



NEW YORK STATE BUILDERS ASSOCIATION, INC.

Peter Florey | President

Michael Fazio | Executive Director

Wednesday, September 19, 2024

To:

Attn: Mr. Roy J.R. Jacobson

New York State Department of Environmental Conservation (NYSDEC)

625 Broadway, 5th Floor

Albany, NY 12233-4756

Re: Comments on Proposed Wetlands Regulations (Part 664)

Dear Mr. Jacobson,

As the Executive Director of the New York State Builders Association (NYSBA), whose members represent businesses employing tens of thousands of tradespeople and professionals in the residential construction industry, we recognize the critical need for environmental stewardship. However, we are deeply concerned about the potential impacts of the proposed wetlands regulations (Part 664) on housing development across the state. New York is in the midst of a severe housing crisis. These regulations could significantly exacerbate the shortage of available, affordable, and market-rate housing of all types, contradicting the efforts Governor Hochul has championed: to produce more housing, make housing more affordable, and cut red tape and excessive regulations—all to address this pressing issue.

Key Concerns and Recommendations

1. Wetlands Classification Criteria & Urban Area Definition

Including areas classified as "urban" based on the 2020 Census to determine wetlands of unusual importance is overly broad. This definition captures many suburban and village areas that are unsuitable for urban designation, significantly increasing the number of regulated wetlands and imposing unnecessary burdens in regions critical for housing development.

Example: In the Town of Clay, near Syracuse, a residential development just four miles from the forthcoming Micron chip plant—a significant economic driver—will see 130 building lots reduced to just eight due to these expanded wetland designations. This misclassification threatens to stifle new housing developments necessary to support the growing workforce in this region.

Recommendation: The definition of "urban areas" should be either eliminated or strictly limited to major cities such as New York City, Buffalo, Albany, and Syracuse. By narrowing the scope, housing growth in suburban and village areas—where it is most needed—can continue without unnecessary regulatory barriers.

2. Extension of Implementation Deadline to January 1, 2028

The current implementation deadline of January 1, 2025, needs to be revised. It does not allow sufficient time for public comment or the construction industry to adapt to the significant changes the new regulations would impose. Additionally, NYSDEC's capacity to handle the surge in regulatory workload is likely inadequate, further delaying projects.

Example: In the Town of Hamburg, near Buffalo, an affordable 60-unit housing development will become infeasible under the new regulations due to expanded adjacent area protections despite the



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project being in a sewer district, which will accommodate future growth. Like many others, this project will be put at risk, further reducing the availability of affordable housing.

Recommendation: Extend the deadline to January 1, 2028, to allow for a more thorough and realistic implementation process. This will align with the timeline for regulating larger wetland areas (7.4 acres or greater), providing much-needed flexibility for developers and municipalities.

3. Grandfathering Approved Projects

The proposed regulations offer limited protections for projects already in progress, which could be devastating for developments that have received approvals and permits after years of planning and investment. Current staffing shortages within NYSDEC could also result in significant delays in the permitting process, putting additional strain on housing production and increasing costs.

Recommendation: All projects that have received site plan or subdivision approval or obtained an NYSDEC freshwater wetlands permit should be fully exempt from the new regulations. This will protect projects already in the pipeline from unnecessary delays and cost escalations, ensuring they can proceed as planned without facing retroactive regulatory hurdles.

4. Impact on Housing Supply and Land Availability

The expansion of regulated adjacent areas (up to 800 feet for vernal pools) will push housing development away from areas with existing infrastructure, including sewer districts where billions of dollars of taxpayer money have been invested. Moving development to more rural areas without sewer infrastructure forces the use of septic systems, which are less environmentally friendly and more costly for developers and future homeowners.

Example: In many sewer districts across New York, infrastructure has been built and expanded with the clear intent of supporting future housing growth. These wetlands regulations will prevent housing from being built in these areas, undermining the planned use of this infrastructure and restricting housing choices for future generations. Towns will effectively lose their ability to plan for growth in these sewer districts, as these areas will be regulated out of use under the new rules.

Recommendation: The regulations should prioritize development in areas with existing infrastructure, such as sewer districts. An exemption for these areas would preserve billions of dollars of taxpayer investment and allow for environmentally responsible, smart growth in regions with the highest housing demand.

5. Fast-Track Approvals for Low-Impact Projects

Given the current NYSDEC staff and resources shortage, the proposed regulations will likely lead to lengthy delays across all housing sectors, even those with minimal environmental impact. In a state with a critical need for new housing, particularly affordable housing, the permitting process for smaller or less impactful developments should be streamlined.

Recommendation: Introduce a fast-track approval process for smaller housing projects and implement a self-certification or professional peer review mechanism for qualified experts. This approach would help alleviate the pressure on NYSDEC, allowing critical housing developments to move forward more quickly while maintaining strong environmental protections.



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- 6. Proposal for a New Wetland Classification - SD (Sewer District):** Given the significant taxpayer investments in sewer infrastructure within mapped sewer districts, a new wetland classification is warranted. A proposed SD classification would recognize areas served by comprehensive sewer systems, facilitating housing density and promoting development in these regions. This classification acknowledges the suitability of sewer districts for housing construction and aligns with efforts to utilize existing infrastructure for sustainable urban development. <https://dthill196.github.io/NY-Sewershed-Populations/>

Conclusion: Balancing Environmental Protection with Housing Development

While we support the protection of New York's wetlands, the proposed regulations, if left unamended, will severely restrict housing development during a time of acute need. The expansive classification of urban areas, unreasonably short implementation timeline, lack of adequate grandfathering provisions, and broad extension of the adjacent areas will hinder projects essential to addressing the state's housing crisis. Furthermore, these regulations will undermine billions of dollars in taxpayer-funded infrastructure investments in sewer districts, limiting housing options for future generations.

We urge NYSDEC to extend the deadline, refine the criteria for urban area classification, and introduce more flexible and efficient approval processes. An exemption for areas within established sewer districts would ensure that the state's infrastructure investments are fully utilized, protecting housing development while maintaining environmental stewardship.

We appreciate your consideration of these comments and are available for further discussion to ensure New York can protect its natural resources while meeting its critical housing needs.

Michael Fazio

Executive Director

New York State Builders Association