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Jurisdiction Type:	State
Municipality:	N/A
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Community Type – applicable to:	Urban; Suburban; Rural
Title:	State of New York Freshwater Wetlands Regulations
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Abstract

Article 24-Title 7 of New York State Consolidated Laws promulgates the sustained and safe use of Freshwater and Wetlands in the Town. Under the law, any person that wishes to engage in any of the enumerated activities including: draining, dredging, dumping, filling, in wetland areas as designated by the official map, shall seek a permit which will either be granted or denied depending on the outcome of the local government or the commissioner's consideration of the effect of the proposed activity with reference to the public health and welfare, fishing, flood, hurricane and storm dangers, and protection or enhancement of the several functions of the freshwater wetlands and the benefits derived therefrom which are set forth in section 24-0103 of this article.

Resource

**New York State Consolidated Laws
Environmental Conservation
ARTICLE 24 - TITLE 7
FRESHWATER WETLANDS REGULATIONS**

Section 24-0701. Permits.

24-0703. Applications for permits.

24-0705. Granting permits.

Sec. 24-0701. Permits.

1. After issuance of the official freshwater wetlands map of the state, or of any selected section or region thereof, any person desiring to conduct on freshwater wetlands as so designated thereon any of the regulated activities set forth in subdivision two of this section must obtain a permit as provided in this title.

2. Activities subject to regulation shall include any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; and any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any other obstructions whether or not changing the ebb and flow of the water; any form of pollution, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set forth in section 24-0105 of this article. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise substantially affect the wetlands and are located not more than one hundred feet from the boundary of such wetland. Provided, that a greater distance from any such wetland may be regulated pursuant to this article by the appropriate local government or by the department, whichever has jurisdiction over such wetland, where necessary to protect and preserve the wetland.

3. The depositing or removal of the natural products of the freshwater wetlands by recreational or commercial fishing, shell-fishing, aquaculture, hunting or trapping shall be excluded from regulated activities, where otherwise legally permitted and regulated.

4. The activities of farmers and other landowners in grazing and watering livestock, making reasonable use of water resources, harvesting natural products of the wetlands, selectively cutting timber, draining land or wetlands for growing agricultural products and otherwise engaging in the use of wetlands or other land for growing agricultural products shall be excluded from regulated activities and shall not require a permit under subdivision one hereof, except that structures not required for enhancement or maintenance of the agricultural productivity of the land and any filling activities shall not be excluded hereunder, and provided that the use of land designated as a freshwater wetland upon the freshwater wetlands map at the effective date thereof for uses other than those referred to in this subdivision shall be subject to the provisions of this article.

5. Public health activities, orders, and regulations of the department of health shall be excluded from regulated activities. Copies of all such public health orders and regulations affecting wetlands shall be filed with the department of environmental conservation. The commissioner may request modification of such orders or regulations if he deems such necessary to implement the policy of this article.

6. The commissioner shall review all current mosquito control projects to determine whether they are having any adverse impact on freshwater wetlands. Where any adverse

impact is found, the commissioner may require modification of such projects if he deems such necessary for the implementation of the policies of this article.

7. Where dredging or filling is in navigable waters of the state or is for the reconstruction or repair of certain dams and docks, and where such activity also affects freshwater wetlands, any person undertaking such activity must seek permission under this article as well as under any other applicable law.

8. On any land that is being developed pursuant to a planned unit development ordinance or local law where freshwater wetlands are to remain as open space, development activities shall be permitted in areas contiguous to such wetlands if the local government affirms that such activities will not despoil said wetland.

Sec. 24-0703. Applications for permits.

1. Any person proposing to conduct or cause to be conducted a regulated activity upon any freshwater wetland shall file an application for a permit with the clerk of the local government having jurisdiction or the department, as the case may be. Review of the application shall be made by the local government or the commissioner, as the case may be, in accordance with applicable law and such rules hereunder as may be adopted by the commissioner. Such application shall include a detailed description of the proposed activity and a map showing the area of freshwater wetland directly affected, with the location of the proposed activity thereon. The clerk or commissioner shall cause notice of such application to be mailed to all local governments where the proposed activity or any part of it is located.

2. No sooner than thirty days and not later than sixty days after the receipt by a local government of an application, and after notice of application has been published by the applicant in two newspapers having a general circulation in the area, the local government shall hold a public hearing on such application at a suitable location in the local government where the affected wetland is situated unless no notice of objection has been filed or unless the local government finds the activity to be of such a minor nature as not to affect or endanger the balance of systems within the wetlands, in which case the local government may, in the exercise of discretion, dispense with such hearing. Where the local government finds that a hearing is not necessary, a decision setting forth reasons therefor shall be prepared, shall be a matter of public record and shall be mailed to all local governments where the proposed work or any part of it is located and to all persons who filed a statement with the local government following the publication of such notice of application. All owners of record of the adjacent land and the local governments where the proposed activity is located shall be notified by certified mail of the hearing not less than fifteen days prior to the date set for such hearing. The local government shall cause notice of such hearing to be published in two newspapers having a general circulation in the area where the affected freshwater wetlands are located. All applications and maps and documents relating thereto shall be open for public inspection at the office of the clerk of the local government in which the wetland is situated. At such hearing any person or

persons filing a request for a hearing or a timely notice of appearance may appear and be heard.

3. In addition to the provisions of article 70 of this chapter and rules and regulations adopted thereunder, the rules and regulations adopted by the department pursuant to this article to implement its processing of permit applications, renewals, modifications, suspensions and revocations shall govern permit administration by the department under this article, provided however, that after the department has given notice to an applicant that an application is complete, or the application is deemed complete, the applicant shall cause a notice of application to be published in a newspaper of general circulation in the affected area as provided in rules and regulations of the department.

4. The applicant shall have the burden of demonstrating that the proposed activity will be in accord with the policies and provisions of this article. To the greatest extent practicable, such hearing shall be incorporated with any public hearing required by the town, village, general city, general municipal or environmental conservation laws in connection with approvals or permits otherwise required before commencement of regulated activities on lands containing such wetlands.

5. Prior to the promulgation of the final freshwater wetlands map in a particular area and the implementation of a freshwater wetlands protection law or ordinance, no person shall conduct, or cause to be conducted, any activity for which a permit is required under section 24-0701 of this article on any freshwater wetland unless he has obtained a permit from the commissioner under this section. Any person may inquire of the department as to whether or not a given parcel of land will be designated a freshwater wetland subject to regulation. The department shall give a definite answer in writing within thirty days of such request as to whether such parcel will or will not be so designated. Provided that, in the event that weather or ground conditions prevent the department from making a determination within thirty days, it may extend such period until a determination can be made. Such answer in the affirmative shall be reviewable pursuant to title eleven of this article; such an answer in the negative shall be a complete defense to the enforcement of this article as to such parcel of land. The commissioner may by regulation adopted after public hearing exempt categories or classes of wetlands or individual wetlands which he determines not to be critical to the furtherance of the policies and purposes of this article.

Sec. 24-0705. Granting permits.

1. In granting, denying or limiting any permit, the local government or the commissioner shall consider the effect of the proposed activity with reference to the public health and welfare, fishing, flood, hurricane and storm dangers, and protection or enhancement of the several functions of the freshwater wetlands and the benefits derived therefrom which are set forth in section 24-0103 of this article. The effects of the proposed activity shall be considered by the department or a local government, as the case may be, irrespective of political boundaries.

2. Duly filed notice in writing that the state or any agency or subdivision thereof is in the process of acquiring any freshwater wetlands by negotiation or condemnation shall be sufficient basis for denial of any permit.

3. No permit shall be granted under this section unless the proposed activity is consistent with the land use regulations applicable pursuant to section 24-0903 of this article within the boundaries of the local government involved and with the policy set forth in section 24-0103 of this article.

4. In granting a permit, the local government or the commissioner may limit the same or impose conditions or limitations designed to carry out the public policy set forth in this article. The local government or the commissioner may require a bond in an amount and with surety and conditions satisfactory to him securing to the state or local government, as the case may be, compliance with the conditions and limitations set forth in the permit. The local government may suspend or revoke a permit if it finds that the applicant has not complied with any of the conditions or limitations set forth in the permit or has exceeded the scope of the activity as set forth in the application. The local government may suspend the permit if the applicant fails to comply with the terms and conditions set forth in the application. Department suspension and revocation proceedings shall be governed by the provisions of article 70 of this chapter and rules and regulations adopted thereunder and by the provisions of rules and regulations adopted by the department as provided in section 24-1301 of this article.

5. The local government or the commissioner shall state upon the record findings and reasons for all actions taken pursuant to this section.

6. Review of the determination of the local government or of the commissioner shall be, within a period of thirty days after the filing thereof, pursuant to the provisions of title eleven of this article or article seventy-eight of the civil practice law and rules. Any owner of the wetland affected and any resident or citizen of the local government shall be deemed to have the requisite standing to seek review.

7. In the event that the court finds the action reviewed constitutes a taking without just compensation, and the land so regulated merits protection under this article, the court may, at the election of the commissioner, either (i) set aside the order or (ii) require the commissioner to proceed under the condemnation law to acquire the wetlands or such less than fee rights therein as have been taken.