

Express terms

6 NYCRR Part 662, Freshwater Wetlands -- Interim Permits, is repealed.

A new Part 664, Freshwater Wetlands Jurisdiction and Classification, is adopted to read as follows:

664.1. Applicability

(a) This Part applies to all wetlands regulated under the Freshwater Wetlands Act, whether regulated by the department or by a local government. The department alone shall identify and classify wetlands, regardless of which entity is implementing the Act in a particular locality, except that the Adirondack Park Agency shall identify and classify the wetlands within the Adirondack Park as described in subdivision 1 of ECL section 9-0101, including any future amendments thereto.

(b) Where the department is the regulating authority, the wetlands classification system presented in this Part, applies to the department's freshwater wetlands permit requirements regulations, Part 663 of this Title. Part 663 of this Title identifies the standards for the issuance of permits for each of the four wetland classes described in sections 664.4 and 664.5 of this Part.

(c) Where a property owner or applicant received, prior to January 1, 2025, either a freshwater wetlands permit issued by the department or a letter from the department notifying them that their freshwater wetlands application is complete, the project may proceed under the freshwater wetlands jurisdictional determination issued by the department prior to January 1, 2025, until expiration of the issued permit.

(d) Where a property owner has commenced, or plans to commence a project on a parcel that did not require a freshwater wetlands permit 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, has received a negative declaration for a Type I action pursuant to Part 617 of this Title for the project, or has received written site plan approval from a local government for the project, this Part shall not be applicable to such parcel until the following dates:

(1) July 1, 2028, for projects determined to be Major projects pursuant to section 621.4 of this Title.

(2) January 1, 2027, for projects determined to be Minor Projects pursuant to section 621.4 of this Title.

664.2. Definitions

(a) 'Act' means the Freshwater Wetlands Act (article 24 and title 23 of article 71 of the ECL).

(b) 'Adjacent to an urban area' means those areas at least partially within an urban area as identified in the '2020 Census Qualifying Urban Areas and Final Criteria Clarifications By The United States Census Bureau' (December 2022) .

(c) 'Amphibian' means, for the purposes of this Part, a member of the Class Amphibia that uses vernal pools as critical breeding habitat. Amphibian species are those that are considered obligate vernal pool breeders in New York State, including the Spotted Salamander ('*Ambystoma maculatum*'), Wood Frog ('*Lithobates sylvaticus*' or '*Rana sylvatica*'), Jefferson Salamander ('*Ambystoma jeffersonianum*'), Blue-Spotted

Salamander ('Ambystoma laterale'), hybrids of Jefferson and Blue-Spotted Salamander, Eastern Tiger Salamander ('Ambystoma tigrinum'), and Marbled Salamander ('Ambystoma opacum').

(d) 'Census tract' means an area delineated as such by the United States Bureau of the Census.

(e) 'Commissioner' means the commissioner of the Department of Environmental Conservation or a duly authorized representative.

(f) 'Contiguous' means physically touching or connected.

(g) 'Critically imperiled' means a wetland plant community, plant species, or animal species that because of extreme rarity, steep declines in population, or severe threats are at a high risk of extirpation in New York State, with generally five or fewer occurrences within the State.

(h) 'Delineation' means the precise demarcation of a regulated freshwater wetland boundary.

(i) 'Department' means the New York State Department of Environmental Conservation.

(j) 'Digital Flood Insurance Rate Map' or 'DFIRM' means, for the purposes of this Part, the digital insurance and floodplain management map produced by the Federal Emergency Management Agency, including the 'National Flood Hazard Layer', that identifies, based on detailed or approximate analyses, the areas subject to flooding during a 1-percent annual chance (100-year) flood event in a community. Flood insurance risk zones, which are used to compute actuarial flood insurance rates, also

are shown on Digital Flood Insurance Rate Maps. In areas studied by detailed analyses, the DFIRM shows base flood elevations to reflect the elevations of the 1-percent annual chance flood. For many communities, when detailed analyses are performed, the DFIRM also may show areas inundated by 0.2-percent annual chance (500-year) flood and regulatory floodway areas.

(k) 'Essential behavior' means any of the behaviors exhibited by a species, listed by the department as endangered, threatened, a species of special concern, or a species of greatest conservation need as identified in the New York State Wildlife Action Plan (Sept. 2015), that are a part of its normal or traditional life cycle and that are essential to its survival and perpetuation. Essential behaviors include those associated with breeding, hibernation, reproduction, feeding, sheltering, migration, and overwintering.

(l) 'Flood' means, for the purpose of this Part, the overflowing of the normal confines of a stream or other body of water, or the accumulation of water over areas not normally submerged. Floods may include river (fluvial) floods, flash floods, urban floods, pluvial floods, sewer floods, coastal floods, and glacial lake outburst floods.

(m) 'Floodplain' means, for the purposes of this Part, any land area next to rivers or streams that is susceptible to being inundated by water from any source.

(n) 'Floodway' means, for the purposes of this Part, a Federal Emergency Management Agency determined channel of a river or other watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

(o) 'Freshwater wetland' or 'wetland' means lands and waters of the State which meet the definition provided in section 24-0107(1) of the Act and have an area of at least 12.4 acres (approximately 5 hectares), or, beginning on January 1, 2028, 7.4 acres (approximately 3 hectares). Freshwater wetland or wetland shall also include any lands and waters smaller than 12.4 or 7.4 acres that are of unusual importance as determined by the department pursuant to this Part.

(p) 'Freshwater wetland boundary' means the outer limit of the vegetation specified in paragraphs (a) and (b) of subdivision 1 of section 24-0107 of the Act and of the lands and waters specified in paragraphs (c) and (d) of such subdivision.

(q) 'Hydrologic Unit Code or 'HUC' means, for the purposes of this Part, a hierarchical land area classification system created by the United States Geological Survey described in 'U.S. Geological Survey, Water Supply Paper 2294' (1987) based on surface hydrologic features in a standard, uniform geographical framework. Each unit is identified by a unique numeric hydrologic unit code consisting of two-to-twelve digits based on the level of classification. Each hydrologic boundary is determined from topography and represents a drainage divide between the watersheds.

(r) 'Hydrophytic vegetation' means plants especially adapted for life in areas with seasonal or permanent saturation of soils.

(s) 'Imperiled' means a wetland plant community, plant species, or animal species that, because of rarity, steep declines in population, or severe threats, are vulnerable to extirpation in the State, with generally 6 to 20 occurrences within the State.

(t) 'Initial consultation' means a meeting providing an opportunity for a person or property owner to seek clarity regarding the process and criteria the department applied when making the positive jurisdictional determination.

(u) 'Jurisdictional determination' means a determination made by the department as to whether a given parcel of land includes freshwater wetlands or regulated adjacent areas subject to State regulation and whether a proposed activity requires a permit.

(v) 'Local government' means a village, town, city, or county.

(w) 'Nutrient Poor Wetlands' means the following wetland plant communities as identified by the department: black spruce-tamarack bog, coastal plain Atlantic white cedar swamp, coastal plain pond shore, coastal plain poor fen, dwarf shrub bog, highbush blueberry bog thicket, inland Atlantic white cedar swamp, inland poor fen, marl fen, medium fen, northern white cedar swamp, perched bog, pitch pine-blueberry peat swamp, red maple-tamarack peat swamp, rich graminoid fen, rich hemlock-hardwood peat swamp, rich shrub fen, rich sloping fen, sea level fen, and sedge meadow.

(x) 'Permit' means the written approval, issued by the commissioner or a local government, where required for the conducting of a regulated activity in a freshwater wetland or regulated adjacent area, in accordance with title 7 of the Act and Part 621 of this Title.

(y) 'Person' means any corporation, limited liability corporation, limited liability partnership, firm, partnership, association, trust, estate, one or more individuals, any other legal entity or any unit of Federal, State or local government or any agency or

subdivision thereof, including any State department, bureau, commission, board or other agency, public authority or public benefit corporation.

(z) 'Plant community' means an assemblage of plant species in an area.

(aa) 'Pollution' means, for the purposes of this Part, the presence in the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to humans, plants, animals, or to property.

(ab) 'Previously Mapped Wetland' means a freshwater wetland that was previously mapped by the department as a regulated wetland on or before December 31, 2024.

(ac) 'Regulated adjacent area' means those areas of land or water that are outside a wetland and within 100 feet (30.5 meters), measured horizontally, of the boundary of the wetland or beyond 100 feet (30.5 meters) pursuant to section 664.7 of this Part.

(ad) 'Significant flooding' means, for the purposes of this Part, large-scale flooding resulting in impacts to human-made infrastructure.

(ae) 'Sub watershed' means, for the purposes of this Part, a HUC 12 area located within an identified watershed.

(af) 'Verified delineation' means a precise demarcation of a jurisdictional freshwater wetland boundary confirmed by the department.

(ag) 'Vernal pool' means a naturally occurring, or purposefully created, depression wetland containing hydrophytic vegetation that is geographically isolated from, and lacking a connection to, permanent surface waters. Vernal pools, temporarily hold water during the spring, summer, and/or fall, and typically dry up for a period of time during

the year. Vernal pools do not support permanent adult fish populations, yet they provide essential habitat for amphibian, invertebrate, and other species.

(ah) 'Vernal pool complex' means a grouping of individual vernal pools in which each pool is 50 meters (approximately 164 feet) or less from at least one other vernal pool in the grouping.

(ai) 'Vulnerable' means a wetland plant community, plant species, or animal species that, because of extreme rarity, steep declines in population, or severe threats, are at a moderate risk of extirpation in the State, with generally 21-100 occurrences, or a very restricted range within the State.

(aj) 'Watershed' means, for the purposes of this Part, an area of land that drains water into a specific body of water. Watersheds include networks of rivers, streams, and lakes and the land area surrounding them. Watersheds are separated by high elevation geographic features, including mountains, hills, or ridges.

664.3. Purposes and Approach

(a) Public policy. It is the public policy of the State, as set forth in the Freshwater Wetlands Act, to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoliation and destruction of wetlands, and to regulate use and development of wetlands to secure the natural benefits of those wetlands, consistent with the general welfare and beneficial economic, social, and agricultural development of the State. It is the purpose of this Part to implement that policy by clarifying certain aspects of wetland identification and delineation of jurisdiction, and by creating a system for classifying wetlands in accordance with section

24-0903(1) of the Act. In accordance with the public policy of the State, such a system must account for the many benefits described below and in section 24-0105(7) of the Act.

(b) Wetland benefits. The preservation, protection, and conservation of wetlands is of public concern because of the functions and benefits they provide. These include:

- (1) Flood and stormwater control. Wetlands slow water runoff and temporarily store water, thus helping to protect downstream areas from flooding, particularly storm related flooding due to climate change. Public health and private property may be harmed in one portion of a watershed if wetlands are destroyed in a different part of that watershed.
- (2) Wildlife habitat. Wetlands are of unparalleled value as wildlife habitat, and the perpetuation of scores of species which depend upon them. Many of the species are migratory and must have nesting, migration, and wintering habitat. The destruction of one kind of wetland habitat in one place may reduce populations of wildlife elsewhere. Where specific wetlands support endangered species, destruction of those wetlands may threaten the persistence of that species in the entire State.
- (3) Water supply. Wetlands themselves are a source of surface water and may, under appropriate hydrological conditions, serve to recharge groundwater and aquifers and to maintain surface water flow.
- (4) Water quality. Many wetlands serve as chemical and biological oxidation basins that help cleanse water that flows through them. Wetlands can also

- serve as sedimentation areas, and filtering basins that absorb silt and organic matter, thereby protecting channels and harbors and enhancing water quality.
- (5) Fisheries. Wetlands provide the spawning and nursery grounds for several species of fish. The availability of these fish in lakes and streams may be adversely affected by the loss of wetlands contiguous to those waters.
 - (6) Food chains. Food and organic detritus supplied by wetlands support the fish and wildlife within contiguous waters.
 - (7) Recreation. Wetlands provide important hunting, fishing, boating, hiking, birdwatching, photography, camping, and other recreational opportunities. In addition, wetlands may be critical to recreation beyond their own borders because of their ability to protect water quality and protect and produce wildlife and fish.
 - (8) Open space and aesthetic appreciation. Wetlands provide visual variety in many different settings. Especially in urban areas, wetland open space contributes to social well-being by providing relief from intense development and a sense of connection with the natural world.
 - (9) Education and scientific research. Because of the high biological productivity and the variety of plant and animal species they can support, wetlands can be of broad social benefit in providing outdoor laboratories and living classrooms for studying and appreciating natural history, ecology, and biology. Many of the lessons learned and principles evolved through study of wetlands are applicable to other environmental issues.

664.4. Classification Procedures

(a) The commissioner shall classify each jurisdictional wetland according to the classification system set forth in section 664.5 of this Part. That system establishes four separate classes that rank wetlands according to their ability to perform wetland functions and provide wetland benefits. Class I wetlands have the highest rank, and the ranking descends through classes II, III and IV.

(b) When a wetland contains characteristics of more than one class, the entire wetland shall be classified based on the highest class identified.

(c) Where a previously mapped wetland has been altered for agricultural purposes and therefore meets the exemption pursuant to section 24-0701 of the Act, the land shall continue to be regulated according to its original mapping designation once exempt agricultural activities cease.

664.5. Classification System

Not all wetlands supply equally the benefits explained in section 664.3(b) of this Part. The degree to which wetlands supply benefits depends upon many factors, including: their rare species and biodiversity, their hydrological and pollution control features, their cover types and special features, and their distribution and location; and these may vary considerably from wetland to wetland. Because of this variation, the Act requires the commissioner to classify wetlands in a way that recognizes that not all wetlands are of equal value. This section establishes four ranked regulatory classes of wetlands that are based upon the degree of benefits supplied, as identified or determined by the department.

(a) Class I wetlands. A wetland shall be a class I wetland if it has any of the following characteristics, as determined by the department:

- (1) it contains habitat for an essential behavior of a species listed as endangered or threatened in Part 182 of this Title or is listed as endangered or threatened by the United States Department of the Interior in the Code of Federal Regulations (50 CFR Part 17);
- (2) it contains an endangered or threatened plant species as listed in Part 193 of this Title;
- (3) it falls within a significant coastal fish and wildlife habitat area, designated as such by the Department of State pursuant to Part 602 of Title 19 of the New York Code of Rules and Regulations;
- (4) it is a tidally influenced wetland not regulated by the department pursuant to article 25 of the ECL;
- (5) it is contiguous to a tidally influenced wetland regulated under article 25 of the ECL;
- (6) it contains a wetland plant community identified as critically imperiled;
- (7) it is a nutrient poor wetland;
- (8) it is in an area designated as a floodway on the Digital Flood Insurance Rate Map (DFIRM) or 'National Flood Hazard Layer', produced by the Federal Emergency Management Agency (FEMA); or
- (9) it is contiguous to fresh surface waters having classifications of A, AA, AA-S, A-S, or N, as set forth in Parts 800-941 of this Title.

(b) Class II wetlands. A wetland shall be a class II wetland if it has any of the following characteristics, as determined by the department:

- (1) it contains an occurrence of an animal species identified as critically imperiled or imperiled;
- (2) it contains habitat for an essential behavior of a species of special concern as listed in Part 182 of this Title, or a species listed in the New York State Wildlife Action Plan (Sept. 2015) as a 'high priority' species of greatest conservation need;
- (3) it contains an occurrence of a plant species identified as critically imperiled or imperiled;
- (4) it is a Great Lakes Coastal Wetland that is not part of a significant coastal fish and wildlife habitat area;
- (5) it is a vernal pool regulated pursuant to this Part;
- (6) it contains a wetland plant community identified as imperiled;
- (7) it is located within a FEMA designated 100-year floodplain on the Digital Flood Insurance Rate Map (DFIRM) or 'National Flood Hazard Layer', produced by the Federal Emergency Management Agency (FEMA);
- (8) it is within the boundary of a sole source aquifer as identified by the Environmental Protection Agency (EPA) in 'EPA Sole Source Aquifers' (August 2020);
- (9) it is contiguous to fresh surface waters having classifications of B as set forth in Part 701 of this Title;

(10) it is contiguous to fresh surface waters assigned a standard of A(t), A(ts), AA(t), AA(ts), A-S(t), A-S(ts), AA-S(t), AA-S(ts), B(t), B(ts), C(t), or C(ts) as set forth in Parts 800-941 of this Title;

(11) it has all three wetland structural groups: woody, herbaceous, and open water;

(12) it consists of floating and/or submerged aquatic vegetation (SAV) and is not dominated ($\leq 50\%$) by invasive species identified by the department pursuant to Part 575 of this Title;

(13) it is located wholly within, or is partially within, an urban area as defined and identified in the '2020 Census Qualifying Urban Areas and Final Criteria Clarifications By The United States Census Bureau' (December 2022);

(14) the wetland is located in, or is partially located in, an area identified as a disadvantaged community as defined in the Climate Leadership and Community Protection Act (CLCPA) ECL 75-0101(5); or

(15) the wetland is located wholly within, or is partially located within, an area identified as a Potential Environmental Justice Area as determined by the department.

(c) Class III wetlands. A wetland shall be a class III wetland if it has any of the following characteristic, as determined by the department:

(1) it contains an occurrence of an animal species identified as vulnerable;

(2) it is located within a FEMA designated 500-year floodplain on the Digital Flood Insurance Rate Map (DFIRM) or 'National Flood Hazard Layer', produced by the Federal Emergency Management Agency (FEMA);

- (3) it is contiguous to fresh surface waters having classifications of C as set forth in Parts 800-941 of this Title;
- (4) it contains shrub-swamp and forested cover type(s);
- (5) it is an emergent marsh or wet meadow and is not dominated by ($\leq 50\%$) invasive species identified by the department pursuant to Part 575;
- (6) it contains a wetland plant community identified as vulnerable; or
- (7) it is in a town in which wetland acreage is less than one percent (1%) of the total acreage.

(d) Class IV wetlands. A wetland shall be a class IV wetland if it has any of the following enumerated characteristics, as determined by the department:

- (1) it is contiguous to fresh surface waters having classifications of D as set forth in Part 701 of this Title;
- (2) it consists of floating and/or submerged aquatic vegetation (SAV) and is dominated ($> 50\%$) by invasive species identified by the department pursuant to Part 575 of this Title; or
- (3) it is an emergent marsh or wet meadow and is dominated ($> 50\%$) by invasive species identified by the department pursuant to Part 575.

664.6. Wetlands of Unusual Importance.

A freshwater wetland, regardless of size, is of Unusual Importance and, therefore, regulated if it possesses one or more of the following characteristics, as determined by the department pursuant to this Part:

(a) Significant Flooding. The freshwater wetland is located in a 12-digit Hydrologic Unit Code (HUC) that meets all of the following three criteria:

(1) it has two percent or more impervious surface based on recent land cover data;

(2) less than five percent of its surface area is comprised of floodwater storage zones in the form of lakes, ponds, reservoirs, or wetlands based on recent land cover data; and

(3) it is located within an urban area or within 4 kilometers (2.48 miles) of an urban area as defined and identified by the United States Census Bureau.

(b) Urban Areas. It is located within or adjacent to an urban area, as defined and identified by the United States Census Bureau.

(c) Rare Plants. It contains a plant species occurring in fewer than 35 sites statewide or having fewer than 5000 individuals statewide, as documented by the department.

(d) Rare Animals. It meets one or more of the following criteria, as documented by the department:

(1) it contains habitat for an essential behavior of a species listed as endangered in Part 182 of this Title or listed as endangered by the United States Department of the Interior in the Code of Federal Regulations (50 CFR Part 17);

(2) it contains habitat for an essential behavior of a species listed as threatened in Part 182 of this Title or listed as threatened by the United States Department of the Interior in the Code of Federal Regulations (50 CFR Part 17);

(3) it contains habitat for an essential behavior of species of special concern.

Species of special concern are native species of fish and wildlife found by the department to be at risk of becoming threatened in New York based on the criteria for listing in Part 182 of this Title; or

(4) it contains habitat for an essential behavior of a species of greatest conservation need listed in the New York State Wildlife Action Plan (Sept. 2015) with habitat loss having been identified by the department as a moderate to very high threat to New York populations.

(e) Class I. It is classified by the department as a Class I wetland.

(f) Unusual Local Importance. It was previously classified and mapped by the department as a wetland of unusual local importance and contain wetland characteristics described in section 24-0107(a) of the Act.

(g) Vernal Pools. It is a vernal pool that is known to be productive for amphibian breeding. A vernal pool is known to be productive for amphibian breeding within a region of the State where the department has determined one or more of the following exist in a particular vernal pool or vernal pool complex:

(1) in the Hudson-Mohawk Region, 25 or more Spotted Salamander egg masses, or 10 or more Wood Frog egg masses;

(2) in the Great Lakes Region, two or more Spotted Salamander or Wood Frog egg masses;

- (3) in the Lower Hudson-NYC-Long Island, Adirondack, and Southern Tier Regions, 10 or more Spotted Salamander egg masses or 15 or more Wood Frog egg masses;
- (4) in the Lower Hudson-NYC-Long Island or Adirondacks Regions, one or more egg masses or larvae of Jefferson Salamander, Blue-Spotted Salamander, or hybrids of Jefferson and Blue-Spotted Salamander;
- (5) in the Great Lakes, Southern Tier, or Hudson-Mohawk Regions, 20 or more egg masses or larvae of Jefferson Salamander, Blue-Spotted Salamander, or hybrids of Jefferson and Blue-Spotted Salamander; or
- (6) in any Region, one or more egg masses or larvae of Eastern Tiger Salamander, or Marbled Salamander.

A map depicting these regions is available on the department's website and in Appendix 56 of this Title.

The department shall create and maintain a list of geographic coordinates for vernal pools known to the department that meet the criteria in paragraphs (1) through (6) of this subdivision. The department shall publish updates to the productive vernal pool list in the Environmental Notice Bulletin. Geographic coordinates of vernal pools containing species listed in Part 182 of this Title will not be included in vernal pool listings or updates.

A landowner may report information to the department that a vernal pool or vernal pool complex occurs on their property that meets one or more of the criteria in paragraphs (1) through (6) of this subdivision. This report must include: site-specific documentation regarding how the vernal pool or vernal pool complex meets criteria, the methodology

used to make that determination, when the investigation was conducted, who conducted the investigation, and the specific location of each vernal pool.

(h) Floodways. It is located in an area designated as a floodway on the Digital Flood Insurance Rate Map (DFIRM) 'National Flood Hazard Layer', produced by the Federal Emergency Management Agency.

(i) Previously Mapped Wetlands. It was previously mapped by the department as a regulated wetland on or before December 31, 2024, and contain wetland characteristics described in section 24-0107(a) of the Act.

(j) Local or Regional Significance. It has wetland functions and values that are of local or regional significance because it meets one or more of the following criteria:

- (1) the wetland is located within an area specifically designated, pursuant to Part 617 of this Title, as a Critical Environmental Area (CEA) with specific reference to wetland protection by a local agency in its written justification supporting the designation; or
- (2) the wetland is partially located within the Adirondack Park and under the jurisdiction of the Adirondack Park Agency.

(k) Important for Protection of New York State's Water Quality. It has significant importance to protecting the State's water quality based on substantial evidence, as determined by the commissioner in writing. The commissioner's written determination shall describe the underlying reasons why the wetland is of significant importance to protecting the State's water quality. This may include a description of why the wetland is of significant importance in preventing exceedances of any water quality standards or

guidance values derived pursuant to Part 702 of this Title. The commissioner's determinations pursuant to this subdivision shall be posted on the department's website.

664.7. Miscellaneous Provisions.

(a) Extending regulated Adjacent Areas. The regulated adjacent area of nutrient poor wetlands determined by the department shall be extended to 300 feet (approximately 91.4 meters) to protect and preserve the wetland pursuant to section 24-0701(2) of the Act. The regulated adjacent area of vernal pools determined by the department to be productive for amphibian breeding, pursuant to subdivision 664.6(g) of this Part, shall be extended to 800 feet (approximately 244 meters) to protect and preserve the wetland pursuant to section 24-0701(2) of the Act.

(b) Treatment of Two or More Areas as a Single Wetland. Two or more areas identified by the department as freshwater wetlands, pursuant to this Part, shall be classified and regulated as a single wetland if they are hydrologically connected, either on the surface or sub-surface, and no more than 50 meters (approximately 164 feet) apart.

664.8. Jurisdictional Determination Procedure

(a) Any person may submit to the department a request for a jurisdictional determination as to whether a given parcel of land includes freshwater wetlands or regulated adjacent areas subject to State regulation.

(b) Any landowner who has been issued a positive jurisdictional determination may request that the department undertake to delineate the boundary of any freshwater wetland identified by the department on the subject parcel or may submit a wetland delineation for verification by the department.

(c) Any landowner who has been issued a positive jurisdictional determination may submit an application to the department requesting a determination as to whether a permit is required for a proposed activity on their parcel, provided that the landowner has submitted to the department site-specific development plans and a wetland delineation for verification by the department. Such an application shall be deemed complete upon notice to the requestor that the department has verified the accuracy of the submitted delineation and the application includes site-specific plans with enough detail to characterize the full extent of the project.

(d) A request for a jurisdictional determination, a wetland delineation, or a determination as to whether a proposed activity requires a permit, must be made in writing and submitted to the department consistent with instructions available on the department's website.

(e) The department shall provide a definite answer in writing within 90 days of the receipt of such request as to the jurisdictional status of a parcel, and if requested, whether a permit is required for proposed activities. Provided however, that if weather or ground conditions prevent the department from making a jurisdictional determination within 90 days, it may extend such period until a determination can be made.

(f) If the department fails to provide a definite answer in writing, or notification of an extension within 90 days of the receipt of a request for a jurisdictional determination whether a given parcel of land includes freshwater wetlands or freshwater wetland adjacent areas subject to State regulation, or a determination of whether a permit is required for a proposed activity, the requestor shall make notice of that failure by means of certified mail, return receipts requested, addressed to the Director of the Division of

Fish and Wildlife, New York State Department of Environmental Conservation, Division of Fish and Wildlife, 625 Broadway, Albany, NY 12233-1750. Such notice must contain the requestor's name, and a copy of any materials sent to the department with the initial request.

(g) If the department fails to provide a definite answer within 10 business days of the receipt of such notice, freshwater wetland jurisdiction for the subject parcel shall be deemed waived. Such waiver shall serve as a complete defense to the enforcement of the Act for a period of five years from the date of the waiver.

(h) A positive jurisdictional determination for a parcel shall describe the reasons for the determination, including the presence of Wetlands of Unusual Importance or those wetlands which are greater than 12.4 (or 7.4) acres, and all applicable wetland classifications.

(i) A positive jurisdictional determination shall be reviewable pursuant to the procedures in section 664.9 of this Part.

(j) A negative jurisdictional determination shall be a complete defense to the enforcement of the Act, as to such parcel of land for which the determination has been made, for a period of five years from the date it is issued.

664.9. Consultation, and Review of Positive Jurisdictional Determinations.

(a) Any landowner having received a positive jurisdictional determination from the department pursuant to this Part after January 1, 2025, may appeal such determination pursuant to this section. A positive jurisdictional determination remains in place pending the outcome of the appeal.

(b) Any person wishing to make an appeal must first have an initial consultation with the department and provide a delineation of the wetlands identified in the jurisdictional determination. If such person does not already have a delineation, they may request that the department delineate the boundary of the particular wetland or wetlands on their property prior to the date of the initial consultation.

(c) If a landowner still wishes to formally appeal the determination pursuant to this section following an initial consultation with the department, they must submit to the department a complete freshwater wetlands jurisdictional determination appeal application. Appeal applications are not complete until the applicant has provided all necessary information. Appeals must be submitted no more than 120 days from the date of the initial consultation. Appeals must be sent to the department via certified mail, return receipts requested, addressed to the Director of the Division of Fish and Wildlife, New York State Department of Environmental Conservation, Division of Fish and Wildlife, 625 Broadway, Albany, NY 12233-1750.

(d) The department shall issue a decision in writing within 60 days after receipt of a complete freshwater wetlands jurisdictional determination appeal application, provided that this deadline may be extended by the department for up to an additional 30 days if it determines that an additional visit to the property is necessary.

(e) The acceptable basis for an appeal is technical information indicating one or more of the following:

(1) an omission of material fact;

(2) incorrect application of the current regulatory criteria; or

(3) incorrect application of guidance for identifying wetlands and delineating wetland boundaries.

664.10. Severability.

The provisions of this Part shall be severable, and if any clause, sentence, paragraph, subdivision, or any other provision of this Part shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person or circumstance.

664.11. Referenced Material.

The regulations included in this Part incorporate by reference materials in the following table which are available online at the listed webpage or for physical inspection and copying at the Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1750:

Appearance	Referenced Document
6 NYCRR 664.2(j), 664.5(b)(2), and 664.6(d)(4)- (5)	New York State Wildlife Action Plan (Sept. 2015) By New York State Department of Environmental Conservation Published September 2015 Available at: https://dec.ny.gov/docs/wildlife_pdf/swapfinaldraft2015.pdf

<p>664.5(a)(1) and 664.6(d)(1)- (2)</p>	<p>*50 CFR Part 17 (December 19, 2023)</p>
<p>6 NYCRR 664.5 (b)(8)</p>	<p>‘EPA Sole Source Aquifers’ By United States Environmental Protection Agency Published August 1, 2020 Available at: https://catalog.data.gov/dataset/epa-sole-source-aquifers1</p>
<p>6 NYCRR 664.2(b). 664.5(b)(13)</p>	<p>‘2020 Census Qualifying Urban Areas and Final Criteria Clarifications By The United States Census Bureau’ By United States Census Bureau in 87 FR 80114 Published December 23, 2022 Available at: https://www.federalregister.gov/documents/2022/12/29/2022-28286/2020-census-qualifying-urban-areas-and-final-criteria-clarifications</p>
<p>6 NYCRR 664.3 (b)(3)</p>	<p>‘U.S. Geological Survey, Water Supply Paper 2294’ By Paul R. Seaber, F. Paul Kapinos, and George L. Knapp Published 1987 Available at: https://pubs.usgs.gov/wsp/wsp2294/pdf/wsp_2294.pdf</p>
<p>6 NYCRR 664.2 (j)</p>	<p>‘National Flood Hazard Layer’ (Digital Flood Insurance Rate Map) By Federal Emergency Management Agency Available at:</p>

	https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd
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* Any volume of the Code of Federal Regulations (CFR) can be obtained by writing to the Superintendent of Documents, Attn.: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. Copies of CFR sections may also be obtained at the National Archives and Records Administration, <https://www.ecfr.gov/>

Appendix 56 - Map depicting major regions of New York State for productive vernal pools.

