

APPENDIX A:

**OBJECTIONS OF THE
HOME BUILDERS AND REMODELERS ASSOCIATION OF NEW HAMPSHIRE,
NEW HAMPSHIRE ASSOCIATION OF REALTORS AND THE
NEW HAMPSHIRE TIMBERLAND OWNERS ASSOCIATION
ON THE FINAL DRAFT REPORT OF THE
HOUSE BILL 1579 LAND USE COMMISSION**

October 25, 2010

Objections of the Home Builders and Remodelers Association of New Hampshire, New Hampshire Association of Realtors and the New Hampshire Timberland Owners Association on the final draft report of the House Bill 1579 Land Use Commission

The Home Builders and Remodelors of New Hampshire (HBRANH), New Hampshire Association of Realtors (NHAR) and the New Hampshire Timberland Owners Association (NHTOA) are not able to support the final draft report of the House Bill 1579 Land Use Commission. While HBRANH, NHAR and the NHTOA support many of the findings and recommendations contained within the draft report, its recommendation to enact legislation establishing wetland buffers based on the admittedly incomplete work of the Definitions Subcommittee is unacceptable. Although the Subcommittee did a very good job of developing a reasonable evaluation process to determine what wetlands rise to the level justifying protective buffers, the evaluation and scoring details are unfinished. Thus, neither the Definitions Subcommittee nor the full Commission is able to understand how far reaching the proposed law will be.

The draft legislation is based on an objective numeric scoring system which is far superior to the subjective “best professional judgment” approach. But, the scoring method is derived from and relies entirely upon an incomplete and unpublished document known as the “new” New Hampshire Method. Using the “new” New Hampshire Method, development project applicants will score the wetlands on their project for the following values: Ecological Integrity, Wetland Dependent Wildlife Habitat, Sediment Trapping and Nutrient Trapping and, if required by the score, provide a buffer around the wetland. Since the “new” New Hampshire Method is still under peer review and not yet published, we question how these numeric scores, and thus the underpinning of the proposed legislation, could be accurately derived. Simply put, the “new” New Hampshire Method is still subject to revision prior to publication and use in the proposed legislation.

On numerous occasions, members of the Subcommittee working on the proposed legislation informed the Commission that the targeted wetlands would be limited to the most important wetlands in terms of functions, the so-called “best of the best”. The final report, however, suggests that as much as 10 to 25 percent of all wetlands could be captured by this legislation. This guess, albeit limited by the unfinished status of the “new” New Hampshire Method, is based on a sample of wetlands surveyed in the Merrimack River Valley and by an individual wetland scientist. Even with the limited sample, the proposed legislation appears to capture far more wetland areas than what was intended by the Subcommittee.

For these reasons, HBRANH, NHAR and the NHTOA are concerned the range of wetlands captured by the legislation will not be known until field tests are performed on real samples from across the state. Thus, we cannot consider supporting the recommendation without knowing and understanding which wetlands are intended to have buffers and which are not.

Also confusing is the statement made by the Subcommittee that 10 to 25 percent of the best wetlands represent 50 percent of all wetland acreage in New Hampshire. Returning to the concept of protecting the “best of the best” it is difficult to argue that the proposed legislation captures only the “best of the best” if it captures half of all New Hampshire wetland acres. If this is true, it will have an unprecedented impact on property rights, economic development and local land use zoning.

It is also unclear to us what activities, if any, are allowed within the buffer area. The Commission attempted to tackle this issue on at least two occasions but it remains open. Is the buffer intended to be a building setback? Are there any disturbances that will be allowed? We believe more discussion is needed to answer these questions before crafting legislation.

Finally, HBRANH, NHAR and the NHTOA want to be clear that we find merit in many elements of the Commission report, specifically, the recommendation to use an objective evaluation process to protect the state’s most valuable wetlands. Even so, our objections come from the premature nature of the untested method. Since so many fundamental questions remain unanswered at this time, we recommend more study of this issue and discussion following the publication of the “new” New Hampshire Method and sampling of more wetlands across the state. We believe land owners, developers, conservationists, policy makers and local governments need to have a better understanding of which wetlands would and would not be captured by this law before it gets adopted.

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