



Town of Washington
Conservation Advisory Commission

Date: June 4, 2025

To: Town of Washington (TOW) Planning Board
Cc: Steve Marino, TOW Wetland Consultant
From: TOW Conservation Advisory Commission (CAC)

Re: Wetlands Update

We appreciate this opportunity to provide the CAC's perspective on wetlands, in light of recent changes in New York State regulations. We also wanted to forward FAQs released in May 2025 by the New York State Department of Environmental Conservation (attached). It should be noted that NYSDEC is continuing to issue guidance regarding the new regulations, so the discussion below is subject to change as new guidance is released.

Benefits of Wetlands

As you know, wetlands receive special protection under New York State law and the TOW Code because they are vitally important to our personal and community health. The benefits of wetlands in our area include:

- Water storage. Networks of wetlands are very effective at flood control and erosion control. Damage to roads, bridges, and other human structures from floods and erosion can be expensive to remediate.
- Drinking water filtration. Wetlands improve drinking water quality within a watershed by absorbing numerous pollutants (excess fertilizer, road salt, failing septic systems). In the absence of natural filtration systems, expensive water treatments plants may be required.
- Economic value. Wetlands are the foundation of a healthy ecosystem and habitat for wildlife. Wildlife and the inherent beauty of wetlands are important to our rural lifestyle and food supply, supporting our local economy through tourism and recreation (bird watching, fishing, hiking, trapping, deer hunting, migratory waterfowl), thereby potentially maintain and increasing real estate values.

The Wetlands Buffer

The 100-foot wetlands buffer that is a part of the state and local regulatory frameworks is a critical component of protecting the wetlands and preserving the benefits of wetlands to

humans that are listed above. The regulatory purpose of the buffer is to establish areas on a parcel where development is unrestricted (outside the buffer), and areas where construction should not occur (areas within a buffer), absent extraordinary circumstances. If development within the wetlands buffer occurs, the benefits outlined above are frequently lost, as complete remediation is often impossible to achieve within a reasonable timeframe. Wetlands disturbances often result in invasive species taking over and degrading the wetlands, even where remediation practices are employed. As wetlands protection laws have been in place for 40 to 50 years locally and across the country, we think that property owners and purchasers are generally on notice that development near wetlands may be prohibited.

In general, the new state regulatory framework requires that property owners apply for a jurisdictional determination from the state if they plan construction activity within the 100 foot-buffer zone of a wetland of any size, and if the state (or the owner) determines that the state has jurisdiction over the wetlands, then the property owner must apply for a state permit. The state has proposed a streamlined process for issuing permits for housing-related construction within the 100-foot wetlands buffer that is instructive. The streamlined process will apply for a permit for housing-related construction within the buffer if the construction removes, replaces, or repairs a pre-existing structure but does not expand the footprint. One can see the logic of this balanced approach – failure to repair or upgrade an existing structure within the buffer could cause significant harm over time, while expansion of existing structures within the buffer should be discouraged.

Permits for Activities in the Buffer

We think that the Town wetlands permit process should be read narrowly, such that wetlands permits for activity within the buffer would be issued only in limited or exceptional circumstances, consistent with the purpose of the law. Wetlands remediation solutions have some value, but they are by definition never as effective as not disturbing the wetlands buffer in the first place. That is why the wetlands buffer concept was developed – to establish a bright line to divide areas where development generally would and would not be permitted.

When the Planning Board considers exercising its discretion to issue wetlands permits, it must follow certain procedures in doing so. TOW Zoning Code Section 165-97.D requires the applicant to provide meaningful documentation and analysis, and if the applicant fails to do so, the Planning Board cannot issue a permit. The Planning Board requires that the applicant establish, by the preponderance of written documentation and evidence, “that there is no reasonable alternative to the proposed activity” which would avoid a significant adverse effect on wetlands, and that any significant adverse effect is mitigated to the maximum extent feasible. “Significant adverse effect” is defined the Code as “an activity that may substantially alter or impair the natural function(s) or benefit(s) of a regulated area.” We would think that insisting on full compliance with these provisions would help the Planning Board make good decisions and fulfill its legal responsibilities.

While towns have no general duty to ensure that its residents comply with state law, our Code requires that applicants affirmatively demonstrate consistency with state land use law as a condition of obtaining a TOW wetlands permit. See Section 165-D(3). It is reasonable to expect that applicants seeking a wetlands permit from the TOW also obtain the necessary jurisdictional determination and permit from the state as a step prior to consideration of the TOW wetlands permit, especially during this transitional time when we are learning how the state intends to apply the new regulations and permitting process. We think this two-step approach could streamline the process for the Planning Board by potentially leveraging work done for other agencies. We also note that a failure to comply with Federal or State wetlands laws may be deemed a violation of the TOW Zoning Code under Section 165-97.B.

We appreciate the opportunity to provide these comments, and we hope they have been helpful.

Freshwater Wetlands

2025 Regulation Change

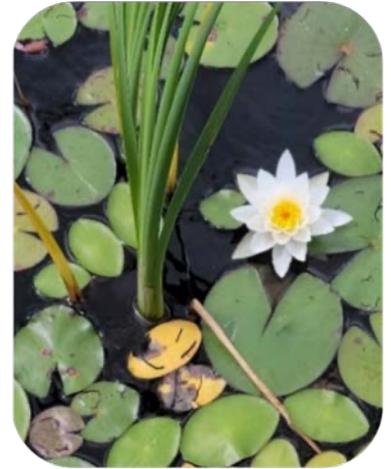


Department of
Environmental
Conservation

Overview of New Freshwater Wetland Regulation

Starting January 1, 2025, New York State Department of Environmental Conservation (DEC) implemented significant changes to freshwater wetlands regulations under 6 NYCRR Part 664. These updates enhance the protection and classification of wetlands by introducing a revised classification system and criteria for Wetlands of Unusual Importance and expands DEC's regulatory jurisdiction to include wetlands not shown on the Previously Mapped Freshwater Wetlands maps.

This Q&A was updated as of **May 2025** and serves as a resource to help understand these regulations during the transition period.



JURISDICTIONAL DETERMINATIONS

1. What is a Jurisdictional Determination?

There are two types of Jurisdictional Determinations (JD). A **Parcel JD** is an assessment conducted by DEC to determine if a parcel meets the criteria for classification as a regulated freshwater wetland. This determination helps define characteristics of wetlands that require protection from degradation to maintain their functionality.

If a positive Parcel JD is issued and there is a project being proposed the next step is a Project JD. A **Project JD** assess if the proposed activity impacts the regulated wetland and/or adjacent area. After determining the extent of wetlands and the impact on them, potential mitigation measures and permitting is required.

2. How do I submit a Parcel JD?

Visit [DEC's Freshwater Wetland Jurisdictional Determination](#) webpage and complete the [online JD request form](#) that must include the physical address of the parcel, the tax parcel ID #, and your contact information. A positive Parcel JD will inform the Project JD process. When a Project JD is required, [contact DEC Regional Office](#) to request a freshwater wetland delineation of your parcel.

3. Do all activities that cause land disturbance require a Parcel JD?

Only if those activities fall within the boundaries of a wetland and/or regulated adjacent area. Activities that impact freshwater wetlands or the 100-foot adjacent area would need a Parcel JD. Types of activities that require a permit may include:

- construction of buildings, roadways, septic systems, bulkheads, dikes, or dams
- placement of fill, excavation, or grading
- modification, expansion, or extensive restoration of existing structures
- drainage, except for agriculture
- application of pesticides

4. What is the timeline and process to obtain the JDs?

Parcel JD – DEC has 90 days to review remote data to determine if a parcel includes regulated wetlands. A negative Parcel JD indicates no protected wetlands and no further action. A positive Parcel JD will require a Project JD once project plans are established.

Project JD – After a wetland delineation is validated and DEC reviews all project documentation, DEC has 90 days to determine if proposed regulated wetlands and/or adjacent area will be impacted. If a positive Project JD is issued, further mitigation measures or an Article 24 Freshwater Wetland Permit may be required.

5. How do I get my wetland delineated?

You can request a delineation from your regional DEC staff at no cost. The timeframe of when your delineation is performed depends on multiple factors including when the request was received and weather allowance. An environmental consultant may be hired to perform the delineation and assist with permitting requirements.

6. Can you determine if a wetland is jurisdictional without a JD?

A regulated wetland cannot be determined without a JD. However, you can use the [DEC's Environmental Resource Mapper \(ERM\)](#) and activate the 'Freshwater Wetland Layers' to identify potential jurisdictional wetlands.

The maps include Previously Mapped Regulated Wetlands, which confirm regulated wetlands, National Wetland Inventory and Informational Wetland Mapping, which is for reference only. These maps do not cover all wetlands regulated under New York's Freshwater Wetlands Act but can indicate potential jurisdictional areas to assist with project planning. If there are wetland features or uncertainty, submitting a JD is recommended

[Submit a JD request](#) for an official determination of the presence of wetlands or adjacent areas on a property.

7. Is it legally required to obtain a JD?

It is not a legal requirement to obtain a JD though it is advisable to consider the potential risks involved if you do not obtain a JD and end up conducting a regulated activity in a regulated freshwater wetland and/or regulated adjacent area. Non-compliance with the Freshwater Wetlands Law can result in significant violation and mitigation fees because of projects that negatively impact regulated wetlands.

8. Is a JD required for a wetland that was identified on the previously mapped wetlands map?

As a temporary measure through the Fall of 2025, if you have a previously mapped wetland on a small lot contact your regional office.

9. Does the growing season impact the JD process?

The Parcel JD assessment is conducted remotely and is not impacted by the growing season. The Project JD process could be impacted since vegetation is used to determine wetland boundaries. Growing seasons vary across the state which can impact the ability to delineate wetlands. If a delineation can't be conducted due to lack of vegetation, DEC will request an extension for that Project JD.

10. Can a hired consultant provide the wetland delineation for the Project JD process?

Yes, DEC will accept wetland delineations from consultants with environmental expertise. DEC must verify the delineation and will discuss with the consultant further as needed.

A hired consultant must follow the [Parcel JD Consultant Option](#) process and follow [Standard Operating Procedures for Remote Freshwater Wetland Jurisdictional Determinations](#). Hiring a consultant allows applicants to advance to the Project JD review by submitting the information in the guidelines to the appropriate region.

11. Are landowners responsible to reference the new regulations and know if they should request a Parcel JD?

Yes, landowners are responsible for being aware of any potentially regulated freshwater wetlands on their properties and may be required to comply with the Article 24 Freshwater Wetlands Act and 6 NYCRR Part 664.

GENERAL PERMITS

12. What are General Permits (GPs)?

DEC issues GPs under the Uniform Procedures Act for activities that have limited impact on the environment. GPs streamline permitting for similar types of activities not unique to a particular location and result in a faster and easier process, compared to acquiring an individual Article 24 Freshwater Wetland Permit. There are no application fees required with general permits.

GPs may be considered once a positive Project JD is issued. Once you have a positive Project JD, contact your [regional DEC office](#) and they will determine if the activity you are looking to do requires a GP or the standard Article 24 permit.

13. How long does it take for a GP to be issued?

There is no standard estimate. Some GPs will require more detailed information including wetland mitigation plans (e.g. Housing Development GP and Community-Scale Solar Energy GP). Less complicated projects, such as constructing of a deck on the back of a house within adjacent wetland area, will take less time than complicated projects.

14. What are the new proposed Freshwater Wetland GPs?

DEC has proposed five new statewide GPs and modified three existing statewide GPs for various activities in state-regulated freshwater wetlands and wetland adjacent areas, protected waterbodies, and navigable waters. These GPs are proposed to be issued for five years. For more detailed information go to the [Proposed General Permits Website](#).

- The Community-Scale Solar Energy Installations GP (GP-0-25-004)
- Electric Utility Right of Way (ROW) Maintenance and Repair GP (GP-0-25-005)

- Housing Development GP (GP-0-25-006)
- Lakes and Shorelines GP (GP-0-25-007)
- Management of Invasive Species GP (GP-0-25-008).
- Natural Gas Utility Right of Way Maintenance and Repair GP (GP-0-25-009)

DEC proposes to modify the existing Stream Crossing for Timber Harvest GP (GP-0-23-004 and GP-0-23-005) to include the freshwater wetland authorization and remove condition 3.c, which currently prohibits crossings in state-regulated freshwater wetlands and adjacent areas. For the current versions of the Timber Harvesting GPs, visit the [Stream Crossings for Timber Harvesting webpage](#).

15. How are the proposed GPs useful to lakefront landowners?

There are there two proposed GPs that are applicable to lake environments containing areas of regulated wetland.

- Lake Shorelines Freshwater Wetlands GP will cover typical shoreline activities such as erosion control, new docks, small scale dredging work. This GP is modeled after Region 7's Article 15 GP.
- Management of Invasive Species GP will cover management of invasive species (e.g., vegetative cutting, pesticides application. This permit covers wetlands permitting only and is not the pesticides permit required for use by [DEC's Bureau of Pesticides Management](#).

16. What does the Housing Development Freshwater Wetlands GP cover?

The Housing Development Freshwater Wetlands GP covers detached single-family housing, multiple family dwellings up to four units per dwelling, multiple family dwellings over four units per dwelling, and apartment buildings. The amount of potential disturbance allowed under this GP in wetlands and adjacent area will vary depending on the type of development, the property area, and wetland area.

17. What does the Community-Scale Solar Energy Installations GP cover?

The allowable limits of disturbance of the project depend on the current use of the property and distance to regulated wetlands. For example, more work may be allowed near active agricultural lands such as row crops or actively managed hay fields. This GP will cover solar installation and access road development.

18. Does the Community-Scale Solar Energy Installations GP align with the United States Army Corps of Engineer (USACE)?

No. New York's Freshwater Wetlands Act is fundamentally different than the Federal Clean Water Act administered by USACE.

LAKE ENVIRONMENTS

19. Are maps available that show portions of lakes being regulated as wetlands?

No. If a person would like to know if a portion of the lake is regulated, refer to Appendix A – Waterbodies with Large Areas of Submerged Aquatic Vegetation in the [Standard Operating Procedures for Remote Jurisdictional Determination](#). If the body of water in question is on this list, it's recommended to [submit a JD request](#) with the parcel ID # that is closest to that portion of the lake in question.

20. Do I need a permit every time I seasonally install or remove a dock?

No. Routine maintenance of existing functional structures (docks, sheds, boat lifts) are exempt from Article 24.

21. Do I need a permit to replace a dock?

When replacing structures, you need a permit. The DRAFT General Permit GP-0-25-003 could be applicable for this scenario.

22. Do I need a permit to manage vegetation along my shoreline property?

It depends on whether that portion of the lake is regulated as well as how long your shoreline is. A permit may be required to remove vegetation either mechanically or with an herbicide. [Submit a Parcel JD request](#) to determine if you will need a permit. The proposed Management of Invasive Species GP (GP-0-25-008) could be applicable for this scenario.

MAPPING

23. Why can't I download the informational maps from the GIS Clearinghouse?

Download the informational maps from the GIS Clearinghouse as a Geodata base, not as an individual file, such as a shapefile.

24. Will criteria for Urban Areas and Watersheds with Significant Flooding be mapped and added to the [ERM](#)?

Yes, DEC is developing a process to present the data. This data is currently located on the [NYS GIS Clearinghouse](#).

25. Are National Wetland Inventory (NWI) included as jurisdictional wetlands under the new regulatory changes?

No, but they were used as a reference for Informational Freshwater Wetland Mapping.

MUNICIPALITIES

26. Are municipalities (towns, villages, cities) responsible to review projects for regulated wetlands as part of their permitting processes?

No. The extent of the municipalities' involvement in ensuring regulatory compliance is at their discretion. While municipalities have the option to manage the program independently, this is relatively uncommon in New York, with only three instances reported, primarily due to the lack of resources to support such an initiative.

27. How can local planning and land-use boards identify wetlands for review of projects?

Visit DEC's [ERM](#) and turn on the "Freshwater Wetland Layers" to view wetland spatial data sources. If project area is located relatively near a wetland area identified on the Wetland Layers, [submit a JD request](#) to identify regulated wetlands and adjacent areas. If wetlands are jurisdictional, the wetland boundary will require field delineations which can be requested by DEC staff. These maps do not cover all wetlands regulated under New York's Freshwater Wetlands Act but can indicate potential jurisdictional areas to assist with project planning. If there are wetland features or uncertainty, submitting a JD is recommended.

PROJECTS IN THE PIPELINE

28. Will municipalities hire more staff in addition to our Code Enforcement Officer in obtaining permits?

No. Code Enforcement Officers should direct residents to [DEC's webpage](#) to [Submit a JD request](#). Permitting for impacts to wetlands that are state-regulated will continue to be administered by DEC as they have been.

29. How do new regulations affect projects under review by municipalities as the SEQR lead agency?

The following scenarios apply to projects already in process. If the project doesn't meet any of these criteria then the project applicant must [submit a JD request](#). Review the [6 NYCRR Part 664.1](#) for complete applicability regulations.

- Projects that received a Freshwater Wetlands Permit or a letter from DEC notifying them that their application is complete may proceed under the freshwater wetlands jurisdictional determination issued prior to January 1, 2025, until expiration of the issued permit.
- Projects that have commenced or have plans to commence on a parcel that did not require a JD prior to January 1, 2025, and has a Final Environmental Impact Statement for the project which has been accepted by a lead agency pursuant to Part 617 of this Title prior to January 1, 2025,
- Projects that have received a negative declaration for a Type I or Unlisted actions pursuant to Part 617 of this Title for the project prior to January 1, 2025,
- Projects that have received written site plan approval from a local government for the project prior to January 1, 2025, Part 664 shall not be applicable to such parcel until the following dates pursuant to section 6 NYCRR 621.4:
 - July 1, 2028, for projects determined to be Major projects
 - January 1, 2027, for projects determined to be Minor Projects

30. What if a project in the above circumstances wasn't completed within the allowable exemption period?

A new [JD request](#) is required to assess the extent and class of the wetlands on the parcel under the new regulations.

MISCELLANEOUS QUESTIONS

31. How do the current exemption for agriculture practices affect new wetland regulations?

There are no changes to 6 NYCRR Part 663 Freshwater Wetlands Permit Requirements, agriculture practices remains unchanged.

32. What is essential behavior of Endangered, Threatened or Species of Greatest Conservation Need?

Essential behaviors are those that are a part of a species normal or traditional life cycle and that are essential to its survival. Essential behaviors include those associated with breeding, hibernation, reproduction, feeding, sheltering, migration, and overwintering.

33. How can I have a vernal pool on my property regulated?

The new regulations provide landowners the opportunity to report vernal pools on their property that meet one or more of the productivity criteria. DEC is developing the reporting process for vernal pools and will provide updated information on the [Freshwater Wetland Program](#) webpage once available. For questions on vernal pools, email vernalpools@dec.ny.gov.

34. How do the new regulations effect vernal pools?

Details of the regulation on vernal pools can be found [6 NYCRR Part 664 Express Terms](#) on pages 17-19. DEC and New York Heritage Program are creating a registration system that will efficiently gather the necessary information needed to qualify a vernal pool to be state regulated. Once available, information can be found on the [Freshwater Wetlands Program](#) page under Wetlands of Unusual Importance in the Vernal Pools tab.

The assessment of vernal pools involves a count of egg masses but please be advised that egg masses should never be disturbed or broken apart at any time during assessment.

35. How will DEC address the increase in workload resulting from expanded wetlands jurisdiction?

DEC has currently hired five additional staff to work on implementing the regulation as well as conduct remote Parcel JDs. As we developed the regulations, the JD process was predicated on the use of remote data to efficiently make determinations and classify regulated wetlands.

DEC is also developing GPs to efficiently move projects through the permitting process. The following is a list of the general permits that were created to efficiently move projects through the permitting process: "Typical Projects", "Lakeshore Stabilization", "Management of Invasive Species", "Housing Development", "Electric Rights of Way Maintenance and Repair", and "Natural Gas Rights of Way Maintenance and Repair". All the details about these GPs can be found on [DEC's website](#).

36. How should realtors advise buyers and sellers?

If a property appears to be lowland area that is wet, parties are encouraged to [submit a JD request](#) to confirm.

RESOURCES FOR MORE INFORMATION

FRESHWATER WETLANDS PROGRAM



FRESHWATER WETLANDS JURISDICTIONAL DETERMINATION



FRESHWATER WETLANDS PERMITS



FRESHWATER WETLAND GENERAL PERMIT (GP-0-25-003)



ENVIRONMENTAL PERMITS PROPOSED GENERAL PERMITS

