

Zoning Board of Appeals Minutes

Meeting Date: June 21, 2023

Present: Nicholas Vorolieff, Chairman
Ann Hardeman, Member
Fred DiVitto, Member

Also Present: Curt Johnson (Jantile Group Designs LLC)
Dave Daniels (Village Attorney)
Caren LoBrutto (Village Planner)

APPROVED

**VILLAGE OF
PAWLING
ZONING BOARD OF
APPEALS**

On **Wednesday, June 21st, 2023 at 7:00 PM**, the **Zoning Board of Appeals** met in the meeting room at the Village Hall on 9 Memorial Avenue, Pawling NY. The Meeting was called to order by Nicholas Vorolieff, Chairman and began with Roll Call as indicated above and The Pledge of Allegiance.

Adam Muroski
53 Fairway Drive
Grid#: 7056-05-029881/R1-R2 Zoning District

Chairman Vorolieff assumed Lead Agency for SEQRA review. Curt Johnson presented a brief recap of the project and reminded the Board of the two variances as follows: a 3.4-foot area variance for the side yard setback and a 6% variance for maximum lot coverage.

With no questions from the Board, Chairman Vorolieff reviewed the five criteria submitted by the Applicant. The Chair commented that he agrees with the Applicant's responses to the five criteria. The Board agreed as well, with no further questions or comments.

Chairman Vorolieff explained that the Applicant will need to provide NYDEC with SEQRA determination in writing in order to complete the NYDEC application. He then reviewed the SEQRA Short Environmental Assessment Form Part 1 and 2 submitted by the Applicant.

Chairman Vorolieff asked Mr. Johnson to detail his communication with NYDEC relative to the Bog Turtle. Mr. Johnson replied that the DEC visited the site and commented that because the lawn is maintained way back on the site, there's really no habitat for the Bog Turtle there. Mr. Johnson commented that you can probably do more damage to the Bog Turtle with a lawnmower than you can with the construction of the garage. Chairman Vorolieff reviewed Part 3 of the SEAF provided by Village Planner LoBrutto, which determined that the project would not result in significant adverse impacts on environmental resources. The Board had no questions or comments. Chairman Vorolieff stated that a negative declaration for SEQRA is well supported, and the Board agreed.

Member DiVitto made a motion to issue a negative declaration for SEQRA. Member Hardeman seconded the motion. The motion passed with all present members in favor.

Ms. Nikolatos noted that Part 2 and 3 of the SEAF will be emailed to Mr. Johnson on Thursday morning (6/14).

Zoning Board of Appeals Minutes

Discussion ensued regarding the possibility of approving the variances prior to receiving the DEC permit. Village Counsel Dave Daniels said approved variances will be nullified if DEC denies the permit, so it's appropriate to grant the variances if the Board chooses to do so. Chairman Vorolieff pointed out that he believes the variances that the Applicant is seeking are not significant. The Board agreed with no questions or comments.

Member DiVitto made a motion to grant an area variance of 6% for maximum lot coverage and an area variance of 1.6 feet for the side yard setback. Member Hardeman seconded the motion. The motion passed with all present members in favor.

Approval of Minutes

Member Hardeman made a motion to approve minutes from Wednesday, May 24th, 2023 ZBA meeting. The motion was seconded by Member DiVitto. The Motion passed with all present members in favor.

Other Business

No other business to discuss

Adjournment

Member DiVitto made a motion to adjourn the meeting to the Wednesday, July 11th ZBA meeting. The motion was seconded by Member Hardeman. The motion passed with all present members in favor.

Submitted by:



Vivian Nikolatos, Secretary

All submission applications, documents, and consultant reports can be found on file at the Village Hall.



PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:
ADAM MUROSKI
53 Fairway Dr
Pawling, NY 12564

Facility:
Muroski Property
53 Fairway Dr
Pawling, NY 12564

Facility Location: in PAWLING in DUTCHESS COUNTY

Facility Principal Reference Point: NYTM-E: 616.667 NYTM-N: 4601.771
Latitude: 41°33'32.8" Longitude: 73°36'03.3"

Project Location: 53 Fairway Drive, Pawling

Authorized Activity: This permit authorizes disturbances to the 100-foot adjacent area of NYS Freshwater Wetland DP-22, Class 1, associated with the removal of an existing garage and replacement with a slightly larger garage. All work must be conducted in strict accordance with plans referenced in Natural Resource Condition #2. No disturbance to the wetland is authorized.

Permit Authorizations

Freshwater Wetlands - Under Article 24

Permit ID 3-1340-00295/00001

New Permit

Effective Date: 7/24/2023

Expiration Date: 12/31/2030

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: TRACEY L O'MALLEY, Deputy Regional Permit Administrator
Address: NYSDEC Region 3 Headquarters
 21 S Putt Corners Rd
 New Paltz, NY 12561

Authorized Signature: Tracey L. M. O'Malley

Digitally signed by Tracey L. M.
O'Malley
Date: 2023.07.24 14:09:07 -04'00'

Date 7 / 24 / 2023



Distribution List

Curt Johnson, J Group Designs
Sarah Pawliczak, NYSDEC
Maria Tupper-Goebel, NYCDEP
Village of Pawling Clerk

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Permit Attachments

Permit Sign
Miscellaneous Attachments - Not Otherwise Specified

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: FRESHWATER WETLANDS

- 1. No Wetland Disturbance** No disturbance to the wetland is authorized.
- 2. Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by J Group Designs LLC, titled "Muroski Garage 53 Fairway Drive Pawling, NY" (2 Sheets), dated 5/8/2023 .
- 3. Post Permit Sign** The permit sign enclosed with this permit shall be posted in a conspicuous location on the worksite and adequately protected from the weather.
- 4. Notify DEC 48 Hrs Prior to Work** The permittee or a representative must contact by telephone Sarah Pawliczak, NYSDEC Bureau of Ecosystem Health, at 845-256-3050, or by email at Sarah.Pawliczak@dec.ny.gov at least 48 hours prior to the commencement of the project authorized herein.
- 5. Prior Approval of Changes** If the permittee desires to make any minor changes to the scope of work shown in the approved plans or seeks minor changes to timeframes or deadlines in any conditions of this permit, the permittee shall submit a request via email to Sarah Pawliczak, NYSDEC Bureau of Ecosystem Health, at Sarah.Pawliczak@dec.ny.gov to make such proposed changes. The proposed



changes shall not be implemented unless authorized in writing by the Department. Issuance of such approval without modification of the permit is at the Department's discretion.

6. Bog Turtle Take-Avoidance Measures The permittee shall follow the attached Bog Turtle Education and Encounter Plan. The work area shall be enclosed by a double row of silt fence (example attached).

7. Clean Fill Only All fill shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, flyash, broken concrete, demolition debris, garbage, household refuse, tires, woody materials including tree or landscape debris, and metal objects. The introduction of materials toxic to aquatic life is expressly prohibited.

8. Install Controls as Shown on Plans Prior to commencement of the activities authorized herein, the permittee shall install securely anchored silt fencing and/or continuous staked straw bales as shown on the plans or drawings referenced in this permit.

9. Maintain Erosion Controls These erosion control devices shall be maintained until all disturbed land is fully vegetated to prevent any silt or sediment from entering the freshwater wetland or its adjacent area. Silt fencing, hay bales and any accumulated silt or sediment shall be completely removed for disposal at an appropriate upland site.

10. Disposal of Material Any demolition debris, excess construction materials, and/or excess excavated materials shall be immediately and completely disposed of on an approved upland site more than 100 feet from any regulated waterbody or wetland. These materials shall be suitably stabilized so as not to re-enter any water body, wetland, or wetland adjacent area; and must be disposed of in accordance with all local, state, and federal statutes, regulations, or ordinances.

11. Concrete Leachate During construction, no wet or fresh concrete or leachate shall be allowed to escape into any wetlands or waters of New York State, nor shall washings from ready-mixed concrete trucks, mixers, or other devices be allowed to enter any wetland or waters. Only watertight or waterproof forms shall be used. Wet concrete shall not be poured to displace water within the forms.

12. No Equipment in Wetland Heavy equipment, including bulldozers, backhoes, payloaders, etc., shall not be operated in the wetland.

13. Equipment Cleaning Before equipment and materials are used in any project work area involving regulated waters or wetlands, the equipment must be inspected for, and cleaned of, any visible soils, vegetation, and debris to prevent the potential introduction of invasive species into regulated waters or wetlands from other areas.

14. Vegetation Debris Disposal Invasive species, host material and attached soil material that has been removed from vehicles, equipment, and materials, or generated from cleaning operations shall be rendered incapable of any growth or reproduction by placing in plastic bags at least 3 mil thick, hauled in a covered truck, and properly disposed of offsite; or the material shall be managed within the infested project area, provided that no filling of any wetland or adjacent area will occur. A list of prohibited and regulated invasive species is contained within 6 NYCRR Part 575 and available at <https://www.dec.ny.gov/animals/99141.html>.



15. Seed, Mulch Disturbed Areas All areas of soil disturbance resulting from this project shall be seeded with an appropriate perennial grass, and mulched with straw immediately upon completion of the project, within two days of final grading, or by the expiration of the permit, whichever is first.

16. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

17. State Not Liable for Damage The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

18. State May Order Removal or Alteration of Work If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

19. State May Require Site Restoration If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available



for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC Region 3 Headquarters
21 S Putt Corners Rd
New Paltz, NY12561

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Freshwater Wetlands.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the



Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

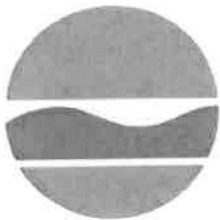
The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

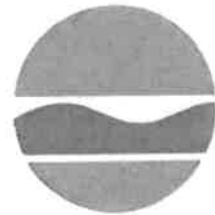
This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

Item E: SEQR Unlisted Action, No Significant Impact Under the State Environmental Quality Review Act (SEQR), the project associated with this permit is classified as an Unlisted Action with Pawling Village Planning Board designated as the lead agency. It has been determined that the project will not have a significant effect on the environment.

**New York State
Department of Environmental Conservation**



NOTICE



The Department of Environmental Conservation (DEC) has issued permit(s) pursuant to the Environmental Conservation Law for work being conducted at this site. For further information regarding the nature and extent of work approved and any Department condition on it, contact the DEC at 845-256-3054. Please refer to the permit number shown when contacting the DEC.

Permittee: Adam Muroski

Permit No. 3-1340-00295/00001

Effective Date: 07/24/2023

Expiration Date: 12/31/2030

☐ Applicable if checked. No instream work allowed between October 1 & April 30

NOTE: This notice is NOT a permit.

January 2022-basic

Bog Turtle Education and Encounter plan – NYS DEC issued

This project site is located in an area of known Bog turtle habitat. Bog turtles use primarily wetland habitats but can make periodic movements over land to new habitats during dispersal events. They are particularly active on the landscape between April 1st to September 30th. This document is intended to minimize impacts to Bog and other turtles that may be encountered during otherwise lawful activities and be used in accordance with the Department's Permits and jurisdictional response letters for the above referenced project, including all other species take avoidance measures proposed. This information should be provided to construction contractors and occupants at the proposed location.

The bog turtle is listed as "Endangered" on the New York State Endangered Species List.

- As a listed species, the bog turtle is protected under the New York State Environmental Conservation Law.
- As provided by the law, it is illegal for any person to approach, touch, move, threaten, harass, disturb, injure, or kill a bog turtle. It is also illegal to take import, transport, possess, or sell any bog turtle, its skin, or other parts, except under a permit or license from the New York State Department of Environmental Conservation (DEC).
- A violation of the Environmental Conservation Law is punishable by both criminal and civil penalties.
- The bog turtle, or other turtle species, may be encountered along roads, near homes and yards, in construction sites, and in undeveloped areas. If encountered, move away and do not attempt injure or collect the turtle.
- If any turtle species is seen in the work area, stop all work immediately.
- Contact the contractor in charge and delay work in the area until the turtle has moved safely from the area. Allow the turtle to continue on its way if it is safe to do so.
- If the turtle does not move out of harm's way on its own, and unless a qualified monitor licensed in New York State to handle and relocate the species has been retained who will promptly arrange for the turtle to be moved, please contact the NYS Department of Environmental Conservation Region 3 Bureau of Wildlife at 845-256-3098 for information regarding next steps and moving the species in accordance with New York State Law.
- If the turtle is found in the roadway (or in immediate danger), it can be moved out of harm's way to the side of the road in the direction it is heading. Do not move the turtle large distances or take possession of the turtle.
- Please report any encounters within 24 hours at 845-256-3098 or Wildlife.R3@dec.ny.gov. Please provide the location, the project name, and explanation of the encounter.



Photo Credit L. Masi

Accompanying handouts:

- Turtles of New York PDF.
https://www.dec.ny.gov/docs/administration_pdf/turtles2.pdf
- NYS DEC Bog Turtle Fact Sheet. 2021
<https://www.dec.ny.gov/animals/7164.html>

Species description

The bog turtle is New York's smallest turtle, reaching a maximum length of 4.5 inches. It is one of seventeen species of turtles found in New York State, including marine turtles. A bright yellow or orange blotch on each side of its head and neck are a distinctive feature of this species. The body color is dark with an orange-red wash on the inside of the legs of some individuals. The carapace (upper shell) is domed and somewhat rectangular, often with prominent rings on the shell plates (scutes). In some older individuals, or those that burrow frequently in coarse substrates, the shell may become quite smooth and polished. Although generally black, the carapace is sometimes highlighted by a chestnut sunburst pattern in each scute. The plastron (lower shell) is hingeless, with a pattern of cream and black blotches.

Other more common species that may be encountered. – All turtles are protected from collection.
turtles in the wild unless injured (see below).

Box Turtle (Special Concern)

Shell length: 4.5 – 6 inches



New York's most terrestrial turtle, the box turtle spends most of its time wandering open fields and forests, only retreating to shallow pools or wetlands to soak during very hot and dry periods. It can completely close its shell, distinguishing it from other turtle species. The box turtle's high-domed carapace is brightly highlighted; the plastron is hinged. Males and females can be told apart by eye color—usually brown for females, red for males. Box turtles eat a variety of fleshy fruits such as strawberries and raspberries, mushrooms and other soft vegetation, worms, slugs and snails. They will also scavenge dead birds and mammals.

Wood Turtle (Special Concern)

Shell length: 6 – 8 inches



The wood turtle gets its name from its preferred wooded habitat, as well as from the color of its carapace—the prominent annuli give it the sculpted appearance of weathered tree rings. Wood turtles are usually found in or along clean, fast-flowing trout streams, foraging during the summer in the woodlands bordering the streams. Like other turtles, females move into open areas for nesting. Wood turtles eat berries, mushrooms, small fish, slugs, worms and tadpoles. They have also been known to feed on carrion.



Snapping Turtle

Shell length: 10 – 16 inches

Easily recognized by its large head, long saw-toothed tail, stocky legs with large claws, and the jagged, saw-toothed rear edge on its dark shell, the snapping turtle is our largest freshwater turtle. Known for its defensive nature, this turtle will attack on land, but prefers to flee in water. Highly aquatic, this species is found in freshwater and brackish marshes, ponds, lakes, rivers and streams. Snappers often scavenge, but they also take live food ranging in size from small invertebrates to young waterfowl or small fish.

Painted Turtle

Shell length: 5 – 7 inches



Our most common species, the painted turtle is often seen basking in large numbers on logs and stumps in marshes, ponds and lakes, disappearing into the water quickly when disturbed. Bright stripes

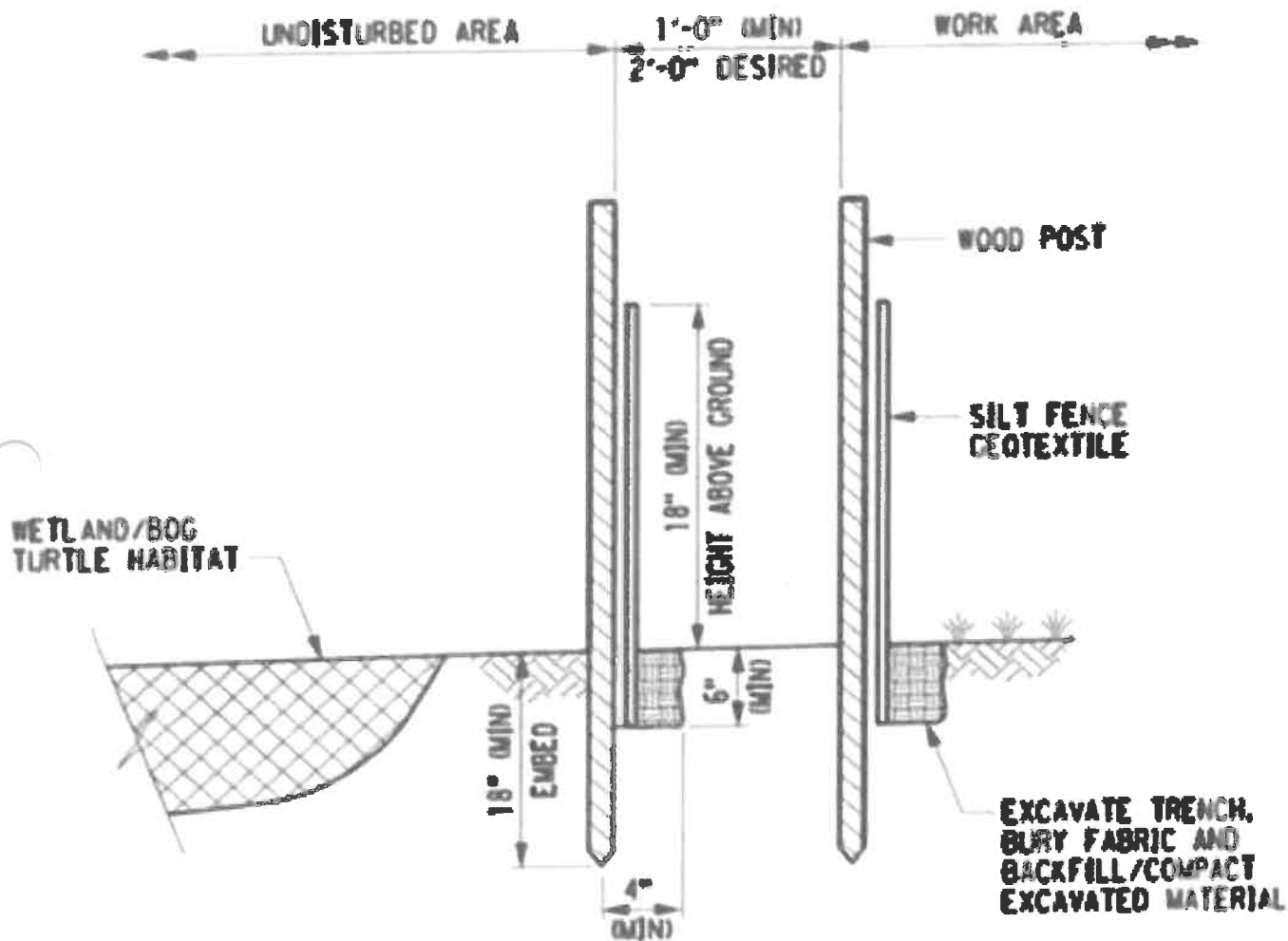
on the neck and spots on the head can be seen when the turtle is basking. The dark carapace is bordered with red. The plastron is plain yellow in the Eastern painted turtle, and has a dark central blotch in the Midland painted turtle. Males have long claws on their front feet; females have longer shells. Painted turtles eat a variety of invertebrates, tadpoles and vegetation, but will also scavenge carrion.

If you encounter an injured turtle, please contact a local NYS DEC licensed Wildlife Rehabilitator by scanning the QR code, or calling the Regional Wildlife office at 845-256-3098



SCAN ME

https://www.dec.ny.gov/cfm/x/xtapps/sls_searches/index.cfm?p=live_rehab



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3

21 South Putt Corners Road, New Paltz, NY 12561-1620

P: (845) 256-3054 | F: (845) 255-4659

www.dec.ny.gov



**Department of
Environmental
Conservation**

IMPORTANT NOTICE TO ALL PERMITTEES

The permit you requested is enclosed. Please read it carefully and note the conditions that are included in it. The permit is valid for only that activity expressly authorized therein; work beyond the scope of the permit may be considered a violation of law and be subject to appropriate enforcement action. Granting of this permit does not relieve the permittee of the responsibility of obtaining any other permission, consent or approval from any other federal, state, or local government which may be required.

Please note the expiration date of the permit. Applications for permit renewal should be made well in advance of the expiration date (minimum of 30 days) and submitted to the Regional Permit Administrator at the above address. For SPDES, Solid Waste and Hazardous Waste Permits, renewals must be made at least 180 days prior to the expiration date.

The DEC permit number & program ID number noted on page 1 under "Permit Authorization" of the permit are important and should be retained for your records. These numbers should be referenced on all correspondence related to the permit, and on any future applications for permits associated with this facility/project area.

If a permit notice sign is enclosed, you must post it at the work site with appropriate weather protection, as well as a copy of the permit per General Condition 1.

If the permit is associated with a project that will entail construction of new water pollution control facilities or modifications to existing facilities, plan approval for the system design will be required from the appropriate Department's regional Division of Water or delegated local Health Department, as specified in the State Pollutant Discharge Elimination System (SPDES) permit.

If you have any questions on the extent of work authorized or your obligations under the permit, please contact the staff person indicated below or the Division of Environmental Permits at the above address.

Alyssa Devine

Division of Environmental Permits, Region 3
Telephone (845) 240-7806

- ☐ Applicable only if checked. Please note all work authorized under this permit is prohibited during trout spawning season commencing October 1 and ending April 30.
- ☐ Applicable only if checked for STORMWATER SPDES INFORMATION: We have determined that your project requires coverage under the General Stormwater SPDES Permit. You must file a Notice of Intent to obtain coverage under the General Permit. This form can be downloaded at:
<http://www.dec.ny.gov/chemical/43133.html>
- ☐ Applicable only if checked - MS4 Areas: This site is within an MS4 area (Municipal Separate Storm Sewer System), therefore the SWPPP must be reviewed and accepted by the municipality. The MS-4 Acceptance Form must be submitted in addition to the Notice of Intent.

Send the completed form(s) to: NYS DEC, Stormwater Permitting, Division of Water, 625 Broadway, Albany, New York 12233-3505.



**Department of
Environmental
Conservation**