



**DRAFT MINUTES**  
Legal Affairs Committee  
September 13, 2013  
Agency Meeting  
ASL:JTT:mp

**Legal Affairs Committee  
September 13, 2013**

The Committee convened at 9:00 am.

**Committee Members Present:**

Arthur Lussi, Acting Chair, Richard Booth, Sherman Craig and Bradley Austin (DED)

**Other Members or Designees Present:**

Leilani Ulrich, William Thomas, William Valentino, Karen Feldman, Dan Wilt, Dierdre Scozzafava (DOS) and Robert Stegemann (DEC)

**Local Government Review Board Present:**

Frederick Monroe, Executive Director

**Agency Staff Present:**

Terry Martino, Executive Director; James Townsend, Counsel; Sarah Reynolds, Associate Counsel and Jennifer McAleese, Senior Attorney

**Counsel Report**

James Townsend informed the Board that the Consensus Rule has been filed with the Secretary of State, and notified all the required Legislative leaders. It will appear in the ENB on September 27, which is when the changes will take effect.

Mr. Townsend also stated that the Senior Attorneys are each taking on a certain area of the regulations and we hope to be bringing back more regulatory revisions for public review. The most current one that is coming is for Emergency Authorization.

**Development in the Adirondack Park (DAP) Presentation (attached)**

Jennifer McAleese explained to the Board that DAP is an advisory publication that provides guidance and assists project sponsors in designing proposals, and staff in reviewing proposals. She

noted that staff is currently working on an entire overhaul of DAP. All divisions are contributing to the current updates and revisions, and it is an evolving document that will continually be revised and updated.

William Valentino asked how to insure that DAP stays current and suggested that different sections be assigned to individuals who will have an obligation to do the update.

Ms. McAleese stated that it is our intention to continually revise and update it. The new format will make it easier to insert new information. The editing and reviewing teams can oversee the updating.

Executive Director Terry Martino stated that the overall work has engaged staff from all divisions so they will be aware of where changes need to be made. The team approach has been highly effective.

Mr. Valentino asked to what extent we would rely on third party certification.

Mr. Townsend responded that the discussion made good points and staff follows these guiding principles. Each permit brought to the Agency reflects DAP and presents an opportunity to ask if DAP uses the most up to date standard. In response to the question about third parties, staff are doing that, and they will continue to do that.

Richard Booth asked if there was significance of DAP being a guidance document as opposed to something else. Secondly, will there be an effort to incorporate current terms? Thirdly, it would be good if staff could distribute the drafts to the Board so if we have comments we can become part of that commenting process also. Mr. Booth also stated that permits should not refer to DAP as the authority for the Agency's making decisions.

Mr. Townsend said that DAP is not a rigid set of guidelines, it is a guidance document to project sponsors and Agency staff for the purposes of permit review.

In response to Mr. Booth's question about using current terms, Ms. McAleese stated that staff has incorporated current terms. The appropriate staff member has looked at the old DAP and drafted new language, updating the science terms.

Fred Monroe asked what makes the distinction between some guidance, such as the snowmobile guidance, being binding and DAP guidance being non-binding?

Mr. Townsend stated that snowmobile guidance is a two party agreement between the Department and the Agency for the interpretation of the law, the State Land Master Plan. The adoption process and level of detail are the big differences between the snowmobile guidance and project review type standards set forth in DAP.

Chairwoman Ulrich commented that DAP has not gone through the same process of scrutiny and adoption. She also noted that there is a value to this as we are going forward about the user friendly aspect of this. We have heard so many times that applicant's will ask where do I start, what do you really want. The revised DAP will make it easier for applicants to know starting points.

Sherman Craig noted that some sections of DAP may be more controversial and hoped the Agency would be able talk about them.

Chairwoman Ulrich stated that Board Members are always able to raise any questions and areas of concern. It would be appropriate to bring those concerns to the committee Chair.

Executive Director Martino commented that DAP is an evolving document and issues of concern will be addressed. Staff have been assigned specific areas, and has been effective through a team approach writing and updating DAP.

### **Legal Guidance Status Report**

Sarah Reynolds gave an update on legal guidance, which she noted that the legal division gives to other staff and the public on a daily basis. She explained that the complexities of the statutes that we implement, changes to the regulations, and the way facts play out means that new questions keep coming up. Ms. Reynolds referenced a memorandum that had been forwarded to the Board as part of the mailing, which included summaries of recent legal guidance issues. Ms. Reynolds also explained that staff had recently completed an update of almost all of the Agency's flyers, which are available on the Agency's website and available to the public.

Committee Chair Arthur Lussi asked for an example of an issue that was confusing for applicants requesting jurisdictional review five years ago that is better understood today.

Ms. Reynolds noted that one recent example came from the public asking how the Agency's laws applied to expansions of tourist accommodations. The question led to new legal guidance for staff and a new flyer for public distribution.

Richard Booth asked if the document the Board received is something the public is getting also. Ms. Reynolds stated that it was included as part of the public mailing.

Mr. Booth stated he feels that parts of the document would be confusing to the public. He also stated that he would rewrite summary number one to be more of an affirmative statement, and that he believes critical environmental areas are a third type of jurisdiction, rather than an exception to land use or development and subdivision jurisdiction.

Ms. Reynolds stated that she and Counsel Townsend had discussed Mr. Booth's comments and decided to include more background information, rather than just the short summary, for the more complicated legal issues in future Legal Affairs Committee mailings. Ms. Reynolds also stated that the information in the summaries is accurate, and that the implications of these legal provisions are hard to understand.

Mr. Booth stated that a member of the public picking up the summaries would be confused.

Mr. Townsend stated that these summaries are not written for the public but for Agency employees. The staff does not rely on the summary only but will read the entire guidance.

Fred Monroe stated that he is happy to see this legal guidance, because many times Review Board members ask questions about the basis for Agency permitting jurisdiction and conditions. Mr. Monroe also stated that he believes critical environmental area jurisdiction is a third variety of jurisdiction, not an exception.

Ms. Reynolds stated that Agency jurisdiction is always either directly related to a land use or development activity or is broader in the case of a subdivision, and that Agency regulations construe both types of jurisdiction within critical environmental jurisdiction areas.

Chairwoman Ulrich encouraged all of the attorneys in the room to continue this legal discussion. Ms. Ulrich also stated that she found the guidance summaries helpful on the points of law and for understanding the issues staff have been involved with recently.

Mr. Townsend stated that staff will work to make sure future guidance summaries are clear, and that the documents are prepared for the Legal Affairs Committee as part of staff's reporting requirements.

**Adjournment:** The Committee adjourned at 10:05 am.