

Sample Wetlands, Watercourse, and Water Body Law
Developed by the Water Resources Council of Tompkins County

TABLE OF CONTENTS

<u>Section</u>	<u>Name</u>	<u>Page</u>
1-1	Title	1
1-2	Declaration of policy	1
1-3	Legislative intent	1
1-4	Findings	2
1-5	Definitions	3
1-6	Rules for establishing and interpreting wetland boundaries	8
1-7	Regulated, permitted, and prohibited activities	8
1-8	Procedure for permits	9
1-9	Standards for permit decisions	10
1-10	Findings of the Approval Authority	11
1-11	Mitigation plan requirements	12
1-12	Permit conditions	13
1-13	Effect of other laws and regulations	13
1-14	Expiration of permit	13
1-15	Penalties for offenses	14
1-16	Enforcement	14
1-17	Severability; consultant fees	14

GENERAL REFERENCES

§ 1-1 Title

This chapter shall be known as the "Wetlands, Watercourse, and Water Body Law of [MUNICIPALITY]"

§ 1-2 Declaration of policy.

A. It is declared to be the policy of the [MUNICIPALITY] to protect and preserve wetlands, watercourses, and water bodies and the benefits derived therefrom; to prevent despoliation and destruction of wetlands, watercourses, and water bodies; and to regulate development in and near such wetlands and protect such watercourses and water bodies in order to secure the natural benefits derived therefrom consistent with the general welfare and beneficial economic, social, and agricultural development.

§ 1.3. Legislative intent.

A. It is the intent of the [MUNICIPALITY] to ensure that activities in and near wetlands, watercourses, and water bodies do not unduly impact public safety or the natural environment, or cause environmental degradation.

B. It is the intent of the [MUNICIPALITY] to enact this chapter pursuant to the Municipal Home Rule Law and any and all applicable laws, rules and regulations of the State of New York. This chapter establishes a wetlands regulatory system separate from, and in addition to, any

applicable requirements under state or federal law. Nothing contained herein shall be deemed to conflict with any such laws, rules and regulations, as it is also the intent to exercise shared authority to regulate wetlands, watercourses, and water bodies with the Department of Environmental Conservation under the provisions of Article 24 of New York State Environmental Conservation Law.

C. This chapter shall apply to all lands defined as wetlands, wetland buffers, watercourses, and water bodies in § 1-5, and to any proposed regulated activity as defined in § 1-7.

§ 1-4. Findings.

A. Wetlands are a critical component of natural ecosystems and provide a variety of benefits such as:

- (1) filtering harmful toxins, nutrients, and sediment from surface and stormwater runoff;
- (2) storing floodwaters and reducing the magnitude of flood events;
- (3) providing valuable habitat for a diverse array of flora and fauna, including many rare, threatened, or endangered species; and
- (4) maintaining surface-water flow during dry periods.

B. Wetlands such as swamps and marshes are often easily recognizable, but some wetlands, such as forested wetlands and wet meadows, are not obvious because they are dry during part of the year. The quality and quantity of wetlands also vary greatly depending on local conditions such as soil type, climate, hydrology, level of precipitation, and human disturbance.

C. Landscape position influences wetland function, with headwater wetlands providing stream base-flow augmentation, and lower elevation wetlands providing floodwater storage. The recreational uses associated with wetlands are also very diverse and include bird watching, hunting, fishing, and botanical tourism, all of which provide direct economic benefits to local communities.

D. The wetlands, watercourses, and water bodies located in the [MUNICIPALITY] are invaluable resources for flood protection, water storage, wildlife habitat, open space, and water quality.

E. The wetlands, watercourses, and water bodies in the [MUNICIPALITY] are invaluable resources for aquatic fish and bird habitat, fishing, boating, and aesthetic appreciation.

F. Loss of wetlands and degradation of watercourses and water bodies deprives the people of the [MUNICIPALITY] of some or all of the multiple benefits to be derived therefrom, such as open space and natural features for quiet enjoyment or educational and scientific research by providing readily accessible outdoor biophysical laboratories, living classrooms, and training and education resources, if permission is given by owners.

G. Considerable acreage of wetlands in the [MUNICIPALITY] may be lost, despoiled, or impaired by unregulated draining, dredging, filling, excavating, building, pollution, or other acts.

H. The wetlands, watercourses, and water bodies in the [MUNICIPALITY] may be endangered by land use development and the resulting degradation caused by the following:

- (1) Excessive siltation resulting from surface runoff from construction sites, road, bridge, and pipeline construction, and lack of erosion control on steep slopes;
- (2) Pollution by road salt, chemical pollution from parking lots and treated lawns;
- (3) Pollution by garbage, litter, and refuse;
- (4) Potential thermal, chemical, and bacteriological pollution, from approved or planned residential septic systems.
- (5) Reduction in flow of watercourses due to destruction of wetlands and lowering of the water table due to water withdrawals for uses ranging from private drinking wells to industrial uses.

I. Therefore, the protection and preservation of wetlands, watercourses, and water bodies is a matter of the [*MUNICIPALITY*] concern.

§ 1-5. Definitions As used in this chapter, the following terms shall have the meanings indicated

APPLICANT -- Any person who files an application for any permit issued by the approval authority pursuant to this chapter; applicants may include owners or the agent of the owner.

APPROVAL AUTHORITY -- The administrative board or public official empowered to grant or deny permits under this chapter. The approval authority shall be empowered to require posting of bonds, as necessary, and to revoke or suspend a permit where lack of compliance is established. The approval authority shall be [Ed. Note: fill in choice, e.g., *the Planning Board of the Municipality*].

BUFFER AREA -- Protective areas surrounding or adjacent to wetlands, watercourses, or water bodies that are subject to regulation. The size or extent of the buffer areas is defined under "wetland/watercourse/water body buffer" in this section.

CLEAR-CUTTING -- Any cutting of more than 30% of trees four inches or more in diameter at breast height (4.5 feet) over any ten-year cutting cycle as determined on the basis of wetland area per lot or group of lots under single ownership, including cutting of trees that results in the total removal of one or more naturally occurring species, whether or not the cut meets or exceeds the 30% threshold.

CODE ENFORCEMENT OFFICER -- The official designated with enforcing zoning or other regulations for the [*MUNICIPALITY*].

DAMS AND WATER CONTROL MEASURES -- Barriers used to, or intended to, or that, even though not intended to in fact do, obstruct the flow of water, or raise, lower, or maintain the level of water.

DEPOSIT -- To fill, grade, discharge, emit, dump, or place any material.

DISCHARGE -- The emission of any water, substance, or material into a wetland, watercourse, or water body or their buffers, whether or not such substance causes pollution.

DOMINANT(S) -- A dominant species is either the dominant plant species (i.e., the only species dominating a vegetative unit) or a co-dominant species (i.e., when two or more species dominate a vegetative unit). The measures of spatial extent are the percentage of area covered for all vegetation units other than trees and basal area for trees.

DRAIN -- To deplete or empty of water by drawing off by degrees or in increments.

ECOLOGIST/BOTANIST -- A person having special knowledge by reason of education or experience of the physical, chemical and biological sciences related to the life cycle, physiology, identification, and distribution of native plants and vegetative associations in wetland and upland systems, and of methods to describe, classify, and delineate vegetative species.

FACULTATIVE SPECIES -- Vegetative species that can occur in both wetland and upland systems. There are three subcategories of facultative species: facultative wetland, facultative, and facultative upland. Under natural conditions a facultative wetland species is usually (estimated probability 67% to 99%) found in wetlands, but occasionally in uplands. A facultative species has basically a similar likelihood (estimated probability of 34% to 66%) of occurring in both wetlands and uplands. A facultative upland species is usually (estimated probability 67% to 99%) found in uplands, but occasionally in wetlands. Facultative species for the Northeast are listed in the "National List of Plant Species That Occur in Wetlands, New York State; 1988," or as amended and updated.

FLAGGING -- Placement of visible markers at the wetland boundary that, upon the approval of the [Code Enforcement Officer] may be transferred by a qualified surveyor onto the site plan or other project map.

GRADING -- Adjustment of the degree of inclination of the natural contours of the land, including leveling, smoothing, and other modification of the natural land surface.

HYDRIC SOIL -- A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in its upper portions and as further defined under "wetland" in this section.

HYDROLOGIST -- A person having special knowledge by reason of education or experience of the quantity, distribution, circulation, and physical properties of bodies of underground water and surface water.

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 and as further defined under "wetland" in this section.

MUNICIPALITY -- [Ed. Note: this word should not appear in the finished law; it should be replaced by [The *Town/Village/City of _____*].

NEW YORK STATE FRESHWATER WETLANDS (as provided in §24-0107.1 of Environmental Conservation Law) – lands and waters of the state as shown on the freshwater wetlands map that contain any or all of the following:

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

- (1) wetland trees, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other trees; including, among others, red maple (*Acer rubrum*), willows (*Salix spp.*), black spruce (*Picea mariana*); swamp white oak (*Quercus bicolor*), red ash (*Fraxinus pennsylvanica*), black

- ash (*Fraxinus nigra*), silver maple (*Acer saccharinum*), American elm (*Ulmus americana*), and Larch (*Larix laricina*);
- (2) wetland shrubs, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other shrubs; including, among others, alder (*Alnus* spp.), buttonbush (*Cephalanthus occidentalis*), bog rosemary (*Andromeda glaucophylla*), dogwoods (*Cornus* spp.), and leatherleaf (*Chamaedaphne calyculata*);
 - (3) emergent vegetation, including, among others, cattails (*Typha* spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.), arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* spp.), reed (*Phragmites communis*), wildrice (*Zizania aquatica*), bur-reeds (*Sparganium* spp.), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*), and water plantain (*Alisma plantago-aquatica*);
 - (4) rooted, floating-leaved vegetation; including, among others, water-lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*), and spatterdock (*Nuphar* spp.);
 - (5) free-floating vegetation; including, among others, duckweed (*Lemna* spp.), big duckweed (*Spirodela polyrhiza*), and watermeal (*Wolffia* spp.);
 - (6) wet meadow vegetation, which depends upon seasonal or permanent flooding or sufficiently water-logged soils to give it a competitive advantage over other open land vegetation; including, among others, sedges (*Carex* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), swamp loosestrife (*Decodon verticillatus*), and pikerush (*Eleocharis* spp.);
 - (7) bog mat vegetation; including, among others, sphagnum mosses (*Sphagnum* spp.), bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calyculata*), pitcher plant (*Sarracenia purpurea*), and cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*);
 - (8) submergent vegetation; including, among others, pondweeds (*Potamogeton* spp.), naiads (*Najas* spp.), bladderworts (*Utricularia* spp.), wild celery (*Vallisneria americana*), coontail (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* spp.), muskgrass (*Chara* spp.), stonewort (*Nitella* spp.), water weeds (*Elodea* spp.), and water smartweed (*Polygonum amphibium*);
- (b) lands and submerged lands containing remnants of any vegetation that is not aquatic or semi-aquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six feet and provided further that such conditions can be expected to persist indefinitely, barring human intervention;
- (c) lands and waters substantially enclosed by aquatic or semi-aquatic vegetation as set forth in paragraph (a) or by dead vegetation as set forth in paragraph (b) the regulation of which is necessary to protect and preserve the aquatic and semi-aquatic vegetation; and
- (d) the waters overlying the areas set forth in (a) and (b) and the lands underlying (c).

OBLIGATE UPLAND SPECIES -- Plant species that, under natural conditions, always occur in uplands (i.e., 99% of the time).

OBLIGATE WETLAND SPECIES -- Plant species that, under natural conditions, always occur in wetlands (i.e., greater than 99% of the time).

ORGANIC SOILS/HISTOSOILS -- A taxonomic order composed of organic soils (mostly peats and mucks) that have organic materials in over half the upper 32 inches unless the depth to

rock or to fragmental materials is less than 32 inches (a rare condition) or the bulk density is very low, and as further defined under "wetland" in this section.

PERMIT or WETLANDS/WATERCOURSE/WATER BODY PERMIT -- That form of written approval required by this chapter for the conduct of a regulated activity.

PERSON -- one or more individuals and any unit of government agency or subdivision thereof, any corporation, firm, partnership, association, trust, or estate or any agent thereof.

PLANNING BOARD -- The duly appointed Planning Board of the *MUNICIPALITY*.

POLLUTION -- the presence in the environment of human-induced conditions or contaminants in quantities or characteristics that are or may be injurious to human, plant or wildlife, or other animal life or to property.

PROJECT -- An undertaking, activity, or collection of actions that may result in direct or indirect physical or chemical impact on a wetland, wetland buffer, watercourse, or water body, including but not limited to a regulated activity.

REGULATED ACTIVITY -- Those activities to be conducted in wetlands, wetland buffers, watercourses, or water bodies that require a permit from the Town.

SELECTIVE CUTTING -- The annual or periodic removal of trees, individually or in small group, in order to realize the yield and establish a new crop and to improve the forest; that removal does not involve the total elimination of one or more species of trees.

SOIL SCIENTIST -- A person having special knowledge by reason of education or experience of the physical, chemical and biological sciences applicable to the genesis and morphology of soils as natural materials and of the methods to describe, classify, and map soil units.

STATE AGENCY -- Any department, bureau, commission, board, or other agency or public authority of the State of New York.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) -- The law promulgated at Article 8 of the New York State Environmental Conservation Law, and the regulations promulgated thereunder by the Commissioner of the Department of Environmental Conservation.

STRUCTURE -- Anything constructed or erected, the use of which requires location on or within the ground or attachment to something having location on or in the ground, including but not limited to such things as buildings, tennis courts, swimming pools, and so forth.

WATER BODY -- Any natural or artificial pond, lake, reservoir, or other area that ordinarily contains water, and has a discernible shoreline, but not including a watercourse as defined in this chapter.

WATERCOURSE -- A permanent or intermittent-running stream of water; a natural stream fed from permanent or natural sources, including rivers, creeks, runs, and rivulets. There must be a stream, generally flowing in a definite channel, having a bed or banks, and usually discharging itself into some other stream or body of water. It must be something other than mere surface drainage over the entire face of a tract of land, occasioned by unusual freshets or other extraordinary causes.

WETLAND -- Any area that meets one or more of the following criteria:

Lands and waters that meet the definition provided in § 24-0107.1 of the New York State Environmental Conservation Law, "Freshwater Wetlands Act," or as amended and updated. The approximate boundaries of such lands and waters are indicated on the official wetlands map promulgated by the Commissioner of the New York State Department of Environmental Conservation, or as amended and updated.

All areas that comprise hydric soils and/or are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and under normal conditions do support, a prevalence of hydrophytic vegetation as defined by the Federal Interagency Committee for Wetlands Delineation, 1989, in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, Washington, DC, and adopted by the US Army Corps of Engineers, US Environmental Protection Agency, and the US Fish and Wildlife Service, or as amended and updated. Hydric soils referenced above shall include the soil types taken from the revised Tompkins County Soil Survey Series, 1965, or such revised, updated and adjusted soil surveys as may be completed.

WETLAND ADMINISTRATOR -- An official(s) designated to enforce this chapter, who shall be the Code Enforcement Officer.

WETLAND DELINEATION -- The process of determining the location of wetlands and their boundaries. The boundaries of a wetland shall ordinarily be determined by field investigation, flagging, and survey. Identification of the general location of wetlands shall be aided by reference to:

The Wetlands Map filed with the Clerk of the [*MUNICIPALITY*] by the New York State Department of Environmental Conservation, as amended and updated; and

The Soils Map of Tompkins County -- Soil Survey Series 1965, or as from time to time updated; and

Other maps such as the US Fish and Wildlife Service Map that may assist in the location and delineation of wetlands. However, wetlands not depicted on any such maps are not thereby exempted from regulation under the provisions of this chapter.

WETLAND HYDROLOGY -- The sum total of wetness characteristics in areas that are inundated or have saturated soils for a sufficient duration to support hydrophytic vegetation.

WETLAND PLANTS OF THE STATE OF NEW YORK -- The list of obligate and facultative wetland and upland species developed by the United States Department of Interior, Fish and Wildlife Service, "National List of Plant Species that Occur in Wetlands, New York State: 1988," in cooperation with the National and Regional Wetland Plant List Review Panels, or as amended and updated.

WETLAND/WATERCOURSE/WATER BODY BUFFER -- The buffer area surrounding or adjacent to the wetland/watercourse/water body; such buffer areas are also subject to regulation. The size and extent of the buffers shall be as follows: [*Editors note: These distances can be adjusted based on the discussions and preferences of the individual Municipality.*]

For wetlands and water bodies of less than two acres, the buffer shall extend a minimum of 75 feet out from the wetland and/or water body. For wetlands and water bodies of two acres and more, the buffer shall extend 100 feet. For watercourses, the buffer shall be 75 feet. The buffers cited above may be greater where designated by either the Commissioner of the DEC or local approval authority. The buffers shall be measured horizontally and away from and paralleling the edge of the stream bank of the active channel or of the edge of the delineated wetland.

§ 1-6. Rules for establishing and interpreting wetland boundaries

The boundaries of a wetland ordinarily shall be determined by field investigation. Flagging and subsequent survey by a licensed land surveyor may be required by the approval authority. The approval authority may consult and/or may require the applicant(s) to consult with approved biologists, hydrologists, soil scientists, ecologists, botanists, legal counsel, engineers, or other experts necessary to make this determination.

§ 1-7. Regulated, permitted, and prohibited activities

A. Regulated activities are not prohibited by this chapter, but no regulated activity shall be conducted in a wetland, watercourse, or water body, nor the adjacent buffer zones, without a written permit from the approval authority and full compliance with the terms of this chapter.

B. Permitted activities. No permit is required for the following activities within a wetland, watercourse, or water body nor adjacent buffer zones, provided they do not constitute a pollution or erosion hazard or interfere with proper drainage; and 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, but excluding removal of vegetation that may cause erosion of sediment into a wetland, watercourse, or water body.
- (2) Repair of existing decorative landscaping and planting native species in a wetland, watercourse, or water body buffer zones.
- (3) Repair of existing walkways, walls, and driveways.
- (4) Public health activities, in emergencies only, of the County Department of Health and/or New York State Department of Health.
- (5) Operation of existing dams and water control devices.
- (6) The activities of farmers in grazing and watering livestock to the extent that such grazing and watering does not cause erosion of sediment into a wetland or watercourse, making reasonable use of water resources, harvesting natural products of wetlands and wetland buffers, but excluding clear-cutting of timber and draining of wetlands.

C. Regulated activities that require a wetlands/watercourse/water body permit. Except as provided in 1-7(B) of this chapter, a written permit issued by the approval authority is required for any of the following activities in any wetland, watercourse, water body, or buffer area:

- (1) Any form of draining, dredging, excavation or removal of soil, mud, sand, shells, gravel, peat, or other aggregate from any wetland, watercourse, water body or buffer area, either directly or indirectly.
- (2) Any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind, either directly or indirectly.

- (3) Erecting any structures or roads, the driving of pilings or placing of any other obstructions, whether or not changing the ebb and flow of the water.
- (4) Any form of pollution, including but not limited to installing a septic tank, running a sewer outfall or discharging sewage treatment effluent or any other wastes directly into or so as to drain into a wetland, watercourse, or water body.
- (5) Installation of any pipes, wells, service lines, and cable conduits.
- (6) Alteration and modification of natural drainage patterns and contours.
- (7) Construction of docks, pilings, bridges, dams, or other water control devices whether or not they change the natural drainage characteristics.
- (8) Any other activity that impairs any of the several functions served by wetlands, watercourses, water bodies, and buffer areas or the benefits derived therefrom as set forth in § 1-4 of this chapter.

D. Prohibited activities. It shall be unlawful for any person to place or deposit known industrial and chemical wastes or to introduce influents of sufficiently high thermal content as to cause deleterious ecological effects in any wetland, watercourse, water body, or buffer area.

§ 1-8. Procedure for Permits.

The issuance of permits for regulated activities under this chapter shall be the responsibility of the Approval Authority, which shall be referred all permit applications deemed to be complete by the Code Enforcement Officer. Applications for permits for regulated activities shall be filed with the Code Enforcement Officer.

A. No person shall undertake, permit, conduct, or cause to be conducted a regulated activity in a wetland, watercourse, water body, or buffer area without applying for and obtaining a written permit as provided for in this chapter.

B. Application procedure; preapplication consultation. The applicant, prior to filing an application for a permit under the provisions of this chapter, is encouraged to consult with the Code Enforcement Officer on the compliance requirements related to wetlands, watercourses, and water bodies as well as application procedures for the [MUNICIPALITY]. The applicant shall describe the general nature of the proposed project as it relates to this chapter.

C. Application for a wetlands/watercourse/water body permit.

(1) The applicant shall file with the Wetland Administrator an application, in such form and with such information as the approval authority shall prescribe, and an application fee as determined by the [Town/Village] Board. At a minimum, the following information shall be required:

- (a) A written explanation of why the proposed activity cannot be located at another site, i.e., out of the wetland, watercourse, water body, or buffer areas.
- (b) Applications affecting the water retention capacity, water flow, or other drainage characteristics of any wetland, watercourse, or water body shall include a statement of the impact of the project on upstream and downstream areas giving appropriate consideration to flood and drought levels and the amount of rainfall.
- (c) A map showing all wetlands, watercourses, water bodies, and buffer areas on the site under review and within 200 feet of the site boundaries.
- (d) A description of the vegetative cover of the area, including dominant species.
- (e) A description of the soil types on the site.

(f) Where creation of a lake or pond is proposed, details of the construction of any dams, 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.

(g) An environmental assessment form under SEQRA.

(h) A stormwater pollution prevention plan (SWPPP) consistent with the requirements of [MUNICIPALITY]. The SWPPP shall meet the performance and design criteria and standards in [*Insert stormwater regulations chapter of municipal code*]. The Code Enforcement Officer may, in his/her sole discretion, require an SWPPP for disturbances of less than one acre [Ed. Note: *may vary by municipality*]. In determining whether to require an SWPPP for disturbances of less than one acre, the Code Enforcement Officer shall consider the following:

- i. The location of the wetland in relation to the location of the proposed disturbance.
- ii. Other water sources present on the site.
- iii. The slopes present on the site.
- iv. The soil conditions present on the site.
- v. The visual and/or scenic significance of the site.

(2) Additional information. The approval authority may require additional information in order to make a determination on the application. Additional information may include, but shall not be limited to, a schedule and sequence of proposed activities and the type of equipment to be used, the study of flood, erosion, and other hazards at the site, and any other information deemed necessary to evaluate the proposed use in terms of the standards of this chapter.

(3) Filings shall be maintained on file in the office of the Code Enforcement Officer.

D. Transmittal of the application. Upon completion of the application, the approval authority shall transmit a copy of the application to:

(1) The Conservation Advisory Council or Conservation Board of the MUNICIPALITY; and

(2) The Clerk of any abutting town if the regulated activity is within 500 feet of the Town line on a watercourse that crosses the town line, or if the regulated activity is within a wetland that crosses the town line.

E. Public hearings. A public hearing shall be conducted upon public notice published in the municipality's official newspaper and posted in a conspicuous place at the [MUNICIPALITY], each to occur at least 10 days before the date designated for the public hearing.

§ 1-9. Standards for permit decisions.

In granting or denying or conditioning any application for a permit, the approval authority shall consider the following:

A. All evidence offered at any public hearing.

B. Any reports from other environmental councils, boards or commissions, and/or federal, county, state or Town agencies.

C. In granting, denying, or limiting any permit application, the [MUNICIPALITY] shall consider the functions of the wetlands and surface water functions and their role in the hydrologic and ecological system and evaluate the effect of the proposed activity with respect to the public health and welfare; navigation, public access and the impact to adjacent properties; fishing; flood and storm dangers; water quality; loss of natural aesthetic values; and protection or enhancement of the several functions of wetland and the benefits derived therefrom which are set forth in § 1-4 of this chapter. The [MUNICIPALITY] shall also consider any land use regulations promulgated by the Commissioner of the New York State Department of Environmental Conservation.

D. The suitability or unsuitability of the activity to the area for which it is proposed.

E. The effect of the proposed activity to the protection or enhancements of functions of wetlands, watercourses, and water bodies and the benefits they provide as set forth in § 1-4 of this chapter.

F. The possibility of avoiding further reduction of the wetlands', watercourses', or water bodies' natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation, prevent erosion, assimilate wastes, facilitate drainage, and provide recreation and open space.

G. The extent to which the exercise of property rights and the public benefit to be derived from such use may or may not outweigh or justify the possible degradation of the wetland, watercourse, or water body, the interference with the exercise of other property rights and the impairment or endangerment of public health, safety and welfare.

H. The [MUNICIPALITY] may impose conditions or constraints designed to carry out the intent of this chapter, including restrictive covenants and performance bonds. Such conditions or limitations shall be incorporated in the permit. If the proposed activity causes an unavoidable loss of wetlands or unavoidably adversely impacts a waterway, said impacts having been minimized to the extent practicable, the applicant shall develop a mitigation plan that shall specify mitigation measures that provide the replacement of the resources that are lost due to the proposed activity. If mitigation is required, the mitigation plan will be a condition of the permit and shall be completed prior to the expiration of the permit and maintained for the life of the permitted structure or activity. Any wetland created pursuant to this provision shall be regulated under this Chapter.

I. The comments of the Code Enforcement Officer, which shall be submitted in writing to the Approval Authority.

§ 1-10. Findings of the Approval Authority.

A. Permits will be issued by the approval authority pursuant to this chapter only if the approval authority shall find that:

- (1) The proposed regulated activity is consistent with the policy of this chapter to preserve, protect, and conserve wetland, watercourse, and water body functions and the benefits derived therefrom.

- (2) The permit issued for the proposed regulated activity is at least as restrictive as would result under application of the Freshwater Wetlands Act of the State of New York.
- (3) The proposed activity is compatible with the public health and welfare.
- (4) The proposed regulated activity cannot practicably be relocated on site to eliminate or reduce the intrusion into the wetland, watercourse, or water body or the buffer areas adjacent thereto.
- (5) The proposed regulated activity minimizes the degradation to, or loss of, any part of the wetland, watercourse, or water body buffer and minimizes the adverse effects on the benefits of wetlands, watercourses, and water bodies as set forth in § 1-4 of this chapter.
- (6) The applicant has agreed to a mitigation plan if one is required (see §1-11, below).
- (7) The proposed regulated activities are in compliance with the standards set forth in 6 NYCRR 665.7(e) and 665.7(g), or as amended and updated.

B. The applicant shall have the burden of proof in demonstrating that the proposed activity will be in accordance with the policies and provisions of this chapter.

§ 1-11. Mitigation plan requirements

A. The approving authority may require the preparation and implementation of a mitigation plan by the applicant when the applicant has demonstrated that either losses or significant impacts to the wetland or wetland buffer are necessary and unavoidable. In determining whether and to what degree such requirement will be imposed, the approving authority will consider the following:

- (1) Whether there is no feasible on-site alternative to the proposed activity, including reduction in density, change in use, revision of road and lot layout and related site planning considerations that could accomplish the applicant's objectives; and
- (2) Whether there is a feasible alternative to the proposed activity on another site available to the applicant that is not a wetland or wetland buffer area.

B. Adequate mitigation for intrusion into wetlands shall ensure no overall net loss of wetlands in terms of ecological characteristics and function, geographic location and setting and size. To ensure no net loss, mitigation measures must provide for replacement wetland at a ratio of at least 2:1.

C. The approving authority may require additional information if the mitigation plan does not provide sufficient detail to evaluate the effectiveness of the plan.

D. On-site mitigation shall be the preferred approach. Off-site mitigation shall be permitted only in cases where on-site alternatives are not possible; in these instances, emphasis should

be placed on mitigation within the same general watershed as the original wetland. In any event, preference should be given to restoration of a previously degraded wetland rather than trying to create a new one.

E. The approving authority may recommend a fee payable to an established [*MUNICIPAL*] Wetlands Improvement Fund in lieu of direct action on behalf of the applicant or violator to initiate restoration projects, where it determines that the public interest is better served through such a fee.

F. The approving authority shall monitor or shall cause to have monitored projects in accordance with the specifications set forth in the permit to determine whether the elements of the mitigation plan have been met. The approving authority may retain qualified professionals to discharge its obligations hereunder at the expense of the applicant. The requirements for monitoring shall be specified in the permit and/or mitigation plan and may include, but not be limited to:

- (1) The time period for all monitoring activities, which shall be a minimum of three years or more, as the approving authority deems necessary;
- (2) Field measurements to verify the size and location of the impacted wetland area and the restored/replacement wetland area;
- (3) The date of completion of the work or restoration/replacement; and
- (4) Field verification of the structural details, best management practices, mitigation measures, and vegetative, hydrologic, and soils criteria specified in the permit and/or mitigation plan.

§ 1-12. Permit conditions

Any permit issued pursuant to this chapter may be issued with conditions to assure the preservation and protection of affected wetlands, watercourses, and water bodies, and compliance with the policy and provisions of this chapter.

§ 1-13. Effect of other laws and regulations

No permit granted pursuant to this chapter shall remove an applicant's obligation to also comply in all respects with the applicable provisions of any other federal, state, or local laws or regulations, including but not limited to, the acquisition of any other permit or approval.

§ 1-14. Expiration of permit

A. All wetland/watercourse/water body permits shall expire upon completion of the activities specified and, unless otherwise indicated, shall be valid for a period of one year from the date of issue. No original permit granted pursuant to this ordinance shall be valid for a period longer than three years from the date of issue. The approval authority may extend the time in which the activities specified in the permit must be completed if, in its opinion, such extension is warranted

by the particular circumstances thereof, but not to exceed two additional periods of 90 days each. A request for extension shall be made in writing to the approval authority at least 30 days prior to the expiration date of the original permit, or the first ninety-day extension.

B. Should a permittee fail to complete the activities specified in the permit prior to the expiration of the second ninety-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 public hearing if the original intent of the permit is not altered or extended in a significant way.

C. Notice of change of ownership of the parcel covered by the permit must be filed with the Wetland Administrator within 30 days of the transfer. This shall be a condition attached to all permits issued under this chapter.

§ 1-15. Penalties for offenses

Any person convicted of having violated or disobeyed any provision of this chapter, or any condition attached 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 \$2,000 nor more than \$15,000, and/or imprisonment of not more than 15 days. Each consecutive day of the violation may be considered a separate offense.

§ 1-16. Enforcement

A. This chapter shall be enforced by the Code Enforcement Officer. The [MUNICIPALITY] may also designate other enforcement officers.

B. The Code Enforcement Officer is specifically empowered to seek injunctive relief restraining any violation, threatened violation, or breach of any permit condition under the provisions of this chapter, and/or to compel the restoration of the affected wetland, watercourse, water body, or buffer to its condition prior to the violation, or breach of any permit condition. If the [MUNICIPALITY] is successful in obtaining preliminary and/or permanent injunctive relief, it shall be entitled to an award by the court of its reasonable attorney's fees. The Code Enforcement Officer is empowered to inspect the site(s) and revoke a permit if conditions are violated.

§ 1-17. Severability; consultant fees

In order to carry out the purposes and provisions of this chapter, and in addition to the provisions specified elsewhere in this chapter, the following general provisions shall apply:

A. Severability. The provisions and sections of this chapter shall be deemed to be severable and the invalidity of any portion of this chapter by a court of competent jurisdiction shall not affect the validity of the remainder of this chapter.

B. The applicant, and the owner of the property that is the subject of an application for a permit under this chapter, shall be responsible for the actual consultant fees incurred by the

[*MUNICIPALITY*] in the review of the application, and the provisions of [*MUNICIPALITY*] of the Municipal Code shall apply procedurally and substantively to define this responsibility.