

LAKES MANAGEMENT ADVISORY COMMITTEE
NH Lakes Management and Protection Program



New Hampshire Department of Environmental Services
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MEETING MINUTES
November 17, 2006 Meeting
DRED Conference Room
9:30 a.m. - 1:00 p.m.

Members present:

James S. Morash, Vice Chair
Wendell Berry
Jennifer Czysz
Joe Farrelly
Mark Gallagher
Mark Hemmerlein
Ken Jordan
Mitchell E. Kalter
Larry Sunderland
Kenneth P. Wilson

Representing:

Tourism, NH Travel Council
NH Business and Industry Assn
Office of Energy & Planning
NH Lakes Association
Commissioner, DOS
Commissioner, DOT
NH Association of Realtors
NH Fish & Game Commission
Conservation Community
NH Marine Trades Association

Term:

August 1, 2007
July 8, 2007
Indefinite
August 1, 2006
Indefinite
Indefinite
June 27, 2008
August 22, 2008
September 19, 2007
August 22, 2008

Members not present:

Jim Haney, Ph.D., Chair
Marsha LaVallee Huntoon
Johanna Lyons
Fred Murphy
Rich Tichko
Michele Tremblay
Vacant
Vacant

Scientific Community, UNH
Conservation Commissions
Commissioner, DRED
Member, Planning Board
Exec. Dir., Fish & Game Dept.
State Conservation Committee
Elected Municipal Official
Commissioner, Agr. Markets and Food

August 22, 2007
August 22, 2007
Indefinite
August 1, 2008
Indefinite
August 1, 2009
August 22, 2003
Indefinite

Staff Present

Jacquie Colburn
Jody Connor
Paul Currier
Carolyn Guerdet

Lakes Coordinator, Watershed Management Bureau
Director, Limnology Center
Admin. Watershed Management Bureau
Admin. Asst., Water Division

Guest

Phil O'Brien

Nominated new committee member

The Meeting Was Called to Order

- **Jim Morash, Vice Chair, called the meeting to order at 9:30 a.m.**

I. Introductions/Minutes/Committee Business

1) Meeting Minutes: October 27, 2006

- **Joe Farrelly made a motion to accept the minutes as presented. Mitch Kalter seconded the motion and the vote was unanimous.**

2) Committee Business:

Statements of Financial Interest need to be filled out and signed. Members appointed by Governor and Council must file these forms by January.

3) Upcoming Meetings:

Next meeting is December 15th, the 3rd Friday, due to the Christmas holiday; this meeting will be held at DES. The monthly meeting schedule for 2007 was distributed.

4) State Agency/Member Updates:Jody Connor/DES

Jody reported about the North American Lakes Management Society (NALMS) annual conference that he attended the prior week in Indianapolis. There are new tools for surveying lakes and ponds so that all states are using the same equipment and using the same techniques. The issue of cyanobacteria (toxic algae) is a major concern across the United States and is being researched by several states.

Jody was asked 'what is the most important thing that can be learned from the national lakes survey?' Jody said that this is a snapshot of lakes and ponds in the U.S. so Congress can get an idea of how are lakes and ponds are doing. What we will learn are new techniques on sampling the lake biota, looking at the macro-invertebrates and the plants.

NALMS is going to be in New England in 2009, possibly Rhode Island, Maine, Connecticut, or the Mount Washington Resort in New Hampshire.

Final papers are coming in regards to the million dollar research grant on milfoil from Senator Gregg and EPA. One is on the replacement of milfoil with native vegetation using a suction harvester. After removing the milfoil, native vegetation is planted and it is coming up and taking the place of the milfoil. This is after just 2 years of observation.

Jacquie Colburn/DES

Jacquie spoke about the presentation she gave at the NALMS conference regarding the LMAC, who we are, what we're doing and our responsibilities; this was part of a session titled "Making Water Policy". Only 2 states (Indiana and New Hampshire) responded that they have groups such as the LMAC. Jacquie said that after listening to Indiana's presentation that we are 10 -15 years ahead of other states regarding water policy, managing lakes and legislation, primarily because of our geography and demographics. Ship Bright of the Maine Lakes Conservancy gave a talk regarding the process used in Maine to pass their boat sticker decal for exotic species. Joe asked Jacquie about the reaction she received from the group when she told them about the state of NH leasing water front property. Jacquie said that the audience seemed surprised and intrigued.

Joe Farrelly/NHLA

Joe reported that he and Phil O'Brien went to the most recent Long-Range Capital Planning and Utilization committee meeting. The Sun Lake Village request to lease 1300' of frontage on Lake Winnisquam was tabled at the Committee's October meeting. At the November meeting, the owner of Sun Lake Village on Lake Winnisquam asked if they would take the issue off the table and reconsider his request. The committee had asked the owner for more information and he reported that he talked to two near-by marinas. He then proposed to charge \$2,000.00/ year for a boat slip. The committee asked for more information as they were still not satisfied to make a determination. Sen. D'Allesandro motioned it again to put it on the table. Jennifer Czysz said that the LRCP&U committee is starting to realize that cumulative impacts should be considered, and that the committee noted that they moved hastily on a prior decision.

Mitch Kalter/Fish and Game Commission

Steve Perry, head of Inland Fisheries at F&G, brought forward to the Commission the Memorandum of Agreement for control of exotic vegetation between DES and Fish and Game. The Dept. of Agriculture reports the request for herbicide applications has gone up dramatically and he voiced concern about the effects on non-target species, both plant and animal, have not been studied. Mitch noted that this is in the Lakes Management Criteria, page 7, Recommendation 1.2 that has not been addressed and it is not on our top 5 list. Jody said that a DES sponsored draft report is done and has been reviewed by F&G; the report addresses the effects of the 2 chemicals now in use – Diquat and 2-4D. Joe asked if the permitting could be done by DES and Jody responded that we could not because it would be a conflict of interest.

The Dept. of Agriculture who does the permitting does have a connection with the risk assessment group at DES.

The Corp of Engineers has facilities that are doing research on these chemicals. The report will be forwarded to them for their comments before it is released to the public. Mitch asked Jody "what is the bottom line regarding these chemicals?" Jody responded that both have been used for a long period of time, Diquat application is used yearly, while 2-4D just targets milfoil and leaves native vegetation. The goal is to move towards using chemicals that only need to be applied every 3-4 years.

Mitch said that Steve Perry told the Commission that there were no studies on Suncook Lake pertaining to the effects on the macro invertebrates and fish from these chemicals. Jody said that there was no study but the videos indicate and people are reporting that the fisheries have been better since the milfoil was treated. He also pointed out that EPA reviews all pesticides every 7 years.

Jacque reported that Bethann McCarthy, from the Dam Bureau, spoke to the LMAC several months ago about the Official List of Public Waters. The information in the document is based on old maps. Some actual investigations have just commenced and there are 8 waterbodies that Bethann is now investigating to determine the accuracy of the information that we have. For example, Wildlife Pond in Barnstead is currently listed as 9.4 acres but the aerial photography and the USGS map indicate it as 11.5 acres.

Mark Hemmerlein asked Mitch about the \$10 conservation stickers. Mitch said that it is being investigated for additional funding. Kayakers, canoeists, etc. are not contributing to maintaining the public access sites. Hunters and fisherman are currently carrying the funding for these. F&G is moving towards the 'user pay' concept. There is a possibility of staff cuts because of funding; personnel and programs are all that are left to cut at the Fish and Game Department.

5) Possible Future Agenda Items

SPNHF - New Hampshire's Changing Landscape, Jacque spoke with Carolyn Russell, DES Sprawl Specialist. She will be at the January meeting to present in conjunction with Dan Sundquist from the Forest Society. Jacque needs to contact Dan.

National Lakes Assessment – Jacque said that at the last meeting, Fred had suggested that we try to coordinate an LMAC visit when one of the lakes is actually being assessed by EPA and DES.

II. SPA Commission

Jacque referred to the packet of materials which included a draft of the commission report. It includes the narrative that Darlene has developed with the Shoreland Protection Act Commission, suggested legislative language, Woodland Buffer Proposals, and the Impervious Surface Proposal.

Jody and Jennifer Czysz gave an overview of the materials. There are a lot of good recommendations (17 in all) including funding, house-keeping items, etc. The woodland buffer proposal was one of the most intense discussions that the commission had – they decided on a point system as opposed to a no cut zone. This then led to the impervious surface proposal and they worked with Jeff Schloss from UNH to set the percentages and looked at municipal ordinances that are already in place. This all needed to be a compromise between conservation and the development community so it would work. Post development must equal pre-development for total runoff volume. All setbacks will be 50 feet, with some exceptions for DOT and Fish and Game projects. Since these are recommendations, bills need to be written and sponsors identified.

Bud Berry asked if DES, Fish and Game, Safety, DRED have any idea what percentage of our lake shore frontage, linear, this law applies to? No one at the meeting knew but could be found determined.

Jim Morash asked about the grandfather situation – would new law apply if it passes. Jody said that that wasn't voted upon by the commission. How would the law apply to the dug-in boathouses requests? Jody said that Recommendation #15 is in the report to address that question.

10:30 am – Paul Currier arrived.

III. Surplus Land Reviews

Jacque reported that one SLR has been received from CORD. DRED is requesting to enter into a lease with the New England Handicap Sports Association at the Mt. Sunapee State Park. They want to continue the current lease and build a new structure that will be slightly closer to the beginner's ski trails. It is more than 250' from Lake Sunapee so LMAC doesn't need to review it.

Jacque encouraged the group to watch this Sunday's Fosters Daily Democrat for an article since a reporter is calling the agencies about state-owned and surplus land.

The sub-committee working on the surplus land review issue has met twice and Larry has collated a task list sheet. The subcommittee divvied up the tasks and is developing drafts documents for some of the tasks.

Larry Sunderland noted that it is becoming issues vs. process and the taskforce idea is still being considered. The taskforce will deal with questions of process which included forms, amount charged for leases, etc. The major issues could be dealt with more quickly. The Governor is showing more interest in this. The Governor's Office has asked for an inventory of the properties. The subcommittee met with Alice Chamberlin and Amy Ignatius (Chairman of CORD) to discuss the authority of CORD; however other issues pertaining to the SLR process were also discussed in detail. Phil O'Brien told the LMAC that the subcommittee is developing an Executive Order for the Governor's signature to establish a task force. If this isn't preferable to the Governor, then legislation could still be drafted. This would allow something to happen quickly. Joe said Alice asked if the Lake Association is prepared to introduce legislation in anticipation of that being the ultimate solution. Joe referred to the newsletter that addressed this; they are preparing to submit something.

Jacque has scheduled a meeting next Monday, November 20th for the sub-committee. They will review the various tasks and drafts that have been prepared and discuss whether a report should be submitted to the Governor which could include talking points, tracking sheet, and other elements specific to the process.

Joe shared a 2 page document from 2003 regarding state-owned railroad corridors along the shores of public waters. This information had been prepared by DOT and was sent to NHLA at their request. According to DOT, the total frontage of state-owned railroad corridors, not including rivers, just around lakes is 39,325 feet or 7.45 miles.

IV. Lakes Management Criteria and Lakes Forum

1) Lakes Management Criteria

At the October meeting the top 5 recommendations chosen by the Committee were as follows; note - there was a tie for the #1 priority:

1a) Finding: Page 5 (1.0) Cumulative impacts from individual development activities in a watershed and the subsequent effect that development may have upon a waterbody, are not sufficiently addressed in existing state regulations.

Recommendation Page 5: (1.1) A review of applicable state laws should be conducted by DES, OSP (now OEP), and other appropriate agencies and organizations. Revisions to existing state laws or new laws to address cumulative impacts should be developed.

1b) Finding: Page 1: (1.0) The State of NH has not clarified the regulatory role of the Wetlands Board (now Bureau) regarding preservation of the public trust and minimization of environmental impacts to the state's waterbodies

Recommendation Page 1: (1.1) The general court should promulgate legislation to address this issue and thereby set forth a policy for the Wetlands Board (now Bureau).

3) Finding: Page 5 (1.0) Cumulative impacts from individual development activities in a watershed and the subsequent effect that development may have upon a waterbody, are not sufficiently addressed in existing state regulations.

Recommendation Page 5: (1.2) The Legislature should consider the revisions proposed by the agencies and should amend state laws to address cumulative impacts.

- 4) Finding: The effect of fluctuating water levels upon water quality, shoreline integrity and aquatic life has not been determined.

Recommendation Page 3: (3.1) DES working in cooperation with UNH and Fish and Game should investigate and jointly issue a report outlining the effects of fluctuating water levels.

- 5) Finding: According to RSA 483-A 1.5 DES is responsible for determining that recreational uses of lakes are compatible with the character of each lake. The State has no process to manage present and potential recreational use impacts to a waterbody.

Recommendation Page 16: (1.1) The State should provide funding to DES to study and implement a method and process which would assess recreational uses and their impacts to the character and quality of each lake.

Jacque explained she wants to attach these to the Lakes Forum spreadsheet to compile all the information and submit it back to the Governor. This will incorporate the 41 action items from the Lakes Forum plus these 5 recommendations from the *Management Criteria*. These 5 will be put into the same spreadsheet so it is all in one document. Today's task is to identify the lead, key partners, actions underway, scheduled actions, proposed actions, timeframe and due date for these 5 recommendations; once this is done they will be in the same format as the action items.

The first recommendation that the group reviewed was #4, **DES working in cooperation with UNH and Fish and Game should investigate and jointly issue a report outlining the effects of fluctuating water levels.**

Lead Agency – DES,

Partners – UNH, Fish and Game, Wetlands Scientists, Natural Resource Scientists, Safety, DRED, RMAC, Loon Preservation Committee, Merrimack Valley Paddlers?

Issue/Need – Carrying Capacity and Lake Management, Water Quality

Actions Underway – Ashuelot Pond Study; Wiswalld Dam Study; Winnepesaukee River Advisory Committee (Legislative Study Committee); Dam Bureau lake level investigations; Dam Bureau lake management plans; Horace Lake; Instream Flow Studies; Silver Lake water level management (ongoing)

Scheduled Actions – Compile all of the above – are these addressing the effects?

Proposed Actions – Develop a DES Strawman Paper with interim findings, use similar process as Stream Gage Task Force; have the Dam Bureau make a presentation to the LMAC; Develop a reverse 911 system for towns/residents; Develop advisory to be sent to property owners when flooding could impact wells and septic systems;

Timeframe – Strawman Paper: 6-8 months; everything else within 12 months

Due Date - 12/07

The next recommendation that the committee reviewed was #1b, **The State of NH has not clarified the regulatory role of the Wetlands Board (now Bureau) regarding preservation of the public trust and minimization of environmental impacts to the state's waterbodies.**

The committee discussed the public trust issue at length. Below are some of the highlights of that discussion. Ultimately, the committee agreed that given the subject matter that this recommendation can be incorporated into Lakes Forum Action Item 7.1 *Promote a common understanding among all state agencies and state legislators for what the state's public trust role is, since it tends to be defined and implemented differently across the state agencies.*

Paul Currier spoke about USA Springs and their wetlands permit with water withdrawal. It does not extend to the ecosystem and there is no jurisdiction except to dredge and fill. As far as the large water withdrawals there needs to be a reasonable use. Joe pointed out that a clarification & understanding of public trust is necessary, what does it mean and what does it protect? This would be beneficial to all agencies and legislators.

Action Item 7.1 is a common starting point. Will the AG make sure that the state's interpretation of these laws is consistent. We need to address loopholes and provide more education regarding our existing laws. Do we need a working committee to develop a broad based water management plan? Who will be a player in this issue? What mechanism or forum should be used - fact sheet or document? Who should frame it? Mark H. suggested using the Certified Public Supervisor Program to draft meaning of public trust and how it applies to the agencies. Should the process involve OEP and/or the AG? There needs to be more focus – interpretation of the law versus intent of the law. Agency responsibilities and conflicts should be resolved there are inconsistencies from agency to agency; how do we frame the most important interpretations? Mark Gallagher asked where is the public trust doctrine in New Hampshire. We can't change case law. Mark H. concurred that there isn't a firm grasp on breath and scope of public trust. Mark G. said that understanding varies from one individual to the next as well as one agency to the next; there needs to be a consistent understanding throughout the State.

Due to time constraints, the committee decided that Jacquie and Laura should develop the information for the three other recommendations and should present this to the committee at the next meeting.

2) Lakes Forum

Jacquie said that she and Laura will meet with NH Lakes Assn. in the next few weeks to get more information regarding their 5 action items and that this will then be put in the new spreadsheet. She also said that she will follow up with F&G to get their input as well. She would like to get back to the Governor before end of year with a complete spreadsheet; therefore this will be the main agenda item for the 12/15 meeting. Jacquie said that if anyone had any further input relative today's discussion, to please call or email her.

V. Other Items and/or Issues

Legislation – There was discussion at the end of the meeting regarding possible legislation for the upcoming session. According to the most recent NHLA newsletter, possible legislation includes:

- Revisions to the Comprehensive Shoreland Protection Act,
- A Speed Limit on Lake Winnepesaukee,
- Boater Education Decal,
- Rental Watercraft Safety Certificate, and
- Creation of a Commission to Study Leasing of State-Owned Land Along Public Waters

- **At 12:15 pm, Mark Gallagher brought forward a motion to adjourn. Bud Berry seconded the motion. All were in favor.**