

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

the Proposed Amendments to the Freshwater Wetlands maps for
Orange County pursuant to Environmental Conservation Law (ECL) Article 24
(Freshwater Wetlands Act) and Title 6 of the Official Compilation of Codes, Rules and
Regulations (6 NYCRR) Part 664.
Proposed amendments to Maps 4 and 13 of 26 for Orange County.

Hearing Report

- by -

_____/s/_____
Daniel P. O'Connell
Administrative Law Judge

January 29, 2008

Proceedings

Pursuant to Environmental Conservation Law (ECL) 24-0301, and implementing regulations at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) 664.7, Staff of the New York State Department of Environmental Conservation (Department staff) propose to amend the boundaries of the freshwater wetlands in Orange County, New York that are depicted on Maps No. 4 and No. 13 of 26, and which are also referred to as the Pine Bush and Maybrook US Geological Survey (USGS) Quadrangles, respectively. The proposed amendments include adding freshwater wetlands, changing wetland boundaries, and changing the identification and classification of certain wetlands.

A Public Notice (the Notice) concerning the proposed amendments appeared in the Department's *Environmental Notice Bulletin* on April 18, 2007. In addition, Department staff published the Notice in the *Orange County Post* and *The Sentinel* on April 24, 2007, and in the *Goshen Independent* and the *Wallkill Valley Times* on April 25, 2007. Pursuant to the applicable regulations, Department staff mailed copies of the Notice to individual landowners who may be affected by the proposed amendments.

As provided by the Notice, Department staff held informational meetings on Tuesday, May 22, 2007 from 5:00 p.m. to 7:30 p.m. at the New Windsor Town Community Center located at 555 Union Avenue in New Windsor, New York, and on Wednesday, May 23, 2007 from 5:00 p.m. to 7:30 p.m. at the Crawford Town Government Center located on Route 302 in Pine Bush, New York. The purpose of the informational meetings was to provide members of the public with an opportunity to examine the proposed map amendments, and to have their questions concerning any aspect of the freshwater wetlands program answered. For the convenience of all persons attending the information sessions at these two locations, Department staff posted copies of the proposed freshwater wetlands map amendments, and had other copies available for inspection.

After each informational meeting and consistent the Notice, Administrative Law Judge (ALJ) Daniel P. O'Connell from the Department's Office of Hearings and Mediation Services convened a legislative hearing session at 7:30 p.m. at each location. The purpose of the legislative hearing sessions was to provide members of the public with an opportunity to make statements about the proposed amendments to the boundaries of the freshwater wetlands in Orange County, New York, which are depicted on the Pine Bush and Maybrook USGS Quadrangles. At each legislative hearing, William Rudge, Natural Resources Supervisor for Region 3, represented Department staff.

About 15 people attended the informational meeting on May 22, 2007 in the Town of New Windsor, and five people spoke at the legislative hearing. On May 22, 2007, ALJ O'Connell and members of Department staff took notes of the comments made by the speakers.

About 40 people attended the informational meeting on May 23, 2007 in the Town of Crawford, and 15 people spoke at the legislative hearing. The legislative hearing on May 23, 2007 was electronically tape recorded. The following section of this Report lists and briefly summarizes all statements received during the two legislative hearing sessions. Department Staff accepted written comments concerning the proposed map amendments until June 11, 2007.

Summary of Statements

I. May 22, 2007

William Rudge is the Natural Resources Supervisor from the NYS DEC Region 3 Office. At the public hearings held on May 22 and 23, 2007, he said that Environmental Conservation Law (ECL) Article 24 (Freshwater Wetlands Act) was enacted in 1975, and that its purposes are to preserve, protect and conserve freshwater wetlands. The Act requires the Department to study and map the boundaries of wetlands that are 12.4 acres or larger. Furthermore, the Act allows the Department to regulate smaller wetlands if those wetlands are of unusual local importance. Based primarily on aerial photography, Mr. Rudge said that the Commissioner promulgated freshwater wetlands maps for Orange County in 1987.

Mr. Rudge explained that ECL Article 24 also recognizes the natural, changing conditions inherent in wetlands, as well as the potential for errors in mapping wetlands and, accordingly, authorizes the Commissioner to amend the maps depicting the boundaries of the freshwater wetlands. The map amendment process is outlined in 6 NYCRR Part 664, and requires, among other things, public notice. Since 1987, Mr. Rudge explained further that, based on inquiries by landowners and Staff's field inspections, Department staff has found inaccuracies on the freshwater wetland maps for Orange County. According to Mr. Rudge, these inaccuracies range from minor to significant, and may be the result of human error, changes in field conditions, or shortcomings in the mapping methodologies used at the time.

Orange County Freshwater Wetland Maps No. 4 and No. 13 are identified by the US Geological Survey (USGS) as the Pine Bush and Maybrook Quadrangles, respectively, and encompass lands in the Towns of Crawford, New Windsor, Blooming Grove, Hamptonburgh, and Wallkill, as well as the Village of Washingtonville. After making numerous field inspections of the wetlands currently mapped on the Pine Bush and Maybrook Quadrangles, Department staff has proposed amendments to the boundaries of 29 freshwater wetlands to address significant inaccuracies. The proposed amendments to the maps would add approximately 485 acres of regulated freshwater wetlands on the Pine Bush Quadrangle, and approximately 510 acres of regulated freshwater wetlands on the Maybrook Quadrangle. According to Mr. Rudge, about 600 landowners would be affected by these proposed amendments.

Mr. Rudge explained that the Department sent copies of the Notice on April 20, 2007 to individual landowners, as well as to elected officials and the local newspapers, identified above. The Notice issued by the Department scheduled a public informational meeting and public hearing in the Town of New Windsor on May 22, 2007, and a public informational meeting and public hearing in the Town of Crawford, on May 23, 2007. Mr. Rudge said that the purpose of the public hearings is to provide members of the public with the opportunity to comment about the proposed amendments to the freshwater wetland maps. In addition to the two public hearings, Mr. Rudge explained further that the Department staff would accept written comments until Friday, June 11, 2007 at the Department's Region 3 Office in New Paltz, NY. Finally, Mr. Rudge stated that all comments, whether submitted in writing or made orally at the public hearings, would be considered on an equal basis.

Alphonse Mercurio is a New York State licensed professional land surveyor who has surveyed several hundred freshwater wetlands in and around Orange County. He stated that Department staff has reviewed prior freshwater wetland surveys and delineations undertaken by him and other members of his firm, and that Staff has approved these surveys and delineations.

Mr. Mercurio inquired whether Department staff had conducted a field inspection of the proposed wetland boundaries for Freshwater Wetlands MB-29 and MB-59. Mr. Mercurio stated that he had conducted a field inspection of these two wetlands. According to Mr. Mercurio, the proposed amended boundaries to Freshwater Wetlands MB-29 and MB-59 are inaccurate. Based on his professional experience, Mr. Mercurio would have mapped Wetlands MB-29 and MB-59 as a single wetland complex that would have included additional areas as freshwater wetland. According to Mr. Mercurio, the area of the proposed single wetland complex would be significantly larger than the sum of the areas for the proposed amended boundaries to Freshwater Wetlands MB-29 and MB-59.

Mr. Mercurio stated that the proposed map amendments associated with Freshwater Wetlands MB-29 and MB-59 would affect a pending subdivision of real property in and adjacent to these freshwater wetlands. Based on his experience with MB-29 and MB-59, Mr. Mercurio is concerned that proposed amendments to the other freshwater wetland boundaries depicted on the Maybrook Quadrangle are inaccurate. Mr. Mercurio argued that inaccurately mapped freshwater wetlands would result in the inconsistent implementation of the regulatory program associated with the Freshwater Wetlands Act. Mr. Mercurio said that such inconsistencies would be unfair to property owners.

Albert Fini is Vice President of the Blue Spruce Construction Corporation. He has been retained by Lou and Janet Nowicki to develop a subdivision plan for the Nowicki's property. As currently mapped, Freshwater Wetlands MB-29 and MB-59 are located on the Nowicki's property. According to Mr. Fini, a significant portion of the Nowicki's property would become regulated freshwater wetlands if the Commissioner approves the proposed amendments to the boundaries of Freshwater Wetlands MB-29 and MB-59.

Mr. Fini said that the proposed amendments to the boundaries of Freshwater Wetlands MB-29 and MB-59 would unfairly limit the Nowicki's plans to subdivide and develop their property. If the Commissioner approves the proposed amendments to the boundaries of Freshwater Wetlands MB-29 and MB-59, Mr. Fini stated that he would pursue all available legal remedies to challenge the Commissioner's final determination.

Kenneth Spadola inquired whether Department staff followed the established guidelines for reviewing the current boundaries of freshwater wetlands, and for amending them. According to Mr. Spadola, some of the proposed amendments to the freshwater wetland boundaries would incorporate areas already developed. In addition, Mr. Spadola said that other undeveloped areas should be mapped as freshwater wetlands.

In addition, Mr. Spadola inquired about how Department staff reviews projects, which are located in or adjacent to regulated freshwater wetlands, when these projects are sponsored by the Department of Transportation (DOT). Mr. Spadola did not specify whether he is concerned about projects undertaken by New York State DOT, Orange County DOT, or by departments of transportation in towns located in Orange County. Mr. Spadola asked whether notice of proposed DOT projects must appear in local newspapers.

Mr. Spadola expressed concern about whether Staff has undertaken its review of the freshwater wetland boundaries located on the Maybrook and Pine Bush Quadrangles in a fair and impartial manner. According to Mr. Spadola, landowners may suffer significant economic losses if the Commissioner adopts the proposed map amendments.

Presently, **Janet Nowicki** and her husband, Lou, live on the family farm located on Station Road in Salisbury Mills, New York. Ms. Nowicki's family has owned and operated the farm at this location since 1949. Ms. Nowicki explained that she and her husband had retained Mr. Fini to prepare a subdivision plan to develop their property. Ms. Nowicki explained that the money collected from the sale of the subdivided property would finance the Nowickis' retirement. The Nowickis chose Mr. Fini based on his outstanding reputation. They do not intend to overdevelop their property, according to Ms. Nowicki.

Freshwater Wetlands MB-29 and MB-59 are located on the Nowickis' property. According to Ms. Nowicki, Department staff became aware of the Nowickis' plans to subdivide their property, and initiated the map amendment process to stop the subdivision approval process. Ms. Nowicki said that Staff's actions in this regard are very unfair.

After comparing the current boundaries of Freshwater Wetlands MB-29 and MB-59, and the proposed amendments, Ms. Nowicki said that the size of MB-29 and MB-59 would substantially increase if the Commissioner approves the proposed amendments. Ms. Nowicki noted further that the area of regulated wetlands on the Nowicki farm would increase further if

Freshwater Wetlands MB-29 and MB-59 were mapped as a single wetland complex, as proposed by Mr. Mercurio.

Ms. Nowicki acknowledged that portions of the Nowicki farm are freshwater wetlands, which would limit development. Based on the proposed amendments to the boundaries of Freshwater Wetlands MB-29 and MB-59, however, Ms. Nowicki estimated that the 100 acre farm could only be subdivided into 10 building lots, which would be substantially less than what the Nowickis had anticipated, given the current depictions of these freshwater wetlands on the Maybrook Quadrangle.

* * *

At the conclusion of the legislative hearing, Messrs. Mercurio and Fini, as well as Mr. and Ms. Nowicki inquired, among other things, about: (1) the next steps in the map amendment process, and whether the courts could review the Commissioner's final determination; (2) whether Staff places flags along the wetland boundary when they go to a site to delineate the boundary; (3) what prompted Staff to focus on the freshwater wetlands located on the Maybrook and Pine Bush Quadrangles, but not remap any of the other wetlands in Orange County; and (4) the last time that Department staff reviewed the boundaries of the freshwater wetlands in Orange County.

With respect to the procedural inquiries, I explained that I would prepare a hearing report that would document how Staff provided notice about the proposed map amendments to the public, in general, and to potentially affected landowners, in particular, and which would summarize the comments made at the two legislative public hearing sessions. I explained further that subsequently, the statements collected at the legislative hearing sessions and during the comment period would be forwarded to the Commissioner for his review. If, upon review of all the information collected during the public comment period, the Commissioner agreed with Department staff's proposed map amendments, the Commissioner would approve them, and the freshwater wetland maps would be amended accordingly. I stated that affected landowners could seek judicial review of the Commissioner's final determination to amend the freshwater wetland boundaries.

Staff responded to the other questions. Mr. Rudge explained that Staff reviewed the wetlands on the Maybrook and Pine Bush Quadrangles for two reasons. First, landowners informed Staff of discrepancies on the official freshwater wetland maps. Second, Staff became aware of proposed development projects in these locations. According to Mr. Rudge, Staff last revised the Orange County freshwater wetland maps in 1987.

Messrs. Mercurio and Fini, and Mr. and Mrs. Nowicki stated that reviewing the freshwater wetlands on only two USGS quadrangles in Orange County is unfair. To which staff explained that its limited resources constrain the scope of its review. In the coming months,

however, Staff intends to review the boundaries of the other freshwater wetlands in Orange County. Messrs. Mercurio and Fini, and Ms. Nowicki requested copies of this Hearing Report when it becomes available.

II. May 23, 2007

As noted above, **William Rudge** is the Natural Resources Supervisor from the NYS DEC Region 3 Office. Mr. Rudge spoke at both public hearings and his statement on May 23, 2007 was the same as the statement he made on May 22, 2007.

Sid van der Ley owns property in the vicinity of Freshwater Wetland PB-25. According to Mr. van der Ley, Freshwater Wetland PB-25 appeared on the 1985 wetlands maps. Mr. van der Ley said that Department staff proposes to upgrade the classification of Freshwater Wetland PB-25 near Route 302 to Class I. Mr. van der Ley explained that initially he thought that the classification upgrade was related to increased beaver activity in the wetlands. However, Mr. van der Ley now understands that the basis for the proposed change in classification is related to the presence of a bog turtle. Rather than upgrade the classification of the freshwater wetland, he recommended placing the bog turtle in captivity to keep it safe. Mr. van der Ley is concerned that the change in classification will unnecessarily limit development of the property. In addition, he is concerned about the wetland attracting mosquitos and the like.

Mr. van der Ley understands that Department staff walked the area in the vicinity of Wetland PB-25 two years ago. He said there was a drought then, and that everything was "bone dry." Mr. van der Ley inquired how the area could have been characterized as a wetland during drought conditions.

Les Sheeley came to the May 23, 2007 legislative hearing on behalf of the Pine Bush Little League, and offered comments about the proposed amendments to the boundary of Freshwater Wetlands PB-4. Mr. Sheeley is concerned about how the proposed map amendments could impact the Pine Bush Little League and the Town Park. Presently, about 100 children come to the park with their families to play baseball. According to Mr. Sheeley, the population of the Town is growing. As a result, the Town Park should expand, and the Town's little league program will also need to expand. According to Mr. Sheeley, the proposed amendments to Freshwater Wetland PB-4 include a wooded area adjacent to the Town park and the ball fields. Mr. Sheeley said that this proposed wetland area should be part of the Town Park rather than regulated freshwater wetlands.

Given the scale of the maps, **Eugene Peterson** is concerned about the approximate nature of the proposed amended boundaries to Freshwater Wetland PB-19, and their imprecise location on the wetland maps. Mr. Peterson stated that he would request Department staff to come to his property, and delineate the freshwater wetland boundary. Mr. Peterson stated that he would be show Staff that his fields are dry, and should not be regarded as regulated freshwater wetlands.

As noted above, **Kenneth Spadola** attended the May 22, 2007 public hearing session. He also attended the May 23, 2007 hearing and offered additional comments, which are summarized here. To the May 23, 2007 public hearing, Mr. Spadola brought a map of the Hamlet of Pine Bush. According to Mr. Spadola, significant undeveloped areas in Pine Bush qualify as freshwater wetlands; however, Department staff has not proposed to map these areas as part of Freshwater Wetland PB-4. During his comments, Mr. Spadola described wetland areas in the center of town that are located within 50 meters of each other. According to Mr. Spadola, the presently unmapped wetland areas cross Route 52 and extend behind Stewart's. The wetland areas continue past the site of the municipal water well, and continue further between the Senior Citizen apartments and the school. They cross Route 302 and extend past the high school athletic fields. Mr. Spadola described these areas as low-lying, and vegetated with wetland plant species similar to the cover types located within the currently mapped boundaries of Freshwater Wetland PB-4. Mr. Spadola said that these unmapped wetland areas should be incorporated into the boundaries of Freshwater Wetland PB-4. According to Mr. Spadola, Department staff does not follow the Department's freshwater wetland delineation guidelines.

Mr. Spadola noted that Department staff had previously delineated portions of the boundary of Freshwater Wetland PB-4, and that these prior delineations served as the impetus to remap other portions of this wetland. According to Mr. Spadola, wetland areas in the vicinity of Freshwater Wetland PB-4 have been the subject of permit and enforcement actions.

Mr. Spadola also commented about his experiences with properties owned by Arthur Moriano. Mr. Spadola said that Mr. Moriano has done everything possible to work with the State to obtain all applicable approvals to develop his properties. For example, Mr. Spadola said that Mr. Moriano has applied for freshwater wetland permits to develop previously disturbed property near the McDonald's and the laundromat. Mr. Spadola stated further that those portions of Mr. Moriano's property, which Staff proposes to incorporate into the proposed amendments to the boundaries of Freshwater Wetland PB-4, include some of the highest upland areas in the town. According to Mr. Spadola, Mr. Moriano's property, located opposite the firehouse, was previously disturbed and is presently covered with gravel and upland, rather than wetland, cover types. According to Mr. Spadola, the combined assessed value of Mr. Moriano's properties exceeds \$1 million, and that Mr. Moriano's development rights would be significantly diminished if the Commissioner approves the proposed amendments to the boundaries of Freshwater Wetland PB-4.

Mr. Spadola said extensive drainage work was undertaken along Route 52 near Black Hawk Road. According to Mr. Spadola, this area is a freshwater wetlands. Mr. Spadola inquired whether a memorandum of agreement exists between the Department and the Department of Transportation with respect to the work undertaken along Route 52.

Finally, Mr. Spadola expressed concern about whether adequate notice had been provided to potentially affected landowners. He stated that Mr. Moriano's letter is dated April 20, 2007,

and provides notice of the May 23, 2007 legislative hearing, which is more than 30 days advance notice. Mr. Spadola understands that the regulations require not more than 30 days advance notice, however.

John Tarolli is a consulting engineer and works with Mr. Mercurio, who spoke at the public hearing on May 22, 2007 concerning the freshwater wetlands mapped on the USGS Maybrook Quadrangle (Orange County Wetlands Map No. 13). Mr. Tarolli based his comments, in part, on Mr. Mercurio's 30 years of experience as a licensed land surveyor. Mr. Tarolli said that Mr. Mercurio has surveyed and delineated many of the freshwater wetlands mapped on the Pine Bush Quadrangle (Orange County Wetlands Map No. 4).

According to Mr. Tarolli, Department staff has inappropriately used the delineation process over the last five years to significantly amend, rather than to simply delineate, the boundaries of the freshwater wetlands mapped on the Pine Bush Quadrangle. As a result, Department staff has inappropriately denied the due process requirements outlined in the Freshwater Wetlands Act and implementing regulations at 6 NYCRR Part 664 to affected landowners. In addition, Mr. Tarolli stated that Staff has not incorporated previously approved delineations onto the proposed amendments to the boundaries of Freshwater Wetland PB-4 and other wetlands.

For example, Mr. Tarolli related his experiences with properties owned by Messrs. Moriano, Gluszak, and DuBois, on which is located Freshwater Wetland PB-4. Mr. Tarolli estimated that the area of the freshwater wetland on the Moriano, Gluszak, and DuBois properties is actually twice the size of what Staff has currently proposed on the amended map. Mr. Tarolli said that if Staff delineated the boundary of Freshwater Wetland PB-4 on Mr. DuBois' property, Staff would actually find significantly more wetlands than what are currently depicted on the proposed map. Consequently, Mr. Tarolli stated that additional public hearings would be necessary to provide the requisite due process before the boundaries of Freshwater Wetland PB-4 could be amended to accurately reflect the current field conditions. Mr. Tarolli noted that this process would result in considerably more work for Department staff.

Mr. Tarolli explained further that Department staff delineated a portion of Freshwater Wetland PB-7 in December 2000, which is located on Howell Street in the Town of Crawford. According to Mr. Tarolli, Staff reviewed the delineation and approved an extension of the boundary of PB-7 on this property. Nevertheless, the wetland boundary on the approved delineation was significantly different from the boundary that appeared on the official wetlands map. Mr. Tarolli said that Staff accepted the delineation and after an application was filed subsequently issued a freshwater wetlands permit. These circumstances, according to Mr. Tarolli, further demonstrate that Staff did not provide the requisite due process to affected landowners. In addition, Mr. Tarolli stated that the currently proposed amendments to the boundaries of Freshwater Wetland PB-7 do not reflect the delineation that took place in December 2000. Mr. Tarolli called upon Staff to review the Department's files to determine

whether other wetland boundaries should be amended based the various approved delineations that have taken place over the years.

As part of a subdivision approval, Mr. Tarolli explained that Staff delineated a portion of the boundary of Freshwater Wetland PB-7 in 1989 on property located at the corner of Howell Street and Van Keuren Avenue in the Town of Crawford. This property is adjacent to the property previously described by Mr. Tarolli. According to Mr. Tarolli, the delineated boundary of Freshwater Wetland PB-7 on this second parcel resulted in a “substantial extension” of the wetland boundary actually depicted on the map. Mr. Tarolli noted that the proposed map amendments do not incorporate the 1989 delineation of Wetland PB-7, which Department Staff had approved.

During the May 23, 2007 public hearing, Mr. Tarolli referred to a high resolution aerial photograph of Freshwater Wetland PB-7 that had two-foot contour lines superimposed on it. Referring to this photograph, Mr. Tarolli said that boundaries of Freshwater Wetland PB-7 are not accurately depicted on the proposed amended map. Mr. Tarolli concluded that Department staff did not notify potentially affected landowners about the proposed amendments to the boundaries of Freshwater Wetland PB-7.

Mr. Tarolli said that Freshwater Wetland PB-3 is located north of PB-4. According to Mr. Tarolli, Department staff determined that the total area of Freshwater Wetland PB-3 was only 4.9 acres after reviewing a 1992 delineation. Mr. Tarolli said that Staff informed the property owner Chessari that a permit to develop the property would not be required because the wetlands were less than 12.4 acres and not of unusual local importance. Given these circumstances, Mr. Tarolli contended that Department staff should have followed the prescribed regulatory requirements to de-map Wetland PB-3. Mr. Tarolli explained that subsequent to Staff’s approval of the 1992 delineation, Mr. Chessari has developed his property with a sports complex and noted, nonetheless, that Freshwater Wetland PB-3 remains on the proposed amended map. Because Department staff has not de-mapped Wetland PB-3, despite the approved delineation and the issued permit, Mr. Chessari is very concerned, according to Mr. Tarolli, that regulated freshwater wetlands are located on his property.

Mr. Tarolli observed that the USGS Pine Bush Quadrangle does not include the entire Town of Crawford. As a result, only some of the freshwater wetlands and the associated landowners in the Town would be affected by the proposed amendments. Mr. Tarolli objected to the apparent selective process, and characterized it as unfair. Mr. Tarolli recommended that Staff expand the scope of its review to include all the freshwater wetlands located within the Town of Crawford and depicted on adjacent USGS quadrangles before the Commissioner decides whether to approve the proposed amendments to the boundaries of the freshwater wetlands on the Pine Bush Quadrangle.

According to Mr. Tarolli, the development pressures in the Towns of Montgomery, Newburgh and Wallkill are significantly greater than those in the Town of Crawford. Yet, Mr.

Tarolli noted that Department staff has not proposed any map amendments to the freshwater wetland boundaries in these towns. Mr. Tarolli said that some landowners in the Town of Crawford appear to have been “singled out” by the proposed map amendments.

Mr. Tarolli noted that several years ago, Staff undertook a systematic review of the wetlands in Dutchess and Saratoga Counties, and requested that Staff undertake a similar approach to review the wetlands in Orange County. Referring to ECL Article 8 (State Environmental Quality Review Act [SEQRA]), Mr. Tarolli characterized Staff’s piecemeal approach to the review of the wetland boundaries in Orange County as a “segmented review” that should be avoided. Among other things, Mr. Tarolli said that a piecemeal, or segmented, approach to reviewing and amending the freshwater wetlands in Orange County would be very costly.

Mr. Tarolli further claimed that Department staff has identified his firm as a source of the problems associated with the delineation of the freshwater wetlands in the Town of Crawford, and that Staff has not properly implemented the mapping procedures outlined in the Freshwater Wetlands Act and regulations. At the end of his presentation, Mr. Tarolli said that either he or members of his firm would submit additional comments in writing before the close of the public comment period on June 11, 2007 concerning the proposed amendments.

John Michelotti said that when he entered the room for the May 23, 2007 public hearing, he saw the USGS Pine Bush Quadrangle, and noticed that one corner comprising approximately 25% of the entire map was in dark green showing proposed amendments. Mr. Michelotti said that this area is in and around the Town of Crawford. According to Mr. Michelotti, the proposed map amendments are not only selective, they are also discriminatory. Mr. Micheletti questioned why proposed amendments are located on only one corner of the quadrangle in and around the Town of Crawford and no where else.

Arthur Moriano owns various properties in the Town of Crawford, which includes approximately 60 plus acres on the northeast side of Route 52. Mr. Moriano said that he began purchasing his properties in the 1950s. According to Mr. Moriano, he has made every effort to comply with all applicable legal requirements. He said that he has attempted to identify all potential wetland areas on his properties.

The Honorable **Daniel Depew** is an Orange County Legislator who represents the 18th District. Mr. Depew came to the May 23, 2007 hearing to support the Bullville Fire Department, and its proposal to build a new firehouse and related facilities. Mr. Depew inquired how the proposed map amendment process would affect applications and other approvals pending before local planning boards and other governmental agencies. He asked whether applicants had to re-apply for local approvals given the proposed amendments to the freshwater wetlands boundaries. Mr. Depew is concerned about the effect that the map amendment process would have on redesign costs, as well as the costs and time associated with obtaining freshwater wetland permits from the Department. Mr. Depew inquired whether New York State would cover any additional

expenses incurred by applicants who would be impacted by the proposed amendments to the freshwater wetlands maps.

Mr. Depew inquired whether the New York State Legislature was required to approve the proposed wetland map amendments. Mr. Depew stated that wetlands change: some get bigger, others get smaller. Mr. Depew inquired whether areas initially designated a freshwater wetland would be de-mapped as a result of Department staff's review.

Victor Verhulp commented about the proposed amendment to the boundaries of Freshwater Wetland PB-37. He is concerned about the accuracy of the boundary due to the scale of the map. He stated that landowners will find it difficult to determine whether freshwater wetlands are located on their property.

Mr. Verhulp observed that prior to the proposed map amendments, landowners who did not have regulated freshwater wetlands on their property had all development rights. Mr. Verhulp said that when Department staff subsequently identifies freshwater wetlands, landowners' development rights become limited, and property values decrease. According to Mr. Verhulp, seeking a reassessment to reflect the presence of newly mapped wetlands does not fairly compensate landowners who had been paying more taxes on the property. Mr. Verhulp said that the State should provide landowners with an alternative form of compensation to offset the diminished value and limited uses of their property when it becomes regulated wetlands.

Finally, Mr. Verhulp is concerned about the role that freshwater wetlands will play in harboring insects that spread infectious diseases such as malaria and dengue fever. Mr. Verhulp said that global warming and the related changes in climate would increase the probability of these diseases spreading to New York State. According to Mr. Verhulp, protecting additional freshwater wetlands in New York State will adversely affect the public health of the State's residents.

Christopher Herbert owns and operates an 85 acre horse farm on Dickerson Avenue, and commented about proposed amendments to the boundaries of Freshwater Wetlands PB-19, PB-25, PB-26, and PB-34. Mr. Herbert objected to the basis for the proposal to combine these four wetlands into a single wetland complex. According to Mr. Herbert, the revised classification of the proposed wetland complex does not reflect the true nature of the current conditions of the wetlands, as currently mapped. He requested that Department staff provide evidence to support the proposed Class I classification. Mr. Herbert said that the proposed classification would have an adverse impact on the value of his property because most activities in Class I wetlands are significantly limited. He said that the one-time sighting of a bog turtle should not serve as the basis for the proposed Class I designation.

According to Mr. Herbert, if the need to remap the freshwater wetlands is related to inaccuracies on the initial maps, then he argued that a proportional amount of property that was

initially mapped as wetlands should be de-mapped. Mr. Herbert inquired whether Staff has proposed to de-map any formerly identified wetland areas.

Mr. Herbert is concerned that the agricultural exemption currently provided by the statute and regulations will continue now that a significant portions of his property may become regulated freshwater wetlands. Mr. Herbert observed that land uses in this area of Orange County are moving from agriculture to residential development. According to Mr. Herbert, pressures to protect open space will increase. Mr. Herbert said that the freshwater regulations in New Jersey changed, and that the agricultural exemption was eliminated. Mr. Herbert characterized the restrictions in New Jersey as “extreme.” He is concerned that similar restrictions would be imposed in New York.

Mr. Herbert is concerned about the uncertainty of Department staff initiating future map amendment proceedings. According to Mr. Herbert, the uncertainty associated with property becoming regulated freshwater wetlands is a disincentive to farmers to hold onto their property. Rather, Mr. Herbert said that farmers would be encouraged to sell their property now before it becomes devalued by a wetlands designation.

John Chessari owns property at 68 Red Mill Road, and commented about proposed changes to the boundary of Freshwater Wetland PB-3. Mr. Chessari said that he requested a wetlands delineation in 1992. At that time, Staff determined that only 6 acres were wetlands, which left 4 acres of his property as uplands. Mr. Chessari stated further that the proposed amendments to the boundaries of Freshwater Wetland PB-3 would designate all 13 acres of his property as regulated freshwater wetlands. Mr. Chessari inquired about the basis for the proposed amendment.

The Honorable **Michael Paduch** represents the 19th District in the Orange County Legislature, which includes the Wallkill and Middletown areas. Mr. Paduch came to the public hearing to show his support for the Bullville Fire Department. Mr. Paduch explained that the Fire Department is planning an expansion of its current facility and that the expansion includes a new septic system. Mr. Paduch said that the Fire Department is concerning about whether the proposed site for the building expansion and the septic system would be in or adjacent to a regulated freshwater wetlands, as amended. According Mr. Paduch the expansion, as currently proposed, would just fit on the Fire Department’s property. Mr. Paduch said that purchasing additional property at an alternative location would not be possible given the cost of any alternative site and the Fire Department’s limited financial resources.

James Gluszak owns property on DuBois Avenue in the Town of Crawford and commented about proposed amendments to the boundaries of Freshwater Wetland PB-4. Mr. Gluszak expressed concern about the value of his property if more of it becomes regulated freshwater wetlands. Mr. Gluszak said that he wants to sell a portion of his property, and inquired whether the transaction could go forward given the circumstances associated with the proposed map amendments.

Phil Jamison owns property in the vicinity of Freshwater Wetlands PB-19. Mr. Jamison said that he is a former member of the Town Board. He explained that he carefully considered every decision that he was called upon to make because he lived in the community and would meet the people who would be affected by his decisions. Mr. Jamison expressed concern that Department staff may be abusing the authority to designate wetland areas. The map amendment process is unfair, according to Mr. Jamison, because it is arbitrary.

III. Staff's Response to Comments

After considering the comments received at the legislative hearing sessions held on May 22 and 23, 2007 as well as written comments, Staff prepared a document entitled, "Staff Response to Comments Received and Staff Recommendations," dated December 2007. This document is appended to the Hearing Report. Staff recommends that the Commissioner approve the proposed amendments to Map 4 and 13 of 26 for Orange County.

STAFF RESPONSE TO COMMENTS RECEIVED and STAFF RECOMMENDATIONS

**Proposed Amendments to Freshwater Wetland Maps 4 of 26 (Maybrook Quadrangle) and
13 of 26 (Pine Bush Quadrangle), Orange County, NY**

December 2007

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NYSDEC Region 3--New Paltz
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New Paltz, NY 12561**

RESPONSE TO COMMENTS

Please note that comments received orally at the public hearings and in writing are combined herein. The name(s) of those making comments are noted in parentheses.

1. The proposed mapping of wetlands MB-29 and MB-57 (Maybrook Quadrangle) is incorrect, as these wetlands are not only joined as a single wetland complex, but are larger in area than shown on the proposed map. (Alphonse Mercurio)

Staff did a field review of the area between these two wetlands in June, 2007. The comment is correct in that these wetlands are connected by a narrow (less than 200 feet wide) band of stream corridor wetland. The proposed map has been revised accordingly.

It is not true, however, that both of the wetlands are larger than shown on the proposed map. The boundary of MB-29 had already been revised slightly to include some additional wetland. Staff checked the general accuracy of current mapping of MB-57 in June, 2007 and found that this wetland is mapped correctly on the existing map.

MB-57 and MB-29 have been combined in the proposed amendment, and renamed MB-29.

2. The mapping that is being proposed—of only the Maybrook and Pine Bush Quadrangles—is not comprehensive enough. Concentration on the revision of only two of the 26 quadrangles is “piecemeal” and “selective”; this will result in inconsistent regulation of freshwater wetlands by DEC under Article 24. (Dominic Cordisco; Alphonse Mercurio; John Michelotti; John Tarolli)

The present map amendment effort was undertaken based upon the site-specific experience of DEC staff over the past several years. This experience resulted from requests by landowners and their representatives for review of the regulatory status and extent of wetlands on their properties. This effort was never intended to be a comprehensive re-mapping project, only a response to the inadequacies of the current wetland maps that have been found on specific properties.

It would be highly desirable to undertake a comprehensive review of all the Orange County wetland maps. Such an effort has been the subject of recent discussion within the Department, and the background field work will likely begin in 2008.

It should be noted that limited amendments of individual quadrangles have been done by DEC regional staff in the past—for Warwick (1995), Goshen (1998), and Monroe (1999). The mapping requirements set forth in Article 24 of New York State Environmental Conservation

Law (Freshwater Wetlands Act), and in 6 NYCRR Part 664 (Freshwater Wetlands Mapping and Classification Regulations), do not set forth any standards for geographic comprehensiveness in map revision. The direction given is that the commissioner may “readjust” the existing map when necessary “to correct any errors on the map... “ (Article 24-0301), in order to “conform the map to actual on-site conditions” (Part 664.7[a][2][I]).

3. The proposed amendments to regulated wetland boundaries would unfairly limit some landowners’ plans to develop their properties. Some project plans have in fact already been developed, and the process of obtaining local approvals initiated. (Dominic Cordisco; Daniel Depew; Albert Fini; James Gluszak; Phil Jamison; Sid van der Ley; Janet Nowicki; Michael Paduch; Les Sheeley; Kenneth Spadola)

As set forth in 1975 in the Freshwater Wetlands Act, it is “the public policy of the state to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom....” (Article 24-0103). The DEC is charged with the implementation of the Freshwater Wetlands Act. Should a project affect a wetland or its associated 100 foot adjacent area, a DEC permit is required before the project can go forward. The standards for permit issuance are established in 6 NYCRR Part 663, the Freshwater Wetlands Permit Requirements Regulations.

If a proposed project is affected by these amendments to the maps, project sponsors can contact regional Staff to schedule a pre-permit application meeting. At that time, project design would be analyzed for its impact to the wetland and/or wetland adjacent area, and for the possibility of meeting the standards for permit issuance. DEC makes every effort to work with landowners and their representatives, so that their goals can be achieved, while at the same time affording adequate protection for natural resources.

4. The proposed mapping of PB-4 (Pine Bush Quadrangle) is inaccurate; it includes developed and upland areas, and overlooks nearby wetlands in undeveloped areas that should be put on the map. (Dominic Cordisco; Kenneth Spadola; JohnTarolli)

In response to these comments, Staff did a comprehensive review of the mapping of this wetland in June and July, 2007. As a result of field investigations, the following responses are made:

A) The “developed” area that is referred to appears to be the property of Mr. Arthur Moriano, situated on the east side of Route 52. This property was the subject of a 1983 DEC permit for wetland fill, to allow construction of a commercial building. The developed area along Route 52 is avoided in the proposed map. The area to the north of this, however, is included, because, while disturbed, it appears to have the necessary wetland vegetation. The exact wetland boundary on this property can only be determined by field delineation.

There is an upland area on Mr. Moriano’s property. This is reflected in the upland inclusion shown on the proposed map.

When amendments are made to the state wetlands maps, Part 664.7(a)[2][I] makes clear that DEC jurisdiction under Article 24 begins as of the date of notice to landowners. Thus, DEC jurisdiction over any identified wetland areas on this property began on April 20, 2007. This DEC staff response supercedes any prior communications from this Department regarding wetland boundaries on this property.

B) The wetland area on the other (west) side of Route 52 , which runs behind Boniface Drive in a westerly direction, cannot be connected to PB-4. There is a gap of greater than 50 meters between the segments of wetland. Therefore, the Boniface Drive wetlands cannot be mapped as part of PB-4, in conformance with Part 664.7(b). The Boniface Drive wetlands are themselves patchy, and collectively do not meet the 12.4 acre threshold for mapping.

Another, larger wetland area on the west side of Route 302, while hydrologically connected to all of the above wetlands, also cannot be mapped as part of PB-4, due to another greater than 50 meter gap in wetland cover. This Route 302 wetland itself does not meet the minimum area of 12.4 acres to be mapped as a state protected wetland.

C) The comment that there are wetlands situated to the east of Dubois Street that have not been included in the proposed map of PB-4 is correct, as verified by Staff field work in July, 2007. These wetlands are extensive in area, though the connection with the remainder of PB-4, to the west, is via a narrow stream corridor wetland. The proposed map of PB-4 has been revised to include the wetlands east of Dubois Street.

5. An upgrade in wetland classification for PB-25 is proposed. The new designation will be Class I. This is due to the supposed presence of the endangered bog turtle. This species would be better protected if these turtles were trapped and placed in captivity. This new Class I designation will put unnecessary limits on development of the property. (Christopher Herbert; Sid van der Ley)

This class assignment was the result of a NYSDEC Natural Heritage Program report of three bog turtles found along a roadway in the vicinity of PB-25 (which will now be renamed PB-19). Natural Heritage has identified an area within this wetland that is suitable habitat for the turtle. As noted in Part 664.5[a][2], a wetland shall be classified as Class I if it contains the habitat of an endangered or threatened species.

As noted above, the mission of NYSDEC is to conserve natural resources in their natural environment. Rather than preserving individuals of a species in a artificially managed setting, DEC seeks to promote their continued survival in nature. The environmental permits program briefly described above was developed to balance this goal with the economic needs of individual landowners.

6. Wetlands attract mosquitoes and other insects that promote infectious diseases; this may be injurious to public health. (Sid van der Ley; Ellen Verhulp; Victor Verhulp)

Insects such as the mosquito are a part of the normal ecology of wetlands. Much of this apprehension is not based upon scientific fact. Tropical diseases carried by mosquitoes like malaria are not found in New York State. In cases where there is thought to be a clear connection between an outbreak of disease, as in the West Nile Virus cases of recent years, and the insect carrier, DEC has issued permits for appropriate insect control in wetlands.

7. Ground conditions in the supposed “wetland” to be mapped are dry. How can this area be considered a wetland? (Sid van der Ley; Eugene Peterson)

As described in the 1995 NYSDEC Delineation Manual, state-protected wetlands are identified primarily by the presence of a specialized community of plants that are adapted to life in saturated soils. Many species in this set of plants are not usually found in standing water. Frequently there is standing water in wetlands only on a seasonal basis (late Winter/early Spring). The rest of the year, the land surface may appear dry. In fact, saturated conditions may be found there only a few inches below the surface.

8. The location of the wetland boundary shown on the regulatory map is approximate and imprecise. Landowners have difficulty knowing exactly where the wetland boundaries are on their properties. (Eugene Peterson; Ellen Verhulp; Victor Verhulp)

It should be noted that large scale aerial photographs of those areas affected by the proposed map revisions were brought to both Hearings. These photographs had property boundaries and both current and prospective mapped wetland boundaries superimposed on them. Landowners were encouraged to examine these and ask questions of the DEC staff present if they were uncertain of the wetland location on their properties.

The map scale of 1:24,000 (or 1 map inch = 2,000 feet on the ground) makes it difficult to map wetland boundaries precisely. The current map format does present difficulty for landowners who wish to know where the wetland is on their property. For this reason, DEC Staff continually inform concerned landowners of their availability, upon request, for field visits to determine the precise location of regulated wetlands on their properties.

9. Notice of the proposed map changes was given to affected landowners by DEC in a letter dated April 20, 2007, with public hearing dates of May 22 and May 23, 2007. Thus, there were more than 30 days between landowner notice and hearing, which is contrary to the regulations set forth in Part 664. (Kenneth Spadola; John Tarolli)

This landowner notification letter was dated and mailed on April 20, 2007, which was a Friday. Assuming a minimum of two days in transit in the mail, actual receipt of the letter for a landowner could have been no earlier than April 23—that is, 29 or 30 days before the scheduled Hearing dates. As stated in Part 664.7[a][2][I], “notice shall be provided... not more than 30 days nor fewer than 10 days before the date set for the hearing.” Thus, the notification provided for the proposed map revision was in compliance with the regulations.

10. DEC Staff have wrongly used the delineation process as a means of de facto map amendment without following the procedures for same outlined in the regulations (Part 664). (John Tarolli)

Article 24-301 states that the site-specific authority for DEC to regulate wetlands rests upon the regulatory maps. The location of regulated wetland boundaries on these maps shall be made “as accurate as is practicable....” However, Article 24-301 also makes it clear that these boundaries represent “the approximate location” of regulated wetlands. In section 24-301(7) of the Article, it is stated that, upon request by a landowner, “a more precise line” may be established by an actual field determination by DEC staff. These landowners have received prior notice of the regulation over their property under Article 24—this is the reason for extending their invitation to DEC to visit the property for the purpose of establishing the actual position of the wetland on their properties.

11. Freshwater Wetland PB-7 is actually larger than the proposed mapping suggests. (John Tarolli)

Staff reviewed the mapping of this wetland in the field (July, 2007), and found that three areas did in fact need to be added to the wetland. The proposed map of this wetland, which is connected to wetland PB-4, has therefore been revised to reflect these three changes. The entire wetland has been renamed PB-4.

12. Wetland PB-3 should be deleted from the map, as it does not meet the 12.4 acre minimum size for inclusion on the map. (John Chessari; John Tarolli)

Current Staff was familiar with this wetland, and was aware of the possibility that the area should not be shown on the map. Deletion was not initially proposed, for the reason explained below:

The DEC office file for PB-3 shows that former DEC staff went to a site in the area in 1992. It was discovered that there were only five acres of wetland at that time. The rest of the subject property (which covers most of PB-3 as currently mapped) was (and still is) occupied by a golf driving range/sport complex. No attempt was made by DEC to amend the map at the time. The basis for this decision may have been an April 23, 1992 internal DEC memorandum that states that PB-3 is “criss crossed with drainage” and that “the whole area of PB-3 as shown on the Reg[ulatory] maps would in fact be a wetland if the large amount of tile drainage failed.” Current Staff believed this to be a valid reason for continued regulation of the area .

In response to comments made, Staff made a site visit in July, 2007 and met with the owner of the property. The owner stated that the property has been in the family since the 1930's, and was formerly pasture on a dairy farm. The owner said that no subsurface tiling has ever been done here. The site today has no evidence of wetland vegetation (grasses and clover are dominant), and none of the hydrologic indicators of a wetland. It is isolated from any other nearby wetland. A pre-development aerial photograph suggests that this was for the most part an

upland pasture. The original data sheet (1982) used to develop a classification for the area says only that this wetland is a “wet meadow”, gives no other site characteristics, and gives the wetland a Class IV designation.

For these reasons, Staff believes that PB-3 may well have been erroneously mapped from the beginning, and recommends that this wetland be removed from the map at this time.

13. NYS should provide affected landowners with additional compensation should their properties come under regulation by Article 24—beyond the possible reduction in local property tax assessment afforded by local tax assessors—as compensation for the reduced value and restricted uses of these properties. (Victor Verhulp)

Article 24 requires the Department to map wetlands in accordance with the standards set out in the delineation manual, law, and regulations. Without statutory authority to do so, DEC cannot compensate for reduction in property values.

14. It is feared that the exemptions from the permit requirements now available to farmers some day might not apply to these newly mapped wetlands. Moreover, if a property is deemed regulated wetland, farmers will be forced to sell because their properties will be devalued. (Christopher Herbert)

The exemptions for agricultural activities listed at Part 663.2[c] are available only to farmers and landowners using wetlands or their adjacent areas for legitimate agricultural purposes. No changes to these exemptions are being proposed. However, consistent with the goals of the Freshwater Wetlands Act, these exemptions would not be available to future property owners if use of the land should change.

15. Wetland PB-51 is incorrectly mapped south of Union School Road. (Nancy Williams)

The proposed adjustment of this wetland’s boundary is based on a field delineation done by Staff for the owners, at their request, in September, 2006. The mapping is thus as accurate as possible.

16. Wetland MB-39 is incorrectly mapped in the vicinity of the junction of North Street and Ahern Boulevard. Although there is a stream, which might be considered a wetland, there is a large area of upland that cannot be part of a wetland. (Alma Gregg)

The wetland boundary on this portion of the map is shown accurately. The basis for redrawing the map there was a field determination performed by Staff in February, 2007. The comment is correct in that MB-39 does narrow down to a stream corridor wetland. However, the area to the east of the stream, which is of concern, is mapped as upland, not wetland. There is substantial non-regulated upland (outside the wetland adjacent area) on the subject property.

17. There is no wetland on the property (north of Union School Road). Therefore, the property should not be affected by any proposed changes to the boundary of Wetland PB-37. (Ellen Verhulp)

This comment correctly observes that wetland PB-37 is not itself on the property. However, the wetland is on the other (south) side of the road, and therefore a certain portion of the property along the road may be affected by the wetland adjacent area. The amount of regulated area can only be determined by a field visit.

RECOMMENDATIONS

Staff has developed the proposed wetland boundaries that are the subject of these wetland map amendments based upon actual field observation, in conformance with the guidelines set forth in the NYSDEC Freshwater Wetlands Delineation Manual, and 6 NYCRR Part 664, the Freshwater Wetlands Mapping and Classification Regulations. These proposed redrawn boundaries have been made as accurate as possible. Staff has adhered to the criteria for wetland map amendment found in Part 664. Staff therefore recommends that these proposed amendments to Map 4 and to Map 13 of 26 for Orange County be approved by order of the Commissioner.