

**Wetland Ordinance – Draft 1-2 2016**

A LOCAL LAW to repeal in its entirety Chapter 178 of the Code of the Town of Yorktown entitled “FRESHWATER WETLANDS” and replaced with a new Chapter 178 of the Code of the Town of Yorktown entitled “FRESHWATER WETLANDS PROTECTION ORDINANCE”

Be it enacted by the Town Board of the Town of Yorktown as follows:

**Section I. Statement of Authority.**

This Local Law is authorized by the New York State Constitution, the provisions of the New York Municipal Home Rule Law, the provisions of the Statute of Local Governments, the relevant provisions of the Town Law of the State of New York, the laws of the Town of Yorktown and the general police power vested with the Town of Yorktown to promote the health, safety and welfare of all residents and property owners in the Town.

**Section II.** Chapter 178 of the Code of the Town of Yorktown entitled “**FRESHWATER WETLANDS**” is hereby repealed in its entirety and replaced with a new Chapter 178 of the Code of the Town of Yorktown entitled “**Freshwater Wetlands and Watercourse Protection Ordinance Law**”

” as follows:

**§ 178-1 Title.** This chapter shall be known as the "Freshwater Wetlands ~~and Watercourse~~ Protection Law." The purpose of this chapter is to regulate the dredging, filling, deposition or removal of materials; diversion or obstruction of water flow; and placement of structures and other uses in or near the ponds, lakes, reservoirs, watercourses and wetlands in the Town of Yorktown.

**§ 178-2 Enabling authority.** This chapter is enacted pursuant to the Municipal Home Rule Law and any and all applicable laws, rules and regulations of the State of New York; nothing contained herein shall be deemed to conflict with any such laws, rules or regulations.

**§ 178-3 Legislative intent.**

A. In their natural state, wetlands serve a myriad of valuable ecological functions important to the public welfare. These functions include, but are not limited to, the following:

- (1) Protecting water resources by providing sources of surface water, recharging groundwater and aquifers, serving as chemical and biological oxidation basins and/or functioning as settling basins for naturally occurring sedimentation;
- (2) Controlling flooding and stormwater runoff by storing or regulating natural flows;
- (3) Providing unique nesting, migratory and wintering habitats for diverse wildlife species,

- including many on the New York State and Federal Endangered Species lists;
- (4) Supporting unique vegetative associations specifically adapted for survival in low-oxygen environments;
  - (5) Providing areas of unusually high plant productivity which support significant wildlife diversity and abundance;
  - (6) Providing breeding and spawning grounds, nursery habitat and food for various species of fish;
  - (7) Serving as nutrient traps for nitrogen and phosphorus and filters for surface water pollutants;
  - (8) Helping to maintain biospheric stability by supporting particularly efficient photosynthesizers capable of producing significant amounts of oxygen and supporting bacteria which process excess nitrates and nitrogenous pollutants and return them to the atmosphere as inert nitrogen gas;
  - (9) Providing open space and visual relief from intense development in a rapidly growing area;
  - (10) Serving as outdoor laboratories and living classrooms for the study and appreciation of natural history, ecology and biology and serving generally, as an education and research resource;
  - (11) Providing recreation areas for hunting, fishing, boating, hiking, bird watching, photography, camping and other uses; and
  - (12) Controlling erosion by serving as sedimentation areas and filter basins, absorbing silt and organic matter.

**§ 178-4 Definitions.**

A. Except where specifically defined herein, all words used in this section shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular.

B. As used this chapter, the following terms shall have the meanings indicated:

**APPROVAL AUTHORITY**

The appropriate board or public official empowered to grant or deny permits under this chapter, to require posting of bonds as necessary and to revoke or suspend, a permit where lack of compliance to the permit is established. The approval authority shall be:

- (1) The Planning Board for permit applications relating to regulated activities that:
  - (a) Also require site plan, subdivision, parking plan or amended parking plan approval by the Planning Board, except as specified in Subsection (1)(b) and (c) below.
  - (b) Are proposed to be conducted on lots or parcels of land which have received

preliminary or final subdivision or site plan approval, provided that no certificate of occupancy has been issued for such lot or provided that the improvements as set forth in Chapter 195, Land Development, have not been completed; or

(c) Have received site plan, parking plan or amended parking plan approval, provided that the improvements shown on the plan or otherwise required have not been completed.

(d) Are substantially related to the activities described in subparagraphs 1(a) through 1(c) above and that are to occur on lands that are outside the boundaries of but proximate to the particular lot, parcel, piece or tract of real property which is the subject matter of the site plan, parking plan or subdivision being approved by the Planning Board.

(e) The permit issued by the Planning Board pursuant to this Chapter is entitled "Planning Board Wetland Permit".

(2) The Town Engineer for permit applications relating to regulated activities permitted with an "Engineering Permit" as specified in §§ 178-7(3)(A)(1-2) of this chapter, subject to the limitations placed upon the Town Engineer's authority to deny such applications as set forth in § 178-7(3)(b)(1-3) of this chapter.

(3) The Town Board for all permit applications not covered by Subsections (1) or (2) above. The permit issued by the Town Board pursuant to this Chapter is entitled "Town Board Wetland Permit".

## **BOARD PERMITS**

Collectively referred to as Planning Board Wetland Permit and Town Board Wetland Permit.

## **ENGINEERING PERMIT**

A permit issued by the Town Engineer for the conduct of regulated activities in wetlands or buffer areas where such conduct of regulated activities is limited in scope and limited in potential impact as determined by this chapter.

## **WETLAND/FRESHWATER WETLAND**

Any area which meets 1 or more of the following criteria

(1)(a) Watercourses defined as running stream of water; a natural stream fed from permanent or natural sources, including rivers, creeks, runs and rivulets. There must be a stream, usually flowing in a particular direction, though it need not flow continuously. It may sometimes be dry. It must flow in a definite channel, having a bed or banks, and usually discharges itself into some other stream or body of water. It must be something more than a mere surface drainage;

(1)(b) Waterbodies defined as a natural or artificial pond, lake, reservoir or other area which exists at least 3 months of the year ordinarily or intermittently contains water and which has a discernible shoreline, but not including a watercourse as defined in this chapter; and

(1)(c) Vernal pools defined as confined depressions, either natural or man-made, that hold water for at least 2 consecutive months out of the year, and are devoid of breeding fish populations. Vernal pools provide habitat to many species of amphibians, insects, reptiles, plants, and other wildlife. The absence of fish is the essence of these ecosystems.

(2) Lands and waters that meet the definition provided in § 24-0107.1 of the New York State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law). The approximate boundaries of such lands and water are indicated on the official freshwater wetlands map promulgated by the Commissioner of the New York State Department of Environmental Conservation pursuant to § 24-0301.5 of the Act, or such a map that has been amended or adjusted pursuant to § 24-0301.6 of Title 23 of Article 71 of the Environmental Conservation Law.

(3) All areas greater than 1/10 of 1 acre (4,356 square feet) in area that comprise hydric soils and are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of hydrophytic vegetation as defined by the Federal Interagency Committee for Wetland Delineation, 1987, in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, Washington, D.C., and with associated supplements, adopted by the United States Army Corp of Engineers, United States Environmental Protection Agency, and the United States Fish and Wildlife Service.

#### **WETLAND FUNCTIONAL VALUE ASSESSMENT**

A procedure for detailing the ecological value of a wetland such as detailed in Hollands-Magee 1998 A Rapid Procedure for Assessing Wetland Functional Capacity or as required by the approving authority.

#### **WETLAND OR WATERCOURSE BUFFER**

A buffer area surrounding a wetland or watercourse that is also subject to the regulations for wetlands as defined herein. The exact size of the wetland/watercourse buffer shall be determined as follows:

(1) ~~Except as provided in Subsection (2) of this definition,~~ The wetland/watercourse buffer shall extend ~~at least~~ 100 feet away from the edge of the wetland as measured horizontally from the boundary of the wetland;

~~(2) The buffer of watercourses includes all adjacent surfaces for 100 feet as measured from the bank of the watercourse, or the high water mark, whichever is more.~~

~~(3) A restrictive buffer shall be established for the first 50 feet of the buffer area.~~

**§ 178-5 Rules for establishing and interpreting wetland boundaries.**

The boundaries of a wetland ~~ordinarily~~ shall be determined by field investigation and, flagging. The ~~and the~~ approximate location of the wetland boundary may be captured in the field by a sub-meter ~~highly~~ accurate GPS unit in order to establish a preliminary wetland boundary map. The approval authority may require a subsequent survey of the wetland ~~by~~ boundary by a licensed land surveyor, unless waived by the approval authority. The approval authority may consult and/or may require the applicant to consult with biologists, hydrologists, soil scientists, ecologists/botanists or other experts as necessary to make the wetland boundary determination pursuant to the definition criteria contained in § 178-4.

**§ 178-6 Prohibited, regulated and permitted acts.**

No regulated activity shall be conducted in a wetland or wetland/watercourse buffer without a written permit from the approval authority and full compliance with the terms of this chapter and other applicable regulations.

A. Permitted activities. The following uses shall be permitted as-of-right within a wetland or wetland/watercourse buffer to the extent that they are not prohibited by any other ordinance; they do not constitute a pollution or erosion hazard or interfere with proper drainage; and they do not require structures, grading, fill, draining or dredging for which a permit may be required:

- (1) Normal ground maintenance, including mowing, trimming of vegetation and removal of dead or diseased vegetation around a residence.
- (2) Installation or replacement of public utilities that result in excavation of ~~cause ground disturbance~~ less than 2 cubic yards of soil ~~material., eg. removal and replacement of utility poles.~~
- (3) Repair of existing walkways and walls.
- (4) Maintenance of existing decorative landscaping and planting in wetland/watercourse buffers, excluding those activities regulated in Subsections B(11) and (12).
- (5) Public health activities and orders of the Westchester County Department of Health and/or the New York State Department of Health for emergencies only.
- (6) Deposition or removal of natural products of wetlands in the process of recreational or commercial fishing, shellfishing, hunting or trapping, but excluding excavation and removal of peat or timber.
- (7) Operation and maintenance of existing dams and water control devices, limiting the adjustment of water elevations to 18 inches in height for periods of less than 1 week after which the water level is returned to its previous level.
- (8) Manual removal of debris, leaves, and dead or diseased vegetation that are obstructing flow within a wetland or wetland buffer.
- (9) Manual removal of accumulated sediment, up to a maximum of 2 cubic yards, located within five feet of the end of a pipe which crosses under a road or driveway.

- (10) Installation of central air conditioning or split system heating and air conditioning equipment including associated support pad within 10~~5~~ feet of an exterior house foundation wall and in compliance with all applicable building and zoning regulations.
- (11) Installation of a generator including gas storage tanks within 10~~5~~ feet of an exterior house foundation wall and in compliance with all applicable building and zoning regulations.
- (12) In kind replacement of decks, patios, walkways and steps located within existing lawn or foundation landscaped areas provided there is no expansion in footprint size.
- (13) Installation of new deck footings and stairway pads within existing lawn or foundation landscaped~~ing~~ areas.
- (14) Required maintenance and repair of all Town stormwater management structures
- (15) Tree removal or pruning conducted by or on the behalf of the Town.
- ~~(16) Emergency work as set forth in this Chapter.~~
- ~~(17) Silviculture agriculture as defined in the New York State Agriculture and Markets Law.~~

B. Regulated acts which require a wetlands permit. Except as provided in Subsection A, it shall be unlawful, in the absence of a specific written permit issued by, the approval authority, to do any of the following activities in any wetland or buffer area:

- (1) Placement or any construction of any structure as defined by the Building Inspector.
- (2) Any form of draining, dredging, excavation, or removal of material either directly or indirectly.
- (3) Any form of dumping, filling or depositing of material, either directly or indirectly.
- (4) Installation of any utility poles, 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 into or so as to drain into a wetland.~~
- ~~(56)~~ Alteration or modification of natural features and contours.
- ~~(67)~~ Alteration or modification of natural drainage patterns and watercourses.
- ~~(78)~~ Construction of dams, docks, or other water control devices, pilings or bridges, whether or not they change the natural drainage characteristics.
- ~~(89)~~ Operation of existing dams and water control devices, involving the adjustment of water level more than 18 inches or any adjustment of water level which is in place for more than 1 week.
- ~~(910)~~ Installation of any wells or wastewater disposal systems.
- ~~(101)~~ Within the wetland and/or wetland buffer area the cutting of more than 3 trees which are over 8 inches in diameter at a point 4 ½ feet from ground level within an 18 month period.
- ~~(112)~~ Plowing and/or harrowing.

(123) Grazing of horses and/or other animals.

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(134) Any other activity that may impair the natural function(s) of a wetland, as described in this chapter.

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(145) Application and/or the use of herbicides and/or pesticides.

C. Prohibited acts. It shall be unlawful to place, discharge or deposit chemical wastes, pollutants or to introduce influents of sufficiently high thermal content as to cause deleterious ecological effect in any wetland or buffer area.

#### § 178-7 Permit applications.

##### A. Engineering Permit applications.

- (1) The application shall contain the following information unless waived by the Town Engineer
  - (a) Combined Environmental Permit Application.
  - (b) Short Form Environmental Assessment Form (EAF).
  - (c) A drawing depicting the location of wetland and wetland buffer area(s) on the property and the limits of disturbance of the proposed work.
  - (d) Erosion and sediment control measures to be implemented prior to the commencement of the work and maintained while work is ongoing.
  - (e) Statement of proposed work, the amount of wetland and/or wetland buffer impacted in square feet of area and cubic yards and purpose thereof.
  - (f) Applications affecting the water retention capacity, water flow or other drainage characteristics of any wetland shall include a statement of the impact of the project on upstream and downstream areas giving appropriate consideration to flood or drought levels of watercourses and amounts of rainfall.
  - (g) Copies of all applicable county, state or federal permits or permit applications that are required for such work or improvement, unless such permits are conditioned upon obtaining a permit under this chapter.
  - (h) An application fee in an amount set forth in the Master Fee Schedule.
  - (i) Any additional information or documentation as may be required.
- (2) Review of application by Town Engineer.
  - (a) Unless requested in writing that the application not be considered for an Engineering Permit, applicant shall submit 5+ copies of the application with all supporting plans, drawings and documentation to the Town Engineer in either hard copy or pdf format. +
  - (b) The Town Engineer shall review the application and any supporting plans and documentation for the purpose of determining whether or not the application is eligible for treatment under the provisions of Subsection A(3), "Regulated acts

permitted with an Engineering Permit". If the Town Engineer requires additional information, plans or specifications in order to make such determination, he shall so notify the applicant within 30 days after receipt of the application.

- (c) If the Town Engineer determines that the application is eligible for treatment under the provisions of Subsection A(3), he shall process the application within 30 days of receipt of a complete.

(3) Regulated acts permitted with an Engineering Permit.

(a) The following regulated activities are determined to be limited in scope and limited in potential impact. The approval authority for applications to conduct these regulated activities shall be the Town Engineer. However, in the event that the Town Engineer determines that the granting of an Engineering Permit would be inappropriate in light of the standards set forth in § 178-9, the Town Engineer shall neither approve nor deny the application, but rather shall refer the file application to the Town Board for processing in accordance with the procedures set forth of this chapter. If the Town Engineer determines that the granting of an Engineering Permit would be appropriate in light of the standards set forth in § 178-9 of this chapter, the Town Engineer shall grant the application in accordance with the provisions of this chapter. Proposed regulated activities within wetlands or wetlands buffer areas for which an Engineering Permit may be granted are:

- (1) The performance of a regulated act, as set forth in § 178-6 which does not require subdivision approval, site plan approval, or the issuance of a special permit by either the Town Board or the Planning Board. ~~and where any deposition or removal of material from the wetland or buffer area is not in excess of 5 cubic yards over a one year period, unless such work described above is located within the 50 foot restrictive buffer area.~~
  - (2) The application of nonpolluting chemicals and dyes for the purpose of maintenance that does not change the character of the wetland (such as Health Department testing).
- (b) Notwithstanding the foregoing, the following activities shall not be permitted with an Engineering Permit:
- (1) Construction of building additions, structural alterations, replacements, detached accessory structures, driveways, decks and/or patios in excess of a ground footprint of 800~~250~~ square feet within the wetland ~~or watercourse or within 50 foot restrictive~~ or the 100 foot wetland buffer area;
  - (2) Construction of new residential, commercial or industrial buildings within the wetland or 100 foot wetland buffer;
  - (3) Grading or land disturbance of greater than 20,000 square feet in spatial extent within the wetland or 100 foot wetland buffer whether or not



associated with building construction.

- (4) Notice provisions. The deed, contract of sale and final plat of any land subdivided subsequent to the enactment of this chapter shall describe any wetlands or buffer areas governed by this chapter and include a covenant to run with the land and note on the deed and final plat respectively that any construction within these areas requires a wetlands permit.

**B. Board Permits applications.**

(1) The application shall contain the following information unless waived by the approval authority

- (a) Combined Environmental Permit Application.
- (b) Environmental Assessment Form (EAF).
- (c) Location of wetland and wetland buffer area(s) on the property and the limits of disturbance of the proposed work.
- (d) Erosion and sediment control measures to be implemented prior to the commencement of the work and maintained while work is ongoing.
- (e) Statement of proposed work, the amount of wetland and/or wetland buffer impacted in square feet of area and cubic yards and purpose thereof.
- (f) Applications affecting the water retention capacity, water flow or other drainage characteristics of any wetland shall include a statement of the impact of the project on upstream and downstream areas giving appropriate consideration to flood or drought levels of watercourses and amounts of rainfall.
- (g) Copies of all applicable county, state or federal permits or permit applications that are required for such work or improvement, unless such permits are conditioned upon obtaining a permit under this chapter.
- (h) An application fee in an amount set forth in the Master Fee Schedule.
- (f) Complete plans and estimates for the proposed site improvements, which shall be certified by an engineer, architect, land surveyor, or landscape architect licensed in the State of New York, drawn to a scale no less detailed than 1 inch equals 50 feet, and showing the following:
  - (1) The location of all wetlands and/or watercourses on the site under review and within 200 feet of the site, as determined by a qualified ecologist/botanist and/or soil scientist, no earlier than 12 months prior the date of filing the application.
  - (2) A description of the vegetative cover of the regulated area.
  - (3) A description of the soil types on-site.
  - (4) The location of the construction area, or area proposed to be disturbed, and its relation to property lines, roads, buildings and watercourses within 200 feet.
  - (5) The locations, specifications and amount of all proposed draining, fill,

grading, dredging and vegetation removal or displacement, including the amount computed from cross-sections, and the procedures to be used to do the work.

- (6) The location of any well(s) and depth(s) thereof and of any wastewater disposal system of stormwater system component
- (7) Existing and adjusted contours at 2 foot intervals in the proposed disturbed area, and to a distance of 50 feet beyond; and elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than 10 feet.
- (8) Details of any temporary or permanent drainage system proposed both for the conduct of work, and after completion thereof, including locations at any point discharges, artificial inlets, or other human-made conveyances which would discharge into the wetland or wetland buffer, and measures proposed to control erosion both during and after the work.
- (9) Where creation of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other water control devices; and analysis of the wetland hydrologic system, including seasonal water fluctuations inflow/outflow calculations, and subsurface soil, geology and groundwater conditions.
- (10) Where creation of a detention basin is proposed, with or without excavation, details of the construction of any dams, berms, embankments, outlets, or other water control devices, and an analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and subsurface soil, geology and groundwater conditions.
- (11) On the plan for development, a means on site for a line of demarcation between the development and the wetland and/or wetland buffer area.
- (12) An application fee in an amount set forth in the Master Fee Schedule.
- (13) A wetland functional value assessment may be required as directed by the approval authority.
- (14) A written cost estimate including labor and material to implement any wetland mitigation plan.
- (15) Any additional information or documentation as may be required.

C. Emergency permits

- (1) The appropriate approval authority may issue a wetland permit for purposes of dealing with an emergency in any wetland or wetland buffer area where said emergency is occurring throughout the Town. Notwithstanding the issuance of such emergency permit, the proper erosion control measures shall be taken during such activity.
- (2) For projects carried out in response to an emergency, the following procedures shall apply:
  - (a) All procedural requirements of this chapter related to application processing are waived,

except as provided in this section.

- (b) Prior to commencement of the project, the Town Engineer must be notified. If circumstances warrant immediate action and written notification is not reasonable practicable, then the Town Engineer must be notified within 24 hours after commencement of the emergency action. Notification must be in writing must be followed within 24 hours by submission of the following information to the Town Engineer and the approval authority:
  - (i) A description of the proposed action;
  - (ii) Location map and plan of the proposed project; and
  - (iii) Reasons why the situation is an emergency.

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D. General permits.

(1) The Town Board may issue general permits which shall be for activities proposed within wetland or wetland buffers that shall encompass greater than a one-year period to complete or shall be part of an approved comprehensive wetland plan. Following review and approval by the Town Board, the general permit holder will be required to annually review the progress and conditions of the project with the Town Engineer who will then recommend to the Town Board continuance or discontinuance of the general permit.

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(2) An application fee in the amount as set forth in the Master Fee Schedule shall be charged and collected upon the filing of the application.

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~~ED.~~ Referral to professional consultants.

(1) The approval authority, in its sole discretion, may refer such application to such planner, engineer, legal, or environmental expert, soil scientist, ecologist, biologist, or other professional as the approval authority shall deem reasonably necessary to assist it in the review of such application as required by law. Fees charged by such professionals shall be in accord with fees set forth in the Master Fee Schedule and in accordance with Chapter 168.

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~~FE.~~ Monitoring and inspection fees.

(1) At the time of approval of a permit application, the approval authority shall determine, in accordance with the provisions of Chapter 168, the required monitoring and inspection fees based on the complexity and substance of the authorized regulated activity

**§ 178-8 Procedures for permits.**

- A. An application shall not be deemed complete until and unless the applicant has complied fully with the procedures of the State Environmental Quality Review (Article 8 of the State Environmental Conservation Law). No wetland permit may be issued until the State Environmental Quality Review Act procedures have been completed.
- B. The original and 5 copies to the wetlands permit application shall be filed with the Engineering

Department, along with an application fee in accordance with the Master Fee Schedule. The Engineering Department will forward a copy of application to:

- (1) The approval authority.
- (2) The Town Engineer.
- (3) The Conservation Board.
- (4) In the case of a wetland or watercourse crossing the Town line, the Clerk of the abutting town.
- (5) In the case of a wetland or watercourse crossing a county line, the Clerk of the abutting county.
- (6) Tree Advisory Committee.
- (7) Town's environmental consultant.

C. The Town Engineer shall, within 30 days of receipt of an application, issue a memorandum to the approval authority addressing:

- (1) The completeness of the application.
- (2) If the application is complete, making recommendation on approval, denial or approval, with suggested conditions provided, if appropriate.

D. Board Permits.

- (1) The approval authority shall refer the application to designated staff, departments and boards. Within 30 days of receipt of any ~~the~~ memoranda ~~um~~ from such ~~the~~ designated staff, departments and boards ~~Town Engineer and/or Conservation Board~~, the approval authority shall ~~make a finding of the completeness of the application.~~ If rendered incomplete, the application shall be returned to the applicant with a list of deficiencies.
- (2) In the case of Board Permits sought in conjunction with a subdivision approval, the approval authority shall open a public hearing on the requested wetland permit concurrently with the public hearing on any preliminary subdivision approval. Public notice and notice to interested parties of the wetland permit hearing shall be provided along with the notice required by the Town Code for the hearing on the preliminary subdivision approval. The approval authority shall issue a preliminary decision statement on the wetlands permit application within 60 days of the close of the above-mentioned public hearing. The approval authority shall issue a final written decision on the wetland permit concurrently with the decision on final subdivision approval.
- (3) In the case of Board Permits sought in conjunction with a site plan approval, the approval authority shall open a public hearing on the requested wetland permit concurrently with the public hearing on site plan approval. Public notice and notice to interested parties of the wetland permit hearing shall be provided, along with the notice required by the Town Code for the hearing on site plan approval. The approval authority shall issue a final written decision on the wetland permit concurrently with the final decision on site plan approval.
- (4) In the case of all other Board Permits, the approval authority shall open a public hearing within 45 days of its finding the application complete. Public notice of such hearing

shall be given at least 10 days prior to the date set for the hearing in a newspaper having general circulation in the Town. The applicant must comply with the provisions of Chapter 205. Within 30 days of the close of the public hearing, the approval authority shall render a written decision on the application.

- (5) In the case of substantial amendment of any previously approved Board Permit, the approval authority shall open a public hearing within 30 days of its finding the application complete. Public notice of such hearing shall be given at least 10 days prior to the date set for the hearing in a newspaper having general circulation in the Town. The applicant shall comply with the provisions of Chapter 205

- F. The approval authority may deny a Board Permit or may direct the Town Engineer to issue the Board Permit subject to any conditions that may be imposed. Any conditions shall be in writing and shall be attached to, or incorporated by reference into the permit.

#### **§ 178-9 Standards for Permit Decisions.**

- A. Consideration. In granting, denying or conditioning any permit, the approval authority shall consider the following:
  - (1) All evidence offered at any public hearing.
  - (2) Any reports from other commissions and/or federal, county, state or Town agencies.
  - (3) Additional requested information by the approval authority.
  - (4) All relevant facts and not circumstances, including but not limited to the following:
    - (a) The environmental impact of the proposed action;
    - (b) The alternatives to the proposed action;
    - (c) Irreversible and irremediable commitments of resources that would be involved in the proposed activity;
    - (d) The character and degree of injury to, or interference with, safety, health or the reasonable use of property that is caused or threatened;
    - (e) The suitability or unsuitability of such activity to the area for which it is proposed; and
    - (f) The effect of the proposed activity with reference to the protection or enhancement functions of wetlands and the benefits they provide which are set forth in § 178-3 of this chapter and in § 24-0103 of the Environmental Conservation Law.
  - (5) The availability of preferable alternative locations on the subject parcel or, in the case of activity of sufficient magnitude, the availability of the reasonable locations, subject to functional value analysis, as directed by the approval authority.;
  - (6) The availability of further technical improvements or safeguards that could feasibly be added to the plan or action.
  - (7) The possibility of further avoiding reduction of the wetland or watercourse's natural capacity to support desirable biological life, prevent flooding, supply water, control

sedimentation and/or prevent erosion, assimilate wastes, facilitate drainage and provide recreation and open space.

- (8) The extent to which the exercise of property rights and the public benefit derived from such use may or may not outweigh or justify the possible degradation of the inland wetland or watercourse, the interference with the exercise of other property rights and impairment or endangerment of public health, safety or welfare.

B. Findings.

- (1) The approval authority shall issue permits pursuant to this chapter only if the approval authority finds that:~~direct the Town Engineer to issue permits pursuant to this chapter only if the approval authority shall find that:~~
  - (a) The proposed regulated activity is consistent with the policy of this chapter to preserve, protect and conserve wetland functions and the benefits they provide, as set forth in § 178-3 of this chapter, by preventing the despoliation and destruction of wetlands and regulating the development of such wetlands consistent with the general welfare and development of the town.
  - (b) The proposed regulated activity is consistent with the land use regulations governing wetlands application in the Town and the local legislation is at least as restrictive as the laws of New York State regarding wetlands protection.
  - (c) The proposed regulated activity is compatible with the public health and welfare.
  - (d) The proposed regulated activity cannot practically be relocated on the site so as to eliminate or reduce the intrusion into the wetland and/or wetland/watercourse buffer.
  - (e) The proposed regulated activity minimizes the degradation to or loss of any part of the wetlands and the wetland buffer and minimizes any adverse impacts on the functions and benefits that said wetland provides as set forth in § 178-3 of this chapter.
  - (f) The proposed regulated activities are in compliance with the standards set forth in 6 NYCRR 665.7(e) and 66S.7(g), as amended.
  - (g) In the event of the issuance of a Board permit the approval authority shall direct the Town Engineer to issue a notice of satisfactory completion of conditions, copies of which shall be filed with the approval authority and the building department. No work shall commence prior to the issuance of the notice of satisfactory completion of conditions and issuance of all required approvals and permits.
- (2) The applicant shall have the burden of proof with regard to the required findings.

**§ 178-10 Permit conditions.**

- A. Any permit issued pursuant to this chapter may be issued with conditions to assure:
  - (1) The preservation and protection of affected wetlands;
  - (2) Compliance with the policy and provisions of this chapter;
  - (3) The provisions of the approval authority's rules and regulations adopted pursuant to this chapter. Such conditions may be attached as the approval authority deems necessary and

pursuant to § 178-13.

- B. Every permit issued pursuant to this chapter shall be in written form and shall contain the following conditions:
- (1) Work conducted under a permit shall be open to inspection at any time, including weekends and holidays, by the approval authority, the Conservation Board, the Town Engineer, the Environmental Inspector or their designated representatives.
  - (2) The permit shall expire on a specified date.
  - (3) The permit holder shall notify the approval authority and the Environmental Inspector of the date on which the work is to begin, at least 5 days in advance of such date.
  - (4) The approval authority's permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permittee.
- C. The approval authority shall set forth, in writing, findings and reasons for all conditions attached to any permit. These findings shall be recorded in the file maintained for each permit application. Conditions may include, but shall not be limited to, the following:
- (1) Limitations on minimum lot size for any activity;
  - (2) Limitation on the total portion of any lot or the portion of the wetland on the lot that may be graded, filled or otherwise noted;
  - (3) Modification of waste disposal and water supply facilities in conjunction with Westchester County Department of Health;
  - (4) Imposition of operation controls, sureties and deed restrictions concerning future use and subdivision of lands such as preservation of undeveloped areas in open space use and limitations of vegetation removal;
  - (5) Dedication of easements to protect wetlands;
  - (6) Erosion control measures;
  - (7) Setbacks for structures, fill, deposit of soil and other activities from the wetland;
  - (8) Modifications in project design to ensure continued water supply to the wetland and circulation of waters; and
  - (9) Replanting of wetland vegetation and construction of new wetland areas to replace damaged or destroyed areas.
- D. The approval authority shall include in the file it maintains regarding a permit application the following:
- (1) A copy of any mitigation plan prepared pursuant to § 178-13B;
  - (2) All comments received; and
  - (3) A record of any hearing held pursuant to § 178-9.

**§ 178-11 Performance bond.**

A. The approval authority may require that, prior to commencement of work under any permit issued pursuant to this chapter, the applicant or permittee shall post a bond in an amount and with surety and conditions, sufficient to secure compliance with the conditions and limitations set forth in the permit. The particular amount and the conditions of the bond shall be consistent with the purposes of this chapter. The bond shall remain in effect until the approval authority or its designated agent certifies that the work has been completed in compliance with the terms of the permit and the bond is released by the approval authority or a substitute bond is provided. In the event of a breach of any condition of any such bond, the approval authority may institute an action in the courts upon such bond and prosecute the same to judgment and execution.

B. The approval authority shall set forth, in writing, in the file it keeps regarding a permit application its findings and reasons for imposing a bond pursuant to this section.

**§ 178-12 Expiration of permit.**

A. All permits shall expire on completion of the acts specified.

B. Board permits ~~and~~, unless otherwise indicated by the approval authority, shall be valid for a period of 3+ years from the date of issue. Engineering permits, unless otherwise indicated by the Town Engineer, shall be valid for a period of 1 year from the date of issue. A request for an extension of 1 additional year shall be made in writing to the approval authority at least 30 days prior to the expiration date of the permit or any extension period. A renewal fee in an amount set forth in the Master Fee Schedule shall be submitted with the extension request.

~~CB.~~ Should a permittee fail to complete the acts specified in the permit prior to the expiration of the second 90 day extension, the original permit shall become null and void and a new permit must be applied for. The request for a new permit shall follow the same form and procedure as the original application, except that the approval authority shall have the option of not holding a hearing if the original intent of the permit is not altered or extended in any significant way.

~~DC.~~ Permits may be transferred to new legal owners of the affected property so long as the conditions and plans as approved remain unchanged. Notice of such transfer of permit must be filed with the Town Engineer within 30 days of the transfer.

**§ 178-13 Mitigation policy and plan requirements.**

A. Mitigation policy. Mitigation shall be permitted as compensation only for unavoidable wetland and wetland buffer losses. For the purpose of this chapter, wetland and wetland buffer impacts are necessary and unavoidable only if all of the following criteria are satisfied:

- (1) There is no feasible on-site alternative to the proposed activity, including reduction in density, change in use, revision of road and lot layout which accomplish the applicant's objectives;
- (2) There is no feasible alternative to the proposed activity on another site that is not a wetland or wetland/watercourse buffer; and
- (3) The proposed activity is compatible with the public health and welfare and Town



declared public policy.

B. Mitigation plan.

- (1) Upon a determination pursuant to Subsection A above that losses of wetland or wetland/watercourse buffers are necessary and unavoidable, the Town Board and Planning Board shall and the Town Engineer may, as approval authorities, require the preparation of a wetland functional assessment and mitigation plan which shall specify mitigation measures that replace to the greatest extent possible, the functions of the original wetland in terms of type, ecological benefits, geographic location and setting and size.
- (2) For the purposes of mitigation, on-site mitigation shall be the preferred approach; off-site mitigation shall be permitted only in cases where an on-site alternative is not possible.
- (3) Adequate mitigation for intrusion into wetlands shall provide a no overall net loss of wetlands and wetland buffers in terms of ecological characteristics and function, geographic location and setting and size. ~~A greater than 1:1 replacement may be necessary in areas where there is a strong possibility of failure.~~ Adequate mitigation for intrusion into wetland buffer areas shall preserve the ecological characteristics and function of the associated wetland.
- (4) Where off-site mitigation is proposed, the same should be within the drainage basin affected by the development. In this regard, contribution to a Town adopted drainage basin and/or wetland improvement plan may be considered. A town-adopted drainage basin and/or wetland improvement plan shall be any plan as established upon resolution of the Town Board.

C. Mitigation plan requirements.

- (1) When required under this chapter, mitigation plans shall be developed in a manner and with acceptable detail to the approval authority so as to fully compensate for the loss of wetlands or wetland/watercourse buffers.
- (2) The applicant shall monitor or shall cause to be monitored acts specified on the permit to determine whether the elements of the mitigation plan and permit conditions have been met and whether the wetland acreage created replaces the wetland acreage lost. The applicant shall submit written reports to the approval authority and Environmental Code Inspector at a frequency to be determined by the approval authority, addressing the progress of the work under the wetlands permit and the mitigation plan. When necessary, the approval authority may require the applicant to contract with a wetland consultant to assess the applicant's work and monitoring reports conducted under the permit and mitigation plan. The requirements for monitoring shall be specified in the mitigation plan and shall include, but are not limited to, the following:
  - (a) A schedule detailing when the ~~The time period over which~~ compliance monitoring and inspections shall occur.
  - (b) Field measurements to verify the size and location of the impacted wetland area and the restored/replacement wetland area.
  - (c) The date of completion of the restoration/replacement.

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- (3) Any mitigation plan, and all contents thereof, prepared pursuant to this section and accepted by the approval authority shall become part of the permit for the application.

**§ 178-14 Sanctions; penalties for offenses.**

A. Administrative sanctions.

- (1) Damages. Any person who undertakes any wetland activity without a permit issued hereunder or who violates, disobeys or disregards any provision of this chapter or any rule or regulation adopted by the approval authority pursuant to this chapter shall be liable to the municipality for civil damages caused by such violation for every such violation. Each consecutive day of the violation will be considered a separate offense. Such civil damages may be recovered in an action brought by the municipality at the request and in the name of the approval authority in any court of competent jurisdiction.
- (2) Restitution. The Town shall have the authority, following a hearing before the Town Board and on notice to the violator to direct the violator to restore the affected wetland to its condition prior to violation, insofar as that is possible, within a reasonable time and under the supervision of the approval authority or its designate. Further, the approval authority shall be able to require an adequate bond in a form and amount approved by the approval authority to ensure the restitution of the affected wetlands. Any such order of the approval authority shall be enforceable in an action brought in any court of competent jurisdiction. Any order issued by the approval authority pursuant to this subsection shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules.
- (3) Stop-work order.
  - (a) The Town Engineer, Building Inspector or Environmental Inspector may post a stop-work order for the entire project or any specified part thereof if any of the following conditions exist:
    - (1) Any land-disturbance activity regulated under Chapters 178 is being undertaken without a permit.
    - (2) The wetlands permit is not being fully implemented.
    - (3) Any of the conditions of the permit are not being met.
  - (b) The stop-work order shall be effective immediately, shall state in writing the specific violations cited and shall state the conditions under which work may be resumed. The remedy of a stop work order shall be in accordance with the requirements of the Town Environmental Code Inspector and/or Town Engineer and may result in the issuance of a notice of violation requiring adjudication.
  - (c) For purposes of this section, a stop-work order is validly posted by posting a copy of the stop-work order on the site of the land-disturbing activity in reasonable proximity to a location where the land-disturbing activity is taking place. Additionally, a copy of the order, in the case of work for which there is a permit, shall be mailed by first class mail, postage prepaid, to the address listed

by the permittee on the permit. In the case of work for which there is no permit, a copy of the order shall be mailed to the person listed as owner of the property by the Town Assessor on the tax roll or, if none, to the taxpayer shown by the records of the Town Assessor.

- (d) If the permittee does not cease the activity or comply with the wetlands permit or permit conditions within 1 day, the issuing authority may revoke the permit. No wetlands permit shall be permanently suspended or revoked until a public hearing is held by the Town Board.
    - (1) Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state:
      - (a) Grounds for complaint or reasons for suspension or revocation, in clear and concise language; and
      - (b) The time and place of the hearing to be held.
    - (2) Such notice shall be served on the permittee at least 1 week prior to the date set for the public hearing, unless the stop-work order is issued for a violation occurring less than 1 week before the next regularly scheduled public meeting of the Town Board. At such hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence on his behalf. At the conclusion of the hearing, the Town Board shall determine whether the permit shall be reinstated, suspended or revoked.
  - (e) If the owner or land user, where no permit has been issued, does not cease the land-disturbance activity, the issuing authority may request the Town Attorney to obtain injunctive relief.
  - (f) The issuing authority may retract the revocation.
  - (g) Ten days after posting a stop-work order, the issuing authority may issue a notice of intent to the permittee, owner, or land user of the issuing authority's intent to perform work necessary to comply with Chapter 178. The issuing authority may go on the land and commence work after 14 days from issuing the notice of intent. The costs incurred by the issuing authority to perform this work shall be paid by the owner or permittee out of the posted wetlands bond, to the extent that the amount is covered thereby, with the remainder being directly due and owing by the owner or permittee. In the event no permit was issued or no bond was posted, the cost, plus interest, at the rate authorized by the issuing authority, plus a reasonable administrative fee, shall be billed to the owner. If, in any event, the amount due is not paid, the Receiver of Taxes shall enter the amount due on the tax roll and collect as a special assessment against the property using the procedures for collecting the assessment, providing for the notice of assessment, hearing thereon, and appeal as provided.
  - (h) Compliance with the provisions of Chapter 178 may also be enforced by injunction.
- (4) The usual wetland and excavation permit application fees shall be doubled in the case of

any application sought as a result of or in connection with the applicant having been issued a stop-work order or a remedy order prior to applying for a permit.

B. Criminal sanctions. Any person convicted of having violated or disobeyed any provision of this chapter, any order of the approval authority or any condition duly imposed by the approval authority in a permit granted pursuant to this chapter shall, for the first offense, be punishable by a fine of not less than \$1,000. For each subsequent offense, such person shall be punishable by a fine of not less than \$5,000, nor more than \$25,000, and/or a term of imprisonment of not more than 15 days. Each consecutive day of the violation may be considered a separate offense. The term "person" as used herein, shall mean a natural person or a corporate person.

C. Issuance of appearance tickets. The purpose of this section is to authorize the Environmental Inspector of the Town to issue and serve appearance tickets in connection with the violation of local laws, ordinances or rules and regulations of the Town which he is authorized or required to enforce.

**§ 178-15 Review and appeal.**

A. Appeal and review.

(1) Any decision or order of the approval authority or any officer or employee thereof made pursuant to or within the scope of this chapter may be reviewed by the Town Board at the request of any interested party, provided that such review is commenced by the filing of a notice of review with the Town Board within 30 days after service of such order or filing of such decision with the Town Clerk.

(2) Any party to any proceeding before the approval authority may appeal to the Town Board from any order or decision of the approval authority or any officer or employee thereof issued or made pursuant to or within the scope of this chapter, provided that such appeal is commenced by the filing of a notice of appeal with the Town Board within 30 days after service of such order or filing of such decision with the Town Clerk.

B. Judicial review. Any final determination, decision or order of the approval authority may be judicially reviewed pursuant to Article 78 of the Civil Practice Law and Rules in the Supreme Court for Westchester County.

Section III. Severability.

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjudicated finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions been excluded.

Section IV. Repeal

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section V. Effective Date.

This Local Law shall become effective upon filing in the office of the Secretary of State in accordance with the provisions of the Municipal Home Rule Law.