



Building Near Wetlands

THE DRY FACTS

BEFORE YOU BUY... BEFORE YOU BUILD

Are you buying undeveloped land? Building a home, a retail center, or marina? How about a driveway or an addition to your cabin? In each case, the presence of wetlands may affect where and whether you build, buy, or develop. In New York and throughout the United States, wetlands are protected on public and private property.

WHY PROTECT WETLANDS?

You may have grown up thinking that the best wetland was one converted to another use, drained for agriculture or filled for development. But wetlands contribute positively to the social, economic, and environmental health of our nation in many ways:

- ◆ By filtering pollutants, nutrients, and sediments, wetlands protect water quality in lakes, rivers, streams, and wells.
- ◆ By storing runoff from heavy rains and snow melts, wetlands reduce flood damage.
- ◆ By acting as shoreline buffers, wetlands protect against erosion from waves and currents.
- ◆ By providing essential habitat for fish, waterfowl, and other animals, wetlands provide recreational opportunities for state residents and visitors and contribute to local economies.
- ◆ Through nutrient export wetlands support the food chain on which wildlife, fisheries, and shellfisheries depend. These support the hunting, commercial and sport fishing, and shellfish industries and contribute to local economies.
- ◆ By providing beautiful open spaces, wetlands enhance the quality of life, private property values, and tourism.

Many of these values were not widely appreciated until the 1970's and 80's. By then, more than half of the nation's marshes, swamps, bogs, and prairie potholes were gone. The need to stop wetland loss was critical and immediate. Local, state, and federal governments responded by creating their own regulatory programs.

WHERE DO I GO FROM HERE?

Will wetland regulations affect your project? You can find out through discussions with local officials, the staff of the New York State Department of Environmental Conservation (DEC), the New York State Adirondack Park Agency (APA), the U.S. Army Corps of Engineers (Corps), and the information presented here. Let this fact sheet be your guide. Glance through it once to see how it's organized - then use it as a reference as you buy property, design your project, and prepare permit applications.

What's Inside?

- ◆ **PROJECT PLANNING CHECKLIST**
The essential steps
- ◆ **GUIDE TO WETLAND LAWS**
Regulations, regulators, and related programs
- ◆ **CONTACTS LIST**
A county-by-county phone directory

PROJECT PLANNING CHECKLIST

BUYING AND BUILDING WITH CARE

During the planning process of your project, you should contact your local government, the regional DEC office, the APA if your property is located within the Adirondack Park, and the appropriate Corps district to determine what permits you may need. Use the *Contacts List* in this guide to find the right numbers for your county.

Try to complete "STEP ONE" and "STEP TWO" before buying property!

STEP 1 Get To Know The Property

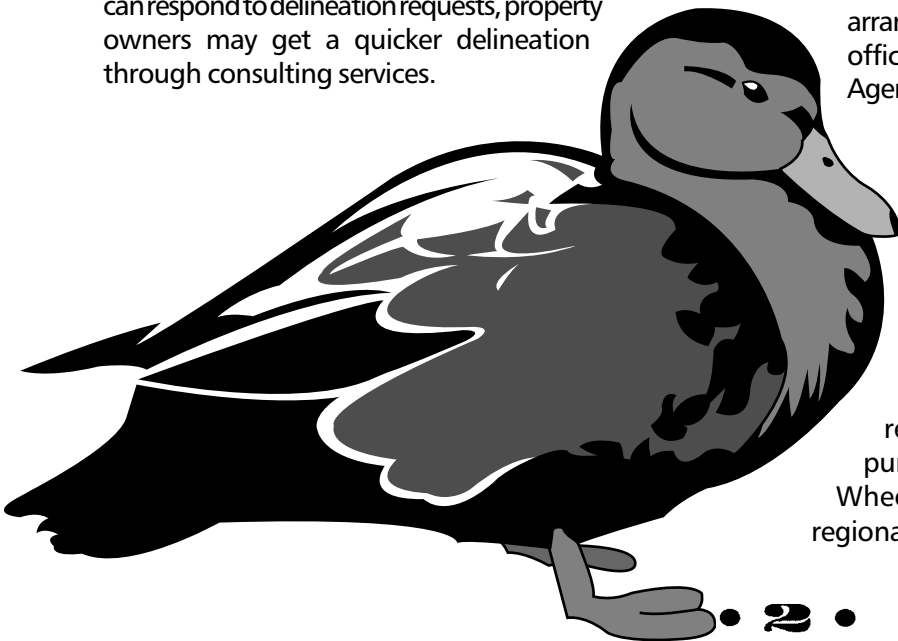
Soil types, wetlands, floodplains, steep slopes, and existing vegetation will all influence your purchase and/or design decisions. While some of these decisions will be based on observation and good judgment, others may be determined by zoning regulations or environmental protection laws.

- A. Gather relevant documents such as property descriptions, topographic maps, aerial photographs, zoning maps, floodplain maps, U.S. Fish and Wildlife Service National Wetland Inventory maps, ordinances or ordinance summaries, etc.
- B. Use the New York State Wetlands Maps to locate state-regulated wetlands that are officially mapped on the property. Note that APA wetlands are distinct from other state-regulated wetlands and that both of these can differ from federally-regulated wetlands. This is because these agencies use different wetland jurisdictional or delineation criteria.
- C. If wetland locations and/or boundaries must be determined more precisely, you may request a delineation by the regional Corps offices, DEC offices, or the APA headquarters. Or, you may choose a consultant to delineate the boundaries for you (subject to state, APA and Corps verification). Given the time frames in which the government offices can respond to delineation requests, property owners may get a quicker delineation through consulting services.

STEP 2 Learn the Basics About Wetland Regulations

Keep in mind that programs at three levels of government - local, state, & federal - may regulate activities in wetlands (see the Guide to Wetland Protection Laws that follows this checklist).

- A. Ask local government, DEC or APA, and Corps staff to help determine which laws apply to your project. If the land is farmed or has been farmed in the past, contact the Natural Resources Conservation Service (NRCS). The land may be a converted wetland, a farmed wetland, a prior converted wetland, or an abandoned converted wetland. Certain federal regulations are applicable to farmed wetlands, depending on the farming history.
- B. Review these laws or summary pamphlets. Remember that local ordinances may vary from one municipality to another, and may also differ from state and federal regulations.
- C. Evaluate your project to determine whether it involves permitted, conditional, or prohibited activities under local ordinances.
- D. Confirm your conclusions with local government, DEC or APA, and Corps staff. A pre-application conference with the Corps and DEC or APA is recommended, and can be arranged by contacting the appropriate regional regulatory office of the Corps, the DEC, or the Adirondack Park Agency headquarters.



NEW YORK STATE TIDAL WETLAND MAPS:

The DEC has mapped tidal wetland boundaries as well as wetland types on aerial photography of the entire marine district. These maps may be viewed at local government clerk's offices and the regional DEC offices. Tidal wetland maps may be purchased from the Nassau-Suffolk Blue Print Co., 354 Wheeler Road, Hauppauge, NY 11788. Contact the regional DEC office for information.



STEP **Modify Your Project Design Or Location**
If Necessary

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- A. Make and use a checklist of laws that affect your property.
- B. Look for design alternatives that avoid wetlands. Minimize the project scope and its adverse impacts.
- C. If the project design can't be altered to comply with applicable regulations, try to change the location or investigate an alternative use for the property.

STEP **Complete Permit Applications**

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Remember that you may need permits from two or more regulatory agencies, and that each permit must be approved before you begin. Violation of these permit requirements is cause for enforcement actions by local, state, and/or federal authorities which may impose fines and require compensation.

JOINT PERMIT APPLICATION PROCESS
(DEC AND CORPS)



Outside the Adirondack Park, a joint DEC/Corps application procedure is in place for wetland permits. Application to DEC is sufficient; a copy of the application will automatically be forwarded by DEC to the Corps. The Corps will then begin its processing of the application. For wetlands which the Corps but not the DEC has jurisdiction, applications to the regional Corps office are required. For applications inside the Adirondack Park, separate applications to the APA and the Corps are required.

- A. Include scale drawings, cross-sections, property descriptions, proposed construction timetables, descriptions of construction techniques, photographs, permits fees, and other supplementary materials as necessary. To expedite review of your proposal include a set of drawings on 8.5" by 11" size paper.
- B. Allow enough lead time in your project to accommodate permit processing (see Permit Review Timetable on page 8) and any potential modifications or special conditions required in the regulatory process.

NEW YORK STATE
FRESHWATER WETLANDS MAPS:

The DEC has mapped the approximate boundaries of all freshwater wetlands of 12.4 acres or more in New York. In some cases, these maps include smaller wetlands of unusual local importance, and within the Adirondack Park the maps include wetlands down to the one acre threshold and all wetlands adjacent to open water. These maps are used to determine the presence of freshwater wetlands on particular properties. Copies of maps are available for review at local government clerk's offices, DEC regional offices, and at the APA headquarters for those counties within the Adirondack Park. **TO PURCHASE MAPS:** DEC provides an Order Form for obtaining specific maps from Syracuse Blue Print Co., Inc., 825 E. Genesee St., Syracuse, NY, 13210. Maps are \$2.00 each plus shipping.

A Directory of Regulations, Regulators, and Related Programs

LOCAL WETLAND PROTECTION

The Freshwater Wetlands Act allows local governments to assume jurisdiction for regulating wetlands once DEC has filed a map for their areas. Very few localities have done so to date. However, local governments may protect wetlands under separate local ordinances. Contact your local government office for general guidance and information, application forms for local zoning programs, review of wetland maps, assistance with wetland delineations, and explanation of permitted uses. In cities or villages, call the municipal office to reach the appropriate person.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)

DEC regulatory wetlands maps are located at appropriate county, town, and clerk offices. Contact the appropriate regional DEC office for general guidance and information, application forms, and review of wetland maps. DEC also conducts wetland delineations. See the *Contacts List* for a county-by-county listing of phone numbers.

Freshwater Wetlands Act

This Act preserves, protects, and conserves those freshwater wetlands in the state that are greater than 12.4 acres in size, and any smaller wetlands of unusual local importance. An adjacent area of 100 feet is also protected to provide a buffer zone to the wetland. The Freshwater Wetlands Act grants the administration of wetlands within the Adirondack Park to the APA. Wetlands over one acre in size, or any size wetlands adjacent to open water are regulated within the Adirondack Park.

Tidal Wetlands Act

This Act preserves and protects wetlands (salt marshes, flats, etc.) now or formerly connected to tidal waters. Adjacent areas within 300 feet (or 150 feet in New York City) of tidal wetlands are also protected under the Act.

Water Quality Certification

Section 401 of the federal Clean Water Act requires state certification that a federal permit (see the Corps section following) meets state water quality standards as a condition of the federal permit approval. In most cases DEC administers water quality certification. Water quality certifications are required for all actions under regulatory authority of Section 404 of the federal Clean Water Act.

Waterfront Revitalization of Coastal Areas and Inland Waterways Act

Under this Act, the NYS Department of State (DOS) administers the coastal program containing policies to which state agencies must conform. Also, the federal Coastal Zone Management Act requires notice of consistency with the state coastal zone management plan. The NYS DOS Coastal Zone Management program reviews project consistency. NYS DOS, Division of Coastal Resources: (518) 474-6000.

New York State Coastal Erosion Hazard Areas Law

This program regulates activities on certain lands along the coastal fresh and salt waters of the state, and identifies Natural Protective Features and Structural Hazard Areas along these coasts on Coastal Erosion Hazard Area Maps. DEC Bureau of Flood Protection (518) 457-3157.

Use and Protection of Waters Program

This program regulates activities that occur in or near navigable and protected waters of the state. Regulated activities include any alteration or excavation of the bed or banks of the waterway including adjacent wetlands.

Uniform Procedures Act

This Act standardizes procedures for processing DEC's major regulatory permits. It assures fast and complete reviews, establishes timetables, and encourages public participation in permit review and decision-making.

State Environmental Quality Review Act (SEQRA)

The provisions of the Uniform Procedures Act require that applications for DEC permits cannot be considered complete unless certain requirements of SEQRA have been met. This initially involves the filing by the applicant of a completed Environmental Assessment Form (EAF). More complex projects may require a more lengthy and detailed Environmental Impact Statement (EIS).

NEW YORK STATE ADIRONDACK PARK AGENCY

Within the Adirondack Park, the Adirondack Park Agency (APA) administers the NYS Freshwater Wetlands Act and the APA Act, both of which regulate activities in or near wetlands. Wetland maps for those portions of counties lying within the Adirondack Park are located at APA headquarters and in town and county clerk offices of affected municipalities. APA: (518) 891-4050.



Adirondack Park Agency Act

The APA Act protects wetlands by regulating activities in or near wetlands that pose the threat of adverse impact, including activities such as the subdivision of land.

U.S. ARMY CORPS OF ENGINEERS (CORPS)

The Corps of Engineers has jurisdiction over activities in waters of the United States, including wetlands, under the following legislation:

Clean Water Act - Section 404

This section of the Act regulates discharges to waters of the United States, including filling, soil movement, and the placement of certain pilings in wetlands, and establishes a permit program to ensure that such discharges comply with environmental requirements. Discharges of dredged or fill material are regulated for all waters and wetlands regardless of size. Pre-approved general or nationwide permits may be available for specific minor activities in wetlands. Compensatory mitigation is only accepted for unavoidable losses under the federal program. The Corps administers the federal permit program.

Rivers and Harbors Act of 1899 - Section 10

This section of the Act regulates any activity that affects the course location and capacity of a navigable water. It regulates all activities that take place in, on, above, or underneath navigable waters. Each Corps district maintains a list of navigable waters regulated under Section 10. Coastal waters, major rivers, the Barge Canal, and the Great Lakes are examples of navigable waters.

Contact the Corps district offices in New York City or Buffalo for information about these federal regulations (see *Contacts List*). Permit applications for Corps-regulated activities can be obtained from the Corps or from regional DEC offices.

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

Within the Section 404 Program, EPA develops the environmental guidelines by which permit applications must be evaluated, reviews proposed permits, may prohibit discharges with unacceptable adverse impacts (404[c]), establishes jurisdictional scope of waters of the United States; and interprets Section 404 exemptions. EPA and the Corps share enforcement authority. EPA Region 2:(212)637-3783.

FARM SERVICE AGENCY (FSA)

FSA administers the 1990 federal Farm Bill, which includes the Wetlands Reserve and the Swampbuster programs. County FSA agents are best able to answer wetland questions relating to these programs and can provide aerial land (crop) photos. FSA: (315) 477-6301

NATURAL RESOURCES CONSERVATION SERVICE (NRCS)

NRCS field offices in most counties provide technical support for the FSA programs; they conduct wetland inventories and make wetland determinations for the Swampbuster program. The EPA, Corps, and NRCS are developing procedures to allow farmers to rely on written NRCS wetland jurisdictional determinations as the final federal government position on the extent of Section 404 Clean Water Act jurisdiction. NRCS identifications are not a substitute for NYS Wetland Maps. NRCS: (315) 477-6504

U.S. FISH AND WILDLIFE SERVICE (USFWS)

USFWS field offices in New York assist with wetland restoration plans and management questions. The USFWS field office reviews federal permit applications and related mitigation plans, and participates in consultations with other resource agencies regarding threatened or endangered wildlife species issues (Section 7 of the federal Endangered Species Act). USFWS: (607) 753-9334.

COUNTY SOIL AND WATER CONSERVATION DISTRICTS (SWCD)

These districts are partners with FSA and NRCS in assisting the local community in particular, and in working with counties in protecting their natural resources. They generally have copies of information such as DEC maps, soil surveys, and aerial photographs. For SWCD contacts, contact the District Committee: (518) 457-3738

COUNTY AND LOCAL ENVIRONMENTAL MANAGEMENT COMMISSIONS

These local review bodies develop resource and other local land use plans and recommend regulatory ordinances to the local governing body. They may also work with local planning or zoning staff in administering local land use laws.

Adjacent Area (New York State):

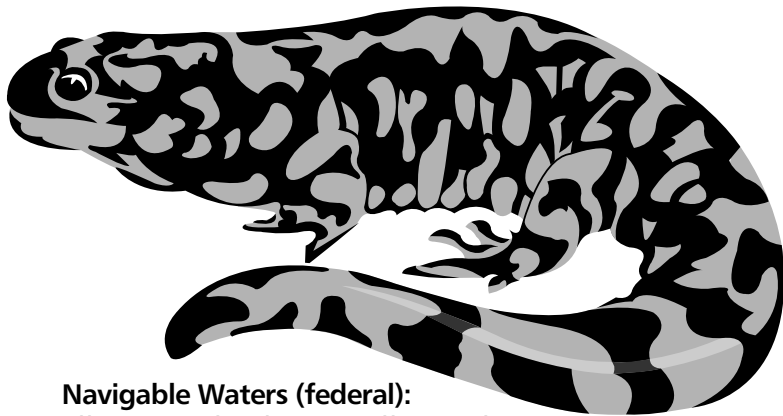
adjacent area means those areas of land or water that are outside a wetland and within 100 feet (or 300 feet in tidal wetlands; 150 feet in New York City in tidal wetlands), measured horizontally, from the boundary of the wetland. DEC may establish an adjacent area broader than 100 feet where necessary to protect and preserve a freshwater wetland.

Mitigation:

mitigation refers to the avoidance and minimization of detrimental impacts and compensation for the loss of wetlands and their functions. It is required in the Corps permit process if alternative siting and efforts to reduce impacts still result in wetlands loss.

National Wetlands Inventory Maps (NWI):

NWI maps show the location and type of wetlands in the United States. They can be overlaid upon U.S. Geological Survey topographic maps. NWI maps are not a substitute for NYS Wetlands Maps or federal wetland jurisdiction. NWI mapping has been undertaken with the use of aerial photo technology, and not all mappings have been ground-truthed. The NWI maps can be purchased through the Cornell Institute for Resource Information Systems (Cornell IRIS) at (607)255-extensions 6529 or 4868. Contact 1-800-USA-MAPS for USGS topo maps.



Navigable Waters (federal):

all presently, historically, and reasonably potential navigable waters and all waters subject to the ebb and flow of the tide up to mean high water in tidal water and up to ordinary high water in freshwater areas.

Ordinary High Water Mark (federal):

the point on the bank or shore to which the presence and action of surface water is so continuous as to leave a distinct mark by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. The OHWM defines the bed of a lake, river, or stream.

Regulated Activity (New York State):

any form of draining, dredging, excavation, or mining, either directly or indirectly; any form of dumping or filling, either directly or indirectly; erecting any structures, constructing roads, driving pilings, or placing any other obstructions whether or not changing the ebb and flow of the water; any form of pollution, including, but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment or other liquefied wastes into or so as to drain into a wetland; or any other activity that substantially impairs any of the several functions or benefits of wetlands. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise substantially affect the wetlands and are located within the adjacent area. In the Adirondack Park, subdivision of land within wetlands is a regulated activity.

Swampbuster:

a provision of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Bill) that denies eligibility for all U.S. Department of Agriculture farm program benefits to any person who converts a wetland by draining, dredging, filling, leveling, or any other means after December 23, 1985.

Wetlands (federal):

those areas that are inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, bogs, marshes, and wet meadows.

Wetlands (New York State):

a) lands and submerged lands ... supporting aquatic or semi-aquatic vegetation; b) containing the remnants of any vegetation that is not aquatic or semi-aquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of 6ft. and that such conditions can be expected to persist indefinitely barring human intervention; c) lands and water substantially enclosed by aquatic or semi-aquatic vegetation as per a) and b); and d) the waters overlying the areas set forth in a) and b) and the lands underlying c).

Wetlands Reserve Program:

a voluntary program, piloted in a number of states including New York, authorized through the 1990 Farm Bill, offering landowners a chance to receive payments for restoring and protecting wetlands on their farms.

CONTACTS LIST: NEW YORK WETLAND REGULATIONS

| COUNTY | CLERK | DEC | CORPS | COUNTY | CLERK | DEC | CORPS |
|-------------|--------------|--------------|--------------|---------------|--------------|--------------|--------------|
| Albany | 518-487-5110 | 518-357-2069 | 518-270-0588 | Niagara | 716-439-7022 | 716-851-7165 | 716-879-4330 |
| Allegany | 716-268-9270 | 716-372-6242 | 716-879-4330 | Oneida* | 315-798-5775 | 315-793-2555 | 716-879-4330 |
| Bronx | 718-590-3646 | 718-482-4997 | 212-264-0184 | Onondaga | 315-435-2227 | 315-426-7438 | 716-879-4330 |
| Broome | 607-778-2451 | 607-753-3095 | 716-879-4330 | Ontario | 716-396-4200 | 716-226-2466 | 716-879-4330 |
| Cattaraugus | 716-938-9111 | 716-372-6242 | 716-879-4330 | Orange | 914-291-2690 | 914-256-3054 | 212-264-0184 |
| Cayuga | 315-253-1271 | 315-426-7438 | 716-879-4330 | Orleans | 716-589-5334 | 716-226-2466 | 716-879-4330 |
| Chautauqua | 716-753-4331 | 716-372-6242 | 716-879-4330 | Oswego | 315-349-8385 | 315-426-7438 | 716-879-4330 |
| Chemung | 607-737-2920 | 716-226-2466 | 716-879-4330 | Otsego | 607-547-4276 | 607-652-7741 | 518-270-0588 |
| Chenango | 607-337-1450 | 607-753-3095 | 716-879-4330 | Putnam | 914-225-3641 | 914-256-3054 | 212-264-0184 |
| Clinton* | 518-565-4700 | 518-897-1234 | 518-270-0588 | Queens | 718-520-3135 | 718-482-4997 | 212-264-0184 |
| Columbia | 518-828-3339 | 518-357-2069 | 518-270-0588 | Rensselaer | 518-270-4080 | 518-357-2069 | 518-270-0588 |
| Cortland | 607-753-5021 | 607-753-3095 | 716-879-4330 | Richmond | 718-390-5396 | 718-482-4997 | 212-264-0184 |
| Delaware | 607-746-2123 | 607-652-7741 | 518-270-0588 | Rockland | 914-638-5221 | 914-256-3054 | 212-264-0184 |
| Dutchess | 914-486-2132 | 914-256-3054 | 212-264-0184 | St. Lawrence* | 315-379-2237 | 315-785-2245 | 716-879-4330 |
| Erie | 716-858-8865 | 716-851-7165 | 716-879-4330 | Saratoga* | 518-885-2213 | 518-623-3671 | 518-270-0588 |
| Essex | 518-873-3600 | 518-897-1234 | 518-270-0588 | Schenectady | 518-388-4221 | 518-357-2069 | 518-270-0588 |
| Franklin* | 518-481-1684 | 518-897-1234 | 518-270-0588 | Schoharie | 518-295-8316 | 607-652-7741 | 518-270-0588 |
| Fulton* | 518-762-0556 | 518-623-3671 | 518-270-0588 | Schuyler | 607-535-8133 | 716-226-2466 | 716-879-4330 |
| Genesee | 716-344-2550 | 716-226-2466 | 716-879-4330 | Seneca | 315-539-5655 | 716-226-2466 | 716-879-4330 |
| Greene | 518-943-2050 | 518-357-2069 | 518-270-0588 | Steuben | 607-776-9631 | 716-226-2466 | 716-879-4330 |
| Hamilton* | 518-518-7111 | 518-897-1234 | 518-270-0588 | Suffolk | 516-852-2001 | 516-444-0365 | 212-264-3912 |
| Herkimer* | 315-867-1129 | 315-793-2555 | 716-879-4330 | Sullivan | 914-794-3000 | 914-256-3054 | 212-264-0184 |
| Jefferson | 315-785-3081 | 315-785-2245 | 716-879-4330 | Tioga | 607-687-8660 | 607-753-3095 | 716-879-4330 |
| Kings | 718-643-7037 | 718-482-4997 | 212-264-0184 | Tompkins | 607-274-5551 | 607-753-3095 | 716-879-4330 |
| Lewis* | 315-376-5333 | 315-785-2245 | 716-879-4330 | Ulster | 914-340-3040 | 914-256-3054 | 212-264-0184 |
| Livingston | 716-243-7010 | 716-226-2466 | 716-879-4330 | Warren* | 518-761-6427 | 518-623-3671 | 518-270-0588 |
| Madison | 315-366-2260 | 315-426-7438 | 716-879-4330 | Washington* | 518-746-2171 | 518-623-3671 | 518-270-0588 |
| Manhattan | 212-374-8360 | 718-482-4997 | 212-264-0184 | Wayne | 315-946-5870 | 716-226-2466 | 716-879-4330 |
| Monroe | 716-428-5177 | 716-226-2466 | 716-879-4330 | Westchester | 914-285-3080 | 914-256-3054 | 212-264-6730 |
| Montgomery | 518-853-8115 | 518-357-2069 | 518-270-0588 | Wyoming | 716-786-8810 | 716-851-7165 | 716-879-4330 |
| Nassau | 516-571-2661 | 516-444-0365 | 212-264-3912 | Yates | 315-536-5120 | 716-226-2466 | 716-879-4330 |

* Portions of these counties lie within the Adirondack Park (518) 891-4050

For general wetlands information call: EPA Wetlands Hotline at 1-800-832-7828

New York County Clerks telephone listings are from <http://www.usaguides.com/nys/ctyclrks.htm>



PERMIT REVIEW TIMETABLE

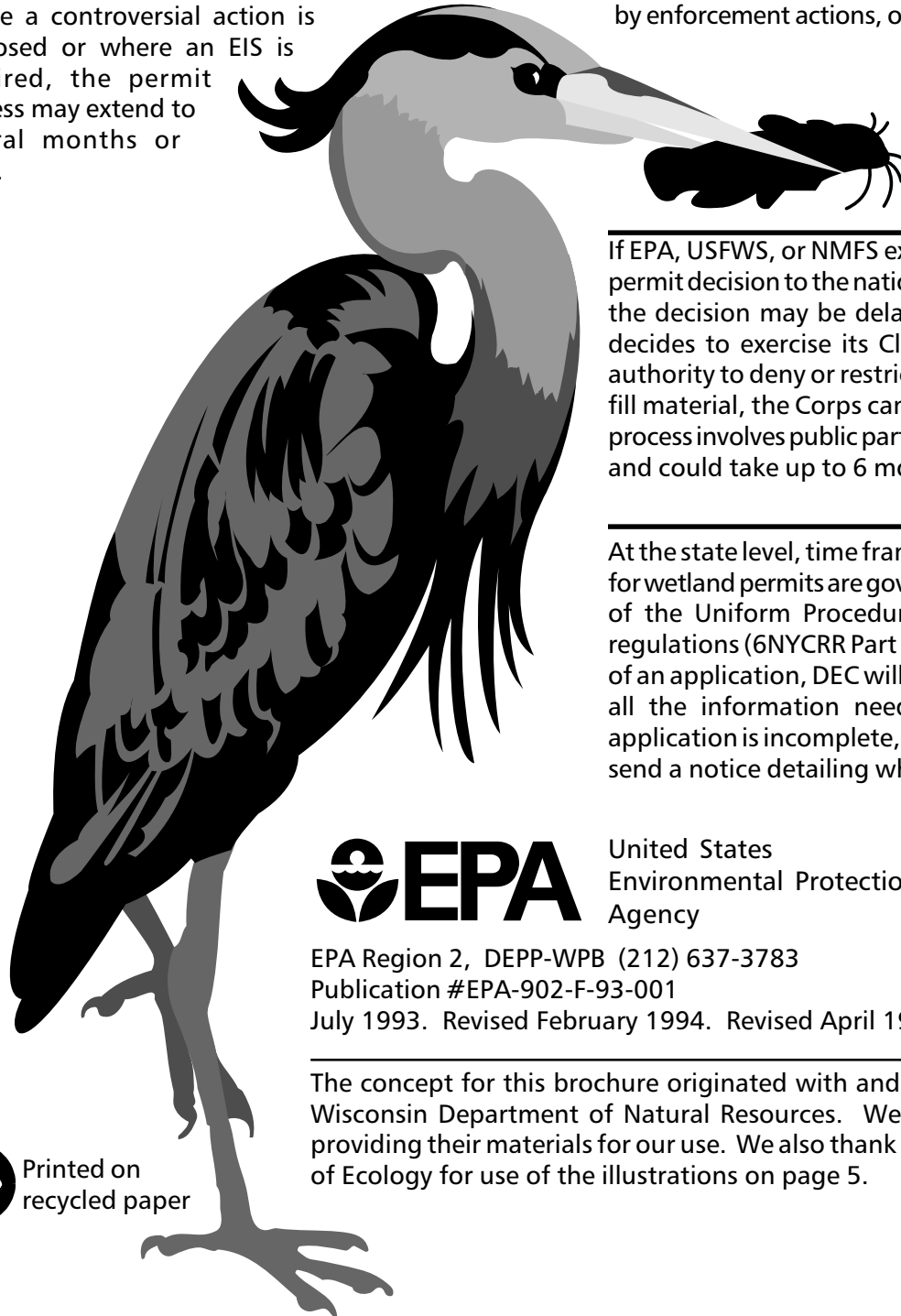
FEDERAL LEVEL

The Corps review process normally is concluded within 60 days of receipt of a complete application. During this time, the Corps issues a public notice, solicits public and agency comments for 30 days, evaluates the proposed action, and issues a decision. If a public hearing is held, the decision process is lengthened.

Where a controversial action is proposed or where an EIS is required, the permit process may extend to several months or more.

STATE LEVEL

When a project application is declared complete, the review process begins. For minor projects, a decision should be made within 45 calendar days. Major project reviews can take up to 90 days if no public hearing is held, and up to 60 days after the close of a public hearing. Time frames may be suspended by mutual agreement of DEC and the applicant, by enforcement actions, or by SEQRA reviews.



If EPA, USFWS, or NMFS exercise their option to elevate a permit decision to the national level, under Section 404(q), the decision may be delayed by 30 to 60 days. If EPA decides to exercise its Clean Water Act Section 404(c) authority to deny or restrict use of a site for placement of fill material, the Corps cannot issue a permit. The 404(c) process involves public participation and possibly hearings, and could take up to 6 months.

At the state level, time frames and processing procedures for wetland permits are governed in New York by provisions of the Uniform Procedures Act and its implementing regulations (6NYCRR Part 621). Within 15 days of receipt of an application, DEC will determine whether it contains all the information needed to begin review. If the application is incomplete, the Regulatory Affairs staff will send a notice detailing what is needed.



United States
Environmental Protection
Agency

EPA Region 2, DEPP-WPB (212) 637-3783

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