

NYSCAR: Wetlands Remapping could harm business development, property values

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The New York State Department of Environmental Conservation (DEC) recently initiated an effort to remap the regulated wetlands in New York State. Some of the new maps are due to be released soon and could significantly impede business development and negatively affect property values.

Currently, all wetlands in New York State are regulated by the U.S. Army Corps of Engineers (USACOE). New York State also regulates wetlands that are 12.4 acres or larger. Applicants seeking to construct a project in New York must proceed through both of these agencies.

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This process is duplicative and time consuming; it can also result in conflicting requirements imposed by either agency.

The proposed new maps will affect business, landowners and municipalities. If the new maps are adopted as proposed, some property owners may seek reduced assessments from their municipality. Assessments for other owners within the municipality will need to be increased to make up the difference. To the property owners, this is a one-time economic event. The sale price received for a given property will be lower, but for the municipalities, this reduction will continue year after year.

One of the first areas to be completed is Orange County. The new maps will increase the size of the DEC's regulated wetlands in Orange County by an additional 16,000 acres, and in Ulster County by 4,000 acres. The DEC has stated that the new maps will have at least a 50-percent increase in wetlands under the DEC's jurisdiction. Remapping in Monroe County has identified an additional 9,000 acres, and

a seven-county area north of Albany appears to be the next target for remapping.

Some estimates indicate that there may be in excess of 700,000 acres of wetlands that could be added to the regulated areas.

Not yet built or future planned projects will not be grandfathered in and will have to abide by the new requirements. There are a large number of pre-approved, "shovel ready" projects across the state. These are projects that were previously engineered and approved, and are currently awaiting better economic conditions before proceeding with development. The fact that there is no grandfathering provision means that any project impacted by the new wetlands, or their 100-foot buffers, will have to go back through the approval process prior to construction.

Remapping the entire state to prepare maps that will need to be updated at some point again in the future is not the best solution. This effort is likely to cost hundreds of thousands, if not millions of dollars, at a time when state resources are scarce.

There is a better way for New York to protect its valuable wetland resources without unduly burdening economic development. New York State could assume the 404 Permit Program from the USACOE. The adoption of the USACOE 404 program by the DEC could be a "win-win" situation, and would provide several benefits including:

- The maps would no longer be needed, as the 404 Permit Program regulates wetlands based upon actual field conditions, not on maps that are prone to inaccuracies and staleness over time.
- Although the DEC would not need to spend the time, effort and money on maintaining the old maps, the wetlands would still be protected through the existing USACOE permit process, which would be taken over by the DEC.
- Applicants would only need to apply to DEC, not both the DEC and the USACOE.

A number of states have already undertaken the effort to eliminate duplicative permitting processes. The New York State Commercial Association of REALTORS® recently passed a resolution in support of the concept, as did the Hudson Gateway Association of REALTORS®. As of this writing, the list of municipalities and organizations passing resolutions in support of this idea continues to grow. A copy of the resolution can be found at www.nyscar.org, and more information about the wetland remapping issue can be found at www.allianceforbalancedgrowth.com. ●

