

APPENDIX C:

DEFINITIONS SUBCOMMITTEE REPORT AND WORK PRODUCTS

Report of the Definitions Subcommittee ---- 10-18-10

The definitions subcommittee was formed at the February 23rd, 2009 meeting of the HB 1579 Land Use Commission. James Gove was appointed as chair of the subcommittee.

The subcommittee decided Indirect Impacts would be defined, but Cumulative Impacts would be left for another time. For defining the impacts, the primary functions of Water Quality, Water Quantity, and Wildlife would be considered. To define what constitutes Indirect Impacts, it was determined we needed to use set parameters to determine when such impacts are present from a proposed project.

Indirect impacts defined: “It is very likely that negative impacts due to indirect activities will occur to some wetlands and not to others. Not all indirect impacts will have a detrimental effect on all wetlands. Not all wetlands need to be protected from indirect impacts.” This concept was voted on unanimously.

To identify those wetlands that might need protection from indirect impacts, it was agreed that a numeric evaluation method should be used. Given the various evaluation methods currently in existence, the NH Method (revised) would be the only one to give a numeric evaluation.

The subcommittee agreed that it was the functions of a wetland that was important for a numeric evaluation. It was agreed unanimously that a sound science basis via the NH Method (revised) was to be used to evaluate the certain functions of a wetland to determine its priority for protection.

As there are no other methods that provide a numeric ranking for certain wetland functions that the subcommittee was aware of, it was agreed that the NH Method (revised) would be used.

It was agreed that “best professional judgment” was not a sound scientific method of evaluating wetlands.

The functions of water quality, water quantity and wildlife habitat were agreed to be the most important functions for determination of indirect impacts. In the NH Method (revised), wildlife habitat function would be evaluated by the functions of Ecological Integrity and Wetland Dependant Wildlife Habitat. Sediment Trapping and Nutrient Removal/Retention/Transformation would evaluate the water quality/quantity functions. The other functions evaluated by the NH Method (revised) would not be used in the scoring.

The subcommittee felt that the most valuable wetlands, based upon the functions of water quality/quantity and wildlife habitat, should be protected from indirect impacts. Not all wetlands need to be protected from indirect impacts.

It was determined that the most effective and equitable way to protect the valuable wetlands from indirect impacts would be with an upland buffer. An upland buffer of 100 feet horizontal distance from the wetland edge would be used for those wetlands that score for the wildlife habitat functions. While buffer widths for the protection of wildlife habitat can be debated, the research of the subcommittee determined that a 100-foot wide buffer provides substantial protection to wetland dependant species. Further, there is precedence in the State for 100-foot buffers for valuable wetlands including the 100-foot tidal wetland buffer and the 100-foot Prime Wetland buffer.

An upland buffer of 50 feet horizontal distance from the wetland edge would be used for those wetlands that score for the water quality/quantity functions. As with the wildlife buffer widths, the width of a buffer to protect the wetland water quality can be debated. However, the research of the subcommittee determined that a 50-foot buffer of native vegetation provided protection from phosphorous and sediment runoff, which are the primary pollutants from disturbed/developed areas.

These buffers and use of the NH Method (revised) to score the functions of wetlands as described in the subcommittee work product would be added to the Excavation and Fill and Alteration of Terrain permit review processes.

The functional scores that were used in the work product of the subcommittee reflect the intent to protect the most valuable wetland resources of the state. While the NH Method has been used in the state for over 20 years, the revised NH Method has just been published and was available for testing this summer. Therefore, the scores used by the subcommittee in the work product may need to be revised in the future.

It is the conclusion of the subcommittee that the approach taken by the following work product: revisions to RSA 482-A and 485-A:17, would be the preferred method of addressing indirect impacts to the valuable wetlands of the state.

1 **(Revision Date 10-18-10)**
2 **RSA 482**

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4 Amend 482-A:2 Definitions by inserting the following definitions:

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6 Wetland Buffers – An area of upland adjacent to a wetland intended to protect the wetland from
7 indirect impacts resulting from activities in the upland that degrade the wetland values
8 enumerated in RSA 482-A:1.

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10 Indirect Impacts – A change to one or more of the values of a wetland enumerated in RSA 482-
11 A:1 resulting from activities in an adjacent upland.

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13 Amend 482-A:3 by adding the new section:

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15 XVI. Any project or activity that requires a permit under chapter 482-A shall meet the
16 requirements of RSA 482-A: 4-a, regarding wetland buffers, except for the following:

17 (a) Agriculture meeting Best Management Practices

18 (b) Forestry activities meeting Best Management Practices;

19 (c) Activities for the management of areas to deter wildlife for public safety
20 purposes, such as areas around airports;

21 (d) Public utility maintenance activities conducted in accordance with *Best*
22 *Management Practices Manual for Utility Maintenance in and Adjacent to Wetlands*
23 *and Waterbodies in New Hampshire published by DRED (see RSA 482-A: 3, XV)*

24 (e) Activities subject to permit-by-notification

25
26 Amend RSA 482-A by inserting after section 4 the following new section:
27

1 482-A:4-a Regarding Wetland Buffers.

2 I. When applicable, any wetland within 100 feet of any clearing, disturbance or structure
3 shall be evaluated and scored using the Method for Inventorying and Evaluating Freshwater
4 Wetlands in New Hampshire as published by the University of New Hampshire Cooperative
5 Extension in 2010. A NH Certified Wetland Scientist or other qualified professional as
6 determined by the Department shall prepare the evaluation. Wetlands on site shall be evaluated
7 in the field. Wetlands on abutting properties may be evaluated by remote sensing. Numeric
8 scores shall be determined for the following wetland functions as identified in the document,
9 which shall be grouped as indicated:

10 (a) Category 1 – ecological integrity, wetland-dependant wildlife habitat;

11 (b) Category 2 – sediment trapping, and nutrient trapping/retention/transformation.

12 The function of ecological integrity shall be evaluated to determine if the score is equal to or
13 exceeds 8.5.

14 The function of wetland-dependant wildlife habitat shall be evaluated to determine if the score
15 is equal to or exceeds 8.0.

16 The function of sediment trapping shall be evaluated to determine if the score is equal to or
17 exceeds 8.0.

18 The function of nutrient trapping/retention/transformation shall be evaluated to determine if the
19 score is equal to or exceeds 8.5.

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23 II. If any of the functions in category 1 are equal to or have exceeded the numeric score,
24 the associated wetland shall have a wetland buffer of 100 feet in width. If that is not the case,
25 then if any of the functions in category 2 are equal to or have exceeded the numeric score, the
26 associated wetland shall have a wetland buffer of 50 feet in width. If that is not the case, then
27 there shall be no wetland buffer under this section unless otherwise provided by other local,
28 state or federal law. No activities shall take place in the wetland buffer that will degrade the
29 identified function of the wetland, unless so allowed by the Department as provided in
30 paragraph III.

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32 III. The Department may provide relief to the requirements of this section if it can be
33 shown that a proposed action will result in an equivalent or increased level of ecological benefit
34 to the wetland. This may include narrowing one or more areas of wetland buffer, provided
35 others are widened, or accepting other mitigating measures.

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!V Wetland types exempt from this section:

- (1) Man-made ditches
- (2) Man-made water conveyance structures
- (3) Agricultural ponds or recreational ponds, other than those created as compensatory mitigation
- (4) Retention/detention ponds
- (5) Created stormwater treatment wetlands
- (6) Created stormwater treatment swales
- (7) Man-made wash ponds in aggregate industries
- (8) Low impact development measures that are not created for wildlife habitat

V The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

Amend RSA 485-A:17, I, Terrain Alteration
With addition of statement “and ensuring compliance with the provisions of RSA 482-A:4-a, regarding wetland buffers”