

**APPENDIX B:**  
**COMMISSION'S MINUTES**

**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**

August 26, 2008 \* 10:30 am  
NH Legislative Office Building, Room 305, Concord, NH

**Commissioners:**

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  
Representative Chris Christensen, NH House of Representatives  
Chairperson Representative Sue Gottling, NH House of Representatives, member of the  
Resources, Recreation and Development Committee  
Erin Darrow, representing American Council of Engineering Companies of NH  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Laura Deming, representing NH Audubon Association

**Attendees:**

Susan Olsen, NH Municipal Association  
Ted Diers, NH Department of Environmental Services  
Paul Currier, NH Department of Environmental Services  
Michael Brunetti, Mount Washington Resort  
Dana Bisbee, Mount Washington Resort  
Bruce Berke, Mount Washington Resort/Sheehan Phinney  
Dave Juret, Business and Industry Association  
Kathryn Fox, Environment NH  
Phil Braley, Brown, Olson & Gould  
Gina Rotondi, Rath, Young and Pignatelli/NH Snowmobile Association  
Adam Schmidt, Bianco P.A./NH Association of Realtors  
Representative Judith Spang, NH House of Representatives, member of the Resources,  
Recreation and Development Committee  
Representative Bill Brennan, NH House of Representatives

**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 10:34 am, distributing copies of an agenda and of HB1579. She announced that of the twenty members to be enlisted on the commission, seventeen had been named.

**II. REVIEW OF COMMISSION DUTIES**

Representative Gottling read the duties of the commission as they appear in the HB1579:

*294:3 Duties. The commission shall study:*

- I. The effects of land development on surface and ground water quality and quantity, and terrestrial and aquatic habitat.*
- II. The adequacy and consistency of local, state, and federal programs as they relate to the regulation and management of land development, including regulations of wetland buffers and setbacks, stormwater management, and cumulative effects of development.*
- III. The opportunities for integration of land use controls, open space protection techniques, and environmental and public health protection laws to promote land development patterns that maintain ecosystem health and integrity while providing desirable communities in which to live and work. This shall include study of any programs of this kind underway in other states or nations.*
- IV. The potential legal, fiscal, regulatory, and technical obstacles for creating an integrated approach to land development.*
- V. Legislation that may be necessary to implement the recommendations of the commission.*

Representative Gottling indicated that a Stormwater Commission (HB1295) has also been formed and that issues relating specifically to stormwater will be examined closely by that commission and their conclusions will be shared with the Land Use Commission. She indicated that the Department of Environmental Services (DES) and the Office of Energy and Planning (OEP) have been in discussions regarding how the two commissions will work in concert and without excessive overlap.

Representative Gottling acknowledged Mr. Diers and requested that he provide a brief synopsis of how the two commissions would fit together. Mr. Diers indicated that one possibility could be that the land use commission focus on *where* land development takes place and the stormwater commission focus on *how* it is executed.

Ms. Darrow asked for clarification regarding the land use commission's expectations for addressing stormwater and expressed that stormwater issues are an important component of land use decisions. Representative Gottling stated that the two commissions should continue to develop avenues for communication.

### **III. INTRODUCTION OF COMMISSION MEMBERS**

Commission members and staff introduced themselves by name and representation/affiliation.

### **IV. DESIGNATION OF CHAIR AND VICE CHAIR**

Representative Gottling nominated Senator Harold Janeway to be commission chairperson. Representative Christensen responded that Senator Janeway's other responsibilities would make it difficult for him to chair the commission and nominated Representative Gottling. Mr. Stanley seconded the nomination. With herself abstaining, Representative Gottling was unanimously voted in as commission chair.

Following an offer from Ms. Darrow to serve as vice chair, Representative Gottling advanced Ms. Darrow's nomination. Mr. Dionne seconded the nomination. By a unanimous vote, Ms. Darrow was named vice chair.

Ms. Czysz offered OEP planner, Mr. Sassan, to serve as commission clerk/staff. Commissioners unanimously accepted Ms. Czysz's offer. Chairperson Gottling extended her gratitude toward Ms. Czysz, Mr. Sassan and OEP for the contribution.

Representative Gottling asked Representative Spang to provide a background on the commission and the legislation through which it was created. Representative Spang stated that the discussions leading to the formation of the commission were borne from consideration of the viability of a statewide mandatory wetland setback requirement of 75 feet. Questions that came up as such a regulation was considered (e.g. "What is a structure?" or "What wetlands shall be protected?") shed light on the need for a commission to look at some of the broader aspects of land use management and regulation. Representative Spang, reported that, in the Senate, Senator Janeway had illuminated the concern that cumulative impacts of development within wetlands needed to be properly addressed. Circumstances at the Fallsway subdivision also brought up concerns of cumulative impacts of a development that may go unrecognized when handled permit-by-permit.

Representative Spang next stated that a need exists to study the relationship between uplands and wetlands. She indicated that DES Commissioner Thomas Burack is interested in combining regulatory and permitting processes that relate to wetlands, stating that he sees an opportunity to remove confusion and administrative work. In contrast to the current system, of addressing a development proposal on a permit-by-permit scale, potentially allowing for certain impacts to fall through the cracks, an opportunity exists to pull all the various regulating groups together and create a more streamlined, comprehensive policy.

Also requiring further study, continued Representative Spang, is the way in which the various levels of land use regulation fit together. Particularly, there exists a need for a commission to weight the costs and benefits of local control against those of uniform state standards. While local control is very important to NH citizens, some developers have expressed that they would prefer uniform, predictable standards. Also, the potential

environmental impacts of weak local ordinances are significant enough to warrant the initiation a discussion regarding state regulatory standards.

**V. STATEMENT FROM EACH COMMISSIONER HIGHLIGHTING IMPORTANT ISSUES BEFORE THE COMMISSION**

Chairperson Gottling requested that, when called upon, each commission member issue a very brief statement of issues that they see as most important to the commission.

**Mr. Morin** expressed a need to create statewide uniformity regarding wetlands regulations. He contrasted Londonderry's regulations, which he feels are the product of a very professional staff, to the regulations of other towns, which may be quite different and are not as well staffed.

**Mr. Walker** explained that he once ran the permitting branch of the Wetlands Bureau at DES and has spent the last five years as a private consultant. Mr. Walker suggested the commission should address the following questions:

- How do we handle activity in the uplands regarding the impacts of that activity on wetlands?
- How to organize the various land use regulations?
- How does the department (DES) publicize regulations?

**Mr. Stanley** indicated that, in his profession, he works to apply existing tools to protect resources. He said that he has experienced frustration with a lack of broad understanding of regulations and with poor enforcement of regulations. Mr. Stanley expressed a feeling that rules must be simplified. He conveyed great hopes for the new Comprehensive Shoreland Protection Act (CSPA) and felt it would be great if every town would use the CSPA as a springboard toward uniform regulations. In summary, Mr. Stanley called for simplicity and clarity from regulations that effectively address the final goal.

**Representative Christensen** also expressed a feeling that statewide consistency is important. On the other hand, said Representative Christensen, local control has value as well. Statewide regulations that contain "must-meet-or-exceed" clauses can contribute to loss of uniformity. Representative Christensen concluded by observing that regulations bearing simplicity and consistency lend themselves to efficient enforcement.

**Ms. Killam** stated that two recent episodes of flooding in Raymond, NH have shed light on the potential benefits of state-level uniform setbacks. Ms. Killam has experienced frustration over the "grandfathering" that allowed for structures to rebuild in the same footprint where they experienced extensive flood damage. Ms. Killam also feels the increase in impervious surface that development can cause is a topic of concern that must be addressed.

**Mr. Miner** expressed that NH Fish and Game is interested in maintaining habitat. His personal Conservation Commission and Planning Board experience has elucidated the trials and tribulations of developers. Mr. Miner would like to see improved up-front communication between regulators and developers.

**Mr. Dionne** expressed interest in combining the various DES permits. He stated that the development community would benefit from permitting that is predictable and consistent. Mr. Dionne would like to see a balance struck between the needs of developers and wetlands protection.

**Ms. Darrow** said that she became a civil engineer because she was seeing considerable development in the Upper Valley region and she wanted to affect responsible, positive development. She said that she is a proponent of low impact development (LID) with strong interests in stormwater. Ms. Darrow said that the commission should promote activity that ensures a strong NH economy while protecting the state's valuable natural resources.

**Ms. Deming** explained that she is a wildlife biologist with NH Audubon. She emphasized that shoreland buffers and other mechanisms focused on the protection of surface waters may not necessarily protect upland habitat. She indicated a need to look beyond water quality and identify other measures of resource protection, which account for health and biodiversity of the entire watershed.

**Mr. Gove** explained that he was once a soil scientist and is now a consultant. He recalled that in his past dealings with the Soil Conservation Service, there was always a point person within the organization who was able to walk folks through the various permits and programs that might apply to the individual's project/parcel. He referred to the Land Use Management Program (LUMP) that is currently under development as a program that might offer similar utility. While he feels it will require legislative changes, Mr. Gove sees a benefit to having a single person within the Department (DES) look at a proposed project and walk the developer/landowner through all necessary permitting processes. He concluded by saying that the Association (NH Association of General Contractors) would be very supportive of consistent regulations within a unified permitting process.

**Mr. Corso** identified himself and his group as "the developer in the room." He said that he would like to see a balance between conservation and prosperity. His organization supports such concepts as Smart Growth, New Urbanism, and multi-use districts. He also supports the thorough vetting process that a developer undergoes as its projects are reviewed by US Fish and Wildlife, NH Fish and Game, DES, the US Environmental Protection Agency and the Army Corps of Engineers, where in the end, the agencies and the developer come up with a project that works for both buyers and regulators. Mr. Corso pointed out that consumers now concern themselves with a developer's commitment to sustainable practices. He said that he aspires to be a model developer that works with the state and its agencies to take on upon projects that foster conservation, environmental protection and economic development.

**Ms. Czysz**, recognizing that she would be the last to speak, prefixed her comments by saying that many reoccurring themes had surfaces throughout the comments of the other commissioners and that she would reiterate some of those themes. First, she said that

OEP works every day to equitably balance economic development with resource protection. Additionally, she said that OEP would like to help by serving as a bridge between the two commissions (land use and stormwater). Ms. Czysz's stated that her work as a planner at both the regional and state level has given her a first-hand look at the level of variation that exists between the policies from one NH town to another. She also said that, in recent years, flooding has provided a sterling example of the fact that better choices can and must be made.

**Chairperson Gottling** said that living in Sunapee has opened her eyes to some of the misunderstandings that can take place when changes are made in complex laws like the CSPA. She expressed her understanding that people have a need to obtain a clear understanding of what they can and cannot do with their land. Chairperson Gottling stated that prior to the groundbreaking of a development, she sees an opportunity for improved engagement by the state in public education.

## **VI. FUTURE STRUCTURE/ACTIVITIES OF COMMISSION**

Chairperson Gottling proposed the following possibilities for future proceeding and requested comment:

- Formation of sub-committees.
- Conduct educational sessions at commission meetings (e.g. presentations before the commission).
- Investigation of "case studies."

Mr. Corso offered to present the development activities at Mount Washington Resort as a case study. Mr. Morin suggested that, in addition to Mr. Corso's example, another case study of a development of smaller scale might help to provide a more complete cross section of typical development in NH. Ms. Darrow added that including a third case study, which goes down to the single-parcel level would provide still more insight into the full realm of regulatory considerations and hurdles that are faced throughout the state.

Ms. Darrow proposed that, in addition to monthly commission meetings, sub-committees might also take shape. Mr. Stanley proposed that one sub-committee might review and define some minimal standards for the protection of wetlands and surface waters. Mr. Gove added that the achievement of an understanding of the current regulatory climate and current level of interaction between the various permitting groups would be a good place to start. He said that gaining an understanding of each regulatory group's practical jurisdiction would help to identify components, which are susceptible to falling through the cracks. Ms. Czysz, Chairperson Gottling and Mr. Walker concurred with Mr. Gove's comments, citing a need to gain a concrete sense of the current environment before moving forward. Mr. Walker added that it would also be useful to gain insight into the gamut of how regulations are interpreted, not only by individuals, but also by local land use boards.

Mr. Gove suggested that the NH Municipal association might be able to provide data to inform a discussion regarding variation in regulations between towns. Ms. Czysz added that OEP might also have data that would contribute to a fact-based discussion on

inconsistencies between local regulations. Mr. Stanley suggested that still more information might be available through the regional planning commissions. Ms. Czysz and Mr. Stanley agreed to work together to amalgamate existing data in to a digestible format.

Ms. Darrow expressed a desire to involve wastewater and drinking water professionals and asked that the commission consider involving the Wastewater Bureau. Mr. Miner offered to conduct a presentation regarding the ways in which land use regulations and development impact fish and game habitat.

Chairperson Gottling proposed the following for the next commission meeting:

- Presentation by NH Fish & Game- How land use regulation and development impact fish and wildlife habitat. (15-30 minutes)
- Presentation by DES- Current permitting systems (1 hour)
- Presentation by OEP/NH Association of Regional Planning Commissions- The quilt of municipal regulations in NH. (10-15 minutes)

Chairperson Gottling proposed that presentations of three case studies depicting large, mid-sized, and single parcel developments take place at a future meeting. Mr. Corso, Mr. Morin and Ms. Darrow will coordinate the three presentations.

**VII. FUTURE MEETING DATES**

<u>Date</u>	<u>Time</u>	<u>Location</u>
September 16, 2008	9 am	LOB* room 305
October 21, 2008	9 am	LOB* room 305

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

**VIII. ADJOURNMENT**

At 11:44 am, Chairperson Gottling moved that the meeting be adjourned. Mr. Stanley seconded the motion, which carried unanimously.

**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.

\* \* \* \* \*

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.

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

October 21, 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  
Representative Chris Christensen, NH House of Representatives  
Jerry Little, representing NH Bankers Association  
Cheryl Killam, representing NH Municipal Association  
Peter Stanley, representing 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 Associated 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:**

Representative Thomas Fargo, NH House of Representatives  
Representative Judith Spang, NH House of Representatives  
Susan Olsen, NH Municipal Association  
Ari Pollack, Gallagher, Callahan & Gartrell Law Firm  
Carolyn Russel, NH Department of Environmental Services  
Jillian McCarthy, NH Department of Environmental Services  
Dana Bisbee, Mount Washington Resort  
Mike Brunetti, Celebration Associates/Mount Washington Resort  
Michael Licata, Business and Industry Association  
Bruce Berke, Mount Washington Resort/Sheehan Phinney  
Charlie Hood, NH Department of Transportation  
Kathryn Fox, Environment NH  
Christine Perran, NH Department of Transportation  
Donald Sienkiewicz, Rath, Young and Pignatelli, P.C.  
Gary Abbott, Associated General Contractors of NH  
Gina Rotondi, Rath, Young and Pignatelli/NH Shorefront Association

Joel Anderson, Staff, NH House of Representatives  
Karen Beaujouan, Bianco P.A.

**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 9:00 AM. Commissioners introduced themselves by name and representation. Agendas and draft minutes from the September 16, 2008 meeting were distributed to commissioners.

**II. APPROVAL OF MINUTES FROM SEPTEMBER 16, 2008 MEETING**

Chairperson Gottling identified the following changes to the minutes:

- At the bottom of page 2, “*Wildlife Action Plan Tools include:*” has been changed to, “*Some Examples of Wildlife Action Plan Tools include:*”
- At the top of page 3, “*Wildlife Action Plan Strategies include:*” has been changed to, “*Some Examples of Wildlife Action Plan Strategies include:*”

Mr. Stanley moved to accept the minutes of the September 16, 2008 meeting. Ms. Czysz seconded. The minutes were accepted unanimously.

Chairperson Gottling introduced the following statement entered by John Kanter of the NH Fish and Game Department as clarification to a response Mr. Kanter gave to a question asked at the September 16, 2008 meeting:

*The success of the NH Wildlife Action Plan (WAP) is tracked through a database that records activities by conservation strategy. This database includes work done by New Hampshire Fish and Game (NHFG) and our many partners. Here are examples of how the WAP is being implemented through conservation planning.*

*NHFG and UNH Cooperative Extension (UNHCE) have partnered to provide presentations and workshops offering tools, suggestions, and guidance on how other agencies, non-profit organizations, towns, consultants, and individuals can utilize parts of the WAP. Since 2005, over 70 WAP workshops have been attended by over 850 individuals from 167 towns. Participants receive periodic WAP email newsletters that allow NHFG and UNHCE an opportunity to highlight new tools that have been initiated as a result of the WAP, volunteer opportunities to help fulfill a WAP strategy, and examples of how others are using the WAP.*

*NHFG works closely with individuals, organizations and agencies to provide technical assistance to any aspect of the WAP. The WAP is being used to create natural resources inventories and local conservation plans, assess conservation acquisitions, evaluate wetland mitigations, and prioritize funding. Several*

*conservation organizations, such as the Society for the Protection of New Hampshire Forests, The Nature Conservancy and Bear Paw Regional Greenways have used these in short and long range planning for habitat protection and management. The WAP is used by EPA to help assess wetland permits, by DES to assess wetland mitigation, by DOT to integrate wildlife into transportation planning and by DRED for the Pisgah State Park Management Plan.*

*The WAP has been found to be cited in numerous town natural resource inventories, parcel assessments, maps, and graduate student research projects. Six towns have received detailed technical assistance through NHFG contracts, and Conservation License Plate funds are providing assistance to others. There are several strategies that individual landowners, towns, and non-profit groups can participate in including: conservation planning, habitat management, local regulation and policy, and land protection. To help quantify and describe how individuals and organizations are using the WAP there will be a survey in an upcoming issue of the WAP newsletter. Additional surveys targeting town officials, non-profit groups, and schools may help to gather more of this information in the future.*

### **III. PRESENTATIONS**

Mr. Corso explained that Mr. Brunetti would give a presentation representing a large-scale development case study.

Mr. Brunetti stated the name of his employer and explained that his company is an advocate of smart growth principles. Mr. Brunetti's presentation about a large development in Carroll, NH is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/large-scale\\_development\\_case\\_study.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/large-scale_development_case_study.pdf)

Referring to five development options that Mr. Brunetti's company presented to stakeholders, Mr. Gove asked how, in hindsight, Mr. Brunetti might have avoided the need to process so many alternative proposals. Mr. Brunetti responded that perhaps earlier identification of wetlands would have eliminated the need for two of the plans. He added that he was pleased with the process that was conducted and was not sure that he would want to change anything. Because it took only thirty days to go through all five plans, Mr. Brunetti stated that at the end of the process, everyone had met their goals.

Mr. Gove asked which agencies were most involved in discussing secondary impacts. Mr. Brunetti answered that the NH Department of Environmental Services (DES), the NH Fish and Game Department, The US Environmental Protection Agency, and the US Fish and Wildlife Department were the most involved.

Representative Christensen asked how working in New Hampshire was different from working in other states. Mr. Brunetti replied that in New Hampshire, his company received straightforward answers. He added that New Hampshire was open to collaborative problem solving. Representative Christensen followed by asking if Mr.

Brunetti has experienced anything that is occurring in other states that New Hampshire ought to consider adopting. Mr. Brunetti said that he would think about a response to Representative Christensen's question and submit a reply to the Commission.

Mr. Little asked if the process that Mr. Brunetti's company undertakes is representative of what generally occurs amongst Mr. Brunetti's competitors. Mr. Brunetti replied that his competitors conduct a less-thorough process.

Representative Spang stated that, as lawmakers, she and her colleagues are constantly walking the line between scripting laws that are explicit enough to keep agencies from being bullied and leaving enough leeway to allow for compromise and collaboration. She asked Mr. Brunetti how he would rate New Hampshire in terms of its allowing for collaborative solutions. Mr. Brunetti awarded New Hampshire a grade of A-. He stated that while the rules are not easy, they are clear. He said that the "no"s that he received in New Hampshire were actually preferable to the "maybe"s that he received in other states.

Mr. Pollack said that the size, scale and level of investment in Mr. Brunetti's project allowed for an expensive conceptual process, which many small developments would not be able to afford. He asked whether Mr. Brunetti experienced pressure to build less or pressure to build smarter. Mr. Brunetti responded that, at first, when his company was seen as threat to the community, the pressure was mainly to build less. As the community became more familiar with the process that Mr. Brunetti was undertaking, the focus shifted to a desire to build smarter.

Ms. Deming acknowledged all that had been done to avoid environmental impacts. She asked if anything would be done following construction to provide continued protection. As an example, she identified lawn care practices as an area where environmental damage could potentially occur. Mr. Brunetti referred to association documents, which call for the use of low-nitrogen fertilizers and establish design guidelines. He also cited a community charter, which includes a salt minimization plan. Furthermore, stated Mr. Brunetti, on each lot, a lot portfolio predetermines what the developable area of each lot shall be. Mr. Bisbee added that all required restrictions, which appear in the charter, are recorded at the registry of deeds.

\* \* \* \* \*

Mr. Morin began his presentation of a mid-size subdivision case study by indicating that it would likely be more typical of what transpires in the state, than the previous presentation. The handouts for Mr. Morin's presentation about a multi-unit subdivision in Londonderry, NH can be found online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/mid-size\\_development\\_case\\_study.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/mid-size_development_case_study.pdf)

Following, are comments made by Mr. Morin that are not captured in the handouts:

*Issues with traffic safety and road construction specifications led to the need for a wetlands crossing and a large amount of otherwise unnecessary impervious surface.*

*As a means of mitigating the threat of down-street flooding, Mr. Morin was forced to reduce impervious surface elsewhere in the subdivision and also had to implement some off-site mitigation. Complications resulted from the fact that the Town wanted all state permits to be in place before it would act on approving the development. Further complications were caused by the fact that the Town did not allow for Low Impact Development (LID) techniques to be utilized, and that permits from one entity were subject to expiration while matters with another entity were being resolved.*

Mr. Stanley asked why the Town restricted LID applications. Mr. Morin replied that skepticism exists toward the long-term functionality of LID systems, which have not been time-tested to the extent that more conventional stormwater techniques have. Referring to an instance where Mr. Morin had already received a wetlands permit from DES but had to go back for another after the town public works department forced changes, Mr. Gove asked if Mr. Morin ran into difficulties with the DES the second time around. Mr. Morin replied that although DES was not thrilled to be revisiting the matter, it was accommodating.

Mr. Walker identified the decision of whether to a). use natural wetlands to detain stormwater or b). use manmade systems as a matter that had arisen in Mr. Morin's presentation which the Commission should concern itself with answering.

Ms. Czysz asked how representative this development was of what occurs throughout the state. Mr. Morin replied that the development was not a fringe example. Mr. Doran asked if the project is currently on hold. Mr. Morin replied that it was on hold.

Representative Fargo asked what the wetlands setbacks were in Londonderry, what criteria they were regulated upon and what options were available for mitigation. Mr. Morin replied that wetlands setbacks were 75 feet and that some allowances are made for replantings. Representative Fargo followed by asking if any stormwater or wastewater covenants or charters existed in the Town, providing salt reduction as an example. Mr. Morin replied that no such covenants were in place.

Representative Spang noted that many problems were caused by the wetlands crossing and asked why the decision to disallow another entry point was not revisited. Mr. Morin replied that, although he would have wanted to revisit that decision, the traffic safety concerns associated with the other entrance took precedence.

Mr. Walker commented that in resolving the issue of determining what level of government should be first in the permitting process, perhaps greater collaboration could be part of the solution. Mr. Pelletier added that, in the case of the Comprehensive Shoreland Protection Act, the state calls for all town approvals to be in place before moving forward. To accept narrower roads, rain gardens and other techniques toward reducing stormwater impacts, continued Mr. Pelletier, a paradigm shift needs to occur. Mr. Gove added that conservation commissions and other municipal bodies are often poorly synchronized.

\* \* \* \* \*

Ms. Darrow began her presentation of a residential property case study by indicating that the American Council of Engineering Companies of NH (ACEC) is the voice of engineering companies in New Hampshire. Ms. Darrow's presentation about the development of a single lot is captured in the slides and handouts which are available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/residential\\_development\\_in\\_new\\_hampshire.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/residential_development_in_new_hampshire.pdf)

Alluding to a statement by Ms. Darrow that many homeowners are concerned about creating a wetland in their backyards, Ms. Czysz asked how realistic it is to expect to be able to implement idealistic principles like those of LID on the average lot. Ms. Darrow responded that there is always an opportunity to realistically dissipate stormwater. Though she added that rain gardens specifically have drawn some objection, as people do not always feel comfortable in retaining stormwater in their backyard. Ms. Darrow added that New London, NH has an excellent section on stormwater in their ordinance.

Mr. Gove asked if ACEC offers a recommendation on wetlands setbacks. Ms. Darrow responded that she does not know of any specific recommendation but would submit further information to the Commission if available. Ms. Darrow said that, in general, ACEC is concerned that regulations not interfere with good engineering practices but instead promote them.

Mr. Walker observed that much focus has been placed on wetlands in recent years and asked if folks are doing enough to regulate indirect effects from the uplands. Ms. Darrow replied that guidance for stormwater and drainage is needed. She added that the Stormwater Pollution Prevention Plan from DES is a large step in the right direction.

Mr. Stock recalled that Ms. Darrow had identified a tendency for municipalities to shy away from smart growth applications and asked how communities could be better educated about the benefits of smart growth so as to become more accepting of its practice. Ms. Darrow indicated that she has had success in getting exceptions and variances by getting involved early with education and starting an early dialogue with local boards.

Mr. Fargo stated that many municipalities use environmental protection regulations as a tool for restricting growth and keeping the tax bill low by limiting school populations. Thus, people may not be as accepting of smart growth, which protects the environment without restricting growth.

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

Ms. Darrow announced that she has made progress in preparing a presentation about the land use impacts of transportation and would like to present at a future meeting.

Chairperson Gottling announced that the next meeting would be held at 9:00 AM on November 18 at the Office of Energy and Planning, located at 4 Chenell Drive, Concord. She added that the presenters would be Tom Irwin and Will Abbott.

**V. OTHER BUSINESS**

Ms. Czysz asked if any discussion should be held regarding the Interim Report due on November 1, 2008. Chairperson Gottling asked for volunteers to collaborate on the report. Ms. Czysz and Ms. Darrow volunteered.

Mr. Sassan announced that the Stormwater Commission would be meeting regularly on the first Monday of every month at 1:00 PM in room 305 of the Legislative Office Building. Mr. Sassan invited all interested parties to attend the meetings.

**VI. ADJOURNMENT**

At 11:33 AM, Ms. Czysz moved that the meeting be adjourned. Ms. Lyons seconded the motion, which carried unanimously.

**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**

November 18, 2008 \* 9:00 AM  
NH Office of Energy and Planning, Concord, NH

**Commissioners Present:**

Chairperson Representative Sue Gottling, NH House of Representatives, member of the  
Resources, Recreation and Development Committee  
Senator Harold Janeway, NH Senate  
Representative Chris Christensen, NH House of Representatives  
Jerry Little, representing NH Bankers Association  
Cheryl Killam, representing NH Municipal Association  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Pat Corso, representing Business and Industry Association  
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  
Rene Pelletier, representing NH Department of Environmental Services

**Other Attendees:**

Representative Judith Spang, NH House of Representatives  
Jillian McCarthy, NH Department of Environmental Services  
Bruce Berke, Mount Washington Resort/Sheehan Phinney  
Charlie Hood, NH Department of Transportation  
Bill Cass, NH Department of Transportation  
Kathryn Fox, Environment NH  
Gary Abbott, Associated General Contractors of NH  
David Shulock, Brown, Olson & Gould, P.C. Biomass Group

**Commission Staff:**

Dari Sassan, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Representative Gottling called the meeting to order at 9:05 AM. Commissioners introduced themselves by name and representation. Agendas and draft minutes from the October 21, 2008 meeting were distributed to commissioners.

**II. APPROVAL OF MINUTES FROM OCTOBER 21, 2008 MEETING**

Mr. Stanley moved to accept the minutes of the October 21, 2008 meeting. Mr. Doran seconded. The minutes were accepted unanimously.

**III. PRESENTATIONS**

Mr. Irwin, representing the Conservation Law Foundation, explained that he would be discussing the “Fall’s Way” development in Greenland, NH as a case study in the current reach of Wetlands protections. Mr. Irwin’s presentation is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/greenland\\_falls\\_way\\_project.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/greenland_falls_way_project.pdf)

Mr. Irwin stated that, generally, one acre of fill would not generate tremendous concern. In the case of the Fall’s Way project, however, he stated that major concerns with stormwater, both from within the wetlands and from upland activity, came into play.

Senator Janeway asked if Mr. Irwin knew the area of land that would be converted to impervious surface. Mr. Irwin replied that he did not know the exact area. Senator Janeway asked if the homes in the development would utilize community sewer or on-site septic. Mr. Irwin replied that 79 septic systems would be used. Ms. Killam asked what size lots would be. Mr. Irwin replied that he was not certain but expected lots would be larger than one acre. He added that the project is currently under development.

Mr. Irwin stated that the extent of mitigation in the project included taking three lots out of development and creating some buffer areas. He indicated that the permitting and appeals process was lengthy, adding that it could likely be streamlined. He reported that the process consisted of consisted of:

- The Department of Environmental Services (DES) granting a wetlands permit to the developer;
- DES denying the permit following a reconsideration request from the Greenland Conservation Commission and the Conservation Law Foundation, and
- DES granting a permit following a reconsideration request from a project proponent.

Mr. Doran asked what the Conservation Law Foundation was seeking through its appeal. Mr. Irwin replied that his organization sought to have the project scaled back. Mr. Doran followed by asking if Mr. Irwin was proposing clustering of

homes and asked how many homes Mr. Irwin sought to scale development back to. Mr. Irwin replied that clustering was proposed and though he did not reach the level of detail regarding exact numbers of units, he felt that 30-35 units would have been appropriate.

Mr. Doran requested information regarding the price range of units. Mr. Irwin stated that 8-10 units would be affordable and that other units would sell for \$400,000 - \$500,000. Mr. Doran commented that there exists a need to balance environmental protections with the need to generate a supply of affordable housing units.

Mr. Irwin, referring to the NH Supreme Court decision that came about as a result of continued appeals by the Conservation Law Foundation and the Greenland, NH Conservation Commission, stated that the decision crystallized a legal question impacts within DES authority?"

Mr. Irwin explained that two previous rulings had set forth the precedent that:

- DES's geographic scope is limited to the exact area of a wetland in which fill is placed, and
- DES's temporal scope is limited to the time immediately surrounding the fill project - only impacts *during* should be considered.

Mr. Irwin stated that his organization was not seeking to expand the circumstances under which a wetlands permit is required. Rather, he continued, he sought to have the wetlands permitting process provide comprehensive protection. Mr. Doran asked if it would be correct to say, "You are not looking to change the trigger; you are asking to change the process that follows the trigger." Mr. Irwin concurred with Mr. Doran's reiteration.

Senator Janeway asked if the Court explained its decision making process within its ruling. Mr. Irwin answered that the ruling did indeed provide the court's reasoning, adding that he would assist the Commission in accessing the written ruling.

Mr. Walker said that his firm works for the owner of the Fall's Way subdivision though it was not involved in any of the permitting or the court case. He offered to recuse himself from further discussion. Chairperson Gottling stated that she did not feel Mr. Walker's recusal would be necessary, adding that many Commissioners are directly involved with issues being deliberated by the Commission.

Mr. Irwin read the following excerpt from RSA 482-A:1:

*"It is found to be for the public good and welfare of this state to protect and preserve its . . . wetlands . . . from despoliation and unregulated alteration, because such despoliation and unregulated regulation. . . will adversely affect the value of such areas . . . as sources of nutrients for finfish, crustaceans, shellfish and wildlife of*

*significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open waters, and will otherwise adversely affect the interests of the general public.”*

Mr. Irwin stated that if the DES Wetlands Bureau is only allowed to focus on the *direct* areas of fill, then RSA 482-A:1 is undermined.

Mr. Stock recalled a presentation given by Mr. Pelletier at a previous Commission meeting in which Mr. Pelletier discussed the multitude of DES permits that are required for various development projects. Mr. Stock stated that as he looked through the various permits, it seemed to him that other permits would be triggered. He asked if other permit programs that may have addressed the problems at Fall’s Way were considered. Mr. Irwin said that the Court did consider the fact that Alteration of Terrain permitting was required for the development. Mr. Irwin went on to convey that his organization’s concern was that the specific attention to the functions and values of a wetland that are within the technical expertise of those in the Wetlands Bureau should be applied to such matters of wetlands impact. Mr. Irwin referred to a “stovepipe effect,” through which overall impacts to the ecosystem are not considered as a result of tight focus upon the regulatory processes prescribed within each regulatory division.

Mr. Morin asked if Mr. Irwin took any comfort in the fact that the new Alteration of Terrain rules go to what Mr. Morin considered “great lengths” to manage stormwater. Mr. Irwin replied that he did support the new measures but he reiterated his feeling that the Wetlands Bureau is specially equipped to address impacts to the functions and values of wetlands. Mr. Morin followed by stating that within the draft he had most recently seen, the new Alteration of Terrain rules specifically include anti-degradation language. Mr. Irwin stated the new draft of Alteration of Terrain does not enumerate habitat fragmentation protections, adding that enablement of regulators to look at the real impacts to wetlands would be a substantial improvement.

Mr. Walker asked if the Alteration of Terrain rules were in effect. Mr. Pelletier stated that the rules were in the process of being submitted to the Joint Legislative Committee on Legislative Rules and were not yet active.

Representative Christensen requested affirmation that a wetlands permit fee is indeed based upon the area that the applicant wishes to impact. Mr. Pelletier confirmed Representative Christensen’s statement. Next, Representative Christensen requested affirmation that, if the permit review process results in a

lesser area of impact, the fee is not reduced. Again, Mr. Pelletier affirmed Representative Christensen's statement. Representative Christensen suggested that the Supreme Court's ruling could possibly have been a means of calling for an alternative to the current system. Mr. Pelletier said that, in an attempt to gain a permit for the largest possible disturbance, some applicants seek a permit to impact a very large area of wetland. These folks, continued Mr. Pelletier, should be willing to pay the appropriate fee for the permit they seek.

Mr. Irwin said that, if DES's review authority does not include indirect impacts, then it is not truly possible to develop an alternative of least impact. Mr. Stanley asked Mr. Pelletier whether DES offers an opportunity for consultation between the builder and DES from the very outset of a project. Mr. Pelletier said that DES has received a grant to study a pre-application process, adding that, currently, individuals at DES are always available for consultation at any point and are available to attend project meetings at no cost to the developer.

Mr. Walker sought insight regarding the potential statewide losses that could result from a continuation of the status quo. He stated that numerous roads and lots were proposed within the area of the Fall's Way development and asked whether such a development is representative of what is occurring across the state or whether it is an aberration. Mr. Irwin stated that within the Fall's Way development, Blandings Turtle habitat would be lost and that the damages to the ecological system extend well beyond the 1.25 acres of wetlands disturbance for which permits were granted. Statewide, continued Mr. Irwin, wildlife mortality and habitat fragmentation are an inevitable result of the current regulatory system. Senator Janeway added that as tracts of land ideally suited for development become increasingly scarce, the State is bound to encounter even larger challenges than the one presented at Fall's Way.

Ms. Deming said that, in the case of vernal pools, one could protect the immediate area that they occupy, or even place a buffer around them, and still fail to protect the species that migrate between the pools and upland habitat that has become disconnected. Ms. Killam added that in addition to the issue of disconnection, the construction of homes and installation of impervious surfaces leads to increased nutrient loading and amplifies occurrences of flooding.

Mr. Morin asked if there exists any opportunity for compensatory mitigation of disturbance to vernal pools. Mr. Irwin stated that, at the Fall's Way development, mitigation occurred on site – three lots were set aside and buffers were established around certain lots.

Mr. Pelletier offered the statement paraphrased below as “food for thought:”

*If there were no wetlands impacts on this site, we would not be looking at this development at all. It would not have crossed our radar. Thus, if a developer finds a way to bridge wetlands, none of these topics - neither vernal pools, nor impervious surfaces, nor road salt, nor habitat*

*fragmentation – would ever come into the consideration of the Wetlands Bureau. We at DES are not convinced that it is within the wetlands statute that all these factors should be addressed.*

Mr. Walker followed, saying that indirect impacts can be very broad and that putting all such considerations upon the shoulders of the Wetlands Bureau may indeed not be the ideal solution. On the other hand, continued Mr. Walker, the issues raised are clearly ones that the State needs to be concerned with.

\* \* \* \* \*

Mr. Abbott, of the Society for the Protection of New Hampshire Forests, explained that he would be discussing RSA 482-A. His presentation is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/spnhf\\_wetlands\\_overview.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2008/documents/spnhf_wetlands_overview.pdf)

After showing several slides representing growth trends in NH in recent decades, Mr. Abbott indicated that during the peak in new-home construction in the eighties, wetlands were not being heavily developed because land more suited to construction was readily available. Today, continued Mr. Abbott, land ideally suited to construction is scarcer and wetlands are therefore being developed to a much greater extent. Mr. Abbott stated that in this time of increased pressure upon natural resources, folks must not retreat from protecting these resources. He added that his organization wishes to see RSA 482-A amended to include provisions for the consideration of indirect impacts.

Mr. Abbott praised the efforts of DES in exploring opportunities for permit integration but added that such integration does not guarantee that indirect impacts will be considered. Mr. Walker said that he recognizes many compelling reasons for considering indirect impacts but pointed out that he struggles with the issues paraphrased as:

- 1. Where do property rights fit in? People may be cash poor and property rich. What effects will these expanded regulations have on them?*
- 2. How does the concept of regulating indirect impacts fit in to the state regulatory scheme?*

Mr. Corso expressed the opinion that 482-A creates so many hypothetical scenarios and is limitless in how it may be interpreted. He said that a highly effective means of protecting resources would be to foster “enlightened development.” Mr. Corso added that there exists a need to create a standard that works for business and the environment.

Mr. Abbott stated that wetlands laws should not be used as a tool for restricting development. He posed the question, “How do we protect what’s there in a way that serves current residents as well as newcomers?” Mr. Abbott added that the potential costs of not protecting natural resources are incalculable.

Mr. Doran asked if Mr. Irwin or Mr. Abbott had made any attempts at defining “direct impacts” and “indirect impacts.” M. Abbott responded that definitions had been drafted and said that he would provide the Commission with copies of the definitions.

Mr. Doran said that DES currently carries out enormous regulatory duties. He asked how a state with a \$250 million deficit could possibly address the proposed expansion of RSA 482 brought forth by Mr. Irwin and Mr. Abbott. He added that Chancellor Reno of the University System of NH had identified people ages 18-34 as a scarce natural resource because they cannot afford to live in NH, asking how expanding environmental protection through RSA 482 would impact the elderly and young people of NH. Mr. Abbott responded that regulations should not be prejudiced. He said that if the state must determine that it cannot afford to hire two additional DES employees to protect wetlands, then the legislature certainly has that option. He reiterated his opinion that the present is not a time to abandon wetlands protections and that, while an amended RSA 482 may add to the cost of development in some instances, it is still the right thing to do.

Mr. Irwin further responded by indicating that the Fall’s Way project was not addressing the housing affordability needs that 18-34 year olds and the elderly face. He emphasized that RSA 482 is not a land use regulation and should not be construed as one. Rather, he described it as a backstop to the impacts that had been discussed previously.

Senator Janeway said that even the best-written laws could only address a part of the overall purpose of protecting wetlands. He expressed a desire for the Commission’s final report to underscore the need for the State’s municipalities to adopt a new mindset about protecting wetlands. He listed affordability, appropriateness and cluster development provisions as examples of issues that municipalities must consider.

Mr. Corso stated that the current progression of development, in which a developer buys a piece of land first and then enters the push and pull of what she can and cannot do with the land, is, in his estimation, backward. He suggested that some benefit might come from a system that allows a developer to receive, for a fee, consultation prior to purchasing a tract. Mr. Corso indicated that such a practice may be worth consideration and restated that the current system seems illogical to him. Mr. Pelletier said that his agency would like to look at such an idea.

Mr. Pelletier said that the issue of creating a comprehensive regulatory process extends well beyond the wetlands statute. He added that the Land Use Commission was created as a result of SB 435 (2008), and the question that needs to be answered is, “How do we want New Hampshire to grow?”

Mr. Doran asked Mr. Abbot what he meant when he referred to “social benefit” in some of his earlier comments. Mr. Abbott replied that human beings have derived benefit from the environment. He said that trees purify the air, sequester carbon and attenuate water. Mr. Abbott said while people do not pay for these types of benefits, we certainly experience a cost when they are removed.

Mr. Abbott said that the issue of how to locate developments must be addressed by all stakeholders, including municipalities. He identified the site evaluation committee that deals with power plant location as a potential model for a group that can work to bring all interests - or “stovepipes” - to the same table.

Mr. Miner said that many of the people who are moving into new homes are coming to NH for the natural resources. If these folks understand that the regulations that impact new home siting and construction are in place to protect the natural resource values that they seek, he continued, they may be more amenable to the regulations. Mr. Miner added that more education is necessary.

Mr. Walker noted that NH is not the only state that has dealt with this issue and proposed that the Commission look at some of the successes and failures other states have experienced. Chairperson Gottling added that such work falls within the duties of the Commission.

Mr. Stock observed that, while it is indeed important not to create regulation that targets winners and losers, there are some other factors to consider. As timber managers, continued Mr. Stock, he and his colleagues need to be able to access trees. He said that timber manager’s activities do not cause the same disruptions that a subdivision causes. He said that he and his fellow timber managers must not be regulated out of business because development needs to be controlled. Mr. Irwin replied that Mr. Abbott and he were advocating for DES to gain the authority to review indirect impacts *with deference to the agency’s best professional judgment*, adding that his organization would be comfortable in relying upon DES to distinguish between uses.

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

Ms. Czysz circulated a handout proposing the following future course of action for the Commission:

*Based upon the commission’s duties (Chapter 294:3, I through V), the following is a summary of a proposed course of action toward completion of those duties.*

- I. *The effects of land development on surface and ground water quality and quantity, and terrestrial and aquatic habitat.*
  - *No additional presentations*

II. *The adequacy and consistency of local, state, and federal programs as they relate to the regulation and management of land development, including regulations of wetland buffers and setbacks, stormwater management, and cumulative effects of development.*

- *Presentation by the Department of Transportation – NHDOT Environmental Planning and Permitting Processes (Scheduled for January 2009)*
- *Presentation by the Office of Energy and Planning on Recent Growth Trends (Proposed for January 2009)*

*Informative presentations in fulfillment of duties I and II (above) establish the foundation the commission needs to precede through duties III through V. Additionally, duties III through V represent an ordered progression for the commission to complete its responsibilities.*

*To elaborate, once the commission has heard the impacts of land use development and has assessed the regulatory system, it can ultimately provide recommendations for improving that system and identify ways in which the state can better integrate land use development objectives with natural resource protection. Through process of formulating recommendations, the commission will naturally recognize specific obstacles to their achievement and any future legislation that may be necessary.*

III. *The opportunities for integration of land use controls, open space protection techniques, and environmental and public health protection laws to promote land development patterns that maintain ecosystem health and integrity while providing desirable communities in which to live and work. This shall include study of any programs of this kind underway in other states or nations.*

- *Presentation by the Office of Energy and Planning on the Housing and Conservation Planning Program*
- *Presentation by Steve Whitman on his research of sustainable development in other NH, around the country and in other nations.*
- *Commission members should engage in a visioning session similar to that done for a municipal master plan. Over the course of several meetings the commission should answer:*
  - *Where do we see our state in 10 years?*
  - *What do we want to look like?*

- *What objectives do we have for balancing community development and natural resource protection?*
  - *The commission, following, or concurrent to, the visioning session should develop a road map for how to achieve that vision which will naturally include a series of recommendations.*
- IV. The potential legal, fiscal, regulatory, and technical obstacles for creating an integrated approach to land development.*
- *Based upon the visioning and development of recommendations the commission will identify obstacles toward achieving those recommendations.*
- V. Legislation that may be necessary to implement the recommendations of the commission.*
- *The last step in the process will be to identify necessary legislation to achieving the commission's recommendations.*

Chairperson Gottling thanked Ms. Czysz for preparing the handout and for her contribution in completing the interim report. Mr. Stanley moved that the Commission approve the scheduling of presentations by the NH Department of Transportation and the NH Office of Energy and Planning in January and a presentation by Steve Whitman, planning consultant, in February. Mr. Walker seconded, all voted in favor.

Mr. Stock asked if it might be possible to conduct a presentation by DES about integrated permitting. Mr. Pelletier replied that, while DES has been fostering the development of an integrated for several months, such a presentation might be premature at the present time.

Chairperson Gottling announced that the Commission would not meet in December but would convene again on January 20 at 9:00 AM in room 305 of the NH Legislative Office Building, Concord.

## **V. OTHER BUSINESS**

Representative Gottling extended thanks to all Commissioners for their attendance and for their excellent questions and insights.

## **VI. ADJOURNMENT**

At 11:10 AM, Ms. Czysz moved that the meeting be adjourned. Mr. Pelletier seconded the motion, which carried unanimously.

**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**

January 20, 2009 \* 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  
Representative Chris Christensen, NH House of Representatives  
Cheryl Killam, representing NH Municipal Association  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Pat Corso, representing Business and Industry Association  
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  
James Gove, representing Associated General Contractors of NH

**Other Attendees:**

Jillian McCarthy, NH Department of Environmental Services  
Bruce Berke, Mount Washington Resort/Sheehan Phinney  
Charlie Hood, NH Department of Transportation  
Nicholas Alexander, NH Department of Transportation  
David Shulock, Brown, Olson & Gould, P.C. Biomass Group  
Gina Rotondi, Rath, Young and Pignatelli  
Michael Licata, Business and Industry Association  
Susan Olsen, NH Municipal Association  
Paul Currier, NH Department of Environmental Services  
Carl Paulsen, NH Rivers Council  
Joel Maiola, Granite Edge Consulting

**Commission Staff:**

Dari Sassan, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 9:04 AM. Commissioners introduced themselves by name and representation. Agendas and draft minutes from the November 18, 2008 meeting were distributed to commissioners. Chairperson Gottling thanked Commissioners for their attendance and for the presentations that many had given.

**II. APPROVAL OF MINUTES FROM NOVEMBER 18, 2008 MEETING**

Ms. Killam requested that the spelling of her name be corrected on page 2 of the minutes. Mr. Walker requested that on page 3, it be clarified that his firm works for the owner of the Fall's Way subdivision though it was not involved in any of the permitting or the court case.

Ms. Killam moved to accept the minutes of the November 18, 2008 meeting. Mr. Stanley seconded. The minutes were accepted unanimously.

**III. PRESENTATIONS**

Mr. Alexander, a Program Specialist with the NH Department of Transportation (DOT) Bureau of Planning and Community Assistance said that in 2006, the NH Charitable Foundation assembled a Community Advisory Committee. The Committee, which included broad representation, sought to create a long-range plan that looked at transportation within the broader context. Mr. Alexander distributed the executive summary of the Committee's findings. He said that the bottom line of the report was that transportation impacts everything and everyone has a role to play in transportation decision-making.

Mr. Alexander acknowledged that in NH, municipalities exhibit greater control over land-use decisions than in other states. He said that regional planning commissions (RPCs) have a role to play in bringing their communities together and to serve as a conduit between the state and towns. Mr. Alexander said that RPCs also offer a forum for the Ten-Year Transportation Plan, where regional priorities are established. Mr. Alexander said that each region has a Transportation Advisory Committee Commission. He said that, currently, the 2011-20 Ten-Year Plan is under development. Building upon the regional work, Mr. Alexander said in addition to its ten-year plan, DOT also produces a Statewide Transportation Improvement Plan (STIP) every four years, as required by the federal government.

Mr. Hood who serves as Administrator for DOT's Bureau of Environment said that DOT assigns a lead project manager to every approved project. This manager, continued Mr. Hood, follows the project from its initial approval all the way up to groundbreaking. Mr. Hood said that, within the Bureau of the Environment, a lead manager is also assigned, regardless of the project's size. He said that the manager monitors all impact statements, assessments and studies. Sometimes, said Mr. Hood, a private consultant is also contracted (e.g. delineation, mitigation). Mr. Hood said that regardless of the funding source, all project investigations are conducted to meet all federal and state requirements. By doing so, DOT does not

have to go back and do more studies if new funding sources are incorporated at a later time.

Mr. Hood said that DOT conducts monthly natural resource meetings (3<sup>rd</sup> Wednesday of each month) with parties including NH Fish and Game, US Fish and Wildlife, the Army Corp of Engineers, NH Department of Environmental Services, and the Department of Resources and Economic Development. He added that on the first and second Thursdays of every month, cultural resources meetings are conducted. Mr. Hood said that these meetings are held for the purpose of soliciting early input.

Mr. Hood said that based upon the input received, design engineers develop alternatives which will protect resources that have been flagged. Then, said Mr. Hood, additional public forums are held and letters are sent out. He added that, typically, DOT does not receive as much feedback as it would like. Mr. Hood said that his bureau issues a draft environmental document which explains the project, identifies resources to protect, and lays out the alternatives that were not adopted. Mr. Hood said that after the draft is circulated, another public hearing is conducted, followed by a final environmental document, which is distributed for informational purposes. Next, said Mr. Hood, DOT applies for permits, at which point the goal is to have all potential roadblocks previously worked through.

Mr. Hood distributed minutes from some of the meetings he had described. Ms. Darrow asked how a project becomes a project. Mr. Alexander responded that the idea for a project may come from different origins, including towns, RPCs, the state or from a federal entity. Mr. Hood added that the concept of “purpose and need” is one that governs the decision of whether or not to go forward with a proposed project. He said that purpose and need must exist to justify a project and that early efforts are made to measure general consensus regarding this criterion.

Mr. Gove said that the Land Use Commission has discussed “secondary impacts” on several occasions. He asked Mr. Alexander or Mr. Hood to provide a thumbnail sketch of the secondary impacts issues that DOT considers. Mr. Hood said that habitat fragmentation is a secondary impact that often comes to DOT’s attention. He referred to an example in which a project’s original proposal would have divided a habitat range, cutting off 100 acres and potentially disrupting normal migration patterns.

Another type of secondary impact Mr. Hood recognized was that when DOT constructs a new road, it may also be creating opportunities to develop land that was previously not suited for development due to accessibility constraints. He said that it is the policy of the Federal Highway Administration to identify these potentials but not to mitigate for them. Mr. Hood said that the Administration takes the stance that it is the eventual developer of the land who should bear the responsibility of mitigation.

Mr. Gove asked if consideration of other secondary impacts commonly arises. He mentioned vernal pools as an example. Mr. Hood recalled that DOT was taken to court for not recognizing vernal pools. Mr. Hood also referred to a project where a consultant was asked to look at habitat fragmentation. He said that the \$300,000-\$500,000 that it would have cost to alleviate the situation was instead put toward mitigation through the purchase of conservation land. Mr. Hood also noted that oversized culverts may sometimes serve to connect sections of habitat. He again emphasized the importance of early input to recognize issues and implement solutions.

Mr. Alexander said that calculating the amount of development a DOT project will bring has proven difficult, if not impossible. He said that a "Delphi process" was initiated to predict the growth that the I-93 expansion would have. That process, continued Mr. Alexander, has thus far proven inaccurate.

Mr. Doran referred back to Mr. Hood's mention of mitigation through the purchase of conservation land, asking whether project funds were put toward the land acquisition. Mr. Hood said that project funds were used, adding that while the land was not directly within the project corridor, it was within the impacted wildlife community.

Mr. Doran asked how new legislation regarding indirect impacts might influence DOT's work. Mr. Hood said that some of the secondary impacts that currently only require identification might eventually require additional research. In such an event, he continued, the balance of mitigation responsibility between DOT and other developers would have to be reexamined to address the issue of duplicate mitigation.

Mr. Walker asked about the adequacy of existing local, state and federal regulations. Additionally, he asked if gaps exist, if overlap exists and whether resources are being expended in a disproportionate level to their resultant environmental protection. Mr. Hood said that there is always room for improvement. As an example, he said that, in the past, he had written documents for projects that had already been constructed. Mr. Hood said that procedures within DOT are evolving in a positive direction. He said that engineering personnel now operate with a greater consideration for environmental protection. Mr. Hood added that, sometimes, great measures are taken to protect a resource that is later compromised by development within another sector. He said that with the current regulations that local boards enforce, it is impossible to block all harmful development.

Mr. Alexander said that the ability of municipal and regional boards and commissions to respond to proposed development varies throughout the state. He said that the Community Technical Assistance Program (CTAP) is an excellent program through which DOT provided communities with money to study and plan for secondary impacts. Mr. Alexander said that CTAP money enabled RPCs in the

southern I-93 corridor to look at the patchwork of community regulations in the region. He indicated that many areas for improvement were identified at a relatively low cost.

Representative Christensen noted that when considering proposals to develop the land surrounding I-93 exit 20, the local planning board listened to traffic engineers. He said that the engineers made errors, which eventually resulted in the need for DOT to construct substantial improvements. Representative Christensen asked if it might be possible for the state to become involved in the local planning process. Mr. Alexander said that corridor studies provide an opportunity for DOT to work with RPCs and, hopefully, municipalities. Mr. Alexander said that such research could lead to regulation changes and recognition of transportation improvement needs. He said that the driveway permit process gives DOT very limited opportunity to participate in the planning process and that it is currently very difficult for the state to get involved with land-use decision making.

Mr. Walker asked if the divergence between local approvals and the impact that such approvals might have on DOT might qualify as one such “gap” he had asked about previously. Mr. Alexander said that it is and repeated the contention that the driveway permit does not provide a sufficient gateway for DOT involvement.

Mr. Stanley asked how the processes that Mr. Hood and Mr. Alexander had described mesh with the “context sensitive solutions” process that DOT practices. Mr. Hood said that, as DOT has evolved, context sensitive solutions have become increasingly inherent in the work the agency does and have done so at earlier stages in project planning.

Chairperson Gottling asked if the capacity exists to learn whether mitigation measures actually result in mitigation. Mr. Hood said that DOT does do some research to learn the effectiveness of certain mitigation measures. Chairperson Gottling asked if the lessons learned would be applied to redevelopment in the North Country. Mr. Hood said that DOT has addressed the projects that are in the ten-year plan and expressed DOT’s desire not to ignore any part of the state.

Ms. Darrow asked what percentage of total project cost is directed toward environmental planning. Mr. Hood said that he could provide the Commission with such information. Mr. Alexander added that, while there does exist an average percentage, notable exceptions certainly occur where above-average resources are dedicated toward environmental matters. Mr. Doran asked for clarification between permitting costs and bureau operating costs. Mr. Hood said that he could provide cost and percentage information. He added that HB 76 (2008, *an act creating an environmental policy for New Hampshire*) contained some fiscal data. Mr. Hood said he would pass the information along to the Commission.

Senator Janeway asked if a method exists for defining the “corridor” to which corridor studies are applied. Mr. Alexander said that no set protocol exists for

defining corridors. He acknowledged that, sometimes, a town is not included that perhaps should have been.

Mr. Corso asked if Mr. Hood could provide documentation regarding successful wetlands mitigation. Mr. Hood said that he would submit some monitoring reports containing such documentation to the Commission.

Chairperson Gottling thanked Mr. Hood and Mr. Alexander for their appearances before the Commission. She congratulated them and their agency for having brought about a measure of cultural change as revealed during their testimony.

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

Chairperson Gottling said that a proposed one-year extension of the Commission had been attached to an omnibus bill.

Ms. Czysz said that she had been in contact with Steve Whitman regarding a presentation about instances outside the US where regulations had been modified to allow for a comprehensive planning process. Mr. Whitman said that he was not certain he would be the ideal presenter because his work rarely places him in direct involvement with regulatory processes. Still, Commissioners expressed a desire to host a presentation from Mr. Whitman.

Chairperson Gottling asked if Commissioners would like to also host a presentation from Mark Kern of the US Environmental Protection Agency. Commissioners replied affirmatively. Mr. Gove said that he would invite Mr. Kern. Mr. Walker recommended inviting Matt Schweisberg as well, to which Commissioners agreed. Senator Janeway proposed that the Commission should provide these presenters with specifics regarding requested subject matter.

Mr. Walker said that a hearing would be taking place on January 27, 2009 at 1:00 PM regarding HB 222 (2009 *an act relative to fill and dredge permits in wetlands*). Mr. Stock asked if such a bill might be premature given the fact that the Commission was formed to vet out the issue of secondary impacts. He asked if the Commission would give input or voice non-support for the bill. Mr. Morin said that his constituency feels that indirect impacts are not well defined in the bill. He added that, in his estimation, it would be appropriate for the Commission to oppose HB 222.

Senator Janeway said that the intent of the bill was to address the Supreme Court decision regarding the Fall's Way development. The bill, he continued, does not attempt to redefine indirect impacts, but to clarify the legislative intent that wetlands impacts should not be looked at so narrowly. Mr. Morin said that the court ruling found that there existed a jurisdictional limit and restated his feeling that this bill would be premature. Mr. Doran acknowledged Senator Janeway's

good intentions in sponsoring the bill, but said that he also would view HB 222 as premature.

Chairperson Gottling said that the Commission would not take a stance on the bill at the present time. She encouraged individual Commissioners to attend the hearing and represent their own views. Mr. Morin requested that further discussion of the bill be placed on the next meeting's agenda.

Ms. Darrow said that she sees some potential for unintended consequences to arise from the bill. She added that the American Council of Engineering Companies of NH sees HB 222 as premature. She also suggested that the Commission's discussion of the bill indicated a need for a legislative subcommittee.

Regarding subcommittees, Chairperson Gottling proposed that the Commission develop two subcommittees. Ms. Czysz said that the first subcommittee could focus on land use management practices in other states. She referred to a handout, available on line at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/new\\_england\\_state\\_level\\_planning\\_programs.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/new_england_state_level_planning_programs.pdf)

The handout provides an overview of some of the measures taken in other New England states. She said that programs that seem especially applicable to the Commission's work can be examined further and the program directors could be contacted and perhaps brought before the Commission.

Chairperson Gottling also proposed the development of a legislative subcommittee and said she would take volunteers to join either committee. Ms. Czysz volunteered to chair the legislative subcommittee. Mr. Gove asked if the formation of subcommittees might generate some conflict in that a Commissioner could be placed in the position of representing her subcommittee *and* the entity for which she serves as a Commissioner. Potentially, the stance of the subcommittee might be in dissonance with the stance of the Commissioner's constituency. Chairperson Gottling encouraged Commissioners to represent their constituencies when the work of subcommittees is brought before the full Commission.

Mr. Morin and Mr. Stanley both expressed willingness to serve the legislative subcommittee in an information-gathering capacity. Chairperson Gottling requested that Mr. Morin and Mr. Stanley work together to establish the subcommittee.

Chairperson Gottling announced that the Commission would to change its meeting time due to the legislative schedule. The Commission agreed to meet again on February 23, 1:00 PM at the Department of Resources and Economic Development. Beginning in March, the Commission agreed to meet on the third Monday of each month at 1:00 PM in room 305 of the NH Legislative Office Building, Concord.

**V. OTHER BUSINESS**

Ms. Czysz requested a decision as to whether Mr. Whitman should present at the same meeting as Mr. Kern and Mr. Schweisberg. Chairperson Gottling proposed having Mr. Whitman present at the March meeting and focusing the February meeting on the EPA presentation and discussion of the indirect impacts bill. Commissioners expressed agreement.

**VI. ADJOURNMENT**

At 11:05 AM Chairperson Gottling adjourned the meeting.

**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**

February 23, 2009 \* 1:00 PM  
NH Department of Resources and Economic Development  
172 Pembroke Road, 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  
Representative Chris Christensen, NH House of Representatives  
Cheryl Killam, representing NH Municipal Association  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Pat Corso, representing Business and Industry Association  
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  
John Doran, representing NH Association of Realtors  
Johanna Lyons, representing NH Department of Resources and Economic Development  
James Gove, representing Associated General Contractors of NH  
Rene Pelletier, representing NH Department of Environmental Services

**Other Attendees:**

Representative Jim McClammer, NH House of Representatives  
Representative Judith Spang, NH House of Representatives  
Representative Frank Tupper, NH House of Representatives  
Bruce Berke, Mount Washington Resort/Sheehan Phinney  
Collis Adams, NH Department of Environmental Services  
Dana Bisbee, Mount Washington Resort  
Mike Brunetti, Celebration Associates/Mount Washington Resort  
Carolyn Russell, NH Department of Environmental Services  
Tom Irwin, Conservation Law Foundation  
Gina Rotondi, Rath, Young and Pignatelli  
Michael Licata, Business and Industry Association  
Joel Maiola, Granite Edge Consulting  
Carl Deloi, US Environmental Protection Agency  
Mark Kern, US Environmental Protection Agency  
Matt Schweisberg, US Environmental Protection Agency

**Commission Staff:**

Dari Sassan, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:06 PM. Commissioners, speakers and audience members introduced themselves by name and representation. Agendas and draft minutes from the January 20, 2009 meeting were distributed to commissioners.

**II. APPROVAL OF MINUTES FROM JANUARY 20, 2009 MEETING**

Mr. Morin proposed the last two paragraphs on page 6 of the draft minutes be changed to read:

*Mr. Walker said that a hearing would be taking place on January 27, 2009 at 1:00 PM regarding HB 222 (2009 an act relative to fill and dredge permits in wetlands). Mr. Stock asked if such a bill might be premature given the fact that the Commission was formed to vet out the issue of secondary impacts. He asked if the Commission would give input or voice non-support for the bill. Mr. Morin said that his constituency feels that indirect impacts are not well defined in the bill. He added that, in his estimation, it would be appropriate for the Commission to oppose HB 222.*

*Senator Janeway said that the intent of the bill was to address the Supreme Court decision regarding the Fall's Way development. The bill, he continued, does not attempt to redefine indirect impacts, but to clarify the legislative intent that wetlands impacts should not be looked at so narrowly. Mr. Morin said that the court ruling found that there existed a jurisdictional limit and restated his feeling that this bill would be premature. Mr. Doran acknowledged Senator Janeway's good intentions in sponsoring the bill, but said that he also would view HB 222 as premature.*

Ms. Darrow proposed the following addition following the first sentence of the second full paragraph from page 7 of the draft minutes:

*The American Council of Engineering Companies of NH sees HB 222 as premature.*

Mr. Doran moved to approve the minutes of the January 20 meeting as amended. Ms. Czysz seconded. The minutes were accepted unanimously.

**III. PRESENTATIONS**

Mr. Gove introduces Carl Deloi, Matt Schweisberg and Mark Kern of the US Environmental Protection Agency (EPA). Mr. Deloi recognized the Commission's ambitious duties. He explained that he and his colleagues had not come to tell the Commission what to do, but to explain how the federal government handles similar issues.

Mr. Schweisberg and Mr. Kern gave a presentation entitled, “Secondary Adverse Impacts,” available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/secondary\\_adverse\\_impacts.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/secondary_adverse_impacts.pdf)

Mr. Morin asked if the speakers could provide a definition of “significant degradation to wetland resources.” Mr. Schweisberg said that “significant impact” has been addressed through both case law and within the National Environmental Policy Act (NEPA). Within NEPA, said Mr. Schweisberg, anything detectable of less-than-minimal is considered significant. Mr. Morin asked Mr. Schweisberg if he could name some case law in which “significant impact” is addressed. Mr. Schweisberg said that while he could not provide such information at once, he could supply some such information to the Commission. Commission members expressed interest in obtaining such information.

Mr. Doran asked about a presentation slide in which a citation from federal code referenced secondary effects and a following comment referenced adverse impacts. Mr. Schweisberg said that the regulations are geared toward addressing negative impacts, thus within the context, assuming secondary impacts to be negative would not be presumptive.

Mr. Gove asked the speakers to address the subject of “buffers.” Mr. Kern said that it is important to place emphasis on the functions of a system. He said that establishing a set buffer for all wetlands suggests the assumption that all wetlands are the same. Mr. Kern said that it might be better to look at the functions of each wetland – at very least to consider size or sensitivity of each system. Mr. Schweisberg added that it also might be best not to treat all activities the same. As an example, he said that a nature trail could be treated differently than a highway.

Mr. Corso asked how one can identify impacts that are “associated with” an activity. Mr. Schweisberg answered by referring to the “but for” test. For example, he said that such-and-such would not occur *but for* such-and-such project. He said that in some instances, the “but for” clause can extend over considerable distance and time.

Ms. Demming asked how boundaries are drawn for cumulative impacts and whether consideration of secondary impacts is limited to a single project. Mr. Schweisberg said that he and his colleagues had come to present on secondary impacts and identified the issue of cumulative impacts as another issue which would require an entire discussion of its own. He said that while secondary impacts considerations are limited to a single project, his agency’s reviews also consider cumulative impacts. He said that most small programmatic general permits do not trigger a look at cumulative impacts.

Referring to HB 222, Mr. Walker asked if it is true that only uplands activities are relevant when addressing secondary impacts. Mr. Schweisberg said that his agency

is not in a position to say whether that is true or not. He again referred to the “but for” clause. Mr. Kern said that activities could take place in wetlands and uplands. Mr. Stanley said that his interpretation of HB 222 was that it adds uplands to the jurisdiction of secondary impacts considerations. Representative Spang said that HB 222 is specific in addressing impacts to wetlands. Representative Tupper said that bills such as HB 222 can be well vetted within the legislative process and need not be taken up by a commission.

Mr. Gove asked the presenters how they would describe their time working on secondary impacts. He asked if they would like it to be more specifically defined and asked if it has been challenged. Mr. Schweisberg said that it has been just right. He said that the language is not too specific and therefore allows for flexibility to overcome unintended consequences and to apply relevant scientific literature. Regarding case law, Mr. Schweisberg could not think of a case that turned on the definition of secondary impacts.

Mr. Corso referred to an example presented during the last Commission meeting in which the impacts of a project were mitigated by creating a vernal pool in the upland. He asked how EPA would view such a remedy. Mr. Schweisberg said that creating vernal pools is becoming more common. When no other options exist, such mitigation can be viable. He said that such projects must look carefully at unintended consequences and should make sure to provide all the other necessary elements that impacted organisms require throughout their life cycles.

Representative Spang addressed the definition of “upland,” saying that upland area can occur within a wetland buffer and can even occur just outside a wetland boundary. Chairperson Gottling said that definitions are very important.

Mr. Walker said that his earlier question about whether only upland impacts are to be considered was not meant to suggest his opinion. He stated that he believes that consideration of indirect impacts *should not* be limited to uplands. He emphasized that indirect impacts address not only spatial dimensions but temporal dimensions as well.

Ms. Darrow said that HB 222 could be interpreted as a call to look at every square inch. She added that the term “reasonably foreseeable” is unfair. She asked the presenters if they prefer any of the approaches they provided in their presentation. Mr. Schweisberg said that EPA is not in a position to recommend one method over another. He said that whatever approach a state takes, it will hopefully not be subject to broad-ranging interpretation. Mr. Schweisberg said that a line-in –the-sand approach points one toward the threshold approach. He said that his agency prefers the general approach because it allows for good science and good judgment.

Mr. Corso asked if EPA and the US Army Corps of Engineers (USACE) require the same secondary impacts analysis in all locations. Mr. Schweisberg said that the

regulations that he presented are the same for EPA and USACE nationwide. He added that there is certainly some variation in implementation.

Mr. Kern said that NH has a good program. Chairperson Gottling asked if it could be even better. Mr. Kern said that it could.

**IV. SUBCOMMITTEE PROCEEDINGS**

Chairperson Gottling proposed the formation of a subcommittee on definitions. Mr. Gove said that he would follow up on such a subcommittee. Ms. Darrow, Mr. Stanley and Mr. Walker expressed interest in participating.

Ms. Czysz said that the subcommittee to research other state’s programs (for which she serves as chair) has met once to discuss the matrix she distributed at the previous Commission meeting. She said that discussion focused on coverages and gaps that exist in NH. Ms. Czysz said that the subcommittee would likely propose presentations in the months to come.

Chairperson Gottling asked Mr. Morin about local and state permits and programs. He said that he was unsure of whether research on the matter would overlap with work that the NH Department of Environmental Services (DES) has done. Mr. Morin said that he will report to the Commission on the work that DES is doing.

Mr. Morin read the following list of bills of potential relevance to the Commission:

HB 45	AN ACT relative to the water supply land conservation program
HB 222	AN ACT relative to fill and dredge permits in wetlands
HB 290	AN ACT authorizing fluvial erosion hazard zoning
HB 307	AN ACT allowing the construction of gray water systems on private property
HB 362	AN ACT relative to zoning districts
HB 384	AN ACT creating urbanization and timber harvesting exemptions for prime wetlands
HB 502	AN ACT modifying the definition of “dam”
HB 652	AN ACT relative to the impact of demolition and construction projects on the environment
HB 681	AN ACT relative to aquatic resource compensatory mitigation
SB 65	AN ACT relative to the acceptance of in lieu payments for the restoration or creation of wetlands
SB 134	AN ACT relative to the comprehensive shoreland protection act

Mr. Morin said that he will regularly report to the Commission on the status of the bills.

**V. DISCUSSION OF HB 222**

Mr. Morin said that he would like for the Commission to take a position on the HB 222. Chairperson Gottling asked what the Commission's procedure should be for determining a Commission position. Mr. Walker proposed a simple majority method. Mr. Corso agreed. Mr. Gove asked if there exists a precedent for Commissions taking a position on legislation. Representative Christensen said that it is not uncommon for Commissions to weigh in on legislation.

Representative Spang encouraged the Commission not to bother with taking a position on the bill and to instead continue to focus on the details of secondary impacts. She said if it is determined that the state can look at secondary impacts, the Commission will be called upon to hammer out the details. Representative Spang said that she felt it would be more meaningful for the Commission to vote on what the legislative subcommittee makes of the bill rather than to vote on the bill as it currently appears.

Chairperson Gottling said that by taking a position that the bill is premature the Commission appears to be against the bill. Mr. Morin said that such is not necessarily the case. He said that when its work is done, the Commission may well support the bill, but, right now, it is premature. Mr. Doran concurred with Mr. Morin. Ms. Czysz suggested that the motion should include language that indicates the Commission's consideration of the bill's timing.

Mr. Doran put forward the following motion:

*The Commission finds that HB 222 is premature in that the subject matter of the bill is central to the charge of the HB 1579 Commission.*

Mr. Gove seconded the motion. The motion passed with a vote of 10 in favor, none opposed, and 4 abstaining.

**VI. OTHER BUSINESS**

Ms. Darrow asked if the Commission might include a representative from the NH Department of Transportation in the future. Chairperson Gottling said that there was no bill to which the request could be attached. She added that it might be a possibility next year.

**VII. ADJOURNMENT**

At 3:38 PM Ms. Killam moved to adjourn the meeting. Mr. Corso seconded the motion, which passed unanimously.

**FINAL MINUTES**  
**HB 1579 COMMISSION TO STUDY LAND DEVELOPMENT**  
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**SURFACE WATERS OF THE STATE**

March 16, 2009 \* 1:00 PM  
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  
Representative Chris Christensen, NH House of Representatives  
Cheryl Killam, representing NH Municipal Association  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Pat Corso, representing Business and Industry Association  
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  
John Doran, representing NH Association of Realtors  
Johanna Lyons, representing NH Department of Resources and Economic Development  
James Gove, representing Associated General Contractors of NH  
Rene Pelletier, representing NH Department of Environmental Services  
Jasen Stock, representing NH Timberland Owners Association

**Other Attendees:**

Representative Jim McClammer, NH House of Representatives  
Philip Braley, Brown, Olson & Gould  
M. Tucker, Devine Millimet  
Carolyn Russel, NH Department of Environmental Services  
Susan Olsen, NH Municipal Association  
Gina Rotondi, Rath, Young and Pignatelli  
Michael Licata, Business and Industry Association  
Jeff Taylor, Jeffrey H. Taylor and Associates  
Steve Whitman, Jeffrey H. Taylor and Associates

**Commission Staff:**

Dari Sassan, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:07 PM. Commissioners, speakers, and staff introduced themselves by name and representation.

**II. APPROVAL OF MINUTES FROM FEBRUARY 23, 2009 MEETING**

Mr. Stanley moved to approve the minutes of the February 23, 2009 meeting. Mr. Morin seconded. The minutes were accepted unanimously with two abstaining because they were not in attendance at the February meeting.

**III. PRESENTATIONS**

Mr. Sassan introduced Mr. Whitman, Senior Planner, Jeffrey H. Taylor and Associates. Mr. Sassan said that Mr. Whitman is well known in the NH planning community as one who maintains an up-to-date knowledge of professional planning practices in the United States and beyond.

Mr. Whitman gave a presentation entitled "Ecological Design in the Built Environment." The presentation is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/ecological\\_design\\_in\\_the\\_built\\_environment.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/ecological_design_in_the_built_environment.pdf)

Mr. Gove speculated that some of the regulatory complications that eco-communities face are based upon conflicts with policies that were originally put in place to protect public health. Using building code compliance as an example, he asked how one could respond to these issues. Mr. Whitman said that some eco-communities were constructed before health and safety codes were in place and may have exhibited health and safety deficiencies. He added that, more recently, there are many examples of cooperation between eco-communities and municipalities to create solutions that adhere to the intent of the regulations while allowing for innovative applications. Additionally, Mr. Whitman said that part of the solution lies with proving the merits of new techniques by doing them properly and documenting the results.

Ms. Deming asked if there exists a set of best management practices that eco-communities can adhere to in order to insure compliance with local standards. Mr. Whitman replied that by meeting standards, one really has not accomplished anything other than adherence to the law. He said that an eco-community is better off identifying important natural resources, which it intends to protect, and to go from there, exceeding standards along the way.

Mr. Morin asked about the relative cost of developing in the manner described in Mr. Whitman's presentation. He referred to a development in Wilton where small homes are selling for \$500,000. Mr. Whitman said that the integration of an affordability component could be better targeted. He added that smaller-scale infill projects could offer significant opportunity for affordable, sustainable development. Mr. Doran asked if the costs of eco-community living have been analyzed on a monthly basis, noting that utility costs are likely lessened, potentially to a degree

that could offset elevated mortgage costs. Mr. Whitman said that he has not seen such an analysis but felt that such considerations might be the “story to tell” when promoting eco-communities.

Mr. Gove asked about the concept of encouraging higher density and conservation to address affordability. Mr. Whitman responded that some density is good and some is not, but that, in general, higher density population centers are preferable to sprawling development from an affordability standpoint as well as a conservation standpoint.

Mr. Stanley asked about the role climate plays. Mr. Whitman said that many techniques work surprisingly well in cold climates, including stormwater and wastewater treatment methods. He added that traditional, regional development methods can be incorporated and can provide solutions to climate-related challenges.

Mr. Stock asked if green-building certifications like LEED could be used to satisfy local building code concerns. Mr. Whitman said that while such certifications might not offer a way to circumvent building code, the certification standards might provide a good reference with which to cross-section building codes. Potentially such a process could lead to building code revisions that would incentivize certification.

Chairperson Gottling said that education is essential. She noted that in one NH town, people wanted to create a cluster development, but the local boards did not understand the concept and it did not go forward. Instead, she continued, the same site is home to a conventional development that has denuded the landscape.

Mr. Gove asked about the procedural framework for settling neighborhood disputes within an eco-community. Mr. Whitman said that entities similar to condo associations often exist to settle such matters, adding that some communities use consensus decision-making, which can result in slow change.

On Representative Christensen’s request, Mr. Whitman recommended the following websites for more information about eco-communities:

<http://gen.ecovillage.org/>  
<http://www.cohousing.org/>

Ms. Czysz noted that in its recent meetings, the Commission had focused on the regulatory elements necessary to foster responsible land use. Through Mr. Whitman’s presentation, she continued, the Commission has been able to get a look at some of the potential outcomes.

Mr. Taylor encouraged State Government to begin educating itself by becoming a leader by example in the use of energy-efficient and resource-conservative applications.

**IV. SUBCOMMITTEE PROCEEDINGS**

Ms. Czysz said that the subcommittee to research other state’s programs (for which she serves as chair) continues to work on a matrix of programs impacting land use in NH and other New England states. She said that the subcommittee would report back at the next meeting.

Mr. Gove announced that Ms. Deming has joined the definitions subcommittee. He said that he is approaching the work of the definitions subcommittee with the philosophy that the task at hand is huge and that the only way to handle it is to break down pieces of it as “we” proceed. Mr. Gove said that the first step should involve getting a handle on definitions and circulated a handout describing the following three different types of impacts:

- Cumulative
- Indirect
- Secondary

Chairperson Gottling asked Mr. Gove if his subcommittee would draw upon available science to determine bounds defining each type of impact. He said that his subcommittee would draw upon science and existing regulation. Speaking of three lists of functions included in his handout, Mr. Gove described the origin of each and said that the list that his subcommittee eventually puts forth might be a combination of the three. When asked to further explain the difference he sees between secondary and indirect impacts, Mr. Gove said that a secondary impact is more directly related to a permitted activity in time and space and added that an indirect impact might not stem directly from a permitted activity. Chairperson Gottling proposed revisiting the subject at the next Commission meeting.

Mr. Morin reviewed the following list of bills, which included each bill’s status at the time of the meeting:

HB 45	AN ACT relative to the water supply land conservation program <i>–PASSED THE HOUSE</i>
HB 222	AN ACT relative to fill and dredge permits in wetlands <i>–IN COMMITTEE</i>
HB 290	AN ACT authorizing fluvial erosion hazard zoning <i>–EXEC SESSION 3/17</i>
HB 307	AN ACT allowing the construction of gray water systems on private property <i>–EXEC SESSION 3/17</i>
HB 362	AN ACT relative to zoning districts <i>–ITL</i>
HB 384	AN ACT creating urbanization and timber harvesting exemptions for prime wetlands <i>–EXEC SESSION 3/17</i>

HB 502	AN ACT modifying the definition of “dam” – <i>EXEC SESSION 3/12</i>
HB 652	AN ACT relative to the impact of demolition and construction projects on the environment – <i>RETAINED</i>
HB 681	AN ACT relative to aquatic resource compensatory mitigation – <i>EXEC SESSION 3/12</i>
SB 65	AN ACT relative to the acceptance of in lieu payments for the restoration or creation of wetlands – <i>PASSED WITH AMMENDMENT</i>
SB 134	AN ACT relative to the comprehensive shoreland protection act – <i>IN COMMITTEE</i>

Chairperson Gottling asked Mr. Morin when the Department of Environmental Services would be conducting meetings regarding the alternate permitting program. Mr. Morin said that he would find out and would determine whether the program has relevance to the Commission so as to warrant regular reporting.

**V. ADJOURNMENT**

At 2:42 PM, Mr. Stanley moved to adjourn the meeting. Representative Christensen seconded the motion, which passed unanimously.

**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**

April 20, 2009 \* 1:00 PM  
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  
Representative Chris Christensen, NH House of Representatives  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
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  
John Doran, representing NH Association of Realtors  
Johanna Lyons, representing NH Department of Resources and Economic Development  
James Gove, representing Associated General Contractors of NH  
Rene Pelletier, representing NH Department of Environmental Services  
Jasen Stock, representing NH Timberland Owners Association

**Other Attendees:**

Representative Frank Tupper, NH House of Representatives  
Carolyn Russel, NH Department of Environmental Services  
Susan Olsen, NH Municipal Association  
Gina Rotondi, Rath, Young and Pignatelli  
Michael Licata, Business and Industry Association  
David Shulock, Brown, Olson & Gould, P.C. Biomass Group

**Commission Staff:**

Dari Sassan, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:07 PM. Commissioners, speakers, and staff introduced themselves by name and representation.

**II. APPROVAL OF MINUTES FROM MARCH 16, 2009 MEETING**

Mr. Doran moved to approve the minutes of the March 16, 2009 meeting. Mr. Gove seconded. The minutes were accepted unanimously.

**III. PRESENTATIONS**

Mr. Gove gave a presentation, which summarized the progress of the definitions subcommittee. The presentation is available online at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/HB1574CommissiontoStudyLandDevelopment4-6-09.pdf>

Mr. Gove indicated that his committee was favoring a distance-based approach to identifying the parameters of a secondary impact rather than a standards-based approach. Mr. Doran recalled that, during the February Commission meeting, presenters from the US Environmental Protection Agency had said that use of distance as a trigger for regulation had a tendency to create an inflexible system. Mr. Gove indicated that the difficulty with a “flexible” system is that it allows for controversy. He added that a lack of rigidity could create extra work for the Department of Environmental Services (DES).

Mr. Gove gave a second presentation, which looked at a case study about Northwest Business Park Hackett Hill Road Manchester, New Hampshire. The presentation is available online at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/NorthwestBusinessPark.pdf>

Mr. Stock asked how the use of porous pavement altered the outcome of the project. Mr. Gove said that without the pavement, a 250-foot buffer still would have been used, but the pavement allowed for the runoff to a white cedar swamp to remain unchanged. Additionally, added Mr. Gove, the porous pavement allowed the City to maximize the amount of usable land by eliminating the need for detention basins. Mr. Gove added that porous pavement was easier to model than other infiltration systems.

Ms. Darrow asked if established building envelope dimensions were used to model the system. Mr. Gove said that in order to ensure that all stormwater would be infiltrated, the depth of gravel sub grading was dependent upon the size of buildings as well as the amount of pavement. He added that ratio of parking to building space was determined through compliance with the City parking ordinance requirements.

Mr. Stanley asked if the requirement to use pervious pavement was accompanied by a maintenance requirement. Mr. Gove clarified that pervious pavement had not been required by DES. He said that it was simply the best solution. Mr. Gove added that in making the choice to utilize pervious pavement, the City established a

requirement that each development envelope agree to buy into the maintenance plan. Thus, at the site plan approval phase, each new owner would commit to the maintenance plan.

Mr. Pelletier said that the land-use issues faced in the State are broader than just wetlands. He said that wetlands serve as the hook for dealing with the overarching issue of stormwater. Mr. Christensen asked about the progress of the Stormwater Commission. Mr. Sassan gave a brief summary of recent discussions within the Stormwater Commission including the recent development of subcommittees. Meeting minutes and presentations from the Stormwater Commission are available online at:

<http://www.nh.gov/oep/legislation/2008/hb1295/index.htm>

Chairperson Gottling asked if the 250-foot buffer was selected arbitrarily. Mr. Gove said that it was deemed appropriate for the protection of high-sensitivity areas.

Mr. Doran identified two variables that go into the secondary-impact equation:

- What shall be protected, and
- Perimeter within which activities have an impact on that being protected.

He said that when proximity and distance based parameters are used, the end result can be the restriction of development on very large tracts of land. Mr. Gove said that the institution of a blanket setback distance from *all* wetlands ignores the variability of function from one wetland to another. In response, Mr. Doran expanded his variables list to include a third:

- The functions that one is trying to protect,
- The resources that shall be protected to preserve that function, and
- Perimeter within which activities have an impact on that which is being protected.

Chairperson Gottling said that, even within a distance-based approach, at some point, standards must come into play.

Mr. Morin asked what would precipitate if the full committee expressed support of the path being taken by the definitions subcommittee, further asking who would set distances if the Commission agreed to move forward with a distance-based approach. Mr. Gove said that he was interested in learning if the Commission would support the current approach of the definitions subcommittee and said that the Commission would address specific distances.

Mr. Doran expressed a vote of confidence in the work of the definitions subcommittee. A straw poll revealed the Commission's overall support for the approach that the Definitions Subcommittee is taking. Mr. Gove added that Mr. Miner had joined the definitions subcommittee.

Mr. Morin talked about the Innovative Permitting Program that DES is in the process of developing. He distributed a handout created Ms. Russell that described the program. The handout can be accessed online at:

[http://www.nh.gov/oep/news/2009/documents/innovative\\_permitting\\_fact\\_sheet.pdf](http://www.nh.gov/oep/news/2009/documents/innovative_permitting_fact_sheet.pdf)

He said the program strives to improve overall environmental health without creating greater administration. Ms. Russell added that the program allows for innovative practices statewide and that municipalities would have to allow for innovation in order for the program to reach its potential.

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

Chairperson Gottling requested suggestions of topics for the next Commission meeting. Ms. Darrow expressed interest in bringing Paul Leveille, a greenbuilding specialist, before the Commission. As a backup, Ms. Deming proposed inviting Paul Currier of DES.

#### **V. ADJOURNMENT**

At 2:40 PM, Mr. Morin moved to adjourn the meeting. Mr. Doran seconded the motion, which passed unanimously.

**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**

May 18, 2009 \* 1:00 PM  
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  
Mike Brunetti, representing Business and Industry Association  
Representative Chris Christensen, NH House of Representatives  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon Association  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Cheryl Killam, representing NH Municipal Association  
Charles Miner Jr., representing NH Fish and Game Department  
Rene Pelletier, representing NH Department of Environmental Services  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jasen Stock, representing NH Timberland Owners Association  
Peter Walker, representing NH Association of Natural Resource Scientists

**Other Attendees:**

Representative Judith Spang, NH House of Representatives, Resources Recreation and Development Committee  
Paul Currier, NH Department of Environmental Services  
Lori Sommer, NH Department of Environmental Services  
Susan Olsen, NH Municipal Association  
Carolyn Russell, NH Department of Environmental Services  
Ted Diers, NH Department of Environmental Services  
Michael Licata, Business and Industry Association  
Gina Rotondi, Rath, Young, and Pignatelli  
Davdi Shulock, Brown, Olson, and Gould

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:07 PM. Commissioners, speakers, and staff introduced themselves by name and representation. Mr. Brunetti noted he replaced Mr. Corso, representative of the Business and Industry Association.

**II. APPROVAL OF MINUTES FROM MARCH 16, 2009 MEETING**

Mr. Stanley moved to approve the minutes of the April 20, 2009 meeting. Mr. Doran seconded. The minutes were accepted unanimously.

### III. PRESENTATIONS

Mr. Currier and Ms. Sommer gave a presentation on ideas for integrating surface water quality standards and wetlands function and value assessment to manage the landscape for water resource protection. The presentation is available online at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/DES05-18-09Presentation.pdf>

M. Gove inquired how many water quality certifications are issued per year? Mr. Currier replied there are approximately 1-3 dozen. The 401 review includes an assurance regarding anti-degradation and no degradation is permitted without a “good” reason.

Mr. Doran asked, of the 14 functional value classifications, are all equally important? Mr. Currier replied that all are given equal weight, as well as their associated values.

Ms. Sommer noted that participation in the Aquatic Resource Mitigation Fund (ARM) is a choice of the applicant if they do not wish or cannot provide necessary wetlands mitigation on site. Eight watersheds have collected project funds totaling \$1.7 million statewide. \$650,000 has been collected in the Merrimack Watershed.

A MOU was signed with the Army Corps of Engineers to establish NH ARM as meeting their criteria for mitigation. While the Army Corps would like all in-lieu wetlands mitigation funds to be dedicated to restoration, the State is considering preservation, such as land protection, as another suitable use of the funds. DES applied for a grant to model suitable and potential restoration sites utilizing GIS data such as the National Wetlands Inventory.

Mr. Doran asked if the removal of a dam would qualify for ARM funding? Ms. Sommer stated that yes, it would, along with other restoration projects such as culvert removal, invasive species eradications, and all direct and indirect costs related to land conservation.

Ms. Killam inquired whether a municipality can apply for ARM funds even if there have not been any contributions to that watershed’s fund from that community? Ms. Sommer noted that yes, they could. However, the Merrimack Watershed is the only one analyzed at the point. DES is hoping to get three other watersheds analyzed in time for this next round of funding. Level I assessment for wetlands have been conducted for the whole state to discover wetland complexes likely to be impaired.

Mr. Doran noted that satellite imagery was used. Was terrain considered? Mr. Currier replied that no, it was not.

DES sees the opportunity for integrating the 401 Water Quality Standards, NPDES and the Construction General Permit Notice of Intents into a single smooth process. Mr. Gove asked the representatives from DES to explain how this might work? Mr. Currier used the example of the Dartmouth Brook project, which had slight wetland impacts, the SPGP was not too complicated, but could affect the total pollutant load to the Ammonoosuc River. The 401 conditions were incorporated into the Wetlands Permit. Mr. Gove followed up asking will this process be used more on very large projects? How will DES resources handle the work? Mr. Currier noted that if you fill a wetland, water quality standards don't apply, but the alteration of terrain permit will invoke monitoring of impacts.

Mr. Gove asked what the five functions are that DES used to evaluate the wetlands? Ms. Sommer listed ecological integrity, water quality, significant habitats, flood flows, and groundwater use.

Mr. Gove noted that small projects near wetlands may not require a permit. For example a house built 10 feet from a stream with a lawn going to it. How far can these go? Mr. Currier replied that theoretically, water quality standards apply to small projects. The issue is, how much of a riparian buffer is needed to prevent loss of wetland values. He would urge municipal building and land use codes to address this. Ms. Sommer followed up, noting that with a one-stop permit, a landowner could learn what all the permit issues are, at once, when planning the project. Mr. Currier stated that this would however require several years before being feasible. DES is working with Fish and Game to establish how much vegetated cover must be left in the buffer to protect the desired Eastern Brook Trout. It also must involve a decision on whether the trout should be protected in that area.

Mr. Walker asked how NPDES fits into the scenario? Mr. Currier noted that when EPA acknowledges a Notice of Intent, developers are urged to check with DES if other state criteria are being met. However, many do not.

Rep. Gottling stated that municipalities vary considerably in terms of their regulations' stringency. How can this be fixed? The judgments need to be supplemented with quantifiable standards as much as possible. Mr. Currier stated that technical assistance needs to be provided in order to obtain performance standards in the municipal review or projects. Mr. Pelletier noted that this is a much bigger issue than amending 482-A. Municipalities grant many permits that DES is never aware of.

#### **IV. SUBCOMMITTEE REPORTS**

Ms. Czysz distributed copies of the draft matrix the subcommittee to research similar efforts in other states has developed. A copy of the matrix has been posted to the commission's website at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/MatrixRev5-18-09.pdf>

Subcommittee members are currently researching each of the identified New England state level planning programs. Research will include a description of each program, measures of success, cost, implementation needs, review of how environmental and wetlands impacts are addressed, and how the program is relevant to the commission's work.

Rep. Spang gave an update on legislation including SB 384 and SB 65.

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

Chairperson Gottling requested suggestions of topics for the next Commission meeting. Ms. Darrow reiterated interest in bringing Paul Leveille, a green building specialist, before the Commission for the June meeting.

Mr. Doran suggested the commission should concentrate on the subcommittee work over the summer.

Another suggestion was to have each of the 9 Regional Planning Commissions (RPCs) speak on what they are thinking and doing on the ground with municipalities. What is lacking? Peter Stanley will speak to the RPCs at their June meeting and can provide an update or have the RPCs present possibly in July.

Another subcommittee was suggested to address how to integrate the commission's work with municipalities and to ensure there is local level implementation. It was suggested that Carolyn Russell of DES could assist.

The commission agreed to meet in July. A suggested option for the July meeting would be to take a trip to see the new Mount Washington development with its many adaptations. Mr. Brunetti offered to help arrange this event.

Mr. Stock suggested a presentation be given by a soil conservation specialist.

Lastly, Mr. Miner distributed copies of "Effects of Land Use on Water Quality, Aquatic Habitat and Bioata" by John Magee of NH fish and Game. Copies of the report are available online at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/SummaryoftheEffectsofLandUseonWaterQuality-FINAL.pdf>

## **VI. ADJOURNMENT**

The meeting was adjourned at 2:50 PM after a motion was duly made and seconded.

**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**

June 15, 2009 \* 1:00 PM  
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  
Senator Harold Janeway, NH Senate  
Representative Chris Christensen, NH House of Representatives  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Charles Miner Jr., representing NH Fish and Game Department  
Mike Brunetti, representing Business and Industry Association  
Cheryl Killam, representing NH Municipal Association  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Rene Pelletier, representing NH Department of Environmental Services  
Jasen Stock, representing NH Timberland Owners Association  
Peter Walker, representing NH Association of Natural Resource Scientists

**Other Attendees:**

Paul Leveille, The Jordan Institute  
Jim Kennedy, NH Association of Natural Resource Scientists  
Paul Currier, NH Department of Environmental Services  
Susan Olsen, NH Municipal Association  
Gloria Leberman, Sheehan Phinney Capitol Group  
David Shulock, Brown, Olson & Gould, P.C. Biomass Group

**Commission Staff:**

Dari Sassan, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:03 PM. Commissioners, speakers, and staff introduced themselves by name and representation.

**II. APPROVAL OF MINUTES FROM MAY 18, 2009 MEETING**

Mr. Doran moved to approve the minutes of the May 18, 2009 meeting. Ms. Killam seconded. The minutes were accepted unanimously with one abstaining.

**III. PRESENTATIONS**

Mr. Leveille gave a presentation entitled, "Introduction to LEED." The presentation is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/introduction\\_to\\_LEED.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/introduction_to_LEED.pdf)

Representative Christensen asked if Leadership in Energy Efficient Design (LEED) certification is based upon what is designed or what is built. Mr. Leveille said that the certification is based on the design, but said that there is some follow up. He added that now some performance data is required.

Representative Christensen asked if the numerous projects in New Hampshire that are being built to LEED standards have been the result of demand from individuals or a decision made by developers. Mr. Leveille said that it is mostly developers and that the reason is based on marketability. On the residential side, however, a motivated homeowner mostly originates the projects.

Mr. Brunetti asked how site considerations figure in to the LEED certification process. Mr. Leveille said that site conditions are considered and that negative land-use and/or environmental ramifications can cost a certification candidate points.

Mr. Walker said that the Commission is looking for obstacles and gaps associated with sound land-use decision-making. He asked if such elements exist in NH regarding LEED. Mr. Leveille said the biggest obstacle is education and that cost is another obstacle. Mr. Walker followed by asking if local or state regulations have posed problems. Mr. Leveille said that when building the Society for the Protection of NH Forests headquarters in Concord, the City had issues with a proposed gray water system and composting toilets. He said that, in the end, the issues were worked out.

Mr. Pelletier asked about the level of apprehension regarding green building and asked if the Jordan Institute spends a great deal of time involved with education. Mr. Leveille said that education is a very large part of his organization's work. He encouraged folks to view a free presentation available on the Jordan Institute website ([www.thejordaninstitute.org](http://www.thejordaninstitute.org)).

Representative Christensen asked if there is a model that could be legislated that would result in more energy efficient development. Mr. Leveille said that several states have adopted LEED or other evaluative systems. He added that Maine requires all State buildings to be LEED certified and that Boston requires the same of all Municipal buildings.

**IV. SUBCOMMITTEE REPORTS**

Mr. Gove distributed the minutes of the June 5, 2009 Definitions Subcommittee meeting. The minutes are available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/definitions\\_subcommittee/documents/06.05.09\\_definitions\\_subcommittee\\_notes.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/definitions_subcommittee/documents/06.05.09_definitions_subcommittee_notes.pdf)

He announced that the next meeting of the Definitions Subcommittee will take place on August 7, 2009 from 9:00 AM – 11:00 AM at the NH Fish and Game Department.

Mr. Brunetti asked if the Subcommittee had engaged in discussions of flexible setbacks. Mr. Gove said that the problem with flexible setbacks is that they are difficult to legislate. He added that the setbacks being discussed were not areas in which particular activities are restricted, but rather areas, within which, impacts must be addressed. Mr. Gove went on to say that the setbacks would establish the DES review trigger.

Mr. Gove presented the concept of incorporating a multiplier that corresponds to a function-and-value index. Mr. Walker said that, in addition to the importance of the nature of the wetland, the nature of the proposed project should also be weighed.

Chairperson Gottling said that, at some point, the Commission would need to consider which elements must be addressed through legislative action and which should be addressed through rulemaking.

Mr. Kennedy distributed a handout summarizing research of wildlife and vegetation definitions that he had conducted for the NH Association of Natural Resource Scientists. The handout is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/definitions\\_subcommittee/documents/06.15.09\\_wildlife\\_and\\_vegetation\\_terms.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/definitions_subcommittee/documents/06.15.09_wildlife_and_vegetation_terms.pdf)

Chairperson Gottling said that Mr. Kennedy's research was very interesting and helpful. She added that it will provide the Commission with an important tool and will help to avoid redefining or recreating existing terms.

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

Chairperson Gottling asked Mr. Brunetti if the July 20, 2009 meeting would be held at the Mount Washington resort. Mr. Brunetti said that it would. He said that the meeting would include a look at the Presidential wing's green roof and the erosion control measures that have been implemented at Dartmouth Brook.

**VI. ADJOURNMENT**

Chairperson Gottling adjourned the meeting at 2:35 PM.

**RECORDS FROM FIELDTRIP  
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**

July 20, 2009 \* 1:00 PM  
MOUNT WASHINGTON RESORT  
PRESIDENTIAL WING – MOUNT WASHINGTON BOARD ROOM

**Commissioners Present:**

Chairperson Representative Sue Gottling, NH House of Representatives, member of the Resources, Recreation and Development Committee  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Charles Miner Jr., representing NH Fish and Game Department  
Mike Brunetti, representing Business and Industry Association  
Paul Morin, representing Home Builders and Remodelers Association of NH  
John Doran, representing NH Association of Realtors  
Rene Pelletier, representing NH Department of Environmental Services  
Jasen Stock, representing NH Timberland Owners Association

**Other Attendees:**

Representative Judith Spang, NH House of Representatives  
Bruce Berke, Mount Washington Resort/Sheehan Phinney  
Dana Bisbee, Mount Washington Resort  
Eric McMurray, Mount Washington Resort

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:00 PM.

**II. APPROVAL OF MINUTES FROM JUNE 15, 2009 MEETING**

Because a quorum was not present, minutes from the previous meeting could not be approved.

**III. PRESENTATIONS**

Mr. Brunetti gave a presentation entitled, “ HB 1579 Commission” The presentation is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/072009\\_presentation.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/072009_presentation.pdf)

Discussion:

- Bisbee –
- Conservation easements placed on open space
- Federal agencies wanted more protection
- The developer is in control of the entire project until its completion
- the open space is fully conditioned in the local approvals and is enforceable by the municipality
- Agency input was adequate
- A better defined process is not needed, the process was very collaborative

- Holes in the current process could be resolved with more collaboration
- Brunetti – Developers would love to have input that indicates the number of units that will be allowed *before* buying land
- Brunetti – We met regularly with all agencies and local boards to make sure they didn't lack a key approval while getting others
- Stanley – What scale was Fish and Game review?
  - Miner – Looked at broader context. DES looked at watershed (holistic approach)
- Pelletier – Economic benefits vs. resource protection=very fuzzy. If the environment is all that matters than no development is reasonable. But if it less critical, then “the benefit of the State of NH” has more influence.
- Pelletier – If the prospective developer haws a P&S, then [DES] will work with him (even with no ownership). There would be no formal delineation of wetlands (most probably), so the validity of the conclusions would be weaker. DES could not in any of this with no P&S.
- Brunetti – Development has been postponed until next Spring or until the market improves.

#### IV. TOUR OF ROOFTOP TERRACES

#### V. ADJOURNMENT

**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**

August 17, 2009 \* 1:00 PM  
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  
Representative Chris Christensen, NH House of Representatives  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Charles Miner Jr., representing NH Fish and Game Department  
Cheryl Killam, representing NH Municipal Association  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Rene Pelletier, representing NH Department of Environmental Services  
Jasen Stock, representing NH Timberland Owners Association  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Peter Walker, representing NH Association of Natural Resource Scientist

**Other Attendees:**

Elizabeth Gould, D & B  
Dick Uncles, Department of Agriculture  
Jillian McCarthy, NH Department of Environmental Services  
Representative Edith 'Dee' Hogan, Nashua, Ward 7, District 25  
Patrick Murphy, NH Senate Legislative Aide  
David Preece, Southern NH Planning Commission  
Cynthia Copeland, Strafford Regional Planning Commission  
Kerrie Diers, Nashua Regional Planning Commission

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:03 PM. Commissioners, speakers, and staff introduced themselves by name and representation.

**II. APPROVAL OF MINUTES FROM JUNE 15 AND JULY 20, 2009**

Mr. Doran moved to approve the minutes of the June 15, 2009 meeting. Ms. Killam seconded. The minutes were accepted unanimously.

Because a quorum was not present on July 20, 2009, the minutes from the July 20, 2009 could not be approved and it was unanimously accepted they be called the “records from the fieldtrip”.

**III. PRESENTATIONS**

Mr. Stanley introduced the Regional Planning Commission (RPC) presenters:

1. David Preece of Southern New Hampshire Planning Commission.
2. Cynthia Copeland of Strafford Regional Planning Commission.
3. Kerrie Diers of Nashua Regional Planning Commission.

Mr. Preece gave an overview of the RPCs in New Hampshire and that the RPCs are created under RSA 36:46. Regional planning commissions are required by New Hampshire statute to prepare regional master plans, compile housing needs assessments, and review developments of regional impact. He also gave a brief about their mission and how their work is coordinated. He mentioned that one of their major focuses is to assist the Planning Boards with various short term and long-term planning issues and work closely with the towns. Mr. Preece pointed out that the RPCs maintain strategic relationships with various state and federal agencies and are in close coordination with the Office of Energy and Planning (OEP), the NH Association of Regional Planning Commissions (NHARPC), the NH Planners Association (NHPA) and the Northern new England Chapter of the American Planning Association (NNECAPA) and provide educational forums.

Ms. Copeland presented The Land Conservation Plan for New Hampshire’s Coastal Watersheds, published in July 2006. It was prepared for NH Estuaries Project, a project hosted by UNH and NH Coastal Program of DES.

[http://www.rpc-nh.org/PDFs/docs/coastal-conservation/Coastal\\_Plan\\_Complete.pdf](http://www.rpc-nh.org/PDFs/docs/coastal-conservation/Coastal_Plan_Complete.pdf)

Ms. Copeland mentioned that this project received funds from the NH Estuaries Project, a program hosted by UNH; NH Coastal Program with funds from National Oceanic and Atmospheric Administration (NOAA) to fund the plan; EPA funds through Piscataqua Regional Estuaries Program (PREP); Strafford Regional Planning Commission; The Nature Conservancy; Society for the Protection of New Hampshire Forests; and NH Charitable Foundation. The project was carried out through federal, state, regional and local collaboration.

She also said the process took 1.5 years and was completed in July 2006. For this project, every land trust and community was surveyed and their regulations were taken into account.

The priority study areas were the watershed, forested land, coastal/estuarine regions, fresh water systems, plant and wildlife habitats.

She also mentioned that the RPCs and SRPC wrote model ordinances as part of the program, and New Durham has adopted some the models.

Ms. Killam asked if the habitat protection ordinances are available? Ms. Copeland replied Yes: they are available in the plan and in the Innovative Land Use Guide.

Mr. Walker asked if there are any other model ordinances available? Who has adopted them? Ms. Copeland responded that there were also conservation area ordinances available and one or two communities have adopted them. In response to why so few have adopted them, she mentioned that the plan uses science to set priorities. Different municipal groups have different priorities and therefore this requires greater outreach and repeated presentation.

Mr. Doran asked a series of questions regarding the length and breadth of area covered in the plan, GIS and the methodology

Mr. Stanley asked what was the motivation behind this: was it state demand or money available? Ms. Copeland responded that demand was there; in order to be eligible for Coast and Estuarine Land Conservation Program (CELCP) funds a plan had to be in place.

Mr. Pelletier inquired about outreach and asked if there are any suggestions, based on their lessons learned, as to how to garner greater municipal engagement and if there is a need for more hand holding? How do we get the word out? Are there any creative thoughts for engagement? Ms. Copeland responded that there needs to be more detailed information and step-by-step process facilitating dialogues between municipalities, local, state and federal government, regulators and NGOs. She also stated that through face-to-face meetings, repeated presentations, reiteration, and persistence the right hook could be found to gain the interest of the people.

There were conversations between the commissioners as to the merits of statewide outreach and education versus statewide minimum zoning requirements; in other words, voluntary versus regulatory solutions and incentives based programs. Rep. Gottling noted that NH does not have a statewide environmental policy unlike other New England states.

There was general inquiry as to what model ordinances and guidance information OEP provides to municipalities and other organizations. Ms. Czysz stated that there are model ordinances and model site plan regulations along with the Planning Board Handbook and the Zoning Board Handbook that are published by OEP. There are also other guidance publications, i.e. the technical bulletins and all these materials are available online at the OEP website at: [www.nh.gov/oep](http://www.nh.gov/oep).

Ms. Diers started her presentation with a brief description of Nashua Regional Planning Commission and their mission to work with municipalities to assist them with their concerns and priorities. She introduced the Innovative Land Use Planning Techniques Handbook (ILU Handbook) that is based on RSA 674:21 that is compiled by the NH Department of Environmental Sciences (NH DES), NHARPC, NH OEP and the NH Municipal Association

(NHMA). The ILU Handbook is created as a guide so the RPCs can work one-on-one with municipalities to adopt models.

Ms. Diers mentioned that it takes a lot of handholding and many years of familiarization to adopt new model ordinances in any municipality. There needs an extended period of time before something that is new and innovative becomes desirable; therefore, a lot of partnering is required. All must convey the same message and point at the same direction. Mr. Walker inquired if New Hampshire's strong local planning authority is unique to New Hampshire or typical when compared to other states? Ms. Diers replied that most states have strong county governments that provide consistency.

Mr. Stock asked, after noting that RPCs do far more than just wildlife plans and environmental planning, while integrating various plans into transportation planning, who makes the final judgment call on various options and conflicting land uses? Ms. Diers responded that the RPCs may advise a community on the best approach, however, ultimately it is the municipality that makes the final call on their decisions. The role of the RPC's is non-regulatory and completely advisory. RPCs are membership organizations that do not set local policies.

David Preece returned to wrap up the presentations. He stated that one of the other the tasks of RPCs is to do a Regional Comprehensive Plan that looks at the region as a whole and take into consideration municipal plans and possibly create a comprehensive future land use map. Another program he discussed was the Community Technical Assistance Program (CTAP), which was formed to assist communities in the I-93 region plan for growth in response to the I-93 environmental impact assessment (EIS) to address secondary impacts. This integrated land use and transportation planning combines the efforts of municipalities, OEP, the Department of Transportation (DOT), four RPCs, homebuilders, SPNHF and other organizations for a more holistic approach. (<http://www.nhctap.com/>).

Mr. Preece mentioned that CTAP held 5 – 6 forums over 2 years, asking how to address growth and development in the municipalities. Their strategies included: presentations on integrated planning, preparing enhanced GIS based information and new aerial photographs and creating new existing land use maps, and open space planning for all 26 towns, etc.

Representative Gottling stated that there are difficulties with communication in small towns that have no local paper, cable, TV channel, so how to spread the word? Mr. Preece responded that it is doable with Internet, but if Internet is also unavailable, than outreach is done physically through town visits and, sometimes, individual mailings.

Mr. Morin mentioned that many communities focus on natural resource protection. However with the current economic crisis, should towns shift their communication strategy to state "you should do this there"? Mr. Preece responded that economic development issues should be addressed at a local and regional level and locations for new development should be coordinated with existing infrastructure. Communities who are going for economic development must look at what businesses they want to attract and can sustain.

The commissioners discussed that no matter how frequently you offer educational programs or write plans, there are always individuals in the community who will be obstructionists. Mr. Doran stated that there are some people who do listen; we need ways to streamline and clarify the process. Mr. Stock asked how the local level turnover affects the Regional Comprehensive Plan and its endorsement? Mr. Preece replied that it does have an effect; therefore, regular plan updates and education are essential.

Mr. Stanley discussed how RPCs are funded; he mentioned that funding is through community memberships, some is project based, and there are grants from DOT, DES and OEP.

#### **IV. SUBCOMMITTEE REPORTS**

Mr. Gove discussed modifying 482-A and the need to decide and define what is an "impact." Direct impacts are easy to determine, indirect impacts are more difficult. The first step in this process is to determine a functional value index.

Mr. Gove mentioned that the prime and tidal wetlands of NH already have 100 feet of buffer set by law. There should be exemptions built in for drainage ditches, agriculture, forestry, and CSPA jurisdiction areas. He asked how do we handle vernal pools? He stated that DES needs to consider direct and indirect impacts as part of permits.

In response to a question on whether secondary and indirect impacts are synonymous, Mr. Gove said, they are and a direct impact must occur before a secondary impact can happen. He also stated that they are waiting for the revised NH Method to be released in order to continue the sub-committee's work and remain consistent with outside work.

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

Next meeting is to be held September 21, 2009 at 1:00 PM at the NH Legislative Office Building, room 305.

#### **VI. ADJOURNMENT**

Ms. Killam made a motion to adjourn the meeting; Mr. Pelletier seconded it. Chairperson Gottling adjourned the meeting at 2:50 PM.

**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 21, 2009 \* 1:00 PM  
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  
Representative Chris Christensen, NH House of Representatives  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Charles Miner Jr., representing NH Fish and Game Department  
Cheryl Killam, representing NH Municipal Association  
Laura Deming, representing NH Audubon Association  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Jasen Stock, representing NH Timberland Owners Association  
Harry Stewart (sitting in for Rene Pelletier), representing NH Department of  
Environmental Services  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Peter Walker, representing NH Association of Natural Resource Scientist

**Other Attendees:**

Joel Anderson, House Staff,  
Lori Sommer, NH Department of Environmental Services  
Carolyn Russell, NH Department of Environmental Services  
Mary Ann Tilton, NH Department of Environmental Services  
Paul Currier, NH Department of Environmental Services  
Amanda Stone, University of NH Cooperative Extension  
Judith Spang, Resources, Recreation and Development Committee

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:04 PM. Commissioners, speakers, and staff introduced themselves by name and representation.

**II. APPROVAL OF MINUTES**

Mr. Stanley moved to approve the minutes of the August 17, 2009 meeting. Mr. Gove seconded. The minutes were accepted unanimously.

**III. PRESENTATIONS**

Mr. Gove introduced the presenter Amanda Stone, of University of NH Cooperative Extension (UNHCE) and added that she has been part of the effort to update the New Hampshire Method. Mr. Gove mentioned the memorandum that he sent out and the content of the memo referred to the old New Hampshire Method.

Amanda Stone was involved with the original development back in 1991, when she worked with the NH Audubon Society. The NH Method has not been updated since then, and is therefore 18 years old. This method, adopted from the Connecticut Method, was originally developed for communities, conservation commissions and planning board members.

She briefly recapped the NH Method. Ms. Stone stated that the NH Method was primarily developed for lay audiences and was an educational tool to educate communities about wetlands, how they functioned, why the functions were important, and which characteristics of wetlands contributed to these functions. It was also intended to instruct readers as to what they need to look at when doing a wetland inventory or evaluation within their community, whether they are going for a prime wetland designation establishing buffers, or modifying zoning ordinances to protect their wetlands.

Ms. Stone added that the original NH Method was a comparative method for multiple wetlands, to evaluate a number of wetlands within a study area (it could be a town, a watershed or a region) and compare the results of the evaluation - wetland by wetland. The result would determine which wetlands ranked highest in terms of natural resource protection and which ones came out lower and needed restoration or enhancement. She added that this was not intended for a single wetland evaluation.

Ms. Stone drew attention to her "Educational Potential" handout and stated that the layout of the Method had remained the same. Each of the functions were broken out into the "question" that was being asked (to determine which feature of the wetland was contributing to the function); a set of "directions" (to determine what you need to do to answer the question); and a "rationale" (as to why was this question is being asked).

Ms. Stone called attention to the second sheet of the handout, from the new NH Method, which was very similar to the old version. It showed 3 multiple-choice answers with a score. The scores of each question for a function would be added up and divided by 8, or the total number of questions, to get the average score called the Functional Value Index

(FVI). The FVI would be multiplied by the wetland acreage to get the Wetland Value Units (WVUs). With this process, one would not come up with a single score for a wetland, instead would have 14 functional scores for a wetland. So each wetland was looked at in the context of 14 functions that could not be added. Therefore, for comparison between wetlands, they were compared between the WVU of the same functions.

When it was originally developed, the steering committee consisted of: EPA, DES Wetlands Bureau, RCS, UNH Corporate Extensions, Association of Conservation Commissions, and wetland scientists. It took about a year to develop the original method.

The updates to the NH Method began 18 months ago. The new Method incorporates new technology and recent studies. It will be updated on a regular basis, most likely on a yearly basis. Although it started 18 months ago, it is still an ongoing process. It will probably not be ready for publication before Spring of 2010. Currently there is a committee working on the new NH Method consisting of representatives from DES Wetlands Bureau (Mary Ann Tilton and Lori Sommer), four wetland scientists, UNH Cooperative Extension, and the Association of Conservation Commissions. Currently this new Method is being field-tested.

Ms. Stone requested the commission not to distribute the handouts, as the method was still being tested and modified and not yet ready for public distribution.

Although the original Method was designed for the layperson, it was observed to have been widely used by professionals as well. For the new Method, the audience has been broadened to incorporate public officials and community volunteers, professionals who are not wetland specialists, and professional wetland scientists. The Method is still primarily an educational tool and it is not a substitute for detailed wetland study or wetland delineation. It has a scientific basis so is scientifically defensible for decisions to be made by communities and professionals. It also has the basis for supporting local planning and decision-making processes.

Ms. Stone discussed that the current draft revised edition has 12 function compared to the original 14 functions. She went into details about what has changed from the 1991 edition to the 2009 edition. She referred to table 1 on her handout. The original title was: "Method for the Comparative Evaluation of Non-tidal Wetlands in New Hampshire" and the new draft title is "Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire." The title change reflects a fundamental shift in the method. The revised edition of NH Method no longer requires comparative evaluation but still could be used for that purpose and it could be used to evaluate individual wetlands, as well as multiple wetlands in a town or watershed.

The Historical Site Potential and the Urban Quality of Life Functions have been dropped from the NH Method and names of several functions among the 12 have been changed as well. Many questions have been added and modified in the new functions to better understand the system. The 12 draft functions are as follows:

<b>Name Changes of the Functions</b>	
<b>1991 Edition</b>	<b>Draft 2009 Edition</b>
Ecological Integrity	Ecological Integrity (no change in name)
Wildlife Habitat	Wetland-Dependent Wildlife Habitat
Finfish Habitat	Fish and Aquatic Life Habitat
Educational Potential	Educational Potential (no change in name)
Visual/Aesthetic Quality	Scenic Quality
Water-based Recreation	Wetland-Based Recreation
Flood Control	Floodwater Storage
Groundwater Use Potential	Ground Water Interactions
Sediment Trapping	Sediment Trapping (no change in name)
Nutrient Attenuation	Nutrient Trapping/Retention/Transformation
Shoreline Anchoring and Dissipation of Erosive Forces	Shoreline Anchoring and Dissipation of Erosive Forces (no change in name)
Noteworthiness	Noteworthiness

Ms. Stone stated that another major difference between the old and the new edition was that the new draft edition no longer had the Wetland Value Units (WVUs). Also the term Functional Value Index (FVI) has been simplified to a “Score”. The values of the scores have been changed from 1.0, 0.5 and 0.1 to 10, 5 and 1 to make computations easy.

Ms. Stone pointed out that due to technological advancements with the Geographic Information System (GIS) and other computer technologies, a variety of data layers available through GRANIT, a greater range of information is available to generate wetland maps and complete evaluations using the NH Method. A wetlands base mapper is being developed that will incorporate existing information and will also have aerial photography and other data layers.

Mr. Stanley asked if there was a target date for this to be operational, if there was, why not sooner than later. Ms. Stone responded saying that this was quite an undertaking, and it was taking longer than planned due to less time made available by volunteers.

Mr. Morin inquired how Ms. Stone felt about some of these functions to be used to determine appropriate setbacks and the type of regulations when it was originally developed for lay people as an educational tool. Ms. Stone responded that in the new draft edition, the scope was expanded to reach a wider range of audiences and giving more flexibility for professional wetland scientists to be able to add additional information and use it in ways that will serve their purposes but still maintain the integrity of the Method.

Ms. Deming asked Ms. Stone, under the ecological integrity function, how she defined impact given that the lay audience might not be familiar with what the impacts are. Ms. Stone responded saying the way the questions were worded or phrased, it asked about what human based activities may be going on around the wetland that could affect the integrity of the site.

Mr. Walker stated that although the original Method was intended to be implemented by municipal volunteer boards and lay audiences, very few people had the expertise to implement it, and asked if it met that objective. Ms. Stone responded that Mr. Walker was right and professionals used it extensively but the new Method was still geared towards lay audiences.

#### **IV. SUBCOMMITTEE REPORTS**

Mr. Gove discussed the handout he sent out by email. It was based on the original NH Method. He stated that based on his proposal the department would consider all impacts to a wetland and a wetland buffer (both direct and secondary) before granting a permit for the project. He added that “Direct Impact” meant directly dredging or placement of a fill within the wetland area itself while “Secondary Impact” meant an indirect impact to a wetland buffer by any soil disturbance or by removal of any woody vegetation within the buffer. The secondary impact was only triggered by a direct impact to a wetland.

Mr. Gove added that the width of the buffer should be determined by the “Score”, originally termed as the FVI for the functions (e.g. Ecological Integrity, Wetland Wildlife Habitat, Finfish Habitat etc.). He stated that man-made structures such as roadside ditches, detention basins, drainage structures, treatment swales etc. and natural wetlands that have a score less than 5 for all functions would not require a buffer. Functions with scores 5 or more (e.g., Flood Control Potential, Groundwater Use Potential, Sediment Trapping or Nutrient Attenuation) would require a buffer of 50 feet, provided that they had a score of 5 or less for functions such as Ecological Integrity, Wetland Wildlife Habitat, Finfish Habitat or Noteworthiness. He added that wetlands that have a score of 5 or more on the last four functions should have a buffer width of 100 feet.

Mr. Gove stated that areas regulated by the Comprehensive Shoreland Protection Act, tidal areas or prime wetlands already have a buffer width of 50 to 100 feet.

In response to a comment by Mr. Doran, Mr. Gove stated that the decimal points on all the FVI have moved one space to the right making 0.1, 0.5 and 1 to scores of 1, 5 and 10 for easy computation. The NH Method is a scientifically based numeric system; therefore the whole numbers work very accurately and it is the best method to date. Mr. Doran further asked about the consistency of this method and whether the Department of Environmental Services or the local municipalities applied it? Would this have enough precision to it to provide consistency? Mr. Gove responded by saying that from his own experience and those of others using it around him, he thought the Method was very consistent. He believed you need not be a wetland scientist or a professional to be able to use this and get a good result. Rep. Gottling added that this is only going to get triggered if there is an application for a direct impact to a wetland in which case the department could come in.

Mr. Walker commented that he had used the NH Method as well as several other wetland evaluation methods and believed that they were the most data rich and data intensive methods. In terms of doing the calculations and applying the method, he believed that lay people could use it, but to make it repeatable and precise, it did

require trained eyes. But to his experience, NH Methods is among the best if not the best method to use. Ms. Stone stated that although it was originally published 18 years ago, it is still being used today; it has numeric scoring, some degree of objectivity, and is not just qualitative and has a higher level of consistency. NH Method has been adapted and used in other states such as Maryland and Oregon. She added a note of caution that if a wetland scores less than 5 (that automatically puts it in a category that it does not require a buffer), it would need to be looked at again to determine why it is scoring less.

Mr. Stock asked Jim Gove about the rationale behind singling out “Ecological Integrity”, “Wetland Wildlife Habitat” and “Finfish Habitat” or “Noteworthiness” among the other functions. Mr. Gove responded that a wetland is unique habitat system, and it was decided earlier that protection of water quality and wildlife habitat would be their most important focus. Mr. Walker added that those functions mentioned above are very sensitive to encroachment, whereas, other functions are less sensitive to encroachment. For this reason, these functions are appropriate as the basis for a buffer.

Ms. Stone added that the 100-foot width buffer for water quality was the recommendation for water quality in the buffer’s guide by the Audubon Society years ago; research indicated that more than 100 feet does not provide significant improvement to the water quality. She asked Mr. Gove what was the reason for the 50 foot cutoff. Mr. Gove replied that from an agricultural perspective, at least 50 feet of vegetative buffer was found to be very effective especially for phosphorus and sediments.

Mr. Stock addressed Mr. Stewart for his comments on this proposal and if this would translate into additional workload. Mr. Stewart responded that there would be a marginal increase in workload, but it was workable. The only concern he had was that they would have to work out the question of the intersection of the proposed change in the state’s statute and the federal programs that overlay those of the state.

Ms. Stone asked the group about the time frame they are looking at for the changes and mentioned that the subcommittee report was based on the old NH Method and that the references needed to be changed to reflect the latest edition. Rep. Gottling responded that there were two time frames: the legislative time frame and the commission’s time frame. She also added that legislation could be drafted this session with an implementation date to correspond to the date the new edition would come out. Commission has until next November to complete its work.

Rep. Gottling asked Rep. Spang if she had any comments. Rep. Spang commented that what has been done and the efforts put into it are terrific and it was moving along well. She did mention that there were details that need to be worked out primarily for exemptions for “timbering” and “Agriculture”.

Mr. Stock asked Mr. Stewart how this was being done through the Alteration of Terrain? Mr. Stewart responded that the Alteration of Terrain deals with Storm Water Management and the Wetlands program deals with the wetlands where the Surface

Water Quality Standards deal with the water quality. He said that all three of these programs collectively represent how these sorts of projects were regulated.

Rep. Gottling asked Ms. Czysz to brief the commission on the work of the “Research on Alternative State Programs Subcommittee”. Ms. Czysz started by describing the matrix that they put together that looked at federal as well as other New England state level planning programs with a focus on: Environmental Protection Acts; Coordinated Permitting; Land Use Planning; Smart Growth; Redevelopment and historic Preservation; Conservation; Transportation; Wetlands; Surface Water; Aquifers and Ground Water; Wildlife; Water, Sewer, and Other Infrastructure; and Water Quality.

The matrix is available online at:

[http://www.nh.gov/oepl/legislation/2008/hb1579/asp\\_subcommittee/documents/matrix.pdf](http://www.nh.gov/oepl/legislation/2008/hb1579/asp_subcommittee/documents/matrix.pdf)

She added that the purpose of this effort was to identify existing government programs that channel growth and development to appropriate locations and acknowledge the need for natural resource protection. In other words, finding a better way for planning, growth and development.

Ms. Czysz mentioned that as a subcommittee, each of the members have been taking one or more rows of the matrix based on their expertise and doing extensive research to identify the critical programs to consider further and putting them in a standardized template to be brought forth to the full committee. She added that their goal is to have the final selection done in October and present it to the full committee in November.

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

Representative Gottling stated that there was no specific program set for October, therefore, requested if anyone had any suggestion for a presenter. Mr. Stock proposed to have Joe Homer of the Natural Resource Conservation Service, Department of Agriculture, as a presenter to talk about types of wetlands. Several commissioners agreed that Mr. Homer should be invited. Rep. Gottling mentioned that a field trip to a wetland might be a good idea too at the end of the presentation if Mr. Homer agreed to do a presentation.

Rep. Gottling mentioned whether the date for the November meeting (November 16, 2009) should be retained or changed to November 23, 2009, as she would not be available on the original day.

**VI. ADJOURNMENT**

Mr. Stanley made a motion to adjourn the meeting; Mr. Doran seconded it. Chairperson Gottling adjourned the meeting at 2:45 PM.

**DRAFT 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**

October 19, 2009 \* 1:00 PM  
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  
Representative Chris Christensen, NH House of Representatives  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Peter Walker, representing NH Association of Natural Resource Scientist  
Rene Pelletier, representing NH Department of Environmental Services

**Other Attendees:**

Joel Anderson, Staff, NH House of Representatives  
Carolyn Russell, NH Department of Environmental Services  
Representative Judith Spang, NH House of Representatives, Resources, Recreation and  
Development Committee  
Joe Homer, Natural Resource Conservation Service, US Department of Agriculture  
Ron Klemarczyk, Forest Resource Consultants  
Eric Johnson, NH Timberland Owners Association  
Gina Rotondi, Rath, Young and Pignatelli/NH Shorefront Association  
David Shulock, Brown, Olson & Gould  
Representative Susan Almy, NH House of Representatives

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:07 PM.

**II. APPROVAL OF MINUTES**

Due to the initial lack of quorum no action was taken on the minutes from September 21, 2009.

**III. SUBCOMMITTEE UPDATES**

Representative Gottling asked Ms. Czysz to brief the commission on the work of the “Research on Alternative State Programs Subcommittee.” Ms. Czysz mentioned that their group has been winnowing down the large list of New England state level planning and environmental protection programs that might be of interest to the commission. The subcommittee hoped to present a couple of them to the commission at the next meeting, to be held on November 23, 2009. She mentioned that there would be two separate presentations where one would look at state level Environmental Policy Protection Acts with a focus on Maine, Massachusetts and Vermont; each of the three states have distinctly different approaches as to how they established a state level Environmental Protection Policy. The second presentation would focus on a more comprehensive smart growth/land use planning approach that channeled development into pre-designated locations with the intent of protecting natural resources. For this the commission would look Vermont’s programs to designate downtowns, villages and community centers.

Ms. Czysz mentioned that the subcommittee would also be presenting, at a future meeting, a comparative review of the New England states’ wetland programs. She added that the subcommittee has asked Carolyn Russell to report back to the full commission in January about her permit coordination efforts at DES. Ms. Czysz also hoped to have a final draft of the Matrix ready at the next meeting (November 23, 2009).

Representative Gottling thanked Ms. Czysz for her hard work and the tremendous amount of work, research and time the subcommittee has dedicated on this matter.

**IV. PRESENTATIONS**

Mr. Gove introduced the presenter, Joe Homer, Assistant State Soil Scientist, Natural Resource Conservation Service (NRCS), United States Department of Agriculture. Mr. Homer’s presentation titled “Wetlands: House Bill 1579 Study Committee” is available at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/presentation101909.pdf>

Mr. Homer in his presentation defined wetlands, went through the terminology, discussed functionality of wetlands and went into details about the three parameters of wetland identification criteria, those being: hydrology, vegetation and soils.

Mr. Homer noted the wetlands manual for New England was being revised and available at:

[http://www.usace.army.mil/CECW/Documents/cecwo/reg/int\\_nc\\_ne\\_supp.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/int_nc_ne_supp.pdf).

He also referred to the Field Indicators of Hydric Soils in the United States and the Field Indicators for Identifying Hydric Soils in New England, available at: [ftp://ftp-fc.sc.egov.usda.gov/NSSC/Hydric\\_Soils/FieldIndicators\\_v6\\_0.pdf](ftp://ftp-fc.sc.egov.usda.gov/NSSC/Hydric_Soils/FieldIndicators_v6_0.pdf) and [http://des.nh.gov/organization/divisions/water/wetlands/documents/hydric\\_soils.pdf](http://des.nh.gov/organization/divisions/water/wetlands/documents/hydric_soils.pdf) respectively.

Representative Gottling thanked Mr. Homer for his presentation. Mr. Gove asked Mr. Homer, if the services of NRCS included designating buffers to wetlands or if he had any guidelines for developing farm plans if there was an issue regarding wetlands. Mr. Homer responded that his job as a soil scientist was to delineate wetlands and flag the boundaries when he was called to look at a farm for farm plan development. The district conservationist worked with the farm bill protocols and stated that he was not sure what the agency has for buffers. Mr. Homer added that he could check into it if required.

Representative Spang asked if a wetland could only be identified if all three criteria had been met (i.e. hydrology, vegetation and soils), and what would happen in cases where the vegetation had been altered? Mr. Homer responded that if they found an area where any of the three criteria had been altered, it was considered to be a “problem site.” He added that if only the vegetation has been altered, then that would be documented and they would work with the other two criteria. Mr. Homer mentioned that he had been to forested areas where the vegetation had been cut, in which case, he made note of that and worked with the soil and hydrology indicators and made a determination from there.

Mr. Homer mentioned that his presentation was missing a slide that talked about what was the minimum size delineation for wetlands. He added that there was no minimum size for wetland delineation.

Mr. Gove stated that poorly drained soils might not necessarily be a wetland, as it may not meet the other two criteria, but given the fact that the largest wetlands are mapped, there might be a possibility that the extent of the wetlands were being underestimated, as the small areas of half an acre or quarter acre wetlands may dot the landscape but never show up on a map. Mr. Homer agreed with Mr. Gove and added, there were a number of different inventories out there and probably one of the most common one used for wetlands was the US Fish and Wildlife Service’s National Wetland Inventory (NWI) maps. These inventories used aerial imagery to identify wetlands, typically those areas with strong signatures (i.e. cattail swamps, marshes, wetland vegetation). Given the methodology of identifying the NWI wetlands, it is accepted that the extent of wetlands in New Hampshire is underestimated.

Mr. Walker mentioned that Mr. Homer drew a distinction between “qualitative” and “quantitative” methods, and was a little surprised to see the New Hampshire Method being identified as a “qualitative” method, and asked how the Highway Methodology differed from the New Hampshire Method. Mr. Homer responded by saying that it was not part of his role to perform functional assessments and added that he was somewhat familiar with the New Hampshire Method and that it was primarily designed for lay

people and that it was based on several subjective evaluations of some of the wetland parameters that he mentioned earlier. However, in some of the quantitative methods, recharge and discharge are measured along with the amount of sediment, vegetation is analyzed in detail, similar to a National Environmental Protection Act (NEPA) study. The quantitative methods were more in depth and technical in nature compared with what could be expected of the layperson to complete.

Representative Gottling added that although the New Hampshire Method was not as technical as the ones Mr. Homer had mentioned earlier, historical use of the New Hampshire Method has been more by the professionals. Mr. Homer responded that he knew that the New Hampshire Method had gone through revision and that he did not have a chance to review it thoroughly yet.

Representative Gottling asked Mr. Homer how communities could ensure that all wetlands have been identified and necessary state permits are received? She drew upon the scenario in which a development application is received by the town for a site where the site is not delineated as a wetland, and the code enforcement officer lacked the expertise to identify wetlands during site inspections, and hence a permit was erroneously issued by the town and the state was not contacted based upon the assumption there were no wetlands present. What was needed to prevent such failure to recognize a wetland and unwanted changes taking place? Should there be someone in every jurisdiction who has had some training, and can identify wetlands? Mr. Homer replied that some education and presentations about wetlands similar to the one done today could go a long way. He added that he was not sure that every town could afford to have a consultant come in and look at every site or have a soil scientist on staff, but educating the town personnel through workshops, presentations and seminars was the best way to address the problem.

Representative Christensen had a question related to the percentages of wetlands shown on the presentation (poorly drained - 3.7 percent and very poorly drained - 5.9 percent for Manchester, NH; where as poorly drained – 26 percent and very poorly drained – 1.4 percent for Pittsburg, NH). Rep. Christensen asked how are changes tracked over time statewide? Mr. Homer responded that the countywide soil surveys give a snap shot in time. Coos county was the final county to be surveyed in New Hampshire and added the only exception being the White Mountain National Forest area. Coos County soil survey mapping was published in 1999; Strafford County during the early 1970's; Carroll County was published in mid 1970's, however, most of the work was done in the 1960's. Representative Christensen followed up by asking if research and mapping was done in the 1960's and 1970's, nearly 50 years ago, if there was an interval in which the maps should be updated? Mr. Homer responded that the life expectancy of their countywide soil survey was about 50 to 60 years, although the soils did not change significantly over this period, however, given urbanization trends, some areas had changed, additionally, the techniques for evaluating soils had changed. Around the 1950's and 1960's the accepted protocol was to examine the soils down to 24 inches, at present however, soils are examined up to 60 inches below the surface. NRCS has started doing updates of Strafford and Carroll County. However, these updates

have been place on hold, as the current nationwide priorities are to complete the mapping of the whole United States by 2011.

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

Rep. Gottling confirmed that the next meeting would be held on November 23, 2009, instead of November 16, 2009.

**VI. ADJOURNMENT**

The Meeting was adjourned at 2:00 PM and preparations were made for the fieldtrip to the City of Concord's Oak Hill Property.

The fieldtrip ended at 4:03 PM.

**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**

**AND**

**RESOURCES, RECREATION AND DEVELOPMENT COMMITTEE**

November 16, 2009 \* 1:00 PM

NH Legislative Office Building, Room 305, Concord, NH

**HB 1579 Commissioners Present:**

Vice Chair, Erin Darrow, representing American Council of Engineering Companies of NH  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon Association  
John Doran, representing NH Association of Realtors  
Johanna Lyons, representing NH Department of Resources and Economic Development  
Charles Miner, representing NH Fish and Game Department  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Jasen Stock, representing NH Timberland Owners Association  
Peter Walker, representing NH Association of Natural Resource Scientists  
Rene Pelletier, representing NH Department of Environmental Services

**House Committee on Resources, Recreation & Development Representatives Present:**

Chair, Representative Judith Spang  
Representative Christopher Ahlgren  
Representative Mike Kappler  
Representative Susan Kepner  
Representative Jim McClammer  
Representative Maria Moody  
Representative Andrew Renzullo  
Representative Yvonne Thomas  
Representative Frank Tupper

**Other Attendees:**

Joel Anderson, Staff, NH House of Representatives  
Charlie Hood, NH Department of Transportation  
Tom Irwin, Conservation Law Foundation  
Robert Johnson, NH Farm Bureau  
Susan Olsen, NH Municipal Association  
Gina Rotondi, Rath, Young and Pignatelli/NH Shorefront Association  
Carolyn Russell, NH Department of Environmental Services  
Adam Schmidt, Bianco, P.H.  
Mary Ann Tilton, Department of Environmental Services  
Henry Veilleux, Sheehan Phinney Capitol Group

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Spang called the meeting to order at 1:00 PM. Commissioners, Committee members, and others present each introduced themselves.

**II. PRESENTATION OF HB 222 DRAFT AMENDMENT**

Representative Spang began the meeting with an overview of the history of House Bill (HB) 222. The bill was retained by the House Resources, Recreation and Development (RR&D) committee during its 2009 deliberations to recognize the Land Use Commission's (referred to as the "Commission") ongoing work on the subject of indirect impacts. RR&D intended to allow the Commission one year, until November 2009, to propose a solution or amendment to the bill as introduced. Once that time had elapsed, Representative Spang informed all present that RR&D planned to move forward regardless of the Commission's status toward developing a final recommendation.

Representative Spang gave a presentation, which summarized the issues surrounding indirect impacts to wetlands and the proposed bill amendment. The presentation is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/indirect\\_impacts\\_presentation.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/indirect_impacts_presentation.pdf)

A copy of the proposed amendment to HB 222 is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/draft\\_amendment.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/draft_amendment.pdf)

During the course of the presentation Representative Spang inquired whether anyone had an objection to the HB 222 Amendment Goals? No objections were stated. Representative Tupper asked if there are any existing rare or endangered species in wetlands or their uplands? Ms. Lyons responded that certainly there may be, however, the determination of the existence of such resources is location or site specific.

Representative Spang clarified that the "Indirect-Impact Evaluation Area" (IIEA) proposed in the draft amendment to HB 222 was not a setback or a "no-touch zone" but instead where development would be reviewed for its impacts to wetlands. Additionally, she recognized that there were clearly stated caveats to utilizing the "Method for the Comparative Evaluation of Nontidal Wetlands in New Hampshire" (referred to herein as the NH Method) as the basis; however, felt it is currently the best option available.

Ms. Czysz offered a point of clarification to the next to last slide of the presentation entitled "What is the Role of the Land Use Commission?" and noted that the Commission has not yet voted on nor finalized a wetland evaluation method as is inferred on that slide.

**III. DISCUSSION OF HB 222 DRAFT AMENDMENT**

Mr. Stanley stated that what the Commission and its Definitions Subcommittee is currently working relative to the evaluation of indirect impacts and the draft methodology is good, but not perfect, as it is still in draft form. He suggested that HB 222's proposed amendment decrease its "volume" as it is extremely detailed, perhaps more so than necessary.

Representative Spang asked those at the joint meeting where they felt the Land Use Commission was going? Mr. Stanley responded that there have been two tracks of progress being carried out by the definitions subcommittee and the subcommittee to research land development policies in other states. Some recommendations for future legislation might be forthcoming, however, the Commission's obligations could be unending.

Mr. Walker added that the Commission spent a significant amount of time on fact-finding and perhaps should have focused more clearly on indirect impacts. It was never expressed to the Commission that RR&D had imposed a November deadline for a final recommendation on HB 222 when that committee retained the bill. The Commission is beginning to round a corner toward developing solutions and recommendations.

Representative Spang noted that despite her questioning the Commission's progress, she did not intend to be critical of the Commission's work. She felt the Commission was in fact progressing well and the numerous presentations it has heard over the last year important to achieving a common understanding.

Mr. Walker noted that the NH Association of Natural Resource Scientists (NHANRS) believes that the Greenland court case has created uncertainty regarding the State's ability to protect natural resources, at least among NHANRS members. NHANRS is looking for the consistency that the regulation of indirect wetlands impacts might provide. However, the association has concerns with the current draft of the bill. The Association additionally does not support pushing policy decision making into the administrative rule making process.

Examples were provided identifying specific portions of the bill amendment that were too specific, including prescribing the buffer size in statute. Buffer size should in turn be established through a "functions and values evaluation," detailed in administrative rules.

The original role of the definitions subcommittee, as stated by Mr. Walker, was to simply define indirect impacts. Subcommittee members determined that this was too vague and its scope of work grew from there. Representative Spang questioned the subcommittee's thoughts on the proposed definition in the amendment language. Representative Renzullo noted there is not a definition of indirect impact in the proposed amendment. Mr. Walker clarified that it was the original version of HB 222 that included a definition.

Representative Renzullo sought to clarify whether the proposed amendment would be applicable if a federal wetlands permit were not required. Mr. Pelletier offered that if there are no direct wetlands impacts, in other words, neither a state or federal wetlands permit is required, then the proposed development would not trigger the indirect impacts review proposed under the amendment to HB 222.

Representative Tupper stated that he had attended the last Commission meeting and that all present, with one exception, endorsed the proposal and that there was general consensus. Mr. Doran made a point of clarification that the meeting Representative Tupper attended was not a Commission meeting, but instead was a subcommittee meeting and there were at least two members present at that time that did not support the proposal as it was drafted.

Ms. Darrow indicated that the American Council of Engineering Companies of New Hampshire (ACEC) feels the proposed amendment was ambiguous. Specifically, in that it leaves certain details to the Department of Environmental Services (DES) to determine. Additionally, Ms. Darrow read a portion of an email from Mr. Gove to the Commission that also stated his belief, as chair of the definitions subcommittee, that the subcommittee's draft language distributed to the Commission a couple meetings ago was yet to be vetted by the full Commission and its use as an amendment to HB 222 was premature, too restrictive, and could potentially create a burden for DES. Representative Spang addressed the claims that the amendment language was ambiguous and reminded all that when dealing with natural resource systems, it is impossible to write legislation or rules that will take everything into consideration, nor do we want that or a situation where there might be significant loopholes, therefore we must allow DES some discretion when reviewing indirect wetlands impacts.

The conversation returned to Representative Tupper's observation of a consensus at the meeting he attended. Mr. Morin noted that observation is fair in that the subcommittee and Commission are searching for common ground. However, Mr. Morin was surprised to find progress/working language presented as proposed legislation. He felt that being only a draft, each individual group represented at the full Commission needs the opportunity to identify and rectify the many kinks or flaws that may be present. He asked, would not RR&D prefer to wait until all individual groups have had the opportunity to fix the various issues in the draft and move forward later with a piece of legislation that has a greater chance of passing? Or, would RR&D prefer to move forward with something that has yet to be vetted by the full Commission?

Representative Spang questioned whether Mr. Morin felt that the necessary vetting process would occur (a) if this goes to the Senate, (b) whether the Commission will be work on it, or (c) the rulemaking process will address necessary issues? Mr. Morin reiterated that a November deadline was not articulated to the Commission, what the Commission had stated was that this issue of indirect impacts was central to its work and should be allowed to progress. Representative Spang referred to Representative McClammer's previous statement that federal regulators have been attempting to develop such definitions for the last 40 years and the Commission was unlikely to do so in the next year. Instead it was time to realize what we could and could not do, and what we could do is to move forward with the passage of basic legislation that would allow DES to do what they have said they have always done, similar to federal regulators, to look at reasonable indirect impacts. Therefore Representative Spang was not comfortable with the Commission stating this was premature legislation and believed that there was a need for the legislation to be somewhat vague.

Ms. Darrow, at Representative Spang's request, read the many duties of the Commission as stated in HB 1579 of 2008. Representative Spang acknowledged that the Commission's responsibilities were a significant undertaking and that was why she felt it was best to move forward on a segment of those responsibilities through HB 222.

Mr. Pelletier stated that DES would not support portions of the bill. He noted that DES does not feel the issue of regulating indirect wetlands impacts is a "sky is falling" situation as it has been presented. DES does not believe it is inconsistent with current federal regulations. This is a major issue and should be carefully considered. He did not believe there was a single person on the commission that would disagree.

Representative Spang requested that Mr. Irwin of the Conservation Law Foundation address the issue of the Greenland decision. Mr. Irwin advised RR&D and Commission members that there was clear language from the court stating that DES did not have the authority to review indirect impacts or post construction impacts. Mr. Pelletier responded that this was simply one attorney's opinion and the Commission should be cautious. Neither the Army Corps nor the Environmental Protection Agency (EPA) has pulled any DES permits. Mr. Irwin, however, did not feel this was an indication that there wasn't a gap and referred to an EPA letter to that fact.

Following Representative Spang's inquiry whether any one on the Commission supported it's definitions subcommittee's work, Ms. Czysz offered that as the Commission has yet to review a final proposal and some Commissioners, she included, have yet to determine whether they support or oppose the definition subcommittee's recommendations. Once a final report is issued by the subcommittee she, representing the Office of Energy and Planning (OEP), will be required to review the recommendations with OEP's director, who in turn will need to seek the advice of the governor's office, before she may vote to support or oppose their work.

Representative Spang recounted the many caveats she has heard from individuals opposed to utilizing the NH Method. Some reasons not to support its use included that the comparative method was never meant to be used this way, it is not really as statistical as it looks, it requires a significant amount of subjective profession judgment, and it is a "weird" way to set setbacks. At no time has she heard support of using the NH Method.

Mr. Morin has advised the organization he represents that he believes the NH Method may present a viable option as the definitions subcommittee has presented it. He reckoned that many Commission members believed there was something in the definitions subcommittees draft to work with and if Representative Spang had been given the impression that there was no support for utilizing the NH Method that was not the impression he had as a member of the Commission. He noted that the Commission was just not far enough along to find out if some of the issues could be overcome by using the current version of the NH Method or whether we should wait for the revised edition to be issued, but we have not seen it yet to make that decision. Conceptually, he believed there were many on the Commission who thought there was something positive before the Commission in which to work with.

Mr. Doran agreed with Representative Tupper's perception and what Mr. Morin had stated, in that the definitions subcommittee had made progress. The subcommittee was at the point of working with the draft proposal compiled by Mr. Gove and overcame an enormous learning curve. He recalled being taken aback by the introduction of HB 222 during the 2009 legislative session and that many on the Commission testified that it was premature, he being one of those testifying. Despite general conversation of preparing alternative language as an estimate for this general timeframe, the reality was that the Commission was now at the point of making great progress but not a final product. Representing an organization that would be regulated by HB 222 he has concerns that as currently drafted it is extremely broad and may be interpreted to be confiscatory or a taking, particularly the buffer depth. Mr. Doran added, there were some significant issues that have yet to be defined, studied, resolved, or agreed upon. If we put something in place that is problematic to begin with, we will only create

more problems for ourselves. He recommended we wait so that it can be done right the first time.

Next, Representative Spang inquired about the fundamental basis of the bill's proposed amendment and whether RR&D members and Commissioners would support it if it utilized the new NH Method. She also asked what we were waiting for? Mr. Doran responded that the NH Method was good at a certain level but it was still imprecise. It was currently being revised and improved and he would not vote to support utilizing the new version of the NH Method until he was able to see and review it to ensure that it was the appropriate measuring stick to generate the necessary empirical data.

Mr. Walker noted that the NH Method is appropriate for determining an individual wetland's value. However, he questioned the appropriateness of its application being set in legislation, particularly if legislation included specific score thresholds relative the functional values of wetlands based on the new version of the NH Method, to do so would be premature. For example if legislation were to specify the score of 0.5 as a threshold for a specific function, repeated application of the evaluation mechanism may later find that the specified score may not truly be the median value as might have been intended.

Representative Spang inquired whether all would feel more confident moving forward using the existing version of the NH Method and legislating a transition to the new version of the NH Method after 12 months. Mr. Walker responded that the new NH Method may be acceptable in determining valuable wetlands and that a 100-foot buffer may be more than adequate. However, Amanda Stone made it clear in her presentation to the Commission on the new NH Method that the authors would take as much time as is necessary to complete their revisions and would not be working to meet other's deadlines.

Mr. Stanley noted that the definitions subcommittee's draft language developed thus far came out of a desire to create an objective approach. However at this point there was yet to be full agreement within the subcommittee. Relative to the draft amendment to HB 222 presented at the meeting, he noted that paragraph 7 needed better parameters.

Representative Spang requested that the group move beyond a discussion of progress, or the lack thereof, as it was not constructive. She asked, could all agree to propose something simple to allow DES to go back to what it was always doing? Ms. Darrow felt that simple was do-able, but does not understand why it needs to be immediate and that the Commission was not made aware of a November recommendation to propose legislation. Representative Spang reminded Ms. Darrow that the meeting attendees were no longer discussing the progress of the Commission relative to the timing of legislation.

Representative Kepner said that legislature needed to do something now to grant back DES' authority to review indirect impacts. She reiterated that DES once had the authority to address indirect impacts, then the Greenland case occurred and the court removed that ability, but the court also said in that decision that the legislature had the right to give DES back that ability. Her opinion was that was all RR&D is doing, giving back that right to review indirect impacts but that the issue was being complicated.

Representative McClammer followed Representative Kepner's thoughts saying there were many people that had been involved in the process for a long time. It now appeared that we were at a point where some form of incremental approach might meet the objective of developing a process to look at those activities that occur in upland areas that might have an impact in wetland areas. He proposed that RR&D and the Commission now draft simple legislation to meet that simple objective and that legislature give the Commission and DES the responsibility of addressing the many individualized issues that have been identified at the table. Rather than talk about process, the meeting should focus on determining where all groups concur.

Mr. Miner noted that he would need to take the draft back to the Fish and Game Commission for their review and vote as to whether to support it. Also, Fish and Game has been waiting to see the actual revised new version of the NH Method before voting to support using it. He could definitely see the benefit of working collaboratively with as many groups as possible on the Commission to develop the best results. To which Representative Spang fully agreed, stating her devotion to utilizing commissions to develop critical compromises.

Ms. Demming noted that Audubon has not yet voted on the issue, however, believes the NH Method was appropriate for use in determining where evaluation was needed. Ms. Lyons noted that she is a member of the Water Council, which heard the Greenland appeal, and could see where having specificity in statute relative to the review of indirect impacts would be beneficial. She also felt however that taking time to create that is important.

Mr. Walker posed where the collective should go from here? He stated that legislation could occur this year that lays out simple parameters, however not as simple as those presented in HB 222 as introduced, nor as prescriptive as in the draft amendment, there was a need to find a middle ground, leaving the details to administrative rules. The concept of a buffer could be laid out in legislation as most agreed that it was an appropriate means of addressing indirect impacts. The resulting decisions to make were first, how big was a buffer and second, what happened within the buffer? He suggested that the draft work of the definitions subcommittee, rather than become the basis for legislation, would be more appropriate as the foundation for developing administrative rules. The rules could determine the actual width of the buffer. He also stated that the permitting standard should be kept simple. It makes sense to use the same standard as exists currently for direct impacts: i.e., avoid, minimize, and mitigate.

NHANRS agrees that a maximum of a 100-foot buffer is best, anything beyond that should be reserved for the most significant and rare wetlands. Representative Spang questioned whether some interest groups would find 100-feet an insufficient width? Mr. Stock added that currently we do not have a buffer, the draft bill amendment proposes a 300 to 500 foot buffer, and the definitions committee had limited the buffer to between 50 and 100 feet. Representative McClammer responded that the universe was on the table now as it is the whole site that is reviewed, buffers would limit that review.

Representative Spang asked if the Commission could develop an alternate recommendation at their November 23, 2009 meeting. Ms. Darrow, noted perhaps, however it would be hastily crafted. Representative Moody reminded all that there would be numerous opportunities to amend the bill's language during the legislative process. Representative

Spang asked Mr. Anderson whether the Senate has until June to work on this bill? Mr. Anderson believed that yes, they would have time to work on it but that it is up to the Senate to determine its time frames.

Ms. Olsen of the New Hampshire Municipal Association (NHMA) addressed the Commission and informed all that the NHMA relies on and places trust in the State's legislative process and would like the Commission to finish its work before acting on HB 222. The timing of the hearing and executive session on this bill made it difficult for NHMA to internally formulate a response or position.

Mr. Morin felt that conversation thus far presented a misreading of the Greenland case in stating that DES had lost its ability to review indirect impacts. In fact DES never exceeded its authority when reviewing the Greenland application and that the court's response was instead directed at the local conservation commission that was asking DES go exceed its authority. The court stated that DES conducted its review as authorized, was not erroneous in its decision nor did it fail in its review of the wetlands impacts, and that DES could not go beyond the review of direct impacts to consider indirect or post construction impacts. To support these assertions he read a section of the courts decision.

Mr. Irwin said that it was great that NHANRS was working on this and asked Mr. Walker if his draft was far enough along that it could be used at the Commission's meeting on November 23rd? Mr. Walker responded that he would first need to return to the NHANRS legislative committee and gain their endorsement first and he would try to do so in time for Monday. He reiterated that while NHANRS would like to move legislation along, it wants to ensure the language is fully vetted first.

Representative Spang noted what she had heard at the meeting was that the Commission was progressing and would appreciate not being rushed to a premature conclusion. RR&D's intent was to hear any ideas or proposals that the Commission might have at this point. Representative McClammer noted that what he heard at the meeting was there were diverse interpretations and that the attorneys differ on their reading of the Greenland case. What was clear to him, as stated in the Greenland case, was that the court directed legislature to set statutory policy for DES to follow. He was a strong proponent for putting legislation forward now relative to the impacts of upland development on wetlands. To do so he recommended removing the methodology from the draft amendment as if the bill gets too specific, it would not progress in a timely fashion. He recommended developing simple language that might not be as objective as can possibly satisfy all interests, but might "get the ball-rolling." Following which, all interests would have the opportunity to weigh in through the Commission which could come back through the process to modify the statutes.

Representative Spang thanked all present and the Commission members for taking on this "Herculean" task. She looks forward to hearing from Commission members either individually or as a group as to how we may constructively take advantage of this bill and the upcoming year to really make a difference. She believed there was an opportunity here in the State of New Hampshire to take the lead nationally in how indirect impacts are dealt with; it's a very exciting time.

**IV. ADJOURNMENT**

The Meeting was adjourned at 3:15 PM.

**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**

November 23, 2009 \* 1:00 PM  
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  
Representative Chris Christensen, NH House of Representatives  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon Association  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Jasen Stock, NH Timberland Owners Association  
Peter Walker, representing NH Association of Natural Resource Scientist  
Rene Pelletier, representing NH Department of Environmental Services  
Johanna Lyons, NH Department of Resource and Economic Development  
Cheryl Killam, NH Municipal Association

**Other Attendees:**

Joel Anderson, Staff, NH House of Representatives  
Carolyn Russell, NH Department of Environmental Services  
Representative Judith Spang, NH House of Representatives, Resources, Recreation and  
Development Committee  
Gina Rotondi, Rath, Young and Pignatelli/NH Shorefront Association  
David Shulock, Brown, Olson & Gould  
Representative Susan Almy, NH House of Representatives  
Michael Licata, NHBA  
Adam Schmidt, Bianco Professional Association  
Representative Andy Renzullo, NH House of Representatives, Resources, Recreation and  
Development Committee  
David Frydman, House Legal Counsel at NH House of Representatives  
Paul Currier, NH Department of Environmental Services  
Mary Anne Tilton, NH Department of Environmental Services  
Collis Adams, NH Department of Environmental Services  
Susan Olsen, NH Municipal Association  
Representative Jim McClammer, NH House of Representatives, Resources, Recreation and  
Development Committee

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:05 PM.

**II. APPROVAL OF MINUTES**

Mr. Stanley moved to approve the minutes of the September 21, 2009 meeting. Representative Christensen seconded. The minutes were accepted unanimously.

Due to the lack of quorum at the October 19 meeting, it was decided by the commission not to take any action on the minutes of that meeting, instead, keep the minutes as a draft document.

No action was taken on the November 16, 2009 Land Use Commission and Resources, Recreation and Development Commission (RR&D) joint meeting minutes. Action was postponed until the next meeting in December.

**III. Discussion of HB 222 – Relative to Fill and Dredge Permits in Wetlands**

Representative Gottling stated that she would not accept a motion on HB 222 and requested the commission to take a position on the bill simply because RR&D had already heard the input and concerns of the Land Use Commission. She added that after the draft amendments moves on to the senate there would be opportunities for everyone to comment and make suggestions. Representative Gottling added that she would like to discuss how they could move forward on the definition subcommittee's work and recognized the hard work of Mr. Gove and his team.

Mr. Doran, as a point of order, stated that HB 222's language to be considered by RR&D was integral to the process of the study commission. He added that he was unclear as to why Representative Gottling declined to receive any proposals for any positions.

Representative Gottling responded that because the bill was pending legislation and also because she thought it did not impede the study commission's work and depending on the outcome of the bill, she believed that the commission was free to continue working as they had been and propose possible legislation at the conclusion of their formal report. Mr. Doran followed up by stating that he objected to the changed position.

Representative Gottling remarked that one of the things that should be kept in mind was that HB 222 was originally a product of the RR&D committee and it was their retained bill. She hoped that the commission would continue in the direction it had been going and at the end would propose a more comprehensive legislation.

Mr. Doran responded that he did understand Representative Gottling's concerns, however he added that the proposed language of HB 222 had changed since the commission last commented on it and that the representatives would want to know the commission's thoughts.

Representative Gottling responded by saying that she appreciated Mr. Doran's concern and stated that at this point it was out of the hands of the commissioners as the bill was going for the executive session the next day (November, 24, 2009) and added that she would consult with the House of Representative's attorney as how this fit with the commission's charge.

Mr. Walker presented a draft language prepared by New Hampshire Association of Natural Resource Scientist (NHANRS) to be considered by the Land Use Commission as an alternative to the current language of HB 222. He stated that some natural resource scientists had seen the original “November 10<sup>th</sup>” language and had a number of concerns about the language. Mr. Walker stated that the draft language was intended for the commission to look at, but given the fact that an executive session for HB 222 was scheduled for the next day, he was uncertain as to how it would fit into the process. With the commission’s permission, he went forward with the discussion of the draft language. The NHANRS draft is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/nhanrs\\_draft\\_112309.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/nhanrs_draft_112309.pdf)

Jim Gove questioned the use of the word “maintenance” under paragraph I (a). Mr. Walker responded that in that sub-paragraph there were two things NHANRS intended to change. They wanted to use the word “operation” for maintenance and the phrase “aquatic resources” was carried over from the November 10<sup>th</sup> language as opposed to “surface waters.” NHANRS was more comfortable in using the phrase “surface waters”.

Mr. Gove mentioned that he understood the intent of paragraph III, however, he thought it was confusing because in his mind, as soon as a buffer width is established, it would be subject to the jurisdiction of the department. He added, it probably should say that it would initially require a dredge and fill permit for direct impacts. The paragraph could be construed to say you would essentially placing a buffer around every single wetland across the state whether there exists a direct impact or not, so this might be something the commission should look at. Mr. Walker said, it was a good point and this was the reason why he wanted the committee to look at it.

Mr. Gove went on to paragraph V, and said he understood that Mr. Walker wanted to leave room for flexibility and modification, but did not believe the legislative services would pass a “may be”. He said it needed to be more definitive. Mr. Walker agreed and said his organization wanted to see some basis for the width of the buffer being tied to functions and values therefore, New Hampshire Method was mentioned. Mr. Walker added since early November, the New Hampshire Method working group members informally expressed to him that the New Hampshire Method was not appropriate for this. As a biologist he disagreed with them, but was not sure where it would windup so that was why paragraph V was kept open ended. Mr. Walker continued that it probably would be better if the New Hampshire Method or any other similar methods were not referenced; instead there should be a statement saying the width of the buffer should be based on the functions and values.

Representative Gottling commented that one of the main things the commission had been struggling with was to create a mechanism that would be consistent and offer some degree of quantitative assessment. Mr. Gove commented that one needed to have a method that was easy to apply and numeric value or numeric ranking based. He added that he had not come across any other method that delivered both.

Representative Gottling Recalled that Ms. Stone, during her presentation, suggested that revised New Hampshire Method would be presumed to be used by professionals because of its historical use by professionals have gone very well. Therefore, Representative Gottling

would like to give the Department of Environmental Services (DES) some credible numbers to work with. She added, as discussed before, the New Hampshire Method could be used, but reports made by the use of any other methods could also be submitted as additional information.

Mr. Stanley's principal comment was on the section on exemptions (paragraph IV), "projects on single residential lots of records should be exempt." Mr. Stanley commented that the most egregious wetland violations probably occur on single lot residential land that are near a hundred acres wherein one could easily hide violations. He recommended considering size limits to address this.

Mr. Doran commented that he supported the subcommittee's recommendation that direct impacts would trigger indirect impact review, however, did not find it clearly stated as such in the opening paragraph (I) where it referenced the impact to the functional value of wetlands and surface waters as the intent of the legislation, or subparagraph (c) established the potential range of the buffers that were depended on the functional values. Mr. Doran asked if the first direct impact would trigger the application process that would require a project to be engineered that would include the establishment of functional values of the wetlands, would that determine the buffer width?

Mr. Walker responded, yes, and this would only apply to projects where there was a direct impact and the buffer would apply to all the wetlands in the property not just the one that were directly impacted. The intent was, if there were an encroachment within 100 feet of the edge of the wetland, a functional value assessment and the establishment of the buffer would be required. But, if the land parcel was 100 acres and the wetlands were 1000 feet away, an encroachment in one of the wetlands may not be applicable to the others and should not require an assessment. Mr. Doran summarized by asking: thinking of it as an algorithm, the first step would be to determine if there has been a direct impact, the second step would be to look at the project and determine if the project within it foresees encroachment upon any of the wetlands 100 feet or less. Then look at those wetlands on the property that would be encroached and determine the functional value of the wetlands and potential impact and set the distance within which someone can encroach? Mr. Walker concurred. Mr. Doran then recommended revisions to clarify the intent.

Mr. Walker replied to an inquiry by Mr. Pelletier that the document was drafted because HB 222 was moving forward and NHANRS did not support all the language of the current draft. NHANRS would like to see the bill moving forward with language that they could support and also acceptable by the commission. Mr. Pelletier followed up by asking if Mr. Walker's intent was to simply massage the proposed HB 222 amendment language and/or to use the draft as the baseline for future amendment to HB 222? Mr. Walker responded that they put the draft out for discussion and possibly offer it as an alternative to the language of HB 222 at a future opportunity for amendments.

Representative Gottling referred to an email Mr. Walker sent to her and asked him to explain to the group his concern about the score "0.5." Mr. Walker stated that one of the main issues regarding the draft language of the work of the subcommittee and the language of the "November 10<sup>th</sup>" amendment was regarding the use of a specific value (0.5) out of the New

Hampshire Method and tying that to the buffer size. When the subcommittee presented their work in September, they were well aware of the issue and Mr. Gove stated that the value used in the document was a space holder and more work and thought was needed on this. He added that unfortunately the “November 10<sup>th</sup>” draft language duplicated this and in fact the actual values were lowered. He went on and stated that the lowest value achievable is 0.1 for almost all of the values. So the perception that it was a scale of 0 to 1 was not correct for most of those functions and hence, 0.5 was not the average score nor the median value and it would differ depending on which functional value was assessed.

Representative Gottling expressed her disappointment that despite the New Hampshire Method had been around for 18 years; there was still no real database of wetlands in New Hampshire. She noted of the things she would like to see happen was the development a database.

Mr. Gove commented that there needed to be a series of benchmark wetlands, ranging from the worst to the best and located relatively close to each other and evaluated by the revised New Hampshire Method. One could go back to a wetland anytime and look at the score of any function. We could look at these benchmark wetlands and their scores and make determination as to what the “number” should be.

Representative Gottling added that those who went on to the fieldtrip with Joe Homer found it to be exceptionally helpful to have three types of wetlands to look at and their functional values. It was clear how much a worthwhile evaluation of wetlands could benefit everyone.

Mr. Stock mentioned that he had two comments, one was specific to the language of paragraph III and the other one was more general. He portrayed a scenario of a 100-acre parcel but only 5 acres of that land was to be disturbed. The parcel had several wetlands scattered throughout, if the project was designed as such that there was no direct impact to the wetlands but the disturbance was within 100 feet of the wetland, would this require an evaluation? Mr. Walker responded “No.” Mr. Walker stated that he was personally concerned about placing an excessive burden on the Department of Environmental Services (DES).

Mr. Stock’s general comment was whether there would be any contemplation as to what a municipality could use as a setback, while crafting the language. He referred to earlier discussions about conflicting regulation of buffers between the municipal and the state government. He asked whether there would be a value in adding a provision to consider a municipal setback or at a regional planning level. Mr. Stanley responded that he agreed that it needed to be looked at regionally and towns should have some sort of methodology that they could follow for some objective reasons. He added that they need to have an approach and standards that when applied statewide would not arbitrarily inhibit development but protect the resources that are essential.

Mr. Stock followed up on Mr. Stanley’s comment on statewide zoning verses the regional approach, and asked if there was a way to craft it so that both ends could be achieved and not fall in the statewide zoning trend?

Mr. Walker remarked that the 100-foot buffer was a balance between property right interests and environmental protection. He added that there was literature supporting buffers greater than 100 feet for certain circumstances. NHANRS was comfortable with 100 feet; he added that the group might want to have a discussion as to if 100 feet would be enough in all cases. Representative Gottling added that more work was needed on this issue and in terms of wildlife habitat, 100 feet probably would not be sufficient but would that be necessary for every wetland? Ms. Deming responded that 100 feet of buffer was recommended in the 1990s based on water quality studies to protect the waters. She was not sure since then if there were better information as to what distance would be best. Mr. Walker responded that in terms of water quality, all the current information still suggests 100 feet of distance being reasonable for protecting the quality of water. He reiterated NHANRS intent, that was to work with the Land Use Commission, therefore, he requested for some directions and some guidance from the commission on the draft language.

Mr. Pelletier commented that in terms of HB 222 and legislation, everyone at the table could see the complexity of the situation that was being addressed and that in the next 3 to 8 months the commission should develop a holistic approach to wetlands identification, address the impacts associated with wetland development and, at the end, propose language for the next legislative session. He added, "Any document that comes out with 12 month rule making is not realistic." He felt the commission was ready to sit-down and talk about direct and indirect impacts and if they were going to have a graduated buffer. He added that they must let HB 222 fall where it might and advocated that the commission did not put something together hastily.

Representative Gottling commented that she has great confidence that everyone in the commission would talk to the group they represented and would bring back their input and concerns to be addressed throughout this process. She added that the tasks she noted down for the commission were; to develop a system for numerical functions and values; and to work on regional evaluations to get benchmark wetlands within their own areas.

Mr. Walker asked how should the commission proceed? Representative Gottling said in her opinion it should be taken to the subcommittee again and possibly those who had not been in a subcommittee would join to make a larger and more represented group. Mr. Gove requested interested members to send him an email to join the subcommittee.

Mr. Walker suggested that this being a standing agenda each month to address the indirect effects.

#### **IV. "Research on Alternative State Programs Subcommittee" Presentation**

Ms. Czysz stated that this subcommittee took upon the third duty of the commission that asked for integrating the various and exiting controls, techniques, and regulations that impact land use development patterns. The subcommittee identified that there were additional things such as, incentive programs, technical assistance program, grants, permits, publications and other wide range of things that all sought to promote the balance between development and the ecosystem.

The presentation is available at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/presentation112309.pdf>

The matrix that was presented is available at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/00\\_matrix\\_rev\\_112309.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/00_matrix_rev_112309.pdf)

Ms. Czysz stated that her subcommittee hoped to make a series of individual presentations before the commission each month. She added that she would talk about “Smart Growth and Land Use Planning” and present a program in Vermont. And she hoped in December Peter Walker would give a presentation on state environmental protection policy acts. Mr. Walker stated that it was evident that New Hampshire was the only state in the North East that did not have a comprehensive environmental policy. There were good programs individually, but there was nothing that wove New Hampshire’s regulations together. During his presentation he will cover Vermont’s Act 250, Maine’s Site Location of Development laws and Massachusetts’s Environmental Protection Act.

Ms. Czysz added that there are two more topics that the subcommittee would like to present; one was an update on DES’s coordinated permitting initiative and the second a comparative review of New England’s wetlands programs.

Mr. Pelletier asked if he owned a parcel of land at an area that the town had identified as outside a growth center, what that would mean to him? Mr. Czysz responded that for DES it might mean fewer permit applications that do a better job of protecting the environment. As a property owner it might mean he would be in an area zoned for low-density residential development or for agricultural purposes. The designation of those areas would be directly correlated to the existing and planned future development patterns and environmental resources of the community.

Representative Christensen asked, referring to the hypothetical scenario of Mr. Pelletier, would not having a 1,000 acre parcel you own be designated as outside a growth center and zoned low density or agriculture be considered snob zoning?

Mr. Stanley responded that if a community in which this was occurred had a master plan that was based on a good natural resource inventory, and had identified where the best land for agriculture was located and the zoning was based on that, than that would be justifiable. Zoning in it by itself would not constitute a taking if it was based on reasonably good planning principles that looked at and evaluated all resources. Ms. Czysz added that this coupled with the variance (the safety valve of the ordinance) ensures that such zoning is not considered a “taking.”

Mr. Walker asked how the growth center program would improve or differ in New Hampshire? Ms. Czysz responded that it tied with the two other existing programs in New Hampshire (research sheets were distributed for each). The first was the state’s smart growth statute, RSA 9-B. The Vermont program would serve as an incentive to communities to implement the smart growth principles locally. The second item is New Hampshire’s Housing Conservation Planning Program that would guide municipalities through the process

to identify their housing stock, historical resources, natural resources and develop a strategy for growth and development in a way that minimizes impacts on natural resources.

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

Rep. Gottling confirmed that the next meeting would be held on December 21, 2009.

Representative Gottling reported that Representative Spang said that Governor Glendening of Virginia is traveling and giving speeches on issues related to the works of the commission and offered to speak with the commission. She asked if the commission would like that. Ms. Czysz added that Governor Glendening is one of the nation's smart growth leaders and an impressive speaker.

**VI. ADJOURNMENT**

Mr. Doran made a motion to adjourn the meeting; Mr. Gove seconded it. Chairperson Gottling adjourned the meeting at 2:57 PM.

**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**

December 21, 2009 \* 1:00 PM  
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  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Jasen Stock, representing NH Timberland Owners Association  
Peter Walker, representing NH Association of Natural Resource Scientists  
Rene Pelletier, representing NH Department of Environmental Services  
Johanna Lyons, NH Department of Resources and Economic Development  
Charles Miner, Jr., representing NH Fish and Game Department  
Erin Darrow, P.E., representing American Council of Engineering Companies of New  
Hampshire

**Other Attendees:**

Joel Anderson, Staff, NH House of Representatives  
Carolyn Russell, NH Department of Environmental Services  
Gina Rotondi, Rath, Young and Pignatelli/NH Shorefront Association  
David Wiesner, Brown, Olsen & Gould  
Alex Koutroubas, Dennehy & Bouley  
Representative Frank Tupper, NH House of Representatives, Resources, Recreation and  
Development Committee  
Representative Judith Spang, NH House of Representatives, Resources, Recreation and  
Development Committee

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:11 PM.

**II. APPROVAL OF MINUTES**

Mr. Doran moved to approve the minutes of the November 16, 2009 meeting. Mr. Gove seconded. Ms. Czysz read the amendments from Mr. Walker. The minutes were accepted unanimously.

Mr. Gove moved to approve the minutes of November 23, 2009, Mr. Pelletier seconded. The minutes were approved unanimously.

**III. Discussion with House Clerk**

Karen Wadsworth, who is a well-versed house clerk on appropriate actions for a commission, was unable to attend the commission meeting due to scheduling issues. Representative Gottling mentioned that she would try to schedule her to attend the next meeting to answer questions regarding proper actions of the commission.

**IV. “Research on Alternative State Programs Subcommittee” Presentation**

Mr. Walker made a presentation titled: “Comprehensive Land Use Regulation in Vermont, Maine and Massachusetts. Mr. Walker mentioned that New Hampshire is the only state in the northeast without a comprehensive environmental policy and regulation program. His presentation is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/pete\\_walker\\_presentation.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/pete_walker_presentation.pdf)

Mr. Walker added that Carolyn Russell would present a report on progress towards a New Hampshire Department of Environmental Services (NHDES) Coordinated Permitting Program at the meeting next month (January 11, 2010) and Laura Deming of New Hampshire Audubon Association is researching other wetland programs and would present a comparative review of New England’s wetlands programs at the following meeting (February 8, 2010).

Mr. Doran referred to the last bullet of Slide 26 and asked whether it was a fact or an opinion that statewide comprehensive review policy should be considered partially because “the Wetlands Bureau is being asked to do too much.” Mr. Walker responded that it was his opinion that the Wetlands Bureau was frequently asked to go beyond its authority. Mr. Pelletier added that currently the bureau is functioning well, but adding a comprehensive environmental program, holistically would be too much for the Wetlands Bureau.

Representative Spang asked how do states review historic resources? She added how would the Wetlands Bureau strike a balance between historic sites and wetlands in a case where a site containing historic resources have impacted wetlands. Mr. Walker responded that the Bureau’s standard was to select the least impacting alternative among them all. He added, if a proposed project was going to impact wetlands (or more than acceptable) to avoid a historic structure hence creating a potential conflict, the New Hampshire Division of Historical Resources (DHR) would need to come together with the Wetlands Bureau and work out a

compromise. He stated that RSA 227-c requires all state agencies to cooperate with DHR; therefore the Wetlands Bureau has some responsibility and authority to look at issues regarding cultural and historic resources. The commission wanted to know if this was applicable to all projects or only state funded projects. Mr. Pelletier responded that it was applicable to all projects.

Mr. Doran asked what would businesses seeking to relocate to New Hampshire from Maine and Massachusetts gain from implementing such a program? What are the current disadvantages for not having this program and what would be the benefits of having it in terms of lifestyle, growth, economic viability, etc.? Mr. Walker responded that the extended discussions on indirect impacts have motivated this. He added that the common perception was that New Hampshire may have gaps, particularly as the transportation and traffic issues are handled at a local level and there was dissatisfaction with how that review took place. He asked if there was something the state should do through New Hampshire Department of Transportation (DOT) for this? He added that that they heard from New Hampshire Fish and Game Department and their concern with the loss of habitat in the state.

Ms. Deming added that the subcommittee recommends a full commission review of pros and cons in terms of demographics, growth and the full economic picture, as it was a very large task. Ms. Czysz added that the intent of the subcommittee was to present to the commission the most compelling findings they came across and sought their feedback and guidance as to the direction the commission would like to go once the series of presentations was over. Ms. Czysz went on saying that in some cases, experts from state programs could be invited for their help with in-depth work to understand the pros and cons before any recommendations were made.

Ms. Czysz responded to Mr. Doran's concerns by stating that the population trend of New Hampshire has remained unchanged for the past few years. In fact, New Hampshire is losing population, particularly in the younger age group due to lack of community centers and vibrancy within the community centers and lack of opportunities to socialize after work. She added that some of these programs were to give incentives for higher densities and revitalizing downtowns. The programs would encourage higher densities in certain areas, making housing affordable, but at the same time channel away from natural resources.

Mr. Gove commented that Maine's program is not anti-development, instead does a good job balancing and coordinating all aspects of a site. He suggested that it might be a good idea to look at Maine's site location law more closely.

Mr. Stock asked how would the Land Use Regulations Commission (LURC) review developments in Maine's unincorporated areas? Mr. Walker responded that he was uncertain and would get back to him on that. Mr. Gove suggested that he could get someone to speak on LURC. Mr. Walker added that there are large unincorporated areas with large developments in Maine; however, LURC does not supersede Maine's site law.

Mr. Stock urged the commission to look at litigation costs associated with various programs; he added that a good program needed to be "tightly" crafted to avoid gray areas.

Mr. Pelletier asked if Mr. Walker could provide comparison of the ratio of projects that are reviewed by the state that go through the programs. For example, if there were 2000 projects in Vermont, how many would rise to the level of state environmental review. Mr. Walker responded that qualitatively, Maine's Site Law would catch the least. The Massachusetts Environmental Policy Act (MEPA) would be in the middle and Act 250 would catch the most, quantitatively he did not have the proportional data in hand.

Mr. Doran referred to the trip to Dartmouth Brook following the presentation of Mr. Brunetti where it was noted that they were "coaxed" by the federal agencies into doing things that were not part of the regular system. He asked if that was the effect of National Environmental Policy Act (NEPA). Mr. Walker responded that had nothing to do with NEPA, but US Environmental Protection Agency (EPA).

Mr. Stock commented that there have already been a few bills in New Hampshire to create a State Environmental Policy Act (SEPA). Representative Gottling requested Mr. Stock to forward the bills to the commission.

Mr. Walker commented that Maine's Site Location of Development program was similar to the program of New Hampshire's Site Evaluation Committee but just a little more comprehensive. He added that a statewide comprehensive review process in New Hampshire already existed. For example, when an energy project reaches a certain size it automatically triggers RSA 162-h for a comprehensive review process and preempts all local regulations.

Representative Gottling believed that the three important things to consider or keep in mind were:

1. Some programs dealt with towns without zoning
2. Having timelines for applicants and agencies
3. More public access, input and more deliberations

Mr. Pelletier stated that the first thing the commission needed to determine was where New Hampshire was failing environmentally. He went on by saying that the commission has to figure out how it would be done, as it is not simple and a broad-brush approach would not work. For example, NEPA is policy and 404 are regulations and they do not blend automatically. Mr. Walker responded that a discussion would be needed to understand all the potential benefits that are out there. If we "borrowed" one of these programs, it probably would not fit. He thought that there was potential benefit from the applicant's perspective; he would like to see a predictable clear process, clear standards and a timeline. He believes the New Hampshire system works most of the time but there is room for improvement. Mr. Doran thanked Mr. Walker and complemented him on his presentation, extent of research and expertise.

## **V. Definitions Subcommittee Update**

Mr. Gove informed the commission that there have been some changes with the members of his subcommittee. He added that Carol Henderson would replace Charles Miner as a member. The current list of members is as follows: Jim Gove, Representative Sue Gottling, Erin Darrow, Peter Stanley, Peter Walker, Laura Deming, John Doran, Paul Morin and Collis Adams who would be sitting in for Rene Pelletier. Mr. Gove invited anyone else who would

be interested to join the group. Mr. Gove went on and stated that he wanted to refocus with the new Definitions Subcommittee and move forward with some real proposals for which he sent out questions to his subcommittee, but only got 4 responses back.

Mr. Gove stated that the subcommittee decided to use the terminology "Indirect Impact" instead of "Secondary Impact." Mr. Gove asked his group whether a functions and value method of assessing wetlands should be used. The subcommittee's response was "yes." He asked if RSA 482-a was the appropriate vehicle for assessing indirect impacts on wetlands, and the subcommittee's response was "no." He then asked whether or not to continue their approach to utilize the New Hampshire Method for wetland evaluation. One concern he received was that the New Hampshire Method was not good for comparing wetlands. Mr. Gove responded that he understood that was a concern but did not believe that was necessarily true. He added that the rest of the respondents were in favor of using the New Hampshire Method. He next asked whether the key functions to be considered were water quality, water quantity and wildlife habitat. The responses were "yes". He then asked whether they should have a numeric value of the New Hampshire Method or qualitative. The response indicated that it was important to have a numeric value and to be able to measure. He also asked if anyone would suggest any other evaluation methods, but there were no other suggestions that were worth considering. He added that the New Hampshire Method was not too difficult, but one subcommittee member suggested creating a new system.

Mr. Gove asked what would be the best time for the subcommittee to meet regularly; the suggestions were either before or after the regular full commission meeting. Mr. Gove stated that his preference would be to have the subcommittee meeting before.

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

As the previously scheduled date for the meeting in January conflicted with Martin Luther King Day, Representative Gottling asked for a date. Ms. Czysz suggested moving up the meeting date to January 11, 2010. For February, the commission suggested February 8, 2010 due to similar circumstances. The commission agreed upon both of the proposed dates.

Representative Gottling reminded the commission of the upcoming bills in January, those being HB 222 and HB 681. Mr. Pelletier suggested that he would bring the list of bills that they are tracking that might be important to the works of the commission.

**VII. OTHER BUSINESS**

Mr. Gove requested the Definitions Subcommittee could meet at 11:00 am on January 11, 2010 and February 8, 2010.

**VIII. ADJOURNMENT**

Mr. Pelletier made a motion to adjourn the meeting; Mr. Gove seconded it. Chairperson Gottling adjourned the meeting at 2:57 PM.

**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**

January 11, 2010 \* 1:00 PM  
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  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Jasen Stock, representing NH Timberland Owners Association  
Rene Pelletier, representing NH Department of Environmental Services  
Johanna Lyons, NH Department of Resources and Economic Development  
Representative Chris Christensen, NH House of Representatives  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Senator Harold Janeway, New Hampshire Senate, Senate District 7, Capital Budget Committee, Finance Committee, Ways and Means Committee, Wildlife, Fish and Games and Agriculture Committee

**Other Attendees:**

Carolyn Russell, NH Department of Environmental Services  
Paul Currier, NH Department of Environmental Services  
Representative Andrew Renzullo, NH House of Representatives, Resources, Recreation and Development Committee  
Representative Susan Almy, NH House of Representatives, New Hampshire House Ways and Means Committee  
Representative Ron Mack, NH House of Representatives, New Hampshire House Ways and Means Committee

**Commission Staff:**

Dari Sassan, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:05 PM.

**II. APPROVAL OF MINUTES**

Mr. Doran moved to approve the minutes of the December 21, 2009 meeting and Senator Janeway seconded. The minutes were accepted unanimously.

**III. Discussion with House Clerk**

Karen Wadsworth, who is a well-versed house clerk on appropriate actions for a commission, reminded the commission of their duties, which included providing recommendations for formal legislation. She added that a study commission might not take a position on legislation that is before a house committee.

Mr. Doran asked whether that was codified. Ms. Wadsworth responded that it was not but was the practice and precedent of legislature. Mr. Morin inquired whether there was a distinction between a study committee and a commission. Ms. Wadsworth replied “not necessarily,” and added they both have the same standing.

Mr. Morin asked if there was anything preventing a commission from taking a position on a pending legislation. Ms. Wadsworth replied in keeping with her previous response, “it is never done, it is the practice and precedent of legislature”. She added that the statute does not give the commission authority to take any position.

**IV. Report on Progress Towards a NHDES Coordinated Permitting Program**

Ms. Carolyn Russell from the New Hampshire Department of Environmental Services (DES) made a presentation titled: “DES Innovative Permitting Initiative”.

She stated that the goals of Innovative Permitting Initiative (ITI) were to have more projects achieve superior environmental performance that would provide better overall environmental outcome, also to facilitate permitting of superior projects. She added that key lessons were taken from other 8 states (MA, ME, RI, MI, IA, MN, VA, NJ).

The presentation of Ms. Russell is available online at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/presentation011110.pdf>

Handout is available at: <http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/handout011110.pdf>

Representative Christensen asked if the inputs (from both municipalities and developers) showed a relationship between the size of the community and development control? Ms. Russell responded that there was a universal desire for local control over use and location. On wetlands issues there was a difference between large and smaller municipalities, where the smaller towns desired more state (DES) involvement. Regarding developers, Ms. Russell said they looked at various types of projects, large and small, and they all had similar messages.

Mr. Gove asked Ms. Russell as to what type of assistance she was seeking from the commission to assist the process. He added, what would be an appropriate communication or interaction between her agency and the commission. Ms. Russell responded that she did not

have a clear request at this point. She believed right now the purpose was information sharing and added that she would be happy to keep the commission updated on any developments.

Senator Janeway inquired about how success would be measured. He added if they envision saving time and money; what did she hope to achieve. Ms. Russell responded that they had envisioned the environmental benefits as the primary measure of success. She added that their intent was to identify methods of measuring energy efficiency of a structure along with identifying the best practices. She mentioned that they intended to use the pilot projects for greater understanding of efficiency. They asked the “developer focus group” as to how long the process should take from the start of a permitting application to the finish of an approval and the intent was to try to stay within the desired time for the whole process.

Senator Janeway stated that the goal is to have a better outcome and efficiency in terms of time and money, but in reality, efficiency does not correlate to the best possible outcome. Similarly, the most innovative, creative and positive outcome takes longer and costs more; if that could be turned around, that would be a great achievement. Ms. Russell replied that they are trying to address that concern and recognized that innovative approaches are more challenging and that is one of the reasons they encourage municipalities to sign on to this initiative.

In response to Mr. Gove’s earlier question, Ms. Czysz mentioned that Ms. Russell has graciously volunteered to participate with the research subcommittee as there were parallels between what the subcommittee was researching and her own research at DES. Therefore, both sides benefited from her involvement and were in a win-win situation. Ms. Russell added that there is a clear connection between what the commission is doing and this project.

Representative Almy commented that the conservation commission would be happy with this approach. She added that speaking for the Ways and Means Committee, the understanding was this approach would be consolidating the permitting procedure, but Ms. Russell’s presentation did seem to concur with that. Ms. Russell responded that it was a core element of their coordinated permit review project, but existing regulations and statutes make this process difficult to achieve. However, she believed that this project would provide good direction and an understanding of how consolidation may take place. Representative Almy followed up by asking what was the timeframe? Ms. Russell responded that she hoped that the Innovative Permitting Initiative component of this project would be up and running within a year and a half as that is when their grant money ends. Mr. Pelletier added that they saw this as the beginning point. Their next step would be looking at consolidation, as this project would help with identifying the required statutory changes. Having the municipalities involved with this process would mean the end product would be efficient and beneficial to all involved.

## **V. Definitions Subcommittee Update**

Ms. Czysz stated that their subcommittee would be continuing their research and work on their matrix. She added that Laura Deming of New Hampshire Audubon Association is researching other wetland programs and would present a comparative review of New England’s wetlands programs at the next meeting (February 8, 2010).

Mr. Gove updated the commission on some of the things his subcommittee touched upon at their meeting. They came to recognize that although many things would come under RSA 487-a, it was obvious that the dredge and fill RSA will not cover everything the commission is discussing. He added that to achieve natural resource protection, RSA 482-a is not the only vehicle as indirect impacts to wetlands, water quantity and quality; impacts to wildlife habitat and corridors would not all fit under this statute. Mr. Gove added that they would be looking to use sound science to evaluate the function of a wetland. His committee would first look at outright exemptions (for man made ditches, retention ponds, etc.) then look at wetlands functions, whether or not it is a priority for protection. The next step would be to develop a matrix of vegetation, landscapes, slopes, and soils to determine the buffer width of the wetlands. The subcommittee would also like to build in some best management practices (BMPs) to figure out buffer width as well. The subcommittee had given substantial inputs; it just needed to be put forth in paper.

Mr. Morin advised the committee to be careful and not get over ambitious as this could become very complicated. One of the biggest challenges would be to keep it simple so that it would be well worked out and well vetted and at the end we would have a solid product. For example, the wildlife piece could present some serious challenges. Representative Gottling reminded the commission that we do not need to write legislation; we need to make observations and recommendations based on both a global overview and detail studies.

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

Representative Gottling reminded the commission that the date for the next meeting would be February 8, 2010 as the original date conflicted with the President's Day holiday (February 15, 2010). The commission agreed upon the proposed date.

Mr. Stock brought copies of HB 652-FN as it was related to the work the commission was performing. He stated that it is a bill that morphed from a broad discussion in environmental policy and got tangled up with a particular "blasting project". Mr. Pelletier added that this bill came to focus because of the "blasting project" and the resultant nitrate contamination. The committee felt this bill was something that needed to be looked at.

#### **VII. OTHER BUSINESS**

Mr. Gove requested the Definitions Subcommittee to meet at 11:00 AM on February 8, 2010. Ms. Czysz requested the Research Subcommittee to meet at 9:30 AM on February 1, 2010.

#### **VIII. ADJOURNMENT**

Chairperson Gottling adjourned the meeting at 2:20 PM.

**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**

February 08, 2010 \* 1:00 PM  
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  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Jasen Stock, representing NH Timberland Owners Association  
Rene Pelletier, representing NH Department of Environmental Services  
Johanna Lyons, representing NH Department of Resources and Economic Development  
Representative Chris Christensen, NH House of Representatives  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Senator Harold Janeway, New Hampshire Senate, Senate District 7, Capital Budget Committee, Finance Committee, Ways and Means Committee, Wildlife, Fish and Games and Agriculture Committee  
Charles Miner, Jr., representing NH Fish and Game Department  
Cheryl Killam, representing NH Municipal Association  
Glenn Smart, P.G., representing the Business and Industry Association.

**Other Attendees:**

Susan Olsen, NH Municipal Association  
Gina Rotondi, Rath, Young and Pignatelli/NH Shorefront Association  
David Shulock, Brown, Olson & Gould, P.C. Biomass Group

**Commission Staff:**

Dari Sassan, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:05 PM.

**II. APPROVAL OF MINUTES**

Mr. Stanley moved to approve the minutes of the January 11, 2010 meeting and Mr. Doran seconded. The minutes were accepted unanimously except for one member who abstained.

**III. SUBCOMMITTEE UPDATE**

Mr. Gove of the Definitions Subcommittee handed out meeting notes of the subcommittee meeting of January 11, 2010 and discussed them in detail. He informed the commission that the subcommittee made a decision to use the term “indirect” instead of “secondary” in discussing impacts to wetlands, regardless of what is used by the Environmental Protection Agency (EPA) and the Wetlands Bureau.

Mr. Gove drew the commission’s attention to item 2 of his handout and pointed out that the key statement was “It is very likely that negative impacts due to indirect activities will occur to some wetlands and not to others. Not all indirect impacts will have a detrimental effect on all wetlands. Not all wetlands need to be protected from indirect impacts”. The subcommittee voted it in unanimously. He added that it was agreed that a numeric evaluation method should be used and therefore, the Army Corps of Engineers Highway Methodology would not be the preferred evaluation system and the revised New Hampshire Method would be appropriate.

The meeting notes of the Definitions Subcommittee meeting of January 11, 2010 are available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/definitions\\_subcommittee\\_minutes012110.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/definitions_subcommittee_minutes012110.pdf)

Mr. Gove added that Commissioner Burack attended their meeting, providing some direction to the subcommittee and discussing having a primary focus on water quality. The reason behind the focus on water quality was that the subcommittee felt they could put together a good matrix of the factors that would affect water quality. The subcommittee also discussed wildlife habitat.

Mr. Gove concluded that the subcommittee’s initial focus would be water quality impacts and creating buffers that directly address water quality issues while recognizing that there would also be some wildlife habitat protection benefits associated with it. The subcommittee also discussed wildlife dependent species, wetlands buffers and wildlife habitat management as suggested by The Natural Resources Conservation Service (NRCS). The wetlands functions that were discussed will go into a matrix that would include: Ecological Integrity; Wetland Dependent Wildlife Habitat; and Fish and Aquatic Life Habitat. Not to be included would be: Educational Potential; Scenic Quality and Water Based Recreation. He also added that exemptions would apply for any man-made ditches, retention or detention ponds that were not made for wildlife mitigation purposes;

basically all Low Impact Development (LID) measures are being put in that work for wildlife habitat.

Ms. Czysz stated that the Research Subcommittee is continuing to work on the matrix and hoped to have a few more updates. She added that the subcommittee plans to do a presentation next month comparing the different New England wetlands programs which will be presented by Laura Deming. She will be looking at the structural differences between the various programs in different New England states.

She mentioned that at today's presentation the commission would be looking at conservation programs. She stated that the goal of the subcommittee is to look at all options through the matrix and narrow it down in order to look in depth at certain programs of interest. In the end, the commission may decide to follow another state's program or may like the way things are done in New Hampshire and keep the program as it is or may decide to modify the existing programs. She added that the subcommittee is still very open to what the final set of recommendations might be and seeking input from the commission.

Senator Janeway commented that in attempts to clearly define indirect impacts, he does not see how indirect impacts can be considered when DES has a policy of disregarding them. Mr. Gove responded that his subcommittee is working on creating a framework for legislation and the goal of the subcommittee is to report back to the commission with some suggestions that include utilizing New Hampshire Method and the matrix as a way of addressing the indirect impacts for future legislation.

#### **IV. Presentation on Land Conservation Strategies and Financing**

Ms. Lyons distributed a handout of her presentation which is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/land\\_conservation\\_strategies.doc](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/land_conservation_strategies.doc)

Representative Christensen asked if she could give an example of a better current use model of another state. Ms. Lyons responded that she did not do much research on comparing current use programs. The author of the study stated that New Hampshire could be a little more flexible as currently it is an "all or nothing" deal; small changes are not handled. She stated that the author believed the Maine model of current use program was better.

She added that many non-profits use revolving loan funds with an infinite number of possibilities for partnerships known as Program Related Investments (PRIs). She then discussed three case studies in detail.

Mr. Gove asked if the third case study (Northwood Area Land Management Collaborative) has been formalized. Ms. Lyons responded that they have a charter that outlines what they are doing; it is very flexible and they did not want to go for non-profit status. Now they have spun-off a friends group and that is their bench. Over time, there would be a larger collaborative like an executive board with crossover between the

friends group, where the friends group would be meeting every month and the collaborative would meet quarterly.

Mr. Doran wanted clarification regarding the first case study (Connecticut Lakes Headwaters Conservation Easement Case Study). He asked if it is a commercial enterprise that works their land and harvests their timber. He wanted to confirm that they conveyed 25,000 acres to the state of New Hampshire through a sale to the Nature Conservancy to protect highly sensitive natural areas and is under current use. Ms. Lyons responded, “yes” to all.

Regarding Northwood Area Land Management Collaborative (NALMC), Mr. Doran asked if it is a voluntary community organization. Ms. Lyons responded that it is, and Carl Wallman (land owner) placed a lot of importance on the wildlife habitat improvements and recognized the value in coordinated efforts and cost saving through collaboration. Mr. Doran followed up by asking if they are bound by any regulations. Ms. Lyons responded “no”; the people were coming together for broad land management.

Representative Gottling asked if anyone would be interested in learning about current use in other states. Mr. Stock mentioned that there is a group called SPACE that looked at other states and stated that he could check with them and let the commission know. He added that calling “current use” a tax credit is a bit of a misnomer. It is actually a different means of assessing land. It looks at the productive capability of the land and, based on the productive capability (whether in terms of growing hay or trees for forest products), the tax rate is determined and it is not unique to New Hampshire. Many communities would take a portion of the land use change tax, or all of it, and place it in a conservation fund. NH’s program, in place since the early ‘70s, has been a model and copied by other states; it is one of the underpinning of the state’s open space.

Mr. Stanley added that land under 10 acres can be under current use so long as it is an easement or wetland.

Ms. Killam added that it was Ellen Snyder who did the Natural Resource Inventory (NRI) plan that they have on their website.

Representative Christensen asked about the collaborative study and the reasoning behind not crossing Route 4. Ms. Lyons responded that their focus right now is on making sure that it is contiguous to state property, and the road interrupts that. Representative Christensen followed up by asking, to make collaborative work, is it necessary that all land be under conservation easement or could the agreement be structured such that current use land would be part of a collaborative. Ms. Lyons responded that most of the land is private ownership without conservation easements. The collaborative could be whatever you set it to be as long as their focus is on land management issues.

Mr. Doran asked whether working with collaboratives such as this would put stress on state agencies in terms of wildlife and environmental protection or even financial issues. Mr. Miner responded that collaborating and working with landowners, towns, and communities is within what they do already. He mentioned that there are small grant

programs of which a portion of their funds go to landowners who carry out management activities. There are also partnerships between a number of federal programs, Fish and Game and the Department of Resources and Economic Development (DRED) that provide financial support.

Mr. Pelletier added that the NH Department of Environmental Services (DES) does not deal with easements. He went on by saying that they look at conservation easements as an alternative to mitigation. If they agree to take a conservation easement as mitigation then they go in with the expectation that there would be someone or some organization that would be managing it.

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

Representative Gottling reminded the commission that the date for the next meeting would be March 15, 2010 and that Laura Deming would be presenting at the meeting. Representative Gottling informed the commission that Commissioner Burack from DES has requested a few minutes at the beginning of the meeting.

**VI. OTHER BUSINESS**

Mr. Smart commented that one of the concerns with transportation is that airports are having issues with wildlife strike hazards, and as a result, are doing wildlife management plans and other similar work. If they come under additional scrutiny by indirect impacts to uplands in proximity to wetlands near airports, it could be a problem for them as they are trying to reduce habitat near airports, so exemptions may be needed in cases like these.

Mr. Smart added that regarding highway projects (particularly I-93) there was something in the memorandum of agreement that required looking at wildlife crossings and his organization did a lot of work for the Department of Transportation (DOT) looking at potential highway crossings for wildlife. He recalled one such wildlife corridor or crossing being implemented.

Ms. Czysz invited Mr. Smart to join their research subcommittee and Mr. Smart accepted the invitation.

**VII. ADJOURNMENT**

Mr. Doran made a motion to adjourn the meeting; Ms. Lyons seconded it. Chairperson Gottling adjourned the meeting at 2:31 PM.

**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**

March 15, 2010 \* 1:00 PM  
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  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon  
Tom Howard (for John Doran), representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Jasen Stock, representing NH Timberland Owners Association  
Rene Pelletier, representing NH Department of Environmental Services  
Johanna Lyons, representing NH Department of Resources and Economic Development  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Cheryl Killam, representing NH Municipal Association

**Other Attendees:**

Susan Olsen, NH Municipal Association  
Tom Burack, Commissioner, NH Department of Environmental Services  
Representative Judith Spang, NH House of Representatives, member of the Resources, Recreation and Development Committee  
Carolyn Russell, NH Department of Environmental Services  
Joel Anderson, Staff, NH House of Representatives  
Lynne Merrill, NH Association of Realtors

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:05 PM.

**II. APPROVAL OF MINUTES**

Ms. Killam moved to approve the minutes of the February 8, 2010 meeting and Mr. Stanley seconded. The minutes were accepted unanimously.

**III. DISCUSSION WITH COMMISSIONER TOM BURACK**

Commissioner Burack of the NH Department of Environmental Services (DES) had asked to share a few thoughts with the commission. He mentioned that although it is his first visit to the full commission, it will not be the last and went on by saying that he made a commitment to engage with the Land Use Commission as well as the Storm Water Commission to help ensure that all are working together to fashion some approaches that can make some differences for the state and address the challenges of the growth impacts on natural resources of the state. Commissioner Burack continued that the challenges we face today are too great to be taken on as we have done so in the past. We need to take new approaches that would knit together not only what we are doing in the regulatory perspective, but also at the municipal and federal levels so that all the pieces work together to achieve the growth we want in the long term. Commissioner Burack added that he expects to be as active as he can be and at the absence of Mr. Pelletier, he would take his place at the commission. From a sustainability perspective, he hopes to bring this commission together with the Stormwater Commission and the commission that is looking into the funding of infrastructure for water issues to talk about big picture issues and how all the issues fit together so that no effort is duplicated. He went on by saying that he would like to be as much a student as the rest of the commissioners and will look to all for being his teachers, mentors and advisers as well to understand the issues. He added that it was important work for all. Within DES, he mentioned that they are ramping up some internal processes to develop their thoughts that they will be bringing to the table for further development. He thanked the commission for their work and efforts and for the opportunity to speak at this meeting.

Mr. Stanley asked about the status of the revised New Hampshire Method.

Commissioner Burack responded that he was not sure of the status. Mr. Gove replied that he received an email from Amanda Stone stating that around April and May a draft will go out for peer review and field-testing of the revised New Hampshire Method.

Mr. Gove mentioned that from his perspective, he wants to avoid putting undue burden on the department to try to handle some of these applications that may come through with new requirements for either investigation or having to deal with the indirect impacts. Commissioner Burack mentioned that they frequently look at a new concept or proposal at DES internally to see how it is going to work, what level of time and effort it will require, and how time and effort could be saved. Mr. Pelletier agreed with this response and added that at some point in time there needs to be an analysis of how effort and time may be saved not only by the department but also by the applicant as well.

Commissioner Burack added that we must make the process as efficient as possible and have the municipalities involved.

Representative Gottling commented that one thing the state lacks is the use of incentives. Should there be regulations and fines or should there be more encouragement of positive behavior through incentives? She added regarding working on a type of evaluation system in the future, two things should be kept in mind:

- How to be consistent for everyone.
- A more concrete measurement method or a scientific basis for decision making.

#### **IV. PRESENTATION ON STATE WETLAND PROGRAMS**

Ms. Deming's presentation is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/new\\_england\\_state\\_wetland\\_regulatory\\_programs.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/new_england_state_wetland_regulatory_programs.pdf)

Mr. Gove asked whether other states have been trying to address indirect impacts either by legislation or by policy. Ms. Deming responded that states have some regulatory measures, such as regulating buffers, as the primary tool for protecting certain wetlands, along with the over arching programs that look at impacts in a comprehensive way that Peter Walker talked about. Examples of those programs are the Vermont -Act 250, Massachusetts Environmental Policy Act (MEPA) and Maine - Site Location and Development. Other than that, none of the states have specific language in their statute about how they will regulate indirect impacts.

Mr. Gove continued by asking whether any of the states tried to tackle the fragmentation of wildlife habitat issues, particularly regarding areas around vernal pools or large blocks of lands. Ms. Deming responded that all of the states have addressed that issue through their wildlife action plans. Maine has done a lot of research on vernal pools; Audubon and University of Maine have put together documents that talk about strategies for protecting vernal pools for forestry and development. She was not sure beyond that what states were implementing.

Representative Gottling asked regarding 404 guidelines, whether there was an assumption made that most projects would get approved in some manner? Ms. Deming responded that she thought most projects got approved but with conditions. From the data received from the Environmental Law Institute, very few projects get denied as the conditions can be worked out and the applicant can alter and adjust to accommodate the requirements. Mr. Walker added that under 404 guidelines there is no absolute prohibition or statement that says, "the permit shall be denied if..." But there is something in New Hampshire under the wetland rules that states, "the department shall not grant permit if..." for example, you cannot fill in to create a septic setback; this is prohibited. Representative Gottling asked whether that meant that New Hampshire is a little more stringent or more explicit than other states. Mr. Stanley added that New Jersey and Minnesota have assumed 404 jurisdictions except for traditional navigable waters; he asked how they accomplished that. Ms. Deming replied that she did not know the details about how they set that up but she thought that they must have worked that out

with the Army Corp of Engineers. They had to have the same requirements as the Army Corp. Commissioner Burack added Ms. Deming was right; they had to probably prove to the Army Corp and the EPA that the program was effectively equivalent to the federal programs. The real problem right now is that there is no actual set of guidelines out there that clearly states what the standards are. He added that one of the things he had discussed with EPA and the Corp of Engineers was that if there was a desire to see more states take delineation of 404, there really needed to be clear guidance of what the requirements were, along with some funding.

Representative Gottling asked Ms. Deming, "Do we have a problem in New Hampshire?" Ms. Deming responded that a huge amount of progress has been made since the clean water act was passed and that New Hampshire has come a long way, but still has a long way to go. We still have water quality issues, roadside runoffs, pesticides, etc. This is going to be an ongoing problem. To her, there are two main issues, one is related to wildlife and the other is related to water quality. She added that the program in NH is very comprehensive, one of the most in the country. Regulations are not going to solve everything. Laws and programs need to evolve because situations evolve.

Mr. Gove said that Ms. Deming mentioned that a lot of the states use buffers to wetlands with higher functions. He added, in terms of her research, if she found how these states did their evaluation of what they considered to be "higher function wetlands," were there any particular guidelines, and was it just acreage? Ms. Deming replied that it was not just acreage, they have certain types of things that are listed here, like wetlands that get special protection, but she informed him that she did not look at their guidelines in detail to see how they evaluated that.

Mr. Pelletier commented that his agency had struggled with the obvious cross-dependent use of wetlands and uplands, then asked if there were regulations out there that dealt with small impact on wetlands in one section and also an indirect impact on the habitat. When talking about fragmentation of habitat, is it on a global scale or a more site-specific impact? Ms. Deming responded that the documents she read talked about wetland regulatory programs and they were not addressing fragmentation issues. She added that what you are getting at is, you cannot assess fragmentation on a site-by-site basis; you really need to look beyond the site. She added the two major issues were water quality and fragmentation of habitat. She added that addressing fragmentation issues should not be site specific; any evaluation, whether it is a regulation or a planning tool, should be addressing the fragmentation issue in the big picture. Mr. Walker followed up by stating that it is incredibly difficult for a state to address the fragmentation and protection of habitat issues through its wetlands protection program. That is where other states have an umbrella organization that takes a more comprehensive environmental look at the issue. It is really difficult to handle this issue because the scale it is operating on is usually much bigger than the site.

Mr. Gove asked Ms. Deming if she could add more to the details of the tax incentive program as it seems to be very effective. He also asked Ms. Deming if she had any sense as to how this tax incentive program works. Ms. Deming mentioned that she did not remember the details but she added that they have six agencies working together to pull

all the information to guide them. She thought that their tax incentive program has been successful and was described as a model program.

Ms. Deming provided the following references for access to additional information:

- State Wetland Protection Status, Trends, and Model Approaches, A 50 State Study by the Environmental Law Institute with support from US EPA, available at: [http://www.elistore.org/Data/products/d18\\_06.pdf](http://www.elistore.org/Data/products/d18_06.pdf)
- Environmental Law Institute's Multi-Year Study on the "Core" Components of State Wetland Programs, available at: [http://www.elistore.org/topics\\_search.asp?Keywords=State+Wetland+Program+Evaluation&Field=Keywords](http://www.elistore.org/topics_search.asp?Keywords=State+Wetland+Program+Evaluation&Field=Keywords)

Representative Spang reported for the Stormwater Commission and provided information on their progress:

There are several knowledgeable people at the commission who are able to compare what is happening on the ground to theoretical conditions. There are people from the UNH Stormwater Center, town engineers, representatives from the state and others. The consensus was that neither the federal nor the state stormwater regulations are up to doing the job so the commission started looking at model stormwater ordinances that are municipal ordinances. The commission is also looking at how Maine handles its shore land ordinance. The model stormwater ordinances they are looking at include the Innovative Land use Guide of DES that looked at Nashua Regional Planning Commission's site plan review regulations, along with other regulations from various states. One of the things they are concerned about is redevelopment. People are used to going through regulations when they are developing something, but what happens when you are redeveloping?

One of the goals they are striving for is uniformity among the states. Also, when developers submit an application, they want to know what exact information is required, and therefore, they want a checklist. The commissioners suggested using stormwater Best Management Practices (BMPs) instead of specific drainage analysis. There were talks about whether they want to do regulatory Command and Control or rely more on incentives. One of those ideas was to develop a statewide stormwater utility similar to the municipal stormwater utility that Manchester and South Burlington has been dealing with. Vermont has one that charges a fee for the amount of impervious surfaces that exists on a lot. This would catch the new developments, redevelopments and even existing land uses and the money would go to a fund at the municipal level to upgrade, manage and extend their stormwater management system infrastructure. The commission is also very interested in looking at a watershed-type of approach towards stormwater management. Also, the commission is looking forward to working with the expertise of the Land Use Commission in resolving some of the common problems.

Representative Spang added that the Ground Water Commission is the third leg and made presentations to various municipalities, discovering that there was quite a bit of municipal anxiety regarding large ground water withdrawal imposed on their municipalities. She said that they put together a handbook or toolkit of all the municipal regulations that are

already in place that could be used by the municipalities to manage it. It was amazing to see the number of municipalities who were concerned about the issue but not using this tool.

Mr. Walker commented that it seemed like the Stormwater Commission was really focused on developing this model ordinance for the municipal level. Representative Spang responded that they have an active subcommittee that put together a matrix of all the needs that they saw relative to managing stormwater and that it was incredibly detailed, touching on infrastructure to funding to legislation, etc. They decided that it would be important to have some regulations at the local level. Mr. Walker followed up by saying that the Stormwater Commission was not really looking at what DES or other entities were doing. Representative Spang responded that they have a regulatory subcommittee that looks at where the holes are. She added that they are looking at the Alteration of Terrain program and whether that could be used more as a discharge of regulation.

Mr. Gove asked, in terms of looking at stormwater runoff, has the group looked at where the runoff goes? Is there a classification scheme as to which areas need more protection. Representative Spang responded they are currently looking at impaired water because of the federal regulations; they want to protect already degrading water from further degradation. Mr. Gove asked if her group talked about vegetative buffers to resource areas for stormwater management. Representative Spang responded, "absolutely."

Mr. Walker mentioned regarding urban versus rural settings, it is the urban setting where the issues lie. The big gap is dealing with all the urbanization. DES does an excellent job looking at new development and its' stormwater impact. He suggested the Stormwater Commission look at the Vermont Department of Environmental Conservation (DEC). Representative Spang responded that the paradigm shift is that everyone is responsible for the water coming off his or her property.

Representative Gottling added that her commission struggled with not making everything dependent on wetland regulations. She asked Representative Spang whether her committee saw themselves working on upland regulations and that together both commissions could come up with an overview. Representative Spang responded that there was quite a bit of overlap between the two.

**V. SUBCOMMITTEE UPDATE**

Ms. Czysz stated that the Research Subcommittee is continuing to work on the matrix and hoped to have a few more updates. She added that the subcommittee plans to meet April 12<sup>th</sup> and the one following that would be on May 10<sup>th</sup>. The April 12<sup>th</sup> meeting will identify any remaining presentations to be made but will not be presenting to the full commission in April.

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

Regarding future meetings, Ms. Deming mentioned that Mr. Doran expressed concern regarding groundwater because of his involvement with the Littleton landfill and the proposal

to expand it, which sits on top of an aquifer. He probably would be willing to present the issues and risks about the Littleton example if he is ready to do so. Representative Gottling said that if Mr. Doran is not ready to present in April, the commission can look at the different issues that have been presented and what the commission had been focusing on and look at the direction the commission wants to go. Mr. Pelletier suggested that it is time the information and knowledge gathered was put into action.

**VII. OTHER BUSINESS**

Commissioner Burack stated that the Climate Change Policy Task Force spent a lot of time and effort developing a set of recommendations relating to transportation and land use in the state, specifically addressing the state's challenges for energy use and climate challenges. He thought it might be useful for the Land Use Commission to look at this, as there might be some complementary ideas as to what this commission is looking at and what the CCPTF suggested.

The next meeting was scheduled for April 19, 2010 and the following meeting is to be held on May 17, 2010.

**VIII. ADJOURNMENT**

Mr. Stanley made a motion to adjourn the meeting; Mr. Walker seconded it. Chairperson Gottling adjourned the meeting at 2:45 PM.

**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**

April 19, 2010 \* 1:00 PM  
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  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Jasen Stock, representing NH Timberland Owners Association  
Rene Pelletier, representing NH Department of Environmental Services  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Glenn Smart, P.G., representing the Business and Industry Association.  
Senator Harold Janeway, New Hampshire Senate, Senate District 7, Capital Budget Committee, Finance Committee, Ways and Means Committee, Wildlife, Fish and Games and Agriculture Committee

**Other Attendees:**

Representative Judith Spang, NH House of Representatives, member of the Resources, Recreation and Development Committee  
Carolyn Russell, NH Department of Environmental Services  
Representative Ronald Mack, NH House of Representative, Hillsborough District # 1  
Representative Andrew Renzullo, NH House of Representative, Hillsboro District # 27

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:07 PM.

**II. APPROVAL OF MINUTES**

Mr. Doran moved to approve the minutes of the March 15, 2010 meeting and Mr. Morin seconded. The minutes were accepted unanimously.

**III. DISCUSSION REGARDING FORMING A SUBCOMMITTEE TO LOOK AT WILDLIFE HABITAT CHALLENGES**

Ms. Deming reminded the commission that Commissioner Burack at the last meeting pointed out that one of the goals of this land use commission was to address fragmentation issues and its' effect on wildlife. Although the commission's work on wetland buffers touches upon the issue, that work is primarily focused on water quality rather than wildlife habitat.

At the subcommittee meeting they decided to consult the commission about what might be the best approach to deal with this and whether forming a subcommittee would be a good idea. She went on by saying that a lot of work has been done on this matter by researchers, the Department of Fish and Games (Fish & Games), University of New Hampshire (UNH) and others, but there has not been much effort in implementing anything or providing tools and maps.

Mr. Gove commented that Ms. Deming works quite a bit with Fish & Game's information and data on wildlife habitat, he wanted to know how detailed the information was. Ms. Deming said, many of the map products not ground truthed, but the maps give a community better idea as to where and what surrounds them or what resources exist within their boundary.

Mr. Stanley added that in his town there were a number of wildlife habitats and deeryards according to the Fish and Game maps. Now, based on the Wildlife Action Plan, there is nothing identified. Therefore, it is not a very useful tool at the local level.

Mr. Doran asked, what would be the purpose of bringing it into this commission, would it be to recommend something for the legislation for the protection of wildlife? Ms. Deming responded that this commission has been addressing wetlands and water quality issues, but may need to look at habitat as well. From her understanding, Commissioner Burack requested the commission to address the fragmentation issue.

Representative Gottling reminded the commission that one of their duties was to look at the effects of land development on terrestrial and aquatic habitat. So she informed the commission that if they had the time and the interest, she had no objection if a small group or subcommittee was to pursue this issue.

Mr. Pelletier commented that there are actually two fragmentation issues, a long-term and a short-term. Legislatively, this will mean changes to not only RSA 482 but also to RSA 485. Mr. Stock asked if Ms. Deming would envision this group to go beyond RSA 482 and RSA 485, and if she wanted to address permitting, current use, tax, etc. and get to the root of this? Ms. Deming responded that the committee thought that the questions should be asked as to what are the elements of this issue, what are the causes and what is driving land use change?

Senator Janeway commented that fragmentation is a whole another layer. At a minimum in the commission's report we should at least raise the issues so that it is considered as part of master plans at the local level.

Representative Gottling suggested the commission do as much as they can in the next couple of months. Maybe a smaller group of interested people could look into this issue in depth. Mr. Doran asked if they decide to have a subcommittee, he would like to have a clear picture of what this subcommittee would be charged with in terms of tasks, duties and goals.

Mr. Smart commented that there are a lot of information out there in the form of environmental impact statements and environmental assessments where wildlife habitat is addressed in a site-specific manner. There are studies of Federal Aviation Administration (FAA) in terms of wildlife hazard assessment for airports. A lot is going on, but not brought together in one concise package.

Mr. Stanley expressed that it is frustrating to think regulatory schemes have evolved in order to protect humans and their needs, however, wildlife habitat is always an after thought. A clear objective is missing for the state of New Hampshire in terms of what it ought to be doing regarding wildlife habitat. We need to know where the wildlife habitat exists irrespective of town boundaries. A proper inventory is needed. This group is not in the position to be able to do that. The Department of Fish and Game is equipped to do a statewide inventory and set a clear goal. Until that is done, we can only react to what comes through the door. Tagging this on to wetland permitting or some other type of permit is not the right way to address this issue.

Mr. Pelletier added that at this late stage the commission should really stay focused on the existing subcommittees and if we are lucky enough, by the end propose a recommended setback. The holistic issue of wildlife habitat is an issue for another day. This is a state policy issue.

Ms. Czysz recognizing that at this point in time it is difficult to come tackle this issue and recommend solutions, therefore, suggested that perhaps it would be a good idea to take a little bit of time and raise the wildlife habitat and fragmentation issues as a "next steps" type of recommendation, and state that the commission identified these problems; were not able to find solutions for all, but the state needs to look at "x, y and z." Mr. Doran supported Ms. Czysz's suggestion.

Representative Gottling proposed that if there is enough interest, the first task would be to just define what they would be looking at and then go from there to see what is feasible to do in 3 or 4 months. The volunteers for the wildlife subcommittee were listed to be: Ms. Deming, Ms. Czysz, Mr. Stock, Rep. Gottling, Mr. Smart and possibly Ms. Henderson.

Representative Spang commented that she has been collecting data on wildlife for the past 20 years. It is time to cut through the chase and talk about regulations. The heart of the issue is protecting wetlands and wildlife. We need wildlife specialist to look into different philosophical paradigm. Mr. Doran added that he was unclear from Rep. Spang's comment as to what she was suggesting as the scope of the work for the wildlife subcommittee. Rep. Spang replied that the subcommittee should start at the place where the commission started, that is look into land use regulations as a whole (wetlands, uplands, municipal and state level) and see what it is we want to accomplish and what is ideal in terms of protecting wildlife resources and how it relates to state and local levels.

#### **IV. OVERVIEW OF TOPICS COVERED IN LUC MEETINGS SINCE SEPTEMBER 2008**

Ms. Czysz pointed out the OEP web page where all the meeting minutes, presentations and agendas have been posted since September 2008. The link is as follows:

<http://www.nh.gov/oep/legislation/2008/hb1579/index.htm>

Representative Gottling recalled that at the initial discussions, the topic that many thought was the most important issue, was the lack of "consistency" in policies and regulations.

Representative Gottling and Ms. Czysz walked through all the meeting and presentation topics of the past. After reviewing all the topics, Rep. Gottling asked how the commission wanted to start digesting all the information, what they thought were the important issues that came out of this and requested the commission to provide some input.

Mr. Pelletier responded that collectively the commission needs to figure out where each subcommittee stands and when their tasks are complete. And start work sessions to begin crafting the recommendations. Rep. Gottling reminded that not everything will come out as legislation, there will be other issues and topics of interest that will come out which will require more attention. Mr. Pelletier added, that he thought that would be redundant as that would be the job the sub-committee would be assigned to do. He believed that the commission is expected to come out this with some form of proposed changes either in one or two statues. Then as part of the decision making process, there were clearly several important issues (such as the wildlife and fragmentation) that were brought to our attention through conversation or education that we will have to address in the upcoming years. He added that if this commission and the Stormwater Commission in two years could come out with statewide setbacks and integrate that with the concept of development of the uplands coming from the Stormwater Commission, in combination that would be a good outcome.

Ms. Russell commented that their project (DES' Innovative Permitting Initiative) is to provide an alternative process for projects to provide a much more coordinated review for within the Department of Environmental Services (DES) and between DES and other state agencies. She added that they have drafts of the new in-house DES coordinated process and a draft of the new coordinated pre-application process now. Once they are further developed, she would be sharing those with this commission. She mentioned that their intent was to have a draft of all the work they have done till this point by the end of this month.

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

Rep. Spang reported that the commission has been invited to attend a joint meeting with the Stormwater, Groundwater, Sustainable Infrastructure Funding and the Sediment Commission. The tentative agenda is to give each commission 30 minutes to explain their work and try to find some common initiatives. It is tentatively set for 9:00 am to noon on May 24<sup>th</sup>, but could possibly go on beyond lunch. She suggested that it might be a good idea for each commission to come in with the outline of their key issues, particularly in terms of the ones they are struggling with that they feel they might benefit from some advice from the other commissions. Maybe even put together a list of the common issues between the commissions so that they can be addressed in one go, instead of each commission outlining their issues, to reduce redundancy. Rep. Spang proposed to have meetings starting from early May to work this out to make this upcoming meeting more productive.

The commission decided to have a full commission meeting and work on the key issues in preparation for the May 24<sup>th</sup> joint commission meeting. Ms. Czysz expressed her concern that it might be difficult to discuss and draft an outline list all the key issues in one commission meeting, so she suggested that all do some homework between now and the next meeting and select a point of contact among them to be the coordinator. All the key issues for the outline could be emailed to the coordinator. She added that this would help all come prepared for the next commission meeting.

Rep. Gottling added that at this meeting they have already identified a number of key issues:

- Fragmentation and wildlife habitat considerations
- Coordinated Permitting (within agency and inter-agency)
- Subjectivity of Standards – to have quantifiable measures
- Reducing litigiousness as much as possible

She recommended the commissioners look at their notes and identify any other issues they would like to be considered. If there was no other volunteer, she could be the coordinator for collecting the key issues for the list.

Rep. Spang added that she would like to have this list by the middle of May, if possible. Mr. Pelletier suggested regarding the format of the May 24<sup>th</sup> meeting, to have a 15 minutes summary of work by each commission then have a 30 minute dialogue/question and answer session with the audience and other agencies. Rep. Spang proposed, if

everyone agreed, that Mr. Pelletier might sit down with the chairs of the commissions and the commissioner and develop a better format for the joint meeting.

The definitions subcommittee is having a session with New Hampshire Methods on May 13, 2010, at DES at 8:30.

The next commission meeting would be held on May 17, 2010.

**VI. ADJOURNMENT**

Mr. Morin made a motion to adjourn the meeting; Ms. Deming seconded it. Chairperson Gottling adjourned the meeting at 2:57 PM.

**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**

May 17, 2010 \* 1:00 PM  
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  
Jennifer Czysz, representing NH Office of Energy and Planning  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Jasen Stock, representing NH Timberland Owners Association  
Rene Pelletier, representing NH Department of Environmental Services  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Senator Harold Janeway, New Hampshire Senate, Senate District 7, Capital Budget Committee, Finance Committee, Ways and Means Committee, Wildlife, Fish and Games and Agriculture Committee  
Cheryl Killam, representing NH Municipal Association  
Carol Henderson, representing NH Fish & Games  
Representative Chris Christensen, NH House of Representatives  
Peter Walker, representing NH Association of Natural Resource Scientists

**Other Attendees:**

Representative Judith Spang, NH House of Representatives, member of the Resources, Recreation and Development Committee  
Carolyn Russell, NH Department of Environmental Services  
Tom Burack, Commissioner, NH Department of Environmental Services  
Jenna Roberts, Durham Public Library Board of Trustees, Town of Durham, NH

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:05 PM.

**II. APPROVAL OF MINUTES**

Senator Janeway moved to approve the minutes of the April 19, 2010 meeting and Mr. Pelletier seconded. Ms. Henderson abstained. The minutes were accepted.

**III. SUBCOMMITTEE UPDATE AND DISCUSSION**

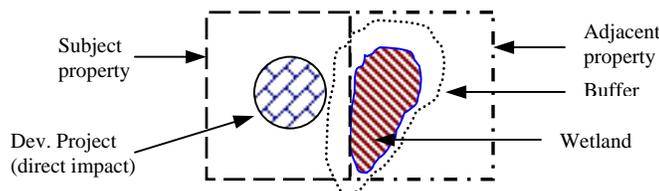
Mr. Gove provided a handout that studied the land development regulations and effects of land development within upland areas that may affect wetlands and surface waters of the state. This document is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/rsa\\_482\\_draft.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/rsa_482_draft.pdf)

Mr. Gove informed the commission that Joel Anderson prepared the first draft of this document that proposes possible changes to RSA 482-A. Mr. Gove did some modifications to the document based on his conversation with the New Hampshire Method workgroup and how they can incorporate the New Hampshire Method. Mr. Gove went through the handout with the commission, which essentially talked about the definitions (“wetland buffers” and “indirect impacts”). He mentioned that the draft New Hampshire Method would be ready for peer review this month.

Mr. Walker commented that the main issue he sees is with the phrase “associated with all projects and activities” was whether it includes all projects on site and off site? Mr. Gove agreed that it is a big issue as to how to deal with projects on a site with a wetland and what it means for adjacent sites?

Mr. Doran described a scenario from a property owner’s perspective. The situation of two properties is graphically represented below: two adjacent properties, one property has a development project with direct impact to the land. The adjacent property has a wetland within that property but is very close or touching the border of the subject property.



The buffer of the wetland will be applicable to the project of the subject property and therefore restrictions will apply as to what can or cannot be done (due to direct and indirect impact to the wetland of the adjacent property). And Mr. Gove agreed, that is an issue, and they agreed that it is solvable.

Mr. Pelletier added that this is the reason why we say this is bigger than RSA 482. This is how the landscape of New Hampshire is developed so this cannot be adequately addressed only by modifying RSA 482. Perhaps the commission needs to look at RSA 485 (water quality statute).

Commissioner Burack asked the commission to look at this from a broader watershed perspective as the overarching construct to graft the concepts the commission is working on from a water quality and watershed management standpoint. There needs to be a broader responsibility and charge to look at the impacts on the watershed that will include the wetlands and other aspects of water quality. When we are developing land, we not only have to look into the impacts on the wetlands onsite but also the impacts on downstream impacts and impacts on lakes, rivers below the proposed development area.

Mr. Walker asked if the commissioner and Mr. Pelletier have an approach in mind for the commission to look at. Mr. Pelletier responded that they don't have any approach in mind, as they only look at individual plots. He added that this is the initial attempt to look at the bigger picture.

Mr. Walker asked the question as to what is meant by a buffer? He proposed the idea of avoid, minimize and mitigate as opposed to "hands off" tight buffers.

Mr. Gove sought input from the commissioners with regard to the following outstanding issues:

1. Whether the indirect impact evaluation should be onsite or could be offsite?
2. What level of protection is required (10, 20, 50 percent or more)?
3. What does buffer mean?
4. What would be an alternative for the word "permit" in page 2, paragraph 1 of the handout.

#### **IV. CONSIDERATION OF THE FIVE QUESTIONS FOR THE JOINT COMMISSION MEETING (MAY 24, 2010)**

Representative Gottling stated that she would be preparing a two-page summary of the commission's work for the meeting as requested. She asked the commission for their input on the commission's work summary. The five questions that were discussed were as follows:

1. What are the key issues your Commission has discussed?
  - a. How do we define indirect impacts on wetlands from upland land development? Once defined, should we regulate based on these impacts? What should be the extent of the regulation?
  - b. Are there instruments for scientifically based quantitative evaluation of wetlands? Are they reliable when used by different evaluators?
  - c. How do we manage the large discrepancies in land use regulations from town to town? Is there a need for state minimum standards, particularly for buffers around valuable wetlands?

- d. How do we enhance communication between permitting agencies and expand awareness of overlapping issues? Although in nature everything is connected, this is not true for our state agencies dealing with land use. For example, DOT may issue a permit for a driveway but cannot look at the environmental impact of the development related to that driveway.
  - e. NH is the only New England state without a comprehensive environmental policy. Do we want one and can we get one?
  - f. Are our policies too “gentle” in promoting smart growth?
  - g. Are there sufficient incentives for developers and landowners to make better long-term plans for our state?
  - h. How do we deal with the complexity of preserving and enhancing wildlife habitat while protecting property rights of landowners?
2. What are committee work products to date?
- a. The Definitions subcommittee has crafted an initial piece of legislation: if a project directly impacts a wetland, the functions of the wetland must be evaluated and a buffer created around the wetland relative to its functions in order to protect the wetland from the indirect impacts of activities in the upland.
  - b. The subcommittee has worked with the NH Method Working Group as they revamp the Method into an updated tool entitled *Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire*, published by the University of New Hampshire Cooperative Extension (2010).
  - c. A second subcommittee has created a matrix comparing Federal and New England States policies and procedures in 13 areas. Several presentations were made to the Commission based on this work. The areas covered in the Matrix include:
    - 1. Environmental Protection Acts
    - 2. Coordinated permitting
    - 3. Land Use Planning
    - 4. Smart Growth
    - 5. Redevelopment and Historic Preservation
    - 6. Conservation
    - 7. Transportation
    - 8. Water, Sewer, and Infrastructure
    - 9. Water Quality
    - 10. Wetlands
    - 11. Surface Water
    - 12. Aquifers and groundwater
    - 13. Wildlife
  - d. All Power Point presentations to the Commission are available on the Commission website. These include presentations from DOT, USEPA, NH Fish and Game, Conservation Law Foundation, SPNHF, DES, and Regional Planning Commissions.
  - e. Commission has made field trips to sites in NH that illustrate the issues in front of the Commission.

3. What are your current and anticipated future work products?
  - a. Further refinement of legislation including a statute that would enable local boards to use the same tool as the state in determining the function of wetlands within their border.
  - b. Development of numerical criteria to establish buffers
  - c. Report from the wildlife habitat subcommittee on issues and the most effective way to approach them; i.e. education or legislation.
  
4. What are potential solutions to problems your Commission has wrestled with?
  - a. Creation of more incentives at local and state level for good land use.
  - b. Creating a Department of Environmental Protection
  - c. Funds for educating every interest group in the long-term value of sound land use.
  
5. What questions or concerns have been raised that you have not addressed because it was assumed another Commission was addressing it.
  - a. Although looking at storm water was part of the Commission's charge in the statute, the LUC has relied on the Stormwater Commission to investigate that area.

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

The next commission meeting to be held on June 21, 2010.

**VI. ADJOURNMENT**

Mr. Doran made a motion to adjourn the meeting; Ms. Czysz seconded it. Chairperson Gottling adjourned the meeting at 2:57 PM.

**DRAFT MEETING MINUTES**  
**JOINT MEETING OF THE LAND USE COMMISSION, STORMWATER**  
**COMMISSION, AND THE SUSTAINABLE INFRASTRUCTURE FUNDING**  
**COMMISSION**

May 24, 2010 \* 9:00 AM – 1:00 PM  
NH Dept. of Environmental Services Building, Rooms 111 – 114  
29 Hazen Drive, Concord, NH

**ATTENDEES**

William Hounsell	North Conway and Bartlett Water Precincts
Farzana Alamgir	NH Office of Energy and Planning
Tom Burack	NH Dept. of Environmental Services
Mark Hemmerlein	NH Dept. of Transportation
Newb LeRoy	Associated General Contractors of NH
Joe Robertie	NH Timberland Owners Association
L. Mike Kappler	State Representative
Michael Trainque	American Council of Engineering Companies
Peter Stanley	NH Association of Regional Planning Commissions
Jasen Stock	NH Timberland Owners Association
Jim Gove	Associated General Contractors of NH
Sue Gottling	State Representative
Cheryl Killam	NH Municipal Association
Johanna Lyons	Dept. of Resources and Economic Development
Harry Stewart	NH Dept. of Environmental Services
Paul Susca	NH Dept. of Environmental Services
Joshua Cline	NH Rivers Council
Jim McClammer	State Representative
Sarah Pillsbury	NH Dept. of Environmental Services
Brian Goetz	Weston & Sampson
Judith Spang	State Representative
Gary Abbott	Associated General Contractors of NH
Paul Basiliere	Public Service of NH
Joel Anderson	House Staff
Doug Bechtel	The Nature Conservancy
David Bernier	North Conway water Precinct
Brandon Kernen	NH Dept. of Environmental Services
Eric Williams	NH Dept. of Environmental Services
Glenn Smart	Business and Industry Association
Kurt Blomquist	City of Keene, NH Public Works Association
Bill Brown	American Council of Engineering Companies
John Boisvert	NH Water Works Association
David Cedarholm	NH Public Works Association
John Doran	NH Association of Realtors
Keith Robinson	US Geological Survey

Dave Danielson	NH Association of Regional Planning Commissions
Karen Ebel	The Nature Conservancy
Paul Currier	NH Dept. of Environmental Services
Jennifer Czysz	NH Office of Energy and Planning
David Borden	State Representative
Jeff St. Cyr	State Representative
Pamela Hubbard	State Representative
Rene Pelletier	NH Dept. of Environmental Services
Ted Diers	NH Dept. of Environmental Services
Jillian McCarthy	NH Dept. of Environmental Services
Ridgely Mauck	NH Dept. of Environmental Services
Carolyn Russell	NH Dept. of Environmental Services
Chris Christensen	State Representative
Donald Siekniewicz	Home Builders and Remodelers

## **INTRODUCTIONS**

The meeting began at 9:10am. Introductions were made around the room.

## **THE BIG PICTURE CHALLENGES**

### **Tom Burack, Commissioner, NH Dept. of Environmental Services**

**Commissioner Burack** presented a summary of the bigger picture environmental challenges facing New Hampshire as a result of the changing landscape. He stated that the quality of New Hampshire's natural environment has been a strong economic driver, attracting people and business to the state to enjoy a high quality of life. He pointed out that the challenges to accommodate growth, address aging water infrastructure, and stormwater management needs are putting pressure on the state's open spaces, the availability of water for drinking, waste assimilation, recreation, and they are creating added stressors for the state's wildlife, which is compounded by the challenge of climate change. He referenced a study done by USGS and DES in the coastal watershed, as well as national studies, that indicate as little as 10% impervious cover in a watershed can negatively impact water quality.

He stated that the Commissions have a unique opportunity at this joint meeting to look more holistically at the land and water resource management issues NH is facing and to develop complimentary solutions. He asked that, during the course of the meeting, everyone look at the bigger picture to see how the pieces might fit together, overlapping themes or conflicting ideas, as well as any pieces that might be missing, and specifically focus on the following things:

1. Understanding what the other commissions are doing and how our issues fit together.
2. Identify issues and opportunities for each commission can flesh-out over the next few months.
3. Explore ways to ensure that the final recommendation of each commission will be based on a common vision and will provide a complementary package of actions designed to ensure that water and land resources are managed in ways that will help to ensure a healthy environment and a prosperous economy for years to come.

## **GREAT BAY SEDIMENT COMMISSION UPDATE**

### **Ted Diers, NHDES Coastal Program**

**Mr. Diers** presented a summary of the Great Bay Sediment Commission's work (see Great Bay Sediment Commission summary document handout). The issue of natural versus anthropogenic sedimentation was discussed. **Mr. Diers** explained that although sedimentation is a natural process, the sedimentation in Great Bay is primarily due to human activity in the watershed. It was asked if the Commission looked at needed sediment reductions and linking it to a sediment TMDL (total maximum daily load study). **Mr. Diers** responded that looking at sediment reductions would be a next phase of work now that the Great Bay Sediment Commission has completed its final report.

## **GROUNDWATER COMMISSION UPDATE**

### **Judith Spang, State Representative & Chair**

**Rep. Spang** presented a summary of the Groundwater Commission's work (see Groundwater Commission summary document handout). **Rep. Spang** explained that the Commission's work began with large groundwater withdrawals. She noted the significant difference between how water is governed in the western and eastern parts of the country and explained that the Commission looked at existing regulations related to groundwater. She explained that an outcome of the Commission's work has been the general opinion that the public needs to take more responsibility for our actions. They have discussed developing a model for municipalities to take more control and a model ordinance for planning. They have also discussed methods for managing smaller groundwater permits. The Commission is discussing who should manage natural resources such as groundwater – local or state government. She explained that the current paradigm is looking at groundwater at a state or local level and it is not working. The Commission has discussed the need to start looking at the issue from a watershed perspective because groundwater is a statewide resources and aquifers can be under multiple municipalities.

## **LAND USE COMMISSION UPDATE**

### **Suzanne Gottling, State Representative & Chair**

**Rep. Gottling** presented a summary of the Land Use Commission's work (see Land Use Commission summary document handout). She explained that the Commission spent a significant amount of time studying wetlands, methods to assess wetlands including the NH Method, and direct versus indirect wetland impacts. They reviewed three case studies of different scales of development projects in NH that clearly showed there is conflict between local, state, and federal regulations. The Commission identified a lack of consistency in how wetlands are protected and managed from town to town as well as a lack of incentives for good, long-term land use and they discussed a statewide minimum standard for wetlands. She noted that NH is one of the only states that does not have a statewide comprehensive environmental policy. **Rep. Spang** asked if the Land Use Commission has decided what good land use is. **Ms. Czyns** explained that there is no one size fits all land use, but that land use planning should identify appropriate places

for growth and appropriate places for natural resource protection to provide a balance between growth and natural resource protection.

## **STORMWATER COMMISSION UPDATE**

### **Dave Cedarholm, NH Public Works Association & Chair**

**Mr. Cedarholm** presented a summary of the Stormwater Commission's work (see Stormwater Commission summary document handout). The question was raised about funding mechanisms and what is affordable. **Mr. Cedarholm** explained that through a stormwater utility, fee rates are equitable and typically based on impervious cover, which gives the incentive to reduce effective impervious cover through implementation of stormwater best management practices in order to reduce the fee. **Mr. Pelletier** mentioned that they need to consider climate change and the impact on storm events. He also explained that there are many redevelopment sites that are trying to retrofit, but cannot infiltrate stormwater. He asked if the Stormwater Commission looked at that. He also stressed the importance of looking at stormwater management on a watershed basis.

## **WATER INFRASTRUCTURE SUSTAINABILITY FUNDING COMMISSION**

### **John Boisvert, NH Water Works Association, Commission Member**

**Mr. Boisvert** presented a summary of the Water Infrastructure Sustainability Funding Commission's work (see Commission summary document handout). He stated that they have determined the water infrastructure costs to be \$2 billion without considering stormwater costs, which will likely be similar to wastewater costs. He explained that they looked at the needs of existing infrastructure systems without stormwater and the bottom line is that there is a large gaps between the funding needs and the funds available to repair and maintain existing infrastructure. He discussed that there will likely be no additional funding from the state's general fund for infrastructure and so, unless other funding sources are identified, the burden will fall on users. **Mr. Boisvert** explained that the Commission has been looking at what is affordable to the majority of users and have been basing rate numbers on median household income. The Commission has recognized the need to cross-utility communication, for example, the water utility digs up the road to make repairs to the water infrastructure and then the sewer utility digs up the road to maintain the sewer infrastructure. If the utilities coordinated, they would have been able to rebuild the road once instead of twice. He stated that they are looking at the need to regionalize utilities, asset management, and the need for education and outreach.

## **FACILITATED DISCUSSION**

### **Facilitated by Ted Diers, NHDES Coastal Program**

**Mr. Diers** explained that the purpose of the facilitated discussion is to identify common themes and approaches among the Commissions, to identify potential areas of conflict as well as gaps in the Commissions' work. The following items were identified:

Areas of Common Ground:

- The need for a watershed approach

- More incentives to do the right thing
- Reliable and sustainable funding for programs with public education
- Allocation of responsibility between local and state governments
- Maintain current and honor existing grant programs
- Consider a regional approach – learn from past experiences that the current approach is not working
- Need for and use of science-based, reproducible technologies
- Balance and affordability
- Need to fill data gaps
- Understanding future regulatory requirements
- The need for uniformity between municipalities
- Focus on the long term – 20 years out
- All areas are constrained by resources (\$)
- Lack of a clear mission statement
- Often gear projects and work toward the grant funding available when it might not be the work that really needs to be done.

#### Watershed Approach:

- Go beyond municipal boundaries
- Develop regional utilities – learn from other states
- Prioritize issues in each watershed – there may be big regional differences
- Understand and educate on the economics of a regional approach – education to change mindset
- Consider how to regulate on a watershed basis – how do we align the varying regulations?
- Develop incentives to promote a regional/watershed approach
- Need to get citizen buy-in and local buy-in, we are all live in a watershed
- Regulations are not organized on watershed levels - regulations are often imposed on individual level
- Enforcement could be challenging on a watershed basis – the current enforcement approach is regulatory-based, a watershed approach could be resource or quality-based
- Environmental planning with assistance from DRED and DOT
- Develop a comprehensive environmental plan to address cross challenges
- There are only 1.3 million people in NH – we should be able to find a solution
- Need to empower municipalities
- Watershed scale is an intersection of state and local authority
- Connecting people to the resources – building a sense of place in communities makes enforcement easier

#### Who Makes the Decisions?

- Also ask – Who's resource is it?
- 28-A issue when shift from state to local responsibility
- There is no in-between authority between state and local governments – no county planning

- Federal oversight of these programs must be considered b/c it is often the driver, preemption
- Utilize the RPC's more effectively – more resources to the RPC's to function better with what we already have in place
- There is very little interaction/connection between the state and local levels
- There is a gap between the municipality and the citizens
- Lack of municipal capability
- Citizens – lack of political will
- Ultimate consumer is the land owner – need land owner buy-in in regulations – need land owner incentives to do the right thing
- How do you quantify things on a watershed scale?
- The only entity a watershed resides in is the state – watersheds cross municipal and even county boundaries
- Need cost allocation to whoever is making/doing the impact
- Need to bring real cost to consumer b/c it results in better decisions
- Increasing quality of life is one of the ultimate goals
- Pushing regulations too far doesn't make sense, there is a threshold cost
- At what scale are watersheds broken down?
- There are differing municipal resources – should there be statewide minimums/requirements (NOTE: All 3 commissions verified they have discussed statewide regulations)
- The citizen is the ultimate consumer
- People have moved to NH b/c of low taxes, a healthy environment, good education, etc. we don't want to undo what we've done by pushing the regulations to far – need to maintain the quality of life (including economics) that attract people to the state.
- Local, diverse activities also attract people to the state
- Need for greater efficiency – increase regionalization, group communities by the goal(s) they are trying to reach
- Institutionalize a goal-based, regionalized (or watershed) approach – master planning
- The duty of the commissions is to recommend what is best regardless of the politics, let the legislative process figure the politics

#### Funding Ideas

- Tie funding sources to commission recommendations
- Create a convincing nexus between fees and purpose (services) – need education to do this
- Funding needed for 1.)administrative/operational costs and 2.)infrastructure costs – administrative costs must be considered in order for infrastructure projects to be successfully managed
- If communities take a loan, they need to show that they can afford to sustain it
- Money does not trickle up - if municipalities have regulatory authority to regulate and manage resources, the money stays with them and they can decide how to use it – must consider funding for management
- Need to look at alternative sources of revenue that may not directly link to the value of the resources – ex. Gas tax
- Charges should be based on the value or the impact to the resource

- Sewer, water, gas are metered services, stormwater is not unless you use impervious cover
- Do not underestimate the value that people put on water
- Green infrastructure is something we should pay for – need a shift in thinking
- Funding mechanisms – need to think big picture beyond user fees – toilet paper tax, bottle tax, etc.
- Need economic incentives for better land management
- Ecological services approach
- Look at the hydrologic process – where is water through the process and where are humans in contact with water? Ex. Charge on consumption of water & regulate on wholesale level to make assessment easier while still generating revenue
- Change in consumption style – bottle water versus tap, wholesale vs. retail
- Where do incentive funds come from? What are alternatives to \$ for incentives?
- Full cost pricing– ex. A month of cable television costs more than water and sewer for some people
- Costs are based on providing service not periphery costs or value of the resources
- Disincentive from a utility perspective to buy land b/c have to pay taxes on land

#### Conflicts

- Conflict in safety and environmental regulations – ex. FAA Airport runway setbacks and wetlands protection
- Federal versus state stormwater regulations – NH is not a delegated state
- Prioritize are different in each community
- Phasing and flexibility of regulations – should pilot new approaches
- Political realities
- Benefits of development versus environmental protection (balance)
- State vs. local - Who implements and who pays?
- Funding needs – what is more important existing or new development?
- Increasing regulations potentially impacts how “attractive” NH is as a state
- Impact on individual homeowners vs. municipalities
- Who owns the resource(s)?
- Who is the consumer? Residents?
- Mandates vs. incentives (balance)
- Infrastructure and Stormwater Commissions have different approaches?
- Local, state, and federal conflicts – Commissions have an opportunity to express conflicts and concerns to EPA and congressional delegation

#### Gaps

- The link between infrastructure and land use patterns – potential to tie the two together
- Central data repository
- Change legislative process – get rid of the old stuff
- Transportation and how we look at water need to be tied together and that will drive land use
- User fees and costs

- Infrastructure commission is looking to stormwater commission for costs of managing stormwater
- Climate change impacts – economic and other
- Wildlife
- Water transportation
- Workforce housing
- Population growth impacts – use trends
- Analyze funding sources – can existing sources get alternate funding?
- Build from the ground up – ex. Southeast watershed Alliance
- Animal waste – hobby farms (horses)
- Stormwater impacts on groundwater quality
- Sprawl – people come to NH to sprawl – how is NH growing? How do we want NH to grow?

### **FUTURE MEETING DATES & TOPICS**

The commission chairs agreed to meet once this summer before a second joint meeting tentatively scheduled for September. Each commission was instructed to think about the following things prior to the next joint commissions meeting:

1. Regionalization and watershed scale approaches
2. The gaps identified at this meeting
3. Base level statewide minimums to set a baseline

### **ADJOURN**

The meeting adjourned at 1:04 PM.

**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**

June 21, 2010 \* 1:00 PM  
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  
Jennifer Czysz, representing NH Office of Energy and Planning  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Jasen Stock, representing NH Timberland Owners Association  
Commissioner Tom Burack (in place of Rene Pelletier) representing NH Department of Environmental Services  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Cheryl Killam, representing NH Municipal Association  
Carol Henderson, representing NH Fish & Games  
Representative Chris Christensen, NH House of Representatives  
Peter Walker, representing NH Association of Natural Resource Scientists

**Other Attendees:**

Representative Judith Spang, NH House of Representatives, member of the Resources, Recreation and Development Committee  
Susan Olsen, NH Municipal Association  
Joel Anderson, Staff, NH House of Representatives

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

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**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:05 PM.

**II. APPROVAL OF MINUTES**

Mr. Doran moved to approve the minutes of the May 17, 2010 meeting and Mr. Stanley seconded. The minutes were accepted unanimously.

**III. UPDATE ON MEETING WITH COMMISSIONER BURACK**

Mr. Gove distributed a handout of draft language for amendments to RSA 482 for the commission to review and gave an update on his meeting with Commissioner Burack. He informed the commission that Commissioner Burack wanted to see things done from a watershed approach and to be able to address impacts that occur both on and off-site. The commissioner was looking to see if the findings of this commission could be

incorporated with the goals of other commissions for a broader legislation. Mr. Gove added that the subcommittee agreed to disagree with him. He went on by saying that the subcommittee did understand the Department of Environmental Studies' (DES) intent of taking a broader approach but wanted to approach it in a smaller fashion and proceed with the buffer approach as it would give a better opportunity for it to succeed in the legislature. He added that the buffers would be put into effect either through RSA 482 or RSA 485. At the meeting with Commissioner Burack, the subcommittee discussed the revised New Hampshire Method and that it is the preferred method for evaluation. Additionally, both the NH Association of Natural Resource Scientists (NHANRS) and DES would fully support the use of the New Hampshire Method for wetland evaluations.

Mr. Gove then went through the handout that he distributed. The handout is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/rsa\\_482\\_draft\\_revision.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/rsa_482_draft_revision.pdf)

Mr. Gove asked the commission to suggest any changes to this draft.

Mr. Walker inquired about page 2, paragraph I, whether everything on the property needed to be evaluated. He added, it should be explained that if there is a wetland within 100 feet of any disturbance, structure, etc., it should be evaluated.

Commissioner Burack asked about the issue regarding the impact on abutting properties of wetlands. He added that the commission has to figure out a way to respect private property rights at the same time ensure that they are not allowing a property to build right to the property boundary (in a case where there is a wetland at the adjacent property) and therefore impact the wetland. He went on by saying that this issue has to be address and DES cannot support the earlier version of this legislation. He reiterated that the commission has an obligation to address this issue.

Mr. Stanley mentioned that taking a global approach from a watershed perspective would be a long way off from practical standpoints, as they need to figure out how to provide some protection in the mean time? Commissioner Burack responded that he does understand that having a watershed approach is a long-term vision and the commission has a more pragmatic vision, but DES believes in having both a pragmatic and long-range approach. Commissioner Burack believed that failure to address the impacts on abutting properties would trigger pushes for amendments by the legislators, therefore, may be it would be better to solve that problem and dilemma now.

Mr. Stock stated that evaluating wetlands on abutting property needed to be addressed with consideration for the landowner and his/her fundamental right over his/her property. Mr. Gove mentioned that he would like to take a two-prong approach, given that in the subject property the delineation would be available and with the authorization of the landowner the wetland scientist could do the evaluation. To gather information on the off-site areas of concern that are close enough to the abutting property, information could be gathered through remote sensing and aerial photography, without any physical encroachment.

Mr. Gove asked whether there was consensus for the concept proposed by the subcommittee that would only evaluate those wetlands within 100 feet of any clearing, disturbance or structure, whether the wetlands are onsite or on abutting properties. Mr. Walker requested to add to this to the ability to use remote sensing data to evaluate wetlands on adjacent properties.

Representative Gottling summarized, there would be 2 methods used to evaluate wetlands on abutters' property:

1. for consenting abutters - use onsite analysis.
2. for non-consenting abutters – use remote sensing data.

Commissioner Burack mentioned that he would refrain from voting to determine whether there was a consensus, as he first needed to discuss the proposal with DES staff. Other commission members felt similarly that they needed to review the proposal with the organizations they represent before they could vote. No vote was taken. The commission discussed whether the part about using remote sensing data should be included in the new text.

Mr. Stock asked how else would RSA 482-A extend DES's jurisdiction other than evaluating a wetland? Mr. Gove responded that this basically states that certain wetlands are of such high value in terms of wildlife habitat and or water quality functions that they will be negatively impacted by the indirect activities upland, therefore, a buffer of 50 or 100 feet should be implemented depending on the numeric score.

#### **IV. STATISTICAL ANALYSIS OF THE NH COMPARATIVE METHOD SCORES**

Mr. Walker's presentation was on the statistical properties of the NH Method scores, and it was based on the study Vanasse Hangen Brustlin, Inc conducted of the Merrimack River watershed. He discussed how the scores from the NH Method relate to the determination of buffer width. The presentation is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/nh\\_method\\_scores.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/nh_method_scores.pdf)

Mr. Stock inquired what was the smallest size of wetland that was considered in this study. Mr. Walker responded that the minimum size was 5 acres.

Mr. Doran wanted to clarify that Mr. Walker specifically selected wetlands that were impacted in his study yet the data indicates that ecological integrity was higher than anticipated, does that suggest that impact is having less effect in terms of degradation than we believe? Mr. Walker responded that it likely has to do with the method used to generate the information.

Rep. Spang commented in most cases they are making an abstract and subjective judgment about the value of these wetlands? She asked how to decide a wetland in the 30<sup>th</sup> or 40<sup>th</sup> percentile is not valuable enough to get more attention? Statistics don't

accurately tell the whole story. She went on by saying that at some point we have to make a subjective decision.

Mr. Morin was curious about how they decide upon where these percentiles will be set? Mr. Walker responded that it needed further discussion. Mr. Morin followed up by asking if there was any data reference for setting the percentiles. Mr. Doran commented that for the under achieving but well deserving wetlands are addressed by the cumulative score.

Mr. Stock asked if there was a way to go back and look at the less than 5-acre wetlands? Mr. Walker responded, that there is a way, but money and work hours would be the limiting factor. Mr. Burack asked would the results be significantly different for the smaller wetlands? In other words, whether the determinations for a wetland 5 acres or larger would be significantly different from a wetland less than 5 acres? Mr. Walker responded that he has to take a look at the data available to see if there is a correlation between the value of the functions and the size of the wetlands. He added that for some, the value of the functions would definitely be skewed by the size of the wetlands.

Rep. Gottling asked Commissioner Burack if it was his intention to protect all wetlands? Commissioner Burack responded that he recognized that some wetlands are more valuable than others and needs higher level of protection than others. He also recognized that there are many wetlands in the state that are given more protection than necessary, as a consequence of doing that we are creating unintended environmental detriment. The intent of this commission should be to strike a balance.

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

Rep. Gottling informed the commission that there are no rooms available at the Legislative Office Building (LOB) for the month of July, therefore, the July 19<sup>th</sup> meeting needed to be shifted to a different venue and suggested that a possible meeting venue could be at the Lake Sunapee Protective Association (LSPA) on July 23 at the date the social networking gathering that was being planned. Ms. Czyns proposed to check if there is space available at the Office of Energy and Planning for July 19, similarly, commissioner Burack proposed to check for space at DES. Ultimately, the commission decided on having the two individual subcommittee meetings for the month of July and to cancel the full commission meeting.

## **VI. ADJOURNMENT**

Mr. Doran made a motion to adjourn the meeting; Ms. Czyns seconded it. Chairperson Gottling adjourned the meeting at 3:10 PM.

**REPORT OF THE MEETING**  
**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**

August 16, 2010 \* 1:00 PM  
NH Office of Energy and Planning, 4 Chenell Dr, Concord, NH

**Commissioners Present:**

Chairperson Representative Sue Gottling, NH House of Representatives, member of the Resources, Recreation and Development Committee  
Jennifer Czysz, representing NH Office of Energy and Planning  
John Doran, representing NH Association of Realtors  
Jasen Stock, representing NH Timberland Owners Association  
Assistant Commissioner Mike Walls (in place of Rene Pelletier), representing NH Department of Environmental Services  
Paul Morin, representing Home Builders and Remodelers Association of NH

**Other Attendees:**

Representative Judith Spang, NH House of Representatives, member of the Resources, Recreation and Development Committee  
Representative Jim McClammer, NH House of Representatives, member of the Resources, Recreation and Development Committee  
Michael Williams, NH Municipal Association  
Collis Adams, NH Department of Environmental Services  
Carolyn Russell, NH Department of Environmental Services  
Joel Harrington, The Nature Conservancy

**Commission Staff:**

Dari Sassan, NH Office of Energy and Planning

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**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:08 PM.

**II. APPROVAL OF MINUTES**

Due to a lack of quorum present, approval of the minutes of the June 21, 2010 meeting will be postponed until the September meeting.

**III. RESEARCH ON ALTERNATIVE STATE PROGRAMS SUBCOMMITTEE UPDATE**

Ms. Czysz distributed copies of the draft report developed by the subcommittee. She requested that the findings and recommendations noted therein not be distributed, as at this stage, they represent the subcommittee's brainstorming rather than final findings or recommendations.

The subcommittee studied the various planning and land use development related programs across New England and documented their research through the development of a matrix of programs and individual research sheets on those found to be of greater

interest to the commission's charge. The draft findings and recommendations are the application of the subcommittee's learning to an analysis of New Hampshire. The subcommittee intends to present its final report to the commission at the September meeting.

The findings and recommendations were separated based upon their relation to the commission's duties. Key findings and recommendations within the first duty related to the wealth of data available in New Hampshire and those data areas in need of improvement. Discussion provided recommended clarifications, revisions and additions including:

- Need to define "scattered development" for better understanding by those outside the commission.
- While the plant data within the Natural Heritage Bureau is more complete than wildlife, development is not required to avoid plant species.
- Are there examples where more dispersed patterns of development are preferred?

Under the commission's second duty the subcommittee noted that New Hampshire is the only state in New England without a comprehensive statewide environmental policy. Of those in neighboring states, Maine's environmental policy program most resembled New Hampshire's existing permit structure, whereas those in Massachusetts and Vermont entail a more cumbersome or costly system. Discussion provided recommended clarifications, revisions and additions including:

- There exists a back and forth "ping-pong" effect that occurs when an applicant navigates between meeting the conditions required for federal, state and local permits and approvals. Often an applicant must resubmit to one after the other set differing requirements that modified the project's design.
- There is a clear need for consistency and predictability from permitting programs.
- There is often overlapping and occasionally conflicting jurisdiction between *federal*, state and local permitting review.
- There was concern that the recommendation to utilize existing organizations, councils and committees implied expanded authority, which is not the intent of the recommendation.
- Add more definition to provide more clarity on recommendations.
- Enhance education and outreach for existing programs to maximize understanding and ease of navigating the regulatory system.

Related to the commission's third duty, the subcommittee noted that the State's environmental planning is divided amongst several agencies including the Department of Environmental Services, the Office of Energy and Planning, Department of Resources and Economic Development, Fish and Game, and others. The Site Evaluation Committee, the state's only comprehensive review system, only looks at large scale energy supply and generation systems. There is a lack of incentives for on-the-ground implementation of smart growth in comparison with other states. However, the

implementation of smart growth into local planning represents the greatest opportunity to achieve watershed level planning.

There was a lengthy discussion over the appropriateness of increasing municipal capacity to effectively review development proposals for environmental impacts and the commission was split over this role. Mr. Morin questioned whether it was appropriate for environmental review to occur at the municipal level. Representative McClammer noted he would rather see a statewide comprehensive environmental policy or regulation that supercedes municipal regulation. Utilizing a statewide system Mr. Morin suggested that the State would set and enforce the baseline for wetlands, environmental permits, and stormwater. Ms. Russell noted that Maine's shoreland program operates in such a manner allowing municipalities to adopt the state regulations, or more stringent regulations and be certified by the state to enforce it at the local level. Ms. Czysz noted that New Hampshire Comprehensive Shoreland Protection Act used to have a similar system, however, only one municipality ever completed the approval process.

Some objections to local land use boards regulating environmental impacts raised by Mr. Stock and Mr. Morin included the potential for overlapping and conflicting state and local wetlands, setbacks, buffers and stormwater requirements. Additionally, local boards are seen to be developing regulations without the necessary scientific resources or expertise. Assistant Commissioner Walls saw benefit in shifting all environmental considerations to be under the Department of Environmental Services' purview. However, all agreed that environmental regulation should not be used to regulate growth.

Further discussion on the third duty's findings and recommendations provided clarifications, revisions and additions as follows:

- Additional coordination is also needed between the *federal*, state and local levels; adding federal to the list of those to coordinate between.
- Identify areas of high wildlife and vehicle traffic with the greatest occurrences of collisions between the two.
- Establish statewide environmental standards, in statute, to ensure consistency from municipality to municipality and between the state and municipalities.
- Elaborate on what incentives exist for municipalities to implement smart growth.
- There was concern that modifying the current use/land use change tax to reduce the amount of tax paid in exchange for placing a portion of the land into permanent protection when converting a portion of the land to a developed use would be met with opposition or little used as the land use change tax in many communities is directly used to fund the acquisition of conservation lands. Reducing the portion received may be counterproductive.
- Define what a "statewide landscape connectivity plan" is and why it is needed. Currently there is data depicting wildlife corridors and unfragmented lands. However, it is inconsistent on a statewide basis. Mr. Harrington noted that The Nature Conservancy is about to embark on a related project entitled "Staying Connected."

There were only findings noted for the fourth duty, relative to the various barriers toward implementation of the commission's future recommendations. The primary findings were the lack of funding and resources along with a strong property rights sentiment in New Hampshire. It was recommended the subcommittee add a finding that indicates that there is a strong preference for new incentives over new regulations.

Lastly, the subcommittee has not drafted recommended language for legislation in response to the commission's fifth duty but recognizes that many of the recommendations identified through its brainstorming may require legislation in order to be implemented.

The subcommittee will meet next on September 1, 2010 and encourages commission members to email any further comments directly to Ms. Czysz for consideration at that time.

**IV. DEFINITIONS SUBCOMMITTEE UPDATE**

Mr. Morin indicated that edits made to the draft legislation had been focused on making the document more compatible with the New Hampshire Method. Ms. Czysz asked if the Subcommittee felt the document was ready to go back to the organizations that the commissioners represent. Mr. Morin said that Commissioner Jim Gove would be the appropriate person to answer that question.

Ms. Demming suggested that the definition of "wetland buffer" should perhaps include the term "naturally vegetated." Chairperson Gottling said that the term had been removed because it is sometimes necessary to actively vegetate an area to provide stabilization but suggested that the term could be put back in.

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

The next meeting will be held September 20, 2010 at the Legislative Office Building, room 305, Concord, NH.

**VI. OTHER BUSINESS**

There was no other business to discuss.

**VII. ADJOURNMENT**

The meeting was adjourned at 3:16 PM.

**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 20, 2010 \* 1:00 PM  
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  
Representative Chris Christensen, NH House of Representatives  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Cheryl Killam, representing NH Municipal Association  
Johanna Lyons, NH Department of Resources and Economic Development  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Carolyn Russell, (in place of Rene Pelletier), representing NH Department of Environmental  
Services  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jasen Stock, representing NH Timberland Owners Association  
Peter Walker, representing NH Association of Natural Resource Scientists

**Other Attendees:**

Joel Anderson, Staff, NH House of Representatives  
Jillian McCarthy, NH Department of Environmental Services  
Susan Olsen, NH Municipal Association  
Representative Andrew Renzullo, NH House of Representatives, Resources, Recreation and  
Development Committee

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

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**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:03 PM.

**II. APPROVAL OF MINUTES**

Ms. Killam moved to approve the minutes of the June 21, 2010 meeting and Mr. Stanley seconded. The minutes were accepted unanimously.

Due to a lack of quorum present at the August 16, 2010 meeting, the minutes of the meeting were not acted upon by the commission, instead the commission decided to keep them as a report of the meeting.

### III. RESEARCH ON ALTERNATIVE STATE PROGRAMS SUBCOMMITTEE REPORT

Ms. Czysz distributed copies of the report developed by the subcommittee. The report is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/final\\_report\\_09202010.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/final_report_09202010.pdf)

Ms. Czysz reviewed the subcommittee's process toward completing the final report. She highlighted the subcommittee's three priority recommendations to the full commission (in no particular order) include:

1. Enhance existing education and outreach programs to promote smarter growth and protect natural resources. Possible opportunities and topics include:
  - Increased educational opportunities on the impacts of development on the natural environment;
  - Increased education opportunities for municipal boards relative to implementing the smart growth principles of RSA 9-B; and
  - Assist municipal boards to implement the models included use of the *Innovative Land Use Planning Techniques Handbook*.
2. Consider new legislation to provide for an alternative, integrated land development permit that addresses multiple issues (e.g., wetlands, stormwater, wastewater/septic, habitat, and indirect and cumulative impacts) in coordination. Central to this concept are the key words "alternative" and "integrated," intending one land development permit offered in parallel and as an alternative to the existing multiple independent permits. Running two parallel permit programs would allow additional time to consider the appropriateness and logistical realities of transitioning to such an integrated permitting program for all applicants. As part of this effort, it is expected that the legislature will establish clear statutory definitions of "cumulative" and "indirect" impacts and establish, within statute, the authority for DES, municipalities, and other regulatory agencies to address these impacts. Existing frameworks that may be utilized to assist in implementing this recommendation include the Maine Site Location of Development Act and the New Hampshire Department of Environmental Services' Innovative Permitting Initiative.
3. Establish incentive-based programs to promote smart growth patterns of development. Possibilities include:
  - Enable modification of existing programs' administrative rules to consider smart growth as a program performance or eligibility requirements;
  - Establish new programs such as Massachusetts's Commonwealth Capital program or Vermont's Growth Centers program; and/or
  - Encourage collaboration with other agencies, organizations, and/or political subdivisions to maximize access to resources and effectiveness.

Discussions and comments of the commission included:

- The parallel permitting process was an intriguing idea.

- Alteration of Terrain was included in the grouping mentioned in recommendation 2 (wetlands, stormwater, wastewater/septic, habitat. etc.), as it is part of the Land Resource Management Program.
- How complicated would it be to incorporate the municipal aspect into this integrated permitting process? Ms. Russell responded, and others agreed, that it would be quite challenging in a number of fronts.
- The commission was reminded that the Site Evaluation Committee (SEC) is an existing comprehensive review process in New Hampshire. And SEC only reviews large-scale energy supply, transmission, and generation facility siting.
- The incentive and educational pieces of the recommendation were valued and appreciated.
- There was reluctance to lend support to the recommendation relative to the Current Use Program (recommendation III.4).
- Mr. Morin objected to the 3<sup>rd</sup> bullet of recommendation 1, “Assist municipal boards to implement the models included in the Innovative land Use Planning Techniques Handbook” as his association is not supportive of all models in the handbook.

Rep. Gottling asked if the commission was in agreement to accept the report and approve the recommendations. Ms. Czysz clarified that the subcommittee was not asking the Commission to vote to endorse the various recommendations contained within the report at this time. If it is the pleasure of the Commission, the full Commission, in its own final report, may later endorse some recommendations be they from the subcommittee’s selected top three recommendations or others from the subcommittee report.

The commission acknowledged the hard work Ms. Czysz and the research subcommittee towards this report. Mr. Walker asked the commission to accept this report as the final product of the subcommittee and move forward towards writing the final report for the Land Use Commission. Rep. Christensen moved to accept the subcommittee report with thanks and applause; Mr. Doran seconded. The report was accepted unanimously.

Rep. Gottling reminded that the full commission report is due November 1, 2010.

#### **IV. DEFINITIONS SUBCOMMITTEE UPDATE**

Mr. Gove went through the handout he distributed. Mr. Gove’s handouts are available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/proposed\\_changes.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/proposed_changes.pdf)  
[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/rsa\\_482\\_draft\\_091410.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/rsa_482_draft_091410.pdf)

The commission members discussed the existing and draft revised New Hampshire Method as tool for evaluating wetlands. They agreed that the revised New Hampshire Method is an objective scoring method to which Mr. Gove added that functional values do not change from town to town. However, given the absence of data generated utilizing the revised method, some inquired whether it would be possible to use data generated under the existing method to test the revised method. Comparing the two

methodologies would be essential toward determining the thresholds set in the draft language developed by the subcommittee to determine buffer widths.

Ms. Demming drew attention toward the phrase “all man-made ponds shall not be considered jurisdictional wetlands” and added that it had a very broad scope. She asserted that many man-made ponds are ecologically significant sites depending on their size and age and functions as lakes or ponds. Examples cited of what would inappropriately be exempted include Turkey Pond in Concord, historic millponds, and Lake Umbagog. It was suggested that any exemption of man-made ponds be linked to a time frame so as to not exempt those that are ecologically important.

Many commission members cautioned against the second proposed change (on the one page handout) that would repeal the Prime Wetlands section of the law. There were concerns about the reasoning cited. Such a repeal should only happen after a serious evaluation. While many municipalities may not adhere strictly to the prime wetlands laws or their designations, it was noted that many municipalities went to great effort and expense to delineate and designate their prime wetlands.

Additionally, there was some clarification needed regarding whether the proposed legislative language pertained to Chapter 482-A, chapter 485, or both. It was noted that by requiring all permits under Chapter 485 to fall into the wetland buffers review may be too broad. Such a requirement would pull in permit applications for actions as small as a single-family home septic tank replacement. It was questioned whether this was necessary or whether minimum impact thresholds should be considered. Additionally, it was noted that the exemption of “Stormwater best management practices” under the proposed RSA 485-A:4-a,IV (h) might be interpreted to infer Alteration of Terrain applications.

Ms. Russell went through the handout she distributed on “An alternative approach to implementing the wetland buffer standard in statue.” The handout is available online at: [http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/alt\\_approach\\_impl\\_wetbuffer1.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/alt_approach_impl_wetbuffer1.pdf)

She proposed establishing wetland buffer standards in the new section, RSA 482-A: 4-a Wetland Buffers. Also amend RSA 482-A:3 and RSA 485-A:17, I, Terrain Alteration to cross reference with the new wetlands buffer standards. Another option she proposed was to establish the wetlands buffer standard as part of a new section under RSA 9-B, State Economic Growth, Resource Protection, and Planning Policy that would then be cross referenced within the various statutes governing the applicable permits wherein the wetlands buffer would be reviewed.

The commission discussed the second option of adding a section in RSA 9-B. They agreed that:

- The amendment of RSA 9-B cannot stand-alone, amendments to statues RSA 482-A and 485 would be required as well for it to work.
- Amending RSA 9-B would not alleviate the need for the scoring of the wetlands.
- There is a need for one stop shopping for environmental permitting at the state level.

The commissioners went on a lengthy discussion as to what activities were allowed in a buffer and what were not (e.g. walk path, trimming some trees for view, building a shed). They noted:

- Any activity that would not have a detrimental effect on the wetland could be allowed.
- Not all indirect impacts have detrimental effects.
- The list of activities allowed or not allowed in a buffer would differ hugely depending on whether it was a stormwater management or a wildlife habitat protection buffer.
- A paragraph would be needed in page 2 of Mr. Gove's handout after section III that would list activities that are allowed or are not allowed in a buffer.
- The definitions of wetland buffers and indirect impacts, as drafted are not included within the statutory changes but as a preamble that would not be codified in law and thus not available as a critical reference to those trying to determine what is or isn't allowed under the proposed RSA 482-A:4-a.

**V. ESTABLISH FINDINGS AND RECOMMENDATIONS OF THE COMMISSION**

The commission at this stage was not ready to discuss and work on this section.

**VI. FINAL REPORT**

Ms. Czysz presented the draft final report outline. It is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/draft\\_final\\_report\\_outline.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/draft_final_report_outline.pdf)

The report writing subcommittee was established and Ms. Czysz, Ms. Demming, Rep. Gottling, Mr. Walker and Ms. Olsen volunteered to be the members. Ms. Czysz added that if required, she could have Dari Sassan from NH OEP contribute a few hours towards writing and compiling this final report.

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

The next meeting will be held October 4, 2010 at the Legislative Office Building, room 305, Concord, NH. A joint Commission meeting, between the various topically related legislative study commissions, is scheduled for October 6, 2010 at the Department of Environmental Services, room 110 - 112.

**VIII. OTHER BUSINESS**

There was no other business to discuss.

**IX. ADJOURNMENT**

The meeting was adjourned at 3:20 PM.

**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**

October 04, 2010 \* 1:00 PM  
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  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Senator Harold Janeway, New Hampshire Senate, Senate District 7, Capital Budget Committee, Finance Committee, Ways and Means Committee, Wildlife, Fish and Games and Agriculture Committee  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Rene Pelletier, representing NH Department of Environmental Services  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jasen Stock, representing NH Timberland Owners Association  
Peter Walker, representing NH Association of Natural Resource Scientists

**Other Attendees:**

Gary Abbott, Executive Vice President, Associated General Contractors of NH  
Joel Anderson, Staff, NH House of Representatives  
Paul Currier, Watershed Management Bureau Administrator, NH Department of Environmental Services  
Susan Olsen, NH Municipal Association  
Representative Andrew Renzullo, NH House of Representatives, Resources, Recreation and Development Committee  
Carolyn Russell, Senior Planner, NH Department of Environmental Services  
Representative Judith Spang, NH House of Representatives, member of the Resources, Recreation and Development Committee  
Henry G. Veilleux, Sheehan Phinney Capitol Group

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

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**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:06 PM.

**II. APPROVAL OF MINUTES**

Mr. Stanley moved to approve the minutes of the September 20, 2010 meeting and Mr. Doran seconded. Mr. Walker pointed out on page 4, paragraph 3, that it should be "Chapter 485" instead of "chapter 482." Ms. Deming also pointed out a typo on page 3, the first bullet should read "Alteration." The minutes were accepted unanimously as amended.

### III. DEFINITIONS SUBCOMMITTEE REPORT

Mr. Gove distributed copies of the revised work product of the Definitions Subcommittee (revision 10-04-10). The draft is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/rsa\\_482\\_draft\\_100410.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/rsa_482_draft_100410.pdf)

Mr. Gove went through the subcommittee's proposed statutory amendments. He pointed out that paragraph XVI was modified and listed the projects and activities exempt from the wetland buffer requirements of RSA 482-A: 4-a. This also specified the wetland types that were exempt.

Mr. Gove presented the changes made to the proposed new section RSA 482-A: 4-a, Regarding Wetland Buffers, including:

- Paragraph I – The functional value “ecological integrity” was added back in to Category 1.
- Paragraph I – The term “flood storage” was removed from Category 2.
- Paragraph I – Individual minimum scores were inserted, where there had been previously placeholders, to indicate the minimum threshold for each functional value. Scores were assigned as follows:
  - Ecological Integrity – equal to or exceeds 8.0;
  - Wetland-dependant Wildlife Habitat – equal to or exceeds 8.0;
  - Sediment trapping – equal to or exceeds 8.0; and
  - Nutrient Trapping/Retention/Transformation – equal to or exceeds 8.0.
- Paragraph II – the last sentence was added that read: “No activities shall take place in the wetland buffer that will degrade the identified function of the wetland, unless so allowed by the Department as provided in paragraph III.”

Mr. Gove noted that the wetland buffer provisions, as proposed, would apply not only for Dredge and Fill permit applicants, but also for those seeking Terrain Alteration (RSA 485-A:17, I), Sewage Disposal Systems (RSA 485-A:29, I), and Comprehensive Shoreland Protection Act (RSA 483-B) permits. The commission went into detailed discussion on the revised work product. The main points of the deliberation are captured below:

The commission sought to confirm consistency in the language utilized throughout the draft. The clause “have exceeded the numeric score” as stated in paragraph II should be revised to be consistent with paragraph I that states “equal to or exceeds.”

The commission inquired whether the subcommittee would be proposing specific statutory amendments to the programs listed on page three. Mr. Gove responded that at this point, the subcommittee planned to only list the statutes that need amendments, but these amendments should be addressed in the future.

Mr. Morin inquired what the impetus was for deleting the statement “Not all indirect impacts will have detrimental effects on all wetlands” from the definition of “Indirect Impact” as previously presented. Mr. Gove responded that the New Hampshire Department of Environmental Services (DES) and New Hampshire Association of Natural Resource Scientists (NHANRS) had issues with that particular sentence. Mr. Walker added that with

the addition of section III, which provided flexibility that was required, there was no more need for that particular sentence.

Mr. Morin noted that the Comprehensive Shoreland Protection Act (CSPA) (RSA 483-B) was removed from the list of exemptions and wanted to know if that was being captured elsewhere in the document. Mr. Gove responded that the proposed wetland buffers would apply to a project if it requires a CSPA permit. In other words, to get a CSPA permit, one has to go through the evaluation process to see if there are any wetlands. If there is a wetland, they must comply with the buffer regulations as applicable just like the permitting process of Alteration of Terrain (AOT) or Dredge and Fill permit. This would only be applicable if one is proposing a project within 100 feet of the wetland.

The commission discussed the reasoning behind re-inclusion of “ecological integrity” in category-1. Mr. Gove explained, to compute the score for wetland dependent wildlife habitat, one would actually have to calculate the score for ecological integrity as part of the evaluation process. Mr. Walker added that ecological integrity is probably the most important function of the whole evaluation process and therefore, it is very important to include it in determining whether a buffer is applicable or not.

Mr. Morin inquired as to why RSA 485-A: 29, I, Sewage Disposal Systems (page 3, line 4) should be amended? Mr. Pelletier explained that the wetland issue was far broader and extends further than just the wetland applications. What is done on the site could impact a wetland. The commission discussed as to how close a septic system could be to a wetland and Mr. Pelletier responded, depending on the soil type, it would be between 75 to 125 feet. The commission asked if one was constructing a septic system within 100 feet of a wetland, if that would trigger an evaluation. Mr. Pelletier replied that this trigger is already in effect today.

The commission inquired how the minimum threshold of 8.0 was established for each functional value in paragraph I. Mr. Gove explained that he took the data and selected the best of the best wetlands. He also ran the data sheets to see how the numbers would turnout. The objective was to protect wetlands with high values.

The commission discussed the type of ponds that should be exempt as mentioned in paragraph XVI. (f) (3). The commission agreed to amend that bullet to read “*Agricultural ponds or recreational ponds*, other than those created as compensatory mitigation”.

Senator Janeway made a motion to accept the revised work of the Definitions Subcommittee with the proposed amendments and corrections as their final work product. Mr. Stanley seconded the motion and all accepted the report unanimously as the final work product. The commission stressed that accepting this report did not mean that the commission was approving the report.

#### **IV. FINAL REPORT**

The draft final report outline is available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/draft\\_final\\_report\\_outline.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/draft_final_report_outline.pdf)

The Final Report Writing Subcommittee is comprised of Rep. Gottling, Ms. Czysz, Ms. Demming, Mr. Gove, Mr. Walker and Ms. Olsen.

Mr. Walker stated that the “wildlife habitat and wildlife connectivity” was a gap that was prevailing and there was a need to address this issue at the appropriate regional or statewide scale. The Research Subcommittee had this as a recommendation on their report (page 7, recommendation 7). Mr. Walker was advocating to the full commission to consider this recommendation for the final report.

The commission was concerned about having a draft report ready and accepted by October 18<sup>th</sup>. It was decided that all Commissioners should send any language they would like considered as part of the report – introductory language, recommendations or findings to Ms. Czysz, via email, by October 8, 2010. She would compile all draft recommendations and findings for review by the Report Writing Subcommittee that will meet on October 14, 2010 at 10 AM at the LOB. The work of the Subcommittee will be compiled into a draft to be distributed to all commission members by October 15, 2010 for discussion at the October 18, 2010 commission meeting.

Ms. Czysz reminded all that the commission had not voted on the top 3 recommendations proposed by the Research Subcommittee. She added that she would modify the top 3 recommendations based on the September 20, 2010 Commission meeting presentation of the Subcommittee’s report to make the recommendations more palatable for all.

The commission talked about making a bulleted list of the topics that were not addressed, as the commission’s scope was large, but were important and should be addressed in the future. They proposed to place them in the introduction of the final report under “Summary of What the Commission Did not Accomplish.”

Ms. Czysz informed the commission of the structure of the final report. The work of the two subcommittees, including their reports and meeting notes will go in the report’s appendices and the main body of the report would be concise and comprised of specific bullet like paragraphs that would summarize the commission’s recommendations and findings.

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

A joint Commission meeting between the various topically related legislative study commissions was scheduled for October 6, 2010 at the Department of Environmental Services, room 110 - 112. The next meeting would be held October 18, 2010 at the Legislative Office Building, room 305, Concord, NH. Rep. Gottling proposed having another meeting on October 25, 2010, to work on the final report.

**VI. OTHER BUSINESS**

There was no other business to discuss.

**VII. ADJOURNMENT**

The meeting was adjourned at 3:02 PM.

**DRAFT MEETING NOTES**  
**JOINT MEETING OF THE LAND USE COMMISSION, STORMWATER**  
**COMMISSION, AND THE SUSTAINABLE INFRASTRUCTURE FUNDING**  
**COMMISSION**

October 6, 2010 \* 1:00 PM – 4:00 PM  
NH DES Building, Rooms 110 – 113, 29 Hazen Drive, Concord, NH

**ATTENDEES**

Susan Olsen	NH Municipal Association
Pam Hubbard	NH House
Mark Hemmerlein	NH Dept. of Transportation
Eber Currier	NH Farm Bureau
Peter Rice	NH WWCA
Sue Gottling	NH House
Steve Kahl	NH Lakes Association
Rachel Rouillard	Piscataqua Regional Estuaries Partnership
Robert Roseen	UNH Stormwater Center
David Cedarholm	NH Public Works Association
Judith Spang	NH House
Paul Morin	Home Builders and Remodelers Association of NH
Kurt Blomquist	NH Public Works Association
Tom Irwin	Conservation Law Foundation
Keith Robinson	US Geological Survey
Henry Veilleux	Sheehan, Phinney, Bass & Greene
Gary Abbott	Associated General Contractors of NH
Jen Czynsz	NH Office of Energy and Planning
Laura Demming	NH Audubon
Bob Quin	NH Association of Realtors
John Doran	NH Association of Realtors
Harold Janeway	NH Senate
Karen Ebel	The Nature Conservancy
Paul Basiliere	Public Service of NH
Martha Fuller Clark	NH Senate
Cordell Johnston	NH Municipal Association
William Hounsell	North Conway and Bartlett Water Precincts
David Danielson	NH Association of Regional Planning Commissions
Brandon Kernan	NH DES Drinking Water and Groundwater Bureau
Paul Currier	NH DES Watershed Management Bureau
Sarah Pillsbury	NH DES Drinking Water and Groundwater Bureau
Rick Chorman	NH Geological Survey
Ridge Mauck	NH DES Alteration of Terrain Bureau
Carolyn Russell	NH DES Planning, Prevention, and Assistance Program
Eric Williams	NH DES Watershed Management Bureau
Tom Burack	NH DES, Commissioner
Rene Pelletier	NH DES Land Resources Management Bureau
Jillian McCarthy	NH DES Watershed Management Bureau
Ted Diers	NH DES Watershed Management Bureau

## **WELCOME**

The meeting began at 1:08 pm. Commissioner Burack welcomed everyone and thanked them for participating. He explained that the previous joint meeting on May 24<sup>th</sup> allowed everyone to gain a better understanding of each commission's work and to explore ways to align the recommendations of each commission around a common vision and a complimentary package of actions.

He highlighted some of the points of the May meeting including: the need for regional and watershed scale approaches; the challenge in aligning state and local policies and actions; the need for alternative and sustainable funding streams; the effect of land use choices and the resulting pattern of development on communities, infrastructure needs, and natural resources; and the opportunity for state-driven minimum requirements to provide protection of high quality resources. He explained that the commission presentations exposed gaps and that each commission was asked to examine those gaps and potential ways to address them in their work prior to today's meeting.

He explained that the purpose of today's meeting is to hear the draft recommendations from each commission, quickly identify any remaining conflicts and gaps that may exist, and focus on moving forward with complementary recommendations.

## **INTRODUCTIONS**

Introductions were made around the room.

## **COMMISSION REPORT OUTS**

The chair of each Commission (see below) gave a brief summary of the primary findings and recommendations of their respective Commissions. The summary documents of each commission are attachments to these meeting notes. The primary recommendations of each commission were recorded in a matrix (attached) to identify common themes and complimentary approaches and to identify remaining gaps.

<b>Commission:</b>	<b>Chair:</b>
Land Use	Suzanne Gottling, State Representative
Stormwater	Dave Cedarholm, NH Public Works Association
Infrastructure	Martha Fuller Clark, State Senator
Groundwater	Judith Spang, State Representative

## **FACILITATED DISCUSSION**

### **Facilitated by Ted Diers, NHDES Watershed Management Bureau**

**Mr. Diers** explained that the purpose of the facilitated discussion is to identify common themes and complimentary approaches and to identify remaining gaps. He used the categories on the matrix to guide the discussion. The following items were identified and discussed:

#### **New and Emerging Issues**

- Climate change is a driver to much of the Commissions' work
- There is a lack of data on newly identified toxic contaminants such as pharmaceuticals in drinking water.

## Data Needs

- Adequate groundwater monitoring network and data
- Sources of sediment to Great Bay

## Conflicting Recommendations

- If we are able to implement all of the separate recommendations of each commission, we may end up with a more complex system than if we are able to incorporate multiple ideas into a single framework together. A coordinated approach would be a worthwhile process.
- Many of the recommendations that are related could be more difficult to push forward individually than as a group.
- Need to look at the costs of each recommendation and the cumulative cost of the recommendations to determine if the costs are reasonable. Is there a more generic way of collecting money?
- The costs associated with each recommendation are all written from one checkbook, especially at the community level.
- It is important to combine the messaging of each commission and report on the bigger message of working toward a healthy environment and a prosperous economy for years to come.
- As more layers of regulation are added, the risk of failure, particularly for developers, increases.
- There needs to be a mid-point between the need for consistency and the need for flexibility.

## Complimentary Recommendation

- The stormwater utility concept solves many of the problems of all of the commissions; maybe the other commissions are willing to support it.
- Incentive-based approaches – what are good incentives?
  - Headline/sign in a magazine - eg. Tree City USA, #1 community, most stormwater friendly town
  - Incentives for developers to design and build in a certain way, eg. time for permits, cost, integrated with community process
  - Fast track permitting process with density bonuses
  - Universal state utility process where property owner would pay in proportion to the ecosystem processes that they use
  - A tax that people can opt out of for “doing the right thing”
  - Municipal incentives for them to change land use regulations eg. Funding for municipal planners if they do x, y, z.
  - Incentives that work within the context of NH –duality that we want environmental protection, but we’re not willing to pay much for it.
  - Offer creative ways for mitigation, pollutant trading, resource restoration, etc.
  - Incentives for state and federal funds – eg. Commonwealth Capital program
  - Incentives for people to use the landscape in one way rather than another, ex. Incentives to protect agriculture

- Avoid disincentives- eg. too great a point of sale cost for real estate and the cost of maintaining real estate. Making property ownership too expensive in urbanized area which leads to sprawl development
- Don't want to make it difficult for people to live in NH. The primary reason people move to NH is quality of life.
- Incentives need to be broad-based
- The incentives today will likely need to change in the future. What we have today is not what we'll have tomorrow.
- Technology innovation, new, cheaper, more effective ways to improve the environment will be strong incentives for people to adopt new practices
- Incentives are not free
- General Comments: Incentives are great, but NH residents have been getting all of the good rewards for free for a very long time. People come to NH because it is a beautiful place to live. Sometimes you can't create incentives for action, you need to require it. Incentives take a long time to create change.
- Statewide minimum standards
  - Promote consistency, but must allow for flexibility
  - True cost accounting for utilities including sinking (capital reserve) funds
  - Wetlands protection to improve uniformity across the state and protect resources in accordance with their functions and values
  - Consistency reduces risk on the development side because they can better understand and refine the process.
  - There is a potential environmental risk if the consistency isn't sufficient
  - The amount and quality of service is determined by the expected level of funding.
  - Some municipalities do not want minimum standards, but some municipalities welcome them so they do not need to spend their own limited money and time developing them
  - It has to be the state that sets the stake in the ground. The state has to determine what is adequately protecting habitat, water quality, open space, etc. It becomes the anchor for making things predictable and consistent so that all the local regulations are achieving the same goal. All of the resources that the Commissions are discussing are state resources and the state should determine how they are to be protected.
  - How do you deal with 28-A considerations?
    - Stormwater utilities generate their own funding and avoid 28-A
    - Having a municipality adopt a new ordinance isn't necessarily a 28-A issue.
    - Communities may embrace the concept of a utility – if it is applied at the state level it gets them out of the challenge of adopting it at the local level.
    - If a federal regulations is passed from the state to the municipalities, it isn't a 28-A issue.

**Mr. Diers** informed everyone that the matrix will be updated based on the discussion and will be submitted, along with the meeting notes, to all attendees. He added that, as each

commission writes their final report, he hopes that the input of other commissions will be considered.

**ADJOURN**

**Commissioner Burack** thanked everyone for participating. The meeting adjourned at 4:00 PM.

**DRAFT SUMMARY OF COMMISSION RECOMMENDATIONS AS OF 10/6/2010**

	<b>Pattern of Land Use/Sprawl/Housing</b>	<b>Regional/Watershed Approach</b>	<b>New-Emerging Issues</b> (e.g., climate change, changing demographics)	<b>Regulatory Consistency &amp; Improvements</b> (e.g., state minimums, municipal standards, reproducible, science-based)	<b>Data</b> (e.g., filling data gaps, improved, centralized access, availability consistency)	<b>Incentives/Non-Regulatory Approaches</b>
<b>Land Use Commission</b>	- Education and outreach to promote smart growth/protect natural resources - landscape connectivity plan development	- many recommendations based on watershed approach		0 - alternative, integrated land development permit program - stepped, scientific-based wetland buffer method - review of existing prime wetlands system/program - encourage consistency	- wildlife habitat & groundwater data needs - central data repository/website - empty NSN statewide	incentive-based programs to promote smart growth
<b>Stormwater Commission</b>	- promote infill development	- Watershed-based, statewide stormwater utility	- land use planning & flooding resiliency	- Define "stormwater" in RSA 485-A - Watershed-based state stormwater discharge permits for developed property (permit by rule) - Enable and require (or create incentives for) municipalities to regulate stormwater consistent w/ a minimum standards. - revise existing stormwater utility enabling legislation - statement in statute that property owners are responsible for their	- utilize & adopt new storm depth data - statewide impervious cover data, periodically updated - better costs estimates for stormwater management - results of stormwater feasibility studies	- Watershed-based, statewide stormwater utility
<b>Infrastructure Commission *DRAFT Commission to be extended</b>	functioning infrastructure supports infill of developed areas	Right sizing of systems - regionalization of smaller systems - interconnection for non-viable systems (not necessarily physical interconnection)	- climate change driving needs - new regulations drive needs	- extend commission for additional year. - Funding only sustainable/unaffordable projects - require planning/capital reserves	UNH Research, needs, gaps, funding mechanisms and approaches	- Funding tied to sustainability - extensive public education to increase value of water services - planning/asset management
<b>Groundwater Commission</b>	- heavy or light use of the land determines water sources - check recommendation	- long term, watershed-wide water use planning at municipal/watershed level		0 - amendments to statute and planning tools for additional municipal control over water resources	- assessment of future water needs - more data on capacity of current sources (monitoring)	- planning tools for implementing water management/model ordinance

**DRAFT 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**

October 18, 2010 \* 1:00 PM  
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  
Representative Chris Christensen, NH House of Representatives  
Jennifer Czysz, representing NH Office of Energy and Planning  
Laura Deming, representing NH Audubon  
John Doran, representing NH Association of Realtors  
James Gove, representing Associated General Contractors of NH  
Carol Henderson, representing NH Fish and Game Department  
Paul Morin, representing Home Builders and Remodelers Association of NH  
Rene Pelletier, representing NH Department of Environmental Services  
Glenn Smart, P.G., representing the Business and Industry Association.  
Peter Stanley, representing NH Association of Regional Planning Commissions  
Jasen Stock, representing NH Timberland Owners Association  
Peter Walker, representing NH Association of Natural Resource Scientists

**Other Attendees:**

Collis Adams, NH Department of Environmental Services  
Joel Anderson, Staff, NH House of Representatives  
Commissioner Tom Burack, NH Department of Environmental Services  
Susan Olsen, NH Municipal Association  
Ari Pollack, Home Builders and Remodelers Association of New Hampshire  
Carolyn Russell, Senior Planner, NH Department of Environmental Services

**Commission Staff:**

Farzana Alamgir, NH Office of Energy and Planning

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**I. ROLL CALL AND INTRODUCTIONS**

Chairperson Gottling called the meeting to order at 1:00 PM.

**II. APPROVAL OF MINUTES**

Mr. Stanley moved to approve the minutes of the October 4, 2010 meeting and Mr. Walker seconded. The minutes were accepted unanimously.

**III. DEFINITIONS SUBCOMMITTEE REPORT**

Mr. Gove distributed copies of the revised work product of the Definitions Subcommittee (revision 10-18-10) and the Definitions Subcommittee Report at the meeting. The documents are available online at:

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/rsa\\_482\\_draft\\_101810.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/rsa_482_draft_101810.pdf)

[http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/definitions\\_subcommittee\\_final\\_report.pdf](http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/definitions_subcommittee_final_report.pdf)

Mr. Gove went through the subcommittee's proposed statutory amendments. He mentioned that all the changes discussed by the Commission in the previous meeting have been incorporated in the new version and new minimum thresholds, for some of the functional values, were assigned based on additional research conducted. The revised scores were as follows:

- Ecological Integrity – equal to or exceeds **8.5**;
- Nutrient Trapping/Retention/Transformation – equal to or exceeds **8.5**.

The scores for Wetland-Dependant Wildlife Habitat and Sediment Trapping remained the same as before (equal to or exceeds 8.0). He pointed out that the Sewage Disposal Systems (RSA 485-A:29, I), and Comprehensive Shoreland Protection Act (RSA 483-B), as previously presented, were removed from the list of statutes that need amendments and were not proposed to be incorporated into the buffers review process at this time. He drew the Commission's attention to a new paragraph in the current version that stated, "The commissioner shall have the authority to grant variances from the minimum standards in this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b)" (paragraph V, page 3). Mr. Gove indicated that this was newly incorporated in the proposed statutory amendments at the request of the NH Department of Environmental Services (NH DES).

Mr. Walker pointed out that the Comprehensive Shoreland Protection Act (CSPA) was neither listed as a trigger for wetland evaluation, nor on the list of exemptions and asked for the intent behind this change. Mr. Gove explained that CSPA would be applicable to any water bodies that are over 10 acres. The CSPA was not listed because, regardless of whether it is within a shoreland or not, if there was a direct wetland impact, it would trigger the evaluation process for the buffers.

Mr. Walker inquired how paragraph III differed from paragraph V. Mr. Gove and Mr. Pelletier explained to the Commission that paragraph V was aimed to resolve the risk of takings through granting variances in cases of undue hardship. Paragraph III on the other hand provided flexibility to buffer requirements to achieve the best environmental results. The Commission discussed the differences in detail and agreed that adding the variance piece would make the revised work product more complete. Mr. Walker advocated that once this moved forward into legislation, it should clearly state that this would be applicable to new disturbances as opposed to existing uses. In agreement, Ms. Czysz proposed to consider a waiver process similar to what exists in the CSPA for redevelopment of pre-existing non-conforming lots.

Mr. Pelletier mentioned that NH DES was concerned that the 100,000 SF of area disturbance, as stated in the statute of Alteration of Terrain (AOT), was too large to capture the impacts. Mr. Gove pointed out that the Federal Storm Water permit requirement is applicable to any construction activity that disturbs 1 acre (43,560 SF) of land. He distributed a handout that is available online at:

<http://www.nh.gov/oep/legislation/2008/hb1579/2010/documents/NHDiggingNeedsFederalPermit.pdf>

Mr. Pelletier expressed that he would like to see the requirements of AOT be in line with the Federal requirements and reduce the minimum impact area to 43,560 SF. He added that he would prefer to see RSA 483-B and 485-A:29, I reinstated and be applicable to any disturbance greater than 20,000 SF.

Mr. Walker recognized that including RSA 485-A:29 had an inherent conflict: environmental protection vs. protection of personal property rights. Therefore, he suggested that it be included with a list of exemptions because not every application would require a major review, particularly single-family residential lots.

Mr. Morin added that the proposal to include the two permit programs (RSA 483-B and 485-A:29, I) within the wetland buffer draft, were brought in too late for the Commission's consideration, when the predominant focus was on direct and indirect impact on wetlands. He asked, to what degree an individual lot would affect the water quality. Mr. Pelletier responded that the buffer concept would need to be looked at holistically. He added that water quality is impacted by what happens in the watershed, and for the past two years, water quality has gotten worse. Therefore, it should not go unmentioned, and needed to be addressed in the future.

Rep. Gottling proposed amendments to RSA 483-B and 485-A:29, I be included in a list of programs that the Commission was unable to address adequately but would need to be examined in-depth in the future. Mr. Morin stated that he would support noting these on the final report as programs that were brought before the Commission but no in-depth study was done, therefore, would leave those for any future Commission to address. Mr. Walker proposed putting this in to the recommendation.

Mr. Stock asked if the Home Builders and Remodelers Association was comfortable in voting in favor of the draft legislation. Mr. Morin responded that they were not, but they are in favor of a good work product. He added that he recognized the rational nexus between wetlands and AOT programs and the buffer system. He added that the rational link to wetlands and the other programs discussed above were not evident, but was rather an excuse to see what else was taking place on the site. He went on to say that if that was the policy, there may as well be a statewide zoning requirement. Mr. Morin added that their organization was not against the approach but this was an unfinished work at this point and would not vote in favor of the draft legislation. He pointed out the draft legislation was based on:

- The revised NH Method that was not yet published and finalized;
- The minimum threshold score of 8.0 and 8.5 are still best guesses as to statistical distribution;
- Permitted uses within the buffer are still not fully defined.

Mr. Doran followed up that he had not heard back from his leadership group (NH Association of Realtors Public Policy Committee) regarding the inclusion of the two programs (CSPA and Septic) as triggers for evaluation; and felt that they would not support an affirmative vote on that. However, he accepted the draft prepared by the Subcommittee

and felt that as presented, it represented consensus of the Commission. He felt that there was a need to first get a good grasp on the revised NH Method and test the minimum threshold for each functional value before expanding the program. He commented that he was comfortable with the work product.

Mr. Stock inquired about the rationale behind striking the line “The estimation by the subcommittee is that between 10 and 25 percent of the wetlands in the state will have the scores to qualify as requiring a wetland buffer.” from the second to last paragraph of the Definitions Subcommittee report. Mr. Gove responded that they reviewed characteristics of very high value wetlands using available data and applied the revised NH Method to test the scores. Then he looked at the old data and correlated it with the new data. There were changes to the questions and assumptions going from the old to the new NH Method, therefore, it was not a direct correlation. He added that they do not have a large enough data set to establish a percentage of wetlands requiring a wetland buffer per town or county or for the state.

Mr. Walker moved to accept the revised documents; Report of the Subcommittee and the revised work product (two documents), as the Definitions Subcommittee Report, replacing that which was accepted at the last Commission meeting. The Commission confirmed that it would be incorporated in the appendix of the Final Report. Mr. Gove seconded the motion and all accepted the subcommittee report unanimously. The Commission clarified that the vote was to accept the report; it did not mean that they endorsed its specific recommendations.

#### **IV. FINAL REPORT**

Mr. Stock presented the following language for consideration as a new recommendation for endorsement by the commission in its final report.

*A recommendation coming from the HB 1579 Land Use Study Commission’s definitions subcommittee is the defining of wetlands buffers, indirect impacts and establishing setbacks from those wetlands whose ecological integrity, wetland dependent wildlife habitat and sediment/nutrient trapping/retention and transformation values score greater than 8.0 according to the NH Method. Although not discussed at length by the Commission, the question of how this proposal fits with New Hampshire’s current Prime Wetlands law found in RSA 482-A:15 has come up. Upon review their purposes (protecting the wetland values of New Hampshire’s best wetlands) and mechanics (establishing upland buffer areas) are very similar. The primary difference is Prime Wetlands are designated by the local communities following a review of all the wetlands within the community, whereas, the Commission requires the wetland be reviewed and any setbacks established on a case-by-case basis. Because of this overlap the HB 1579 Land Use Study Commission recommends establishing a commission to explore how to integrate the requirements found in RSA 482-A:15 into the Commission’s recommendation. Specifically the Commission recommends a study looking at the:*

- *Accuracy of current Prime Wetland designations and if these need to be updated to reflect current mapping standards and delineation procedures,*

- *Changes made to the Prime Wetlands law since its passage. How they are working and if additional changes are necessary, and*
- *What updates should be made to the Prime Wetlands law to make it compatible with the proposed wetlands evaluation and buffer process found in the Commission's recommendations.*

*This commission will meet \_\_\_\_ and file a report on \_\_\_\_\_.*

Mr. Gove noted that the study should also review the regulation of wetland buffers and the integration of the proposed buffer requirements and those of the Prime Wetlands Program. Ms. Czysz hesitated to endorse the formation of a new study commission. Ms. Olsen indicated that the NH Municipal Association (NHMA) has just begun a series of conversations with the Department of Environmental Services (NHDES) to thoroughly review the Prime Wetlands statutes and program. Discussion ensued. General consensus among commissioners was to not add this as a recommendation within the report as the review is underway by the NHMA and NHDES and any such recommendation would be redundant.

Mr. Morin offered the following alternate language to replace the first recommendation in the draft report under review.

*The Commission recommends that any legislation addressing indirect impacts to wetlands use the numeric approach described in Appendix B rather than a subjective "best professional judgment" approach. Legislation should only be proposed once the new "NH Method" is published and available for evaluation and applied to a reasonable data set to establish an appropriate benchmark that considers environmental protection, property rights and the needs of economic development.*

Mr. Morin noted that this proposed revision would address the many concerns the Home Builders have with the various unknowns that exist within the recommendation as presented in the draft report, particularly regarding the percentage, number and acreage of wetlands that would be regulated under the proposed wetland buffer provisions. Discussion ensued.

Mr. Stanley agreed with the concept of Mr. Morin's revision and the need to wait until the new NH Method was published, however, he disagreed to wait until a "reasonable data set" was established. Mr. Pelletier expressed his concern by asking whether the intent of this Commission was to protect the best of the best wetlands regardless of whether that was 2 or 18 percent of wetlands? He reminded the Commission that the goal was to protect the exemplary wetlands from direct and indirect impacts. Mr. Morin explained that he agreed with Mr. Pelletier, but the definition of "exemplary wetlands" was inconsistent. He added that the stated percentage of wetlands that would be captured varied from meeting to meeting and if measured in terms of area, the value may be as large as 50 percent of wetland acreage.

Mr. Doran stated that it is essential to be able to accurately explain what will be regulated to constituents. Mr. Stock agreed and stated that before we vote and recommend a statewide policy we need to know its impacts and the number of wetlands that will be regulated. He

offered the example that under the Comprehensive Shoreland Protection Act, legislators clearly knew the number of stream miles that would be regulated depending on whether they applied the act's provisions to third or fourth order streams.

Ms. Deming indicated that regardless of regional differences wetland value evaluations should be applied consistently across the state to achieve the commission's desired intent of protecting the State's highest value wetlands.

Mr. Walker made a motion to accept recommendations five through eight as written. Mr. Pelletier seconded. Discussion followed.

Mr. Doran suggested clarifying that the second bullet of the seventh recommendation is presenting examples and is not stating that New Hampshire should replicate the listed programs. All agreed to this revision.

Mr. Doran also asked for clarification on what "landscape level planning for ecological integrity" is, as stated in the eighth recommendation. Ms. Deming explained that landscape level planning looks beyond boundaries such as property lines or municipal bounds and utilizes a regional perspective. It looks at the landscape from a wildlife perspective.

Ms. Henderson proposed amending the eighth recommendation to strike from its first paragraph "in order to address...planning for ecological integrity." All agreed to this revision.

Mr. Walker amended his motion to accept recommendations five through eight with the amendments proposed. Mr. Pelletier seconded. A roll call vote was taken and votes were cast as follows:

Chairperson Representative Sue Gottling - Yes  
Representative Chris Christensen - Yes  
Jennifer Czysz - Yes  
Laura Deming - Yes  
John Doran - Yes  
James Gove - Yes  
Carol Henderson - Yes  
Paul Morin - Yes  
Rene Pelletier - Yes  
Glenn Smart, P.G. - Yes  
Peter Stanley - Yes  
Jasen Stock - Yes  
Peter Walker - Yes

Motion passed, 13-0.

The accepted recommendations, as amended by the motion, were as follows:

- 5) Enhance existing education and outreach programs to promote smarter growth and protect natural resources. Possible opportunities and topics include:

- Increased educational opportunities on the impacts of development on the natural environment;
  - Increased education opportunities for municipal boards relative to implementing the smart growth principles of RSA 9-B; and
  - Assist municipal boards to implement the Innovative Planning Techniques of RSA 674:21.
- 6) Consider new legislation to provide for an alternative, integrated land development permit that addresses multiple issues (e.g., wetlands, stormwater, wastewater/septic, habitat, and indirect and cumulative impacts) in coordination. Central to this concept are the key words "alternative" and "integrated," intending one land development permit offered in parallel and as an alternative to, the existing multiple independent permits. Running two parallel permit programs would allow additional time to consider the appropriateness and logistical realities of transitioning to such an integrated permitting program for all applicants. As part of this effort, it is expected that the legislature will establish clear statutory definitions of "cumulative" and "indirect" impacts and establish, within statute, the authority for DES, municipalities, and other regulatory agencies to address these impacts. Existing frameworks that may be utilized to assist in implementing this recommendation include the Maine Site Location of Development Act and the New Hampshire Department of Environmental Services' Innovative Permitting Initiative.
- 7) Establish incentive-based programs to promote smart growth patterns of development. Possibilities include:
- Enable modification of existing programs' administrative rules to consider smart growth as a program performance or eligibility requirements;
  - Establish new programs, *examples of which include* such as Massachusetts's Commonwealth Capital program or Vermont's Growth Centers program; and/or
  - Encourage collaboration with other agencies, organizations, and/or political subdivisions to maximize access to resources and effectiveness.
- 8) Develop and implement a statewide ecological connectivity plan to maintain and restore wildlife mobility among habitats and across the landscape ~~in order to address the current lack of landscape level planning for ecological integrity~~. This plan should identify best management practices that can be implemented by individual project proponents to preserve and enhance wildlife connectivity on a site level. The plan should also set priorities for developing new tools to assess habitat connectivity and fragmentation and provide guidelines for planners on how to use these tools to preserve important habitats. Finally, the plan should identify high value wildlife areas within the state, outline a strategy for protecting these areas, and describe the role of the state in implementing this plan.

The Commission took a five-minute break from 3:00 PM to 3:05 PM.

Upon reconvening, photocopies of the language drafted by Mr. Morin as a proposed alternative to the first recommendation were distributed to all in attendance for further review and consideration.

Mr. Stanley made a motion to accept recommendations one through four as presented in the draft final report. Mr. Gove seconded the motion. Discussion followed.

Mr. Gove found Mr. Morin's draft to be too ambiguous and also too last-minute to have had the opportunity to fully review it with his constituents. Therefore, he was not able to support Mr. Morin's proposed language.

Mr. Smart inquired whether the buffers as proposed were to be measured horizontally or following the terrain? All agreed that the industry standard is to measure buffers horizontally. Mr. Stanley recommended making one amendment to recommendation one to parenthetically note that the distance would be "measured horizontally."

Mr. Doran requested that the motion be broken to consider only recommendations two through four at this time. Mr. Stanley declined to make such an amendment to his motion.

There being no further discussion on the motion, the motion was amended by Mr. Stanley to add the aforementioned parenthetical note to recommendation one, "(measured horizontally)." A roll call vote was taken and votes were cast as follows:

Chairperson Representative Sue Gottling - Yes  
Representative Chris Christensen - Yes  
Jennifer Czysz - Yes  
Laura Deming - Yes  
John Doran - No  
James Gove - Yes  
Carol Henderson - Yes  
Paul Morin - No  
Rene Pelletier - Yes  
Glenn Smart, P.G. - Yes  
Peter Stanley - Yes  
Jasen Stock - No  
Peter Walker - Yes

Motion passed, 10-3.

The accepted recommendations, as amended by the motion, were as follows:

- 1) Utilize the *Method for the Evaluation of Freshwater Wetlands in New Hampshire (Revised NH Method), 2010*, a recognized scientifically based method of evaluating wetlands, to establish wetland buffers of 50 to 100 feet (*measured horizontally*). The buffer shall be 100 feet when the following functional values of a wetland meet or exceed a score of:
  - Ecological integrity – 8.5;

- Wetland dependent wildlife habitat – 8.0.

The buffer shall be 50 feet when the following functional values of a wetland meet or exceed a score of:

- Sediment trapping – 8.0;
- Nutrient trapping/retention/transformation – 8.5.

This buffer system should apply to the following existing permit systems:

- RSA 482-A, Dredge and Fill;
- RSA 485:17, I, Terrain Alteration.

There was a lack of existing data to confirm exactly which wetlands would be captured by the thresholds stated above and in the proposed statutory language found in Appendix B (Definitions Subcommittee Report) formulated to implement this recommendation. Therefore, the thresholds may need to be reviewed and modified in the future to ensure that they are capturing the intended quality of wetlands and those in need of protection.

- 2) Define “wetland buffers” and “indirect impacts” to wetlands. The commission recommends the following definitions:

Wetland Buffers: An area of upland adjacent to a wetland intended to protect the wetland from indirect impacts resulting from activities in the upland that degrade the wetland values enumerated in RSA 482-A:1.

Indirect Impacts: A change to one or more of the values of a wetland enumerated in RSA 482-A:1 resulting from activities in an adjacent upland.

- 3) Compile data on functional values of wetlands as they become available in order to evaluate the effectiveness of the thresholds or cut off scores proposed in the first recommendation, above, and Appendix B (Definitions Subcommittee Report).
- 4) Recommend that if municipalities choose to implement a wetland buffer ordinance or regulation, that they be encouraged to utilize the same method as proposed above and in Appendix B (Definitions Subcommittee Report).

There being no further conversation or action on the Recommendations portion of the Final Report, conversation shifted to reviewing the remainder of the Report’s content. Mr. Morin inquired whether the Chair would accept minority reports or letters of objection to be included in the Commission’s Final Report. Rep. Gottling asked if there were any objections from Commission members. Mr. Walker asked if the Home Builders and Remodelers Association would exclusively sign the document or if there were other signers? At this time it is only being submitted on behalf of the Home Builders. There being no objections, the chair agreed to include either a minority report or letter of objection from the Home Builders and Remodelers Association if Mr. Morin wished to submit such a document. Commission members agreed to include this document in the Final Report as Appendix A and would subsequently renumber the Report’s appendices so that the

Commission's minutes would become Appendix B; the Definitions Subcommittee's Report, Appendix C and their meeting notes Appendix D; and so forth.

Mr. Walker suggested moving the Findings to precede the Recommendations in the Report. All agreed to this modification. Ms. Czysz noted she would like someone to proof read the draft report before it is submitted to legislature. Mr. Stanley offered to do so.

Mr. Doran sought to clarify that finding number 13 was to the exception of the work done by the subcommittee. All agreed that his reading of the finding was correct and that other than the subcommittee's work to define indirect impacts, there is no consensus on how to define "indirect" or "cumulative" impacts.

Additionally, Mr. Doran requested where he could find further information relative to the 21<sup>st</sup> finding. Ms. Deming, Ms. Henderson, and Ms. Czysz all noted several sources of information including the Wildlife Action Plan, the presentation to the Commission by the Fish and Game Department, and others.

There being no other comments on the report, Mr. Stanley made a motion to accept the Final Report as written and with the various edits identified. Mr. Pelletier seconded the motion. A roll call vote was taken and votes were cast as follows:

Chairperson Representative Sue Gottling - Yes  
Representative Chris Christensen - Yes  
Jennifer Czysz - Yes  
Laura Deming - Yes  
John Doran - Yes  
James Gove - Yes  
Carol Henderson - Yes  
Paul Morin - Yes  
Rene Pelletier - Yes  
Glenn Smart, P.G. - Yes  
Peter Stanley - Yes  
Jasen Stock - Yes  
Peter Walker - Yes

Motion passed, 13-0.

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

No more meeting is required.

**VI. OTHER BUSINESS**

There was no other business to discuss.

**VII. ADJOURNMENT**

The meeting was adjourned at 3:40 PM.