



# NEW YORK STATE BUILDERS ASSOCIATION, INC.

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December 12, 2025

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Thank you for the opportunity to provide comments on the draft General Permit (GP) for Housing. New York is in a severe housing and affordability crisis, and the DEC's permitting structure must support, rather than unintentionally hinder, the creation of housing in locations where it is most feasible, most needed, and most aligned with the State's development and climate goals.

Of particular concern is the language on **page 4, Section 2**, regarding **eligibility**, which states that *projects with a total development acreage of 2 acres or less are not eligible for coverage under this general permit*. This exclusion is highly problematic and counterproductive to the State's goals.

Parcels of two acres or less are overwhelmingly located in **urban and suburban areas where sewer service and public infrastructure already exist**, and where New York taxpayers have invested billions of dollars over decades to support higher-density development. These are precisely the areas where housing can be built **more efficiently, more affordably, and more quickly**, and where the State has encouraged growth to reduce sprawl, climate emissions, and infrastructure costs. Removing small parcels from eligibility for the General Permit will:

- Discourage development in the areas best suited for growth
- Push development pressure outward, encouraging sprawl
- Slow production of affordable and attainable housing
- Directly contradict the Governor's stated housing and smart-growth goals
- Undermine efforts to build near jobs, transit, and services

We strongly urge the DEC to **revisit and revise this eligibility restriction**. Allowing parcels of two acres or less to apply under the General Permit is essential for achieving New York's housing, affordability, and climate objectives. Proceeding with the restriction as written will unnecessarily curb housing production in the communities best equipped to accommodate it.

## 1. Clarify Allowed Activities in Adjacent Areas

Language must explicitly state that all activities typical of **housing construction are allowed in the adjacent areas identified as permissible for disturbance**. The current draft lists numerous prohibited activities but does not make clear exceptions for those same activities in the areas where disturbance is authorized. This will create confusion among applicants, municipal reviewers, and consultants. Clear affirmative language is needed.

## 2. Add a Review Timeline for General Permit Applications

To ensure predictability and prevent unnecessary delays in housing production, the permit must include a clear review timeline. We recommend:

**DEC must act within 30 days of receiving a complete application.**

Housing projects cannot withstand indefinite review periods, and the lack of a timeline will undermine the purpose of a streamlined GP.

### **3. Section 3(b) – Wetland Impact Limit Steps Must Be Gradual**

The current percentage-step structure for allowable wetland impact is too abrupt and will lead to distortions. For example, increasing project size from 50% to 51% of a parcel doubles the allowable impact from 1% to 2%—an extreme jump.

We recommend the following more reasonable and workable step schedule:

- **21–30%** → 1%
- **31–40%** → 1.5%
- **41–50%** → 2%
- **51–65%** → 2.5%
- **66–90%** → 3%

This approach avoids arbitrary cliffs and will better reflect real-world project design constraints.

### **4. Section 3(d) – Adjacent Area Impact Steps Must Also Be Gradual**

The adjacent area impact limits also change too drastically. For example, increasing project size from 50% to 51% raises allowable adjacent area impact from 25% to 45%—an 80% jump.

We recommend the following:

- **21–30%** → 25%
- **31–40%** → 35%
- **41–50%** → 45%
- **51–60%** → 50%
- **61–70%** → 55%
- **71–90%** → 60%

These steps are far more consistent with typical project footprints and will avoid arbitrary results.

### **5. Section 6 – Wetland Mitigation Plan**

Off-site wetland mitigation (banking) should be allowed **so long as it occurs within the same MS4 area**. This is a practical, environmentally responsible approach that aligns with federal policy and preserves project viability when on-site mitigation is infeasible.

### **6. Expand GP Eligibility to Include Mixed-Use Projects**

While the GP is designed for residential projects, it should be expanded to include **mixed-use housing/commercial development**, particularly in urban and suburban areas. This reflects modern planning practices and the State’s own land-use objectives.

### **7. Section 2(a) – Treatment of Previously Approved or Developed Lots**

The current language may create serious problems for existing approved or previously developed, but unbuilt, lots, especially on parcels of 2 acres or less.

Because the new wetlands framework applies retroactively, there is a real risk that some lots will be rendered unbuildable, creating potential takings issues.

We recommend allowing:

- Adjacent area disturbance (but not within the 25-foot wetland setback)
- Driveway and utility crossings of wetland and 25-foot buffer totaling **no more than ¼ acre**

This provides fairness and avoids litigation risk.

## 8. Worksheet Corrections

The worksheet must be updated to reflect the more gradual step systems recommended in Sections 3 and 4.

Additionally, the Excel version includes several incorrect multipliers and should be corrected to prevent miscalculations that could invalidate applications or delay review.

## 9. Allow Multiple GP Applications for a Single Project (Similar to Federal Nationwide Permits)

Given the complexity of residential development and the Legislature's intent to align state and federal wetlands protections, applicants should be allowed to **submit separate GP applications for individual permitted activities** within the same project, such as utility line crossings, road crossings, minor fills, and other discrete components.

This mirrors the federal Nationwide Permit system and would significantly enhance clarity and efficiency for both applicants and DEC staff.

## Conclusion

The draft General Permit represents a significant step toward a more modern and predictable statewide permitting system. Still, several revisions are essential, especially the eligibility restriction for parcels of two acres or less, which directly undermines the State's housing goals and the core purpose of this permit.

With thoughtful adjustments, the General Permit can both protect wetlands and support the urgent need to produce more housing, particularly in the infrastructure-rich areas where New York has invested so heavily and where growth is most environmentally appropriate.

We appreciate the DEC's ongoing collaboration with stakeholders and strongly encourage the incorporation of the recommendations above.



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