

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:

Name Changes of the Functions	
1991 Edition	Draft 2009 Edition
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

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.