

**FINAL MINUTES**  
**HB 1579 COMMISSION TO STUDY LAND DEVELOPMENT REGULATIONS**  
**AND THE EFFECTS OF LAND DEVELOPMENT WITHIN UPLAND AREAS**  
**THAT MAY AFFECT WETLANDS AND SURFACE WATERS OF THE STATE**

September 16, 2008 \* 9:00 am  
NH Legislative Office Building, Room 305, Concord, NH

**Commissioners Present:**

Chairperson Representative Sue Gottling, NH House of Representatives, member of the  
Resources, Recreation and Development Committee  
Vice-chairperson Erin Darrow, representing American Council of Engineering Companies of NH  
Senator Harold Janeway, NH Senate  
Paul Dionne, representing NH Association of Conservation commissions  
Cheryl Killam, representing NH Municipal Association  
Peter Stanley, NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Pat Corso, representing Business and Industry Association  
Jim Gove, representing Association of General Contractors of NH  
Peter Walker, representing NH Association of Natural Resource Scientists  
Charles Miner Jr., representing NH Fish and Game Department  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Laura Deming, representing NH Audubon Association  
Jasen Stock, representing NH Timberland Owners Association  
John Doran, representing NH Association of Realtors  
Johanna Lyons, representing NH Department of Resources and Economic Development  
Rene Pelletier, representing NH Department of Environmental Services

**Other Attendees:**

Cordell Johnston, NH Municipal Association  
Ted Diers, NH Department of Environmental Services  
Jillian McCarthy, NH Department of Environmental Services  
Ben Frost, NH Housing Finance Authority  
Bruce Berke, Mount Washington Resort/Sheehan Phinney  
Michael Licata, Business and Industry Association  
John Kanter, NH Fish and Game Department  
Alex Koutroubas, Dennehy & Bouley/ American Council of Engineering Companies - NH  
Kathryn Fox, Environment NH  
Phil Braley, Brown, Olson & Gould  
Gina Rotondi, Rath, Young and Pignatelli/NH Shorefront Association  
Joel Anderson, Staff, NH House of Representatives  
Jodi Grimbilas, Bianco P.A.  
Timothy Fortier, McLane Law Firm

**Commission Staff:**

Dari Sassan, NH Office of Energy and Planning

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## I. ROLL CALL AND INTRODUCTIONS

Representative Gottling called the meeting to order at 9:02 am. Commissioners and staff introduced themselves by name and representation. Agendas and draft minutes from the August 26, 2008 meeting were distributed to commissioners.

## II. APPROVAL OF MINUTES FROM AUGUST 26, 2008 MEETING

Mr. Stanley moved to accept the minutes of the August 26, 2008 meeting. Mr. Morin seconded. The minutes were accepted unanimously.

## III. PRESENTATIONS

Mr. Miner introduced John Kanter of the NH Fish and Game Department (F&G), stating that F&G is the state's steward of wildlife and its associated habitat. Following, is a summary of a presentation entitled "Wildlife and Wildlife Habitats" given by Mr. Kanter, available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/wildlife\\_and\\_wildlife\\_habitats.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/wildlife_and_wildlife_habitats.pdf)

*Wildlife is defined in NH state statute as all non-domesticated members of the animal kingdom, including over 400 vertebrates and over 11,000 insects.*

*The Wildlife Action Plan ([http://www.wildlife.state.nh.us/Wildlife/wildlife\\_plan.htm](http://www.wildlife.state.nh.us/Wildlife/wildlife_plan.htm)), released by F&G in 2006, addresses threats to wildlife and provides vital information to guide both proactive and reactive measures to mitigate threats to habitat. Establishing a base coverage of the entire state, the plan identifies 27 different habitat types ranging from the alpine areas of the north, to the tidal salt marsh of the seacoast. Within the Wildlife action Plan, land development is addressed as a principal threat to wildlife habitat. Such threats can be categorized as habitat destruction, habitat degradation, and/or fragmentation of habitat and landscapes.*

*When barriers are created, which restrict a species' ability to move (e.g. deforestation for roads or buildings), occupied habitats become isolated, which can reduce individuals' abilities to find food and shelter but can also reduce gene flow, potentially compromising the viability of a population.*

*The Wildlife Action Plan provides guidelines for conducting "connectivity analyses." These analyses can identify existing and potential barriers and solutions to creating corridors, aquatic, upland and riparian alike, which will allow for improved protection of species diversity, species composition, animal movement, and genetic diversity.*

*Some Examples of Wildlife Action Plan Tools include:*

- *Co-occurrence maps*
- *Habitat designation maps*
- *Habitat profiles*
- *Species profiles*

Some Examples of Wildlife Action Plan Strategies include:

- *Conservation planning*
  - *Local regulation and policy*
  - *Land protection*
  - *Landowner incentives*
- *Intra-agency coordination and policy*
  - *Education, information and technical guidance*
  - *Habitat management*
  - *Population management*
  - *Research*
- *Environmental Review*

*In closing, the Wildlife Action Plan is not only geared toward protecting endangered populations but also about keeping common species common. In addition to the environmental and public health benefits that are realized when habitat is protected, the preservation of the state's unique landscape provides a direct economic benefit through the revenues generated through tourism and recreation.*

Senator Janeway asked if F&G had some idea of the extent to which the Wildlife Action Plan is being utilized at the local and regional levels. Mr. Kanter responded that there is currently no specific process in place for gathering such data. Senator Janeway suggested that such information could be of value to F&G.

Mr. Gove asked for specific examples of inter-agency cooperation surrounding the Wildlife Action Plan. Mr. Kanter replied that, as one example, the NH Department of Environmental Services (DES) includes consideration of fish and wildlife habitat within its wetlands permitting process. Mr. Kanter added that while no formal memorandum of agreement exists in relation to habitat protection, memoranda of agreement are in place regarding information sharing.

Mr. Walker asked how closely activity in the upland is linked to conditions in down-gradient riparian and aquatic locations. Mr. Kanter replied that the links are inextricable. Mr. Morin asked if any protocols exist for identifying the most important habitats to protect. Mr. Kanter answered that prime wetlands are of vital importance as are corridors, which prevent isolation of habitat pockets.

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Ms. Czysz gave a presentation entitled "The Municipal Planning Process and Patchwork of Regulations" compiled by her and Mr. Stanley. The contents of the handout Ms. Czysz provided with her presentation are available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/municipal\\_planning\\_process.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/municipal_planning_process.pdf)

Following, are comments made by Ms Czysz that are not captured in the handout:

*In 2002, Chapter 229 called for the alignment of state, regional and municipal planning efforts. Through its land-use and vision chapters, the Master Plan is*

*intended to drive the planning process. Thus, development that takes place is widely dependent upon the current planning resources available in the host community. Because land-use boards are primarily comprised of volunteer members with other responsibilities and time requirements, it is rare that such boards have time to look beyond the proposals before them, and into proactive planning. In order to dedicate the necessary time and expertise required for practical planning purposes, such as the development of a Master Plan, communities commonly turn to professional consultants. At which point, the financial constraints of the community become a factor. Once a community has completed the Master Plan, it moves on to updating regulations and the same set of complications surface again.*

*Two main sources of municipal-level land-use planning data in NH towns, are available through the Office of Energy and Planning (OEP) website and from DES. OEP sends out questionnaires annually and the accuracy of information returned is dependent upon the accuracy of the responder. The DES data is based upon a 2005 study that focused on water resources protection. In summary, there is no absolute data indicating exactly what is in place in each and every NH town.*

*“Innovative Land Use Planning Techniques: A Handbook for Sustainable Development,” a soon-to-be-released publication created jointly by DES and representatives of NH’s regional planning commissions, provides not only a good source of model ordinances, but also an overview of the realm of considerations to be accounted when drafting an ordinance for a specific municipality.*

Ms. Darrow inquired how many towns have conservation commissions, to which Mr. Dionne responded 184. Ms. Czysz added that such information is available on the OEP website.

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Mr. Pelletier gave a presentation entitled "Land use program permitting at NHDES" compiled by DES. The slides that Mr. Pelletier showed with his presentation are available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/land\\_use\\_program\\_permitting\\_at\\_nhdes.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/land_use_program_permitting_at_nhdes.pdf).

Following, are annotations made by Mr. Pelletier that are not captured in the slides:

- *Currently, there are no regulations in NH governing quality and quantity of private well withdrawals.*
- *While the benefits of wetlands may be interpreted differently among different people, DES does have science-based mechanisms for determining the value of a wetland.*
- *For the first time in NH, the new Comprehensive Shoreland Protection Act (CSPA) addresses percent imperviousness of shoreland properties.*
- *Item IV of the CSPA Purpose (Under current law the potential exists for uncoordinated, unplanned and piecemeal development along the state's*

*shorelines, which could result in significant negative impacts on the public waters of New Hampshire) is an example of the very reason the Land Use Commission is necessary*

- *Stormwater pollution is leading to some of the most substantive instances of degradation in the state.*

Mr. Doran extended his compliments to Mr. Pelletier and to DES for the quality of the presentation. He expressed, on behalf of the NH Realtors Association, a real concern about water quality as it impacts the long-term health of the real estate business in NH. Mr. Doran asked if the philosophical approach to water quality protection that was mentioned in Mr. Pelletier's presentation was consistent with a recent decision by DES to prescribe the construction of a berm capable of containing a 25-year storm event around a landfill in Bethlehem. Mr. Doran expressed a concern that a larger storm event would cause millions of tons of trash to wash downstream.

Mr. Pelletier responded that an while a larger event might cause flows to escape over the berm walls, much of the flow would move along the shallower (upper) depths of the inundation and would therefore not overturn and empty the contents of the landfill. Mr. Pelletier stated that the Bethlehem situation illustrates a serious social issue, to which, the answer may not be as simple as sending the problem, in this case solid waste, along to another community in another state.

Mr. Corso added that the NH Rivers Protection Act protects the lower reaches of the Ammonoosuc River. He asked how existing rules would impact Bretton Woods and how it would impact the landfill. Mr. Pelletier replied that activities in these areas are permitted when they are "reasonable rights" which do not affect a net impact on the environment.

Mr. Gove asked Mr. Pelletier how he would build NH's regulatory structure if he were given a clean slate, free of the entanglements of today's environment of multiple agencies and divisions interacting with sometimes overlapping duties. Mr. Pelletier responded that he would begin by asking, "How do we want to grow as a state?" and then create the regulations that will provide the vehicle to that destination. The complication, Mr. Pelletier continued, is that everyone has a different idea of what constitutes acceptable growth.

Mr. Morin asked how DES would handle additional permitting responsibilities if new regulations came online. Mr. Pelletier responded that DES is at a point where it cannot absorb any more responsibilities at its current staffing and funding levels.

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

Ms. Darrow announced that she would like to do a presentation with the Department of Transportation at some point. Chairperson Gottling requested that Ms. Darrow provide further information at the October meeting regarding the details of such a presentation.

Mr. Stock suggested that a presentation about incentive based approaches to attaining sound land management practices may provide a valuable contrast to the regulatory approaches that had been discussed.

Ms. Czysz circulated a handout drafted by DES and OEP containing an outline that presenters at the October meeting could follow. The outline proposed that the following items be addressed by presenters:

1. Developer's goals/vision for the site
2. Local vision as expressed in zoning
3. Smart growth considerations
4. Low Impact Development
5. Permitting process - consistency and conflicts between local/state/federal
6. Direct and secondary impacts and/or contributions of development on:
  - Surface and ground water quality and quantity
  - Terrestrial and aquatic habitat
  - Ecosystem health and integrity
  - Providing for desirable communities in which to live and work  
(4 bullets cited directly from HB 1579)
7. Lessons learned, potential process improvements

**V. FUTURE MEETING DATES**

Date	Time	Location
October 21, 2008	9 am	LOB* room 305
November 18, 2008	9 am	TBA
December 16, 2008	9 am	TBA

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

**VI. ADJOURNMENT**

At 11:14 am, Mr. Stanley moved that the meeting be adjourned. Ms. Czysz seconded the motion, which carried unanimously.