§ 24-0107. Definitions.

1. * "Freshwater wetlands" means lands and waters of the state, that are not tidal wetlands as defined in subdivision one of section 25-0103 of this chapter, that have an area of at least twelve and four-tenths acres or, if less than twelve and four-tenths acres in size, are of unusual importance, and which contain any or all of the following:

* NB Effective until January 1, 2028

* "Freshwater wetlands" means lands and waters of the state, that are not tidal wetlands as defined in subdivision one of section 25-0103 of this chapter, that have an area of at least seven and four-tenths acres or, if less than seven and four-tenths acres in size, are of unusual importance, and which contain any or all of the following:

* NB Effective January 1, 2028

(a) lands and submerged lands commonly called marshes, swamps, sloughs, bogs, and flats supporting aquatic or semi-aquatic vegetation of the following types:

(1) wetland trees, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other trees; including, among others, red maple (Acer rubrum), willows (Salix spp.), black spruce (Picea mariana); swamp white oak (Quercus bicolor), red ash (Fraxinus pennsylvanica), black ash (Fraxinus nigra), silver maple (Acer saccharinum), American elm (Ulmus americana), and Larch (Larix laricina);

(2) wetland shrubs, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other shrubs; including, among others, alder (Alnus spp.), buttonbush (Cephalanthus occidentalis), bog rosemary (Andromeda glaucophylla), dogwoods (Cornus spp.), and leatherleaf (Chamaedaphne calyculata);

(3) emergent vegetation, including, among others, cattails (Typha spp.), pickerelweed (Pontederia cordata), bulrushes (Scirpus spp.), arrow arum (Peltandra virginica), arrowheads (Sagittaria spp.), reed (Phragmites communis), wildrice (Zizania aquatica), bur-reeds (Sparganium spp.), purple loosetrife (Lythrum salicaria), swamp loosestrife (Decodon verticillatus); and water plantain (Alisma plantago-aquatica);

(4) rooted, floating-leaved vegetation; including, among others, water-lily (Nymphaea odorata), water shield (Brasenia schreberi), and spatterdock (Nuphar spp.);

(5) free-floating vegetation; including, among others, duckweed (Lemna spp.), big duckweed (Spirodela polyrhiza), and watermeal (Wolffia spp.);

(6) wet meadow vegetation, which depends upon seasonal or permanent flooding or sufficiently water-logged soils to give it a competitive advantage over other open land vegetation; including, among others, sedges (Carex spp.), rushes (Juncus spp.), cattails (Typha spp.), rice cut-grass (Leersia oryzoides), reed canary grass (Phalaris arundinacea), swamp loosestrife (Decodon verticillatus), and spikerush (Eleocharis spp.);

(7) bog mat vegetation; including, among others, sphagnum mosses (Sphagnum spp.), bog rosemary (Andromeda glaucophylla), leatherleaf (Chamaedaphne calyculata), pitcher plant (Sarracenia purpurea), and cranberries (Vaccinium macrocarpon and V. oxycoccos);

(8) submergent vegetation; including, among others, pondweeds (Potamogeton spp.), naiads (Najas spp.), bladderworts (Utricularia spp.), wild celery (Vallisneria americana), coontail (Ceratophyllum demersum), water milfoils (Myriophyllum spp.), muskgrass (Chara spp.), stonewort (Nitella spp.), water weeds (Elodea spp.), and water smartweed (Polygonum amphibium);

(b) lands and submerged lands containing remnants of any vegetation that is not aquatic or semi-aquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six feet and provided further that such conditions can be expected to persist indefinitely, barring human intervention;

(c) lands and waters substantially enclosed by aquatic or semi-aquatic vegetation as set forth in paragraph (a) of this subdivision or by dead vegetation as set forth in paragraph (b) of this subdivision, the regulation of which is necessary to protect and preserve the aquatic and semi-aquatic vegetation; and

(d) the waters overlying the areas set forth in paragraphs (a) and (b) of this subdivision and the lands underlying paragraph (c) of this subdivision.

2. "Freshwater wetlands map" shall mean a map developed by the department pursuant to section 24-0301 of this article on which are indicated the boundaries of any freshwater wetlands. Freshwater wetland maps depict the approximate location of wetlands and are not necessarily determinative as to whether a permit is required pursuant to section 24-0701 of this article.

3. "Boundaries of a freshwater wetland" shall mean the outer limit of the vegetation specified in paragraphs (a) and (b) of subdivision one of this section and of the lands and waters specified in paragraph (c) of such subdivision.

4. "Local government" shall mean a village, town, city, or county.

5. "State agency" shall mean any state department, bureau, commission, board or other agency, public authority or public benefit corporation.

6. "Person" means any corporation, firm, partnership, association, trust, estate, one or more individuals, and any unit of government or agency or subdivision thereof, including the state.

7. "Board" shall mean the freshwater wetland appeals board.

8. "Pollution" shall mean the presence in the environment of human-induced conditions, or contaminants in quantities or characteristics which are or may be injurious to human, plant or wildlife, or other animal life or to property.

9. "Unusual importance" shall mean a freshwater wetland, regardless of size, that possesses one or more of the following characteristics as determined by the department pursuant to regulations:

(a) it is located in a watershed that has experienced significant flooding in the past, or is expected to experience significant flooding in the future from severe storm events related to climate change;

(b) it is located within or adjacent to an urban area, as defined by the United States census bureau;

(c) it contains a plant species occurring in fewer than thirty-five

sites statewide or having fewer than five thousand individuals statewide;

(d) it contains habitat for an essential behavior of an endangered or threatened species or a species of special concern as defined under section 11-0535 of this chapter or listed as a species of greatest conservation need in New York's wildlife action plan;

(e) it is classified by the department as a Class I wetland;

(f) it was previously classified and mapped by the department as a wetland of unusual local importance;

(g) it is a vernal pool that is known to be productive for amphibian breeding;

(h) it is located in an area designated as a floodway on the most current Digital Flood Insurance Rate Map (DFIRM) produced by the Federal Emergency Management Agency;

(i) it was previously mapped by the department as a wetland on or before December thirty-first, two thousand twenty-four;

(j) it has wetland functions and values that are of local or regional significance; or

(k) it is determined by the commissioner to be of significant importance to protecting the state's water quality.

10. "Delineation" shall mean a precise representation of a regulated freshwater wetland as defined in subdivision one of this section.