DRAFT 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

October 19, 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
Laura Deming, representing NH Audubon
John Doran, representing NH Association of Realtors
James Gove, representing Associated General Contractors of NH
Paul Morin, representing Home Builders and Remodelers Association of NH
Peter Walker, representing NH Association of Natural Resource Scientist
Rene Pelletier, representing NH Department of Environmental Services

Other Attendees:
Joel Anderson, Staff, NH House of Representatives
Carolyn Russell, NH Department of Environmental Services
Representative Judith Spang, NH House of Representatives, Resources, Recreation and Development Committee
Joe Homer, Natural Resource Conservation Service, US Department of Agriculture
Ron Klemarczyk, Forest Resource Consultants
Eric Johnson, NH Timberland Owners Association
Gina Rotondi, Rath, Young and Pignatelli/NH Shorefront Association
David Shulock, Brown, Olson & Gould
Representative Susan Almy, NH House of Representatives

Commission Staff:
Farzana Alamgir, NH Office of Energy and Planning

I. ROLL CALL AND INTRODUCTIONS

Chairperson Gottling called the meeting to order at 1:07 PM.

II. APPROVAL OF MINUTES

Due to the initial lack of quorum no action was taken on the minutes from September 21, 2009.

III. SUBCOMMITTEE UPDATES

Representative Gottling asked Ms. Czysz to brief the commission on the work of the "Research on Alternative State Programs Subcommittee." Ms. Czysz mentioned that their group has been winnowing down the large list of New England state level planning and environmental protection programs that might be of interest to the commission. The subcommittee hoped to present a couple of them to the commission at the next meeting, to be held on November 23, 2009. She mentioned that there would be two separate presentations where one would look at state level Environmental Policy Protection Acts with a focus on Maine, Massachusetts and Vermont; each of the three states have distinctly different approaches as to how they established a state level Environmental Protection Policy. The second presentation would focus on a more comprehensive smart growth/land use planning approach that channeled development into pre-designated locations with the intent of protecting natural resources. For this the commission would look Vermont's programs to designate downtowns, villages and community centers.

Ms. Czysz mentioned that the subcommittee would also be presenting, at a future meeting, a comparative review of the New England states' wetland programs. She added that the subcommittee has asked Carolyn Russell to report back to the full commission in January about her permit coordination efforts at DES. Ms. Czysz also hoped to have a final draft of the Matrix ready at the next meeting (November 23, 2009).

Representative Gottling thanked Ms. Czysz for her hard work and the tremendous amount of work, research and time the subcommittee has dedicated on this matter.

IV. PRESENTATIONS

Mr. Gove introduced the presenter, Joe Homer, Assistant State Soil Scientist, Natural Resource Conservation Service (NRCS), United States Department of Agriculture. Mr. Homer's presentation titled "Wetlands: House Bill 1579 Study Committee" is available at:
http://www.nh.gov/oep/legislation/2008/hb1579/2009/documents/presentation101909.pdf

Mr. Homer in his presentation defined wetlands, went through the terminology, discussed functionality of wetlands and went into details about the three parameters of wetland identification criteria, those being: hydrology, vegetation and soils.

Mr. Homer noted the wetlands manual for New England was being revised and available at:
http://www.usace.army.mil/CECW/Documents/cecwo/reg/int_nc_ne_supp.pdf.

He also referred to the Field Indicators of Hydric Soils in the United States and the Field Indicators for Identifying Hydric Soils in New England, available at: ftp://ftp-fc.sc.egov.usda.gov/NSSC/Hydric_Soils/FieldIndicators_v6_0.pdf and http://des.nh.gov/organization/divisions/water/wetlands/documents/hydric_soils.pdf respectively.

Representative Gottling thanked Mr. Homer for his presentation. Mr. Gove asked Mr. Homer, if the services of NRCS included designating buffers to wetlands or if he had any guidelines for developing farm plans if there was an issue regarding wetlands. Mr. Homer responded that his job as a soil scientist was to delineate wetlands and flag the boundaries when he was called to look at a farm for farm plan development. The district conservationist worked with the farm bill protocols and stated that he was not sure what the agency has for buffers. Mr. Homer added that he could check into it if required.

Representative Spang asked if a wetland could only be identified if all three criteria had been met (i.e. hydrology, vegetation and soils), and what would happen in cases where the vegetation had been altered? Mr. Homer responded that if they found an area where any of the three criteria had been altered, it was considered to be a "problem site." He added that if only the vegetation has been altered, then that would be documented and they would work with the other two criteria. Mr. Homer mentioned that he had been to forested areas where the vegetation had been cut, in which case, he made note of that and worked with the soil and hydrology indicators and made a determination from there.

Mr. Homer mentioned that his presentation was missing a slide that talked about what was the minimum size delineation for wetlands. He added that there was no minimum size for wetland delineation.

Mr. Gove stated that poorly drained soils might not necessarily be a wetland, as it may not meet the other two criteria, but given the fact that the largest wetlands are mapped, there might be a possibility that the extent of the wetlands were being underestimated, as the small areas of half an acre or quarter acre wetlands may dot the landscape but never show up on a map. Mr. Homer agreed with Mr. Gove and added, there were a number of different inventories out there and probably one of the most common one used for wetlands was the US Fish and Wildlife Service's National Wetland Inventory (NWI) maps. These inventories used aerial imagery to identify wetlands, typically those areas with strong signatures (i.e. cattail swamps, marshes, wetland vegetation). Given the methodology of identifying the NWI wetlands, it is accepted that the extent of wetlands in New Hampshire is underestimated.

Mr. Walker mentioned that Mr. Homer drew a distinction between "qualitative" and "quantitative" methods, and was a little surprised to see the New Hampshire Method being identified as a "qualitative" method, and asked how the Highway Methodology differed from the New Hampshire Method. Mr. Homer responded by saying that it was not part of his role to perform functional assessments and added that he was somewhat familiar with the New Hampshire Method and that it was primarily designed for lay

people and that it was based on several subjective evaluations of some of the wetland parameters that he mentioned earlier. However, in some of the quantitative methods, recharge and discharge are measured along with the amount of sediment, vegetation is analyzed in detail, similar to a National Environmental Protection Act (NEPA) study. The quantitative methods were more in depth and technical in nature compared with what could be expected of the layperson to complete.

Representative Gottling added that although the New Hampshire Method was not as technical as the ones Mr. Homer had mentioned earlier, historical use of the New Hampshire Method has been more by the professionals. Mr. Homer responded that he knew that the New Hampshire Method had gone through revision and that he did not have a chance to review it thoroughly yet.

Representative Gottling asked Mr. Homer how communities could ensure that all wetlands have been identified and necessary state permits are received? She drew upon the scenario in which a development application is received by the town for a site where the site is not delineated as a wetland, and the code enforcement officer lacked the expertise to identify wetlands during site inspections, and hence a permit was erroneously issued by the town and the state was not contacted based upon the assumption there were no wetlands present. What was needed to prevent such failure to recognize a wetland and unwanted changes taking place? Should there be someone in every jurisdiction who has had some training, and can identify wetlands? Mr. Homer replied that some education and presentations about wetlands similar to the one done today could go a long way. He added that he was not sure that every town could afford to have a consultant come in and look at every site or have a soil scientist on staff, but educating the town personnel through workshops, presentations and seminars was the best way to address the problem.

Representative Christensen had a question related to the percentages of wetlands shown on the presentation (poorly drained - 3.7 percent and very poorly drained - 5.9 percent for Manchester, NH; where as poorly drained – 26 percent and very poorly drained – 1.4 percent for Pittsburg, NH). Rep. Christensen asked how are changes tracked over time statewide? Mr. Homer responded that the countywide soil surveys give a snap shot in time. Coos county was the final county to be surveyed in New Hampshire and added the only exception being the White Mountain National Forest area. Coos County soil survey mapping was published in 1999; Strafford County during the early 1970's; Carroll County was published in mid 1970's, however, most of the work was done in the 1960's. Representative Christensen followed up by asking if research and mapping was done in the 1960's and 1970's, nearly 50 years ago, if there was an interval in which the maps should be updated? Mr. Homer responded that the life expectancy of their countywide soil survey was about 50 to 60 years, although the soils did not change significantly over this period, however, given urbanization trends, some areas had changed, additionally, the techniques for evaluating soils had changed. Around the 1950's and 1960's the accepted protocol was to examine the soils down to 24 inches, at present however, soils are examined up to 60 inches below the surface. NRCS has started doing updates of Strafford and Carroll County. However, these updates

have been place on hold, as the current nationwide priorities are to complete the mapping of the whole United States by 2011.

V. DISCUSSION OF FUTURE MEETING TOPICS AND DATES

Rep. Gottling confirmed that the next meeting would be held on November 23, 2009, instead of November 16, 2009.

VI. ADJOURNMENT

The Meeting was adjourned at 2:00 PM and preparations were made for the fieldtrip to the City of Concord's Oak Hill Property.
The fieldtrip ended at 4:03 PM.