

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
MAY 23 2003

MISCELLANEOUS
& STATE RECORDS

~~County~~
~~City~~ of Shelter Island
Town
~~Village~~

Local Law No. 7 of the year 2003.

A local law ENTITLED AMENDMENTS TO CHAPTERS 129 AND 133 RE WETLAND REGULATION
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~County~~
~~City~~ of Shelter Island as follows:
Town
~~Village~~

SECTION 1. AMENDMENT OF TOWN CODE:

A. Article I, "Policy; Definitions" of Chapter 129 of the Code of the Town of Shelter Island is hereby changed to the title "Policy" and is amended to read as follows:

§129-1. Purpose; findings.

A. Rapid population growth, the spread of development and increasing demands upon natural resources are encroaching upon or disturbing many of the wetlands within the Town of Shelter Island, which, if preserved and maintained in an undisturbed and natural condition, are a highly important natural resource, as well as a physical, social, aesthetic, recreational and economic asset to the Town.

B. Wetlands constitute one of the most vital and productive areas in the natural world and collectively have many values including but not limited to marine food chain productions, wildlife habitat, conveyance of flood and storm water, outdoor recreation, waterfowl production, protection of water quality and reduction in sediment, protection of groundwater recharge and discharge, sedimentation control, education and research, open space and aesthetic appreciation, and fisheries production. Therefore, the protection and preservation of both tidal and freshwater wetlands are essential.

C. The Shelter Island Comprehensive Plan calls for regulatory action which establishes a goal to protect the functions and values of the Town's sensitive wetlands. It is the purpose of this local law to provide for the protection, preservation, proper maintenance and use of the Town's wetlands, by preventing or minimizing erosion due to flooding and stormwater runoff, by maintaining the natural groundwater supplies, preserving and protecting the purity, utility,

(If additional space is needed, attach pages the same size as this sheet, and number each.)

water retention capability, protecting and encouraging natural plant and wildlife diversity, ecological functions, recreational usefulness and natural beauty of all wetlands, and other related features of the terrain, and by providing and protecting appropriate habitats for natural wildlife. It is the policy of this local law that there shall be no net loss of wetlands due to development or other activities.

D. The Town Board of the Town of Shelter Island hereby finds and declares it to be the public policy of the Town to preserve, protect, and maintain the functions and values of its wetlands and the benefits derived therefrom, to regulate their use and development in order to prevent their despoliation and destruction. Such policy is consistent with the Town's Comprehensive Plan and the general health and welfare of its inhabitants and the beneficial, economic and social development of the Town.

B. Article II, "Activities which may be Conducted Within Regulated Area" is hereby deleted in its entirety.

C. Article III, "Permits", of Chapter 129 of the Code of the Town of Shelter Island is hereby re-numbered to Article II, "Permits", and is amended to read as follows:

§129-2. Permit required.

Any regulated activity in, on or over or within the regulated area, entirely or in part, shall require a wetlands permit unless it is specifically exempted or allowed without a permit, as indicated in the following table. Any regulated activity for which a permit is required, which is carried out without a permit or in violation of the conditions of a permit, is a violation of this Code and subject to criminal and civil penalties.

Types of Activities	Within Vegetative Buffer	Within Adjacent Regulated Area
<p>Key: No = Activity not allowed, however applications may be processed in consideration of differences between Town Law and DEC Laws, if all other remedies have been exhausted and DEC approval is obtained or letter of non-jurisdiction is applicable. NPR = Activity does not require wetlands permit. PR = Wetlands permit required.</p>		
<p>New structure on lot with or without bulkhead New construction (≤100 s.f.) Other new construction</p>	<p>NPR No</p>	<p>NPR PR</p>
<p>Existing Structure on lot with bulkhead Repair Reconstruction (no expansion) Reconstruction with expansion upward within footprint Reconstruction with expansion beyond footprint if it is farther away from the designated wetlands than the nearest point of the existing structure</p>	<p>NPR PR PR No</p>	<p>NPR NPR NPR NPR</p>
<p>New construction with expansion upward within footprint New construction (≤100 s.f.) New construction (outside footprint) New construction (all other)</p>	<p>PR NPR No No</p>	<p>NPR NPR PR PR</p>

Existing Structure on lot without bulkhead		
Repair	NPR	NPR
Reconstruction (no expansion)	PR	PR
Reconstruction with expansion upward within footprint	PR	PR
Reconstruction with expansion beyond footprint if it is farther away from the designated wetlands than the nearest point of the existing structure	No	PR
New construction with expansion upward within footprint	PR	PR
New construction (≤ 100 s.f.)	NPR	NPR
New construction (outside footprint)	No	PR
New construction (all other)	No	PR
Landscaping (per code restrictions)	NPR	NPR
Construction, creation, elimination, alteration, relocation or enlargement or diminishment of waterway	PR	PR
Demolition	PR	PR
Bulkhead/Dock & no filling or wetlands disturbance involved	NPR	NPR
Bulkhead/Dock & filling or wetlands disturbance involved	PR	PR
Fence	NPR	NPR
Driveway	No	PR
Utilities (including well)	NPR	NPR
Septic (changes to existing)	PR	PR
Septic (new)	No	No

§129-3. General Guidelines to Activities within Regulated Area.

A. Planting, seeding, cultivating or maintaining a previously disturbed area is allowed so long as there is no use of sod, turf, fertilizers, pesticides, herbicides, fungicides or other pollutants. New or replacement plantings in the vegetative buffer shall be of native vegetation, as set forth in a list approved by the Town Board.

B. Undisturbed areas must remain in a natural, undisturbed state, except for the following:

1. Removal of dead, diseased or damaged trees when such removal is necessary for reasons of safety or to control the spread of disease.
2. Removal of obnoxious plant growth such as catbrier, poison ivy, wild grape, oriental bittersweet, Russian olive or other common invasive species.
3. Removal of vegetation on a five foot wide path for access to, or for construction of, a dock, bulkhead or boardwalk, or other access to the water.
4. Tree limbs may be trimmed upward from the ground to a maximum of 15 feet to permit water views. It is permitted to remove trees of less than four inches in diameter when measured four feet above ground level as long as root structure is not removed and the ground area remains vegetated.

5. Shrubs may be trimmed to a height of four feet to enhance growth of nearby ground vegetation.

C. Construction of a dock, bulkhead and boardwalk, does not require a wetlands permit so long as applicant has obtained a permit pursuant to Chapter 53 of this Code, and the project does not require any disturbance, removal or filling of wetlands or produce any negative impact on the wetlands. No new bulkheads will be allowed unless the applicant can demonstrate that land and/or a significant structure(s) on the property are in imminent peril of destruction from erosion and that other measures of curtailing erosion, such as rock revetments, vegetation restoration, etc., are not viable.

D. The depositing or removal of the natural products of wetlands during recreational or commercial fishing, shellfishing or aquaculture is allowed so long as there is no undue disturbance of the wetlands.

E. Any actual and ongoing emergency activity which is immediately necessary for the protection and preservation of life, property or natural resources may be done on a temporary basis without a permit, although the applicant must subsequently obtain a permit if one is required.

F. The dumping of sewage, liquid waste, refuse, toxic or other offensive materials shall not be permitted within the regulated area, except as permitted by the DEC and the Town.

G. Any activity which is not required to obtain a wetlands permit is still subject to all other permit requirements.

§129-4. Permit procedure.

A. The owner or authorized agent of the owner proposing to conduct or cause to be conducted a regulated activity as defined herein upon or over any wetland or within a regulated area shall file an application for a permit on a form prescribed by the Town Board. Such application shall include the following:

1. A current, certified survey prepared by a licensed surveyor showing the information set forth in the application form approved by the Town Board.

2. The "short form" Environmental Assessment Form (EAF) mandated by SEQRA and the Shelter Island local Environmental Quality Review Law, Chapter 60, setting forth the information and documentation required for a project permit involving wetlands or the regulated area, subject to a request by the Town Board for additional information in a long form EAF.

3. A disapproval letter and application form indicating all proposed structures, and the requisite fee, established from time to time by resolution of the Town Board.

4. A vegetation plan must be submitted for any proposal which involves new construction, showing the way in which the vegetative buffer will be affected and preserved.

5. Additional hydrological computations, topographical or engineering studies, ecological site plan or other factual or scientific data as deemed necessary by the Town Board.

6. Current photographs of proposed site showing proposed project location, current vegetative buffer, and existing sediment/erosion controls.

7. Ten (10) copies of any such application shall be filed with the Town Clerk.

B. Upon receipt of all copies of the complete application, the Town Clerk shall forward one (1) copy to the Planning Board, one (1) copy to the Conservation Advisory Council, and five (5) copies to the Town Board. The Planning Board and the Conservation Advisory Council shall review said application and shall have a forty-five (45) day period following transmittal of the application to forward their written report of findings and recommendations to the Town Board.

C. The Town Board will accept and process wetlands permit applications only if they are accompanied by a DEC wetlands permit and all other required permits, including the Health Department and Army Corps approvals.

D. Any application for a wetlands permit shall be subject to coordinated review with the Department of Environmental Conservation in accordance with the Lead Agency Agreement executed on June 20, 1983.

E. The Town Board shall schedule a public hearing on the application with no less than ten (10) days notice, to be published in one (1) or more newspapers having a general circulation in the Town. At least ten (10) days prior to the hearing, the applicant shall mail notice of the time, date and place of the hearing to neighbors within a two hundred (200) feet radius of the applicant's property line.

F. Within sixty (60) days after the public hearing or receipt of any requested information, whichever is later, the Town Board shall render a decision to approve, approve with modifications or conditions or disapprove the issuance of a permit.

G. Should a permit be granted, the applicant shall, before the issuance of such permit, file with the Town Clerk a certificate of insurance showing the Town of Shelter Island as an additional insured under a comprehensive general liability policy with minimum limits of \$500,000.00. The work covered by the permit must be substantially started within two (2) years of issuance, or the permit is void.

H. Any new or additional activity not covered in the original wetlands permit shall require an amendment to the wetlands permit. The amendment follows the same application process as a new wetlands permit.

§129-5. Criteria for Permit Issuance.

A. No permit shall be issued unless the applicant demonstrates, and the Town Board finds, that the following standards have been met:

1. The proposed action and location will not create a risk of impairing the function and value of the wetland and buffer.

2. The proposed project will not diminish any wetland in size, unless the approving authority finds that the proposed activity is water-dependent or requires access to the wetland as a central element of its basic function and will result in the minimum possible alteration or impairment of the wetland.

3. The proposed project will not have a negative impact on the quantity and quality of groundwater.

4. The proposed project will not create a net increase in the risk of runoff.

5. The applicant has demonstrated that there are no practicable alternatives which allow the project to be constructed outside the regulated area. Practicable alternatives are presumed to be available unless the applicant clearly demonstrates otherwise. In making this determination, note that the Town Board generally finds that conducting the proposed regulated activity on the side or landward side of the house is highly preferred to conducting it within the regulated area.

6. The applicant has submitted information to describe alternative site locations and configurations sufficient for a determination that the proposed work and location would have a less adverse environmental impact than any other practicable alternative in order for it to be approved. Practicable alternatives that are constructed entirely outside the vegetative buffer are presumed to have less adverse impacts on the wetlands than projects that do not meet such standards, unless the applicant clearly demonstrates otherwise.

7. The Town Board has determined that the applicant will voluntarily implement, within three months of the issuance of the permit, adequate mitigation measures that contribute to the protection and enhancement of wetlands and wetland benefits.

B. The Town Board reserves the right to impose any conditions and mitigation measures it deems to be compatible with the purpose and public policy of this local law.

§129-6. Fees.

The fees for an application under this local law shall be set from time to time by resolution of the Town Board.

§129-7. Waiver

The Town Board, upon the request of an applicant for a permit, may waive the submission of any information required by the provisions of §129-4, if it finds it to be unnecessary.

D. Article IV, "Additional Regulations", and §129-10 "Additional regulations enumerated" are hereby deleted in their entirety.

E. Article V, "Administration and Enforcement", is hereby renumbered to Article III, titled "Definitions, Administration and Enforcement", and §§129-11 through 129-13 are hereby renumbered to §§129-9 through 129-11, respectively.

F. Article V, §129-14 is hereby renumbered to §129-12 of Chapter 129 of the Code of the Town of Shelter Island, and a new paragraph (B) is hereby added to read as follows, and the subsequent paragraphs are relettered respectively:

§129-12. Penalties for offenses.

B. Any disturbance of the vegetative buffer that exceeds the standards specified in §129-3, must be restored in its entirety, by submission of a revegetation plan which satisfies the Town Board and by the installation of native vegetation, as designated in a list prepared by the Conservation Advisory Council, to restore the vegetative buffer.

G. Article I, §129-2, "Definitions", is hereby renumbered to Article III, §129-8, and the following existing definitions are amended to read as follows:

ADJACENT REGULATED AREA - The area lying outside the seventy-five (75) feet Vegetative Buffer but within the one hundred (100) feet regulated area.

BOARDWALK - a walk, or a stairway down a bluff, constructed of planking, which can be at ground level or elevated over vegetation and, which cannot be more than five (5) feet wide.

EXPANSION - The construction of an addition to an existing structure.

FOOTPRINT - The outside perimeter of an existing foundation for a structure, including any covered porches attached to said structure but excluding patios, decks, stairways, steps, or balconies.

NEW CONSTRUCTION - The erection of a structure in a location where no structure previously stood, whether freestanding or attached to an existing structure.

RECONSTRUCTION - An alteration to any part of an existing structure which replaces fifty (50) percent or more of the existing structure, including walls, roofs, floors, wiring, plumbing and insulation.

REGULATED ACTIVITY - Activities requiring a permit, including but not limited to:

- A. dredging, disturbing, excavating or mining, either directly or indirectly;
- B. dumping, filling, or depositing, either directly or indirectly;
- C. disturbing, clearing cutting or removing vegetation;
- D. erecting or expanding any buildings or structures including docks, bulkhead, boardwalks, driveways, tennis courts, or pools;
- E. constructing or expanding roads;

F. installing utilities, septic systems, sumps or catchment basins;
G. driving pilings or placing any obstructions, whether or not changing the ebb and flow of the water;

H. any form of pollution, including but not limited to installing an on-site sewage disposal system, running sewer outfall, discharging sewage treatment effluent, rainwater runoff, water discharge from a swimming pool, or other liquefied wastes into or so as to drain into a wetland and which occur within the regulated area;

I. any other activity which impacts any of the functions or benefits of wetlands.

REGULATED AREA - The area in, on or over a wetland and within one hundred (100) feet of the landward boundary of a tidal wetland or within one hundred (100) feet of the landward boundary of a freshwater wetland, as measured horizontally. It shall consist of the seventy-five (75) feet Vegetative Buffer plus the twenty-five (25) feet Adjacent Regulated Area.

REPAIR - An alteration to any part of an existing structure which replaces less than fifty (50) percent of the existing structure, including walls, roofs, floors, wiring, plumbing and insulation.

VEGETATIVE BUFFER - There shall be a shoreline vegetative buffer which extends seventy-five (75) feet landward from the most landward point of tidal or freshwater wetlands, as those terms are defined herein.

WETLANDS (is amended as follows, the balance of the definition to remain unchanged):

A. TIDAL WETLANDS

(2) All lands generally covered or intermittently covered with, or which border on or lie beneath tidal waters such as banks, beaches, bogs, salt marsh, swamps, meadows, flats, bars, shoals, littoral zones, high marsh and salt meadow or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters and including waters immediately adjacent to bulkheads.

G. Article V, §129-13 of Chapter 129 of the Code of the Town of Shelter Island is hereby added to Article III to read as follows:

§129-13. Appeals.

Any person aggrieved by the issuance, denial, suspension or revocation of a permit or by a civil penalty imposed under this Chapter may seek relief pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York. Such proceedings shall be instituted within thirty (30) days after the filing of a decision in the Office of the Town Clerk.

H. Article V, §129-15, "Severability", is hereby renumbered to §129-14 and included in Article III of Chapter 129 of the Code of the Town of Shelter Island.

I. Article III, §133-12(C), "Near Shore and Peninsular Overlay District", of the Code of the Town of Shelter Island is hereby amended to read as follows:

§133-12. Near Shore and Peninsular Overlay District.

C. Shoreline vegetative buffer. The purpose of the shoreline vegetative buffer is to protect bay, creek or fresh waters from pollution caused by stormwater runoff, or by applications of chemicals to the land. Such buffers should be able to absorb excess nutrients, thereby reducing bacterial and chemical input to the waterways from such stormwater runoff or chemicals. The shoreline vegetative buffer shall be subject to the provisions of Chapter 129, and activities within that area shall require a permit as specified in Chapter 129.

SECTION 2. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State.

(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. 7 of 2003 of the ~~(County)(City)~~(Town)(Village) of Shelter Island was duly passed by the Town Board on May 16 2003, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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 20_____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Elective Chief Executive Officer)*
(Name of Legislative Body)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. 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 _____ 20____, in accordance with the applicable provisions of law.
(Elective Chief Executive Officer)*
(Name of Legislative Body)

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 20_____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.
(Elective Chief Executive Officer)*
(Name of Legislative Body)

* 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 chairperson 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.

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 20_____ 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 _____ 20____, became operative.

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

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, 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 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 _____, above.

Brenda D. Ober
Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

(Seal)

Date: May 16, 2003

(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 Suffolk

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]
Signature

Town Attorney
Title

~~County~~
~~City~~ of Shelter Island
~~Town~~
~~Village~~

Date: May 16, 2003