

FINAL DRAFT OF PROPOSED MODIFICATIONS

06-22-05, REVISED 01-11-06, 07-19-06, 12-14-06, 3-9-07, 5-4-07,8-31-07

TOWN OF YORKTOWN

CHAPTER 178, FRESHWATER WETLANDS, WATERCOURSES AND WATERBODIES-

[HISTORY: Adopted by the Town Board of the Town of Yorktown 3-19-1991 by L.L. No. 16-1991. Amendments noted where applicable.]

GENERAL REFERENCES

Conservation areas -- [See Ch. 140.](#)
Environmental quality review -- [See Ch. 161.](#)
Erosion and sediment control -- [See Ch. 165.](#)
Flood damage prevention -- [See Ch. 175.](#)
Land development -- [See Ch. 195.](#)
Zoning -- [See Ch. 300.](#)

§ 178-1. Title.

This chapter shall be known as the "Freshwater Wetlands, Watercourses and Waterbodies Protection Law of the Town of Yorktown." It is a chapter regulating the dredging, filling, deposition or removal of materials; diversion or obstruction of water flow; and placement of structures and other uses in the wetlands, watercourses, ponds, lakes, reservoirs and their buffers in the Town of Yorktown.

§ 178-2. Enabling Authority.

This chapter is enacted pursuant to the Municipal Home Rule Law and any and all applicable laws, rules and regulations of the State of New York; nothing contained herein shall be deemed to conflict with any such laws, rules or regulations.

§ 178-3. Findings of Fact.

A. Wetlands, watercourses and waterbodies, in their natural condition, function to provide multiple environmental benefits, including:

- (1) 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.
- (2) Control of flooding and storm water runoff by storing or regulating natural flows.
- (3) Providing unique breeding, foraging, cover and seasonal or year-round habitats for diverse fish and wildlife species, including many listed as “special concern”, “threatened”, “endangered” and “rare” by Federal, State, County and local agencies.
- (4) Supporting unique vegetative and biotic associations specifically adapted for survival in low-oxygen environments.
- (5) Providing areas of comparatively high plant productivity which support significant wildlife diversity and abundance;
- (6) Providing breeding and spawning grounds, nursery habitat and food for various species of fish, reptiles and amphibians, birds and mammals.
- (7) Serving as nutrient traps for nitrogen and phosphorus and filters for surface water pollutants.
- (8) 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 nitrogenous pollutants and return them to the atmosphere as inert nitrogen gas;
- (9) Providing open space and visual relief from intense development in urbanized and growing areas.
- (10) Serving as outdoor laboratories and living classrooms for the study and appreciation of natural history, ecology and biology.
- (11) Providing recreational opportunities, including hunting, fishing, camping, boating, hiking, bird watching, and photography.
- (12) Protecting and maintaining stability of stream and watercourse channels, shorelines and banks, thereby controlling and reducing erosion, flooding and related property damage.
- (13) Protecting aquifers, reservoirs and watersheds vital to the community and to the water supply of New York City and Westchester County.

B. Buffer areas provide a critical transition between wetlands, water courses and waterbodies and upland ecosystems and human activities. As an integral landscape component of wetlands and watercourses, such buffer areas provide essential functions and values, regarding surface runoff and wildlife habitat.

(1) Surface Runoff- The capability of buffer land to modify surface runoff varies with physical attributes. The slope of the land alters the rate of water flow over the land. This, in turn, affects the amount of time available for water to infiltrate into the soil. Steeper gradients also cause sheet flow runoff to more quickly become concentrated flow. Concentrated flow has less soil contact, therefore a lower rate of infiltration. Concentrated flow is more erosive than sheet flow. Ground cover also modifies the ability of buffer land to modify runoff. Impervious surfaces, such as buildings, roads, parking lots, patios, walkways, tennis courts, prevent almost all infiltration. Compacted earth, such as dirt and gravel drives which have not been constructed to retain permeability, shed most runoff without significant infiltration. The type and density of vegetative cover affects rainfall runoff. Surface area is important for the initial capture of rainwater. Foliage, twigs, branches and trunks of trees and shrubs provide a significant surface area over which runoff collects before beginning to flow. Herbaceous groundcover, in addition to providing surface area upon which rainwater collects, provides resistance to overland flow. This allows additional time for runoff to infiltrate.

- a. 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.
- b. Trapping sediments, 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.
- c. Providing the last 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.
- d. Providing a practical and cost effective means of protecting wetlands, watercourses and waterbodies and controlling or preventing pollution.

- (2) Wildlife Habitat - Habitat requirements vary with the intended use of the habitat and with the target species, if any. Larger, pristine areas of native vegetation may be used as breeding habitat. Smaller more lineal areas may be used as travel corridors between the larger tracts. Target species vary in range or area of territory required, type of vegetative cover preferred and sensitivity to human activity.
- 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 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 buffer areas comprise a relatively small portion of the landscape, they, in combinations with wetlands, watercourses and waterbodies are irreplaceable habitat links in the life cycles of the greatest proportion of area wildlife, including game and non-game species, a number of which are listed as special concern, rare, threatened or endangered at the Federal, State or County level.
 - 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. 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.
 - e. 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.

- C. Upland areas surrounding wetlands, watercourses and waterbodies 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 upland areas.
- D. Many factors affect the ability of buffer areas 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.
- E. The most effective buffers are those with native forest cover, including understory, shrub and ground cover strata, and with a surface gradient of five percent (5%) or less. Channelized flow through buffer areas greatly diminishes the ameliorating effects of buffers on surface runoff.
- F. Effective buffer width is also dependent upon the intended principal functions. One fixed dimension does not adequately address the purpose of the buffer, sometimes being insufficient to protect water and wildlife resources. Other times fixed buffers can be an undue burden upon the landowners. Variable buffers can be better tailored to meet the designated purposes, whether it is runoff management or wildlife habitat; either transitory or for breeding.
- G. 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.
- H. It is therefore the policy of the Town of Yorktown to protect its citizens, including generations yet unborn, by preventing the despoliation and destruction of wetlands, watercourses and waterbodies, while taking into account varying ecological, economic, recreational, and aesthetic values. Activities that may damage wetlands, watercourses and waterbodies should be located on upland areas, separated by densely vegetated upland buffer areas of sufficient width.

§ 178-4. Legislative Intent.

It is the intent of the Town of Yorktown to control, protect, preserve, conserve and regulate wetlands, watercourses, waterbodies and adjacent buffer areas, within the Town so as to not hinder the benefits set forth in the legislative findings. These regulations are also enacted with the intent of providing a reasonable balance between

the rights of the individual property owners and the public interest in preserving the valuable functions of wetlands. It is the goal of the Town of Yorktown to achieve no overall net loss of the Town's remaining wetland resources. Activities in and around wetlands, watercourses, waterbodies, and their buffer areas, must conform with all applicable building codes and other regulations, so that such activities do not threaten public safety or, the natural environment, or cause nuisances by:

- A. Impeding or accelerating flood flows, reducing flood storage areas or destroying storm barriers, thereby resulting in increased flood heights, frequencies or velocities on other lands;
- B. Increasing water pollution through location of domestic waste disposal systems in wet soils; inappropriate siting of stormwater control facilities, improper and careless application and/or disposal of fertilizers, pesticides, herbicides and algacides in a wetland or shore area; disposal of solid wastes at inappropriate sites; creation of unstable fills; or the destruction of wetland soils and vegetation serving pollution and sediment control functions;
- C. Increasing erosion;
- D. Decreasing breeding, nesting and feeding areas for many species of waterfowl, shorebirds, fish and other forms of wildlife, including those that are listed as "special concern", "rare", "threatened", or "endangered as referenced by New York State Department of Environmental Conservation.
- E. Interfering with the exchange of nutrients needed by fish and other forms of wildlife;
- F. Decreasing viable habitat for fish, reptiles and amphibians, and other forms of wildlife.
- G. Adversely altering the recharge or discharge functions of wetlands thereby impacting groundwater or surface water supplies;
- H. Significantly altering the wetland hydroperiod and thereby causing either short- or long-term changes in vegetation composition, soils characteristics, nutrient recycling or water chemistry;
- I. Destroying existing or proposed sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms and training areas;
- J. Interfering with public rights in navigable waters and the recreation opportunities provided by wetlands for fishing, boating, hiking, bird-watching, photography, camping and other passive uses; or

- K. Destroying or damaging aesthetic and property values, including significant public viewsheds and open space;
- L. Destroying or reducing undisturbed adjacent upland areas surrounding wetlands and watercourses, which provide a protective buffer.

§ 178-5. Definitions.

- A. Except where specifically defined herein, all words used in this section shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular.
- B. As used this chapter, the following terms shall have the meanings indicated:

ADMINISTRATIVE PERMIT -- A permit issued by the Environmental panel for the conduct of regulated activities in wetlands or buffer areas where such conduct of regulated activities is limited in scope and limited in potential impact as determined by this chapter (§178-9A).

AGRICULTURE -- Cultivating and harvesting products, including fish and vegetation, that are produced naturally in freshwater wetlands, and installing cribs, racks and other in-water structures for cultivating these products, but this does not include filling, dredging, peat mining or the construction of any buildings or any water regulating structures, such as dams, except as allowed under NYS Agriculture and Markets Law.

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.

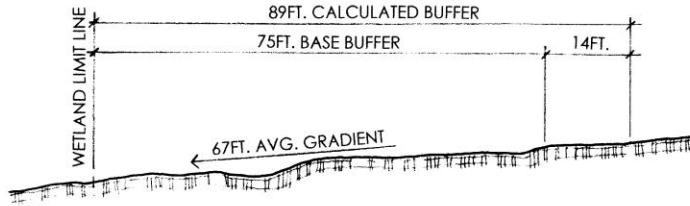
APPROVAL AUTHORITY [Amended 2-15-1994 by L.L. No. 6-1994] -- The municipal or administrative board, or public official empowered to grant or deny permits under this chapter, to require the posting of bonds as necessary and to revoke or suspend a permit where lack of compliance to the permit is established. The Approval Authority for the Town of Yorktown shall be the Planning Board or the Town Engineer, as designee of the E-Panel.

BUFFER – The area surrounding a wetland, watercourse or waterbody that is also subject to the regulations for wetlands as defined herein. The exact extent of the buffer will vary according to wetland type, physical characteristics of the land and the principal purpose of the buffer. Buffer widths shall be determined by the following means:

- A. Begin with the Base Buffer dimension, measuring from the top of bank or limit of wetland delineation:
- (1) Connected wetlands are those with surface connections, either by watercourse, as defined herein, or piped to other wetlands or waterbodies and eventually to a perennial watercourse. Connected wetlands shall have a Base Buffer width of seventy five feet (75 ft.)
 - (2) Isolated wetlands are those lacking surface continuity via a watercourse, as defined herein, or pipe with other wetlands or waterbody and eventually to a perennial watercourse. Isolated wetlands are of two types:
 - (a) Vernal pools of 1000 sq. ft. or greater and as defined herein shall have a Base Buffer dimension of one hundred feet (100 ft.).
 - (b) All other isolated wetlands shall have a Base Buffer dimension of fifty feet (50 ft.).
- B. Add to the Base Buffer dimension two feet (2 ft.) for every one percent (1%), rounded, of slope up to fifteen percent (15%).
- (1) The change in grade over the Base Buffer distance shall be divided by the Base Buffer distance. The grade changes across steep slopes, impervious surfaces and rock outcrops are not included.
 - (2) The buffer addition shall exclude areas described in the following C.
- C. Exclude from Calculated Buffer measurement:
- (1) All land with fifteen percent (15%) slope or greater.
 - (2) All impervious surfaces, e.g. roads and parking lots, including gravel and compacted earth, buildings, patios, swimming pools, tennis courts, walks.
 - (3) Bedrock outcrops of greater than one thousand square feet (1,000 sq. ft.) and with a minimum horizontal dimension of ten feet (10 ft.).
- D. Calculated Buffer shall not exceed one hundred fifty feet (150 ft.) due to steeply sloping land.
- E. Terrain reduction of buffer requirement - The presence of a watershed divide may be used to reduce the total buffer width. Where a watershed diverts water away from a wetland, waterbody or watercourse, the buffer shall extend no farther than twenty five feet (25 ft.) beyond the watershed.

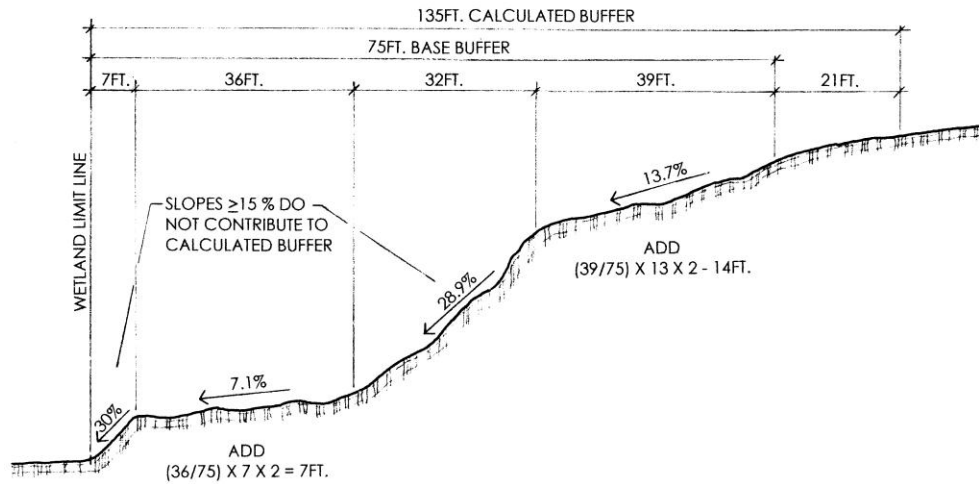
- (1) Watershed divide must remain undisturbed by the proposed grading or other activities that would effectively alter its location.

CALCULATED BUFFER VARIABLES

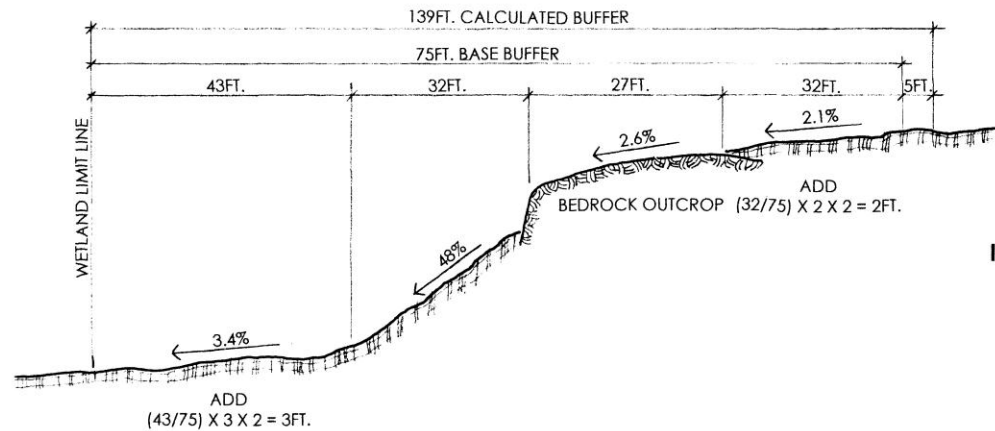


Gradient in Contributing Areas

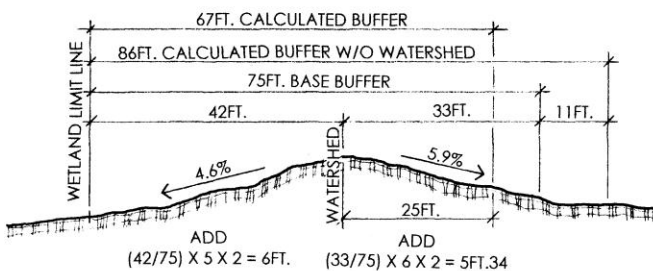
ADD
GRADIENT ROUNDED X 2FT./1% GRADIENT
= 7×2
= 14FT.



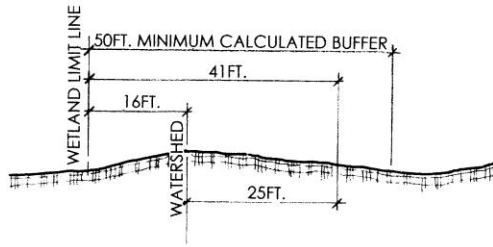
Steep Slope $\geq 15\%$



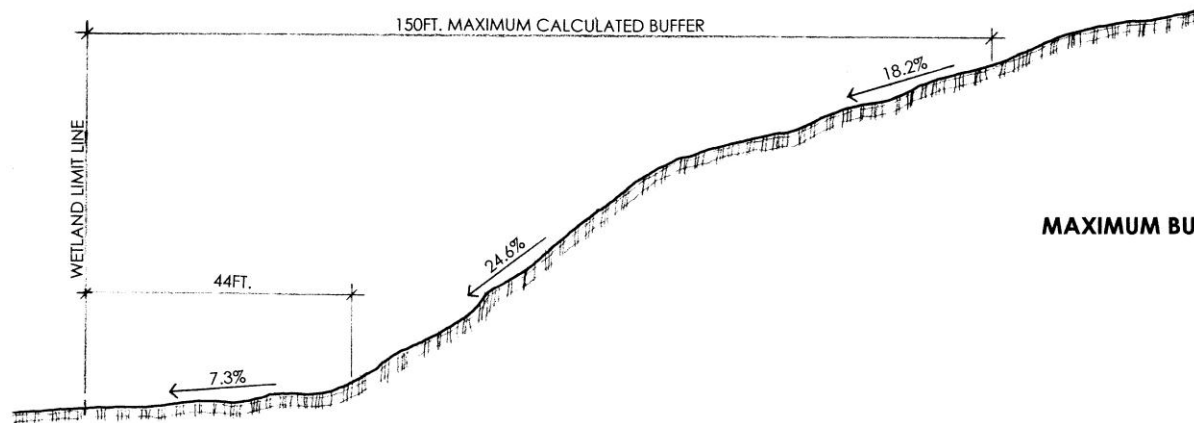
IMPERVIOUS SURFACES



WATERSHED DIVIDE



MINIMUM BUFFER



MAXIMUM BUFFER

- (2) No drainage features, e.g. roof leaders, footing drains, curtain drains or storm drains shall redirect water across the watershed into the buffer.
- (3) Under no circumstances shall the buffer be less than fifty feet (50 ft.)

BUFFER CALCULATION / DELINIATION PROCEDURE

- A. Determine areas of fifteen percent (15%) and greater slopes.
- B. Determine locations of transects to be used for Buffer Limit calculations.
 - (1) Transects shall be no more than one hundred feet (100 ft.) apart between midpoints.
 - (2) Transects shall be approximately perpendicular to the general edge of the wetland, watercourse or waterbody.
 - (3) Transects need not be continuous across a watercourse or lineal wetland.
- C. Measure the Base Buffer distance along each transect. Beginning at the edge of delineated wetland, top of watercourse bank, or waterbody shoreline, measure along the transect line, omitting all areas of slopes equal or greater than fifteen

percent (15%), impervious surfaces, and bedrock outcrops, as defined above.

- D. Determine the addition to the Base Buffer due to the slope within the Base Buffer distance.
 - (1) Sum the grade changes for all of the segments contributing to the Base Buffer measurement.
 - (2) Divide the sum of the grade changes by the Base Buffer to derive the average slope across the distance and round to the nearest whole number.
 - (3) Add two feet (2 ft.) to the Measured Base Buffer for each percent of slope. This added buffer shall not include any land having a gradient equal or greater than fifteen percent (15%), impervious surface, or rock exposures as described above.
- E. One hundred fifty feet (150 ft.) shall be the maximum unaveraged Calculated Buffer.
- F. Connect these buffer limit points with a smoothly curving line to determine the Buffer Limit Line.
- G. Add transects and/or Buffer Averaging, as desired, to refine the Buffer Limit Line.

BUFFER CREDITS - Deductions from the calculated buffer distance can be created in several ways. These measures must be implemented as part of the initial site preparation.

- A. Removal of invasive species. Up to ten percent (10%) reduction of the base buffer may be earned depending upon the extensiveness of invasive species present, the degree of permanent removal proposed and a three year non-reestablishment warrantee period.
- B. Planting native species of trees, shrubs and ground cover to accelerate the restoration of a forested buffer. This must be accompanied by a Conservation Easement or land dedication and a five year warrantee for an 80% survival rate in good health of all plant materials. Up to 15% reduction of the base buffer dimension may be earned depending upon the existing condition of the buffer area and the proposed extent of planting.
- C. Conversion of existing concentrated flow to sheet flow can earn up to a ten percent (10%) reduction of the base buffer dimension.

BUFFER AVERAGING - Averaging of buffer width may be used with prior written approval of the Permitting Authority.

- A. Calculated buffer width may be varied up to one third.
- B. Minimum width of an averaged buffer shall be no less than fifty feet (50 ft.)
- C. Buffer area shall not be reduced by the use of the averaging alternatives. This shall be demonstrated with a plan showing the square footage of all areas of reduction and augmentation.
- D. Buffer reduction and augmentation must occur within the same wetland water shed. Wetlands with a central perennial stream shall be averaged separately on each side.

CLEARING-- The cutting of more than three trees of non-invasive species which are over 8 inches dbh within the same one acre area within an eighteen month period.

CONSERVATION BOARD -- The duly appointed Conservation Board of the Town of Yorktown as created pursuant to § 239 of the General Municipal Law.

DAMS AND WATER CONTROL MEASURES -- Barriers which obstruct the flow of water or raise, lower or maintain the level of water.

DATE OF RECEIPT OF APPLICATION BY APPROVAL AUTHORITY -- An application shall be deemed received by the approval authority on the date of the first regular meeting of the approval authority following the filing of the application and supporting plans pursuant to the provisions of the law.

dba -- Diameter breast high, ie 4ft. above ground.

DEPOSIT -- To fill grade, discharge, emit, dump or place any material or the act thereof.

DISCHARGE -- The emission of any water, substance or material into a wetland, watercourse or their buffers, 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.

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 plant species.

ENVIRONMENTAL CLERK -- An employee of the Town of Yorktown, or an independent contractor engaged by the Town of Yorktown, designated to perform, inter alia, the duties of the Environmental Clerk as set forth in this chapter.

ENVIRONMENTAL CODE INSPECTOR -- The duly appointed Town official charged with the duty of inspecting and enforcing the environmental laws of the Town of Yorktown, including but not limited to Chapter 165, Erosion Control and Soil Removal, and this chapter.

ENVIRONMENTAL PANEL -- aka E-panel -- An application screening panel consisting of representatives of the Engineering, Planning, and Building Departments and the Conservation Board.

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

FACULTATIVE SPECIES -- Plant species that occur with equal probability in both upland and wetland or watercourse systems. Facultative species for the Northeast are listed in the Wetland Plants of the State of New York 1986, published by the United States Fish and Wildlife Service in cooperation with the National and Regional Wetland Plant List Review Panels, and as updated from time to time. Such lists shall be available at the Town Clerk's office.

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.

FILL -- See "deposit."

FRESHWATER WETLANDS MAP -- The final freshwater wetlands maps for Westchester County promulgated by the Commissioner of the New York State Department of Environmental Conservation pursuant to § 24-0301.5 of the New York State Freshwater Wetlands Act, or such map as has been amended or adjusted, and on which are indicated the approximate locations of the actual boundaries of wetlands regulated pursuant to Article 24 of the Environmental Conservation Law.

GRADING -- Altering or changing the existing surface of land by such acts as excavating, ditching, leveling, filling or otherwise significantly altering the existing or natural contours of the land surface. This does not include top dressing of established turf areas or the filling of subsidence depressions and holes resulting from the permitted removal of tree stumps.

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

HAND TOOLS -- Equipment carried and used by a single person, or occasionally two. Hand tools may be motorized. Such powered tools include chain saws, pruners and post hole augers. They do not include walk behind equipment such as roto-tillers, cultivators, brush cutters, and power buggies.

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."

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.

INVASIVE PLANT SPECIES -- Invasive species are non-native species that can cause harm to the environment or to human health. As a threat to our biodiversity, they have been judged second only to habitat loss. Until such time that the NYS DEC develops an official Invasive Species list, Invasive species shall be those most recently listed as such by the Invasive Plant Council of New York State or the Invasive Plant Atlas of New England (IPANE).

LANDSCAPED AREA -- Characterized by the predominance of regularly maintained vegetation and non-living surfaces. Ground level vegetation over broad smoothly graded areas is usually turf grasses receiving frequent cutting during the growing season. Lesser areas may have other, less maintenance intensive ground cover, such as ivy, myrtle or ajuga. Once established these require only periodic maintenance weeding. Occasionally, decorative gravel may be used in place of grasses and ground covers over large areas.

Pools, patios, terraces, and walks may be constructed of gravel, flag stone, modular pavers, or other substantially impervious materials. These areas may require some infrequent maintenance, such as weeding or joint repair.

Shrub beds may be comprised of exotic or native species. Other than formal hedges, these require only infrequent pruning to maintain form and vigor.

Trees within Landscaped Areas may be specifically planted as part of the landscape, or be remnants of the predevelopment vegetation. Generally, tree maintenance is limited to infrequent pruning, crown thinning and occasionally feeding to maintain the desired form, function and health of the tree.

Woodland shade gardens, usually limited to unpaved paths, trail-side plantings of predominantly native herbaceous perennials and shrubs, and possibly strategically placed rocks, logs or benches may be considered as landscaped areas.

Areas which have been cleared of brush and seeded with grass; showing few indications of smoothing the natural micro-terrain and having little discernable contribution to the use and enjoyment of the space are not considered to be Landscaped Areas for the purposes of these regulations.

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.

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

MITIGATION PLAN -- The plan prepared by the applicant pursuant to § 178-10C when the applicant has demonstrated that either losses or impacts to the wetland or wetland buffer are necessary and unavoidable, as defined in § 178-11, and have been minimized to the maximum extent practicable.

MUNICIPALITY -- The Town of Yorktown.

OBLIGATE UPLAND SPECIES -- Plant species that, under natural conditions, always occur in uplands (i.e., greater than 99% of the time). Obligate upland species for the Northeast are listed in the Wetland Plants of the State of New York 1986, published by the United States Fish and Wildlife Service, in cooperation with the National and Regional Wetland Plant List Review Panels and as updated from time to time. Such lists shall be available at the Town Clerk's office.

OBLIGATE WETLAND SPECIES -- Plant species that, under natural conditions, always occur in wetlands (i.e., greater than 99% of the time). Obligate wetland species for New

York State are listed in Wetland Plants of the State of New York 1986, published by the United States Fish and Wildlife Service, in cooperation with the National and Regional Wetland Plant List Review Panels, and as updated from time to time. Such lists shall be available at the Town Clerk's office.

PERMIT OR WETLANDS PERMIT -- That form of written municipal approval required by this chapter for the conduct of a regulated activity within a wetland, watercourse, watercourse or buffer.

PERSON -- See "applicant."

PLANNING BOARD -- The duly appointed Planning Board of the Town of Yorktown as created pursuant to § 271 of the Town Law.

REGULATED AREA -- Land defined as Wetland, Watercourse, Waterbody, or Buffer by this chapter, 178, of the Town Code.

REMOVE -- To dig, dredge, suck, bulldoze, dragline, blast or otherwise excavate or grade, or the act thereof.

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

STRUCTURE -- Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on, *under or in the ground*, including, but not limited to, buildings, tennis courts and swimming pools. Fencing is not included as long as it complies with zoning.

TOWN -- The Town of Yorktown.

TOWN CLERK -- The duly elected Town Clerk of the Town of Yorktown.

TOWN ENGINEER -- Any person employed by the Town of Yorktown as the Town Engineer.

VERNAL POOL — 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, either in the Spring or the Fall, and that are devoid of fish and contain obligate species: 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*); fairy shrimp (*Eubrachipus* spp) and fingernail clam (*Sphaerium* spp)

WATERBODY -- Any perennial or intermittent impoundment of water having a discernable shoreline, excluding watercourses.

WATERCOURSE -- A river, stream, creek or rivulet of water flowing continuously or intermittently in a defined channel with readily discernable bed and banks. Watercourses are fed from a permanent, natural source and usually discharge into another body of water, such as a lake or larger watercourse. A drainage ditch, swale or surface feature that contains water only during and immediately after a rainstorm or a snow melt shall not be considered to be a watercourse.

WETLAND -- Any area, which meets one or more of the following criteria:

- (1) Lands and waters that meet the definition provided in § 24-0107.1 of the New York State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law). The approximate boundaries of such lands and water, are indicated on the official freshwater wetlands map promulgated by the Commissioner of the New York State Department of Environmental Conservation pursuant to § 24-0301.5 of the Act, or such a map that has been amended or adjusted pursuant to § 24-0301.6 of Title 23 of Article 71 of the Environmental Conservation Law.
- (2) All areas that comprise hydric soils and 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 Wetland Delineation, 1989, in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, Washington, D.C., and adopted by the United States Army Corp of Engineers, United States Environmental Protection Agency, and the United States Fish and Wildlife Service.
- (3) Areas demonstrated to be vernal pools as defined herein

WETLAND FUNCTIONAL ASSESSMENT –A published methodology for assessing wetland function and value which could affect the type of mitigation requirements within a wetland or wetland buffer. The wetlands functional assessment shall be based upon Magee. 1988. “A Rapid Procedure for Assessing Wetland Functional Capacity”, or other methods as approved by the permitting authority.

WETLAND PLANTS OF THE STATE OF NEW YORK 1986 -- The list of obligate and facultative upland and wetland plant species developed by the United States Department of the Interior, Fish and Wildlife Service, in cooperation with the National and Regional Wetland Plant List Review Panels, as amended and updated from time to time (available in the Town Clerk's office).

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

§ 178-6. Rules for Establishing and Interpreting Wetland Boundaries.

- A. The boundaries of a wetland shall be determined by field investigation, and delineated by a qualified environmental professional, ie ecologist/botanist or soil scientist, and subject to review by the approval authority. The delineating flags shall be surveyed by a licensed land surveyor, unless the last is waived by the approval authority. The approval authority may consult and/or may require the applicant to consult with biologists, hydrologists, soil scientists, ecologists/botanists or other experts as necessary to make this determination pursuant to the definition criteria contained in § 178-5. When required to consult with experts, the applicant shall retain either a consultant from the list available in the Town Clerk's office or other consultants approved in advance of the delineation by the Conservation Board.
- B. Wetland delineations must be re-evaluated every two (2) years to the satisfaction of the approving authority.

§ 178-7. Applicability.

The provisions of this chapter shall apply to all lands defined and/or designated wetlands, watercourses, waterbodies and their buffers.

§ 178-8. Allowable, Regulated and Prohibited Activities.

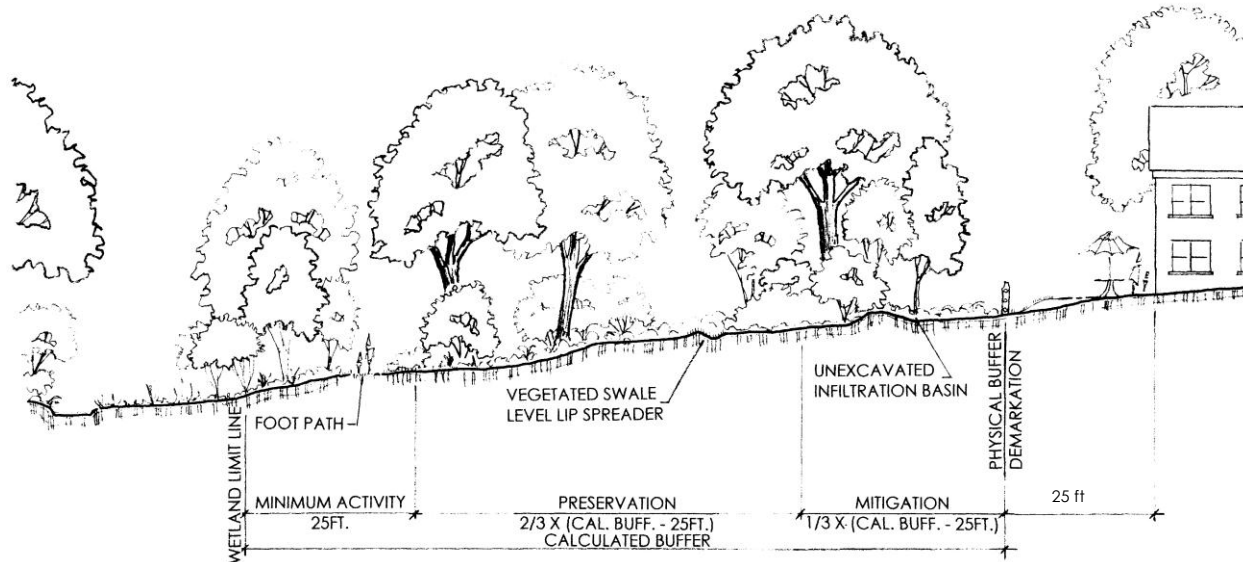
No regulated activity shall be conducted in a wetland, watercourse, waterbody or buffer without a written permit from the approval authority and full compliance with the terms of this chapter and other applicable regulations.

- A. Allowable Activities Not Requiring Permit. The following activities shall be permitted as-of-right within a wetland, watercourse, waterbody or buffer to the extent that they are not prohibited by any other ordinance; they do not constitute a pollution or erosion hazard or interfere with proper drainage; and they do not require structures, grading, or fill.
- (1) Normal ground maintenance by hand equipment only of landscaped areas, including mowing of lawn areas, trimming, removal of dead or diseased vegetation, removal of invasive plant species, top dressing of soil to fill sinkholes, etc.
 - (2) Repair or replacement, in-kind, of walkways, terraces, patios, walls, fences, driveways and roadways with no increase in the areal extent and when appropriate erosion controls are installed and maintained.
 - (3) Operation and maintenance of existing dams and water control devices.
 - (4) Establishing and maintaining passive recreational activities, such as wood chipped walking trails and benches, which do not significantly alter runoff. All such activities must be accomplished only with the use of hand tools.
 - (5) Activities of farmers and other landowners as set forth in § 24-0701 (4) of the Environmental Conservation Law, and as allowed under NYS Agriculture and Markets Law.
 - (6) Normal building or structure maintenance activities, including periodic pumping of septic tanks, and interior and 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).
 - (7) Planting of naturalizing species not designated as Invasive, as defined herein. These shall be horticulturally suited for the location planted and require no regular maintenance, such as pruning, fertilizing, etc.
- B. Regulated activities, which require a wetland permit. Except as provided in Subsection A, it shall be unlawful, in the absence of a specific written permit issued by the approval authority, to do any of the following activities in any wetland, watercourse or waterbody or their buffers.
- (1) Placement or any construction of any structure as defined by Town Code Chapter 300, Zoning, excluding fencing installed with hand tools only.
 - (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, cable conduits, pipes, wells, or other utilities.
- (5) Construction of dams, docks, or other water control devices.
- (6) Within the same one acre area, the cutting of more than three non-invasive trees as defined which are over eight inches dbh within an eighteen month period.

C. Intensity of Allowable and Regulated Activities. The level and types of activities which may occur within the calculated buffer shall vary with distance from the wetland, watercourse or waterbody.

- (1) Minimal Activity Zone - The twenty-five feet (25 ft.) of buffer nearest the designated wetland, watercourse or waterbody shall remain in a natural condition to the greatest extent possible. The objective is to retain, or attain, a native forest cover with its full compliment of vegetation strata as illustrated. Activities shall be limited and minimized to utility and vehicular site access and unpaved paths.
- (2) Preservation Zone - Two thirds of the remaining Calculated Buffer shall also remain in a natural condition. The objective is to maintain, or attain, a multi-tiered cover of native vegetation. This zone can be managed with minimal selective tree removal to improve the overall quality of the canopy. Surface runoff improvements designed to retain or attain sheet flow and other secondary water quality management practices may be considered. These shall not include the excavation of basins or flooding prolonged to the extent of adverse effects on existing or proposed woody vegetation.
- (3) Mitigation Zone - The balance of the calculated buffer may be used for a limited variety of stormwater management best management practices (BMPs). The objective is to maintain or retain a multi-layered woodland cover of native woody and herbaceous vegetation. Minor grading may be done to create BMPs such as level lip spreaders, vegetated swales, and vegetative filter strips. Infiltration basins may be constructed. All proposed mitigation measures shall be designed to the standards established in the most recent version of the *New York State Stormwater Management Design Manual*.
- (4) Principal building shall be set back a minimum of twenty five feet (25 ft.) from the Calculated Buffer Limit Line to allow for foundation excavation and other construction related activities around the building.



ZONED ACTIVITY INTENSITY

Zone	Minimum Activity	Preservation	Mitigation
Width	25ft.	2/3 the remaining Calculated Buffer	1/3 the remaining Calculated Buffer
Function	<ul style="list-style-type: none"> Stabilize outer edge/bank of wetland, watercourse or waterbody Provide shade for surface waters Ensure continuing source of organic carbon 	<ul style="list-style-type: none"> Natural water quality control Natural water quantity and rate of runoff control Natural wildlife habitat 	<ul style="list-style-type: none"> Receive surface and subsurface runoff from development Convert concentrated flow into sheet flow Provide natural surface runoff water quality and quantity controls prior to reaching the more sensitive natural resources
Vegetative Goal	Undisturbed forest cover with full stratification of canopy, understory, shrub ground cover and vines	Full natural woodland cover with minimal management activities designed to improve native forest structure and composition	Maintain/attain a predominantly native forest cover with a well developed multi-tiered structure, while allowing for limited human activities
Allowable Uses	<ul style="list-style-type: none"> Unavoidable vehicular and utility crossings Foot paths Observation decks 	<ul style="list-style-type: none"> All uses in Minimum Activity Zone Multi-use trails exclusive of motorized vehicles Surface runoff improvements designed to retain/attain sheet flow Other secondary water quality management practices, eg vegetated swales and level lip spreaders 	<ul style="list-style-type: none"> All of the uses in Minimum Activity and Preservation Zones Woodland management activities, eg selective clearing for canopy and habitat improvement Native perennial and shrub gardens Stormwater management requiring only minor regrading and which retain the existing native vegetation, ie ponding created by low berming and having no significant impact on the flooded vegetation

§ 178-9. Permit Application

Wetland Permit Applications may be processed for an Administrative Permit or for a Non-administrative Permit.

A. Administrative permit criteria

Regulated acts which are limited in scope and which will have limited unavoidable adverse impacts on the Regulated Areas involved, such as the following activities:

- (1) Change of use within an already established Landscaped Area, as defined, eg., within a legally existing landscaped Regulated Area construction of a swimming pool, tennis court, terrace, deck or building addition, including any necessary grading.
- (2) Installation of utilities, such as wells, buried pipe and wire services in conduit, when the original grade and surface drainage is restored.
- (3) Driveway crossings of Regulated Area which are no greater than two hundred and fifty feet (250 ft.) in length and which cause the least unavoidable disturbance, both temporary and permanent, to the Regulated Area.
- (4) Regulated Activities of limited scope and area within an area of extreme disturbance, ie, where second growth vegetation of noninvasive species has not yet become fully established.

B. Non-administrative Permit criteria

- (1) All regulated activities which exceed the limited scope and area described in § 178-9(A).
- (2) In the event that the E-panel determines that the granting of an Administrative Permit would be inappropriate in light of the standards set forth in § 178-9A(1) of this chapter, the E-panel shall neither approve nor deny the application, but rather shall return the filed application to the Environmental Clerk for referral to the Planning Board.
- (3) Regulated Activity proposed for areas designated wetlands on the most recent New York State Freshwater Wetlands Map.

178-10 Application Contents.

A. Administrative Applications shall contain the following information:

- (1) Name and post office address of Owner and Applicant, if different.

- (2) Street address and tax map designation of property covered by the application.
- (3) Statement of Consent from the owner for any agent making application.
- (4) Brief written description of the proposed work and purpose.
- (5) Applications affecting surface runoff shall include a statement of the impact of the project on upstream and downstream areas.
- (6) Graphic illustration, usually in plan form, of the proposed Regulated Activities, including information sufficient to convey the intent of the Application. This may include but not be limited to :
 - (a) Site location plan at a scale sufficient to locate site.
 - (b) Site property lines and topography at a scale of 1" = 50' or smaller
 - (c) Wetland limit line and water course as defined in § 178-6 and applicable Buffer,
 - (d) Proposed activities, including grading,
 - (e) Limit of disturbance,
 - (f) Erosion and sediment controls,
 - (g) Sequence of operations,
 - (h) Details and sections, as necessary,
 - (i) Mitigation as appropriate.
- (7) Completed short form of the Environmental Assessment Form (EAF).

B. Non-administrative Applications shall contain the following information:

- (1) A name and address of the Owner and Applicant, if different.
- (2) The street address and tax map designation to the property.
- (3) A statement of authority from the Owner for any agent making application.
- (4) A brief written description of the purpose and scope of the work proposed.

- (5) A list of names of the owners of record of lands adjacent to and within 100 feet of the boundary of the property on which the proposed Regulated Activity will be located.
- (6) Complete plans for the proposed site development, which shall be sealed 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) Site Location plan in sufficient detail to locate the site.
 - (b) The location of all wetlands and/or watercourses on the site under review and within 100 feet, as determined by a qualified ecologist/botanist and/or soil scientist, no earlier than 24 months prior the date of filing the application.
 - (i) Wetland and watercourse identifying flag locations shall be as surveyed by a licensed surveyor, unless otherwise allowed by the Planning Board.
 - (ii) Wetland hydrogeomorphic (HGM) type(s), as defined in *A Rapid Procedure for Assessing Wetland Functional Capacity*, by Dennis Magee, to the affected wetlands.
 - (c) Calculated Wetland Buffer
 - (i) Under existing conditions.
 - (ii) Post development conditions.
 - Without buffer averaging.
 - With buffer averaging, if used.
 - (d) On-site soils as determined by a certified Soil Scientist based upon field identification.
 - (e) Existing and proposed topography at a contour interval of not more than two feet.
 - (f) Slopes of fifteen percent (15%) or greater
Estimated volumes of cut and fill.
 - (g) Bedrock outcrops of one thousand square feet (1,000 sq.ft.) or greater
 - (h) Estimated volumes of cut and fill.

- (i) Limits of Grading (LOG) and Limits of Disturbance (LOD).
- (j) Surveyed tree locations with tree dbh, species and field tag number.
- (k) Location of existing and proposed site improvements including but not limited to:
 - (i) Structures such as buildings, sheds, swimming pools, decks, patios, terraces, tennis courts, walls, etc.
 - (ii) Other impervious surfaces such as roads, drives, parking, walks, stoops, etc.
 - (iii) Utilities such as storm drainage, with pipe sizes and inverts; sanitary sewers, septic fields, drywells, footing drains, curtain drains, gas, electric, telephone, cable, etc.
- (l) Storm water management utilizing the standards established in the latest edition of the *New York State Stormwater Management Design Manual*.
- (m) Mitigation of unavoidable adverse impacts.
- (n) Erosion and sediment controls following the latest edition of the *New York Guidelines for Urban Erosion and Sediment Control*.
- (o) Details, sections, profiles and elevations as necessary to describe the proposed regulated activity.
- (p) Construction sequence in detail.

(7) Mitigation Plan

(8) Completed long form of the Environmental Assessment Form (EAF)

(9) The Planning Board may require additional information as needed. Such additional information may include, but is not limited to:

- (a) The study of flood, erosion, or other hazards at the site;
- (b) The effect of any protective measures that might be taken to reduce such hazards; and
- (c) Any other information deemed necessary to evaluate the proposed use in terms of the goals and standards of this chapter.

C. Mitigation Plan Contents

- (1) Mitigation measures shall be designed to adequately off-set the minimized and unavoidable adverse impacts of the proposed development on the regulated areas of the site..
- (2) All mitigation plans shall be based on the following order of preference:
 - (a) Minimization of impacts and disturbance to wetlands, watercourses, waterbodies and buffer areas.
 - (b) Preservation of remaining wetlands, watercourses, waterbodies and buffer areas through the dedication and establishment of perpetual conservation easements, development restriction areas, or equivalent.
 - (c) Restoration of impaired wetlands, watercourses, waterbodies and buffer areas.
 - (d) Enhancement of existing Regulated areas to improve natural functions.
- (3) Mitigation may take the following forms, either singularly or in combination, for disturbances in regulated areas:
 - (a) Buffer disturbance.
 - (i) Implementation of preventative practices to protect the natural condition and functions of the wetland, watercourse; and/or
 - (ii) Removal of invasive species
 - (iii) Restoration or enhancement (e.g. improving the density and diversity of native woody plant species of remaining or other upland buffer at a ratio of 1.5 to 1.0 or better to offset the impacts to the original buffer
 - (iv) Conversion of concentrated flow to sheet flow runoff.
 - (b) Wetland, watercourse or waterbody disturbance:
 - (i) Restoration of areas of significantly disturbed or degraded wetlands at a ratio of at least 1.5 (restored wetland) to 1.0 (impacted wetland) by reclaiming significantly disturbed or degraded wetland to bring back one or more of the functions that have been partially or completely lost by such actions as draining or filling, provided the area of proposed mitigation occurs in a confirmed disturbed or degraded wetland having significantly

lesser functional values as a result of disturbance or degradation; and/or

(ii) The in-kind replacement of impacted wetland by the construction of new wetland, usually by flooding or excavating lands that were not previously occupied by a wetland, that recreates as nearly as possible the original wetland in terms of type, functions, geographic location and setting, and that is larger than, by a ratio of at least 1.5 to 1.0, the original wetland.

(iii) Removal of invasive species.

(4) A narrative which describes goals and specific objectives for the mitigation wetland or wetland/watercourse buffer, including the functions and benefits to be provided and clear performance standards and criteria for assessing project success;

(5) Details of construction, including:

(a) Diking, excavation, or other means by which the wetland will be restored or created, including existing and proposed topographic contours;

(b) Construction sequence and schedule;

(c) Measures to control erosion and sedimentation during construction;

(d) Plantings: source of stock, procedures for planting schedule. If vegetation from the wild is to be used, identify the source and measures to prevent introduction of undesirable exotics.

(e) Chemicals: if applicable, explain why chemicals will be used and precautions to be taken to minimize their application and protect the wetland and/or watercourse from excessive chemicals

(6) Mitigation Monitoring

The Planning Board shall require the regular monitoring of mitigation measures during the construction and warrantee periods.

(a) Construction monitoring

(i) Mitigation activities involving plant materials and grading within regulated areas shall be monitored by persons of the appropriate professions to assure that the mitigation measures are implemented as anticipated.

- Grading of created wetlands shall be monitored by a New York State licensed Engineer or Landscape Architect experienced in wetland construction and restoration.

- Removal of invasive species and planting of new material shall be monitored by an Ecologist/Botanist or Landscape Architect experienced in wetland creation, renovation and enhancement planting supervision.
- (ii) Construction monitoring shall be completed when the Applicant has submitted the following items for review and acceptance by the Planning Board appointed monitor.
- An as-built survey of mitigation grading shall be provided along with a written report of field changes necessitated by unanticipated conditions encountered.
 - An as-built sketch plan of approximate areas of planting along with quantities of species involved. This shall be accompanied by a written report describing the necessity and consequence of any field changes made.

(b) Warrantee monitoring.

- (i) A warrantee period of 3-5 years shall be established by the Planning Board as a Condition of Approval based upon the sensitivity and significance of the mitigation to be done.
- (ii) The warrantee shall be for a survival rate of 80% at the end of the warrantee period. This shall be 80% of the trees planted, 80% of the shrubs, and 80 % ground cover for herbaceous or low spreading woody plants.
- (iii) The warrantee period shall begin upon the provisional acceptance of the mitigation installation.
- (iv) Inspection shall be made annually by the Monitor and written reports submitted to the Planning and Conservation Boards.
- (v) In the event that an interim inspection determines that a survival rate has fallen below 50%, the Applicant shall make up the loss as soon as practicable. This will usually be the following spring planting season. The plant count coverage in the deficient plant layer shall be restored to at least the minimum 80% of original.

(7) Details on long term management of the mitigation site, including:

- (a) Measures to assure persistence of the wetland (e.g., protection against predation by birds and other animals)

- (b) Vegetative management;
- (c) Sediment and erosion control;
- (d) Provisions for long-term protection of the site (e.g., permanent conservation easement);
- (e) Provision for bonding or other financial guarantees

(8) Mitigation measures and permit conditions shall be set forth in a covenant to be recorded in the County Clerk's office, to run with the land and bind subsequent owners. The approval authority will require the applicant to provide a covenant or easement to enable the Town to inspect any mitigation measures of approval. If mitigation measures are removed or not properly maintained, the Town, upon notice to cure to the property owner, may undertake corrective action, charge the property owner for such expense, and, if unpaid, place the costs on the real property tax bill.

D. Mitigation Design Standards

Mitigation of the unavoidable adverse impacts of proposed development activities shall be designed to the following standards. These will include both short term mitigation during construction and the long term mitigation. Regulated Area mitigation shall be clearly distinguished from Buffer Area Credit activities.

(1) Construction period short term mitigation.

(a) Buffer demarcation shall be in place prior to clearing and grading activities.

- (i) Demarcation shall be orange construction fence on steel posts.
- (ii) Buffer protection within drip line of buffer trees to remain shall be 4 ft. chain link fence on 1 ½" diameter driven posts placed 10ft. on center.
- (iii) Four foot chain link fence on 1 ½" driven steel posts set 10ft. on center (o.c.) shall be used if lighter fence proves to be inadequate for full protection.

(b) Tree Protection

- (i) Drip line protection shall be 4 ft. orange construction fence on driven steel posts placed 8 ft. o.c.
- (ii) Root protection for disturbance areas within drip line shall consist of 12" of wood chips. If heavy machinery or trucks must maneuver or traverse multiple times, chips shall be covered with ¾" plywood during passage.

- (iii) Trunk protection shall be in place prior to clearing and consist of 2x4x8ft. lumber strapped to tree trunks.

(c) Temporary Stabilization

- (i) During the growing season, April 15th to October 1st, disturbed areas which will remain for ten days or longer, shall be stabilized with rapidly germinating rye grass broadcast at twice the suppliers recommended rate. These areas include but are not limited to basement excavation stock piles, utility trenches, material intended for backfill, rough graded areas, stumped or grubbed areas and rough cut and fill embankments.
- (ii) Dormant season stabilization shall include erosion control blankets, (ECB), on slopes of 1(vert.):3(hor.) or greater.

(2) Permanent Mitigation

Permanent mitigation of unavoidable adverse impacts to regulated areas shall be designed to replace wetlands in kind and in function. Buffer mitigation objective shall be a native woodland forest cover, providing the most effective wetland buffer. Introducing habitat diversity not adversely affecting existing habitat such as deep woods, forest cover or vernal pools, shall be considered.

(a) Site Planning

- (i) Locate less intensive use areas adjacent to buffer limit line.
 - (ii) Disperse impervious area runoff as sheet flow outside of buffer.
 - (iii) Provide multiple low volume point discharges of piped storm drainage in lieu of large concentrated flows.
 - (iv) Install permanent buffer demarcation, eg surveyed monuments, walls, fence, etc.
- (b) Invasive species removal shall be done by cutting and chipping most woody plants. Chips shall be spread no thicker than three inches (3") deep. Root systems shall be killed by pruning sprouts at least twice a year during the warrantee period. Herbaceous and vine invasives shall be removed by hand. Alternatively, woody roots and herbaceous ground covers may be removed by swabbing with a short lived systemic herbicide, such as Roundup[®] as approved by the permitting authority.
- (i) Remove 40-60% of crown level trees when invasive species dominate or 80-100% when only occurring occasionally.
 - (ii) Remove 80-100% of understory and pole sized invasive species.

- (iii) Remove 90-100% of invasive shrub species.
- (iv) Remove 80-100% of invasive vine and ground cover species.
- (c) Restoration planting may be done sequentially with the removal of invasive species, to supplement sparse existing early succession vegetation or to replace urban landscaped areas not meeting the following densities. The following plant stem densities are the desired goal and usually will include existing native plants.
 - (i) Canopy species trees shall have average stem density of 60/ac.
 - (ii) Understory trees shall have an average stem density of 125/ac. These may include the young of canopy species.
 - (iii) Shrub species shall have an average stem density of 250/ac.
- (d) Enhancement planting shall be the establishment of plant densities 25% or greater of the goals described herein.
 - (i) New plants counts shall be at least 25% of the goal densities.
 - (ii) Enhancement plantings may be limited to selected woodland strata, e.g. canopy, understory, etc.
- (e) Plant sizes shall be limited to minimize disturbance within the Regulated Area.
 - (i) Plant pit excavation and plant transport shall generally be by hand.
 - (ii) Mechanical equipment, if approved in advance for use, shall be as small as practical for the intended work and shall travel over existing farm tracks or layers of ¾" plywood.
- (f) Plants shall be protected as necessary from wildlife damage.
 - (i) Species known to be least favored by deer should dominate proposed plants.
 - (ii) Plants sized above browse level, 5-6ft. tall, survive better than smaller plants.
 - (iii) Plant groups may be protected with deer netting during the warrantee period.

(g) Warrantee of 80% survival rate at the end of the warrantee period shall be provided.

E. Application submission

(3) Application fees shall be paid to the Engineering Department

(a) The Administrative Permit Application fee shall be determined by the Town Board.

(b) The Non-administrative application fee shall be determined by the Town Board.

(4) Submission of ten (10) sets of the Application documents shall be made to the Environmental Clerk for distribution.

§ 178-11. Permit Application Review Procedures

A. Prior to distribution, applications for an administrative Permit shall be inspected by the Environmental Clerk for completeness as described in 178-10A and B.

(1) Complete Applications shall be distributed.

(2) Incomplete Applications shall be returned to the Applicant with a written listing of deficiencies.

B. Permit application distribution

(1) E-panel, unless the Applicant has requested in writing review by the Planning Board, acknowledging the scope or impact to be beyond the limits of an Administrative Permit.

(2) Conservation Board

(3) When project property adjoins another municipality, the Town Clerk of the neighboring community.

(4) When the project property adjoins another county, the County Planning Department.

C. Administrative Permit review process

(1) Review of application by the E-panel.

- (a) Unless the Applicant requests, in writing, that his application not be considered for an Administrative Permit, the Environmental Clerk, upon receipt of the application prepared in accordance with §178-10A and B above, shall forward one copy of the application and supporting plans and documentations to the E-panel. The four additional copies shall stay in a central wetlands file in the Environmental Clerk's office available for public review and interdepartmental referral.
- (b) The E-panel shall review the application and any supporting plans and documentation for the purpose of determining whether or not the application is eligible for treatment under the provisions of Subsection §178-9A, Regulated acts permitted within an Administrative Permit. If the E-panel requires additional information, plans or specifications in order to make such determination, the Applicant shall be notified in writing within 15 days after the initial review of the application by the E-panel.
- (c) If the E-panel determines that the application is not eligible for treatment under the provisions of Subsection §178-9A of this chapter, written notice shall be provided of such decision to the Applicant and the Environmental Clerk, and the application shall be returned to the Environmental Clerk. The application shall then be submitted to the Planning Board for a non administrative review.
- (d) The Conservation Board shall provide the E-panel with a written response to the Application within 30 days of receipt of the Application in order to be included in the review process.
- (e) If the E-panel determines that the application is eligible for treatment under the provisions of Subsection §178-9A of this chapter, the application shall be processed within 90 days of receipt of a complete application in accordance with the provisions of this chapter.
- (f) Decisions shall include:
 - (i) SEQRA Finding Statement
 - (ii) Approval with conditions, if any.
 - (iii) Disapproval with rationale.

(2) Notice provisions.

- (a) Notice of the E-panels decision regarding the permit application shall be submitted in writing to the Applicant within 10 days of the Panel's decision.

- (b) The Environmental Clerk shall maintain a record of all submissions, correspondence meetings, etc. regarding each application.
- C. Non-administrative Permit review process Non-administrative Permit reviews shall be conducted simultaneously with other Planning Board reviews of the proposed project.
- (1) Completeness of the Application shall be determined by the Planning Board. Incomplete Applications shall be returned to the Applicant with a written listing of deficiencies.
 - (2) SEQRA process shall be initiated by the Planning Board
 - (a) The Action Type will be confirmed
 - (b) The intent of the Planning Board to become the Lead Agent for the SEQRA review shall be advertised as required.
 - (c) Additional wetlands-related information, if necessary, will be requested along with other project related supplemental information.
 - (d) The Planning Board, as Lead Agent, shall make a determination of significance, or Declaration Statement.
 - (e) The Planning Board shall determine the Scope of information to be submitted.
 - (3) The Planning Board shall open a public hearing on the requested wetland permit concurrently with the public hearing on preliminary subdivision or Site Plan applications.
 - (a) Public notice of such hearing shall be given at least 10 days prior to the date set for the hearing in a newspaper having general circulation in the Town. The Applicant shall provide prior notice of such hearing to interested parties pursuant to the provisions of Chapter 205, Notification of Interested Parties.
 - (b) Within 30 days of the close of the public hearing on Site Plan or Final Subdivision applications, the Planning Board shall render a written decision on the application.

§178-12. Standards for Permit Decisions.

The Planning Board shall either grant, conditionally grant or deny a permit application within 60 days of the close of the public hearing; provided, however, that the Planning Board has whatever additional information or documentation it required, the Planning Board shall then render its decision within 60 days of its receipt of such matter.

A. In granting, denying, or conditioning any permit, the Planning Board shall evaluate regulated area functions and the role of each, as the case may be, in the hydrologic and ecological system in which it is part, and shall determine the impact of the proposed activity upon public health, safety and welfare, flora and fauna, water quality, and additional wetland and watercourse functions. Regardless of the level of the impact of the proposed activity, avoidance of any direct or indirect impacts shall be the primary criteria used to judge the appropriateness of the action. The Planning Board shall consider the following factors, and shall issue written findings with respect to:

- (1) The overall direct and indirect impact(s) of the proposed activity, and existing and reasonably anticipated similar activities, upon neighboring land uses and regulated area functions, including but not limited to the:
 - (a) Infilling of a wetland, watercourse or waterbody, or other modification of natural topographic contours;
 - (b) Disturbance or destruction of natural flora and fauna;
 - (c) Influx of sediments or other materials causing increased water turbidity or substrate aggradation;
 - (d) Removal or disturbance of wetland soils;
 - (e) Reduction in wetland, watercourse or waterbody surface or subsurface water supply;
 - (f) Interference with wetland, watercourse or waterbody water circulation;
 - (g) Changes in the amount or type of wetland, watercourse or waterbody nutrients;
 - (h) Physical and chemical changes to the wetland, watercourse or waterbody water supply; and
 - (i) Destruction of natural aesthetic values;
 - (j) Reduction in public recreational or educational use and access; and
 - (k) Impact to, and alteration or disturbance of buffer areas associated with wetlands, watercourses and waterbodies.
- (2) Any existing regulated area impact(s) and the cumulative effect of reasonably anticipated future activities in the regulated area subject to the application;

- (3) The impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage, storm barriers, shoreline protection, and water quality;
- (4) The potential effect of flooding, erosion, hurricane winds, soil limitations, and other hazards, and possible losses to the applicant and subsequent purchasers of the land;
- (5) The adequacy of water supply and waste disposal for the proposed use;
- (6) Consistency with federal, state, county and Town comprehensive land use plans, and regulations;
- (7) The availability of preferable or environmentally compatible alternative locations on the subject parcel; and
- (8) The demonstration by the Applicant that any direct and indirect impact(s) are necessary and unavoidable and have been minimized to the maximum extent practicable for the purposes of this chapter. Regulated Area impacts will be deemed necessary and unavoidable only if the applicant satisfies all of the following criteria as determined by the Planning Board:
 - (a) The proposed activity is compatible with the public health, safety and welfare.
 - (b) 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.

B. The approval authority must deny a 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 regulated area; or that any unavoidable losses or impacts to regulated areas have not been minimized to the maximum extent practicable.
- (2) The proposed activity may threaten public health, safety or welfare; results in fraud, causes nuisances, impairs public rights to the enjoyment and use of public lands and waters; threatens a special concern, rare or endangered plant or animal species; violates pollution control standards; or violates any other Town, state, city or federal regulations or laws.
- (3) Both the affected landowner and the local government have been notified by a duly filed notice in writing that the state or any agency or political subdivision of

the state is in the process of acquiring the wetland, watercourse, waterbody or buffer 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.
- C. The approval authority shall give consideration to activities that must have a shoreline or wetland location to function and that will have as little impact as possible upon the regulated area. In general, permission will not be granted for dredging or ditching solely for the purpose of draining wetlands or watercourses, controlling mosquitoes, creating ponds, constructing industrial facilities, providing soil and dump sites, or building roads, driveways or buildings or structures that may be located elsewhere. All reasonable measures must be taken to minimize all direct and indirect impacts upon the wetland, watercourse, waterbody and buffer area.
- D. The Planning Board shall require preparation of a mitigation plan by the applicant pursuant to § 178-10B when the Planning Board has determined that all alternatives have been explored and that wetland, watercourse, waterbody and buffer impacts are necessary and unavoidable and have been minimized to the maximum extent practicable. In the evaluation of the least environmentally damaging practicable alternatives, mitigation may be used as a means of reducing environmental impacts; a mitigation wetland is designed to replace lost wetland acreage and functions.

§ 178-13. Review Decisions

A. Standards to be followed during the decision making process:

- (1) Consider the relevant environmental impacts, facts and conclusions presented
 - (a) During the public hearing;
 - (b) By other interested or involved town, county, state or federal agencies;
 - (c) Additional information requested of the Applicant.
- (2) The proposed regulated activity is consistent with the policy of this chapter to preserve, protect and conserve wetland functions and the benefits they provide, as set forth in § 178-3 of this chapter, by preventing the despoliation and destruction of wetlands and regulating the development of such wetlands consistent with the general welfare and development of the town.

- (3) The proposed regulated activity is consistent with the land use regulations governing wetlands application in the Town of Yorktown and the local legislation is at least as restrictive as the laws of New York State regarding wetlands protection.
- (4) The proposed regulated activity is compatible with the public health, safety and welfare.
- (5) The proposed regulated activity cannot practically be relocated on the site so as to eliminate or reduce the intrusion into the wetland, watercourse, waterbody or the buffer.
- (6) The proposed regulated activity minimizes the degradation to or loss of any part of the wetlands, watercourse, waterbody or buffer and minimizes any adverse impacts on the functions and benefits that these Regulated Areas provide as set forth in § 178-3 of this chapter.
- (7) The proposed regulated activities are in compliance with the standards set forth in 6 NYCRR 665.7(e) and 66S.7(g), as amended.

B. Findings statement.

- (1) Provide a rationale for the agency's decision;
- (2) Certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures that were identified as practicable.
- (3) Conditions of Approval
- (4) The applicant shall have the burden of proof with regard to the required findings set forth in § 178-12B.

§178-14 Permit Form and Conditions.

- A. Any permit issued pursuant to this chapter may be issued with conditions. Such conditions may be attached, as the approval authority deems necessary, to assure the preservation and protection of affected wetlands and compliance with the policy and provisions of this chapter.

- B. Every permit issued pursuant to this chapter shall be in written form and shall contain the following conditions:
- (1) Work conducted under a permit shall be open to inspection at any time, including weekends and holidays, by the approval authority, or its designated representative(s).
 - (2) The permit shall expire on a specified date; unless otherwise indicated, the permit shall be valid for one year.
 - (3) The permit holder shall notify the approval authority, in writing, of the date on which the regulated activity is to begin at least five days in advance of such date.
 - (4) A copy of the approval authority's written permit with conditions and the approved plans shall be maintained on site during construction while the regulated activities authorized by the permit are being undertaken.
 - (5) The boundaries of the regulated activity and wetlands and watercourses shall be staked and appropriately marked in the field so as to be clearly visible to those at the project site.
 - (6) Mitigation measures shall be enumerated as conditions of the written permit.
- C. Any permit, the issuance of which is based on erroneous or incomplete information, including, but not limited to, the failure to completely identify regulated areas, shall be subject to revocation by the Planning Board.
- D. The approval authority shall set forth in writing all conditions attached to any permit. Such conditions may include, but are not limited to, limitations on lot size for any activity; limitations on the total portion of any lot or the portion of the regulated area on the lot that may be cleared, graded, filled, drained, excavated or otherwise modified; modification of water supply facilities; 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; dedication of easements and development restriction areas to protect regulated areas; erosion and sediment control measures; setbacks for structures, fill, excavation, deposit of soil, and other activities from the wetland, watercourse and waterbodies; modifications in project design to ensure continued ground and surface water supply to the regulated areas and circulation of waters; and/or replanting of vegetation in regulated areas or construction of new wetland areas to replace damaged or destroyed areas.
- E. All permits shall expire on completion of the acts specified and, unless otherwise indicated, shall be valid for a period of one year from the date of issue. An extension of an original permit may be granted upon written request to the approval authority by the original permit holder and/or the legal agent for the permit holder at least 90

days prior to the expiration date of the original permit. The approval authority may require new hearings if, in its judgment, the original intent of the permit is altered or extended by the extension, or if changed circumstances or conditions in the area may exist or if the applicant has failed to abide by the terms of the original permit in any way. The request for extension of a permit shall follow the same form and procedure as the original application, except that the approval authority shall have the option of not holding a hearing if the original intent of the permit is not altered or extended in any significant way.

§ 178-15. Performance Bond.

- A. The approval authority may require that, prior to commencement of work under any permit issued pursuant to this chapter, the applicant or permittee shall post a bond 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 approval authority or its designated agent certifies that the work including warrantee monitoring and final acceptance have been completed in compliance with the terms of the permit and the bond is released by the approval authority or a substitute bond is provided. In the event of a breach of any condition of any such bond, the approval authority may institute an action in the courts upon such bond and prosecute the same to judgment and execution.
- B. The approval authority shall set forth, in writing, in the file it keeps regarding a permit application its findings and reasons for imposing a bond pursuant to this section.

§ 178-16. Other Laws and Regulations.

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

§ 178-17. Expiration of Permit.

- A. All permits shall expire on completion of the acts specified and, unless otherwise indicated, shall be valid for a period of one year from the date of issue. No original permit granted pursuant to this chapter shall be valid for greater than a period of three years from the date of issue. The approval authority may extend the time in which the acts specified in the permit must be completed if, in its opinion, such intention is warranted by the particular circumstances thereof for not to exceed two

additional periods of 90 days each. A request for an extension of an original permit shall be made in writing to the approval authority at least 30 days prior to the expiration date of the original permit or the first ninety-day extension.

- B. Should a permittee fail to complete the acts specified in the permit prior to the expiration of the second ninety-day extension, the original permit shall become null and void and a new permit must be applied for. The request for a new permit shall follow the same form and procedure as the original application, except that the approval authority shall have the option of not holding a hearing if the original intent of the permit is not altered or extended in any significant way.
- C. If the approval resolution referring to the wetlands permit is reapproved by the approval authority, the wetlands permit is not implicitly reapproved; a separate reapproval for the wetlands permit must be secured on its own.
- D. Transfer of a valid Wetland Permit to a new legal Owner may be done so long as the conditions and plans as approved remain unchanged. Notice of such transfer of permit must be filed with the Environmental Clerk within 30 days of the transfer.

§ 178-18. Sanctions; Penalties for Offenses.

A. Administrative sanctions.

- (1) Damages. Any person who undertakes any wetland activity without a permit issued hereunder or who violates, disobeys or disregards any provision of this chapter or any rule or regulation adopted by the approval authority pursuant to this chapter shall be liable to the municipality for civil damages caused by such violation for every such violation. Each consecutive day of the violation will be considered a separate offense. Such civil damages may be recovered in an action brought by the municipality at the request and in the name of the approval authority in any court of competent jurisdiction.
- (2) Restitution. The Town shall have the authority, following a hearing before the Town Board and on notice to the violator to direct the violator to restore the affected wetland to its condition prior to violation, insofar as that is possible, within a reasonable time and under the supervision of the approval authority or its designate. Further, the approval authority shall be able to require an adequate bond in a form and amount approved by the approval authority to ensure the restitution of the affected wetlands. Any such order of the approval authority shall be enforceable in an action brought in any court of competent jurisdiction. Any order issued by the approval authority pursuant to this subsection shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules.

(3) Stop-work order. [Amended 4-2-2002 by L.L. No. 1-2002]

- (a) The Town Engineer, Building Inspector or Environmental Code Inspector may post a stop-work order for the entire project or any specified part thereof if any of the following conditions exist:
- (i) Any land-disturbance activity regulated under Chapters 178 is being undertaken without a permit.
 - (ii) The wetlands permit is not being fully implemented.
 - (iii) Any of the conditions of the permit are not being met.
- (b) The stop-work order shall be effective immediately, shall state the specific violations cited and shall state the conditions under which work may be resumed.
- (c) For purposes of this section, a stop-work order is validly posted by posting a copy of the stop-work order on the site of the land-disturbing activity in reasonable proximity to a location where the land-disturbing activity is taking place. Additionally, a copy of the order, in the case of work for which there is a permit, shall be mailed by first class mail, postage prepaid, to the address listed by the permittee on the permit. In the case of work for which there is no permit, a copy of the order shall be mailed to the person listed as owner of the property by the Town Assessor on the tax roll or, if none, to the taxpayer shown by the records of the Town Assessor.
- (d) If the permittee does not cease the activity or comply with the wetlands permit or permit conditions within one day, the issuing authority may revoke the permit. No wetlands permit shall be permanently suspended or revoked until a public hearing is held by the Town Board.
- (i) Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state:
 - Grounds for complaint or reasons for suspension or revocation, in clear and concise language; and
 - The time and place of the hearing to be held.
 - (ii) Such notice shall be served on the permittee at least one week prior to the date set for the public hearing, unless the stop-work order is issued for a violation occurring less than one week before the next regularly scheduled public meeting of the Town Board. At such hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence on his behalf. At the conclusion of the

hearing, the Town Board shall determine whether the permit shall be reinstated, suspended or revoked.

- (e) If the owner or land user, where no permit has been issued, does not cease the land-disturbance activity, the issuing authority may request the Town Attorney to obtain injunctive relief.
- (f) The issuing authority may retract the revocation.
- (g) Ten days after posting a stop-work order, the issuing authority may issue a notice of intent to the permittee, owner, or land user of the issuing authority's intent to perform work necessary to comply with Chapter 178. The issuing authority may go on the land and commence work after 14 days from issuing the notice of intent. The costs incurred by the issuing authority to perform this work shall be paid by the owner or permittee out of the posted wetlands bond, to the extent that the amount is covered thereby, with the remainder being directly due and owing by the owner or permittee. In the event no permit was issued or no bond was posted, the cost, plus interest, at the rate authorized by the issuing authority, plus a reasonable administrative fee, shall be billed to the owner. If, in any event, the amount due is not paid, the Receiver of Taxes shall enter the amount due on the tax roll and collect as a special assessment against the property using the procedures for collecting the assessment, providing for the notice of assessment, hearing thereon, and appeal as provided.
- (h) Compliance with the provisions of Chapter 178 may also be enforced by injunction.

B. Criminal sanctions. Any person convicted of having violated or disobeyed any provision of this chapter, any order of the approval authority or any condition duly imposed by the approval authority in a permit granted pursuant to this chapter shall, for the first offense, be punishable by a fine of not less than \$1,000. For each subsequent offense, such person shall be punishable by a fine of not less than \$2,000, nor more than \$15,000, and/or a term of imprisonment of not more than 15 days. Each consecutive day of the violation may be considered a separate offense. The term "person" as used herein, shall mean a natural person or a corporate person.

C. Issuance of appearance tickets. The purpose of this section is to authorize the Environmental Inspector of the Town of Yorktown to issue and serve appearance tickets in connection with the violation of local laws, ordinances or rules and regulations of the Town of Yorktown which he is authorized or required to enforce.

§ 178-19. Additional Remedies.

The municipality 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 or wetland/watercourse buffer to its condition prior to the violation of the provisions of this chapter.

§ 178-20. Wetland Acquisition.

Duly filed notice, in writing, that the state or any agency or political subdivision of the state is in the process of acquiring any wetland by negotiation or condemnation authorizes but does not require denial of any permit, but only if both the affected landowner and the local government have been so notified.

- 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.

§ 178-21. Appeal Review.

- A. Town review and appeal.

- (1) Any decision or order of the approval authority or any officer or employee thereof made pursuant to or within the scope of this chapter may be reviewed by the Town Board at the request of any interested party, provided that such review is commenced by the filing of a notice of review with the Town Board within 30 days after service of such order or filing of such decision with the Town Clerk.
- (2) Any party to any proceeding before the approval authority may appeal to the Town Board from any order or decision of the approval authority or any officer or employee thereof issued or made pursuant to or within the scope of this chapter, provided that such appeal is commenced by the filing of a notice of appeal with the Town Board within 30 days after service of such order or filing of such decision with the Environmental Clerk.

- B. Judicial review. Any final determination, decision or order of the approval authority may be judicially reviewed pursuant to Article 70 of the Civil Practice Law and Rules in the Supreme Court for Westchester County. The institution of an immediate judicial proceeding to review all original determinations on the permit precludes an appeal to the Freshwater Wetlands Appeals Board.

§ 178-22. Applicability; Preexisting Activities.

- A. This chapter shall apply to any and all activities, projects, developments and/or land uses that, as of the date of the adoption of this chapter, have not received final approval or either a negative declaration or a positive findings statement pursuant to the Environmental Conservation Law (6 NYCRR 617).
- B. All activities, projects, developments or land uses which have received a final approval without having undergone the procedures pursuant to Environmental Conservation Law Article 8 (6 NYCRR 617) shall be deemed to have received a negative declaration or positive findings statement for the purposes of this chapter.

§ 178-23. Consent; Legislative Conflicts.

In order to carry out the purposes and provisions of this chapter and in addition to the powers specified elsewhere in this chapter, the following general provision shall apply:

- A. Consent. The applicant consents to the entry onto his property by any town agent, including, but not limited to, members of the Town Board, Planning Board, Conservation Board, the Town Engineer or Environmental Code Inspector, or their agents, to view and review the property in pursuance of this chapter.
- B. Conflicts. Whenever this chapter is inconsistent with any other law of the Town of Yorktown, whichever imposes the more stringent restriction shall prevail.