

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
625 Broadway  
Albany, New York 12233-1550

In the Matter

- of -

Proposed amendments to the Freshwater Wetland maps for Putnam County (Maps 1-11) and Dutchess County (Maps 18-20 of 22), pursuant to Environmental Conservation Law (ECL) 24-0301 and Section 664.7 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR)

Hearing Report

- by -

/s/

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Edward Buhrmaster  
Administrative Law Judge

October 13, 2005

## PROCEEDINGS

Pursuant to Environmental Conservation Law (ECL) 24-0301 and Section 664.7 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR 664.7), the Department of Environmental Conservation proposes to amend its freshwater wetland maps for Putnam County (Maps 1 - 11) and for that portion of Dutchess County that is within the New York City watershed (Maps 18 - 20 of 22). The amendments involve additions of wetland, boundary adjustments, classification changes, wetland identification changes, and extension of the regulated adjacent area to variable distances beyond 100 feet from the wetland boundary where necessary to protect and preserve the wetland.

Notice of the proposed changes appeared in the Department's on-line Environmental Notice Bulletin on August 17, 2005. In addition, notice was placed in the following newspapers: the Southern Dutchess News (on August 24, 2005), the Putnam County Press (on August 24, 2005), the Putnam County Courier (on August 25, 2005), the Putnam County News & Recorder (on August 24, 2005), the Journal News (on August 19, 2005), and the Poughkeepsie Journal (on August 18, 2005). Finally, written notice was given to landowners of record and to chief administrative officers and clerks of each affected local government.

At the same time, maps showing the proposed amendments were made available for inspection on-line and at the county, town, city and village clerks' offices within the areas affected by the remapping, as well as at public libraries and the Department's Region 3 office in New Paltz, Ulster County. These maps show the approximate location of the remapped wetland boundaries, but are not meant to represent legal land survey boundaries.

To help the public understand the Department's Freshwater Wetlands Act (ECL Article 24) and review the maps with Department Staff, public informational meetings were held between 2 and 7 p.m. on Tuesday, September 13, 2005, and between 2 and 7:30 p.m. on Wednesday, September 14, 2005, at the firehouse in Mahopac, Putnam County. Then, at 7:30 p.m. on Wednesday, September 14, I conducted a public hearing to accept comments on the maps' accuracy, also at the Mahopac firehouse.

The meetings and hearing were originally scheduled to be held at the Carmel Town Hall. However, due to a conflict in use of this facility, the meetings and hearing were moved to the Mahopac firehouse. The change in location was announced in a

supplemental notice published in the Poughkeepsie Journal on September 8, 2005, and the Putnam County Press on September 14, 2005. Also, signs announcing the change in location were posted at the town hall.

Consistent with 6 NYCRR 664.7(a)(3), the hearing provided interested members of the public an opportunity to support, oppose, or make a statement of interest in, the proposed amendments and adjustments of the wetland maps.

Approximately 65 people attended the public hearing, and 19 people offered oral comments. In addition, it was indicated that Department Staff would accept written comments, provided they were postmarked by September 28, 2005. All comments on the map amendments -- whether delivered orally at the hearing, submitted by letter, or passed along at the informational meetings -- are to be considered by Department Staff before any final wetland remapping.

Prior to the public comments, a brief overview of the wetland remapping was provided by the Department's mapping contractor, Norbert Quenzer, Jr., vice president and senior ecologist of Bagdon Environmental in Delmar, New York. As Mr. Quenzer explained, remapping of the wetlands in Dutchess County (previously mapped in 1987) and Putnam County (previously mapped in 1984) has resulted in a net gain of wetland acreage in both counties, as a result of newly mapped wetlands and additions to previously mapped wetlands. At the same time that new acreage has been added, portions of some previously mapped wetlands have been deleted to the extent it has been determined that they do not meet the statutory wetland definition.

Mr. Quenzer explained that the wetland remapping effort began in 2003. He said remote sensing information, compiled largely from maps and aerial photographs, and geographic information analysis were used to identify potential map changes, and that these changes were then verified by field surveys in areas where amendments were considered. Investigators walked wetland boundaries, photographed the wetlands from various points, and documented wetland characteristics such as hydrology, plant communities and soils. Draft maps were then prepared and, as necessary, wetland classifications were revised using mapping and classification criteria at 6 NYCRR Part 664.

- - Summary of Oral Comments

What follows is a summary of the oral comments in the order of their delivery at the legislative hearing:

1. Christopher Styga, president of the Wixon Pond Association, argued that the spring-fed, glacier-formed Wixon Pond in the Town of Carmel is threatened by three proposed developments -- Countryscapes, Young, and Wixon Pond Estates -- with a combined total of 23 lots, runoff from which would be piped to the pond, potentially contaminating it with pesticides. Mr. Styga said he is concerned that the pond, which empties through a stream into Mahopac Lake, will die, impacting the fish species and cranes that make it their home. He said the proposed remapping of wetlands in the area of concern is a "good idea," but added that it is probably too late to save Wixon Pond.

2. Jacquelyn Gueft of Kent Lakes, a property owner in a newly mapped part of wetland LC-39, on the north side of Farmers Mill Road, questioned the accuracy of the proposed wetland boundary in the area of a small subdivision she and her husband are hoping to develop. She said the so-called wetland is due to water that backs up on her property from roadside storm drains that the county does not keep clear.

3. Jeffrey Beer of Carmel questioned the placement of part of wetland CF-7 at the front end of his property, claiming that it is "dry ground" and asking that the Department check this for itself.

4. Angelo Ferri of Yorktown Heights said he owns 6.6 acres of undeveloped commercial land on Baldwin Place Road about a mile from Route 6. He added that when he bought the property, it was not mapped as wetland, but that it would all be considered wetland under the new maps proposed by the Department. He questioned the accuracy of the remapping and asked for a reevaluation, arguing that if his property is deemed wetland, it will be totally worthless to him and that he will be "paying taxes for nothing."

5. Pedro Reyes, a property owner in Holmes, spoke on behalf of himself and a neighboring property owner, John Catopano. He said that he noticed in 2004 that water was backing up onto their lands from a neighboring property, due to an obstruction that prevented the water from flowing into a stream. He asked that this area not be considered wetland and that permission be given for the obstruction's removal so the water can drain away, particularly as the water is a breeding ground for mosquitos.

6. Jean Earle lives on Wood Street, Mahopac, in the very south part of Putnam County, about 500 yards from the Westchester County line, and is president of the Wood Street Association. She said that, looking at the map for ML-4, it was difficult for

her to find her property, and asked if the Department had tax maps it could overlay on the wetland maps, as this would help her determine if her property is affected by the new maps. She also inquired whether the remapping would affect her property taxes in any way, and whether, if no Department representative came to inspect, a property owner could assume that his or her wetland boundaries had not been changed. As the hearing was scheduled for comments rather than questions, I asked Department Staff who were present to approach Ms. Earle afterwards, to answer her questions and help her review the maps.

7. Tyler Gagnon, who owns property on Route 9 in Cold Spring, said he could not understand why his property was flagged as wetland when it is a dry area that he has mown for years and that he can drive a tractor on without problems.

8. Joann Bade questioned the validity of the wetland boundary on her property at 142 Shindagen Hill Road in Carmel.

9. Robert McCartney spoke on behalf of Misty Hill Estates, a 47-unit condominium development on 86 acres in Cold Spring. He said there are three apparently unmapped wetlands near this development, one along a small stream that feeds into a pond, in the direction of Fisher School, and two others atop a hill north of Misty Hill Estates, where construction is being done.

10. Willard Reuter of Mahopac questioned whether the proposed amendments were the subject of an ongoing investigation, to which Mr. Quenzer responded that before the new maps are finalized, the Department will take into account public comment and changes that result from the public comment.

11. James Heins, a homeowner in Carmel, said the proposed maps show that his house and yard may be in a wetland. He expressed concern about how this would affect his ability to dredge two ponds on his property that had been silted up by storms.

12. Gayle Lowell of Patterson inquired whether the new maps show all wetland areas or only those that are newly proposed or for which boundary changes are proposed. Mr. Quenzer responded that the maps show previously mapped wetlands as well as proposed additions, giving a complete picture of wetland that would be subject to Department regulation.

13. Kathy Messina, who lives on Wixon Pond in Mahopac, said she did not understand why a dry area of beachfront in front of her house, on the other side of the street, was defined as

wetland. Mr. Quenzer responded that, to paraphrase the regulatory definition, a wetland is a transitional area between an aquatic environment (like a lake or a pond) and a dry upland area, with specific wetland vegetation, hydric soils, and standing water or a high groundwater table during a certain period of the year. Asked how a wetland determination could be made if no one came on a property and tested the soil, Mr. Quenzer said it was not necessary to visit each property to make the wetland map amendments. He said the existence and dimensions of some wetlands could be verified from the roadside, from aerial photographs, or from other remote sensing resources, and that such resources were used in those cases where landowners prohibited property access.

14. Jim Utter of Stormville, chairman of Friends of the Great Swamp and an ecologist at SUNY-Purchase, complimented the Department for what he considers to be a broad-scale improvement of the wetland maps, which, as now proposed, would delineate wetland areas he had mapped as such 15 years ago.

15. Michael Martin of the Ossi Sport Club on Barrett Hill Road, Mahopac, expressed concern as to whether he would have to seek wetland permits to improve septic systems, put in roads, and address drainage and runoff in his neighborhood of summer homes, and whether such permits would be granted. He said he would take these matters up with Department Staff.

16. Steven Astrachan of Mahopac asked how he could get a more detailed map to determine the impact of map amendments on his property. Mr. Quenzer responded that, for those with a pending project or a project approaching the planning stage, a wetland delineation could be requested at the Department's regional office. He said a Department biologist would come to the property and flag the limits of the wetland on the property and help the owner determine whether the project would require a permit. Mr. Quenzer said the Department's maps are intended to help property owners determine whether they are close enough to a wetland such that they should contact the Department to find out if they need a wetland permit.

17. Thomas Bradley of Cortlandt Manor spoke on behalf of himself and his father, who owns six acres of land on Sprout Brook Road in Garrison, all of it now identified as within wetland PK-3. He called for reconsideration of the wetland boundary, adding that two of the six acres are actually "high and dry" and would be a suitable building lot for a house he wants to build for himself.

18. Anthony Dortono of New Paltz owns a piece of undeveloped property at 420 Stormville Mountain Road in Fishkill. He said the property would be useless to him if, as proposed, it is delineated as part of wetland PQ-27. He wanted to know if there is anything he could do to get compensation due to the taxes he has to pay on the land. He also asked if the Department would consider the fact that the wetland results from people dumping material into a stream, which causes the stream to overflow. Mr. Dortono said he has cleaned the stream out twice, but the dumping continues.

19. Rocco Pennella of Dixon Road in Carmel wanted to know if he would have to remove a garage and shed from his residential property if the area in which they are located is now mapped as wetland.

- - Post-Hearing Activity

The public hearing concluded at 8:35 p.m., allowing those in attendance to further address their questions and concerns directly with Department Staff. Written comments were subsequently accepted provided they were postmarked by September 28, 2005. The hearing transcript arrived at the Department's Office of Hearings and Mediation Services on September 29, 2005, and was reviewed during preparation of this report. The report and the transcript from which it was prepared are being furnished to Department Staff for consideration of the oral comments prior to the final wetland remapping.