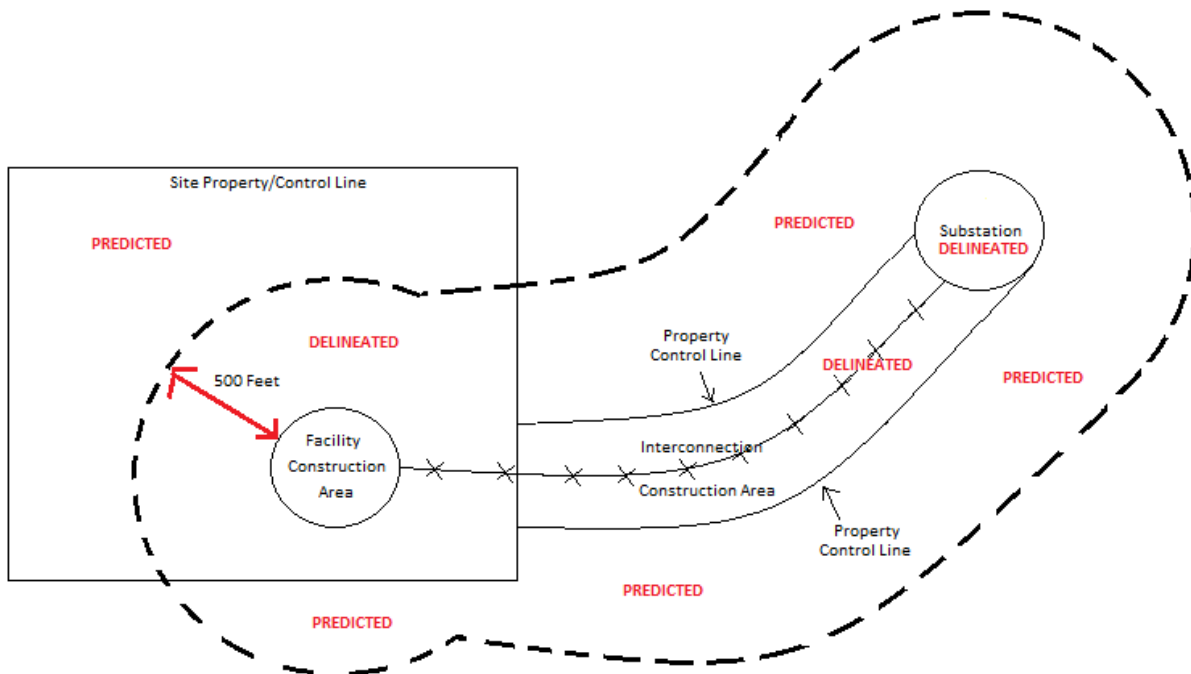


ADVICE TO APPLICANTS ON THE WETLANDS DELINEATION
REQUIREMENTS OF THE ARTICLE 10 REGULATIONS
(May 31, 2018)

One of the elements of obtaining a finding by the Chair of the Siting Board that a developer's Article 10 Application complies with the statute is the filing of a complying wetlands map as part of required Exhibit 22: Terrestrial Ecology and Wetlands. The Siting Board's regulations at 16 NYCRR, Section 1001.22, Paragraph (i), provide:

Exhibit 22 shall contain: (i) A map showing delineated boundaries based on on-site identification of all federal, state and locally regulated wetlands present on the facility site and within 500 feet of areas to be disturbed by construction, including the interconnections; and predicted presence and extent of wetlands on the remainder of site properties and adjacent properties within 500 feet of areas to be disturbed by construction. For adjacent properties without accessibility, initial surveys may be based on remote-sensing data, interpretation of published wetlands and soils mapping and aerial photography.

The diagram below illustrates which areas on the wetlands map must be depicted based on the actual "on-site" delineation of wetlands boundaries, and which areas may be depicted based on "predicted" boundaries derived from remote-sensing data, interpretation of published wetlands and soils mapping and aerial photography.



The regulation requires the mapping to cover the area within 500 feet of all areas to be disturbed by construction. The 500-foot dimension may seem unusually broad to people experienced in typical wetlands delineation protocols, but it was adopted to facilitate a request by wind energy stakeholders that the Article 10 process provide developers with the flexibility to change their facility designs by moving wind turbine locations up to 500 feet without such change being deemed a "Revision", defined elsewhere in the regulations, that would require substantial additional scrutiny in the review process including the developer being required to submit additional intervenor fees to facilitate further participation in the review by municipal and other local parties.¹ By providing all the data necessary to cover the entire geographical area in which a turbine could be moved so as to avoid a future need to undertake substantial additional scrutiny or new studies, the desired flexibility is possible.

The regulation has the full force of law and the 500-foot dimension cannot be diminished in the Stipulations process. The parties entering into pre-application Stipulations, including the Trial Staff Team designated by the Department of Public Service, do not have legal authority to waive any part of the regulation.

As to what constitutes the "on-site" delineation of wetlands boundaries, that requirement can be satisfied by the placement in the field of sequentially numbered pink surveyor's flagging marked "wetland delineation" with the locations of individual flagging points documented using Global Positioning System (GPS) technology with reported sub-meter accuracy. The use of Wetland Delineation Data Forms (or comparable forms) for the appropriate number and location of sample sites to fulfill Army Corps of Engineers requirements, and field verification by the Army Corps and the NYSDEC, shall not be required to obtain a finding by the Chair of the Siting Board that a developer's Article 10 Application complies with the statute. However, such information and verifications will be necessary to obtain Army Corp approval outside of the Article 10 process and to reach agreement with NYSDEC Staff in the Article 10 proceeding on the extent and nature of wetlands impacts.

The placement in the field of sequentially numbered pink surveyor's flagging marked "wetland delineation" with the locations of individual flagging points documented using GPS technology with reported sub-meter accuracy is the absolute minimum that will be required for a complete application. It is fully recommended that applicants complete Wetland Delineation Data Forms (or comparable forms) for the appropriate number and location of sample sites to fulfill Army Corps of Engineers requirements and field verification by the Army Corps and the NYSDEC as soon as possible in the process. This may help to avoid issues later in the Article 10 process, subsequent to the Chair determining that an application is compliant. In addition, this statement of the absolute minimum that will be required for a complete application should not be interpreted as a barrier to agreeing by stipulation to provide more than the absolute minimum requirements.

¹ Case 12-F-0036, In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR, Chapter X, Certification of Major Electric Generating Facilities, Memorandum and Resolution Initiating Promulgation Process for Proposed Article 10 Regulations and Adopting Notice of Proposed Rulemaking (issued March 27, 2012), p.7.