

Topic:	Water Conservation; Watershed Protection; Wetlands & Watercourse Protection
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Hyde Park
Year (adopted, written, etc.):	2009
Community Type - applicable to:	Suburban; Rural
Title:	Town of Hyde Park Water Resources Protection Ordinance
Document Last Updated in Database:	May 5, 2017

Abstract

The Town of Hyde Park's public policy is to preserve, protect, and conserve its water resources while simultaneously balancing the rights of individual property owners' with the rights of the community. Unless otherwise exempted, the Hyde Park requires a permit for activities including, but not limited to, draining, dredging, septic tank installation, vegetation removal, or any activity that may pollute the Town's water resources.

The Planning Board takes a number of factors into consideration when approving, approving with conditions, or disapproving permit submissions. These factors include, but are not limited to, the environmental impact of the proposed action, alternatives to the proposed action, and the suitability or unsuitability of the activity to the area for which the action is proposed. A permit may only be approved with conditions if it falls within one of the categories listed in § 107-6(C).

Mitigation plans are required for unavoidable impacts to the water resource or buffer areas. When more than one regulatory program applies to an action in which a permit is requested, the more stringent standard shall prevail.

Resource

LOCAL LAW NO. 5 OF THE YEAR 2009

Be it enacted by the Town Board of the Town of Hyde Park as follows:

Section 1

The Code of the Town of Hyde Park is hereby amended by the adoption of the following chapter:

Chapter 107, WATER RESOURCES PROTECTION

§ 107-1 to § 107-14

[History: Adopted by the Town Board of the Town of Hyde Park 8-24-2009 by L.L. No. 5-2009. Amendments noted where applicable.]

§ 107-1 LEGISLATIVE POLICY INTENT AND FINDINGS

A. The Town Board of the Town of Hyde Park declares it to be the public policy of the Town to preserve protect and conserve its water resources and the benefits they provide to prevent their degradation and to secure the natural benefits these resources provide to the residents of Hyde Park.

B. This local law is enacted with the intent of providing a reasonable balance between the rights of the individual property owner to the free use of property and the right of the community to enjoy and benefit from the preservation of water resources Therefore this chapter recognizes the rights of landowners to use their property for reasonable purposes consistent with other regulations and controls provided that such use does not result in a significant adverse impact to water resources both on and off site or to the functions which these resources fulfill in the Town of Hyde Park It is the intention of the Town Board to supplement federal and state law regarding water resources not to duplicate it.

C. Town Board hereby finds as follows:

1. The water resources of the Town preserved and maintained 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 communities.

2. Residential and commercial development has increased the demand on natural resources resulting in the impairment or elimination of many of the Town water resources and the services they provide to the community.

3. Failure to protect and maintain the Town water resources is resulting in erosion and property damage due to flooding a decrease in the natural groundwater quality and supply a loss in water retention capability a loss in ecological functions recreational usefulness and the natural beauty of all water resources and a loss of habitats for plants and wildlife especially endangered threatened and rare species.

§ 107-2 DEFINITIONS

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

ACOE- The United States Army Corps of Engineers

AGRICULTURE- The commercial use of land for the raising production preservation processing storage and sale of farm commodities such as crops plants flowers vines trees sod shrubs livestock, poultry, fish, shellfish, honey, or dairy products but not including clear-cutting, constructing roads that require moving earth or other aggregate or that alter

water flow filling or deposition of spoil, mining use of land primarily for the disposal of sewage or garbage or erecting structures not required to enhance or maintain the agricultural productivity of the land.

APPLICANT- The person filing an application pursuant to this chapter

BUFFER AREA- The land area adjacent to a water resource that serves to lessen the impact of human disturbance and serves as an integral component of the water resource ecosystem. The buffer area shall include all land within 100 feet of the water resource measured perpendicular to or radially from the boundary of the water resource. The boundary of a watercourse or water body shall be the mean high water level. The boundary of a wetland shall be determined as set forth in section 107-5F

BUILDING INSPECTOR- The Building Inspector of the Town of Hyde Park

CAC- The duly appointed Conservation Advisory Council of the Town of Hyde Park

CONSERVATION EASEMENT-An easement covenant restriction or other interest in real property created under and subject to the provisions of Title 3 Article 49 of the Environmental Conservation Law which limits or restricts development management or use of such real property for the purpose of preserving or maintaining the open or natural condition character significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in this chapter

DEC- The New York State Department of Environmental Conservation

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

DREDGING- Excavating or removing sediment soil mud sand shells gravel or other aggregate whether natural or artificial except for small samples from a Regulated Area

FILL- Any material deposited in a Regulated Area that results in a change in topography

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 Wetlands Delineation Manual

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

INVASIVE SPECIES- Non-indigenous species of plants that adversely affect the habitats they invade economically environmentally or ecologically. For purposes of this chapter, invasive

species shall be limited to the plant species on the most recent list of invasive species prepared by the CAC and placed on file with the Town Clerk

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- A plan prepared by an Applicant pursuant to the standards and requirements of this chapter to compensate for water resource and/or buffer area impacts upon a determination by the Planning Board that such impacts are unavoidable and have been minimized to the greatest extent practicable

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 Hyde Park

REGULATED AREA- A water resource and its associated buffer area

SEQRA- The New York State Environmental Quality Review Act Article 8 of the New York Environmental Conservation Law and the regulations there under at 6 NYCRR Part 617

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

SPECIES OF CONCERN- Those species of flora and fauna identified by federal state or local governments as rare threatened endangered or of special concern

STRUCTURE- A static assembly of materials forming a construction framed of component structural parts for occupancy or use such as a building dam display stand shed sign storage bin terrace patio fence or wall but not including a retaining wall

TOWN BOARD- The Town Board of the Town of Hyde Park

TOWN CLERK- The Town Clerk of the Town of Hyde Park

VERNAL POOL- Any intermittent body of water at least 0.1 acres in size, that lacks permanent surface water connections with watercourses, wetlands or water bodies, that is devoid of fish and contains amphibians (adults, egg masses or larval stages)

WATER BODY- Any permanent body of water at least 0.1 acres in size, not including a swimming pool or wastewater treatment facility

WATER RESOURCE- Any area that meets the definition provided herein of a vernal pool water body watercourse or wetland.

WATERCOURSE- Any visible path with well-defined bed and banks through which surface water travels. A drainage ditch or stormwater facility shall not be considered a watercourse. A 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.

WETLAND- Any area at least 0.1 acres in size possessing three essential characteristics hydrophytic vegetation, hydric soils and wetland hydrology, all of which must be present in an area to be considered a wetland. The criteria to determine the presence of hydrophytic vegetation, hydric soils and hydrological indicators shall be those set forth in the Wetlands Delineation Manual Wetlands shall include all portions of DEC regulated wetlands all portions of ACOE regulated wetlands and all portions of wetlands not regulated by either DEC or ACOE.

WETLANDS DELINEATION MANUAL- The “Corps of Engineers Wetlands Delineation Manual,” issued by the Department of Army Environmental Laboratory January 1987, as periodically updated by ACOE, a copy of which is on file for reference in the office of the Town Clerk.

WETLANDS REVIEW PROFESSIONAL- An environmental scientist qualified to carry out the functions described in this chapter. A qualified Wetlands Review Professional shall have a degree from an accredited college or university in a relevant scientific field, a minimum of four years of wetland delineation experience and scientific knowledge of the biogeophysical structure, function, or inter-relationships of terrestrial and aquatic/semi-aquatic plant and animal communities.

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 Hyde Park

§ 107-3 REGULATED ACTIVITIES

Except as provided in §107-4 hereof, it shall be unlawful to conduct directly or indirectly any of the following activities upon or within any water resource or buffer area unless an individual permit is first obtained pursuant to §107-5 hereof.

A. Draining dredging grading excavating or removing material, including but not limited to, peat or other organic soil deposits except removal of debris or refuse.

B. Depositing more than ten cubic yards of any material, or more than one cubic yard of manure.

C. Erecting or enlarging any building or structure of any kind, the construction of roads or driveways, the driving of pilings, digging or drilling of new wells or placing of any obstructions, whether or not they change the ebb and flow of the water.

D. Any form of activity which may pollute the water resource, including but not limited to, installing a septic tank or septic field, running a sewer outfall or otherwise discharging sewage treatment effluent or other liquid waste. The placement of a new sewage disposal tank, septic field or sewage treatment plant within a Regulated Area may only be considered when all other potential alternatives have been thoroughly explored and determined to be physically or financially infeasible. Such facilities shall be assessed and designed consistent with the requirements of the Dutchess County Department of Health.

E. Removal of vegetation:

1. Removal of trees, shrubs, and other vegetation, except activities listed under §107-4I or necessary for wetland restoration projects (see §107-8.B).

2. Replacement of any buffer area vegetation with lawn.

F. The introduction or destruction of plant life that would alter the natural pattern of vegetation.

G. Any form of activity that could destroy or damage nesting or breeding areas, except as recommended by DEC for control of nuisance species.

H. The application of herbicides, pesticides, fertilizers, bleach or other household chemicals to the Regulated Area.

J. Construction of water control structures and devices including dams, spillways, stormwater facilities, sluices, culverts, or other water control structures or devices.

K. Any other activity that disturbs any of the functions served by the water resource or the benefits derived there from as set forth in §107-1 hereof, including any activity that causes the disturbance of the soil.

§ 107-4 EXEMPT ACTIVITIES

Notwithstanding the provisions of §107-3, the following activities within Regulated Areas are exempt from the permit requirements of §107-5. It should be noted that activities exempt from Town regulation may still require DEC or ACOE permits, and that the following exemptions only apply to the requirements of this chapter.

A. Depositing or removing the natural products of water resources in the process of recreational or commercial fishing, shell fishing, aquaculture, hunting or trapping where otherwise legally permitted, including the erection and maintenance of temporary hides or blinds.

B. Outdoor recreation activity that does not materially alter the natural state of the land or require construction

C. Operation maintenance and repair of water control structures and devices including dams, spillways, stormwater facilities, sluices, culverts and other water control structures or devices.

D. The normal installation and maintenance of stormwater facilities identified by the Town as part of its MS4 commitment and other public utility improvements by the Town.

E. The implementation of emergency actions by the Town, as determined by the Town Supervisor, in order to protect public health or safety.

F. Public health activities as authorized by orders or regulations of the State or County Department of Health.

G. Any actual and ongoing emergency activity that is immediately necessary for the protection and preservation of life or property.

H. Normal maintenance of lawns and gardens removal of hazardous trees and tree trimming, pruning and bracing

I. Removal of naturally occurring vegetation for the following purposes, provided that such actions do not impair the natural functions of a Regulated Area:

1. Removal of invasive species

2. Annual or periodic removal of trees to provide firewood for normal residential use. This does not include removal of trees for commercial use or sale.

3. Selective harvesting and sustained-yield forestry when conducted in accordance with a forest management plan prepared by a DEC Cooperating Forester in accordance with New York State's Forestry Best Management Practices for Water Quality, Timber Harvesting Guidelines and Forest Road Construction Handbook, a copy of which is on file in the Office of the Town Clerk for reference. Construction of landing areas, skid trails and log haul roads are considered regulated acts subject to §107-3C of this chapter. The plan shall be on file with the Zoning Administrator.

J. Repair or redrilling of an existing well or repair or replacement of a septic tank or septic system without changing the location of the well or septic tank or system

K. Construction in the buffer area accessory to an existing single family residence of an at-grade or above-grade structure or structures totaling in the aggregate no more than 400 square feet after the effective date of this chapter.

L. Continuing lawfully existing uses and continuing all activities normally and directly associated with any such use, where such continuance does not involve expansion or significant alteration of the existing use and does not affect additional Regulated Areas.

M. Establishing scientific historic wildlife and scenic preserves where no significant impairment of the water resource or its benefits is involved.

N. Boating, hiking, swimming, camping, picnicking and other similar, non-motorized forms of outdoor activity where no significant impairment of the water resource or its benefits is involved.

O. Conducting educational and scientific research activities where no significant impairment of the water resource or its benefits is involved.

P. Establishing walking trails where no significant impairment of the water resource or its benefits is involved.

Q. Establishing an individual recreational mooring.

R. Conducting an agricultural activity consistent with applicable federal state and county requirements.

S. Ordinary maintenance and repair of existing functional structures, facilities or improved areas, including but not limited to, bridges, roads, highways, culverts, railroad beds, bulkheads, docks, beaches, piers, wharves, pilings, dolphins, utility rights-of-way, buildings, landscaped or paved areas, and lawns.

T. Operating all-terrain vehicles, air, and motor boats and snowmobiles in the buffer area except intensive organized and repetitive use of the same.

U. Placement of aeration devices or fountains.

V. Alteration of an existing structure within the same footprint or rebuilding a structure on the same footprint within five years of its complete or partial destruction.

W. Depositing or storage of up to ten cubic yards of any material except no more than one cubic yard of manure.

X. Testing for hydric soils and engineering soil testing. Any disturbance to Regulated Areas shall be kept to a minimum and all disturbance shall be restored to its original condition, except as approved by the Planning Board.

Y. Paving or repaving an existing driveway.

Z. Application of herbicides, pesticides and fertilizers in a buffer area according to the manufacturer's labeling.

AA. Any activity subject to the jurisdiction of DEC pursuant to Article 24 of the Environmental Conservation Law for which a freshwater wetlands permit or other approval has been granted by DEC and which is in compliance therewith.

BB. Remedial activity necessary to restore a developed lot in a residential subdivision which was approved by the Planning Board and has become inundated subsequent to such approval and construction of a residence. Such remedial activity must be limited to the inundated lot. This exemption does not relieve the property owner of the need to comply with the requirements of other applicable laws and regulations.

§ 107-5 INDIVIDUAL PERMIT APPLICATION PROCEDURES

A. Pre-application Conference.

A request for pre-application conference may be submitted to the Zoning Administrator. The purpose of the pre-application conference is for the applicant to obtain from the Zoning Administrator a general understanding of the requirements of this chapter and the possible applicability of this chapter to the proposed project. There shall be no fee for the pre-application conference.

B. Every application for a building permit under chapter 40, other than for an exempt activity under section 107-4 shall be reviewed by a Wetlands Review Professional retained by the Town to determine whether a permit is required under this chapter.

C. Any person proposing to conduct or cause to be conducted a regulated activity specified in § 107-3 hereof which is not exempt under § 107-4 hereof, shall submit an application to the Zoning Administrator for a permit waiver pursuant to section 107-14 or submit an application to the Planning Board for a water resources permit as hereinafter provided together with the fee as provided in the Fee Schedule adopted by the Town Board. The permit application shall include the following information provided that the applicant may request waivers from the Planning Board of any of the following requirements for good cause shown.

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 approximate boundaries of water resources and buffer areas involved and areas proposed to be disturbed. The boundaries of the water resource and buffer area shall be flagged on the property.
5. Any topographical and perimeter surveys, hydrological computations, engineering studies and other factual or scientific data and reports as deemed necessary by the Planning Board to permit it to arrive at a proper determination.

6. In the case of applications affecting water retention capability, water flow or other drainage characteristics of any water resource a stormwater runoff analysis of the contributory watersheds shall be prepared by a licensed professional engineer that includes an analysis of pre and post development conditions for the 1, 10 and 100 year storms in accordance with the NYS Stormwater Design Manual, dated August 2003, or latest revision, a copy of which is on file in the Office of the Town Clerk. The post development 24 hour peak rate of runoff for each of the design storms shall be attenuated to predevelopment conditions. This analysis will be used to determine capacity and size of any existing or proposed drainage channels pipes or other stormwater conveyance system.

7. Identification of all applicable county state and federal permits required for the proposed activity and copies of the same when available.

8. Identification of all species of concern potentially affected by the proposed activity.

D. Ten copies of the application shall be submitted to the Zoning Administrator. When the Applicant is also applying for site plan approval subdivision variance or a special use permit, the water resources permit application shall be submitted at the same time as the other application When the Applicant is applying for a building permit, the water resources permit application shall be submitted to the Zoning Administrator at the same time the building permit application is submitted to the Building Inspector, unless a permit has already been granted pursuant to this chapter.

E. The Planning Board may refer any application submitted to it pursuant to this chapter to the CAC for a report and recommendation. If the CAC fails to report back to the Planning Board within a reasonable time, the Planning Board may proceed to final action without the report of the CAC.

F. The determination and delineation of water resources shall be conducted between March 1 and November 30, unless the Zoning Administrator, on recommendation of the Town's Wetlands Review Professional approves determination and delineation in the winter season. Wetland delineations shall be valid for only five years. The boundaries of a DEC regulated wetland shall be confirmed by field inspection and signature on the map by DEC staff. The boundaries of an ACOE regulated wetland shall be confirmed by field inspection and jurisdictional determination by ACOE staff, to the extent ACOE staff are available to do so within a reasonable period of time in the judgment of the Planning Board. All other regulated wetlands shall be delineated and confirmed by a Wetlands Review Professional. All delineated wetlands shall be surveyed and mapped by a New York State licensed land surveyor unless such mapping is waived by the Planning Board. If for any reason the validity of the delineation is questioned, the Town reserves the right to appoint a Wetlands Review Professional to conduct a peer review of the delineation.

G. The Planning Board may require the Applicant to fund reasonable and necessary studies through an escrow account which may involve information review and analysis from biologists hydrologists soil scientists or other experts, possibly including site visits, to

assist the Planning Board in making a determination as to whether to approve, approve with conditions or deny the permit.

H. Public Hearing and Notice:

1. For an application involving site plan approval, subdivision or special use permit by the Planning Board, a consolidated public hearing shall be held by the Planning Board on the application for a water resources protection permit at such times, under such circumstances and upon such notice as is required for the granting of the other permit or approval.

2. For an application which does not involve site plan approval, subdivision or special use permit, the Planning Board shall determine whether to require a public hearing on the application for a water resources protection permit. In making such determination the Planning Board shall consider the degree of interest in the application shown by the public or other agencies; whether significant potential impacts on the water resource have been identified; the adequacy of the mitigation measures proposed; and the extent to which a public hearing can aid in the decision-making process.

3. Notice of public hearing shall be made as provided for site plan approval at section 108-9.3E of the Code of the Town of Hyde Park.

§ 107-6 STANDARDS FOR ISSUANCE OR DENIAL OF PERMITS

A. An application shall be approved, approved with conditions, or denied by the Planning Board.

B. In approving disapproving or approving with conditions, the Planning Board shall consider 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 water resources are known to fulfill.

7. The availability of preferable alternative locations of the proposed action on the subject parcel.

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 water resource, 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 Planning Board.

11. The purpose of the zoning district or districts in which the proposed action is located as stated in Article 3, Chapter 108 of this Code.

C. The Planning Board may approve the water resources permit application or approve with conditions, only if such approval is justified based on the following standards:

1. The eleven considerations in §107-6B warrant the grant of such permit.

2. The proposed regulated activity is consistent with the policy and provisions of this chapter.

3. The proposed regulated activity is consistent with the Code of the Town of Hyde Park.

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 technically or economically feasible alternative for the proposed regulated activity.

6. The proposed regulated activity minimizes the degradation to or loss of any part of the water resource and its buffer areas and minimizes any adverse impacts on the functions and benefits of that resource or a mitigation plan acceptable to the Planning Board has been prepared.

D. If the Planning Board determines that impacts to a water resource or buffer area are unavoidable, the Applicant shall be asked to develop a proposed mitigation plan in accordance with §107-9 hereof, which when approved by the Planning Board shall be considered a part of the water resources permit.

E. Notwithstanding any other provisions herein, notice duly filed with the Planning

Board, in writing, that the State of New York or any agency or governmental subdivision thereof is in the process of acquiring any water resource by negotiation or condemnation shall be sufficient basis for denial of any permit.

§ 107-7 PERMIT LIMITATIONS CERTIFICATE OF COMPLETION

A. In granting a permit, the Planning Board may limit the same or impose conditions or limitations designed to carry out the public policy set forth in this chapter. The Planning Board may require a bond or other financial security, in an amount and with surety and conditions satisfactory to it, securing to the Town of Hyde Park compliance with the conditions and limitations set forth in the permit, including any mitigation plan.

B. Mitigation measures and permit conditions may be set forth in a restrictive covenant or declaration to be recorded in the County Clerk's office, to run with the land and bind subsequent owners. The Planning Board may require the Applicant to provide an easement or declaration to authorize the Town to inspect any mitigation measures or approval. If mitigation measures are removed or not properly maintained, the violation shall be reported to the Town Board. The Town Board, following the procedures set forth in Chapter 84 of this Code regarding Property Maintenance, may undertake corrective action, charge the property owner for such expense and if unpaid, assess the cost and expense of such action against the property. The total costs and expenses shall be determined by the Town Board and shall be reported to the assessor of the Town as an amount to be levied and assessed against the property, and the expense so assessed shall constitute a lien and charge on the property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other Town charges, in the same manner as provided in Chapter 84 hereof.

C. The boundaries of the water resource and its associated buffer area having been delineated by flagging, these markings shall be maintained throughout the construction period so that said markings are clear to any observer on the property, provided that the Planning Board may waive the flagging of the buffer area when it determines that such flagging is not needed to protect the water resource.

D. Within ten days after completion of all work allowed under a permit granted in accordance with this chapter, the Applicant shall notify the Zoning Administrator of such completion. Within thirty days of such notification, the applicant shall submit a report prepared by a Wetlands Review Professional or appropriate design professional certifying compliance with all conditions of the permit.

E. Before a permit is issued a Declaration of Covenants and Restrictions may be required by the Planning Board to be filed in the office of the Dutchess County Clerk against the parcel describing the water resource and buffer boundary determined hereunder.

F. When all work allowed under a permit is deemed acceptable, the Zoning Administrator shall issue a certificate of occupancy or certificate of completion. The Town Board may thereupon 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 years from the date of issuance of the permit, such permit shall

lapse, provided that the Planning Board may, in its discretion, grant an extension of up to two additional years. The applicant shall submit a written request sixty days prior to the date of expiration, requesting an extension for a specified time and the reason therefore. In granting the extension, the Planning

Board may require revision of the previously approved permit to comply with current regulations and conditions. Any subsequent request for extension may be granted only after conducting a public hearing as required for the original 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.

§ 107-8 APPLICABILITY MORE PROTECTIVE STANDARDS TO PREVAIL

A. This chapter shall not apply (1) to any use or structure which was existing and was not in violation of any federal or state wetlands protection law or regulation, as of the effective date of this chapter, (2) to any unexpired building permit or Dutchess County Department of Health approval issued prior to the effective date of this chapter, or (3) to any pending application for subdivision, site plan approval or special use permit for which the lead agency has prior to the effective date of this chapter, made a determination under SEQRA that a DEIS need not be prepared or for which a DEIS has been accepted by the lead agency as adequate for the purpose of commencing public review. If a use existing as of the effective date of this chapter is discontinued for 12 consecutive months, the resumption of the use shall be subject to this chapter.

B. Where the regulatory program of ACOE, DEC or Dutchess County or the Town of Hyde Park applies to the water resource for which a permit is requested hereunder, the law or regulation that is most protective of the water resource shall prevail.

§ 107-9 MITIGATION PLAN REQUIREMENTS

A water resource mitigation plan may be required by the Planning Board to compensate for impacts to water resources associated with a permit application. The Planning Board reserves the right to retain professional consultants to conduct a peer-review of any mitigation plan.

A. The mitigation plan shall be based on the following order of preference:

1. Minimization of impacts and disturbance to water resources and adjacent buffer areas in that order.

2. Preservation of remaining water resources and adjacent buffer areas through the dedication and establishment of perpetual conservation easements, development restriction areas or equivalent.

3. Rectification by repairing or restoring damaged water resources or adjacent buffer areas, including enhancement thereto.

B. Mitigation shall take the following forms, either singly or in combination, on the same or other lot approved by the Planning Board:

1. Implementation of preventative practices to protect the natural condition and functions of the remaining water resources.

2. Restoration or enhancement (e.g. improving the density and diversity of native woody plant species) of remaining upland buffer.

3. Restoration of areas of significantly disturbed or degraded water resources 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.

4. The in-kind replacement of impacted water resources by the construction of a new resource, that recreates as nearly as possible, the original water resource in terms of type, functions, geographic location and setting, and that is larger than the original resource by a ratio acceptable to the Planning Board, but not less than 2:1.

5. Any other method approved by the Planning Board consistent with the policies and principles of this chapter.

C The following policies shall apply:

1. All mitigation measures shall balance the benefits of gaining new water resource area(s) with the loss to upland (non-water resource areas) caused by water resource creation.

2. Any mitigation plan developed to compensate for the loss of water resource or buffer shall include sufficient base line data to adequately review the effectiveness of the plan.

3. Any mitigation plan prepared pursuant to this section and accepted by the Planning Board 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 water resource is located and its size, boundaries and topographic features.

2. A narrative which describes goals and specific objectives for the mitigation, 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 water resource or buffer, and proposed restored or created resource or buffer in sufficient

detail to enable the Planning Board to determine whether water resource or buffer impacts will be permanently mitigated.

4. Details on construction including:

(a) Diking, excavation, or other means by which the water resource shall 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 maintenance plan and planting schedule.

(e) If applicable, explain what chemicals will be used and why and precautions to be taken to minimize their application and protect the water resource or buffer.

5. Details on management of the mitigation site including:

(a) Measures to assure persistence of the water resource.

(b) Vegetative management including irrigation and procedures to prevent the introduction and/or establishment of exotic or invasive species.

(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 of the mitigation plan.

(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 effected via a separate, recorded document.

(f) Provision for bonding or other financial security as required by the Planning Board.

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 implementing the mitigation plan.

§ 107-10 RETENTION OF WETLANDS REVIEW PROFESSIONAL

The Planning Board is authorized to hire a Wetlands Review Professional to serve as a consultant to the Planning Board for a particular Application under this chapter. The

Planning Board shall periodically prepare a nonexclusive list of individuals the Planning Board considers to be qualified wetlands review professionals that may be retained by the Planning Board or other Town agencies to provide wetland consulting services.

§ 107-11 STOP WORK ORDERS

A. Authority to issue.

The Zoning Administrator is authorized to issue Stop Work Orders pursuant to this section. The Zoning Administrator shall issue a Stop Work Order to halt: (1) any work that is determined by the Zoning Administrator to be contrary to any applicable provision of this chapter, without regard to whether such work is or is not work for which a Building Permit or permit under this chapter is required, and without regard to whether a Building Permit or permit under this chapter has or has not been issued for such work, or (2) any work for which a permit is required, under this chapter which is being performed without the required permit or under a permit under this chapter that has become invalid, has expired, or has been suspended or revoked.

B. Content of Stop Work Orders Stop Work Orders shall (1) be in writing, (2) be dated and signed by the Zoning Administrator, (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume

C. Service of Stop Work Orders.

The Zoning Administrator shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and if the owner is not the permit holder, on the permit holder) personally or by posting same upon a conspicuous portion of the use or structure under construction and sending a copy of the same by registered mail. The Zoning Administrator shall be permitted, but not required to cause the Stop Work Order, or a copy thereof to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the Stop Work Order personally, or by registered mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

D. Effect of Stop Work Order.

Upon the issuance of a Stop Work Order, the owner of the affected property the permit holder and any other person performing, taking part in, or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order.

E. Remedy not exclusive.

The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subsection A of this section, and the authority to issue a Stop Work

Order shall be in addition to, and not in substitution for or limitation of the right and authority to pursue any other remedy or impose any other penalty under section 107-12 (Violations) of this chapter or under any other applicable local law or State law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of or after the issuance of a Stop Work Order.

§ 107-12 VIOLATIONS

A. Notice of Violation and Order to Remedy.

The Zoning Administrator is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any use or structure in violation of this chapter. Upon finding that any such condition or activity exists, the Zoning Administrator shall issue a Notice of Violation and Order to Remedy. The Notice of Violation and Order to Remedy shall (1) be in writing; (2) be dated and signed by the Zoning Administrator; (3) specify the condition or activity that violates this chapter; (4) specify the provision or provisions of this chapter which is/are violated by the specified condition or activity; (5) specify the period of time which the Zoning Administrator deems to be reasonably necessary for achieving compliance; (6) direct that compliance be achieved within the specified period of time; and (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Zoning Administrator shall cause the Notice of Violation and Order to Remedy, or a copy thereof, to be served on the owner of the affected property personally or by registered mail. The Zoning Administrator shall be permitted, but not required, to cause the Notice of Violation and Order to Remedy, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in work being performed at the affected property personally or by registered mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the Notice of Violation and Order to Remedy.

B. Appearance Tickets.

The Zoning Administrator is authorized to issue appearance tickets for any violation of this chapter.

C. Penalties.

In addition to those penalties proscribed by State law, any person who violates any provision of this chapter, or any term or condition of any Water Resources Permit or Stop Work Order or other notice or order issued by the Zoning Administrator pursuant to any provision of this chapter, shall be liable for a civil penalty of not more than \$250 for each day or part thereof during which such violation continues or 15 days in jail, or both. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of the Town.

D. Injunctive Relief.

An action or proceeding may be instituted in the name of the Town in a court of competent jurisdiction to prevent, restrain, enjoin, correct or abate any violation of, or to enforce any provision of this chapter or any term or condition of any Water Resources Permit, Stop Work Order, Notice of Violation and Order to Remedy or other notice or order issued by the Zoning Administrator pursuant to any provision of this chapter. No action or proceeding described in this subsection shall be commenced without the appropriate authorization from the Town Board.

E. Remedies Not Exclusive.

No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this chapter or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time whether prior to simultaneously with, or after the pursuit of any other remedy or penalty specified in this chapter, or in any other applicable law.

§ 107-13 FEES AND ESCROW

A. The fees required under this chapter are set forth in the fee schedule adopted annually by the Town Board.

B. Any reasonable and necessary 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 for such reasonable and necessary professional review fees in accordance with the provisions and procedures of Chapter 108 the Town Code.

§ 107-14 PERMIT WAIVER

Where the Planning Board finds that, due to the special circumstances of a particular lot, the degraded quality of a water resource, or the unique characteristics of the topography or hydrology of a water resource and surrounding area, strict adherence to the requirements provided herein is not in the interest of the public health, safety and welfare or is inappropriate because of said circumstances, the Planning Board may waive such requirements subject to appropriate conditions. Application for a waiver shall be made to the Zoning Administrator on forms provided by the Town and shall include payment of the fee set forth in the Fee Schedule adopted by the Town Board. The Zoning Administrator shall refer the application to the Planning Board with the Zoning Administrator's recommendation for approval, disapproval or approval with conditions.

Section 2 Separability

If any part or provision of this local law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in

the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons of circumstances, and the Town Board of the Town of Hyde Park hereby declares that it would have passed this local law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 3 Repeal

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

Section 4 Effective Date

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.