

# Environmental Conservation

## ARTICLE 24 FRESHWATER WETLANDS

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### TITLE 1 GENERAL PROVISIONS AND PUBLIC POLICY

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§ 24-0101. Short title.

This article shall be known as the "Freshwater Wetlands Act".

§ 24-0103. Declaration of policy.

It is declared to be the public policy of the state to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoliation and destruction of freshwater wetlands, and to regulate use and development of such wetlands to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the state.

§ 24-0105. Statement of findings.

1. The freshwater wetlands of the state of New York are invaluable resources for flood protection, wildlife habitat, open space and water resources.

2. Considerable acreage of freshwater wetlands in the state of New York has been lost, despoiled or impaired by unregulated draining, dredging, filling, excavating, building, pollution or other acts inconsistent with the natural uses of such areas. Other freshwater wetlands are in jeopardy of being lost, despoiled or impaired by such unrelated acts.

3. Recurrent flooding aggravated or caused by the loss of freshwater wetlands has serious effects upon natural ecosystems.

4. Freshwater wetlands conservation is a matter of state concern since a wetland in one region is affected by acts on rivers, streams and wetlands of other regions.

5. The natural systems affecting freshwater wetlands overlap many localities. While many local governments individually have enacted

ordinances to conserve freshwater wetlands and to reduce flood hazards and losses, effective freshwater wetlands management requires uniformity in laws to eliminate inconsistent or conflicting local laws. One locality alone lacks adequate jurisdiction to protect itself from misuse or neglect of adjacent localities.

6. Freshwater wetlands are an integral part of the unique scenic, aesthetic, wildlife, recreational, open space, ecological and natural resources of the Adirondack park and are recognized and protected by the Adirondack park agency act. The act provides a mechanism for the regulation of Adirondack wetlands by the Adirondack park agency and local governments which is consistent with both the state interest in the preservation and development of the park area and the state policy to preserve, protect and conserve freshwater wetlands expressed in this article.

7. Any loss of freshwater wetlands deprives the people of the state of some or all of the many and multiple benefits to be derived from wetlands, to wit:

(a) flood and storm control by the hydrologic absorption and storage capacity of freshwater wetlands;

(b) wildlife habitat by providing breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare species such as the bald eagle and osprey;

(c) protection of subsurface water resources and provision for valuable watersheds and recharging ground water supplies;

(d) recreation by providing areas for hunting, fishing, boating, hiking, bird watching, photography, camping and other uses;

(e) pollution treatment by serving as biological and chemical oxidation basins;

(f) erosion control by serving as sedimentation areas and filtering basins, absorbing silt and organic matter and protecting channels and harbors;

(g) education and scientific research by providing readily accessible outdoor bio-physical laboratories, living classrooms and vast training and education resources; and

(h) open space and aesthetic appreciation by providing often the only remaining open areas along crowded river fronts and coastal Great Lakes regions; and

(i) sources of nutrients in freshwater food cycles and nursery grounds and sanctuaries for freshwater fish.

8. Regulation of freshwater wetlands, in accordance with the agricultural exemption established in title seven hereof, is consistent with the legitimate interests of farmers and other landowners to graze and water livestock, make reasonable use of water resources, harvest natural products of the wetlands, selectively cut timber and otherwise engage in the use of land for agricultural production.

#### § 24-0107. Definitions.

1. "Freshwater wetlands" means lands and waters of the state as shown on the freshwater wetlands map which contain any or all of the following:

(a) lands and submerged lands commonly called marshes, swamps, sloughs, bogs, and flats supporting aquatic or semi-aquatic vegetation of the following types:

(1) wetland trees, which depend upon seasonal or permanent flooding or

sufficiently water-logged soils to give them a competitive advantage over other trees; including, among others, red maple (*Acer rubrum*), willows (*Salix* spp.), black spruce (*Picea mariana*); swamp white oak (*Quercus bicolor*), red ash (*Fraxinus pennsylvanica*), black ash (*Fraxinus nigra*), silver maple (*Acer saccharinum*), American elm (*Ulmus americana*), and Larch (*Larix laricina*);

(2) wetland shrubs, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other shrubs; including, among others, alder (*Alnus* spp.), buttonbush (*Cephalanthus occidentalis*), bog rosemary (*Andromeda glaucophylla*), dogwoods (*Cornus* spp.), and leatherleaf (*Chamaedaphne calyculata*);

(3) emergent vegetation, including, among others, cattails (*Typha* spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.), arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* spp.), reed (*Phragmites communis*), wildrice (*Zizania aquatica*), bur-reeds (*Sparganium* spp.), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*); and water plantain (*Alisma plantago-aquatica*);

(4) rooted, floating-leaved vegetation; including, among others, water-lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*), and spatterdock (*Nuphar* spp.);

(5) free-floating vegetation; including, among others, duckweed (*Lemna* spp.), big duckweed (*Spirodela polyrhiza*), and watermeal (*Wolffia* spp.);

(6) wet meadow vegetation, which depends upon seasonal or permanent flooding or sufficiently water-logged soils to give it a competitive advantage over other open land vegetation; including, among others, sedges (*Carex* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), swamp loosestrife (*Decodon verticillatus*), and spikerush (*Eleocharis* spp.);

(7) bog mat vegetation; including, among others, sphagnum mosses (*Sphagnum* spp.), bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calyculata*), pitcher plant (*Sarracenia purpurea*), and cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*);

(8) submergent vegetation; including, among others, pondweeds (*Potamogeton* spp.), naiads (*Najas* spp.), bladderworts (*Utricularia* spp.), wild celery (*Vallisneria americana*), coontail (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* spp.), muskgrass (*Chara* spp.), stonewort (*Nitella* spp.), water weeds (*Elodea* spp.), and water smartweed (*Polygonum amphibium*);

(b) lands and submerged lands containing remnants of any vegetation that is not aquatic or semi-aquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six feet and provided further that such conditions can be expected to persist indefinitely, barring human intervention;

(c) lands and waters substantially enclosed by aquatic or semi-aquatic vegetation as set forth in paragraph (a) or by dead vegetation as set forth in paragraph (b), the regulation of which is necessary to protect and preserve the aquatic and semi-aquatic vegetation; and

(d) the waters overlying the areas set forth in (a) and (b) and the lands underlying (c).

2. "Freshwater wetlands map" shall mean a map promulgated by the department pursuant to section 24-0301 of this article on which are indicated the boundaries of any freshwater wetlands.

3. "Boundaries of a freshwater wetland" shall mean the outer limit of

the vegetation specified in paragraphs (a) and (b) of subdivision one of section 24-0107 and of the lands and waters specified in paragraph (c) of such subdivision.

4. "Local government" shall mean a village, town, city, or county.

5. "State agency" shall mean any state department, bureau, commission, board or other agency, public authority or public benefit corporation.

6. "Person" means any corporation, firm, partnership, association, trust, estate, one or more individuals, and any unit of government or agency or subdivision thereof, including the state.

7. "Board" shall mean the freshwater wetland appeals board.

8. "Pollution" shall mean the presence in the environment of man-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant or wildlife, or other animal life or to property.

### TITLE 3

#### FRESHWATER WETLANDS STUDIES; NOTIFICATION AND MAPS

Section 24-0301. Commissioner's study.

§ 24-0301. Commissioner's study.

1. The commissioner shall, as soon as practicable, conduct a study to identify and map those individual freshwater wetlands in the state of New York which shall have an area of at least twelve and four-tenths acres or more, or if less than twelve and four-tenths acres, (a) have, in the discretion of the commissioner unusual local importance for one or more of the specific benefits set forth in subdivision seven of section 24-0105 of this article or (b) are located within the Adirondack park and meet the definition of wetlands contained in subdivision sixty-eight of section eight hundred two of the executive law, and shall determine their characteristics. This study shall, in addition to such other data as the commissioner may determine to be included, consist of the freshwater wetlands inventory of the department of environmental conservation, currently being made, together with other available data on freshwater wetlands, whether assisted by the state of New York under the tidal wetlands act or otherwise, or assembled by federal or local governmental or private agencies, all of which information shall be assembled and integrated, as applicable, into a map of freshwater wetlands of the state of New York. Such study may, in the discretion of the commissioner, be carried out on a sectional or regional basis, as indicated by need, subject to overall completion in an expeditious fashion subject to the terms of this chapter. This map, and any orders issued pursuant to the provisions of this article, shall comprise a part of the statewide environmental plan as provided for in section 3-0303 of this chapter. As soon as practicable the commissioner shall file with the secretary of state a detailed description of the technical methods and requirements to be utilized in compiling the inventory, and he shall afford the public an opportunity to submit comments thereon.

2. Upon completion of a freshwater wetlands inventory, the commissioner shall prepare a tentative freshwater wetlands map delineating the boundaries of such wetlands as determined by the study and inventory conducted pursuant to subdivision one of this section. The map may be prepared for different sections or regions of the state separately, as the commissioner shall determine. The commissioner shall consult and cooperate with the Adirondack park agency in the preparation

of a tentative freshwater wetlands map for any area within the Adirondack park.

3. The tentative freshwater wetlands map shall set forth the boundaries of such wetlands as accurately as is practicable to inform the owners thereof, the public and the department of the approximate location of the actual boundaries of the wetlands, subject to motion for delineation pursuant to this section, or more precise definition thereof in the discretion of the commissioner. The commissioner shall take into consideration, whenever possible, the boundaries of the local government or governments within which the wetlands are located.

4. Upon completion of the tentative freshwater wetlands map for a particular area, the commissioner or his designated hearing officer shall hold a public hearing in that area in order to afford an opportunity for any person to propose additions or deletions from such map. The commissioner shall give notice of such hearing to each owner of record as shown on the latest completed tax assessment rolls, of lands designated as such wetlands as shown on said map and also to the chief administrative officer and clerk of each local government within the boundaries of which any such wetland or a portion thereof is located and, in the case of a tentative freshwater wetlands map for any area within the Adirondack park, to the Adirondack park agency, by certified mail not less than thirty days prior to the date set for such hearing and shall assure that a copy of the relevant map is available for public inspection at a convenient location in such local government. The map filed with a local government may, at the local government's request, be either a physical copy of the tentative freshwater wetlands map, or, if available, a digital file that represents it. The commissioner shall also cause notice of such hearing to be published at least once, not more than thirty days nor fewer than ten days before the date set for such hearing, in at least two newspapers having general circulation in the area where such wetlands are located. The commissioner may post on the department's website a digital image that represents the tentative freshwater wetlands map.

5. After considering the testimony given at such hearing and any other facts which may be deemed pertinent, after considering the rights of affected property owners and the ecological balance in accordance with the policy and purposes of this article, and, in the case of wetlands or portions thereof within the Adirondack park, after consulting with the Adirondack park agency, the commissioner shall promulgate by order the final freshwater wetlands map. Such order shall not be promulgated less than sixty days from the date of the hearing required by subdivision four of this section. A copy of the order, together with a copy of such map or relevant portion thereof shall be filed in the office of the clerk of each local government in which each such wetland or a portion thereof is located and, in the case of a map for any area within the Adirondack park, with the Adirondack park agency. The map filed with a local government may, at the local government's request, be either a physical copy of the final freshwater wetlands map, or, if available, a digital file that represents it. The commissioner shall simultaneously give notice of such order to each owner of lands, as shown on the latest completed tax assessment rolls, designated as such wetlands by mailing a copy of such order to such owner by certified mail in any case where a notice by certified mail was not sent pursuant to subdivision four of this section, and in all other cases by first class mail. The commissioner shall also give notice of such order at such time to the chief administrative officer of each local government within the boundaries of which any such wetland or a portion thereof is located. At

the time of filing with such clerk or clerks, the commissioner shall also cause a copy of such order to be published in at least two newspapers having general circulation in the area where such wetlands are located. The commissioner may post on the department's website a digital image that represents the final freshwater wetlands map.

6. Except as provided in subdivision eight of this section, the commissioner shall supervise the maintenance of such boundary maps, which shall be available to the public for inspection and examination at the regional office of the department in which the wetlands are wholly or partly located and in the office of the clerk of each county in which each such wetland or a portion thereof is located. The commissioner may readjust the map thereafter to clarify the boundaries of the wetlands, to correct any errors on the map, to effect any additions, deletions or technical changes on the map, and to reflect changes as have occurred as a result of the granting of permits pursuant to section 24-0703 of this article, or natural changes which may have occurred through erosion, accretion, or otherwise. Notice of such readjustment shall be given in the same manner as set forth in subdivision five of this section for the promulgation of final freshwater wetlands maps. In addition, at the time notice is provided pursuant to subdivision five of this section, the commissioner shall update any digital image of the map posted on the department's website to reflect such readjustment.

7. Except as provided in subdivision eight of this section, the commissioner may, upon his own initiative, and shall, upon a written request by a landowner whose land or a portion thereof may be included within a wetland, or upon the written request of another person or persons or an official body whose interests are shown to be affected, cause to be delineated more precisely the boundary line or lines of a freshwater wetland or a portion thereof. Such more precise delineation of a freshwater wetland boundary line or lines shall be of appropriate scale and sufficient clarity to permit the ready identification of individual buildings and of other major man-made structures or facilities or significant geographical features with respect to the boundary of any freshwater wetland. The commissioner shall undertake to delineate the boundary of a particular wetland or wetlands, or a particular part of the boundary thereof only upon a showing by the applicant therefor of good cause for such more precise delineation and the establishment of such more precise line.

8. The supervision of the maintenance of any freshwater wetlands map or portion thereof applicable to wetlands within the Adirondack park, the readjustment and precise delineation of wetland boundary lines and the other functions and duties ascribed to the commissioner by subdivisions six and seven of this section shall be performed by the Adirondack park agency, which shall make such maps available for public inspection and examination at its headquarters.

## TITLE 5 LOCAL IMPLEMENTATION

Section 24-0501. Local freshwater wetlands protection procedures.

24-0503. Transfer of function to county; supersession by department.

24-0505. Exemption from local implementation.

24-0507. Reservation of local jurisdiction.

24-0509. Relationship to other laws.

24-0511. Local freshwater wetlands protection procedures in the Adirondack park.

§ 24-0501. Local freshwater wetlands protection procedures.

1. On or after September 1, 1975, each local government may adopt, amend, and, upon the filing of the appropriate freshwater wetlands map, implement a freshwater wetlands protection law or ordinance in accordance with this article to be applicable to all freshwater wetlands wholly or partially within its jurisdiction. No freshwater wetlands protection law or ordinance adopted by a county pursuant to this section shall be applicable within the boundaries of any city, town or village which has adopted and is implementing a local freshwater wetlands protection law or ordinance consistent with this article.

2. Said freshwater wetlands protection law or ordinance may be in such form and with such procedures prescribed as may be determined by the local government adopting the same, or it may set forth the procedures and concepts contained in this article; provided, however, that no local freshwater wetlands protection law or ordinance enacted pursuant to subdivision one hereof shall be less protective of freshwater wetlands or effectiveness of administrative and judicial review, than the procedures set forth in this article, nor shall such local law or ordinance affect the activities exempted from permit by section 24-0701 of title seven hereof.

3. Adoption by a local government, pursuant to this article, of a local freshwater wetlands protection law or ordinance by reference to the procedures and concepts set forth herein shall be sufficient if reference is made to the procedures and concepts of this article with exceptions, additions, and modifications thereto noted; and the adoption, once effected, shall include subsequent statutory amendments to this article as aforesaid; subject, again, to exception, addition, or modification by such municipality, without time limitation. At any time after a local adoption of the procedures contained in this article, a local government subject to this section may rescind its adoption thereof and simultaneously adopt a local freshwater wetlands protection procedure in accordance with subdivisions one and two of this section.

4. If a city, town or village fails to adopt and implement a freshwater wetlands protection law or ordinance in accordance with this article by the date the applicable freshwater wetlands map is filed by the department or by September 1, 1977, whichever is later, it shall be deemed to have transferred the function to the county in accordance with section 24-0503. If the county fails within ninety days after the date of filing of the applicable freshwater wetlands map or after September 1, 1977, whichever is later, to adopt and implement a freshwater wetlands protection law or ordinance in accordance with this article, it shall be deemed to have transferred the function to the department. Within thirty days after the adoption of a freshwater wetlands protection law or ordinance pursuant to this article, the local government shall notify the department thereof, under such terms and conditions as the department may prescribe, together with its technical and administrative capacity to administer the act. Failure of a local government to give such notice shall constitute a transfer of function pursuant to this subdivision and section 24-0503.

5. A local government or the department shall have the right, in its regulation of freshwater wetlands within its jurisdiction, to charge such fees and expenses to an applicant for official action as shall enable it to recover the costs incurred by reason of such application.

6. Any local government which defaults or transfers its authority pursuant to subdivision four of this section or section 24-0503 of this article, may recover such authority at any time by adopting a local freshwater wetland protection local law or ordinance consistent with

this article and notifying the county and the department of the adoption. Such notice shall be given by certified mail within ten days of the adoption thereof. Such local law or ordinance shall not become effective in less than sixty nor more than one hundred days from the adoption thereof.

7. The technical services of the department shall be made available to municipalities, on a fee basis, in the implementation of the procedure herein set forth.

§ 24-0503. Transfer of function to county; supersession by department.

1. In the event that a town, village, city or county shall certify in writing, as hereinafter provided, that it does not possess the technical capacity or the procedures effectively to carry out the requirements of this title, such local function shall be transferred to the county or the department, as the case may be. The certification of the town, village or city shall be by certified mail to the chief executive officer of the county, or, in the case of a county, to the commissioner.

2. In the event that the commissioner shall find that a local government does not possess the technical capacity or the implemented procedures effectively to carry out the requirements of this title, and that his failure to act will entail a default, or the potential of a default, in freshwater wetlands regulation, the commissioner may supersede the local government and order, alternatively, either that the local function be transferred to the county, or that the department itself undertake the local function, all to the extent necessary to carry out the purposes of this article. The supersession of the local government, shall be by order of the commissioner sent, by certified mail, to the chief executive officer of the local government involved.

3. In the event of transfer or supersession under subdivision one or two of this section, subsequent proceedings shall be in accordance with the further requirements of this article.

§ 24-0505. Exemption from local implementation.

The commissioner, by rule, may exempt from local implementation under this title those freshwater wetlands which, by reason of their size or special characteristics of unique environmental value or by reason of common characteristics, are appropriately to be administered pursuant to this article by the department alone. Such rule, based upon findings of fact made after public hearing, may relate to classes of wetlands based on size or particular characteristics, or to particular wetlands the characteristics of which make them subject to the exercise of the commissioner's discretion pursuant to this section. The commissioner shall make an order to such effect in each such instance and send a certified copy thereof to the executive officer of each local government affected thereby within ten days of his signing the same; such order shall not take effect until forty days after such signing.

§ 24-0507. Reservation of local jurisdiction.

Except as provided in this article, jurisdiction over all areas which would qualify as freshwater wetlands except that they are not designated as such on the freshwater wetlands map pursuant to section 24-0301 of this article because they are less than twelve and four-tenths acres in size and are not of unusual local importance is reserved to the city, town or village in which they are wholly or partially located, and the implementation of this article with respect thereto is the



responsibility of said city, town or village, in accordance with section 24-0501 and title twenty-three of article seventy-one of this chapter, except that a city, town or village in the exercise of its powers under this section, shall not be subject to the provisions of subdivision four of section 24-0501, subdivisions two and three of section 24-0503, or section 24-0505 of this article.

§ 24-0509. Relationship to other laws.

No provision of this article shall be deemed to remove from any local government any authority pertaining to the regulation of freshwater wetlands, whether such wetlands are under the jurisdiction of the department or a county pursuant to subdivision 4 of section 24-0501 of this title, under the county, general city, general municipal, municipal home rule, town, village, or any other law, provided, however, that any such regulation by a local government shall be at least as protective of freshwater wetlands as the regulations in effect pursuant to the provisions of this chapter or any rule or regulation promulgated pursuant to the provisions of this article or pursuant to a local freshwater wetlands protection law or ordinance adopted by a county pursuant to the provisions of section 24-0501 of this title.

§ 24-0511. Local freshwater wetlands protection procedures in the Adirondack park.

Except for section 24-0509, this title shall not apply to freshwater wetlands protection laws or ordinances adopted by towns or villages with respect to their territories within the Adirondack park. Such laws or ordinances are governed by title eight of this article.

TITLE 7  
FRESHWATER WETLANDS REGULATIONS

Section 24-0701. Permits.

24-0703. Applications for permits.

24-0705. Granting permits.

§ 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.

#### § 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 title 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; 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.

§ 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 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.

TITLE 8  
REGULATION OF WETLANDS IN THE ADIRONDACK PARK

Section 24-0801. Permits for wetlands in the Adirondack park.  
24-0803. Transfer of jurisdiction to local government.  
24-0805. Land use regulations for freshwater wetlands in the Adirondack park.

§ 24-0801. Permits for wetlands in the Adirondack park.

1. As used in this title, the term "freshwater wetlands", in addition to its meaning under section 24-0107 of this article, shall mean "wetlands" as defined in subdivision sixty-eight of section eight hundred two of article twenty-seven of the executive law.

2. Where the activities otherwise subject to regulation under this article involve freshwater wetlands located within the boundaries of the Adirondack park, the inquiries referred to and the applications provided for in section 24-0703 of this article shall be made to and filed with the Adirondack park agency at its headquarters office, under such regulations and procedures as the Adirondack park agency may promulgate. The Adirondack park agency shall review the application in place of the commissioner or local government as provided in section 24-0705 of this article, having due regard for the declaration of policy and statement of findings set forth in this article and for the considerations set forth in subdivision one of section 24-0705 of this article. The agency shall in addition determine prior to the granting of any permit that the proposed activity will be consistent with the Adirondack park land use and development plan and would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park, taking into account the economic and social or other benefits to be derived from the activity. Any person may seek review of a ruling made solely pursuant to the provisions of this article by the Adirondack park agency pursuant to the provisions of article seventy-eight of the civil practice law and rules.

§ 24-0803. Transfer of jurisdiction to local government.

1. Notwithstanding anything in article twenty-seven of the executive law to the contrary, the Adirondack park agency may transfer to a town or village any or all of its jurisdiction over regulated activities conducted upon, or land use and development or subdivision involving, those wetlands located on private lands which it finds, due to their size or other characteristics, are of lesser regional importance and are appropriately to be administered by such local governments alone.

2. The agency shall not transfer such jurisdiction unless the town or village (a) has adopted and implemented a local freshwater wetlands protection law or ordinance or has in a local land use program provided by local law or ordinance for the protection of such wetlands, which law or ordinance:

(i) meets the criteria set forth in subdivision two of section 24-0501 of this article,

(ii) provides for a review of regulated activities, land use and development and subdivision pursuant to the standards set forth in subdivision two of section 24-0801 of this article, and

(iii) contains at a minimum land use regulations meeting the criteria of subdivision one of section 24-0903 of this article; and

(b) possesses the technical or administrative capacity to administer the local law or ordinance.

3. In connection with a transfer of its jurisdiction pursuant to this section, the agency may impose reasonable conditions in furtherance of the policies and purposes of this article and of article twenty-seven of the executive law.

4. A local government regulating wetlands pursuant to this section shall have the right to charge such fees and expenses to an applicant for official action as shall enable it to recover the costs incurred by reason of such application.

5. The technical services of the department or the agency shall be made available to towns and villages, on a fee basis, in the implementation of the procedures set forth in this section.

§ 24-0805. Land use regulations for freshwater wetlands in the Adirondack park.

Except as to wetlands upon private lands within local governments to which jurisdiction has been transferred pursuant to section 24-0803 of this article, the Adirondack park agency shall also exercise the functions assigned to the commissioner under section 24-0903 of this article.

TITLE 9  
FRESHWATER WETLANDS PRESERVATION PROGRAM

Section 24-0901. Cooperative agreements.

24-0903. Land use regulations for freshwater wetlands.

24-0905. Tax abatement.

§ 24-0901. Cooperative agreements.

1. Upon completion of the freshwater wetlands map, the commissioner shall confer with local government officials in each region in which the inventory has been conducted to establish a program for the protection of the freshwater wetlands of the state.

2. The commissioner may enter into cooperative agreements with any city, village, town or county, or with an owner of freshwater wetlands or with any one or more of them, for the purpose of preserving and maintaining, in accordance with the policies of this article, those freshwater wetlands which are within the boundaries of such city, village, town or county.

3. The cooperative agreement shall provide that the freshwater wetlands be preserved and maintained in their natural state and may provide for access thereto to be retained by such owner for purposes compatible with the purposes of this article.

4. A cooperative agreement with any such village, town, city or county may provide for the development by personnel and facilities of the department or the payment out of funds appropriated therefor, for the purpose of preserving, maintaining, or enhancing such wetlands in accordance with the policies of this article, and for the furnishing of such personnel, facilities or funds as may be agreed upon by the parties to the cooperative agreement.

5. This section shall not prevent any freshwater wetland from being designated as part of the natural and historic preserves of the state, nor shall it prevent preservation of such lands by dedication as state parks. The office of parks and recreation shall outline to the commissioner its plans to preserve freshwater wetlands as parks and reserves as soon as possible after the effective date of this article.

§ 24-0903. Land use regulations for freshwater wetlands.

1. Upon completion of the freshwater wetlands map of the state, or of any selected section or region thereof, the commissioner shall proceed to classify freshwater wetlands so designated thereon according to their most appropriate uses, in light of the values set forth in section 24-0105 of this article and the present conditions of such wetlands. The commissioner shall determine what uses of such wetlands are most compatible with the foregoing and shall prepare minimum land use regulations to permit only such compatible uses. The classifications may cover freshwater wetlands in more than one governmental subdivision. Permits pursuant to section 24-0701 of this article are required whether or not a classification has been promulgated.

2. The commissioner shall upon completion of minimum land use regulations as provided in subdivision one of this section, forward the same to the local governments affected thereby. Within six months of receipt of the minimum land use regulations, the legislative body of each such local government shall submit to the commissioner proposed regulations governing the freshwater wetlands within its boundaries. Such proposed regulations shall be consistent with the purposes of this article and may be more restrictive than the minimum land use regulations as determined by the commissioner under this article. Where the proposed local wetlands use regulations do not meet the minimum land use regulations as determined by the commissioner, the proposed local regulations shall be accompanied by supporting materials setting forth, among other things, that there are overriding economic and social considerations vital to the growth and economic base of such local government that clearly require such variance.

3. If the commissioner finds that the proposals meet the conditions stated in subdivision two of this section, the commissioner, after taking into consideration their effect on other local governments, may approve said local land use regulations.

4. In the event the commissioner does not approve local freshwater wetlands land use regulations, he shall then frame land use regulations governing such freshwater wetlands.

5. Prior to the adoption of any land use regulations governing freshwater wetlands, the commissioner shall hold a public hearing thereon in the area in which the affected freshwater wetlands are located, and give fifteen days prior notice thereof by publication at least once in a newspaper having general circulation in the area of the local government involved. The commissioner shall promulgate the regulations within thirty days of such hearing and publish such order at least once in a newspaper having general circulation in the area of the local government affected and make such plan available for public inspection and review; such order shall not take effect until thirty days after the filing thereof with the clerk of the county in which such wetland is located.

6. The commissioner shall accept and review applications to change the regulations annually.

7. Any person aggrieved by any such order or regulation may seek judicial review pursuant to article seventy-eight of the civil practice

law and rules in the supreme court for the county in which the freshwater wetland is located, within thirty days after the date of the filing of the order with the clerk of the county in which the wetland is located.

8. Except as provided in section 24-0805 of this article, this section shall not apply to freshwater wetlands or portions thereof located within the Adirondack park.

§ 24-0905. Tax abatement.

Any freshwater wetland subject to land use regulations pursuant to section 24-0903 of this article or subject to a cooperative agreement pursuant to section 24-0901 of this article shall be deemed subject to a limitation on the use of such wetlands for the purposes of property tax evaluation, in the same manner as if an easement or right had been acquired pursuant to the general municipal law. Assessed value shall be based, during the duration of such agreement or regulations, on the uses remaining to the owner thereof.

TITLE 13  
MISCELLANEOUS PROVISIONS

Section 24-1301. Miscellaneous provisions.

24-1303. Severability.

24-1305. Applicability.

§ 24-1301. Miscellaneous provisions.

1. The provisions of this article shall not be construed to limit in any manner the functions, powers and duties of the commissioner or the department of environmental conservation, or of any other state department or agency, under this chapter or any other laws.

2. The commissioner, his agents or employees and the personnel of the Adirondack park agency may enter upon any lands or waters after reasonable notice and for good cause shown for the purpose of undertaking any investigations, examination, survey, or other activity for the purposes of this article.

3. The commissioner may adopt and, from time to time, amend rules and regulations consistent with this article to assist him in carrying out his functions, powers and duties hereunder.

4. Notwithstanding any other provision of this chapter, a privately owned parcel of land or part thereof within the county of Richmond that did not contain a designation as a freshwater wetland on the tentative freshwater wetlands map filed in the office of the clerk of Richmond county in 1981 shall not be on any tentative freshwater wetlands map if the landowner has any written determination from the department pursuant to subdivision five of section 24-0703 of this article that such parcel of land or part thereof did not meet the statutory definition of a freshwater wetland. Such representations shall be considered to have been definitive when made, and such parcel or part thereof shall not be designated as a freshwater wetland on any final map filed in the office of the clerk of Richmond county pursuant to this article. The provisions of this subdivision shall not apply to any parcel of land or part thereof, purchased after January first, nineteen hundred eighty-seven, or to any such parcel or part thereof owned wholly or in part by any unit of government or agency or subdivision thereof, any authority or agency existing pursuant to governmental action, or subdivision thereof;



including the state and the city of New York.

§ 24-1303. Severability.

The provisions of this article shall be severable, and if any clause, sentence, paragraph, subdivision or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 24-1305. Applicability.

The provisions of this article shall not apply to any land use, improvement or development for which final approval shall have been obtained prior to the effective date of this article from the local governmental authority or authorities having jurisdiction over such land use. As used in this section, the term "final approval" shall mean:

(a) in the case of the subdivision of land, conditional approval of a final plat as the term is defined in section two hundred seventy-six of the town law, and approval as used in section 7-728 of the village law and section thirty-two of the general cities law;

(b) in the case of a site plan not involving the subdivision of land, approval by the appropriate body or office of a city, village or town of the site plan; and

(c) in those cases not covered by subdivision (a) or (b) above, the issuance of a building permit or other authorization for the commencement of the use, improvement or development for which such permit or authorization was issued or in those local governments which do not require such permits or authorizations, the actual commencement of the use, improvement or development of the land.