



New York State Association of REALTORS®, Inc.

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New York State Department of Environmental Conservation  
Attn: Roy Jacobson Jr.  
5<sup>th</sup> Floor  
625 Broadway  
Albany, NY 12233-4756

RE: Comments on Wetlands Part 664 Proposed Regulations

The New York State Association of REALTORS® (NYSAR) welcomes the opportunity to submit comments on proposed regulations for amendments to the Freshwater Wetlands Act. NYSAR is the leading real estate trade association in New York State, comprised of more than 63,000 licensed professionals helping consumers and property owners sell, purchase and lease property in all regions of the State.

NYSAR's recognizes the importance and need to protect precious environmental resources, including freshwater wetlands. However, the expansion of the Department of Environmental Conservation's oversight of freshwater wetlands raises many concerns about the impact of this expansion on the existing housing supply shortage facing New York State. Importantly, Governor Kathy Hochul's administration has taken several steps to address the housing shortage and the proposed regulations could undermine those efforts. Among the more significant steps taken by the administration was the creation of the pro-housing communities program, which was established in July 2023 by Executive Order 30. This program incentivizes local governments to prioritize the development of housing by awarding state funding to localities who earn the pro-housing community certification. We believe the proposed regulations pertaining to freshwater wetlands would slow or curtail much needed housing development in localities where housing is sorely needed. This could hinder the success of the pro-housing communities program, which depends on localities making proper use of land for housing development.

One concern with the proposed regulations is the appeal process for positive jurisdictional determinations outlined in part 664.9. Under the proposed regulations and the Freshwater Wetlands Act, the DEC would have the authority to initiate jurisdictional determinations without a request from a landowner or local government. While private landowners would be able to appeal positive jurisdictional determinations made by the DEC, the proposed regulations are ambiguous as to whether a local government can appeal such a determination. Local governments, particularly those in the Hudson Valley and Upstate New York where freshwater wetlands are more prevalent, could face dwindling land resources for housing development without any opportunity to appeal positive jurisdictional determinations. If the intent of part 664.9 is to allow local governments to appeal these determinations, that should be made clear. Otherwise, the DEC's expansion of wetlands oversight could restrict much needed housing development in areas previously unclassified as wetlands.

Another concern with the proposed regulations is the definition of "vernal pool", along with the extension of the regulated adjacent area surrounding vernal pools, by an additional 700 feet. This regulated adjacent

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area equates to the size of more than two football fields. Furthermore, the broad definition of vernal pool could lead the DEC to regulate and restrict development on land in already developed residential areas. Under this definition, there is no reason the DEC could not classify a wetland on parts of a private landowner's property, which could be used for housing development.

NYSAR would prefer a more collaborative process between the DEC, local governments and private landowners when identifying and classifying freshwater wetlands – hence the reason for our prior opposition to various legislative bills to expand State oversight of these lands. The proposed regulations should not further limit the input of local governments nor eliminate their ability to challenge DEC's determinations, particularly if a locality considers the land in question suitable for housing development. NYSAR encourages the DEC to work with other state agencies (i.e. – Homes & Community Renewal) seeking to encourage more housing development to ensure that the regulation of lands that could be deemed freshwater wetlands does not curtail residential development. We thank you for the opportunity to submit comments.

*The New York State Association of REALTORS® is a not-for-profit trade organization representing more than 63,000 of New York State's real estate professionals. The term REALTOR® is a registered trademark, which identifies real estate professionals who subscribe to a strict code of ethics as members of the National Association of REALTORS®. These REALTORS® are also members of the New York State Association of REALTORS® as well as their local board or association of REALTORS®.*