

Appendix L-2
Definition of Tidal Wetlands

NYSDEC

WestlawNext New York Codes, Rules and Regulations

6 CRR-NY 661.4
NY-CRR

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 6. DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CHAPTER X. DIVISION OF WATER RESOURCES
SUBCHAPTER A. GENERAL
ARTICLE 1. MISCELLANEOUS RULES
PART 661. TIDAL WETLANDS—LAND USE REGULATIONS

6 CRR-NY 661.4
6 CRR-NY 661.4

661.4 Definitions.

The following terms when used in this Part shall have the following meanings:

(a) *Act* shall mean the Tidal Wetlands Act (article 25 of the Environmental Conservation Law as from time to time amended).

(b)

(1) *Adjacent area* shall mean any land immediately adjacent to a tidal wetland within whichever of the following limits is closest to the most landward tidal wetland boundary, as such most landward tidal wetlands boundary is shown on an inventory map (see explanatory figures 1-6):

(i) 300 feet landward of said most landward boundary of a tidal wetland, provided, however, that within the boundaries of the City of New York this distance shall be 150 feet (see figure 1); or

(ii) to the seaward edge of the closest lawfully and presently existing (*i.e.*, as of August 20, 1977), functional and substantial fabricated structure (including, but not limited to, paved streets and highways, railroads, bulkheads and sea walls, and rip-rap walls) which lies generally parallel to said most tidal wetland landward boundary and which is a minimum of 100 feet in length as measured generally parallel to such most landward boundary, but not including individual buildings (see figure 2); or

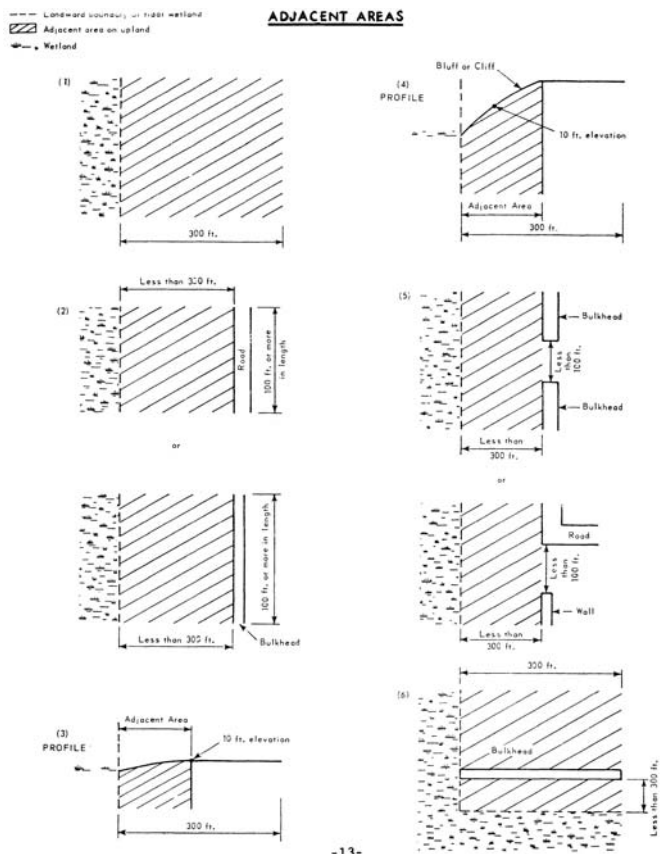
(iii) to the elevation contour of 10 feet above mean sea level, except when such contour crosses the seaward face of a bluff or cliff, or crosses a hill on which the slope equals or exceeds the natural angle of repose of the soil, then to the topographic crest of such bluff, cliff, or hill (see figures 3 and 4). Pending the determination by the commissioner in a particular case, the most recent, as of the effective date of this Part, topographical maps published by the United States geological survey, Department of the Interior, having a scale of 1:24,000, shall be rebuttable presumptive evidence of such 10 foot elevation.

(2) *Adjacent area* shall not include any area lying landward of an imaginary line drawn between the seaward edges of two existing (*i.e.*, as of August 20, 1977) substantial fabricated structures which constitute the landward limit of an adjacent area, as provided in subparagraph (ii) of this subdivision, where the area landward of such imaginary line does not have located thereon any such fabricated structures and where such imaginary line is less than 100 feet in length, as measured generally parallel to the most landward limit of the tidal wetland involved (see figure 5).

(3) Where land lies within the boundaries of an adjacent area described by subparagraph (i) or subparagraph (iii) of this subdivision but appears to be excluded from an adjacent area by subparagraph (ii) of this subdivision or paragraph (2) of this subdivision, such land shall be deemed to be part of an adjacent area (see figure 6). Provided, however, that in such instances of overlap between the various provisions of this subdivision the regional permit administrator may in his discretion determine that said land is not an adjacent area for the purposes of this Part if factors are present which in his opinion justify treating such land as non-adjacent area in light of the provisions in subparagraph (ii) or paragraph (2) of this subdivision.

(4) The construction of a new substantial man-made structure described in subparagraph (ii) of this subdivision after August 20, 1977 shall not be deemed to limit the extent of an adjacent area.

(5) *Adjacent area* shall also include any extended adjacent area identified during the moratorium period, as established by section 25-0202 of the Act, pursuant to the provisions of subdivision (c) of section 660.1 of this Title.



(c) *Applicant* shall mean a person who files an application for a permit issued by the department pursuant to this Part and who is either the owner of the land on which the proposed regulated activity will be located, a contract vendee of such owner, a lessee of such owner, or the person who will actually control and direct the undertaking of the proposed activity.

(d) *Aquaculture* shall mean the cultivation and harvesting of products that naturally are produced in the marine environment, including fish, shellfish, crustaceans and seaweed, and the installation of cribs, racks and in-water structures for cultivating such products, but shall not mean the construction of any building, any filling or dredging or the construction of any water regulating structures.

(e) *Chief administrative officer* shall mean in the case of a city or a village, the mayor thereof, in the case of a town, the supervisor thereof, and, in the case of a county not wholly within a city, the county executive or county legislative body.

(f) *Chief permit administrator* shall mean any employee of the department who is designated by the commissioner to act in such capacity.

(g) *Commercial use* shall mean any use involving the sale, rental or distribution of facilities (including but not limited to tourist accommodations and storage facilities), goods, services or commodities, either retail or wholesale, or the provision of recreational facilities for a fee.

(h) *Commercial use building* shall mean any building in excess of 100 square feet associated with a commercial use.

(i) *Commissioner* shall mean the Commissioner of Environmental Conservation or his duly authorized representative.

(j) *Department* shall mean the Department of Environmental Conservation.

(k) *Dredging* shall mean the excavation or removal of sediment, soil, mud, sand, shells, gravel or other aggregate from any tidal wetland or adjacent area for the direct or indirect purpose of establishing or increasing water depth, increasing the surface or cross-sectional area of a waterway, or obtaining such sediment, soil, mud, sand, gravel, shells or other aggregate. Provided however, such term shall not include acquiring samples of sediment, soil, mud, sand, shells, gravel or other aggregate; acquiring the natural products of tidal wetlands by recreational or commercial fishing, shellfishing, aquaculture, hunting or trapping where otherwise legally permitted; or maintenance dredging as defined in subdivision (r) of this section.

(l) *In existence* or *existing* shall mean, with respect to any land use and development (except a subdivision), that such land use and development has been lawfully substantially commenced or completed, and with respect to any subdivision of land, or portion thereof, shall mean that such subdivision, or portion, has been lawfully substantially commenced or completed and that substantial expenditures have been made for structures or improvements directly related thereto.

(m) *Industrial* use shall mean any manufacturing, production or assembly of goods or materials and any mineral extraction operation.

- (n) *Industrial use building* shall mean any building in excess of 100 square feet associated with an industrial use.
- (o) *Inventory map* shall mean a final tidal wetlands boundary map established by the commissioner pursuant to subdivision (4) of section 25-0201 of the Act depicting the boundary lines of tidal wetlands and filed in the office of the county clerk in the county in which such wetlands are located.
- (p) *Land use and development or use* shall mean any construction or other activity which materially changes the use or appearance of land or a structure or the intensity of use of land or a structure, including but not limited to any regulated activity.
- (q) *Lawfully* shall mean in full compliance with all applicable statutes, rules and regulations.
- (r) *Maintenance dredging* means excavation to restore the depth of underwater lands to elevations which are demonstrated to the reasonable satisfaction of the department to have been lawfully in existence within 20 years preceding the date of the application.
- (s) *Mineral extraction* shall mean any extraction (not including the taking of specimens, dredging, or maintenance dredging) from any tidal wetland or adjacent area of stone, coal, salt, ore, talc, granite, petroleum products, sand and gravel or other materials, including the construction, alteration or maintenance of mine roads, mine tailing piles or dumps and mine drainage.
- (t) *Multiple family dwelling* shall mean any apartment, town house, condominium or similar building, including the conversion of an existing single-family dwelling to a structure designed for occupancy in separate living quarters by more than one family.
- (u) *Municipality* shall mean a village, town or city or a county in the case of a county not wholly included within a city.
- (v) *Permit* shall mean that form of departmental approval required by this Part for the carrying on of a regulated activity.
- (w) *Person* shall mean any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, bi-state authority, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.
- (x) *Pollutant* shall mean any form of pollution.
- (y) *Pollution* shall mean the presence in the environment of conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant, or marine life, wildlife, or other animal life, or to property, or which unreasonably interfere with the comfortable enjoyment of life and property throughout such tidal wetlands as may be affected thereby.
- (z) *Principal building* shall mean any one of the following: single-family dwelling; each two units of a multiple-family dwelling; any other type of building, including but not limited to any commercial or industrial use building or public or semi-public building, that exceeds 1,000 square feet in area and each additional 1,000 square feet of floor space of such a building in excess of 3,000 square feet. In addition, each commercial or industrial use building or public or semi-public building less than 1,000 square feet in area shall count as one-quarter of a principal building.
- (aa) *Project* shall mean any action which may result in direct or indirect physical impact on a tidal wetland, including, but not limited to, any regulated activity.
- (bb) *Public or community sewage disposal system* shall mean any sewage disposal system for which the discharge to such system has been authorized by a SPDES permit issued pursuant to article 17 of the Environmental Conservation Law.
- (cc) *Public or semi-public building* shall mean any municipal building, library building, school or college building, hospital building, building used as a place of worship, museum building, research center building, rehabilitation center building or any similar building.
- (dd) *Regional permit administrator* shall mean an employee of the department designated by the commissioner to act in such capacity within the jurisdiction of a regional office of the department.

(ee)

(1) *Regulated activity* shall mean:

- (i) any form of draining, dredging, excavation or removal, either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate;
- (ii) any form of dumping, filling or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish or fill of any kind;
- (iii) the erection of any structures or construction of any facilities or roads, the driving of any pilings or placing of any other obstructions, whether or not changing the ebb and flow of the tide;
- (iv) any form of pollution;
- (v) any portion of a subdivision of land located in any tidal wetland or adjacent area;
- (vi) any other new activity within a tidal wetland or on an adjacent area which directly or indirectly may substantially alter or impair the natural condition or function of any tidal wetland.

(2) Regulated activity shall include, but not be limited to, any activity listed in subdivision (b) of section 661.5 of this Part as a generally compatible use—permit required (GCp), presumptively incompatible use—permit required (PIp), incompatible use (I) or

permit required (P) for the applicable area. Regulated activity shall not include any activity listed in section 661.5 of this Part as a use not requiring a permit (NPN) for the applicable area.

(ff) *Single-family dwelling* shall mean any detached building containing one dwelling unit including any mobile home.

(gg) *Subdivision of land* or *subdivision* shall mean any division of land into two or more lots, parcels or sites, whether adjoining or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy (including any grading, road construction, installation of utilities or other improvements or any other land use and development preparatory or incidental to any such division) by any person or by any other person controlled by, under common control with or controlling such person or by any group of persons acting in concert as part of a common scheme or plan. Subdivision of land shall not include the lease of land for hunting and fishing and other open space recreation uses and shall not include the division of land by bona fide gift, devise or inheritance by and from natural persons.

(hh) *Tidal wetlands* or *wetland* shall mean any lands delineated as tidal wetlands on an inventory map and shall comprise the following classifications as delineated on such map:

(1) Coastal fresh marsh.

The tidal wetland zone, designated FM on an inventory map, found primarily in the upper tidal limits of riverine systems where significant fresh water inflow dominates the tidal zone. Species normally associated with this zone include narrow leaved cattail, *Typha angustifolia* the tall bracklish water cordgrasses, *Spartina pectinata* and/or *S. cynosuroides*; and the more typically emergent fresh water species such as arrow arum, *Peltandra*; pickerel weed, *Pondederia*; and cutgrass, *Leersia*.

(2) Intertidal marsh.

The vegetated tidal wetland zone, designated IM on an inventory map, lying generally between average high and low tidal elevation. The predominant vegetation in this zone is low marsh cordgrass, *Spartina alterniflora*.

(3) Coastal shoals, bars and flats.

The tidal wetland zone, designated SM on an inventory map, that (i) at high tide is covered by water, (ii) at low tide is exposed or is covered by water to a maximum depth of approximately one foot, and (iii) is not vegetated by low marsh cordgrass, *Spartina alterniflora*, except as otherwise determined in a specific case as provided in section 661.16 of this Part.

(4) Littoral zone.

The tidal wetlands zone, designated LZ on an inventory map, that includes all lands under tidal waters which are not included in any other category, except as otherwise determined in a specific case as provided in section 661.16 of this Part. Provided, there shall be no littoral zone under waters deeper than six feet at mean low water. Pending determination by the commissioner in a particular case, the most recent, as of the effective date of this Part, national ocean survey maps published by the national ocean survey, national oceanic and atmospheric administration shall be rebuttable presumptive evidence of such six foot depth.

(5) High marsh or salt meadow.

The normal uppermost tidal wetland zone, designated HM on an inventory map, usually dominated by salt meadow grass, *Spartina patens*; and spike grass, *Distichlis spicata*. This zone is periodically flooded by spring and storm tides and is often vegetated by low vigor, *Spartina alterniflora* and Seaside lavender, *Limonium carolinianum*. Upper limits of this zone often include black grass, *Juncus Gerardi*; chairmaker's rush, *Scirpus sp*; marsh elder, *Iva frutescens*; and groundsel bush, *Baccharis halimifolia*.

(6) Formerly connected tidal wetlands.

The tidal wetlands zone, designated FC on an inventory map, in which normal tidal flow is restricted by man-made causes. Typical tidal wetland plant species may exist in such areas although they may be infiltrated with common reed, *Phragmites sp*.

RESEARCH REFERENCES AND PRACTICE AIDS:

55 NY Jur 2d, Environmental Rights and Remedies § 56.

6 CRR-NY 661.4
Current through August 31, 2015

END OF DOCUMENT

© 2015 Thomson Reuters. No claim to original U.S. Government Works.