



What you should know about wetlands and their impact on development plans

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When in "A Charlie Brown Christmas," Lucy proclaims that what she really wants for Christmas is real estate, she probably wasn't thinking about the implications of regulated wetlands on a property. Your clients might not be thinking about it either, but they should be.

Wetlands are natural resources that are both valuable to the environment and, often add to the aesthetic appeal of a development. However, wetlands are also subject to federal, state, and sometimes local regulation. For this reason, it is in the interest of landowners or developers to know if and how much wetland is present on their property because, if identified too late in the planning process, wetlands can throw a wet towel over the best laid development plans.

Wetlands became a regulated resource with the advent of the federal Clean Water Act in 1972. The Clean Water Act regulates the waters of the U.S., including wetlands. The federal agencies charged with regulating wetlands are the Army Corps of Engineers, the Environmental Protection Agency, and the Fish and Wildlife Service. The charge of these agencies is to protect wetland resources for the benefits they provide, such as flood protection through the detention of flood waters, fish and wildlife habitat, groundwater recharge and discharge (depending on the season), outdoor educational opportunities, open space, and others. The Army Corps is generally the lead agency for federal wetland permitting. In N.Y., applications for proposed impacts to wetlands are usually made through a joint application form that goes to the Army Corps and to the NYS Department of Environmental Conservation (DEC). This process includes completing a wetland delineation report and wetland location map.

So how do you know if your property includes wetlands? The casual observer often thinks of wetlands as cattail-covered water bodies, but there are many other types. In fact, certain types of wetlands, including wet meadows and wooded swamps, may only be wet or saturated for a relatively short duration of the growing season while through the remainder of the year appear dry at the surface.

To know where and approximately how extensively wetlands are located on your property, start by reviewing wetland maps such as the state DEC's freshwater wetland maps and the U.S. Fish and Wildlife Service's National Wetland Inventory maps. Town halls often keep these maps on file, and they are also becoming easier to find online. The thing to remember about wetland mapping is that the state's freshwater wetland maps are regulatory maps, meaning if there is a state wetland located on your subject property, it is definitely regulated and any proposed grading or construction activities are subject to a permit application. National Wetland Inventory (NWI) mapping, however, is what is called "guidance" mapping. If wetlands are shown on your subject property in the NWI, it means there are probably wetlands in the general location, and those wetlands need to be delineated by a wetland professional.

Even if no wetlands appear on wetland mapping, a property may still contain regulated wetlands. Since not all wetlands are mapped, it is incumbent on the property owner to have the property delineated to know if wetlands are present before development. In a federal wetland delineation, a wetland scientist will look at the dominant vegetation, the soil, and evidence of surface water or saturated soils. Those three criteria—wetland vegetation, hydric (wetland) soils, and hydrology—are also what is required in the Army Corps Wetland Delineation Manual to identify an area as a wetland.

Here are a few more wetland facts and figures to be aware of:

- * NYS DEC generally regulates wetlands that are 12.4 acres and larger in size.
- * Wetlands regulated by NYS DEC also include a regulated 100-ft. adjacent area that extends beyond the wetland itself.
- * The federal government, through the Army Corps of Engineers administration, regulates all waters and wetlands of the U.S. with the exception of isolated wetlands that have no hydrologic connection to other waters of the U.S. The Army Corps makes jurisdictional determinations for wetlands.
- * The Army Corps of Engineers maintains a series of nationwide permits that allow certain activities to take place in regulated wetlands, usually with required notification. Nationwide permits include such items as maintenance or replacement of existing facilities within wetlands and minor amounts of dredging or fill activities within a wetland. Specific nationwide permit thresholds can be reviewed on the Army Corps website at <http://www.lrb.usace.army.mil/>.
- * Proposed wetland impacts of over 0.5 acres are subject to an individual permit and are not eligible for a nationwide permit.
- * Proposed wetland impacts greater than 0.1 acre require compensatory mitigation to offset the wetland loss.
- * Wetland mitigation can only be considered after all practicable alternatives for avoiding and minimizing wetland impacts have been explored.

Needless to say, wetlands can and do have an important impact on development plans. For help navigating through the many ins and outs of wetland regulations, contact the regulatory agencies or environmental firms in your area that specialize in wetland delineations, such as Stantec.

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