ATTACHMENT

4. A. L.   DEC ECL ARTICLE 25 TIDAL WETLANDS GUIDANCE AND INFORMATION
ARTICLE 25—TIDAL WETLANDS

Title
1. General provisions and public policy
2. Wetlands inventory
3. Program and land-use regulation for tidal wetlands
4. Regulated activities
5. Violations and enforcement [Repealed]
6. Miscellaneous provisions

TITLE 1—GENERAL PROVISIONS AND PUBLIC POLICY

Section
25-0101. Short title.
25-0102. Declaration of policy.
25-0103. Definitions.

Cross References
Coastal erosion hazard areas, see section 34-0101 et seq.
Freshwater Wetlands Act, see section 24-0101 et seq.
Implementation of Environmental Quality Bond Act of 1972, see section 31-0101 et seq.
Penalties for violations of this article, see section 71-2503.
Penalties for violations of this chapter—
   Civil penalties, see section 71-3903.
   Criminal penalties, see section 71-3901.
Waterfront revitalization and coastal resources, see Executive Law § 910 et seq.

United States Code Annotated
Water bank program for wetlands preservation, see section 1301 et seq. of Title 16.
Conservation.

§ 25-0101. Short title

This article shall be known as the "Tidal Wetlands Act".
(Added L.1973, c. 790, § 2.)

Historical Note

Legislative Findings. Section 1 of L.1973, c. 790, eff. Sept. 1, 1973, provided:

"The legislature hereby finds and declares that tidal wetlands constitute one of the most vital and productive areas of our natural world, and that their protection and preservation are essential. Among the many and multiple values of such wetlands are the following:

   "(a) marine food production—tidal wetlands are an essential area of retention, conversion and availability of nutrients for crustaceans and shellfish; they are the nursery ground and sanctuary for many fin fish; they sustain mi-
TIDAL WETLANDS

§ 25-0101

(f) sedimentation—tidal wetlands are an essential settling and filtering basin, absorbing silt and organic matter which otherwise would obstruct channels and harbors to the detriment of navigation;

(g) education and research—tidal wetlands afford a wide range of opportunity for scientific research, outdoor biophysical laboratories, and living educational classrooms; their training and education value is enormous, and they offer unbounded opportunity for the imparting of environmental values in our youth;

(h) open space and aesthetic appreciation—tidal wetlands comprise a large part of the remaining natural and unspoiled areas along the crowded coastal reaches of the state; the benefit to the public of these natural open areas in a region of rapid population growth is significant; such wetlands offer unique open space and aesthetic qualities while at the time permitting full play to their other natural values.

"The legislature further finds that vast acreage in the tidal wetlands in the state of New York has already been irreparably lost or despoiled as a result of unregulated dredging, dumping, filling, excavating, polluting, and like activities; that the remaining tidal wetlands are in imminent jeopardy of being lost or despoiled by these and other activities; that if the current rate of loss continues, most of the state’s tidal wetlands will be entirely lost before the end of this century; and that presently many creeks and tidal wetlands are so polluted that shellfish harvesting is banned. Accordingly, the legislature finds that it is in the interest of the state, consistent with the reasonable economic and social development thereof, to preserve as much as possible of these remaining wetlands in their present natural state and to abate and remove the sources of their pollution."

Practice Commentary

by Philip Weinberg

This article, the Tidal Wetlands Act, protects the state’s tidal, or coastal, wetland areas in much the same way as the Freshwater Wetlands Act, Article 24, protects non-tidal wetlands.
The legislative findings which follow this section, which are found in section 1 of L.1973, ch. 790, which enacted the Act, 517
§ 25–0101  ENVIRONMENTAL CONSERVATION  
Art. 25

enumerate the vital reasons for safeguarding these areas: fish and shellfish breeding grounds, waterfowl habitat, flood control, pollution control, recreation and others. See the Commentaries following § 24–0105, the parallel legislative findings concerning freshwater wetlands.

In addition to the decisions and text cited in the Commentaries, Teal, Life and Death of the Salt Marsh (Atlantic-Little Brown, 1969) cogently and eloquently describes the needs which impelled the Legislature to act to conserve tidal wetlands.

Cross References

Freshwater Wetlands Act, short title of, see section 24–0101.

25–0102. Declaration of policy

It is declared to be the public policy of this state to preserve and protect tidal wetlands, and to prevent their despoliation and destruction, giving due consideration to the reasonable economic and social development of this state.

Ibid L.1973, c. 790, § 2.)

Historical Note

Effective Date. Section effective t. 1, 1973, pursuant to L.1973, c. 790.

Practice Commentary

by Philip Weinberg

This strong statement of the State's public policy is grounded in the legislative findings of the 1973 Act following § 25–0101. See the Commentaries following that section, as well as those following § 24–0103, the similar declaration of policy in the Freshwater Wetlands Act. As noted there, the public trust doctrine, holding that all underwater lands are impressed with a trust for the public benefit and may not be conveyed for purposes inconsistent with that trust, undergirds both acts. See Illinois Central Railroad Co. v. Illinois, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1019 (1892), the landmark decision applying the public trust doctrine to lands under navigable waters. The Supreme Court there held that state's legislature lacked power to convey such lands to a private corporation, at least without a strong showing of public purpose. Note, as discussed in the Commentaries following § 25–0103, that in Nassau and Suffolk counties underwater lands are held by town trustees under conveyances pursuant to the public trust doctrine made by the Colonial governors.

The courts have repeatedly recognized the critical importance of tidal wetlands, see Matter of New York City Housing Au-
TIDAL WETLANDS

§ 25–0102

Authority v. Commissioner of Environmental Conservation, 83 Misc.2d 89, 372 N.Y.S.2d 146 (Sup. Ct., Queens Co., 1975), and the highest courts of several other states have ruled that the filling or alteration of tidal wetlands without a permit is the equivalent of a public nuisance. See Just v. Marinette County, 56 Wis.2d 7, 201 N.W.2d 761 (1972); Sibson v. State, 115 N.H. 124, 336 A.2d 239 (1975); Graham v. Estuary Properties, Inc., 399 So.2d 1374 (Fla.1981), cert. den. sub nom. Taylor v. Graham, 454 U.S. 1083, 102 S.Ct. 640, 70 L.Ed.2d 618.

In some respects this act is even stronger than the companion Freshwater Wetlands Act. Enforcement is lodged totally in the Department, unlike the freshwater act which permits delegation to local governments. In addition this act is not limited to wetlands over 12.4 acres as is the freshwater act, and it provides for a moratorium pending the mapping process, during which an applicant must show that denial of an interim permit would cause him hardship (§ 25–0202). The State's public policy protecting wetlands must give due consideration to reasonable economic and social development. But this does not mean the Legislature has decreed that the Department must remain equally poised between protecting wetlands and permitting their destruction. Preventing their destruction is an explicit legislative policy enunciated in this section. The Department must, however consider the reasonable development of the state as well. The emphasis is on the word "reasonable."

The wording of this section is, again, even more protective than that of § 24–0103 in the Freshwater Wetlands Act. There the public policy is "to prevent the despoliation and destruction of freshwater wetlands, and to regulate use and development . . . to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the state." Here the policy is unequivocally to "prevent [tidal wetlands'] despoliation and destruction, giving due consideration to the reasonable economic and social development of the state." The Department is to regulate use and development under its permit program, to be sure. But the State's policy is even more firmly set to protecting wetlands, recognizing how many have already, in the language of the legislative findings of L.1973, ch. 790, § 1, been "irreparably lost or despoiled."

Cross References
Abatement of pollution, responsibility of Commissioner, see section 71–2307.
Preservation of freshwater wetlands, declaration of policy, see section 24–0103.

New York Codes, Rules and Regulations
Applicability, see 6 NYCRR 661.3.
Findings, see 6 NYCRR 661.2.
12's McKinney §§ 16–0101 to 33–End—18 519
§ 25–0102

ENVIROMENTAL CONSERVATION

Art. 25

United States Code Annotated

Congressional declaration of wetlands preservation policy, see section 1301 of Title 16, Conservation.

Library References

Navigable Waters ⇒1(4), 3.
C.J.S. Navigable Waters §§ 4, 10 et seq.

Notes of Decisions

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Regulation of tidal wetlands</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Purpose</td>
<td>Purpose of this article is to preserve lands subject to the natural action of the tides and prevent their despoliation and destruction. State v. Lang, 1975, 84 Misc.2d 106, 375 N.Y.S.2d 941, affirmed 52 A.D.2d 921, 383 N.Y.S.2d 400.</td>
</tr>
<tr>
<td>2. Regulation of tidal wetlands</td>
<td>Legislature has a special duty to regulate tidal wetlands. New York City Housing Authority v. Commissioner of Environmental Conservation Dept., 1975, 83 Misc.2d 89, 372 N.Y.S.2d 146.</td>
</tr>
</tbody>
</table>

§ 25–0103. Definitions

1. “Tidal wetlands” shall mean and include the following:

(a) those areas which border on or lie beneath tidal waters, such as, but not limited to, banks, bogs, salt marsh, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters;

(b) all banks, bogs, meadows, flats and tidal marsh subject to such tides, and upon which grow or may grow some or any of the following: salt hay (Spartina patens and Distichlis spicata), black grass (Juncus Gerardi), saltworts (Salicornia ssp.), sea lavender (Limonium carolinianum), tall cordgrass (Spartina pectinata and Spartina cynosuroides), hightide bush (Iva frutescens), cattails (Typha angustifolia and Typha latifolia), groundsel (Baccharis halimifolia), marsh mallow (Hybiscus palustris) and the intertidal zone including low marsh cordgrass (Spartina alterniflora).

2. “Commissioner” shall mean the commissioner of environmental conservation.

3. “Pollution” shall mean the presence in the environment of conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant, or marine life, wildlife, or other animal life, or to property, or which unreasonably interfere with the comfortable enjoyment of life and property throughout such tidal wetlands as may be affected thereby.

4. “Person” shall mean any individual, public or private corporation, political subdivision, government agency, department or bu-
§ 25–0103

TIDAL WETLANDS

1. Reau of the state, bi-state authority, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

5. “Municipality” shall mean a village, town, city or county.

(Added L.1973, c. 790, § 2.)

Historical Note


Practice Commentary

by Philip Weinberg

As with freshwater wetlands, tidal wetlands are defined in scientific terms. But note that wetlands include not only marshes and salt meadows but also “those areas which border on or lie beneath tidal waters” (subd. 1[a]). The Department’s regulations, 6 NYCRR § 661.4(hh), clarify the applicability of the Act to coastal shoals, bars and flats up to a depth of a foot below mean low water and to the littoral zone up to a depth of six feet. Grass is not a necessity.

However, not all lands covered by tidal waters are necessarily also covered by the Act. In State v. Lang, 84 Misc.2d 106, 375 N.Y.S.2d 941 (Sup.Ct., Suffolk Co., 1975), aff’d 52 A.D.2d 921, 383 N.Y.S.2d 400, the defendant’s land became inundated at high tide only because a State-built drainage culvert under a highway brought tidal water onto the tract. The court ruled it was not within the Act, since the tidal wetland was “artificially created.” 84 Misc.2d at 109, 375 N.Y.S.2d at 944. In contrast, where a developer flooded the adjacent tract, the courts have held the Freshwater Wetlands Act applies to the similarly artificially created wetlands. Matter of Rappel & Hoenig Co. v. Department of Environmental Conservation, 61 A.D.2d 20, 401 N.Y.S.2d 346 (4th Dept., 1978), aff’d 47 N.Y.2d 925, 419 N.Y. S.2d 490, 399 N.E.2d 485. The Rappel & Hoenig court distinguished Lang on the ground that the courts there found the tract did not “border on or lie beneath tidal waters” as required by this section. But that distinction, if not the lands involved, seems arid. Neither act excludes artificially created wetlands.

Nor do the Department’s regulations. The eloquently expressed legislative intent and State policy to safeguard freshwater and tidal wetlands point to the inclusion of all genuine wetlands, whether natural or man-made. Lang should be regarded as an aberration which runs counter to the purpose of the legislation—particularly since the United States Army Corps of Engineers and others have recently developed techniques to restore filled-in wetlands. It would be anomalous to
deny such areas, equally valuable for fish, wildlife, storm control and recreation, the protection the Act affords all others. The statute explicitly includes in its definition of tidal wetlands “areas now or formerly connected to tidal waters” (subd. 1(a)). Despite this seemingly plain statement, the court in O’Brien v. Barnes Building Co., 85 Misc.2d 424, 380 N.Y.S.2d 405 (Sup.Ct., Suffolk Co., 1974), aff’d 48 A.D.2d 1018, 372 N.Y.S.2d 992, adopted the Department’s construction limiting the Act to areas “naturally subject to tidal action in the recent past and which still retain some of the characteristics of wetlands.” 85 Misc.2d at 445, 380 N.Y.S.2d at 424. It held a pond, literally formerly connected to the ocean until 1930, was not within the Act where in that year the channel was filled in and replaced by a pipe. The second part of the definition, relating to plant life, was ruled irrelevant because the area was not now subject to tides as subd. 1(b) requires. Thus “formerly connected” appears to be limited to connections in the reasonably recent past. The regulations, 6 NYCRR § 661.2(i), mandate determination as to formerly connected areas on a case-by-case basis.

The precise limit of private ownership in New York has historically been the mean high-water mark. In the case of tidelands this in turn has meant the limit of navigation, so that a private owner holds wetlands where the grasses render navigation impossible. In recent years infrared aerial photography has become able to distinguish salt grasses requiring tidal flow, such as those listed in subd. 1(b), from grasses deriving their sustenance from fresh water. The New Jersey courts have accepted this method of measuring the mean high water mark and thus ownership of tidelands, City of Newark v. Natural Resource Council, 82 N.J. 530, 414 A.2d 1304 (1980), cert. denied 449 U.S. 983, 101 S.Ct. 400, 66 L.Ed.2d 245. But our Court of Appeals rejected this approach in Dolphin Lane Associates, Ltd. v. Town of Southampton, 37 N.Y.2d 292, 372 N.Y.S.2d 52, 333 N.E.2d 358 (1975), holding reliance on novel photographic measurements should not overturn the historically-accepted means of determining tideland boundaries.

In Nassau and Suffolk counties, where many of New York’s tidal wetlands lie, underwater lands were conveyed to the trustees of the towns by patents issued by the Colonial governors in the seventeenth century, and are still held by them in trust. See Knapp v. Fasbender, 1 N.Y.2d 212, 221–22, 151 N.Y.S.2d 668, 673–75, 134 N.E.2d 482, 486–87 (1956).

Note the inclusive definition of “person” in subd. 4, encompassing the state, bi-state authorities such as the Port Authority of New York and New Jersey, and municipalities, and thus making them subject to the Act’s permit requirements.
TIDAL WETLANDS
Title 2 § 25-0201

Cross References

Wetlands, definition of—
Land preservation and improvement projects, see section 51-0703.
Preservation of freshwater wetlands, see section 24-0107.

New York Codes, Rules and Regulations
Additional definitions, see 6 NYCRR 661.4.

West's McKinney's Forms

The following forms appear in Selected Consolidated Laws Forms under section 25-0103 of the Environmental Conservation Law—
Notice of cross motion to dismiss complaint in action to enjoin alteration of tidal wetlands, see Form 1.
Affidavit in support of cross motion to dismiss complaint in action to enjoin alteration of tidal wetlands, see Form 2.
Order dismissing complaint in action to enjoin alteration of tidal wetlands, see Form 3.

Notes of Decisions

1. Tidal wetlands
   One-acre plot which was only artificially connected to tidal waters by means of ditch, culvert and pipe, being completely surrounded by partially improved wetland property, was not tidal wetland as defined by this section. State v. Lang, 1976, 52 A.D.2d 921, 388 N.Y.S.2d 400.
   This article was not intended to apply to a ditched one-acre parcel surrounded by industrially developed lands and adjacent to farmland, in which tidal water was artificially introduced into ditches, and only at high tide. State v. Lang, 1975, 84 Misc.2d 106, 375 N.Y.S.2d 941, affirmed 52 A.D.2d 921, 388 N.Y.S.2d 400.

TITLE 2—WETLANDS INVENTORY

Section
25-0201. Inventory of tidal wetlands.
25-0202. Moratorium on alteration of tidal wetlands.

§ 25-0201. Inventory of tidal wetlands

1. The commissioner shall as soon as practicable make an inventory of all tidal wetlands in the state of New York. This inventory, and any restrictive orders issued pursuant to section 25-0302 of this act, shall comprise a part of the statewide environmental plan as provided for in section 3-0303 of the environmental conservation law.

2. The inventory shall set forth the boundaries of such wetlands using such photographic and cartographic standards and techniques as the commissioner may deem reasonable and appropriate in order
to provide clear and accurate maps of the tidal wetlands of the state for the purpose of effectuating the policies and provisions of this act. Said boundaries shall generally delineate all tidal wetlands in the state as defined in section 25–0101 of this act. At least sixty days prior to the commencement of the inventory the commissioner shall file with the secretary of state a detailed description of the technical methods and requirements to be utilized in compiling the inventory, and he shall afford the public an opportunity to submit written comments thereon.

3. Upon completion of a tentative tidal wetlands boundary map for a particular area, the commissioner or his designated hearing officer shall hold a public hearing in order to afford an opportunity for any person to propose additions or deletions from such map. The commissioner shall give notice of such hearing to each owner of record of all lands designated as such wetland as shown on such maps, and also to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located, by certified mail, return receipt requested, not less than thirty days prior to the date set for such hearing. The commissioner shall also cause notice of such hearing to be published at least once, not more than thirty days nor fewer than ten days before the date set for such hearing; in at least two newspapers having a general circulation in the area where such wetlands are located.

4. After considering the testimony given at such hearing and any other facts which may be deemed pertinent and after considering the rights of affected property owners and the policy and purposes of this act, the commissioner shall establish by order the final bounds of each such wetland. A copy of the order, together with a copy of the map depicting such final boundary lines, shall be filed in the office of the clerk of the county in which each such wetland is located. The commissioner shall simultaneously give notice of such order to each owner of all lands designated as such wetlands by mailing a copy of such order to such owner. The commissioner shall also simultaneously give notice of such order by certified mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. The commissioner shall also cause a copy of such order to be published in at least two newspapers having a general circulation in the area where such wetlands are located.

5. Any person aggrieved by such order may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetlands are located, within thirty days after the date of the filing of the order with the clerk of the county in which such wetlands are located.
6. The commissioner shall supervise the maintenance of such boundary maps, which shall be available to the public for inspection and examination. The statewide inventory shall be readjusted from time to time as may be necessary to reflect such natural changes as have occurred through erosion, accretion, and otherwise and also to reflect such other changes as have occurred as a result of the granting of permits pursuant to section 25–0403 of this act.

(Added L.1973, c. 790, § 2; amended L.1976, c. 598, § 1.)

1 L.1973, c. 790, which enacted this article.

Historical Note

1976 Amendment. Subd. 3. L.1976, c. 598, § 1, eff. July 21, 1976 substituted certified mail, return receipt requested for registered mail.

Subd. 4. L.1976, c. 598, § 1, eff. July 21, 1976, provided for certified mail in lieu of registered mail.

Practice Commentary

by Philip Weinberg

This section requires the Commissioner to map and inventory all the state’s tidal wetlands. Notice to owners of lands tentatively found to be wetlands, and to municipalities, is mandated by subd. 3, as are public hearings. A determination that a tract constitutes a protectible wetland is reviewable in an Article 78 proceeding (subd. 5). This inventory has been completed and the permanent land-use regulation of §§ 25–0302 to 25–0403 is now in effect.

Cross References

Freshwater wetlands study, see section 24–0301.
Protection and management of wetlands, powers and duties of Commissioner, see section 3–0301.

New York Codes, Rules and Regulations

Determination that lands do not involve littoral zone or coastal shoals, bars or flats, see 6 NYCRR 661.26.
Inventory map: maintenance and amendments, see 6 NYCRR 661.27.
Notice of hearing, see 6 NYCRR 661.16.

Library References

Navigable Waters 2.
C.J.S. Navigable Waters § 10 et seq.
§ 25-0202. Moratorium on alteration of tidal wetlands

1. No person shall alter the state of any tidal wetland or of any area immediately adjacent to such wetland as the commissioner may reasonably deem necessary to preserve in order to effectuate the policies and provisions of this act, \(^1\) prior to the effective date of the land-use regulations adopted by the commissioner pursuant to this act, \(^1\) unless a permit for such alteration shall have been obtained pursuant to section 15-0505 of the environmental conservation law. This moratorium shall not restrict in any way any summary action taken by the commissioner under section 71-0301 of the environmental conservation law.

2. Any person, upon a showing of hardships caused by this moratorium, may petition the commissioner for a review of the application of the moratorium to any tidal wetland or any area immediately adjacent thereto. Within thirty days of the petition being received, the commissioner shall provide the petitioner and any other person an opportunity to be heard. Notice of such hearing shall be published in at least two newspapers having a general circulation in the area where the wetlands are located, and notice of such hearing shall also be given by registered mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. If the proposed alterations of the tidal wetlands are not contrary to the policy or any provision of this act, \(^1\) the commissioner may permit the alteration to continue during the moratorium, provided that permission may be revoked by the commissioner if its terms are violated and that the permission ends upon completion of the inventory for the area in which the affected wetlands are located, and provided further that any such hardship permit issued by the commissioner shall be in addition to, and not in lieu of, such permit or permits as may be required by any municipality within whose boundary such wetland or portion thereof is located.

3. Within thirty days after such permission has been granted or denied, any aggrieved person may seek judicial review of such decision pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which such wetlands are situated.

Add L.1973, c. 790, § 2.)

\(^1\) L.1973, c. 790, which enacted this article.
TIDAL WETLANDS
Title 2

Historical Note
Effective Date. Section effective Sept. 1, 1973 pursuant to L.1973, c. 790,
§ 5.

Practice Commentary
by Philip Weinberg
A spate of litigation accompanied the moratorium on altering wetlands pending completion of the inventory directed by the previous section. The claim that the moratorium, which exempted only owners proving hardship (subd. 2), amounted to an unconstitutional de facto taking, was rejected in Matter of Marine Equities Corp. v. Biggane, 49 A.D.2d 907, 373 N.Y.S.2d 622 (2d Dept., 1975); see, also, Matter of New York City Housing Authority v. Commissioner of Environmental Conservation, 83 Misc.2d 89, 372 N.Y.S.2d 146 (Sup.Ct., Queens Co., 1975). Since, as noted in the Commentaries to the prior section, the permanent land-use regulations are now in effect, it is there that attention should focus.

Cross References
Summary abatement of unapproved activity, see section 71–0301.

New York Codes, Rules and Regulations
Moratorium permits—
Generally, see 6 NYCRR Part 660.
Pending applications, see 6 NYCRR 661.21.

West's McKinney's Forms
The following forms appear in Selected Consolidated Laws Forms under section 25–0202 of the Environmental Conservation Law—
Order to show cause in article 78 proceeding to review denial of application for moratorium permit to alter tidal wetlands, see Form 1.
Petition in article 78 proceeding to review denial of application for moratorium permit to alter tidal wetlands, see Form 2.

Notes of Decisions
Admissibility of evidence 6
Areas adjacent to wetlands 4
Constitutionality 1
Construction with other laws 2
Double jeopardy 7
Exhaustion of administrative remedies 3
Termination of moratorium 5

1. Constitutionality
This section prohibiting altering tidal wetland or adjacent area without permit obtained pursuant to this article was not unconstitutional as applied to applicant for permit to fill in under water land off shore of Staten Island on theory that it deprived applicant of its property without just compensation. Marine Equities Corp. v. Biggane, 1975, 49 A.D.2d 907, 373 N.Y.S.2d 622.

527
Moratorium clause which prohibits any person from altering the state of any tidal wetlands prior to the effective date of land use regulations, except by special permission from commission, is reasonable, and its effect for slightly less than period of two years is not unreasonable, and does not constitute an unconstitutional taking of property without just compensation. New York City Housing Authority v. Commissioner of Environmental Conservation Dept., 1975, 55 Misc.2d 89, 372 N.Y.S.2d 146.

2. Construction with other laws

This section providing that no person shall alter the state of any tidal wetland unless a permit for such alteration shall have been obtained pursuant to section 15-0305 which did not apply to marches in Suffolk County nevertheless applied to Suffolk County landowners who were constructing a driveway through wetlands. State v. Reed, 1974, 78 Misc.2d 1004, 359 N.Y.S.2d 185.

3. Exhaustion of administrative remedies

In order for landowners, who were constructing a driveway through wetlands in Suffolk County, to contend that this section providing that no person shall alter the state of any tidal wetland prior to the effective date of the land use regulations, unless a permit for such alteration shall have been obtained, to contend that this section was unconstitutional as confiscatory, landowners were required to first avail themselves of the procedure set forth in this section. State v. Reed, 1974, 78 Misc.2d 1004, 359 N.Y.S.2d 185.

4. Areas adjacent to wetlands

Under provision that no person shall alter state of any tidal wetland or any area immediately adjacent to such wetland, as the commission may reasonably deem necessary, it was not for the court, in prosecution for violation of this section to determine that an area within 30 feet of a wetland was immediately adjacent to the wetland; only the commission could determine and designate those adjacent areas which could not be altered; no discretion rested with the court to determine on a factual or case-by-case basis whether the particular area under consideration was "adjacent" as that term was used in the statute. People v. Cudak, 1974, 78 Misc.2d 909, 358 N.Y.S.2d 909.

5. Termination of moratorium

Where property owner's land was subject to moratorium against alteration of wetlands for over three years, and where there was no indication as to when this moratorium would end, constitutionality of this section was subject to renewed inquiry and Department would be required to set a certain date for termination of moratorium on alteration of tidal wetlands. Russo v. New York State Dept. of Environmental Conservation, 1977, 55 A.D.2d 935, 391 N.Y.S.2d 11.

While the state has power to temporarily restrict the use of land, without compensation, for the purpose of conducting studies toward a comprehensive regulatory scheme, duration of such period cannot be unreasonable. Russo v. New York State Dept. of Environmental Conservation, 1977, 55 A.D.2d 935, 391 N.Y.S.2d 11.

6. Admissibility of evidence

Document, which contained determination of Commissioner that lands immediately adjacent to tidal wetland would extend for distance of 300 feet landward, which had not been filed with Secretary of State and which had not been admitted at trial in prosecution under this section making it an offense to alter state of any tidal wetland or area immediately adjacent thereto as the Commissioner might reasonably deem necessary to preserve, would not be admitted in evidence on decision after trial so as to support conviction under the "adjacent" clause. People v. Cudak, 1974, 78 Misc.2d 899, 358 N.Y.S.2d 909.

7. Double jeopardy

Prosecution of petitioner for violation of this article in connection with his dredging of channel without obtaining a permit following his acquittal in prosecution for violating town wetlands ordinance based on same act of dredging without a permit did not violate right against double jeopardy since the two laws differed materially in scope and purpose and in the state prosecution petitioner was charged with alteration of an area immediately adjacent to a wet-
TITLE 3—PROGRAM AND LAND-USE REGULATION FOR TIDAL WETLANDS

Section 25-0301. Program and cooperative agreements for the protection of tidal wetlands.

25-0302. Land-use regulation of tidal wetlands.

§ 25-0301. Program and cooperative agreements for the protection of tidal wetlands

1. Upon completion of the inventory with respect to tidal wetlands, the commissioner shall confer with the local government officials involved to establish a program for the protection of such tidal wetlands.

2. The commissioner may enter into cooperative agreements with any village, town, city or county, or with any one or more of them, for the purpose of preserving, maintaining and enhancing, in accordance with the policies of this act, those tidal wetlands included within the boundaries of such villages, towns, cities and counties.

3. A cooperative agreement with any such village, town, city or county may provide for the development by personnel and facilities of the department of environmental conservation, or the payment out of funds appropriated for the purpose, of the cost of preserving, maintaining or enhancing such tidal wetlands in accordance with the policies of this act, and for the furnishing of such personnel, facilities or funds as may be agreed upon within the cooperative agreement.

4. The cooperative agreement shall provide that the tidal wetlands be preserved and maintained in their natural or enhanced state, provided, however, that a reservation in any such agreement by a village, town, city or county of the right to operate or lease for operation shellfish beds lying within the area, and a reservation of the income from such operation or lease for the village, town, city or county shall be allowed and not considered a violation of preservation and maintenance of a natural state.

5. This section shall not prevent any tidal wetlands from being designated as portions of the state’s natural and historic preserves, nor shall it prevent the dedication of any such lands as state parks. The office of parks and recreation shall outline to the commissioner...
Tidal Wetlands
Land Use Regulations
6 NYCRR Part 661
Effective January 16, 1991

February 1992
Reprinted Without Revision

Pursuant to Article 25
of the
Environmental Conservation Law

New York State Department of Environmental Conservation
MARIO M. CUOMO, Governor THOMAS C. JORLING, Commissioner
<table>
<thead>
<tr>
<th>Sec.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>661.1</td>
<td>Purpose of this Part</td>
<td>1</td>
</tr>
<tr>
<td>661.2</td>
<td>Findings</td>
<td>1</td>
</tr>
<tr>
<td>661.3</td>
<td>Applicability</td>
<td>7</td>
</tr>
<tr>
<td>661.4</td>
<td>Definitions</td>
<td>8</td>
</tr>
<tr>
<td>661.5</td>
<td>Use guidelines</td>
<td>19</td>
</tr>
<tr>
<td>661.6</td>
<td>Development restrictions</td>
<td>22</td>
</tr>
<tr>
<td>661.7</td>
<td>Uses not requiring a permit</td>
<td>25</td>
</tr>
<tr>
<td>661.8</td>
<td>Permit requirements</td>
<td>26</td>
</tr>
<tr>
<td>661.9</td>
<td>Standards for issuance of permits</td>
<td>26</td>
</tr>
<tr>
<td>661.10</td>
<td>Conditions to a permit</td>
<td>30</td>
</tr>
<tr>
<td>661.11</td>
<td>Existing land use and development</td>
<td>30</td>
</tr>
<tr>
<td>661.12</td>
<td>Variances</td>
<td>31</td>
</tr>
<tr>
<td>661.13</td>
<td>Application for a permit</td>
<td>32</td>
</tr>
<tr>
<td>661.14</td>
<td>Duration of permits</td>
<td>34</td>
</tr>
<tr>
<td>661.15</td>
<td>Bond</td>
<td>34</td>
</tr>
<tr>
<td>661.16</td>
<td>Determination that lands do not involve littoral zone or coastal shoals, bars or flats</td>
<td>35</td>
</tr>
<tr>
<td>661.17</td>
<td>Inventory map: maintenance and amendments</td>
<td>35</td>
</tr>
<tr>
<td>661.18</td>
<td>Measurement</td>
<td>37</td>
</tr>
<tr>
<td>661.19</td>
<td>Tax assessment</td>
<td>37</td>
</tr>
<tr>
<td>661.20</td>
<td>Jurisdictional inquiries</td>
<td>38</td>
</tr>
<tr>
<td>661.21</td>
<td>Judicial review</td>
<td>39</td>
</tr>
</tbody>
</table>

6NYCRR 661

10/4/90
Section 661.1 Purpose of this Part. It is the public policy of the State, as set forth in the Tidal Wetlands Act, to preserve and protect tidal wetlands, and to prevent their despoliation and destruction, giving due consideration to the reasonable economic and social development of the State. It is the purpose of this Part to implement that policy by establishing regulations that allow only those uses of tidal wetlands and areas adjacent thereto that are compatible with the preservation, protection and enhancement of the present and potential values of tidal wetlands (including but not limited to their value for marine food production, wildlife habitat, flood and hurricane and storm control, recreation, cleansing ecosystems, absorption of silt and organic material, education and research, and open space and aesthetic appreciation), that will protect the public health and welfare, and that will be consistent with the reasonable economic and social development of the state.

Section 661.2 Findings.

(a) Tidal wetlands constitute one of the most vital and productive areas of the natural world and collectively have many values. These values include, but are not limited to, marine food production, wildlife habitat, flood and storm and hurricane control, recreation, cleansing ecosystems, sedimentation control, education and research, and open space and aesthetic appreciation, as set forth in the legislative findings contained in section one of chapter 790 of the laws of 1973. Therefore, the protection and preservation of tidal wetlands are essential.

(b) Several ecological zones exist in tidal wetlands. These several zones are as follows: coastal fresh marsh; intertidal marsh; coastal shoals, bars and flats; littoral
zone; high marsh or salt meadow; and formerly connected tidal wetlands. In addition, adjacent areas, which are important to the protection of tidal wetlands values, adjoin these tidal wetlands zones.

(c) These tidal wetlands zones collectively serve all of the tidal wetland values set forth in chapter 790 of the laws of 1973. However, because of their different natural characteristics, each zone may serve any particular value to a greater or lesser degree than other zones. The varied natural characteristics of the several tidal wetlands zones, including their functions, contour, biota, tidal action, water quality and in particular their respective contributions to the marine food chain, cause certain zones to be relatively more sensitive to the adverse impacts caused by land use and development. Similarly, these varied natural characteristics make it important to more stringently protect and preserve certain tidal wetlands zones relative to other zones. However, any ranking of the value of different tidal wetland zones is general in nature, and specific exceptions to such a ranking do occur.

(d) Intertidal marsh and coastal fresh marsh tidal wetlands are the most biologically productive of all tidal wetlands areas. Furthermore, since they receive twice-daily tidal flushing, the products of vegetative photosynthetic activity and decomposition in these zones are readily transported to adjacent waters for use in the estuarine food chain. Their intertidal location also makes them among the most effective wetland zones for flood and hurricane and storm protection. Both their intertidal location and their highly productive nature makes them among the most effective wetland zones for cleansing ecosystems and for absorbing silt and organic material. Because of these high values and their sensitive location at the land-water interface, intertidal and coastal fresh marshes must be the most
stringently protected and preserved tidal wetlands zones. Even small portions of these zones are critically important resources. Consequently, only very limited types of land use and development are compatible with the values of these areas.

(e) Coastal shoals, bars, and flats and littoral zones include areas of extreme variability in their contributions to marine food production and other tidal wetland values, and each such area requires a specific assessment of tidal wetland values. Some coastal shoals, bars and flats and some littoral zones are areas of extremely high biological productivity and are nearly or equally as important in this respect as intertidal marshes and coastal fresh marshes. Other areas are of little biological significance. Even in these relatively unproductive areas, however, values other than marine food production are often present, and these areas often have the potential to become more biologically productive in the future. Because of their location at the land-water interface, coastal shoals, bars and flats and littoral zones play an important role in flood and hurricane and storm control, although they are less important in this regard than coastal fresh marshes, intertidal marshes and high marshes or salt meadows. Similarly, because of their location at the land-water interface and because of their generally high levels of productivity, these areas have an important function in cleansing ecosystems and absorbing silt and organic materials, but they are also less critical in these ways than coastal fresh marshes, intertidal marshes and high marshes or salt meadows. Where tidal wetlands values, particularly biologic productivity, are high, only limited types of land use and development are compatible with the values of these areas. Where tidal wetland values are relatively lower, more extensive and intensive uses may be compatible with the wetland values of these areas.
(f) Some areas possess the physical characteristics of littoral zones or coastal shoals, bars or flats but do not function biologically as tidal wetlands. Such areas have generally been heavily impacted by pollution, sedimentation or other artificial disturbance, exhibit little primary productivity, and are populated by few benthic organisms. Such areas require identification on a case-by-case basis and when so identified should no longer be treated as tidal wetlands under this Part.

(g) High marsh or salt meadow tidal wetlands constitute an extensive zone of the salt marshes that receives only occasional tidal flooding coincident with extreme lunar tides and occasional storms. Since their photosynthetic productivity is lower than coastal fresh marshes and intertidal marshes and since flushing of the biological products of the high marsh or salt meadow to the estuary is less efficient than in coastal fresh marshes and intertidal marshes, salt meadows or high marshes, while critically important for marine food production, are slightly less important in this regard than coastal fresh marshes or intertidal marshes. Because of their size and location salt meadows or high marshes are as important for absorption of silt and organic material and flood and hurricane and storm control as coastal fresh marshes and intertidal marshes. Furthermore, because they are located generally in such a way that they are the first tidal wetland area to receive run-off and other materials from the land, they have an important role in cleansing ecosystems, but their value in this respect is generally slightly less than in coastal fresh marshes and intertidal marshes because of the lower level of direct tidal influence in high marshes or salt meadows. Because these
wetlands are usually located adjacent to intertidal marshes and because their values are similar, these wetland areas must be stringently protected and preserved. Even small portions of these areas are critically important resources, although slightly less so than intertidal marshes and coastal fresh marshes. Consequently, only very limited types of land use and development are compatible with the value of these areas.

(h) All of the above-described tidal wetland zones may occur behind shifting natural barriers that are breached by intermittent tidal inlets which allow tidal action to affect such wetlands.

(i) Formerly connected tidal wetlands are lowland areas whose connections to tidal waters are restricted by road fills, dikes, or other man-made facilities. The nature and value of these tidal wetland areas are widely variable and are a function of the extent of the tidal restriction and the time which has passed since the restriction occurred. Therefore, a case-by-case analysis of these wetlands is required. Each of these tidal wetland areas closely resembles another type of wetland zone. Those uses compatible with the type of wetland zone which a particular formerly connected tidal wetland most closely resembles will be generally compatible with that formerly connected wetland.

(j) Adjacent areas make insignificant contributions to marine food production. Tidal wetland values for cleansing ecosystems, flood and hurricane and storm control, and absorbing silt and organic material may be served to varying degrees by these areas, but these values are not as critically served in adjacent areas as in the tidal wetland zones. The most important function of adjacent areas is to serve as buffers to protect the character, quality and values of tidal wetlands that adjoin or lie near these areas. Consequently, a wide variety of uses may be compatible with
these areas, provided such uses do not adversely affect adjacent and nearby tidal wetlands.

(k) All of the tidal wetland zones and adjacent areas generally serve to an approximately equal degree the wildlife habitat, recreation, education and research, and open space and aesthetic appreciation values of tidal wetlands. Variations do occur in the values served from, for example, a particular intertidal marsh to another or from a particular high marsh or salt meadow to another. Furthermore, one type of tidal wetland or an adjacent area may serve a particular wildlife habitat, recreation, education and research, or open space and aesthetic appreciation value. These variations depend on a wide variety of factors, including the particular value sought to be served, the quality and diversity of the natural resources of a particular area, the size and location of the area, the natural features and land uses surrounding the particular area, and the time of year. Generally, tidal wetlands and adjacent areas are the habitat for a large number of wildlife species, provide large expanses for a variety of recreational purposes, offer conditions useful for many education and research purposes and satisfy a broad spectrum of aesthetic appreciation and open space needs.

(1) The productivity and variability of tidal wetlands and their location in a constantly changing environment mean that whatever the present existing values of a particular tidal wetland are, the ability of that wetland to serve these values generally continues provided it is allowed to function in a substantially natural and undisturbed state. Furthermore, certain human-induced modifications of tidal wetlands can increase tidal wetland values when carefully designed and undertaken. Consequently, land use and development in or near tidal wetlands must be compatible with the present and potential values of tidal wetlands.
(m) Tidal wetlands are located at the critical interface between land and tidal waters, and the amount of this land-water boundary is limited. Certain types of land use and development require access to tidal waters, while others do not. Given the critical values served by tidal wetlands, the limited extent of the land-water boundary, and the many types of land use and development that require water access and should be located where they will not substantially impair tidal wetland values, land use and development that does not require water access generally should not be located in tidal wetlands or adjacent areas.

(n) While tidal wetlands and adjacent areas contain distinct zones, as set forth in these findings, these areas are essentially an integrated natural system. The resources in one area utilize and depend on the resources in other areas. The tidal wetland benefits produced in one area benefit nearby areas, and the negative impacts imposed on the natural values of one area are transferred to other nearby tidal wetland areas. Consequently, land use and development occurring in any particular tidal wetland or adjacent area may cause impacts on nearby areas and should be compatible with the values of the particular area on which it is located as well as with the values of nearby tidal wetlands.

Section 661.3 Applicability.

This Part shall apply to any tidal wetland the final bounds of which have been established by an order of the commissioner pursuant to section 25-0201 of the Act and to any adjacent area. Any such order shall become effective on the date it is filed in the office of the clerk of the county in which such wetland is located. These regulations shall be applicable in the following areas: Suffolk county, Nassau
county, all boroughs of the city of New York, Westchester county and Rockland county.

Section 661.4 Definitions. The following terms when used in this Part shall have the following meanings:

(a) "Act" shall mean the Tidal Wetlands Act (Article 25 of the environmental conservation law as from time to time amended).

(b) (1) "Adjacent area" shall mean any land immediately adjacent to a tidal wetland within whichever of the following limits is closest to the most landward tidal wetland boundary, as such most landward tidal wetlands boundary is shown on an inventory map (see explanatory figures 1-6):

(i) 300 feet landward of said most landward boundary of a tidal wetland, provided, however, that within the boundaries of the city of New York this distance shall be 150 feet (see figure 1); or

(ii) to the seaward edge of the closest lawfully and presently existing (i.e., as of August 20, 1977), functional and substantial man-made structure (including, but not limited to, paved streets and highways, railroads, bulkheads and sea walls, and rip-rap walls) which lies generally parallel to said most landward tidal wetland boundary and which is a minimum of 100 feet in length as measured generally parallel to such most landward boundary, but not including individual buildings (see figure 2); or

(iii) to the elevation contour of 10 feet above mean sea level, except when such contour crosses the seaward face of a bluff or cliff, or crosses a hill on which the slope equals or exceeds the natural angle of repose of the soil, then to the topographic crest of such bluff,
§ 25-0301
ENVIRONMENTAL CONSERVATION
Art. 25
its plans to preserve tidal wetlands in parklands as soon as practicable.
(Added L.1973, c. 790, § 2.)
1 L.1973, c. 790, which enacted this article.

Historical Note
Effective Date. Section effective Sept. 1, 1973 pursuant to L.1973, c. 790, § 5.

Cross References
Cooperative agreements for the protection of freshwater wetlands, see section 24-0501.

Library References
Navigable Waters & 2.
C.J.S. Navigable Waters § 10 et seq.

§ 25-0302. Land-use regulation of tidal wetlands
1. Upon completion of the inventory the commissioner shall adopt land-use regulations governing the uses of said inventoried wetlands. In preparing such regulations the commissioner shall be guided by factors including, but not limited to, the public policy set forth in this act as well as the present and potential value of the particular wetland for marine food production, as a wildlife habitat, as an element of flood and storm control, and as a source of recreation, education and research. The commissioner shall determine what uses of inventoried wetlands may be compatible with any or all of the foregoing, and he shall prepare such appropriate land-use regulations as may permit only such compatible uses. These regulations shall be filed with the secretary of state and shall take effect thirty days after such filing. A copy of such regulations shall also be simultaneously forwarded by certified mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. No permits may be granted by any local body, nor shall any construction or activity take place at variance with these regulations.

2. The placing of any tidal wetlands under a land-use regulation which restricts its use shall be deemed a limitation on the use of such wetlands for the purposes of property tax valuation, in the same manner as if an easement or right had been acquired under the general municipal law. Assessment shall be based on present use under the restricting regulation.
(Added L.1973, c. 790, § 2; amended L.1976, c. 598, § 2.)
1 L.1973, c. 790, which enacted this article.
TIDAL WETLANDS
Title 4

Historical Note

Practice Commentary
by Philip Weinberg

This section furnishes the basis for the Department’s implementation of the Act through land-use regulations, found in 6 NYCRR Part 661. The nature of the regulations and the restrictions they place on activities affecting wetlands are discussed in the Commentaries following § 25-0401.

Subdivision 2, the analogue to § 24-0905 in the Freshwater Wetlands Act, makes a regulation restricting use of a tidal wetland a limitation of its use for real property tax valuation purposes. This is a significant benefit to landowners since tax valuation is ordinarily based on the land’s highest and best use. The amount of tax the owner must pay is an element in determining whether the wetland regulation deprives him of the economic value of the land and thus constitutes a taking. See the Commentaries following § 25-0403. In a case under the parallel Freshwater Wetlands Act provision, § 24-0905, the court recognized that land-use restrictions under that act may reduce the taxable value of a parcel. See Matter of Katz v. Assessor and Bd. of Assessment of Mt. Kisco, 82 A.D.2d 654, 442 N.Y.S.2d 795 (2d Dept., 1981).

Cross References
Land use regulation of freshwater wetlands, see section 24-0903.
Promulgation of rules and regulations, abatement of pollution, see section 2507.

New York Codes, Rules and Regulations
Tidal wetlands—land use regulations, see 6 NYCRR Part 661.

Notes of Decisions
1. Valuation of property Pursuant to this section, tidal wetlands, must be assessed according to their present use. 4 Op. Counsel S.B. E.A. No. 79.

TITLE 4—REGULATED ACTIVITIES

Section
25-0401. Regulated activities.
25-0402. Application for permits.

531
25-0405. Payments for extractions from or filling in wetlands.

Cross References
Freshwater wetlands regulations, see section 25-0701 et seq.

§ 25-0401. Regulated activities

1. After completion of the inventory prescribed in title 2 of this article with respect to any tidal wetland, no person may conduct any of the activities set forth in subdivision 2 of this section unless he has obtained a permit from the commissioner to do so. The permit issued by the commissioner shall be in addition to, and not in lieu of, such permit or permits as may be required by any municipality within whose boundary such wetland or portion thereof is located.

2. Activities subject to regulation hereunder include any form of draining, dredging, excavation, and removal either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate from any tidal wetland; any form of dumping, filling, or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind; the erection of any structures or roads, the driving of any pilings, or placing of any other obstructions, whether or not changing the ebb and flow of the tide, and any other activity within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area.

3. The depositing or removal of the natural products of the tidal wetlands by recreational or commercial fishing, shellfishing, aquaculture, hunting or trapping, shall be excluded from regulation hereunder, where otherwise legally permitted.

4. Activities, orders, and regulations of the department of health or of units of local government with respect to matters of public health shall be excluded from regulation hereunder, except as hereinafter provided. Copies of all such public health orders and regulations affecting tidal wetlands shall be filed with the department of environmental conservation. The commissioner may require modification of such orders or regulations if he deems it necessary to implement the policy of this act.1

5. The commissioner shall review all current mosquito control projects to determine whether they are having any adverse impact on tidal wetlands. Where any adverse impact is found, the commissioner following a public hearing, may require modification of such
projects if he deems it necessary to implement the policy of this act.\(^1\)

6. Where the dredging or filling is in the navigable waters of the state or is for the reconstruction or repair of certain dams and docks, and where such activity also substantially affects tidal wetlands, any person undertaking such activity must seek permission under this act\(^1\) as well as under any other applicable law.

(Added L.1973, c. 790, § 2.)

\(^1\) L.1973, c. 790, which enacted this article.

**Historical Note**


**Practice Commentary**

*by Philip Weinberg*

This title empowers the Department to regulate activities in tidal wetlands after the mapping and inventory are done. It is vital to be familiar with the 6 NYCRR Part 664 regulations adopted to implement the land-use controls authorized by the Act, and discussed below in this Commentary.

Subdivision 1 specifies that the Act does not preempt municipal regulation of wetlands, as the court correctly held in Town of Huntington v. Albicocco, 66 A.D.2d 886, 411 N.Y.S.2d 675 (2d Dept., 1978). Since, as discussed in the Commentaries following § 25–0103, many of the tidal wetlands of the Long Island towns are held by their trustees pursuant to Colonial patents, maintaining effective control at both the state and municipal level is desirable. In contrast, the Freshwater Wetlands Act allows delegation by the State to municipalities. See § 24–0501 and the Commentaries thereto.

Note the broad, inclusive list (subd. 2) of activities subject to regulation under the Act. Many, as subd. 6 recognizes, also require a permit under the Stream Protection Act, §§ 15–0501 to 15–0505, section 10 of the Rivers and Harbors Act, 33 U.S.C.A § 403, or the dredge-and-fill permit provisions of section 404 of the Clean Water Act, 33 U.S.C.A. § 1344. See the Commentaries following § 15–0501 for a discussion of those provisions. Since the Tidal Wetlands Act, as well as the Stream Protection Act, is governed by the uniform procedures of ECL Article 70, see § 25–0402(2), a single permit application suffices. See the Commentaries following § 70–0101.

Activities in areas immediately adjacent to wetlands are regulated by the 6 NYCRR Part 661 requirements if the activity may substantially impair or alter the wetland (subd. 2).
§ 25–0401

The regulations, § 661.4(b), define “adjacent area” in some detail. In general, subject to the more specific boundaries set forth there, adjacent areas are those within 300 feet landward of a wetland (150 feet in the City of New York), § 661.4(b)(1)(i), or up to ten feet in elevation, § 661.4(b)(1)(iii). Often in actuality and more than ten feet high may have a keenly-felt impact on adjacent tidal wetlands. Even after giving due deference to the Department’s expertise, this limit seems procrustean and arbitrary.

The procedure involved in applying for permits is dealt with in the Commentaries following § 25–0402, and substantive issues in those after § 25–0403.

Cross References
Permits for regulated activities, freshwater wetlands, see section 24–0701.
Promulgation of rules and regulations, abatement of pollution, see section 2507.

New York Codes, Rules and Regulations
Use guidelines, see 6 NYCRR 661.5.
Uses not requiring a permit or notification letter approval, see 6 NYCRR 661.7.

Notes of Decisions

<table>
<thead>
<tr>
<th>Local regulation or control</th>
<th>Necessity for permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

1. Local regulation or control

Under this section, state had not preempted town’s Marine Conservation Law, so that court properly directed owner of fuel storage tank along navigable waters of bay to apply to town for permit with respect to the fill work. Town of Huntington v. Albicocco, 1978, 66 A.D.2d 886, 411 N.Y.S.2d 675.

2. Necessity for permit


§ 25–0402. Application for permits

1. Any person proposing to conduct or cause to be conducted an activity regulated under this act, upon any inventoried tidal wetland shall file an application for a permit with the commissioner, in such form and containing such information as the commissioner may prescribe. The applicant shall have the burden of demonstrating that the proposed activity will be in complete accord with the policy and provisions of this act. Such application shall include a detailed description of the proposed work and a map showing the area of tidal wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent lands and the known claimants of water rights in or adjacent to the tidal wetlands of whom the applicant has notice.
Title 4

The commissioner shall cause a copy of such application to be mailed to the chief administrative officer in the municipality where the proposed work or any part of it is located.

2. The rules and regulations adopted by the department to implement this article and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this article.

(Added L.1973, c. 790, § 2; amended L.1976, c. 162, § 2; L.1979, c. 233, § 26.)

1 L.1973, c. 790, which enacted this article.

Historical Note

1979 Amendment. Subd. 2. L.1979, c. 233, § 26, eff. Sept. 1, 1979, added subd. 2 and repealed former subd. 2, which related to public hearings on applications for permits, notice of hearing and opportunity of the applicant to present proof in support of the permit application.

1976 Amendment. Subd. 2. L.1976, c. 162, § 2, eff. May 18, 1976, increased the notice period for chief administrative officers of municipalities from 15 to 30 days, and added sentences beginning “The notice of”, “The public notice”, “Notices of appearance” and “In the event.”


Practice Commentary

by Philip Weinberg

Under this section, the procedure involved in permit applications is prescribed. The burden is on the applicant to show the proposed activity will be in complete accord with the policy and provisions of the Act (subd. 1), as the court held in Matter of McKinney v. Department of Environmental Conservation, 52 A.D.2d 881, 383 N.Y.S.2d 57 (2d Dept., 1976). Note that the Department must furnish the municipality with a copy of the application and supporting documents.

This section (subd. 2) specifies that applications under the Act are subject to the uniform procedures imposed by Article 70. See the Commentaries following § 70–0101.

Under the regulations (6 NYCRR Part 661), applications are filed with the Department’s regional permit administrator (§ 661.15) and must provide alternatives to the proposal which will not affect tidal wetlands. The procedure at hearings on permit applications is set forth in § 661.16 to .18. Hearings are mandatory unless no objections are made to the proposal and the applicant in turn waives the hearing. § 661.18(i).

Cross References

Applications for permits, freshwater wetlands, see section 24–0703.

535
Fees for processing applications, see section 70–0117. 
Public hearings, see section 70–0119.

New York Codes, Rules and Regulations

Permits—
Application, see 6 NYCRR 661.15.
Requirements, see 6 NYCRR 661.9.
Standards for issuance, see 6 NYCRR 651.10.

Public hearings—
Generally, see 6 NYCRR 661.18.
Notice, see 6 NYCRR 661.16.
Tidal wetlands—moratorium permits, see 6 NYCRR Part 660.
Uniform procedures, application of, see 6 NYCRR 621.2.

Notes of Decisions
1. Burden of proof
   Property owner petitioning to the Commission [now the Department] for a hardship permit to continue dredging and filling of property to construct boat basin thereon and to increase length of proposed channel into his property had burden of presenting evidence on all issues necessary in order for him to receive permit. McKinney v. Commissioner of Environmental Conservation, 1976, 52 A.D.2d 681, 383 N.Y.S.2d 57.

§ 25–0402. Granting of permits

1. In granting, denying or limiting any permit under this act, the commissioner shall consider the compatibility of the proposed activity with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, flood and hurricane and storm dangers, and the land-use regulations promulgated pursuant to section 25–0302 of this act.

2. Notice that the state or any agency or subdivision thereof is in the process of acquisition of any tidal wetlands by negotiation or condemnation shall be sufficient basis for denial of any permit under this section.

3. In granting a permit, the commissioner may impose such conditions or limitations as may be necessary to carry out the public policy set forth in this act.1 The commissioner may require a bond in an amount and with surety and conditions satisfactory to him securing to the state compliance with the conditions and limitations set forth in the permit.

4. The commissioner's order granting, denying, revoking or suspending a permit shall state his findings and reasons for all actions taken pursuant to this section. The commissioner shall cause a copy of such order to be forwarded by certified mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. The commissioner shall also cause notice of such order to be published 536
Title 4

in at least two newspapers having a general circulation in the area where the affected wetlands are located.

(Added L.1973, c. 790, § 2; amended L.1976, c. 598, § 3; L.1979, c. 233, § 27.)

L.1973, c. 790, which enacted this article.

Historical Note

1979 Amendment. Subd. 3. L.1979, c. 233, § 27, eff. Sept. 1, 1979, deleted provisions relating to suspension or revocation of the permit by the commissioner.

1978 Amendment. Subd. 4. L.1976, c. 598, § 3, eff. July 21, 1976, provided for certified mail in lieu of registered mail.

Effective Date. Section effective Sept. 1, 1973 pursuant to L.1973, c. 790, § 5.

Practice Commentary

by Philip Weinberg

This section provides substantive criteria for the granting, denial and limiting of permits. It should be read together with the rule imposed by § 25-0402 that the applicant must show the activity to be in complete accord with the policy and provisions of the Act. Subdivision 3 authorizes the Commissioner to impose conditions and limitations on permits and bonding requirements to insure compliance.

It is vital to be familiar with the 6 NYCRR Part 661 regulations, which establish use guidelines (§ 661.5) for activities in various categories of wetlands. Uses are either generally compatible, presumptively incompatible or incompatible. Wetlands are divided into coastal fresh marshes, intertidal marshes, coastal shoals, and several other classifications, defined in § 661.4(hh). Certain activities only mildly impinging on a wetland require only a notification letter, rather than a permit. Section 661.6 sets forth certain explicit development restrictions such as lot sizes and setbacks, and § 661.10 provides detailed standards for the issuance of permits as to both wetlands and adjacent areas. Under § 661.25 permits may be suspended or revoked.

The claim has been voiced that the Act's restrictions constitute a de facto taking of an owner's property. During the moratorium imposed by § 25-0202 during the mapping process the courts rejected that contention. Matter of Marine Equities v. Biggane, 49 A.D.2d 907, 373 N.Y.S.2d 622 (2d Dept., 1975). It is unlikely that the claim would fare better under the land-use regulations for the reasons discussed in detail in the Commentaries following § 24-0765, the similar Freshwater Wetlands Act provision.
§ 25–0403  ENVIRONMENTAL CONSERVATION  
Art. 25

Cross References
Granting permits, freshwater wetlands, see section 24–0705.
Permit modifications, suspensions, revocations, renewals, reissuances, and recertifications, see section 70–0115.
Public hearings, see section 70–0119.

New York Codes, Rules and Regulations
Permits—
Bond, see 6 NYCRR 661.23.
Conditions, see 6 NYCRR 661.11.
Duration of, see 6 NYCRR 661.22.
Modification, see 6 NYCRR 661.24.
Notice of decision to grant or deny, see 6 NYCRR 661.19.
Revocation or suspension, see 6 NYCRR 661.25.

Notes of Decisions
Notice of
Government acquisition 1
Grant or denial 2

1. Notice of government acquisition
Under this section providing that notice that government agency is in process of acquisition of tidal wetlands by negotiation or condemnation shall be basis for denial of application for wetlands permit, initiation of “process by acquisition” by actual commencement of condemnation proceedings or negotiations for acquisition is condition precedent to filing of the notice; thus building permit should not have been denied merely because regional supervisor of real property services for region said state was interested in acquiring the property. Grasso v. Berle, 1979, 99 Misc.2d 562, 416 N.Y.S.2d 681.

2. Notice of grant or denial
Service of Commissioner’s order, granting application or permit to extend pier, upon opponents’ attorney, rather than upon the parties themselves, nonetheless satisfied this section and regulations promulgated thereunder, given that attorney representing opponents at administrative proceeding supplied only his address and was adamant about his authority to represent them; under such circumstances, service upon the attorney would be deemed constructive service upon the parties. Oak Island Beach Ass’n, Inc. v. Flacks, 1983, 96 A.D.2d 841, 465 N.Y.S.2d 596.

Requirements for giving notice to parties other than permit applicant when tidal wetlands permit is granted or denied are applicable to all tidal wetlands permits regardless of whether they are for projects designated as minor or major. Biggar v. Heller, 1983, 96 A.D.2d 567, 465 N.Y.S.2d 252.

§ 25–0404. Judicial review
Any person aggrieved by the issuance, denial, suspension, or revocation of a permit may within thirty days from the date of the commissioner’s order seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetlands affected are located. In the event that the court may find that the determination of the commissioner constitutes the equivalent of a taking without compensation, and the land so regulated otherwise meets the interest and objectives of this act, it may, at the election of the commissioner, either
set aside the order or require the commissioner to acquire the tidal wetlands or such rights in them as have been taken, proceeding under the power of eminent domain.

(Added L.1973, c. 790, § 2.)
L.1973, c. 790, which enacted this article.

Historical Note

Effective Date. Section effective Sept. 1, 1973 pursuant to L.1973, c. 790, § 5.

Practice Commentary

by Philip Weinberg

This provision shortens the usual four-month period of limitations in Article 78 proceedings to thirty days in the case of those brought to review determinations under this Act. The same is true under the Freshwater Wetlands Act, but that act's added option of allowing aggrieved parties to seek review by the Freshwater Wetlands Appeals Board (see §§ 24-1101 to 24-1103 and the Commentaries thereto) has no counterpart under the Tidal Wetlands Act.

The 30-day period runs from the date of the order, not its service. Matter of Oak Island Beach Assn. v. Flacke, 96 A.D.2d 841, 465 N.Y.S.2d 596 (2d Dept., 1983). And it is tolled by the Department's failure to serve the order on the municipality and publish it in order to notify adjacent property owners as required by § 25-0403(4). Bigar v. Heller, 96 A.D.2d 567, 465 N.Y.S.2d 252 (2d Dept., 1983).

The courts give a great deal of deference to the determinations of the Department under the Act where based on scientific testimony as to the environmental value of the wetland, the prospect of injury to it, and the possibility of alternatives to altering it. Where the determination follows a hearing, the petitioner must meet the usual burden of showing it lacks substantial evidence in the record as a whole. See CPLR § 7803(4) and the Commentaries thereto. In such cases, the Article 78 is transferred to the Appellate Division for decision pursuant to CPLR § 7804(g). The issuance, denial, suspension and revocation of a permit are all expressly made judicially reviewable.

This section also provides, as does § 24-0705(7) in the Freshwater Wetlands Act, that should the court find the determination constitutes a de facto taking of the owner's tract (see the discussion in the Commentaries following that section) it may, at the Commissioner's election, either set aside the order or require the State to acquire the land through eminent domain.

539
It is unlikely, however, that a landowner will be able to meet the stringent burden of proving the denial of a permit amounted to an unconstitutional taking of his property, for the reasons discussed in the Commentaries following § 24–0705. Briefly, in most instances he will not be deprived of all economic value of his land. And even in those uncommon instances, the courts have found similar legislation not to create a de facto taking since it effectively abates the public nuisance which would otherwise occur.

Cross References

Judicial review of determinations or orders of the Commissioner, freshwater wetlands, see section 24–1105.
Uniform review procedures, see section 70–0101 et seq.

New York Codes, Rules and Regulations

Judicial review, see 6 NYCRR 661.36.

West's McKinney's Forms

The following form appears in Selected Consolidated Laws Forms under section 25–0404 of the Environmental Conservation Law—
Article 78 proceeding to review denial of application for moratorium permit to alter tidal wetlands (cross reference), see Form 1.

Notes of Decisions

Limitations  2
Persons entitled to seek review  1
Weight and sufficiency of evidence  3

1. Persons entitled to seek review

Any challenge by city housing authority to constitutionality of this article as a whole was premature prior to promulgation of implementing regulations, since such regulations might permit use of property as authority envisioned, or authority might be able to obtain permit under full permit program. New York City Housing Authority v. Commissioner of Environmental Conservation Dept., 1975, 53 Misc.2d 89, 372 N.Y.S.2d 146.

2. Limitations

Date of service of order of the Commissioner upon permit opponents' attorney was irrelevant for purposes of commencement of limitations period within which appeal from the order could be sought, such period commencing, instead, on date of the order itself. Oak Island Beach Ass'n, Inc. v. Flacke, 1983, 96 A.D.2d 841, 465 N.Y.S.2d 596.

In situation in which party would be expected to receive notice of determination of public agency pursuant to statutory requirements but has not, applicable statute of limitations begins to run when he knows or should know that he has been aggrieved by determination. Bigar v. Heller, 1983, 96 A.D.2d 567, 465 N.Y.S.2d 252.

Failure of Department to comply with notice requirement for sending copy of order granting tidal wetlands permit to chief administrative officer of each municipality in which wetland was located and to cause notice of such order to be published tolled 30-day statute of limitations in which to bring action challenging the order. Bigar v. Heller, 1983, 96 A.D.2d 557, 465 N.Y.S.2d 252.

3. Weight and sufficiency of evidence

Substantial evidence supported finding of Commissioner that property owner's dredging and filling of property to construct boat basin thereon and to in-
§ 25-0405. Payments for extractions from or filling in wetlands

1. Any applicant for a permit to dredge, excavate, or remove soil, mud, sand, shells, gravel or other aggregate from any publicly-owned tidal wetland shall be required to pay to the public owner thereof such amount, which shall not be nominal, as the office of general services or its local equivalent body shall determine to be the value of the aggregate extracted. Any person aggrieved by such determination may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetland is located.

2. Any applicant for a permit to dump, fill, or deposit any soil, stones, sand, gravel, mud, rubbish, or fill of any kind onto or in any publicly-owned tidal wetlands shall be required to pay to the owner such amount, which shall not be nominal, as the office of general services or its local equivalent shall determine. Any person aggrieved by such determination may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetland is located.

3. Monies paid to the state under this section shall be used by the commissioner for preservation of the tidal wetlands.

(Added L.1973, c. 790, § 2.)

Historical Note

Effective Date. Section effective Sept. 1, 1973 pursuant to L.1973, c. 790, § 5.

TITLE 5—VIOLATIONS AND ENFORCEMENT [REPEALED]

[§§ 25-0501 to 25-0503. Repealed. L.1975, c. 182, § 1, eff. on the 30th day after June 9, 1975]

Historical Note

Section 25-0501, added L.1973, c. 790, § 2, related to violations of this article. Section 25-0502, added L.1973, c. 790, § 2, related to enforcement of this article. Section 25-0503, L.1973, c. 790, § 2, related to pollution of tidal wetlands. See now section 71-2501 et seq.
§ 25–0601  ENVIRONMENTAL CONSERVATION
Art. 25

TITLE 6—MISCELLANEOUS PROVISIONS

Section
[25–0602. Repealed.]

§ 25–0601. Severability

The provisions of this act, shall be severable, and if any clause, sentence, paragraph, subdivision or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.
(Added L.1973, c. 790, § 2.)

1 L.1973, c. 790, which enacted this article.

Historical Note

Effective Date. Section effective
Sept. 1, 1973 pursuant to L.1973, c. 790,
§ 5.

Library References

Statutes ¶ 64(2).
C.J.S. Statutes § 96 et seq.


Historical Note

Section, added L.1973, c. 790, § 2, pro-
vided that this article shall not be appli-
cable to any lands now or hereafter ap-
propriated by the state.

542
ARTICLE 25—TIDAL WETLANDS

TITLE 1—GENERAL PROVISIONS AND PUBLIC POLICY

Law Review Commentaries


§ 25-0102. Declaration of policy

Supplementary Practice Commentaries

by Philip Weinberg

1988

The public trust doctrine, discussed in the Practice Commentary to this section in the main volume, has been resoundingly reaffirmed by the United States Supreme Court in Phillips Petroleum Co. v. Mississippi, 108 S.Ct. 791, 484 U.S. 489, 96 L.Ed.2d 877 (1988), reharing denied 108 S.Ct. 1760, 100 L.Ed.2d 221. The Court applied the doctrine to coastal lands tidal when the state entered the Union, even though tidal no longer.

§ 25-0103. Definitions

Supplementary Practice Commentaries

by Philip Weinberg

1990

Following the Ciampitti case discussed in the 1984 and 1986 Commentaries, a United States Court of Appeals has held an artificially created wetland is subject to an Army Corps of Engineers permit under Clean Water Act § 404. Leslie Salt Co. v. U.S., 896 F.2d 354 (9th Cir.1990). Francisco Bay by an earlier owner. The empty pits filled with rainwater, a tidegate. Thus the federal courts adhere to a broader definition of wetland.

1987

The Lang and O'Brien cases, discussed in the original Commentary, were limited by Jack Coletta, Inc. v. New York State Dept. of Environmental Conservation, 128 A.D.2d 705, 518 N.Y.S.2d 465 (2d Dept.1987), where the Act applies to wetland resulting wholly from artificial forces.

1986

The Army Corps of Engineers' Authority over wetlands under Clean Water Act § 404, 33 U.S.C.A. § 1444, discussed in 1984 and 1985 Commentaries to this section, was resoundingly upheld by the United States Supreme Court in United States v. Riverside Bayview Homes, Inc., 106 S.Ct. 456, 474 U.S. 121, 88 L.Ed.2d 419 (1986). The court there held the ed or saturated by surface or ground water" frequently enough to "support a prevalence of vegetation typically adapted for life in saturated soil conditions" encompassed a wetland whether or not it was periodically flooded. (An earlier regulation had required flooding.)

1985

In United States v. City of Fort Pierre, 747 F.2d 464 (8th Cir.1984), the court found an area flooded by the Army Corps of Engineers' nearby dredging was not thereby converted into a wetland within the Corps' permit jurisdiction under Clean Water Act § 404, 33 U.S.C.A. § 1344. The case appears consistent with United States v. Ciampitti, discussed in the 1984 Commentaries, since the court limited its holding to the "unique" situation at bar and did not challenge the Corps' jurisdiction with regard to any other artificially created wetland-type environment.

1984

Further illumination is to constitute a wetland was recently served by a federal court in United States v. Ciampitti, 883 F.Supp. 483, 20 Envr. Rptr. Cases 1926 (D.N.J.1994). The court there had a wetland caused by a breach in an embankment, either man-made or due to storms, is part of the "waters of the United States" and therefore requires a permit to dredge or fill under Clean Water Act § 404, 33 U.S.C.A. § 1344.

Law Review Commentaries


1. Tidal wetlands

Landowner's allegation that wetlands on his property were entirely created by artificial means, even if proven, would not render the United States Department of Environmental Conservation of authority to regulate and restrict their use as tidal wetlands. Gasza v. New York State Dept. of Environmental Conservation, 1988, 139 A.D.2d 647, 527 N.Y.S.2d 285.


Rip-rap wall did not constitute "functional and substantial man made structure" within meaning of regulation excluding certain land from tidal wetland jurisdiction where wall was built for construction debris and fill and nearby tidal wetland had actually expanded despite existence of wall. F.L.D. Const. Corp. v. Williams, 1986, 122 A.D.2d 189, 504 N.Y.S.2d 726, appeal dismissed, stay dismissed 68 N.Y.S.2d 996, 510 N.Y.S.2d 665, 558 N.E.2d 121.

TITLE 2—WETLANDS INVENTORY

§ 25-0201. Inventory of tidal wetlands

Supplementary Practice Commentaries

by Philip Weinberg

1987

Two decisions reaffirm the Department's authority under this section to remap tidal wetlands where it finds the facts warrant. Both Merrick Jewish Centre, Inc. v. New York State Dept. of Environmental Conservation, 128 A.D.2d 877, 513 N.Y.S.2d 799 (2d Dept.1987), and Jack Coletta, Inc. v. New York State Dept. of Environmental Conservation, 128 A.D.2d 755, 513 N.Y.S.2d 465 (2d Dept.1987), held the Department had the requisite rational basis for remapping on proof of tidal inundation and changes in

185
vegetation. In Coletta the court likewise held the Department not estopped by previous statements of its employees (see the cases discussed in this year's Commentary to § 24-0301). The court also rejected the argument that the wetland in Coletta was artificially created. This aspect of the case is discussed in the Commentary to § 25-0103.

1985

The Department's responsibility to adjust the tidal wetlands maps drawn pursuant to this section to conform to reality was recognized in Matter of Thompson v. Department of Environmental Conservation, 130 Misc.2d 123, 495 N.Y.S.2d 107 (Sup.Ct.Suffolk Co.1985). The court held that the Department had authority to remap after receiving a petition application, in order to effectuate the clearly-expressed policy of the state to preserve and protect tidal wetlands. See § 25-0102 and the Commentary thereto. This decision confirmed the Department's declaratory ruling discussed in the 1985 Commentary to the Instant section. A contrary result would have tied the Department to an earlier map which time and tide rendered incorrect.

1986

The Department has ruled that its jurisdiction to remap a tidal wetland pursuant to subd. 6 where conditions warrant is not divested by receipt of an application for a permit to develop the adjacent property. DEC Declaratory Ruling 25-02 (Thomas Thompson) (1984). The Department held:

"Just as it would be unfair and illogical to bind an applicant to an obsolete inventory map which overstated the extent of a particular wetland, logic and the above-cited provisions of law (this section, § 25-0403(1) and § 25-0402(1)) similarly dictate that DEC not be prevented from reconciling an outdated map with prevailing on-site conditions in the interest of correcting an underinclusive boundary."

Notes of Decisions

Hearing 2
Power of commissioner 1

1. Power of commissioner

Department of Environmental Conservation had authority to conduct on-site inspections of given parcel of real property and to propose amendment to alter tidal wetlands inventory map, if warranted, even though application for permit to develop affected property had already been filed. Thompson v. Department of Environmental Conservation of State of N.Y., 1985, 130 Misc.2d 123, 495 N.Y.S.2d 107, affirmed 132 A.D.2d 645, 518 N.Y.S.2d 36, appeal denied 71 N.Y.2d 866, 527 N.Y.S.2d 763, 522 N.E.2d 1067.

Statute which authorizes amendment of wetlands map, gave Department of Environmental Conservation authority to hold hearing to reclassify subject property from status of adjacent area to that of land that was formerly connected to tidal wetlands and gave authority to amend wetlands map to conform it to actual conditions. Merrick Jewish Centre, Inc. v. New York State Dept. of Environmental Conservation, 1987, 128 A.D.2d 877, 513 N.Y.S.2d 799.


2. Hearing

Ordering of hearing to determine whether tidal wetlands maps should be amended to extend tidal wetlands boundary on parcel was rational exercise of Department of Environmental Conservation's authority after DEC was apprised of additional scientific evidence from outside sources concerning nature and extent of wetlands. Jack Coletta, Inc. v. New York State Dept. of Environmental Conservation, 1987, 128 A.D.2d 756, 513 N.Y.S.2d 465, appeal denied 70 N.Y.2d 602, 518 N.Y.S.2d 1025, 512 N.E.2d 551.

186

TITLE 3—PROGRAM AND LAND-USE REGULATION FOR TIDAL WETLANDS

Law Review Commentaries


25-0301. Program and cooperative agreements for the protection of tidal wetlands

[See main volume for 1 to 5]

6. The wetland stewardship program established under section 24-0902 of this chapter shall also apply to tidal wetlands.

As amended L.1990, c. 395, § 33.

Historical and Statutory Notes


Cross References

Adopt-a-wetland stewardship program, see ECL 24-0902.

25-0302. Land-use regulation of tidal wetlands

Notes of Decisions

Aquaculture activities 2
Best use of property 3
Valuation of property 1

1. Valuation of property

When a claimant in proceeding to determine proper valuation of classified wetlands appropriately acquired for conservation purposes has demonstrated that development of the property is economically feasible and that the application of the wetlands regulations has destroyed the economic value of the parcel, or all but a bare residue of that value, he is entitled to an increase above the restricted value. Berwick v. State, 1985, 107 A.D.2d 79, 486 N.Y.S.2d 260, appeal denied 66 N.Y.2d 604, 486 N.Y.S.2d 1024, 489 N.E.2d 709.


In proceeding to value classified wetlands appropriately acquired for conservation purposes, unrestricted values proffered by owners of land which had a residential highest use and a comparison of market values with and without regard to development restrictions of the Tidal Wetlands Act demonstrated that the application of the Act had effectively deprived claimants of all financially rewarding uses of their properties and thus, claimants were additionally entitled to an incremental award, over and above the property's restricted market value of $5,000 per acre, representing its enhanced value to a knowledgeable buyer in light of the reasonable probability of a successful constitutional court challenge to application of the Act. Berwick v. State, 1985, 107 A.D.2d 79, 486 N.Y.S.2d 260, appeal denied 66 N.Y.2d 604, 486 N.Y.S.2d 1024, 489 N.E.2d 709.


2. Aquaculture activities

Regulation of the Commissioner of Environmental Conservation defining "aquaculture" as excluding filling incidental to aquaculture did not violate provisions and policy of this article. Swan v. Commis.-
TITLE 4—REGULATED ACTIVITIES

§ 25-0401. Regulation activities

Supplementary Practice Commentaries

by Philip Weinberg

1984

The Department has ruled that conveying wetlands subject to a reverter should the Department deny a permit is not in itself an act requiring a permit. DEC Declaratory Ruling 25-01 (Harry Kessler) (1981).

Law Review Commentaries


Notes of Decisions

2. Necessity for permit

Prior negative declaration of Commissioner of Department of Environmental Conservation under State Environmental Quality Review Act (SEQRA) did not estop Commissioner from denying permit to erect bulkhead on property abutting canal after revaluation of proposed project in light of subsequent designation of property as tidal wetland, since project was incompatible with purposes of Tidal Wetlands Act. Brotherton v. Department of Environmental Conservation of State of N.Y. (Sup Ct. 1982) 189 A.D.2d 914, 592 N.Y.S.2d 457.

Substantial evidence supported determination by Commissioner of Environmental Conservation that bulkhead constructed on property was "regulated activity" for which permit was required under Tidal Wetlands Act. James H. Rambo, Inc. v. Jorling, 1981, 177 A.D.2d 577, 576 N.Y.S.2d 292.

3. Dredging

Determination of administrative law judge that owner of property bordering tidal wetlands violated Environmental Property Law by improperly dredging wetlands was not supported by substantial evidence; record showed that town had conducted dredging operations near owner's property. Marmo v. Department of Environmental Conservation, 1989, 150 A.D.2d 577, 541 N.Y.S.2d 402.

§ 25-0402. Application for permits

Supplementary Practice Commentaries

by Philip Weinberg

1987

The original Commentary, asserting that a hearing is mandatory under the regulations implementing this section, has been superseded by the Uniform Procedures Act, § 70-0119, which empowers the Department to decide whether a hearing is necessary in connection with a permit application. The Department regulations referred to in the original Commentary still anachronistically provide that a hearing is required unless waived by the applicant. See 6 NYCRR § 661.18(b). Of course, the statute governs.

Notes of Decision

2. Notice of grant or denial

Oak Island Beach Ass'n, Inc. v. Flacke, 96 A.D.2d 841, 460 N.Y.S.2d 596 (main volume); appeal denied 62 N.Y.2d 606, 420 N.Y.S.2d 1023, 472 N.E.2d 327.

3. Denial of permit

Department of Environmental Conservation properly denied application for tidal wetlands permit to build single family house within 75 feet of tidal wetland, there being no basis for grant of variance of required setback distance from tidal wetlands' boundary line on the site. Harbour Point, Inc. v. Flacke, 1984, 104 A.D.2d 927, 480 N.Y.S.2d 644.

Notes of Decision

1. Repealed

(As amended L.1986, c. 527, § 1.)
ENGLISH CONSERVATION LAW

§ 25-0403
Note 3

the property reflected limitations on the property, and property had not lost all, or all but bare residue, of its economic value.


4. Grounds for denial
State Conservation Department did not act improperly when it refused to further process property owner's application for permit to level ocean beach sand based on determination that property owner had previously altered natural beach topography of tidal wetlands without permit. Pebble Cove Home Owners' Assoc., Inc. v. New York State Dept. of Environmental Conservation, 1988, 141 Misc.2d 979, 535 N.Y.S.2d 688.

§ 25-0404. Judicial review

Supplementary Practice Commentaries

by Philip Weinberg

1994

A de facto taking claim involving a tidal wetland was rebuffed in Gazza v. New York State Dept. of Environmental Conservation, 159 Misc.2d 591, 605 N.Y.S.2d 642 (Sup. Ct. Suffolk Co. 1990). The owner, who purchased in 1989, was denied a DEC permit to build a residence and septic system while his parcel had been de facto taken. The court ruled, however, that he bought subject to the burden of the Act, reflected both in the low purchase price of $100,000 for a 47,000 square-foot parcel in Quogue, and in real property tax reductions obtained by the owner based on the parcel's wetland nature. There was testimony that the property was still worth between $50,000 and $80,000, negating the claim that it had lost all reasonable value. Further, the court, citing Lucas (see the 1992 Commentary), held the owner's reasonable investment-backed expectations were not justly impaired by legislation which had long been in place when he purchased the property.

1993

See this year's Commentary to § 24-0705 for an update on the Lucas case on remand to the South Carolina courts.

1992

This year's Commentary to § 24-0705 describes Lucas v. South Carolina Coastal Council, the most recent decision from the United States Supreme Court on the vexing issue of de facto taking.

1990

The 1988 Commentary referred to the important United States Supreme Court decision in the First English Lutheran Church case. The California courts have now held that the flood control law involved in that case was not a de facto taking at all. See this year's Commentary to § 24-0706.

1988

No discussion of the de facto taking issue (see the original and subsequent Commentaries) is complete without consideration of the First English Lutheran Church case, decided last year by the United States Supreme Court. See the 1987 Supplementary Practice Commentary to § 24-0705.

1987

The Court of Claims has awarded $1.15 million to three Westhampton Beach property owners whose lands were acquired by the State in 1979.

Berkov v. State, 1 Misc.2d 801, 475 N.Y.S.2d 68 (Sup. Ct., New York Co.).

Property taken in condemnation must be valued, under basic principles, at its highest and best use under existing zoning and other land-use restrictions. The Appellate Division, in an earlier ruling, had found that as regulated by the Tidal Wetlands Act the lands were worth $55,500. Berkov v. State, 107 A.D.2d 79, 486 N.Y.S.2d 250 (2d Dept. 1984), appeal dismissed 66 N.Y.2d 604, 498 N.Y.S.2d 1024, 489 N.E.2d 709. Since the owners proved the Act, as applied to them, "destroyed... all but a bare residue" of the economic value of the land, they are entitled to the difference between its value with and without the statute, the Appellate Division held. On remand, the trial court now found that sum to be $1.15 million, and entered judgment against the State for that amount.

1986

Birkov v. Heller, discussed in the main Commentary to this section, was effectively overruled by a 1986 amendment to § 25-0403, discussed in this year's Commentary to that section. As there noted, the Uniform Procedures Act (ECL art. 70) controls notice and other procedures to be followed in issuing, denying, revoking or suspending permits.

The Court of Appeals has wisely held the burden lies with the owner to prove the denial of a permit constitutes a de facto taking. In de St. Aubin v. Flacke, 68 N.Y.2d 665, 505 N.Y.S.2d 889, 498 N.E.2d 979 (1986), the petitioners owned 103 acres, 81 classified as tidal wetlands and 22 as upland. The lower courts found the denial of the permit reduced the value of these parcels from 86% to 96%. The Department contended a change in zoning from single-family to two-family use, or cluster zoning, would enable the owners to build 104 units, instead of 29. But the Appellate Division found the State had the burden of proving that the owners could obtain that zoning change.

The Court of Appeals, unanimously reversing, held the burden properly is on the owners to prove "no reasonable probability that the Town will approve any change." It noted that under the lower court's view the owner could compel the state to "condemn the wetlands portion of [his] properties to avoid full development of it, ... and then seek a change in zoning for the remaining uplands, ... claiming [a] hardship created by the substantial change in circumstance." Thus an owner could "profit from the condemnation of the wetlands and still retain the full potential value of the uplands"—an unconscionable result akin to having one's cake and eating it too.

The court remanded for a new trial with the burden on the petitioners.

Moreover, under the Court of Appeals and other decisions discussed in the original Commentary to § 24-0705, the parallel Freshwater Wetlands Act provision, at most a claim of confiscation can result in a declaration that the statute is invalid as applied, not a compensable taking. Fred F. French, Investing Co. v. City of New York, 30 N.Y.2d 587, 389 N.Y.S.2d 5, 350 N.E.2d 381 (1976), aff'd, 1976 N.Y.Lexis 152, 75 N.Y.2d 64, 554 N.E.2d 630, 554 N.Y.S.2d 630. Further, the courts of several states have ruled that laws protecting wetlands require no compensation to an owner since they prevent the destruction of those wetlands and consequent public nuisance. See the Just, Siboni, and Estuary Properties cases in the original Commentary following § 24-0705. In view of the eloquent and explicit statement of public policy protecting the natural resources of tidal wetlands (see §§ 25-0101 and 25-0102 and the original Commentary thereto) the courts should not find a taking under the Tidal Wetlands Act. This is especially so here, as in de St. Aubin, the locality in fact allows cluster zoning, which would safeguard both the owners' investment and the public interest.
Admissibility of evidence 9
Harassment or prejudicial error 4
Sufficiency of evidence 5
Uncompensated taking, determination of

1. Persons entitled to seek review
Claim of property owners that denial by
Commissioner of Environmental Conservation
of their applications to fill tidal wetlands for residential development amounted to a taking without just
compensation, because combined effect of wetlands restrictions and town zoning precluded any economic use of their properties,
was ripe for judicial review, notwithstanding
Commissioner’s contention that owners had first to seek a variance or rezoning of the properties from town
board; Commissioner’s decision was final, and owners were not required to seek relief from one or more regulators in
different branches of governmental authority as a neces-
sary precondition to bringing suit against the

If a claimant in proceeding to determine proper valuation of classified wetlands appropria-
ted by state for conservation pur-
poses, believes that application of the Tidal
Wetlands Act unconstitutionally deprives him of any reasonable economic return on this property, he may challenge its validity in the condemnation proceeding by demonstrating that no permit would have issued for any economically
productive use and that application of the
Act, coupled with the denial of a permit,

2. Limitations
Oak Island Beach Ass’n, Inc. v. Flacke,
465 N.Y.S.2d 596 [main volume] appeal
denied 62 N.Y.2d 606, 482 N.Y.S.2d 1023,
472 N.E.2d 297.

Proceeding to vacate Department of Environmental Conservation’s denial of application for permit pursuant to Tidal Wetlands Act, where notice of petition and petition were served on 30th day after denial of request for hearing, and two months after date of denial of permit, was

192

Notes of Decisions

193

limitely commenced and properly dis-

Limitations period for challenging issuance of tidal wetlands permit began to run upon issuance of permit, even though
limitations statute provided that period began to run from date of “commissioner’s order” authorizing permit; reference to “commissioner’s order” in limitations statute was legislative oversight apparently predicated on former requirement of an order as established in subdivision of En-
vironmental Conservation Law that had been repealed by L 1991, 150 Misc.2d 683, 569 N.Y.S.2d 893.

3. Weight and sufficiency of evidence
Issuance of tidal wetlands permit to
subdivide property without requiring prepara-
tion of environmental impact statement was not arbitrary and capri-
cious, absent evidence that subdivision of property alone might have significant ef-

In proceeding to value classified wetlands appropriated for conservation pur-
poses, evidence, including development costs proffered by claimant warranted finding of economic feasibility of residential

In proceeding to value classified wetlands appropriated for conservation pur-
poses, evidence, including development costs and testimony that the parcels could not meet the sewer setback require-
ments in isolation, supported finding that residential development of long and nar-
row interior marshland parcels, zoned for one-acre single-family residences and land use plan for one rod right-of-

In proceeding to challenge determination of Department of Environmental Conservation that lessee of property was not entitled to a variance, from regulations requiring a 30-day day after denial of request for hearing, and two months after date of denial of permit, was

granting of variances had rational ba-
sis and was supported by substantial evi-

In proceeding to value classified wetlands appropriated for environmental pur-
poses, in which State essentially conceded that it was highly improbable that permit for use other than recreational would be issued for landowner’s property, thus ren-
dying unnecessary further proof on
issue, and State failed to effectively coun-
ter evidence as to economic feasibility of developing property as residential subdivi-
sion, evidence supported finding of confis-

4. Harmless or prejudicial error
Use of a personal nonexclusive map com-
posed by administrative law judge in pro-
ceding to consider granting permit to
construct a residence and septic system in area protected by Tidal Wetlands Act pro-
vided no basis for disturbing the determini-
anation on review where judge also had been before him the original boundary de-

5. Questions considered
Questions to be considered by special
term in determining whether denial of
permit to allow construction of residence and septic system constituted confiscation of
leased property include significance and effect of: fact that party claiming confis-
cation is lessee, fee owner is not a party, amount of rent payable, claim that lessee
may purchase property, clause in lease
concerning rights of lessor and lessee in
event of a taking, and claim that denial of

Proper practice to assert claim that de-
nial of permit to construct residence and
septic system in area protected by Tidal
Wetlands Act constitutes a taking of prop-
erty is to assert such claim in proceeding
seeking judicial review of permit denial, and butress claim with supporting affida-
vit outlining its basis. Haines v. Flacke,

6. Uncompensated taking, determina-
tion of—Generally
Tidal wetlands were “lands that were
subject of flooding” within town code, and
thus excludable from gross area calcula-
tion in determining number of lots avail-
able for cluster development, for purposes of valuing parcel in condemnation pro-
ceeding. Sebastian’s Cove, Ltd. v. State,

To establish unconstitutional taking un-
ter Tidal Wetlands Act, which permits declaratory judgment action within context of article 78 administrative review proceeding, owner is required to prove, by “dollar and cents” evidence as to economic return that could be realized under each permitted use, that under no permissible use could parcel as whole be capable of producing reasonable return, and if it be shown that economic value of parcel, or all but residue of value, has been destroyed by application of wetlands regula-
tions, uncompensated taking cannot stand. Chase Manhattan Bank, N.A. v.
State, 1984, 103 A.D.2d 211, 479 N.Y.S.2d 983.

Issue of confiscation of private property for environmental purposes can only be determined by comparison of “before and after values,” i.e., market value without regard to developmental restrictions of Tidal Wetlands Act and market value as so restricted. Chase Manhattan Bank, N.A. v. State, 1984, 103 A.D.2d 211, 479 N.Y.S.2d 983.

No. 8

7.—Condition precedent

Since same evidentiary “dollars and cents” proof mandated to prove confis-
cation in article 78 proceedings reviewing wetlands permit denials may be required of claimant in State-initiated condem-
nation proceedings under Tidal Wetlands Act, landowner’s compliance with permit and review procedures of Tidal Wetlands Act is not condition precedent to confiscation determination in condemnation pro-
ceeding. Chase Manhattan Bank, N.A. v.
State, 1984, 103 A.D.2d 211, 479 N.Y.S.2d 983.

8.—Condemnation proceeding dis-
tinguished
Wetlands—article 78 administrative re-
view proceeding is not identical to wet-
lands condemnation proceeding in that for-
mer, state’s posture is far more defensive, amounting essentially to providing rebut-
tal of landowner’s prima facie proof of confiscation, whereas in latter, burden of proof remains on landowner but state has independent obligation to pay just compen-
9. Admissibility of evidence

Topographical maps of two subdivisions which were very similar to one of the parcels at issue, although at a distant location, should have been admitted in proceeding to value classified wetlands approximated for conservation purposes on land of economic feasibility of residential development of the parcel. Berwick v. State, 1985, 107 A.D.2d 72, 486 N.Y.S.2d 694, 488 N.Y.S.2d 1024, 489 N.E.2d 769.

ARTICLE 27—COLLECTION, TREATMENT AND DISPOSAL OF REFUSE AND OTHER SOLID WASTE

TITLE 17. Lead-Acid Battery Recycling

TITLE 1—SOLID AND HAZARDOUS WASTE MANAGEMENT POLICY AND PLANNING

Section 27-0103. State solid waste management plan.
27-0105. Preferred statewide hazardous waste management practices hierarchy.
27-0107. Local solid waste management plans: purpose and scope.
27-0109. State assistance for local solid waste management plans.

Historical and Statutory Notes

1987 Amendment. Title heading. Amendment by L.1987, c. 618, § 3, substituted "SOLID
AND HAZARDOUS WASTE MANAGEMENT POLICY AND PLANNING" for "RESOURCES RECOVERY PROGRAMS;
PLANNING; Effective Date of Amendment by Implementation."

Rules of the City of New York

Butchers' refuse, health code, see 24 RCNY Art. 155.
Collection of refuse, see 16 RCNY Chapter 1.
Criteria for location of waste management facilities, see 62 RCNY App. A.
Discontinuing operation of refuse burning equipment, see 151 RCNY Chapter 2.
Dumping, polluting, or obstructing waters, see 66 RCNY § 2-05.
Lands, lands under water, landfill, see 16 RCNY Chapter 3.
Littering and disposal of refuse, health code, see 24 RCNY Art. 163.
Markets, prohibitions and restrictions, see 60 RCNY § 1-10.
Protecting city water supply from contamination, see 16 RCNY Chapter 18.
Public sewer use, see 15 RCNY Chapter 19.
Sewage disposal, health code, see 24 RCNY Art. 143.
Specifications for refuse containers, see 16 RCNY Chapter 9, subch. A and 24 RCNY
Chapter 17, subch. A.
Specifications for waste containerization systems, see 16 RCNY § 9-12, 24 RCNY
Transfer stations, see 16 RCNY Chapter 4.
Transport, storage and disposal of asbestos waste, see 16 RCNY Chapter 8.
Upgrading existing apartment house incinerators, see 15 RCNY Chapter 5.
Vacant lots, see 16 RCNY Chapter 6.
Water pollution control under health code, see 24 RCNY Art. 145.

Law Review Commentary


United States Supreme Court


§ 27-0101. Legislative purposes

1. It is the purpose of the legislature of the state of New York in enacting this article to encourage the development of economical projects for the present and future collection, treatment and management of solid and hazardous waste in such a manner as will assure full consideration of all aspects of planning for proper and effective solid and hazardous waste disposal, coordinated, so far as practicable, with other related state, regional and local planning activities, and consistent with the protection of the public health, including such factors as population change, urban and metropolitan development, land use planning, water pollution and air pollution control, and the feasibility of regional resource recovery programs.

[See main volume for 7]

(Historical and Statutory Notes

1987 Amendment. Subd. 1. L.1987, c. 618, § 3, substituted "solid and hazardous waste" for "refuse" following "and management of", and inserted "and hazardous" preceding "waste disposal".

Effective Date of Amendment by Implementation. Section 12 of L.1987, c. 618, provided: "This act [enacting sections 27-0103, 27-0105, 27-1102, 27-1109, 27-1111, 27-1112, and 27-1115; and amending this section and sections 27-1101, 27-1103, 27-1105 and 27-1107] shall take effect on the one hundred twentieth day [Dec. 1, 1987] after it shall have become a law, [Aug. 3, 1987] provided however, that effective immediately, all actions and procedures with respect to the proposed adoption, amendment, suspension or repeal of any rule or regulation necessary to the timely implementation of this act are directed and authorized; provided further that section eight [amending section 27-1105] of this act shall take effect immediately [Aug. 3, 1987] and shall be deemed to apply to any proposed facili-
ty which has not received all necessary permits or approvals required for construction and operation under the environmental conservation law prior to the effective date of such section."

Temporary Legislative Commission on Toxic Substances and Hazardous Wastes. L.1993, c. 51, § 1, eff. Apr. 5, 1993, deceased eff. Apr. 1, 1993, provided: "The legislature hereby finds that New York State has initiated a massive clean up of inactive toxic waste dump sites; this program is unique in the nation and is highly complex, requiring a large commitment of public and private resources.

"The legislature further finds that efforts to prevent, in the first instance, the generation of toxic wastes must receive major new emphasis in the development and adoption of new technologies and manufacturing and production processes."

"The legislature further finds that New York's waste exchange program has been successful in directing wastes to a productive use, thereby reducing the volume of
cliff, or hill (see figures 3 and 4). Pending the
determination by the commissioner in a particular case, the
most recent, as of the effective date of this Part,
topographical maps published by the United States geological
survey, department of the interior, having a scale of
1:24,000, shall be rebuttable presumptive evidence of such
10 foot elevation.

(2) Adjacent area shall not include any area lying
landward of an imaginary line drawn between the seaward
edges of two existing (i.e., as of August 20, 1977)
substantial man-made structures which constitute the
landward limit of an adjacent area, as provided in paragraph
(2) of this subdivision, where the area landward
of such imaginary line does not have located thereon any
such man-made structures and where such imaginary line is
less than than 100 feet in length, as measured generally
parallel to the most landward limit of the tidal wetland
involved (see figure 5).

(3) Where land lies within the boundaries of an
adjacent area defined by paragraph (1) or paragraph (3) of
this subdivision but appears to be excluded from an adjacent
area by paragraph (2) or the immediately preceding paragraph
of this subdivision, such land shall be deemed to be part of
an adjacent area (see figure 6). Provided, however, that in
such instances of overlap between the various provisions of
this subdivision the regional permit administrator may in
his discretion determine that said land is not an adjacent
area for the purposes of this Part if factors are present
which in his opinion justify treating such land as
non-adjacent area in light of the provisions in paragraph
(2) or the immediately preceding paragraph of this
subdivision.

(4) The construction of a new substantial man-made
structure described in paragraph (2) of this subdivision
after August 20, 1977 shall not be deemed to limit the extent of an adjacent area.

(5) Adjacent area shall also include any extended adjacent area identified during the moratorium period, as established by section 25-0202 of the act, pursuant to the provisions of 6 NYCRR 660.1(c).
ADJACENT AREAS

(1) Landward boundary of tidal wetland

- - - - -
Adjacent area on upland

| Wetland |

(2) Less than 300 ft.

(3) PROFILE

Adjacent Area

10 ft. elevation

300 ft.

(4) PROFILE

Bluff or cliff

10 ft. elevation

Adjacent Area

300 ft.

(5) Bulkhead

Less than 100 ft.

300 ft.

(6) Bulkhead

Less than 100 ft.

300 ft.
(c) "Applicant" shall mean a person who files an application for a permit issued by the department pursuant to this Part and who is either the owner of the land on which the proposed regulated activity will be located, a contract vendee of such owner, a lessee of such owner, or the person who will actually control and direct the undertaking of the proposed activity.

(d) "Aquaculture" shall mean the cultivation and harvesting of products that naturally are produced in the marine environment, including fish, shellfish, crustaceans and seaweed, and the installation of cribs, racks and in-water structures for cultivating such products, but shall not mean the construction of any building, any filling or dredging or the construction of any water regulating structures.

(e) "Chief administrative officer" shall mean in the case of a city or a village, the mayor thereof, in the case of a town, the supervisor thereof, and, in the case of a county not wholly within a city, the county executive or county legislative body.

(f) "Chief permit administrator" shall mean any employee of the department who is designated by the commissioner to act in such capacity.

(g) "Commercial use" shall mean any use involving the sale, rental or distribution of facilities (including but not limited to tourist accommodations and storage facilities), goods, services or commodities, either retail or wholesale, or the provision of recreational facilities for a fee.

(h) "Commercial use building" shall mean any building in excess of 100 square feet associated with a commercial use.

(i) "Commissioner" shall mean the commissioner of environmental conservation or his duly authorized representative.
(j) "Department" shall mean the department of environmental conservation.

(k) "Dredging" shall mean the excavation or removal of sediment, soil, mud, sand, shells, gravel or other aggregate from any tidal wetland or adjacent area for the direct or indirect purpose of establishing or increasing water depth, increasing the surface or cross-sectional area of a waterway, or obtaining such sediment, soil, mud, sand, gravel, shells or other aggregate. Provided however, such term shall not include acquiring samples of sediment, soil, mud, sand, shells, gravel or other aggregate; acquiring the natural products of tidal wetlands by recreational or commercial fishing, shellfishing, aquaculture, hunting or trapping where otherwise legally permitted; or maintenance dredging as defined in subdivision (r) below.

(l) "In existence" or "existing" shall mean, with respect to any land use and development (except a subdivision), that such land use and development has been lawfully substantially commenced or completed, and with respect to any subdivision of land, or portion thereof, shall mean that such subdivision, or portion, has been lawfully substantially commenced or completed and that substantial expenditures have been made for structures or improvements directly related thereto.

(m) "Industrial use" shall mean any manufacturing, production or assembly of goods or materials and any mineral extraction operation.

(n) "Industrial use building" shall mean any building in excess of 100 square feet associated with an industrial use.

(o) "Inventory map" shall mean a final tidal wetlands boundary map established by the commissioner pursuant to subdivision four of section 25-0201 of the Act depicting the boundary lines of tidal wetlands and filed in the office of
the county clerk in the county in which such wetlands are located.

(p) "Land use and development" or "use" shall mean any construction or other activity which materially changes the use or appearance of land or a structure or the intensity of use of land or a structure, including but not limited to any regulated activity.

(q) "Lawfully" shall mean in full compliance with all applicable statutes, rules and regulations.

(r) "Maintenance dredging" means excavation to restore the depth of underwater lands to elevations which are demonstrated to the reasonable satisfaction of the department to have been lawfully in existence within twenty years preceding the date of the application.

(s) "Mineral extraction" shall mean any extraction (not including the taking of specimens, dredging, or maintenance dredging) from any tidal wetland or adjacent area of stone, coal, salt, ore, talc, granite, petroleum products, sand and gravel or other materials, including the construction, alteration or maintenance of mine roads, mine tailing piles or dumps and mine drainage.

(t) "Multiple family dwelling" shall mean any apartment, town house, condominium or similar building, including the conversion of an existing single family dwelling to a structure designed for occupancy in separate living quarters by more than one family.

(u) "Municipality" shall mean a village, town or city or a county in the case of a county not wholly included within a city.

(v) "Permit" shall mean that form of departmental approval required by this Part for the carrying on of a regulated activity.

(w) "Person" shall mean any individual, public or private corporation, political subdivision, government
agency, department or bureau of the state, bi-state authority, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

(x) "Pollutant" shall mean any form of pollution.

(y) "Pollution" shall mean the presence in the environment of conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant, or marine life, wildlife, or other animal life, or to property, or which unreasonably interfere with the comfortable enjoyment of life and property throughout such tidal wetlands as may be affected thereby.

(z) "Principal building" shall mean any one of the following: single family dwelling; each two units of a multiple family dwelling; any other type of building, including but not limited to any commercial or industrial use building or public or semi-public building, that exceeds 1,000 square feet in area and each additional 1,000 square feet of floor space of such a building in excess of 3,000 square feet. In addition, each commercial or industrial use building or public or semi-public building less than 1,000 square feet in area shall count as one-quarter of a principal building.

(aa) "Project" shall mean any action which may result in direct or indirect physical impact on a tidal wetland, including, but not limited to, any regulated activity.

(bb) "Public or community sewage disposal system" shall mean any sewage disposal system for which the discharge to such system has been authorized by a SPDES permit issued pursuant to Article 17 of the environmental conservation law.

(cc) "Public or semi-public building" shall mean any municipal building, library building, school or college building, hospital building, building used as a place of
worship, museum building, research center building, rehabilitation center building or any similar building.

(dd) "Regional permit administrator" shall mean an employee of the department designated by the commissioner to act in such capacity within the jurisdiction of a regional office of the department.

(ee) (1) "Regulated activity" shall mean:

(i) any form of draining, dredging, excavation or removal, either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate;

(ii) any form of dumping, filling or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish or fill of any kind;

(iii) the erection of any structures or construction of any facilities or roads, the driving of any pilings or placing of any other obstructions, whether or not changing the ebb and flow of the tide;

(iv) any form of pollution;

(v) any portion of a subdivision of land located in any tidal wetland or adjacent area;

(vi) any other new activity within a tidal wetland or on an adjacent area which directly or indirectly may substantially alter or impair the natural condition or function of any tidal wetland.

(2) Regulated activity shall include, but not be limited to, any activity listed in subdivision (b) of section 661.5 of this Part as a generally compatible use - permit required (GCp), presumptively incompatible use - permit required (PIp), incompatible use (I) or permit required (P) for the applicable area. Regulated activity shall not include any activity listed in section 661.5 of this Part as a use not requiring a permit (NPN) for the applicable area.
(ff) "Single family dwelling" shall mean any detached building containing one dwelling unit, including any mobile home.

(gg) "Subdivision of land" or "subdivision" shall mean any division of land into two or more lots, parcels or sites, whether adjoining or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy (including any grading, road construction, installation of utilities or other improvements or any other land use and development preparatory or incidental to any such division) by any person or by any other person controlled by, under common control with or controlling such person or by any group of persons acting in concert as part of a common scheme or plan. Subdivision of land shall not include the lease of land for hunting and fishing and other open space recreation uses and shall not include the division of land by bona fide gift, devise or inheritance by and from natural persons.

(hh) "Tidal wetlands" or "wetlands" shall mean any lands delineated as tidal wetlands on an inventory map and shall comprise the following classifications as delineated on such map:

(1) **coastal fresh marsh** - The tidal wetland zone, designated FM on an inventory map, found primarily in the upper tidal limits of riverine systems where significant fresh water inflow dominates the tidal zone. Species normally associated with this zone include narrow leaved cattail, Typha angustifolia; the tall brackish water cordgrasses, Spartina pectinata and/or S. cynosuroides; and the more typically emergent fresh water species such as arrow arum, Peltandra; pickerel weed, Pontederia; and cutgrass, Leersia.

(2) **intertidal marsh** - The vegetated tidal wetland zone, designated IM on an inventory map, lying generally between average high and low tidal elevation. The
predominant vegetation in this zone is low marsh cordgrass, *Spartina alterniflora*.

(3) **coastal shoals, bars and flats** – The tidal wetland zone, designated SM on an inventory map, that (i) at high tide is covered by water, (ii) at low tide is exposed or is covered by water to a maximum depth of approximately one foot, and (iii) is not vegetated by low marsh cordgrass, *Spartina alterniflora*, except as otherwise determined in a specific case as provided in section 661.16.

(4) **littoral zone** – The tidal wetlands zone, designated LZ on an inventory map, that includes all lands under tidal waters which are not included in any other category, except as otherwise determined in a specific case as provided in section 661.16. Provided, there shall be no littoral zone under waters deeper than six feet at mean low water. Pending determination by the commissioner in a particular case, the most recent, as of the effective date of this Part, national ocean survey maps published by the national ocean survey, national oceanic and atmospheric administration shall be rebuttable presumptive evidence of such six foot depth.

(5) **high marsh or salt meadow** – The normal uppermost tidal wetland zone, designated HM on an inventory map, usually dominated by salt meadow grass, *Spartina patens*; and spike grass, *Distichlis spicata*. This zone is periodically flooded by spring and storm tides and is often vegetated by low vigor, *Spartina alterniflora* and Seaside lavender, *Limonium carolinianum*. Upper limits of this zone often include black grass, *Juncus Gerardi*; chairmaker’s rush, *Scirpus sp*; marsh elder, *Iva frutescens*; and groundsel bush, *Baccharis halimifolia*.

(6) **formerly connected tidal wetlands** – The tidal wetlands zone, designated FC on an inventory map, in which normal tidal flow is restricted by man-made causes. Typical
tidal wetland plant species may exist in such areas although they may be infiltrated with common reed, *Phragmites sp.*

Section 661.5 Use guidelines.

(a) (1) Any type of use designated in this section as a use not requiring a permit for the type of area involved is not subject to the permit requirements of this Part.

(2) Any type of use designated in this section as a generally compatible use for the type of area involved is generally compatible with that type of area and with the preservation, protection and enhancement of the present and potential value of tidal wetlands if undertaken in that area. The compatibility of a particular use depends on the particular location, design and probable impact of the proposed use. Generally compatible uses are subject to the permit requirements of this Part.

(3) Any type of use designated in this section as a presumptively incompatible use for the type of area involved shall be presumed not to be compatible with the type of area involved or with the preservation, protection or enhancement of the present and potential values of tidal wetlands if undertaken in that area. Any such use is subject to the permit requirements of this Part.

(4) Any type of use designated in this section as an incompatible use is not compatible with the type of area involved or with the preservation, protection or enhancement of the present and potential values of tidal wetlands if undertaken in that area. Any such use is subject to the permit requirements of this Part.

(i) Nothing in this subdivision shall be deemed to remove any burden of proof imposed on an applicant by section 661.9 of this Part.

(b) The classification of uses in coastal fresh marshes, intertidal marshes, coastal shoals, bars and flats, high marshes or salt meadows, littoral zones, and adjacent areas, shall be as respectively indicated in the following chart:
<table>
<thead>
<tr>
<th>Area Categories</th>
<th>Use Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>FM—Coastal Fresh Marsh</td>
<td>NPN—Uses Not Requiring a Permit</td>
</tr>
<tr>
<td>IM—Intertidal Marsh</td>
<td>CCP—Generally Compatible Use—Permit Required</td>
</tr>
<tr>
<td>SM—Coastal Shallows, Bars and Flats</td>
<td>Plp—Presumptively Incompatible Use—Permit Required</td>
</tr>
<tr>
<td>LZ—Littoral Zone</td>
<td>I—Incompatible Use</td>
</tr>
<tr>
<td>HM—High Marsh or Salt Meadow</td>
<td>P—Permit Required</td>
</tr>
<tr>
<td>AA—Adjacent Area</td>
<td>NA—Not Applicable</td>
</tr>
</tbody>
</table>

### ABBREVIATIONS

1. The continuance of lawfully existing uses (including but not limited to residential, commercial, industrial, agricultural, recreational and public use) and the continuance of all activities normally and directly associated with any such use, where such continuance does not involve expansion or significant alteration of the existing use. NPN NPN NPN

2. Activities of the department of health or of one of the local governments with respect to public health, when conducted in conformance with section 25-0401 of the Act. NPN NPN NPN

3. Activities subject to the review jurisdiction of the public service commission or the state board on electric generation siting and the environment under article seven or article eight of the public service law, respectively. The standards and restrictions of this Part will be applied by said bodies in determining whether to issue a certificate of environmental compatibility and public need under such articles. NPN NPN NPN

4. Establishing scenic, historic, wildlife and scientific preserves, without any material alteration of the area involved. NPN NPN NPN

5. Boating, hiking, swimming, camping, picnicking and other similar non-motorized forms of outdoor activity. NPN NPN NPN

6. Depositing or removing the natural products of a tidal wetland (or adjacent area) in the process of recreational or commercial fishing, shellfishing, aquaculture, hunting or trapping, including the erection and maintenance of temporary hides or blinds. NPN NPN NPN

7. Conducting educational and research activities not involving any material alteration of the area involved. NPN NPN NPN

8. Establishing walking trails without material alteration of the area involved. NPN NPN NPN

9. Establishing plantings. CCP CCP CCP NPN

10. Establishing recreational moorings. NPN NPN NPN

11. Operation of motor vehicles, including but not limited to air boats and other all-terrain vehicles, for educational or scientific research purposes (provided this item shall not include operation of aircraft or mechanically propelled vehicles, other than air boats). CCP CCP NPN

12. Operation of motor vehicles, including but not limited to air boats and other all-terrain vehicles, for other than educational or scientific purposes (provided this item shall not include the use of aircraft or mechanically propelled vessels other than air boats). Plp CCP NPN

13. Operation of aircraft or mechanically propelled vessels other than air boats. NPN NPN NPN

14. Constructing one open pile catwalk and/or dock not greater than four feet in width for any principal building. CCP CCP CCP

15. Constructing open pile catwalks and docks more than four feet in width; or constructing more than one open pile catwalk and/or dock not greater than four feet in width for any principal building. Plp CCP CCP

16. Installing a floating dock(s) totalling less than 200 square feet in area. CCP NPN NPN

17. Installing a floating dock(s) totalling 200 square feet or more in area. Plp CCP CCP

18. Relocation or rearrangement of floating docks, open pile docks, and similar structures within an established marina or boat basin where such activities involve no disturbance of a tidal wetland other than removing or relocating anchors or pilings. Plp NPN NPN

19. Constructing solid fill docks. Plp Plp CCP

20. Permanent or seasonal mooring of any vessel or structure to be used as a single family dwelling, multiple family dwelling, commercial use building, industrial use building or public or semi-public building. Plp CCP CCP

21. Ordinary maintenance and repair (not involving expansion or substantial restoration, reconstruction or modification) of existing functional structures, facilities, or improved areas, including but not limited to bridges, roads, highways, railroad beds, bulkheads, docks, beaches, piers, wharves, pilings, dolphins, buildings, landscaped or paved areas, laws, and agricultural and mosquito control ditches, — including for example, replacing broken boards in docks, repainting structures, redriving pilings, resurfacing paved areas, installing or removing lawful structures on a seasonal basis. NPN NPN NPN

22. In-kind and in-place replacement of existing functional bulkheads and similar structures. CCP CCP CCP

23. Routine beach regrading and cleaning, both above and below mean high water mark. Plp NPN NPN

24. Substantial restoration or reconstruction, of existing functional structures or facilities of any kind, except for those covered by items 22 and 26, (provided, where the installation of a new structure or facility is listed in this subdivision as NPON or a particular type of area, the substantial restoration or reconstruction of such a structure or facility on that area shall be treated in the same manner as the installation of such a new structure or facility). CCP CCP CCP

25. Expansion or substantial modification of existing functional facilities and structures, except for those actions covered by items 26, 33, 34 or 38 (provided where the installation of a new structure or facility is listed in this subdivision as NPON or a particular type of area, the expansion or substantial modification of such a structure or facility shall be treated in the same manner in that area). Plp CCP CCP

26. Substantial restoration, reconstruction, modification or expansion of existing functional residential structures which are and will continue to be located 75 feet or more (or 30 feet or more in New York City) from the most landward edge of any tidal wetland. NA NA NPN
<table>
<thead>
<tr>
<th>Uses</th>
<th>Area and Use Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FM, IM, HM</td>
</tr>
<tr>
<td>27. Dredging</td>
<td>Plp</td>
</tr>
<tr>
<td>28. Maintenance dredging</td>
<td>CCp</td>
</tr>
<tr>
<td>29. Construction of groins, bulkheads and other shoreline</td>
<td>Plp</td>
</tr>
<tr>
<td>stabilization structures.</td>
<td></td>
</tr>
<tr>
<td>30. Tilling</td>
<td>Plp</td>
</tr>
<tr>
<td>31. Disposal of dredged material.</td>
<td>Plp</td>
</tr>
<tr>
<td>32. Construction of berms.</td>
<td>Plp</td>
</tr>
<tr>
<td>33. Construction or substantial modification of mosquito control</td>
<td>Plp</td>
</tr>
<tr>
<td>ditches.</td>
<td></td>
</tr>
<tr>
<td>34. Construction or substantial modification of drainage ditches</td>
<td>Plp</td>
</tr>
<tr>
<td>for other than agricultural or mosquito control purposes</td>
<td></td>
</tr>
<tr>
<td>35. Cultivating and harvesting naturally occurring agricultural</td>
<td>NPN</td>
</tr>
<tr>
<td>and horticultural products, other than activities covered by items</td>
<td></td>
</tr>
<tr>
<td>36. Manual harvesting of salt hay.</td>
<td>NPN</td>
</tr>
<tr>
<td>37. Harvesting of salt hay by mechanical equipment.</td>
<td>CCp</td>
</tr>
<tr>
<td>38. Substantial modification of existing agricultural ditches.</td>
<td>CCp</td>
</tr>
<tr>
<td>40. Connection of electric, gas, sewer, water, telephone or other</td>
<td>CCp</td>
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<tr>
<td>utilities from an existing distribution utility facility to an</td>
<td></td>
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<tr>
<td>existing structure.</td>
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<tr>
<td>41. Installation of underground electric, sewer, water, or other</td>
<td>CCp</td>
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<tr>
<td>utilities where such installation will</td>
<td></td>
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<tr>
<td>involve restoration of existing ground elevation, other than</td>
<td></td>
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<tr>
<td>activities covered by item 40.</td>
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<tr>
<td>42. Installation of electric, gas, sewer, water or other utilities,</td>
<td>Plp</td>
</tr>
<tr>
<td>other than activities covered by items</td>
<td></td>
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<tr>
<td>43. Installation of a dry well, retention basin, filter, open swale</td>
<td>Plp</td>
</tr>
<tr>
<td>or pond.</td>
<td></td>
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<tr>
<td>44. New discharge of any pollutant requiring a SPDES permit</td>
<td>P</td>
</tr>
<tr>
<td>pursuant to the environmental conservation law and complying with</td>
<td></td>
</tr>
<tr>
<td>the requirements for the issuance of such a permit.</td>
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<tr>
<td>45. Installation of a sewage disposal septic tank, cesspool,</td>
<td>Plp</td>
</tr>
<tr>
<td>leach field or seepage pit and discharge of any pollutant into</td>
<td></td>
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<tr>
<td>such facilities not requiring a SPDES permit pursuant to article 17</td>
<td></td>
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<tr>
<td>of the environmental conservation law.</td>
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<tr>
<td>46. Construction of single family dwellings and multiple family</td>
<td>Plp</td>
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<tr>
<td>dwellings.</td>
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<tr>
<td>47. Construction of commercial and industrial use facilities</td>
<td>Plp</td>
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<td>requiring water access and public and semi-public buildings</td>
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<tr>
<td>requiring water access; and undertaking commercial and</td>
<td></td>
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<tr>
<td>industrial use activities requiring water access.</td>
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<tr>
<td>48. Construction of commercial and industrial use facilities not</td>
<td>Plp</td>
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<tr>
<td>requiring water access and public or semi-public buildings not</td>
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<tr>
<td>requiring water access; and undertaking commercial and</td>
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<tr>
<td>industrial use activities not requiring water access.</td>
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<tr>
<td>49. Construction of accessory structures or facilities for any use</td>
<td>Plp</td>
</tr>
<tr>
<td>listed in items 46 and 47, other than accessory structures or</td>
<td></td>
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<tr>
<td>facilities covered by item 50 or covered specifically in this list.</td>
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<tr>
<td>50. Construction of accessory structures or facilities for existing</td>
<td>NA</td>
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<tr>
<td>residential structures where such accessory structures or</td>
<td></td>
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<tr>
<td>facilities are and will continue to be in full compliance with the</td>
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<td>development restrictions of this Part.</td>
<td></td>
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<tr>
<td>51. Construction of accessory structure or facilities for any use</td>
<td>Plp</td>
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<tr>
<td>listed in item 48.</td>
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<td>52. Disposal of any chemical, petrochemical or other toxic</td>
<td>I</td>
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<td>material, including any pesticide.</td>
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<tr>
<td>53. The use or application of any chemical, petrochemical or other</td>
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<td>toxic material, including any pesticide, where not authorized by</td>
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<td>law.</td>
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<td>54. The storage of any chemical, petrochemical or other toxic</td>
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<td>material, including any pesticide, for wholesale purposes or for</td>
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<td>purposes of distribution to persons other than the ultimate user of</td>
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<td>such materials.</td>
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<td>55. The use or application of any chemical, petrochemical or other</td>
<td>NPN</td>
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<td>toxic material, including any pesticide, where otherwise authorized</td>
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<tr>
<td>by law, or the storage of any such material for purposes other than</td>
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<td>wholesaling or distribution to persons other than the ultimate users</td>
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<td>of such materials.</td>
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</tr>
<tr>
<td>56. Disposal of solid wastes as defined in section 27-0501 of the</td>
<td>I</td>
</tr>
<tr>
<td>environmental conservation law.</td>
<td></td>
</tr>
<tr>
<td>57. Any type of regulated activity not specifically listed in this</td>
<td>P</td>
</tr>
<tr>
<td>chart and any subdivision of land.</td>
<td></td>
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</tbody>
</table>
(c) Formerly connected tidal wetlands. For formerly connected tidal wetlands, uses not requiring a permit approval, generally compatible uses, presumptively incompatible uses and incompatible uses shall be deemed to be the same respectively as the type of wetland which a particular formerly connected tidal wetland most closely resembles.

(d) Uses not specifically listed in subdivision (b). For any regulated activity covered by item 57 in subdivision (b) of this section, the regional permit administrator shall, on a case-by-case basis, classify such cases as GCp, PIP, or I under subdivision (b), utilizing the listed items as a guideline for such classification.

Section 661.6 Development restrictions.

(a) No person shall undertake any new regulated activity on any tidal wetland or on any adjacent area except in compliance with the following development restrictions:

(1) The minimum setback of all principal buildings and all other structures that are in excess of 100 square feet (other than boardwalks, shoreline promenades, docks, bulkheads, piers, wharves, pilings, dolphins, or boathouses and structures typically located on docks, piers or wharves) shall be seventy-five feet landward from the most landward edge of any tidal wetland. Provided, however, within the boundaries of the city of New York the minimum setback required by this paragraph shall be thirty feet. Further provided, where numerous and substantially all structures which are (i) of the type proposed by the applicant, (ii) lawfully existing on August 20, 1977 and (iii) within 500 feet of the subject property, are located closer to the subject tidal wetland than the minimum setback required by this
paragraph, placement of a structure as close as the average setback of these existing structures from the subject tidal wetland shall fulfill the requirements of this paragraph.

(2) The minimum setback of any on-site sewage disposal septic tank, cesspool, leach field or seepage pit shall be 100 feet landward from the most landward edge of any tidal wetland.

(3) For any on-site sewage disposal cesspool, septic tank, leach field or seepage pit there shall be a minimum of two feet of soil between the bottom of such pool, tank, field or pit and the seasonal high ground water level, rock, hardpan, or other impermeable materials.

(4) Not more than twenty percent of the adjacent area, as such term is defined in this Part, on any lot shall be covered by existing and new structures and other impervious surfaces. Provided, however, this paragraph shall not be deemed to prohibit the coverage of 3,000 square feet or less of adjacent area on any individual lot lawfully existing on August 20, 1977 by existing and new structures and other impervious surfaces.

(5) The minimum lot area for any principal building constructed within the area regulated by this Part, which minimum lot area shall include any wetland portion and any adjacent area portion of such lot, shall be as follows:

(i) 20,000 square feet where such principal building will be served by a public or community sewage disposal system;

(ii) 40,000 square feet where such principal building will not be served by a public or community sewage disposal system.

Notwithstanding any other provision of this Part, the requirements of this paragraph for buildings to be served
by a public or community sewage disposal system shall not be applicable within the boundaries of the city of New York.

(6) Notwithstanding the minimum lot size provisions contained in paragraph five of this section, the clustering of principal buildings utilized for residential purposes, including multiple family dwellings, shall be permitted at the request of an applicant for a permit under this Part in order to encourage the maintenance of undeveloped areas in or adjoining tidal wetlands. Provided, such clustering procedure shall in no case result in more principal buildings on the area regulated by this Part than would be permitted by the application of the minimum lot size criteria in paragraph five of this subdivision.

(7) The minimum setback of all hard surface driveways, roads and parking lots and similar impervious surfaces exceeding 500 square feet in size on the property involved, overhead utility line poles and railroads shall be seventy-five feet from any tidal wetland. Provided, within the boundaries of the city of New York the minimum setback required by this paragraph shall be thirty feet. Further provided, this provision shall not be applicable to any portion of a regulated activity that involves a crossing or direct access to a tidal wetland on the subject property.

(8) Any substantial increase in surface water run-off to tidal waters classified SA, as defined in 6 NYCRR Section 701.5, or to any other surface waters which are within 1,000 feet of any SA waters and are adjacent or tributary to such SA waters, shall be prevented from directly running into any such waters by the utilization of sufficient runoff control measures, including but not limited to, the installation of dry wells, retention basins, filters, open swales or ponds. Any such dry well, retention basin, filter, open swale or pond to be constructed in order to prevent
direct surface water run-off to said SA and other surface waters shall be designed and constructed to handle the water run-off produced on the project site by a five-year storm.

(b) The minimum lot size or average lot size provisions contained in paragraphs five and six of subdivision (a) of this section shall not be applicable to any vacant lot in a subdivision lawfully in existence on August 20, 1977, or in a subdivision which received all required state, regional and local approvals prior to August 20, 1977, for the purposes of placing one single family dwelling on such lot. Furthermore, such provisions shall not be applicable to any single vacant lot which was on record on August 20, 1977 for the purpose of placing one single family dwelling thereon, provided such lot does not adjoin other lots in the same ownership, except that all such lots in the same ownership may be treated together as one lot.

Section 661.7 Uses not requiring a permit.

(a) Any use, where otherwise legally permitted, listed in section 661.5 of this Part as a use not requiring a permit (NPN) for a particular tidal wetland zone or for an adjacent area may be undertaken in such tidal wetland zone or adjacent area without a permit under this Part, provided such activity does not involve a regulated activity.

(b) Any alteration of a tidal wetland or adjacent area with respect to which a moratorium permit has been issued pursuant to 6 NYCRR Part 660, or with respect to which a permit pursuant to 6 NYCRR Part 608 shall have been issued prior to September 1, 1973, may be undertaken or continued pursuant to the terms of such permit without a permit under this Part; provided, however, that any such alteration
that is defined in this Part as a regulated activity shall be treated for all purposes as a new activity under the provisions of this Part as of August 20, 1977, if such activity has not been substantially commenced as of that date. The department may extend the exemption herein provided for an alteration covered by a moratorium permit or Part 608 permit beyond August 20, 1977, if in the department's judgment the pertinent natural or man-made conditions which existed at and adjacent to the site at the time such permit was issued have not substantially changed and the site is still suitable for the permitted activity. Notwithstanding the foregoing, no alteration of a tidal wetland zone or adjacent area authorized by a permit pursuant to Part 660 or Part 608 that is treated as an incompatible use for such zone or area under section 661.5 of this Part shall be undertaken or continued in that zone or area after August 20, 1977, except in compliance with the provisions of this Part.

Section 661.8 Permit requirements.

No person shall conduct a new regulated activity on or after August 20, 1977 on any tidal wetland or any adjacent area unless such person has first obtained a permit pursuant to this Part. Regulated activities for each type of tidal wetland zone and for adjacent areas include, but are not limited to, all types of uses specifically listed in section 661.5 of this Part as generally compatible use - permit required (GCp), presumptively incompatible use (PIp), and incompatible use (I) for the type of area involved.

Section 661.9 Standards for issuance of permits.

(a) Burden of proof. The applicant shall have the
burden of establishing that the applicable standards of this section will be met.

(b) Standards for permits on any tidal wetland.

(1) Overall standards. The department shall issue a permit for a proposed regulated activity on any tidal wetland only if it is determined that the proposed activity:

(i) is compatible with the policy of the Act to preserve and protect tidal wetlands and to prevent their despoliation and destruction in that such regulated activity will not have an undue adverse impact on the present or potential value of the affected tidal wetland area or adjoining or nearby tidal wetland areas for marine food production, wildlife habitat, flood and hurricane and storm control, cleansing ecosystems, absorption of silt and organic material, recreation, education, research, or open space and aesthetic appreciation, as more particularly set forth in the findings in section 661.2 of this Part, taking into account the social and economic benefits which may be derived from the proposed activity;

(ii) is compatible with the public health and welfare;

(iii) is reasonable and necessary, taking into account such factors as reasonable alternatives to the proposed regulated activity and the degree to which the activity requires water access or is water dependent;

(iv) complies with the development restrictions contained in section 661.6 of this Part; and

(v) complies with the use guidelines contained in section 661.5 of this Part. If a proposed regulated activity is a presumptively incompatible use under such section, there shall be a presumption that the proposed regulated activity may not be undertaken in the subject area because it is not compatible with the area involved or with the preservation, protection or enhancement of the present or
potential values of tidal wetlands if undertaken in that area. The applicant shall have the burden of overcoming such presumption and demonstrating that the proposed activity will be compatible with the area involved and with the preservation, protection and enhancement of the present and potential values of tidal wetlands. If a use is a type of use listed as an incompatible use in the use guidelines for the area involved, it shall not be undertaken on that area.

(2) Formerly connected tidal wetland. In addition to the standards contained in paragraph one of this subdivision, the department shall issue a permit for a regulated activity on a formerly connected tidal wetland only if it is determined that the proposed activity will be consistent with the possible future restoration of any portion of the tidal wetland adjoining or surrounding the project site to its original condition.

(c) Standards for permits on adjacent areas. The department shall issue a permit for a proposed regulated activity on an adjacent area only if it is determined that the proposed regulated activity:

(1) is compatible with the public health and welfare;

(2) complies with the development restrictions contained in section 661.6 of this Part;

(3) will not have an undue adverse impact on the present or potential value of any adjacent or nearby tidal wetland for marine food production, wildlife habitat, flood and hurricane and storm control, cleansing ecosystems, absorption of silt and organic material, recreation, education, research or open space and aesthetic appreciation, taking into account the social and economic benefits which may be derived from the proposed activity; and

(4) complies with the use guidelines contained in section 661.5 of this Part. If a proposed activity is a
presumptively incompatible use for adjacent areas under such section, there shall be a presumption that the proposed activity may not be undertaken on the adjacent area because it is not compatible with the preservation, protection, or enhancement of the present and potential values of tidal wetlands if undertaken in that area. The applicant shall have the burden of overcoming such presumption and demonstrating that the proposed regulated activity will be compatible with the preservation, protection and enhancement of the present and potential values of tidal wetlands. If a use is a type of use listed as an incompatible use, it shall not be undertaken on such adjacent area.

(d) Notice of acquisition. Written notice by the department to an applicant proposing a regulated activity, or written notice to the department from the state or any agency or subdivision thereof, that the state or any such agency or subdivision is in the process of acquiring the tidal wetland or adjacent area on which the proposed regulated activity would be located by negotiation or condemnation shall be sufficient basis for denial of a permit for such regulated activity. Such notice may be provided at any time prior to the department’s decision to issue or deny a permit for a regulated activity.

(e) In determining whether the standards contained in subdivisions (b) and (c) of this section will be fulfilled by a proposed regulated activity, the department may in its discretion consider any proposal made by the applicant in his application to enhance the existing values served by a wetland on or in the vicinity of the site of the proposed regulated activity or to create and sustain new wetland values in or in the vicinity of the site of the proposed regulated activity, provided such proposal relates to an area that is or will be regulated under this Part.
(f) In any case in which an activity is specified as a use not requiring a permit (NPN) under section 661.5 of this Part but requires a permit pursuant to title 5 of article 15 of the environmental conservation law, the standards of this Part will be applied in the department’s review of such activity under article 15.

Section 661.10 Conditions to a permit.

(a) Any permit issued pursuant to this Part may be issued with conditions. Such conditions may be attached as are necessary to assure the preservation and protection of affected tidal wetlands and to assure compliance with the policy and provisions of the Act and the standards and provisions of this Part.

(b) Every permit issued pursuant to this Part shall contain the following conditions:

(1) the department shall have the right to inspect the project from time to time;

(2) the permit shall expire on a date certain; and

(3) the permit holder shall notify the regional permit administrator of the date on which project construction is to begin, at least five days in advance of such date.

(c) Any permit issued pursuant to this Part may authorize the undertaking of the authorized regulated activity on a periodic basis, as specified in the permit, over a period of time not exceeding ten years from the date of issuance of the permit. Such permit shall contain a condition requiring the permittee to notify the regional permit administrator at least fourteen days in advance of each occasion upon which the permitted activity will be conducted.

Section 661.11 Existing land use and development.

(a) No provision of this Part shall be deemed to
prohibit or require the removal of any land use and
development, including any structure, lawfully in existence on
August 20, 1977.

(b) The development restrictions in section 661.6 shall
not be deemed to require a variance for the repair,
restoration or rebuilding, in whole or in part, of any
structure or facility lawfully in existence, although such
repair, restoration or rebuilding activities may be subject to
the permit requirements of this Part; provided, no such
repair, restoration, or rebuilding shall increase any existing
non-compliance with the provisions of that section.

Section 661.12 Variances.

(a) Where there are practical difficulties in the way of
carrying out any of the provisions of section 661.6 of
this Part or where in the department's judgment the strict
application of the provisions of section 661.6 would be
contrary to the purposes of this Part, the department shall
have authority in connection with its review of an application
for a permit under this Part to vary or modify the application
of any provisions in such a manner that the spirit and intent
of the pertinent provisions shall be observed, that public
safety and welfare are secured and substantial justice done
and that action pursuant to the variance will not have an
undue adverse impact on the present or potential value of any
tidal wetland for marine food production, wildlife habitat,
flood and hurricane and storm control, cleansing ecosystems,
absorption of silt and organic material, recreation,
education, research, or open space and aesthetic appreciation.
Any person wishing to make application for a variance shall do
so in writing in conjunction with his or her application for a
permit under this Part and shall specify the proposed
variance, which elements of section 661.6 Development
Restrictions, relief is sought from, the minimum relief that is necessary, the practical difficulties claimed, a discussion of alternate site possibilities, a discussion of change of project objective possibilities and a discussion of environmental impact reduction and/or mitigation measures to be employed. The burden of showing that a variance to such provisions should be granted shall rest entirely on the applicant.

(b) The regional permit administrator may on his own motion treat an application for a permit under this Part as a request for a variance and may request from the applicant the information required by this section.

Section 661.13 Application for a permit.

(a) (1) An application for a permit shall be filed by the applicant with the regional permit administrator on a form prescribed by the department. Such application shall set forth the purpose, character and extent of the proposed regulated activity and shall set forth with particularity the reasons the applicant seeks a permit. The application shall include a detailed description of the regulated activity; a map showing the area of tidal wetland or adjacent area directly affected, with the location of the proposed regulated activity thereon; a statement as to feasible alternatives to the proposed activity on a site that is not a tidal wetland or adjacent area or by means that do not affect tidal wetlands; a statement identifying the owner of the subject property and, where applicable, written permission of said owner for the applicant to seek permission for, and to carry out, the proposed activity; a description of the planned use of the subject property once the proposed regulated activity is completed; a plan at 1" = 50' scale with a two foot contour interval and a representation of both the tidal wetlands landward boundary and the mean high water line; a statement of the methods to be employed to eliminate or mitigate
environmental impacts; clearly labeled photographs of the site; a variance request when applicable; and such additional information as the regional permit administrator deems sufficient to enable the department to make the findings and determinations required under this Part.

(2) The application shall be accompanied by a list of the names of the owners of record of lands adjacent to the tidal wetland or adjacent area upon which the regulated activity is to be undertaken and the names of known claimants of water rights, of whom the applicant has notice, which relate to any land within, or within three hundred feet of the boundary of, the property on which the proposed regulated activity is located.

(3) An application shall not be deemed to be received until the regional permit administrator determines that all such information, including any additional information requested, has been supplied in a complete and satisfactory form.

(4) The department shall mail a copy of the application to the chief administrative officer, or his designee, of each municipality in which the affected tidal wetland or adjacent area, or portion thereof, is located.

(5) The department shall make the application, including all documents and maps associated with it, available for public inspection at the regional office within whose jurisdiction the affected tidal wetland or adjacent area is located and at such other locations as may be designated in the notice of hearing. The department may require the applicant to provide a reasonable number of copies of the application, including associated documents and maps, for this purpose.

(b) The regional permit administrator may, or on request of the applicant, treat the application as a request for a determination that the proposed project is an action which does not require a permit under this Part.
Section 661.14 Duration of permits.

(a) The date of expiration of any permit issued pursuant to this Part shall be not more than ten years from the date such permit was issued.

(b) The expiration date of any permit issued pursuant to this Part may be extended by the chief permit administrator for good cause shown upon a written request to him filed prior to the expiration date. Any such extension may not exceed one year in duration.

(c) In accordance with section 661.10(c) any permit issued pursuant to this Part may authorize the undertaking of a regulated activity on a periodic basis, but the duration of any such permit shall not exceed the period of time allowed by subdivisions (a) and (b) of this section.

Section 661.15 Bond.

In any case the commissioner may, upon written findings and reasons, require that prior to commencement of work under any permit issued pursuant to this Part the permittee shall post a bond with the department in an amount determined by the commissioner, conditioned upon the faithful compliance with the terms of such permit and for the indemnification of the state for restoration costs resulting from failure to so comply. Such a bond shall be issued by a corporate surety authorized to do business in the state of New York and shall be in favor of the department. Such bond shall remain in effect until the department certifies that the work has been completed in compliance with the terms of the permit or the bond is released by the department.

Section 661.16 Determination that lands do not involve littoral zone or coastal shoals, bars or flats.

The commissioner may amend an inventory map pursuant to the procedures set forth in section 661.17 where he
determines that certain lands under tidal waters, while possessing the physical characteristics of littoral zone or coastal shoals, bars or flats, are not littoral zone or coastal shoals, bars or flats or any other type of tidal wetlands because such lands do not function biologically as tidal wetlands, exhibit little primary productivity and are populated by few benthic organisms, due to such factors as pollution, sedimentation or other physical disturbances. The commissioner may take such action on his own motion or at the request of any person. Such a request shall set forth the specific boundaries of the proposed amendment and the necessary information on which a decision on the request may be made.

Section 661.17 Inventory map: maintenance and amendments.

(a) The commissioner shall supervise the maintenance of each inventory map, and all such maps shall be available at the appropriate regional office of the department for public inspection and examination.

(b) Upon request by any person or upon his own initiative, the commissioner may amend any inventory map or maps under the following circumstances and in the following manner:

(1) after public hearing, any amendment to add a new tidal wetland to an inventory map, to significantly expand or detract from the boundaries of a tidal wetland shown on such map, to delete a wetland from such map or to alter the classification of a wetland shown on such map as may be necessary to conform such maps to actual on-site conditions;

(2) notwithstanding paragraph one of this subdivision, any amendment as may be necessary to reflect such natural changes as have occurred since the effective date of the inventory map, as originally established or as
amended, through erosion, accretion or otherwise or to reflect such other changes as have occurred since such effective date as a result of granting permits under this Part; any amendment to clarify the boundaries of any tidal wetland shown on an inventory map, to correct any minor errors on the map or to affect other technical changes on the map; or any amendment to affect minor changes pursuant to section 661.16, without a public hearing unless the commissioner determines that a public hearing is appropriate;

(c) Any public hearing held pursuant to subdivision (b) of this section shall provide any person an opportunity to support, oppose or make a statement of interest in the proposed amendment of an inventory map and shall be held in the following manner:

(1) The department shall prepare a proposed amended inventory map for each area in which the commissioner is considering amending an inventory map. Such map shall be made available for public inspection at the appropriate regional offices of the department at the time the hearing notice provided for in paragraph two below is given.

(2) The commissioner shall give notice of such hearing to each owner of record of all lands designated on the proposed amended inventory map as a new tidal wetland which may be added or a tidal wetland whose boundaries may be amended and also to the chief administrative officer, or his designee, of each municipality within whose boundary any such wetland or portion thereof is located, by mail not less than thirty days prior to the date set for such hearing. The commissioner shall also cause notice of such hearing to be published at least once, not more than thirty days nor fewer than ten days before the date set for such hearing, in at least two newspapers having a general circulation in the area where such wetland is located.

(d) After considering any facts which may be deemed
pertinent and the testimony given at the public hearing, if a hearing is held, and after considering the rights of affected property owners and the policy and purposes of the Act, the commissioner shall establish by order the final bounds of each tidal wetland that will be added or whose boundary will be amended on an inventory map. A copy of the order, together with a copy of the inventory map depicting such final boundary lines, shall be filed in the office of the clerk of the county in which is located all or any portion of such wetland. The commissioner shall simultaneously give notice of such order to each owner of all lands designated in the order as a tidal wetland which has been added or whose boundary has been amended by mailing a copy of such order to such owner. The commissioner shall also simultaneously give notice of such order by mail to the chief administrative officer, or his designee, of each municipality within whose boundary any such wetland or portion thereof is located. The commissioner shall also cause a notice of such order to be published in at least two newspapers having a general circulation in the area where any such wetland is located.

(e) All actions taken pursuant to this section shall conform to the requirements of section 202 of the state administrative procedure act.

Section 661.18 Measurement.
Any measurement required in this Part shall be measured horizontally unless otherwise specified.

Section 661.19 Tax assessment.
As soon as practicable following August 20, 1977, the department shall file with the tax assessment office of each municipality in which any tidal wetlands are located a copy of the provisions of this Part, a copy of each inventory map
that includes any area within the boundaries of such municipality, and a copy of the following notice:

"Section 25-0302(2) of Article 25 of the Environmental Conservation Law, which article is known as the Tidal Wetlands Act, requires that the placing of any tidal wetlands under a land use regulation which restricts its use be deemed a limitation on the use of such wetlands for the purpose of property tax valuation in the same manner as if an easement or right had been acquired under the general municipal law and that assessment be based on present use under the restricting regulation. The enclosed land use regulations were promulgated by the department of environmental conservation pursuant to section 25-0302(1) of the Tidal Wetlands Act."

As soon as practicable following any amendment to the provisions of this Part, the department shall file a copy of such amended provisions with the tax assessment office in each municipality in which any tidal wetlands are located. As soon as practicable following any amendment to an inventory map, the department shall file a copy of such amended map with the tax assessment office of each municipality within whose boundaries the amended map applies.

Section 661.20 Jurisdictional inquiries.

(a) If a person is uncertain whether a proposed activity is subject to the provisions of this Part, he or she may request the regional permit administrator to make a determination as to whether the permit provisions of this Part apply to such activity.

(b) If a person desires the determination requested in (a) to be made in writing, such request shall be made in writing and shall contain all information deemed necessary
and appropriate by the regional permit administrator to make such determination. Within fifteen days after receipt by said administrator of such written request and all such information, he shall notify such person by letter whether his activity is subject to the permit provisions of this Part.

Section 661.21 Judicial review.

Any person aggrieved by the issuance, denial, suspension, or revocation of a permit may within thirty days from the date of the commissioner’s order seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetlands or adjacent areas affected are located.
TIDAL WETLANDS PROGRAM

APPLICANTS' GUIDE

MARIO M. CUOMO, Governor

THOMAS C. JORLING, Commissioner
TIDAL WETLANDS PROGRAM

ARTICLE 25, ENVIRONMENTAL CONSERVATION LAW IMPLEMENTING REGULATIONS—6NYCRR PART 66:

INTRODUCTION

Tidal wetlands line much of the salt water shore, bays, inlets, canals, and estuaries of Long Island, New York City, and Westchester County. They also line the Hudson River in Westchester and Rockland Counties upstream to the salt line and are regulated along the Hudson from its mouth to the Tappan Zee Bridge. These ecological areas are valuable in many ways including marine food production; wildlife habitat; flood, hurricane, and storm control; recreation; cleansing of ecosystems; absorption of silt and organic material; education and research opportunities; and aesthetic values. Adjacent areas may share some of these values and, in addition, provide a valuable buffer for the wetlands.

Certain kinds of human activities can adversely affect, and in some cases destroy, the delicate ecological balance of these important areas. The policy of New York State, as set forth in the Tidal Wetlands Act, is to preserve and protect these wetlands. To implement this policy, the New York State Department of Environmental Conservation (DEC) administers the Tidal Wetlands Regulatory Program which is designed to prevent the despoliation and destruction of tidal wetlands by establishing and enforcing regulations that:

1. Preserve, protect, and enhance the present and potential values of tidal wetlands,

2. Protect the public health and welfare, and

3. Give due consideration to the reasonable economic and social development of the state.

WETLANDS ARE MAPPED

Official tidal wetlands maps showing the exact locations of New York's regulated wetlands are on file in the County Clerks' Offices of Nassau, Suffolk, Bronx, Kings, New York, Queens, Richmond, Rockland, and Westchester.

10/01/91
Counties, and are also available at local assessing agencies in these areas and at
DEC regional offices in Regions 1, 2, and 3.

Regulation is based on the Tidal Wetlands Land Use Regulations (6NYCRR
Part 661). The wetland categories used in these regulations are identified by
the types of vegetation present. The categories of wetlands and the restrictions placed
on activities in and around them are defined in detail in Part 661.

REGULATED ACTIVITIES

The Tidal Wetlands Act provides for a permit program to regulate activities
to be carried out in tidal wetlands and their adjacent areas. In general, tidal wetlands
consist of all the tidal waters of the state and the tidal marshes, flats, and shoreline
areas. The adjacent areas extend up to 300 feet inland from the wetland bound-
dary (up to 150 feet inland within New York City). A permit is required from DEC
for almost any activity which will alter wetlands or the adjacent areas.

Some of the most common activities which do require permits include:

1. CONSTRUCTION, RECONSTRUCTION, and/or EXPANSION of
structures such as:
   - Residences and condominiums
   - Accessory structures (tennis courts, swimming pools, decks,
     garages, etc.)
   - Boat ramps and boat slips
   - Commercial and/or industrial buildings
   - Dams, dikes, weirs
   - Docks, piers, wharves, catwalks, boardwalks
   - Groins, jetties, and breakwaters
   - Bulkheads, sea walls, retaining walls, rip-rap, and gabions
   - Septic systems
   - Roads, driveways, parking lots, bridges, drainage structures

DO YOU NEED A PERMIT?
2. MOVEMENT OF EARTH MATERIAL such as:
   Filling, dredge spoil placement, dune building, beach nourishment,
   clearing and/or clearcutting (removal of vegetation by bulldozer or
   other heavy motorized equipment).
   Dredging.
   Excavating.
   Grading.

3. SUBDIVIDING OF LAND.

DO NOT START A PROJECT BEFORE OBTAINING A PERMIT!

If activities which are regulated under the Tidal Wetlands Act are begun before
a permit is obtained, the person undertaking these activities and any contractors
working for that person may be subject to enforcement action by the DEC. Such
action may include:
   1. Civil or criminal court action, or both,
   2. Fines, or
   3. An order to remove structures or materials or perform other remedial
      action, or both a fine and an order.

EXEMPT ACTIVITIES

Continuation of lawfully existing uses which do not involve the alteration of
land, alteration of wetlands, or changes to structures in or adjacent to the tidal
wetland DO NOT require tidal wetlands permits.

However, you must be careful not to take too broad an interpretation of this
category. For example, replacing broken boards on a functional dock does not re-
quire a permit, but changing the length, width, or position of the dock does re-
quire a permit. Also, work on a structure that has deteriorated to the point where
it is no longer functional is NOT exempt from permit requirements. If you are in
doubt about whether an activity requires a permit or not, contact the Division of
Regulatory Affairs at the appropriate DEC regional office BEFORE beginning design,
engineering, or actual on-site work.

IS YOUR PROJECT EXEMPT?
Pre-Application Assistance

Applicants often find a pre-application conference to be a helpful forum to explain a proposed project to DEC. It is highly recommended for complex, multi-residential, commercial or industrial projects. This meeting allows you to obtain at least preliminary answers to questions about wetland and adjacent area boundaries, application procedures, and standards for permit issuance. A pre-application conference can be scheduled by contacting the appropriate Regulatory Affairs regional office of DEC. It is often best to keep initial plans flexible until the project design has been reviewed in relation to the standards of the regulatory agencies involved. On occasion, minor changes in layout can avoid disagreements and delays.

Multiple mailings, multiple reviews, and misunderstandings can be eliminated by seeking clarifications from DEC staff at the planning stages of the project, and by submitting accurate, complete information.

Part 661 regulations detail the types of use and development that are usually permissible in different types of wetlands, and in adjacent areas (See Section 661.5 Use Guidelines). Whenever possible, projects should be planned to conform to these guidelines.

For areas where development is permitted, the regulations include additional requirements for minimum lot sizes; runoff restrictions; setback requirements for buildings, septic systems, roadways, accessory structures, etc. (See Section 661.6 Development Restrictions). These restrictions should be followed whenever property conditions permit in order to ensure prompt approval.

Variances to the development restrictions can be granted only if the applicant demonstrates that:

1. Practical difficulties exist, which are not of the applicant’s own making, which prevent compliance with the development restrictions. (Examples of practical difficulty include pre-existing lot size or geometry which prevents meeting requirements, or conflicting provisions of local building or zoning codes.)
2. The variance sought is the minimum needed.
3. Granting the variance will not result in an undue adverse impact on the affected wetland.

Projects that require variances or that propose development which is inconsistent with the Development Restrictions of Section 661.6 are likely to require significant modification or mitigation or both in order to be approved.

**Application Requirements**

To be complete, an application must include:

1. The application form (at least 3 copies) including a detailed description of the regulated activity.

2. A description of the purpose of the proposed regulated activity.

3. A location map showing the precise location of the project by reference to known landmarks such as streets and public buildings. (A photocopy of a USGS topographic map or equivalent will usually be sufficient.) If the project site is a vacant lot, provide the number of the nearest utility pole, distance to the nearest intersection, or location of another identifying landmark (at least 3 copies). It is also necessary to provide the county, city, or village tax lot identification numbers for the project site. A photocopy of the tax bill will be sufficient for this purpose.

4. A list of the names of the owners-of-record of lands adjacent to the tidal wetland or adjacent area where the project is located and, in some cases, a list of the names of known claimants of water rights for the project property or for property within 300 feet of the project property.

5. Project plans at a scale of 1”=50’ or larger, including topography at a 2 foot contour interval. The drawing must show existing conditions and the work to be performed and include all pertinent dimensions and elevations. This plan must also show the mean high water line and the tidal wetlands boundary. (See the plan illustrations shown at the back of this guide.) The wetlands boundary may be on the plans as it was delineated at the site by an environmental consultant, or by DEC staff, or shown as an accurate representation of the tidal wetland boundary as taken from the official tidal wetland maps. It is also necessary to provide a cross-sectional drawing through any proposed modification of beach or lands under water. If a septic system is part of the proposed project, the plan must show the location of the system including the test hole location and data and the elevation of the system above seasonal high groundwater. (4 copies.)

6. Recent clear photographs of the project site and wetlands area mounted on a separate sheet labeled with the view shown and the date of the photographs.

7. The appropriate application fee, payable to “NYSDEC” by check or money order only. (See the fee schedule on page 8.)
8. Information necessary for the requirements of the State Environmental Quality Review Act (SEQR) and the State Historic Preservation Act (SHPA) (See page 10 regarding SEQR and SHPA) which will include:
   a. A completed Environmental Assessment Form (EAF) (Part I), and in certain cases, a Draft Environmental Impact Statement (DEIS)
   b. A completed Structural Archeological Assessment Form (SAAF) (if required), and in certain cases, a cultural resource survey.

9. If the applicant is not the owner of the land for which the application is submitted, written permission of the landowner for the applicant to file the application and undertake the proposed activity. If the application is for state-owned underwater lands, written notice that the applicant is seeking the appropriate grant, easement or lease of such lands from the New York State Office of General Services is sufficient.

10. Other information which the DEC staff may determine is necessary to adequately review and evaluate the application, such as engineering or supplemental reports, justifying this proposal over alternative non-wetland sites and alternative layouts or designs which might avoid or minimize impacts to wetlands.

11. For projects which require a variance, or which seek approval of uses designated in Section 661.5 as PIp (Presumably Incompatible—permit required), I (Incompatible), or P (Permit required), a statement that identifies feasible alternatives to the proposed project including:
   a. Alternatives located on a site that is not a tidal wetland or adjacent area;
   b. Alternatives that accomplish the project's objectives by means that do not adversely affect tidal wetlands;
   c. Alternatives that reduce or minimize the project's encroachment and/or impact on tidal wetlands.

12. When a variance is required, a written request setting forth the facts supporting the variance, must be submitted. This must include:
   a. A clear statement of the specific element of the Development Restrictions in Section 661.6 from which you seek relief;
   b. Specific identification of the extent of the variance sought.
   c. Description and justification of the minimum variance necessary.
   d. Identification and explanation of the practical difficulties claimed which support the need for the variance requested.

NOTE: Application forms, fees, and other required materials must be submitted to the DEC Regional Permit Administrator for the county where the activity or project is located. (See the map on the last page.)

Once an application is declared complete and review begins, it may become clear that additional information is needed to complete the review and make a decision. You will be notified of what information is necessary, and this must be submitted before a final decision can be reached on the project application.
IS YOUR PROJECT MAJOR OR MINOR?

MINOR MAJOR PROJECTS

Review time frames, fees for processing, procedures, and requirements for public notice for applications are different for major and minor projects under the Uniform Procedures Act requirements (Part 621).

Generally, minor projects have shorter review time frames, require less public review, and have lower application fees. Notice of all major projects must be published in both the Environmental Notice Bulletin (ENB) and a designated local newspaper to allow for public review.

For a detailed listing of all regulated tidal wetlands activities and their major or minor status, please refer to Part 661. Any activity which has a designation of NPN (No Permit Necessary) in the classification of uses chart in Part 661, the Tidal Wetlands Land Use Regulations, requires no DEC approval. Projects designated as GCP (Generally Compatible—permit required uses) are considered MINOR PROJECTS. All other activities are considered MAJOR PROJECTS for fee and public notice requirements of the Uniform Procedures Act.

Minor Projects Include:

1. Construction of open pile docks or catwalks no greater than 4 feet in width.
2. Installation of a floating dock having a surface area no greater than 200 square feet.
3. Construction of single family or multiple family dwellings and/or accessory structures for them (driveways, garages, swimming pools, tennis courts, septic systems etc.) IN AN ADJACENT AREA. IF NO VARIANCE FROM THE DEVELOPMENTAL REGULATIONS IS REQUIRED.
4. Connection of electricity, gas, sewer, or water lines from an existing distribution facility to an existing structure.
5. Maintenance dredging.
**Major Projects Include:**

1. Construction of open pile docks or catwalks greater than 4 feet in width.
2. Installation of a floating dock having a surface area of greater than 200 square feet.
3. Construction of a solid fill dock.
4. Placement of fill in a tidal wetland.
5. Construction of single family or multiple family dwellings and/or accessory structures for them (driveways, garages, swimming pools, tennis courts, septic systems etc.) **IN A WETLAND.**
6. Construction of commercial or industrial structures.
7. Construction of groins, bulkheads, or other shoreline stabilization structures in **vegetated** tidal wetlands.
8. New dredging.

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**APPLICATION FEES**

Application fees are required for all regulated activities under the Tidal Wetlands Program. This revenue is placed in a dedicated fund used for marine resources management. Please submit the correct fee, as described below, with your application.

**FEES FOR MAJOR PROJECTS:**

- Dredging affecting 5,000 square feet or less .......................... $400
- Filling of 100 cubic yards or less ........................................ $400
- All other major projects .................................................... $900

**FEES FOR MINOR PROJECTS:**

Those minor projects requiring a variance of greater than 10% from standards in section 661.6 Development Restrictions

- Those minor projects requiring a variance of 10% or less from standards in section 661.6 Development Restrictions ........................................ $400
- Installation of one or two new pilings per currently existing principal building ........................................ $100
- All accessory structures less than 100 square feet in area, adjacent to a regulated wetland, whether or not a variance is required ........................................ $100
- All other minor projects .................................................... $200

**NOTE:** Be sure to make the check or money order payable to “NYSDEC”. 
TIME FRAMES

Application submission, time frames, and processing procedures are governed by the provisions of Article 70 of the Environmental Conservation Law, the Uniform Procedures Act and its implementing regulations, 6NYCRR Part 621.

Within 15 calendar days of the receipt of a Tidal Wetlands application, DEC will determine whether or not it contains all the information needed to begin review. If the application is incomplete, the Regulatory Affairs staff will send the applicant a notice detailing what is needed.

When all the necessary information has been submitted, the application is declared complete and the review process is begun. For minor projects, which are defined on page 5, a decision on the permit should be made within 45 calendar days. Major project review can take up to 90 days if no public hearing is held, and up to 60 days after the close of a public hearing, if one is necessary.

Time frames may be suspended:

1. By mutual agreement of the DEC and the applicant,
2. If enforcement action has been started against the applicant, or
3. If another agency is leading the environmental review of the project under SEQRA and has not yet completed the review. (See the SEQRA section on page 10.)

OTHER REQUIRED DEC PERMITS AND DETERMINATIONS

Your project or activity may require additional permits under other DEC permit programs.

For example, Protection of Waters permits are required for certain activities such as dredging or filling that take place in navigable waters or for activities that may result in disturbance to the bed or banks of protected streams. If the activity will require a permit from the Corps of Engineers, then a Section 401 Water Quality Certification by DEC may also be needed.

Freshwater Wetlands permits are required for areas designated on the freshwater wetlands maps. In many cases, these areas are near tidal wetlands, and their adjacent areas may overlap.

Coastal Erosion Hazard Area permits are required along sensitive shorelines in structural hazard areas or natural protective feature areas, which are indicated on Coastal Erosion Hazard Area Maps.

If you are not sure whether your project requires more than one DEC permit, contact the regional office for the county where the wetland is located. Your application for a tidal wetlands permit will generally serve as an application for these other permits as well. If the project requires more than one permit, check all the appropriate boxes at the top of the application.

The materials necessary for all required permits must be submitted at the same time to allow simultaneous review of the entire project. Review of your project may not commence until these materials are submitted.
**State Environmental Quality Review Act (SEQR)**

The provisions of the Uniform Procedures Act require that applications for DEC permits cannot be considered complete unless certain requirements of the State Environmental Quality Review Act (SEQR) have been met. This initially involves the applicant filing a completed Environmental Assessment Form (EAF). Upon receipt of the application and EAF, DEC may choose to coordinate the SEQR environmental review of the project with other state or local agencies having jurisdiction over the project. In doing so, an agency other than DEC may ultimately be designated as the "lead agency." The "lead agency" determines whether or not the proposed project will have a significant adverse impact on the environment. If the project may have a significant adverse impact, the applicant must submit a Draft Environmental Impact Statement (DEIS).

**TRY TO STRIKE A BALANCE.**

**State Historic Preservation Act (SHPA)**

In accordance with the State Historic Preservation Act (SHPA), DEC must evaluate whether or not a project may have an impact on historical structures or archeological sites. If your application is for a major project, the packet should include a Structural Archeological Assessment Form (SAAF). Please fill out this form according to its instructions. In some cases, a cultural resource survey, including a field study of archeological or historic features may be needed.

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**JURISDICTION OF OTHER AGENCIES**

**U.S. Army Corps of Engineers**

The Corps of Engineers regulates the placement of fill or dredge spoil and the construction of certain structures in waterways and wetlands. Over recent years, the Corps jurisdiction has expanded beyond those major waterways that were traditionally referred to as "navigable waters."

New York DEC Regions 1, 2, and 3 are under the jurisdiction of the New York District Office of the Corps of Engineers. A Joint Application procedure is in place for Corps of Engineers permits. When you file your application with DEC a copy will be forwarded by DEC to the Corps of Engineers. However, the two agencies have different application requirements and the Corps of Engineers will contact you for additional information as needed.

A determination that no permit is required from DEC does not necessarily mean that no permit is required from the Corps. Likewise, having obtained a DEC permit does not relieve the applicant from the obligation to comply with federal law. If there is any question of jurisdiction, you should contact the Corps of Engineers directly.
For information on the Corps of Engineers' permit requirements, you may write or call their office at the address listed on the last page.

New York State Department of State

If a federal approval is required, the federal agency must obtain a Coastal Consistency Certification from the New York State Department of State before it can give its approval. If such a certification is needed, you will be informed of this by the federal agency involved, usually the Corps of Engineers, who will need to make the Coastal Consistency Certification a part of its permit decision. If a federal approval is not required, DEC will need to make the Coastal Consistency certification as part of its permit decision.

In New York, coastal areas covered by this program include the Atlantic Ocean, Long Island Sound, Arthur Kill, Kill van Kull, Harlem River, East River, Hudson River south of the federal dam in Troy, Niagara River, St. Lawrence River, Lake Ontario, Lake Erie, and all connecting waterbodies, bays, harbors, shallows, and marshes.

This consistency program will also apply to some designated inland waterways in New York where local waterfront revitalization programs have been developed. Again, you will be informed if a certification must be prepared and whether any further information will be required from you.

New York State Office of General Services (OGS)

It is your responsibility to determine whether your project involves any New York State-owned underwater lands and to obtain necessary approvals or easements for their use from the New York State Office of General Services (OGS).

During review of your application, DEC will notify OGS of your project, if state-owned underwater lands appear to be involved.

For questions involving underwater properties owned by the state, contact:
Office of General Services
Division of Land Utilization
Bureau of Land Management
Corning Tower
Empire State Plaza
Albany, NY 12242
(518) 474-2195

Local Governments

Finally, county, city, town or village building permits, flood plain permits, or other approvals may be necessary. You should check with the appropriate offices. DEC will require you to inform them of any other local approvals needed for your project. This will enable a coordinated review among all affected agencies.
MISCELLANEOUS INFORMATION

References

The following 6NYCRR Regulations may be helpful for information pertaining to questions on the application forms. You may request those which are applicable to your project from the appropriate DEC Regional Office.

Part 661-Tidal Wetlands
Part 608-Protection of Waters
Part 663-Freshwater Wetlands
Part 617-SEQR
Part 621-Uniform Procedures

Other publications which may be of assistance include:

Applicants' Guide to Protection of Waters
Applicants' Guide to Freshwater Wetlands
How to Apply for a DEC Permit brochure
Applicant's Guide to SEQR brochure
SEQR Handbook

Permit Modifications

You must submit a written request for modifications, renewals, or transfers of your permit. Major modifications (revisions) may require the submission of a new application. If an extension of time is needed to complete the project, you should submit a written request briefly explaining the circumstances. Such request should be made at least 30 days in advance of the permit's expiration date to avoid any lapse in the permit.

Should the affected property be sold to a new owner, the permit must also be transferred to the new owner. A transfer of permit may be granted upon request by the new owner when accompanied by written consent from the prior permit holder. Contact the appropriate Regulatory Affairs regional office to obtain a DEC Application for Permit Transfer form. Please submit this transfer application well in advance of the proposed transfer to allow for review time.

Regulated activities may not be carried out by the new owner until the permit transfer has been approved by DEC.

Questions?

On the last page is a map showing the DEC regions and the addresses and telephone numbers of the regional offices where anyone may contact the Regional Permit Administrators or other Regulatory Affairs staff for more information on this permit program or any other items mentioned in this guide.

The counties served by the three DEC offices which have tidal wetlands programs are as follows:

Nassau and Suffolk Counties—Region 1
The five boroughs of New York City—Region 2
Rockland and Westchester Counties—Region 3.

If, AFTER carefully reviewing these forms and instructions, you have any specific questions about the application procedures, specific technical questions about a project in a tidal wetlands area or questions about SEQR or SHPA requirements, you should contact the Division of Regulatory Affairs in the appropriate region.
List of Sample Plans and Diagrams

Single Family Dwelling Construction
   Project Plan
   Crossview Diagram

Subdivision
   Project Plan

Replacement Bulkhead Construction
   Project Plan
   Crossview Diagram

New Bulkhead Construction
   Project Plan
   Crossview Diagram

Dock Construction
   Project Plan
   Crossview Diagram

Dredging (New and Maintenance)
   Project Plan
   Crossview Diagram

Navigational Dredging
   Project Plan 1—Diked Dredge Material Placement
   Crossview Diagram 1A
   Crossview Diagram 1B
   Project Plan 2—Beach Nourishment
   Crossview Diagram 2

Plans and Diagrams Drawn by CHRISTINA GRAHN
PROJECT PLAN

Single Family Dwelling Construction
Single Family Dwelling Construction
PROJECT PLAN

Replacement Bulkhead Construction

Location Map
Mark or Circle
Project Location
Place Map
Here

Waterbody
Village
Applicant Name
Consultant Name
Date Prepared

Scale

House (Show Address)

Distance

Old Bulkhead

Distance

Backfill (Type and Amount)

Proposed Bulkhead

18" or Proposed Distance

X Telephone Pole Number

Street Name

Top Point

Note: Use dashed lines for future construction and solid lines for existing conditions.
CROSSVIEW DIAGRAM

Replacement Bulkhead Construction
PROJECT PLAN

New Bulkhead Construction
CROSSVIEW DIAGRAM

- Distance (')
- Whaler Description
- Backfill (Amount + Type)
- Piling Description
- Sheathing Description
- Mean High Water
- Mean Low Water
- Depth (')
- Existing Bottom
- Depth of Penetration (')

New Bulkhead Construction
PROJECT PLAN

Dock Construction

Location Map
Mark or Circle
Project Location
Place Map Here

Scale

House (Give Address)

X Telephone Pole Number

Mean High Water

Mean Low Water

Tidal Wetland Boundary

Distance (')

Length (')

Width (')

Project Description
Waterbody
Village
Applicant Name
Consultant Name
Date Prepared
CROSSVIEW DIAGRAM

Dredging (New and Maintenance)

Location Map
Mark or Circle
Project Location
Place Map Here

Scale

Dredge Material Disposal Area

Existing Soil

Mean High Water

Mean Low Water

Existing Depth (')

Proposed Depth (')

Area to be Dug

Distance (')

Existing Bottom

Area to be Dug

Existing Bottom

Distance (')

Project Description
Waterbody
Village
Applicant Name
Consultant Name
Date Prepared
Navigational Dredging
CROSSVIEW DIAGRAM #2

Location Map
Mark or Circle
Project Location
Place Map
Here

Fill Distance (')

Existing Elevation

Height of Fill (')

Distance (')

Existing MHW

Proposed Mean High Water

Existing MLW

Proposed Mean Low Water

Fill Distance below MHW

Scale

Beach Nourishment
Article 25 Typical Marsh Profile

Landward edge
Baccharis halimifolia
(groundsel bush)

Lygurites frutescens
(marsh elder)

High Marsh
Spartina patens
(meadow grass)

Distichlis spicata
(spike grass)

Salicornia sp.
(saltwort)

Intertidal Marsh
Spartina alterniflora
(low marsh cordgrass)

Phragmites sp.
(common reed)

Low vigor S. alterniflora
Limonium carolinianum
(seaside lavender)

Juncus gerardi
(black grass)

Scirpus sp.
(chairmakers rush)

Coastal shoals
bars and flats
(unvegetated)

Littoral Zone
(unvegetated)
NYSDEC "JOINT APPLICATION FOR PERMIT" BLANK FORM

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

JOINT APPLICATION FOR PERMIT

U.S. ARMY CORPS OF ENGINEERS APPLICATION NO.

Please read ALL instructions on back before completing this application. Please type or print clearly in ink. Attach additional information as needed.

ARTICLE 9 TITLE 1. ARTICLE 43 6NYCRR 646 (LAKE GEORGE RECREATION ZONE)
ARTICLE 11, TITLE 3 (AQUATIC PESTICIDES CONTROL)  [6NYCRR 327 (AQUATIC VEGETATION)]
ARTICLE 15, TITLE 5 6NYCRR 608 (PROTECTION OF WATERS)
ARTICLE 15, TITLE 3 6NYCRR 327 (AQUATIC VEGETATION)  [6NYCRR 328 (FISH)]  [6NYCRR 329 (INSECTS)]
ARTICLE 15, TITLE 5 6NYCRR 608 (PROTECTION OF WATERS)
ARTICLE 15, TITLE 10 6NYCRR 660 (WATER SUPPLY)
ARTICLE 15, TITLE 12 6NYCRR 602 (LONG ISLAND WELLS)
ARTICLE 15, TITLE 27 6NYCRR 666 (WILD, SCENIC AND RECREATIONAL RIVERS)
ARTICLE 25 6NYCRR 662, 663 (FRESHWATER WELDS)  [ARTICLE 36 6NYCRR 500 (FLOODPLAIN MANAGEMENT)]
ARTICLE 25 6NYCRR 661 (TIDAL WELDS)  [ARTICLE 34 6NYCRR 501 (COASTAL EROSION)]

SECTION 10 (RIVER AND HARBOR ACT OF 1899) for structures and work in navigable waters of the U.S.
SECTION 401 WATER QUALITY CERTIFICATION
SECTION 404 (CLEAN WATER ACT OF 1977) for disposal of dredged or fill material in waters of the U.S.
SECTION 103 (MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT) for the transportation of dredged materials for dumping into ocean waters.

1. LIST PREVIOUS PERMIT/APPLICATION NUMBERS AND DATES (If any)

2. APPLICANT IS ( ) Owner ( ) Operator ( ) Lessee ( ) Municipality/Governmental Agency (Check as many as apply)

3. NAME OF APPLICANT (Use Full Name)

MAILING ADDRESS

POST OFFICE

TELEPHONE (Where can be reached during day) ( )

STATE ZIP CODE

4. NAMING OF ( ) Owner ( ) Agent/Contact Person (Check one)

MAILING ADDRESS

POST OFFICE

TELEPHONE (Where can be reached during day) ( )

STATE ZIP CODE

5. PROJECT/FACILITY LOCATION (Mark location on map, see Number 18 on reverse side)

County

Town or city

Village

STREET ADDRESS (If different from applicant)

POST OFFICE

STATE ZIP CODE

6. NAME OF STREAM OR BODY OF WATER

7. HAS WORK BEGUN ON PROJECT? ( ) Yes ( ) No

IF YES, attach explanation on starting work without permit, includes dates

8. WILL PROJECT UTILIZE STATE LAND? ( ) Yes ( ) No

Show work on map and/or drawings.

9. PROPOSED USE: ( ) Public ( ) Private ( ) Commercial

10. PROPOSED STARTING DATE: ___________________________

11. APPROXIMATE COMPLETION DATE: ______________________

12. FEE OF (NYS Permit Only) $_________ Enclosed

13. PROJECT DESCRIPTION: (e.g. quantity and type of material to be excavated, dredged or used for fill or rip rap, location of disposal sites; type of structure to be installed; height of dam; size of impoundment; capacities of proposed water sources; extent of distribution system, etc.)

14. WILL THIS PROJECT REQUIRE ADDITIONAL FEDERAL, STATE AND/OR LOCAL PERMITS? ( ) Yes ( ) No

If yes, please list:

15. CERTIFICATION:

I hereby affirm that under penalty of perjury that information provided on this form and all attachments submitted herewith is true to the best of my knowledge and belief. False statements made hereon are punishable by a Class A misdemeanor pursuant to Section 211-A of the Penal Law.

Further, the applicant accepts full responsibility for all damage, direct or indirect, of whatever nature, and by whatever cause, arising out of the project described herein and agrees to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from said project. In addition, Federal Law, 18 U.S.C. Section 1001 provides for a fine of not more than $10,000 or imprisonment for not more than five years, or both, where an applicant knowingly and willfully falsifies, conceals, or covers up a material fact, or knowingly makes or uses a false, fictitious or fraudulent statement.

I hereby authorize the agent named in Number 4, above to submit this application on my behalf.

DATE ___________________________ SIGNATURE ___________________________

PLEASE READ ALL INSTRUCTIONS ON REVERSE SIDE

PERMIT ADMINISTRATOR
GENERAL INSTRUCTIONS
INCOMPLETE OR INACCURATE INFORMATION MAY DELAY PROCESSING AND A FINAL DECISION ON YOUR APPLICATION!

1. Please prepare and submit:
   A. Three signed copies of this application. Use typewriter or print clearly in black ink.
   B. Three copies of a USGS map or equivalent showing the project location.
   C. Three copies of a sketch plan drawn to scale or engineering drawings showing location and extent of work (see sample drawings) as well as view directions of the photographs required in 1D.
   D. Three copies of three representative color photographs of the project area and surroundings with time and date taken indicated on them.

2. Applications by counties, cities, towns and villages shall be signed by the chief executive officer thereof or the head of the department or agency undertaking the project.

3. The applicant may be required to publish a “Notice of Application” as provided by the regional permit administrator.

4. If someone other than owner makes application, written consent of the owner to use the property/facility must accompany application.

5. If a public hearing is necessary, the applicant may be required to furnish the names and addresses of all adjacent landowners and all known claimants to water rights.

6. The applicant is responsible for obtaining any other required federal, state or local permits.

7. Be sure to enclose proper application fee, note accordingly in item 13 on the reverse side; consult UPA fee schedule or with regional office.

OTHER REQUIREMENTS

8. If project is an unlisted action pursuant to the State Environmental Quality Review Act regulations-Part 617, a completed Part 1 of a Short Environmental Assessment Form must be submitted with the application.

9. If project is a Type I action pursuant to the State Environmental Quality Review Act regulations-Part 617, a completed Part 1 of a Long Environmental Assessment Form must be submitted with the application.

10. If project is classified as major pursuant to the Uniform Procedures Act regulations-Part 621, a completed Part 1 of a Structural-Archaeological Assessment Form must be submitted with the application.

11. If project lies within the Coastal Zone, a completed Coastal Assessment Form must be submitted with the application.

SPECIAL REQUIREMENTS FOR SPECIFIC PERMIT APPLICATIONS

12. Applications for the construction, reconstruction or repair of a DAM or other IMPOUNDMENT STRUCTURE must be accompanied by Supplement D-1.

13. Applications for WATER SUPPLY or LONG ISLAND WELL permits must be accompanied by Supplement W-1.

14. Applications for a permit to apply a CHEMICAL TO CONTROL OR ELIMINATE AQUATIC VEGETATION, FISH OR INSECTS must be accompanied by Supplement A-1, A-2, or A-3, respectively.

15. Applications for a WILD, SCENIC OR RECREATIONAL RIVERS SYSTEM Permits must be accompanied by Supplement WSR-1.

16. Applications for a federal permit for filling or ocean dumping under SECTIONS 404 or 103, must include Federal Supplement E-1 and require a mandatory discussion of practicable alternatives to the project. Particular justification should be given as to why the alternatives are not suitable. In addition, provide names, addresses and telephone numbers of adjacent property owners.

Contact the Regional Permit Administrator, Division of Regulatory Affairs, at the appropriate office of the Department, as given below, for assistance regarding any of the above requirements. Consult other available application instruction materials.

Department of Environmental Conservation Regional Offices
Division of Regulatory Affairs

United States Army Corps of Engineers
Department of the Army
ATTN: Chief, Regulatory Branch
New York District, Corps of Engineers
25 Federal Plaza, New York, N.Y. 10278
Telephone (212) 264-0184
DEC Regions 1, 2, 3, 4, 5

Department of the Army
ATTN: Chief, Regulatory Branch
Buffalo District, Corps of Engineers
1776 Niagara St., Buffalo, N.Y. 14207
Telephone (716) 879-5444
DEC Regions 6, 7, 8, 9

Department of the Army
ATTN: Chief, Regulatory Branch
Pittsburgh District,
Corps of Engineers
William S. Moorehead
Federal Building
1000 Liberty Ave.,
Pittsburgh, PA. 15222
Telephone: (412) 644-6872

Portions of Allegany, Cattaraugus and Chautauqua Counties

Legend
Regional Headquarters
Sub-Offices
Served by Sub-Office

Pittsburgh District
Corps of Engineers

REGION 6
State Office Building
317 Washington Street
Nassau, N.Y. 13001-3787
(315) 785-2245

SUB-OFFICE
State Office Building
207 Genesse Street
Utica, N.Y. 13501-2885
(315) 790-2555

REGION 7
615 Erie Boulevard West
Syracuse, N.Y. 13204-2400
(315) 426-7400

SUB-OFFICE
Box 5170, Fisher Ave
Cortland, N.Y. 13045-5170
(607) 753-3065

REGION 8
6274 E. Avon-Lima Road
Avon, N.Y. 14414-9519
(716) 225-2465

REGION 9
600 Delaware Avenue
Buffalo, N.Y. 14202-2999
(716) 847-4600

REGION 10
Route 86
Ray Brook, N.Y. 12977-0296
(518) 891-1234

SUB-OFFICE
County Route 40
Box 220
Wardenburg, N.Y. 12805-0200
(518) 623-3971

REGION 4
2176 Guilderland Ave.,
Schenectady, N.Y. 12306-4486
(518) 382-5880

SUB-OFFICE
Route 10, Jefferson Road
HR5#1, Box 3A
Stamford, N.Y. 12167-9503
(607) 652-7364

REGION 3
21 South Putt Corners Road
New Paltz, N.Y. 12561-1696
(914) 255-3121

REGION 1
SUNY, Building 40
Lehman Road
Stony Brook, N.Y. 11790-2365
(516) 444-0365

REGION 2 (New York City)
1 Hunters Point Plaza
4740 21st Street
Long Island City, N.Y. 11101-5407
(718) 482-4997

LEGEND

Regional Headquarters
Sub-Offices
Served by Sub-Office
TIDAL WETLANDS NOTIFICATION LETTER

This is to notify you that I am proposing to conduct the activity described below in an area that has been classified as a tidal wetland on a tidal wetlands inventory map.

NAME

ADDRESS

EXACT LOCATION OF PROJECT (identify by county, town, street, body of water and Tidal Wetlands Inventory map number and coordinates, if known)


TYPE OF PROJECT (Dredging - number of cubic yards, dock - size, bulkhead - length, etc.)


TYPE OF WETLAND WORK IS TO BE DONE ON OR NEAR (Coastal freshmarsh, intertidal marsh, littoral zone, etc.)


Please advise me whether or not it will be necessary to file an application for a tidal wetlands permit.

Signature

Date

FILE WITH THE REGIONAL PERMIT ADMINISTRATOR IN YOUR AREA:

Area 1 - Nassau and Suffolk Counties
- Regional Permit Administrator
  New York State Department of Environmental Conservation
  Building 40; SUNY at Stony Brook
  Stony Brook, New York 11790

Area 2 - All New York City Boroughs
- Regional Permit Administrator
  New York State Department of Environmental Conservation
  Two World Trade Center, 61st Floor
  New York, New York 10047

Area 3 - Dutchess, Orange, Rockland, Putnam, Sullivan, Ulster and Westchester Counties
- Regional Permit Administrator
  21 South Putt Corners Road
  New Paltz, New York 12561

5-12-77
Tidal Wetlands Notification Letter Approval

Dear

This is to inform you that we have reviewed the notification letter filed on 19 and have determined that it will not be necessary to file a permit application for

You may proceed with your project adhering to any special conditions found on the reverse side of this letter.

__________________________
Regional Permit Administrator

__________________________
Date Issued

__________________________
Expiration Date
Tidal Wetlands Notification Letter Denial

Dear

This is to inform you that we have reviewed the notification letter filed on , 19 and have determined that it will be necessary to apply for a permit for

Your notification letter will suffice as a permit application upon receipt of the additional information listed below.

________________________________
Regional Permit Administrator