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Governor

NY Rising Housing Program

Guidance for Tidal Wetland Adjacent Areas

August 28, 2017

NY Rising Housing Program (applies to all Programs)

Land usage within designated Tidal Wetland areas and the Tidal Wetland Adjacent area is regulated by the New York State Department of Environmental Conservation (DEC). Certain activities in these areas require a permit from the DEC, while certain activities do not. The DEC regulates activities in to Tidal Wetland and their adjacent areas to prevent, or at least to minimize, impairment of wetland functions. Almost any activity which may impact the natural values of the wetlands or their adjacent areas is regulated. DEC provides guidance on which land uses and actions require a permit from the DEC. This guidance is available at <http://www.dec.ny.gov/permits/6359.html>.

Tidal Wetland Adjacent areas consist of the regulated adjacent area extending 300 feet from a designated Tidal Wetland. However, even within that 300 foot regulated adjacent area, the Tidal Wetland Adjacent area does not include areas 10 feet or more above sea level or areas where there is a “qualifying structure” such as a road, bulkhead, rip-rap wall or seawall separating the project site from the Tidal Wetland. For example, if there is paved road 60 feet from a designated Tidal Wetland area only the 60-foot area between the Tidal Wetland and the road is considered to be an Tidal Wetland Adjacent Area, and the remaining 240 feet of buffer zone is not considered to be a Tidal Wetland Adjacent Area. A “qualifying structure” is one that prevents normal tidal action; any structures that might limit jurisdiction must have been in existence prior to August 20, 1977, paved (if a road), and at least 100 feet or more in length, in order to limit DEC jurisdiction.

The following are some examples of activities and their permit requirements:

Permit NOT Required:

- Minor repairs within Tidal Wetland Adjacent areas
- Substantial restoration, reconstruction, modification or expansion of existing functional residential structures which are and will continue to be located 75 feet or more from the most landward edge of any tidal wetland

Permit Required:

- Substantial restoration, reconstruction, modification or expansion of existing functional residential structures **within** 75 feet of the most landward edge of any tidal wetland

To learn more about the permit application process, please visit <http://www.dec.ny.gov/permits/6275.html>. For more information or for answers to questions concerning this area, please contact the appropriate DEC Regional Office by visiting here <http://www.dec.ny.gov/about/558.html>.