

Topic:	Wetlands & Watercourse Protection; Natural Resource Protection & Conservation; Erosion & Sedimentation Control; Stormwater Management; Wildlife & Fish Habitat; Scenic Resources; Drinking Water Protection & Conservation
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of North Castle
Year (adopted, written, etc.):	1990-2009
Community Type - applicable to:	Suburban; Rural
Title:	Town of North Castle Wetlands Purpose Ordinance
Document Last Updated in Database:	May 8, 2017

Abstract

This law states the Town Board's rationale for protecting wetlands within the Town of North Castle, NY. Some of the stated reasons include: the important role the wetlands have in cleaning the water supply, their function as a habitat for plant, fish and wildlife species, their role in absorbing stormwater, and their importance as a scenic resource.

Resource

Town of New Castle NY Wetlands Purpose
Code of the Town of New Castle NY
Chapter 137: Wetlands
General Code
<http://www.ecode360.com/11774386>

§ 137-1. Findings; purpose.

A. The Town Board of the Town of New Castle finds and declares it to be the public policy of the Town to preserve, protect and conserve its wetlands, including water bodies and watercourses, and the benefits derived therefrom, to prevent despoliation and destruction and to regulate the use and development thereof and to secure the natural benefits of wetlands, water bodies and watercourses consistent with the general welfare and beneficial economic and social development of the town. In this connection, the Town Board finds as follows:

(1) Rapid population growth, attended by housing, road and other construction, and increasing demands upon natural resources are found to be encroaching upon, despoiling, polluting or eliminating many of the town's wetlands, water bodies, watercourses and other natural resources and processes associated therewith.

(2) The preservation and maintenance of wetlands, water bodies and watercourses in an undisturbed and natural condition constitute important physical, ecological, social, aesthetic, recreational and economic assets necessary to promote the health, safety and general welfare of present and future residents of the Town and of downstream drainage areas. In particular, wetlands serve multiple functions, including:

(a) Protecting water resources by providing sources of surface water, recharging groundwater and aquifers, serving as chemical and biological oxidation basins and functioning as settling basins for naturally occurring sedimentation.

(b) Controlling flooding and stormwater runoff by storing or regulating natural flows.

(c) Providing nesting, migratory and wintering habitats for diverse wildlife species, including many on the New York State and Federal Endangered Species lists.

(d) Supporting vegetative associations specifically adapted for survival in low oxygen environments.

(e) Providing areas of unusually high plant productivity which support significant wildlife diversity and abundance.

(f) Providing breeding and spawning grounds, nursery habitat and food for various species of fish.

(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 that process excess nitrates and nitrogenous pollutants and return them to the atmosphere as inert nitrogen gas.

(i) Providing open space and visual relief from development.

(j) Serving as outdoor laboratories and living classrooms for the study and appreciation of natural history, ecology and biology.

(3) 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. Remaining wetlands are in jeopardy of being lost, despoiled

or impaired by such acts and the cumulative effect of such acts, contrary to the public safety and welfare.

B. It is the intent of this chapter to promote the public purposes identified in this section by providing for the protection, preservation, proper maintenance and use of the town's wetlands, water bodies and watercourses, by preventing or minimizing erosion caused by flooding and stormwater runoff, by maintaining the natural groundwater supplies, preserving and protecting the purity, utility, water retention capability, ecological functions, recreational usefulness and natural beauty of all wetlands, water bodies, watercourses and other related features of the terrain and by providing and protecting appropriate habitats for natural wildlife.

§ 137-2. Definitions.

Words or phrases used in this chapter shall be interpreted as defined below, and where ambiguity exists, words or phrases shall be interpreted so as to carry out the regulatory goals stated in § 137-1. As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT

A person requesting a wetlands permit from the Town or a person to whom a wetlands permit has been given. Editor's Note: The definition of "adjacent area," which immediately preceded this definition, was repealed 10-9-2001 by L.L. No. 5-2001.

APPROVING AUTHORITY

The Planning Board, the Environmental Review Board or the Town Wetlands Inspector, as specified in § 137-5G hereof.

BOUNDARIES OF A WETLANDS

The outer limit of the soils and/or vegetation as defined in "wetlands."

CLEAR CUTTING

Any cutting of more than 10 trees on an individual lot within a one-year time period.

DEPOSIT

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

DOMINANT SPECIES

The predominant plant species (i.e., the only species dominating a vegetative unit) or a codominant species (i.e., when two or more species dominate a vegetative unit).

ENVIRONMENTAL REVIEW BOARD

The Environmental Review Board of the Town of New Castle, New York.

HYDRIC SOIL

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

HYDROPHYTIC VEGETATION

Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, prepared by the federal government and as updated from time to time, and Wetlands Plants of the State of New York, 1986, published by the United States Fish and Wildlife Service in cooperation with the National and Regional Wetlands Plant List Review Panels, and as updated from time to time, and as on file with the Town Clerk of the Town of New Castle.

MATERIAL

Soil, silt, stones, sand, gravel, rock, clay, bog, peat, mud, debris, water and refuse or any other organic or inorganic substance, chemical agent or matter, sewage sludge or effluent or municipal or industrial solid waste, whether liquid, solid or gaseous, or any combination thereof.

MITIGATION PLAN

A plan prepared by the applicant which shall specify mitigation measures that provide for replacement wetlands and wetlands buffers that recreate as nearly as possible the original wetlands and wetlands buffers in terms of type, function, geographic location and setting.

[Amended 10-9-2001 by L.L. No. 5-2001]

PERSON

Any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including public agencies and municipal corporations.

PLANNING BOARD

The Planning Board of the Town of New Castle, New York.

POLLUTION

Any harmful thermal effect on any wetlands or the contamination or rendering unclean or impure of any wetlands by reason of erosion or by any waste or other materials discharged or deposited therein.

STATE MAP

The wetlands map prepared by the State of New York pursuant to Article 24 of the Environmental Conservation Law.

TOWN

The Town of New Castle, New York.

TOWN BOARD

The Town Board of the Town of New Castle, New York.

TOWN WETLANDS INSPECTOR

The Town Wetlands Inspector of the Town of New Castle, New York, or the person acting in that capacity, as designated by the Town Board.

TREE

Any healthy, living, woody plant, its root system and the area within the outer limit of its branches, which has a diameter at breast height (4 1/2 feet) of six inches or more.

WATERCOURSE

Any natural or artificial, permanent or intermittent, public or private surface water body or surface water segment, such as ponds, lakes, reservoirs, rivers, streams, brooks or waterways, that are contained within, flow through or border on the Town of New Castle.

WETLANDS HYDROLOGY

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

WETLANDS:

[Amended 10-9-2001 by L.L. No. 5-2001]

A. All areas of at least 1/10 of an acre that comprise hydric soils and/or are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation as defined by the Federal Interagency Committee for Wetlands Delineation 1989; Federal Manual for Identifying and Delineating Jurisdictional Wetlands; United States Army Corps of Engineers, United States Environmental Protection Agency, United States Fish and Wildlife Service, and U.S.D.A. Soil Conservation Service, Washington, D.C.; Cooperative Technical Publication, attached hereto as Appendix A. Editor's Note: Appendix A is on file in the Town offices.

B. Watercourses as defined in this section.

C. Any area either larger or smaller than 1/10 of an acre, meeting all other requirements of a wetland, within 100 feet of other similar areas shall be considered as one wetland if the total of the areas is greater than 1/10 of an acre.

WETLANDS BUFFER

A specified area surrounding a wetlands, that is intended to provide protection to the wetlands from human activity and other encroachment associated with development. The

wetlands buffer shall be determined to be the area extending 100 feet horizontally away from and paralleling the wetlands boundary.

[Added 10-9-2001 by L.L. No. 5-2001]

§ 137-3. Regulated activities.

[Amended 10-9-2001 by L.L. No. 5-2001]

Except as provided in § 137-4 hereof, it shall be unlawful to conduct, directly or indirectly, any of the following activities upon any wetlands or within the wetlands buffer unless a permit is obtained pursuant to § 137-5 hereof:

- A. Placement or construction of any structure.
- B. Any form of draining, dredging, excavation or removal of material, either directly or indirectly.
- C. Any form of dumping, filling or depositing of material either directly or indirectly.
- D. Installation of any service lines or cable conduits.
- E. Introduction of any form of pollution, including but not limited to the installation of a septic tank, the running of a sewer outfall or the discharging of sewage treatment effluent or other liquid wastes.
- F. Alteration or modification of natural features and contours.
- G. Alteration or modification of natural drainage patterns.
- H. Construction of dams, docks or other water control devices, pilings or bridges, whether or not they change the natural drainage characteristics.
- I. Installation of any pipes or wells.
- J. Clear cutting.
- K. Removal or cutting of any vegetation except as permitted in § 137-4C, F and G hereof.
- L. Deposition or introduction of chemicals, including herbicides, pesticides and fertilizers, except as permitted in § 137-4J.
- M. Grazing of one or more horses or other animals other than those directly producing agricultural products.
- N. Any other activity that may impair the natural function(s) of a wetlands as described in § 137-1 hereof.

O. Decorative landscaping and planting except as permitted in § 137-4K hereof.
§ 137-4. Activities permitted by right.

[Amended 10-9-2001 by L.L. No. 5-2001]

The following activities are permitted by right within any wetlands or wetlands buffer:

A. The depositing or removal of the natural products of the wetlands by recreational or commercial fishing, shellfishing, aquaculture, hunting or trapping where otherwise legally permitted.

B. Outdoor recreational activity that does not materially alter the natural state of the land or require construction, including use of field trails for nature study, hiking, swimming, skin diving and boating, where otherwise legally permitted.

C. Normal ground maintenance, including mowing, trimming of vegetation and removal of dead or diseased vegetation around a residence except for the use of fertilizers, pesticides and herbicides in wetlands.

D. Repair of walkways and walls when the work does not involve the use of any machinery.

E. Operation and maintenance of such dams, retaining walls, terraces, sluices, culverts or other water control structures or devices as legally existed on the effective date of this chapter.

F. Selective trimming and pruning in previously landscaped areas to improve the health or appearance of vegetation within 50 feet of residences that were in existence on the effective date of this chapter.

G. Public health activities pursuant to the order of the Westchester County Department of Health or New York State Department of Health.

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

I. The existing, yearly activities of farmers and other landowners in grazing and watering livestock or growing of crops that directly produce agricultural products.

J. Depositing herbicides, pesticides or fertilizers in an wetlands buffer in accordance with manufacturers' recommendations and accepted horticultural practices.

K. Decorative planting in a wetlands buffer.
§ 137-5. Permits.

A. Any person proposing to conduct or cause to be conducted a regulated activity specified in § 137-3 hereof upon any wetlands or wetlands buffer shall file an application for a

permit with the approving authority as hereinafter provided, in hard copy and in an electronic file format.

[Amended 10-9-2001 by L.L. No. 5-2001; 3-27-2012 by L.L. No. 1-2012]

- (1) The name and address of the property owner and applicant, if different.
- (2) The street address and Tax Map designation of the property.
- (3) A statement of authority from the owner for any agent making application for a permit.
- (4) A statement of the proposed work and purpose thereof.
- (5) A completed environmental assessment form as required by the New Castle Environmental Quality Review Law and the New York State Environmental Quality Review Act. Editor's Note: See Ch. 65, Environmental Quality Review, of the Code book and § 8-0101 et seq. of the Environmental Conservation Law, respectively.
- (6) A statement that the property owner and applicant will indemnify and hold the Town or its representatives harmless against any damage or injury in accordance with § 137-8 hereof.

B. Additional information may be requested by the approving authority, including any of the following:

- (1) An explanation as to why the proposed activity cannot be located on a different portion of the site or on another lot under the applicant's ownership or control.
- (2) A description of all functions currently provided by the wetlands under review.
- (3) Complete plans for the proposed site improvements, which shall be certified by an engineer, architect, land surveyor or landscape architect licensed in the State of New York, drawn to a scale no less detailed than one inch equals 50 feet and showing the following:
 - (a) The location of all wetlands and wetlands buffers as determined by a qualified individual no earlier than 12 months prior to the date of filing the application. The finite boundaries of a wetlands shall be determined by field investigation and flagging after appropriate field survey work by qualified individuals in a manner acceptable to the approving authority. The boundaries shall subsequently be surveyed by a licensed land surveyor unless this requirement is waived by the approving authority. The approving authority may consult and/or may require the applicant to consult with biologists, hydrologists, soil scientists, ecologists/botanists or other experts as necessary to make this determination pursuant to the definition contained in § 137-2.

[Amended 10-9-2001 by L.L. No. 5-2001]

(b) A description of the vegetative cover of the wetlands and wetlands buffer, including dominant species.

[Amended 10-9-2001 by L.L. No. 5-2001]

(c) A description of the soil types on site.

(d) The location of the construction area or area proposed to be disturbed, and its relation to property lines, roads, buildings, and wetlands within 250 feet.

(e) The exact locations, specifications and amount of all proposed draining, fill, grading, dredging and vegetation removal or displacement, and the procedures to be used to undertake such work.

(f) The location of any wells and the depths thereof, and any sewage disposal system within 50 feet of the areas to be disturbed.

(g) The existing and proposed contours at two-foot intervals in the proposed disturbed area and to a distance of 50 feet beyond such area; and elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than five feet.

(h) Details of any temporary or permanent drainage system proposed both for the conduct of work and after completion thereof, including locations at any point discharges, artificial inlets or other human-made conveyances that would discharge into the wetlands or wetlands buffer, and measures proposed to control erosion both during and after completion of the work.

[Amended 10-9-2001 by L.L. No. 5-2001]

(i) Where creation of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other water control devices and analysis of the wetlands hydrologic system, including seasonal water fluctuation, inflow/outflow calculations and subsurface soil, geology and groundwater conditions.

(j) Where creation of a detention basin is proposed, with or without excavation, details of the construction of any dams, berms, embankments, outlets or other water control devices and an analysis of the wetlands hydrologic system, including seasonal water fluctuation, inflow/outflow calculations and subsurface soil, geology, and groundwater conditions.

(4) Copies of all applicable county, state or federal permits or permit applications that are required for such work or, if none have been submitted at the time of wetlands permit application, a list of all permits that will ultimately be required.

(5) A list of the names to whom notice of the application was sent, as specified in § 137-5F.

(6) 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. An application fee and engineering and inspection fee in amounts set forth by resolution of the Town Board in the Master Fee Schedule, which may be amended, shall be submitted with the application.

[Amended 9-10-2002 by L.L. No. 8-2002]

D. All information relating to a permit application, including but not limited to the application itself, additional required materials or information, notices, record of hearings, written comments and findings, shall be maintained on file in the office of the Town Building and Engineering Department.

E. Four copies of any such application shall be filed with the approving authority if it is the Town Wetlands Inspector or the Environmental Review Board or 10 copies with the approving authority if it is the Planning Board.

F. For applications to the Planning Board as approving authority, the applicant shall publish a notice of such application in the town's official newspaper. For applications to the Planning Board, the applicant shall also notify, in writing, all property owners of record within 100 feet of the boundary of the property on which the proposed regulated activity will be located, as shown in the Town Tax Assessor's office, of the filing of the wetlands permit application. For applications to the Environmental Review Board as approving authority, the applicant shall, within 10 days after filing the application, notify, in writing, all property owners of record within 100 feet of the boundary of the property in which the proposed regulated activity will be located.

[Amended 11-13-1990 by L.L. No. 40-1990]

G. The approving authority for all applications shall be the Environmental Review Board, except as follows:

(1) The Planning Board shall be the approving authority for any application involving property that is also the subject of a pending site plan, subdivision or special permit application in accordance with the zoning requirements of the Town of New Castle, Editor's Note: See Ch. 60, Zoning. and for any application that also involves the construction or establishment of a principal building or use.

(2) The Town Wetlands Inspector shall be the approving authority for any of the following activities proposed to be conducted on property not subject to regulation by the State of New York, and no public hearing shall be required:

(a) Removing water-deposited silt and/or other material in order to restore the preexisting land elevations, provided that the total amount removed does not exceed 15 cubic yards of material.

(b) Restoring land elevations that have been altered by erosion or storm damage.

(c) The construction, expansion or improvement of private residential or recreational facilities, as otherwise legally permitted, provided that the total amount of material deposited, removed or regraded does not exceed 15 cubic yards.

(d) The construction of driveways not associated with any other construction approvals where alternative means of access are proved to be impractical, provided that the amount of material to be deposited or regraded in connection with such construction does not exceed 100 cubic yards.

(e) The use of harmless chemicals, dyes and other similar substances to maintain or study any wetland.

(f) Decorative landscaping and planting in wetlands when covering less than 1/10 of an acre.

(3) Where the Environmental Review Board or Town Wetlands Inspector initiates a review of an application submitted pursuant to this chapter and determines that because of the scope, nature, location or potential environmental impact of the action which could result from approval of the wetlands permit a public hearing would be either necessary or appropriate, the application shall be immediately forwarded to the Planning Board for public hearing, whereupon the Planning Board shall become the approving authority for such application.

H. The Planning Board, upon receipt of an application meeting the requirements of this section, shall refer the application submitted to it, as the approving authority pursuant to this chapter, to the Environmental Review Board for review and report. The Environmental Review Board shall report to the Planning Board within 30 days of the referral date or within such other period as may be specified by the Planning Board. The Planning Board will be guided by the Environmental Review Board's report. Failure to comply within the specified time period may be interpreted by the Planning Board as evidence of no objection to the application.

I. An application shall not be deemed complete until and unless the applicant has complied fully with the procedures of the State Environmental Quality Review Act. Editor's Note: See § 8-0101 et seq. of the Environmental Conservation Law.

J. When the Planning Board is the approving authority, no sooner than 30 days and no later than 60 days after the receipt of such application the Planning Board shall hold a public hearing on any application submitted pursuant to this chapter. These time periods may be extended by mutual agreement between an applicant and the Planning Board. The Planning

Board shall cause notice of such hearing to be published in the town's official newspaper at least five days prior to the date set for such hearing. All applications and maps and documents relating thereto shall be open for public inspection at the office of the Town Building and Engineering Department.

K. Within 45 days of the date that such application is considered complete or within 45 days of the date of the close of any public hearing that may be conducted on said application, whichever period is longer, the approving authority shall render a decision to approve, approve with modifications or disapprove the issuance of a permit for the proposed activity. Nothing in this section shall be construed as authorizing a default approval in the event that these periods are exceeded.

L. Professional review fees.

[Added 4-28-1992 by L.L. No. 8-1992; amended 1-10-2006 by L.L. No. 1-2006; 4-14-2009 by L.L. No. 5-2009]

(1) The Town Board, Planning Board and the Zoning Board of Appeals, in review of any application for wetlands permit approval, may refer such application to such planner, engineer, environmental expert, attorney or other consultant engaged by the Town or to such Town professional staff as such Board shall deem reasonably necessary to enable it to review such application as required by law.

(a) Fees charged by such consultant shall be in accord with fees usually charged for such services in the metropolitan New York region and pursuant to a contractual agreement between the Town and such consultant. All such fees shall be paid by the Town upon the submission of a Town voucher, and the applicant shall reimburse the Town for the cost of such consultant upon submission of a copy of the voucher or, at the discretion of the reviewing board, in accordance with the escrow account procedure set forth below.

(b) Costs for services of professional staff shall be in accord with hourly rates based upon actual salary and benefits paid by the Town. The applicant shall reimburse the Town for the costs of professional staff services upon submission of an invoice or at the discretion of the reviewing board, in accordance with the escrow account procedure set forth below.

(c) The payment of such costs 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 Town law, ordinance or regulation.

(d) All charges for services shall be audited by the Town, and applicant costs shall be limited to those that are reasonable in amount and are necessary for the Town's review and action of the application in accordance with the law.

(2) Escrow accounts. At the time of submission of any application for wetlands permit approval, the Planning Board may require the establishment of an escrow account, from which withdrawals shall be made to reimburse the Town for the cost of consultant fees and

professional staff services. The applicant shall then provide funds to the Town for deposit into such account, in the amount to be determined by the reviewing board based upon its evaluation of the nature and complexity of the application. The applicant shall be provided with copies of any Town voucher for consultant fees as they are submitted to the Town and with Town staff time records for which reimbursement is sought. When the balance in such escrow account is reduced to 1/3 of its initial amount, the applicant shall deposit additional funds into such account to restore the balance in such account to the amount of the initial deposit. If such account is not replenished within 30 days after the applicant is notified, in writing, of the requirements for such additional deposit, the reviewing board may suspend its review of the application. A building permit or certificate of occupancy or use shall not be issued unless all such applicants costs have been reimbursed to the Town. After all pertinent costs have been paid, the Town shall refund to the applicant any funds remaining on deposit.

M. A stormwater pollution prevention plan consistent with the requirements of Chapter 108A, Stormwater Management and Erosion and Sediment Control, shall be required for any wetlands permit approval that qualifies as or authorizes a land development activity as defined in Chapter 108A. The SWPPP shall meet the performance and design criteria and standards in Chapter 108A. The approved wetlands permit shall be consistent with the provisions of that chapter.

[Added 4-10-2007 by L.L. No. 3-2007]

§ 137-6. Standards and procedures.

A. In making its determination to grant, deny or grant with conditions a permit under this chapter, the approving authority shall consider the following:

- (1) Whether the proposed activity is consistent with the purpose and findings of this chapter as set forth in § 137-1 hereof.
- (2) The environmental impact of the proposed action.
- (3) The possible or practicable alternatives to the proposed action.
- (4) Whether the proposed action will have a deleterious effect on the health, safety or welfare of the residents of New Castle or its neighboring communities.
- (5) Whether the proposed action will have adequate safeguards for the protection and preservation of the environment and for the proper maintenance of any wetlands and the natural functions of and the benefits derived from such areas.
- (6) Whether the proposed action will have adequate safeguards employing the best available technology to protect the potable fresh surface and ground water supplies of the Town from drought, pollution, overuse and other forms of misuse.

(7) Whether the proposed action has been planned, designed or constructed so as to create minimal disturbance; to prevent or mitigate damage from erosion, turbidity or siltation; to preserve the natural flora and fauna and their habitat; to protect against flood and pollution of the wetlands affected; and to protect any other benefits of wetlands as enumerated in § 137-1B hereof; and is the best alternative available for accomplishing the proposed action.

(8) Whether there is a practicable alternative site for the proposed activity in another area of the subject property that is not a wetland.

(9) Any additional information as contained in:

(a) Any statements or comments offered at or before any public hearing.

(b) Any report from other New Castle boards and agencies and/or federal, state or other local governmental agencies.

(c) Any additional requested information.

B. The applicant shall have the burden of demonstrating that the proposed activity is not adverse to the health, safety and welfare of the residents of New Castle or its neighboring communities and that it will not degrade the environment or be inconsistent with the purpose of this chapter as stated in § 137-1 hereof or, in the alternative, that the applicant will otherwise suffer undue hardship if a permit is not issued.

C. Duly filed notice, in writing, that the state or any agency or subdivision thereof or the Town is in the process of acquiring any wetlands by negotiation or by condemnation shall be sufficient basis for denial of any permit.

D. The approving authority may require the preparation of a mitigation plan by the applicant pursuant to § 137-6F hereof when the applicant has demonstrated that either losses or significant impacts to the wetlands or wetlands buffer are necessary and unavoidable. For the purposes of requiring a mitigation plan, wetlands impacts are necessary and unavoidable only if all of the following criteria are satisfied:

[Amended 10-9-2001 by L.L. No. 5-2001]

(1) There is no feasible on-site alternative to the proposed activity, including reduction in density, change in use, revision of road and lot layout and related site planning considerations that could accomplish the applicant's objectives; and

(2) There is no feasible alternative to the proposed activity on another site available to the applicant that is not a wetlands or wetlands buffer.

E. The approving authority shall monitor or shall cause to have monitored projects in accordance with the specifications set forth in the permit to determine whether the

elements of the permit and/or mitigation plan have been met. The Planning Board may contract with an academic institution, independent research group or other qualified professionals to assist and discharge its obligations hereunder at the expense of the applicant. The requirements for monitoring shall be specified in the permit and/or mitigation plan and may include, but not be limited to:

- (1) The time period over which monitoring shall occur.
- (2) Field measurements to verify the size and location of the impacted wetlands area and the restored/replacement wetlands area.
- (3) The date of completion of the work or restoration/replacement.
- (4) Field verification of the vegetative, hydrologic and soils criteria as specified in the permit and/or mitigation plan.

F. In the event that the approving authority so requires pursuant to § 137-6D hereof, the applicant shall prepare a mitigation plan.

- (1) All mitigation measures shall balance the benefits of regaining new wetlands areas with the loss to other natural areas caused by wetlands creation. 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.
- (2) Mitigation plans developed to compensate for the loss of wetlands or wetlands buffers shall include baseline data as needed to adequately review the effectiveness of this plan. The mitigation plan shall also include a monitoring schedule for a specified period of time as agreed to by the approving authority.

[Amended 10-9-2001 by L.L. No. 5-2001]

- (3) Any mitigation plan prepared pursuant to this section and accepted by the approving authority shall become part of the permit for the application.

G. Any permit issued pursuant to this chapter may be issued with conditions. Such conditions may be attached as the approving authority deems necessary to ensure the preservation and protection of affected wetlands and to ensure compliance with the policies and provisions of this chapter and the provisions of the approving authority's rules and regulations, if any, adopted pursuant to this chapter.

H. Every permit issued pursuant to this chapter shall be in written form and shall contain the following conditions:

- (1) Work conducted under a permit shall be open to inspection during daylight hours, including weekends and holidays, by the approving authority or its designated representative.

(2) The permit expiration date as determined by the approving authority shall be stated.

(3) The permit holder shall notify the approving authority of the date on which the work is to begin at least five days in advance of such commencement date.

(4) The approving authority's permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit.

I. The approving authority shall include in the permit application file it keeps a copy of any mitigation plan prepared pursuant to § 137-6F hereof and a record of any hearing held pursuant to § 137-5J hereof.

J. The Planning Board, as the approving authority, may require prior to the commencement of work authorized under any permit issued pursuant to this chapter that the applicant shall post a bond or other security acceptable to the Town Board in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit. 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 issuance of a certificate of completion as described in § 137-10 hereof and until the bond is released by the approving authority or a substitute bond is provided. In the event that any condition of any such bond is breached, the Planning Board, as the approving authority, may recommend that the Town institute an action in the courts upon such bond and prosecute the same to judgment and execution.

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

L. The approving authority may suspend or revoke a permit in the form of a stop-work order if it finds that the applicant 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.

(1) The applicant shall receive written notice of said stop-work order as soon as reasonably practicable but no later than three days after issuance of the same, which notice shall be delivered personally or by certified mail and addressed to the applicant's address as shown on the permit. Such applicant shall be entitled to a hearing before the approving authority after work has stopped. If such a hearing is requested by the applicant, in writing, within five days of receipt of notice of the stop-work order, such hearing shall be scheduled by the approving authority within 15 days of receipt of request for a hearing. After the close of the hearing, the approving authority may confirm, modify or cancel the stop-work order.

(2) The approving authority shall set forth, in writing, in the permit application file it keeps its findings and reasons for revoking or suspending a permit pursuant to this section.

M. No permit shall be valid for more than one year after approval of an application by the approving authority unless otherwise specified by the approving authority. All permits shall expire upon the completion of the work specified therein. The validity of any work duly completed pursuant to an existing permit shall not be affected by the expiration of the permit, but such work shall not be continued beyond the expiration date. Permits may be renewed by the approving authority upon application submitted at least 60 days before the expiration of the permit. Standards for issuance of renewals shall be the same as for the issuance of permits. Permits, including all of their conditions, shall be binding on successors and assignees of the applicant.

§ 137-6.1. Additional standards and procedures in Environmental Protection Overlay Districts.

[Added 7-23-2002 by L.L. No. 5-2002]

In addition to compliance with the provisions of this chapter, applications for wetlands permits to conduct regulated activities on properties located within an Environmental Protection Overlay District shall comply with the provisions of Chapter 64 of the Town Code pertaining to such districts. In the event of any inconsistency or conflict between the provisions of this chapter and Chapter 64, the provisions of Chapter 64 shall govern to the extent of the inconsistency or conflict.

§ 137-7. Appeals.

A. A determination by the Planning Board to grant or deny a wetlands permit may be reviewed by the applicant or any other aggrieved person by the commencement of an action pursuant to the provisions of Article 78 of the Civil Practice Law and Rules within 30 days of the filing of such a determination with the Town Clerk.

B. In the case of an application decided by the Environmental Review Board or the Town Wetlands Inspector, the applicant or any other party aggrieved by such determination may seek review by appealing to the Planning Board, in which case the Planning Board shall become the approving authority for such application. Such review shall be requested not later than 20 days after the filing of the subject decision by the approving authority.

§ 137-8. Inspection; indemnification.

Any site for which an application has been submitted shall be subject to inspection upon notice to the property owner and applicant at any reasonable time, including weekends and holidays, by the Town Wetlands Inspector, the Building Inspector or by members of the Environmental Review Board, the Planning Board or their designated representatives. The applicant shall indemnify and hold the Town harmless against any damage or injury that may be caused by or arise out of any entry onto the subject property in connection with the processing of the application, during construction or within one year after the completion of work.

§ 137-9. Exemptions.

This chapter shall not apply to any work shown on construction drawings or improvement plans for subdivisions, site plans or special permits for which a wetlands permit has previously been granted prior to the effective date of this chapter.

§ 137-10. Completion of work.

A. Within 30 days after completion of all work authorized under a permit issued in accordance with this chapter, the applicant shall notify the Town Wetlands Inspector of such completion. For all work undertaken pursuant to permits approved by the Planning Board or Environmental Review Board, the applicant shall, if required, submit as-built drawings. Within 30 days of such notification and submission, the Town Wetlands Inspector shall inspect the work for compliance with all conditions of the permit.

B. When all work authorized under a permit is deemed acceptable, the approving authority shall issue a certificate of completion, which shall be accompanied by cancellation or return of any bond collected for such permit.

C. When work authorized under a permit is deemed not acceptable, the Town Wetlands Inspector shall so notify the applicant. The notification of noncompliance shall include a list of all conditions in violation of the terms of the permit and shall specify a time limit for the correction of all items so listed.

§ 137-11. Penalties for offenses.

A. Any person who undertakes any regulated activity within a wetlands or wetlands buffer without a permit or who violates, disobeys or disregards any provision of this chapter shall be liable for a civil penalty not to exceed \$3,000 for every such violation. Each consecutive day of the violation will be considered a separate offense. Before assessment of the civil penalty, the alleged violator shall be afforded a hearing or opportunity to be heard before the Planning Board upon due notice and with rights to specification of the charges and representation by counsel. Such civil penalty may be recovered in an action brought by the Town in any court of competent jurisdiction. Such civil penalty may be released or compromised by the town, and any action commenced to recover the same may be settled and discontinued by the town.

[Amended 10-9-2001 by L.L. No. 5-2001]

B. The Planning Board shall also have the power, following a hearing, to direct a violator to cease violation of this chapter and, under the Board's supervision, to restore satisfactorily the affected freshwater wetlands or watercourse to its condition prior to the violation, insofar as that is possible, within a reasonable time. Exercising of such power may be with or without the imposition of a fine or civil penalty under Subsections A and D hereof.

C. Any civil penalty or order issued by the Planning Board shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules within 30 days of the filing of the decision in the office of the Town Clerk of the Town of New Castle.

D. In addition to the above civil penalty, any person who violates any provision of this chapter shall be guilty of a violation, punishable by a fine of not less than \$500 nor more than \$1,000. For a second and each subsequent offense, the violator shall be guilty of a violation punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of not more than 15 days, or both. Each offense shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. In addition to these punishments, any offender may be punishable by being ordered by the court to restore the affected freshwater wetlands 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 Wetlands Inspector.

E. The Town shall have the right to seek equitable relief to restrain any violation or threatened violation of any provision of this chapter and to compel the restoration of the affected wetlands or wetlands buffer to its condition prior to the violation of the provisions of this chapter.

[Amended 10-9-2001 by L.L. No. 5-2001]

F. The Town Engineer, Building Inspectors and the Town Wetlands Inspector are hereby authorized to issue appearance tickets and summonses for violations of this chapter.

[Added 11-13-1990 by L.L. No. 46-1990]

§ 137-12. Severability.

If any provision of this chapter shall be held for any reason to be invalid, such determination shall not invalidate any other provision hereof.