

**LOCAL LAW \_\_\_\_\_ OF 2006**  
**Chapter \*\*\* – Freshwater Wetlands**

**“A Local Law Establishing a Freshwater Wetlands, Water Bodies  
and Watercourses Ordinance”**

**§ \*\*\* - 1 LEGISLATIVE INTENT**

- A. These regulations are enacted with the intent of providing a reasonable balance between the rights of the individual property owner to the free use of his property and the right to enjoy and benefit from preservation of wetlands, water bodies and watercourses of present and future generations. Therefore, this chapter recognizes the rights of owners of property in or near wetlands to use their property for reasonable purposes consistent with other regulations and controls, provided that such use, in the judgment of the appropriate agencies or officials of the Town of East Fishkill, does not result in a significant adverse impact to the wetland systems, both on and offsite, or the functions which the wetlands are known to fulfill in the Town of East Fishkill.

Therefore, the Town Board of the Town of East Fishkill finds and declares it to be the public policy of the Town to preserve, protect and conserve its wetlands, water bodies and watercourses and the benefits derived there from, to prevent the despoliation and destruction and to regulate the use and development thereof and to secure the natural benefits of wetlands, water bodies and watercourses consistent with the general welfare and beneficial economic and social development of the Town. In this connection, the Town Board finds as follows:

1. Rapid population growth, attended by housing, road and other construction, and increasing demands upon natural resources, are found to be encroaching upon, despoiling, polluting or eliminating many of the Town’s wetlands, water bodies and watercourses and processes associated therewith.
2. The preservation and maintenance of wetlands, water bodies and watercourses in an undisturbed and natural condition constitute important physical, ecological, social, aesthetic, recreational and economic assets necessary to protect and promote the health, safety and general welfare of present and future residents of the town and of downstream drainage areas.

- B. It is the intent of this chapter to promote the public purposes identified in this section by providing for the protection, preservation, proper maintenance and use of the Town's wetlands, water bodies and watercourses by preventing or minimizing erosion due to flooding and stormwater runoff, by maintaining the natural groundwater supplies, by preserving and protecting the purity, utility, water retention capability, ecological functions, recreational usefulness and natural beauty of all wetlands, water bodies, watercourses and other related features of the terrain and by providing and protecting appropriate habitats for wildlife.
- C. It is the intent of this chapter to provide for the integrity of the biodiversity of the Town's wetlands, water bodies and watercourses, by providing and protecting appropriate habitats for wildlife and plants and especially rare, endangered and threatened species.
- D. It is the intent of this chapter to improve and avoid, minimize or mitigate the loss or degradation of the Town's wetlands, water bodies and watercourses, by regulating the operation, repair and maintenance of dams, spillways, retaining walls, drainage structures, sluices, culverts, or other water control structures or devices that insure the integrity of wetlands, watercourses and water bodies.
- E. The Town shall encourage the use of conservation easements to protect wetlands, water bodies and watercourses.
- F. It is the intent of this chapter to apply to wetlands, water bodies and watercourses, including those regulated pursuant to state or federal law, as the same may from time to time be amended.
- G. The following wetlands, water bodies and watercourses are regulated under this chapter:
1. Ponds, lakes, reservoirs, marshes, swamps, bogs, vernal pools or other area of permanent water retention, regardless of origin.
  2. All natural drainage systems, including rivers, streams and brooks which contain water at least three (3) month of the year and the associated flood plains of such watercourses.

## § \*\*\* - 2 DEFINITIONS

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

**APPLICANT** - The person filing an application pursuant to this chapter.

**APPROVAL AUTHORITY** - The Zoning Board, the Planning Board, the Town Board, the Building Inspector, or the Zoning Administrator.

**BIODIVERSITY** - The variety of living things (plants and animals), their interrelationships, their interdependence with the environment in which they live.

**BUILDING INSPECTOR** - The Building Inspector of the Town of East Fishkill, New York.

**ENVIRONMENTAL ADVISORY BOARD (EAB)** - The body established by the Town Board to address wetland and other environmental issues in connection with Planning Board, Zoning Board of Appeals and Town Board applications (currently the Conservation Advisory Council as set forth in Chapter 8 of the Town Code).

**CONSERVATION EASEMENT** - Land set aside on the subject premises for preservation and protection and/or the right of use or enjoyment.

**DEPOSIT** - To fill, place, eject, discharge or dump any material, but not including storm water.

**ENDANGERED AND THREATENED SPECIES** - Those species of flora and fauna, including those on federal, state and county lists, that are present in such small numbers that they are in jeopardy of becoming extinct. Threatened species could become endangered if a critical factor in their environment were to change.

**FILL** - Any material used for the primary purpose of changing the topography. See also DEPOSIT.

**GROWING SEASON** - The portion of the year when wetland vegetation is most apparent.

**HYDRIC SOIL** - A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part, as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, dated January, 1989, prepared by the federal government and as updated from time to time and is on file with the Town Clerk.

**HYDROPHYTIC VEGETATION** - Those plants that are dependent upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other species. These plants may belong to any of the following vegetative types: wetland trees, wetland shrubs, submerged vegetation, rooted floating-leaved vegetation, free-floating vegetation, wet meadow vegetation and bog mat vegetation.

**LOT COUNT FORMULA** - A formula, set forth in Chapter 163 Subdivision of Land, that establishes the maximum permitted number of lots or dwelling units for a proposed subdivision, which references this Chapter.

**MATERIAL** - Matter, including but not limited to, soil, silt, rock, stone, sand, gravel, clay, peat, mud, debris, refuse or any other organic or inorganic substance, whether liquid, solid or gaseous, or any combination thereof.

**MITIGATION PLAN** - The plan prepared by an applicant's professional to compensate for unavoidable wetland and buffer area impacts pursuant to the standards and requirements of this chapter, upon determination that either losses or impacts to the wetland or regulated buffer area are necessary and unavoidable and have been minimized to the extent practicable as determined by the approval authority.

**PERSON** - Any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

**PLANNING BOARD** - The Planning Board of the Town of East Fishkill, New York.

**POLLUTION** - The introduction into the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to humans, plants, wildlife or other animal life, or to property.

**REGULATED AREA** - That area which consists of a wetland, water body or watercourse and its associated buffer area.

**RESTORATION PLAN** - The plan prepared by an applicant's professional to restore or otherwise correct unauthorized activities or existing conditions and approved by the approval authority.

**SEQRA** - The New York State Environmental Quality Review Act - A law pursuant to Article 8 of the New York Environmental Conservation Law providing for environmental quality review of actions which may have a significant adverse impact on the environment.

**SOILS MAP** - The Soils Map of the United States Department of Agriculture for Dutchess County.

**STATE MAP** - The freshwater wetlands map prepared by the State of New York pursuant to Article 24 of the Environmental Conservation Law, as the same may from time to time be amended.

**STRUCTURE** - Anything constructed or built, whether of natural, manmade or processed materials.

**TOWN BOARD** - The Town Board of the Town of East Fishkill, New York.

**VERNAL POOL** - A confined depression, either natural or man-made, that is seasonably flooded, and is devoid of breeding fish populations. The absence of fish is the essence of this ecosystem.

**WATER BODY** - Any body of water that exists at least three (3) months of the year.

**WATERCOURSE** - Any identifiable channel through which water flows continuously or intermittently.

**WATERSHED** - The geographic region within which water drains to a particular wetland, water body, or watercourse containing water at least two (2) months of the year.

**WETLANDS** - Wetlands possess three essential characteristics: (1) Hydrophytic vegetation, (2) hydric soils and (3) wetland hydrology, all of which must be present in an area to be considered a wetland. The criteria shall be the ones used to determine the presence of hydrophytic vegetation, hydric soils and hydrological indicators as set forth in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", dated January 1989. Wetlands shall be all portions of NYSDEC regulated wetlands and buffers, all portions of USACOE regulated wetlands, and all portions of "isolated" wetlands not regulated by either NYSDEC or USACOE and with an area of one-half acre or more. Further, the area requirements for all wetlands shall mean the total area of the wetland, not just the portion on the applicant's lot.

**WETLAND BUFFER AREA** - The land area within one hundred (100) linear feet, (50' in the case of a watercourse) measured perpendicular or radial to the boundary of the wetland, waterbody, watercourse or watershed area along the ground surface, away from, and around the perimeter of the outermost boundary of a wetland, which area serves to lessen the impact of human disturbances to, and is an integral component of, said wetland ecosystem. Except for wetlands and water bodies of at least one acre but less than two acres, the buffer shall be 50 feet. For wetlands and water bodies of at least two acres but less than three acres, the buffer shall be 75 feet. The buffers less than 100 feet may be greater as determined by the approval authority but not more than 100 feet.

**WETLAND FUNCTIONAL ASSESSMENT** - A determination of the ecological value of a wetland, as detailed in Magee 1998 "A Rapid Procedure for Assessing

Wetland Functional Capacity”, or as required by the approval authority.

**WETLAND HYDROLOGY** - The dynamics of water movement and changes in water supply to areas that are inundated or saturated during the growing season long enough to support a dominance of hydrophytic vegetation.

**ZONING ADMINISTRATOR** - The Zoning Administrator of the Town of East Fishkill, New York.

**ZONING BOARD** - The Zoning Board of Appeals of the Town of East Fishkill, New York.

### **§ \*\*\* - 3 REGULATED ACTIVITIES**

Except as provided in § \*\*\*-4 hereof, it shall be unlawful to conduct, directly or indirectly, any of the following activities upon or within any regulated wetlands, water bodies or watercourses unless a permit is obtained pursuant to § \*\*\*-5 hereof. Any person, applicant or property owner found to be conducting or maintaining a regulated activity or use without the proper prior clearance, authorization or permit approval, or violating any provision of this chapter, shall be subject to the enforcement proceedings and penalties and any other applicable remedies as provided by Law.

#### **REGULATED ACTIVITIES WITHIN WETLANDS:**

- A. Any form of draining, dredging, grading, excavation or removal of material, including, but not limited to, peat or other organic soil deposits, except removal of debris or refuse.
- B. Any form of depositing, dumping, filling or storing of any material.
- C. Erecting or enlarging any building or structure of any kind, roads, driveways, the driving of pilings, digging of wells or placing of any obstructions, whether or not they change the ebb and flow of the water.
- D. Any form of activity which might tend to pollute, including, but not limited to, installing a septic tank or septic field, running a sewer outfall, discharging sewage treatment effluent or other liquid waste into or so as to drain into any wetland, water body or watercourse.
- E. Any other activity that disturbs any of the several functions served by wetlands, water bodies and watercourses or the benefits derived there from as set forth in § \*\*\*-1 hereof, including any activity that causes the disturbance of the soil (i.e., removal of tree stumps).

- F. Any cutting of trees or brush.
- G. Using off-road vehicles of any kind.
- H. The introduction or destruction of plant life that would alter the existing pattern of vegetation.
- I. Any form of activity that could destroy or damage nesting or breeding areas.
- J. The application of herbicides, pesticides, or fertilizers.
- K. Any soil testing or other testing activity or access thereto. As part of an application for a wetland permit, the applicant shall prove to the satisfaction of the approval authority that there are no alternative means of access to the subject location. Any permitted disturbance to wetland, water body and watercourse regulated areas shall be kept to a minimum by the applicant and all disturbances shall be restored to original condition as approved by the approval authority.
- L. Repair, rebuilding or replacing of dams, spillways, retaining walls, drainage structures, sluices, culverts, or other water control structures or devices.
- M. The placement of sewage disposal tanks, septic fields and sewage treatment plants are not encouraged within a wetland and/or wetland buffer area, and may only be considered when all other potential feasible alternatives have been thoroughly explored and determined to be infeasible, as represented in writing by the applicant's engineer. Such facilities shall be assessed and designed consistent with the requirements of the Dutchess County Health Department.
- N. Any placement of aeration devices or fountains.
- O. Any activity that changes the velocity or direction of water flows.

#### **§ \*\*\* - 4 ACTIVITIES PERMITTED BY RIGHT**

The following activities, which might otherwise be construed as being encompassed by § \*\*\*-3 hereof, are permitted by right within regulated areas:

- A. The depositing or removal of the natural products of the wetlands, water bodies or watercourses by recreational or commercial fishing, shell

- fishing, aquiculture, hunting or trapping where otherwise legally permitted.
- B. Outdoor recreation activity that does not materially alter the natural state of the land or require construction, including use of field trails for nature study, hiking or horseback riding, swimming, skin diving and boating, where otherwise legally permitted.
  - C. Operation and maintenance of dams, stone walls, retaining walls, terraces, sluices, culverts, or other water control structures or devices.
  - D. The implementation of emergency actions of the Town of East Fishkill, as determined by the Town Supervisor, in order to protect public health or safety.
  - E. Public health activities as expressed by orders and regulations of the County Department of Health.
  - F. Any actual and ongoing emergency activity that is immediately necessary for the protection and preservation of life or property or the protection or preservation of natural resource values.
  - G. Normal maintenance of existing lawns and gardens, removal of hazardous trees, tree trimming, pruning and bracing, but excluding the use of pesticides, herbicides or fertilizers.
  - H. The normal maintenance and installation of public drainage facilities and other public utility improvements by the Town.
  - I. Timber harvesting as specified under a professionally prepared management plan, pursuant to an approved management plan under NYS DEC or NYC DEP rules and/or relevant Town of East Fishkill regulations, and as administered by a forester.
  - J. The location and construction of public water supply facilities or sewer treatment plants as approved by the County Department of Health.

### **§ \*\*\* - 5 PERMIT APPLICATION & PROCEDURES**

- A. The boundaries of a wetland, water body or watercourse shall be determined by field inspection and delineation by the Town designated wetlands consultant and subsequent survey and mapping by a New York State licensed land surveyor unless such mapping is waived by the approval authority. Any professional fees incurred by the Town in reviewing an application shall be borne by the Applicant. The Applicant

- shall deposit funds into a Town Escrow Account in accordance with the provisions of the Town Code.
- B. The approval authority may require the applicant to fund other studies which may involve information from biologists, hydrologists, soil scientists, or other experts as necessary, to assist the Town in making a determination as to the acceptability of a proposed activity.
- C. As a policy and at the discretion of the Approval Authority, the determination and delineation of wetlands will only be conducted during the growing season which is usually April 2 - November 30. Wetland delineations must be re-evaluated every four (4) years to the satisfaction of the approval authority in order to be utilized in a permit application.
- D. Any person proposing to conduct or cause to be conducted a regulated activity specified in § \*\*\*-3 hereof shall file an application for a permit with the approval authority as hereinafter provided. Such application shall include the following information:
1. The name, address and telephone number of the applicant and the applicant's agent, if any, and whether the applicant is the owner, lessee, licensee, etc. If the applicant is not the owner, the written consent of the owner must be attached.
  2. The street address and Tax Map designation of the subject property.
  3. A detailed description of the specific purpose, nature and scope of the activity proposed.
  4. A map showing the area of wetland(s), watercourse(s) and water body(ies) involved and areas proposed to be disturbed.
  5. The boundaries of the buffer area shall be flagged on the property, and shown on the site development plan.
  6. Any topographical and perimeter surveys, hydrological computations, engineering studies and other factual or scientific data and reports as deemed necessary by the approval authority to permit it to arrive at a proper determination.
  7. In the case of applications affecting water retention capability, water flow or other drainage characteristics of any wetland, water body or watercourse, the approval authority may require the inclusion of a statement of the area of upstream and downstream

watersheds, impact analysis and information as to rainfall intensity in the vicinity for not less than a ten year return frequency, together with approximate runoff coefficients to determine the capacity and size of any channel sections, pipes or waterway openings, together with plans for necessary bridges, culverts, storm water or pipe drains that, in the opinion of the approval authority, are needed to arrive at a proper determination on the application, consistent with the purposes of this chapter.

8. A list of the names of the owners of record of all abutting property owners, including those across any street or right-of-way abutting the involved property.
  9. An enumeration of all applicable county, state and federal permits required for the proposed activity, and copies of the same when requested.
- E. One (1) copy of any such application shall be filed with the Town Clerk of the Town of East Fishkill and two (2) copies with the approval authority.
- F. The approval authority with respect to applications hereunder, shall be as follows:
1. The Zoning Board of Appeals shall be the approval authority with respect to any application that requires the issuance of any other permit or approval by it exclusively pursuant to the local laws and ordinances of the Town of East Fishkill.
  2. The Planning Board shall be the approval authority with respect to any application which requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of East Fishkill, including any application which also incidentally requires the issuance of any permit or approval by the Zoning Board of Appeals.
  3. The Town Board shall be the approval authority with respect to any application which requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of East Fishkill, including any application which also incidentally requires the issuance of any permit or approval by the Planning Board or Zoning Board of Appeals.
  4. The Building Inspector or the Zoning Administrator shall be the approval authority with respect to all other regulated activities.

- G. The approval authority shall refer any application submitted to it pursuant to this chapter to the Environmental Advisory Board. The Environmental Advisory Board shall report back to the approval authority within forty-five (45) days of the date of referral or within such greater period as determined by the approval authority.
- H. Public Notification:
1. For an application involving the Planning Board, Zoning Board of Appeals or Town Board, a public hearing shall be held by the approval authority on the application made hereunder at such times, under such circumstances and upon such notice as may be required for the granting of the other permit or approval required of such approval authority pursuant to the local laws and ordinances of the Town of East Fishkill.
  2. For a single lot application or an application which does not involve the Zoning Board of Appeals, Planning Board or Town Board, upon receipt of a completed application under this chapter, the Building Inspector or Zoning Administrator shall cause notice of receipt of same, such notice to be defined by the Town Board, to be made to abutting property owners and property owners across any street or right-of-way abutting the involved property. Such property owners shall have thirty (30) days from the day of notice to submit written comments to the approval authority with regard to said application. The approval authority may waive this notice procedure if responses from all of the required property owners have been received with the application. Additionally, the property will be posted, as set forth in the Zoning Ordinance for a period of 20 days prior to the final date for comments.
- I. Approval or disapproval of permit.
1. On an application for which a public hearing is required, a determination shall be made to approve, approve with modifications or disapprove the issuance of such permit simultaneous with the determination by the approval authority of the other permit or approval for which application was made.
  2. On an application for which no public hearing is required, a determination shall be made to approve, approve with modifications or disapprove the issuance of such permit within sixty (60) days following the close of the comment period, unless an extension is agreed to between the Town and applicant.

3. The Town shall require the applicant to fund the cost of monitoring improvements per the mitigation plan, during and for a designated period after construction.

### **§ \*\*\* - 6 ISSUANCE OR DENIAL OF PERMITS**

- A. The approval authority shall make an initial determination that impacts to wetland or buffer areas are unavoidable, and then the Applicant must develop a proposed mitigation plan in accordance with section 10 hereof. The applicant shall have the burden of demonstrating that the proposed activity will be in accord with the policies and provisions of this chapter and will satisfy the considerations expressed in subsection B below.
- B. In approving, disapproving or approving with modifications an application, the approval authority, based on the CAC report, or the recommendations of other Town designated consultants involved with the project, shall issue "findings" which address the following:
  1. The environmental impact of the proposed action.
  2. The alternatives to the proposed action.
  3. Irreversible and irretrievable commitments of resources that would be involved in the proposed activity.
  4. The character and degree of injury to or interference with safety, health or the reasonable use of property that is caused or threatened.
  5. The suitability or unsuitability of such activity to the area for which it is proposed.
  6. The effect of the proposed activity with reference to the protection or enhancement of the several functions which the wetlands water bodies and water courses are known to fulfill.
  7. The availability of preferable alternative locations of the subject parcel or proposed action.
  8. The required mitigation measures that are incorporated in the plan or action.

9. The extent to which the exercise of property rights and the public benefit derived from such use may outweigh or justify the possible degradation of the wetland, water body or water course, the interference with the exercise of other property rights and the impairment or endangerment of the public health, safety or welfare.
  10. The wetland functional assessment, if required by the approval authority.
- C. Permits will be issued by the approval authority pursuant to this chapter only if the approval authority:
1. Has adopted findings warranting the grant of such permit on the basis of the considerations set forth in Subsection B above and that such permit is consistent with the policies and provisions of this chapter.
  2. The proposed regulated activity is consistent with the policy of this chapter.
  3. The proposed regulated activity is consistent with the land use ordinances and regulations governing wetlands, water bodies and watercourses applicable in the Town of East Fishkill.
  4. The proposed regulated activity is compatible with the public health and welfare of the Town.
  5. The applicant has demonstrated that there is no practicable alternative for the proposed regulated activity.
  6. The proposed regulated activity minimizes the degradation to or loss of any part of the wetland, water body or watercourse or its regulated areas and minimizes any adverse impacts on the functions and benefits that said wetland, water body and watercourse provides, or an acceptable mitigation plan has been prepared.
  7. The proposed activities must also be in compliance with the standards set forth in the federal regulations and in the New York State Freshwater Wetland Regulations, Sections 665.7(e) and 665.7(g).
- D. Notwithstanding any other provisions herein, duly filed notice, in writing, that the State of New York or any agency or governmental subdivision thereof is in the process of acquiring any wetlands by negotiation or

condemnation shall be sufficient basis for denial of any permit.

**§ \*\*\* - 7 PERMIT LIMITATIONS; CERTIFICATE OF COMPLETION**

- A. In granting a permit, the approval authority may limit the same or impose conditions or limitations designed to carry out the public policy set forth in this chapter. The approval authority shall require a bond or other financial security, in an amount and with surety and conditions satisfactory to it, securing to the Town of East Fishkill compliance with the conditions and limitations set forth in the permit.
- B. Mitigation measures and permit conditions shall be set forth in a covenant to be recorded in the County Clerk's office, to run with the land and bind subsequent owners. The approval authority will require the applicant to provide an easement or covenant to enable the Town to inspect any mitigation measures or approval. If mitigation measures are removed or not properly maintained, the Town, upon notice to cure to the property owner, may undertake corrective action, charge the property owner for such expense, and, if unpaid, place the costs on the real property tax bill.
- C. The approval authority shall inspect or shall cause to be inspected the premises in question from time to time. The boundaries of a wetland, water body or watercourse and its associated buffer area having been delineated by flagging [§ \*\*\*-5(A)], these markings should be maintained throughout the construction period so that said markings are clear to any observer on the property. A permanent marker of the wetland buffer boundary will be required upon completion of any work. The approval authority shall suspend or revoke a permit if it finds, on ten (10) days written notice to the applicant and such further notice as may have been required for the public hearing held under § \*\*\*-5H hereof, that the applicant has not complied with one (1) or more of the conditions or limitations set forth in the permit or has exceeded the scope of the permitted activity. An immediate stop-work order may, however, be issued by the Building Inspector or the Zoning Administrator pending such hearing where, in this official's reasonable judgment, additional damage may be done to the wetland, water body, watercourse or regulated area pending a determination on such hearing.
- D. Within ten (10) days after completion of all work allowed under a permit granted in accordance with this chapter, the applicant shall notify the approval authority of such completion. Within thirty (30) days of such notification, the Building Inspector or the Zoning Administrator shall have the work inspected for compliance with all conditions of the permit.

- E. Before a permit is issued, a Declaration of Covenant and Restrictions will be filed against the parcel describing the Wetland boundary determined hereunder.
- F. When all work allowed under a permit is deemed acceptable, the Building Inspector or the Zoning Administrator shall issue a certificate of completion, which shall be accompanied by cancellation or return of any bond or other financial security collected for the completion of the work under that permit.
- G. If the activity authorized by a permit issued pursuant to this chapter has not been completed within two (2) years from the date of issuance of the permit, such permit shall lapse. Application for extension for an additional year may be made to the approval authority, not more than 60 days before the expiration of the permit.
- H. A copy of the permit issued under this chapter shall, prior to the exercise of any rights granted under said permit, be posted in a conspicuous location on the parcel to which said permit is applicable so that the permit shall be visible from the roadway directly accessing said parcel.

**§ \*\*\* - 8 APPLICABILITY; MORE PROTECTIVE STANDARDS TO PREVAIL**

- A. This Local Law will not apply to any Application which has received preliminary approval upon the effective date of this Law nor will this Local Law apply to any application for which a determination of significance has been adopted as of the effective date of this Law and, in addition, for which a DEIS has heretofore been submitted to the lead agency conducting environmental review or for which a DEIS will be submitted within nine months from the effective date of this Law.
- B. Where this chapter is less or more protective of the environment than the regulatory program of the United States Army Corps of Engineers, the Environmental Conservation Law of the State of New York, the New York City Department of Environmental Protection, or any law or ordinance of the County of Dutchess or the Town of East Fishkill, the law or ordinance that is more protective of the environment shall prevail.
- C. Grandfathered projects: This chapter shall not apply to any land use, improvement or development physically completed prior to the effective date of this Chapter. This chapter shall not apply to any project for which approval has been granted and work is commenced within one (1) year of final approval.

- D. Current projects: Any regulated activity which has received an approval or is otherwise allowed to legally continue prior to the effective date of this chapter, but which is not in conformity with the provisions of this chapter, may be continued subject to the following:
1. Such activity shall continue to be governed by the laws of the Town of East Fishkill in effect at the time of approval.
  2. Such activity shall not be expanded, changed or enlarged in any way that increases its size or impact without compliance with this chapter.
  3. If such activity is discontinued for twelve (12) consecutive months, any resumption of the activity shall conform to this chapter.
- E. The Buffers provided for herein shall not apply to any individual Lot upon which a residence is already existing. Nothing herein shall prevent the expansion, repair or replacement of any existing Residential use or accessory Activity on an existing residential Lot, nor shall any permit be required for such uses within the defined buffer areas.

#### **§ \*\*\* - 9 WETLAND MITIGATION PLAN REQUIREMENTS**

- A. The mitigation plan shall be based on the following order of preference:
1. Minimization of impacts and disturbance to wetlands and adjacent buffer areas, in that order.
  2. Preservation of remaining wetlands and adjacent buffer areas through the dedication and establishment of perpetual conservation easements, development restriction areas or equivalent.
  3. Rectification by repairing or restoring existing damaged wetlands or adjacent buffer areas, including enhancement thereto.
- B. Mitigation may take the following forms, either singly or in combination:
1. For disturbance in a wetland or buffer:
    - (a) Implementation of preventative practices to protect the natural condition and functions of the remaining wetland.
    - (b) Restoration or enhancement (e.g. improving the density and diversity of native woody plant species) of remaining or other upland buffer.

2. For disturbance in a wetland:
    - (a) Restoration of areas of significantly disturbed or degraded wetlands to reclaim or to bring back one or more of the functions that have been partially or completely lost by such actions as draining and filling.
    - (b) The in-kind replacement of impacted wetland by the construction of new wetland, usually by flooding or excavating land that were not previously occupied by a wetland, that recreates as nearly as possible the original wetland in terms of type, functions, geographic location and setting and that is larger than the original wetland by a ratio acceptable to the approval authority but not less than 2-1. On site mitigation is required.
- C. The following policies shall apply:
1. All mitigation measures shall balance the benefits of gaining new wetland area(s) with the loss to upland (non-wetland) areas caused by wetland creation.
  2. Any mitigation plan developed to compensate for the loss of wetland or wetland/watercourse buffer shall include base line data as needed to adequately review the effectiveness of the plan.
  3. Any mitigation plan prepared pursuant to this section and accepted by the approval authority shall become part of the permit to conduct a regulated activity.
- D. All mitigation plans shall include:
1. A map with sufficient detail and at a scale to be able to determine where the wetland is located and its size, boundaries and topographic features.
  2. A narrative which describes goals and specific objectives for the mitigation wetland or wetland buffer, including the functions and benefits to be provided and clear performance standards and criteria for assessing project success.
  3. A description of the physical, hydrological, and ecological characteristics of the impacted wetland or wetland buffer, and proposed restored or created wetland or buffer, in sufficient detail to enable the approval authority to determine whether wetland or wetland buffer impacts will be permanently mitigated.

4. Details on construction, including:
  - (a) Diking, excavation, or other means by which the wetland will be restored or created, including existing and proposed topographic contours.
  - (b) Construction schedule.
  - (c) Measures to control erosion and sedimentation during construction.
  - (d) Plantings, source of stock, procedures for transplanting/seeding the stock, area(s) to be planted, and planting schedule. If vegetation from the wild is to be used, identify the source and measures to prevent introduction of undesirable exotics.
  - (e) If applicable, explain why chemicals will be used and precautions to be taken to minimize their application and protect the wetland or wetland buffer from excessive chemicals.
5. Details on management of the mitigation site, including:
  - (a) Measures to assure persistence of the wetland (e.g. protection against predation by birds and other animals).
  - (b) Vegetative management.
  - (c) Sediment and erosion control.
  - (d) Plans for monitoring site during and after construction, including methods and a schedule for data collection and provisions for mid-course corrections.
  - (e) Provisions for long-term protection of the site (e.g. permanent conservation easement) with such protections to be described on the approved plan and to be issued via a separate recorded document.
  - (f) Provision for bonding or other financial guarantees.
6. A description of the periodic reporting, including at the end of the construction, during the monitoring period and at the end of the monitoring period;
7. The name, qualifications and experience of the person(s) implementing the mitigation plan (i.e. contractor who will restore or construct the wetland).

## **§ \*\*\* - 10 RETENTION OF WETLANDS CONSULTANTS**

- A. The Town Board authorizes the following amended administrative procedures with respect to applications pursuant to Chapter 163 (Subdivision of Land), Chapter 194, Article XII (Site Development Plan Approval) and this Chapter \*\*\* (Freshwater Wetlands, Water Bodies and Watercourses)

1. After conferring with the CAC, the Building Inspector shall periodically prepare for the consideration of the Town Board a list of qualified wetlands consultants to be retained by the Town Board to provide wetland services (identification, evaluation and periodic inspections during construction) to assist the Planning Board, Zoning Board of Appeals, Town Board, the Building Inspector or the Zoning Administrator, in subdivision or site development plan review, and other agencies and offices of the Town in the implementation of subdivision or site development plans.
2. The Building Inspector shall assign on an equitable basis the wetland consultants retained by the Town Board for subdivision or site development plan applications.

#### **§ \*\*\* - 11 PENALTIES AND REMEDIES FOR OFFENSES**

- A. Any person who violates, disobeys or disregards any provision of this chapter shall be punishable by a fine not to exceed five hundred dollars (\$500) or up to fifteen (15) days in jail or by a civil penalty not to exceed three thousand dollars (\$3,000) for every such violation. Each week's continuation of a condition violating this chapter shall be deemed a separate violation.
- B. In addition to the above penalties, the Town Board or the Building Inspector or the Zoning Administrator, with advice and consent of the Town Attorney, shall have the right to seek equitable relief to restrain and/or remedy any violation of any provisions of this chapter.
- C. The Building Inspector or the Zoning Administrator shall have the power to direct a violator to cease violation of this chapter and, with the consultation of the Conservation Advisory Council, satisfactorily restore the affected wetland, water body or watercourse to its condition prior to the violation, insofar as that is possible, within a reasonable time. The exercise of such power may be with or without the imposition of a fine or civil penalty under Subsection A hereof.

#### **§ \*\*\* - 12 EFFECTIVE DATE**

This Local Law shall take effect immediately upon its filing with the Secretary of State of the State of New York in accordance with the provisions of law.