

Topic: Wetlands & Watercourse Protection;
Buffer Zones
Resource Type: Regulations
State: New York
Jurisdiction Type: Municipal
Municipality: Town of Lewisboro
Year (adopted, written, etc.): 2004
Community Type - applicable to: Suburban; Rural
Title: Town of Lewisboro Wetlands &
Watercourses Ordinance
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Abstract

The legislature's intent in creating Chapter 217 of the Town Code is to assure that activities conducted in and around wetlands, watercourses and associated buffer areas be done so in conformance with the provisions of this chapter and in a manner which promotes the preservation of wetlands, watercourses and associated buffer areas as specified in the findings of fact seen at the beginning of the Chapter.

Resource

Town of Lewisboro NY
Code of the Town of Lewisboro NY
Chapter 217: Wetlands and Watercourses
General Code [http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=1300%2D217%2Ehtm%23Section217%2D1%2E&cn=470&n=\[1\]\[82\]\[470\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=1300%2D217%2Ehtm%23Section217%2D1%2E&cn=470&n=[1][82][470])
[HISTORY: Adopted by the Town Board of the Town of Lewisboro 2-23-2004 by L.L. No. 1-2004. Amendments noted where applicable.]

§ 217-1. Findings of fact; intent.

A. Findings of fact.

- (1) In their natural condition and state, wetlands and watercourses function to provide multiple ecological benefits, including:
 - (a) Storing and regulating the distribution of surface water, water quality renovation during groundwater and aquifer recharge, and/or functioning as settling basins for the removal of pollutants, including the trapping of

sediments.

- (b) Controlling flooding and stormwater runoff by storing or regulating natural flows.
- (c) Providing unique breeding, foraging, cover and seasonal or year-round habitats for diverse wildlife species, including many listed as "special concern," "threatened," "endangered" and "rare" by federal, state, county and local agencies.
- (d) Supporting unique biotic associations specifically adapted for survival in low-oxygen environments.
- (e) Providing areas of comparatively high plant productivity which support significant wildlife diversity and abundance.
- (f) Providing breeding and spawning grounds, nursery habitat, and food for various species of fish, reptiles and amphibians, birds and mammals.
- (g) Serving as nutrient traps for nitrogen and phosphorus, and filters for surface water pollutants.
- (h) Helping to maintain biospheric stability by supporting particularly efficient photosynthesizers capable of producing significant amounts of oxygen, and supporting bacteria which process excess nitrates and other nitrogenous pollutants and returning them to the atmosphere as inert nitrogen gas.
- (i) 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) Preserving the quality and value of water-related recreational activities.
- (l) Protecting aquifers, reservoirs and watersheds vital to the community and to the water supply of New York City, Westchester County and Connecticut.
- (m) Protecting and maintaining stability of stream and watercourse channels, shorelines and banks, thereby controlling and reducing erosion, flooding and

related property damage.

- (2) The integrity and realization of the full potential of wetland and watercourse functions and benefits is inextricably linked to the presence of intact, undisturbed natural communities or adjacent buffer areas surrounding wetlands and watercourses. As an interlocking landscape component of wetlands and watercourses, such buffer areas provide essential functions and values, including:
- (a) Serving as important, often critical, travel corridors and wetland-to-upland transitional habitats vital to the ecological needs and life cycle of many wetland/watercourse dependent species, including many amphibians, reptiles, birds and mammals whose survival is in jeopardy due to increasing loss of such buffer area habitat. While undisturbed adjacent buffer areas comprise a relatively small portion of the landscape, they, in combinations with wetlands and watercourses, are irreplaceable habitat links in the life cycles of the greatest proportion of area wildlife, including game and nongame species, a number of which are federal, state and county listed as special concern, rare, threatened or endangered.
 - (b) Serving as visual and noise barriers, protecting wetland/watercourse wildlife from human disturbance.
 - (c) Ameliorating potentially harsh environmental conditions by serving as windbreaks and solar reflectors, facilitating the warming of surface waters during early spring to produce water temperatures vital to the initiation of the breeding cycles of many wetland/watercourse-dependent invertebrates, amphibians, reptiles and fish; and providing shade, particularly during the growing season when the ambient heat load progresses, allowing wetlands/watercourses to maintain cool, well-oxygenated water supplies, and maintain atmospheric moisture levels amenable to moisture-sensitive amphibians.
 - (d) Controlling flooding by slowing overland runoff and absorbing and storing substantial amounts of sheet flow, thereby assisting wetlands and watercourses in controlling flooding and gradually releasing flood flows to lower watersheds.
 - (e) Trapping sediments in sheet flow, removing and assimilating excess nutrients from stormwater, and intercepting the soil-erosive force of precipitation, thereby protecting wetlands and watercourses against eutrophication (excess nutrient enrichment) and sedimentation, which can adversely affect proper wetland and watercourse functions and values.

- (f) Providing the first line of defense in the protection of wetlands and watercourses against the adverse impacts of stormwater-borne pollutants of human origin, including fertilizers, herbicides, pesticides, heavy metals, viral and bacterial agents associated with septic leachate, and various types of petroleum products. In essence, wetland and watercourse buffer areas work synergistically with aquatic resources to protect groundwater and surface water quality.
 - (g) Providing a practical and cost effective means of protecting wetlands and watercourses and controlling or preventing pollution.
 - (h) Absorbing and transpiring water with a resulting absorption of heat energy, thereby creating a cooling effect on the local microclimate and reducing soil saturation which allows for additional storage of stormwater and a concomitant reduction in runoff potential; maintaining soil porosity, thus further increasing soil water-holding capacity; and preventing potentially adverse changes to wetland and watercourse hydroperiod (duration of inundation or saturation near the surface) which could trigger a change in floristic composition, adversely affecting the physiology, germination and seedling development of wetland and watercourse plant species, and the breeding activities of wetland-dependent animals.
 - (i) Providing often unique wetland-to-upland transitional communities, with their own distinctive flora and fauna, unlike the habitat of wetlands and watercourses and drier uplands between which they lie. Consequently, buffer areas are critical ecological communities in their own right and serve as unique areas of substantial value for passive recreation, outdoor education and scientific research.
- (3) Upland adjacent areas surrounding wetlands and watercourses provide an essential protective buffer with benefits which are significant for maintaining the functional integrity and quality of such resources, and for furnishing protection against adverse impacts from activities in surrounding land areas.
- (4) Many factors affect the ability of buffer areas of various widths to protect wetlands and watercourses, including, but not limited to, type and extent of vegetative cover, time of travel of overland flow, adjacent land uses, amount of impervious cover, slope, soil type and drainage characteristics.
- (5) 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 uses of such areas. Without increased protection and larger intact upland buffer areas, remaining wetlands and watercourses are in

greater jeopardy of being lost, despoiled, or impaired by such acts, contrary to the public safety and welfare.

- (6) It is therefore the policy of the Town of Lewisboro to protect its citizens, including generations yet unborn, by preventing the despoliation and destruction of wetlands and watercourses, while taking into account varying ecological, economic, recreational, and aesthetic values. Activities that may damage wetlands and watercourses should be located on upland areas, separated by densely vegetated upland buffer areas of sufficient width.

B. Intent. It is the intent of the Town of Lewisboro that activities in and around wetlands, watercourses and associated buffer areas be conducted in conformance with the provisions of this chapter and in a manner which promotes the preservation of wetlands, watercourses and associated buffer areas as specified in the findings of fact set forth herein; conforms with all applicable building codes, sediment control regulations, and other applicable regulations; and does not threaten public safety or the natural environment, or cause nuisances or adversely affect the natural functions of wetlands and watercourses 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 waste 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; placement of unstabilized fills; or the disturbance or removal 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 and shorebirds, including those that are listed as "special concern," "rare," "threatened" or "endangered."
- (5) Interfering with the exchange of nutrients needed by fish and other forms of wildlife.
- (6) Decreasing habitat for fish, reptiles and amphibians, 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 hydroperiod and thereby causing either short- or long-term changes in wetland and watercourse community composition, soils characteristics, nutrient recycling, or water chemistry.
- (9) Destroying sites valued 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 and watercourses for hunting, fishing, boating, hiking, birdwatching, photography, camping, and other uses.
- (11) Destroying or damaging aesthetic and property values, including significant public viewsheds.
- (12) Destroying or reducing undisturbed adjacent upland areas surrounding wetlands and watercourses, which provide a protective buffer.

§ 217-2. Terms defined; word usage.

- A. Words or phrases used in this chapter and not elsewhere defined 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 § 217-1 herein.
- B. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

ACTIVITY — See "regulated activity or use."

ACTIVITY IMPLEMENTATION PERMIT — See "permit, activity implementation."

ACTIVITY PERMIT — See "permit, activity."

APPLICANT — A person, including a corporation, partnership or any entity which files an application for a permit under this chapter and which 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 such person.

AQUACULTURE — Growing, managing, and harvesting aquatic or semi-aquatic species, including animals and plants, e.g., crayfish, mussels, fish and duckweed, that are produced naturally in freshwater wetlands, and installing cribs, racks, and other in-water structures for cultivating these species; but does not include filling, dredging, fertilizing, peat mining, clear cutting, or the construction of any buildings or any water-regulating structures, such as dams.

BOUNDARY OF A BUFFER AREA — The outward limit of a buffer area as defined in this section.

BOUNDARY OF A WATERCOURSE — The outward limit of standing or flowing water of a watercourse as defined in this section.

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

BUFFER AREA — The area extending 150 linear feet along the surface, away from, and around the perimeter of the outermost boundary of a wetland and/or watercourse.

CERTIFICATE OF COMPLIANCE — That form of written confirmation by the Wetland Inspector that all authorized regulated activities have been physically completed in accordance with this chapter and an authorizing activity permit and/or activity implementation permit, as required.

CLEARANCE FORM — That form of written clearance issued by the Wetland Inspector, indicating that a permit, as defined herein, is not required in order to carry-out any land altering activity or use requiring a permit or approval from the Town of Lewisboro, or which may affect wetlands, watercourses and/or buffer areas as defined in this section.

CLEAR CUTTING — Any cutting of live trees four inches or more in diameter at breast height above the ground by more than 30% per contiguous acre of any wetland, and/or regulated buffer area, during a single ten-year period as determined on the basis of wetland area per lot or group of lots under single ownership.

COMMISSIONER — The Commissioner of the Department of Environmental Conservation of the State of New York.

CONSERVATION ADVISORY COUNCIL — That body established by the Town Board pursuant to the General Municipal Law, having responsibility for conservation activities.

DAMS AND WATER CONTROL MEASURES — Any natural or constructed barrier which obstructs or controls the flow of water, or can be operated to raise, lower, or maintain the water level of any wetland or watercourse.

DATE OF RECEIPT OF APPLICATION — An application shall be deemed received by the Planning Board on the date of the first regular meeting of the Planning Board following the filing of a fully completed application, including receipt of all necessary or appropriate supporting plans pursuant to the provisions of this chapter.

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

DISCHARGE — The channeling, directing, or redirecting of any solid, liquid or gaseous, substance or material, whether or not such substance causes pollution.

DOMINANT(S) OR DOMINANCE — A dominant species is either the predominant plant species of a plant community which is directly discernable or measurable in the field (i.e., the only species dominating a vegetative unit, by a spatial extent of 50% or greater) or a codominant species (i.e., one of two or more species which dominate a vegetative unit). The measures of spatial extent shall be percent area cover for all vegetation units and/or the basal area of trees.

DRAIN — To remove or reduce, or cause to remove or reduce the flow or volume of surface or ground water.

DREDGE — To excavate or remove sediment, soil, mud, sand, shells, gravel or other aggregate material.

ECOLOGIST/BOTANIST — A qualified expert having knowledge of the physical, chemical and biological sciences related to the physiology, identification, distribution and general ecology of wetlands and watercourses; of upland plant and animal species and associated communities; and of methods to delineate and describe wetland and watercourse resources, communities and habitats. This individual must possess a minimum of two years' experience in wetland/watercourse delineation and wetland/watercourse report preparation and hold at least a bachelors degree, with a minimum of 30 semester hours (credits), or equivalent, in biology, physical science, and chemistry, with a minimum of eight semester hours (credits), or equivalent, in botany, including field identification of animal and plant species. Individuals who do not meet the above minimum qualifications but who possess at least 10 years' experience identifying and mapping native vegetation are qualified if they have completed at least 12 semester hours (credits), or equivalent, in botany, including field identification of animal and plant species.

EXCAVATE — To dig out, cut away from the existing grade, relocate or remove any material by hand or machine.

FACULTATIVE SPECIES — Plant species that occur with equal probability in both upland and wetland or watercourse systems.

FACULTATIVE UPLAND SPECIES — Plant species with an estimated probability of 67% to 99% of occurring in uplands, but occasionally in wetlands and watercourses.

FACULTATIVE WETLAND SPECIES — Plant species with an estimated probability of 67% to 99% of occurring in wetlands and watercourses, but occasionally in uplands.

FERROUS IRON — The chemically reduced form of iron found in waterlogged soils.

FILL — See "deposit."

FRESHWATER WETLANDS MAP — The accumulated delineation of wetlands and watercourses within areas of the Town of Lewisboro as accepted by the Planning Board in the course of the application of this chapter, including but not limited to wetlands and

watercourses as shown on the final Freshwater Wetlands Maps for Westchester County promulgated by the Commissioner of the New York State Department of Environmental Conservation pursuant to Subdivision 24-0301.5 of the New York State Freshwater Wetlands Act, or such maps as have been amended or adjusted, and on which are indicated the approximate location of the actual boundaries of wetlands regulated pursuant to Article 24 of the Environmental Conservation Law; and as shown on National Wetlands Inventory Map as promulgated by the U.S. Department of the Interior, Fish and Wildlife Service.

GRADING — To alter or change the existing surface of land by such acts as excavating, ditching, leveling, filling or otherwise altering the existing or natural contours of the land surface.

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

HISTOSOL — A taxonomic order of soils which include organic soils (mucks and peats) consisting of greater than 90% organic matter content to a thickness of at least 16 inches above bedrock, or of any thickness above bedrock lying within 16 inches of the surface.

HYDRIC SOIL — A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part and as further defined under "wetland/freshwater wetland."

HYDROPHYTE — Any readily visible plant species that grows in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Hydrophytes include plant species classified as facultative, facultative wetland and obligate wetland species.

HYDROPHYTIC VEGETATION — An assemblage of one or more plant species growing in a common aquatic environment or on a substrate that is at least partially deficient in oxygen as a result of excessive water content. Hydrophytic vegetation includes the sum of those dominant plant species occurring in a wetland that are designated as "facultative" (FAC), "facultative wetland" (FACW) and/or "obligate wetland" (OBL) as recorded in the National List of Plant Species that Occur in Wetlands: Northeast (Region 1) or the National List of Plant Species that Occur in Wetlands; New York, developed by the U.S. Department of the Interior Fish and Wildlife Service in cooperation with the National and Regional Wetland Plant Review Panels, as amended and updated from time to time.

LONG DURATION (FLOODING) — A period of time in which inundation for a single event ranges from 14 days to one month.

MATERIAL — Liquid, solid, or gaseous substances including but not limited to soil, silt, gravel, rock, 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.

MICROSITE — A small area of a plant community supporting plant species atypical of the hydrologic regime of the predominant plant species composition. Micro sites may be drier or wetter than surrounding areas as a result of altered drainage, incidental topographic variation or a related characteristic, and may support plant species of greater or lesser wetland/watercourse affinity.

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

MITIGATION PLAN — The plan prepared by an applicant to compensate for proposed wetland, watercourse and buffer area impacts pursuant to the standards and requirements of this chapter, upon demonstration that either losses or impacts to the wetland, watercourse or regulated buffer area are necessary and unavoidable as defined herein and have been minimized to the maximum extent practicable as determined acceptable by the Planning Board.

MUNICIPALITY — The Town of Lewisboro.

MUNSELL SOIL COLOR CHARTS — A soil color designation system that characterizes the three variable aspects of color: hue, value and chroma; the soil color charts are produced by the Kollmorgen Corporation, 1975, and are revised from time to time.

OBLIGATE UPLAND SPECIES — Plant species that, under natural conditions, almost always occur in uplands (i.e., greater than 99% of the time). "Obligate upland species for the northeast are listed in Wetland Plants of the State of New York 1988 published by the U.S. 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, nearly always occur in wetlands (i.e. greater than 99% of the time). Obligate wetland species for the northeast are listed in Wetland Plants of the State of New York 1988 published by the U.S. Fish and Wildlife Service in cooperation with the National and Regional Wetland Plant List Review Panels and as updated from time to time.

PERMIT — See "activity permit" and "activity implementation permit."

PERMIT, ACTIVITY — That form of written approval issued by the Planning Board for the conduct of a regulated activity or use within a wetland, watercourse and/or buffer area. Where similar jurisdiction exists with the New York State Department of Environmental Conservation or with other state, regional or federal agencies, a permit issued by one of these agencies will not be considered a permit for the conduct of activities regulated by this chapter.

PERMIT, ACTIVITY IMPLEMENTATION — That form of written approval, issued by the Wetland Inspector, as authorized pursuant to § 217-6D of this chapter or in accordance with an activity permit issued by the Planning Board.

PHYSICALLY COMPLETED — The actual completion of all construction and land use altering activities as authorized pursuant to an activity permit and/or activity implementation permit.

PLANNING BOARD — That body established by the Town Board pursuant to the Town Law of the State of New York. The Planning Board is the municipal board empowered to grant, deny or issue conditional activity permits pursuant to this chapter, to require the posting of bonds as necessary, to revoke or suspend a permit where lack of compliance with the permit is established, or to adjudicate violations and assess penalties.

POLLUTION — Any departure from the natural range of variation in the physical, chemical or biological conditions or properties of a natural system. Any harmful thermal effect; or the contamination or rendering unclean or impure of any wetland, watercourse or buffer area by reason of erosion, or by any waste or other materials discharged or deposited therein, including but not limited to changes in temperature, odor, color, turbidity, pH, or taste.

PROJECT — Any proposed or ongoing action, construction activity, or alteration of the landscape, including applications of fertilizers or biocides, which may result in demonstrable direct or indirect physical, chemical or biological impacts to a wetland, watercourse and/or buffer area, including but not limited to any regulated activity as set forth herein.

REGULATED ACTIVITY OR USE — Any activity or use within a wetland, watercourse and/or buffer area not specifically determined by the Planning Board or the Wetland Inspector to be an allowable activity as set forth in § 217-5B of this chapter, or a prohibited activity as set forth in § 217-5A of this chapter, is a regulated activity as set forth in § 217-5C and requires the prior issuance of a written activity permit from the Planning Board, as well as an activity implementation permit from the Wetland Inspector, in accordance with the standards and procedures of this chapter. Regulated activities and uses include, but are not limited to:

- (1) Placement or construction of any structure, driveway or roadway.
- (2) Any form of draining, dredging, excavation or removal of material, either directly or indirectly.
- (3) Any form of dumping, filling or depositing of material either directly or indirectly.
- (4) Installation of any service lines or cable conduits.
- (5) Introduction of any form of pollution, including but not limited to the installation of a septic tank or 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, watercourse or buffer area.

- (6) Alteration or modification of natural features and contours.
- (7) Alteration or modification of natural drainage patterns.
- (8) Construction of dams, docks or other water control devices, pilings or bridges, whether or not they change the natural drainage characteristics.
- (9) Installation of any pipes or wells.
- (10) Clear cutting of any area of trees.
- (11) Removal or cutting of any vegetation except permitted selective cutting.
- (12) Deposition or introduction of organic or inorganic chemicals, including pesticides and fertilizers.
- (13) Any agricultural activity which involves drainage or excavation of a wetland.
- (14) Any other activity that may impair the natural function(s) of a wetland, watercourse or buffer area as described in § 217-1 of this chapter.

REMOVE — To dig, dredge, take away, relocate, drain, bulldoze, dragline, blast, or otherwise excavate or grade.

REPAIR/REPLACEMENT — Any repair or replacement in-kind, provided that the height, size and/or spatial extent of the affected area does not change.

RESTORATION PLAN — The plan prepared by an applicant to restore, mitigate and otherwise correct unauthorized activities or existing conditions, as approved by the Planning Board.

SELECTIVE CUTTING — Any cutting of trees within the boundaries of a wetland, watercourse or buffer area that is not clear cutting as defined herein.

SOIL SCIENTIST — A qualified expert having special knowledge of the physical, chemical, and biological sciences applicable to the genesis and morphology of soils and of the methods to identify, describe, classify, and map soil units. This individual must possess a minimum of two years' experience in identifying, classifying and mapping soils, or comparable field experience, or a masters degree in soil science; and a bachelors degree, with a minimum of 30 semester hours (credits) or equivalent in biology, physical science and earth science, with a minimum of eight semester hours (credits) or equivalent in soil science. Individuals who do not meet the above minimum qualifications but who possess at least 10 years' experience in mapping soils are qualified if they have completed at least 12 semester hours (credits) or equivalent in

soil science.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) — Article 8 of the New York State Environmental Conservation Law.

STRUCTURE — Anything constructed or erected, the use of which requires location on, under or in the ground or attachment to something having location on, under or in the ground, including but not limited to buildings, tennis courts, and swimming pools.

VERNAL POOL — Relatively open areas of surface water formed in depressions within uplands that are inundated to a minimum depth of six inches for three to four months during the growing season (usually March through June) and that are devoid of fish and contain amphibians (adults, egg masses or larval stages) during the growing season. Vernal pools are the exclusive breeding habitats of several amphibians that are becoming increasingly rare throughout the northeast, notably: Eastern wood frog (*Rana sylvatica*), Jefferson salamander (*Ambystoma jeffersonianum*; NYSDEC listed special concern); marbled salamander (*Ambystoma opacum*; NYSDEC listed special concern), blue spotted salamander (*Ambystoma laterale*; NYSDEC listed special concern), and spotted salamander (*Ambystoma maculatum*).

VERY LONG DURATION — A duration of time for a single event which lasts longer than one month.

WATERCOURSE — Any natural or artificial, permanent or intermittent, public or private standing or flowing water body, such as ponds, lakes, reservoirs, rivers, streams, brooks, vernal pools, waterways, or drainageways that are contained within, flow through, or border on the Town of Lewisboro. For the purposes of this definition "intermittent" shall mean that surface water stands or flows for at least total of three continuous months in a consecutive twelve-month period.

WATER TABLE — The zone of saturation at the shallowest average depth from the surface during the wettest season.

WETLAND/FRESHWATER WETLAND — All areas that comprise hydric soils and/or are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation. Refer to Appendix A at the end of this chapter for the Technical Criteria for Wetland Identification.

WETLAND HYDROLOGY — The dynamics of water movement and changes in water supply to areas that are inundated or saturated to within 16 inches of the surface during the growing season long enough to support a dominance of hydrophytic vegetation.

WETLAND INSPECTOR — The administrative official defined by the implementing regulations of the New York State Freshwater Wetlands Act (6 NYCRR 665.5a) appointed by the Town Board to fulfill the designated responsibilities set forth in this chapter.

WETLAND/WATERCOURSE DELINEATOR — An individual(s) with the combined qualifications of an ecologist/botanist and soil scientist as defined herein.

§ 217-3. Applicability; nonconforming activities.

- A. This chapter shall apply to all lands defined as "wetlands," "watercourses" and "buffer areas" as set forth in § 217-2. This chapter also identifies the activities and uses which are to be regulated and/or prohibited in accordance with the findings of fact as set forth in § 217-1 of this chapter.

- B. Rules for establishing and interpreting wetland/watercourse boundaries. The boundaries of a wetland and/or watercourse shall be determined by field investigation and delineation by a qualified environmental professional, subject to approval by the Planning Board, and subsequent survey and mapping by a New York State licensed land surveyor unless waived by the Planning Board. The Planning Board 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 definition criteria contained in § 217-2 herein.

- C. Grandfathered projects. The provisions of this chapter shall not apply to any land use, improvement, or development physically completed prior to the effective date of this chapter.

- D. Current projects. A regulated activity that has received an approval, a SEQR negative declaration or has been the subject of a findings statement prior to the effective date of this chapter, but which is not in conformity with the provisions of this chapter may be continued subject to the following:
 - (1) All such activities shall continue to be governed by the laws of the Town of Lewisboro 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 this chapter.

 - (4) If any such use or activity is destroyed by human action or the forces of nature, it shall not be resumed except in conformity with the provisions of this chapter.

§ 217-4. Authorized clearance form required.

- A. All applications of any land use development or land altering or disturbance permit issued by the Building Department, Highway Superintendent, Architecture and Community Appearance Review Council, Town Board, Planning Board, or Zoning Board of Appeals of the Town of Lewisboro shall be accompanied by an authorized wetland/watercourse clearance form, which shall be obtained by an applicant from the

Wetland Inspector.

- (1) An applicant shall provide sufficient information to enable the Wetland Inspector or other authorized representative to properly determine if the requested permit action will impact regulated wetlands, watercourses or buffer areas, and if so, to determine if the requested permit action is an allowable activity or use that does not also require a wetland/watercourse permit; is a prohibited activity; is a regulated activity or use which also requires an activity implementation permit as issued by the Wetland Inspector; or is a regulated activity or use which also requires an activity permit as issued by the Planning Board, all in accordance with the standards and procedures set forth in this chapter.
 - (2) The Wetland Inspector or other authorized representative may require an applicant to provide additional information, including but not limited to a qualified wetland delineation, report and survey, to assist in making such a determination; and may further defer the making of said determination to the Planning Board.
 - (3) The Wetland Inspector or other authorized representative may conduct a site visit.
 - (4) False or misleading statements or information provided in a clearance form shall result in the invalidation of any authorization pursuant to § 217-5C(1)(a) herein. The applicant shall be subject to the penalties and sanctions set forth in this chapter for any activities conducted which would have otherwise required an activity permit.
- B. A completed clearance form by the Wetland Inspector or other authorized representative shall determine one of the following, provided the proposed activity is not prohibited pursuant to § 217-5A of this chapter:
- (1) That the proposed activity or use is an allowable activity or use pursuant to § 217-5B of this chapter, and no permit is required, thus the Wetland Inspector shall sign and issue a wetlands/watercourse clearance form indicating same; or
 - (2) That the proposed activity or use does not occur within a wetland, watercourse or buffer area, and no permit is required, thus the Wetland Inspector shall sign and issue a wetlands/watercourse clearance form indicating same; or
 - (3) That an activity implementation permit, as issued by the Wetland Inspector, is required in accordance with the standards and procedures set forth in § 217-5C of this chapter.
 - (4) That prior to the issuance of activity implementation permit by the Wetland Inspector, an activity permit as issued by the Planning Board is also required in

accordance with the standards and procedures set forth in § 217-5D of this chapter.

- C. Subsequent activities or uses affecting the same property shall require separate authorization via completion of a new or separate clearance form, following the same standards and procedures as set forth herein for the original action.

§ 217-5. Prohibited, allowable and regulated activities.

- A. Prohibited activities. The following activities are prohibited as indicated:

- (1) Placement of a sewage disposal tank or plant or septic field within any wetland or watercourse.
- (2) Direct discharge of untreated stormwater runoff into a wetland or watercourse.
- (3) The placement of aboveground or underground chemical storage facilities or bulk petroleum storage tanks within a wetland, watercourse or buffer area.
- (4) Animal feed lots or pens or manure storage within a wetland, watercourse or buffer area.
- (5) Deposit or fill consisting of construction and demolition materials, asphalt or other materials within a wetland, watercourse or buffer area.

- B. Allowable activities and uses not requiring a permit or clearance form. The following activities and uses may be conducted without a permit or clearance form being issued pursuant to the standards and procedures of this chapter, to the extent that they are not prohibited by this or any other law, ordinance, rule or regulation; and such activities do not require structures, grading, filling, draining or dredging, except as allowed below:

- (1) Normal ground maintenance of existing landscaped areas and residential gardens, including mowing of existing lawn areas and the trimming and removal of dead or diseased vegetation.
- (2) Selective cutting, provided stumps are left in place and work is accomplished without the assistance of any motorized vehicle.
- (3) Repair or replacement, in-kind, of walkways, terraces, patios, walls, seawalls, fences, driveways and roadways, provided that the height, size and/or spatial extent (i.e., no increase in the area beyond the existing footprint) of the affected

area does not change and appropriate erosion controls are maintained.

- (4) Public health activities, orders and regulations of the Westchester County Department of Health and/or New York State Department of Health for emergencies only, with prior notification to the Planning Board.
- (5) Recreational activities, not involving new or expanded land disturbances or structures, and recreational fishing, hunting, swimming and boating as otherwise permitted or allowed.
- (6) Activities of farmers and other landowners as set forth in § 24-0701(4) of the Environmental Conservation Law.
- (7) Normal building or structure maintenance activities, including periodic pumping of septic tanks and interior and building or structure exterior repairs and improvements which do not enlarge or expand the building or structure, or require excavation, filling, or other similar disturbances and alterations (temporary or permanent).
- (8) Seasonal installation and removal of docks. (Does not include the construction or installation of new, expanded or enlarged docks).
- (9) Normal maintenance and repair of existing swimming pools, tennis courts and other existing recreational facilities. The development or establishment of new or expanded recreational facilities and/or uses is a regulated activity.

C. Regulated activities requiring an activity implementation permit.

- (1) The following regulated activities shall require an activity implementation permit as issued by the Wetland Inspector:
 - (a) All authorized regulated activities pursuant to an approved activity permit, as issued by the Planning Board.
 - (b) Deck, porch or fence accessory to a single-family residence, utilizing hand-dug support posts, provided there is no machine activity or grading, and excess fill is removed or spread under deck, porch or fence and stabilized.
 - (c) Swimming pools accessory to a single-family residence located no closer than 50 linear feet to a wetland or watercourse, including associated grading.

- (d) Terrace or patio accessory to a single-family residence, with a ground footprint area of less than 500 square feet and located no closer than 50 linear feet to a wetland or watercourse, including associated grading.
 - (e) Repair of existing septic disposal facilities.
 - (f) Permitted single-family residential building additions, structural alterations, replacements, or detached accessory structures not exceeding a ground footprint area of 600 square feet and located no closer than 50 linear feet to a wetland or watercourse, including associated grading, provided that associated grading or land disturbance is less than 10,000 square feet in spatial extent and maximum fill or cut is limited to no more than an increase or decrease of two feet from the elevation of existing grade.
 - (g) Permitted single-family residential accessory uses located no closer than 100 linear feet to a wetland or watercourse, including associated grading, provided associated grading or land disturbance is less than 10,000 square feet in spatial extent and maximum fill or cut is limited to no more than an increase or decrease of two feet from the elevation of existing grade.
 - (h) Any activity requiring Planning Board review and approval which the Planning Board duly refers to the Wetlands Inspector for disposition, including any conditions thereto.
- (2) At the discretion of the Wetlands Inspector, the review and approval of any of the regulated activities set forth in Subsection C(1) above may be referred to the Planning Board for its review and action.
 - (3) Appeals of decisions by the Wetlands Inspector shall be made to the Planning Board in writing within 30 days. The Planning Board may review all appeals in accordance with the procedures pertaining to an activity permit.

D. Regulated activities requiring an activity permit.

- (1) The following regulated activities shall require an activity permit as issued by the Planning Board, prior to the issuance of an activity implementation permit by the Wetland Inspector:
 - (a) Any regulated activity in a wetland or watercourse proper, except as set forth in § 217-5B of this chapter.

- (b) Any regulated activity in a wetland, watercourse or buffer area not delegated to the Wetland Inspector for review and approval as set forth in § 217-5C of this chapter.
 - (c) All regulated activities ancillary to a corresponding application to the Planning Board for site development plan approval, special permit approval or subdivision approval.
 - (d) All nonresidential development activities in wetlands, watercourses or buffer areas.
 - (e) All new single-family residential development on an undeveloped or vacant parcel, including all principal and accessory site improvements, land uses, buildings and structures in or affecting wetlands, watercourses or buffer areas.
- (2) The Planning Board, upon findings that a proposed action is consistent with the activities as set forth in § 217-5C subject to Wetland Inspector approval, may refer any regulated activity subject to its review and approval for disposition by the Wetland Inspector, and may attach conditions thereto.

§ 217-6. Permit procedures.

- A. No person, applicant or property owner shall commence, undertake, conduct or maintain a regulated activity or use without first obtaining all required permits for such regulated activity or use from the Planning Board and/or Wetland Inspector. Applications for permits required herein shall be on forms as furnished by the Planning Board and/or Wetland Inspector, respectively, and include all application materials in a manner and content as required herein.
- B. Any person, applicant or property owner found to be conducting or maintaining a regulated activity or use without the prior proper clearance, authorization or permit approval, or violating any provision of this chapter, shall be subject to the enforcement proceedings and penalties prescribed herein, and any other applicable remedies as provided by law.
- C. The placement of sewage disposal tanks, plants, and septic fields is not encouraged within a buffer area, and may only be considered when all other potential feasible alternatives have been thoroughly explored and determined to be infeasible. Such facilities shall be assessed and designed consistent with the requirements of the New York City Department of Environmental Protection and the Westchester County Health

Department.

D. Procedure for an activity implementation permit, as issued by the Wetland Inspector:

- (1) An application for an activity implementation permit shall be filed with the Wetland Inspector, including all materials, information, reports and plans as determined necessary to review and evaluate the proposed action by the Wetland Inspector.
- (2) The Wetland Inspector shall conduct a site inspection and may require the applicant to stake or otherwise locate in the field all pertinent locations of a proposed activity, including wetlands, watercourses and buffer areas.
- (3) The Wetland Inspector shall report regularly and meet periodically with the Planning Board regarding the content and status of activity implementation permit applications and denial or approvals of same. Copies of all activity implementation permit denials or approvals shall be provided to the Planning Board.
- (4) The Wetland Inspector shall conduct periodic site inspections during the implementation or construction phase of an authorized regulated activity, as needed and in accordance with § 217-9H of this chapter, to ensure that all granted permits are being completed in accordance with the provisions of this chapter and the issued permit approval.
- (5) Upon completion of all authorized regulated activities, an applicant shall request a final inspection by the Wetland Inspector in order to obtain a certificate of compliance as set forth in § 217-9H of this chapter, certifying that all authorized activities are physically completed.

E. Procedure for a permit through an application to the Planning Board for subdivision, special permit or site development plan approval.

- (1) The permit application shall be considered in the context and procedural requirements of the overall subdivision, special permit or site plan approval application.
- (2) A separate application for an activity permit shall be completed, as set forth in Subsection F below, by the applicant and submitted with all other required applications.

- (3) All public hearings shall be coordinated where possible.
 - (4) Approval of the subdivision, special permit or site plan application shall require the issuance of a separate wetland/watercourse activity permit.
- F. Procedure for an activity permit, as issued by the Planning Board, not requiring any additional Planning Board approval.
- (1) Application. An application for an activity permit shall be filed with the Planning Board, including all materials, information, reports and plans as set forth in § 217-7 of this chapter.
 - (2) Site inspections.
 - (a) After receipt of all required application materials, the Planning Board may schedule a site inspection. The applicant shall stake in the field all pertinent locations of a proposed activity as directed by the Planning Board.
 - (b) Additional site visits may be required depending upon the complexity and extent of regulated activities proposed, and the seasonality of the submission.
 - (3) Referral to CAC. All applications for an activity permit shall be referred to the Town of Lewisboro Conservation Advisory Council (CAC) for review and recommendations, which recommendations shall be duly considered by the Planning Board.
 - (4) Referral to professional consultants. The Planning Board, in the review of any application for an activity permit approval, may refer such application to such planner, engineer, legal, or environmental expert, soil scientist, ecologist, biologist, or other professional as the Planning Board shall deem reasonably necessary to assist it in the review of such application as required by law. The cost for such professional services may be required to be reimbursed to the Town by an applicant in accordance with the standards and procedures for fees and escrow accounts as set forth in this chapter.
 - (5) No other permit covering the regulated activity shall be approved or issued until the Planning Board issues an activity permit.
 - (6) Public hearing and notice.

- (a) Insofar as possible, any public hearing on an application for an activity permit shall be integrated with any public hearing required or otherwise held pursuant to any other law, including the State Environmental Quality Review Act.
 - (b) All hearings shall be open to the public and minutes of each public hearing shall be made. The minutes of any public hearing shall become part of the permanent record of a permit application. In the event that a verbatim record or transcription is made by the applicant, a copy of same shall be provided to the Planning Board at no cost to the Planning Board. Any party may present evidence and testimony at the public hearing. At the public hearing, the applicant shall have the burden of demonstrating that the proposed activity will be in accord with the goals and policies of this chapter and the standards set forth herein.
 - (c) Any public hearing may be extended, adjourned, reconvened or closed at the discretion of the Planning Board at any time prior to the issuance of an activity permit by the Planning Board.
 - (d) The Planning Board shall provide an applicant with a legal notice, which the applicant shall publish at his/her expense in the official newspaper of the Town of Lewisboro at least 15 days prior to the public hearing. Said legal notice shall also be mailed, certified mail, return receipt requested, at least 15 days prior to the public hearing, by the applicant to owners of property within 200 feet of the application property. Said legal notice shall be in a form prescribed by the Planning Board and shall: **[Amended 9-20-2004 by L.L. No. 2-2004]**
 - [1] Describe the proposed regulated activity; specify the location and tax assessor identification of the subject property; and specify the name and address of the property owner and applicant.
 - [2] Specify that persons wishing to comment on the proposed application can do so in writing or at the public hearing.
 - [3] Specify that the proposed application materials, including all documents and maps therewith, are available for public inspection at the office of the Planning Board prior to the public hearing.
- (7) Inactive permit applications. All permit applications must be diligently pursued by an applicant. Should any application before the Planning Board remain inactive for a period exceeding one year without submission of written correspondence or an

appearance before the Planning Board, the application shall be considered withdrawn. Withdrawn applications may be resubmitted as new applications, subject to all fees and review requirements of this chapter.

- G. No permit required pursuant to this Chapter 217 shall be issued unless all amounts required to be collected by or due to the Town of Lewisboro as real estate taxes and special assessments on the total area of land encompassed by the application, together with all penalties and interest thereon, have been paid. **[Added 9-20-2004 by L.L. No. 2-2004]**

§ 217-7. Permit application materials.

- A. Activity permit application materials. All applications for an activity permit shall include submission of the following:
- (1) Completed application forms, as provided by the Planning Board, including affidavit of ownership or authorization from the property owner to make application and an affidavit from the Town Receiver of Taxes that all amounts required to be collected by or due to the Town of Lewisboro as real estate taxes and special assessments on the subject property, together with all penalties and interest thereon, have been paid. **[Amended 9-20-2004 by L.L. No. 2-2004]**
 - (2) Required application fee and initial Planning Board escrow deposit as required by this chapter.
 - (3) An accurate property and land survey, prepared and certified by a New York State licensed land surveyor.
 - (4) Wetland/watercourse delineation map, showing all regulated areas and the location and numbering of all individual field delineation flags, prepared and certified by a New York State licensed land surveyor, the certification to be within one year of the date of application. The delineation limits of all wetlands and watercourses shall be subject to field verification and acceptance by the Planning Board and its authorized agents.
 - (5) Wetland/watercourse delineation report and assessment, prepared by a qualified wetland delineator as defined by this chapter. Said report shall include, but not be limited to, the identification, description and impact assessment of the following:
 - (a) Hydrophytic vegetation.

- (b) Wetland/watercourse hydrology.
 - (c) Wetland/watercourse and buffer area functions and benefits.
 - (d) Site soil types, including all hydric inclusions per soil type and field observed indicators of hydric soils, and their drainage characteristics and depth to bedrock.
 - (e) Site flora, including upland and hydrophytic vegetation with their wetland classified status (FAC, FACW, FACU, OBL) and dominant woody and herbaceous species.
 - (f) Site fauna.
- (6) A narrative description of the proposed regulated activity or use, indicating:
- (a) Location of subject property and area to be affected.
 - (b) Environmental impact assessment and description of the wetland, watercourse and/or buffer area proposed to be disturbed or altered.
 - (c) Intended purpose of the proposed activity or use and the applicant's interest in the subject property and area to be affected.
 - (d) Intended purpose and extent of impact or alteration on the affected wetland, watercourse and/or buffer area.
 - (e) Explanation why the proposed regulated activity cannot be located at another site or location with no or less impact upon wetland, watercourse and/or buffer area.
 - (f) Explanation as to whether or not the proposed activity is dependent on the affected wetland, watercourse and/or buffer area.
 - (g) The alternatives to the proposed activity considered, and why the proposal to disturb or alter the affected wetland, watercourse and/or buffer area was chosen instead.
 - (h) The mitigation measures proposed to avoid or reduce impact on the affected wetland, watercourse and/or buffer area.

- (7) Complete plans and estimates for the proposed site improvements, which shall be certified by an engineer, architect, land surveyor, or landscape architect licensed in the State of New York, drawn to scale no less detailed than one inch equals 50 feet, or such scale as is deemed appropriate by the Planning Board, and showing the following:
- (a) Project location map, showing the subject property as a parcel centered within adjacent parcels within 500 feet; surrounding zoning, named streets and water-related resources; and having a scale no less than one inch equals 400 feet.
 - (b) Location of all wetlands, watercourses, and buffer areas as prepared by a qualified wetland delineator.
 - (c) Existing conditions map covering an area as defined by the Planning Board, including delineation of existing buildings, structures, stone walls, fences, areas of one-hundred-year floodplain, vegetative cover, including dominant species and all trees with a diameter of eight inches or greater.
 - (d) Delineation of the soil types on-site.
 - (e) Location of the construction area, or area proposed to be disturbed, and its relation to property lines, roads, buildings, and wetlands and watercourses within 250 feet.
 - (f) Exact locations and specifications for all proposed draining, fill placement, grading, dredging, and vegetation removal, including the amount computed from cross sections, and the procedures to be used.
 - (g) Location of any well(s) and depth(s) thereof, and any disposal system within 50 feet of area(s) to be disturbed.
 - (h) Existing and proposed contours at two-foot intervals in the proposed disturbed area, and to a distance of 50 feet beyond; and elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than five feet.
 - (i) Details of any drainage, diversion, or detention or retention system proposed, both for the conduct of work, and after completion thereof, including locations at any point discharges, artificial inlets, or other constructed conveyances which would discharge into wetlands,

watercourses or buffer areas.

- (j) The Planning Board may also require groundwater table elevations, indicating depth to groundwater and direction of flow and hydrologic connections with surface water features; and analysis of the wetland/watercourse hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and soil subsurface, geology, and groundwater conditions.
 - (k) Erosion and sedimentation control plan, including installation details of proposed control measures, directive construction notations, and a schedule for the installation and maintenance of proposed control measures.
 - (l) Where construction of a lake or pond is proposed, details of the construction of any dams, bulkheads, berms, embankments, outlets or other bank or bottom stabilizing or water control devices.
 - (m) Where creation of a detention basin is proposed, with or without excavation, details of the construction of any dams, bulkheads, berms, embankments, outlets, or other bank or bottom stabilizing or water control devices; and an analysis of the hydrologic system, including seasonal water fluctuations, inflow/outflow calculations, and subsurface drainage, soils and bedrock and groundwater conditions.
 - (n) Detailed mitigation and/or restoration plans as proposed or otherwise required by the Planning Board.
- (8) A completed environmental assessment form as required by the New York State Environmental Quality Review Act.
 - (9) Copies of all applicable county, regional, state, or federal permits or permit applications that are required for such work.
 - (10) Copy of subdivision map as filed in the office of the Westchester County Clerk, Division of Land Records, or site plan or special permit site plans if applicable.
- B. The Planning Board may require additional information as needed 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; and other information deemed necessary to evaluate the proposed use in terms of the goals and standards of this chapter.

- C. All information relating to a permit application, including but not limited to the application itself, additional required materials or information, notices, records of hearings, written comments and findings shall be maintained on file in the office of the Planning Board.
- D. Upon written request by an applicant, the Planning Board may waive or modify the required application materials to address the specific instances of the application under consideration. Any such waiver shall not be automatic, but rather shall only be granted if such required application materials are deemed not applicable to the application under consideration.

§ 217-8. Standards for activity permit decisions.

- A. In granting, denying, or conditioning any activity permit, the Planning Board shall evaluate wetland, watercourse and/or buffer area functions and the role of the wetland, watercourse and/or buffer area in the hydrologic and ecological system, and shall determine the impact of the proposed activity upon public health and safety; special concern, rare, threatened and endangered species; water quality and additional wetland, watercourse and/or buffer area functions listed in § 217-1 of this chapter. In this determination, the Planning Board shall take into consideration the following factors:
 - (1) The overall impact of the proposed activity, and existing and reasonably anticipated similar activities, upon neighboring land uses and wetland, watercourse and/or buffer area functions as set forth in § 217-1 of this chapter, including but not limited to the:
 - (a) Milling of a wetland, watercourse and/or buffer area, and other modification of natural topographic contours.
 - (b) Disturbance or destruction of native flora and fauna.
 - (c) Influx of sediments or other materials causing increased water turbidity and/or substrate aggradations.
 - (d) Removal or disturbance of wetland, watercourse or buffer area soils.
 - (e) Reductions or increases in wetland or watercourse water supply.
 - (f) Interference with wetland or watercourse water circulation and flow.

- (g) Changes in the amount or type of wetland or watercourse nutrients.
 - (h) Influx or discharge of toxic chemicals and/or heavy metals.
 - (i) Physical and chemical changes to the wetland or watercourse water supply.
 - (j) Destruction, reduction and diminution of natural and native aesthetic values.
 - (k) Reduction in public recreational or educational use and access.
 - (l) Impact to, and alteration or disturbance of buffer areas.
- (2) Any existing wetland, watercourse and/or buffer area impacts and the cumulative effect of reasonably anticipated future wetland, watercourse and/or buffer area activities in the wetland, watercourse and/or buffer area subject to the application.
 - (3) The impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage, storm barriers, and water quality.
 - (4) The potential effect of flooding, erosion, hurricane winds, soil limitations, and other hazards on the proposed activity, 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 federal, state, county, regional and local comprehensive land use plans and regulations.
 - (7) The availability of preferable or environmentally compatible alternative locations on the subject parcel or, in the case of an activity which cannot be undertaken on the property without disturbance to wetlands, watercourses and/or buffer areas, the availability of other reasonable or practicable locations for the activity.
- B. The Planning Board shall only grant an activity permit for regulated activities if the Planning Board determines that impacts to the affected wetland, watercourse and/or buffer area are necessary and unavoidable, and have been minimized to the maximum extent practicable. For the purposes of this chapter, wetland, watercourse and/or buffer area impacts are necessary and unavoidable only if all of the following criteria are satisfied, as determined by the Planning Board:

- (1) The proposed activity is compatible with the public health and welfare.
- (2) There is no reasonably feasible on-site alternative to the proposed activity, in the judgment of the Planning Board, including reduction in density, change in use, revision of road and lot layout, revision in the location of buildings, structures, driveways and other site construction and land-altering activities, and/or related site planning considerations, that could otherwise reasonably accomplish the applicant's objectives.
- (3) If it is otherwise a practicable alternative, an area not presently owned by the applicant, which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.
- (4) There is no reasonably feasible alternative to the proposed activity on another site or site location that is not a wetland, watercourse or buffer area as regulated herein.

C. The Planning Board shall deny a requested activity permit if:

- (1) The applicant has not demonstrated that all reasonable alternatives have been explored; that reasonable alternatives exist which could avoid or reduce potential losses or impacts to the wetland, watercourse and/or buffer area; or that any unavoidable losses or impacts to wetlands, watercourses and/or buffer areas have not been minimized to the maximum extent practicable.
- (2) The proposed activity threatens public health or safety; results in fraud; causes nuisances; impairs public rights to the enjoyment and use of public waters; threatens a special concern, rare, threatened or endangered plant or animal species; violates pollution control standards; or violates other federal, state, county, regional or local regulations.
- (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 any 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 prohibition shall lapse. 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 Eminent Domain Procedure Law, or this prohibition shall lapse.

D. The Planning Board shall give consideration to activities that must have a shoreline wetland or watercourse location in order to function and that will have as little impact as possible upon buffer areas as regulated herein. In general, permission will not be granted for dredging or ditching solely for the purpose of draining wetlands or watercourses, controlling mosquitoes, constructing lagoons, constructing factories or industrial facilities, providing spoil and dump sites, or building roadways, driveways or buildings and structures 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, watercourse and/or buffer area. All reasonable measures must be taken to minimize impact upon the wetland, watercourse and buffer area.

E. Activity permit mitigation plan.

(1) Upon findings of the Planning Board that impacts to regulated areas are not unavoidable, and that impacts have been minimized to the maximum extent practicable, the applicant shall be required to prepare and implement a mitigation plan acceptable to the Planning Board.

(2) For the purposes of mitigation, losses of buffer areas will be viewed as losses of wetlands and watercourses. On-site mitigation shall be the preferred approach; off-site mitigation shall be permitted only in cases where an on-site alternative is not possible and the applicant has control of the off-site property.

(3) Acceptable mitigation must be provided to minimize impacts to the maximum extent practicable, striving for a no-net-loss of wetlands, watercourses and/or buffer areas within the Town. Acceptable mitigation may be provided in various forms, either singularly or in combination. (Refer to Appendix B of this chapter for mitigation guidelines.)

(4) All mitigation plans shall be based on the following order of preference:

(a) Minimization of impacts and disturbance to wetlands, watercourses and buffer areas, in that order.

- (b) Preservation of remaining wetlands, watercourses and buffer areas through the dedication and establishment of perpetual conservation easements, development restriction areas, or equivalent.
 - (c) Rectification by repairing or restoring existing damaged wetlands, watercourses and/or buffer areas, including enhancement thereto.
 - (d) Replacement wetlands, watercourses and buffer areas that recreate as nearly as possible the original wetlands, watercourses and/or buffer areas in terms of spatial area, type, functions, hydrologic conditions, geographic location and setting.
- (5) Any mitigation plan prepared pursuant to this section and accepted by the Planning Board shall become part of the permit for the application.
- (6) A monitoring and inspection schedule for a specified period of time as agreed to by the Planning Board shall be established and implemented. Town-incurred costs for monitoring and inspecting applicant projects shall be funded by an applicant as required by this chapter.

§ 217-9. Activity permit conditions.

- A. Any activity permit issued pursuant to this chapter may be issued with conditions. Such conditions may be attached as the Planning Board deems necessary or advisable to assure the preservation and protection of affected wetlands, watercourses and/or buffer areas, to assure compliance with the policy and provisions of this chapter and the provisions of the Planning Board's rules and regulations adopted pursuant to this chapter.
- B. Every activity permit issued pursuant to this chapter shall be in written form and shall contain, but not be limited to, the following conditions:
- (1) Work conducted pursuant to an activity permit shall be open to inspection at any time, including weekends and holidays, by the Planning Board, Wetland Inspector, or their designated representative(s).
 - (2) The activity permit shall expire on a specified date.
 - (3) Prior to commencement of any site activity or disturbance, or commencement of the authorized regulated activity by an applicant, the following shall be completed:

- (a) Approved activity permit site plans and mitigation plans, as endorsed by the Planning Board Chair and Secretary pursuant to a duly authorized written resolution of the Planning Board, shall be filed with the Planning Board Secretary and Wetland Inspector.
 - (b) Subsequent to the endorsement of the final approved activity permit site plans and mitigation plans, the applicant shall apply for and obtain an activity implementation permit as issued by the Wetland Inspector in accordance with the activity permit approval granted by the Planning Board.
 - (c) Projects which also involve or require subdivision or other land use or zoning approval, including but not limited to an area or use variance, building permit, zoning permit, special use permit or site plan approval, shall not be commenced until such other approval have also been obtained by the applicant.
 - (d) The permit holder shall notify the Planning Board and Wetland Inspector of the date on which the work is to begin, at least five days in advance of such date.
 - (e) The Planning Board's and Wetland Inspector's permit authorizations shall be prominently displayed at the project site during the undertaking of the activities authorized by the granted permit.
- (4) Any activity permit, the issuance of which is based on erroneous or incomplete information, including but not limited to the failure to completely identify regulated wetland, watercourse and/or buffer areas, shall be subject to revocation by the Planning Board.
- C. The Planning Board shall set forth in writing in the file it maintains regarding a permit application all conditions attached to any activity permit. Project specific conditions may include, but shall not be limited to:
- (1) Limitations on minimum lot size for any activity;
 - (2) Limitation on the total portion of any lot or the portion of the wetland, watercourse and/or buffer area on the lot that may be graded, filled, or otherwise modified;
 - (3) Modification of waste disposal and water supply facilities;

- (4) Imposition of operation controls, sureties, and deed restrictions concerning future use and subdivision of lands such as preservation of undeveloped areas in open space use, and limitation of vegetation removal;
- (5) Dedication of easements, development restriction areas or equivalent to protect wetlands;
- (6) Erosion control measures;
- (7) Setbacks for structures, fill, deposit of spoil, and other activities from the wetland, watercourse and/or buffer area;
- (8) Modifications in project design to ensure continued water supply to the wetland or watercourse and circulation of waters; and/or
- (9) Replanting and maintenance of wetland, watercourse and buffer area vegetation and construction of new wetland, watercourse or buffer areas to replace damaged or destroyed areas.

D. Other laws and regulations. Nothing in this chapter shall obviate the requirements for an applicant to obtain any other consents, permits, approvals, or licenses required by law or regulation by the Town of Lewisboro or other regulatory agency, including any federal, state, county, regional or local agencies. Obtaining such consents, permits, approvals, or licenses shall be the sole responsibility of an applicant.

E. Performance bond.

- (1) The Planning Board may require that, prior to commencement of any public work improvements under any activity permit issued pursuant to this chapter, the applicant or permittee shall post a bond to be approved and deemed acceptable by the Town Board in an amount and with a surety and conditions sufficient to secure satisfactory completion of the public work improvements and compliance with the conditions and limitations set forth in the activity permit.
- (2) The particular amount and the conditions of the bond shall be consistent with the purposes of this chapter. The bond shall remain in effect until the Planning Board or its designated agent certifies that the work has been completed in compliance with the terms and conditions of the activity permit and the bond is recommended for release by the Planning Board and thereafter released by the Town Board, or a substitute bond is provided.

- (3) In the event of a breach of any condition of any such bond, the Town Board may institute an action in the courts upon such bond, and prosecute the same to judgment and execution. A substitute form of guaranty may be provided as approved by the Town Board.

F. Activity permit expiration.

- (1) Approved activity permit site plans, signed by the applicant as evidence of acceptance of the conditions of an activity permit approval, shall be submitted for endorsement by the Planning Board Chair and Secretary within 180 days of the date of the Planning Board's resolution granting the related activity permit approval. Failure to submit activity permit site plans as required by the Planning Board's resolution granting permit approval, within the specified time frame, shall result in expiration of the related activity permit, thereby making it null and void.
- (2) Upon written request by the applicant, the Planning Board may extend the time, not to exceed two additional periods of 90 days each, in which the conditions of the granted activity permit approval and/or final activity permit site plans must be completed or endorsed, as the case may be, if in the opinion of the Planning Board such extension is warranted by the particular circumstances of the request.
- (3) No changes, additions, erasures, modifications or revisions shall be made to the final activity permit site plans following endorsement by the Planning Board Chair and Secretary. Any such changes detected after endorsement of the activity permit site plans as final shall result in the immediate expiration of the related activity permit, thereby making it null and void.
- (4) An activity permit approval shall expire, without further written notification, two years after the date of the Planning Board resolution granting such activity permit approval, unless all work and conditions of approval have been certified complete by the Wetland Inspector pursuant to the conditions of the activity permit approval and the provisions of this chapter.
- (5) The Planning Board may extend the expiration date of an activity permit approval upon a showing of reasonable cause by the applicant or permittee, and/or upon determination by the Planning Board that the public interest and environment will be best served by not interrupting the activity or use, if commenced. Any request for extension shall be in writing and submitted a minimum of 30 days prior to the date of expiration of the related activity permit approval, and shall clearly describe the following:
 - (a) The status of the authorized activity or use which is the subject of the expiring activity permit approval, including a description of the extent of

work completed at the time of the extension request and the proposed schedule for completing the remaining authorized work.

- (b) The reasons for the requested extension.
 - (c) The reasons why the authorized activity or use was not initiated or completed within the time frame allowed.
 - (d) Any changes in the facts or circumstances involved with or affecting the regulated resource area affected by the authorized activity or use, or the property for which the expiring activity permit approval was issued.
- (6) The request for extension of an activity permit approval shall follow the same form and procedure as an original application, except that the Planning Board may waive the requirement for a public hearing and notice, if in its judgment, the original intent and substance of the permit is not altered by the requested renewal, or if the applicant has not failed to abide by the terms of the original permit in any way.
- (7) Upon approval of an extension, the Planning Board may attach additional conditions or limitations as deemed appropriate or necessary given any changes in facts or circumstances, and the Planning Board shall prescribe a new schedule of implementation and expiration.

G. Suspension or revocation of permits.

- (1) Following a hearing conducted by the Planning Board in accordance with the procedures for violation hearings as set forth in § 217-12 of this chapter, the Planning Board may modify, suspend or revoke a permit and direct the Wetland Inspector to issue a stop-work order and/or notice of violation, if it finds that the applicant or permittee has not complied with any or all of the terms of such permit; has exceeded the authority granted in the permit; or has failed to undertake the project in the manner set forth in the approved application; or the permit was issued in whole or in part upon information which subsequently proves to be false, deceptive, incomplete or inaccurate.
- (2) The Planning Board shall set forth in writing its findings and reasons for revoking or suspending a permit pursuant to this section.

H. Monitoring and inspection.

- (1) Monitoring required. The Planning Board shall monitor, or shall cause to have monitored, approved activity permits according to the specifications set forth in the permit to determine whether the elements of the permit have been met. The Planning Board may require that the implementation or construction phase of an authorized activity permit be monitored by the Wetland Inspector and/or a Town-appointed environmental monitor, such as an academic institution, independent research group or other qualified professionals, at the expense of the applicant.
- (2) Requirements of monitoring. The requirements for monitoring shall be specified in the permit and shall include, but not be limited to:
 - (a) The time period during which compliance monitoring shall occur.
 - (b) Field measurements to verify the size and location of the impacted wetland, watercourse and/or buffer area and the restored/replacement wetland, watercourse and/or buffer area.
 - (c) Implementation scheduling of all authorized activities and any mitigation restoration/replacement work.
 - (d) Field verification of compliance with the vegetative, hydrologic, and soils criteria, and all other requirements, as specified in the approved mitigation plans and granted activity permit.
- (3) Inspection of ongoing activity permit activities. The Wetland Inspector or other duly authorized representative shall inspect all permit activities during the implementation or construction phase of an approved activity permit and mitigation plan to assure that all required wetland, watercourse and buffer area protections and mitigation measures are properly installed and maintained, and authorized activities are being satisfactorily completed according to required schedules of implementation. Failure to conduct such inspections shall not in any way relieve the applicant of its activity permit conditions or responsibilities.
- (4) Inspection upon completion of permit activities. The applicant shall request a final inspection by the Wetland Inspector of all completed work, or as otherwise may be required by the activity permit approval. Incomplete work or unsatisfactory site conditions shall be remediated immediately upon notice by the Wetland Inspector or other authorized representative. Failure to take such action may result in the suspension or revocation of an authorized activity permit, or in the issuance of a notice of violation.
- (5) As-built plan. The Planning Board or Wetland Inspector may require an applicant

to submit an as-built plan of completed work, which plan shall be prepared and certified complete by a New York State licensed surveyor, landscape architect and/or professional engineer, as appropriate.

(6) Certificate of compliance.

- (a) Upon the completion of all authorized work conducted pursuant to an activity permit (and an activity implementation permit), the applicant shall request that the Wetland Inspector make a final inspection thereof to determine compliance.
- (b) If the Wetland Inspector finds all work to be complete in accordance with the issued permits and the provisions of this chapter, then the Wetland Inspector shall issue a certificate of compliance relating to such permit.
- (c) A certificate of compliance shall be deemed to authorize the initial and continued activity and use affecting a regulated area and resource so long as continued full conformity and compliance are maintained with the terms and conditions of an issued activity permit and the provisions of this chapter.

§ 217-10. Fees and escrow.

- A. All permit application and review fees shall be in an amount set forth in the fee schedule established by resolution of the Town Board.
- B. Fees charged by consultant professionals to the Planning Board shall be in accordance with fees usually charged for such services in Westchester County and pursuant to a contractual agreement between the Town and such professional. All such charges shall be paid by the Town upon receipt of a Town voucher. The applicant shall reimburse the Town for the cost of such professional review services upon submission of a copy of the voucher or, at the discretion of the Planning Board, in accordance with Subsections C and D of this section. Such professional review fee reimbursement costs shall bear a reasonable relationship to other applications of that type. The payment of such fees by the applicant shall be required in addition to any and all other fees required by this or any other section of this chapter, or any other chapter of this code.
- C. Permit review escrow account procedures.
 - (1) At the time of submission of any application for an activity permit approval, and subsequent to the date of receipt but prior to the review by the Planning Board, the Planning Board may require the establishment of an applicant-funded permit

review escrow account, from which withdrawals shall be made to reimburse the Town for the cost of professional review services.

- (2) The applicant shall then provide initial funds to the Town in two separate installments for deposit into such account in an amount to be determined by the Planning Board based on its evaluation of the nature and complexity of the application, as follows:
 - (a) To cover the costs of the initial review of the application, an initial escrow deposit shall be made in accordance with the Initial Escrow Account Deposit Schedule adopted by the Planning Board, as amended from time to time.
 - (b) After such initial review, the applicant shall provide additional funds to the Town for deposit into the escrow account in an amount to be established by the Planning Board as the full escrow deposit based upon estimates of the total anticipated review costs provided by the consultants to the Planning Board. Said estimates are for the convenience of the applicant and shall not be binding upon the Planning Board. Upon request, the applicant shall be provided with copies of any voucher for such services as they are submitted to the Town.
- (3) When the balance in such escrow account is reduced to 1/2 of the full escrow deposit amount, the applicant shall deposit additional funds into such account to bring its balance up to 100% of the amount of the full escrow deposit, or to some lesser amount as deemed acceptable by the Planning Board to complete the permit review of the application.
- (4) If such escrow account is not replenished within 20 days after the applicant is notified in writing of the requirement for such additional deposit, the Planning Board may suspend its review of the application until such time as the escrow account is replenished accordingly.
- (5) A building permit, or certificate of occupancy or use or certificate of compliance shall not be issued and no approval of plats, subdivisions, site plans, special permits, variances or other permits or approvals as issued by the administrative officials and municipal boards of the Town of Lewisboro shall be granted unless all professional review fees charged in connection with the applicant's project have been reimbursed to the Town.
- (6) After all pertinent charges have been paid, the Town shall refund to the applicant any funds remaining on deposit.

D. SEQRA escrow account procedures.

- (1) In the event that a positive declaration is determined in accordance with the New York State Environmental Quality Review Act (SEQRA) regarding the subject application, reimbursement procedures utilizing the basic permit review escrow account established in accordance with Subsection C may be suspended until after completion of the SEQR process.
- (2) After all pertinent charges have been paid, the Town may refund to the applicant any funds remaining on deposit in the basic permit review escrow account minus \$100 so as to maintain the basic permit review escrow account with the Town.
- (3) Reimbursements of the costs of professional fees incurred subsequent to the determination of a positive declaration and necessary for the preparation or review of an environmental impact statement (EIS) shall be made in accordance with the procedures established under SEQR and the Lewisboro Environmental Quality Review Law (LEQR), **Editor's Note: See Ch. 110, Environmental Quality Review.** as may be amended from time to time.
- (4) Upon completion of the SEQR process or continued review of the application which is not directly related to the preparation or review of an EIS, the applicant shall replenish the basic permit review escrow account with a deposit in an amount deemed necessary by the Planning Board, but in no case in an amount greater than the full escrow deposit amount originally established by the Planning Board.
- (5) All subsequent deposits, reimbursements and refunds relating to the review of the activity permit application shall be made in accordance with the standards and procedures above.

E. Monitoring and inspection fees.

- (1) Required monitoring and inspection fees shall be determined by the Planning Board upon approval of an activity permit, based on the complexity and substance of the authorized regulated activity.
- (2) To perform specific monitoring duties as required by this chapter, the Town may contract with a professional consultant to provide independent environmental monitoring services. To offset the costs of hiring an independent environmental monitor for this purpose, the Planning Board may require an applicant to establish a monitoring escrow account with the Town.

§ 217-11. Enforcement; stop-work orders, penalties for offenses.

- A. General provisions. No board, agency, officer or employee of the Town shall issue, grant or approve any permit, license, certificate or other authorization for any construction, reconstruction, alteration, enlargement or moving of any building or structure, or for any use of land or building that would not be in full compliance with the provisions of this chapter. Any such permit, license, certificate or other authorization issued, granted or approved in violation of the provisions of chapter shall be null and void and of no effect without the necessity of any proceeding or revocation or nullification thereof.

- B. Enforcement agents. This chapter shall be enforced by the Wetland Inspector and such deputy inspectors as may be appointed by the Town Board.

- C. Issuance of stop-work orders.
 - (1) Whenever the Wetland Inspector has reasonable grounds to believe that a person or applicant has caused or committed a violation of any provision as set forth in this chapter; or a permittee has not complied with any or all of the terms of a granted permit, or has exceeded the authority granted by a permit; or has failed to undertake a project in the manner set forth in an approved permit application, the Wetland Inspector may issue a stop-work order in writing to same, thereby notifying the person or persons responsible to stop and suspend all work.

 - (2) A stop-work order shall be served by the Wetland Inspector upon the alleged violator by certified mail, return receipt requested, or by personal service. "Personal service" shall be defined as set forth in the New York State Civil Practice Law and Rules.

 - (3) Such person or persons shall forthwith stop and suspend all such work until such time that the stop-work order has been rescinded by the Wetland Inspector. The remedy of a stop-work order shall be in accordance with the requirements of the Wetland Inspector, and may result in the issuance of a notice of violation requiring adjudication by the Planning Board.

- D. Issuance of notice of violation. The Town of Lewisboro is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions of this chapter and/or compel the restoration of the affected wetland, watercourse and/or buffer area to its condition prior to the violation of the provisions of this chapter. The Wetland Inspector is empowered to issue a notice of violation and the Planning Board is empowered to adjudicate any such violation as issued by the Wetland Inspector.

- E. Penalties for violations, administrative and criminal sanctions.

- (1) Any single violation shall be subject to either administrative or criminal sanctions but not both.
- (2) Administrative sanctions.
 - (a) Any person or property owner who undertakes any regulated activity within a wetland, watercourse and/or buffer area 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, shall be liable to the Town of Lewisboro for a civil penalty of not more than \$7,500 for every such violation. Any civil penalty in excess of \$5,000 shall be based upon a finding of willful violation by a majority of the Board plus one.
 - (b) Such civil penalty may be assessed by the Planning Board upon an admission of liability or upon a determination by the Planning Board, after notice and hearing, that a violation of this chapter has occurred. Each consecutive day of the violation will be considered a separate offense, subject to additional penalties.
 - (c) Such civil penalty may be recovered in an action brought by the Town of Lewisboro at the request and in the name of the Planning Board or Town Board in a court of competent jurisdiction.
 - (d) No permit for a regulated activity or certificate of compliance, or certificate of occupancy, or building permit shall be issued until such civil penalty is paid.
 - (e) Such civil penalty may be released or compromised, and any action commenced to recover the same may be settled and discontinued by the Planning Board or Town Board.
 - (f) The Planning Board shall have the power, following a violation hearing, to direct the violator to restore the affected wetland, watercourse and/or buffer area to its condition prior to the violation, insofar as that is possible, within a reasonable time and under the supervision of the Planning Board or its designate.
 - (g) Any such order of the Planning Board shall be enforceable in an action brought in any court of competent jurisdiction.

- (h) Any civil penalty or order issued by the Planning Board pursuant to this subdivision shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules.

- (3) Criminal sanctions. Any person who violates an order, permit or rule or regulation of the Planning Board's and/or Wetland Inspector's regulation of wetlands, watercourses and/or buffer areas pursuant to this chapter shall, for the first offense, be guilty of a violation punishable by a fine of not less than \$500 and not more than \$1,000; for a second and each subsequent offense, he or she shall be guilty of a misdemeanor punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of not less than 15 days or more than six months, or both. In addition to these punishments, any offender may be ordered by the court to restore the affected wetland, watercourse and/or buffer area to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Planning Board and/or Wetland Inspector. 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.

§ 217-12. Processing of violations.

A. Notice of violation and hearing.

- (1) A notice of violation and hearing, as issued by the Wetland Inspector, shall include notification of the following:
 - (a) The time and place of the violation hearing.

 - (b) A list of all alleged violations complained of, with specific reference to the provisions and sections of the law, rule or regulation involved, and a summary of the alleged facts supporting each alleged violation.

 - (c) The alleged violator's right to present evidence.

 - (d) The alleged violator's right to examine and cross-examine witnesses.

 - (e) The alleged violator's right to be represented by counsel.

 - (f) Notice that the alleged violator's failure to appear shall constitute a default by the alleged violator, and that the violation hearing may proceed in said

violator's absence and a determination made solely upon evidence submitted or accepted into the record by the Planning Board.

- (2) A notice of violation and hearing shall be served by the Planning Board or Wetland Inspector upon the alleged violator by certified mail, return receipt requested, or by personal service. "Personal service" shall be defined as set forth in the New York State Civil Practice Law and Rules.

B. Violation hearings.

- (1) Upon the issuance of a notice of violation and hearing, the Planning Board shall cause to be held a violation hearing, unless a person, entity, or property owner charged with such violation admits liability by returning the notice of violation and hearing with a signed admission of liability.
- (2) The person, entity or property owner charged with an alleged violation may waive its right to such violation hearing by signing an admission of liability on the notice of violation and hearing. Once an admission of liability is submitted to the Planning Board, the Planning Board shall assess a civil penalty and require a restoration plan and/or mitigation plan, and so advise the person, entity or property owner in violation by certified mail, return receipt requested.
- (3) The Planning Board shall not be bound by the strict rules of evidence in the conduct of a violation hearing, but its findings of fact shall be founded upon a fair preponderance of the evidence presented at the violation hearing. The Planning Board shall admit and consider evidence of mitigation offered by the alleged violator.
- (4) To aid in the administration of this chapter, the Planning Board may issue subpoenas requiring the attendance and giving of testimony by witnesses and the production of books, photographs, assessment reports, papers and other evidence for any violation hearing or proceeding conducted under this section. Service of such subpoena, enforcement of obedience thereto, and punishment for disobedience thereof, shall be had as and in the manner provided by the New York State Civil Practice Law and Rules relating to the enforcement of any subpoena issued by a board or committee. It shall be the responsibility of the party requesting the issuance of a subpoena to effect service thereof.
- (5) Upon the return date of a violation hearing, the Planning Board shall note the appearances of the persons attending the violation hearing. Witnesses shall be sworn and testimony shall be recorded either by a certified stenographer or by

use of an electronic recording device.

- (6) All violation hearings shall be open to the public. Testimony shall be transcribed upon the request of any interested party. The party requesting the transcript shall pay the costs and expenses in connection therewith and shall provide a copy of said transcript to the Planning Board in a timely manner.
- (7) The Planning Board may add a party to the proceeding upon due and adequate notice to both the party to be added and the parties named in the proceedings.
- (8) The Planning Board may grant an adjournment of the violation hearing upon request of any party to the proceeding, provided that an adjournment shall not be for an indefinite period of time, but shall be set down for a date certain.
 - (a) If an adjournment is requested in advance of the violation hearing date, such request shall be presented to the Planning Board in writing, and shall specify the reason for such request.
 - (b) In considering an application for adjournment of a violation hearing, the Planning Board shall consider whether the purpose of the violation hearing will be affected or defeated by the granting of such adjournment.
- (9) Upon the conclusion of the violation hearing and after consideration of credible evidence, the Planning Board shall issue a written decision. If a violation is found, the Planning Board shall issue a decision which shall set out the civil penalties and requirements for a restoration and/or mitigation plan. The Planning Board shall take into consideration the seriousness of the violation, the evidence of mitigation offered by the violator and the cost of any mitigation and/or restoration measures imposed in setting the civil penalty.
- (10) The Planning Board's written decision shall contain a summary of the evidence and findings of fact and conclusions of law. Said written decision shall be filed with the Town Clerk and the alleged violator shall be advised of any decision of the Planning Board by certified mail, return receipt requested.

§ 217-13. General powers of Planning Board.

In order to carry out the purposes and provisions of this chapter, and in addition to the powers specified elsewhere in this chapter, the Planning Board shall have the following powers:

- A. To adopt, amend, and repeal, after public hearing (except in the case of rules and regulations that relate to the organization or internal management of the Planning Board) such rules and regulations consistent with this chapter as it deems necessary to administer this chapter, and to do any and all things necessary or convenient to carry out the policy and intent of this chapter.
- B. To consult or contract with expert persons or agencies in reviewing a permit application or violation action.
- C. To hold hearings and subpoena witnesses in the exercise of its powers, functions, and duties provided for by this chapter.
- D. To adopt procedures and policies that relate solely to the organization or internal management of the Planning Board that are necessary or convenient to carry out the policy and intent of this chapter.

§ 217-14. Judicial review and appeal.

Any determination, decision or order of the Planning Board may be judicially reviewed pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York, provided that such proceeding must be initiated within 30 days after the filing of the Planning Board's decision in the Office of the Town Clerk.

§ 217-15. Severability.

If any clause, sentence, paragraph, section or part of this chapter, or the application thereof to any person or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the application of the remainder of any part thereof to any other person or circumstances; and to this end, the provisions of each section of this chapter are hereby declared to be severable.

§ 217-16. Amendments.

- A. This chapter may from time to time be amended by the Town Board in accordance with the procedures and requirements of the general statutes and as new information concerning soils, hydrology, flooding or botanical species peculiar to wetlands, watercourses and associated buffer areas becomes available.
- B. Every amendment of this chapter entertained by the Town Board shall be referred to the Planning Board and Conservation Advisory Council for written reports before a required public hearing on the proposed amendment is held by the Town Board. A

minimum of 60 days to respond to the referral shall be provided.