

COMMISSION TO STUDY THE EFFECTIVENESS OF THE CURRENT STATUTES RELATED TO
MANAGEMENT OF NON-TIDAL PUBLIC WATERWAYS AND THE CONSTRUCTION OR
PLACEMENT OF STRUCTURES WITHIN THEM (RSA 482-A:35)

Monday, February 24th, 2020 **1:30 PM** in LOB Room 305

Draft Minutes

- I. Call to order:
 - a. Mark McConkey, Chair, called the meeting to order at 1:35 PM.
- II. Introductions:
 - a. Members present: Cindy Balcius, Rene Pelletier, Darlene Forst, Tom Quarles, Diane Hanley, Kelly Buchanan, Nick Robbins, Mark McConkey, Representative Smith, Representative Renzullo
 - b. Guests: Joel Anderson, House Staff and Seth Prescott from DNCR, Division of Parks
- III. Approval of last meeting's minutes (1/27/2020)
 - a. Minutes were approved unanimously with three clerical corrections from Tom. Diane abstained due to absence.
- IV. Legislative Update (Representative Smith and Representative Renzullo)
 - a. Representative Smith passed out an amended for HB1609. The amendment allows for exemptions for platforms used by DOT or others for other essential safety, science or non-recreational work.
 - b. The House is still waiting for the dock registration bill, SB627, to crossover. It passed on the Senate floor this month.
 - c. Senator Rosenwald arrived to discuss SB589, relative to allowing seasonal docks on certain lots in the town of Freedom. NHDES came forward with a creative amendment to limit the applicability of seasonal dock permits, in a limited size (4' x 24'), to non-conforming lots only on Spindle Point on Lake Ossipee (by GPS coordinates). The bill as amended passed in a voice vote on the Senate floor last week. We will look for this bill at

crossover. The effective date was changed to “upon passage” to allow for dock building this summer.

i. This bill would affect 8-10 lots on Spindle Point according to Mark. There are currently about 66 lots on Spindle Point.

d. Mark inquired about SB491, relative to shoreland water quality. This bill will be heard on the Senate floor on March 5th. This bill does not affect structures out and over water. It only affects the protected shoreland area (land).

e. The commission agreed to send letters in support of SB589 and HB1609. Representative Renzullo abstained.

V. Discuss what docking structures can be eligible for an alternative process and different ways to approach how various “permitting” needs are met, potential law changes, and how the new process might work (Darlene Forst)

a. The dock registration bill, SB627, will remain as is due to the lateness of the session.

b. Darlene discussed her handout “Alternative to Current Freshwater Dock Permitting Requirements”. She also distributed a map handout.

c. Darlene explained that wetland permits are typically required because of requirements from the Army Corps of Engineers. The NHDES rules must be as stringent as the federal requirements. Furthermore, the Army Corps approves the state level permitting systems.

d. Note the section “Structures eligible to be removed from the current process”. Army Corps requires permits for projects with “fill”.

i. Pilings would not be considered fill, unless they are installed using “jetting” methods.

ii. Cribs would be considered fill.

iii. Breakwaters require fill.

- e. No matter what the commission recommends, if this alternative process goes forward, we would need to discuss and establish recommendations for those structures that still require the Army Corps permitting level.
- f. Seasonal docks still need a Corps permit on interstate lakes.
- g. Tom asked how much of the permitting at NHDES could the alternative process cover? Darlene estimates the simple alternative process could cover 95% of projects. Cindy asked does this apply to tidal areas as well? Darlene responded this only applies to freshwater.
- h. Tom asked what is the definition of a wetland for the Army Corps? Cindy and Darlene replied that if an area on a body of open water is dominated by plants, then that area is a wetland.
- i. Note goals for the new process or processes on the handout.
 - i. Darlene also noted riverfront boardwalks as a possible goal for inclusion in allowance. The document she presented today does not include any river considerations, but Darlene can produce them at a later date.
- j. Note the requirements for implementation sections. Darlene emphasized this would not be a quick and easy process to reorganize the entire dock permitting system.
- k. Tom asked, if we go forward with new permitting system and the voluntary dock registration, which structures are included? Permanent? Grandfathered? Darlene responded the commission needs to decide the direction of this new permitting system. Darlene doesn't see the registration being exclusive or necessary to the new process.
- l. Nick inquired if the dock permitting process is mandatory or voluntary. Darlene responded it is mandatory for new structures and repairs. Nick explained he hopes the new permitting process is simplistic and easy to understand. He also wanted to know how grandfathered structures might be affected. Nick asked, would this incentivize people to

go after permits with the promise of grandfathering? Darlene responded that SB627 does that and is a “get out of jail free” card.

- m. Mark inquired what people requesting a dock would receive under this system. Would they receive a permit number? Darlene stated that currently people get a wetlands permit and permit number approved by the Army Corps. The new science-based wetlands rules make permitting a challenge if docks were to stay in wetlands. Mark asked if this new process is called registration, a license, or a permit. Darlene said you could call it a “freshwater dock permit” or “freshwater dock license”. The simple process might have a different name than the more complex process for the projects that would still require additional review.
- n. Darlene stated the commission needs to think about where we place the proposed new permitting system within the statutes and rules. It new system could be adapted to fit within RSA 482:A. It also could be moved to 483:B, but this would require redefining boundaries of the Shoreland Water Quality Protection Act. You could put the new permitting system in RSA 270 (Marine Patrol Statute area). Darlene also stated we need to decide where to put specific regulations – whether or not they go to rule or to statute.
- o. Note the structure limit questions on pages 2 and 3 of Darlene’s handout.
- p. Tom asked, what is the justification for a new permanent dock? Darlene responded that permanent docks are usually requested because of heavy wave and wind exposure. Tom noted that the commission could decide to only allow seasonal docks on waterbodies that do not have heavy wind and wave action. Darlene stated that this suggestion from Tom would help address hazards to recreation on the ice caused by circulators, agitators or other forms of dock ice management. Darlene asked if permanent docks should be included in the “short” or “simple” process and stated that this is for the commission to decide.

- q. Nick inquired where permanent docks are currently permitted/allowed. Darlene responded on most permanent docks are permitted on lakes like Newfound and Winnisquam.
- r. Darlene asked, can this new permitting system be transferred between owners and how do we handle non-compliance and renewals?
- s. Darlene mentioned the impact of commercial permitting for docks and how the commission could propose some sort of rule or law to allow commercial projects (restaurants, marinas etc.) because the current rules don't allow for it. Tom mentioned we should consider if there is in fact already enough commercial lakeside development and inquired how this would impact existing town-level regulations on land use. Tom also mentioned this might bring up concerns with The Dive or other on-water commercial entities. Darlene clarified that this could also apply to state park docks, municipal docks, and other public use spaces that are non-conventional.
- t. The commission concluded that we need 3 types of dock permitting: simple, non-conventional, and Army Corps level. We may need a 4th type for pre-existing or registered structures.
- u. The commission members broadly discussed preferences on naming this new system, including permit, license, or another new name. Some expressed concern with the term license because it has connotations of meeting qualifications. The term permit has negative baggage, but it is already in place and expected. Registration would run alongside this change as a separate option.
- v. Darlene brought up the importance of enforcement to avoid abuse of the system.
- w. Tom expressed the commission should focus on doing as much as we can to improve things for most people. It wouldn't be necessary to change the whole system. Representative Smith explained that overhauling the system would be beneficial to start fresh and address the problem of continual dock problems holistically.

- x. Diane asked if other states employ a similar process to the proposal we discussed today. Darlene replied yes. Examples include Maine, VT, Minnesota, Michigan. Oregon also has a registration system.
 - y. Mark expressed we are in agreement to move forward with this proposal. Darlene suggested we work on naming the new process, deciding where it should go in statute/rule and who should qualify for it.
- VI. Discuss next steps and other business that may come before the commission (All)
- a. Our next meeting on Monday, March 16th. We will work on answering the questions in “y” above for intrastate bodies of water.
- VII. Public Input
- a. Seth from DNCR made a comment that an exemption for entities like DNCR to always use the simple process would be beneficial.
- VIII. Adjourn
- a. Representative Smith made a motion to adjourn. Diane seconded the motion. The meeting was unanimously adjourned at 3:34 PM.