



Department of
Environmental
Conservation

Freshwater Wetlands Proposed Regulations Changes: An Overview

Changes to Part 664: Freshwater Wetlands Mapping & Classification

Aug 14, 2024

Krista Spohr, Freshwater Wetlands Outreach Coordinator

Overview

- Article 24: Statutory Changes
- Current Regulations & Challenges
- Draft Regulations Implementing changes
- ANPRM Feedback Based Revisions
- Permitting Through the Transition Period
- Examples: GIS Application of Criteria
- General Programmatic Process Changes
- Public Comment Period & Hearings



Freshwater Wetlands Regulations

The background of the slide features a photograph of the New York State Capitol building in Albany, New York. The building is a grand, multi-story structure with a prominent central dome and several smaller towers. In the foreground, there is a large field of red tulips in bloom. The overall scene is set during the day, with some trees visible around the building.

- **6 NYCRR Part 663 - Permit Requirements**
- **6 NYCRR Part 664 - Mapping & Classification**
- **6 NYCRR Part 665 - Local Government Implementation and Minimum Land-Use Regulations**

Sections of the Proposed Regulations

Applicability (664.1)

Definitions (664.2)

Purposes and Approach (664.3)

Classification Procedures (664.4)

Classification System (664.5)

Wetlands of Unusual Importance (664.6)

Miscellaneous Provisions (664.7)

Jurisdictional Determination Procedure (664.8)

Consultation and Review of Positive Jurisdictional Determinations (664.9)

Severability (664.10)

Current 6 NYCRR Part 664

- Mapped Wetlands >12.4 Acres
- Unusual Local Importance
 - ex. bog turtle
- 100 Foot Adjacent Area
- Classify Wetlands (I – IV)

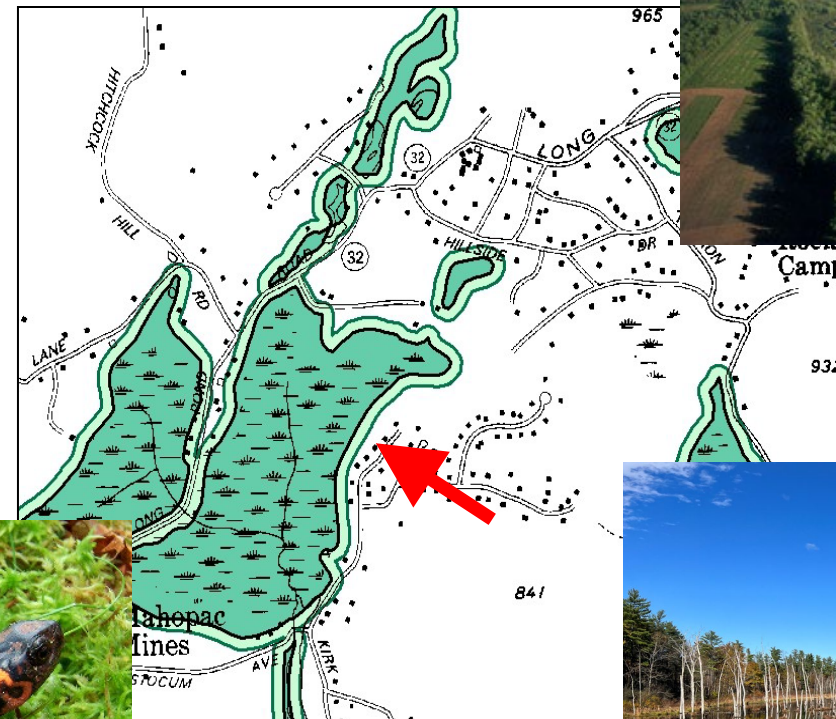


Photo: Melissa Calabria

Current 6 NYCRR Part 664

Classify Wetlands I – IV

- Ability to perform wetland functions & provide wetland benefits.
- Special Ecological Importance – ex. Inland poor fen
- Special Features – habitat for endangered/threatened species
- Hydrological & Pollution Control Features

40 Criteria (7 Class I criteria)

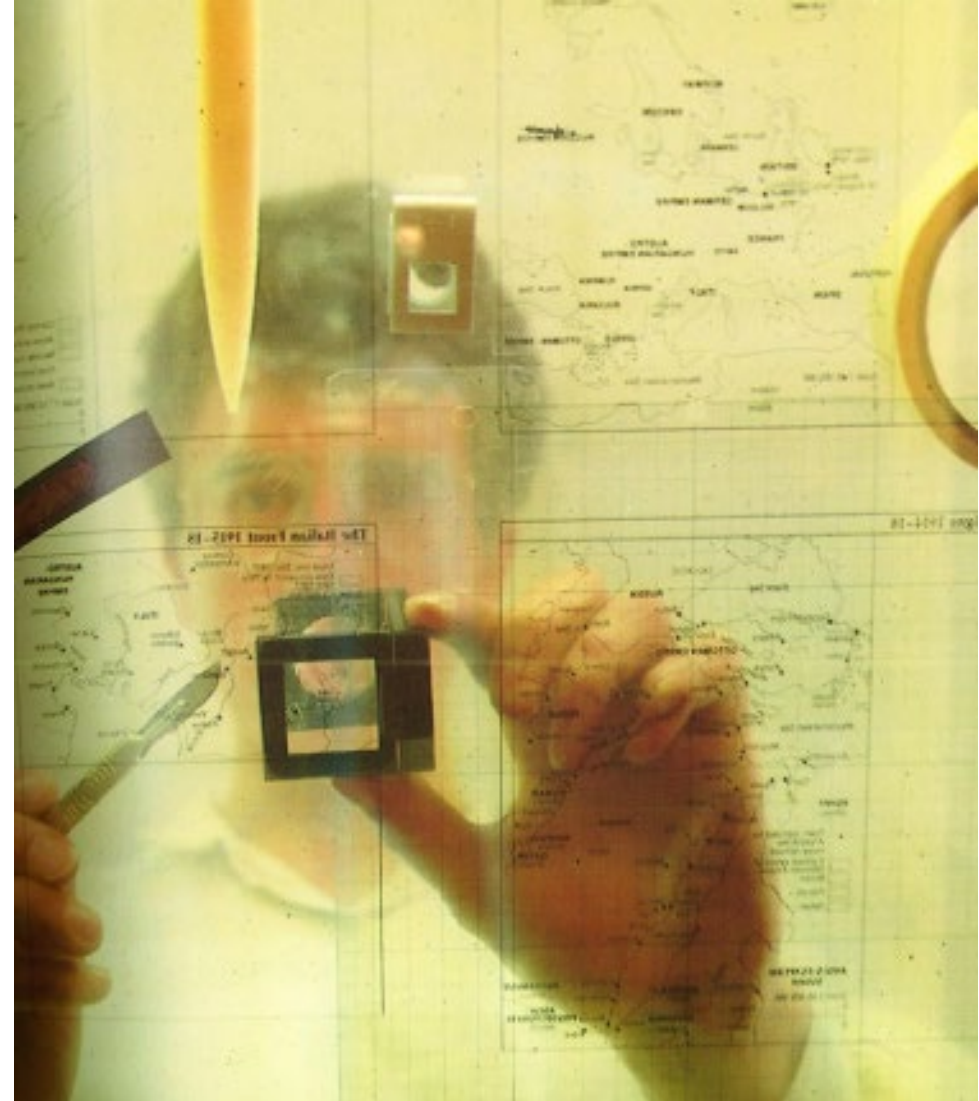
PART 664
FRESHWATER WETLANDS MAPS AND CLASSIFICATION
(Statutory authority: Environmental Conservation Law,
§§3-0301 and 24-1301)

<u>Section</u>	<u>Page</u>
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664.3 - Purposes and approach.	4
664.4 - Classification procedures.	6
664.5 - Classification system.	11
(a) Class I wetlands.	11
(b) Class II wetlands.	13
(c) Class III wetlands.	15
(d) Class IV wetlands.	17
664.6 - Explanation of classification characteristics.	17
(a) Covertypes.	17
(b) Ecological associations.	22
(c) Special features.	26
(d) Hydrological and pollution control features.	33
(e) Distribution and location.	35
664.7 - Freshwater wetlands map maintenance, amendment, and adjustment.	38
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664.9 - Effective date.	45

Current Maps

Based on a field visit of each site taking in consideration

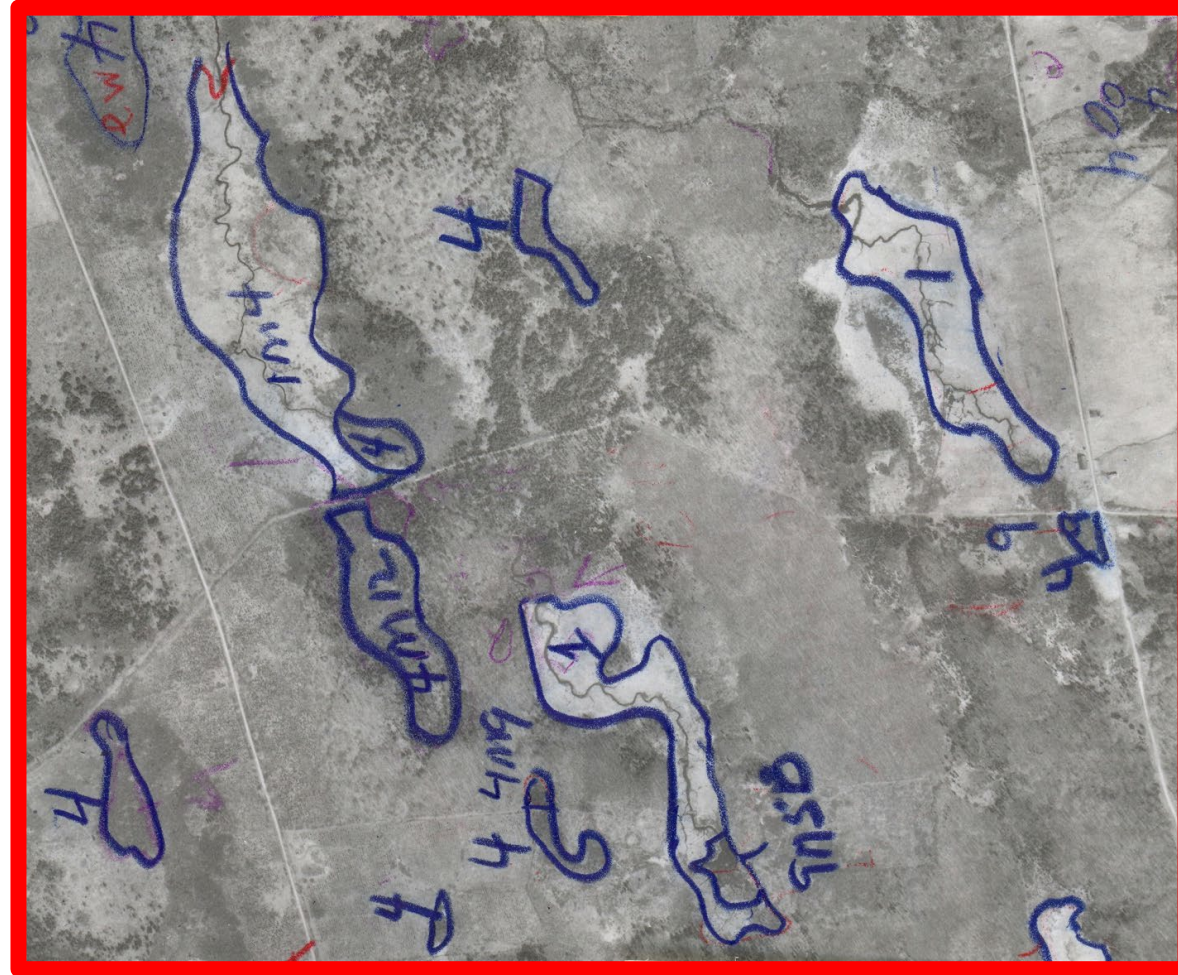
- Wetland Type
- Benefits
- Distribution & Location

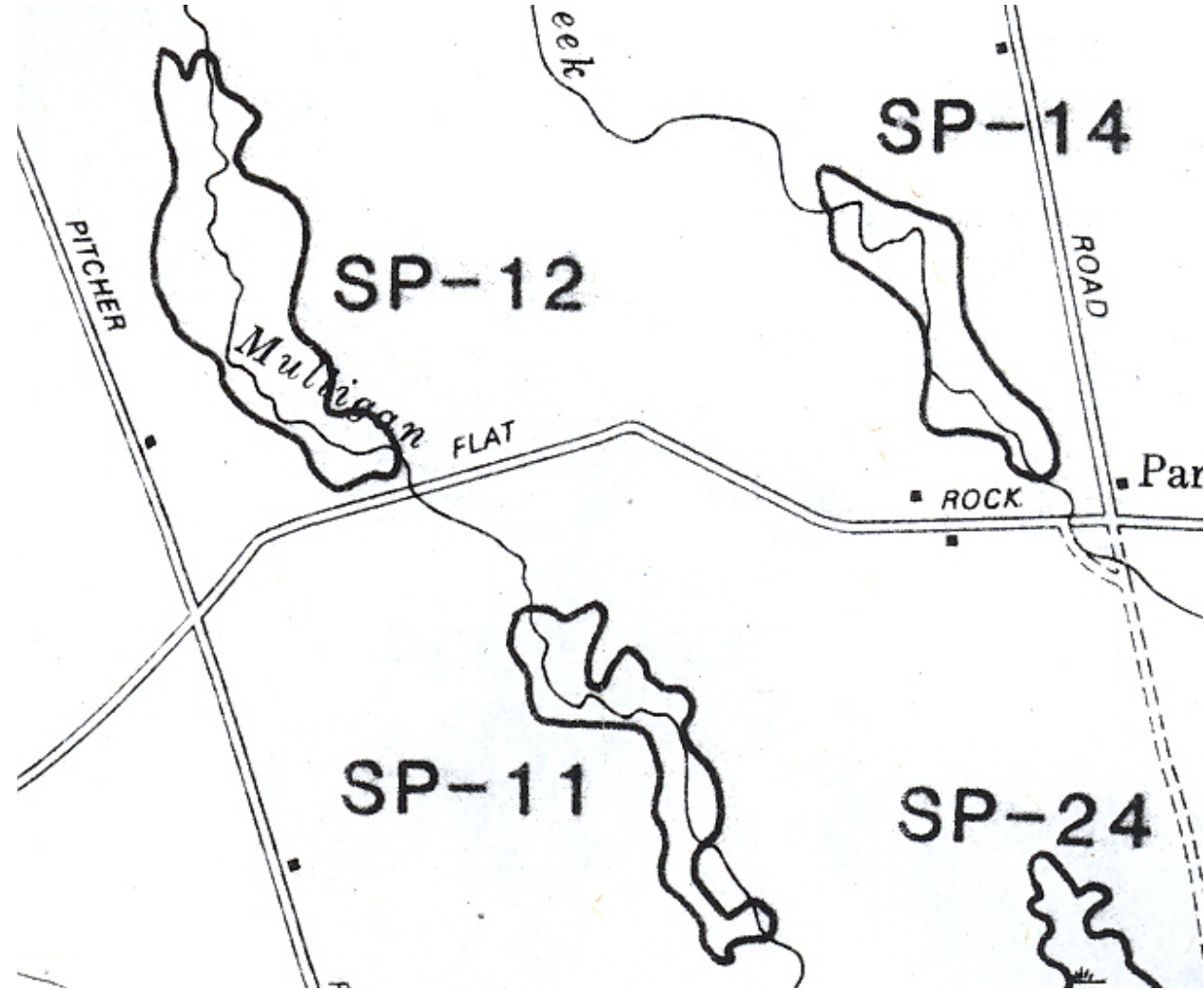


1960-70's Air Photos



Enlarged Image





Final
Freshwater
Wetlands Map

Using
Today's
Technology



Context as to Why the Need for Change

- 1975 – Article 24 Freshwater Wetlands Act enacted
- 1984 – First county finalized its maps
- 1992 – First map amendment
- 1995 – Last map amendment
- 2011 – 2022 Effort to remove the maps as regulatory
- Currently ~1.2 Million acres on the maps
- ~ 1 million additional unmapped wetland acres that meet our jurisdictional criteria for protections, but we can't currently protect them b/c they are not on our regulatory maps.

Implications of Inaccurate Regulatory Maps?

- Confusion for the regulated community and DEC
- Ongoing jurisdictional questions
- Difficulty for project planning, development & design
- Delays in project implementation
- Statutory resource protection goals not met





Wetland Maps



Department of
Environmental
Conservation

Significant Statutory Changes to the Freshwater Wetlands Act

2024 EDITION

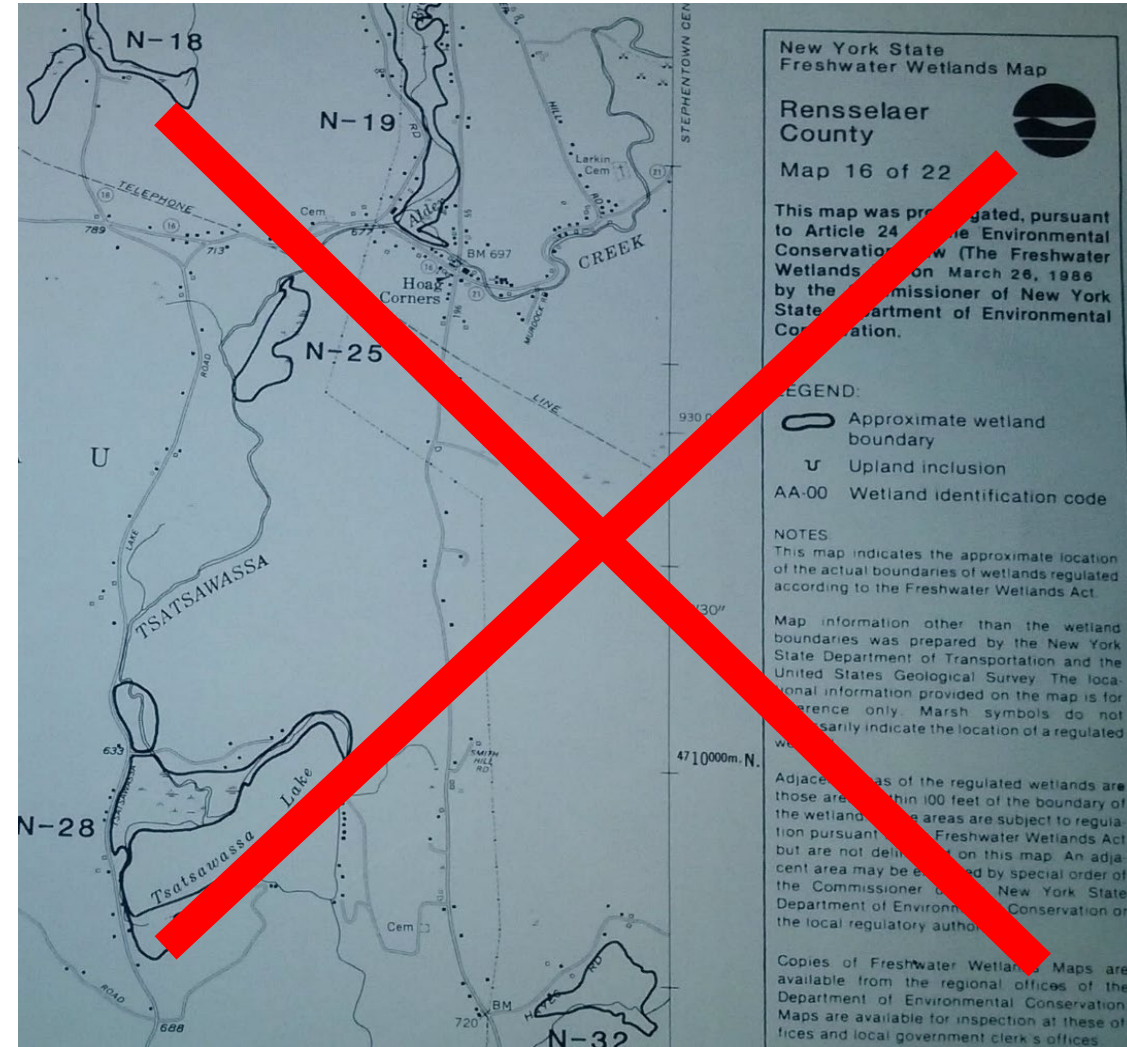
ENVIRONMENTAL
CONSERVATION
LAW
OF THE STATE OF
NEW YORK

Blue360°
Media

NYS Certified

Key Changes: *Maps*

- Transition from *Regulatory* to *Informational Maps*
- Informational Maps: Modeling by Cornell Institute for Resource Information Sciences (IRIS)
- “Previously Mapped” and Informational Maps will be available online December 2024



Key Changes: *Acreeage Thresholds*

- Maintain current 12.4⁺ acre threshold 2025 – 2027
- January 1, 2028, threshold decreases to 7.4⁺ acres



Key Changes: *Wetlands of Unusual Importance*

“Unusual Importance” shall mean a freshwater wetland, regardless of size, that possesses one or more of the following characteristics as determined by the department pursuant to regulations:

§ 24-0107(9)

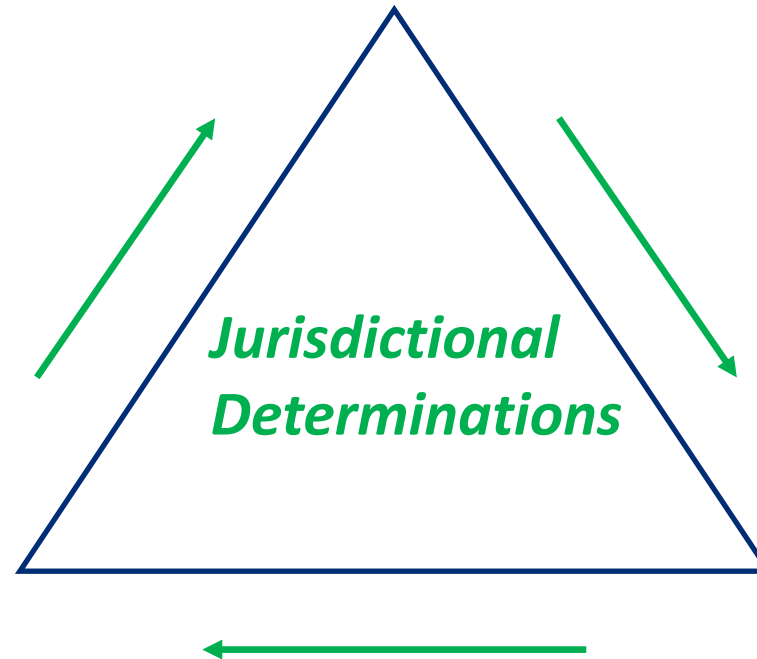


1. Located within a watershed with significant flooding;
2. Located within or adjacent to an urban area (US Census Bureau);
3. It contains a rare plant species;
4. It contains habitat for essential behavior of E/T/Special Concern/Species of Greatest Conservation Need (SGCN);
5. It is classified by the department as a Class I wetland;
6. It was previously classified and mapped by the department as a wetland of unusual local importance;
7. It is a vernal pool known to be productive for amphibian breeding;
8. It is located within a FEMA designated Floodway;
9. It was previously mapped by the department on or before 12/31/2024;
10. It is wetland of local or regional significance;
11. It is of significant importance in protecting the state's water quality.

Summary of Key Changes...

Transition:

Regulatory > Informational Maps



Acreage Threshold:

- 2025-2027: ≥ 12.4 ac
- 2028: ≥ 7.4 ac

UI Wetlands:

(No acreage threshold)



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Existing Part 664

Class I – Class IV , 40 Criteria

Assignments based on site visits of each

we

Field Based Classification Scheme

PART 664
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6 NYCRR Part 664

New York State Department of Environmental Conservation (.gov)
https://dec.ny.gov › nature › freshwater-wetlands-program

Programs To Conserve Wetlands - NYSDEC

6NYCRR Part 664 : Freshwater Wetlands Mapping and Classification Regulations. This regulation contains the criteria for classifying wetlands as Class I, II, III ...

Proposed Part 664 Drafting

Remote JD & Classification System Needs:

- Efficiency – Determinations must be timely;

Data-Reliant, Data-Driven JD & Classification Assignment

assignments made based on objective ID of classification criteria.

Express terms

6 NYCRR Part 662, Freshwater Wetlands -- Interim Permi

6 NYCRR Part 664, Freshwater Wetlands Maps and Class

A new Part 664, Freshwater Wetlands Jurisdiction and Cla

to read as follows:

shall classify the wetlands within the Adirondack Park.

(b) Where the department is the regulating authority, the wetlands cla presented in this Part takes effect in the department's freshwater wetl requirements regulations, Part 663 of this Title. In Part 663, standards of permits are provided for each of the four wetland classes described and 664.5 of this Part.

664.2. Definitions.

(a) "Act" means the Freshwater W...

January 3, 2024

Advanced Notice of Proposed Rule Making

The screenshot shows the top navigation bar of the Department of Environmental Conservation website. It includes the New York State logo, and links for Services, News, and Government. Below this is a dark green header with the text "Department of Environmental Conservation" and a secondary navigation bar with links for Things To Do, Places to Go, Nature, Environmental Protection, Regulatory, News, Get Involved, and About. A prominent dark green box contains the text: "ENB PUBLISH DATE: 01/03/2024" followed by "Statewide - Advanced Notice of Proposed Rule Making for Potential Revisions to Freshwater Wetlands Regulations 6 NYCRR Part 664". A "PRINT" button is visible at the bottom right of the screenshot.

The cover of the New York State Register journal is shown. It features the date "January 3, 2024", "Vol. XLVI", and "Issue 1" in the top left corner. The "DEPARTMENT OF STATE" and "Division of Administrative Rules" are listed in the top right. The title "NEW YORK STATE REGISTER" is prominently displayed in the center. At the bottom, under the heading "INSIDE THIS ISSUE:", there is a list of topics including "Minimum Standards for the New York State Partnership for Long-Term Care Program" and "Transfer of Water Assets from Rural Atlantic Water Company, Inc. to the Town of Warwick and Dissolution of the Company".

Why the ANPRM? What were our goals?

1. Engage with the public in an open, transparent manner to inform stakeholders of NYS Freshwater Wetland Protection Program changes on the horizon;
2. Solicit and receive stakeholder feedback and input *while developing new proposed rules*;
3. Provide an efficient mechanism w/ time to *act on feedback early* to develop a balanced rule.

**What Did They
Say?**



ANPRM Response – Recurring Themes

- Questions
 - Clarifying (definitions, etc.)
 - Implementation (data sets, etc.)
- Concern DEC will be overwhelmed
- Permitting for projects already in the development pipeline
- Vernal pools – How will that work?
- Questions re: Jurisdictional Determination process



Changes made to original proposal based on ANPRM feedback...

- 1) Permitting protocols for projects already in the pipeline
- 2) Added protocols to the JD process
- 3) Productive Vernal Pool protections



DEC Response to ANPRM Permitting Feedback:

Projects meeting the following criteria prior to January 1, 2025, will be allowed to continue without any change in Article 24 jurisdiction for the following specified terms...

Projects With Mapped State Regulated Wetlands

§664.1 Applicability: (c)

Condition Met Before 2025	Scope of Project (UPA Major/Minor Part 621.4(j))	New Regulations Won't Apply Until...
<p>If Issued DEC Freshwater Wetlands Permit</p> <p style="text-align: center;">-OR-</p> <p>DEC Notice of Complete Freshwater Wetlands Permit Application¹</p>	<p>Major or Minor, (It Doesn't Matter)</p>	<p>...Permit Expiration</p>

1 – Jurisdictional Determinations are required for a complete application



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Projects Without Mapped State Regulated Wetlands

§664.1 Applicability: (d)(1),(2)

Condition Met Before 2025	Scope of Project (UPA Major/Minor Part 621.4(j))	New Regulations Won't Apply Until...
FEIS (under Part 617) -OR- Neg Dec for a Type 1 Action -OR- Site plan approval by municipality	Major	July 2028 (3.5 years)
FEIS (under Part 617) -OR- Neg Dec for a Type 1 Action -OR- Site plan approval by municipality	Minor	January 2027 (2 years)



Changes made to original proposal based on ANPRM feedback...

- 1) ✓ Permitting protocols for projects already in the pipeline
- 2) Amended the JD process
- 3) Vernal Pools

CliffsNotes NYSDEC Part 664 ET!

What happens

§ 664.7 Jurisdiction

If the department fails to respond within 90 days of a request for a determination of wetland jurisdiction, the jurisdiction is waived for five years.

If the department fails to respond within 10 business days of a request for a determination of wetland jurisdiction, the jurisdiction is waived for five years.

- DEC drops the ball: > 90 days: JD not given
- Requestor Sends 10 Day Notice to DEC
- DEC fails to provide "a definite answer" by day 10, wetland jurisdiction for the subject parcel is waived for 5 years.

Over 300 Regs Available!

deadline?

in writing that

*over within
shwater
a period*

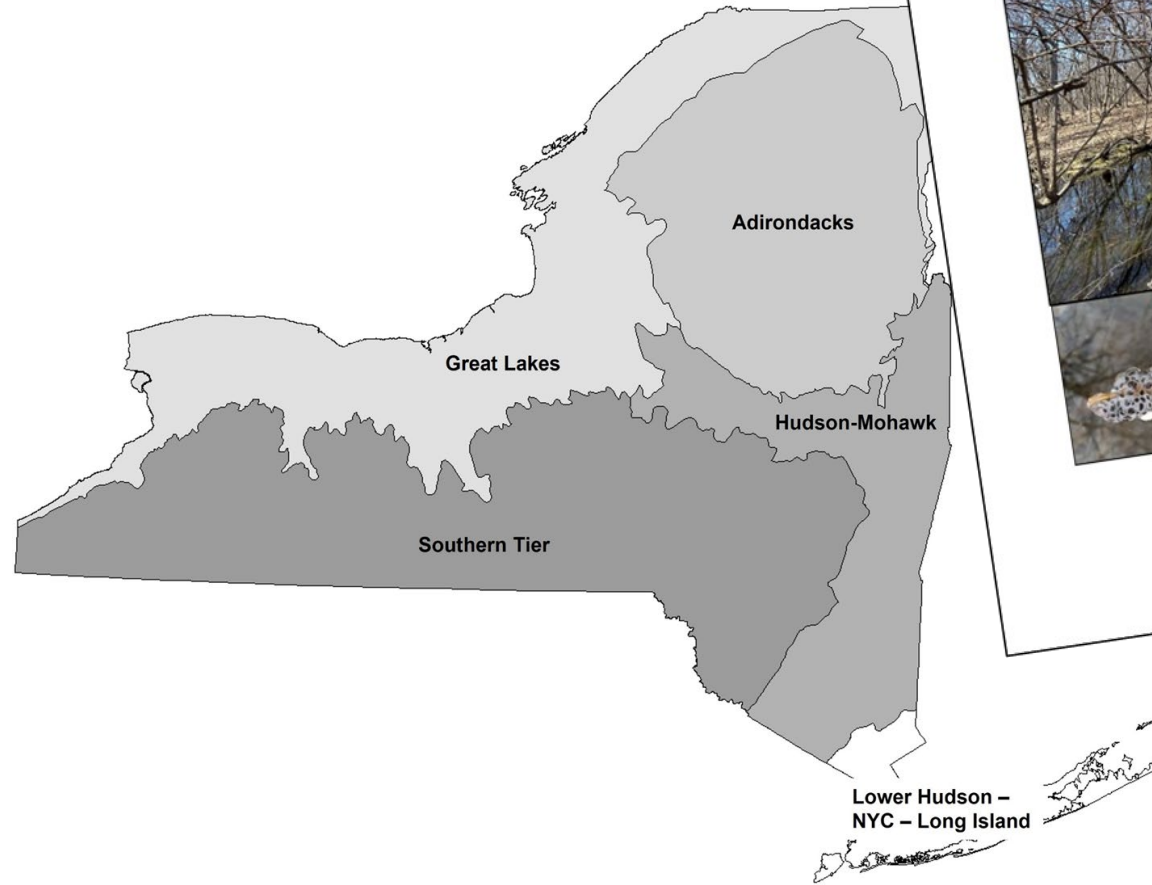
Regulated Vernal Pools

The department shall **create and maintain a list of geographic coordinates for vernal pools known to the department** and that meet the criteria in subparagraphs (1) through (6) of paragraph (g) of this section. The department shall **publish updates to the productive vernal pool list in the Environmental Notice Bulletin.**

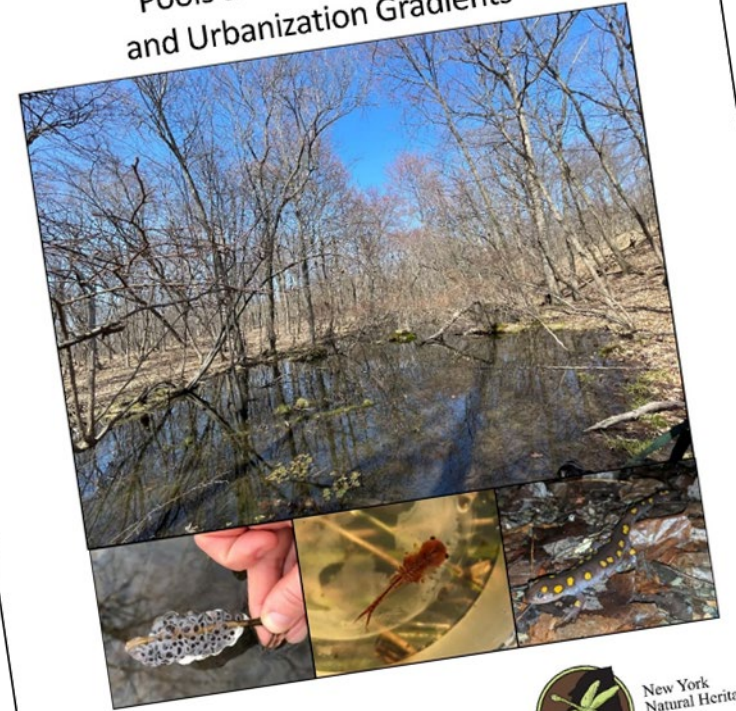
Productive Vernal Pools:

How is productivity determined & how will they be regulated?

- Species Groups
- Geographic Area
- DEC Web Listing



Determining the Importance of Vernal Pools across Geophysical and Urbanization Gradients



Department of
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Vernal Pools - Changes

- Process for landowners to notify DEC of productive vernal pools
- Technical adjustments
- Extend adjacent area



Productivity According to Egg Masses by NYS Region

Focal Species:	Adirondack	Great Lakes	Southern Tier	Hudson-Mohawk	Lower Hudson-NYC-Long Island
Spotted Salamander	10+	2+	10+	55+	10+
Wood Frog	15+	2+	15+	30+	15+
Jefferson Salamander	1+	20+	20+	20+	1+
Blue Spotted Salamander	1+	20+	20+	20+	1+
Jefferson-Blue Spotted Hybrids	1+	20+	20+	20+	1+
Eastern Tiger Salamander	1+	1+	1+	1+	1+
Marbled Salamander	1+	1+	1+	1+	1+

Why Extend Adjacent Area for Vernal Pools?

Statute directs us to protect vernal pools for amphibians

Upland habitat is vital for amphibian populations to persist

All studies conclude that protecting a 100-foot zone is not enough for amphibians to persist

Question is how large an adjacent area is enough?



Study of Amphibian Life Zones	Distance (m)	Distance (ft)
Madison 1997	160	525
Madison and Farrand 1998	245	804
Semlitsch 1998	164	538
Faccio 2003	175	574
Rittenhouse and Semlitsch 2007	293	961
Scott et al. 2013	348	1142
Van Drunen et al. 2020	397	1302
Average =	255	835
Median =	245	804

Vernal Pools – Difficult to Get On List

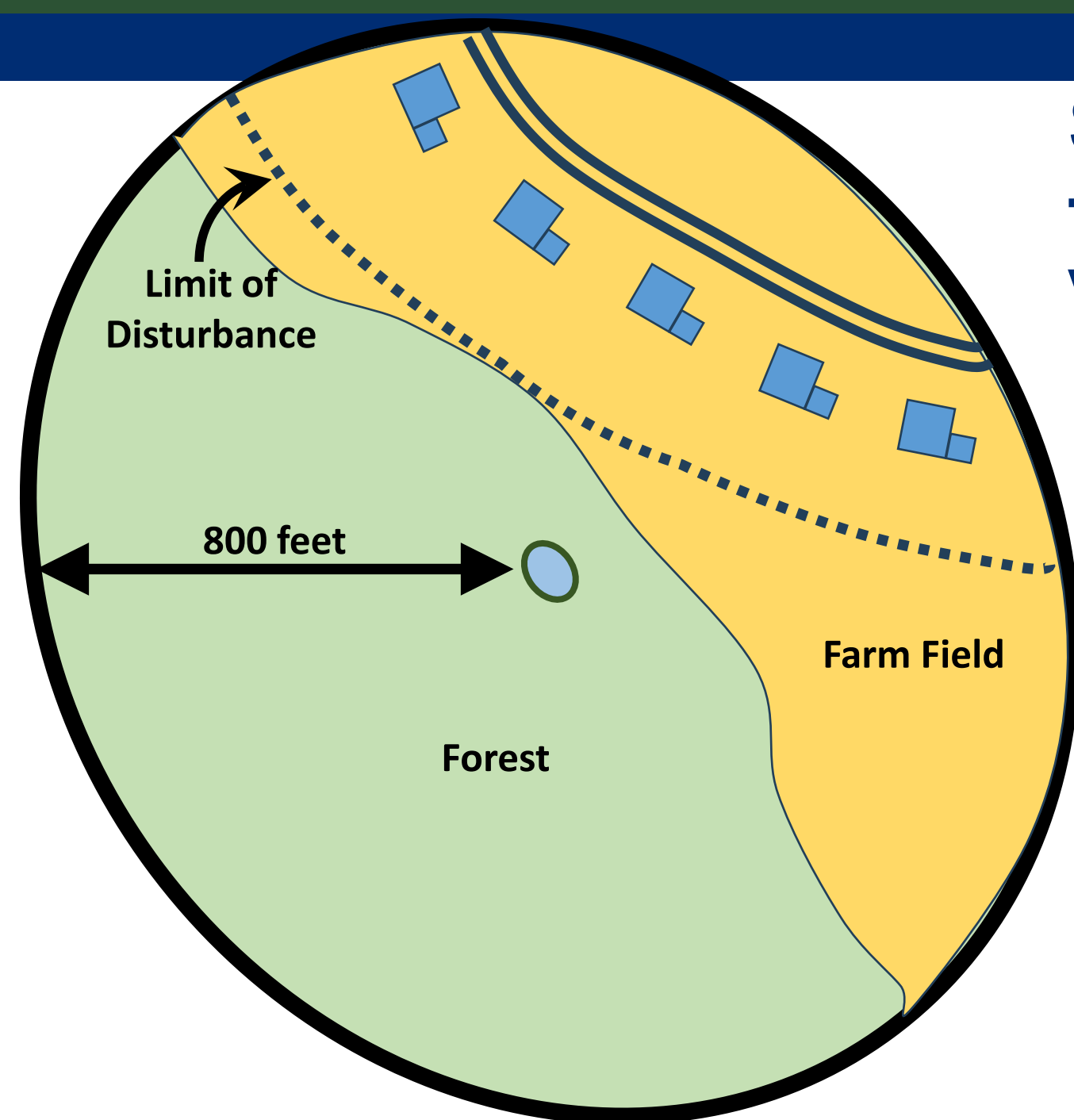
- Must have wetland vegetation
- Must be surveyed
- Must be productive (stringent egg mass count)
- Must be documented
- Must be submitted to DEC
- Must get on list
- Must be posted on website

**Then
Regulated**



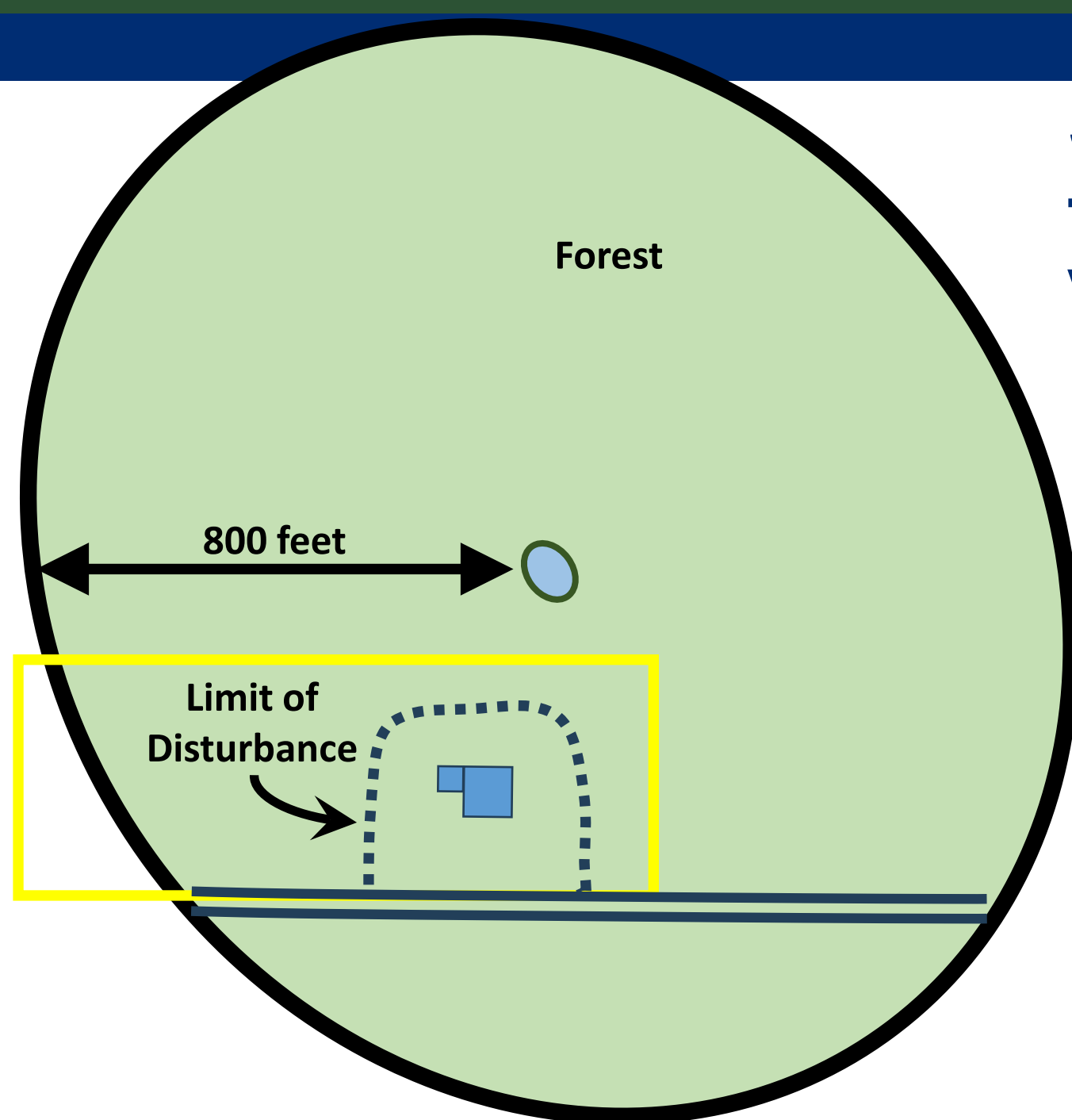
Site Specific Factors for Permitting Near Vernal Pools

- Existing Conditions
- Lot Arrangement
- Proposed Activities
- Practicable Options
- Impacts on Habitat and Amphibian Use



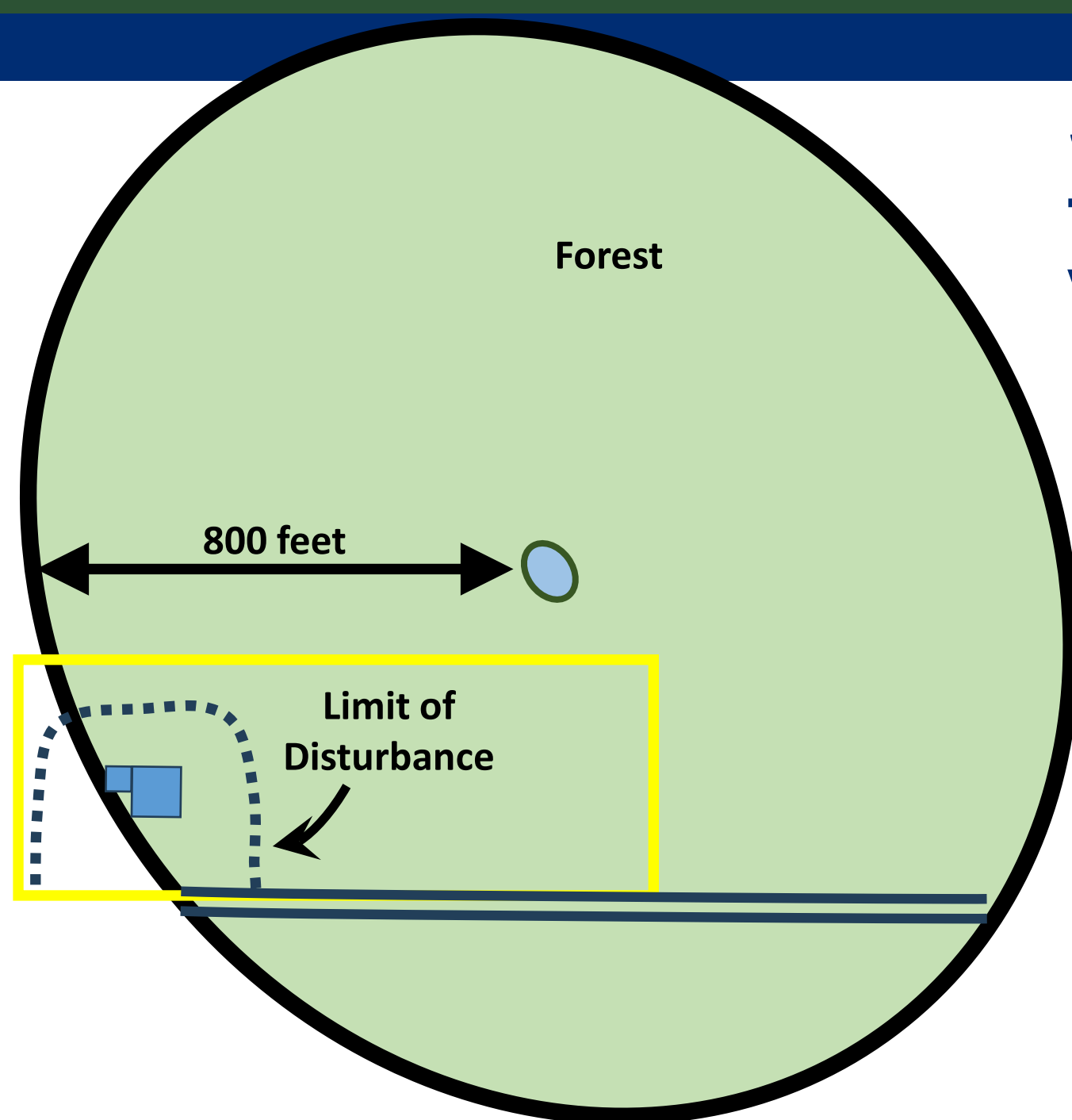
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- Existing Conditions
- Lot Arrangement
- Proposed Activities
- Practicable Options
- Impacts on Habitat and Amphibian Use



Extending Adjacent Areas

300 feet for nutrient poor wetlands

- Example - Black Spruce-Tamarack Bog
- 20 in New York State
- Known – New York Natural Heritage Data Base, ERM



- 1. Located within a watershed with significant flooding;**
- 2. Located within or adjacent to an urban area (US Census Bureau);**
- 3. It contains a rare plant species;**
- 4. It contains habitat for essential behavior of E/T/Special Concern/Species of Greatest Conservation Need (SGCN);**
- 5. It is classified by the department as a Class I wetland;**
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Hydrologic Unit Code - HUC

- The United States Geological Survey (USGS) created the HUC, a hierarchical land area classification system, based on surface hydrologic features. The USGS uses a nationwide system to delineate watersheds.
- A HUC is a sequence of numbers or letters that identifies a hydrological unit or feature. HUCs are unique to each hydrologic unit and consist of 2 to 12 digits.

HUC Levels

HUC 2 = Largest Area

HUC 12 = Smallest Area



Watershed with significant flooding

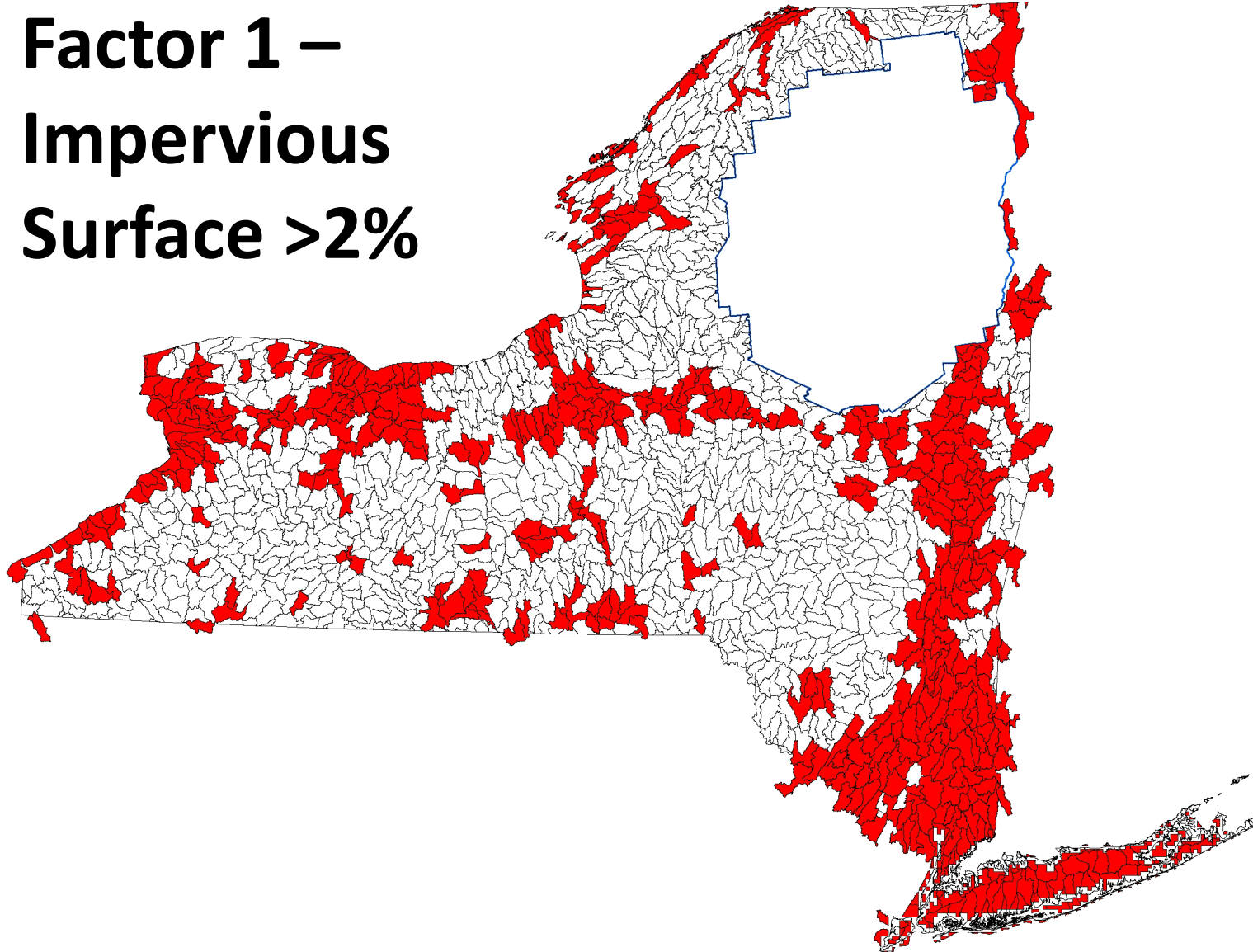
HUC 12 watershed **with all of the following:**

Runoff
Water
Holding Capacity
Human Risk

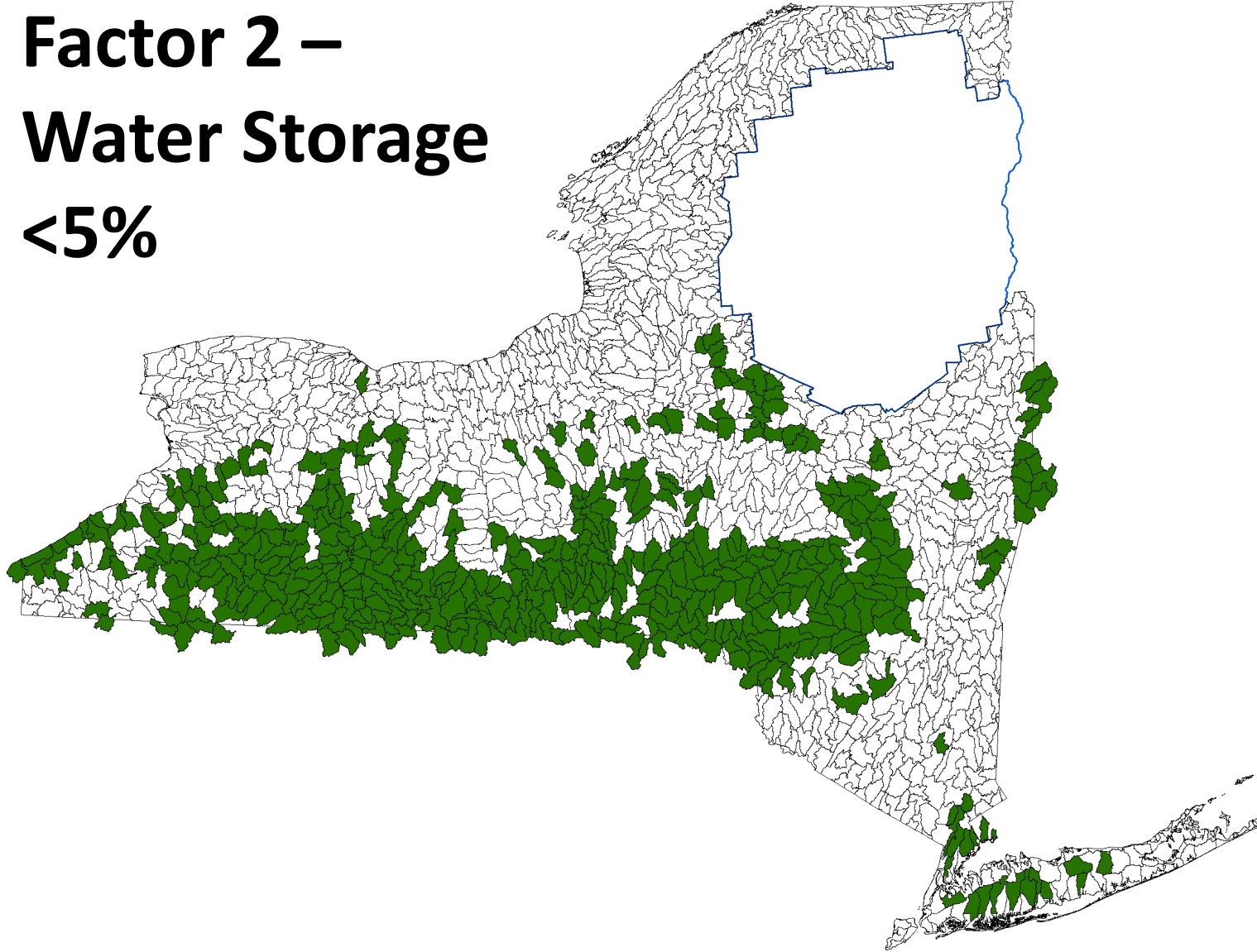
- Impervious Surface >2%
- Water storage area <5%
(lakes, ponds, wetlands, reservoirs)
- Within 4 km (2.48 miles) of urban area



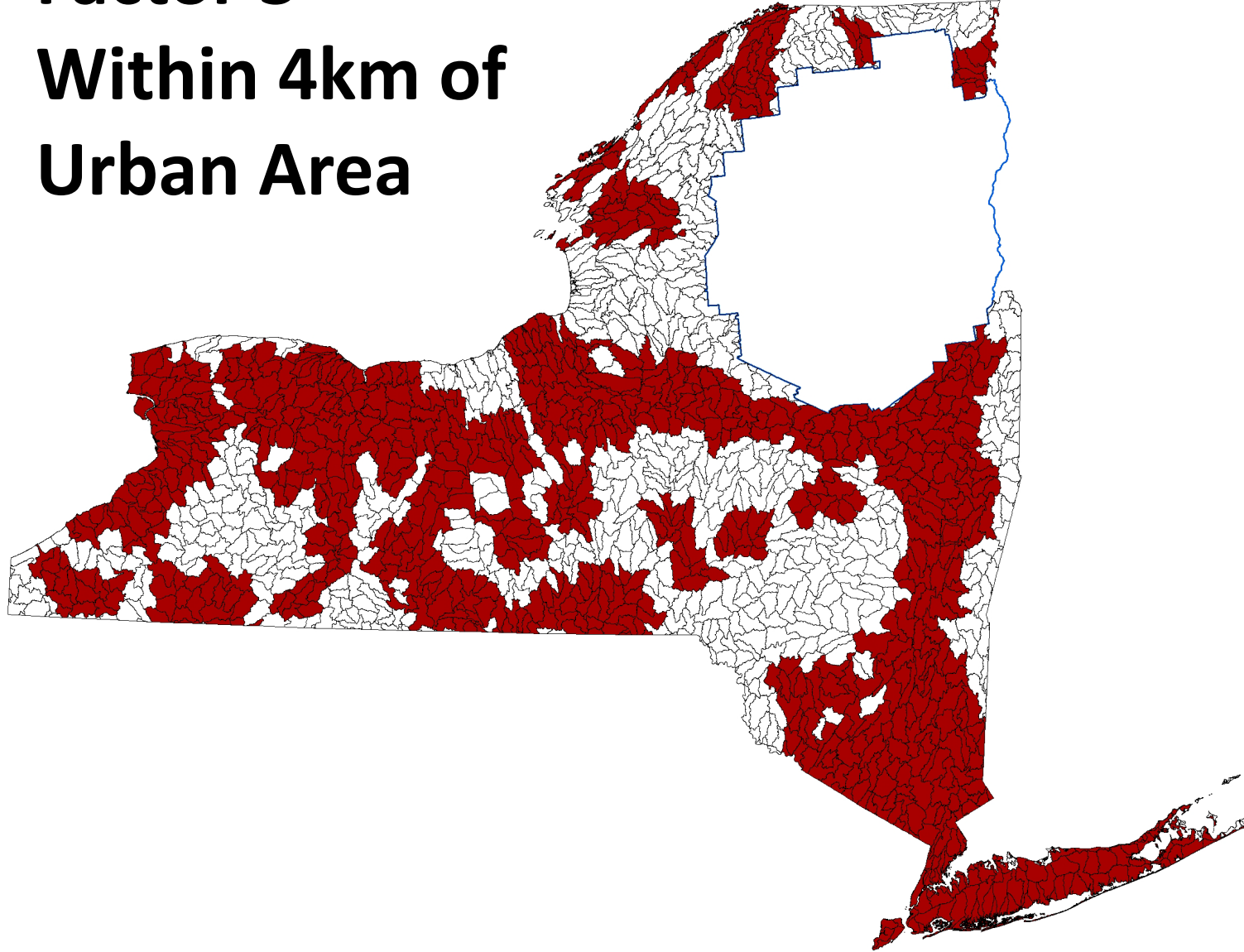
Factor 1 – Impervious Surface >2%



Factor 2 – Water Storage <5%



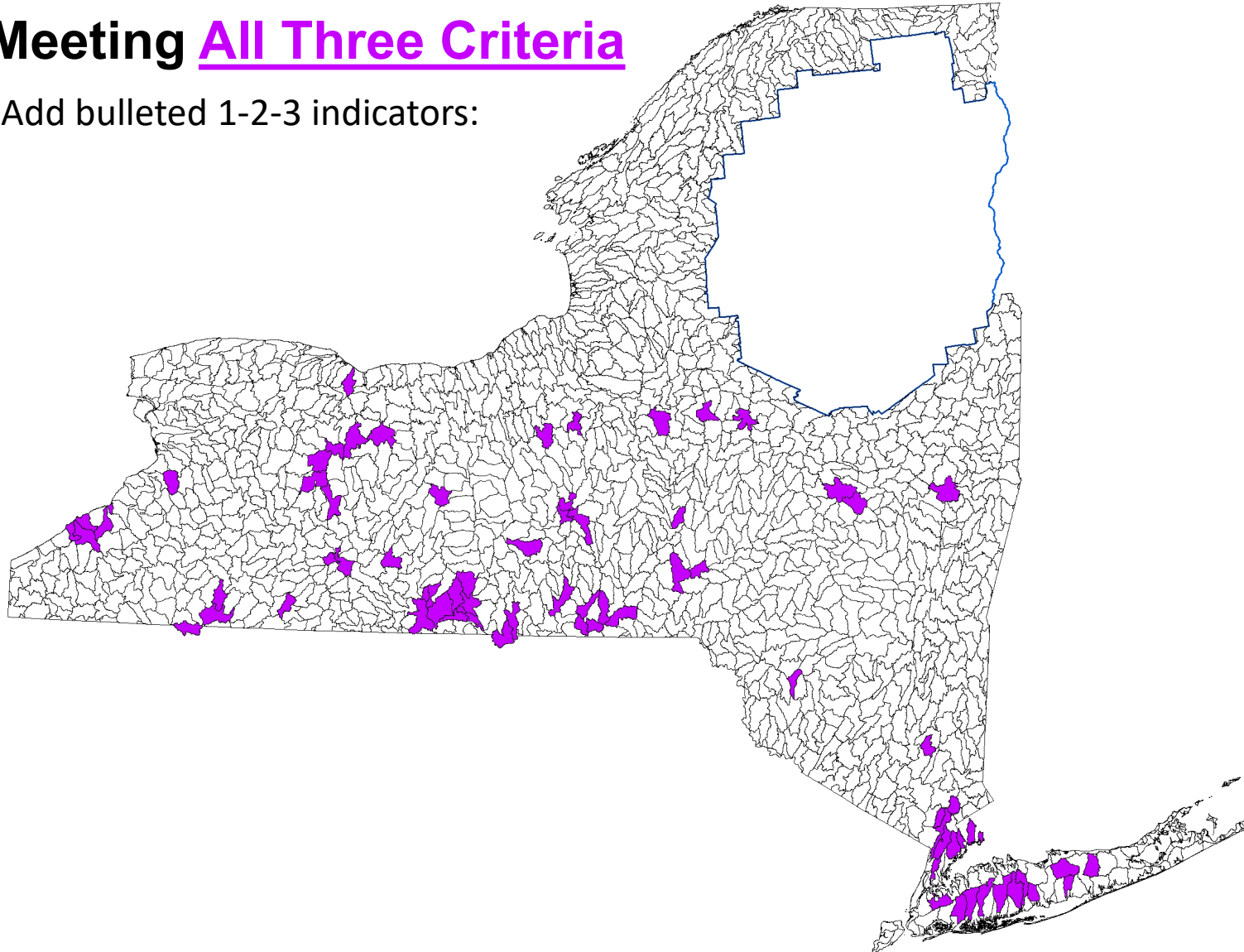
Factor 3 – Within 4km of Urban Area



HUC 12 Watersheds

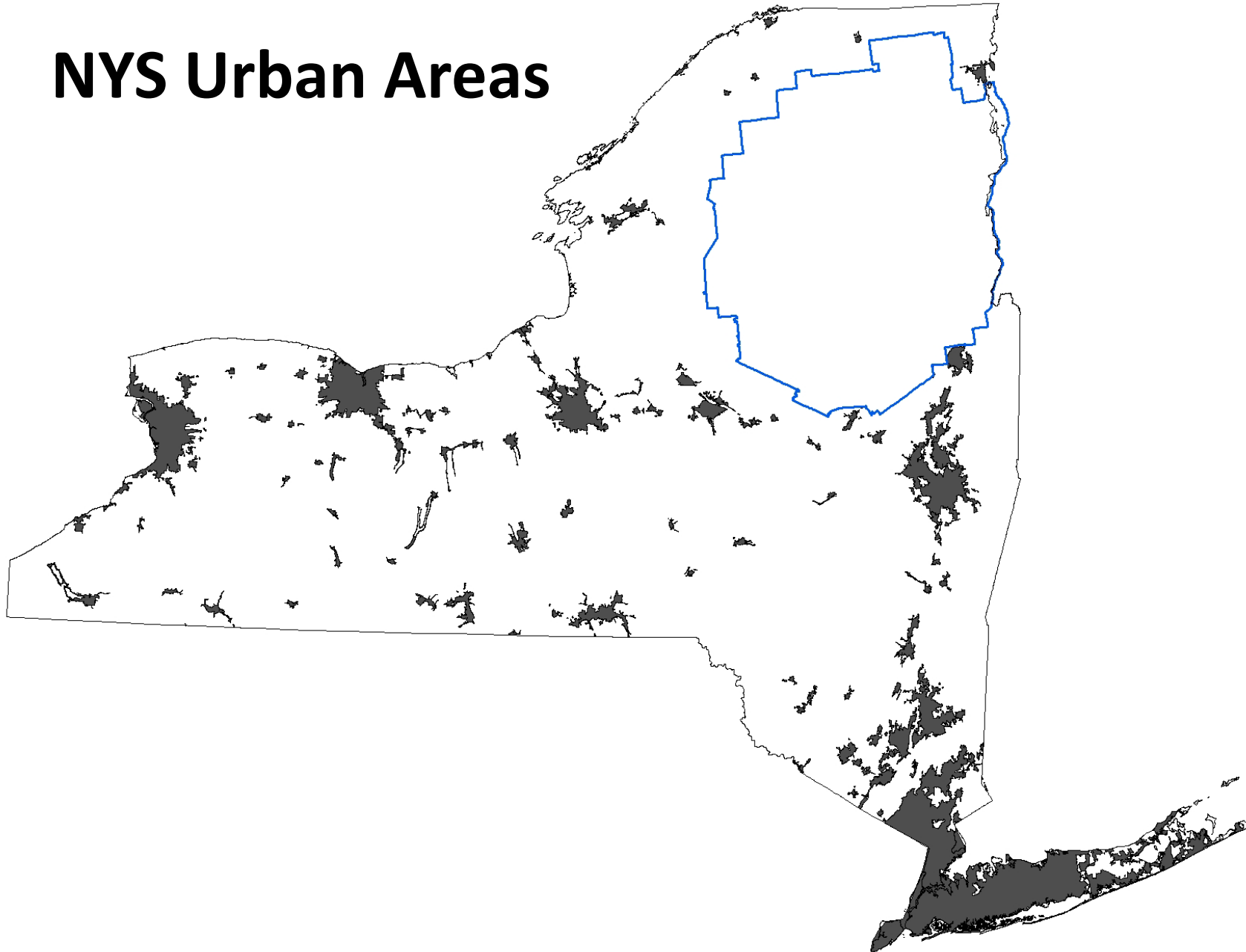
Meeting All Three Criteria

Add bulleted 1-2-3 indicators:



1. Located within a watershed with significant flooding;
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NYS Urban Areas



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Species of Greatest Conservation Need

(4) it contains habitat for an essential behavior of a species of greatest conservation need listed in the **New York State Wildlife Action Plan (Sept. 2015)** with habitat loss having been identified by the department as a moderate to very high threat to New York populations.



20 Wetland Dependent SGCN Species w/ moderate to very high threats from habitat loss:

Species	Primary habitat?	Breeding and/or nesting habitat?	Species	Primary habitat?	Breeding and/or nesting habitat?
American black duck	Y	Y – Both	Bog turtle	Y	
Golden-winged warbler	Y	Y – Both	Eastern hog-nosed snake		
Kentucky warbler	Y	Y – Both			
Louisiana waterthrush	Y				Y – Breeding
Northern bay breasted warbler				Y	Y – Both
North Carolina sparrow			Atlantic coast leopard frog	Y	Y – Both
Seaside sparrow		Y – Both	Northern metalmark	Y	N
Shorebird	Y	Y – Both	Four-spotted pennant	Y	Y – Both
Yellow-breasted chat	N	Y – Breeding	Double-ringed pennant	Y	Y – Both
Blanding's turtle	Y	Y – Breeding	Seaside dragonlet	Y	Y – Both

**Data-Reliant, Data-Driven
Element Occurrence Point for Spp. in FWW = Class II**

Appeal of Jurisdictional Determinations

- 1) Initial consultation/delineation (field meeting, discussion)
- 2) Complete JD appeal application within 120 days from initial consultation
- 3) Acceptable basis of appeal:
 - Missing technical information
 - Incorrect application of regulatory criteria
 - Incorrect application of guidance
- 4) Department responds within 60 days



Timeline going forward...

2024: July 10 – Notice of Proposed Rule Making in State Register...

...The Formal Comment Period is Currently Open

This Summer – Informational Presentations 8/1, 8/14 & 8/27

September 10 & 12 - Public hearings (2 Virtual, 1 In-Person, 9/12, Albany); September 19 – Comment Period Closes

Early December – Informational Wetland Maps posted online;

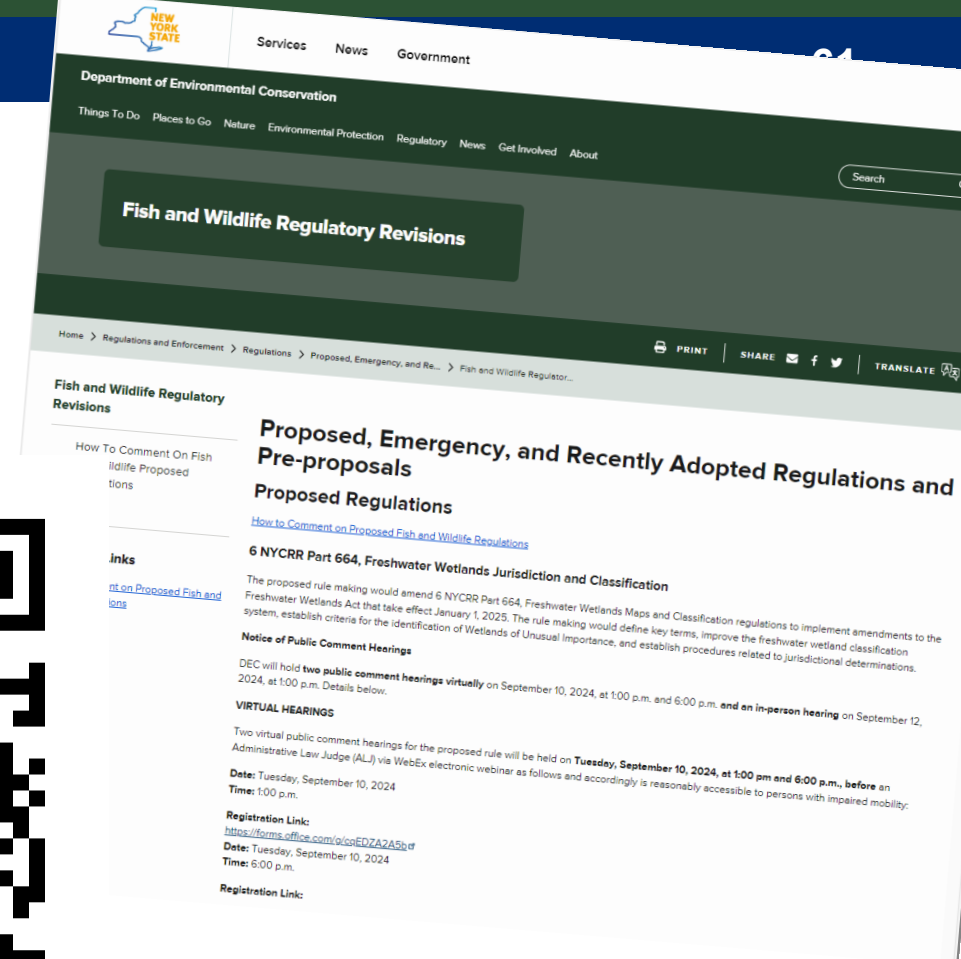
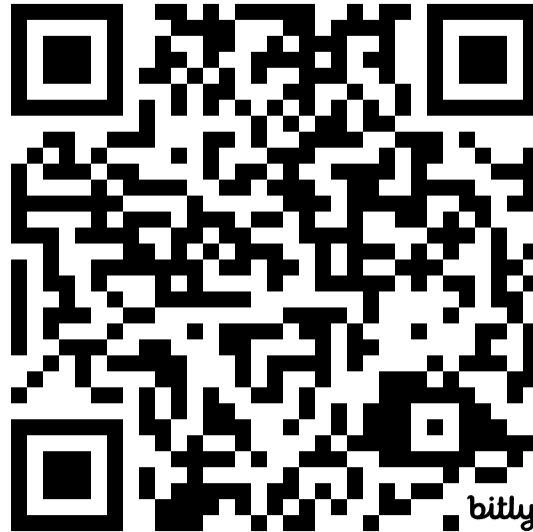
Remote JD & Classification SOP posted on website

2025: January 1 – Statutory amendments take effect



DEC Website

- Text of Proposed Regulations
- Supporting Documents
- Q&A Sheet
- Hearing Registration



<https://dec.ny.gov/regulatory/regulations/proposed-emergency-recently-adopted-regulations/fish-wildlife-revisions>

Please Direct Comments To:

WetlandRegulatoryComments@dec.ny.gov



I've always found that anything worth achieving will always have obstacles in the way and you've got to have that drive and determination to overcome those obstacles on route to whatever it is that you want to accomplish.

-Chuck Norris

Thank You!

Krista Spohr
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