

**RESOLUTION**

Councilman \_\_\_\_\_, seconded by Councilman \_\_\_\_\_, introduced the following proposed local law, to be known as Local Law No. \_\_\_\_ of 2007, entitled A LOCAL LAW OF THE TOWN OF WASHINGTON, DUTCHESS COUNTY, NEW YORK TO AMEND THE TOWN OF WASHINGTON ZONING CODE TO ADD A NEW SECTION 396 ENTITLED "WETLANDS AND WATERCOURSES LAW OF THE TOWN OF WASHINGTON".

BE IT ENACTED by the Town Board of the Town of Washington that the Town Code is amended to read as follows:

Section 1. The Town of Washington Zoning Code is hereby amended to add a new Section 396 "Wetlands and Watercourse Law of the Town of Washington", reading in its entirety as follows:

**SECTION 396. WETLANDS AND WATERCOURSES LAW OF THE TOWN OF WASHINGTON**

**Section I. Language of Purpose:**

It is the purpose of the "Wetlands and Watercourses Law of the Town of Washington" to protect the health, safety and welfare of the citizens of the Town of Washington by preventing despoliation and destruction of wetlands, water bodies and watercourses, and wetland/water body/watercourse buffers collectively referred to herein as "regulated areas," recognizing their varying ecological, water quality, supply and recreational values. The Town of Washington hereby regulates activities that may cause significant adverse effect or environmental impact to the function served by regulated areas or the benefit derived therefrom.

It is further the purpose of this Law to enact regulations which will preserve, protect and conserve wetlands, potable water sources and watercourses and the benefits derived therefrom, prevent the despoliation and destruction of wetlands and watercourses, and regulate use and development of such areas consistent with the general welfare and beneficial economic,

social and agricultural development of the Town of Washington through the requirement of permits therefor, providing for the protection and control of wetlands, water bodies, potable water sources and watercourses.

## **Section II. Findings**

The Town of Washington has reviewed, finds and affirms the following:

- A. The objectives of the Town of Washington Master Plan include protecting the community's many resources for the future by enhancing the rural quality of the community and protecting environmentally sensitive areas and natural resources, waterways, flood plains and wetlands by establishing guidelines and regulating development density.
- B. The Town of Washington Master Plan encourages the Town to consider techniques for protecting the physical attributes of the community.
- C. The guidance of the Federal Water Pollution Control Act (Clean Water Act) and publication titled the National Wetlands Mitigation Action Plan (12/26/02; 11/16/04) which affirms a federal commitment to the goal of no net loss of the Nation's wetlands.
- D. The finding of the New York State Department of Environmental Conservation (NYSDEC) publication titled Survey and Compendium of Local Laws for Protecting Water Quality from Nonpoint Source Pollution (1/96) which is a compilation of local laws which have been used by municipalities to protect wetlands and waterways in their jurisdictions from nonpoint pollution. The publication states, "Non-point source pollution is the primary cause of the water quality problems in more than 90 percent of New York State's impaired waterbodies".
- E. The findings of the pertinent literature published by the NYSDEC and articulated in 6 NYCRR 664.3 that, in their undisturbed and natural condition, the regulated areas sought to be protected herein serve multiple beneficial functions, including but not limited to:
  - 1. The protection of water resource quantity and quality by preserving sources of surface water, recharging groundwater and aquifers, serving as chemical and biological oxidation basins, serving as nutrient traps for nitrogen and phosphorus, filtering pollutants, and/or functioning as settling basins for naturally occurring sedimentation.
  - 2. Protection of aquifers and water bodies that are or can/may be used in the future for water supply purposes.
  - 3. The protection of stream channel and stream bank stability thereby controlling and reducing erosion, flooding and related property damage.

4. The control of flood water and storm water runoff by the regulation and storage of natural flows.
  5. The provision of important nesting, feeding, migratory and wintering habitat for diverse wildlife species, including many listed as "special concerned", "threatened", "endangered", and "rare" by New York State; or other government entities, including the U.S. Fish and Wildlife Service.
  6. The provision of breeding and spawning grounds, nursery habitat and food for various species of fish and other wildlife.
  7. The support of distinctive and less common vegetative associations specifically adapted for survival in low oxygen environments.
  8. The provision of areas of unusually high land productivity which support significant wildlife diversity and help to maintain ecological integrity.
  9. The provision of areas throughout the Town of Washington for recreational uses.
  10. The provision of outdoor laboratories and living classrooms for environmental studies.
  11. The provision of open space and visual relief from residential and commercial development.
- F. The findings of the NYSDEC titled Freshwater Wetlands Program: Freshwater Wetlands Status and Trends which recognizes that considerable statewide acreage of these important natural resources sought to be protected herein has been lost or impaired by the cumulative effects of acts inconsistent with the natural uses of such areas, and contrary to public health, safety and welfare.
- G. The findings of the Environmental Law Institute publication entitled Conservation Thresholds for Land-Use Planners (2003) which determined that the adjacent "buffer" areas associated with regulated areas "provide benefits that are significant for maintaining the functional integrity and quality of such resources, and for furnishing protection against adverse impacts from activities in adjacent areas." Due to the diversity in quality and functional roles of different wetlands and watercourses, the Town of Washington has determined that variable wetlands and watercourse buffer widths are appropriate to protect the functional integrity and quality of these resources.
- H. The Town of Washington Town Board has determined, based upon a review of the aforementioned literature and from observations made by others in the Town itself, that further unregulated land development activities and water withdrawals (wells and surface water intakes) and sewage collection systems may alter the

hydrology of ground and surface waters, which can lead to significant adverse effects or environmental impact to the function served by regulated areas or the benefits derived therefrom, thus posing a threat to the health, safety and general welfare of the people of the Town of Washington and the surrounding region.

### **Section III. Intent:**

The Town of Washington has determined that the public interest, health and safety and the economic and general welfare of the residents of the Town of Washington will be best served by providing for the protection, preservation, proper maintenance and use of the Town's ponds, lakes, reservoirs, water bodies, rivers, streams, watercourses, wetlands, potable water, natural drainage systems and adjacent land areas from encroachment, spoiling, polluting or elimination resulting from rapid population growth attended by commercial development, housing, road construction, and/or disregard for natural resources.

This section is enacted pursuant to legislation passed by the State of New York entitled the "Freshwater Wetlands Act" and found in Article 24 of the Environmental Conservation Law which authorizes local governments to establish their own procedures for the protection and regulation of wetlands lying within their jurisdictions. The New York State Department of Environmental Conservation has promulgated implementing regulations for local government adoption of Article 24 authority, found in Part 665 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6NYCRR part 665). Nothing contained herein shall be deemed to conflict with any such laws, rules and regulations or any and all applicable laws, rules and regulations of the Federal Government and State of New York .

- A. It is the intent of this Section to incorporate the consideration of wetlands and watercourse protection, as well as that of their adjacent areas, into the Town of Washington's land use and development approval procedures, so as to provide a reasonable balance between the rights of the individual property owners to the use of their property and the rights of present and future generations in consideration of riparian law.
  
- B. It is the intent of this Law to conserve and protect the regulated areas described herein pursuant to the general enforcement power vested in and granted to the Town of Washington to protect the general health, safety and welfare of the residents of the Town and their property by: the New York State Constitution; the Municipal Home Rule Law; the Statute of Local Governments and the Town Law; as specifically provided in Environmental Conservation Law ECL-24-0509 which recognizes the right of local governments to establish their own procedures for the protection of regulated areas lying within their jurisdictions separate from the provisions of the Freshwater Wetlands Act found in ECL 24-0501 and the DEC regulations promulgated in Part 665 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR Part 665) provided that such provisions are at least as protective of the regulated areas as 6 NYCRR Parts 663-664 and regulations promulgated pursuant to Freshwater Wetlands Act permits ECL 24-0701, etc.

- C. It is the intent of this Law to locally provide greater protection to wetlands than that provided by federal wetland regulations promulgated by the U.S. Army Corp. of Engineers (USACE) in cooperation with the federal Environmental Protection Agency (EPA) and Fish and Wildlife Service specifically with regard to the presumption pursuant to 33 CFR. 323.6(a) which provides that alternatives to impacting wetlands are presumed to be available if a project is not a water-dependent project.
- D. It is the intent of this Law to exercise concurrent jurisdiction with the NYSDEC and the USACE for regulating areas within the Town of Washington.
- E. It is the intent of this Law to further the Town's stated goals and objectives through a restrictive permitting process, and to separately strengthen and concurrently enhance a goal of the State Environmental Quality Review Act (SEQRA) in reducing the likelihood of adverse environmental impacts to important natural resources.
- F. It is the intent of this Law to conserve and protect the regulated areas described herein and be consistent with this objective, to advance responsible land use and management, development, natural resource extraction, and other activities conducted in the Town of Washington in order to avoid the loss or impairment of the natural functions and values of regulated areas as described herein.
- G. It is the intent of this Law to administer the provisions of this law to ensure administrative efficiency with the Town's land use development regulatory processes.

**Section IV. Wetlands and Watercourses Map(s)**

- A. The Town of Washington Town Board shall adopt by zoning amendment, pursuant to the procedures in this Local Law, a map(s) entitled "Zoning Map Series Map #5: Streams, Wetlands, Hydric Soils and Floodplains" (Wetlands Protection Map), drawn at a scale of one -inch equals one thousand feet (1" = 1,000') or larger and shall identify the approximate locations of regulated wetlands and watercourses within the Town Such locations are subject to more precise interpretation in accordance with the definitions of wetlands set forth in the Definition Section of this Local Law. Such interpretation shall be made by the Planning Board in consultation with the Conservation Advisory Commission, and with the advice of such qualified wetlands specialists, biologists, hydrologists, soil scientists, ecologists, botanists, or other experts as may be needed to make the interpretation. The cost of such expert assistance, if required, shall be paid for by the applicant for a permit under this Section.
- B. Said Map(s) may be modified by the Town Board so as to correct or clarify the locations of wetlands or watercourses, to incorporate additional wetlands or watercourses, to eliminate from the jurisdiction of this Local Law particular wetlands or watercourses deemed to be insignificant for the purposes of this Local

Law, or to incorporate supplementary maps that correct, clarify, or affirm in detail the area of jurisdiction of this Local Law.

## **Section V. Regulated Action Required**

Activities and uses which shall be regulated under this Law are those that may cause identifiable significant adverse effect or environmental impact as defined herein to the functions(s) served by the regulated areas(s) or the benefits(s) derived therefrom located in the Town of Washington. It shall be unlawful for any person **without a written permit issued by the Planning Board** to conduct any regulated activity to alter any wetland, wetland buffer area or watercourse protected by this Section except as herein provided.

## **Section VI. Regulated Activities**

Regulated activities are those listed which occur or are proposed to occur within the confines of a wetland or water course, within a minimum of a fifty foot buffer (50') for smaller wetlands that are less than one acre and a one hundred foot (100') buffer when wetlands are one (1) acre or more independent of property boundaries and municipal jurisdictions. Regulated activities are those that may cause significant adverse effects and environmental impacts as defined herein, to the function served by regulated areas or the benefits derived therefrom, as well as but not limited to the following:

- A. Any form of clearing, draining, dredging, excavation, removal of soil, mud, sand, shells, gravel, or other aggregate from any wetland or watercourse, either directly or indirectly;
- B. Any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind, either directly or indirectly;
- C. Erecting any structures, including but not limited to buildings, whether principal, accessory, or temporary, construction of any road, driveway, or motor vehicle parking facility, paving, the driving of pilings, or placing of any other obstructions whether or not they affect the ebb and flow of the water in a watercourse;
- D. Placing any other obstructions within any regulated area, whether or not the same affect the ebb and flow of water. Withdrawing ground or surface water in excess of 2,500 gallons per day for more than seven (7) days in the course of one (1) year which may cause an increase or decrease in the flow, velocity or volume of water (excluding the natural seasonal fluctuations of said watercourse or water body.)
- E. Creating an alteration and modification of natural drainage patterns and contours
- F. Introducing any influents of high thermal content that may cause deleterious ecological effects;

- G. stripping any area of vegetation; including clear cutting
- H. Installing swimming pool drainage systems, constructing wells, or installing any pipes, service lines, cable conduit or other conduit; whether or not the same affect the ebb and flow of water.
- I. The creation of a best management plan for using or storing chemicals, dyes, fertilizers, including manure, compost, topsoil, or other organic materials, fuels, herbicides, pesticides, de-icing materials, or similar materials in any regulated area, if such materials are likely to cause pollution of waters. This provision does not apply in cases of emergency or in cases where the public safety may be in jeopardy.
- J. Any other activities which are determined by the Planning Board to have the potential for significant adverse affect or environmental impact to the regulated areas.
- K. Any form of pollution including but not limited to installing a septic tank, running a sewer outfall or discharging sewerage treatment effluent or any other waste directly into or so as to drain into a wetland, watercourse or water body.

**Section VII. Pre-Existing Lawful Activities**

- A. The provisions of this Law shall not apply to the following pre-existing lawful activities including uses and structures established prior to the effective date of this Law, provided those activities in regulated areas greater than 12.4 acres were established in compliance with 6 NYCRR Part 663-664. Such activities shall not be expanded, changed, enlarged or altered except in accordance with the provisions of this Law. Should approval of such activities or uses expire, said activity shall no longer be permitted.
  - 1. A valid preliminary subdivision plan, site plan and special permit has been duly approved by the Planning Board.
  - 2. A valid building permit and/or certificate of occupancy has been lawfully issued by the Building Inspector.
  - 3. A use variance, area variance or special permit has been duly issued by the Zoning Board of Appeals (ZBA) and which permit or approval remains valid and effective as of the date of this Law.
- B. Activities or uses in regulated areas as depicted on a valid site plan or a subdivision plan granted preliminary approval by the Planning Board on or before the effective date of this Law must be completed within two (2) years from the date of approval, provided that the activity or use conforms to the site plan approval and SEQRA environmental assessment form and determination made at the time of approval.

- C. Activities or uses in a regulated area for which a valid building permit or special permit has been issued on or before the effective date of the Law shall expire if the work to be performed on the project is not begun within twelve (12) months of the date of approval. Such approval may be extended by the Planning Board or the ZBA upon Planning Board referral before such approval expires for an extension of not more than six (6) months for good cause shown. The construction activities must be completed within twenty-four (24) months.

### **Section VIII. Activities Allowed Without Permit**

The following activities are exempt from the permitting requirement as set forth under this Law, provided they shall not cause significant adverse effect or environmental impact to the regulated areas.

- A. The depositing or removal of the natural products of the wetlands and adjacent areas by recreational or commercial fishing, shell fishing, aquaculture, hunting, or trapping where otherwise legally permitted and regulated;
- B. Agricultural and forestry activities including but not limited to grazing and watering of livestock, making reasonable use of water resources for irrigation, harvesting natural products of wetlands, selectively cutting timber, and otherwise engaging in the use of wetlands or other land for growing marketable agricultural products, provided that draining, filling, and construction activities not required for enhancement or maintenance of the agricultural productivity of the land shall be regulated under this Section;
- C. Public health activities under orders and regulations of the New York State Department of Health, provided that copies of all such public health orders and regulations affecting wetlands have been filed with the Planning Board (or its designated agent) and that the Planning Board may request modification of such orders if it deems it necessary to implement this Local Law;
- D. Activities of the Village of Millbrook related to the operation, maintenance and expansion of the Village's public water supply system including its watershed areas provided that advance notice of such activities and a reasonable opportunity to comment thereon is given to the Town of Washington Planning Board;
- E. Any actual and ongoing emergency activity that is immediately necessary for protection and preservation of life or property, or preservation of natural resource values. Such emergency activities include, but are not limited to: search and rescue operations; preventive or remedial activities related to large-scale contamination of streams or other bodies of water; withdrawal of water for fire fighting purposes; emergency response to floods, hurricanes and other storms, fires, and other public health emergencies. Within 30 days of the end of such an

emergency involving any activity which otherwise would be treated as a regulated activity under this law, the person chiefly responsible for undertaking such emergency activity shall send a written statement to the Planning Board setting forth the pertinent facts regarding such emergency, including an explanation of life, property, or resource values such activity was designed to protect or preserve;

- F. Ordinary maintenance and repair of existing structures or improved areas which does not involve expansion, the use of pressure treated wood or substantial restoration, reconstruction, rehabilitation, or modification, including but not limited to bridges, roads, driveways, highways, railroad beds, bulkheads, docks, piers, or pilings; and
- G. Trimming, pruning, and bracing of trees, decorative landscaping including the addition of trees and plants, and incidental removal of trees and brush, provided that those additions are not of an invasive species (see recommendations).

### **Section IX. Permit Requirement.**

Any person desiring to conduct a regulated activity in a wetland or watercourse must obtain a **wetlands permit** from the Planning Board.

### **Section X. Permit Application Procedures.**

Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland or watercourse in the Town shall file an application for a wetlands permit with the Planning Board in the following manner:

- A. Short Form

The **short form** application shall be made to the Planning Board for all regulated activities listed in the Law which require a permit pursuant to this Law on forms provided by the Zoning Administrator. The application shall include any necessary documentation and a fee as shall be established from time to time by action of the Town Board, and shall be referred by the Planning Board to the Zoning Administrator, Wetlands Administrator and the CAC. The Zoning Administrator shall determine, and if necessary with the assistance of the CAC and/or the Wetlands Administrator within fourteen (14) business days of receipt of such a referral, whether the proposal may include an activity pursuant to the provisions and set forth herein.

The Zoning Administrator, with and/or including consultation with a member(s) of the CAC and/or Wetlands Administrator, shall be authorized to conduct a site visit whenever deemed necessary for the purpose of evaluating the "short form" application.

Upon review of the referral, if the proposed activity is determined to be within a regulated area as described in this Law, the Zoning Administrator -- who is invested with the authority to do so by the Town of Washington Planning Board -- and after consultation with the Wetland Administrator and/or with the CAC shall make one (1) of two (2) determinations:

1. The proposed activity would not have a significant adverse effect or environmental impact on a regulated area, and therefore may proceed by letter of permission, as defined herein, without a permit. Said determination shall include the date of the review of the referral, any site inspection and the supporting reasons for the determination. The letter and findings shall be brought before and reviewed and then filed with the offices of the Planning Board, the Building Inspector, the CAC, the Town Clerk and the applicant.

The Planning Board has the right to waive public hearing in such cases.

2. The proposed activity is a regulated activity as enumerated in this Law and may have a significant adverse effect(s) or environmental impacts(s) on a regulated area(s) requiring a **Long Form** permit application prepared by the applicant as determined by the Zoning Administrator in consultation with the Wetlands Administrator. Said determination shall include the date of the review of the referral, any site inspection, and the supporting reasons for the determination. This determination shall be in writing and identify the potential significant adverse effects or environmental impacts to the regulated area(s) and consider the biological quality, values, functions and benefits of the regulated area, the potential impact on the regulated area, and the availability of a reasonable alternative as determined by the parties involved.. This finding shall be filed with the office of the Planning Board, the Building Inspector, Wetlands Administrator, CAC, the Town Clerk and the applicant.

B. Long Form

Said application shall be filed in **10 copies**, with one copy submitted directly to the

Zoning Administrator, the Wetlands Administrator, and the Conservation Advisory Commission, and shall include the following information on a form provided by the Planning Board:

1. Applicant's name, home and business address, and telephone numbers;
2. The owner must be the applicant. The owner's written authorization for the filing of the application and for the performance of the proposed activity;

3. The geographical location of the property on which the proposed activity is to be conducted including the full extent of the wetlands area being reviewed.
4. Detailed narrative description of the proposed activity;
5. A map at a scale no greater than one inch equals 50 feet (1" = 50') and containing contour intervals of two (2) feet or less in the regulated area showing the area of wetland or watercourse directly or indirectly affected, with the location of the proposed activity thereon;
6. Names and addresses of abutting property owners;
7. Letter of determination from the United States Army Corps of Engineers that the wetlands and watercourses are not subject to regulation under Section 404 of the Federal Clean Water Act, or a copy of a 404 permit application, (If area is governed by NYSDEC or USACE, then copy of applicable letter from the oversight agency is required.)
8. Additional information as required by the Planning Board and/or the New York State Department of Environmental Conservation as necessary.
9. The Planning Board may require, as is necessary for the proper review of the application, the following additional information based on the scope of the project, and comments from the Wetlands Administrator and the CAC:
  - a. The boundaries of all regulated areas within the applicant's subject property as identified and delineated in accordance with standards set forth in "The Freshwater Wetlands Delineation" prepared by the NYSDEC Division of Fish & Wildlife and the "Technical Report Y-87-1 Corps of Engineers Wetlands Delineation Manual" no more than eighteen months prior to the date of filing of the application on a topographic survey of the property and containing notation documenting the field delineation.
  - b. The description of the vegetative cover of the regulated area shall include the dominant species and their wetland classified status as referred to in The National List of Plant Species That Occur in Wetlands, New York or Northeast (Region 1) published by the U.S. Fish and Wildlife Service or the most recent edition.
  - c. If requested by the Planning Board, ground water table elevations indicating depth to ground water, direction of flow and hydrologic connections with surface water features.
  - d. Location of the construction area and area proposed to be disturbed, and its relation to property lines, roads, buildings,

regulated areas within a minimum of two-hundred fifty (250) feet or an appropriate distance as determined by the Planning Board.

- e. Locations and specifications for any proposal to drain, fill, grade, dredge and clear vegetation, including areas and quantities proposed for deposition or removal, the procedures to be used and dominant species of vegetation to be removed.
  - f. Locations and details of any existing and proposed storm water drainage facilities, including any point discharges, artificial inlets, or other conveyances which would discharge into regulated areas, and measures proposed to control erosion both during and after the proposed work including a schedule for installation and maintenance for such measures.
  - g. Where creation of a lake, pond, detention or other water impoundment is proposed, details of the construction of any dams, berms, embankments, spillways, outlets or other water control devices.
  - h. An analysis of hydrologic systems located within and connected to the regulated areas and a narrative to explain how the regulated areas will be affected by the proposed action including water retention capacity, water flow and drainage characteristics. Applications for projects affecting the water-retention capacity, water flow, or other drainage characteristics of any pond, lake, reservoir, natural drainage system, or wetland shall include a statement and numerical calculations of the impact of the project on upstream and downstream areas, giving appropriate consideration of other than normal levels of watercourses and amounts of rainfall, specifically the 100-year storm event.
10. Within 45 days of the receipt by the Planning Board of a Long Form application which the Planning Board deems complete, the Planning Board shall hold a public hearing on such application. The Planning Board shall notify all owners of record of land at a minimum of five hundred (500) feet adjacent to the parcel on which the proposed activity is located, as well as those who have ownership at a distance to the nearest well head of the hearing by first class mail not less than ten (10) days prior to the date set for such hearing. The Planning Board shall also cause notice of such hearing to be published in a newspaper having a general circulation in the area where the affected wetland is located not less than ten (10) days prior to the date set for such hearing. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing any interested person or persons may appear and be heard.

- C. The Planning Board shall also review and consider all other state and federal applications for activities within the regulated wetland. The Planning Board shall have the discretion to issue a permit for a regulated activity where the Board finds that the permit mitigation requirements as a condition of a state or federal agency having concurrent jurisdiction over a regulated wetland or water course disturbance permit satisfies the requirements of this local law. Such issuance and findings shall not be construed as refusal of jurisdiction by the Board, and the Board shall issue such permit conditioned on the applicant complying with all of the conditions of such state or federal permit approval.

**Section XI. Standards for Permit Decisions.**

- A. In granting, denying, or conditioning any permit, the Planning Board shall consider the effect of the proposed activity on the ecology of the wetland, potable water sources and watercourses, on the public health and welfare, on flood hazards, irreversible and irretrievable commitments of natural resources that would be involved in the proposed activity, the possibility of avoiding further reduction of the wetlands', watercourses', or water bodies' natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation, prevent erosion, assimilate wastes, facilitate drainage and provide recreation and open space, the extent to which the exercise of property rights and the public benefit to be derived from such use may or may not outweigh or justify the possible degradation of the wetland, watercourse or water body, the interference with the exercise of other property rights and the impairment or endangerment of public health safety and welfare, and on the maintenance and enhancement of other benefits as stated in Purposes Section.
- B. In order to approve an application, the Planning Board must find that the proposed regulated activity is consistent with the purposes of this Local Law, including:
  - 1. Preserving and protecting wetlands, water resources, potable water sources and watercourses and the benefits derived therefrom;
  - 2. Preventing the despoliation and destruction of wetlands and watercourses; and
  - 3. Regulating the development of such wetlands and watercourses, in order to secure the natural benefits derived therefrom, consistent with the general welfare and the beneficial economic and social development of the Town of Washington.
- C. In granting a permit, the Planning Board may limit the same and impose conditions designed to carry out the purposes of this Local Law. The Planning Board may require a bond or letter of credit in an amount and with surety and conditions satisfactory to the Planning Board to secure compliance with the conditions and limitations set forth in the permit. The Zoning Administrator may suspend or revoke a permit if he/she finds that the applicant has not complied with

the conditions or limitations set forth in the permit or has exceeded the scope of the activity as set forth in the application. The applicant can appeal to the ZBA to review the Zoning Administrators determination.

1. Within 62 days following the close of a public hearing, the Planning Board shall:

Approve/Approve with Conditions, 2) Issue a Notice of Intent to Deny or  
3) Deny the Application as provided below:

2. No Permit Approval shall be considered for the proposed regulated activity by the Planning Board unless and until the applicant has demonstrated by clear and convincing data and analysis:

- a. That there is no reasonable alternative to the proposed regulated activity including a reduction in the density, intensity of use, or scope of the proposed use, or alternative site plan which would avoid significant adverse effect or environmental impact to the function of regulated area(s).
- b. That the significant adverse effect(s) or environmental impact(s) of the proposed regulated activity to the function served by the regulated area(s) or the benefits derived therefrom, has been minimized to the maximum extent feasible.
- c. Consistency with public health and safety as well as any existing Federal, State, County and local comprehensive land use plans and regulations.

3. To determine if the applicant has complied with the criteria above, the Planning Board, in consultation with the Wetlands Administrator, CAC and the Zoning Administrator, shall evaluate the adverse effects or environmental impacts of the proposed regulated activities, upon regulated area functions and neighboring land use as enumerated below:

- a. Depositing fill in a regulated area, or other modification of topographic contours.
- b. Disturbance or destruction of flora and fauna, endangered and threatened species and significant habitats in a regulated area.
- c. Influx of sediments or other materials causing increasing water turbidity and/or substrate aggradation in a regulated area.
- d. Removal or disturbance of regulated area soils
- e. Destabilization of regulated area channel or bank

- f. Reductions and/or increases in regulated area water supply.
- g. Reductions and/or increases in an associated buffer area.
- h. Interference with the circulation of water within or through a regulated area
- i. Damaging thermal changes and/or nutrient levels in the water supply within or through a regulated area.
- j. Any other considerations which the Planning Board deems pertinent to the functioning of regulated areas.
- k. Alterations to flood flows, flood storage, storm water, upstream and downstream channel and bank stability, storm barriers and water quality of regulated areas.
- l. Impacts of flooding, erosion, hurricane winds, soil limitations, and other hazards such as fire and landslide of regulated areas.
- m. Impacts on water supply and waste disposals or regulated areas.
- n. Cumulative adverse effect of any proposed or reasonably anticipated future activities on regulated areas subject to the application.

**Section XII. Definitions:**

**Agriculture:** All activities directly related to the grazing, growing or raising of crops or livestock, including but not limited to horticulture and fruit production, operating as a business. Timber harvesting and drainage or permanent alteration of wetlands, watercourses or controlled areas is not included in agriculture activities.

**Alter:** To change, move or disturb any vegetation, soil drainage way or other natural material or system within a wetland, watercourse or controlled area.

**Applicant:** Any individual or individuals, firm, partnership, association, corporation, company, organization, or other legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof, who has a request for a permit to conduct a regulated activity or who has an application pending before the Planning Board.

**Applicant Fee:** A sum paid by an applicant to accompany either a short form or long form application and collected by the town Planning Board in accordance with a fee schedule as shall be established from time to time by resolution of the Town Board and made available by the office of the Town Clerk and the Building Inspector.

**Aquaculture:** 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 does not include filling, dredging, peat mining or construction of any buildings or any water-regulating structures, such as dams.

**Associated Buffer Zone:** A regulated area surrounding or adjacent to wetlands, watercourses, or water bodies which provides benefits important in maintaining their functional integrity and protection from human activity or other encroachment associated with regulated activities.

**Bank:** The land area immediately adjacent to, and which slopes toward the bed of the watercourse and which is necessary to maintain the integrity of a watercourse.

**Berming:** The process of building up stream banks higher than the surrounding floodplain elevations to contain water in the channel.

**Boundary of Wetland:** The outer limit of a regulated area characterized by wetland soils, wetland hydrology and wetland vegetation as defined under Wetland/Freshwater Wetland.

**Catchment Area:** Lands that drain into a common water body, watercourse or wetland.

**Channelization:** The process of straightening, widening and excavating gravel from a watercourse.

**Clear-Cutting:** Complete cutting and removing of an entire stand of trees, replaced by natural or planted regeneration.

**Conservation Advisory Commission:** A commission comprised of local citizens appointed by the Town Board to exercise a review function and provide a focal point in the community on all matters affecting the protection, preservation and enhancement of the environment.

**Controlled Area:** A buffer area surrounding a wetland or watercourse that is also subject to the regulations of this code, determined as follows, all measurements to be on the horizontal:

1. For all wetlands, the "controlled area" shall extend to the greater of the following: one hundred (100) feet when wetlands are 1 acre or more or (50) feet away from the edge of the smaller wetland boundary, or in cases where the wetland is bounded with a steep slope twenty-five percent (25%) or greater, the buffer shall extend one hundred feet (100) from the top of the steep slope.
2. The "controlled area" of a watercourse shall extend to all adjacent surfaces for one hundred (100) feet or (50) feet as measured from the top of the bank to the watercourse.

**Dams and Water Control Measures and Devices:** Barriers used to obstruct the flow of water to raise, lower or maintain the water level in wetlands.

**Date of Receipt of Complete Application:** A complete application shall be deemed received by the Planning Board on the date of the first regular meeting of the Planning Board following the filing of the complete application and supporting plans with the Planning Board.

**Deposit:** To fill, place, eject or dump any material, but not including storm water.

**DCSWCD:** Dutchess County Soil and Water Conservation District

**Discharge:** The emission of any water, substance or material into a wetland, watercourse or wetland/watercourse buffer.

**Drain:** To deplete or empty of water by drawing off by increments.

**Dredge:** To excavate, move or remove sediment, soil, mud, sand, shells, gravel, or other aggregate either by hand or machine.

**Excavate:** To dig out, move, or remove any material either by hand or machine.

**Forestry:** Activities in wetlands undertaken in compliance with a forest management plan prepared in accordance with Section 480-A of the NYS Real Property Tax Law or in concert with a consulting forester, shall be deemed permissible under this regulation.

**GIS:** Maps and data presented by Geographic Information System technology.

**Grading:** To adjust the degree or inclination of the contours of the land, including leveling, smoothing, and other modifications of the land surface by any means including filling and excavation

**Intermittent Watercourse:** A regulated area that comprises stream, creek, or brook, through which surface water travels on a seasonal basis. For the purpose of this Law, intermittent watercourses are those where water stands or flows for a total of three (3) months or more in a consecutive 12 month period. Note: Waterways specifically designed and constructed to serve a storm water conveyance or treatment function, such as grassy swales, drainage ditches, and other structures engineered to concentrate and convey storm water from development and only retain water for short duration after a rain storm or spring snow melt are not considered intermittent watercourses.

**Logging:** Commercial harvesting of live timber.

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

**NYCRR:** New York Code of Rules and Regulation

**NYSDEC:** The New York State Department of Environmental Conservation

**Permit or Wetland Permit:** That form of town approval required for the conduct of a regulated activity within any wetland, watercourse or controlled area.

**Perennial watercourse:** A regulated area that comprises river, stream, creek or brook through which surface water travels on a continual basis.

**Planning Board:** The duly appointed Planning Board of the Town of Washington

**Pollution:** The presence in the environment of human- or animal-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant or animal life or property.

**Project:** Any action resulting in direct or indirect physical or chemical impact on a wetland, watercourse or controlled area, including but not limited to any regulated activity.

**Regulated Activities:** Any activity that may potentially have a significant adverse effect or environmental impact to the function served by a regulated area, or the benefits derived therefrom.

**Regulated Areas:** Those areas enumerated in this Law pursuant to the title, purpose, finding and intent of this local law.

**Remove:** To dig, dredge, suck, bulldoze, drag line, blast or otherwise excavate or re-grade, or the act thereof.

**Routine Maintenance and Landscaping:** The mowing, weeding, cultivating, planting, and trimming of vegetation or removal of dead or diseased trees in natural or improved landscaped areas.

**Significant Adverse Effect or Environmental Impact:** An activity that will substantially alter or impair the natural function(s) or benefit(s) of a regulated area.

**State Environmental Quality Review Act (SEQRA):** The law pursuant to Article 8 of the New York State Environmental Conservation Law providing for environmental quality review of actions which may have a significant effect on the environment.

**Sound Agricultural Practices:** Farm operations that are reviewed on a case by case basis by the Commissioner of Agriculture and Markets to determine if the agricultural practice conforms with Section 308 of the Agriculture and Markets Law (AML) which provides for this review. The guidelines for this review state that (1) the practice should be legal; (2) the practice shall not cause bodily harm or property damage off the farm; (3) the practice should achieve results intended in a reasonable and supportive way; (4) the practice should be necessary.

**Structure:** Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground. The term includes but is not limited to tennis courts and swimming pools.

Timber Harvesting: Any activity which may alter the physical characteristics of any forested land, including but not limited to any activity involving or associated with the cutting of trees, except that the following activities shall not be considered to be "timber harvesting":

1. The routine maintenance of roads, easements and rights-of-way and the clearing of farm fence lines; and
2. The clearing of approved subdivision roads, site plans and public utility easements.

Town Board: The duly elected Town Board of the Town of Washington

Town Clerk: The duly elected Town Clerk of the Town of Washington

Water body: Any natural or artificial pond, lake, reservoir or other area which usually or intermittently contains water and which has a discernible shoreline.

Watercourse: Any natural or artificial, permanent or intermittent, public or private water body or water segment, such as ponds, lakes, reservoirs, rivers, streams, brooks, waterways or natural drainage swales, that is contained within, flows through or borders on the Town of Washington.

Wetlands Administrator: A professional individual who is an expert in wetlands and who is hired/appointed by the Town of Washington Town Board to work with the Zoning and Planning boards of the Town to assist their agents in investigating, advising and determining the appropriate actions which should take place with regards to wetlands applications brought before them.

Wetlands:

1. All geographic areas greater than one-fourth (1/4) acre identified on the Wetlands & Watercourses Maps 5, 5A and 5B, but not including wetlands regulated by the NYSDEC, and characterized by any or all of the following:
  - a. marshes, swamps, bogs or other areas of permanent water retention fed by springs or natural drainage systems.
  - b. Soil types that are poorly drained or very poorly drained, alluvial or flood plain soils or potential hydric soils as defined by the Soil Survey of the United States Department of Agriculture, Soil Conservation Service and the Dutchess County Soil and Water Conservation District, including but not limited to the following:

Hydric Soils: Canandaigua, Carlisle, Fluvaquents, Halsey, Hydraquents, Livingston, Medisaprists, Palms, Sun, Wayland

\* Potential Hydric Soils: Kingsbury and Rhinebeck, Linlithgo, Massena A, Massena B, Punsit, Udorthents, Fredon, Raynham Silt Loam  
Note:\* These soils found by field determination.

- c. Lands and submerged lands commonly called marshes, swamps, sloughs, bogs, flats supporting aquatic or semiaquatic vegetation of the following vegetative types:
- (1) Wetland trees, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other trees; including, among others red maple (*Acer rubrum*), willows (*Salix sp.*), black spruce (*Picea mariana*), swamp white oak (*Quercus bicolor*), red ash - green ash (*Fraxinas pennsylvanica*), American elm (*Ulmus americana*), and larch (*Larix laricina*).
  - (2) Wetland shrubs, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over shrubs; including, among others, alder (*Alnus spp.*), button bush (*Cephalanthus occidentalis*), bog rosemary (*Andromeda polifolia*), leatherwood (*Dirca palustris*), silky dogwood (*Cornus amonum*) and redosier dogwood (*C. sericea*), large cranberry (*Vaccinium macrocarpon*) and highbush blueberry (*V. corymbosum*), winterberry (*Ilex verticillata*), red chokeberry (*Aronia arbutifolia*), summersweet (*Clethra alnifolia*), swamp azalea (*Rhododendron viscosum*), bush cinquefoil (*Potentilla fruticosa*), poison sumac (*Rhus vernix*), American cranberrybush (*Viburnum trilobum*), and wild-raisin (*V. cassinoides*), and leatherleaf (*Chamaedaphne calyculata*).
  - (3) Emergent vegetation, including, among others, cattails (*Typha spp.*), pickerweed (*Pontederia cordata*), bulrushes (*Sciripus spp.*), arrow-aryum (*Peltandra virginica*), arrowheads (*Sagittaria spp.*), reed (*Phragmites australis*), wild rice (*Zizania aquatica*), bur reeds (*Sparganium spp.*), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*), water plantain (*Alisma spp.*), horsetails (*Equisetum spp.*), sedges (*Carex spp.*), rushes (*Juncus spp.*), marsh marigold (*Caltha palustris*), sweetflag (*Acorus calamus*), regal fern (*Osmunda regalis*) and ostrich fern (*Matteuccia struthiopteris*) and swamp buttercup (*Ranunculus septentrionalis*).
  - (4) Rooted, floating-leaved vegetation; including, among others, water lily (*Nymphaea odorata*), water- shield (*Brasenia schreberi*), hornwort (*Ceratophyllum spp.*), and water smartweed (*Polygonum amphibium*).

- (5) Free-floating vegetation; including, among others, duckweed (*Lemna* spp.), and water-meal (*Wolffia* spp.).
  - (6) Wet meadow vegetation, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other open land vegetation; including, among others, sedges (*Carex* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), swamp loosestrife (*Decodon verticillatus*), purple loosestrife (*Lythrum salicaria*), spike-rush (*Eleocharis* spp.), Joe-Pye weeds (*Eupatorium* spp.), N.Y. ironweed (*Vernonia noveboracensis*), cardinal flower (*Lobelia cardinalis*), gentians (*Gentiana* spp.), marsh fern (*Thelypteris palustris*), false hellebore (*Veratrum viride*), skunk cabbage (*Symplocarpus foetidus*), Jack-in-the-pulpit (*Arisaema* spp.), Turk's-cap lily (*Lilium superbum*), and rough-leaved goldenrod (*Solidago patula*).
  - (7) Bog mat vegetation; including, among others, sphagnum moss (*Sphagnum* spp.), pitcher plant (*Sarracenia purpurea*), large cranberry (*Vaccinium macrocarpon*) and sundew (*Drosera rotundifolia*).
  - (8) Submergent vegetation with most or all of their leaves and stems below the water surface; including among others, pondweed (*Potamogeton* spp.), bladderwort (*Utricularia* spp.), coontail (*Ceratophyllum demersum*), water-milfoil (*Myriophyllum* spp.), wild celery (*Vallisneria americana*) and waterweed (*Elodea* spp.)
2. Finite boundaries of wetlands shall be established on each parcel or parcels by the DCSWCD or an appropriately qualified individual, as approved by the Planning Board.

Section 2. The Town Washington Zoning Code shall be amended to create an "Appendix D" which shall read in its entirety as follows:

#### **APPENDIX D**

#### **WETLANDS AND WATERCOURSES LAW OF THE TOWN OF WASHINGTON**

#### **Suggested Readings**

"Native Species Planting Guide for New York City and Vicinity"  
 by Danielle Luttenberg, Deborah Lev, Michael Feller  
 Natural Resources Group 1993

Wetlands Planting Guide for the Northeastern United States  
"Plants for Wetland Creation, Restoration, and Enhancement"  
by Gwendolyn A. Thunhorst  
Environmental Concern, Inc. 1993

The National List of Plant Species That Occur in Wetlands, New York or Northeast (Region 1)  
published by the U.S. Fish and Wildlife Service

Soil Survey of the U.S. Department of Agriculture Soil Conservation Service

Freshwater Wetlands Mapping and Classification Regulations - 6 NYCRR Part 664

ECL Article 15, Title 5; 6 NYCRR Part 608: Use and Protection of Waters

Wappinger Creek Watershed Map - Inter-municipal Council of Dutchess County (*as of this date*)

Section 3. This local law shall take effect immediately upon filing with this state's Secretary of State.

Councilman \_\_\_\_\_ advised the Town Board that, pursuant to the Municipal Home Rule Law of the State of New York, it will be necessary to hold a public hearing upon this local law. Councilman \_\_\_\_\_ offered the following resolution which was seconded by Councilman \_\_\_\_\_, who moved its adoption:

WHEREAS, on November 8, 2007, Councilman \_\_\_\_\_ has introduced this local law for the Town of Washington, to be known as "Town of Washington Local Law No. \_\_\_ of the Year 2007, a local law of the Town of Washington, Dutchess County, New York, to amend the Town of Washington Zoning Code to add a new section 396 entitled "Wetlands and Watercourses Law of the Town of Washington"

RESOLVED, that a public hearing be held in relation to the proposed changes as set forth in the form of notice, hereinafter provided, at which hearing parties in interest and citizens shall have an opportunity to be heard, to be held at the Town Hall, 10 Reservoir Drive, Millbrook,

New York, on December \_\_\_\_\_, 2007 at 7:00 o'clock, p.m., Prevailing Time, and that notice of said meeting shall be published in the official newspaper of general circulation in the Town of Washington, by the Town Clerk, at least five (5) days before such hearing and that such notice shall be in the following form:

**NOTICE OF PUBLIC HEARING**

TAKE NOTICE, that the Town Board of the Town of Washington will hold a public hearing at the Town Hall, 10 Reservoir Drive, Millbrook, New York on December \_\_\_\_, 2007 at 7:00 o'clock, p.m., on Local Law No. \_\_ of the Year 2007, to amend the Town of Washington Zoning Code to add a new section 396 entitled "Wetlands and Watercourses Law of the Town of Washington"

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination at the office of the Clerk of the Town of Washington, at the Town Hall, 10 Reservoir Drive, Millbrook, New York between the hours of 9:00 a.m. to 12:30 p.m. and then between 1:30 p.m. to 3:00 p.m.. on all business days between the date of this notice and the date of the public hearing.

TAKE FURTHER NOTICE, that all person interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

DATED:        Millbrook, New York  
                  November 8, 2007

\_\_\_\_\_  
MARY ALEX, TOWN CLERK

The foregoing resolution was duly put to a vote which resulted as follows:

Supervisor Prisco \_\_\_\_\_

Councilman Turletes \_\_\_\_\_

Councilman Rappleyea \_\_\_\_\_

Councilman Murphy \_\_\_\_\_

Councilman Audia \_\_\_\_\_

DATED: Millbrook, New York  
November 8, 2007

\_\_\_\_\_  
MARY ALEX, Town Clerk  
Town of Washington

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