

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

For purposes of this Rural Area Flexibility Analysis, "rural area" means those portions of New York State (State) so defined by Executive Law section 481(7). SAPA section 102(10). Under Executive Law section 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

There are 44 counties in the State that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile. This rule applies to all rural areas of the State outside the Adirondack Park.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

This proposed regulation does not require any reporting or record keeping for private landowners or municipalities in rural areas. This rule making expands the scope of the jurisdiction of the Department of Environmental Conservation (department) to regulate freshwater wetlands. Under existing regulations, landowners seeking to conduct a regulated activity within a regulated wetland or regulated adjacent area often

hire professional consultants to assist with the development process. The increased scope of jurisdiction means it is likely that an increased number of landowners proposing to conduct an activity within a regulated wetland or regulated adjacent area may seek professional services to assist with the development process. However, the extent of those compliance requirements, necessitating professional services, would be site-specific and would depend on the nature of the activity and the adverse impacts on the wetland.

Permits issued by the department for small projects that impact regulated wetlands or their adjacent area only require best management practices during construction activities, while permits for large and complicated development projects could require highly technical mitigation plans to compensate for losses of wetlands. Therefore, permits for smaller projects generally do not require professional services while large projects do require these services.

To limit the potential need for professional services, this rule provides procedures for landowners to request jurisdictional determinations and wetland delineations free of charge.

3. Costs:

The proposed regulations do not require any initial capital costs nor any annual costs because the rule only clarifies the types and extent of wetlands that will be regulated under the Freshwater Wetlands Act (the Act), as amended in 2022. Since its inception, the Act has provided substantial exemptions for normal agricultural activities and ordinary maintenance and repair of existing structures. These exemptions will continue when the changes to the Act take effect in January 2025. Landowners are not

required to expend any additional costs unless they seek to conduct a development activity within a regulated wetland or regulated adjacent area and do not meet the exemptions mentioned above. Projects requiring permits will be subject to statutory application fees that became effective in January 2023 that are commensurate with the scope of the project and potential impacts. For example, projects covered by general permits will not require application fees. Projects to construct a single-family dwelling will require a \$300 application fee, while large commercial development projects will require a \$1,000 fee.

4. Minimizing adverse impact:

The purpose of this rule making is to implement amendments to the Act that expand protections to previously unprotected wetlands throughout the State, in part, so New York would be prepared for more frequent and intense storm events resulting from a changing climate. Protecting additional wetlands pursuant to this rule will help minimize adverse impacts in rural areas by maintaining the capacity of the land to hold water, thereby reducing the risk of damage to human infrastructure and reducing costs on rural communities when infrastructure damaged by flood events must be replaced. While wetlands provide many benefits to rural communities, expanded jurisdiction based on the statutory changes will result in the need for more wetland permits.

5. Rural area participation:

The department conducted a comprehensive two-phase outreach plan to engage a wide range of stakeholders and solicit input for the development of this proposed regulation. Phase 1 focused on raising general awareness about wetlands, explaining

the statutory changes, and soliciting input before the department drafted regulatory language. Phase 1 included multiple in-person and remote meetings with more than 30 stakeholder groups representing rural municipalities, agriculture, forest products, land trusts, and other groups. Phase 2 focused on seeking specific stakeholder input on potential regulatory language through an Advanced Notice of Proposed Rule Making (ANPRM). Phase 2 included more formal efforts to elicit feedback from stakeholders and included publication of the ANPRM in the State Register and the department's Environmental Notice Bulletin (ENB). The ANPRM included pre-proposal draft regulatory text and questions targeting eight specific areas of interest. To assure stakeholders from rural areas had an opportunity to participate in the ANPRM, the department sent email messages to all stakeholders involved in the Phase 1 outreach, as well as other interested groups representing rural interests such as loggers, representatives from the wood products industries, realtors, and builders to inform them of the ANPRM. In addition, the department conducted more than a dozen webinars to describe the ANPRM and solicit direct feedback. Combined, these webinars reached more than 1,300 participants. Feedback on the ANPRM from stakeholders in rural areas was incorporated into the proposed regulations.