

RIVERS MANAGEMENT ADVISORY COMMITTEE
Meeting Minutes
April 17, 2007
Society for Protection of NH Forests
9:30 am – 12:30 pm

Members Present

Ken Kimball, Chair (via phone)
Michele L. Tremblay, Vice Chair
Alan Bartlett
Bob Beaurivage
Jennifer Czysz
Deborah Hinman
John Magee
Walter Morse
Allan Palmer

Representing

Recreational Interests
Conservation Interests
Agricultural Community
Public Water Suppliers
NH Office of Energy and Planning
NH Assn. Conservation Commissions
Fish & Game Department
NH Fish & Game Commission
Business and Industry Association

Term

Dec. 28, 2008 V
Dec. 28, 2008 V
Mar. 22, 2009 V
Sept. 28, 2007 V
Indefinite NV
Oct. 12, 2007 V
Indefinite NV
Sept. 28, 2009 V
Sept. 28, 2007 V

Members Absent

William Heinz
Johanna Lyons
Gail McWilliam Jellie
Wesley Stinson
Ted Sutton

Granite State Hydropower
Dept. Resources & Economic Development
NH Department of Agriculture
Historical & Archaeological Interests
Municipal Government

Jan. 5, 2009 V
Indefinite NV
Indefinite NV
June 15, 2007 V
Nov. 16, 2008 V

DES Staff Present

Steve Couture
Laura Weit
Paul Currier
Collis Adams
Wayne Ives
Carolyn Guerdet

NHDES Rivers Coordinator
NHDES Lakes and Rivers Asst. Planner
NHDES Administrator, Watershed Mgmt Bureau
NHDES Administrator, Wetlands Bureau
NHDES Instream Flow Specialist, Watershed Mgmt Bureau
NHDES Administrative Assistant

Guests Present

Carl Paulsen NH Rivers Council

The Meeting Was Called to Order

Michele L. Tremblay, Vice Chair, called the meeting to order at 9:30 AM.

I. 9:30 – 9:45 Introductions/Minutes/Committee Business

1) March 27, 2007 Meeting Minutes - Vote Required

- ***Ken Kimball made a motion to accept the March 27, 2007 Meeting Minutes with the following correction: page 7, HB 383, change wording from “a ton of” to “many”, second by Allan Palmer. The vote was unanimous.***

2) RMAC Membership Status –

The NH Historical Society is working with the Division of Historical Resources to find a suitable person for nomination.

A re-appointment letter is at the Governor’s office for Allan Palmer.

3) Correspondence

Ken sent a letter from the RMAC to thank Wes for his service on the committee.

II. 9:45 - 10:45 Legislation/Rulemaking/Other**1) Wetlands Programmatic General Permit – Collis Adams, NHDES**

Collis Adams explained the State Programmatic General Permit (SPGP) is an agreement with the Corps of Engineers that authorizes the state to issue permits for minimum impact projects under the SPGP or general permit. This agreement is effective for five years and then needs to be renewed; New Hampshire's renewal date is June 2, 2007. There have been regular meetings with the Corps for 6-8 weeks, with drafts and revisions to develop the new general permit for the next five years, 2007 – 2012. A public information meeting was held at DES last week to solicit public comment. The Corps attended along with approximately 55 people. There will be another revision based upon the comments received at that meeting. There are a few areas under more scrutiny. Of most concern to the RMAC is the stream crossing conditions as they relate to how the Corps will view them. Six months ago DES began an effort to develop a document called the "Stream Crossings Guidelines" with assistance from NH Fish and Game Dept. Finalization of the document is a couple of months away. When DES develops rules they will reference the document. As stream crossings technology evolves, changes can be easily incorporated into the document as compared to going through a formal rulemaking process. Collis thanked John Magee, the primary author of this document, and the work group that was convened. They have worked to make the document consistent, address environmental needs, and make it easy to modify as technology advances. In the past, Wetlands has successfully worked with JLCAR to reference a document that is subject to change. This is considered a BMP, and is referenced to as 'the most recent document'.

These guidelines are technical, but do include a general discussion of what the goals of the guidelines are - to protect and preserve aquatic life, movement, as well as the geomorphology of the stream reach, etc. so that the natural environment is not disrupted where the crossing is being introduced. The guidance document allows people to use an expedited process if they adhere to the guidelines. If they are interested in other options they must go through the standard application process and provide documentation as to why the structure they are proposing including the location, design and type, is appropriate. The intent is projects that follow the guidelines are minimal impact, and therefore granted an expedited process. A framework will be set up for this. Steve noted a summary of this was in the meeting packet that was distributed. Ken asked questions concerning the notification of the public. The process won't change for solicitation of comments from groups that may have interest. Current expedited process is a 30-day review period. Those people who want to provide comment still can and a public hearing can still be requested. Abutters, municipalities, the conservation commission, planning board, and the Board of Selectmen are all notified upon the submission of the application. DES does not have a formal public process as the Corps of Engineers does. DES, by statute, are only required to notify certain individuals and parties. Any other interested party must engage themselves in the process.

A rulemaking effort is planned for the SPGP in the near future. Permit condition #21 talks about waterway/wetland work in crossings. The state process is very prescriptive as compared to the federal guidelines, which are more generic and liberal. The federal emphasis will be on 21A: "All temporary and permanent crossing of waterbodies and wetlands shall be suitably culverted, bridged, or otherwise designed to withstand and to prevent the restriction of high flows, to maintain existing low flows, and to not obstruct the movement of aquatic life indigenous to the waterbody beyond the actual duration of construction."

The goal is to have the Stream Crossings document finished before the SPGP renewal date, so it can be directly referenced. The Corps's perception of a minimum impact project is different than the state's perception. The Corps's interpretation provides a lot of latitude as to whether a project has minimal impact. The Corps has been cooperative to work with and the permit should be flexible enough to do the state level work. The SPGP is an important process in environmental regulation and environmental oversight.

Walter brought up jurisdictional questions regarding forestry. Collis mentioned that they do submit a plan that lays out their skid roads, haul roads, and log landings with their Best Management Practices.

Collis also noted the three major areas of change have focused on: 1) stream crossings 2) vernal pools and 3) indirect or secondary impacts.

Vernal pools have come under heightened awareness and in New Hampshire a work group has been meeting for about six months to: 1) develop a definition for vernal pool, 2) talk about how to identify vernal pools out in the field and 3) how to delineate them on a plan. The process is almost complete, once complete they will be incorporated into the rules. Vernal pools are jurisdictional wetlands. Federal agencies want to expand this jurisdiction to include uplands. New Hampshire's jurisdiction is limited to wetlands and surface waters, it does not include upland areas (with a few exceptions that are well defined and clearly understood.) The Corps is concerned about the upland habitat, since upland activities, such as runoff from developed areas, can have an adverse impact to vernal pools.

Indirect or secondary impacts are not typically considered when DES reviews a wetlands permit; other programs within DES address that issue. There has to be some direct wetlands impact on the property associated with a project for the Wetlands Bureau to look at the indirect and secondary impacts. The federal government is concerned with run-off from impervious areas and wildlife habitat fragmentation. These are looked at by DES but the Corps wants DES to look at habitat fragmentation, as roadways heads out into the uplands. There are however limitations and levels of involvement when it comes to indirect impacts.

Carl Paulsen asked about the issue of the Clean Water Act and how it relates to the general permit process. The Rivers Council is concerned about secondary impacts and habitat fragmentation as the state has no jurisdiction over these issues and they are inherent in any project. Collis noted that good, high-level dialogue has come from this between the state and our federal partners. There is the willingness to amend a statute, if necessary. The ultimate goal is to have state statutes, jurisdiction, authority, and regulations mirror the federal programs and processes as closely as possible. A formal opinion letter is being prepared by the Attorney General's Office, which will allow the state to analysis the gaps and determine what needs to be done to close those gaps.

Bob Beaurivage asked about the design criteria as it relates to these last flooding events and climate change. Collis noted the Alteration of Terrain program, that performs the engineering review, is revising their rules and they are contemplating requiring design requirements to address larger storm events.

Paul Currier noted the state has the authority to implement the Clean Water Act. This includes vernal pools and applies to aquatic habitat and wildlife that are water-dependent. It does not however apply to terrestrial habitat fragmentation.

Michele Tremblay asked if there was a tie-in with the state emergency general permit that DOT has been granted by DES? Collis noted there is no general permit, but DOT was afforded latitude to do what was necessary to protect and preserve life and private property. When things calm down there will be follow-up. It is unrealistic to think that all will be caught.

2) Wetlands Mitigation Comments – Ken Kimball, Chair, RMAC

Ken deferred to Steve. Steve referred to the 2003 letter and the 2007 draft letter. It outlines that there should be another resource category within the mitigation table that requires mitigation for impacts to floodplain wetlands. This letter has not been submitted to DES. Michele suggested adding in the last paragraph “and April 2007 floods”, as we are in the midst of an event, which adds significance to the argument. The approach is now resource specific vs. policy specific. We are now working towards the goal of understanding floodplains and upland values, but have not included mitigation for riparian lands. The ratio for riparian land should be equal to tidal wetlands. Steve noted there will be a public hearing on May 4th and the RMAC needs to present the letter. There was a vote to submit a letter at the last meeting.

Paul explained that designated rivers are an administrative designation, and don't relate to the value of the resource. They only relate to the social perception of the resource.

Collis shared that the ratios that were proposed back in 2003 in the mitigation rules were the most important, most hotly contested, and politically sensitive issue. If higher ratios were added it would have scuttled the whole thing. These ratios were a compromise to make in roads. There is a new political climate now.

The committee was amenable to going forward and submitting the letter.

There was also discussion as to whether or not impacts to designated rivers should be given a higher ratio. At the last meeting, the committee worked on trying to align what the RMAC is going to recommend with what was already in the existing mitigation ratio table, which is habitat or wetland type specific. The RMAC decided to include floodplain wetlands for all rivers. The established ratios account for two things: 1) the temporal loss of the functions and values and 2) a fudge factor, since 100% success is never achieved when constructing wetlands. Ken noted that wetlands are one of the best ways to reduce the effects of floods. It was decided to stay with the April 12th letter as amended to add “as equal to tidal wetlands.” And in the last paragraph add “April 2007” to the two named floods in the third sentence.

3) Legislation – Steve Couture, NHDES

HB 319 - relative to allowing DES to use NRCS funds to issue emergency permits for certain necessary projects. This would only apply to federally declared flood related emergencies or projects that would protect life and property. The RMAC voted at its last meeting to recommend ITL.

Collis indicated that this bill is in response to the Alstead floods. The typical wetlands permitting process took too long, with a 225 day window, in which the NRCS money could not be readily accessed and utilized. The local process was removed, but the state would retain theirs. DES is supportive of this legislation. Discussion continued as to environment vs. human concerns, federal vs. state/local process/control. DES tries to balance safeguarding life and property while protecting the environment.

- **Bob Beurivage made a motion that the RMAC not support or oppose this bill in the Senate, but remain neutral, second by Allan Palmer. Steve clarified that a letter was not issued on the House side, it was just tracked. Motion was defeated 3 – 2.**

The motion from March stands, so the RMAC is still in opposition.

Allan Palmer suggested asking representatives from the Town of Alstead to come to talk about the flooding event and particularly the restoration. It was also suggested to invite the Conservation Commission, NRCS, and/or the Board of Selectmen.

HB 663 – relative to fees for the Comprehensive Shoreland Protection Act (CSPA). The bill was amended to include a sunset provision so the fees will be re-evaluated in 2011 to assess their appropriateness.

III. 10:45 – 11:30 Souhegan Protected Instream Flow – Wayne Ives, NHDES

Wayne Ives gave an overview of the proposed Souhegan River protected instream flows. The purpose of the instream flows is to specify standards, criteria, and procedures by which a protected instream flow shall be established and enforced for each designated river in order to maintain water for instream public uses and to protect the resources for which the river was designated. The instream flow process has four steps: 1) identify flow-dependent entities, 2) evaluate their flow needs, 3) establish protected flows to meet these needs, and 4) develop management plans.

The process also included an on-stream survey to identify the presence of protected flow-dependent entities: human, fish, and rare, threatened, and endangered species. A Protected Instream Flow Report (PISF) was written to determine the flow needs for each of the identified flow-dependent, protected entities. The identified human flow-dependent needs included: recreation, fishing, water supply, hydropower, and pollution abatement.

The Natural Flow Paradigm was used to develop the PISF. Natural variability in river flow creates a wide range of habitat types and ecosystem processes that maintain the natural biological diversity of aquatic and riparian species. A major consequence of this natural variability is that all species experience favorable conditions at some time, preventing any one species from dominating.

Once a PISF has been established for each protected entity, it is then integrated into the Watershed PISF. Each PISF are overlaid to determine which protected entity's flow need is the strictest and when. By satisfying the highest of these PISF, all others are satisfied: protected entities are supported when flow in the river equals or exceeds the highest of these PISF. Human needs (recreation and hydropower) are the largest of the low flow PISF.

Paul mentioned that the technical aspects of this are successful. A former criticism was the methodology was not credible. It is now important to spend time with this method to assess its credibility. This will be going to the legislature for a recommendation with SB 330, to proceed and use this methodology on all designed rivers.

LEGISLATION CONTINUED:

HB 1-A - relative to the NH Department of Environmental Services budget. Eighteen thousand dollars was restored to the Rivers and Lakes Programs budgets to fund the part-time Assistant

Planner position. The funds needed to hire interns were not included. The letter of testimony that was submitted to the House will be revised and submitted to the Senate.

HB 25-FN-A - relative to the stream gage funding request in the Capital Budget. It is expected that the Senate will be receptive. A letter of testimony will be drafted to the Senate requesting \$120,000. Ken, Michele and Steve will work to coordinate which RMAC members should contact which Senators.

Also included in the packet was a matrix of existing regulations and how they do or don't fall under the 401 Certification process.

IV. 11:30 – 12:00 Sustainability Initiative

Steve reported the subcommittee met the previous week and there is a new summary document of what the next steps are, dated April 17, 2007. The statement draft that will be presented to the Commissioner and Governor still needs to be finalized. It's important to note that some of the important details still need to be worked out: amount of staff time that will be required, solicitation of grant funds, and the logistics of implementation of the initiative. Step 1 is to continue working with the subcommittee to finalize the document and present it to the RMAC for their review. Step 2 is to develop the white paper to document landscape change, identify how landscape change affects water quality, perform a gap analysis, and develop recommendations. All of this would be performed by a consultant with participation from the RMAC, LMAC, and DES staff. Steve asked if the committee would like to continue to move forward and asked if Ken was interested in continuing to participate in the process.

- **The Committee agreed to continue to support the Sustainability Initiative by following the next steps.**

V. 11:45 – 12:15 Surplus Land Reviews (SLR) – Disposition of state-owned properties

CORD SLR 04- 018 Lebanon – Jennifer Czysz, OEP

This proposal is from 2004 and is now being reviewed by the Long Range Capital Planning and Utilization Committee. The parcel contains six acres in the City of Lebanon along the Connecticut River. The City of Lebanon would like to acquire the parcel for recreational purposes. The parcel is a brownfield site that contains petroleum and asbestos. Conditions on the approval were: 1) removal of all contaminated soil prior to the conveyance of the land, 2) existing riparian buffers will be maintained, and 3) the property will only to be used for recreational uses. The contaminated soils are causing a debate. The City of Lebanon and DOT have reached an agreement to cleanup two acres. The other four acres contain asbestos and proposals for its removal are still being worked on. It has been tabled again by Long Range for further planning work.

Laura submitted comments on behalf of the RMAC to CORD on their revised SLR checklist. A letter was also submitted to CORD for the last SLR the Committee reviewed.

VI. 12:15-12:30 Other Business/Action Item Reviews

Steve suggested removing the DES logo from the RMAC letterhead, since the RMAC does not always agree with DES's position. This would hopefully remove any confusion as to who was submitting the letter.

Michele also suggested listing each represented interest as indicated in statute rather than each of the nominating organizations.

- **Bob Beurivage made a motion to change the letterhead to include the 'Interests' represented in the statute, second by Walter Morse. Vote was unanimous.**

VII. Next Meeting Date(s)/Adjourn:

Next meeting date: –

Tuesday, June 19th, at the Boscawen Town Hall then a canoe trip on the Upper Merrimack in the afternoon. It was decided to invite the LAC Chairs with a RSVP.

Steve announced that streaming audio is available as a resource if ever needed.

RSA 483 is celebrating its 20th anniversary, and as a result Steve would like a RMAC subcommittee specific to discuss possible changes for the next legislative session. Michele , Bob, and Allan volunteered. Ken suggested adding to the webpage a list of the accomplishments that the Act has achieved in the last 20 years. Steve mentioned that this is possible, but may take a while due to limited staff time.

Action Items –

- 1) Amend page 7, HB 383, of the March 27th meeting minutes from “a ton of” to “many” and post approved minutes on the web.
- 2) Revise the draft wetlands mitigation letter to include “as equal to tidal wetlands” and “April 2007 floods” then submit to DES.
- 3) Submit a letter of testimony to the Senate recommending ITL for HB 319.
- 4) Contact the Cold River LAC, Alstead Con Com, Planning Board, and Board of Selectmen to invite them to talk about the flooding and restoration efforts at an upcoming meeting.
- 5) Revise and submit letter of testimony to the Senate for HB 1-A.
- 6) Revise and submit letter of testimony to the Senate for HB 25-FN-A.
- 7) Ken K. agreed to continue to serve on the sustainability initiative subcommittee.
- 8) Amend RMAC letterhead to: 1) remove the DES logo and 2) list interests as indicated in statute rather than each nominating organization.
- 9) Michele , Bob, and Allan agreed to serve on a legislative subcommittee.

- **Motion to adjourn by Ken Kimball, second by Bob Beurivage. Vote was unanimous.**

Meeting adjourned at 12:30 pm.