

## RESOLUTION

Councilman \_\_\_\_\_, seconded by Councilman \_\_\_\_\_, introduced the following proposed local law, to be known as Local Law No. \_\_\_ of 2010, 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. Section 328 of the Town of Washington Zoning Code "Wetlands and Watercourses" is deleted in its entirety.

Section 2. 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 and 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 controlled areas, 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 effects or environmental impacts to the function served by regulated areas or the benefits 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, water sources, 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 therefore, 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 within regulated areas.
- B) The Town of Washington 1987 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 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 beneficial functions, which may include but not be 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, or 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 wetland dependent species listed as "special concern", "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.
- E) 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.
- F) The findings of the Environmental Law Institute publication entitled Conservation Thresholds for Land-Use Planners (2003) which determined that the adjacent "buffer" areas (i.e. controlled areas) associated with lakes, ponds, streams and wetlands "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 controlled area widths (as defined below) are appropriate to protect the functional integrity and quality of these resources.
- G) The Town of Washington Town Board has determined, based upon a review of the aforementioned literature and from observations made in the Town itself, that further unregulated land development activities can lead to significant adverse effects or

environmental impact to the functions served by regulated wetland 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

- A) It is the intent of the Town of Washington to insure that activities in and adjacent to wetlands, watercourses and water bodies do not adversely affect the natural environment, or cause significant environmental degradation or unduly impact the public health, safety and general welfare.
- B) It is the intent of this Section 396 to incorporate the consideration of wetland, watercourse, and water body protections, including their controlled 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 reasonable use of their property and the rights of present and future generations in consideration of riparian law. **Whenever possible, the review of an application under this section shall be in conjunction with the property owner's application for building permit, site plan and/or subdivision approval.**
- C) 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.
- D) 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 establishing a minimum regulated setback area from the delineated wetland boundary where careful review and approval of the proposal by the Town of Washington Planning Board must be completed prior to the commencement of activities as described below in Section VIII, Regulated Activities.
- E) **It is the intent of this Law to exercise jurisdiction of only those wetlands, watercourses, water bodies, and controlled areas (i.e. "regulated areas") within the Town of Washington which are not within the jurisdiction of the NYSDEC and/or the USACE.**
- F) It is the intent of this Law to further the Town's stated goals and objectives through a mandatory permit review process to reduce the potential for significant adverse environmental impacts to important natural resources.
- G) 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.
- H) 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. Definitions.

**Agriculture:** The employment of land, including for the primary purpose of obtaining a profit in money, for raising, harvesting, and selling crops, or feeding, including but not limited to, grazing, breeding, managing, selling or producing livestock, poultry, fur-bearing animals or honeybees, or by dairying and the sale of dairy products, by any other horticulture, floriculture or viticulture, aquaculture, hydroponics, silviculture, animal husbandry, or by a combination thereof. It also includes the employment of land, including for the primary purpose of obtaining a profit, for stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows, including other on-farm niche marketing promotions.

~~**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.

**Application Fee:** A sum paid by an applicant to accompany an 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.

**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.

**Buffer:** See "Controlled Area".

**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:** For the purposes of this ordinance, the complete cutting and removing of an entire stand of trees greater than or equal to 4" diameter at breast height (dbh), over a contiguous area that is at least 1/4 of an acre in size (10,890 square feet).

**Conservation Advisory Commission (CAC):** 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:** An area surrounding a wetland or watercourse, also known as a buffer or regulated setback, that is also subject to the regulations of this code, determined as follows, all measurements to be taken on the horizontal plane:

1. For all wetlands, the "controlled area" shall be:
  - a. For a wetland that is one (1) acre or greater in size the land area within one hundred feet (100') of the boundary of the wetland.
  - b. For a wetland that is less than one (1) acre and greater than ¼ acre in size the land

area within fifty (50") feet of the boundary of the wetland.

2. For a perennial watercourse or waterbody the "controlled area" shall be the land area within one hundred (100) feet from the top of the bank of the watercourse or waterbody. The top of bank shall be the mean high water mark of the water course or water body. For an intermittent watercourse, the "controlled area" shall be the land area within fifty (50) feet from the top of the bank of the identified channel.

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: For purposes of this Section, "deposit" shall mean to fill, place, eject or dump any material, deliberately.

DCSWCD: Dutchess County Soil and Water Conservation District

Discharge: The emission of any water, substance or material into a wetland, watercourse, or controlled area.

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

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: 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. The following activities shall not be considered to be "Forestry":

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.
3. The use of pesticides, herbicides and fertilizers to induce vegetative growth.

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, as determined in the sole discretion of the Wetland Administrator. Note: Waterways specifically designed and constructed to serve a storm water conveyance or treatment function, such as grassy swales, roadside 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: See "Forestry."

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.

Permittee; The person(s) or legal entity in whose name the wetland permit is issued.

Perennial watercourse: A regulated area that comprises river, stream, creek or brook through which surface water travels on a continual basis, i.e., at least nine (9) months out of the year.

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 a physical change to existing conditions on a site, including but not limited to any regulated activity as defined under this code.

Regulated Activities: Activities and uses regulated under this Section 396 that may cause identifiable significant adverse effect(s) or environmental impact(s) as defined herein to the functions(s) served by the regulated areas(s) or the benefits(s) derived therefrom, and therefore require review by and approval from the Town of Washington Planning Board.

Regulated Areas: Those areas enumerated in this Law pursuant to the title, purpose, finding and intent of this Section 396 (i.e. wetlands, watercourses, waterbodies and controlled areas).

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, except for the use of pesticides, herbicides, and fertilizers.

Regulated Setback: See "Controlled Area".

Significant Adverse Effect or Environmental Impact: An activity that may 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: See "Forestry."

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. Waterways specifically designed and constructed to serve a storm water conveyance or treatment function, such as grassy swales, roadside 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 watercourses.

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 Administrator, the Planning Board and the Zoning Board of Appeals 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: As defined by the Corps of Engineers and the EPA, those areas that are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. It is recognized that the interaction of hydrology, vegetation and soils results in the development of characteristics unique to wetlands, and that in the majority of cases wetland areas will have all three of these characteristics. For the purposes of this Section 396, this includes all geographic areas greater than one-fourth (1/4) acre identified on the Wetlands & Watercourses Maps 5, 5A and 5B or as otherwise delineated by the Town Wetland Administrator or a knowledgeable expert hired by the Town or Applicant, but excluding wetlands which are regulated by the NYSDEC and/or the USACE. Wetlands in the Town of Washington are generally characterized by any or all of the following:

- a) Marshes, swamps, bogs, vernal pools, or other areas of 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:
  - a) Hydric Soils: Canandaigua, Carlisle, Fluvaquents, Halsey, Hydraquents, Livingston, Medisaprists, Palms, Sun, Wayland
  - b) Hydric inclusions within the following mapped soil types: Kingsbury and Rhinebeck, Linlithgo, Massena A, Massena B, Punsit, Udorthents, Fredon, Raynham Silt Loam
- c) Lands and submerged lands commonly called marshes, swamps, vernal pools, sloughs, bogs, flats supporting aquatic or semiaquatic vegetation of the following vegetative types:
  - (i) 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*).
  - (ii) 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*).

- (iii) Emergent vegetation, including, among others, cattails (*Typha* spp.), pickerweed (*Pontederia cordata*), bulrushes (*Sciripus* spp.), arrow-arum (*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*).
- (iv) Rooted, floating-leaved vegetation; including, among others, water lily (*Nymphaea odorata*), water-shield (*Brasenia schreberi*), hornwort (*Ceratophyllum* spp.), and water smartweed (*Polygonum amphibium*).
- (v) Free-floating vegetation; including, among others, duckweed (*Lemna* spp.), and water-meal (*Wolffia* spp.).
- (vi) 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*).
- (vii) Bog mat vegetation; including, among others, sphagnum moss (*Sphagnum* spp.), pitcher plant (*Sarracenia purpurea*), large cranberry (*Vaccinium macrocarpon*) and sundew (*Drosera rotundifolia*).
- (viii) 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.)

## Section V. Wetlands and Watercourses Map(s)

- A) Concurrent with the adoption of this Section 396, the Town of Washington Town Board hereby adopts a map 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 which identifies the approximate locations of regulated wetlands and watercourses within the Town. It is not assumed that all regulated wetlands, watercourses and waterbodies within the Town of Washington are shown on this map, which is to be used as a guide for applicants and administrators. The actual location(s) of a water course boundary and the controlled area around the water course, and/or a water body and the controlled area around the water body, and/or a wetland boundary and the controlled area around a wetland, are subject to field delineation, in accordance with the definitions and methodologies set forth in this Section 396 followed by verification by the Town or its

representative. The Planning Board, in consultation with the Conservation Advisory Commission (CAC), and with the advice of such qualified wetlands specialists, biologists, hydrologists, soil scientists, ecologists, botanists, and other experts as deemed necessary by the Planning Board, shall make the final determination regarding the location of all water course boundaries, wetland boundaries, and their associated controlled areas pursuant to this Section 396. The cost of such expert assistance, if required, shall be paid for by the applicant for a permit under this Section 396 in accordance with the provisions of Town of Washington Zoning Law Section 402(2).

- B. The Applicant may, at his discretion, request either of two particular services from the Town or its consultants at a rate to be determined by the Town Board:
  - a. Wetland Determination. For a fee, as set forth on the prevailing fee schedule adopted by resolution of the Town Board, and as such schedule is modified from time to time by resolution of the Town Board, the Applicant may request that the Wetland Administrator visit a site, typically prior to filing an application to the Planning Board, to determine if a site contains wetlands that are regulated by the Town of Washington. Such a request may be made following a determination from the Zoning Administrator that, based on the filed Town Wetland Map, a property is likely to have regulated wetlands. This request may also be appropriate if a property owner has reason to believe that a site may contain regulated wetlands that are not shown on the Map. This Determination will not result in immediate delineation of the wetland by the Wetland Administrator, but the visit and subsequent written report may likely provide valuable guidance to the applicant in the preparation of Planning Board applications.
  - b. Wetland Delineation. The applicant may choose to have site wetlands delineated by the Town Wetland Administrator, rather than hiring a private consultant. The applicant will be provided with a written fee proposal for this service by the Town Wetland Administrator, and the applicant may choose to accept the proposed fee or hire a private consultant to complete the delineation.
  
- C. 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 Section 396 particular wetlands or watercourses that do not meet the criteria established in this Section 396, or to incorporate supplementary maps that correct, clarify, or affirm in detail the area of jurisdiction of this Section 396.

## Section VI. Activities Allowed Without Permit (i.e. Exempt Activities)

The following activities are exempt from the permitting requirement as set forth under this Section 396, 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 by recreational fishing, shell fishing, hunting, or trapping where otherwise legally permitted and regulated;
- B) Agriculture, as defined herein, on lands that are either (a) located within an established agricultural district adopted by Dutchess County and certified by the State of New York and qualified under Dutchess County and NYS law for an agricultural exemption by the Assessor of the Town of Washington, or (b) land located outside of an established agricultural district but which is currently receiving an agricultural exemption from the Assessor of the Town of Washington; **except** for the following activities which shall require application to the Planning Board under this Section if proposed to take place within wetlands and their associated buffer areas:
  - (1) Clear-cutting, as defined herein.
  - (2) The construction of roads that requires moving of earth or other aggregate or alters

- wetlands or watercourses in any way.
- (3) Any filling of a wetland, even by deposit of soil for agricultural purposes.
  - (4) Mining as defined in 6 NYCRR § 663.2.
  - (5) The erecting of structures not required to enhance or maintain the agricultural productivity of the land.
  - (6) Draining all or part of a wetland

It is expected that **exempt** agricultural activities will follow sound agricultural practices as defined in this Section 396, and not result in significant adverse impacts to wetlands, watercourses and controlled areas.

- C) Timber harvesting, logging and/or forestry management pursuant to an approved management plan under NYSDEC regulations and any applicable law(s) of the Town of Washington, and administered by a cooperating consulting forester or a DEC forester, but excluding clear cutting as elsewhere defined. Notification of such activities and filing of the forest management plan with the Zoning Administrator is required prior to the commencement of such activities. Absent said approved plan, timber harvesting as defined in this Section 396 is prohibited within wetlands and controlled areas without review and approval by the Planning Board under this Section 396.
- D) 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 and the Zoning Administrator and that the Planning Board may request modification of such orders if it deems it necessary to implement this Section 396;
- E) Activities of the Village of Millbrook related to the operation, maintenance and expansion of the Village's public water supply system, provided that the Village notify the Town Board, Planning Board and the Zoning Administrator 15 days in advance of such activities if said activities involve otherwise regulated activities (per subsection VIII of this Section 396);
- F) 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 contamination of streams or other bodies of water; withdrawal of water for firefighting 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. The Planning Board has the right to request additional information and, further, to require reasonable mitigation or remediation if reasonable after the cessation of the emergency;
- G) Ordinary maintenance and repair of existing structures or improved areas, including but not limited to bridges, roads, driveways, highways, railroad beds, bulkheads, docks, piers, or pilings, which do not involve expansion or increasing the size of such structures or improved areas, the use of pressure treated wood or more than routine restoration, reconstruction, rehabilitation, or modification. In cases of extensive activities that may fall under this category, it is recommended that the property owner first consult with the Zoning Administrator or Wetland Administrator before conducting such activities; and
- H) 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 or non-native species (see Appendix, "A" attached hereto and made part

hereof).

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

- A) Pre-existing lawful activities shall mean land uses and structures legally established prior to the effective date of this Section 396. In order to have been legally established a land use activity or structure shall have been: 1) established and documented prior to the effective date of this Section 396; or 2) shall have been lawfully established in compliance with Article 24 of the New York State Environmental Conservation Law.
- B) The provisions of this Section 396 shall not apply to pre-existing lawful activities including uses and structures established prior to the effective date of this Section 396. In no event shall any pre-existing lawful activity be expanded, changed, enlarged, or altered except in accordance with the provisions of this Section 396. Should the permit, license, or approval under which any pre-existing lawful use or activity was established cease or expire, or if any pre-existing use or activity shall cease, then the activity may not be re-established and the use of such structure shall not resume except pursuant to a permit issued under the terms of this Section 396.
- C) With respect to all other uses and structures established prior to the effective date of this Section 396 said uses and structures may continue as pre-existing lawful activities and structures provided:
  - 1) A valid preliminary subdivision plat, or site plan, or special permit has been duly approved by the Planning Board and is valid and in effect as of the date of this Section 396; or
  - 2) A valid building permit and/or certificate of occupancy has been lawfully issued by the Building Inspector and is valid and in effect as of the date of this Section 396; or
  - 3) A use variance, or area variance, or special permit has been duly approved by the Zoning Board of Appeals (ZBA) and is valid and in effect as of the date of this Section 396.

### **Section VIII. Regulated Activities**

Activities and uses regulated under this Section 396 are those that may cause identifiable significant adverse effect(s) or environmental impact(s) 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 within a regulated area as defined in this Section 396 except as herein provided. In determining whether to issue a permit, the Planning Board shall use its discretion to make a decision that is rational and supported by the evidence.

Regulated activities are those set forth in this subsection which occur or are proposed to occur within the boundary of a wetland, the boundary of a water course, or within the controlled area of a wetland or water course independent of whether the wetland or the water course or the controlled area is separated by one or more parcels or municipal boundaries. Regulated activities under this subsection shall be as follows:

- A) Any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel, or other material or aggregate from or within any regulated area;
- B) Any form of placing, dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind **deliberately** into or on a regulated area(s);
- 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, swimming pool drainage systems, constructing wells, or installing any pipes, service lines, cable conduit or other conduit, or placing of any other obstructions

whether or not they affect the ebb and flow of water in or on a regulated area

- 1) The Zoning Administrator shall have the limited discretion to exempt the erection of certain structures under 100 square feet, but only upon a showing that a potential structure will not result in a negative impact to the beneficial functioning of a wetland, watercourse or water body. In making this determination, the Zoning Administrator may consult with the Wetlands Administrator.
- D) Placing any other obstructions within any regulated area, whether or not the same affects the ebb and flow of water.
- E) Altering and/or modifying the natural drainage patterns and/or the contours of a regulated area by changing, moving or disturbing any vegetation, soil or other natural material;
- F) Introducing any influents of high thermal content that may cause deleterious ecological effects into or on a regulated area;
- G) Stripping any area of vegetation, including clear cutting;
- H) Using or storing chemicals, dyes, fertilizers, including manure, compost, topsoil, or other organic materials, fuels, herbicides, pesticides, de-icing materials, or similar materials within or on any regulated area. This provision shall not apply in cases of emergency or in cases where the public safety may be in jeopardy;
- I) Installation of a septic tank, septic tank discharge pipe, storm water discharge outlet, roof gutter, grey water discharge pipe, or any part of any storm water management structure, or any sewer outfall within a regulated area;
- J) The discharge of treated or untreated sewage effluent, storm water discharge, or any other waste into a regulated area;
- K) The depositing or removal of the natural products of the wetlands by commercial fishing or aquaculture.

#### **Section IX. Permit Requirements and Procedures.**

- A) Any person proposing to conduct or cause to be conducted a regulated activity within a regulated area shall obtain the approval of the Planning Board prior to the commencement of the regulated activity. Applications for permits for regulated activities shall be filed with the Zoning Administrator. In addition:
  - 1) It shall be the responsibility of the Zoning Administrator, upon receipt of an application for approval of a regulated activity under this Section 396, to immediately refer the application to the Town's wetland consultant for assistance in making an initial determination as to whether the proposed regulated activity is subject to the requirements of this Section 396; it being the intent that the Zoning Administrator, after consultation with the Town's wetland consultant, shall at the earliest possible time determine whether a proposed activity is a regulated activity as set forth herein.
  - 2) It shall be the responsibility of the Building Inspector upon receipt of an application for a building permit to consult with the Zoning Administrator as to whether one or more of the activities proposed under a building permit application is a regulated activity as set forth in this Section 396.
- B) Application procedure; pre-application consultation. It is recommended that the applicant, prior to filing an application for a permit under the provisions of this Section 396, consult with the Zoning Administrator as to the compliance requirements related to wetlands, watercourses and water bodies as well as application procedures for the Town of Washington

Planning Board.

C) Application for a wetlands/watercourse/water body permit. The applicant shall file with the Zoning Administrator an application, in such form, in such number, and with such information as the Planning Board shall prescribe. At a minimum, the following information shall be required:

1. The name, address, and telephone number of the applicant.
2. Names and addresses of abutting property owners.
3. A description of the proposed project as it relates to this Section 396.
4. A written explanation of why the proposed activity cannot be located at another site, i.e., out of the wetland, watercourse, water body or controlled areas (i.e., Alternatives Analysis).
5. A map showing all wetlands, watercourses, water bodies and controlled areas within 200 feet of the location of the proposed regulated activity, based on areas depicted on the Town Wetlands Protection Map or on a visual inspection. This map is not required to be a formal wetland delineation, but must illustrate the location of the wetlands using a scale. [The Planning Board reserves the right to require land data information for distances of greater than 200 feet based on the Board's assessment of field conditions – See subsection (C)(11), below].
6. A map at a scale no greater than one inch equals 50 feet (1" = 50') and containing contour intervals of five (5) 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. The maps required by subsection (C)(5), above, and this subsection may be combined into one map.
7. A description of the vegetative cover of the area, including dominant species.
8. A description of the soil types on the site, consistent with the descriptions provided in the Dutchess County Soil Survey prepared by the Natural Resources Conservation Service (NRCS).
9. A Short Form Environmental Assessment Form (EAF) under SEQRA. The Planning Board reserves the right to require the applicant to prepare a Long Form EAF after the initial review of an application.
10. An application fee in an amount set by the Town Board, and an application review fee (escrow) in an amount set by the Planning Board.
11. Additional information. After an initial review of the information required by subsections (C)(1) – (10), above, the Planning Board may require additional information in order to make a determination on the application. When exercising its discretion to request additional information, the Planning Board shall make a brief finding detailing the reasons why the additional information is requested.

Additional information may include, but shall not be limited to, a schedule and sequence of proposed activities and the type of equipment to be used, the study of flood, erosion and other hazards at the site, and any other information deemed necessary to evaluate the proposed use in terms of the standards of this Section 396. In addition, the Planning Board may require the following additional information:

- 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. Wetlands, waterbodies and watercourses as shown must be delineated in the field by the Wetland Administrator or another qualified individual knowledgeable about wetlands and water resources. The Planning Board, with advice from the Wetland Administrator and the CAC, will make the final decision regarding the accuracy of the delineation as depicted on the plans. The Planning Board may also at its discretion determine during review that only those areas of wetland within 200 feet of the proposed disturbance need be delineated, waiving the requirement that the entire property be delineated for smaller projects.

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. 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 (200) feet or such other distance as determined by the Planning Board.

e. A wetland functional analysis consistent with the methods described in "A Rapid Procedure for Assessing Wetland Functional Capacity" by Dennis W. Magee, 1998.

f. Applications affecting the water retention capacity, water flow, or other drainage characteristics of any wetland, watercourse or water body may require a statement of the impact of the project on upstream and downstream areas giving appropriate consideration to flood and drought levels and the amount of rainfall.

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

h. Locations and specifications for any proposal to drain, fill, grade, dredge and clear vegetation, including areas and quantities proposed for depositing or removal, the procedures to be used and dominant species of vegetation to be removed.

i. 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.

j. 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 which may affect the water-retention capacity, water flow, or other drainage characteristics of any pond, lake, reservoir, natural drainage system, or wetland may require inclusion of 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.

k. The preparation and submission of a mitigation plan that includes creation, restoration and/or enhancement of wetlands in order to offset the loss of wetland function that is anticipated as a result of the proposed action. For wetland creation, the minimum acceptable ratio of creation to disturbance will be 1.5:1. Plans will be at a level of detail sufficient to demonstrate that the mitigation plan will be acceptable for long term mitigation of potential wetland impacts, and may include an analysis of pre and post construction hydrology, planting plan, conservation easements and/or deed restrictions, maintenance and monitoring agreement and other methods to ensure the long term success of the proposal.

12. Upon receipt of an application that the Zoning Administrator determines is complete as to form he/she shall refer said application to the Planning Board for review.
13. When officially received. An application submitted under this section 396 shall be deemed received at the next regular meeting of the Planning Board at which the application is to be considered. An application shall be placed on the Planning Board agenda only after payment of the application fee and application review fees and receipt by the Board of the specified number of copies of the application including maps and any supporting documentation.
14. Planning Board review. Applications for wetland permit approval must be received by the Planning Board not less than two (2) weeks prior to the date of the regularly scheduled Planning Board meeting. Following receipt and initial review of an application, the Planning Board will refer the application for comments to the CAC. At its discretion, the Board may also request review by the Wetland Administrator. Initial comments and recommendations for additional information must be received by the Board within 30 days of such referrals.
15. Following receipt of initial comments and recommendations for additional information (if provided), the Planning Board will notify the applicant of any additional information which may be required to deem the application complete for content. Following receipt of this additional information as applicable, the Board will determine the application to be complete for content and commence formal review.
16. Public review; public hearing. Within sixty-two (62) days of receipt of a complete application, the Planning Board shall hold a public hearing. Notice of the public hearing shall be published in the official newspapers at least ten (10) days prior to the date set for public hearing, and shall, at least ten (10) days before such hearing, mail notice thereof to the owners of property within 200 feet of the property that is the subject of the application. The notice shall state the date, time, place and subject of the public hearing at which the application will be reviewed. Such notice shall not be required for adjourned dates. The address on file in the records of the Receiver of Taxes of the Town of Washington shall be deemed conclusive as to ownership and the notice shall be deemed complete when deposited in a properly addressed postpaid envelope in the United States mail. The Planning Board may also provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of the application, including the prominent placement of one (1) or more signs on the premises that is the subject of the application notifying interested persons that an application for a site plan approval is under consideration by the Board.
17. Referral to Neighboring Municipalities. For a wetland application under this Section 396 involving property located within five hundred (500) feet of an adjacent municipality notice of any public hearing shall be given by mail or electronic transmission to the clerk

of the adjacent municipality not less than ten (10) days prior to the date of said hearing.

18. Agricultural data statement. For activities on agricultural lands other than those listed in subsection VI (B) of this Section 396, an application for wetland permit approval must also contain an agricultural data statement if any portion of the project is located on property within an agricultural district containing a farm operation, or other property with boundaries within five hundred (500) feet of a farm operation located in an agricultural district. The agricultural data statement shall contain the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district which contains farm property; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.
19. Time of Decision. Within sixty-two (62) days of close of the public hearing and the completion of environmental review under SEQRA, the Planning Board shall approve, approve with modifications, or disapprove the wetland permit application. A copy of the Planning Board's decision shall be filed in the Office of the Town Clerk within five (5) days of the date of such decision, and a copy shall be mailed to the applicant. In acting to approve, with or without modifications, a wetland permit application, the Planning Board may attach such conditions and safeguards as it deems necessary to assure that the purpose and intent of these regulations are complied with. Within sixty (60) days of the date of approval or approval with modifications, the applicant shall present to the Planning Board a corrected final wetland plan in reproducible form, including any modifications required by the Planning Board as a condition of approval. Upon verification by the Planning Board that the wetland plan complies with the requirements of the approval, the plan shall be endorsed by the Planning Board Chairperson and filed with the Planning Board and the Zoning Administrator. The permittee shall not commence any site preparation, including but not limited to tree removal, removal of soil, grading, stockpiling of soil or other construction material, until the wetland plan has been endorsed by the Planning Board Chairperson.

#### Section X. Standards for Permit Decisions.

- A. **Standard for Approval:** An applicant is entitled to a wetland permit under this Section if the proposed regulated activity will not result in a negative impact to the functioning of a wetland, watercourse, or water body that has been shown to have a beneficial environmental function.
- B. In granting a permit, the Planning Board may limit the same and impose reasonable conditions designed to carry out the purposes of this Section 396 and to meet the Standard for Approval. The Planning Board may require a performance bond with security acceptable to the Town in an amount and with conditions satisfactory to the Planning Board to secure compliance with the conditions and limitations set forth in the permit. Such security shall be in the form of a letter of credit, assignment of a bank account or cash deposit. If a performance bond is required by the Planning Board, the Town's planning, engineering and/or wetland consultant shall make a recommendation as to the amount of said performance bond.

~~Where the Planning Board finds that the mitigation requirements or conditions of a permit issued by a state or federal agency having concurrent jurisdiction over a regulated wetland or water course satisfy the requirements of this Section 396, the Board may issue a permit conditioned on the applicant complying with all of the conditions of such state or federal permit approval. However, such a determination shall not be construed as a refusal of jurisdiction by the Board, and the applicant's failure to comply with all conditions of such state or federal permit approval shall be deemed a violation of this~~

~~Section 396~~

- C. In reviewing an application for compliance with the aforementioned Standard for Approval, the Planning Board, in consultation with the Wetlands Administrator, CAC and the Zoning Administrator, shall be guided by the following:
- a) **Considerations:** In determining whether to grant, grant with conditions or deny any permit application, the Planning Board shall consider whether the application may result in any of the following:
- 1) Potential impacts or changes to the ecology of the wetland, and the potential for significant adverse impacts to the general environment;
  - 2) The potential impact of the project on potable water sources and watercourses;
  - 3) Flood hazards and the significant alteration of drainage patterns and hydrology
  - 4) The irreversible and irretrievable commitment of natural resources that would be involved in the proposed activity;
  - 5) The availability of practicable and feasible alternatives to the proposed action that would avoid or minimize potential adverse impacts to 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;
  - 6) 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;
  - 7) The proposed mitigation plans that are incorporated in the plan or action.
  - 8) Depositing fill, soil, vegetation or stone in a regulated area, or other modification of topographic contours.
  - 9) Disturbance or destruction of flora and fauna, endangered and threatened species and significant habitats in a regulated area.
  - 10) Influx of sediments or other materials causing increasing water turbidity and/or substrate aggradations in a regulated area.
  - 11) Removal or disturbance of regulated area soils.
  - 12) Destabilization of regulated area channel or bank.
  - 13) Reductions and/or increases in regulated area hydrology.
  - 14) Interference with the circulation of water within or through a regulated area
  - 15) Damaging thermal changes and/or nutrient levels in the water supply within or through a regulated area.
  - 16) Introduction of hazardous or toxic pollutants into a regulated area.
  - 17) Alterations to flood flows, flood storage, storm water, upstream and downstream channel and bank stability, storm barriers and water quality of regulated areas.
  - 18) Cumulative adverse effect of any proposed or reasonably anticipated future activities on regulated areas subject to the application.
  - 19) A significant adverse impact on the general public health, safety and welfare
  - 20) Any other fact which the Planning Board deems results in a negative impact to the functioning of regulated wetland, watercourse or water body.

- 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 **beneficial functioning** of a regulated wetland, watercourse or water body.
  - 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.

### **Section XI. General Wetland Permit Conditions.**

The approved permit form shall bear the following language, which form shall be signed by the permittee:

“BY THIS SIGNATURE THE PERMITTEE STATES THAT HE/SHE HAS READ THE GENERAL AND SPECIAL CONDITIONS OF THIS PERMIT, UNDERSTANDS THE REQUIREMENTS AND LIMITATIONS OF THIS PERMIT, AND AGREES TO COMPLY WITH THE CONDITIONS OF THIS PERMIT AND SECTION 396 OF THE TOWN OF CODE”.

The following General Conditions shall be conditions of all wetland permits issued pursuant to this Section 396.

- A) By acceptance of this permit the owner/applicant/permittee agrees that the permit is contingent upon strict compliance with this Section 396 of the Town of Washington Town Code and any special conditions of the Planning Board.
- B) The owner/applicant/permittee shall notify the Planning Board and the Zoning Administrator in writing not less than 72 hours in advance of the time work is commenced, and shall promptly notify the Planning Board and the Zoning Administrator in writing of the completion of work.
- C) The permitted work shall be subject to inspection by an authorized representative of the Town of Washington which may order work suspended if the public interest so requires.
- D) The Town of Washington reserves the right to suspend or revoke this permit at any time after due notice when: a) the scope of the project is exceeded or a violation of any condition of the permit or provision of the law pertinent regulations are found; b) the permit was obtained by misrepresentation or failure to disclose relevant facts; or c) newly discovered information or significant physical changes are discovered.
- E) The permittee is responsible for keeping the permit active by requesting renewal from the Planning Board, including any forms, fees or supplemental information that may be required by the Planning Board not less than thirty (30) days prior to the expiration of this Permit.
- F) This permit shall not be construed as conveying to the applicant any right to trespass upon private lands or interfere with the riparian rights of others in order to perform the permitted work or as authorizing the impairment of any right, title or interest in real or personal property held or vested in a person not party to this permit.
- G) The permittee is responsible for obtaining any other permits, approvals, easements and

rights-of-way which may be required from any other governmental agency or private person, including the New York State DEC and the US Army Corps of Engineers, and the permittee shall be responsible for filing a copy of said permits with the Town of Washington Planning Board. The granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from any other federal, state, regional, or local government agency or department, which may be required.

- H) Any modification of this permit is subject to prior approval of by the Planning Board and confirmation of such modification shall be in the form of a written resolution.
- I) All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediment, fuels, solvents, lubricants, epoxy coating, paints, concrete, leachate or other environmentally deleterious materials associated with the project.
- J) All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or his agent as part of the permit application.
- K) All sediment and erosion control measures depicted on the approved plans shall be installed prior to commencement of the approved work and shall be continuously maintained during the term of the project. The sediment and erosion control measures shall be replaced as necessary or as directed by the Planning Board or its authorized representative.

#### **Section XII. Expiration of Permit.**

- A) All permits issued pursuant to this Section 396 shall expire upon completion of the activities 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 Section 396 shall be valid for a period longer than three years from the date of issue. The approval authority may extend the time in which the activities specified in the permit must be completed if, in its opinion, such extension is warranted by the particular circumstances thereof for not to exceed two additional periods of 90 days each. A request for extension 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 activities 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 Planning Board shall have the option to waive the public hearing if the original intent of the permit is not altered or extended in a significant way.
- C) Notice of change of ownership of the parcel covered by the permit must be filed with the Zoning Administrator no later than 30 days following the transfer of title or prior to the expiration date of the permit, whichever is earlier. Failure to comply with this notice procedure will invalidate the permit. The expiration date for the permit will remain the same, and the provisions for extension of the permit will still apply. The new property owner must sign the permit acknowledging all requirements, conditions and obligations required by the permit before work can commence or continue. This shall be a condition attached to all permits issued under this Section 396.

#### **Section XII. Enforcement.**

- A) This Section 396 shall be enforced by the Zoning Administrator or his or her designee.
- B) The Town Board, or, with Town Board approval, the Zoning Administrator or other proper official, is specifically empowered to seek injunctive relief restraining any violation, threatened violation or breach of any permit condition under the provisions of this Section 396, and/or to compel the restoration of the affected regulated area to its condition prior to

the violation, or breach of any permit condition. If the Town is successful in obtaining preliminary and/or permanent injunctive relief, it shall be entitled to an award by the court of its reasonable attorney's fees.

**Section XIII. Penalties.**

Any person convicted of having violated or disobeyed any provision of this Section 396, or any condition attached 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 or more than \$15,000, and/or imprisonment of not more than 15 days. Each consecutive day of the violation shall be considered a separate offense.

**Section XIV. Effect of 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 laws or regulations, including but not limited to, the acquisition of any other permit or approval.

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 was 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 \_\_\_\_\_, 2010, Councilman \_\_\_\_\_ has introduced this local law for the Town of Washington entitled Local Law No. \_\_\_ of the Year 2010, 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, Town of Washington, Reservoir Drive, Millbrook, New York, on \_\_\_\_\_, 2010, at 7:30 o'clock, Prevailing time, and that notice of said meeting shall be published in the Poughkeepsie Journal, a 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, in sum and substance, be in the following form:



NOTICE OF PUBLIC HEARING

TAKE NOTICE, that the Town Board of the Town of Washington (the "Town") will hold a public hearing at the Town Hall, Town of Washington, Reservoir Drive, Millbrook, New York, on \_\_\_\_\_ 2010, at 7:30 o'clock, p.m., Prevailing Time, in relation to Local Law No. \_\_\_ of the Year 2010 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".

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

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

DATED: Millbrook, New York  
\_\_\_\_\_, 2010

MARY ALEX, Town Clerk  
Town of Washington

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

Supervisor Prisco	_____
Councilman Turletes	_____
Councilman M. Murphy	_____
Councilman Audia	_____
Councilman W. Murphy	_____

DATED: Millbrook, New York  
\_\_\_\_\_, 2010

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