. Manzelli** suggested that a state permit program be structured to require a state permit unless a federal permit has already been issued.

**Dr. Roseen** responded that a state permit could require the most stringent conditions of the state and federal permit be met.

**Mr. P. Currier** responded that they could issue a general permit for the entire state and then they could have separate general permits for watersheds, for example Great Bay.

**Dr. Roseen** stated that in Massachusetts, the intention was that the state permit would be inclusive enough to act as a state and federal permit, but there was a lot of push back. He added that if a state permit were good enough, it could be accepted as a federal permit.

**Rep. Spang** asked if New Hampshire is happy with the federal permit.

**Mr. P. Currier** responded that the federal permit might not be strict enough.

**Rep. Kappler** stated that under the proposed enabling legislation for municipalities to regulate stormwater, the language reads “...municipalities shall have the power...” and that “Bylaws may include...” He explained that if adoption of stormwater bylaws is not mandated, it is not going to work. He added that it needs to say that municipalities shall do something, otherwise it is the same as what we already have and the municipalities will choose to do nothing.

**Dr. Roseen** agreed that there are already voluntary standards.

**Ms. Manzelli** stated that under the draft 31:41-f, towns could be confused about what they are supposed to do. She suggested adding that the intention is to allow municipalities to comply with federal permits and that projects shall comply with surface water quality standards. She added that the legislation could be limited to only municipalities that are subject to the federal permit.

**Mr. P. Currier** stated that they could run into 28:A issues if municipalities are required to adopt bylaws.

**Commission Burack** responded that this legislation would create a statewide stormwater standard and towns could decide if they want to adopt, apply and enforce it. He stated that it should be clear that this would give MS4 communities the authority to comply with the federal permit.

**Mr. Hemmerlein** responded that they can get around the 28:A issue because the requirements for MS4s communities are federal requirement. He added that other communities could adopt it if they choose to.

**Rep. Spang** asked Mr. P. Currier to explain what a general permit is.

**Mr. P. Currier** explained that a general permit is a single permit that lists general conditions.

**Mr. Hemmerlein** added that the MS4 general permit lists conditions that all MS4 communities must comply with and report on to EPA each year.

**Rep. Spang** asked if the general permit would be issued at a watershed scale.

**Chairperson Cedarholm** stated that a municipality could adopt a bylaw that says the state permit must be met.

**Rep. Spang** asked how difficult would it be for the state to write a general permit and how specific would the permits need to be.

**Mr. P. Currier** explained that DES is already working with EPA on writing permits, so it would be an expansion of that hierarchy.

**Commissioner Burack** added that some tailoring might need to be done for the general permits, but most requirements would be generic. He stated that there should be the ability to have waterbody specific general permits.

**Mr. LeRoy** suggested it be done like fishing permits and specify waters where different requirements apply.

**Mr. Hemmerlein** stated that the 303(d) list of impaired waters could be a basis for making specific permit requirements on a watershed basis.

**Commissioner Burack** responded that the 303(d) list could become a subset of waters with special requirements. He stated that the state would need authority to adjust permit conditions to address changes in water quality.

#### IV. PROS AND CONS OF VARIOUS STORMWATER MANAGEMENT APPROACHES

**Mr. Sienkiewicz** stated that it would be helpful to go over the full menu of options and suggested that he present the list of pros and cons that he put together. He explained the table of options that he put together and read 28:A aloud to the Commission.

*N.H. Constitution [Art.] 28-a. [Mandated Programs.] "The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision." November 28, 1984*

He explained that he asked Ben Frost why the New Hampshire Workforce Housing Statute was not a 28:A issue and Mr. Frost responded that the towns already had approved zoning by vote of the local legislative body. Mr. Sienkiewicz stated that there are many municipalities that are already regulating land use and stormwater and it might be a possibility to say that those municipalities are already choosing to regulate stormwater according to a state standard. He added that he thinks there is a benefit to keeping municipalities involved in the process because there needs to be buy-in and understanding at the local level. He stated that the Comprehensive Shoreland Protection Act (CSPA) cut out the municipalities and has the state directly regulate property owners. He asked Commissioner Burack if there is a sense of what the CSPA costs to administer.

**Commissioner Burack** responded that there are a lot of variables, but that DES can try to put numbers together for the cost to administer a general permit. He added that DES would need to know how much the municipalities would be involved and state staffing requirements.

**Mr. P. Currier** added that there are some significant differences between the CSPA and how a general stormwater permit would work. He explained that the CSPA only applies if someone wants to make changes to a property, but the stormwater permit would apply to all property owners. He stated that it might be possible to obtain federal funding for start-up costs for the first year or two.

**Mr. Hemmerlein** asked if the fees collected from a statewide stormwater utility would go to municipalities or the state.

**Mr. Sienkiewicz** suggested that the state could administer the beginning stages including the GIS, then a portion of the funding could go to the towns or administration and stormwater infrastructure improvements.

**Mr. P. Currier** stated that if municipalities adopt their own stormwater utilities, they would keep the fees, which keeps them involved and keeps the money local.

**Dr. Roseen** stated that stormwater utility fees are generally between \$15.00 and \$40.00 annually per household, depending on the amount of impervious cover.

**Mr. LeRoy** stated that the money generated from fees needs to be kept local.

**Mr. P. Currier** responded that a dedicated fund could be set up.

**Mr. Trainque** added that two things determine the stormwater utility fee: 1.) what they want to include in their stormwater program, and 2.) the size of the property. He added that the fee for a residential site is usually between \$3.00 to \$5.00 per month.

**Dr. Roseen** stated that to date, utilities have been more focused on MS4 compliance than on infrastructure fixes.

**Chairperson Cedarholm** stated that in MS4 communities, if a property owner is out of compliance, the municipality can correct the problem and charge the property owner.

**Mr. Trainque** asked how requirements on private property owners are factored into a utility.

**Ms. Manzelli** stated that the property owner would be responsible for both paying into the utility and personally paying for stormwater management on their private property.

**Mr. Robertie** asked how many utilities would be created.

**Mr. P. Currier** responded that municipal-level utilities make sense, but that there are options for watershed, county, or other-level utilities as well.

**Chairperson Cedarholm** suggested that the Southeast Watershed Alliance could potentially form a utility.

**Mr. Sienkiewicz** stated that he agrees with Ms. Manzelli's thought. He explained that if a property owner needs a \$10,000 stormwater system, and the utility gives \$5,000 toward the system, there may still be a takings issue, but there will be less of an issue if the property owners are receiving money toward the improvements.

**Dr. Roseen** suggested that a property owner would have to pay the monthly utility fee unless they are meeting some type of stormwater improvement. He explained that the Long Creek residual designation authority is looking at costs around \$3000/acre/year and that the mall would be around \$300,000. He explained that they had the choice to spend the money to make improvements on their own property.

**Mr. Sienkiewicz** explained that the Massachusetts Wetland Protection Act uses state statute and rule as the guide, but municipalities are the first line of enforcement. He explained that in Maine, the municipality is required to do the enforcement. He added that he thinks New Hampshire needs a statewide standard that is uniform, but that the municipalities need to be involved.

**Mr. P. Currier** stated that approach in Maine does not generate funds.

**Rep. Spang** asked what municipal enforcement would require. She stated that some smaller municipalities may have a problem with implementation. She added that they may want to manage stormwater, but they may not have sophisticated enough staff to do so.

**Mr. Sienkiewicz** responded that the biggest back for the buck with municipal enforcement is the smaller projects that fall under the AoT threshold and for redevelopment projects. He stated that Dr. Kahl brought up not wanting someone to have to do a drainage analysis to be able to build a shed, and explained that a general permit that phases in requirements might be the best approach. He added that the 2009 residential building code applies to all buildings, even if the municipality has no building inspector. He suggested a way for homeowners to complete a checklist to report that they installed rain gutters or cisterns, or other management practice.

**Mr. Hemmerlein** responded that even if inspections of stormwater practices do not happen, the possibility that they could happen is a powerful tool for compliance.

**Ms. Manzelli** suggested that it would be good if municipalities who want to manage stormwater, but don't have the capacity, could have the option for the state to regulate and enforce it for them.

**Mr. P. Currier** responded that the state could do it for them and it would be good to have a program for municipalities to help them build capacity to do it in the future.

**Mr. Hemmerlein** suggested different tariffs that are lower for municipalities who administer and enforce the program themselves, and higher if the state does it for them.

**Mr. P. Currier** stated that he thought the Winnepesaukee River Basin would be a good ~~entity~~ *conceptual model* to administer the utility. He added that municipalities would need to feel represented.

**Rep. Borden** asked if there could be representation from each of the major watersheds and specified the Winnepesaukee, the Connecticut, the Androscoggin, and the Saco.

**Mr. Hemmerlein** responded that the fee would have to be collected by the municipality.

**Mr. P. Currier** stated that the state would have to do the GIS analysis so that it was consistent throughout the state.

**Mr. Sienkiewicz** stated that there would need to be an appeals process. He explained that if the municipality is collecting the money, a homeowner could go to the town and appeal an error and then have communication between the town and DES.

**Rep. Spang** stated that the Commission is discussing two things: 1.) developing regulations to reduce the impact of stormwater and 2.) developing a utility to obtain funding to deal with the stormwater problem. She asked if the utility would issue the permits.

**Mr. Sienkiewicz** asked if it would make sense for the local permitting body be the utility.

**Rep. Spang** suggested that the permit for building would pay for the administration of the permit, and the utility would pay for the infrastructure.

**Mr. Hemmerlein** suggested that they can get municipal buy-in by having the option of property owners paying a utility fee to the state or paying a smaller fee to the municipality if the municipality has a utility.

**Mr. P. Currier** stated that the utility would collect fees based on what's on the ground.

**Dr. Roseen** added that the utility does not enforce standards directly.

**Mr. Sienkiewicz** responded that it is probably a bad idea then for the utility to issue the permits. He added that some municipalities may want to start their own utilities right away.

**Rep. Spang** stated that she wonders if the Commission should focus energy on the utility or on the ordinance idea and is afraid that the utility is a far reach.

**Chairperson Cedarholm** responded that he thinks both things need to happen. He explained that a utility is needed to pay for the improvements and an ordinance is needed to know what improvements should be made and how.

**Dr. Roseen** added that a utility gets around the 28" A issue.

**Mr. Sienkiewicz** suggested that the Commission inform that legislature of the regulatory gaps from the document that Mr. P. Currier put together, and present the utility as a funding source.

**Rep. Spang** asked if the smaller towns will see the benefit of a utility.

**Chairperson Cedarholm** responded that a stormwater utility in the smaller towns would have very minimal utility fees because there is very little infrastructure. He asked what if a private parking lot discharged directly to a brook.

**Mr. P. Currier** responded that the town could develop bylaws if they were enabled to do so and they could regulate the parking lot.

**Chairperson Cedarholm** asked how the town would work with property owners to correct the problem.

**Mr. P. Currier** responded that the town would collect a fee unless the property owner fixed it themselves or the town could use money generated by the utility to fix it.

**Ms. Manzelli** offered assistance to Mr. P. Currier in drafting legislation.

**Dr. Roseen** suggested that the Commission look at a calendar and assign hard and fast deadlines for the remainder of the work.

**Chairperson Cedarholm** suggested that the next meeting be scheduled to go until 4:00pm.

**Dr. Roseen** asked if the Commission can work by email in between meetings to develop a schedule.

**Mr. Sienkiewicz** asked if the Commission was planning on holding a joint meeting with the Land Use Commission.

**Mr. P. Currier** responded that he thinks a joint meeting is necessary. He explained that they are working on a statewide plan for where development should go on the landscape and where it should be avoided.

**Rep. Spang** responded that it sounds like statewide zoning.

**Mr. P. Currier** explained that the intent is to allow for planning before people buy a property

**Rep. Spang** stated that the next Land Use Commission meeting is on Monday, March 15. She explained that she talked with Commissioner Burack about having a joint meeting with the Land Use, Stormwater and Groundwater Commissions and have small discussions by topic. She added that the Groundwater Commission is working on ordinances.

**Mr. Sienkiewicz** suggested that, as a first step, representatives for each Commission meet to update each other and get each other up to speed.

**Rep. Spang** agreed to ask the Land Use Commission chair for 15 minutes of time at their next meeting for Chairperson Cedarholm to give them an update on the Stormwater Commission.

**V. FUTURE MEETING DATES AND TOPICS**

Date	Time	Location
April 5, 2010	1:00 PM – 3:00 PM	LOB 305*
May 3, 2010	1:00 PM – 3:00 PM	LOB 305*
June 7, 2010	1:00 PM – 3:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**VI. ADJOURNMENT**

**The meeting adjourned at 3:17pm.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

April 5, 2010 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
L. Mike Kappler	NH House of Representatives
Donald Sienkiewicz	Home Builders and Remodelers Association
Paul Currier	NH Department of Environmental Services
Robert Roseen	University of New Hampshire Stormwater Center
Michael Trainque	American Council of Engineering Companies
Newb LeRoy	Associated General Contractors of NH
Mark Hemmerlein	NH Department of Transportation
Josh Cline	NH Rivers Council
Dari Sassan	NH Office of Energy and Planning
Eber Currier	NH Farm Bureau
Dave Danielson	NH Association of Regional Planning Commissions
Karen Ebel	The Nature Conservancy
Steve Kahl	NH Lakes Association

**Members Absent:**

Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate
Rep. David Borden	NH House of Representatives
Amy Manzelli	Business and Industry Association of NH
Joe Robertie	NH Timber Owners Association

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Attendees:**

Thomas Burack	Commissioner, NH DES
Erin Hass	Dennehy and Bouley
Susan Olsen	NH Municipal Association
Ridgely Mauck	NH DES Alteration of Terrain Program

**I. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:06pm. Introductions were made around the room.

**II. APPROVAL OF MINUTES**

**Mr. P. Currier** made a correction to his statement on page 8 of the March 1, 2010 minutes to clarify that the Winnepesaukee River Basin would be a good conceptual model for how to administer the statewide utility.

**Mr. LeRoy** made a motion to approve the minutes with amendments from March 1, 2010 meeting. **Rep. Spang** seconded the motion. **All approved and none opposed.**

### **III. LAND USE COMMISSION UPDATE – REP. SPANG**

**Rep. Spang** presented an update of the Stormwater Commission to the Land Use Commission at their last meeting. She reported that the Land Use Commission is looking at land use regulations in other states and has a definitions subcommittee that is looking at controlling indirect impacts to wetlands. She stated that the Land Use Commission members agreed that a joint meeting of the Commissions is needed.

**Mr. P. Currier** stated that he was hoping that they would be looking at a statewide framework that would identify the best and worst places for development.

**Rep. Spang** responded that they discussed that, but it is a big issue to tackle and would require more time.

**Chairperson Cedarholm** asked if they are looking at stormwater as a component of wetland setbacks.

**Rep. Spang** responded that they are looking at soils and other wetland indicators for setbacks and that they are referring to the Stormwater Commission for the stormwater pieces. She stated that they are having a hard time with determining how to inventory the biological component of wetland assessments.

**Rep. Kappler** asked when the Land Use Commission reports

**Rep. Spang** responded that they have the same timeline as the Stormwater Commission and will report by November 2010. She added that she has been looking at the report from the Great Bay Sediment Commission and that nonpoint source pollution has been identified as a major problem.

**Dr. Roseen** responded that the Stormwater Commission has been focusing on post-construction and not much on construction activities where erosion and sediment can be more of a problem.

### **IV. PROPOSED LEGISLATIVE LANGUAGE DISCUSSION – CONTINUATION FROM MARCH 1, 2010 MEETING**

**Chairperson Cedarholm** introduced Ridgely Mauck from the NH Department of Environmental Services Alteration of Terrain (AoT) Program and explained that he is available to answer questions during this discussion.

**Mr. P. Currier** reminded the Commission that there are currently two ideas to work through; stormwater discharge permits and a statewide stormwater utility with a local option. He stated that he thinks both are necessary, but asked the

Commission their opinion. He explained that a utility might be possible without a permit, but that a permit would likely need a utility to administer it. He stated that the Winnepesaukee River Basin program framework could be used as an example to have a separation between the permitting authority and the utility.

**Chairperson Cedarholm** asked if a utility would apply to everyone in a town or only those within the MS4 area. He stated that, in most cases, the MS4 is only a portion of the town.

**Mr. P. Currier** responded that he thinks the utility would apply to everyone.

**Dr. Roseen** responded that there are examples of both. The utility in Augusta, Maine includes only the MS4 portions of the town and the utility in South Burlington, Vermont include the entire city. He added that any impervious cover, whether it is within or outside of the MS4 area, contributes runoff.

**Chairperson Cedarholm** responded that if the stormwater utility is only for the MS4 area, that a permit may be needed for outside of the MS4 area.

**Mr. P. Currier** stated that there is a difference between the MS4 permit and the stormwater permit that the Commission is discussing. He explained that the EPA MS4 general permit regulates stormwater that goes through conveyance, but in New Hampshire, there is often stormwater that does not go through municipal conveyance and this would also be regulated under the stormwater permit they are discussing.

**Dr. Kahl** asked if a town could set their own utility fee if they adopted a local utility and opted out of the state utility.

**Mr. P. Currier** responded yes, and that the state would encourage local utilities.

**Dr. Kahl** stated that the town would get the fee and they could set the fee to zero if they wanted.

**Mr. P. Currier** responded that there would likely be requirements for stormwater fixes and that the fees would need to go to aid or grants to implement the fixes.

**Mr. Sienkiewicz** asked if the fees collected by the state utility would be set aside for stormwater aid. He stated that, at the last meeting, they discussed that the GIS analysis of impervious cover was best done by the state, but that administration of the utility be done by the municipalities.

**Rep. Spang** responded that municipalities would not do it without getting money and asked if a town did not do it, if the state would.

**Mr. P. Currier** responded that the state would do the GIS on a unified statewide basis or municipalities would gather it with requirements for data.

**Rep. Spang** asked if anything would be grandfathered.

**Mr. P. Currier** responded that the water quality standards apply to everything and there is no grandfathering. He explained that if the water quality standards change, everyone must comply with the changes. He stated that the purpose of the permit and the utility is to meet water quality standards.

**Chairperson Cedarholm** asked if the stormwater permit would only apply to new development or if existing and re-development would also be included.

**Mr. P. Currier** responded that all development would be included and that the owner of every property would be responsible for the runoff coming from their property. He added that if a property is undeveloped, which would need to be defined, there would be no requirements.

**Rep. Kappler** asked if EPA has been talking about better regulating stormwater as a result of the recent storms.

**Mr. P. Currier** replied that EPA is maxed out and that the new stormwater general permit will have additional requirements beyond the existing permit.

**Dr. Roseen** added that the Massachusetts stormwater general permit public comment period closed and it will likely be a while longer until it is in effect.

**Mr. Hemmerlein** asked if there would be a cost benefit analysis for the state stormwater permit if the performance standard is to meet water quality standards.

**Mr. P. Currier** responded that he hopes a best management practices (BMP) approach could work where, if the new AoT framework and stormwater manual were followed, it could be assumed that water quality standards would be met.

**Chairperson Cedarholm** asked if the stormwater permit would require everyone in a town to get a permit and to determine where and what they discharge.

**Mr. P. Currier** responded that it could be a phased approach that could potentially start with a general permit for the entire state.

**Chairperson Cedarholm** asked if it is feasible.

**Mr. P. Currier** stated that he thinks it is feasible, but implementation should not start until the legislature asks DES to produce recommendations for implementation. He added that the DES recommendations for implementation would need to be much more detailed than what the Stormwater Commission report will contain.

**Mr. Sienkiewicz** stated that it feels like it is not politically viable or a good idea to do a stormwater general permit because it will appear that people need a state permit to let the rain run off of their roofs. He explained that they want property owners and municipalities to take responsibility and understand that brown, polluted water is a problem. He stated that he thinks municipalities need to administer the permit.

**Mr. P. Currier** responded that the Commission could decide not pursue the permit idea and focus on the utility. He stated that the Commission could recommend that property owners be required to take responsibility for their runoff and municipalities have authority to comply with the water quality standards. He added that municipalities could develop utilities and, if they choose not to, the statewide utility applied.

**Mr. Sienkiewicz** asked where the stick is, and stated that a stormwater permit might be necessary, but should be administered at the local level.

**Rep. Spang** asked if it would be appropriate to start with a size threshold and phase in development. She explained that they are doing this with groundwater withdrawals starting with the large withdrawals and now moving to small withdrawals. She added that they could start with the larger commercial properties.

**Mr. LeRoy** stated that the existing, grandfathered properties are causing the problem. He suggested asking the AoT Program if they could reduce their area of disturbance threshold to capture smaller-scale development.

**Mr. Mauck** of the DES AoT Program responded that the AoT Program is entirely fee-based and that lowering the threshold would generate more permit fees and allow them to hire more staff. He explained that residential subdivisions contribute to flooding and other water quality problem, but that the road size for a subdivision is the only thing that triggers a residential AoT permit. He added that there are many 10 to 15-lot cul-de-sacs that are built without reaching the permit threshold and therefore never get a state review.

**Chairperson Cedarholm** asked how many applications the AoT Program currently reviews.

**Mr. Mauck** replied that the application numbers have been down about 50% over the last year and a half due to the economy. He explained that there was a spike in applications in December 2008 because a rule-change went into effect January 2009.

**Chairperson Cedarholm** asked what the basis is for the permit threshold of 100,000 square feet of disturbance.

**Mr. Mauck** replied that the permit threshold was established prior to his involvement in the program, but that he does not believe there was science behind the threshold and guesses that it was a number that was thought would catch the larger projects, but was not unreasonable to manage.

**Mr. Sienkiewicz** stated that he is surprised by how much you can develop without triggering a permit. He added that there has been a lot of discussion on pollutants, but that they have not seen numbers to quantify the worst polluting land uses.

**Dr. Roseen** responded that the reason the Commission began discussing the idea of every property needing a permit was to get at uniformity in managing stormwater. He suggested that the permit could be for the municipality.

**Mr. P. Currier** responded that having a permit for municipalities would be a 28-A issue.

**Mr. Sienkiewicz** responded that he does not think there would be a 28-A issue if the permit requires municipalities to be responsible for the quality of rivers flowing out of their municipal boundaries.

**Mr. P. Currier** responded that municipalities have only been responsible for their drainage and have not been responsible for surface water quality leaving their town boundaries.

**Rep. Spang** stated that it might not be the larger commercial developments that they want to target, it might be all the smaller development.

**Mr. P. Currier** responded that stormwater is death by 1000 cuts and it is directly related to population. He added that the problem is where the people are.

**Dr. Roseen** responded to Mr. Sienkiewicz that they can easily pull existing data to determine the median pollutant loading values for each land use and put them in order from lowest to highest loading.

**Mr. Hemmerlein** added that there is an area component that should be considered and that highways take up very little area in a watershed.

**Rep. Spang** asked if stormwater volume data by land use is available.

**Dr. Roseen** responded that it is not readily available, but that they could do it.

**Mr. Sienkiewicz** stated that he thinks there needs to be a stormwater permitting mechanism because there needs to be a bigger stick than just a utility fee. He explained that, at the last meeting, Dr. Kahl stated that they do not want people to have to submit an engineering design to build a shed. He thinks that there needs to be a selection of BMPs for people to choose from to meet the requirement. He added that having the state tell a property owner to do something is not as palatable as if the municipality tells them to do something and he believes a good legal argument could be made for municipalities who have site plan review that it is not a new state requirement, but they would need to decide if it is an expanded requirement.

**Rep. Spang** explained that it has been an ugly couple of weeks related to stream crossings because of the cost to properly size culverts. She explained that municipalities were saying it was a 28-A issue even though there were very good public safety and ecological reasons for improved culverts. She asked how that can be avoided with the stormwater issue.

**Dr. Roseen** responded that it needs to be partnered with funding and that a statewide stormwater utility might make it more palatable.

**Rep. Spang** asked if a utility would be able to fund all of the fixes.

**Mr. Trainque** responded that stormwater utilities typically look at the current activities a municipality is doing to manage stormwater, such as catch basin cleaning and then look at the additional activities that they would like to do and what additional funding would be necessary to conduct all existing and future stormwater activities. He explained that over time, the revenue stream becomes more stable and the general fund money that had been used for stormwater activities can be used for other activities once the utility takes over. He added that this is a good argument for making sure that all properties are included in the utility.

**Mr. P. Currier** stated that the statewide utility concept is a slightly different situation because the state does not have current costs for stormwater. He explained that at the state level, there needs to be an enterprise fund and that they need to figure out a source of start-up money.

**Dr. Roseen** stated that he circulated a copy of a Maryland Senate Bill with a statewide utility component and remediation funds for targeted efforts. He explained that if it passes, all municipalities in the state must create a stormwater utility by July 2011 or be part of the state utility.

**Mr. Hemmerlein** responded that Maryland is a delegated state that administers the EPA stormwater permit, which means that the requirement is coming from

the federal government, not the state. He explained that the costs of maintaining stormwater structures add up quickly. He said that people often mention that street sweeping and catch basin cleaning are low-hanging fruit, but sweeping costs around \$10.00 per mile and catch basin cleaning is around \$50 per catch basin. He stated that some neighborhoods have more catch basins than houses and the costs add up quickly. He said he is not sure that the \$20.00 or \$30.00 per year per household for stormwater utility fees would be enough.

**Rep. Spang** asked if municipalities should be compensated for cleaning catch basins and other stormwater management activities.

**Chairperson Cedarholm** responded that it would be nice to have a dedicated fund for those types of activities.

**Rep. Spang** agreed, but asked if state money should go to more exotic stormwater management, not routine maintenance.

**Dr. Roseen** stated that capital costs to repair everything at once will not be achieved with \$15.00 per year per household, but it is the start of a dedicated fund with built-in incentives for people to manage their stormwater better.

**Mr. Trainque** added that the benefit of a stormwater utility is that there are dedicated funds for stormwater management instead of coming out of the municipal general fund. He explained that stormwater activities are often overlooked because of more pressing budget issues. He added that every community is unique and will have different stormwater needs.

**Chairperson Cedarholm** stated that the statewide stormwater utility is exciting, but that the problem areas still need to be identified.

**Dr. Roseen** responded that the problem areas have already been identified with the MS4 permit.

**Chairperson Cedarholm** stated that MS4s only cover a small portion of the state.

**Dr. Roseen** agreed, but recommended focusing on MS4s because that is where the driver is.

**Mr. Hemmerlein** stated that the MS4 areas might change.

**Dr. Roseen** agreed that the details of the new MS4 permit still need to be developed, but that the cost of administering MS4s is not going to decrease with the next permit round.

**Rep. Spang** explained that the challenge of a statewide stormwater utility is going to be getting enough flexibility and that she is worried communities are not going to be able to implement a local utility because it goes to the voters.

**Dr. Roseen** explained that this is the reason why a statewide utility is necessary and that the flexibility of the statewide utility is that there is a local option.

**Rep. Kappler** responded that there needs to be a statewide program that requires towns to do something or else they will not do anything.

**Dr. Kahl** added that an incentive for municipalities to develop their own utilities is that they get to keep the money generated from the fees.

**Rep. Spang** asked how many of the key needs that the Commission originally drafted, are addressed by the statewide stormwater utility.

**Dr. Roseen** responded that this is only the economic piece and it does not get at the uniformity piece.

**Rep. Spang** asked if it would get at the uniformity piece if they specified standards that need to be met.

**Mr. Trainque** responded that a stormwater utility is not only a funding mechanism and that it can also be a program.

**Mr. Hemmerlein** stated that he is worried about compliance and asked how it will be determined that each property owner is in compliance and that the funds are being used correctly.

**Mr. P. Currier** suggested that there could be a self-certification program done by the property owner or that the local building inspector could be trained.

**Mr. Hemmerlein** asked how the best use of the funds would be determined.

**Rep. Spang** responded that at the municipal level, there could be CIP developed in advance of the utility to plan phased improvements. She asked who would decide what municipalities spend money on if it is a statewide utility.

**Dr. Roseen** responded that with the state utility a large portion of the funds generated would go back to municipalities.

**Mr. Hemmerlein** stated that there will need to be very tight restrictions on what the money can be spent on.

**Dr. Kahl** asked if the desire is for municipal stormwater utilities or a statewide stormwater utility because there seems to be no municipal incentive.

**Dr. Roseen** explained that the municipal incentive would be lower fees for the property owners and dedicated municipal funds to do things that they already do like catch basin cleaning. He suggested that they build on the momentum of the MS4 draft permit.

**Mr. Danielson** suggested taking the idea of CIP and to phase in compliance. He suggested the first phase include MS4 communities and that the legislation to include a large outreach component. He asked if legislation can be structured to phase in requirements.

**Rep. Spang** answered affirmatively.

**Dr. Roseen** responded that MS4s are based on census data, which changes.

**Chairperson Cedarholm** stated that MS4s are strange and that Newmarket and Concord are not MS4s but that they might be in the next round.

**Mr. P. Currier** stated that he agreed with Mr. Danielson that there needs to be phased implementation that starts with the MS4 communities.

**Mr. Danielson** added that education needs to start immediately.

**Chairperson Cedarholm** asked Mr. Mauck to what degree a stormwater permit or a statewide stormwater utility would work with or conflict with the AoT Program.

**Mr. Mauck** responded that he does not think they would conflict.

**Mr. P. Currier** responded that the permits during construction (AoT) would be different than an operation permit.

**Mr. Mauck** added that another benefit to the stormwater utility is maintenance. He explained that there had been no operation and maintenance requirements in the AoT Program until 2009. He explained that there are now operation and maintenance plan requirements that include keeping records available to DES upon request. He explained that the state of Maine has a re-certification program for showing compliance with their operation and maintenance plan that requires the permit holder to apply for recertification. He added that this is the first year permit holders will need recertification and that his Maine counterparts are interested to see how people comply and to determine what the stick would be if people do not comply.

**Rep. Spang** asked if during busier times, the AoT Program has a hard time keeping up and how many years do you keep looking at maintenance.

**Mr. P. Currier** responded that a property assessor could be trained to look at how BMPs are being maintained.

**Dr. Roseen** responded that training the property assessors is what was proposed in Massachusetts.

**Mr. Mauck** stated that the focus of the AoT Program has been on the front end and that they may need to look at these systems after construction to see how well they are operating. He added that it would be a big program change.

**Chairperson Cedarholm** stated that, for the most part, the MS4 permit to date has been a paper exercise with no feedback from EPA.

**Mr. P. Currier** suggested that homework for the next meeting be to focus on a phased approach starting with MS4 communities with performance standards. He stated that he is stuck on how the process gets started and asked if that can be the homework for next time. He added that if they start with municipalities, they might be able to get funding from EPA. He explained that the issue they need to deal with is planning for the rest of the state and branching out from the MS4s. He stated that until they look at what the stormwater performance standards are, they are talking in the abstract. He suggested the Commission might want to ask DES to put performance specifications together.

**Rep. Spang** stated that the MS4s are already pretty well education and asked if they are missing an opportunity to work with non-MS4 communities.

**Dr. Roseen** responded that MS4s are informed, but not necessarily savvy or educated and could do and know more.

**Mr. P. Currier** stated that sooner or later they are going to need to start thinking about getting start-up money.

**Rep. Spang** suggested starting with MS4s and setting a larger impervious cover threshold.

**Chairperson Cedarholm** asked if Mr. P. Currier was going to take on the homework assignment.

**Mr. P. Currier** responded that he was hoping for ideas.

**Dr. Roseen** suggested that they look at what stormwater needs are covered under the stormwater utility and stated that the rest need to fall under the stormwater permit idea.

**Mr. P. Currier** asked if they should spend more time on the stormwater permit concept.

**Mr. Sienkiewicz** responded no, that the utility could set up a permit structure.

**Chairperson Cedarholm** asked if they could learn something from the four stormwater utility feasibility studies that are ongoing or from the city of Manchester such as the biggest hurdles or lessons learned.

**Ms. McCarthy** explained that the feasibility studies are just getting started and will not be completed until December 2010.

**Dr. Roseen** responded that the biggest hurdle we can learn from Manchester is that when a municipality takes on a stormwater utility it takes 7 years.

**Mr. Trainque** responded that South Burlington is farther into the process and could be a good speaker.

**Mr. Hemmerlein** stated that the South Burlington utility is a flood-based utility.

**Rep. Spang** asked how far the AoT permit goes and if there would be overlap between the AoT permit and a stormwater permit.

**Mr. Mauck** responded that the AoT permits have operation and maintenance conditions that go for the length of the operation.

**Rep. Spang** asked what the stormwater permit would cover that the AoT permit does not.

**Mr. P. Currier** responded that an operational permit is very different than a construction permit. He stated that the statute could say you cannot discharge stormwater to surface waters with operational requirements. He explained that with the AoT program, someone gets a permit, builds what needs to be built, and then is basically done with the program because there is no long term mechanism in place for operation and maintenance.

**Rep. Spang** asked if the permit would be only to surface waters or if it would also include to neighboring properties.

**Mr. P. Currier** responded that it would likely only be to surface waters.

**Dr. Kahl** stated that a stormwater discharge permit seems crazy if the statute says there should be no discharge.

**Mr. P. Currier** responded that there would need to be performance specifications. He recapped the discussion that the utility would have phased implementation starting with MS4s and that ultimately; implementation would cover every developed property of the state.

**Dr. Roseen** stated that a phased approach is good for the permit, but he thinks the utility should all start at the same time.

**Chairperson Cedarholm** stated that there should be a waiver for the utility if performance specifications are met.

**Dr. Kahl** added that performance specifications could be impervious cover based.

**Rep. Spang** asked if the performance specifications will deal with only volume or quality and asked how quality is being addressed. She stated that it does not seem right that people who discharge dirty water are charged the same fee as those who discharge clean water.

**Dr. Roseen** responded that it gets at both volume and quality because quality is assumed depending on the amount of impervious cover and implementation of certain BMPs.

**Rep. Spang** asked if monitoring would be required as part of the permit.

**Dr. Roseen** and **Mr. P. Currier** responded that no monitoring would be required.

**Mr. P. Currier** stated that compliance could be based on performance standards and the ability of BMPs to meet performance standards. He added that if they are going to phase in the permit, he thinks the second phase should be impaired watersheds.

**Ms. Ebel** suggested a change to the wording in the definition of stormwater from “does not infiltrate” to “has not infiltrated”.

**Mr. P. Currier** agreed.

**Mr. P. Currier** asked if the permit should be modeled after the waste permits.

**Mr. Danielson** responded that consistency would be good.

**Mr. Hemmerlein** asked if a property is exempt from the utility, if they are then exempt from the permit.

**Mr. P. Currier** responded no, but if they comply with the permit, they might not have a fee.

**Mr. Mauck** explained that the AoT Program currently has a general permit-by-rule for all development regardless of the size of disturbance that went into effect with the 2009 rule change. He explained that they felt authority was lacking before and so they included it in the rule change.

**Commissioner Burack** added that the AoT program has not always been looking at smaller development, but it does not mean that they won't in the future. He added that the Land Resources Management Bureau has been cross-trained for inspections and enforcement.

**Dr. Kahl** stated that they need a definition of impervious cover and suggested that lawns should be considered impervious when they are within 100 feet of surface waters.

**Dr. Roseen** suggested putting together a calendar and deadlines.

**Mr. Hemmerlein** asked how the permit works with the utility. He asked if people with waivers or who are in compliance with the permit still have to pay the fee.

**Rep. Spang** asked if everyone would have to pay an administration fee.

**Chairperson Cedarholm** responded that there are always pieces of infrastructure whether you live in the village or in the outskirts.

**Dr. Kahl** suggested that people are given full credit and are assigned no fee if they are doing the right thing. He asked if it is a straight fee or a tiered fee.

**Mr. Trainque** responded that utilities typically determine an equivalent residential unit (ERU) and assign a fee per ERU. He explained that the more impervious surface, the more ERUs and the larger the fee.

**Rep. Spang** asked if the utility cover everything or only properties in town.

**Dr. Roseen** answered everything is covered.

**Rep. Spang** stated that under that scenario her little house on 100 acres would have a fee.

**Dr. Kahl** stated that water quality impacts from impervious cover are not typically seen until 6 – 10% and there could be an impervious cover threshold.

**Mr. P. Currier** stated that antidegradation says no degradation unless there is social or economic justification. He explained that the criteria is that the social and economic justification must outweigh the environmental impact.

**Commissioner Burack** asked about the possibility of holding a joint meeting between the Land Use and the Stormwater Commissions and asked Ms. McCarthy to coordinate the joint meeting.

**Chairperson Cedarholm** responded that it would be beneficial and suggested that the meeting be held at a separate time from the regular meetings.

**Rep. Spang** suggested inviting the Infrastructure Commission.

**Rep. Spang** informed the Commission that Bob Zimmerman of the Charles River Watershed has offered to speak to the Commission on residual impacts.

## V. FUTURE MEETING DATES AND TOPICS

Date	Time	Location
May 3, 2010	1:00 PM – 3:00 PM	LOB 305*
June 7, 2010	1:00 PM – 3:00 PM	LOB 305*
July TBD		

\*NH Legislative Office Building, 33 North State Street, Concord, NH

## VI. ADJOURNMENT

**The meeting adjourned at 4:02pm.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

May 3, 2010 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
L. Mike Kappler	NH House of Representatives
Paul Currier	NH Department of Environmental Services
Robert Roseen	University of New Hampshire Stormwater Center
Michael Trainque	American Council of Engineering Companies
Newb LeRoy	Associated General Contractors of NH
Mark Hemmerlein	NH Department of Transportation
Dari Sassan	NH Office of Energy and Planning
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Steve Kahl	NH Lakes Association
Rep. David Borden	NH House of Representatives
Amy Manzelli	Business and Industry Association of NH

**Members Absent:**

Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate
Joe Robertie	NH Timber Owners Association
Donald Sienkiewicz	Home Builders and Remodelers Association
Josh Cline	NH Rivers Council
Dave Danielson	NH Association of Regional Planning Commissions

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Attendees:**

Thomas Burack	Commissioner, NH DES
Bob Zimmerman	Charles River Watershed Association

**I. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:08pm. Introductions were made around the room.

**II. APPROVAL OF MINUTES**

**Rep. Spang** made a motion to approve the minutes with amendments from the April 5, 2010 meeting. **Rep. Borden** seconded the motion. **All approved and none opposed.**

### III. CHARLES RIVER STORMWATER PRESENTATION – BOB ZIMMERMAN, CHARLES RIVER WATERSHED ASSOCIATION

**Mr. Zimmerman** explained that the Charles River Watershed Association (CRWA) started in 1965 when the Charles River was the most polluted river in the United States. He became executive director in 1990 and explained that, as a result of the misconception that it was okay to discharge polluted water to the Charles River because the river had always been polluted, the CRWA began an extensive monitoring program to identify the sources of pollution in the river and prove that the pollution was not natural. He explained that since then, the CRWA has been a science and engineering directed organization with their single client being the environment of the Charles River and eastern Massachusetts.

**Mr. Zimmerman** explained the following points in his presentation:

- In order to restore surface waterbodies and sustain ourselves, we need to mimic nature in our stormwater, drinking water, and wastewater operations. Decentralization of water is critical and we are still using a 19<sup>th</sup> century approach and technologies for our water infrastructure that includes getting water from somewhere clean, using it, and getting rid of it far away. Current regulation favors large centralized treatment systems, and that in order to fundamentally change, the regulations need to change to enable decentralization.
- We often make conclusions and assumption to build things and create more environmental problems. For example, Boston Harbor was cleaned up when Deer Island wastewater treatment facility (WWTF) of developed to stop direct wastewater discharges to the harbor. The WWTF discharged the wastewater miles out to sea. This ended up dewatering the towns serviced by the WWTF because 60% of the water going to Deer Island is potable water from groundwater seepages. The WWTF wastes the equivalent of one entire Charles River Annually. In addition, the stormwater that falls and enters the drainage network and into rivers is lost within 24 hours out to sea. We are not running out of water in New England, we are throwing it away because of outdated practices and regulations that require the use of outdated practices.
- A land use based TMDL for the Charles River showed that 73% of the loading comes from less than 23% of the land area and this is pretty standard across the United States.
- Impervious cover was the single largest contributor of pollution because 100% of the rain on impervious cover is lost.
- In 2004 the CRWA began work with the Conservation Law Foundation, EPA Region 1, and MA DEP to get EPA to extend their regulatory authority to include stormwater through residual designation under Section 402 of the federal Clean Water Act to capture industrial, commercial, and high density residential areas of 2 acres or greater. They extended the NPDES permits to existing development and require that they remediate their stormwater runoff

- by 65%. This is being piloted in three towns in the headwaters of the Charles River Watershed, Franklin, Bellingham, and Milford.
- The best way to remediate stormwater runoff is to mimic nature using infiltration and vegetated practices to slow runoff down. We need to go after what is already built because we are never going to get the water quality improvement that is needed by only going after new development and redevelopment.
  - They have developed software that informs the planning process as to where stormwater improvements could be made and at what cost. This eliminates costly upfront consultant and engineering fees. The process will involve trading for properties that cannot achieve the treatment that they need, they can “buy” treatment on an offsite property.
  - There is a notion that we haven’t spent money on water and stormwater before, but this is wrong. In Massachusetts, the state revolving fund alone spends millions. The money needs to be spent in a way that fixes things permanently instead of expanding on the system that is already in the ground.
  - 30% of the energy in the United States is used to pump water around. If we can keep water local, it has enormous energy implications. Cambridge drinking water plan has more energy use than all of Harvard and all of MIT combined.
  - The town of Franklin, MA has five water supply wells and they cannot meet the demand of residents. They want to add two more wells. If they reused the water (re-circulate, treat, and infiltrate to groundwater) and capture 30% of the stormwater on existing impervious cover, the flow from the brook would go back to near historic flows. We need to change the regulations to allow us to move in this direction.
  - If we use anaerobic digestion in WWTFs, it creates methane and can generate for energy. Methane is 23 times better at trapping heat than carbon.

**Dr. Roseen** asked if there is anywhere else in the United States where there is credit trading for stormwater.

**Mr. Zimmerman** responded that there is nitrogen trading for WWTFs, but not for stormwater.

**Rep. Spang** asked once the trade has happened, how it is known that the requirements are being met on the other side.

**Mr. Zimmerman** stated that there must be some legal instrument such as a note in the deed to enforce it. He added that who allows the trade to work and who oversees the trading process still needs to be determined.

**Dr. Roseen** asked how the trading is offsetting costs by both parties.

**Mr. Zimmerman** responded that the person installing the additional BMP to offset pollutant loading elsewhere in the watershed would have to charge a fee to do so, over and above the cost of additional BMP installation. He added that it will be important to look at zoning requirements to see how much land can be used for stormwater treatment. He also added that commercial zoning often

requires much more parking than necessary and limits the amount of the property that could be use for stormwater treatment.

**Rep. Borden** asked if there is a problem with over-mimicking nature

**Mr. Zimmerman** responded that it is possible, and it would mean that they would be generating water.

**Chairperson Cedarholm** stated that trading could potentially be done through a stormwater utility.

**Mr. Zimmerman** responded that the residual designation authority allows for trading in the three municipalities and stated that the trading will probably be handled by EPA under the general permits. He added that New Hampshire not being a delegated state for the federal stormwater permit is an opportunity to allow EPA to do the same thing in New Hampshire.

**Rep. Spang** asked if there is any difference with the use of RDA's now that Bob Varney has left Region 1.

**Mr. Zimmerman** explained that RDA was adopted by the Bush administration and that EPA Headquarters is watching the RDA in the Charles River Watershed very closely.

**Dr. Roseen** asked if any of the involved communities have stormwater utilities and does Mr. Zimmerman know of any utilities that are particularly effective.

**Mr. Zimmerman** responded that he doesn't know of any truly effective utilities in New England, but referred to Portland, OR and Seattle, WA as good examples. He added that we need to look at stormwater more broadly and how we make water mimic nature including drinking water, groundwater and wastewater. He stated that we cannot overcome losses of existing water supply and water treatment systems. He explained that remediating impervious cover can improve the situation but cannot overcome the loss.

**Dr. Roseen** asked if they had considered flood skimming.

**Mr. Zimmerman** responded that conservation-based withdrawal permits reduce the demand and that anyone in Massachusetts who withdraws greater than 100,000 gallons per day are required to get a withdrawal permit.

**Dr. Kahl** asked if it would be a distraction for the Commission to think of trading right now since it is only a pilot in Massachusetts.

**Mr. Zimmerman** responded that he thinks trading is worth considering because it hasn't really worked in the United States and EPA is very interested in it.

**Dr. Roseen** stated that the option for trading exists if we look at the potential for recharge. He explained that part of the pilot project looked at cost association with various BMP options and it showed that the most cost-effective BMPs to implement are community-based, not site level.

**Rep. Borden** asked if it makes sense to go bigger than a regional scale.

**Mr. Zimmerman** responded that they need to get through the pilot first, but that the same code could be applied to the state of New Hampshire.

**Mr. Trainque** asked if the pilot is going to meet the requirements of the inter-basin transfer act.

**Mr. Zimmerman** responded that it is all watershed based so they cannot trade from one watershed to another.

**Mr. Hemmerlein** asked Mr. Zimmerman to elaborate on wastewater being the biggest problem.

**Mr. Zimmerman** responded that the water problem with water quality is stormwater, but the major problem with water quantity is the losses from withdrawals. He explained that we need to be aware of wastewater, drinking water, stormwater and groundwater and we can't think in silos anymore.

**Mr. Hemmerlein** asked, from a public investment point of view, where is the cost benefit. He explained there are irreducible concentrations and magnitudes of difference between stormwater and wastewater. He asked how we can craft regulations to overcome the problem.

**Mr. Zimmerman** responded that the only way we're going to change anything is to show that it works economically. He gave an example of a town that gets its water from three wells that are very far from where people live. The entire town is on septic systems and the town is having budget problems. They are looking at doing "smart sewerage" where instead of sewerage the entire town, they only sewer the downtown. The WWTF is sized for two times the sewerage area and the property taxes on those properties go up. They are able to use federal district incremental financing to sewer the downtown area.

**Commissioner Burack** asked if Mr. Zimmerman thinks this approach is better than directly addressing stormwater.

**Mr. Zimmerman** responded no, that he thinks this approach goes together with addressing stormwater.

**Dr. Roseen** asked what portion of the pollution in the Charles River Watershed is from point sources and what portion is due to nonpoint sources.

**Mr. Zimmerman** responded that 17% are due to point sources and the rest are due to nonpoint sources.

**Dr. Roseen** asked Mr. Zimmerman if he thought they would have made such progress without the RDA or TMDL. He stated that New Hampshire doesn't have either and that the Commission needs to identify motivation factors for improving stormwater.

**Mr. Zimmerman** responded that TMDLs are very useful if they address the cause of the problem and if the TMDL asks the right questions. He explained that TMDLs often ask the wrong questions. He stated that he is confident about the Charles River Watershed TMDL because it is watershed based. He stated that TMDLs need to look at all the sources. He also explained that a TMDL does not require EPA or DES to do anything to implement it, although the new MA NPDES permit does link to TMDLs.

**Mr. Zimmerman** explained that he wants to look at the potential of using impervious cover as a surrogate.

**Dr. Kahl** agreed that impervious cover could be used as a surrogate.

**Chairperson Cedarholm** asked how many of the communities involved in the RDA are not MS4 communities or have a WWTF.

**Mr. Zimmerman** responded that Bellingham is the only community that is not an MS4, but it still has a large urbanized area.

**Chairperson Cedarholm** stated that there are only 28 MS4 communities in New Hampshire and that it is difficult for communities that are not subject to the MS4 permit or that do not have a WWTF to understand the RDA.

**Mr. Zimmerman** explained that there was a major break in a water line over the weekend in Boston and 2.5 million people in the area were on boil order. He explained that he was in Cape Cod, an area not affected by the pipe break or the boil order, yet the bottled water was gone from all the grocery stores. He stated that people do not know where water comes from or where it goes. He added that you need to state that case and make the link between water and the environment.

**Rep. Spang** explained that the Commission has been discussing a statewide stormwater utility, but that she heard him say that utilities do not work.

**Mr. Zimmerman** clarified that they can work, but they need to be impervious cover based. He stated that a municipality alone will not be able to remediate stormwater and he thinks that a stormwater utility would be more successful if it were run by something larger than a municipality. He explained that a utility could be used as the regional trading association that oversees the software, trading, and acts as a knowledge and data manager to get the right BMPs in place.

**Rep. Spang** stated that she is skeptical about stormwater utilities because people would perceive it as a property tax. She asked how to get around that.

**Mr. Zimmerman** responded that he does not have an answer, but stated that in the end, taxes pay for things and people like clean water. He added that we do not have a choice because we are in an environmental transition and we need to do something now. He suggested hiring an on-staff economist to understand what we're already spending on water and stormwater.

**Mr. P. Currier** suggested that if New Hampshire had a statewide stormwater permitting process in place, they might not need an RDA.

**Mr. Zimmerman** agreed and stated that Massachusetts had looked at a statewide process but got cold feet. He suggested that watersheds could be used as a trading level for a statewide program and added that a statewide law on a watershed basis sets up watershed-based issues. He stated that a statewide process would be a lot more effective than town to town.

**Dr. Kahl** stated that this would allow New Hampshire to beat the TMDL and hopefully prevent the state from needing one. He added that it might be perceived as a property tax, but there are incentives to reduce the fee.

**Mr. Hemmerlein** asked what the unintended consequences are.

**Mr. Zimmerman** stated that he does not know what the consequences are, but he does know that if we do not make changes, it will only get worse.

**Dr. Roseen** asked what Mr. Zimmerman thinks the business implications will be because of the more stringent requirements in the three pilot towns.

**Mr. Zimmerman** responded that some of the people will leave, depending on the business, but some of the flight will be avoided by telling them that in 18 months the requirements will be on everyone.

#### **IV. PROPOSED LEGISLATIVE LANGUAGE DISCUSSION – CONTINUATION FROM MARCH 1, 2010 MEETING**

Postponed to June 2010 meeting.

**Mr. P. Currier** suggested putting together an outline on how a statewide stormwater permit process and utility might work. He explained that he does not want to work on legislative language until they work these concepts out more. He offered to send out what he has put together to the Commission.

**Dr. Kahl** asked if the Commission is looking for a statewide applicable law that establishes districts to administer it.

**Mr. Hemmerlein** asked where the new law would go.

**Mr. P. Currier** responded that the permit could go with the wastewater statutes and that the utility could go in RSA 485-A instead of requiring a new chapter and could build on the existing stormwater utility statute.

**Dr. Roseen** asked if they could wrap in the use of the Southeast Watershed Alliance as a regional utility.

#### **V. FUTURE MEETING DATES AND TOPICS**

**Rep. Spang** mentioned the joint meeting of the Stormwater, Land Use, and Infrastructure Commissions to be held at DES on May 24<sup>th</sup>. She explained that each Commission will be reporting on how they are progressing and will outline key topics, followed by conversation to share ideas among the Commissions. She asked for ideas on what to present.

**Commissioner Burack** explained that the Infrastructure Sustainability Funding Commission has not been able to put a dollar amount on stormwater. He explained that the meeting should focus on what each Commission has learned, what the key elements are that they are working on, and how does it fit together with the other Commissions. He added that we need to think about how the pieces fit together.

**Dr. Kahl** suggested that impervious cover is a potential integrating factor between all of the Commissions. He added that impervious cover is measurable and that it ties in with the climate change piece.

**Rep. Spang** stated that representatives from the Groundwater Commission and the Great Bay Sediment Commission will also attend the joint meeting. She

suggested that the Commission Chairs, Commissioner Burack, Mr. P. Currier, and Ms. McCarthy meet to plan the agenda for the joint meeting.

**Ms. Manzelli** asked for an update on the Commission of Commissions.

**Rep. Spang** responded that that the Stormwater Commission expires and the Commission on Commissions is deciding what other Commissions should be terminated.

Date	Time	Location
May 24, 2010	9:00 AM – 1:00 PM	DES 111-114
June 7, 2010	1:00 PM – 3:00 PM	LOB 305*
June 28, 2010(tentative)	1:00 PM – 3:00 PM	LOB 305*
August 2, 2010	1:00 PM – 3:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**VI. ADJOURNMENT**

**The meeting adjourned at 3:26pm.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

June 7, 2010 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
L. Mike Kappler	NH House of Representatives
Paul Currier	NH Department of Environmental Services
Robert Roseen	University of New Hampshire Stormwater Center
Michael Trainque	American Council of Engineering Companies
Mark Hemmerlein	NH Department of Transportation
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Steve Kahl	NH Lakes Association
Amy Manzelli	Business and Industry Association of NH
Donald Sienkiewicz	Home Builders and Remodelers Association

**Members Absent:**

Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate
Joe Robertie	NH Timber Owners Association
Josh Cline	NH Rivers Council
Dave Danielson	NH Association of Regional Planning Commissions
Newb LeRoy	Associated General Contractors of NH
Dari Sassan	NH Office of Energy and Planning
Rep. David Borden	NH House of Representatives

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Attendees:**

Thomas Burack	Commissioner, NH DES
Susan Olsen	NH Local Government Center
Eric Williams	NH Dept. of Environmental Services
Rene Pelletier	NHDES Dept. of Environmental Services

**I. CALL TO ORDER**

**Rep. Spang** called the meeting to order at 1:08pm.

**II. APPROVAL OF MINUTES**

**Rep. Kappler** made a motion to approve the minutes from the May 3, 2010 meeting. **Mr. Trainque** seconded the motion. **All approved and none opposed.**

**III. SUMMARY OF JOINT COMMISSIONS MEETING – MAY 24, 2010**

Commissioners who attended the joint meeting stated that it was very useful and there were a handful of common themes between all of the Commissions including the need to explore a regional or watershed approach and the need for funding options outside of the state general fund. The Infrastructure Funding Commission requested that the Stormwater Commission come up with an estimate of the cost to manage stormwater.

**Rep. Spang** read through the list of gaps that were identified at the joint meeting including:

- *The link between infrastructure and land use patterns, and smart growth and sprawl* - **Dr. Kahl** suggested that the Commissions review the Climate Change Action Plan.
- *Wildlife* - **Dr. Roseen** suggested the UNH Stormwater Center's thermal impacts to coldwater fisheries research could provide useful information. **Ms. Manzelli** suggested that the Commission addressed wildlife implicitly by addressing water quality and quantity concerns.
- *Baseline Statewide Minimums* – **Rep. Spang** informed the Commission that she, Eric Williams, and Rene Pelletier will be meeting with the Regional Planning Commission directors later in the week to and asked the Commission for good ideas to present to the directors.

The Commission discussed how a regional or watershed approach to stormwater management is an equitable approach that captures both urban and rural properties and levels the playing field. It was suggested that it regardless of whether someone lives in the city or the country, the majority of people still work, travel, contribute to, and benefit from these economic centers.

**Dr. Roseen** stated that the watershed approach is a unifying theme between all of the Commissions and added that the principal failing of the National Pollutant Discharge Elimination System (NPDES) permitting program was that it was not at a watershed scale. He stated that Watershed Management Districts, similar to the Southeast Watershed Alliance (SWA) include everyone in the watershed. **Ms. Manzelli** suggested that the Commission persist in their plan to link fees with impervious cover because it is equitable for urban and rural properties.

**Mr. Hemmerlein** stated that every new house lot adds a car to the road. He stated that roads are very sensitive to sprawl and explained that a 20% - 25% increase in impervious cover really impacts transportation infrastructure. He stated that there is a conflict between rural highways and mass transit and statewide regulations. He asked how a highway can be expanded without increasing impervious cover. **Dr. Roseen** asked if it's possible to have traffic congestion without creating a safety problem.

The Commission discussed the issue of sprawl and the lack of a rural economy in NH, which contributes to sprawl, as well as how smart growth is in conflict with “rural New Hampshire”. The Commission suggested that the issues of sprawl and smart growth should be addressed by the Land Use Commission and that they should make sure not to make any recommendations or draft legislation that would encourage sprawl.

**Chairperson Cedarholm** suggested looking at baseline statewide minimums for stormwater management through a model ordinance at the next meeting and reviewing Durham’s draft regulations and New London’s stormwater ordinance as starting points.

- *Funding* – The Commission discussed the idea of a statewide stormwater utility and how it could meet the stormwater funding needs.
- *Stormwater Impacts on Groundwater Quality* – The Commission decided not to address groundwater because there is a state Source Water Protection Program with tools in place to address groundwater issues.
- *Smart Growth/Sprawl* –The Commission suggested that this is a topic for the Land Use Commission. **Mr. Pelletier** explained that the Land Use Commission has been looking at wetland setbacks and sprawl issues related to development in NH uplands. He stated that NH has decided, through the Shoreland Protection Act, that you need a 50 foot Shoreland buffer and that impervious cover should be limited to 30%, but there is not control over the big picture issues such as the type and location of development on the landscape. He added that there needs to be a paradigm shift and that most people come to NH specifically to sprawl.

**Commissioner Burack** suggested tying together the concepts of buffers, BMPs, impervious cover, and managing stormwater to fit all of the different pieces together. He stated that there is a need to define the water quality BMPs associated with a potential stormwater utility or ordinance. He requested that the Commission consider a flexible structure that will consider the varying issues between watersheds, in particular rural and urban watersheds. He also asked the Commission to research the costs associated with managing stormwater in New Hampshire to provide to the Infrastructure Commission and suggested using the Clean Water Needs Assessment as a starting point.

**Dr. Roseen** responded that within the context of the statewide stormwater utility concept, the case needs to be made for the benefits of municipal utilities. He suggested making the case on a site-by-site basis to get passed the argument that it is too expensive. **Ms. Manzelli** asked if there is information on avoided costs, such as flood repair and water quality restoration, with better stormwater management.

**Mr. Williams** explained the rubber ducky campaign done in the state of Maine to raise public awareness on stormwater and nonpoint source pollution that gathered

data on public behavior. **Dr. Roseen** suggested that New Hampshire will need an information/education campaign.

**Dr. Roseen** suggested reconvening the funding subcommittee. **Commissioner Burack** offered DES's assistance. **Mr. Trainque** stated that there may be complications with developing a statewide or watershed wide stormwater utility without knowing the associated costs. He explained that municipal costs are much better defined in order to set a fee and that a bigger area would be very difficult to establish a fee. **Mr. Hemmerlein** suggested using the cost analysis from the EPA draft MS4 permit to help estimate costs.

**Rep. Spang** stated that the Commission has not discussed the municipal and statewide practices such as the frequency of catch basin cleaning. She stated that roadway maintenance may have a big impact on stormwater and asked if municipalities should be let off the hook. **Rep. Kappler** responded that if the towns are not required to do something, they will not do it. **Mr. Hemmerlein** responded that at the state level, there would have to be funds available. He added that the state is not regulated to conduct stormwater maintenance. **Chairperson Cedarholm** suggested that a watershed approach would work well with established minimum BMPs. **Ms. Ebel** stated that it needs to be clear that municipalities are subject to the stormwater requirements.

**Dr. Roseen** stated that the recommendations the Commission is discussing achieve creating greater uniformity in stormwater management. **Ms. Ebel** stated that ordinances do not apply to municipalities because they are exempt from their own zoning laws. **Dr. Roseen** suggested that the Commission recommend updating the rainfall runoff data.

**IV. PROPOSED LEGISLATIVE LANGUAGE DISCUSSION –  
CONTINUATION FROM APRIL 5, 2010 MEETING**

Postponed until June meeting.

**V. OTHER BUSINESS/FUTURE MEETING DATES AND TOPICS**

The next meeting was scheduled for June 29<sup>th</sup> at 1:00 PM

Date	Time	Location
June 28, 2010	1:00 PM – 3:00 PM	LOB 305*
July TBD	1:00 PM – 3:00 PM	LOB 305*
August 2, 2010	1:00 PM – 3:00 PM	LOB 305*
September 6, 2010	1:00 PM – 3:00 PM	LOB 305*
October 4, 2010	1:00 PM – 3:00 PM	LOB 305*

\*NH

Legislative Office Building, 33 North State Street, Concord, NH

**VI. ADJOURNMENT**

**The meeting adjourned at 2:59pm.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

June 28, 2010 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
L. Mike Kappler	NH House of Representatives
Paul Currier	NH Department of Environmental Services
Robert Roseen	University of New Hampshire Stormwater Center
Michael Trainque	American Council of Engineering Companies
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Steve Kahl	NH Lakes Association
Dave Danielson	NH Association of Regional Planning Commissions
Dari Sassan	NH Office of Energy and Planning
Newb LeRoy	Associated General Contractors of NH

**Members Absent:**

Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate
Joe Robertie	NH Timber Owners Association
Josh Cline	NH Rivers Council
David Borden	NH House of Representatives
Amy Manzelli	Business and Industry Association of NH
Donald Sienkiewicz	Home Builders and Remodelers Association
Mark Hemmerlein	NH Department of Transportation

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Attendees:**

Thomas Burack	Commissioner, NH DES
Eric Williams	NH Dept. of Environmental Services
Rene Pelletier	NHDES Dept. of Environmental Services

**I. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:10pm.

**II. APPROVAL OF MINUTES**

**Rep. Kappler** made a motion to approve the minutes from the June 7, 2010 meeting. **Mr. Trainque** seconded the motion. **All approved and none opposed.**

### III. **BASELINE STATEWIDE MINIMUM STORMWATER REQUIREMENTS**

The Commission discussed the Durham site plan review regulations that incorporate many of the components of the DES Innovative Land Use Guide's Post Construction Stormwater Model Ordinance.

**Chairperson Cedarholm** explained that Durham used performance standards as minimum requirements in order to give flexibility to designers. He stated that developments are required to maintain stormwater practices with a third party review or they can file an annual report. He explained that if a party fails to maintain the practices, the town can step in, make repairs, and charge the owner for it.

**Ms. Ebel** explained that the town of New London incorporated LID provisions into their site plan review regulations and subdivision regulations. She explained that, as an incentive, a developer using LID on their site may be allowed to do things they normally would not. She explained that the subdivision and site plan review regulations were adopted by the planning board and so they never went before the town. She added that they still do not have the authority under these regulations to regulate individual lots. She also explained that they tried to incorporate a 10% effective impervious cover limit, but there was resistance to that on individual lots.

The Commissioners agreed to still consider a statewide model ordinance.

**Chairperson Cedarholm** suggested that the DES model ordinance in the Innovative Land Use Guide be used as a starting point to propose updates. He also suggested looking at Durham, New London, and New Durham to see how the language from the model ordinance has actually been used by the towns. He added that the Commission needs to decide if this is to be a Commission work product or if they will recommend that DES or OEP update the model ordinance.

**Mr. P. Currier** asked if it is possible to put performance standards into municipal regulations to get at existing development. He then asked if a municipal ordinance included a performance specification that said do not dump snow on a neighbor's property, if that could be enforced through a zoning ordinance on an existing property.

**Chairperson Cedarholm** responded that performance standards for existing development cannot be implemented through municipal regulations and that it might be possible to send a code officer out to enforce a zoning ordinance.

**Mr. P. Currier** agreed to put together an outline for the statewide stormwater ordinance and the statewide stormwater permit for the August meeting.

### IV. **WATERSHED APPROACH**

The Commission discussed the need for a watershed approach to implementing a statewide stormwater discharge permit. They suggested dividing the state into six or seven large watershed areas and having the Southeast Watershed Alliance be a platform to pilot the approach. It was suggested that legislation for the statewide stormwater discharge permit could be written similar to instream flow to provide

a pilot and have a review after the pilot period. The legislation would including making rules for the stormwater discharge permit. They also discussed the possibility of the discharge permit being phased in over time and could start with the issuance of a general permit. It was suggested that implementation begin with the small MS4 communities to assist meeting their permit requirements and watersheds that are impaired due to stormwater. The general permit could then be refined by watershed or categories of properties. It was suggested that the Commission review the three pilot TMDLs that were developed under EPA's residual designation authority for the Charles River Watershed to determine if there are applicable elements.

They discussed the challenge of getting all of the towns in the watershed to participate because the SWA is currently voluntary. It was suggested that each town get a load allocation that, as an incentive, they would be able to trade if they participated. It was proposed that the discharge permit would be separate from the Alteration of Terrain permit and would go out to individual property owners, unless a utility was formed, in order to achieve the purpose of each property owner being responsible for their own runoff. It was suggested that the permits could be based on impervious cover and best management practices with the option for trading and could specify performance standards to be achieved through implementation of best management practices with instructions for homeowners to construct BMPs without having to hire a consultant. They briefly discussed ways that the regional planning Commissions could be involved.

The Commission discussed the challenges of homeowners having to pay to install BMPs or paying stormwater utility fees, particularly on a fixed income. The possibility of having a discharge permit without the stormwater utility was discussed and the Commission agreed that a stormwater discharge permit could exist without a stormwater utility, but in order for a stormwater program to be effective, the stormwater utility funding piece is necessary. The Commission agreed that in addition to the stormwater utility funding option, they should brainstorm other funding options such as a bottle tax.

They discussed that 28A would not be an issue because the burden is on the property owners and not the municipality; however, the municipality may choose to form a utility. It was noted that 28A does not apply if the state is passing through a federal regulation.

The Commission discussed the idea of the legislature creating watershed districts. **Mr. Joel Anderson** offered to research the possibility. **Ms. McCarthy** offered to distribute a recent document describing the watershed management districts in Florida for the Commission to review.

The Commission recapped that they would focus on the recommendations for a statewide stormwater utility, a statewide stormwater discharge permit, and a

statewide stormwater ordinance. They agreed to look at the existing DES model ordinance and examples of ordinances that municipalities have adopted.

**V. OTHER BUSINESS/FUTURE MEETING DATES AND TOPICS**

**Chairperson Cedarholm** stated that he will not be attending the August meeting and that Rep. Spang act as chair.

The Commission discussed the final report and agreed that a report from each subcommittee will be a chapter in the draft final report. **Rep. Spang** reminded the Commission that everything does not have to result in a recommendation. The final report can include the good ideas that the Commission has discussed and simply recommend that the state should consider it further. **Mr. P. Currier** added that the Commission would be successful if it resulted in legislation stating that property owners are responsible for their stormwater. He stated that it would be even more successful if the legislation directed DES to develop a statewide stormwater permit because it would be clear that the legislature wanted stormwater to be regulated and wanted DES involved.

The next meeting may be hosted at the Office of Energy and Planning conference room. **Mr. Sassan** will check room availability and confirm.

Date	Time	Location
August 2, 2010	1:00 PM – 3:00 PM	TBD
September 6, 2010	1:00 PM – 3:00 PM	LOB 305*
October 4, 2010	1:00 PM – 3:00 PM	LOB 305*

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**VI. ADJOURNMENT**

**The meeting adjourned at 2:58pm.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

August 30, 2010 1:00 PM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
L. Mike Kappler	NH House of Representatives
Paul Currier	NH Department of Environmental Services
Michael Trainque	American Council of Engineering Companies
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Steve Kahl	NH Lakes Association
Dave Danielson	NH Association of Regional Planning Commissions
Newb LeRoy	Associated General Contractors of NH
Mark Hemmerlein	NH Department of Transportation
Amy Manzelli	Business and Industry Association of NH

**Members Absent:**

Chris Devine	NH Local Government Center
Sen. Jacalyn Cilley	NH Senate
Joe Robertie	NH Timber Owners Association
Josh Cline	NH Rivers Council
David Borden	NH House of Representatives
Donald Sienkiewicz	Home Builders and Remodelers Association
Robert Roseen	University of New Hampshire Stormwater Center
Dari Sassan	NH Office of Energy and Planning

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Attendees:**

Others present, but did not sign in.

**I. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:08pm. Introductions were made around the room.

**II. SUBCOMMITTEE REPORTS**

**Regulatory Authority Subcommittee**

**Ms. Manzelli**, chair of the Regulatory Authority Subcommittee reported on the progress of the subcommittee and referred the Commission to Paul Currier's memo dated August 30, 2010. **Ms. Manzelli** and **Mr. P. Currier** walked the Commission through the memo.

**Ms. Manzelli** stated that the subcommittee recommends that the Commission put forward the statewide stormwater utility option over the statewide permit option. The subcommittee suggested putting forward both recommendations, but stating in the report why they feel the utility option is superior.

The Commission discussed possible forestry and agriculture exemptions for the statewide utility and statewide permit options. **Ms. Manzelli** suggested that the final report outline the different options for exemptions and let the legislature decide.

The Commission discussed the need for public participation and provisions for a public review process with the statewide stormwater permit option. They also discussed the need for an appeals process with the stormwater utility option, as well as boundaries and restrictions on the way the money generated from utility and permit fees can be spent. **Ms. Manzelli** suggested that the Funding Subcommittee investigate the utility fee.

**Mr. P. Currier** stated that DES would want responsibility to develop minimum standards for either the utility or the permit option. He also stated that there would be a greater likelihood of obtaining federal funding to support the utility concept than the permit concept.

**Mr. LeRoy** recommended that the report should be very clear that the Commission recommends the utility concept over the permit concept. There was general agreeance by the Commissioners to present both the utility and the permit concepts, but to emphasize the Commissions recommendation for the utility concept over the permit concept.

#### **Needs Subcommittee**

**Ms. McCarthy** distributed the last work product of the Needs Subcommittee, which summarized all of the stormwater needs that had been identified by the Commission. She suggested that this be used as a basis for the needs chapter in the final report and that the Commissioners go through the document to determine if any of the needs have not been addressed by the recommendations presented by the Regulatory Authority Subcommittee. **Rep. Spang** suggested that if certain identified needs have not been met, it is simply stated that they were not met in the report, but that they are still needs that should be considered in the future.

#### **Funding Subcommittee**

**Mr. Trainque** gave a summary of the Funding Subcommittee's working document including the basis for utility fees and incentives for municipal utilities. The Commission discussed the need for revisions to the existing stormwater utility enabling legislation as well as the possibility of creating a stormwater mitigation fund, similar to wetlands mitigation, for new and redevelopment projects that do not meeting state regulations. **Mr. P. Currier** explained that

DES hit resistance in implementing antidegradation through the Alteration of Terrain program, but it might have a better chance if there was an in-lieu-fee that someone could pay if they could not comply.

The Commission discussed potential property owner resistance to paying a new stormwater utility fee to do the same thing they have always done. **Ms. Manzelli** stated that property owners may be eligible for pollution prevention tax credits for improved stormwater management.

### III. FUTURE MEETING DATES

Date	Time	Location
<b>Regulatory Authority Subcommittee</b> September 15, 2010	9:30 AM – 11:30 AM	Gallery at Sulloway & Hollis, 29 School Street, Concord
<b>Joint Regulatory Authority &amp; Funding Subcommittees</b> September 22, 2010	9:30 AM – 11:30 AM	LOB 305*
<b>Full Commission</b> October 4, 2010	9:30 AM – 12:30 PM	LOB 305*
<b>Full Commission</b> October 20, 2010	1:00 PM – 3:00 PM	LOB 305

\*NH Legislative Office Building, 33 North State Street, Concord, NH

### IV. ADJOURNMENT

**The meeting adjourned at 3:04pm.**

**FINAL MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

October 4, 2010 9:30AM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
Michael Trainque	American Council of Engineering Companies
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Steve Kahl	NH Lakes Association
Newb LeRoy	Associated General Contractors of NH
Mark Hemmerlein	NH Department of Transportation
Amy Manzelli	Business and Industry Association of NH
Robert Roseen	University of New Hampshire Stormwater Center
Chris Devine	NH Local Government Center

**Members Absent:**

Sen. Jacalyn Cilley	NH Senate
Joe Robertie	NH Timber Owners Association
Josh Cline	NH Rivers Council
David Borden	NH House of Representatives
Donald Sienkiewicz	Home Builders and Remodelers Association
Dari Sassan	NH Office of Energy and Planning
L. Mike Kappler	NH House of Representatives
Paul Currier	NH Department of Environmental Services
Dave Danielson	NH Association of Regional Planning Commissions

**Commission Staff Present:**

Jillian McCarthy NH Department of Environmental Services

**Attendees:**

Others present, but did not sign in.

**II. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:08pm. Introductions were made around the room.

**III. APPROVAL OF MEETING MINUTES**

**Dr. Kahl** made a motion to approve the minutes from the June 28, 2010 meeting. **Ms. Ebel** seconded the motion. **All approved and none opposed.**

**Ms. Ebel** noted that she was marked as present at the August 30, 2020 meeting, but was absent. **Dr. Kahl** made a motion to approve the minutes as amended from

the August 30, 2010 meeting. **Mr. Trainque** seconded the motion. **All approved and none opposed.**

#### **IV. SUBCOMMITTEE REPORTS**

##### **Regulatory Authority Subcommittee**

**Ms. Manzelli**, subcommittee chair, summarized the recommendations covered at the last full Commission meeting and presented the remaining two recommendations that the subcommittee is putting forward; enabling municipal authority to manage stormwater and amending the existing stormwater utility legislation in RSA 149-I.

**Ms. Manzelli** explained that the subcommittee recommends legislation to specify that municipalities may choose whether or not to regulate stormwater. If they choose to regulate stormwater, they must do so in accordance with a model ordinance to be developed by the Department of Environmental Services. The subcommittee specified that the enabling legislation should identify areas where the model is flexible and provide guidance on those areas. They also discussed the idea of having minimum and maximum standards to achieve better uniformity.

It was discussed that, while this approach allows for communities regulated under the federal stormwater program to comply with their permit and is a good step toward a statewide requirement, it does not achieve the end goal that the Commission is looking for and it would still allow other municipalities to do nothing. It was proposed that municipalities be required to regulate stormwater instead of having the choice to. They then discussed the 28-A issue associated with requiring municipalities to regulate stormwater in accordance with minimum standards. They discussed how some municipalities put their guard up when the state tells them they have to do something, but others welcome such specific guidance from the state because it means they do not have to spend their limited budget and time on figuring out how to comply with a less specific state regulation.

**Ms. Ebel** reminded the Commission that they have been studying this for two years and that they know what needs to be recommended in order to improve the stormwater problem. She suggested that the Commission make the recommendations that they believe will make a difference and let the legislative process work through it.

It was suggested, at a minimum and to avoid the 28-A issue, that municipalities be enabled to regulate stormwater. Representatives from the business community stated that they would be opposed to a recommendation that would give authority with no guidelines or specifications because it would not achieve the uniformity they are looking for.

The Commission discussed the possibility of including an exemption to the requirement for municipalities that already have good stormwater regulations that are consistent with the minimum standards developed by DES.

**Chairperson Cedarholm** asked if there were examples in statute that say if a municipality chooses to regulate something, they must meet minimum standards. The Commission generally agreed that the fire code, building code, energy code, and even wetland and shoreland regulations are examples. It was suggested that instead of developing a model ordinance, that a stormwater code be developed by DES and a group of stakeholders. Along with the code, it was suggested that example ordinances and regulations be developed to show municipalities how they might incorporate the stormwater code into their regulations.

**Mr. Trainque** stated that the states of Florida, Delaware, and Maryland already have minimum standards established for stormwater. It was also suggested that standards in Rhode Island and Vermont be reviewed.

There was not consensus, but the majority of the Commissioners generally agreed that the recommendation should be to require municipalities to adopt a minimum stormwater code, to be developed by DES and stakeholders, with example ordinances, and that the legislature would specify the elements that the minimum code needs to include, such as groundwater recharge, minimum standards for water quality, conveyance and channel protection, flood protection, and others.

The Commission discussed the need to amend the existing stormwater utility legislation in RSA 149-I, but generally agreed that there is no time remaining to make specific recommendations beyond those made by Mike Trainque and submitted to the Commission for consideration. It was generally agreed that the subcommittee would include amendments to RSA 149-I in their subcommittee recommendations, identify that they did not have sufficient time to make specific recommendations, and include Mr. Trainque's comments.

**Ms. Manzelli** stated that she will be putting together the Regulatory Authority Subcommittee's draft final report section and sending it out to the Commission for comment by mid-week and a final vote on the recommendations will be taken by the Commission at the October 20<sup>th</sup> meeting.

#### **Funding Subcommittee**

**Mr. Trainque** summarized the work of the Funding Subcommittee. He explained that, using the 2008 Clean Water Needs Survey and the work of Mr. Eric Williams from DES, they have an estimate of the costs associated with managing stormwater in the state, but they feel the estimate is low at \$181 million. **Mr. Hemmerlein** stated that DOT has cost data that shows costs at roughly \$50,000 per acre and will get the data to the Funding Subcommittee to include in the report. **Dr. Rosen** added that UNH is wrapping up a study with

seven case studies of retrofits and municipal projects with actual costs and savings for innovative stormwater management that he will get for the subcommittee.

The Commission discussed that the report needs to explain that the costs of managing stormwater is enormous and that an additional source of funding, such as the utility concept being recommended, is necessary. **Chairperson Cedarholm** suggested that the Commission needs to see the outcome of the stormwater utility feasibility studies occurring in Dover, Portsmouth, and Nashua. **Ms. McCarthy** informed the Commission that the feasibility studies are not scheduled to be completed until December 2011 and that they are having some difficulties. She explained that the purpose of the feasibility studies are not to determine whether or not stormwater utilities will work, because there are hundreds of working utilities around the country that prove that they work. She stated that right now, the biggest lesson that can be learned from the feasibility studies going on in New Hampshire is that it can take a very long time and there are many barriers to a municipality trying to adopt a stormwater utility on their own. She explained that the current feasibility studies are looking at the existing municipal stormwater program and costs to run it, the ideal, future stormwater program and costs to run it, the fee that would be necessary per acre impervious or per equivalent residential unit, possible incentives, and whether or not the fee and incentives are feasible to the public.

The chairs of the funding and regulatory authority subcommittees agreed to get their final report sections to Ms. McCarthy by Wednesday October 13<sup>th</sup> in order to compile the report and send it to the full Commission for review on October 15<sup>th</sup>.

**V. OTHER BUSINESS**

The Commission discussed preparing for the Joint Commission meeting at DES on October 6<sup>th</sup>. The Chairs of the funding and regulatory authority subcommittees agreed to send bulleted summaries of their findings and recommendations to Ms. McCarthy to include in a summary document for the meeting.

**VI. FUTURE MEETING DATES**

Date	Time	Location
<b>Full Commission</b> October 20, 2010	1:00 PM – 3:00 PM	LOB 305

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**VII. ADJOURNMENT**

**The meeting adjourned at 12:25pm.**

**DRAFT MINUTES HB 1295 COMMISSION TO STUDY THE ISSUE OF  
STORMWATER MANAGEMENT**

October 20, 2010 9:30AM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
Michael Trainque	American Council of Engineering Companies
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Newb LeRoy	Associated General Contractors of NH
Amy Manzelli	Business and Industry Association of NH
Robert Roseen	University of New Hampshire Stormwater Center
L. Mike Kappler	NH House of Representatives
Dari Sassan	NH Office of Energy and Planning
Paul Currier	NH Department of Environmental Services

**Members Absent:**

Sen. Jacalyn Cilley	NH Senate
Joe Robertie	NH Timber Owners Association
Josh Cline	NH Rivers Council
David Borden	NH House of Representatives
Donald Sienkiewicz	Home Builders and Remodelers Association
Dave Danielson	NH Association of Regional Planning Commissions
Steve Kahl	NH Lakes Association
Mark Hemmerlein	NH Department of Transportation
Chris Devine	NH Local Government Center

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Attendees:**

Susan Olsen	New Hampshire Municipal Association
Henry Veilleux	SPCG

**VIII. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:05pm. Introductions were made around the room.

**IX. APPROVAL OF MEETING MINUTES**

**Rep. Spang** made a motion to approve the minutes from the October 4, 2010 meeting. **Dr. Roseen** seconded the motion. **Chairperson Cedarholm** requested that the word "agreed" throughout the text of the minutes be replaced with "generally agreed" because "agreed" gives the impression that a vote was taken.

**All approved the minutes as amended, none opposed, and Rep. Kappler abstained.**

**X. FINAL REPORT DISCUSSION**

**Regulatory Authority Subcommittee**

**Ms. Manzelli**, subcommittee chair, explained that she would be putting together the subcommittee final report from the two working documents of the Subcommittee, the draft subcommittee final report and the October 14, 2010 memo from Paul Currier. She stated that there were no updates from what was reported at the October 4<sup>th</sup> meeting. **Mr. P. Currier** noted that he had additional work to go on the proposed legislation to enable or require municipalities to regulate stormwater.

The Commission discussed how the Subcommittee reports are accepted by the Full Commission.

The Commission generally agreed that they would like to put the recommendations in a clearly visible place in the final report, but that there should not be redundancy between the Funding Subcommittee and Regulatory Subcommittee sections. It was decided that the Subcommittee reports would be included as appendices and that the Commission would decide which components of the Subcommittee reports to include in the final report.

The Commission discussed the sections, order of sections, and what each of the sections within the final report should contain.

**Rep. Spang** explained that there had been emails back and forth about possible extending the Commission, but that most members seemed opposed to the idea. She explained that she spoke to the Clerk of the House and was told that there was no reason that the formal Commission couldn't continue working on an ad-hoc basis, informally. She suggested that members of the Commission should form an ad-hoc group to work specifically on legislation.

The Commission generally agreed that they did not want to extend the Commission, but some members expressed willingness to continue working on legislation after the final report is submitted.

The Commission discussed scheduling and deadlines for drafting and commenting on the final report draft.

**XI. FUTURE MEETING DATES**

Date	Time	Location
<b>Full Commission</b> November 1, 2010	1:00 PM – 4:00 PM	LOB 305

\*NH Legislative Office Building, 33 North State Street, Concord, NH

**XII. ADJOURNMENT**

**The meeting adjourned at 3:15pm.**

**DRAFT MINUTES**  
**HB 1295 COMMISSION TO STUDY THE ISSUE OF**  
**STORMWATER MANAGEMENT**

November 1, 2010 9:30AM  
NH Legislative Office Building, Room 305, Concord, NH

**Members Present:**

Chair: David Cedarholm	NH Public Works Association
Vice Chair: Judith Spang	NH House of Representatives
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Newb LeRoy	Associated General Contractors of NH
Amy Manzelli	Business and Industry Association of NH
Robert Roseen	University of New Hampshire Stormwater Center
L. Mike Kappler	NH House of Representatives
Dari Sassan	NH Office of Energy and Planning
Paul Currier	NH Department of Environmental Services
Steve Kahl	NH Lakes Association
Mark Hemmerlein	NH Department of Transportation

**Members Absent:**

Sen. Jacalyn Cilley	NH Senate
Joe Robertie	NH Timber Owners Association
Josh Cline	NH Rivers Council
David Borden	NH House of Representatives
Donald Sienkiewicz	Home Builders and Remodelers Association
Dave Danielson	NH Association of Regional Planning
Commissions	
Chris Devine	NH Local Government Center
Michael Trainque	American Council of Engineering
Companies	

**Commission Staff Present:**

Jillian McCarthy	NH Department of Environmental Services
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**Attendees:**

Susan Olsen	New Hampshire Municipal Association
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**XIII. CALL TO ORDER**

**Chairperson Cedarholm** called the meeting to order at 1:03pm. Introductions were made around the room.

**XIV. MEETING MINUTES**

**Chairperson Cedarholm** explained that Ms. McCarthy will send out draft minutes from the October 20, 2010 meeting and today's meeting and that they will go into the final report appendices as "draft" documents.

**XV. FINAL REPORT DISCUSSION**

**Chairperson Cedarholm** asked what would happen if the Commission did not address all of the comments at today's meeting. **Rep. Spang** responded that as long as they vote to approve the report at today's meeting, the report can be submitted later in the week.

The Commission generally agreed to work through the "hot" or "contested items" at today's meeting and to leave the editorial changes to Ms. McCarthy to address.

The Commission went through each outstanding issue in the final report draft and came to resolution. It was generally agreed that the Commission members approved of all of the concepts in the final report, but that they had not had sufficient time to thoroughly review the specific proposed legislative language for the Statewide Stormwater Utility Concept or the Municipal Authority to Regulate Stormwater concept. The Commission decided to move the proposed legislative language for both of these concepts from the main body of the report to appendices and to include clarification in the report that while they support the concepts, the language should be considered "concept draft legislation" and should be a starting point for development of legislation in the future.

**Ms. Manzelli** made motion to approve the final report but not the specifics of the draft legislative language contained in the appendices regarding stormwater utilities and enabling municipalities to regulate stormwater. **Mr. P. Currier** seconded the motion. **All approved and none opposed.**

**XVI. ADJOURNMENT**

**The meeting adjourned at 3:45pm.**

## **H2 – Regulatory Authority Subcommittee Meeting Notes**

### **Meeting Dates**

April 28, 2009

August 24, 2009

July 28, 2010

August 2, 2010

August 16, 2010

September 15, 2010

Stormwater Commission: Regulatory Authority Subcommittee Meeting Minutes  
4/28/09, 3:30-4:30pm

In Attendance: Amy Manzelli, Newb Leroy, Donald Sienkiewicz, Paul Currier, Carl Paulsen

Meeting began with Carl Paulsen volunteering to act as secretary for the subcommittee. Chair Amy Manzelli opened discussion about subcommittee's goals. All agreed that the primary goal is to document current status of laws and policies relevant to stormwater at all levels of government, whether direct or indirect. These policies would then be overlain with the findings of the Needs Subcommittee to identify gaps in current policy. Subcommittee discussed some examples, such as the state authority to issue discharge permits under RSA 485-A:13. Paul Currier noted that his reading of this section suggests the state may not have authority to issue stormwater permits other than where they are considered point sources. Similarly, Alteration of Terrain permits address construction runoff issues but don't address longer-term stormwater runoff and maintenance of stormwater controls. Subcommittee also discussed the Multi-Sector General Permit. Subcommittee then conducted a brainstorm of policies as members understand them.

Programs discussed include:

- MSGP (Multi-Sector General Permits)
- MS4 (Municipal Separate Storm Sewer System Permits)
- Site Plan Review, Subdivision Regulations, Public Health Ordinances
- Stormwater Utilities
- CGP (Construction General Permit)
- SWPPP (Stormwater Pollution Prevention Plans)
- SPCC (Spill Prevention Countermeasure and Control)
- §401 Certification
- Water Quality Standards/Antidegradation
- RSA 485-A:13 (Water Discharge Permits)
- Residual Designation Authority under Clean Water Act
- CSPA (Comprehensive Shoreland Protection Act, RSA 483-B)
- State Wetlands Laws (RSA 482-A) and Greenland Case, AG opinion, etc.
  - No authority to address runoff related fill or pollution under wetlands law
- Real Estate transfer disclosures – e.g. of site plan conditions related to stormwater such as maintenance of control measures

Additional Notes:

- Need to look at enforcement issues for each of these (e.g. what enforcement authority exists, and how well is it implemented?)
- Read Water Primer section on stormwater
- Take a look at Maryland and Lake Tahoe cases as regional stormwater model

Subcommittee agreed on the following work plan:

Amy Manzelli will link up specific materials that have been provided or referenced in the course of the Commission with each of the programs listed above. Then, for each of the programs listed above, she will solicit volunteers from the subcommittee to prepare a thorough and concise statement of the regulatory authority that exists for that program. (Of course, in the absence of volunteers, Amy Manzelli will designate members.) Those subcommittee members will then submit their write up to Amy Manzelli, who will

HB 1295 Commission to Study Issues Relating to Stormwater  
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synthesize them all into one written document Amy Manzelli will circulate to the subcommittee for review and approval.

No further meetings have been set pending the subcommittee work session planned for 4 May 2009.

**MINUTES**

August 24, 2009

Regulatory Authority Subcommittee of the Stormwater Commission

**PRESENT:**

Amy Manzelli

Paul Currier

David Borden

**AGENDA:**

- I. Complete summary of stormwater law
- II. Discuss municipal authority to regulate stormwater

**NOTES:**

**I. Complete summary of stormwater law**

Reviewed, revised, and supplemented summary of stormwater law (updated copy attached and supporting documents forthcoming).

Agreed it was complete, subject to: (1) input from a subcommittee member; and (2) review and comment of full commission.

**II. Discuss municipal authority to regulate stormwater**

Discussed our understanding that the new federal General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (“MS4 Permit”) requires municipalities to enact local ordinance regulating stormwater.

Agreed that no clear authority under existing NH law for municipalities to do so.

Looked at memo from Eric Williams (N.H. Dept. of Environmental Services) dated January 30, 2009, titled “Questions Regarding Legal Authority to Regulate Stormwater in New Hampshire” (“Williams Memo”).

The Williams Memo lists the possible sources for such authority as follows:

A. “Towns may make bylaws for . . . [t]he collection, removal and destruction of garbage, snow and other waste materials” RSA 31:39, I(f);

B. “In municipalities where the sewage or stormwater is pumped or treated, the mayor and aldermen may adopt such ordinances and bylaws relating to the system, pumping station, treatment plant or other appurtenant structure as are required for proper maintenance and operation and to promote the objectives of the sewage system or stormwater utility” RSA 149-I:6;

C. “It is hereby declared . . . that the department shall, in the administration and enforcement of this chapter, strive to provide that all sources of pollution within the state shall be abated within such times and to such degrees as shall be required to satisfy the provisions of state law or applicable federal law, whichever is more stringent. . . [T]he department shall adhere to the following policies: [first, install primary treatment for all discharges of sewage and industrial wastes; second, install secondary treatment whenever necessary to protect the uses assigned to the particular stream classification; third, “after all stream classification requirements throughout the state have been satisfied, . . . continue the program of pollution abatement by installing other forms of treatment desirable to maintain all surface waters of the state in as clean a condition as possible, consistent with available assistance funds and technological developments” RSA 485-A:3, I-III;

D. “zoning ordinances shall be designed . . . to assure proper use of natural resources and other public requirements” RSA 674:17, I(h);

E. “Innovative land use controls may include . . . Environmental characteristics zoning” RSA 674:21, I(j);

F. “A municipality may . . . authorize the planning board to require preliminary review of subdivisions . . . and the manner in which streets within such subdivision shall be graded and improved and to which streets water, sewer, and other utility mains, piping, connections or other facilities . . . shall be installed” RSA 674:35;

G. “The site plan review regulations which the planning board adopts may provide for the safe and attractive development or change or expansion of use . . . and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of inadequate drainage or conditions conducive to flooding of the property or that of another” RSA 674:44, II(a)(1); and

H. “The site plan review regulations of the planning board may stipulate . . . the extent to which and the manner in which streets shall be graded and improved and to which water, sewer, and other utility mains, piping, connections, or other facilities shall be installed” RSA 674:44, IV.

Discussed that municipalities have no authority to enact stormwater regulations, which is what they need to do to comply with MS4 Permit, without state enabling law.

Agreed we think that there is consensus among the Commission to propose such state enabling law.

Discussed whether best way to do so is to add another power in RSA 31:39, which lists the powers of cities and towns.

Discussed issue of authorizing all municipalities (not just those subject to new MS4 Permit) to regulate stormwater.

Agreed it would be too problematic to simply grant a blanket authorization to the municipalities for at least two reasons: (1) municipalities could do nothing, which would not help solve the stormwater problem; and (2) it would not create uniformity of regulation amongst the municipalities (i.e. some would enact while some would not, and those enacting would likely enact very different ordinances).

Discussed Maine approach to regulating shoreland (Maine enacted a statewide law that required municipalities to enact local ordinances regulating use of shoreland. Municipalities had a bit of flexibility in what they enacted. If they enacted nothing, they would get stuck with the model ordinance proposed in the state law.)

Agreed Maine approach may make sense in the context of stormwater in NH because it would achieve relative uniformity and ensure action, but do not feel there is consensus amongst the Commission on this point.

Somewhat of a model exists in NH law, which a member of the subcommittee will provide shortly.

To make such legislation palatable, suggested: (1) that the Maine approach would be better if Regional Planning Commissions got some money to help municipalities implement it; and (2) it should have a long lead time until when municipalities have to comply.

**NEXT SUBCOMMITTEE MEETING:**

We will set a date and time at the full commission meeting. We need more participation. We will continue discussion of regulating stormwater, including what ways other than the Maine approach we should consider, and discuss funding.

## Meeting Notes

### HB 1295 REGULATORY SUBCOMMITTEE

July 28, 2010 9:30 – 11:30 AM  
Sulloway & Hollis, Concord, NH

#### Members Present:

Amy Manzelli	Business and Industry Association of NH (Subcommittee Chair)
David Cedarholm	NH Public Works Association (Commission Chair)
Vice Chair: Judith Spang	NH House of Representatives
Paul Currier	NH Department of Environmental Services
Robert Roseen	University of New Hampshire Stormwater Center
Karen Ebel	The Nature Conservancy
Newb LeRoy	Associated General Contractors of NH
Mark Hemmerlein	NH Department of Transportation
Jillian McCarthy	NH Department of Environmental Services (STAFF)

#### LEGISLATIVE CONCEPTS FOR STORMWATER PERMITS AND STATEWIDE STORMWATER UTILITY

The group discussed the first two items in the memo sent via email by Paul Currier to all Commission members on July 27, 2010.

#### I. DEFINITION OF STORMWATER

The group discussed whether the definition of stormwater proposed in the memo is too narrow, and if the last sentence, “Stormwater is not sewage, industrial waste, or other wastes” should be revised to include that stormwater could contain these things. It was decided that the sentence should remain as proposed because sewage, industrial waste, and other wastes are regulated under other programs. It was noted that with respect to some “other wastes”, although DES is authorized to regulate it, it does not actually do so, for example, rainwater flowing over a parking lot and becoming contaminated with PCBs.

It was decided that the definition should be revised to be more consistent with the federal definition in 40 CFR 122.26(b)(13), and the following new definition was proposed:

***“Stormwater” means water from precipitation that results, directly or indirectly, in stormwater runoff, snowmelt runoff, and surface runoff and drainage, together with debris, chemicals, sediment, or other substances that may be carried along with the water. Stormwater is not sewage, industrial waste, or other wastes.***

**Ms. Manzelli** stated that New Hampshire is in a defensive position and trying to avoid EPA using residual designation authority (RDA) in the state. Being as consistent as possible with the federal language will show that New Hampshire is going in the right direction and may help avoid RDA.

## II. PROPERTY OWNER'S RESPONSIBILITY FOR STORMWATER

The group discussed the ambiguity of the new language proposed under this section, specifically the wording, "significantly altered in such a manner as to impede the natural runoff or create an unnatural runoff".

It was decided that the ambiguous language could be removed and the following new language was proposed:

***III-a. [or V.]An owner of property shall be responsible for the stormwater emanating from the property, and such stormwater shall not cause or contribute to a violation of surface water quality standards, including antidegradation.***

The group discussed exemptions for agricultural operation and timber harvesting. They agreed that exemptions are not appropriate because, while agriculture and timber operations may have permit and other regulatory exemptions, it is still the intent of the proposed legislation that all property owners, including owners of agricultural and timber lands, are responsible for the runoff coming from their properties.

**Ms. Manzelli** suggested phasing in this piece of legislation to coincide with the development of the statewide stormwater utility or the statewide stormwater discharge permit to avoid the possibility of CLF or other groups suing DES for not enforcing the law. The group agreed to consider this.

WRAP-UP

**Mr. P. Currier** stated that there needs to be money for any of these ideas to work. He explained that the idea of the statewide stormwater permit will likely be a tough sell and so he suggested different options for that topic that were described in the memo.

**Rep. Spang** suggested that the subcommittee look at how all of the pieces relate to each other and determine which are inter-related. She stated that the primary objective of the Commission is to present what they know is the right thing in terms of protecting water quality and managing stormwater, but that they also have to craft recommendation and legislation that will be strong and allow the pieces to stand alone.

**Ms. Manzelli** recommended to Mr. Cedarholm [Commission chair] and Rep. Spang [Commission co-chair], that the full Commission meeting scheduled for Monday August 2, 2010 be used for subcommittee meetings for the Funding and the Regulatory Authority subcommittees. They agreed and Rep. Spang offered to send out a notice to all of the Commissioners notifying them of the change.

**Ms. Manzelli** suggested that the subcommittee pick up with the remaining items from the memo at the subcommittee meeting to replace the full Commission meeting on August 2<sup>nd</sup>.

MEETING ADJOURNED AT 11:30 AM

Meeting Notes

## HB 1295 REGULATORY AUTHORITY SUBCOMMITTEE

August 2, 2010 1:00 – 3:00PM

NH Office of Energy and Planning, Conference Room, Concord, NH

### Members Present:

Amy Manzelli	Business and Industry Association of NH (Subcommittee Chair)
Rep. Judith Spang	NH House of Representatives
Rep. L. Mike Kappler	NH House of Representatives
Paul Currier	NH Department of Environmental Services
Eber Currier	NH Farm Bureau
Michael Trainque	American Council of Engineering Companies
Dave Danielson	Association of Regional Planning Commissions
Karen Ebel	The Nature Conservancy
Newb LeRoy	Associated General Contractors of NH
Mark Hemmerlein	NH Department of Transportation
Donald Sienkiewicz	NH Homebuilders and Remodelers Association.
Jillian McCarthy	NH Department of Environmental Services (STAFF)

The subcommittee discussed the following items from the memo sent via email by Paul Currier to all Commission members on July 27, 2010.

### I. DEFINITION OF STORMWATER

The subcommittee briefly discussed the federal definition of stormwater and how it was incorporated into the proposed definition at the last subcommittee meeting. They decided to revise the proposed stormwater definition as follows:

*“Stormwater” means water from precipitation that results, directly or indirectly, in stormwater runoff, snowmelt runoff, and surface runoff and drainage, together with debris, chemicals, sediment, or other substances that may be carried along with the water. Stormwater is not **any substance that is regulated under** sewage, industrial waste, or other wastes.*

They also decided to remove the word “stormwater” from the definition of “other wastes” because stormwater is just something that happened whereas sewage and waste are things that are thrown out.

### II. PROPERTY OWNER’S RESPONSIBILITY FOR STORMWATER

The subcommittee decided to remove the word “surface” from “surface water quality standards” in the proposed language. They discussed that there are some wetlands that are not surface waters and they want the proposed legislation to apply to those wetlands as well. **Mr. P. Currier** explained that there is an interim study Commission working on

HB 1305 that is looking at the definition of surface waters, waters of the state, and wetlands. They agreed to delete the word “surface” from the proposed language that that regardless of the outcome of HB 1305, the proposed legislation would still capture everything they intended.

The proposed language was changed as follows:

*III-a. [or V.]An owner of property shall be responsible for the stormwater emanating from the property, and such stormwater shall not cause or contribute to a violation of ~~surface~~ water quality standards, including antidegradation.*

### III. & IV. STATEWIDE STORMWATER UTILITY/STATEWIDE STORMWATER DISCHARGE PERMIT

The subcommittee discussed the pros and cons of each the statewide stormwater utility and the stormwater discharge permit.

They discussed that a stormwater discharge permit would provide a parallel mechanism to sewage or waste (and the federal clean water act) that it is unlawful to discharge without a permit, however; there is currently no permit fee for sewage or waste discharge permits. There is also no state money being used to fund those permit programs. A statewide stormwater discharge permit would need start-up money and would likely need to have an associated fee otherwise the permit would not raise funds to support the program. The subcommittee discussed how permit applicants might see a stormwater permit as having to pay twice.

The subcommittee discussed that the statewide stormwater utility concept is based on the idea that everyone is responsible for the stormwater from their property with an incentive process for better stormwater management. Everyone would either pay a stormwater fee to the state or to a local utility for capital costs and the costs of operation and maintenance. They discussed that a utility would generate money where a stormwater permit might not. **Mr. P. Currier** suggested that the stormwater utility approach would allow the state to use existing enforcement authority of the water quality standards that an activity cannot cause or contribute to an impairment. They discussed that property owners may oppose the fee, but that they would have a choice of paying the fee or implementing best management practices on their property to reduce the fee.

**Mr. P. Currier** reminded everyone that without money, neither of the ideas is viable. **Ms. Manzelli** asked if federal money would be available and where the programs would be housed at the state. **Mr. P. Currier** responded that a stormwater discharge permit could be housed at DES, but the stormwater utility could be housed elsewhere. He brought up the possibility of a stormwater utility Commission to run it. He stated that there is no new federal funding, but that federal funding is a possibility. He added that municipalities can give SRF money to residents if they act as a broker.

**Ms. Ebel** asked why a property owner would install a \$2,000 BMP on their property when their utility fee is only \$100 per year. The subcommittee discussed that the incentive would have to be great enough to make it worthwhile.

**Ms. Manzelli** suggested the subcommittee focus on the details of the utility for the remainder of the meeting.

The subcommittee went through the general concepts of the utility:

- The purpose is that property owners are responsible for the stormwater that comes off of their properties.
- If there is no municipal or regional utility, a property owner would pay into the state utility.
- Municipalities could partner however they want, alone, two or more municipalities, or all municipalities in a watershed.
- A stormwater utility Commission could be established to oversee the utility and it could be based loosely on the structure of the Winnepesaukee River Basin Program.
- The 28A issue can be avoided because anyone can own property and the utility will apply to all property owners.

They agreed that there should be an option for a watershed utility and that the watershed scale should be defined. It was suggested that the existing enabling legislation for municipalities to work together be used to form watershed utilities. The subcommittee discussed whether it was appropriate for only municipalities within the same watershed to work together. When discussed municipalities that cross watershed boundaries, it was decided that the municipal boundary will likely trump the watershed boundary. They also discussed phasing utility in by watershed with language specifying that if the municipalities within a certain watershed have not formed a utility by a set date, they are subject to the state utility.

**Mr. Danielson** suggested looking at section 208 of the federal clean water act to see what it says about watershed management.

The subcommittee discussed start-up money. **Mr. P. Currier** suggested that it could take \$250,000 per year (equivalent to two full time positions) to run the program. The subcommittee discussed the possibility of using the fees generated for start up costs and writing the legislation so that the funds could be used for staff and program administration. **Mr. P. Currier** responded that before fees can be collected, the properties need to be assessed in order to know what fee to charge, and they need to have a process in place to collect the fees. He added that the utility would need to be phased in, but they would need start up money first. He suggested that a smaller fee could be used for start up. **Ms. Ebel** stated that she spoke with the assessor in her town and they didn't think that it would be difficult to get the impervious surface of each property from the existing assessment data.

**Ms. Manzelli** suggested asking the funding subcommittee to research federal funding opportunities that might be available for start-up and what the start up costs for the program might be.

**Mr. Danielson** stated that it needs to be made clear to people that clean water is the ultimate goal. He explained that many people do not understand how their paved driveway contributes to a water quality problem and that connection needs to be made for them. **Mr. P. Currier** responded that DES has mapped the areas in the state that are contributing to water quality impairments and this could be a tool to help make the connection.

The subcommittee further discussed phasing in the utility and suggested beginning in watersheds with impaired waters and possibly the seacoast watershed because the southeast watershed alliance is already formed and because there is already a watershed wide requirements to limit nitrogen loading. **Mr. LeRoy** asked if the subcommittee also wants to focus on preventing new development from creating new impairments. The group agreed that this could be a future phase. **Rep. Spang** suggested that if there are municipalities in other parts of the state that want to form a utility, but that have not yet been phased into the program, they should be allowed to do so. **Mr. P. Currier** added that if there are private residents or developers who want to implement best management practices and better manage stormwater on their properties, they could get a certificate that says they improved their properties and will get a reduced fee when the fee comes.

The subcommittee agreed that the legislation should include the phase in concept, and the specifics could be worked out in rulemaking.

**Ms. Manzelli** asked what watershed would come after the seacoast if the seacoast is the first to be phased in. **Mr. P. Currier** suggested that they use the 305(b) water quality report to develop a priority list.

The subcommittee discussed the need for a large outreach program to go along with the utility concept and it was suggested that the RLAC's, the SWA, and other groups that already work on outreach activities be pulled in to help with outreach.

#### WRAP-UP

Because the LOB is unavailable for August, the subcommittee suggested that the next full committee meeting be on August 30<sup>th</sup> at 1:00PM at the Sulloway & Hollis School Street Office (29 School St. in Concord) and that the next subcommittee meeting be on August 16<sup>th</sup> at 9:00AM at the Sulloway & Hollis Capital Street building. The next subcommittee meeting will pick up with the utility conversation and the remainder of Mr. P. Currier's memo.

MEETING ADJOURNED AT 11:30 AM

#### Meeting Notes

#### HB 1295 REGULATORY AUTHORITY SUBCOMMITTEE

August 16, 2010 9:00 – 11:00AM  
Suloway & Hollis, Conference Room, Concord, NH

#### ATTENDEES

Newb LeRoy	Associated General Contractors of NH
Eber Currier	NH Farm Bureau
Karen Ebel	The Nature Conservancy
Rep. Judith Spang	NH House of Representatives
Amy Manzelli – Subcommittee Chair	Business and Industry Association of NH
Paul Currier	NH DES
Donald Sienkiewicz	Home Builders and Remodelers Association
Jillian McCarthy	NH DES

**Mr. P. Currier** presented an updated version of his memo and explained that Gretchen Hamel from the DES legal office had reviewed it and commented on the language.

#### STATEWIDE STORMWATER UTILITY

The subcommittee recapped the stormwater utility concept. They discussed the following key components of the utility:

- Phasing in sections of the state in a way that makes sense, based on impairments or other quantifiable measure.
- Establishing watershed-based stormwater utility Commissions
  - To include all municipalities within the HUC 8 watershed – even municipalities that have their own stormwater utilities.
  - To set fees, collect and distribute funds for municipalities that do not have their own utility.
  - To allow for collaboration of all municipalities within the watershed.
  - Commissions could be given municipal status, which would allow them more power to receive grants, enter into contracts, levee taxes, and set fees, etc.
  - Allows for local control
- Distribution of funds would be within a HUC 8 watershed.

The subcommittee discussed whether agriculture and timber operations would be exempt. They decided to discuss the Nonpoint source pollutant loading from these land uses with Dr. Rosen and others to determine how much they contribute to water quality problems before deciding on exemptions. **Ms. Manzelli** suggested drafting the legislation with and without the exemptions and flagging it in the report for the legislature to decide on.

#### STATEWIDE STORMWATER PERMIT

The subcommittee reviewed the changes that Gretchen Hamel proposed to the draft language and decided to go with their original definition of stormwater and to remove the term “developed property”.

The subcommittee noted that the language had been changed to exclude private residential properties from being responsible for the stormwater coming from their

properties. They decided it was not the intent of the Commission to exclude these properties and they decided to strike that language.

**Mr. P. Currier** explained that the permit concept could be phased in similar to the utility concept. The subcommittee discussed the idea of a permit fee and how the fee would be established. **Mr. P. Currier** explained that fees are usually established in statute, but that he thinks a fee for permits is a show stopper, unlike a utility where there is an option to do better stormwater management and reduce the fee.

**Ms. Manzelli** suggested including a fee provision in the final report, knowing that it could be a show stopper, and include an explanation that without a fee, the permitting concept will not work.

#### ENABLE MUNICIPALITIES TO REGULATE STORMWATER

The subcommittee discussed the need for municipalities to regulate stormwater and, in particular, for MS4 communities to be able to comply with their federal permit requirements. **Mr. Sienkiewicz** suggested that the draft legislation should specify that only MS4 communities can regulate stormwater. He emphasized that allowing all municipalities to regulate stormwater could lead to each municipality creating their own stormwater regulations and get away from the uniformity that the Commission was trying to achieve. **Ms. Ebel** responded that rural municipalities need to be enabled to regulate stormwater and they also need very good guidance on how to do so. The subcommittee discussed allowing MS4 communities the ability to manage stormwater to meet their permit requirements, and non-MS4 communities to regulate stormwater through adoption of an ordinance with minimum requirements to be set by the state. They also discussed a need to create incentives for non-MS4 municipalities to adopt ordinances. They agreed that this idea needs further discussion.

#### NEXT REGULATORY AUTHORITY SUBCOMMITTEE MEETING

The Subcommittee set the next meeting for Wednesday September 15, 2010 at 9:30AM at Sulloway and Hollis on Capital Street in Concord.

#### Meeting Notes

#### HB 1295 REGULATORY AUTHORITY SUBCOMMITTEE

September 15, 2010 9:30 AM – 11:30 AM  
NH Office of Energy and Planning, Conference Room, Concord, NH

**Members Present:**

Amy Manzelli	Business and Industry Association of NH (Subcommittee Chair)
Rep. Judith Spang	NH House of Representatives
Paul Currier	NH Department of Environmental Services
Karen Ebel	The Nature Conservancy
Newb LeRoy	Associated General Contractors of NH
Mark Hemmerlein	NH Department of Transportation
Donald Sienkiewicz	NH Homebuilders and Remodelers Association.
Dave Cedarholm	NH Public Works Association
Robert Roseen	University of New Hampshire Stormwater Center
Jillian McCarthy	NH Department of Environmental Services (STAFF)
Henry Velleux	Public

The subcommittee discussed the following items from the draft memo developed by Paul Currier and revised on 8/30/2010.

**I. ENABLE MUNICIPALITIES TO MANAGE STORMWATER WITH OR WITHOUT A UTILITY (Item V. of the draft memo).**

The subcommittee discussed the need for clear authority for MS4 communities to regulate stormwater and the need for other communities to be able to regulate stormwater while maintaining uniformity in the way that stormwater is regulated from town to town. They discussed that the language, as drafted in the memo, would not promote uniformity and would likely result in large variability in municipal stormwater regulations. They discussed the option of specifically enabling municipalities to regulate stormwater and if they choose to, they would have to meet minimum, and potentially maximum, requirements to be established by DES. This would put a floor and a ceiling on potential requirements and improve uniformity. The subcommittee generally agreed that DES would be charged with developing the standards. It was suggested that they look at the federal requirements of EISA 438 as a starting point.

The subcommittee discussed whether the standards would be presented in a model ordinance or in elements to be adopted for site plan and subdivision review regulations. They discussed that an ordinance would capture smaller scales of development in addition to larger ones, as well as apply to existing development. It was recognized that ordinances are not one size fits all, but that they can identify the elements that are flexible and provide advice on them. It was also suggested that roads be included in the ordinance and that a timetable be given to DES to develop the standards, possibly within two years.

The subcommittee discussed the idea of requiring a stormwater audit upon the sale of a property, similar to MA title 5 requirements that at the sale of a house, property improvements must be made.

## II. MODIFYING MUNICIPAL STORMWATER UTILITY LEGISLATION TO INTERFACE WITH STATEWIDE STORMWATER UTILITY (Item VI. Of the draft memo)

The subcommittee discussed Mike Trainque's recommendation for general improvements and how to blend the existing stormwater utility language in RSA 149:I with the new stormwater utility concept. It was suggested that his recommendation be included in the final report, but that there was no additional time to work this over further.

## III. COMMENTS FROM FULL COMMISSION MEETING

The subcommittee addressed the following comments on the 8/3/2010 memo from the full Commission:

- They agreed that the stormwater permit option needs to include public participation and an appeals process. They will work this into the final language.
- They will recommend including maintaining or re-establishing buffers as a type of credit for the stormwater utility concept in order to encourage and provide an incentive for better buffers.
- They agreed that they need to define how the money generated from the stormwater utility fees should be used and suggested looking at how the solid waste funds are protected. They agreed that the state portion of the funds need to be protected from the general fund and that the municipal portions need to be protected from the municipal general funds.
- They agreed to further discuss how a state permit would interact with a federal permit and if both permits would be necessary.

**Rep. Spang** noted that the definition of stormwater needs to be made consistent throughout the memo.

**Ms. Manzelli** requested that there be no cross-referencing of the other proposed statutes in the memo so that each piece of proposed legislation stands alone.

**Ms. Ebel** requested that the final report include the recommendation that all municipalities develop and adopt bylaws to regulate stormwater pursuant to the DES model.

**Dr. Roseen** informed the subcommittee that, while significant progress has been made, he feels that the Commission is not where it needs to be and that they could have more specific recommendations.

**Rep. Spang** replied that DES could set up a group similar to the water quality standards advisory committee to work out more of the details or, the Commission could

bring forward legislation that would be retained over the summer and they could continue to work on it through RR&D.

**Ms. Manzelli** stated that she will send out the draft report chapter for the subcommittee and asked that comments be submitted prior to the October 4<sup>th</sup> Full Commission meeting.

MEETING ADJOURNED AT 11:30 AM