



Department of  
Environmental  
Conservation

# Navigating the New Freshwater Wetlands Regulations

6 NYCRR Part 664 – Freshwater Wetlands Jurisdiction and Classification

June 13, 2025

# Overview

## Freshwater Wetlands Statute

Is a lake or pond a wetland?

## Do I need a Permit?

Regulated Activities

New JD Process

## Other Permits

Protection of Waters

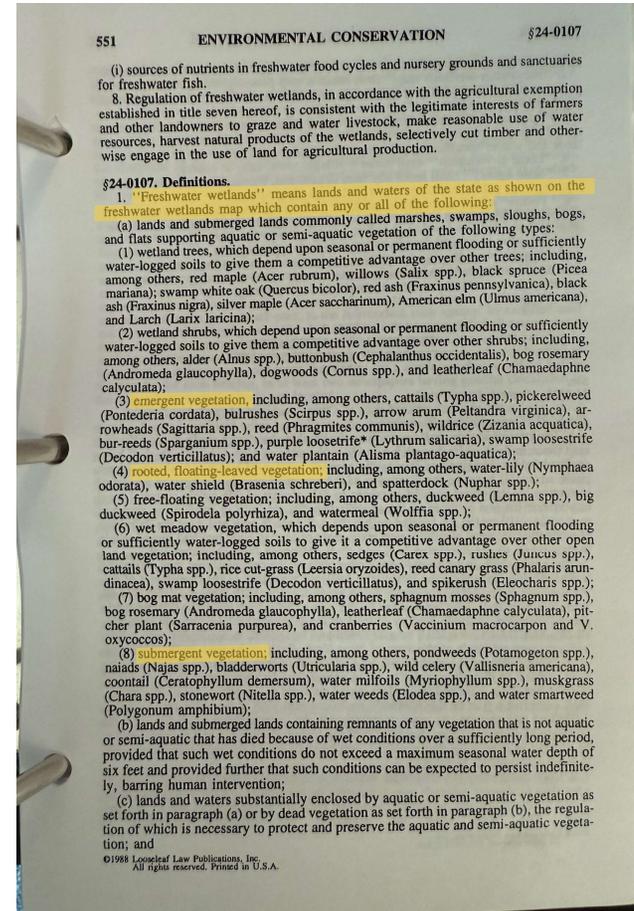
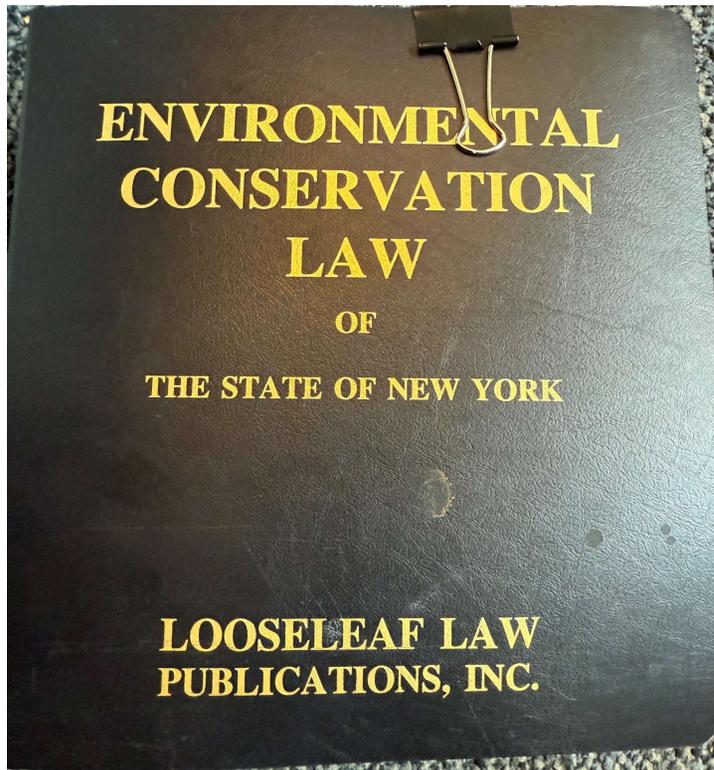
## General Permits



# Environmental Conservation Law Article 24 Freshwater Wetlands

September 1, 1975

Defined Wetlands as:



DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Article 24 Freshwater Wetlands

8. Regulation of freshwater wetlands, in accordance with the agricultural exemption established in title seven hereof, is consistent with the legitimate interests of farmers and other landowners to graze and water livestock, make reasonable use of water resources, harvest natural products of the wetlands, selectively cut timber and otherwise engage in the use of land for agricultural production.

### §24-0107. Definitions.

1. "Freshwater wetlands" means lands and waters of the state as shown on the freshwater wetlands map which contain any or all of the following:

(a) lands and submerged lands commonly called marshes, swamps, sloughs, bogs, and flats supporting aquatic or semi-aquatic vegetation of the following types:

(1) wetland trees, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other trees; including, among others, red maple (*Acer rubrum*), willows (*Salix* spp.), black spruce (*Picea mariana*); swamp white oak (*Quercus bicolor*), red ash (*Fraxinus pennsylvanica*), black ash (*Fraxinus nigra*), silver maple (*Acer saccharinum*), American elm (*Ulmus americana*), and Larch (*Larix laricina*);

(2) wetland shrubs, which depend upon seasonal or permanent flooding or sufficiently

## Article 24 Freshwater Wetlands

among others, alder (*Alnus* spp.), buttonbush (*Cephaelanthus occidentalis*), bog rosemary (*Andromeda glaucophylla*), dogwoods (*Cornus* spp.), and leatherleaf (*Chamaedaphne calyculata*);

(3) **emergent vegetation**, including, among others, cattails (*Typha* spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.), arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* spp.), reed (*Phragmites communis*), wildrice (*Zizania aquatica*), bur-reeds (*Sparganium* spp.), purple loosestrife\* (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*); and water plantain (*Alisma plantago-aquatica*);

(4) **rooted, floating-leaved vegetation**; including, among others, water-lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*), and spatterdock (*Nuphar* spp.);

(5) free-floating vegetation; including, among others, duckweed (*Lemna* spp.), big duckweed (*Spirodela polyrhiza*), and watermeal (*Wolffia* spp.);

(6) wet meadow vegetation, which depends upon seasonal or permanent flooding or sufficiently water-logged soils to give it a competitive advantage over other open land vegetation; including, among others, sedges (*Carex* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), swamp loosestrife (*Decodon verticillatus*), and spikerush (*Eleocharis* spp.);

(7) bog mat vegetation; including, among others, sphagnum mosses (*Sphagnum* spp.), bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calyculata*), pit-

cher plant (*Sarracenia purpurea*), and cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*);

(8) **submergent vegetation**; including, among others, pondweeds (*Potamogeton* spp.), naiads (*Najas* spp.), bladderworts (*Utricularia* spp.), wild celery (*Vallisneria americana*), coontail (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* spp.), muskgrass (*Chara* spp.), stonewort (*Nitella* spp.), water weeds (*Elodea* spp.), and water smartweed (*Polygonum amphibium*);

(b) lands and submerged lands containing remnants of any vegetation that is not aquatic or semi-aquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six feet and provided further that such conditions can be expected to persist indefinitely, barring human intervention;

(c) lands and waters substantially enclosed by aquatic or semi-aquatic vegetation as set forth in paragraph (a) or by dead vegetation as set forth in paragraph (b), the regulation of which is necessary to protect and preserve the aquatic and semi-aquatic vegetation; and

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## Is a lake or pond a wetland? Parts of it are.

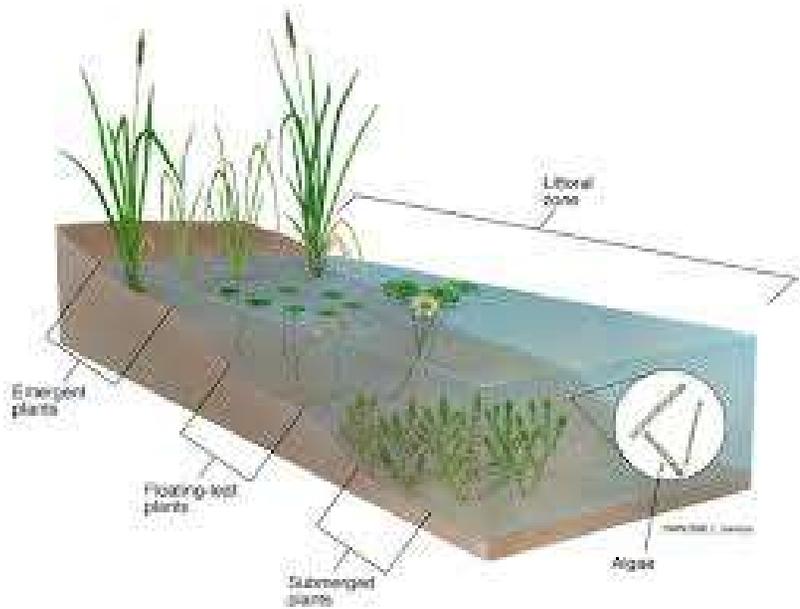


Photo Credit Minnesota DNR



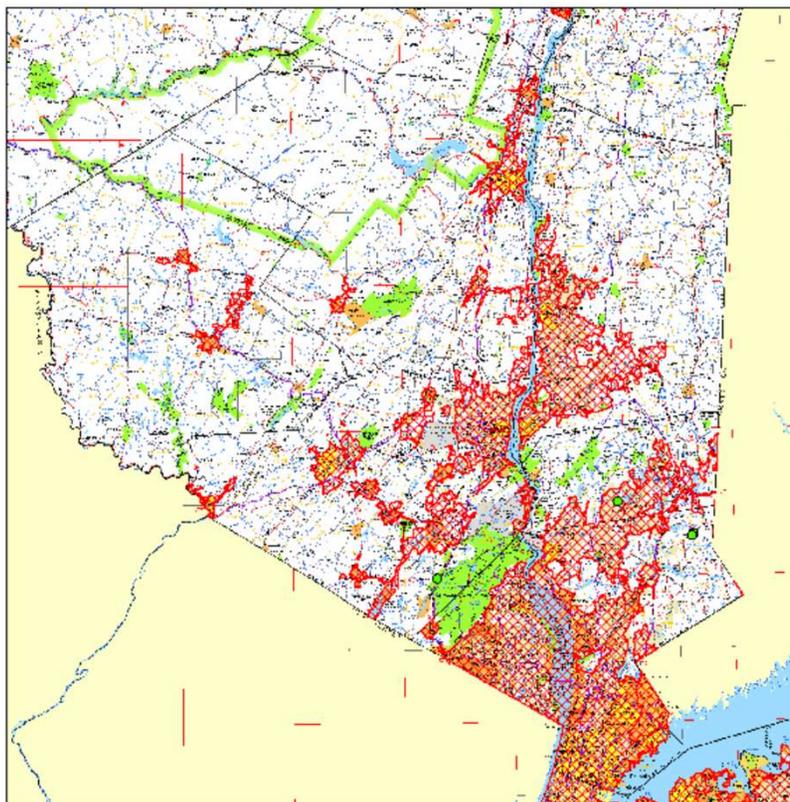
# Statutory Provisions

## Freshwater Wetlands Act (Article 24)

- Jurisdiction no longer tied to maps
- Regulate wetlands and adjacent area
- Regulate larger wetlands >12.4 acres (>7.4 acres in 2028)
- Regulate smaller wetlands of “Unusual Importance”



- 1) Urban areas
- 2) Rare plants
- 3) Previously designated as a wetland of Unusual Local Importance (ULI)
- 4) Wetlands in floodways
- 5) Previously mapped
- 6) Habitat for essential behavior of Endangered/threatened/special concern/species of greatest conservation need
- 7) Watershed with significant flooding
- 8) Productive vernal pools
- 9) Class I wetland
- 10) Regional or local significance
- 11) Significant for protecting state's water quality





July 13, 2023

# DO I NEED A PERMIT?



# INFORMATIONAL Maps **NO!**

The screenshot shows the NYS Environmental Resource Mapper interface. At the top left is the New York State logo. Navigation links for 'Services', 'News', and 'Government' are at the top. The header reads 'NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION'. The main title is 'Environmental Resource Mapper'. On the left is a 'Layers and Legend' panel with various map layers, including 'Informational Freshwater Wetland Mapping' which is checked. A browser window is overlaid on the map, displaying the URL 'gisservices.dec.ny.gov/gis/erm/infoWetlands.html' and the title 'Informational NYS Freshwater Wetlands'. The browser content includes a disclaimer: 'Disclaimer :These maps are for informational purposes only. They are intended to be used as a planning tool for landowners and project sponsors and do not necessarily depict wetlands regulated under New York's Freshwater Wetlands Act (Article 24 of NY Environmental Conservation Law)'. Below the disclaimer, a green box contains the text: 'The Informational Freshwater Wetland Mapping layer is only intended to be used for informational purposes in identifying the general location and extent of freshwater wetland areas of any size throughout the state. Informational Freshwater Wetland Mapping is not regulatory.' The background map shows parts of New York, Ohio, and Pennsylvania, with labels for Lake Huron, Toledo, Cleveland, Akron, Youngstown, Scranton, Albany, and Utica.

# Regulated Activities

- New construction of buildings, driveways, and accessory structures
- Clear cutting vegetation
- Filling, Excavation, dredging, and draining
- Installing and expanding new docks
- Applying pesticides/herbicides
- 6NYCRR Part 663.4(d)



# Exempt Activities



- Ordinary maintenance and repair of existing structures and improved areas
  - maintaining existing lawns and landscaped areas
  - resurfacing paved areas
- Seasonal installation and removal of previously permitted or pre-existing floating docks
  - \*Article 15 Protection of Waters\*
- Boating, fishing, and other outdoor recreation

## Exempt Activities

<i>Procedure and Compatibility by Area</i>			
<i>Items</i>	<i>Activities</i>	<i>FWW</i>	<i>AA</i>
1.	Continuing lawfully existing uses and continuing all activities normally and directly associated with any such use, except for those activities covered by items 38, 39, 40 and 41, where such continuance does not involve expansion or significant alteration of the existing use and does not affect additional wetland area.	E	E
2.	Establishing scenic, historic, wildlife and scientific preserves, where no significant impairment of the wetland or its benefits is involved.	E	E
3.	Boating, hiking, swimming, camping, picnicking and other similar nonmotorized forms of outdoor activity, where no significant impairment of the wetland or its benefits is involved.	E	E
4.	Depositing or removing the natural products of wetlands in the process of recreational or commercial fishing, shellfishing, aquiculture, hunting or trapping, including the erection and maintenance of temporary hides or blinds.	E	E
5.	Conducting educational and scientific research activities where no significant impairment of the wetland or its benefits is involved.	E	E
6.	Establishing walking trails, where no significant impairment of the wetland or its benefits involved.	E	E
7.	Establishing an individual recreational mooring.	E	E
8.	Gathering fuelwood, except as covered by items 22, 23 and 24.	E	E
9.	Conducting an agricultural activity, as defined in the act or section 663.2 of this Part.	E	E
<i>Existing Structures and Facilities</i>			
	Normally, maintenance, repair or restoration of existing facilities will not cause adverse impacts on wetlands. This is not always true, however, for construction activities that are associated with such maintenance, repair or restoration, such as the placing of access roads, staging areas and utilities. Various such associated activities are listed elsewhere in this chart.		

## Exempt Activities

<i>Items</i>	<i>Activities</i>	FWW	AA
10.	Ordinary maintenance and repair of existing functional structures, facilities or improved areas, including but not limited to bridges, roads, highways, culverts, railroad beds, bulkheads, docks, beaches, piers, wharves, pilings, dolphins, utility rights-of-way, buildings, landscaped or paved areas, lawns and mosquito control ditches. Such maintenance and repair might include, for example, replacing broken boards in docks, repainting structures, redriving pilings, resurfacing paved areas, and installing and removing docks on a seasonal basis, but does not include activities covered by items 22, 23, 24, 38, 39, 40 and 41 or other applicable items listed in this chart.	E	E

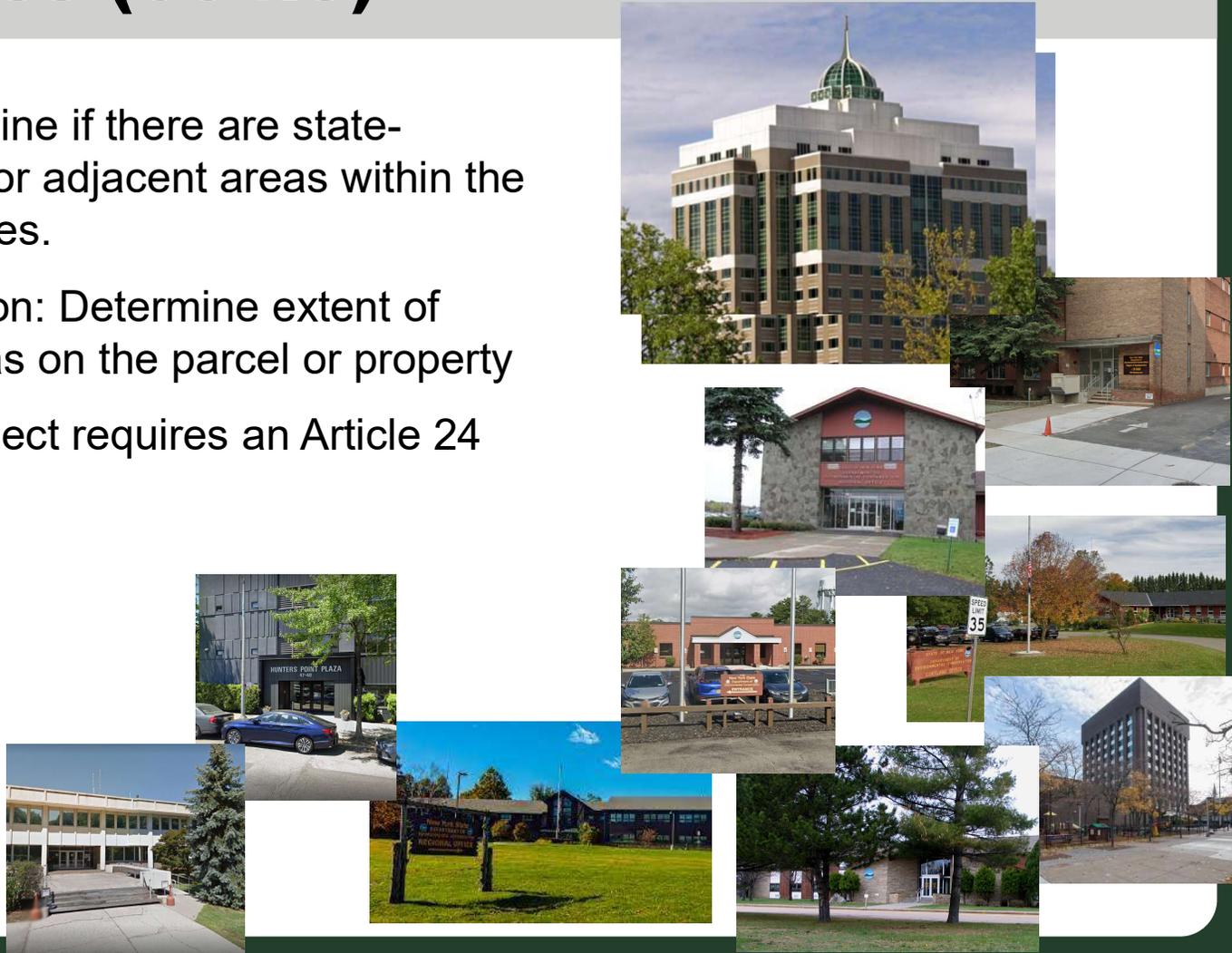
# **Jurisdictional Determination(JD) Process**

# NEW JD Process (664.8)

Step 1 – Parcel JD: Determine if there are state-jurisdictional wetlands and/or adjacent areas within the parcel or property boundaries.

Step 2 – Wetland Delineation: Determine extent of wetlands and adjacent areas on the parcel or property

Step 3 – Determine if a project requires an Article 24 Permit (Project JD)



## Excavation and Fill Navigable in Waters

608.5 Excavation or placement of fill in navigable waters.

*Permit required.* No person, local public corporation or interstate authority may excavate from or place fill, either directly or indirectly, in any of the navigable waters of the State or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the State, and that are inundated at mean high water level or tide, without a permit issued pursuant to this Part.

608.1 (u) *Navigable waters of the State* means all lakes, rivers, streams and other bodies of water in the State that are navigable in fact or upon which vessels with a capacity of one or more persons can be operated notwithstanding interruptions to navigation by artificial structures, shallows, rapids or other obstructions, or by seasonal variations in capacity to support navigation. It does not include waters that are surrounded by land held in single private ownership at every point in their total area.

## Mean High Water

(r) *Mean low water* or *mean high water* means, respectively, the approximate average low water level or high water level for a given body of water at a given location, that distinguishes between predominantly aquatic and predominantly terrestrial habitat as determined, in order of use by the following:

- (1) available hydrologic data, calculations, and other relevant information concerning water levels (e.g., discharge, storage, tidal, and other recurrent water elevation data); (mean high water elevations are established, using this method, for certain waterbodies as presented in section 608.11 of this Part);
- (2) vegetative characteristics (e.g., location, presence, absence or destruction of terrestrial or aquatic vegetation);
- (3) physical characteristics (e.g., clear natural line impressed on a bank, scouring, shelving, or the presence of sediments, litter or debris); and
- (4) other appropriate means that consider the characteristics of the surrounding area.

## Docks and Moorings

Permit required.

Except as provided in subdivision (c) of this section, no person or public corporation may:

(1) construct, reconstruct, modify, repair or change the use of any dock, pier, wharf, platform, breakwater or other structure in on or above the navigable waters of the State; or

(2) install or modify any mooring area; without a permit issued pursuant to this Part.

Must be water dependent use

Must be a dock and not a deck

c) Exceptions.

A permit pursuant to subdivision (b) of this section is not required for the following:

(1) docks, piers, wharfs, platforms, moorings and other structures placed on, in or above State-owned lands under water for which a lease or other appropriate conveyance of interest authorizing the use and occupancy of such lands has been obtained from the Commissioner of General Services;

(2) a docking facility providing dockage for five or fewer boats and encompassing within its perimeter an area of less than 4000 square feet; \*includes birthing area\*

(3) a mooring area providing mooring for fewer than 10 boats;

(4) temporary anchoring where a boat is not attached to an in-place or fixed mooring device;

(5) seasonal replacement or reinstallation of floating docks and other structures exceeding the criteria in paragraph (2) of this subdivision, legally existing prior to May 4, 1993, or for which a permit has been obtained under this Part;

(6) the relocation, replacement, and/or rearrangement of floating docks, ramps, walkways and anchoring devices within the established perimeter of a docking facility or mooring area; and

(7) ordinary maintenance and repair of structures such as repainting, redriving piles or replacing boards in docks. Maintenance and repair does not include substantial reconstruction of structures.

# **Freshwater Wetlands Permitting**

## **Wetland Classification 6 NYCRR Part 664.5**

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.

# Permit Issuance Standards

## Four Classes-

<i>Class I wetlands</i>	<i>Class II wetlands</i>	<i>Class III wetlands</i>	<i>Class IV Wetlands</i>
Class I wetlands provide the most critical of the State's wetland benefits, reduction of which is acceptable only in the most unusual circumstances. A permit shall be issued only if it is determined that the proposed activity satisfies a compelling economic or social need that clearly and substantially outweighs the loss of or detriment to the benefit(s) of the Class I wetland.	Class II wetlands provide important wetland benefits, the loss of which is acceptable only in very limited circumstances. A permit shall be issued only if it is determined that the proposed activity satisfies a pressing economic or social need that clearly outweighs the loss of or detriment to the benefit(s) of the Class II wetland.	Class III wetlands supply wetland benefits, the loss of which is acceptable only after the exercise of caution and discernment. A permit shall be issued only if it is determined that the proposed activity satisfies an economic or social need that outweighs the loss of or detriment to the benefit(s) of the Class III wetland.	Class IV wetlands provide some wildlife and open space benefits and may provide other benefits cited in the act. Therefore, wanton or uncontrolled degradation or loss of Class IV wetlands is unacceptable. A permit shall be issued for a proposed activity in a Class IV wetland only if it is determined that the activity would be the only practicable alternative which could accomplish the applicant's objectives.

# 3 Step Permit Review Process

**Avoid**  
**Minimize**  
**Mitigate**



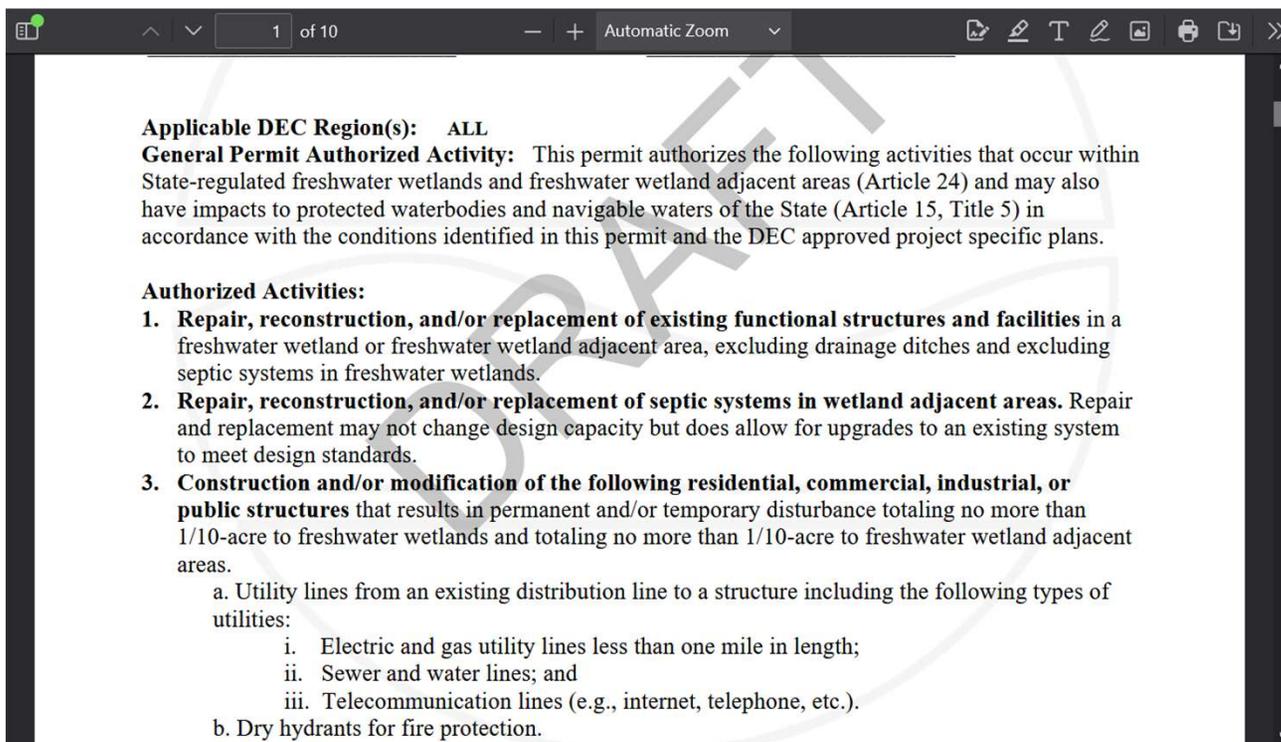
# At the End of the Day

- Need to consider project impacts on wetland functions and benefits...
- For unavoidable impacts, mitigation may be required...
- Any unmitigated impacts are then assessed in relation to economic and social need.

# General Permits

# Freshwater Wetlands General Permit (GP-0-25-003)

Draft: <https://dec.ny.gov/regulatory/permits-licenses/general-permits/freshwater-wetlands>

A screenshot of a PDF document viewer showing the text of a permit. The viewer's interface includes a toolbar at the top with icons for zooming, searching, and printing, and a page indicator showing '1 of 10'. The document content is as follows:

**Applicable DEC Region(s):** ALL

**General Permit Authorized Activity:** This permit authorizes the following activities that occur within State-regulated freshwater wetlands and freshwater wetland adjacent areas (Article 24) and may also have impacts to protected waterbodies and navigable waters of the State (Article 15, Title 5) in accordance with the conditions identified in this permit and the DEC approved project specific plans.

**Authorized Activities:**

1. **Repair, reconstruction, and/or replacement of existing functional structures and facilities** in a freshwater wetland or freshwater wetland adjacent area, excluding drainage ditches and excluding septic systems in freshwater wetlands.
2. **Repair, reconstruction, and/or replacement of septic systems in wetland adjacent areas.** Repair and replacement may not change design capacity but does allow for upgrades to an existing system to meet design standards.
3. **Construction and/or modification of the following residential, commercial, industrial, or public structures** that results in permanent and/or temporary disturbance totaling no more than 1/10-acre to freshwater wetlands and totaling no more than 1/10-acre to freshwater wetland adjacent areas.
  - a. Utility lines from an existing distribution line to a structure including the following types of utilities:
    - i. Electric and gas utility lines less than one mile in length;
    - ii. Sewer and water lines; and
    - iii. Telecommunication lines (e.g., internet, telephone, etc.).
  - b. Dry hydrants for fire protection.

## General Permit Public Comments Under Review

- The Community-Scale Solar Energy Installations GP (GP-0-25-004)
- Electric Utility Right of Way Maintenance and Repair General Permit (GP-0-25-005)
- Housing Development GP (GP-0-25-006)
- Lake Shorelines Freshwater Wetlands General Permit (GP-0-25-007)
- Management of Invasive Species (GP-0-25-008) Modification of Management of Invasive Species General Permit (GP-0-25-008)
- Natural Gas Utility Right of Way Maintenance General Permit (GP-0-25-009)



# General Permit Public Comments Under Review

- ***Lakes and Shorelines GP (GP-0-25-007):***
  - Shoreline erosion protections,
  - repair and replacement of existing functional shoreline protection,
  - in kind replacement or repair of boat or access ramps,
  - installation of new single lane boat/access ramps,
  - repair and replacement of existing functional boat houses, docks, platforms, or similar over water structures,
  - installation of new residential docking facility,
  - demolition of existing structures and removal of structural fill,
  - maintenance dredging of existing residential dockages,
  - new navigational dredging,
  - installation of dry fire hydrants, water intake lines, or beach well.



## General Permit Public Comments Under Review

### *Management of Invasive Species (GP-0-25-008).*

- Management of invasive and nuisance species by various methods such as
  - hand harvesting,
  - suction harvesting,
  - aquatic pesticides,
  - benthic barriers,
  - mechanical harvesting and cutting.



# *Thank You!*

**Brian Drumm**  
**Bureau of Ecosystem Health**  
**Manager Region 3**  
**New York State Department of**  
**Environmental Conservation**

Portions of presentation borrowed from:  
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