

APPENDIX L

WATER RESOURCES-RELATED DOCUMENTS

Appendix L-1
Definition of Class 2 Freshwater Wetlands

NYSDEC

WestlawNext New York Codes, Rules and Regulations

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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 664. FRESHWATER WETLANDS MAPS AND CLASSIFICATION

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664.5 Classification system.

Not all wetlands supply equally the benefits explained in section 664.3(b) of this Part. The degree to which wetlands supply benefits depends upon many factors, including: their vegetative cover, their ecological associations, their special features, their hydrological and pollution control features, and their distribution and location; and these may vary considerably from wetland to wetland. Because of this variation, the act requires the commissioner to classify wetlands in a way that recognizes that not all wetlands are of equal value. This section establishes four ranked regulatory classes of wetlands, depending upon the degree of benefits supplied. The benefits cited in section 24-0105(7) of the act are translated into discernible wetland characteristics, and these characteristics are used to classify wetlands. Section 664.6 of this Part describes each characteristic in some detail and discusses the benefits supplied by a wetland when it contains that characteristic.

(a) Class I wetlands.

A wetland shall be a class I wetland if it has any of the following seven enumerated characteristics:

Ecological Associations

- (1) It is a classic kettlehole bog (664.6[b][2]); *

Special Features

- (2) It is resident habitat of an endangered or threatened animal species (664.6[c][2] and [4]);
- (3) It contains an endangered or threatened plant species (664.6[c][4]);
- (4) It supports an animal species in abundance or diversity unusual for the State or for the major region of the State in which it is found (664.6[c][1] and [6]);

Hydrological and Pollution Control Features

- (5) It is tributary to a body of water which could subject a substantially developed area to significant damage from flooding or from additional flooding should the wetland be modified, filled or drained (664.6[d][1]);
- (6) It is adjacent or contiguous to a reservoir or other body of water that is used primarily for public water supply, or it is hydraulically connected to an aquifer which is used for public water supply (664.6[d][2],[3] and [4]); or

Other

- (7) It contains four or more of the enumerated class II characteristics. The department may, however, determine that some of the characteristics are duplicative of each other, therefore do not indicate enhanced benefits, and so do not warrant class I classification. Each species to which paragraphs (b)(6)-(8) of this section apply shall be considered a separate class II characteristic for this purpose.

(b) Class II wetlands.

A wetland shall be a class II wetland if it has any of the following 17 enumerated characteristics:

Cover Type

- (1) It is an emergent marsh in which purple loosestrife and/or reed (phragmites) constitutes less than two thirds of the cover type (664.6[a][2]); *

Ecological Associations

- (2) It contains two or more wetland structural groups (664.6[b][1]);
- (3) It is contiguous to a tidal wetland (664.6[b][3]);
- (4) It is associated with permanent open water outside the wetland (664.6[b][4]);
- (5) It is adjacent or contiguous to streams classified C(t) or higher under article 15 of the Environmental Conservation Law (664.6[b][5]);

Special Features

- (6) It is traditional migration habitat of an endangered or threatened animal species (664.6[c][3] and [4]);
- (7) It is resident habitat of an animal species vulnerable in the State (664.6 [c][2] and [5]);
- (8) It contains a plant species vulnerable in the State (664.6[c][5]);
- (9) It supports an animal species in abundance or diversity unusual for the county in which it is found (664.6[c][7]);
- (10) It has demonstrable archaeological or paleontological significance as a wetland (664.6[c][8]);
- (11) It contains, is part of, owes its existence to, or is ecologically associated with, an unusual geological feature which is an excellent representation of its type (664.6[c][9]);

Hydrological and Pollution Control Features

- (12) It is tributary to a body of water which could subject a lightly developed area, an area used for growing crops for harvest, or an area planned for development by a local planning authority, to significant damage from flooding or from additional flooding should the wetland be modified, filled or drained (664.6[d][1]);
- (13) It is hydraulically connected to an aquifer which has been identified by a government agency as a potentially useful water supply (664.6[d][4]);
- (14) It acts in a tertiary treatment capacity for a sewage disposal system (664.6[d][3]);

Distribution and Location

- (15) It is within an urbanized area (664.6[e][1]);
- (16) It is one of the three largest wetlands within a city, town, or New York City borough (664.6[e][3]); or
- (17) It is within a publicly owned recreation area (664.6[e][4]).

(c) Class III wetlands.

A wetland shall be a class III wetland if it has any of the following 15 enumerated characteristics:

Cover Types

- (1) It is an emergent marsh in which purple loosestrife and/or reed (phragmites) constitutes two thirds or more of the cover type (664.6[a][2]);*
- (2) It is a deciduous swamp (664.6[a][3]);
- (3) It is a shrub swamp (664.6[a][5]);
- (4) It consists of floating and/or submergent vegetation (664.6[a][6]);
- (5) It consists of wetland open water (664.6[a][7]);

Ecological Associations

- (6) It contains an island with an area or height above the wetland adequate to provide one or more of the benefits described in section 664.6(b)(6) of this Part;

Special Features

- (7) It has a total alkalinity of at least 50 parts per million (664.6[c][10]);
- (8) It is adjacent to fertile upland (664.6[c][11]);*
- (9) It is resident habitat of an animal species vulnerable in the major region of the State in which it is found, or it is traditional migration habitat of an animal species vulnerable in the State or in the major region of the State in which it is found (664.6[c][1]-[3] and [5]);
- (10) It contains a plant species vulnerable in the major region of the State in which it is found (664.6[c][1] and [5]);

Hydrological and Pollution Control Features

(11) It is part of a surface water system with permanent open water and it receives significant pollution of a type amenable to amelioration by wetlands (664.6[d][3]);

Distribution and Location

(12) It is visible from an interstate highway, a parkway, a designated scenic highway or a passenger railroad, and serves a valuable aesthetic or open space function (664.6[e][2]);

(13) It is one of the three largest wetlands of the same cover type within a town (664.6[e][3]);

(14) It is in a town in which wetland acreage is less than one percent of the total acreage (664.6[e][3]); or

(15) It is on publicly owned land that is open to the public (664.6[e][5]).

(d) Class IV wetlands.

A wetland shall be a class IV wetland if it does not have any of the characteristics listed as criteria for class I, II or III wetlands. Class IV wetlands will include wet meadows (664.6[a][1]) * and coniferous swamps (664.6[a][4]) which lack other characteristics justifying a higher classification.

RESEARCH REFERENCES AND PRACTICE AIDS:

107 NY Jur 2d, Water § 272.

Footnotes

- * The reference in parentheses after each characteristic is to the description of that characteristic and its associated benefits in section 664.6 of this Part.
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