



BUILDINGS BULLETIN 2009-012

Operational

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Issuer: James P. Colgate, RA, Esq.

Assistant Commissioner for Technical Affairs and Code Development

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Purpose: This document establishes construction document submittal procedures for work in Tidal Wetlands, Freshwater Wetlands, and Coastal Erosion Hazard Areas

Related Code LL 21/09
Section(s): AC 28-104.9

Subject(s): Coastal Zones; Water-Sensitive Inland Zones; Wetlands, Tidal; Wetlands, Freshwater; Coastal Erosion Hazard Areas

1. Background

Local Law 21/09 (Section AC 28-104.9.2), effective July 1, 2009, establishes additional responsibilities on applicants for work proposed in Coastal Zones and Water-Sensitive Inland Zones:

"It shall be the duty of an applicant for construction document approval to determine whether the proposed work is located within a coastal zone or a water-sensitive inland zone subject to section 28-104.9.3 and/or section [28-104.9.4]. Applications for construction document approval shall include a statement by the applicant indicating whether the proposed work is located within a coastal zone or water-sensitive inland zone subject to such sections. The failure to disclose that proposed work is within a coastal zone or water-sensitive inland zone subject to such sections shall be a violation of this code."

Further, Section AC 28-104.9.3 mandates that the applicant submit to the Department of Buildings (DOB) any required approvals from the New York State Department of Environmental Conservation (DEC).

This Bulletin establishes the procedures for submitting to DOB the applicable maps and DEC approvals in relation to Tidal Wetlands (TWL), Freshwater Wetlands (FWWL), and Coastal Erosion Hazard Area (CEHA).

2. Categories of work covered

The categories of work that require compliance with LL 21/09 in relation to TWL, FWWL and CEHA include any new building (NB) or alteration (Alt-1, Alt-2, Alt-3) for work that introduces, or horizontally enlarges, any object constructed, installed, or placed in, on, or under land or water, including but not limited to: a building, shed, deck, above or below ground swimming pool, paving, sidewalk, garage, mobile home, ground sign, dry well, storage tank, pier, dock, wharf, groin, jetty, seawall, revetment, bulkhead, breakwater. Work that includes any excavation or fill is also required to comply. Where the proposed work replaces a structure existing prior to the effective date of LL21/09 without enlarging it and without causing excavation or fill, such work is not required to comply.

Example 1: A Builder's Pavement Plan (BPP) replaces an existing sidewalk in the existing location with new paving, and does not involve an excavation. Because the new paving replaces the existing paving on the sidewalk, there is no enlargement to the existing paving area, and there is no excavation involved, LL21/09 is not triggered.

Example 2: A BPP introduces paving to a portion of the site which was previously unpaved. Such introduction or enlargement of paving triggers LL 21/09.

3. Providing map with application for construction document approval

For the categories of work that require compliance with LL 21/09, all new building (NB) or Alteration (Alt-1, Alt-2 or Alt-3) applications on a tax lot for which the Building Identification Numbers (BINs) are flagged on the Building Information System (BIS) property profile overview screen with the applicable NYS DEC Wetlands category(s) or on a tax lot that has not been flagged but is located within or partly within a TWL, FWWL, CEHA or associated adjacent areas, the applicant must submit the applicable required item(s) prior to DOB construction document approval:¹

- Provide DEC tidal wetlands map
- Provide DEC freshwater wetlands map
- Provide DEC CEHA map

The applicant must obtain the map from the appropriate source (see http://www.nyc.gov/html/dob/html/codes_and_reference_materials/wetlandsMaps.shtml) and shall print the applicable portion of the map, indicating any applicable adjacent areas:

- TWL adjacent area: 150 feet (adjacent area not shown in online map; applicant must sketch the adjacent area where applicable)
- FWWL adjacent area: 100 feet (adjacent area already shown in online map; applicant need only print the online map)
- CEHA adjacent area: none (the line shown on the map is the final boundary).

The applicant shall annotate the map by clearly identifying the subject premises, demonstrating whether the tax lot is either within a mapped zone or adjacent area, or is outside of such areas. In cases where a portion of the tax lot is within the mapped zone or adjacent area, but the proposed work is wholly outside, the registered design professional or a licensed land surveyor shall sign and seal such annotated map to certify that the proposed work is outside of the mapped zone or adjacent area.

In the alternative, the applicant may submit to DOB a "jurisdictional determination" from DEC that the subject premises is either inside or outside of the mapped zone or adjacent area.

4. Providing DEC permit for the proposed work

Where the map or DEC's "jurisdictional determination" that is submitted demonstrates that the proposed work falls within the mapped zone or adjacent area, the applicant must also submit the applicable required item(s) prior to DOB construction document approval:

- Provide DEC permit for Tidal Wetlands
- Provide DEC permit for Freshwater Wetlands
- Provide DEC permit for Coastal Erosion Hazard Area

¹ Tax lots that have existing, associated BINs have been flagged in the Building Information System (BIS) on the property profile overview as "NYS DEC Wetlands TWL, FWWL, CEHA (as applicable) or associated adjacent area is nearby. Although tax lots that do not have an associated existing BIN (for instance, vacant land), have not been flagged in BIS, the applicant remains responsible for determining whether the tax lot is located in one of the mapped zones or adjacent areas and submitting the applicable map(s).

5. Professional certification of applications

Where an application filed for work subject to LL21/09 is professionally certified, it shall be the applicant's responsibility to provide the map, DEC's "jurisdictional determination", and DEC permit, as applicable, as part of the initial submittal document for approval. The applicable required items shall be checked on Form PC-1.

6. Removing flags in BIS for a tax lot

The process identified above establishes the procedure for a case-by-case review of the work proposed based on the scope of such proposed work. Submission of a map in accordance with the above procedures does not remove the NYS DEC Wetlands flag from the property profile overview in BIS. Therefore all subsequent applications related to the same flagged property must follow the above procedures and submit copies of the applicable map(s) each time.

If an owner wishes to permanently remove the NYS DEC Wetlands flag(s) on BIS from the entire tax lot, a separate request must be made to the borough commissioner in which the property is located. Such request shall be submitted on the Department Wetlands Property Profile Change Request form (OP133) by a registered design professional or licensed land surveyor, and shall contain either a "jurisdictional determination" or an annotated map that clearly identifies the subject premises and demonstrates that the entire tax lot is outside the mapped zone and associated adjacent area. The registered design professional or licensed land surveyor shall sign and seal such annotated map to certify that the tax lot is outside of the mapped zone and associated adjacent area.

7. Construction document approval approved on or after July 1, 2009

Local Law 21 of 2009 took effect on July 1, 2009 and applies to applications for construction document approval approved on or after such date.