

**HB 710, CHAPTER LAW 254, LAWS OF 2007**  
**COMMISSION FOR THE STUDY OF LEASING STATE-OWNED REAL ESTATE ON**  
**PUBLIC WATERS**

**EXISTING AND FUTURE LEASE POLICY SUBCOMMITTEE REPORT**  
**September 16, 2008**

Existing Lease Policy Recommendation

The subcommittee recommends to the commission that, as of the effective date of legislation to implement the commission's recommendations, any existing lease agreement or lease assignee shall only be renewed for lease terms of 5 years provided that the lessee or lease assignee has meet all statutory conditions and is compliant with all state and federal permits. Under special circumstances, lease terms can be other than 5 years upon approval by the Long Range Planning and Utilization Committee and Governor and Executive Council.

Future Lease Policy Recommendation

*The following lease policy recommendation represents a compromise intended to continue to acknowledge the many existing residential property owners, adjacent to the state's real property and public waters, and their existing right under state statute to gain access to the water. The adjacent property owner's rights need to be balanced with those of the public's to enjoy access to the state's public lands and the state's need to maintain high water quality. While the simplest solution would be to halt all future leases at a specified point in the future, this solution has the potential to take rights away from existing property owners. The proposed solution does in fact recommend a halt to granting new leases in the future while maintaining the right of existing adjacent property owners to lease state real property.*

The subcommittee recommends to the commission that:

1. Portions of real estate owned by the State that are on the shores of public waters, as defined by RSA 271:20, may be leased for private, non-commercial use by owners of adjacent residentially developed properties that are either fully constructed or the property owner can demonstrate that he or she has incurred substantial liabilities in a reasonable, good faith reliance on the absence of a controlling law or regulation, sometimes called vested rights, prior to January 1, 2011. The following thresholds shall constitute proof that the adjacent property owner has vested rights:
  - a. The activities are specifically identified in a building permit application that has been approved by the municipal board(s) or official having authority over building permits prior to January 1, 2011; or
  - b. A concrete foundation for the primary structure was installed prior to January 1, 2011.
2. Any lease requests for railroad property for the purposes of installing a dock or mooring, in accordance with 228:57-a, shall additionally be subject to the procurement and delivery of a Dock Permit issued by the Department of Environmental Services or a Mooring Permit issued by the Department of Safety. This shall be established as a condition precedent to the effectiveness of all such lease agreements. Language shall be included in the lease agreement stating that if a dock or mooring permit is denied or revoked, the lease shall be terminated.

3. Notwithstanding the above, where an applicant can demonstrate the intent to provide a public use or benefit through a lease or other agreement to utilize state lands on the shores of public waters they may be allowed to do so upon review and approval by the Long Range Planning and Utilization Committee and Governor and Executive Council, provided that they proceed through the appropriate statutory review process including, but not limited to that in RSA 4:40, 4:39-a, 4:39-c, and 481:3-a.
4. The Legislature integrate the above three recommendations into the existing statutes related to the disposal of surplus state land, so to affect all lease requests for state owned real estate adjacent to the shores of public waters, regardless of which state agency manages or owns the land.

#### Communication Policy Recommendation

The subcommittee recommends to the commission that:

1. The Long-Range Capital Planning and Utilization Committee should make their agendas and minutes more readily available to the public and distributed directly to interested parties including municipalities where surplus land requests are being deliberated.
2. RSA 4:39-C should be amended to include notice to CORD and its members of lands to be surplussed. *[The intent here is not to reverse back to requiring these items to be reviewed by CORD, but simply as a means to alert other State agencies of lands to be surplussed, so that they are afforded an opportunity to contact DOT if they have an interest in the property and the required funding to reimburse the federal source that originally funded the property's acquisition.]*

#### Other Policy Recommendations

The subcommittee recommends to the commission that it make a recommendation within its final report requesting that a uniform definition of "surplus" be established by the Legislature based upon the various statutory and agency definitions.

Respectfully Submitted,

Representative David Campbell, NH House of Representatives  
Jennifer Czysz, Representing the Council on Resources and Development  
Jack Ferns, NH Department of Transportation  
Benjamin Frost, NH Housing Finance Authority  
Carol Granfield, Representing a Municipality with Lease Shorefront  
Jared Teutsch, Subcommittee Chair, Representing the Public

#### Attachments:

Subcommittee Meeting Minutes of April 3, 2008  
Subcommittee Meeting Minutes of May 14, 2008  
Subcommittee Meeting Minutes of June 3, 2008  
Subcommittee Meeting Minutes of July 15, 2008  
Subcommittee Meeting Minutes of August 12, 2008

## **Existing and Leasing Policy Subcommittee Research**

### **Defining Non-Commercial Development and Vesting**

Non-commercial residential development is privately owned single-, two-, and multi-family homes and condominiums whether owner or renter occupied.

Commercial residential development is the development of homes by a real-estate developer with the intent to be transferred or sold in order to be occupied by someone other than the initial developer/builder.

Non-commercial development is a precondition for a lease of RR land per RSA 228:57-a, I:

*Notwithstanding RSA 228:57, portions of real estate owned by the state and managed by the bureau of rail and transit in the department of transportation that are on the shores of public waters, as defined by RSA 271:20, may be leased for private, noncommercial use by owners of adjacent properties separated from the shore only by the railroad land, as long as such use does not interfere with railroad operations. Any property owner meeting the requirements of this section may request in writing to be allowed to lease such property from the state. However, when the adjacent property is owned by more than one individual, such as a condominium association, the association, only as a single entity, may request the lease. In no case shall more than one access point to the leased property be allowed.*

RSA 674:39 is the standard in “vesting” for subdivision and site plan approvals. A subdivision plat or site plan approval is exempt from subsequent land use regulation or ordinance changes for four years, provided that (1) active and substantial development or building has begun within 12 months of the date of approval, (2) development remains in full compliance with public health regulations and ordinances, and (3) at the time of approval and filing the application was in full compliance with the regulations/ordinances. Definition of “active and substantial improvement” is left to the municipality to define.

The definition of existing development, to be used as a prerequisite to future leases of state owned lands adjacent to public waters, should be based upon completion or demonstration of substantial improvement/progress upon an approved development by January 1, 2010.

### **Proposed language to be used when determining how and when development is vested to be eligible for future leases of state lands adjacent to public waters:**

For any state surplus land request permitted by RSA 4:39-a, 4:40, 228:57 [need to capture all applicable] that are for state property along public waters, the adjacent privately owned land must have been residentially developed where either:

- a. construction completed or built prior to January 1, 2010; or
- b. a subdivision plat, site plan, and/or building permit has been issued and active and substantial development or building has begun on the site prior to January 1, 2010.

For these purposes, active and substantial development or building means the construction of foundation walls and footings of proposed buildings, installation of erosion and sediment control measures, site grading and construction of permanent physical improvements such as road base, water and sewer lines or other underground utilities including drainage structures has occurred.

## **674:39 Four-Year Exemption.**

**I.** Every subdivision plat approved by the planning board and properly recorded in the registry of deeds and every site plan approved by the planning board and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, impact fee ordinances, and zoning ordinances adopted by any city, town, or county in which there are located unincorporated towns or unorganized places, except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 4 years after the date of approval; provided that:

(a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 12 months after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the city, town, or county in which there are located unincorporated towns or unorganized places, at the time of commencement of such development;

(b) Development remains in full compliance with the public health regulations and ordinances specified in this section; and

(c) At the time of approval and recording, the subdivision plat or site plan conforms to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such subdivision plat or site plan.

**II.** Once substantial completion of the improvements as shown on the subdivision plat or site plan has occurred in compliance with the approved subdivision plat or site plan or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.

**III.** The planning board may, as part of its subdivision and site plan regulations or as a condition of subdivision plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:

(a) "Substantial completion of the improvements as shown on the subdivision plat or site plan," for purposes of fulfilling paragraph II; and

(b) "Active and substantial development or building," for the purposes of fulfilling paragraph I.

**IV.** Failure of a planning board to specify by regulation or as a condition of subdivision plat or site plan approval what shall constitute active and substantial development or building shall entitle the subdivision plat or site plan approved by the planning board to the 4-year exemption described in paragraph I. The planning board may, for good cause, extend the 12-month period set forth in paragraph I(a).

**Source.** 1983, 447:1. 1989, 266:17, 18. 1991, 331:1, 2. 1995, 43:5, eff. July 2, 1995; 291:7, 8, eff. Aug. 20, 1995. 2004, 199:1, eff. June 7, 2004.

### **Amendments**

**2004.** Rewritten to the extent that a detailed comparison would be impracticable.

**1995.** Chapter 43 substituted the owner's for his preceding successor in the introductory paragraph and in the first sentence of par. I.

Chapter 291 substituted the for said following terms of in par. I and added par. IV.

**1991.** Inserted or site plan following every plat, site plan review regulations preceding and zoning and or unless otherwise stipulated by the planning board preceding the rights in the introductory paragraph and inserted or site plan preceding conforms and site plan review regulations preceding and zoning in par. III.

**1989.** Substituted town, or county in which there are located unincorporated towns or unorganized places for or town following adopted by any city in the introductory paragraph and following posted with the city in par. I.

**Legislative purpose of 1991 amendment.** 1991, 331:4, eff. Aug. 27, 1991, provided:

The purpose of sections 1-3 of this act [which amended this section and RSA [676:12](#)] is to confirm and re-emphasize the intent of the general court at the time of the enactment of 1986, 229:3 and 1983, 447:1. Municipalities may not retroactively amend local land use regulations or zoning ordinances for the purpose of stopping proposed projects or developments while an application is under consideration by the municipality. This act shall not be interpreted as changing the intent of any provision of 1986, 229 or 1983, 447.

**Cross References.** Development on class V and VI highways, see RSA [674:41](#).

Effect of approval of plats generally, see RSA [674:38](#).

Recordation of plats in registry of deeds, see RSA [676:18](#).

Revocation of recorded approval, see RSA [676:4-a](#).

Street improvements generally, see RSA [674:40](#).

## NOTES TO DECISIONS

### 1. Applicability

Supreme court affirmed developer that had RSA [674:39](#) four-year preliminary exemption from town's higher impact fees; site plan approvals were recorded before increase was approved and active or substantial developing started less than 12 months after recording. *R.J. Moreau Cos. v. Town of Litchfield*, 148 N.H. 773, 813 A.2d 527, 2002 N.H. LEXIS 213 (2002).

This section, providing four-year exemption from lot size restrictions of recently enacted zoning ordinances, was inapplicable as to subdivision plat which was neither approved nor recorded. *Chasse v. Town of Candia*, 132 N.H. 574, 567 A.2d 999, 1989 N.H. LEXIS 132 (1989).

### 2. Substantial Construction Standard

Where Town of Hookset officials erroneously told the applicant that the building permit for the gas station would not be revoked under newly enacted zoning laws if the applicant obtained the permit within a year of when the litigation over approval of the gas station ended and if the applicant began building within six months of that, municipal estoppel did not require the reinstatement of the building permit where those statements turned out to be false; the applicant's reliance on the statements of the code enforcement officer and planning board member was not reasonable because a statute, former RSA [674:39\(l\)](#) (see now RSA [674:39\(l\)\(a\)](#)), required the applicant to begin active and substantial development of the property within one year in order to secure protection from zoning changes. *Thomas v. Town of Hookset*, N.H. , A.2d , 2006 N.H. LEXIS 99 (July 20, 2006).

Where a developer expended a substantial amount of money on public improvements and constructed six houses, its work was enough to meet the substantial construction standard; its right to complete a project permanently vested. *AWL Power, Inc. v. City of Rochester*, 148 N.H. 603, 813 A.2d 517, 2002 N.H. LEXIS 178 (2002).

**Cited** Cited in *Town of Nottingham v. Bonser*, 131 N.H. 120, 552 A.2d 58, 1988 N.H. LEXIS 108 (1988); *Chasse v. Town of Candia*, 132 N.H. 574, 567 A.2d 999, 1989 N.H. LEXIS 132 (1989); *Rall v. Town of Belmont*, 138 N.H. 172, 635 A.2d 1368, 1993 N.H. LEXIS 185 (1993).

## **Municipal Definitions of Active and Substantial Development and Completion**

### **Bedford**

#### Section 345 – Active and Substantial Development and Completion

345.1 In approving any application, the Planning Board may specify the threshold level of work which constitutes “active and substantial development and building” for the purpose of determining the minimum amount of work required in order to satisfy the provisions of RSA 674:39 pertaining to protection from subsequent amendments to local land use regulations for a period of four (4) years. Active and substantial development, in the absence of a specific finding by the Planning Board, shall be deemed to have occurred when at least twenty percent (20%) of the total building foundations or one building foundation – whichever is greater – on the site has been installed, inspected and approved by the Building Inspector, utilities have been extended to the site, and a certified plot plan of the foundation has been submitted. All erosion control measures as specified on the approved plan for the area of disturbance must be installed.

345.2 Substantial completion of the development shall be deemed to have occurred when a Certificate of Occupancy for all buildings shown on the approved site plan shall have been issued by the Bedford Building Department, and all other on-site and/or off-site improvements have been determined by the Town of Bedford or its agent to be in compliance with the approved site plan or satisfactory financial guarantees remain on deposit with the Town to insure completion of such improvements.

### **Fitzwilliam**

#### Section 221-27: Vesting [Amended 12-20-2005]

The definition of ‘active and substantial development or building’ and ‘substantial completion of the improvements shown on the subdivision plat’ for the purposes of complying with RSA 674:39 I. (a) and II and III shall be:

1. Construction of and/or installation of basic infrastructure to support the development (including all of the following: foundation walls and footings of proposed buildings; roadways, access ways, parking lots, etc. to a minimum of gravel base; and utilities placed in underground conduit ready for connection to proposed buildings/structures) in accordance with the approved plans, as applicable; and
2. Construction and completion of drainage improvements to service the development (including all of the following: detention/retention basins, treatment swales, pipes, underdrains, catch basins, etc.) in accordance with the approved plans as applicable; and
3. All erosion control measures (as specified on the approved plans) must be in place and maintained on the site; and
4. Items 1, 2, and 3 shall be reviewed and approved by the Town.

Movement of earth, excavation, or logging of a site without completion of items 1, 2, 3, and 4 above shall not be considered “active and substantial development.” Plans approved in phases shall be subject to this definition for the phase currently being developed. The Planning Board may, for good cause, extend the 12-month period.

To the extent that the Planning Board calls a bond or other security for such improvements and the funds are paid to the Town, substantial completion of the improvements in the subdivision shall be deemed to have occurred.

### **Milford**

ACTIVE AND SUBSTANTIAL DEVELOPMENT: Unless otherwise defined by the Planning Board at the time of approval, shall mean the installation of erosion and sediment control measures, site grading and construction of permanent physical improvements such as road base, water and sewer lines or other underground utilities including drainage structures has occurred.(5/16/06)

## **Comprehensive Shoreland Protection Act Standards for Vesting**

### **Env-Wq 1406.03 Exemption for Vested Rights.**

(a) Subject to (e), below, activities in the protected shoreland shall not require a permit under RSA 483-B:5-b if the property owner or developer can demonstrate to the department's satisfaction that the property owner or developer has incurred substantial liabilities in a reasonable, good faith reliance on the absence of a controlling law or regulation, sometimes called vested rights.

(b) The department shall deem any of the following to be proof that the property owner or developer has vested rights:

- (1) The activities are specifically identified in an application that has been the subject of notice by a planning board pursuant to RSA 676:4, I(d) or the zoning board of adjustment prior to July 1, 2007, regardless of whether an approval has yet been issued, provided that such application is ultimately approved by the municipal board(s) having authority over the activities covered by the application;
- (2) The activities are specifically identified in a detailed plan or narrative description submitted with a building permit application submitted to a municipality prior to January 1, 2008, provided that such application is ultimately approved by the municipal board(s) or official having authority over building permits;
- (3) A concrete foundation for the primary structure was installed between April 1, 2007 and July 1, 2008;
- (4) The activities are specifically identified in a variance or redevelopment waiver issued by the department prior to July 1, 2008 pursuant to RSA 483-B, unless the approval specifically requires the permittee to obtain a permit pursuant to this section if work was not commenced prior to July 1, 2008; or
- (5) The activities were specifically approved in a permit issued pursuant to RSA 485-A:17 prior to July 1, 2008, unless the approval specifically requires the permittee to obtain a permit pursuant to this section if work was not commenced prior to July 1, 2008.

(c) A property owner or developer who is not able to show any of the conditions listed in (b)(1)-(5) may submit other evidence to demonstrate that the property owner or developer has otherwise incurred substantial liabilities and that such liabilities:

- (1) Resulted from a reasonable, good faith reliance on the absence of a controlling law or regulation; and
  - (2) Are related to the provision of RSA 483-B from which the property owner or developer is seeking relief.
- (d) A property owner claiming vested rights shall provide the following to the department in writing:
- (1) The name and mailing address of the property owner;
  - (2) The name, mailing address, and daytime telephone number and, if available, an e-mail address, of an individual authorized to act on behalf of the property owner with whom the department can discuss the proposed project;
  - (3) The physical address of the proposed project site, if different from the property owner's

mailing address;

(4) The name of the surface water that causes the property to be subject to RSA 483-B;

(5) If the exemption is claimed under (b)(1), above, proof that the notice was issued;

(6) If the exemption is claimed under (b)(2), above, a copy of the detailed plan or narrative description submitted with the building permit application;

(7) If the exemption is claimed under (b)(3), above, proof that the foundation has been installed, such as dated photographs or a bill for the foundation showing the date of installation; and

(8) If the exemption is claimed under (c), above, the following information:

a. A budget showing the total estimated cost of the project;

b. A narrative describing the full scope of the project, including all work expected to be done on the property within a 5-year period;

c. How much of the total estimated cost had been incurred prior to July 1, 2007 and how much of the total estimated cost had been incurred prior to July 1, 2008;

d. How much of the total scope of the project had been completed prior to July 1, 2007 and how much of the total scope of the project had been completed prior to July 1, 2008;

e. What revisions would be required to redesign the project to reflect the standards enacted to be effective July 1, 2008;

f. The cost of the revisions that would be needed; and

g. The relationship of the revisions to the full scope of the project as originally envisioned.

(e) An exemption shall not be available under (a), above, if:

(1) The applicant proposes changes to the activities from those that would otherwise be exempt under (a), above, and such changes would increase impacts in the natural woodland buffer established by RSA 483-B:9, V(b)(1); or

(2) The applicable permit, approval, variance, or redevelopment waiver expires or otherwise lapses prior to work commencing, or is revoked for cause by the issuing authority.

**HB 710 Leasing State-Owned Waterfront Commission:  
Existing and Future Leasing Policy Subcommittee  
April 3, 2008 Meeting Minutes  
Legislative Office Building Room 203**

Present: Jennifer Czysz (CORD), Jack Ferns (DOT), Jared Teutsch - Chair (Public)

After discussing the existing leasing policy, the subcommittee agreed to review four specific areas to determine recommendations for future leasing policy to the full HB 710 Commission. The four areas of discussion include:

1. Discuss notice requirements for leasing: consider 30 days?
2. Discuss uniform definition of surplus
3. Review all statutes relating to leasing of waterfront property
  - a. RSA 4:39-a
  - b. RSA 4:40
  - c. RSA 204-d
  - d. RSA 227-h
  - e. RSA 228:57
  - f. RSA 228:57-a
  - g. RSA 228:60
  - h. RSA 228:60-a
  - i. RSA 228:60-b
  - j. RSA 228:60-c
  - k. RSA 228:67
  - l. RSA 228:68
  - m. RSA 271:20
  - n. RSA 481:3-a
4. Definition of Commercial Development

Set next meeting date for 3 PM on May 5, 2008, location to be determined

Meeting was adjourned at 4 PM

Respectfully Submitted,

Jared Teutsch, HB710 Subcommittee Chair

**HB 710 Leasing State-Owned Waterfront Commission:  
Existing and Future Leasing Policy Subcommittee  
May 14, 2008 Meeting Minutes  
Legislative Office Building Room 203**

Present: Jennifer Czysz (CORD), Jack Ferns (DOT), Jared Teutsch - Chair (Public), Carol Granfield (Municipal Association)

1. The Subcommittee discussed the notice requirements for leasing.

ACTION: Recommend to full 710 Commission that CORD codify 30 day notice requirement and establish rules

ACTION: Recommend to full 710 Commission that Long-Range Capital Planning establish a 30 day notice requirement as well

ACTION: Recommend to full 710 Commission that RSA 4:39-C be amended to include notice to CORD

2. The Subcommittee discussed creating a uniform definition of surplus.

ACTION: Jared will write a draft definition of surplus land and email it to the subcommittee for discussion and review.

3. The Subcommittee discussed the underlining policy of leasing and will continue to discuss in future meetings.

Set next meeting date for 3 PM on June 3, 2008, in room 203 of the Legislative Office Building

Meeting was adjourned at 4 PM

Respectfully Submitted,

Jared Teutsch, HB710 Subcommittee Chair

**HB 710 Leasing State-Owned Waterfront Commission:  
Existing and Future Leasing Policy Subcommittee  
June 3, 2008 Meeting Minutes  
Legislative Office Building Room 203**

Present: Jennifer Czysz (CORD), Jack Ferns (DOT), Jared Teutsch – Chair (Public)

**3. Review leasing policy to be recommended to full 710 Commission.**

Key policy recommendations and differentiations between existing-future leased and undeveloped-developed lands formulated during the meeting include:

- a. That existing leases be granted a conditional right to renew, wherein lessees may request to renew based upon 5-year terms and must meet existing statutory and lease conditions and be in conformance with all state and federal permits.
- b. That the right to request future leases be limited to state lands adjacent to lots with existing residential development that includes single-, two-, and multi-family homes and condominiums. The subcommittee recommended that existing development be either build or demonstrate some form of substantial improvement to an approved development as of January 1, 2010.
- c. That no leases shall be granted adjacent to undeveloped or non-residential lands.

Jen will draft more specific policy language to be reviewed at the next meeting.

**5. Discuss the definition of development**

The subcommittee discussed the definition of “commercial residential development” and felt with the proposed leasing policy, introducing a definition of development was unnecessary for the purposes of distinguishing funnel developments under construction for the developer’s profit from existing residential development.

However, to support the policy above, the following was developed to determine when development would be considered vested if not completed.

For any state surplus land request permitted by RSA 4-:39-a, 4:40, 228:57 [need to capture all applicable] that are for state property along public waters, the adjacent privately owned land must have been residentially developed where either:

- c. construction completed or built prior to January 1, 2010; or
- d. a subdivision plat, site plan, and/or building permit has been issued and active and substantial development or building has begun on the site prior to January 1, 2010.

For these purposes, active and substantial development or building means the construction of foundation walls and footings of proposed buildings, installation of erosion and sediment control measures, site grading and construction of permanent physical improvements such as road base, water and sewer lines or other underground utilities including drainage structures has occurred.

**6. Discuss definition of surplus**

Jared will write a draft definition of surplus land and email it to the subcommittee for discussion and review.

**7. Next meeting date**

Set next meeting date for June 15, 2008 tentatively to be held at 2 PM at DOT

Meeting was adjourned at 4:15 PM

**HB 710 Leasing State-Owned Waterfront Commission:  
Existing and Future Leasing Policy Subcommittee  
July 15, 2008 , 2:30 PM  
Department of Environmental Services, Room 313  
Minutes**

Subcommittee Members Present: Representative David Campbell (NH House), Jennifer Czysz (CORD), Ben Frost (NHHFA),

Others Present: Lou Barker (DOT), Jacquie Colburn (DES), Bill Heinz (RMAC), Gina Rotondi (Rath, Young, Pignatelli)

Moved by Representative Campbell, seconded by Mr. Frost, that the minutes of the policy subcommittee meeting held on June 3, 2008 be approved. The motion passed unanimously.

**1. Review leasing policy to be recommended to full 710 Commission**

**a. Existing Lease Policy**

Two changes to the draft policy statement were identified including:

- Clarify that leases “*shall* only be renewed for lease terms of 5-years...”
- Add “Under special circumstances, lease terms can be less than 5- years upon approval by the Long Range Planning and Utilization Committee and Governor and Council.”

An informational note should accompany the policy recommendation to highlight that the conditions for renewing an existing lease are to accompany existing law and do not override existing laws, they simply create additional requirements for leases of state owned real property adjacent to public waters.

**b. Future Lease Policy**

Given that “Plan B” as presented in the June 25, 2008 working draft of the Recommendations of the Existing and Future Lease Policy Subcommittee, is the more politically and socially feasible recommendation, “Plan A”(terminating the right to request future leases by a given date) should be used only in discussion of why “Plan B” is better. Therefore, while “Plan A” will not be the subcommittee’s official recommendation, it should still be a part of the conversation in the future.

Edits identified to be made to “Plan B” include:

- i. Replace the vesting of development language with concrete markers of development such as a building permit has been issued or language similar to that used for the Comprehensive Shoreland Protection Act (CSPA). Jen will research language used by the CSPA to determine when development is vested.
- ii. Development shall be completed or vested as of January 1, 2011 to be eligible for a future lease.
- iii. Jen will follow up with DOT, DES, DRED, and Fish and Game to review and refine language allowing an exemption for surplus land requests along public waters where there is an intent to provide a public service or benefit.
- iv. Lou will email to Jen language that DOT would like added to the recommendations that will require the ultimate receipt of a dock permit as a condition of a lease for railroad property along public waters.

**2. Review communication policy to be recommended to full 710 Commission**

One definitive change was proposed to the draft communication policy, as included in the June 25, 2008 working draft of the Recommendations of the Existing and Future Lease Policy Subcommittee. Instead of mandating a 30 day notice requirement for Long Range, make a recommendation that agendas and minutes be more readily available to the public and distributed directly to interested parties (such as municipalities where a surplus land agenda items exist).

Additionally, DOT is hesitant to support a requirement that all RSA 4:39-a requests be noticed to CORD.

While not a part of the communication policy directly, an additional recommendation was made to amend state statutes to require that the priority offering of all surplus land requests be made to the municipality and county prior to submission to Long Range, rather than between Long Range and Governor and Council as is the current practice.

**3. Discuss definition of surplus**

There was some debate over whether a definition of surplus is necessary or appropriate given that each agency has a unique charge for utilizing its lands and determining that which is surplus to its needs. A possible benefit to having a definition of surplus for agencies to use in their determinations would be to assess whether certain environmental characteristics are present on state owned properties and using a threshold, established in the definition, identify those lands that may not be truly surplus to the State's needs given the environmental benefit the property holds for the State.

Jared had previously offered to draft a definition of surplus.

**4. Review statutory charges and the Commission's Interim Report for other policy issues to be evaluated**

The subcommittee reviewed its statutory charge and those questions raised in the interim report. The following elements still need to be reviewed by this subcommittee in future meetings:

- HB 710 – 254:3, VI – Review current leasing practices for state-owned real estate on the shores of public waters for consistency with statutes, including RSA 483, 483-A, and 483-B;
- HB 710 – 254:3, VII – Review statutes relating to leasing of state-owned property, including RSA 4:40, RSA 228:31, and RSA 228:57-a, and recommend amendments to the statutes as necessary.
- Interim Report - #4 – Statutory conflicts with regard to dock and mooring renewal and expiration.
- Interim Report - #10 – Liability issues with regard to docks and the crossing of railroads.

**5. Next meeting date**

August 12, 2008, 11:30 AM, at the LOB.

**HB 710 Leasing State-Owned Waterfront Commission:  
Existing and Future Leasing Policy Subcommittee  
August 12, 2008 , 11:30 AM  
Legislative Office Building, Room 201  
Minutes**

Subcommittee Members Present: Representative David Campbell (NH House), Jennifer Czysz (CORD), Ben Frost (NHHFA), Jared Teutsch (Public), Lou Barker (DOT)

**1. Finalize leasing policy to be recommended to full 710 Commission**

**a. Existing Lease Policy**

The only change identified at was to modify the last sentence to read "...can be *other* than 5-years..." rather than "...*less* than 5-years..."

Pending one last review of the above change, the subcommittee members all concurred with this final drafted language to be presented to the full commission at their September 2008 meeting.

**b. Future Lease Policy**

The subcommittee identified several "fine-tuning" changes to be made to the future lease policy recommendation to finalize the draft. The included:

- i. Reduce the drafted vesting standards in item 1 to only allow for an approved building permit or an installed concrete foundation.
- ii. Remove item 2, as this is simply the inverse of item 1 and thus redundant an potential fodder for confusion.
- iii. Move item 4 up to follow item 1 and modify its language to require a dock or *mooring* permit be obtained when the lease is for the state purpose of obtaining a dock or *mooring*.
- iv. Revise item 3, the exemption for public use or benefit, be for a lease or *other agreement* and be subject to review and approval of Long Range and Governor and Council.

Pending one last review of the above changes, the subcommittee members all concurred with this final drafted language to be presented to the full commission at their September 2008 meeting.

**2. Review communication policy to be recommended to full 710 Commission**

Representative Campbell reported that he spoke with fellow Long Range members and they have an interest in sponsoring legislation that will require the municipal and county priority offering for all surplus land requests to be made prior to applications being presented to Long Range, rather than after as is the current practice. While this will not be a part of the subcommittee's official recommendations to the commission all were interested in it as a means to improve communication with municipalities.

Similarly, while granting CORD Administrative Rule making authority would benefit improved communications, the subcommittee felt it was beyond the purview of the commission and may meet political opposition. Therefore this item should be removed from the recommendation.

The only other change identified was that Long Range "...*should* make their agendas and minutes more readily available..." rather than they "*shall*" do so.

Pending one last review of the above changes, the subcommittee members all concurred with this final drafted language to be presented to the full commission at their September 2008 meeting.

**3. Discuss definition of surplus**

The full committee discussed the benefits and difficulties in developing a single definition of surplus. In the end, this really will vary from agency to agency. Instead all agreed that the drafting of legal definitions is best left to legislature and legislative services. Instead, the committee decided to add a recommendation to its report that would suggest that a uniform definition of surplus be established by legislation based upon the various statutory and agency definitions.

**4. Begin discussion on the following statutory charges:**

**a. Chapter 254:3, VI**

**b. Chapter 254:3, VII**

The subcommittee felt that the future lease policy as drafted, and with the identified edits, will directly address these statutory charges. However, it will be incumbent upon legislative services to integrate the recommended policy statement into all existing statutes.

**5. Begin discussion on the following items from the Commission's Interim Report:**

**a. Item #4**

This has been addressed through two of the subcommittee's drafted recommendations:

- the existing lease policy that recommends that all leases be standard 5 year leases, and
- that obtaining a lease for the express purpose of a dock or mooring is incumbent upon obtaining a dock or mooring permit.

**b. Item #10**

Lou Barker informed the subcommittee that liability issues are addressed directly through leases for railroad property wherein a lessee is required to hold insurance covering that liability of granting a railroad crossing.

**6. Next meeting date**

September 16, 2008, 12:45 PM, at the LOB.

This next meeting will only be for 15 minutes before the full commission meeting to have one last look at the final edits to the subcommittee's recommendation report to the full commission.