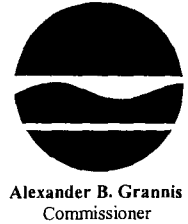


**New York State Department of Environmental Conservation
Office of General Counsel, Region 3**

21 South Putt Corners Road
New Paltz, New York 12561 - 1620
Phone: (845) 256-3000 • **FAX:** (845) 255-3042
Website: www.dec.ny.gov



May 5, 2009

Adelaide Camillo
507 Stanford Road
Millbrook, NY 12545

Dear Ms. Camillo:

I write in response to your questions about a number of wetlands issues. The questions focus on the Department's Region 3 Office and its position on local wetlands ordinances, small wetlands that are not currently mapped, and the mapping and delineation process used by Department Staff.

New York's freshwater wetlands have tremendous ecological and economic value, providing important functions for both people and the environment. Their benefits are many. Wetlands offer natural flood control and retention; filter and retain sediment and contaminants from surface runoff; and provide habitat for many plants and animals. These benefits are significant and of particular value to the State, to local communities, and to citizens throughout New York. The biodiversity supported by wetlands and adjacent areas contributes to the overall function of natural systems and processes, but cannot be maintained when these habitats are degraded or destroyed by pollution, filling, draining, and landscape fragmentation. Furthermore, the loss of healthy, functioning wetland systems decreases the ability of communities to mitigate the effects of climate change and associated fluctuations in local weather conditions, such as severe rainstorms and drought. Thus, the State policy on protection of wetlands and the Commissioner's priority to advance that policy is well justified.

Wetlands Under State Law

There are jurisdictional issues that limit the protection of wetlands that may otherwise meet regulatory wetlands definitions necessary for protection. As a general rule, DEC jurisdiction over freshwater wetlands is limited to wetlands that are at least 12.4 acres. There are exemptions. Conversely, Federal wetlands regulated by the Army Corps of Engineers do not have minimum size requirements but other limitations on jurisdiction exist. State law also provides a mechanism for designating wetlands that are smaller than 12.4 acres. These wetlands can be protected if they are of "unusual local importance." Any member of the public can petition the DEC Commissioner if the special unique criteria are present, and if appropriately established, they can be designated state wetlands.

DEC Wetland Mapping and Delineation

The Department identifies regulatory wetlands through mapping and delineating processes, and these two processes are separate and distinct. At the conclusion of these efforts, the DEC

publishes the jurisdictional wetlands maps. It is important to note that wetlands "mapping" efforts use aerial photographs and other remote techniques to provide an "approximation" of the boundaries of the wetlands. Actual wetland may well extend beyond these mapped boundaries.

Wetland delineation, on the other hand, represents an on-site assessment and includes the "flagging" of the wetland boundaries. Department staff routinely delineate wetlands if necessary for particular projects subject to DEC jurisdiction and may also delineate regulated wetlands subject to or impacted by proposed projects. Department staff follow the DEC field delineation manual. Delineation efforts require a significant commitment of resources in terms of time and personnel. As a matter of practice, delineated wetlands have been previously mapped via the remote methods described above.

Wetland mapping efforts in Region 3 continue, but many wetlands exist that have yet to be mapped. Wetlands that may be or are subject to the Department jurisdiction but are not yet mapped should be brought to the Department's attention particularly if that wetland ought to be regulated under State law. The Department practice in cases where the wetland is not yet mapped is to seek agreement with applicants to protect the wetland and buffer area as though it is mapped and regulated. This process is in place in Region 3 and will continue.

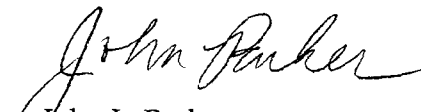
Local Wetlands Laws and Ordinances

Even with these Department efforts, many potential wetlands will remain unprotected in the Region. The Department supports and encourages local governments to enact ordinances that provide jurisdiction to regulate wetlands of less than 12.4 acres. Existing local ordinances in the Region commonly regulate wetlands less than an acre in size, with corresponding buffers of at least 100 feet (and can range up to 250 feet plus). Such ordinances must meet the minimum requirements of State law and regulation on wetlands designation criteria, and must provide for adequate wetland buffering and enforcement.

The Department remains committed to meet its obligations under the wetlands provisions of the Environmental Conservation Laws, and to work with communities to achieve successful stewardship of these important and essential natural resources.

I hope this response has been helpful.

Regards,


John L. Parker
Regional Attorney