

**PROPOSED LOCAL LAW NO. 1  
OF THE YEAR 2017**

**A PROPOSED LOCAL LAW  
FOR THE PROTECTION OF WETLANDS,  
WATER BODIES AND WATERCOURSES  
WITHIN THE VILLAGE OF CASSADAGA**

**BE IT ENACTED BY THE VILLAGE BOARD  
OF THE VILLAGE OF CASSADAGA  
AS FOLLOWS:**

**SECTION 1. PURPOSE AND INTENT**

The Board of Trustees of the Village of Cassadaga finds that growth of population and attendant residential and commercial development and increasing demands upon natural resources have the potential of encroaching upon, despoiling, polluting or eliminating many of the wetlands, water bodies and watercourses of the Village, which, if preserved, constitute the important physical, economic, social, historic, archaeological, aesthetic, recreational and ecological assets to present and future residents of the Village and provide important beneficial functions, including natural flood and stormwater control, groundwater recharged, natural pollution treatment, erosion and sediment control, wildlife habitat creation, recreation and open space enhancement and educational opportunities.

It is the intent of this law to protect the public interest, general health, safety, economic and general welfare of the citizens of the Village by providing for the protection, preservation, proper maintenance and use of its wetlands, water bodies and watercourse by preventing damage from erosion or siltation, minimizing disturbance, preserving natural habitats and protecting against flood and pollution and otherwise protecting the quality of such areas for their conservation, economic, aesthetic, recreational and other public uses and values. Further, it is the intent of this law to protect the surface water and groundwater resources wholly and partly within the Village from the threat of pollution, misuse or mismanagement. Therefore, because all wetlands, water bodies and watercourses are presumed to be of importance, it is hereby declared that the regulation of wetland and wetland buffer areas of the Village, as defined in §644-A of this law and as this law becomes effective relative to any specific area as described herein, is essential to the health, safety, economic and general welfare of the citizens of the Village. This law is intended to be enforced concurrently with New York State Wetland management laws.

**SECTION 2. VILLAGE OF CASSADAGA ZONING LAW ARTICLE VI  
SUPPLEMENTAL REGULATIONS IS AMENDED AS FOLLOWS:**

**ADD - SECTION 644 PROTECTION OF WETLANDS, WATER BODIES AND  
WATERCOURSES**

A. Definitions

As used in this section, the following terms, phrases or words and their derivations shall have the meanings given herein:

1. Agriculture – The act of raising crops for economic gain; and further defined in 6 NYCRR 663.2(c).
2. Applicant – Any individual or individuals, firm, partnership, association, corporation, company, organization or other legal entity of any kind, including municipally, corporations, governmental agencies or subdivisions thereof, filing an application pursuant to this section.
3. Board of Trustees – The Board of Trustees of the Village of Cassadaga.
4. Clear-Cutting – The cutting of more than 10 trees with a DBH of four inches or greater on a lot, within any twelve-month period.
5. Deposit – To fill, replace, eject or dump any liquid, solid or gaseous material, or the act thereof, but not including stormwater.
6. Diameter at Breast Height (DBH) – The diameter of a tree measured at a point 4 ½ feet above the ground, or at the highest point of the remaining stump if less than 4 ½ feet, on the uphill side of the tree.
7. Freshwater Wetlands Map – The final Freshwater Wetlands Map promulgated by the New York State Department of Conservation as defined in 6 NYCRR 663.2(p).
8. Hydric Soil – A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part, as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, prepared by the federal government and as updated from time to time, and as on file with the Village Clerk of the Village of Cassadaga.
9. Hydrophytic Vegetation – Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content as set forth in the Federal Manual for Identifying and delineating Jurisdictional Wetlands, prepared by the federal government

and as updated from time to time, the Wetlands Plants of the State of New York, 1988, published by the United States Fish and Wildlife Service in cooperation with the National and Regional Wetlands Plant List Review Panels, and as updated from time to time, and as on file with the Village Clerk of the Village of Cassadaga.

10. Lot – Any parcel of land, not necessarily coincident with a lot or lots shown on a map of record, which is occupied or which is to be occupied by a building and its accessory buildings, if any, or by a group of buildings having any land in common and the buildings accessory thereto, if any, together with the required open spaces appurtenant to such building or group of buildings.
11. Material – Substances including but not limited to soil, silt, gravel, rock, sand, clay, peat, mud, debris and refuse, any organic or inorganic compound, chemical agent or matter (excluding pesticides, herbicides, algacides and agricultural or radioactive wastes to the extent that the same are exempt or regulated exclusively by the state), sewage sludge or effluent or solid waste (industrial or municipal).
12. Person – Any individual or individuals, firm, partnership, association, corporation, company, organization or other legal entity of any kind, including municipal corporations, government agencies or subdivisions thereof.
13. Pollution – The presence in the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant or animal life or to property.
14. Remove – To dig, dredge, suck, bulldoze, dragline, blast or otherwise excavate or regrade, or the act thereof.
15. Tree – A living woody plant with an erect perennial trunk which is four inches or more in DBH.
16. Vernal Pool – Relatively open areas of surface water formed in depressions within uplands that are inundated to a minimum depth of six inches for three to four months during the growing season (usually March through June) and that are devoid of fish and contain amphibians (adults, egg masses or larval stages) during the growing season.
17. Water Body – Any natural or artificial, permanent or intermittent, public or private water segment such as ponds, lakes or reservoirs, that are contained within, flow through, or border on the Village of Cassadaga. For purposes of this definition, “intermittent” shall mean that water stands for at least three consecutive months in a twelve-month period. A

water body is intermittently, seasonally or permanently covered by water and contains a discernible shoreline.

18. Water Course – Any natural or artificial, permanent or intermittent, public or private water segment such as rivers, streams, brooks or waterways, that is contained within, flows through, or borders on the Village of Cassadaga. For purposes of this definition, “intermittent” shall mean that water flows for a at least three consecutive month in a twelve-month period. A drainage, ditch, swale or surface feature that contains water only during and immediately after a rain storm or a snow melt shall not be considered a watercourse.

19. Wetlands

- A. Those geographical areas of 5,000 square feet or more, with the exception of vernal pools as defined in this section that are regulated regardless of size, inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, vernal pools, wet meadows, fens and similar areas. For purposes of this section, wetlands are defined as having one or more of the following characteristics:
  - 1) Hydrophytic vegetation.
  - 2) Hydric Soils.
  - 3) Wetlands hydrology.
- B. Water bodies shall be encompassed under the term “wetland” as used in this section. For purposes of identification, the minimum area requirement of 5,000 square feet for the “wetland” definition shall not apply and a minimum area requirement of 2,500 square feet shall apply instead.
- C. Watercourses shall be encompassed under the term “wetland” as used for this section. For purposes of identification, the minimum area requirement of 5,000 square feet for the “wetland” definition shall not apply.
- D. “Wetland,” as defined and regulated under this section, shall include lands and waters that meet the definition provided in Section 24-0107, Subdivision 1, of the New York State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law) and have an area of at least 12.4 acres or, if smaller, have unusual local importance as determined by the Commissioner pursuant to Section 24-0301, Subdivision 1, of the Act. The approximate boundaries of such lands and waters are indicated on the Official Freshwater Wetlands Map promulgated by the Commissioner pursuant to

Section 24-0301, Subdivision 5, or such a map that has been amended or adjusted pursuant to Section 24-0301, Subdivision 6.

20. Wetlands Buffer – A specified area surrounding a wetlands, which is intended to provide protection to the wetlands from human activity and other encroachment associated with development. The wetlands buffer shall be determined to be the area extending 120 feet horizontally from and paralleling the outermost wetlands boundary or top of the band of the watercourse.
21. Wetlands Hydrology – The sum total of wetness characteristics in areas that are inundated or have saturated soils for a sufficient duration to support hydrophytic vegetation.

#### B. Regulated Activities

Except as provide in Subsection C hereof, it shall be unlawful to conduct, directly or indirectly, any of the following activities upon any wetlands or within the wetlands buffer:

1. Placement or construction of any structure.
2. Any form of drainage, dredging, excavation or removal of material, either directly or indirectly.
3. Any form of dumping, filing or depositing of material, either directly or indirectly.
4. Installation of any service lines or cable conduits.
5. Introduction of any form of pollution, including but not limited to the installation of a septic tank, the running of a sewer outfall or the discharging of sewage treatment effluent or other liquid wastes.
6. Alteration or modification of natural features and contours.
7. Alteration or modification of natural drainage patterns.
8. Construction of dams, docks or other water control devices, piling or bridges, whether or not they change the natural drainage characteristics.
9. Installation of any pipes or wells.
10. Clear cutting.
11. Removal or cutting of any vegetation except as permitted in Subsection C.
12. Depositing or introducing of chemicals, including herbicides, pesticides and fertilizers, except as permitted in Subsection C.
13. The grazing and watering of one or more horses or other animals other than those directly producing agricultural products.
14. Any other activity that may impair the natural function(s) of a wetlands as described in Subsection A.
15. Decorative landscaping and planting, except that decorative landscaping and planting in a wetlands buffer shall not require a permit.

### C. Activities Permitted by Right Without Permit

The following activities are permitted by right within any wetlands or wetlands buffer:

1. The depositing or removal of the natural products of the wetlands by recreational or commercial fishing, shell fishing, aquaculture, hunting or trapping where otherwise legally permitted.
2. Outdoor recreational activity that does not materially alter the natural state of the land or require construction, including use of field trails for nature study, hiking, swimming, skin diving and boating, where otherwise legally permitted.
3. Normal ground maintenance, including mowing, trimming of vegetation and removal of dead or diseased vegetation, around a residence except for the use of fertilizers, pesticides and herbicides in wetlands.
4. Repair of walkways and wall when the work does not involve the use of any machinery.
5. Operation and maintenance of such dams, retaining walls, terraces, sluices, culverts or other water control structures or devices as legally existed on the effective date of this section.
6. Public health activities pursuant to the order of the Chautauqua County Department of Health or the New York State Department of Health.
7. Any actual and ongoing emergence activity that is immediately necessary for the protection and preservation of life of property.
8. The growing of crops that directly produce agricultural products.
9. The grazing and water of one or more horses or other animals that directly produce agricultural products.
10. Deposition herbicides, pesticides or fertilizers in a wetlands buffer in accordance with manufacturers' recommendations and accepted horticultural practices.
11. Decorative planting in a wetlands buffer.

### D. New York State Department of Environmental Conservation

1. Any person who proposes to conduct or cause to be conducted a regulated activity specified in Subsection B hereof upon any wetlands or wetlands buffer shall file an application for a permit with the NYSDEC. The applicant shall provide to the Village Code Officer a copy of the NYSDEC permit application and any permit issued to the applicant for conducting the regulated activity prior to engaging in the regulated activity permitted by NYSDEC.

### E. Exemptions

Any site for which an application has been submitted to NYSDEC shall be subject to inspection upon notice to the property owner and applicant at any reasonable time,

including weekends and holidays, by the Village Code Enforcement Officer or their designated representatives. The applicant, by making application for such permit, shall be deemed to have given its consent to such inspection. The applicant shall indemnify and hold the Village harmless against any damage or injury that may be caused by or arise out of entry onto the subject property in connection with the administration of this law.

#### F. Completion of Work

1. Within 30 days after completion of all work authorized under a permit issued by NYSDEC, the applicant shall notify the Village Code Enforcement Officer of such completion. Within 30 days of such notification and submission, the Village Code Enforcement Officer shall inspect the work for compliance with all conditions of the NYSDEC permit.
2. When all work authorized under the NYSDEC permit is deemed acceptable, the Village Code Enforcement Officer shall issue a certificate of completion.
3. When work authorized under the NYSDEC permit is deemed not acceptable, the Village Code Enforcement Officer shall so notify the applicant. The notification of noncompliance shall include a list of all conditions in violation of the terms of the NYSDEC permit and shall specify a time limit for the correction of all items so listed.

#### G. Penalties for Offenses; Enforcement

1. Any person who violates a stop work order issued by the Village Code Enforcement Officer pursuant to this law shall be guilty of an offense, punishable by a fine not less than \$500.00 dollars nor more than \$1,000.00 dollars. For a second and each subsequent violation of the stop work order that the violator commits shall be an offense punishable by a fine of not less than \$1,000.00 dollars nor more than \$2,000.00 or a term of imprisonment of not more than 15 days, or both. Each violation of the provision of this section shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.
2. The Village Code Enforcement Officer shall issue a stop work order to any person in violation of this section. The stop work order will remain in effect until such time as the violator has obtained a NYSDEC permit to engage in the regulated activity or has come into compliance with the terms of the existing NYSDEC permit governing the conduct of the regulated activity on the subject property.

3. The Village also shall have the right to seek equitable relief to restrain any violation or threatened violation of any provisions of this section and to compel the restoration of the affected wetlands and wetlands buffer to its condition prior to the violation of the provision of this section.
4. The Village shall not issue a building permit, temporary certificate of occupancy or certificate of occupancy for any property for which a violation of this law has been served, or for which an administrative or judicial proceeding has been commenced under this section, until said violation or proceeding is dismissed or resolved to the satisfaction of the approving authority or court, as is appropriate.
5. The Village Code Enforcement Officer is hereby authorized to issue appearance tickets for violations of this section.

### **SECTION 3. SEVERABILITY**

If any provision of this law shall be held for any reason to be invalid, such determination shall not invalidate any other provision hereof.

### **SECTION 4. EFFECTIVE DATE**

This Local Law shall take effect immediately upon filing with the Secretary of State as provided by law.

Dated: Cassadaga, New York  
September \_\_\_\_\_, 2017