New York State Association of REALTORS®, Inc.

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March 31, 2025

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NYSDEC Division of Environmental Permits-4th Floor
625 Broadway
Albany, NY 12233-1750

RE: Comments on Regulations and Proposed General Permits for Freshwater Wetlands

The New York State Association of REALTORS® (NYSAR) appreciates the opportunity to again submit comments on permits related to the expansion of the Freshwater Wetlands Act. NYSAR continues to be concerned that the expanded Freshwater Wetland Act and implementing regulations will curb much needed housing development in New York State. Unfortunately, the newly proposed general permits, when combined with the regulations that took effect on January 1, 2025, do absolutely nothing to address these concerns.

Although NYSAR recognizes the importance of protecting freshwater wetlands, the expansion of the DEC's oversight of freshwater wetlands comes in the midst of a severe statewide housing shortage and affordability crisis. NYSAR has repeatedly maintained – as has Governor Hochul's administration – that the only way to address these problems is to build more housing. Instead of supporting housing development, these DEC's regulations, including the proposed requirement for additional permits to develop and construct in and around wetlands, will have the opposite effect.

The current regulations and proposed permits will have a severe impact on residential development, particularly in urbanized and suburban areas where municipalities have invested billions of taxpayer dollars in water and sewer infrastructure. By rendering much of this land undevelopable, the new permit structure will have far-reaching economic consequences, including job losses, reduced local tax revenues, increased housing costs, fewer housing opportunities, and an acceleration of outmigration to other states. Below are a few specific areas of concern with the proposed regulations and permits:

- The regulations expand DEC's jurisdiction over all wetlands in urbanized and suburban areas, regardless of size.
- When combined with the required 100-foot buffer, even minor wetland areas will result in exponentially larger regulated areas, rendering prime development land with existing water and sewer, exceedingly difficult or impossible to develop.
- Definition of a Stream: The definition should be clarified to apply only to perennial streams, thereby preventing unnecessary regulation of temporary or seasonal water features, including vernal pools, for which the regulations propose to require an 800-foot buffer.
- The inclusion of 100-year floodplain considerations in a wetlands permit is unnecessary and should be removed. Floodplain management is already addressed through separate regulatory processes and should not be used as a barrier to development under the wetlands permit.

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When evaluated in the context of the steps taken by Governor Hochul's administration to address the housing shortage, the regulations and proposed permits would undermine those steps. Among the more significant steps taken by the administration was the creation of the pro-housing communities program, 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. The expanded freshwater wetlands act and accompanying regulations would slow or curtail much needed housing development in localities where housing is sorely needed. These regulations will hinder the success of the pro-housing communities program, which depends on localities making proper use of land for housing.

Since our last set of public comments in September 2024 on the proposed regulations, NYSAR has not seen any efforts to modify the freshwater wetlands program in a way that would negate the impact of the program's expansion on the development more housing. The proposed regulations and general permits should not 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. – Housing & Community Renewal) and local governments 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 again for the opportunity to submit comments.

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