

# The Forum

NEW YORK STATE WETLANDS FORUM

## MESSAGE FROM THE CHAIR

— Barbara B. Beall, *The LA Group*

As I write this, the year 2000 is nearly upon us. Do you remember the day in your childhood when you realized for the first time that you would be alive when the year 2000 arrived? I do. I was wandering around in the woods behind my house when all of a sudden I thought to myself, "Wow, the year 2000 is only 27 years away...I'll be 30-something." I tried to do the math in my head to see exactly how old I would be but quickly gave up. Math was never my strong suit, and somehow I am closer to 40-something than the previously estimated 30-something.

This is my last "Message from the Chair." Throughout my tenure as Chair of the Forum, I have tried to facilitate open exchanges about wetlands. Given that a new century approaches, I wanted to take this final opportunity to explore this idea a bit more.

We all have many challenges facing us in the areas of wetland science, wetland management, and wetland preservation. Wetlands, along with other natural resources, are under and will continue to be under increasing development pressures. All of us will face more difficult decisions and choices about how we will evaluate and balance growth and development with preservation and protection. A key component to meeting these challenges will be effective communication between the various wetland interests.

I believe that effective communication is principal-centered, and based on the universal truths of honesty, respect, empathy and trust.

Honesty - Sometimes it is hard to be honest in our work with wetlands. We can all name examples where, to advance a particular position or cause, facts have been "spun" or innuendo smears have been added under the guise of professional opinion. These practices lower the credibility of all wetland professionals and do a disservice to the cause of wetland science. We would all be better served if, when conveying information to others, we separated and clearly identified factual statements from professional opinions.

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## CORPS EXTENDS TIMELINE TO FINALIZE NATIONWIDE PERMITS AND REVISES PROCEDURE FOR PROCESSING NWP 26 NOTIFICATIONS

— Kevin M. Bernstein, Esq.  
*Bond, Schoeneck & King, LLP*

The process of issuing 5 new Nationwide Permits (NWP) and modifying 6 existing NWP to replace NWP 26 seems to be nearing its conclusion - finally.

### Background

On July 1, 1998, the Corps of Engineers (the Corps) issued public notice of proposed modifications to the Nationwide Permit (NWP) program. The Corps proposed issuing six new NWP and modifying six others. The Corps also proposed adding one new NWP condition and modifying six existing NWP conditions which will apply to all new and existing Nationwide Permits. Please refer to the Summer 1998 issue of *The Forum* (Volume 5, No. 1) for a detailed report on the Corps' proposed replacements to NWP 26. See also 63 Fed. Reg. 36,040.

On October 14, 1998, the Corps published a supplemental Notice and modified its proposed changes to the NWP Program as published on July 1, 1998. In its October 14 Notice, the Corps withdrew proposed NWP B, which would have permitted certain discharges associated with master planned developments. The Corps proposed limiting the use of certain NWP within the 100 year floodplain of Waters of the United States. The Corps also proposed limiting the use of NWP in designated critical resource waters and impaired waters. Under the October 14 Notice, the changes were proposed to take place when the presently existing NWP 26 was set to expire on September 15, 1999. The existing NWP, with the exception of NWP 26, would remain in effect until they expire on February 11, 2002. See 63 Fed. Reg. 55,095.

On July 21, 1999, the Corps published a new proposal to issue and modify the NWP. See 64 Fed. Reg. 39,252. The comment period, originally set to expire on September 7, 1999, was extended one month and comments on the proposed rule were due on October 7, 1999. The Corps is proposing to issue five new NWP, and modify six existing

NWP to replace NWP 26 when it expires. The Corps is also proposing to modify 9 NWP general conditions and add 3 new general conditions. These general conditions will apply to the proposed new and modified NWP, as well as the NWP issued on December 13, 1996, when the new and modified NWP become effective. Under the July 21, 1999 proposal, the NWP were slated to become effective on (and NWP 26 would be therefore extended until) December 30, 1999.

However, on September 3, 1999, in connection with extending the public comment period, the Corps extended the expiration date for NWP 26 to January 5, 2000 (or the effective date of the replacement NWP, whichever comes first).

### New and Final Extension

On December 15, 1999, the Corps for the final time extended the expiration date for the existing NWP and identified a specific date by which the new and modified NWP would be issued (February 14, 2000) and become effective (April 14, 2000). According to the Corps, the justification for this further delay was the over 1,700 comments received on the Corps' July 21, 1999 proposal. See 64 Fed. Reg. 69,994.

### Impact on NWP 26

To ensure that there continues to be a NWP available to authorize activities in headwaters and isolated waters that have minimal adverse effects on the aquatic environment, the Corps extended the expiration date for NWP 26 until April 14, 2000. Moreover, in answer to most likely an avalanche of inquiry and to ostensibly provide an efficient transition from NWP 26 to the new and modified NWP, the Corps' December 15, 1999 Notice set forth procedures to handle the processing of NWP

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### Mission:

The New York State Wetlands Forum is a non-advocacy group comprised of individuals and groups with diverse backgrounds, interests and viewpoints regarding wetlands and their science, use and management. Incorporated in 1994, the Forum is a 501(c)(3) not-for-profit organization. Its purpose is to improve communication among people interested in wetlands; call attention to and objectively discuss local, statewide, regional, national and global wetland issues as they relate to New York State; improve its members' knowledge and understanding of wetlands; and make available information about wetlands to its members and the general public.

## NYS DEPARTMENT OF STATE PROVIDES GRANTS FOR WETLANDS PROGRAMS AND PROJECTS

— Michael Corey

*NYSDOS Division of Coastal Resources*

The NYS Department of State Division of Coastal Resources has, since 1982, used both traditional and innovative coastal management techniques to investigate and solve problems, provide timely technical assistance, and respond to the changing needs of New York's waterfronts. Through cooperative relationships with local governments, businesses, and citizens, the Division of Coastal Resources works to ensure that waterfronts continue to enrich the quality of life of New Yorkers and visitors, that the environmental quality of the State's waterfronts continues to improve, and that waterfronts generate appropriate economic growth. By way of the administration of Environmental Protection Fund (EPF) and Clean Water Clean Air Bond Act (Bond Act) grants, these goals are being achieved.

Since 1994, the Department of State has awarded and administered grant money through Local Waterfront Revitalization Program Grants (Title 11) of the EPF. Most of the grants are awarded to projects that help implement Local Waterfront Revitalization Programs, to the preparation of intermunicipal waterbody management plans, to waterfront redevelopment plans, or to public coastal education projects. However, many of the grants go to the design and implementation of wetlands-related projects. Of the approximately \$21 million awarded by the Department of State over the five years the grants program has been in place, nearly \$1.2 million has gone to municipalities for planning, design, education, or construction projects involving wetland restoration, management, or research. Many wetland-related planning or design projects that might not be readily funded via the Bond Act can be funded using EPF monies.

A number of EPF-funded projects that involve planning rather than construction have been funded in later grant rounds for construction using Bond Act money. The two grant programs complement each other well in this way.

The following are examples of some of the EPF grants awarded by the Department of State to various municipalities for wetlands projects:

#### **Brooklyn Marine Park Salt Marsh Education Project** – New York City.

Development of a new education center that will include a mile-long trail along a salt marsh, interpretive signage, research areas for native grass, shrub, and tree plantings for habitat restoration and enhancement

**Fiske Pond Freshwater Wetlands Restoration Plan** – Village of Lloyd Harbor. Preparation of a restoration plan and design for Fiske Pond, including an evaluation of the cause of degradation, identification of feasible wetland restoration alternatives, and development of design plans for the selected alternative.

**Wetlands Habitat Management Plan for Bay Islands in South Oyster Bay** – Town of Oyster Bay. Evaluation of South Oyster Bay tidal wetlands current condition, habitat values, and sources of impairment. Recommendations will include specific sites for wetlands restoration and conceptual design of these specific efforts.

**Wetlands Restoration Plans** – Town of Southampton. Prepare wetlands restoration plans for the Town's coastal area, including Moriches and Shinnecock bays. Town-owned tidal wetland parcels will be studied for potential restoration and enhancement using native wetland species.

**Wetlands Restoration** – Town of Southampton. To implement the previously completed plans, the Town will restore and enhance degraded Town-owned wetlands located at the Ponquogue Bridge. Included is site preparation, excavation and disposal of old fill, necessary grading, propagation of tidal wetlands plant species, and installation of interpretive signage and informational kiosks.

The Department of State is also responsible for administering a portion of the funding available through the 1996 Clean Water/Clean Air Bond Act (Bond Act). Eligible aquatic habitat restoration and non-agricultural non-point source abatement and control program projects that improve water quality and implement management programs within such areas as the Hudson River Estuary, South Shore Estuary Reserve, and the Fingers Lakes are funded by the Bond Act and administered through the Division of Coastal Resources. Many of these projects involve wetland restoration activities. Of the approximately \$4.2 million in grants handled by the Department of State since the Bond Act was passed in 1996, over \$1.8 million has been awarded to municipalities for wetlands-related projects.

The following are a few examples of these projects:

**Beaver Lake Wetlands Enhancement and Water Quality Improvement** – Town of Babylon. Improvement of stream flow, wetland restoration and creation for non-point

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## SUMMARY OF HYDRIC SOILS WORKSHOP

— Barbara B. Beall

As a special offer to members of the Forum, a hydric soils workshop was held on Friday, October 22, 1999 at the US Air Force Test Facility in Verona, New York. This workshop was taught by Leander Brown of the Wetland Training Institute, Russell Pringle with the Wetland Science Institute and Ed Stein of the NRCS, Cooperstown Office. Thanks to the staff at the US Air Force Verona Test Facility who allowed the Forum to use the site for looking at difficult hydric soils. Many thanks as well to the instructors, and to Fran Reese, Diane Kozlowski and Sandra Doran who helped to organize the event.

The Natural Resources Conservation Service, Wetland Science Institute and Soils Division, has developed a new "*Field Indicators of Hydric Soils in the United States – A Guide for Identifying and Delineating Hydric Soils, Version 4.0 (March 1998)*." ("*NRCS Field Indicators*") Copies can be obtained from Russell F. Pringle, NRCS, WSI, LSU, 104 Sturgis Hall, Baton Rouge, LA 70803-2110. Information on the publication and additional information concerning the hydric soils are maintained on the web site [www.statlab.iastate.edu/soils/hydric](http://www.statlab.iastate.edu/soils/hydric).

The *NRCS Field Indicators* was developed with input of soil scientists from the NRCS, in cooperation with the USFWS, the USACOE, the USEPA, and various regional, state, local agencies, universities, and private sector. The *NRCS Field Indicators* has not been officially adopted by the ACOE as stand alone indicators of hydric soils. However, the ACOE has reviewed the *NRCS Field Indicators* and a table in the back of the *NRCS Field Indicators* (pages 28 and 29) cross-references the 1987 ACOE Manual with the 1998 indicators. In a December 12, 1995 letter from ACOE Headquarters to the Districts, it is recommended that the *NRCS Field Indicators* be used as another tool in the ACOE's wetland determinations and delineations.

Three approaches have been used in the past to identify hydric soils. 1) if the hydric soil was on the National Technical Committee on Hydric Soils (NTCHS) list, and was identified in the field as such by a soil scientist; 2) if in the field, the soil met the criteria of a hydric soil as defined by the NTCHS; or 3) if the soil had ACOE field indicators of a hydric soil. The *NRCS Field Indicators* focuses on the third approach of field indicators and refines the indicators developed as part of the 1987 ACOE Manual. To properly correlate these indicators to hydric soils characteristics, detailed pedon descriptions for the soil supporting the hydric

indicator, and an adjacent non-hydric pedon were developed. Detailed vegetative data to represent the vegetation of the pedons was collected as prevalence indices. More impressively, saturation (inundation) data and Eh data for a duration that captured the saturation cycle (dry-wet-dry), collaborated by precipitation and in-situ soil-water pH data was developed.

The *NRCS Field Indicators* is designed to be regionally specific. The indicators are linked to the Land Resource Regions (LRRs) or Major Land Resource Areas (MLRAs) in which the indicator has been tested and approved. New York State is located in Land Resource Regions L, for the Lake Ontario/Lake Erie plain, and the Mohawk Valley, and region R for the "forested lands" in the remainder of the state. Table 1 on page 28 of the *NRCS Field Indicators* lists the indicators which can be used in each LRR.

The *NRCS Field Indicators* has taken the more general indicators discussed in the 1987 ACOE Manual and has broken them down into more detailed and precise indicators. As a result, in the Lake Ontario and Lake Erie Plain, there are 21 indicators available for use, and in the remainder of the state, there are 25 indicators available. Another difference between the 1987 ACOE Manual and the *NRCS Field Indicators* is that the ACOE Manual prioritized the field indicators according to their reliability as hydric soils indicators. In the *NRCS Field Indicators*, all hydric soil indicators have the same level of reliability – a data point location has hydric soils if it meets the indicator.

As an example of the detail provided in the NRCS, the 1987 ACOE Manual has field indicators for a histisol, a histic epipedon, and the presence hydrogen sulfide. In contrast, the *NRCS Field Indicators* has taken these three indicators and developed 10 detailed indicators for organic soils. The indicators provide specific descriptions of what constitutes an organic soil or an organic layer over a mineral soil. With histic epipedons, indicators are provided for the characteristics that should be present when the aquic condition can or cannot be confirmed in the field. There is also an indicator to describe when stratified layers (for example in an alluvial area) constitute a hydric soil. The *NRCS Field Indicators* provides indicators for other areas of the country where thinner muck layers are indicative of a hydric soil condition.

The *NRCS Field Indicators* provides guidance on relic versus contemporary morphologic features (e.g., is the hydric soil indicator a result of a previous aquic

conditions that no longer exists (a relic feature), or is the indicator the result of existing aquic conditions). The manual states that "Typically, contemporary and recent hydric soil morphologies have diffuse boundaries; relic hydric soil features have sharp boundaries. When soil morphology seems inconsistent with the landscape, vegetation or observable hydrology, it may be necessary to obtain the assistance of an experienced soils or wetland scientist to determine whether the soil is hydric." A sharp boundary is defined as a redoxomorphic feature that grades sharply from one color to another. The color grade is commonly less than 0.5mm wide even under a 10x-hand lens.

The *NRCS Field Indicators* also has a detailed glossary to define many of the terms used in the body to describe the soils. Some of the common terms which have been used in the past by wetland scientists have changed. Bright mottles are now "redox concentrations" whereas the low chroma areas are called "redox depletions." A gleyed chroma is now referred to as a "reduced matrix." Oxidized rhizospheres are now called "pore linings."

The "gleyed or low chroma with mottles" indicator common to the 1987 ACOE Manual has been refined in the *NRCS Field Indicators*. These indicators are found under the section "Loamy and Clayey Soils." In order for a loamy or clayey soil to be hydric, all of the mineral layers above the indicator described must have a dominant chroma of 2 or less or the layer with the dominant chroma of 2 or more is less than 15 cm (6 inches) thick. In addition, unless otherwise noted, nodules and concretions are not considered to be redox concentrations. In loamy or clay soils, the following are considered field indicators of hydric soils:

**F1.** A mucky modified mineral layer 10 cm (4 inches) thick starting within 15 cm (6 inches) of the soil surface.

**F2.** Loamy gleyed matrix. A gleyed matrix that occupies 60% or more of a layer starting within 30 cm (12 inches) of the soil surface. The gley color must have a hue of N, 10Y, 5GY, 10GY, 5G, 10G, 5BG, 10BG, 5B, 10B, or 5PB with value of 4 or more. The gleyed matrix only has to be present within 30 cm (12 inches) of the surface, and there is no minimum thickness required.

**F3.** Depleted matrix. A layer at least 15 cm (6 inches) thick with a depleted matrix that has 60% or more chroma 2 or less starting within 25 cm (10 inches) of the surface. If the depleted matrix is within the upper 15 cm (6 inches) of the soil, the minimum thickness requirement is 5 cm (2

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# DEC ANSWERS QUESTIONS ON SARATOGA COUNTY WETLAND REMAPPING

— Jennifer Brady-Connor  
With Ken Kogut, NYS DEC Region 5

## When did the remapping process begin?

The mapping process actually began over ten years ago. As wetlands staff met in the field with landowners to do delineations, or when they were working on other projects, it quickly became apparent that there were many problems with the Saratoga County maps. When staff returned to the office they would place a note in a file along with a map of the site and any revised changes. During the early 1990's we began to greatly accelerate the process. Beginning in 1993 (or thereabouts), the US EPA and other Government agencies began to focus on Saratoga County. With the funding and support of the "Saratoga County Initiative" we greatly accelerated our remapping effort.

## What was the purpose behind the remapping?

The sole purpose of the Saratoga County remapping effort was to produce the most accurate set of NYS Regulatory Maps that we could produce given limited manpower and funds. As I mentioned earlier, it was very apparent that the original maps for Saratoga were very poor. This has been demonstrated by the fact that total wetlands acreage has been increased from approximately 30,000 acres to 52,000 acres. Approximately 4,000 landowners were impacted by the wetland additions.

## What remains to be completed in the remapping process?

As of today (December 8, 1999) we have over 287 field visits with landowners left to make. While this is a huge number, it shows that we have made great progress in reducing our original from the 622 site visits requested as part of our hearing process.

By the way, in our 14 public information meetings and hearings we met with over 1,500 property owners and political leaders from Saratoga County. We wanted to get the message out about the new maps, and with all the controversy we have created I suppose we were successful in this effort!

## When is the process expected to be completed?

With winter now settling in, we do not expect to complete field inspections until early

next summer. Once they are completed, it will be necessary to write up a report of our efforts and address any issues raised by the hearing officer, who will also be completing his report on the mapping effort. This will all go to the Commissioner for review and approval. Realistically, I don't believe we will see 'final' maps approved until late in 2000. This really is not a problem however since, as the New York State Rule and Regulations are currently written, we can begin using the revised maps for regulatory purposes as soon as the public is notified of their existence.

## What tools were utilized during the remapping process?

The Saratoga County Initiative provided the Department with the unique opportunity to complete the remapping effort with a set of tools that have not been available in the past for other counties. The Initiative paid for new soils maps produced by the USDA Natural Resource Conservation Service, and new National Wetland Inventory Maps produced by the USFWS Wetlands Inventory Unit. When combined with aerial photography, the old NYS wetland maps, and extensive field visits, we believe we have produced some of the most accurate maps ever in New York for regulatory purposes.

## How many landowners did the remapping impact? number of acres?

As mentioned earlier, approximately 4,000 landowners were affected by the new maps. Wetland acreage increased from 30,000 to 52,000 acres, a 22,000 acre increase.

## How is DEC working to reconcile the concerns of landowners impacted by the remapping process?

Anyone following the news realizes that the remapping effort has become a huge political issue. In fact, we are told that at least 4 bills will be introduced to the legislature in January regarding New York's wetlands program. It is interesting to note that the political turmoil in the news is not reflected in our meetings with landowners. Many already have a clear idea of where the wetlands are located on their property and we are simply reinforcing what they already know. With those individuals who have a project in mind,

we are trying to carefully work with them to help them meet their goals while at the same time protecting wetlands from development. I think we have been very successful in this regard when we get to meet with landowners one-on-one.

## Does DEC anticipate remapping all counties within NY?

The remapping of wetlands in New York has been an ongoing process for many years. As wetlands are identified, they can be added to a particular county's regulatory map. What was unique about Saratoga County, and Clinton County before it, is that we decided to remap the entire county at once rather than pick away at it a wetland or two at a time. I am not aware of any plans to remap entire counties in New York as we just did in Saratoga County. This is not to say that there are not counties that could use a remapping effort.

## If DEC had it to do all over again, would they change anything they did and if so, what?

I don't believe I would do anything different than what we have done. I honestly believe that we made an outstanding effort to inform the public and local officials about our remapping effort early in the mapping process.

The negative reaction of the public to the wetlands program was expected. However, what we did not realize was the change in power of the landowner rights organizations. Perhaps Saratoga's situation is unique: we have an area with extremely high growth rates, high land values, and an area that sits adjacent to the power base in Albany. It is interesting to watch the issues surrounding the wetlands remapping effort change from concerns relating to the inaccuracy of the maps to those of landowner rights, loss of property value and tax base, and constitutional law.

For those of us involved in the remapping process it has been a long, painful, and lonely experience. It seems as though those groups advocating the protection of wetlands quickly went into hibernation once the going got

Although the information in this document has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement X992664-01-0 to the New York State Wetlands Forum, Inc., it may not necessarily reflect the views of the Agency and no official endorsement should be inferred.

## (SUMMARY OF HYDRIC SOILS WORKSHOP)

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inches). Redox concentrations including iron/manganese soft masses and/or pore linings are required in soils with matrix colors of 4/1, 4/2, and 5/2. A, E, and calcic horizons may have low chromas and high values and may therefore be mistaken for a depleted matrix; however, they are excluded from the concept of a depleted matrix unless common or many distinct or prominent redox concentrations as soft masses or pore linings are present.

An additional four indicators are provided for soils with dark surface horizons. For New York State, the loamy and clayey portion of the *NRCS Field Indicators* also provides indicators for redox depressions and marl. Indicators for sandy soils are also provided.

During the workshop, Russ Pringle commented on the New England's Field Indicators for Hydric Soils. In the New England "Manual," a chroma of 3 is used as the criteria for a hydric soil rather than a chroma of 2. Mr. Pringle stated that the scientific testing the NRCS/NTCHS completed determined that soils with chromas of 2 or less, not 3, were indicative of reduced conditions (or anaerobic conditions) in the soil profile. The available scientific data did not support the use of a chroma of 3 as the indicator.

In 1994, the USDA SCS announced that it was revising the National List of Hydric Soils in order to include new soils series. As described in the Federal Register announcement of July 13, 1994, these changes did not affect the acreage of hydric soils in the United States. The changes were made to incorporate new soils series which identified during more detailed soil remapping efforts, and to remove dry phases of existing hydric soils. The NTCHS also modified the definition of hydric soils: "A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part." This change in the definition did not affect the National List of Hydric Soils. The change aligned the definition more closely with Soil Taxonomy and clarifies that artificially drained phases are hydric soils if the soil in its undisturbed state meets the criteria. What this means is that if a soil is a hydric soil, it will always be a hydric soil; it may not meet the hydrology parameter of the 1987 ACOE Manual, but it will be a hydric soil. A copy of the National List of Hydric Soils can be obtained for \$45 by forwarding a written request to NRCS Project Manager, Statistical Laboratory, Iowa State University, 217 Snedecor Hall, Ames, IA 50011. An electronic file can be sent to

you via e-mail. The file is 2 MB in size. Send your request, including internet e-mail address to Michael Whited, NRCS Wetland Science Institute, fax 413.253.8482, phone 413.253.8624, or e-mail: Michael\_Whited@mail.fws.gov. This information is also found on the hydric soils homepage at [www.statlab.iastate.edu/soils/hydric](http://www.statlab.iastate.edu/soils/hydric).

During the meeting, Mr. Pringle reminded the participants that a soil listed on the National List of Hydric Soils, and mapped on a county soil survey, might not be a hydric soil on the ground in that location. This is because the mapping in the field may be incorrect, and because the placement of a soil on the hydric soils is based on a broad list of factors. The field indicators on-site are likely to be much more accurate. An interpretive rating should always be confirmed by an on-site investigation for purposes of wetland delineations.

Ed Stein discussed the effect of landscape position in the development of hydric soils. In summary, different moisture regimes within a landscape create dissimilar B-horizon colors. Wet sites result from three factors: 1) Topographic location such as a broad flat upland or a closed depression; 2) The presence of a shallow restrictive layer that retards water movement (dense layer, fragipan, lithologic, claypan, impermeable high clay layer); and 3) Recharge/discharge relationships. These are interrelated factors and a consideration of the landscape will help one identify "where to dig," will develop an ability to expect certain soil morphology in particular landscape positions, and will increase one's knowledge of hydrologic sources. As a result, wetland decisions will be more complete and accurate.

Following this portion of the presentation, participants questioned how long it takes for hydric soil features to develop. Russ Pringle replied that in an experiment, a tan silt loam was saturated and sugar was added (as organic matter). The iron was reduced within 3 days, and the soil was grey within a week. At Mt. Saint Helens, redox features were visible in the soil profile within 2 years after the eruption. The length of time required for these changes are dependent upon how hot or cold the soil is, where the soil is and the organic matter available in the soil. The red color of soils with high iron content may mask the redox features when a soil becomes anaerobic and hydric. The evidence in the soil must be reviewed in context with other factors and wetland indicators on the site. Redox features fluctuate so they are not always visible.

During the field portion of the workshop, three stations were examined by participants. The first was a soil with a thick organic surface horizon in a red maple swamp. The second site was in an old field dominated by various mixes of flat top goldenrod, Canada goldenrod and reed canary grass, some dogwoods and Queen Annes Lace (standard nightmare delineation - old field site on lake plain soils). The soil beneath was a sandy loam where, in places, the depleted matrix chroma indicator (F3 described above) was met. In other places, a more detailed review of the soil profile showed that the indicator would not be met. This station showed the need to pay attention to details in the soil profile and how that related to the microtopography and the subtle changes in vegetation dominance. The third station was a sandy area, with some areas of manganese concretions, and the sandy indicators were reviewed.

### FORUM APPOINTS EXECUTIVE DIRECTOR

The Forum has appointed Sue Montgomery Corey as its first Executive Director. Sue is the President of Flat Rock Productions, a consulting company which develops opportunities for New York citizens and communities to participate in public policy issues which are scientific or technical. She will work with the Forum as a part-time consultant focusing initially on resource development.

Prior to joining the Forum, Sue served as Executive Director for the NYS Community Action Association (NYSCAA) during NYSCAA's start-up phase. More recently, she represented NYSCAA on behalf of low-income families in the Public Service Commission's energy deregulation proceedings. Sue's nonprofit, local government and New York State policy experience includes stints with the NYS Rural Housing Coalition and the Tug Hill Commission.

A graduate of Rensselaer Polytechnic Institute's Technical Communications graduate program, Sue earned a B.A. in Environmental Studies and Government from St. Lawrence University.

Sue is based in the southern Adirondacks. She can be reached by phone at 518/251-4063 or by e-mail at [SueMCorey@aol.com](mailto:SueMCorey@aol.com)

## NEW YORK HIGH COURT DECIDES TAKINGS CASE

— Kathleen M. Bennett, Esq.  
Bond, Schoeneck & King, LLP

The New York State Court of Appeals recently held that a local zoning ordinance which rezoned property from residential to recreational use did not constitute a regulatory taking because the ordinance substantially advanced legitimate state interests. Bonnie Briar Syndicate, Inc. v. Town of Mamaroneck, 99 N.Y. Int. 0155 (November 23, 1999)

The Plaintiff owned 150 acres of land in the Town of Mamaroneck (the “Town”), a portion of which was within the floodplain of the Sheldrake River. The Bonnie Briar Country Club leased and used Plaintiff’s land as a private golf course since 1921. In 1922, the Town zoned the 150 acre parcel and the surrounding area for residential use. However, a 1966 master plan and a 1985 land use study both concluded that the parcel should remain a recreational area because development would increase the risk of flooding. Likewise, a local waterfront revitalization program (“LWRP”), developed in 1986 to effectively protect against flooding in the floodplain area, concluded that the golf course was an appropriate use which had ecological, recreational, architectural and scenic value and provided open space and natural water retention.

To address and implement the goals stated in the LWRP, the Town formulated a comprehensive plan. After it conducted a detailed SEQRA review and prepared a generic environmental impact statement, the Town issued a findings statement on rezoning the golf course property. In its findings statement, the Town concluded that further

residential development would frustrate the Town’s goal of preserving recreational opportunities and open space, and could increase the flooding already experienced by many area homeowners. Accordingly, the Town determined that rezoning the 150 acre parcel for recreational use was the best alternative because “the Recreation Zone best achieve[d] the objectives of the Town, State, regional and federal policies that have guided the Town’s comprehensive planning process for almost three decades.”

Just prior to the passage of the zoning ordinance, the Plaintiff submitted a preliminary subdivision plan for the golf course property. Under the plan, the Plaintiff proposed to construct 71 residential lots. However, the Town chose to rezone the property for recreational use to preserve open space, provide recreational opportunities, and mitigate flooding.

Plaintiff then commenced an action alleging that the zoning ordinance effected an unconstitutional taking of its property without just compensation. Plaintiff argued that the zoning ordinance was not sufficiently related to the stated purposes. Plaintiff moved for summary judgment, and the Town opposed the motion and cross-moved for summary judgment. The Supreme Court dismissed Plaintiff’s cause of action alleging that there was an insufficiently close relationship between the Town’s goals and its zoning ordinance. The Appellate Division affirmed.

The issue before the Court of Appeals was

whether the zoning ordinance substantially advanced a legitimate state interest. It is well settled that a general zoning law effects a regulatory taking if (1) the zoning ordinance does not substantially advance legitimate state interests or (2) the ordinance denies an owner economically viable use of the land. Agins v. Tiburon, 447 U.S. 255. According to the Plaintiff, the zoning ordinance did not substantially advance legitimate state interests because there was not a close causal nexus between the Town’s objectives and the zoning ordinance. The Court of Appeals disagreed with Plaintiff’s analysis and rejected the “close causal nexus” standard of review.

The United States Supreme Court developed the close causal nexus standard in Nollan v. California Coastal Commission, 483 U.S. 825, and Dolan v. City of Tigard, 512 U.S. 374, both dealing with exactions. According to the Supreme Court in Nollan, there must be an essential nexus between property interests exacted from an owner and the identified legitimate governmental objective. The Supreme Court elucidated the essential nexus standard in Dolan requiring a rough proportionality between the exaction and the governmental interests involved. However, the Supreme Court later declared that the rough proportionality standard applied only to exaction cases and reaffirmed the continued viability of the Agins standard in regulatory takings cases dealing with the denial of development and general zoning regulations. City of Monterey v. Del Monte Dunes, 526 U.S. \_\_\_\_, 143 L. Ed. 2d 882. Accordingly, the Court of Appeals concluded the appropriate standard for regulatory takings analysis of general zoning regulations is whether the ordinance substantially advances a legitimate state interest by bearing a reasonable relationship to the stated objective.

According to the Court of Appeals, the Town’s zoning ordinance easily qualified as a valid regulatory denial of development pursuant to a generally applicable zoning regulation. The Town’s decision to rezone Plaintiff’s property for recreational uses bore a reasonable relation to and substantially advanced the Town’s legitimate objectives stated within the zoning ordinance including the preservation of open space, recreational opportunities and flood control areas. Furthermore, the zoning ordinance was passed after years of study and documentation. Finally, the Court of Appeals noted that even though the Town had less restrictive options to choose from, it was not the Court’s place to substitute its judgment for that of the Town so long as the method and solution the [Town] chose substantially advanced the public interest.



Bernie Carr digs soils at Forum’s fall hydric soil workshop.

*Photo courtesy of Barbara Beall.*

# IDENTIFYING AND PROTECTING WETLAND RESOURCES IN THE CATSKILL REGION

— Beth Gelber, Stream Management Program  
New York City Department of Environmental Protection (DEP)

**The Watershed:** New York City's water supply watershed spans almost 2,000 square miles in eight counties of upstate New York and a small part of Fairfield County Connecticut. West of the Hudson River (WOH), the Catskill reservoir system includes the Ashokan and Schoharie reservoirs in Ulster, Greene and Schoharie counties. Major rivers and streams of the Catskill watershed include the Esopus Creek, Schoharie Creek, Stony Clove Creek, and the Batavia Kill. The Delaware system includes the Cannonsville and Pepacton reservoirs in Delaware County, and the Rondout and Neversink reservoirs in Sullivan county. Delaware watershed rivers and streams include the East and West Branches of the Delaware River, the Neversink River, and Chestnut Creek. East of the Hudson River, the West Branch and Boyds Corner reservoirs in Dutchess and Putnam counties, and the Kensico reservoir in Westchester county, are connected to the Catskill/Delaware system via aqueducts.

Although the importance of wetlands in protecting and improving surface and ground water quality is widely recognized by water resource professionals, until recently there were limited data available about the occurrence and location of wetlands throughout the mountainous Catskill landscape where geology, topography and climate limit the formation of large expanses of wetland.

## Identification - The National Wetlands Inventory:

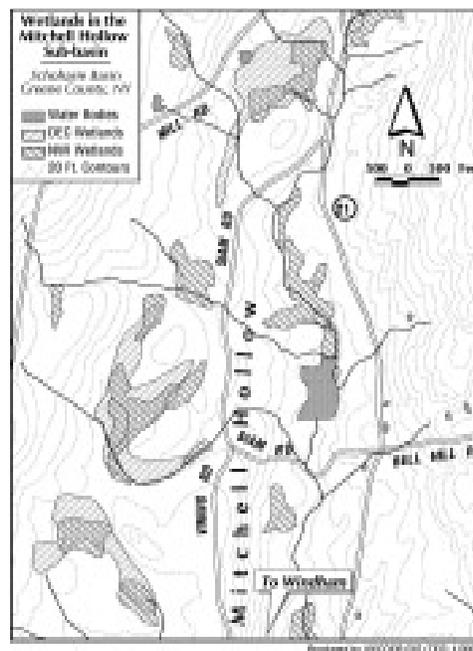
DEP contracted the United States Fish and Wildlife Service (USFWS) to complete a National Wetlands Inventory (NWI) to determine the extent of wetland acreage in the watersheds of the New York City water supply system. The inventory utilized 1:58,000 color infrared aerial photography from 1982-1987 to interpret wetland types down to approximately 1- 3 acres in size according to the following definition: presence of one or more of the following attributes: 1) wetland vegetation (hydrophytes) 2) hydric soils, or 3) evidence

of saturation or flooding (wetland hydrology).

The results of the inventory were published in 1997 in the USFWS publication *Wetlands in the Watersheds of the New York City Water Supply System*. This informational booklet includes color photos of wetlands throughout the watersheds, and provides detailed information about the importance of protecting local wetlands. Over 2000 booklets have been distributed throughout New York State and beyond.

Wetlands comprise about 7% of the acreage in the Catskill/Delaware reservoir basins located east of the Hudson River. By comparison, wetlands comprise less than 2% of the total Catskill/Delaware watershed acreage west of the Hudson<sup>1</sup>. However, in some areas WOH, an abundance of glacially-deposited clays create the right soil conditions for a veritable mosaic of small headwater wetlands. The majority of these NWI wetlands are smaller than the 12.4 acre size threshold recognized by the New York State Department of Environmental Conservation Freshwater Wetlands Maps<sup>2</sup>. Field reconnaissance by DEP staff has confirmed the presence of wetlands that are even smaller than the 1-3 acre size captured by the NWI.

**The maps below illustrate a complex of small NWI wetlands, as well as DEP wetlands, found in the headwaters of Mitchell Hollow, a tributary of the Batavia Kill, a major feeder stream of the Schoharie Reservoir in the NYC West of Hudson watershed.**



According to the NWI, forested wetlands such as Red Maple or Hemlock swamps (named for the dominant tree species) are the most prevalent type in the Catskill watershed, while marshes and wet meadows, known as emergent wetlands, are most prevalent in the Delaware watershed.

## From Identification to Protection:

The 1997 New York City Watershed Memorandum of Agreement (MOA) established several environmental and economic partnership programs to protect water quality, including the development and implementation of a Wetlands Protection Strategy. The goal of the strategy is “to develop and implement a wetlands protection program that will preserve the critical water quality functions provided by natural wetland systems located within the Catskill and Delaware water supply watersheds.”

Purchasing wetlands in fee is the most secure method of protecting them in perpetuity. However, it is also critical to purchase land (or a conservation easement on land) that is adjacent to a wetland, in order to provide a buffer to protect its biological integrity and water quality function. DEP's Land Acquisition and Stewardship Program utilizes the NWI and NYS DEC Freshwater Wetlands Maps to identify priority parcels for acquisition from willing sellers within the Catskill/Delaware watershed. Through June 1999, DEP has purchased or protected more than 2,000 acres of wetlands (both NWI and DEC mapped) in the Catskill/Delaware watershed.

DEP's Wetlands Protection Strategy recognizes the importance of providing educational activities and technical assistance to communities and individual landowners in

the watershed. These programs are designed to increase public awareness of the relationship between wetlands and local water quality protection, and instill a long term understanding and appreciation for the stewardship of local wetland resources.

Since May 1998, DEP has been co-sponsoring wetlands education and outreach activities with local groups and county agencies in towns throughout the watersheds. These



**PRELIMINARY AGENDA**

(Subject to change)

**LEGISLATIVE AND REGULATORY UPDATE – Thursday or Friday**

- The US Fish and Wildlife Service role in protecting migratory birds and the interstate commerce clause connection, Anne Secord, US Fish and Wildlife Service
- The ACOE’s Nationwide Permits
- US Environmental Protection Agency developments, Dan Montella, EPA
- NYCDEP’s Watershed Management Agreement
- Region 7 NYSDEC developments

**CONCURRENT SESSIONS – Thursday**

<p align="center"><b>Streams Sponsored by NYCDEP Stream Management Program</b></p>	<p align="center"><b>Wetland Policy</b></p>	<p align="center"><b>Wetland Science</b></p>
<p><b>Stream Management Planning Using Geomorphic Approach</b> Contact Beth Gelber - NYCDEP 71 Smith Avenue Kingston, New York 12401 914-340-7515 bgelber@arch.catgis.dep.nyc.ny.us</p>	<p><b>NYCDEC Wetland Remapping</b> Contact Jennifer Brady Connor 130 Homestead Road Saratoga Springs, New York 12866 518-581-8375 jennifer@aswm.org</p>	<p><b>Watershed Management and Inter-municipal Planning</b> Cayuga Lake Watershed Plan (invited) Buffalo Creek Watershed Riparian Habitat Restoration Project (invited) Contact Michael Corey NYS Department of State 41 State Street Albany, New York 12231 518-486-3108 mcorey@dos.state.ny.us</p>
	<p><b>How to Handle a Violation</b> Contact Teresa Bakner Whiteman Osterman and Hanna One Commerce Plaza Albany, New York 12260 518-487-7615 tmb@woh.com</p>	<p><b>Grant Sources to Fund Water Quality/ Stormwater Management Improvements</b> Contact Michael Corey See information above</p>
<p><b>Developing Stream Management Plans</b> Contact Beth Gelber See information above</p>	<p><b>Big Box Development in Wetlands</b> Contact Teresa Bakner See information above</p>	<p><b>Status and Trends in New York State Wetlands</b> Patty Riexinger – NYSDEC</p>
<p><b>Case studies of Stream Management Planning</b> Contact Beth Gelber See information above</p>	<p><b>Careers in Wetlands</b> Contact Sally Daly 11 Birch Drive Albany, New York 12203 518-456-5170 sdaly@cnsunix.albany.edu</p>	<p><b>Utility Projects in Wetlands</b> Contact Ray Cummings, NMPC 300 Erie Blvd. West Environmental Affairs C-1 Syracuse, New York, 13202 315-428-6613 cummingsr@nimo.com</p>
<p><b>Establishing Riparian Buffers</b> Contact Diane Kozlowski, ACOE 1776 Niagara Street Buffalo, New York 14207 716-879-4433 diane.c.kozlowski@usace.army.mil</p>		<p><b>Winter Botany and Vegetation</b> Contact Joe McMullen Terrestrial Environmental Specialists 23 County Route 6, Suite A Phoenix, New York 12135 315-695-7228 tes@dreamscape.com</p>

**GOT QUESTIONS – NEED ANSWERS**

Contact the association offices at P.O. Box 1351, Latham, New York 12110-1351. Or call them at 518-783-1322. You can check our web site at <http://www.capital.net/com/nywf/index.html>. You can e-mail us a question or comment at [nywf@capital.net](mailto:nywf@capital.net). If you want to exhibit, either as a poster session or as a paid exhibitor, contact Kevin Bernstein. Kevin can be reached by calling 315-422-0121 or at [bernstk@bsk.com](mailto:bernstk@bsk.com).

**REGISTRATION/HOTEL INFORMATION**

**HOTEL INFORMATION – THE HOLIDAY INN “ARENA”**

Please contact the Hotel directly to make reservations. When making your room reservation please indicate that you are with the New York State Wetlands Forum, Inc. The reservation cut off deadline is March 15, 1998, and after that date, rooms will not be held specifically for this meeting. The room rates for this conference are \$74 for a single or a double. Government rates are \$50 single and \$75 double, but subject to change in 2000 based on announced per diem.

**THE HOLIDAY INN “ARENA”**    28 Hawley Street, Binghamton, New York 13901  
607-722-1212    607-722-6063 (fax)

**REGISTRATION FORM**

Name \_\_\_\_\_ *Affiliation* \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-Mail \_\_\_\_\_

	<i>Circle your choice</i>	
	Without Dinner Thursday	With Dinner Thursday
<b>Early-Bird</b> Registration Fee (postmarked by March 11, 2000)	\$75	\$95
<b>Speakers/Moderators</b> regardless of date	\$75	\$95
<b>Student</b> Regular (with ID Card) regardless of date	\$65	\$85
<b>Student</b> Poster Session or Speaker (with ID Card)	\$50	\$70
<b>Prepaid</b> Registration Fee (postmarked by March 23, 2000)	\$90	\$110
<b>On-Site</b> Registration	\$100	\$120
<b>Co-sponsorship</b> – donation of monies _____ or services _____		
<b>Exhibitor</b> Postmarked before March 23 (includes one free registration)	\$160	
<b>Exhibitor</b> After March 23 (includes one free registration)	\$250	
<b>Poster Session</b> – (free of charge)	Y	N

Exhibitors and poster sessions should contact Kevin Bernstein at 315-422-0121 or [bernstk@bsk.com](mailto:bernstk@bsk.com).

Make checks to: New York State Wetlands Forum, Inc.

Mail checks to: New York State Wetlands Forum, Inc. P.O. Box 1351 Latham, NY 12110-1351

Questions? Call the Association Offices at 518-783-1322 or fax 518-783-1258

P.S. Don't forget your dues!

The New York State Wetlands Forum, Inc.'s Federal Employer Identification Number is 14-1723859

**(NYS DEPARTMENT OF STATE PROVIDES GRANTS FOR WETLANDS PROGRAMS AND PROJECTS)**

*[Cont'd. from page 2]*

source pollution filtering and the re-establishment of wildlife habitat, and control of invasive plants.

**Seton Falls Park Wetlands Restoration** – New York City. Restore a large freshwater marsh in South Bronx presently dominated by giant reed grass, and invasive species. Work to include rebuilding culverts to re-establish proper drainage, scalping the marsh surface to remove giant reed grass, replacing sedges, dogwoods, red maples, and other native species

**Glenwood Road Area Runoff Control and Remediation** – Town of Oyster Bay. Control and remediate stormwater runoff to improve the water quality of Hempstead Harbor. Includes the construction of freshwater detention pools, the planting of wetland vegetation, and the restoration of tidal wetlands along the Hempstead Harbor shoreline.

**Ocean View Park Mastic Beach Wetland Restoration** – Town of Brookhaven. Restoration of 30,000 square feet of degraded wetlands in order to improve habitat values. Sufficient fill will be removed to allow necessary tidal inundation to support native wetland plant growth. A portion of the site will be planted, and the remainder will be allowed to undergo natural revegetation.

**Centre Island Wetland Restoration** – Village of Centre Island. Restoration of 25 acres of salt marsh habitat via the re-establishment of tidal exchange by replacement of a culvert with a self-regulating tide gate. Increased tidal exchange with higher salinities will counteract the encroachment of giant reed grass in the existing marsh. Both fish and aquatic bird habitat are expected to improve as a result of this action.

The use of both EPF and Bond Act money by municipalities for a wide variety of wetlands-related projects is expected to continue for as long as these public funding sources are available.

The wise use of these funding mechanisms will help to ensure that the overall quality of the State's wetlands remains high and that the public will recognize that these are important resources whose functions and benefits must be understood.

For further information contact Michael Corey at (518) 486-3108 or via e-mail at [mcorey@dos.state.ny.us](mailto:mcorey@dos.state.ny.us) or check out the Department of State web site at <http://dosnet.dos.state.ny.us>.

**MEMBER PROFILE: BARBARA BEALL**

— Jennifer Brady-Connor

Barbara Beall, currently Chair of the NYSWF and a wetland consultant for the LA Group, has looked at wetland issues from all angles during her career as a wetland scientist. She studied water law and water chemistry as a graduate student at SUNY ESF. As an intern with Save the River, Barbara laid the groundwork for what later became the Great Blue Heron awards, a Thousand Island region program recognizing homeowners who properly evaluate and maintain their septic systems. She graduated with a M.S. in Environmental Science.

Barbara was hesitant to take her first real job offer - from the ACOE in Los Angeles who wanted her to work in their wetlands regulatory program. She had gotten a bad first impression of the ACOE after seeing their beach "nourishment" programs on Long Island. After some persuasion, she was convinced that the ACOE's wetland regulatory program was effective and necessary and she worked for the ACOE for five years, first in Los Angeles and then in Philadelphia. When her husband got a job in Glens Falls, Barbara relocated and took a position with the Lake George Association (LGA), a nonprofit dedicated to the protection of Lake George water quality. While with LGA, Barbara worked on water quality issues and

developed an educational curriculum that served as the basis for the present day LGA Floating Classroom. In 1991 Barbara joined the LA Group and has worked on numerous projects as a wetland consultant including the Saranac Cogeneration Project, an electric utility that operates with a whopping 90% efficiency.

After years of wrangling with wetland issues while working as a regulator, advocate, and consultant, Barbara manages to draw upon all of her experience and provide effective leadership for the Forum. Barb also serves as a continuing education instructor for the Golf Course Superintendent Association of America, a member of their national Government Relations Committee, a wife, a mother, and an active member of her church congregation, it is a wonder she even has a moment to devote to the Forum. When pressed, Barbara remarks that "being involved with the Forum has been a highlight of my career, something my heart goes into 100%. I love that the group brings everyone onto one level for the exchange of ideas. Through the Forum I have met some terrific people." Barbara will be leaving us as Chair in the Spring of 2000 but, true to her spirit, will remain on the Board of Governors to help set a long-term agenda



**Exhibitors and participants discuss water quality issues at the Forum/Save the Sound Long Island meeting.**  
*Photo courtesy of Barbara Beall.*

## CAREERS IN WETLANDS: WHAT'S THE SCOOP?

— Sally Daly

Since there is high interest among college grads for "Careers in Wetlands," a session on the topic is included in the Forum's 2000 Annual Meeting. A related concern "Employment Skills for Natural Resource Students" is the topic of a session at the January Tri-Society (American Foresters, Wildlife, and American Fisheries) meeting. At the same time, research indicates that today's professionals change careers an average of three times before retirement; the prediction is that this will increase to seven times or more for new graduates. Another trend is professionals who fashion careers from several part-time jobs. What does this mean for an enthusiastic college graduate planning a career in wetlands?

With certainty, the skills of today's college graduates will not see them very far into their work years, except for the skill called "knowing how to learn." The reason is "progress." When I entered the work force, skill with a manual typewriter and slide rule were ranked pretty high and there were not enough people to fill the job openings. Later I learned to operate mechanical calculators three feet high, wide and deep, electric typewriters, room-sized Univac computers programmed with stacks of cards for every task, Wang word processors, and the first hand-held calculators that many of us built from Heathkit kits to save money. My first computer had 64K and my brain had to hold more than that just for the software codes. With still some years before Medicare kicks in, I watch respectfully as cathedrals are built of information infrastructures in our search for meaning.

I predict that today's college grads will someday tell a parallel story. I predict that today's wetland regulation and wetland science will be as obsolete 40 years from now as the manual typewriter and slide rule today. In addition, wetland science and wetland regulation will no longer stand alone; they will be completely integrated into a new academic discipline incorporating all natural systems. But the vastly more complex new-millennium technology, science, and regulation will not be visible or comprehensible to most end users. Instead it will be contained within integrated information systems and through user-friendly information analysis/synthesis formats (software will be obsolete) quickly provide acceptable site-specific options as well as initiate the automatic permitting process for local governments, developers, wetland managers, and environmentalists. A technological and informational transition as

dramatic as from the slide rule to Pentium III will have taken place.

Within the fast pace of progress, and the effects of working conditions on the human body as it ages, it is not unusual in my work as an academic advisor to "mature" college students to encounter professionals in transition. One professional began a 10-year environmental chemist career by working in wetlands; she is about to leave her second long-term career, banking, to earn another graduate degree for a third career, teaching.

What, then, is the potential for a career in wetlands? A recent article gives some information about careers in one area, restoration. In a study commissioned by the journal *Ecological Restoration/North America*, Brian Lavendel (1999) reports that seasonal field work in restoration is plentiful for new grads. But employers, who have few openings, sometimes describing "limited amount of money available" and "budget constraints," look for experienced professionals when they hire supervisors and managers. (A grad student in my town was hired because fast-food management training gave him an "edge" during an environmental internship.) Lavendel also reports on the need to integrate restoration science with social science and the "ethical, legal, and policy aspects." And more study of the legal issues surrounding mitigation and restoration is high on one professor's agenda. How, then, can students approach wetlands career planning in order to find their "niche," as many others are doing, from which to launch a career?

Wetland Careers for College Grads promises to be an interesting panel discussion and we think there will be lots of questions and lots of new ideas generated.

### Reference

Lavendel B (1999) *Ecological Restoration in Academia. Ecological Restoration* 17:120-125

## (CORPS EXTENDS TIMELINE)

[Cont'd. from page 1]

26 notifications.

Corps district offices will process all preconstruction notifications (PCNs) for NWP 26 activities that are submitted to Corps district offices on or before the publication date of the final new and modified NWPs in the Federal Register (currently scheduled for February 14, 2000). For such NWP 26 PCNs, where the Corps subsequently determines that the project meets the terms and conditions of NWP 26, the verification will remain in effect until February 11, 2002. As of December 15, 1999, the Corps has suspended the 45 day period in paragraph (a)(3) of General Condition 13. The Corps will continue to process such PCNs and reach final decisions as expeditiously as possible. However, a project sponsor who submits a NWP 26 PCN after December 15 cannot assume, after 45 days have passed, that the proposed work is authorized by NWP 26. Consequently, a NWP 26 verification must be received from the Corps prior to commencing the work. PCNs submitted to Corps district offices after the publication date of the final new and modified NWPs will be processed under the procedures for the new and modified NWPs or the other

## ATTENTION STUDENTS AND PROFESSORS

*The Forum* is looking for greater involvement by university students and professors at our annual meeting. We would like more poster sessions, more presentations, and more participants. To encourage this, *The Forum* is offering discounted special registration rates to students who wish to present or conduct a poster session, as well as a student discount for registration. See the Registration Form for more information.

## WHAT IS THE NEW YORK STATE WETLANDS FORUM?

The New York State Wetlands Forum, Inc. is a non-advocacy organization comprised of individuals and groups with diverse backgrounds, interests and viewpoints regarding wetlands and their science, use and management. Incorporated in 1994, the Forum is a 501(c)(3) not-for-profit organization.

Its purpose is to:

- improve communication among people interested in wetlands,
- call attention to and objectively discuss local, statewide, regional, national and global wetland issues as they relate to New York State,
- improve its members' knowledge and understanding of wetlands, and
- make available information about wetlands to its members and the general public.

Membership benefits include:

- our information-packed bi-annual newsletter, The Forum, which reviews and discusses late-breaking wetland topics, regulatory updates, and other useful items.
- an invitation and reduced registration for our very popular two-day annual conference, where people interested in wetland issues from around the State gather to exchange information and experiences while attending a variety of presentations and field trips.
- announcements of other meetings, workshops, and field excursions in New York.
- opportunity to advance wetland knowledge in New York by serving on our Board of Governors and/or participating on the Forum's committees.

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## PLEASE TAKE A MOMENT TO BECOME A MEMBER OF THE NEW YORK STATE WETLANDS FORUM, INC.

Volunteers are the backbone of the Forum. Become actively involved in our efforts by:

- **Submitting a newsletter article.** It can be a commentary, research summary or an in-depth topic discussion.
- **Presenting a paper, moderating or organizing a session at our annual meeting.**
- **Volunteering to research or write a grant.** Thus far, USEPA grant funds have allowed us to put our newsletters on the world-wide web, and have increased our circulation and membership.
- **Serving on a committee.** Committees needing active members include:
  - Newsletter:* Suggest themes for future issues, solicit and review articles submitted.
  - Program:* Develop annual meetings and other seminars. Identify speakers, review abstracts, moderate sessions, assist in background logistics, suggest exhibitors, or develop a display for your organization.
  - Administrative and By-Laws:* The tough nitty gritty details that make an organization run. Identify people to serve on the Board, assist in revising by-laws, write grants, prepare budgets and find sources for funding.
  - Long Range Planning:* How can the Forum best foster communication about future trends and issues in wetland science, regulation, policy, protection, and management.

### WANT TO JOIN THE NEW YORK STATE WETLANDS FORUM, INC.

<http://www.capital.net/com/nywf/index.html> e-mail: [nywf@capital.net](mailto:nywf@capital.net)

Name \_\_\_\_\_ Affiliation \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip +4 \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-Mail \_\_\_\_\_

I WANT TO BE MORE THAN JUST A MEMBER. I WANT TO:

Serve on Committee: \_\_\_\_\_ Write an article  
about: \_\_\_\_\_

My area of expertise  
is: \_\_\_\_\_

Annual Dues Enclosed \$25.00

## LONG ISLAND MEETING A SUCCESS

On November 8<sup>th</sup> and 9<sup>th</sup>, the New York State Wetlands Forum and Save the Sound co-sponsored a successful meeting at Port Jefferson, New York. Approximately 75 individuals and 9 exhibitors/poster sessions gathered to discuss the influence of wetland management on water quality in the metropolitan New York City and Long Island region. The abstracts from this meeting will be posted on the Forum's web site, hopefully by the time this newsletter goes to press.

In the opening session, Dr. Henry Bokuniewicz and Dr. William Wise from SUNY Stony Brook gave an overview of the geology and biology associated with Long Island Wetlands and Water Resources. Two concurrent sessions followed. In the Non-Point Source Pollution Session, Steve Nakashima from NEMO and George Aponte-Clarke from NRDC discussed stormwater management strategies for municipalities, and Emerson Hasbrouck from Cornell Cooperative Extension reviewed the use of DNA profiling to identify sources of e-coli bacteria. In the Dredging and Harbor Management Session, Geoffrey Steadman of the CT Harbor Management Association reviewed the roles of harbor management commissions in the dredging process. Drew Carey from CoastalVision, Inc. discussed issues associated with dredged material disposal in Long Island Sound.

Another informative, but too short, Legislative and Regulatory Update Session included Roberta Barbosa from the New York Corps District, speaking on the Nationwide Permits and Regional Conditions; Kent Edwards and Darrell Kost of NYSDOT speaking on the NYSDOT Environmental Initiatives; John Atkin, of Save the Sound, speaking on the federal and New York State legislative updates; and Art Newell of NYSDEC speaking on the NYSDEC Wetland Permitting Program Review.

The luncheon keynote speaker was Peter Lehner, Environmental Protection Bureau Chief of the NYS Office of the Attorney General. *See separate story, pages 14 and 15.*

The first afternoon session examined wetland restoration and creation technology. Thomas Ferraro of Ecology and Environment presented on treatment wetlands for

remediation. Joseph Carmo of Carmo Environmental Systems discussed the use of geosynthetic clay liner designs in wetland applications. Gary Gentile of NYSDOT reviewed bioengineering applications for wetland creation and restoration. Ellen Talmage of Talmage Farms detailed the native plants that are commonly available for wetland creation and restoration projects.

Funding sources for wetlands protection and restoration was discussed by Karen Chytalo of the NYSDEC, focusing on the NY Clean Water/Clean Air Bond Act and Jodi McDonald of the NYSDEC who reviewed the use of funding available through the Jamaica Bay damages account.

The final session presented case studies of wetland and waters restoration programs. Mark Maghini of the US Fish and Wildlife Service talked on the Long Island Wetland Restoration Initiative. Lisa Holst of the NYSDEC reviewed the NYSDEC "Partnerships for Restoration" program. Nancy Wallace and Robert Gans of the Bronx River Restoration group told an inspiring story of efforts to restore the Bronx River. Chris Pickerell of Cornell Cooperative Extension walked through the restoration process for a former dredge spoil site. And Jennifer Wilson-Pines of the Town of North Hempstead reviewed the Manhasset Bay Water Quality Improvement Plan.

On Tuesday, a 3.5-hour field trip toured wetland creation and restoration sites and interesting wetland complexes on Long Island. Television coverage was provided by two stations, including one station who sent reporters out on the field trips and did a feature story on the event.

## SUMMARY OF COMMENTS OF KEYNOTE SPEAKER PETER LEHNER, ENVIRONMENTAL PROTECTION BUREAU CHIEF, NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

Wetlands are a critical New York resource, and they are under siege. Wetlands are a critical aspect of land uses. They are critical for habitat values, for improving water quality from stormwater runoff. Stormwater runoff is the largest source of water pollution today in Long Island Sound. State and federal agencies have a tremendous workload for permits, inspections, mapping and enforcement actions. Given that the state only addresses wetlands that are greater than 12.4 acres in size, the local governments have a tremendous opportunity to development programs to add additional protections for these resources.

The New York State Attorney General's office has undertaken several activities that directly affect wetlands. These include the recent power plant initiative, which is a lawsuit against out-of-compliance coal burning power plants in the mid-west. While power plants are mostly discussed as contributors to acid rain and asthma, they are also a significant contributor to the eutrophication of Long Island Sound, with up to a quarter of the nitrogen load being attributed to power plant emissions. The NYS Attorney General's Office has also brought a lawsuit against New York City for nitrogen discharges from wastewater treatment plants. New York City has been found liable for the discharges and the process is now in the penalty phase. Settlement is possible with the goal being reductions in discharges.

The bulk of other wetland cases are referred to the New York State Office of the Attorney General from the NYSDEC either as enforcement actions or as defensive actions to support a good decision made by another state or local agency.

Specific NYSDEC referred wetlands cases include:

- **Lardiro** – a pre-wetlands act purchase. Lardiro argued nuisance and public trust defenses. Motion for summary judgement was made by the state.
- **Porto** – A NYSDEC enforcement action in tidal wetlands on the North shore of Long Island.
- **Dorchester** – Challenge position to issue (Islip)
- **NYC Watershed** – assisted in the work on wetland reports and investigations.

Lehner also noted that takings cases are an important part of the New York State Attorney

### ATTENTION MEMBERS

Members who wish to be included on an e-mail list for occasional notices, etc. from *The Forum* should send their e-mail address to The New York State Wetlands Forum at [nywf@capital.net](mailto:nywf@capital.net).

General's workload.

Enforcement of SEQRA – while there is no agency specifically assigned to enforce SEQRA, the Attorney General's office looks to support local governments when they are doing right by SEQRA, and to challenge local decisions when they do not follow SEQRA. For example, the Attorney General's Office is supporting the Town of Brookhaven in its lawsuit against Elias, who has taken the Town of Brookhaven to court, demanding a change of zoning from residential to commercial without an EIS, despite the potential for harm on the Wertheim National Wildlife Refuge.

Litigation alone will not save wetlands. Wetlands will be saved by addressing land uses and by controlling runoff. Wetlands need the support of state regulators, town officials, and environmentalists. Preserve wetlands, change policies to be more protective of wetlands, and participate in public hearings, so that your support of wetlands is heard.

### Legislative Update

A summary of the presentation by John Atkin, President, Save the Sound

#### Federal –

The most significant news is the death of Senator John Chafee, RI, who was the Chair of the Senate Environmental and Public Works Committee. Senator Bob Smith of New Hampshire replaces Chafee, who was given a lifetime League of Conservation Voters score of 70 percent. In contrast, Smith voted pro-environment only 13 percent during 1997 and 1998.

**Estuary Habitat Restoration Partnership Act of 1999, S.835 – Chafee – Companion Bill H.R. 1775 Gilchrest (MD).** Bill will help restore estuary habitat through project financing and coordination of Federal and non-federal restoration programs. Save the Sound which has worked to pass this bill for the past two years is a partner of Restore America's Estuaries. This bill has considerable support and would greatly enhance restoration efforts in Long Island Sound.

**DeLauro-Lowery Water Pollution Control and Estuary Protection Act, H.R. 1096 – Lowery (NY).** Would provide \$4 billion for estuary restoration through approved CCMP's.

**Wetlands Mitigation Banking Bill, H.R. 1290 – Jones (NC).** Widely opposed by environmentalists around the nation.

**Natural Resources Reinvestment Act of 1990, S. 1573 – Leiberman (CT).** Provides for the distribution of \$2.5 billion in OCS receipts for the permanent funding of LWCF. Includes a "Save Our Wetlands Program" which would amend Title II of the Federal

Water Pollution Control Act to provide funds for open space acquisition to protect watersheds and water quality.

**Stormwater Phase II Rule Released, October 29, 1999** — The USEPA released stormwater regulations for small municipal separate storm sewer systems that serve populations under 100,000 in "urbanized areas." These regulations also apply to construction activities disturbing five or less acres. The rule will be published in the Federal Register in mid-November and will take effect 60 days later. The first round of permits will take effect in 3 years.

#### State –

**A01153, A bill to increase fines for violations of the freshwater wetlands law (Grannis (D-NYC)).** Increases maximum civil penalties for violations of the Freshwater Wetlands Act from \$3,000 to \$10,000 and increases the maximum criminal fines to \$5,000 for a first offense and \$10,000 for a subsequent offense.

**A01346, A bill prohibiting the granting of tidal wetlands permits for regulated activities where such activities would impact or prevent public access or use of public lands. Thiele (R-Suffolk).** An attempt to prevent private property owners from protecting themselves from the inevitable impacts of erosion at the expense of public access.

**A05690, A bill to regulate the application of pesticides to tidal wetlands Englebright (D-Setauket).** Requires the use of an integrated pest management program prior to spraying tidal wetlands for insect control.

**A06369, Wetland Mitigation Bill. Schimminger (D-Kenmore).** Provides for the creation, maintenance and regulation of freshwater and tidal wetlands mitigation banks, to provide compensatory mitigation in advance of authorized projects.

**A08896, A bill to provide that the Thruway Authority and the Canal Corporation may purchase land to mitigate the negative impacts on wetlands in the**

## (IDENTIFYING AND PROTECTING WETLAND RESOURCES IN THE CATSKILL REGION )

[Cont'd. from page 7]

programs have ranged from evening workshops and slide-shows to walks led by DEP wetlands staff, assisted by other resource professionals and local naturalists.

One of the more memorable events was a hike to several unique "high-elevation" wetland communities on the Dry Brook Ridge trail in the Catskill Park, Delaware County. These wetland activities have become increasingly popular; participants have traveled outside of their county to different parts of the watershed to attend. In the Spring and Fall of 2000, DEP's Wetland Education and Outreach Program will lead a series of walks to highlight wetlands that have been recently purchased in the Catskill and Delaware watersheds.

DEP has distributed a reduced-size version of the NWI quad maps to each Town in the Catskill/ Delaware watershed, and will soon provide the full-size Quad maps to each Planning Board to assist in their identification of wetlands as they review project proposals.

DEP has also undertaken an on-going research and monitoring effort in an attempt to answer some of the scientific questions about the water quality functions provided by wetlands in relation to their position in the landscape.

To order a free copy of the informational booklet *Wetlands in the Watersheds of the New York City Water Supply System* or if you would like to be added to DEP's Wetlands Walk mailing list, please call Beth Gelber at (914) 340-7515.

<sup>1</sup> Estimate excludes NWI inundated wetlands (waterbodies).

<sup>2</sup> In order to receive regulatory protection, wetlands smaller than 12.4 acres require a designation of Unusual Local Importance from New York State DEC. A municipality can nominate a particular wetland for this designation.

### THE WORTH OF WETLANDS

Wetlands in the headwater streams of the Catskills provide critical storage capacity to retain water from snowmelt and precipitation, reducing downstream flooding. Floodplain wetlands intercept runoff from roads and other impervious surfaces, and catch sediment and other pollutants before they enter streams and impair water quality and aquatic habitat. Wetlands provide habitat for unique flora and fauna, many of which are threatened due to the loss of extensive acreage to competing land uses. Their high productivity provides the base of the aquatic food chain, providing spawning, feeding, and nursery grounds for fish and other aquatic species. Wetlands also provide open space for aesthetics, recreation, outdoor education, and scientific research.

**(MESSAGE FROM THE CHAIR)**

*[Cont'd. from page 1]*

Our factual statements should be as accurate as possible and professional opinions should be limited to those areas one is qualified to discuss.

Respect – While I was with the Corps in Philadelphia there was an award program called “Leaders in Customer Care” to recognize employees who were especially responsive to the public we served. I am proud to say that I received one of those awards. However, I must also confess that in that same year I received a written complaint from a Congressman about a field delineation inspection where I was disrespectful to a consultant. (As I look back upon it, I find the irony quite humorous.) That single letter taught me a valuable lesson. I try to approach and speak to all individuals in the wetland arena the way I myself would like to be approached and spoken to - with respect. It is hard on those days when I am harried, frustrated, or when I know I am right. Still, the benefits outweigh the negatives. Those other individuals may have important information to share with me. Likewise, I am more likely to successfully share the information I want to impart if I am respectful. And I hate the taste of eating humble pie should I turn out to be wrong. Disrespectful communication results in closed minds, closed ears and closed mouths. There can be no effective communication under those conditions.

Empathy – I think empathy is the next level of communication above respect. The well-known management consultant Steven Covey describes empathy as “seeking first to understand before being understood.” It is a process of humbly placing yourself in the other person’s shoes, of trying to really understand their position. The reason for putting yourself in the other person’s shoes is not to gain a tactical advantage, as might be the desire in an adversarial relationship. The person whose shoes you are trying to get into will quickly recognize the falseness of your empathy and kick you out of those shoes. The goal of empathic communication should be to work towards the greatest good, recognizing that “two heads are better than one.”

Trust – Trust can only be generated in relationships when communications are honest, respectful and empathetic. Trust is that level of communication where individuals are willing to tell their fears, of what they are afraid of losing, of what they want to gain. Trust is needed in relationships to solve the great problems. It is only when everyone at a table not only knows - but empathizes with - what everyone else at the table fears and desires, that the group can begin to creatively look at the problem. I think that great problems can only be resolved in this or some similar type of consensus-based fashion.

The majority of wetland decisions are decided now through regulations, on a case by case basis, in an adversarial format (applicant versus regulator, sometimes friendly, often not). I am afraid that this method does not

always result in the best individual decisions. It certainly does not advance the cause of a “bigger view.” As resources become scarcer, I think that only consensus-generated solutions to wetland issues and other natural resource concerns will be lasting and true. Under true consensus building, everyone’s concerns and voices would be heard, valued, considered, and built upon. Out of this synergy and energy the best ideas bubble forth, and all would feel part of the process.

Perhaps I am being naïve or wishful to think that such a shift – from an adversarial to consensus building – can occur in the way we examine wetland issues. But I have seen movement towards such changes in the past five years. As an example, look at the increase in watershed management planning. Wise watershed management planners use a consensus-building approach where they reach out to all possible parties in and outside the watershed to find solutions to water quality concerns.

I think that in its short five years of existence, the Forum has played a very important role in improving communications and developing greater levels of honesty, respect, empathy and ultimately trust among the various wetland interests. As Chair for the past two years, it has been an honor to be part of this growth, and I hope to continue this work through long-range planning. I look forward to continuing this discussion at the annual meeting in Binghamton, and at the fall meeting somewhere out in the western part of the state.

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**The Forum**  
*A publication of*  
NEW YORK STATE WETLANDS FORUM, INC.  
POST OFFICE BOX 1351  
Latham, NY 12110-1351  
**SPRING MEETING INFO INSIDE!**