Buffer Options for the Bay

NAVIGATING REGULATIONS: WHAT REGULATORY OPTIONS DO TOWNS HAVE?

Communities have a range of regulatory options with which to manage buffers, some of which have the potential to greatly enhance protection of buffer areas and use of local knowledge in land use management decisions. The effectiveness of each option, however, relies heavily on the resources, willingness, motivation, and expertise of a particular municipality to properly manage these areas. They include the following:

1. **Rely solely on the state's Shoreland Water Quality Protection Act (SWQPA) (RSA 483-B)**, which has limited jurisdiction and is not likely to protect many buffer areas associated with local water resources.
2. **Adopt regulations that extend the same protections laid out in the SWQPA** to local streams and surface water bodies that do not fall under the act's jurisdiction.
3. **Develop separate stream corridor (watershed) regulations** to protect riparian buffers along 1st-3rd order streams, but leave the State's SWQPA to regulate the lakes, ponds, and higher order streams in the community. See this PDF for more information.
4. **Adopt regulations that are more stringent than the SWQPA** minimum standards. Under RSA 674:16 Grant of Power, municipalities can adopt zoning ordinances that determine how land use and development decisions are made. And under RSA 674:21 there is an extension of power to municipalities to adopt **innovative land use controls** methods in shoreland

and wetland areas. Such methods include **environmental characteristics zoning,** which regulates activities on a given piece of land based on its environmental characteristics.

For example, a **Conservation Overlay District Zoning** can prohibit or restrict development in drinking water or wellhead source areas, wetlands, shoreland buffers, wildlife corridors, cold-water streams, and other critical resource areas. Municipalities can use overlay districts to establish the size of buffers and setbacks and determine which activities are considered "allowable uses."

Transfer of Development Rights permanently protects farmland and other natural and cultural resources by redirecting development to areas planned to accommodate growth. Land owners can legally sever the "development rights" from their land and sell them for use at another location. The land from which the development rights have been severed is permanently protected and the development value of the land to which development rights are applied is enhanced by allowing for new or special uses, greater density or intensity, or other regulatory flexibility.

5. **Embrace floodplain management.** The National Flood Insurance Program (NFIP) is a partnership between a local community and the federal government. In participating communities, property owners and renters may purchase insurance to protect them against losses from flooding. In exchange for adopting and enforcing floodplain regulations designed to reduce future flood risks communities can get a reduced rate on their town's residents' flood insurance premiums. Towns must maintain current minimum floodplain standards to stay in the NFIP.

The state has authored a Floodplain Management Handbook to assist those at the state and local level in navigating the process of addressing flooding in New Hampshire. The NH Office of Strategic Initiatives operates a floodplain management program that offers assistance to towns. The University of New Hampshire also provides an online resource—Floodplain Learning on Demand—that provides, maps, regulatory information, quizzes, and a diversity of

other information for those interested in learning more about floodplain management in New Hampshire.

6. **Establish hazard zones.** Under RSA: 674:56: Flood Hazards, and RSA 674:21: Innovative Land Use Controls, municipalities can minimize future flood impacts and enhance public safety in areas that are at risk for flooding and fluvial erosion by creating hazard ordinances. Fluvial erosion is defined as erosion caused by rivers and streams, ranging from gradual bank erosion to massive, sudden changes in river channel location and dimension during flood events. More information and model ordinances can be found in Chapter 9 of the Innovative Land Use Planning Techniques Handbook and the New Hampshire Office of Strategic Initiatives (OSI) Floodplain Management Program. These types of local land use controls indirectly discourage development near waterways thus protecting both water quality and local property.

7. **Enact a Current Use Tax Structure:** Current Use Regulation RSA 79 A allows communities to establish a tax strategy that enables landowners to keep open space property undeveloped. Under current use, land is assessed at its present, rather than at its highest potential, use. Those who possess qualified property pay a reduced tax rate. If property owners later decide to develop the land, they agree to pay a land use change tax, which is calculated as a percentage of the fair market value of the portion of the property being developed. Unless a governing body or town vote dictates otherwise, the land use change tax goes to the general fund. However, several New Hampshire communities have applied all or some of the tax to the town's conservation fund. The Town of Sunapee has a useful guide to current use and more information can be found in a booklet published by the New Hampshire Department of Revenue every year.

NAVIGATING REGULATIONS: WHAT REGULATORY OPTIONS DOES THE STATE HAVE?

While proper local management is feasible, studies in New Hampshire and elsewhere indicate the benefits of local knowledge are often outweighed by the lack of resources and technical expertise available to municipalities. As a result, many of the state's smaller shorelands and undesignated wetlands are at risk for degradation as its communities continue to develop, and stakeholders are left to navigate an inconsistent, confusing, economically inefficient regulatory landscape. These conditions contradict the objectives outlined in New Hampshire's current Wetland Program Plan, which prioritizes regulatory consistency and high enforcement.

All of these factors combine to create a powerful incentive for stronger state level regulations related to buffer management. This is underscored by a feasibility study conducted by undergraduates in Dartmouth College's Center for Public Policy and Social Science. This study weighed the costs and benefits of centralized and decentralized buffer policies in New Hampshire. It found that generally, local policy makers are not equipped to conduct a thorough study of the factors necessary to determine the appropriate buffer width and that this expertise is more likely to reside in state agencies. These findings echoed those of the Rhode Island Legislative Task force, which when charged with exploring this issue, found that, in many instances, the state was the entity with sufficient funding, expertise, and experience in shoreland and riparian management.

BOB's community assessment of community perspectives in the Exeter-Squamscott subwatershed found that, generally, there is support for a statewide buffer. Stakeholders felt that it could provide uniformity, clarity, and consistency, support affordable housing by allowing greater density, reduce costs of development by promoting efficiency, and provide a safety net for municipalities that don't have a buffer. Some felt the lack of strong state-wide buffer called more stringent municipal regulations into question and stronger state rules would demonstrate that the state and courts support their ordinances.

However, there were also concerns over whether a statewide buffer would supplant municipal regulations or make it easier to challenge these local ordinances. Would, for example, communities use a science-based statewide buffer or continue to use their own buffer, which some perceive as being arbitrary or based on restricting growth? Would longtime residents be grandfathered into the rules?

Other approaches to buffer regulation can be found in case studies from other states. These include Vermont's program to managing buffers to support stream corridor migration, Rhode Island's approach to resolving state versus local regulations, and Washington's matrix-based process for setting buffer widths. For more about how buffers are regulated in New Hampshire and other states, see the BOB policy synthesis.