

County of Tioga

Local Law No. 4 of the Year 1976.

A Local Law known as the Freshwater Wetlands Law of Tioga County.

Be It Enacted by the Legislature of the County of Tioga as follows:

TIOGA COUNTY LEGISLATURE  
TIOGA COUNTY, NEW YORK

Pursuant to Article 24 of the State Environmental Conservation Law to provide for the protection, preservation and conservation of the freshwater wetlands within its boundaries by establishing a permit system with regard to regulated activities in freshwater wetlands and adjacent areas and by establishing the procedures and standards for the processing or permit applications.

ARTICLE I  
TITLE, PURPOSE

*SECTION 101: TITLE*

This local law shall be known as the Freshwater Wetlands Local Law of Tioga County, New York.

*SECTION 102: PURPOSE*

It is declared to be the public policy of Tioga County to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoliation and destruction of freshwater wetlands, and to regulate the development of such wetlands in order to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of Tioga County. It is further declared to be the policy of Tioga County to exercise its authority pursuant to Article 24 of the State Environmental Conservation Law.

ARTICLE II  
DEFINITIONS

The following terms, phrases, words and their derivatives shall have the meaning given herein:

1. "Adjacent area": means any land in the Tioga County immediately adjacent to a freshwater wetland lying within 100 feet measured horizontally of the boundary of a freshwater wetland.
2. "Agency": means the Tioga County Legislature.
3. "Applicant": means any person who files an application for any permit issued by the Agency pursuant to this law, and includes the agent of the owner or a contractor.
4. "Board": means the Freshwater Wetlands Appeals Board established by Article 24 of the State Environmental Conservation Law.
5. "Boundaries of a freshwater wetland": means the outer limit of the vegetation in paragraphs (a) and (b) of subdivision 7 of this section and of the waters specified in paragraph (c) of such subdivision.
6. "Commissioner": means the Commissioner of the New York State Department of Environmental Conservation.
7. "County": means the County of Tioga.
8. "Freshwater wetlands": means lands and waters lying within the boundaries of Tioga County as shown on a 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 semiaquatic vegetation of the following vegetation types:
    - (1) wetlands trees
    - (2) wetlands shrubs
    - (3) emergent vegetation
    - (4) rooted, floating-leaved vegetation
    - (5) free-floating vegetation
    - (6) wet meadow vegetation
    - (7) bog mat vegetation
    - (8) submergent vegetation
  - (b) Lands and submerged lands containing remnants of any vegetation that is not aquatic or semi-aquatic;

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

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

9. "Freshwater wetlands map": means on which are indicated the boundaries of any freshwater wetland and which has been filed with the Clerk of Tioga County by the State Department of Environmental Conservation pursuant to Section 24-0301 of the State Environmental Conservation Law.

10. "Local government": means a City, County, Town or Village.

11. "Party in interest": means the applicant, the Agency, the State Department of Environmental Conservation, each local government in which the regulated activity or any part thereof is located, and any person who appears and wishes to be a party in interest at the public hearing held pursuant to Section 7 of this law.

12. "Person": means any corporation, firm, partnership, association, trust, estate, one or more individuals, any unit of government or agency or subdivision thereof.

12. "Pollution": means the presence in the environment of human-induced conditions or contaminations in quantities or characteristics which are or may be injurious to humans, plants, animals or property.

14. "Project": means any action which may result in direct or indirect physical impact on a freshwater wetland, including but not limited to, any regulated activity.

15. "Regulated Activity": means any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; any forms of dumping, filing, or deposition of any soil, stones, sand, gravel, mud, rubbish or fill of any kind either directly or indirectly; erecting any structures or roads, the driving of pilings, or placing of any other obstructions whether or not changing the direction and flow of 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 directly into or so as to drain into a freshwater wetland; that portion of any subdivision of land that involves any land in any

freshwater wetland or adjacent area; 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 3 of this law.

16. "Selective cutting": means the annual or periodic removal of trees, individually or in small groups, in order to realize the yield and establish a new crop and to improve the forest, which removal does not involve the total elimination of one or more particular species of trees.

17. "State agency": means any State department, bureau, commission, board of other agency, public authority or public benefit corporation.

18. "State": means the State of New York.

19. "Subdivision of land": means any division of land into two or more lots, parcels, or sites, whether adjoining or not, for the purpose of sale, lease, license, or any form of separate ownership or occupancy.

**ARTICLE III**  
**ESTABLISHMENT OF**  
**FRESHWATER WETLANDS BOUNDARIES**

***SECTION 301: ESTABLISHING OF FRESHWATER WETLANDS BOUNDARIES***

As enabling laws specify and as defined in ARTICLE II, "Freshwater Wetlands" means lands and waters lying within the boundaries of Tioga County as shown on the wetlands map on which are indicated the boundaries of any freshwater wetland and which is to be filed with the Clerk of Tioga County by the State Department of Environmental Conservation pursuant to Section 24-0301 of the State Environmental Conservation Law.

***SECTION 302: WETLANDS MAP***

Said wetlands are bounded as shown on a map entitled "Freshwater Wetlands Map": of Tioga County which was prepared by the State of New York, Department of Environmental Conservation pursuant to Section 24-0301 of the State Environmental Conservation Law.

***SECTION 303: INTERPRETATION OF WETLANDS BOUNDARIES***

Where uncertainty exists with respect to the boundaries of the wetlands, as shown on the map, the Tioga County Planning Board shall interpret those boundaries, following review and approval by the "Board".

**ARTICLE IV**  
**PROCEDURES**

***SECTION 401: PERMITTED USES***

The following uses require no permit.

**A. Farming and related activities:**

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 shall be excluded from regulated activities. Refer to Section 402 of this local law for regulated activities.

Farming activities which conform to the Soil Conservation Service Plan shall be a permitted use within the specified period of time.

**B. Natural Products**

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

**C. Public Health Activities**

Public Health activities, orders and regulations of the New York State Department of Health and the Tioga County 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 ordinance.

**D. Open Space**

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.

#### **E. Emergency Activities**

Any actual and ongoing emergency activity which is immediately necessary for the protection and preservation of life or property or the protection or preservation of natural resource values. Within five days of the end of such an emergency involving the undertaking of any activity which otherwise would be treated as a regulated activity under this ordinance, the person chiefly responsible for undertaking such emergency activity shall send a written statement to the Agency setting forth the pertinent facts regarding such emergency, including an explanation of the life, property or resource values such activity was designed to protect or preserve.

### ***SECTION 402: REGULATED USES***

All persons prior to conducting one of the following uses, with the exception of those stated in SECTION 401: PERMITTED USES, shall first obtain a permit pursuant to this ordinance prior to conducting a regulated activity on any freshwater wetland or adjacent area.

#### **A. Draining, Dredging, Excavation, Removal of Soil, Mud, Etc.**

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, any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind; 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, 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. 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; provided, however, that no regulation shall apply to any area more than one hundred feet from the boundary of such wetland or any such lesser or greater distance therefrom as determined by the appropriate local government.

#### **B. Mosquito Control**

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.

#### **C. Dams and Docks**

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 under-taking such activity must seek permission under this article as well as under any other applicable law.

**D. New York State Laws**

Activities subject to the review jurisdiction of the State Public Service Commission or the New York State Board on Electric Generation Siting and the Environment under Article 7 or Article 8 of the State Public Service Law, respectively. The standards and restrictions of this law will be applied by said bodies in determining whether or not to issue a certificate of environmental compatibility and public need under such articles.

**SECTION 403: PERMIT REGULATIONS**

**A. Standards for issuance of permit**

No permit be issued by the Tioga County Legislature pursuant to this law unless the Agency shall find that:

(1) The proposed regulated activity is consistent with the policy of this law to preserve, protect and conserve freshwater wetlands, and that the benefits derived therefrom, to prevent the despoliation and destruction of freshwater wetlands, and to regulate the development of such wetlands in order to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of Tioga County.

(2) The proposed regulated activity is consistent with the land use regulations applicable in that Town.

(3) The proposed regulated activity is compatible with the public health and welfare;

(4) The proposed regulated activity is reasonable and necessary, and

(5) There is not reasonable alternative for the proposed regulated activity on a site which is not a freshwater wetland or adjacent area.

The applicant shall have the burden of demonstrating that the proposed regulated activity will be in accord with the standards set forth in this subdivision.

**B. Application Procedure**

**1. File Application**

Any person proposing to conduct or cause to be conducted a regulated activity requiring a permit under this law upon any freshwater wetland or adjacent area, shall file an application for a permit with the Director of the Tioga

County Planning Board of Tioga County. The Director shall present the application to the Tioga County Planning Board at their next regularly scheduled meeting.

(a) **Application Form:** An application for a permit shall be filed by the applicant on a form prescribed by the Agency. Such application shall set forth:

- (1) Purpose
- (2) Character
- (3) Extent of proposed regulated activity
- (4) Detailed description of regulated activity
- (5) Plot or site plan
- (6) List of names of owners of record of lands adjacent to the freshwater wetland or adjacent area
- (7) Other information as the Agency deems sufficient to enable it to make the findings and determinations required under law.

(b) **Completed Form.** An application shall not be deemed to be completed or received until the Agency determines that all such information requested, has been supplied in complete and satisfactory form.

## **2. Distribute the Application**

(a) **Local Governments:** The Director of the Planning Board of Tioga County shall cause a copy of such completed application to be mailed to all local governments where the proposed activity or any part thereof is located.

## **3. Date of Public Hearing**

(a) A public hearing shall be held within sixty (60) days of receipt of an application for a permit on a regulated activity. The Agency shall hold the public hearing at suitable location within Tioga County.

## **4. Notice of Hearing**

(a) The Agency shall within twenty-one days of receipt of a completed application provide the applicant with a notice of hearing which the applicant shall publish at his or her own expense at least ten (10) days prior to the date set for the hearing, at least once in each of at least one (1) newspaper of general circulation in the County of Tioga.

(b) The notice of hearing shall:

- (1) State the name of the applicant,
- (2) Specify the location and outline the scope of the proposed regulated activity,
- (3) Scope of proposed regulated activity,



(4) Specify one date, time and place of the public hearing on the application,

(5) Specify that any person who wishes to be a party in interest may do so by appearing at the public hearing,

(6) Specify that the application, including all documents and plot plans therewith, is available at the office of the Planning Director of Tioga County.

## ***SECTION 404: PUBLIC HEARING***

### **A. Hearing Officer**

Any public hearing held on a permit application received under this law shall be conducted by a hearing officer designated by the Agency. The hearing officer shall have full authority to control the conduct and procedure of the hearing, and shall be responsible that a complete record of the hearing be kept. The public hearing shall be held within Tioga County.

### **B. Parties in Interest**

#### **1. Appearance**

Any person may appear as a party in interest.

#### **2. Testimony**

All parties in interest shall be afforded an opportunity to present oral and written arguments on issues of law and policy and an opportunity to call witnesses in their behalf and to present oral and written evidence on issues of fact.

## ***SECTION 405: DECISION OF PERMIT APPLICATION***

### **A. Following Public Hearing**

Where a public hearing has been held regarding a permit application, the Agency shall either issue a permit requested with or without conditions, or deny the application

The decision by the Agency to issue or deny a permit after public hearing shall be based on the record of the hearing and shall be made in writing within thirty days of the Agency's receipt of the hearing record.

### **B. No Public Hearing**

Where no public hearing regarding a permit application has been held, the Agency shall compile an official file consisting of documents submitted by the applicant and any other additional documents relied upon by the Agency with respect to the application.

**C. Notification of Permit**

A copy of the decision of the Agency on each application for a permit under this law shall be mailed by the Agency as soon as practicable to the applicant and to each local government within whose boundaries the proposed regulated activity or any portion thereof is located.

**D. Conditions of Permit**

Any permit issued pursuant to this law may be issued with conditions. Such conditions may be attached as are necessary to assure the preservation and protection of affected freshwater wetlands.

**1. Conditions**

Every permit issued pursuant to this law shall contain the following conditions:

- (a) The Agency or its representative shall have the right to inspect the project from time to time;
- (b) The permit shall expire within 12 months of issuance; extensions may be granted at the discretion of the Agency;
- (c) The permit holder shall notify the Agency of the date of which project construction is to begin, at least five (5) days in advance of such date, and
- (d) The Agency's permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit.

**2. Record of Permit**

The condition shall be made a part of the permits' file.

**3. Bonding Requirements**

(a) The Agency may require that, prior to commencement of work under any permit issued pursuant to this ordinance, the permittee shall post a bond with the Agency, in an amount determined by the Agency, conditioned upon the faithful compliance with the terms of such permit and for the indemnification of Tioga County for restoration costs resulting from failure to do so comply. Such bond shall be issued by a corporate surety authorized to do business in the State and shall be in favor of Tioga County. It shall remain in effect until the Agency certifies that the work has been completed in compliance with the terms of the permit of the bond is released by the Agency, or a substitute bond is provided.

- (b) The bond shall become a part of the permits' file.

**ARTICLE V**  
**THE AGENCY**

## ***SECTION 501: POWERS AND DUTIES***

In order to carry out the purposes and provisions of this ordinance, the Agency shall have the following powers and duties:

### **A. Appointments**

To appoint officers, agents, employees and prescribe their duties and qualifications and fix their compensation;

### **B. Prepare Rules and Regulations**

To adopt, amend and repeal, after public hearing (except in the case of rules and regulations that relate to the organization or internal management of the Agency), such rules and regulations, consistent with this ordinance as it deems necessary to administer this ordinance and to do any and all things necessary or convenient to carry out the purpose and policies of this ordinance.

### **C. Staffing**

To contract for professional and technical assistance and advice; and

### **D. Hold Hearings**

To hold hearings and subpoena witnesses in the exercise of its powers, functions and duties provided for by this ordinance.

E. The Agency may relinquish its authority under this Local Law if it finds that the local municipality (Town, Village) is willing and prepared to exercise its authority.

## **ARTICLE VI** **OTHER LAWS AND REGULATIONS**

## ***SECTION 601: OTHER LAWS AND REGULATIONS***

### **A. Other Laws**

To the greatest extent practicable, any public hearing held pursuant to this ordinance shall be incorporated with any public hearing required by or pursuant to the New York State Town Law, Village Law, General City Law, General Municipal Law or Environmental Conservation Law relating to approvals or permits otherwise required for the undertaking of regulated activities on the freshwater wetland or adjacent area in question.

### **B. Other Regulations**

No permit granted pursuant to this ordinance shall remove any person's obligation to comply in all respects with the applicable provisions of any other federal, State or local law or regulation, including but not limited to the acquisition of any other required permit or approval.

ARTICLE VII  
ADMINISTRATION AND ENFORCEMENT

***SECTION 701: SUSPENSION AND REVOCATION OF PERMITS***

**A. Suspension and Revocation**

The Agency may suspend or revoke a permit issued pursuant to this ordinance where it finds that the permittee has not complied with the regulations of this local law.

**B. Reasons**

The Agency shall set forth in writing in the file it keeps regarding a permit application its findings and reasons for revoking or suspending a permit pursuant to this section.

***SECTION 702: VIOLATION AND PENALTIES***

**A. Administrative Sanctions**

Any person who violates, disobeys or disregards any provision of this ordinance including any provision of any permit issued pursuant to this ordinance or any rule or regulation adopted by the Agency pursuant to this local law shall be liable to the people of the State for a civil penalty not to exceed three thousand dollars for every such violation. The assessment shall be made following a hearing or opportunity to be heard upon due notice and with the rights to specification of the charges and representation by counsel at such hearing by the Agency. Such penalty may be recovered in an action brought by the Attorney General at the request and in the name of the Agency in any court of competent jurisdiction. Such civil penalty may be released or compromised by the Agency before the matter has been referred to the Attorney General, and such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Attorney General with the consent of the Agency. In addition, the Agency shall have power, following a hearing held in conformance with the procedures set forth in Section 71-1709 of the State Environmental Conservation Law, to direct the violator to cease his or her violation of this ordinance and to restore the affected freshwater wetland to its condition prior to the violation, insofar as that is possible within a reasonable time and under the supervision of the Agency. Any such order of the Agency shall be enforceable in an action brought on by the Attorney General at the request and in the name of the Agency in any court of competent jurisdiction. Any civil penalty or order issued by the Agency pursuant to this subdivision shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules.

***SECTION 703: ENFORCEMENT***

**A. Authority**

The Attorney General, upon his or her own initiative or upon complaint of the Agency or Commissioner, shall prosecute persons alleged to have violated any such order by the Agency pursuant to this local law.

The Agency or Commissioner shall have the right to seek equitable relief to restrain any violation or threatened violation of any provisions of this local law.

**ARTICLE VIII**  
**REVIEW AND APPEAL**

***SECTION 801: REVIEW AND APPEAL***

**A. Review and Appeal**

Any decision or order of the "Agency" made pursuant to or within the scope of this local law may be reviewed and appealed at the initiation of any person affected thereby. Within thirty days of notice of review or appeal, in accordance with Title II of Article 24 of the State Environmental Conservation Law, the Board shall make a decision on the case.

**ARTICLE IX**  
**SEVERABILITY**

***SECTION 901: SEVERABILITY***

If any section of this local law or the application thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined to its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person or circumstances and to this end the provisions of each section of this ordinance are hereby declared to be severable.

**ARTICLE X**  
**EFFECTIVE DATE**

***SECTION 1001: EFFECTIVE DATE***

**This Local Law shall take effect upon the filing with the County Clerk of Tioga County of the final freshwater wetlands map.**

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 4 of 1976 of the (County) of Tioga was duly passed by the Tioga County Legislature on November 29, 1976, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County) (City) (Town) (Village) of was duly passed by the on , 19 , and was (approved)(not disapproved)(repassed after disapproval) by the on and was deemed duly adopted on , 19 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on , 19 , and was (approved)(not disapproved)(repassed after disapproval) by the on , 19 . Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on , 19 , in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on , 19 , and was (approved)(not disapproved)(repassed after disapproval) by the on , 19 . Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of , 19 , in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the City of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on , 19 , become operative.

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\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19 \_\_\_\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_, 19 \_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

\_\_\_\_\_  
Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date:

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

State of New York

County of Tioga

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Signature

Title

County of Tioga

City

Town

Village

Date: