

Local Law Filing

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

~~County~~

~~City~~

of

North Castle

Town

~~Village~~

Local Law No. _____ of the year 2012

A local law to repeal Chapter 206 (Watercourses), Chapter 209 (Wetlands and Drainage) and Chapter 99 (Environmental Quality Review), to amend various sections of the Town Code with respect to Chapter 99, to create a new Chapter 209 (Wetlands and Watercourse Protection)

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

~~County~~

~~City~~

of

North Castle

as follows:

Town

~~Village~~

Section 1. Repeal Chapter 206 (Watercourses) of the Town of North Castle Town Code.

Section 2. Repeal Chapter 209 (Wetlands and Drainage) of the Town of North Castle Town Code.

Section 3. Repeal Chapter 99 (Environmental Quality Review) of the Town of North Castle Town Code.

Section 4. Amend Section 213-22.B(2) as follows:

- (2) Net density. To further the achievement of the objectives of the State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law), the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law), the North Castle Town Wetlands and Watercourse Protection Law, the North Castle Town Development Plan and § 213-17 of this chapter, the lot area used in the calculation of maximum density in the R-MF District shall be "net lot area," as defined herein.

Section 5. Amend Section 213-22.2.A(2) as follows:

- (2) It is also the legislative intent of the Town Board to further the achievement of the objectives of the State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law), the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law), the North Castle Town Wetlands and Watercourse Protection Law and the North Castle Town Development Plan and § 213-17 of this chapter.

Section 6. Amend Section 213-23-H as follows:

- H. Development density. To further the achievement of the objectives of the State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law), the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law), the North Castle Town Wetlands and Watercourse Protection Law, the North Castle Town Comprehensive Development Plan and § 213-17 of this chapter, the total lot area used in the calculation of maximum permitted density in all business districts shall be "net lot area," as defined herein.

Section 7. Amend Section 213-24-G as follows:

- G. Development density. To further the achievement of the objectives of the State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law), the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law), the North Castle Town Wetlands and Watercourse Protection Law, the North Castle Town Development Plan and § 213-17 of this chapter, the lot area used in the calculation of maximum allowable density shall be "net lot area," as defined herein.

Section 8. Amend Section 213-24-I(2)(d) as follows:

- (d) Topography and site conditions. Sites should be of relatively level (0% to 15% or moderate 15% to 25%) grade with suitable soil (nonwetland) and foundation (adequate bearing capacity) conditions so that the proposed development will be possible without detriment to adjoining properties or the natural environment. These sites or portions of sites designated as controlled areas under the Town Wetlands and Watercourse Protection Law shall be avoided. Where such areas are proposed for development, no permit shall be granted unless the required findings in Chapter 209 can be made by the approving authority.

Section 9. Amend Section 213-24-I(4)(g) as follows:

- (g) Extension of time limits. Any of the above time limits may be extended by the Town Board where necessary to conform to the requirements of the state Environmental Quality Review Act.

Section 10. Amend Section 213-27.D as follows:

D. Pursuant to the requirements of the State Environmental Quality Review Act, the applicant shall consult with the Town Board to determine whether the action for which special permit approval is sought may have a significant adverse effect on the environment. If a draft environmental impact statement is required, it shall be made a part of the application for issuance of a special permit, and any public hearing for the draft environmental impact statement shall be held concurrently with the public hearing for the special permit application.

Section 11. Amend Section 213-37 as follows:

§ 213-37. Standards.

In acting on any site development plan application, the Planning Board shall take into consideration the recommendations of the Town Development Plan, the provisions of the Town Flood Damage Prevention Law, the Wetlands and Watercourses Protection Law, the existing topography and site conditions, including wetlands, watercourses, water bodies, adjacent areas, floodplains, steep slopes, soil conditions, rock outcroppings, vegetation and stone walls, the proposed location, height and bulk of buildings, traffic circulation within and without the site, provision of off-street parking space, location and provision of off-street parking for the handicapped, exterior lighting, buffer areas and other open spaces, appearance of utility lines and display of signs, so that the impact of development on the environmental quality and scenic character of the site will be minimized, so that it will have a harmonious relationship with the existing or permitted development of contiguous land and of adjacent neighborhoods and so that pedestrian and vehicular traffic will be handled adequately and safely within the site and in relation to the adjoining street system. Where determined appropriate, the Planning Board may forward for review and report one copy each of the application to the Conservation Board (mandatory in the case of properties listed on the open space index), the Architectural Review Board, the Housing Board and the Town Engineer.

Section 12. Amend Section 213-39 as follows:

§ 213-39. Environmental impact studies.

In accordance with the requirements of the State Environmental Quality Review Act, the Planning Board may require the applicant, at his own expense, to furnish impact studies covering aspects of the environment such as traffic, noise and air quality. The basic components of these studies shall be:

- A. A description of the proposed action and the area of activities affected.
- B. A discussion of adverse and beneficial environmental impacts. Environmental impacts are to be interpreted in the broadest sense and shall include not only hydrologic, atmospheric, geologic, vegetative, scenic and historic considerations, but also socioeconomic components.

- C. An analysis of available alternatives and their environmental effects including conventional development according to the standards of the district in which the land is located.
- D. Potential mitigating measures to minimize the negative environmental impacts.

Section 13. Amend Section A216-14.A as follows:

- A. Sketch plat review. Before preparing the preliminary plat, the applicant should become familiar with the regulations, standards and requirements contained in these Land Subdivision Regulations, the Zoning Ordinance, the State Environmental Quality Review Act, the Flood Damage Prevention Law, and the Wetlands and Watercourse Protection Law as well as with any other applicable Town, county, state and federal requirements.

Section 14. Amend Section A216-14.F as follows:

- F. Conservation Board. Where parcels are 10 acres in area or greater or where such parcels are designated on the Town's Open Space Inventory Map, or where activities are shown occurring in or adjacent to any controlled areas as defined in the Town Wetlands and Watercourse Protection Law, the Planning Board may refer a sketch plat to the Conservation Board for its review and comment.

Section 15. Amend Section A216-15.B(4) as follows:

- (4) The location of all controlled areas as defined in the North Castle Town Wetlands and Watercourse Protection Law and of any state-designated wetlands as defined in Article 24 of the Environmental Conservation Law shall be clearly delineated in the field through the use of stakes and/or flags. Stakes and/or flags shall be placed at a height of not less than 30 inches above the ground and located in such a manner that the boundaries of the controlled areas and wetlands may be clearly distinguished in the field.

Section 16. Amend Section A216-16.A(4) as follows:

- (4) Include, if determined necessary by the Planning Board in accordance with the requirements of the State Environmental Quality Review Act a final environmental impact statement.

Section 17. Amend Section A216-23.B(1) as follows:

- (1) Land to be subdivided shall be designed in reasonable conformity to existing topography in order to minimize grading, cut and fill and to retain, insofar as possible, the natural contours, to limit stormwater runoff and to conserve the natural vegetative cover and soil. No tree, topsoil or excavated material shall be removed from its natural position except where necessary and incidental to the improvement of lots and the construction of streets and related facilities in accordance with the approved plan. Topsoil shall be restored to a

depth of at least six inches and properly seeded and fertilized in those disturbed areas not occupied by buildings or structures.

Section 18. Amend Section A216-26.A as follows:

- A. Lot arrangement. The lot arrangement shall be such that there will be no foreseeable difficulty, for reasons of topography or other conditions, in securing building permits to build on all lots in compliance with the Zoning Ordinance, the Wetlands and Watercourse Protection Law and the County Health Department regulations. The Planning Board shall also consider the arrangement of lots with respect to the promotion of energy conservation and the maximization of solar access.

Section 19. Amend Section A216-26.F as follows:

- F. Water bodies. If a subdivision contains a water body, or portion thereof, lot lines shall be drawn so as to distribute the entire ownership of the water body among the fees of the adjacent lots, unless the Planning Board approves an alternate plan whereby the ownership of and responsibility for the safety of the water body is so placed that it will not become a Town responsibility. No more than 25% of the minimum lot area required under the Zoning Ordinance may be satisfied by land which is under water or is defined as a wetland by the Wetlands and Watercourse Protection Law.

Section 20. Amend Section A216-29 to remove the following term and definition.

TOWN ENVIRONMENTAL QUALITY REVIEW ACT (TEQR) -- The local law of the Town of North Castle, New York, effective July 1, 1981, implementing the New York State Environmental Quality Review Act.

Section 21. Amend Section A216-29 to remove the following term and definition.

WETLANDS AND DRAINAGE LAW -- The local law of the Town of North Castle, New York, effective October 22, 1981, providing for the protection of wetlands, water bodies and watercourses, and all amendments thereto.

Section 22. Amend Section A216-29 to include the following new term and definition.

WETLANDS AND WATERCOURSE PROTECTION LAW -- The local law of the Town of North Castle, New York providing for the protection of wetlands, water bodies and watercourses, and all amendments thereto.

Section 23. Amend Section A216-37.B as follows:

- B. Town Wetlands and Watercourse Protection fee. A permit fee of \$25 shall be paid to the Town Engineer as a condition precedent to the issuance of a permit for an approved application.

Section 24. Amend Section A216-37.C as follows:

- C. Town Flood Damage Prevention Law fee. A permit fee of \$25 shall be paid to the Town Engineer as a condition precedent to the issuance of a permit for an approved application.

Section 25. Amend Section A216-38.B(4) and (5) as follows:

- (4) Reserved
- (5) The Town Wetlands and Watercourse Protection Law

Section 26. Create the following new Chapter 209 as follows:

WETLANDS AND WATERCOURSE PROTECTION

ARTICLE I General Provisions (§ 209-1 — § 209-4)

§ 209-1 Findings of fact and intent.

- A. Findings of fact.
 - (1) Wetlands and watercourses are valuable natural resources and serve multiple functions, including:
 - (a) Protecting water resources by providing sources of surface water, recharging groundwater and aquifers, serving as chemical and biological oxidation basins and functioning as settling basins for naturally occurring sedimentation and purifying surface and subsurface water resources.
 - (b) Controlling flooding and stormwater runoff by storing or regulating natural flows.
 - (c) Providing unique nesting, migratory and wintering habitats for diverse wildlife species, including many on the New York State and federal endangered species lists.
 - (d) Supporting unique vegetative associations specifically adapted for survival in low oxygen environments.

- (e) Providing areas of unusually high plant productivity which support significant wildlife diversity and abundance.
 - (f) Providing breeding and spawning grounds, nursery habitat and food for various species or fish and other aquatic life.
 - (g) Serving as nutrient traps for nitrogen and phosphorus and filters for surface water pollutants.
 - (h) Providing open space and visual relief from intense development in urbanized and growing areas.
 - (j) Serving as outdoor laboratories and living classrooms for the study and appreciation of natural history, ecology and biology.
 - (k) Protecting reservoirs and watersheds vital to the community and to the public water supplies that they provide.
- (2) Considerable acreage of these important natural resources has been lost or impaired by draining, dredging, filling, excavating, building, polluting and other acts inconsistent with the natural functioning of such areas. Remaining wetlands are in jeopardy of being lost, despoiled or impaired by such acts, contrary to the public safety and welfare.
- (3) It is therefore the policy of the Town of North Castle to protect its citizens, including generations yet unborn, by preventing the despoliation and destruction of wetlands while taking into account varying ecological, economic, recreational and aesthetic values. The protection of water quality and quantity is of the greatest importance.

B. Intent. It is the intent of the Town of North Castle that activities in and around wetlands conform with all applicable building codes and other regulations and that such activities not threaten public safety, the natural environment or cause nuisances by:

- (1) Impeding flood flows, reducing flood storage areas or destroying storm barriers, thereby resulting in increased flood heights, frequencies or velocities on other lands.
- (2) Increasing water pollution through location of domestic wastewater disposal systems in wet soils; inappropriate siting of stormwater control facilities; unauthorized application of fertilizers, pesticides, herbicides and algicides; disposal of solid wastes at inappropriate sites; creation of unstabilized fill; or the destruction of wetland soils and vegetation serving pollution and sediment control functions.
- (3) Increasing erosion and subsequent sedimentation.

- (4) Decreasing breeding, nesting and feeding areas for many species of waterfowl, including those rare and endangered.
- (5) Interfering with the exchange of nutrients needed by fish and other forms of wildlife.
- (6) Decreasing habitat for fish and other forms of wildlife.
- (7) Adversely altering the recharge or discharge functions of wetlands, thereby impacting groundwater or surface water supplies.
- (8) Significantly altering the wetland hydro-period and thereby causing either short- or long-term changes in vegetation composition, soils characteristics, nutrient recycling or water chemistry.
- (9) Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms and training areas.
- (10) Interfering with public rights in navigable waters and the recreation opportunities provided by wetlands for fishing, boating, hiking, bird watching, photography, camping and other passive uses.
- (11) Destroying or damaging aesthetic and property values, including significant public viewsheds.

§ 209-2 Applicability.

- A. General applicability. The regulations established in this chapter shall apply to all wetlands, watercourses, water bodies and wetland/watercourse buffers as these areas are defined in § 209-3 and to any proposed regulated activity as defined in § 209-4B not physically completed prior to the effective date of this chapter.
- B. Rules for establishing and interpreting wetland boundaries. The boundaries of a wetland ordinarily shall be determined by field investigation and delineation by a qualified environmental professional and subsequent survey and mapping 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 this determination pursuant to the definitions contained in § 209-3.
- C. Grandfathered projects. The provisions of this chapter shall not apply to any land use, improvement or development that has been physically completed prior to the effective date of this chapter. As used in this section, the term "physically completed" shall mean the actual completion of construction activities related to a regulated activity, including filling, erecting structures or other improvement or development activities.

- D. Current projects. A regulated activity that was approved prior to the effective date of this chapter and to which significant economic resources have been committed pursuant to such approval but which is not in conformity with the provisions of this chapter may be continued subject to the following:
- (1) All such activities shall continue to be governed by the present regulations of the Town of North Castle in effect at the time of approval.
 - (2) No such activity shall be expanded, changed, enlarged or altered in such a way that increases its size or impact without compliance with this chapter.
 - (3) If such activity is discontinued for 12 consecutive months, any resumption of the activity shall conform to the provisions of this chapter.
 - (4) If any such use or activity is destroyed by human activities, an act of God, or the forces of nature, it shall not be resumed except in conformity with the provisions of this chapter.
 - (5) Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue.

§ 209-3 Definitions.

- A. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Certain words or phrases used in this chapter shall be interpreted as defined below; and, where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out the regulatory goals stated in § 209-1.
- B. As used in this chapter, the following terms shall have the meanings indicated:

ADJACENT AREA -- See "wetland buffer."

ADMINISTRATIVE PERMIT -- A permit issued by the Building Inspector in consultation with the Town Wetland Consultant for certain activities in wetlands, as listed in § 209-4C, which have been determined by this chapter to be limited in scope and limited in potential impact on wetlands.

APPLICANT -- Any individual, firm, partnership, association, corporation, company, organization or other legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof and that is either the owner of land on which the proposed regulated activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of any such person, who requests the approval authority to issue a permit.

APPROVAL AUTHORITY -- The administrative board or public official empowered to grant or deny permits under this chapter, to require the 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 of the Town of North Castle for any wetlands activity requiring a permit as specified in § 209-4B and for any activity included on plans submitted to the Planning Board for approval under other procedures, such as subdivision, site plan, or special use permit applications.
- (2) The Building Inspector in consultation with the Town Wetland Consultant of the Town of North Castle for any wetlands activity requiring an administrative permit as specified in § 209-4C.

BOUNDARY OF A WETLAND -- The outer limit of the soils and/or vegetation as defined under "wetland/freshwater wetland."

CLEARING -- As defined in Chapter 192 of the Code of the Town of North Castle. Any cutting of more than five trees of eight inches in diameter or more in any one-quarter-acre area, within a twelve-month period, with such area being measured as a square with each side measuring 104 feet.

CONSERVATION BOARD -- The duly appointed Conservation Board of the Town of North Castle, created pursuant to §§ 239-x and 239-y of the General Municipal Law.

CREATION -- To construct a new wetland, often by excavating and/or flooding land not previously occupied by a wetland.

CRITICAL ENVIRONMENTAL AREA (CEA)- Established in accordance with provisions 6NYCRR Part 617.4(h) by the Westchester County Board of Legislators as Chapter 694 of the Westchester County Charter adopted on October 16, 1989. Effective date of CEA designation as determined by the NYS Department of Environmental Conservation: January 31, 1990. The potential impact of any Type 1 or unlisted action on the environmental characteristics of the CEA is a relevant area of environmental concern and must be evaluated in the Determination of Significance pursuant to SEQRA. In North Castle: Byram Lake (all lands within the immediate tributary drainage area/watershed), Mianus River (NYSDEC "A" for drinking water purposes, 500 feet on either side of the bank of the river, or the edge of the freshwater wetland, as defined by NYSDEC, if greater than 500 feet), Mianus Gorge Preserve (500 feet from the river/reservoir whichever is greater). CEA designation also includes: Westchester County Parklands (Bronx River Parkway Reservation, Cranberry Lake Preserve, Kensico Dam Plaza, Silver Lake Park and Wampus Pond).

DAMS and WATER CONTROL MEASURES -- Barriers used or intended to or which, even though not intended 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 or the act thereof.

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

DOMINANT(S) or DOMINANCE -- A dominant species is either the predominant plant species (i.e., the only species dominating a vegetative unit) or a codominant species (i.e., when two or more species dominate a vegetative unit). Dominant species are considered to be those with 20% or more areal coverage in the plant community. The measures of spatial extent are percent areal cover for all vegetation units other than trees and basal area for trees. In this chapter, "dominance" refers to the spatial extent of a vegetative species because spatial extent is directly discernible or measurable in the field.

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

DREDGE -- To excavate or remove sediment, soil, mud, peat, muck, sand, shells, twigs, leafy litter or other decomposing vegetation, gravel or any other material.

ENHANCEMENT -- The repair of a wetland in which some functions have been degraded or lost, such that the degraded wetland functions are restored.

ENVIRONMENTAL MAP OF NORTH CASTLE -- The 1998 map prepared by C.H. Sells and revised in 2011 by Kellard Sessions Consulting, P.C., showing wetlands, watercourses, water bodies, steep slopes, and property lines in North Castle, as such would be amended to reflect the 2004 NYSDEC revised wetlands mapping. The Environmental Map of North Castle provides general guidance only and is intended only for general planning purposes. It is not site specific.

EXCAVATE -- To dig out and remove any material from a wetland, watercourse or wetland buffer.

FACULTATIVE SPECIES -- Vegetative species that can occur in both upland and wetland systems. There are three subcategories of facultative species: facultative wetland, straight facultative and facultative upland. Under natural conditions, a facultative wetland species is usually (estimated probability of 67% through 99%) found in wetlands, but occasionally in uplands; a straight facultative species has basically a similar likelihood (estimated probability of 34% through 66%) of occurring in both wetlands and uplands; a facultative upland species is usually (estimated probability of 67% through 99%) found in uplands but occasionally in wetlands.

~~FERROUS IRON -- The reduced form of iron found in waterlogged soils.~~

FILL -- See "deposit."

FRESHWATER WETLANDS MAP -- The final freshwater wetlands map for Westchester County promulgated by the Commissioner of the New York State

Department of Environmental Conservation pursuant to § 24-0301.5 of the New York State Freshwater Wetlands Act, or such map as has been amended or adjusted, and on which are indicated the approximate locations of the actual boundaries of wetlands regulated pursuant to Article 24 of the Environmental Conservation Law.

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

GROWING SEASON -- The portion of the year when soil temperatures are above biologic zero (5° C. or 41° F.) The growing season for Westchester County is March through October.

HYDRIC SOIL -- A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic (absence of air or free oxygen) conditions in the upper part and as further defined under "wetland."

MATERIAL -- Liquid, solid or gaseous substances, including but not limited to soil, silt, gravel, rock, water, clay, peat, mud, debris and refuse; any organic or inorganic compound, chemical agent or matter; sewage sludge or effluent; or industrial or municipal solid waste.

~~**MINERAL SOIL** — A soil consisting predominantly of and having its properties determined predominantly by mineral matter. Mineral soils usually contain less than 20% organic matter by weight.~~

MITIGATION --The creation or substantial improvement of wetlands and wetland buffers in nonregulated areas, in degraded wetland areas, or in wetland buffer areas to lessen, ease or replace the functional capacity of existing wetlands or wetland buffers that is lost as a result of the permitted activity. Wetland mitigation, referred to in this chapter as "mitigation," requires the development and implementation of a mitigation plan, pursuant to § 209-9.

MITIGATION PLAN -- The plan prepared by the applicant pursuant to § 209-9 when the applicant has demonstrated that either losses or impacts to the wetland or wetland buffer are necessary and unavoidable as defined in § 209-8D and have been minimized to the maximum extent practicable. The mitigation plan shall compensate for unavoidable wetland losses at a ratio of not less than two for one, i.e., two acres of created wetland for every one acre of wetland loss. The mitigation plan shall also compensate for unavoidable wetland buffer losses at a ratio of two for one, unless the approval authority determines that such mitigation is not practical and necessary.

MUNICIPALITY -- The Town of North Castle, New York.

~~**MUNSELL SOIL COLOR CHARTS** — A soil color designation system that specifies the relative degree of the three simple variables of color: hue, value and chroma; produced by the Kollmorgen Corporation, 1975, or as amended or updated from time to time.~~

NUISANCE -- The use of land or an activity conducted on the land that has, or is likely to have, a detrimental impact on the physical condition of nearby land or on the health, safety, and welfare of people of the surrounding area.

OBLIGATE UPLAND SPECIES -- Plant species that, under natural conditions, always occur in uplands (i.e., greater than 99% of the time). The less-than-one-percent difference allows for anomalous wetland occurrences (i.e., occurrences that are the result of human-induced disturbances and transplants). Obligate upland species for the northeast are listed in the Wetland Plants of the State of New York 1986, published by the United States Fish and Wildlife Service in cooperation with the National and Regional Wetland Plant List Review Panels, and as updated from time to time.

OBLIGATE WETLAND SPECIES -- Plant species that, under natural conditions, always occur in wetlands (i.e., greater than 99% of the time). The less-than-one-percent difference allows for anomalous upland occurrences (i.e., occurrences that are the result of human-induced disturbances and transplants). Obligate wetland species for New York State are listed in Wetland Plants of the State of New York 1986, published by the United States Fish and Wildlife Service in cooperation with the National and Regional Wetland Plant List Review Panels, and as updated from time to time.

ON-LINE POND -- Any pond constructed within a stream.

PERMIT -- The form of written approval issued by the Town of North Castle under this chapter for the conduct of a regulated activity within a wetland or wetland buffer. A permit will include a wetland activity permit issued by the Planning Board and an administrative wetland activity permit issued by the Building Inspector in consultation with the Town Wetland Consultant.

PERSON -- See "applicant."

PHYSICAL COMPLETION -- The actual completion of construction activities related to a regulated activity, including filling, erecting structures, or other improvements or development activities.

POLLUTION -- Any harmful thermal effect or the contamination or rendering unclean or impure of any wetland or waters by reason of erosion or by any waste or other materials discharged or deposited therein.

PROJECT -- Any proposed or ongoing action which may result in direct or indirect physical or chemical impact on a wetland, watercourse, water body or wetland or watercourse buffer, including but not limited to any regulated activity.

REMOVE -- To dig, trench, dredge, suck, bulldoze, dragline, blast or otherwise excavate or grade.

RENDERING UNCLEAN OR IMPURE -- Any alteration of the physical, chemical or biological properties of any wetland or waters, including but not limited to change in odor, color, turbidity or taste.

RESIDENTIAL PROJECT REVIEW COMMITTEE (RPRC) – Committee established pursuant to Chapter 45 of the Town of North Castle Town Code to review all applications for any residential permit (including, but not limited to, buildings permits, steep slope permits, wetlands permits and pool permits), but excluding permits only relating to interior alterations/renovations to determine whether a permit application should require Planning Board and/or Architectural Review Board approval. The Committee is intended to streamline the residential review process by having the RPRC quickly review incoming residential projects.

RESTORATION -- To reclaim a disturbed or degraded wetland or watercourse in order to bring back one or more functions that have been partially or completely lost by such actions as draining or filling.

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

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) -- The law pursuant to Article 8 of the New York Environmental Conservation Law providing for environmental quality review of actions which may have a significant effect on the environment.

STRUCTURE -- Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground, including but not limited to buildings, tennis courts, in-ground swimming pools and other recreational facilities that create impervious surfaces.

SUBDIVISION -- The division of any parcel of land into two or more lots, blocks or sites, with or without the creation of new streets, for the purpose, whether immediate or future, of transfer of ownership or building development, and includes resubdivision.

TOWN WETLAND CONSULTANT -- Any person employed by the Town of North Castle as the Town Wetland Consultant.

WATERCOURSE -- Any natural or artificial or permanent or intermittent public or private water body or water segment, such as ponds, lakes, reservoirs, rivers, streams, brooks or waterways, that are contained within, flow through, or border on the Town of North Castle. For the purposes of this definition, "intermittent" shall mean that water stands or flows for a total of three months in a consecutive twelve-month period. A drainage ditch, swale or surface feature that contains water only during and immediately after a rainstorm or a snow melt shall not be considered to be a watercourse.

WATER QUALITY STANDARDS -- As defined by federal and state water standards, including but not limited to New York State, 6 NYCRR Part 703, Surface Water and Groundwater Quality Standards, and US EPA Clean Water Act Section 303(c).

WATER TABLE -- The zone of saturation at the highest average depth during the wettest season.

WETLAND. WATER BODY. AND WATERCOURSE BUFFER (ADJACENT AREA) -- The wetland buffer is a specified area surrounding a wetland that is intended to provide some degree of natural protection to and separation from the wetland from human activity and other encroachment associated with development. The wetland buffer shall be subject to the regulations for wetlands as defined in this chapter and shall be determined to be the area extending 100 feet horizontally away from and paralleling the outermost wetland boundary or bank of the watercourse or if, within such buffer area, there is an area of slope in excess of 25%, the buffer area shall be expanded to include the lesser of either 150 feet or the entirety of the area of 25% or greater slope which drains down toward the wetland, water body or watercourse.

WETLAND/FRESHWATER WETLAND

Wetlands regardless of size including vernal/woodland pools:

- (1) Those geographic areas of the Town of North Castle which meet the technical criteria, field indicators and other sources of information as outlined in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989) published by Federal Interagency Committee for Wetland Delineation, 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and U.S.D.A. Soil Conservation Service, Washington, D.C. Cooperative technical publication (76 pp. plus appendices).

For purposes of this chapter, wetlands are defined as those areas that have a predominance of hydric soils and/or are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions. Wetlands possess three essential characteristics: (1) hydrophytic vegetation, (2) hydric soils, and (3) wetland hydrology. These characteristics are generally described below and are more thoroughly described in the "1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands".

Hydrophytic Vegetation

For purposes of this chapter, hydrophytic vegetation is defined as macrophytic plant life growing in water, soil or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Nearly 7,000 vascular

plant species have been found growing in U.S. wetlands (Reed 1988). Out of these, only about 27 percent are "obligate wetland" species that nearly always occur in wetlands under natural conditions. This means that the majority of plant species growing in wetlands also grow in nonwetlands in varying degrees.

Hydric Soils

Hydric soils are defined as soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. In general, hydric soils are flooded, ponded, or saturated for usually one week or more during the period when soil temperatures are above biologic zero (41 degrees F as defined by "Soil Taxonomy" (U.S.DA Soil Survey Staff 1975). These soils usually support hydrophytic vegetation.

Wetland Hydrology

Permanent or periodic inundation, or soil saturation to the surface, at least seasonally, are the driving forces behind wetland formation. The presence of water for a week or more during the growing season typically creates anaerobic conditions in the soil, which affect the types of plants that can grow and the types of soils that develop. Numerous factors influence the wetness of an area, including precipitation, stratigraphy, topography, soil permeability, and plant cover. All wetlands usually have at least a seasonal abundance of water. This water may come from direct precipitation, overbank flooding, surface water runoff due to precipitation or snow melt or ground water discharge. The frequency and duration of inundation and soil saturation vary widely from permanent flooding or saturation to irregular flooding or saturation.

- (2) Watercourses and water bodies shall be encompassed under the term "wetland" as used in this chapter.
- (3) "Wetland/freshwater wetland," as defined and regulated under this chapter, shall include lands and waters that meet the definition provided in § 24-0107, Subdivision 1, of the New York State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law) and have an area of at least 12.4 acres or, if smaller, have unusual local importance as determined by the Commissioner pursuant to § 24-0301, Subdivision 1, of the Act. The approximate boundaries of such lands and waters are indicated on the Official Freshwater Wetlands Map promulgated by the Commissioner pursuant to § 24-0301, Subdivision 5, or such a map that has been amended or adjusted pursuant to § 24-0301, Subdivision 6, of Title 23.
- (4) Wetland areas depicted on the Environmental Map of North Castle (provides general guidance only and is intended only for general planning purposes, it is not site specific).

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.

VEGETATION REMOVAL -- The removal of any vegetation within the wetland or wetland buffer.

§ 209-4 Activities subject to regulation.

No activity shall be conducted in a wetland or wetland buffer, unless identified in § 209-4A as an exempt activity, without a written permit from the approval authority and full compliance with the terms of this chapter and other applicable regulations. The Town Wetland Consultant shall make the final determination of which category below that an activity falls under. All proposed activities for the subject property must be reviewed cumulatively to determine the extent of disturbance proposed.

A. Exempt activities. The following uses shall be permitted as-of-right within a wetland or wetland buffer to the extent that they are not prohibited or regulated by any other law, ordinance or regulation and to the extent that they do not constitute a pollution or erosion hazard or interfere with proper drainage and provided that they do not require structures, grading, fill, draining or dredging:

- (1) Normal ground maintenance (not including the establishment of newly grassed areas), including, mowing of existing grassed areas, trimming of vegetation and removal of dead or diseased vegetation around a residence but excluding the use of fertilizers, pesticides and herbicides.
- (2) Repair of existing walkways, bridges, culverts, pipes, walls, fences, driveways, docks and roadways, although not including a change in the surface material, after securing any required building permit.
- (3) Public health activities, orders and regulations of the Westchester County Department of Health or the New York State Department of Health for emergencies only.
- (4) Maintenance and repair of the municipal or private stormwater conveyance system including, but not limited to, pipes, swales, streams and basins.

B. Regulated activities subject to review of Planning Board. Regulated activities subject to review of the Planning Board include all activities within a wetland or wetland buffer other than those specified in § 209-4A and C and may be permitted upon written application to the approval authority. These regulated activities include but are not limited to:

- (1) Placement or construction of any structure, roadway, or driveway, including a change in surface material.

- (2) Any form of dumping, filling or depositing of material, either directly or indirectly, including silts, sediments or other materials.
- (3) Installation of any service lines, cable conduits, or other utilities.
- (4) Introduction of any form of pollution, including but not limited to the installation of a septic tank or infiltration fields, 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.
- (5) Disturbance, alteration or modification of natural features and contours, or the alteration or modification of natural aesthetic values.
- (6) Disturbance, alteration or modification of natural drainage patterns.
- (7) Construction of dams, docks or other water control devices, pilings or bridges, whether or not they change the natural drainage characteristics.
- (8) Installation of any new pipes or new wells.
- (9) Clearing, as defined in Chapter 192 of the Code of the Town of North Castle.
- (10) Removal or cutting of any vegetation except as permitted in § 209-4A.
- (11) Deposition or introduction of organic or inorganic chemicals, including herbicides, pesticides and fertilizers.
- (12) Grazing of one or more horses or other animal and any agricultural activity which involves draining or excavation of a wetland or wetland buffer.
- (13) Decorative landscaping and planting in wetland buffers.
- (14) Discharges or other activities which may cause thermal changes to the water supply.
- (15) Introduction of any non-native species of vegetation, either directly or indirectly, other than as may be allowed by state or federal regulation.
- (16) Any other activity that may impair the natural function(s) of a wetland or the benefits derived therefrom, as described in § 209-1.
- (17) Subdivision of land taking into consideration environmental features to avoid the creation of poor lots with detrimental impacts related to wetlands and steep slopes.

C. Regulated activities subject to administrative permit. The following activities, when proposed for a one or two-family residential parcel [NOTE: CB recommends only allowing an administrative permit for existing homes], are determined by this chapter to be limited in scope and limited in potential impact. The approval authority for applications to conduct these activities shall be the Building Inspector in consultation with the Town Wetland Consultant. Before issuing any administrative permit, the Town Wetland Consultant shall review the administrative permit application, conduct a site visit to determine the scope of the project, and may, at his discretion, refer any application for an administrative wetland activity permit to the Planning Board for its review and action. Activities for which an application may be made for an administrative permit are:

- (1) Deck, porch or fence accessory to an existing residence, utilizing hand dug support posts.
- (2) One and two-family residential buildings or residential accessory uses, where disturbance is located no more than 25 feet into a wetland or watercourse buffer. [NOTE: CB recommends that this section only apply to additions to existing homes]
- (3) Repair of existing septic disposal facility or existing domestic well.

ARTICLE II Permit Procedure (§ 209-5 — § 209-15)

§ 209-5 General procedures for permits.

- A. Application required. Prior to the submission of a wetland application form, the Applicant should schedule a pre-application meeting with the approval authority to discuss the scope of the project and identify the information required to be submitted. No regulated activity shall be conducted without the issuance of a written permit from the approval authority. Application for a permit shall be made to the approval authority on forms furnished by the Planning or Building Department. When a wetland permit is required for improvements associated with a subdivision or a site plan application, a separate wetland application form is not required; however, a fee for wetland application review is to be submitted in accordance with a fee schedule adopted by the Town Board. The approval authority shall review the subdivision or site plan applications using the standards established by this chapter.
- B. Conservation Board;
 - (1) Where the Planning Board is the approval authority, upon submission of a completed application, the Conservation Board shall review the application and, within 45 days of receipt thereof, shall file a written report and its recommendation concerning the application with the Planning Board. Such report shall evaluate the proposed regulated activity in terms of the findings, intent and standards of Chapter 209.

- (2) Where the Building Inspector in consultation with the Town Wetland Consultant is the approval authority, upon submission of the completed application, the Town Wetland Consultant shall provide the Conservation Board an informational report at its next meeting. [NOTE: CB recommends that the report be presented for review and comment prior to the issuance of the administrative permit]
- C. Planning Board waiver. The Planning Board, if it determines that the requested wetland permit is minor in nature, may direct the permit to be processed administratively by majority vote.
 - D. SEQRA compliance. An application shall not be deemed complete until and unless the applicant has complied fully with the procedures of the State Environmental Quality Review Act.
 - E. Maintenance of files. All information relating to a permit application, including but not limited to the application itself, additional required materials or information, notices, record of hearings, written comments and findings shall be maintained on file in office of the approval authority.
 - F. Site inspections. The approval authority, its agents or employees may enter upon any lands or waters for good cause shown so as to undertake investigations, examinations, surveys or other activity, including the review of applications and determinations of compliance with permits, all for the purpose of administering and enforcing this chapter.
 - G. Expiration of approval. All permits shall expire on completion of the acts specified and, unless otherwise indicated, shall be valid for a period of two years from the date of issue. An extension of an original permit may be granted upon written request to the approval authority by the original permit holder or his legal agent. The approval authority may require a new hearing if, in its judgment, the original intent of the permit is altered or extended by the renewal or if the applicant has failed to abide by the terms of the original permit in any way. The request for renewal of a 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.

§ 209-6 Application for permit.

- A. Required data for a Planning Board application. An application for a wetland activity permit shall be filed with the Planning Department and shall contain the following information:
 - (1) Name and address of the owner and applicant if different.
 - (2) Street address and Tax Map designation of the property.

- (3) A statement of authority from the owner for any agent making application.
- (4) Statement of proposed work and purpose thereof and an explanation why the proposed activity cannot be relocated to any area so as not to require the issuance of a wetlands permit.
- (5) A list of the names of the owners of record of lands adjacent to the wetland or wetland buffer in which the project is to be undertaken and the names of known claimants of water rights of whom the applicant has notice, which relate to any land within or within 100 feet of the boundary of the property on which the proposed regulated activity will be located.
- (6) A description of all functions currently provided by the wetland under review.
- (7) A completed environmental assessment form.
- (8) Copies of all applicable permits or permit applications that are required for such work or, if application has not yet been made, a list of all permits that will ultimately be required.
- (9) Complete plans 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 one inch equals 50 feet. Plans shall be submitted in 8 sets. The plans shall show:
 - (a) The location of all wetlands, as determined by a qualified individual identified on the plans (i.e., ecologist, botanist, soil scientist), no earlier than 12 months prior to the date of filing the application.
 - (b) The location of the construction area or area proposed to be disturbed and its relation to property lines, roads, buildings and watercourses within 250 feet.
 - (c) The exact locations, specifications and amount of all proposed draining, cut and fill, grading, dredging and vegetation removal or displacement and procedures to be used to do the work.
 - (d) Existing and adjusted contours at two-foot intervals in the proposed disturbed area and to a distance of 50 feet beyond or greater as may be required by the approving authority.
 - (e) Elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than five feet.
 - (f) A description of the vegetative cover of the regulated area, including dominant species.

- (g) A description of the soil types on site.
- (h) Location of any wells and depths thereof and any sewage disposal system within 200 feet of areas to be disturbed.
- (i) 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.
- (j) 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 fluctuation, inflow/outflow calculations (using Westchester County Soil Conservation Service method), subsurface soil, geology and groundwater conditions.
- (k) 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 analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations (using Westchester County Soil Conservation Service method), subsurface soil, geology and groundwater conditions.

B. Required data for the administrative application. An application for a wetland activity permit shall be filed with the Building Department and shall contain the following information:

- (1) Name and address of the owner and applicant if different.
- (2) Street address and Tax Map designation of the property.
- (3) Statement of authority from the owner for any agent making application.
- (4) Statement of proposed work and purpose thereof.
- (5) A completed environmental assessment form.
- (6) Copies of all applicable permits or permit applications that are required for such work or, if application has not yet been made, a list of all permits that will ultimately be required.
- (7) Complete plans for the proposed lot improvements, which may be certified by an engineer, architect, land surveyor or landscape architect licensed in the State of

New York, drawn at the scale one inch equals 50 feet. Eight (8) sets of such plans shall be submitted with each application and show [See Section 209-6.C for information regarding information waiver provisions]:

- (a) The location of the wetlands as they exist in the field or as shown on the Town of North Castle Environmental Map and field-verified by the Town Wetland Consultant.
- (b) Location of the construction area or area proposed to be disturbed and its relation to property lines, roads, buildings and watercourses and wetlands.
- (c) Existing and proposed contours at two-foot intervals in the proposed disturbed area as may be required at the sole discretion and request of the Town Wetland Consultant.
- (d) Location of any existing structures, well(s) and septic system(s), other improvements, easements or encumbrances as required by the Town Wetland Consultant.

C. Certain application submission requirements may be waived at the discretion of the Approval Authority subject to meeting the following conditions:

- (1) The applicant shows good cause for the requested waiver;
- (2) The waiver does not compromise a proper and complete review; and
- (3) The information is not material to describing the proposal or demonstrating compliance with approval criteria.

D. Fees.

- (1) An application fee of \$50, shall be paid by the applicant.
- (2) The Building Inspector, the Planning Board, and the Conservation Board in the review of any wetland permit, may refer any such application presented to it to such engineering, planning, legal, technical or environmental consultant, or professional(s) employed by the Town, as such approval authority shall deem reasonably necessary to enable it to review such application as required by law. Charges made by such consultants shall be in accord with charges usually made for such services in the metropolitan New York region or pursuant to an existing contractual agreement between the Town and such consultant. Charges made by the Town shall be in accord with the hourly rates upon which the employee's actual salary is based and fringe benefits and reasonable overhead. All such charges shall be paid on submission of a Town voucher. The applicant shall reimburse the Town for the cost of such consultant services upon submission of a

copy of the voucher, in accordance with the escrow account procedure set forth below.

- (3) Escrow accounts. At the time of submission of an application, the approval authority may require the establishment of an escrow account from which withdrawals shall be made to reimburse the Town for the cost of consultant fees and professional staff services. The applicant shall then provide funds to the Town for deposit into such account, in the amount to be determined by the approving authority based upon its evaluation of the nature and complexity of the application. The applicant shall be provided with copies of any Town voucher for consultant fees as they are submitted to the Town and with Town staff time records for services for which reimbursement is sought. When the balance in such escrow account is reduced to 1/3 of its initial amount, the applicant shall deposit additional funds into such account to restore the balance in such account to the amount of the initial deposit. If such account is not replenished in 30 days after the applicant is notified, in writing, of the requirement for such additional deposit, the approval authority may suspend its review of the application. A building permit, certificate of occupancy or use or certificate of compliance shall not be issued unless all such applicant's costs have been reimbursed to the Town. After all pertinent costs have been paid, the Town shall refund to the applicant any funds remaining on deposit.

- E. Additional data. The approval authority may require additional information deemed necessary to evaluate the proposed activity in terms of the goals and standards of this chapter, such as the study of flood, erosion or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards.

§ 209-7 Public hearing and notice. No sooner than 30 days and not later than 60 days after receipt of a complete application by the approval authority, the approval authority shall hold a public hearing on such application. Where the approval authority is the Building Inspector in consultation with the Town Wetland Consultant, then no public hearing shall be required. Notice of such hearings shall be given in the same manner as prescribed for the approval of plats under § 276 of the Town Law, and, in addition, the applicant shall notify all abutting property owners of record. Such service shall be made by certified mail, return receipt requested. Such mailing shall be made at least five business days before the date set for hearing. All applicants, maps and documents relating thereto shall be open for public inspection at the offices of the Planning Department. At such hearing any person or persons having an interest may appear and be heard.

§ 209-8 Standards for application for permit decisions.

- A. Criteria to be considered. In granting, granting subject to conditions, or denying any application for a permit under this chapter, the approval authority shall evaluate wetland functions and the role of the wetland in the hydrologic and ecological system and shall determine the impact of the proposed activity upon public health and safety, rare and endangered species, water quality and the additional wetland functions listed in § 209-1.

In this determination, the approval authority shall consider the following factors and shall issue written findings with respect to:

- (1) The impact of the proposed activity and existing and reasonably anticipated similar activities upon neighboring land uses and wetland functions as set forth in § 209-1, including but not limited to the:
 - (a) Infilling of a wetland or other modification of natural topographic contours.
 - (b) Disturbance or destruction of natural flora and fauna.
 - (c) Influx of sediments or other materials causing increased water turbidity or substrate aggradation.
 - (d) Removal or disturbance of wetland soils.
 - (e) Reductions in wetland water supply.
 - (f) Interference with wetland water circulation.
 - (g) Reduction or increases in wetland nutrients.
 - (h) Influx of toxic chemicals or heavy metals.
 - (i) Temperature changes in the wetland water supply.
 - (j) Changes affecting natural aesthetic values.
- (2) Any existing wetland impacts and the cumulative effect of reasonably anticipated future wetland activities in the wetland subject to the application.
- (3) The impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage and water quality.
- (4) The safety of the proposed activity from flooding, erosion, hurricane winds, soil limitations and other hazards and possible losses to the applicant and subsequent purchasers of the land.
- (5) The adequacy of water supply and waste disposal for the proposed use.
- (6) Consistency with all applicable statutes or regulations of comprehensive land use plans.
- (7) The availability of preferable alternative locations on the subject parcel.

- (8) The adequacy of the proposed mitigation plan in minimizing the potential impacts of the activity.

B. Basis for denial. The approval authority shall deny a permit if:

- (1) The proposed activity may significantly threaten public health and safety, result in fraud, cause nuisances, impair public rights to the enjoyment and use of public waters, threaten a rare or endangered plant or animal species, violate water quality standards or violate other federal, state or local regulations.
- (2) It finds that the detriment to the public, measured by the factors listed in this section, that would occur on issuance of the permit outweighs the nonmonetary public benefits associated with the activity.
- (3) Both the affected landowner and the local government have been notified by a duly filed notice, in writing, that the state or any agency or political subdivision of the state is in the process of acquiring the subject freshwater wetland by negotiation or condemnation with the following provisions:
 - (a) The written notice must include an indication that the acquisition process has commenced, such as that an appraisal of the property has been prepared or is in the process of being prepared.
 - (b) If the landowner receives no offer for the property within one year of the permit denial, this ban to the permit lapses. If its negotiations with the applicant are broken off, the state or any agency or political subdivision must, within six months of the end of negotiation, either issue its findings and determination to acquire the property pursuant to § 204 of the Eminent Domain Procedure Law or issue a determination to acquire the property without public hearing pursuant to § 206 of the General Domain Procedure Law or this ban to permit lapses.
- (4) There is a viable alternative to the proposed activity's placement in or encroachment upon the wetland or wetland buffer area.

C. Consideration of relationship of activity to wetland site. The approving agency shall give consideration to the necessity for a proposed activity to have a shoreline or wetland location in order to function and that will have as little impact as possible upon the wetland buffer. In general, permission will not be granted for dredging or ditching solely for the purpose of draining wetlands, controlling mosquitoes, lagooning, creating ponds or stormwater detention basins, constructing residences or commercial buildings, providing spoil and dump sites, or building roadways that may be located elsewhere. The regulated activity must, to the extent feasible, be confined to the portion of a lot outside of a wetland and wetland buffer. All reasonable measures must be taken to minimize impact upon the wetland and wetland buffer.

- D. Determination of unavoidable impacts. When an applicant has demonstrated that either losses or impacts to the wetland or wetland buffer are necessary and unavoidable and have been minimized to the maximum extent practicable, the approval authority shall require preparation of a mitigation plan by the applicant pursuant to § 209-9.
- (1) The following is the order of preference for mitigation plans:
 - (a) Avoidance.
 - (b) Minimization.
 - (c) Rectification by repairing or restoring.
 - (d) Reduction through preservation and operation maintenance.
 - (2) For the purposes of this chapter, wetland impacts are necessary and unavoidable only if all of the following criteria are satisfied:
 - (a) The proposed activity is compatible with the public health and welfare.
 - (b) 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.
 - (c) There is no feasible alternative to the proposed activity on another site available to the applicant that is not a wetland or wetland buffer.
- E. Conservation Board report. If the Conservation Board recommends disapproval or modification of an application under this chapter, the Planning Board shall not act contrary to such recommendation except by a vote of a majority plus one of the whole number of the Planning Board. If no recommendation is received by the Planning Board, the Conservation Board shall be deemed to have made no recommendation and the supermajority requirement shall not apply.

§ 209-9 Mitigation policy.

- A. Mitigation required.
- (1) After it has been determined by the approval authority pursuant to § 209-8D that losses of wetland or wetland buffer are necessary and unavoidable and have been minimized to the maximum extent practicable, the applicant shall develop a mitigation plan which shall specify mitigation measures that provide for replacement wetlands or wetland buffers that recreate as nearly as possible the original wetlands and buffer in terms of type, function, geographic location and setting. The mitigation plan shall compensate for unavoidable wetland losses at a ratio of not less than two for one, i.e., two acres of created wetland for every one acre of wetland loss. The mitigation plan shall also compensate for unavoidable

wetland buffer losses at a ratio of two for one, unless the approval authority determines that such mitigation is not practical and necessary.

- (2) All mitigation measures shall balance benefits of regaining new wetland and buffer areas with the loss to other natural areas due to wetland and/or buffer creation. On-site mitigation shall be required; however, off-site mitigation shall be permitted in cases where an on-site alternative is not possible or practical.
- (3) Mitigation includes, but is not limited to, remediating activities that limit environmental damage, wetlands construction, mitigation plantings, wetland maintenance, establishment of no-mow zones, removal of invasive species, and wetland buffer enhancement.

B. Mitigation plans, developed to compensate for the loss of wetlands, shall include the following:

- (1) Monitoring schedule. A monitoring schedule for a specified period of time as agreed to by the approval authority, and which shall be in accordance with the provisions of § 209-12.
- (2) Mitigation types. Mitigation may take the following forms, either singularly or in combination, for disturbances in wetlands and wetland buffers:
 - (a) For disturbance in a wetland buffer:
 - [1] Implementation of preventative practices to protect the natural condition and functions of the wetland; and/or
 - [2] Restoration or enhancement (e.g., improving the density and diversity of native plant species) of remaining or other upland buffer to offset the impacts to the original buffer.
 - (b) For disturbance in a wetland:
 - [1] Restoration of areas of disturbed or degraded wetlands, at a minimum ratio of 2 (restored wetland) to 1 (impacted wetland), by reclaiming disturbed or degraded wetland to bring back one or more of the functions that have been partially or completely lost by such actions as draining or filling, provided that the area of proposed mitigation occurs in a confirmed disturbed or degraded wetland having significantly less functional value as a result of disturbance or degradation; and/or
 - [2] The in-kind replacement of impacted wetland by the construction of new wetlands, usually by flooding or excavating lands in upland areas, that recreates as nearly as possible the original wetland in

terms of type, function, geographic location, and setting and that is larger than the original wetland by a ratio of a minimum ratio of 2 to 1.

C. Mitigation plan becomes part of permit. Any mitigation plan prepared pursuant to this section and accepted by the approval authority shall become part of the permit for the application. All mitigation plans shall include:

- (1) A map with sufficient detail and at a scale that makes it possible to determine where the wetland and/or wetland buffer is located, its size, its boundaries, and its topographical features;
- (2) Baseline data as needed to adequately review the effectiveness of this plan.
- (3) A narrative which describes the 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;
- (4) A description of the physical, hydrological, and ecological characteristics of the impacted wetland and/or wetland buffer and proposed restoration and/or created wetland and/or buffer in sufficient detail to enable the approval authority to determine whether wetland or buffer impacts will be permanently mitigated;
- (5) Details on construction, including:
 - (a) Diking, excavation, or other means by which the wetland will be restored or created, including existing and proposed topographical 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) Chemicals: If applicable, explain why chemicals will be used and precautions to be taken to minimize their application. Always protect the wetland and/or wetland buffer from excessive chemicals.
- (6) 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 schedule for data collection and provisions for midcourse corrections.
- (e) Provision for bonding or other financial guarantees.
- (7) A description of the periodic reporting, including at the end of construction, during the monitoring period, and at the end of the monitoring period; and
- (8) Identify the name, qualifications, and experience of the person(s) implementing the mitigation plan (i.e., contractor who will restore or construct the wetland).

§ 209-10 Action to grant permits.

- A. Action may be subject to conditions. Any permit issued pursuant to this chapter may be issued with conditions. Such conditions may be attached as the approval authority deems necessary to ensure the preservation and protection of affected wetlands and to ensure compliance with the policies and provisions of this chapter and the provisions of the approval authority's rules and regulations, if any, adopted pursuant to this chapter.
- B. Required conditions. 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, Town officials, the Conservation Board, the Town Wetland Consultant or their designated representative.
 - (2) The permit shall expire on a specified date.
 - (3) The permit holder shall notify the approval authority of the date on which the work is to begin at least five 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 permit.
- C. Additional conditions. The approval authority shall set forth in writing and maintain on file its findings and reasons for all conditions attached to any permit. Such conditions may include but shall not be limited to:
 - (1) Limitation on the total portion of any lot or the portion of the wetland on the lot that may be graded, filled or otherwise modified.
 - (2) Modification of waste disposal and water supply facilities.

- (3) 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 on vegetation removal.
- (4) Dedication of easements to protect wetlands.
- (5) Erosion control measures.
- (6) Setbacks for structures, fill, deposit of soil and other activities from the wetland.
- (7) Modifications in project design to ensure continued water supply to the wetland and circulation of waters.
- (8) Replanting of wetland vegetation and construction of new wetland areas to replace damaged or destroyed areas.

§ 209-11 Performance and/or erosion control bonds.

- A. The approval authority may require posting of a performance bond as a condition of a permit, the amount, surety and form of such bond to be approved by the Town Board. Such bond is intended to ensure the proper completion of the proposed activity in accordance with the approved plans, the restoration of the area to its natural condition as far as practicable and consistent with the mitigation plan and protection of adjoining property owners from damage resulting therefrom. It shall remain in effect until the approval authority certifies that the work has been completed in compliance with the terms of the permit, whereupon the bond shall be released or reduced by the approval authority after authorization of the Town Board. A substitute form of guaranty may be provided as approved by the Town Board.
- B. The approval authority may require posting of an erosion control bond as a condition of a permit, the amount, surety and form of such bond to be approved by the Town Board. The erosion control bond is intended to ensure the proper installation and maintenance of the erosion control measures during the permitted activity period. It shall remain in effect until the approval authority certifies that the work has been completed in compliance with the terms of the permit, whereupon the bond shall be released by the approval authority after authorization of the Town Board.

§ 209-12 Monitoring and inspection.

- A. Monitoring required. The approval authority shall monitor or shall cause to have monitored activities granted permits according to the specifications set forth in the permit to determine whether the elements of the permit and mitigation plan have been met and whether the wetland acreage or buffer created replaces the wetland acreage or buffer lost. To this end, the approval authority may contract with an academic institution and independent research group or other qualified professionals at the expense of the applicant or may use its own staff expertise. Where the approval authority deems monitoring to be necessary, an applicant shall be required to post a bond.

- B. Requirements of monitoring. The requirements for monitoring shall be specified in the permit or mitigation plan and shall include but not be limited to:
- (1) The time period over which compliance monitoring shall occur. Monitoring of mitigation plans shall be, at a minimum, five years after completion of all construction activity on site.
 - (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 restoration/replacement.
 - (4) Field verification of the vegetative, hydrologic and soils criteria as specified in the mitigation plan and permit.

§ 209-13 Suspension or revocation of permits.

- A. The Building Inspector may suspend and/or the approval authority may suspend or revoke a permit in the form of a stop-work order if it finds that the applicant or permittee has not complied with any or all of the conditions of such permit issued by the Planning Board, has exceeded the authority granted in the permit or has failed to undertake the project in the manner set forth in the permit approval document.
- B. The Building Inspector may suspend or revoke a permit in the form of a stop-work order if it finds that the applicant or permittee has not complied with any or all of the conditions of an administrative permit, has exceeded the authority granted in the permit or has failed to undertake the project in the manner set forth in the permit approval document.
- C. The approval authority shall set forth in writing in the file it keeps regarding a permit application its findings and reasons for revoking or suspending a permit pursuant to this section.

§ 209-14 Compliance with other regulations.

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

§ 209-15 Additional powers of the approval authority. In order to carry out the purposes and provisions of this chapter and in addition to the powers specified elsewhere in this chapter, the approval authority shall have the following powers:

- A. To adopt procedures and policies that relate solely to the organization or internal management of the approval authority that are necessary or convenient to carry out the policy and intent of this chapter.

B. To adopt, amend and repeal, after public hearing, such additional rules and regulations consistent with this chapter as it deems necessary to administer its provisions and to do any and all things necessary or convenient to carry out the policy and intent of this chapter.

C. To consult or contract with expert persons or agencies in reviewing a permit application.
ARTICLE III Enforcement (§ 209-16 — § 209-22)

§ 209-16 Penalties for offenses.

A. Administrative sanctions.

(1) Any person who undertakes any regulated activity within a wetland or wetland buffer without a permit issued hereunder or who violates, disobeys or disregards any provision of this chapter, including any provision of any permit issued pursuant to this chapter or any rule or regulation adopted by the approval authority pursuant to this chapter, shall be liable to the Town for a civil penalty of not more than \$1,000 for every such violation.

(2) Each consecutive day of the violation will be considered a separate offense.

(3) Such civil penalty may be recovered in an action brought by the Town at the request and in the name of the approval authority in any court of competent jurisdiction. Such civil penalty may be released or compromised by the approval authority, and any action commenced to recover the same may be settled and discontinued by the approval authority. In addition, the approval authority shall have power, following a hearing, to direct the violator to restore the affected wetland and/or wetland buffer to its condition prior to the violation, to the maximum extent possible, within a reasonable time and under the supervision of the approval authority or its designate.

(4) 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 section shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules.

(5) The Town will provide technical assistance to the court if requested.

B. Criminal sanctions.

(1) Any person who violates an order, permit or rules or regulations of the approval authority regulating wetlands and wetland buffers pursuant to this chapter shall, for the first offense, be guilty of a violation punishable by a fine of not less than \$1,000 and not more than \$2,000, for a second and each subsequent offense, he shall be guilty of a misdemeanor punishable by a fine of not less than \$3,000 nor

more than \$25,000 or a term of imprisonment of not more than six months, or both.

- (2) In addition to these punishments, any offender may be ordered by the court to restore the affected wetland and/or wetland buffer to its condition prior to the offense, to the maximum extent possible. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the approval authority.
- (3) Each offense shall be a separate and distinct offense, and, in the case of continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.
- (4) The Town will provide technical assistance to the court if requested.

§ 209-17 Restraining of violations; restorations.

The Town is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions of this chapter and compel the restoration of the affected wetland or wetland buffer to its condition prior to the violation of the provisions of this chapter.

§ 209-18 Review and appeal.

- A. Appeal. Any party to any proceeding before the approval authority may appeal to North Castle Zoning Board of Appeals from any order or decision of the approval authority, or any office or employee thereof, issued or made pursuant to or within the scope of this chapter, provided that such appeal is commenced by the filing with the North Castle Zoning Board of Appeals of a notice of appeal within 30 days after service of such order or notice of such decision given, as the case may be.
- B. Judicial review. Any determination, decision or order of the approval authority or any appeal to the North Castle Zoning Board of Appeals may be judicially reviewed pursuant to Article 78 of the Civil Practice Law and Rules in the Supreme Court for Westchester County.

Section 27. Conflicting Standards.

Where the requirements of this Local Law impose a different restriction or requirement than imposed by other sections of the Code of the Town of North Castle, the Town Law of the State of New York or other applicable rules or regulations, the requirements of this Local Law shall prevail.

Section 28. Severability.

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

Section 29. Effective Date.

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

Dated: _____, 2012

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