

## **Proposed Local Law 7-2020**

A Local Law amending Chapter 149 (Freshwater Wetlands) of the Village of Ossining Code.

**BE IT ENACTED by the Board of Trustees of the Village of Ossining as follows:**

**Section 1.** Chapter 149 (Freshwater Wetlands) of the Village of Ossining Code is amended with new matter underlined and deleted matter in [brackets].

**[§ 149-1 Exercise of regulatory authority.**

Pursuant to § 24-0501 of the New York State Freshwater Wetlands Act (Article 24 of the New York Environmental Conservation Law), the Board of Trustees shall fully undertake and exercise its regulatory authority with regard to activities subject to regulation under the Act in freshwater wetlands, as shown on the Freshwater Wetlands Map, as such map may from time to time be amended, filed by the Department of Environmental Conservation pursuant to the Act, and in all areas adjacent to any such freshwater wetland up to 100 feet from the boundary of such wetland. Such regulatory authority shall be undertaken and exercised in accordance with all of the procedures, concepts and definitions set forth in Article 24 of the New York Environmental Conservation Law and Title 23 of Article 71 of such law relating to the enforcement of Article 24, as such law may, from time to time, be amended.]

**§ 149-1 Title and purpose; statutory authority.**

- A. Title and purpose. This chapter shall be known as the "Freshwater Wetlands, Watercourses and Water Body Protection Law of the Village of Ossining." It is a chapter regulating the dredging, filling, deposition or removal of materials; diversion or obstruction of water flow; and placement of structures and other uses in the water bodies, watercourses, wetlands and buffers thereof, in light and recognition of the functional benefits of the preservation, protection and conservation of these water resources as enumerated in § 149-1.C, in the Village of Ossining code.
- B. Enabling authority. This chapter is enacted pursuant to the Municipal Home Rule Law and any and all applicable laws, rules and regulations of the State of New York. Nothing contained herein shall be deemed to conflict with any such laws, rules and regulations.

### C. Functions.

- (1) In their natural state, wetlands serve a myriad of valuable ecological functions important to the public welfare. These functions include but are not limited to the following:
  - (a) Protecting water resources by providing sources of surface water, recharging groundwater and aquifers, serving as chemical and biological oxidation basins, and/or functioning as settling basins for naturally occurring sedimentation.
  - (b) Controlling flooding and stormwater runoff by storing or regulating natural flows.
  - (c) Providing unique nesting, migratory and wintering habitats for diverse wildlife species, including many on the New York State and federal endangered species lists.
  - (d) Supporting unique vegetative associations specifically adapted for survival in low-oxygen environments.
  - (e) Providing areas of unusually high plant productivity which support significant wildlife diversity and abundance.
  - (f) Providing breeding and spawning grounds, nursery habitat and food for various species of fish.
  - (g) Serving as nutrient traps for nitrogen and phosphorus, and filters for surface water pollutants.
  - (h) Helping to maintain biospheric stability by supporting particular efficient photosynthesizers capable of producing significant amounts of oxygen, and supporting bacteria which process excess nitrates and nitrogenous pollutants and return them to the atmosphere as inert nitrogen gas.
  - (i) Providing open space and visual relief from intense development in a rapidly growing area.
  - (j) Serving as outdoor laboratories and living classrooms for the study and

appreciation of natural history, ecology and biology, and serving generally as an education and research resource.

(k) Providing recreation areas for fishing, boating, hiking, bird watching, photography, camping and other uses.

(l) Controlling erosion by serving as sedimentation areas and filter basins, absorbing silt and organic matter.

(m) Providing carbon sequestration to offset climate change.

(2) A significant amount of the village's wetland base has been lost or impaired by draining, dredging, filling, excavating, building, polluting and other acts inconsistent with the natural uses of such areas. The remaining wetlands are potentially in jeopardy of being lost in a similar fashion.

D. Legislative intent. It is the intent of the Village of Ossining that activities in and around wetlands, watercourses and water bodies conform with all applicable building codes and other regulations. Such activities shall not threaten public safety or welfare or the natural environment to the residents of the Village of Ossining or neighboring communities, or cause nuisances by factors including but not limited to the following:

(1) Impeding flood flows, reducing flood storage areas or destroying storm barriers, thereby resulting in increased flood heights, frequencies or velocities on other lands;

(2) Increasing water pollution through location of domestic waste disposal systems in wet soils; inappropriate siting of stormwater control facilities; improper and careless application and/or disposal of fertilizers, pesticides, herbicides and algaecides in a wetland; disposal of solid wastes at inappropriate sites; creation of unstabilized fills; or the destruction of wetland soils and vegetation serving pollution and sediment control functions;

(3) Increasing erosion; or

(4) Adversely affecting any of the other wetland functions specified in § 149-1.C above.

#### E. Policy.

- (1) It is declared to be the intent of the Village to control, protect, preserve, conserve and regulate the use of wetlands within the Village to ensure that the benefits found to be provided by wetlands as set forth in § 149-1.C hereof will not be lost.
- (2) This chapter is enacted with the intent of providing a reasonable balance between the rights of the individual property owners and the public interest in preserving the valuable functions of wetlands.
- (3) It is the intent hereof to incorporate wetlands protection into the Village's land development regulations.

#### § 149-2 Definitions and word usage.

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

#### **APPLICANT**

Any individual, firm, partnership, association, corporation, company, organization or other legal entity of any kind, excluding the Village of Ossining, who request the approval authority to issue a permit or to whom a permit has been granted under the provisions of this chapter.

#### **APPROVAL AUTHORITY**

The Village's agency(s) or public official(s) empowered to administer the permit procedures of this chapter, as described herein.

#### **BOUNDARY OF A WETLAND**

The outer limit of a Wetland, as defined in this section.

#### **BUFFER AREA**

The area extending 100 feet along the surface, away from and around the perimeter of the outermost boundary of a wetland or waterbody and 50 feet from the outermost boundary of a watercourse.

**BUILDING INSPECTOR**

The Building Inspector of the Village of Ossining and/or his/her designee(s).

**CHECK ZONES**

100-foot zones around the regulated areas shown on the Village's Wetland and Drainage Map. Due to the approximate nature of mapped wetland boundaries, for those properties located in these 100-foot zones where a regulated activity is proposed, as defined in this Chapter, the applicant must determine whether a wetland permit is required.

**DAMS AND WATER-CONTROL MEASURES**

Barriers used to or intended to or which, even though not intended, in fact do obstruct the flow of water or raise, lower or maintain the level of water.

**DEPOSIT**

To fill, grade, discharge, emit, dump or place more than 1.5 cubic yards of any material or disturbing more than 150 square feet, whichever is less.

**DIRECTOR OF PLANNING**

The Director of Planning for the Village of Ossining and/or his/her designee(s).

**DISCHARGE**

The emission of any water, substance or material into a wetland, watercourse or their buffers, whether or not such substance causes pollution.

**DRAIN**

To deplete or empty of water by drawing off by degrees or in increments.

**DREDGE**

To excavate or remove sediment, soil, mud, sand, shells, gravel or other material within the wetland or watercourse.

**ENVIRONMENTAL ADVISORY COUNCIL**

The Environmental Advisory Council of the Village of Ossining.

**EXCAVATE**

To dig out and remove any material.

## **FILL**

Includes road base, trench backfill, subbase bedding, trench material and bedding, run-of-bank fill for septic, sand for concrete and all other commonly used materials for construction delivered to a site for purposes of filling in land or regrading.

## **FRESHWATER WETLAND**

Same as the term "wetland."

## **FRESHWATER WETLANDS MAP, NEW YORK STATE**

The final freshwater wetlands maps for Westchester County promulgated by the Commissioner of the New York State Department of Environmental Conservation pursuant to § 24-0301, Subdivision 5, of the New York State Freshwater Wetlands Act, or such map as has been amended or adjusted, and on which are indicated the approximate locations of the actual boundaries of wetlands regulated pursuant to Article 24 of the Environmental Conservation Law.

## **GRADING**

To adjust the degree of inclination of the natural contours of the land, including leveling, smoothing, constructing or repairing retaining walls, and other modification of the natural land surface.

## **GROWING SEASON**

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

## **HYDRIC SOIL**

A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation (U.S. Department of Agriculture Soil Conservation Service 1985). Hydric soils that occur in areas having positive indicators of hydrophytic vegetation and wetland hydrology are wetland soils.

## **HYDROLOGY**

The science dealing with the properties, distribution, and circulation of water.

### **HYDROPHYTIC VEGETATION**

The sum total of macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. When hydrophytic vegetation comprises a community where indicators of hydric soils and wetland hydrology also occur, the area has wetland vegetation.

### **IMPERVIOUS AREA**

All impermeable surfaces that cannot effectively infiltrate rainfall. This includes paved and concrete surfaces (i.e. parking lots, driveways, roads, runways and sidewalks); porous pavers and pervious pavement systems, unless designed as part of an acceptable stormwater management practice; building rooftops; and miscellaneous impermeable areas such as patios, pools, and sheds.

### **MATERIAL**

All liquid, solid or gaseous substances.

### **PERMIT**

The written municipal approval required by this chapter for the conduct of a regulated activity within a wetland, watercourse, water body or buffer area.

### **PLANNING BOARD**

The Planning Board of the Village of Ossining.

### **PROJECT**

Any proposed or ongoing action which may result in direct or indirect physical or chemical impact on a wetland or wetland buffer including but not limited to any regulated activity.

### **REMOVE**

To dig, dredge, suck, bulldoze, dragline, blast or otherwise excavate or grade.

### **STATE ENVIRONMENTAL QUALITY REVIEW ACT**

The law pursuant to Article 8 of the New York Environmental Conservation Law providing for environmental quality review of actions.

## **STRUCTURE**

For purposes of this Chapter, anything constructed or erected that requires a Building Permit, the use of which requires location on or in the ground or attachment to something having location on the ground including but not limited to buildings, tennis courts, swimming pools and decks.

## **VILLAGE**

The Village of Ossining.

## **VILLAGE BOARD**

The Board of Trustees of the Village of Ossining.

## **WATER BODY**

Any natural or artificial pond, lake, reservoir or other area which ordinarily or intermittently contains water and which has a discernible shoreline, but not including a watercourse as defined in this chapter or man-made water features or swimming pools not associated with a wetland or watercourse.

## **WATERCOURSE**

A body of water flowing in a defined bed or channel, with banks and sides, having permanent sources of supply, uniform or interrupted.

## **WETLAND**

- (1) Those areas within the Village of Ossining that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, vernal pools and similar areas.
- (2) Except with respect to the size of buffer areas as defined in this section, the term "wetland," as used in this chapter, shall include watercourses and water bodies.

## **WETLAND CONSULTANT**

The Village wetland consultant, as appointed by the Village Board,



empowered to undertake the responsibilities set forth in this Chapter, or his/her designated representative.

## **WETLANDS AND DRAINAGE MAP**

The most current Village of Ossining Wetlands and Drainage Map which shows the approximate location of areas classified as wetlands and associated check zones. The map shall be reviewed and updated by the Planning Department and certified annually by the Village Board. This map is intended to provide general guidance in locating and determining those areas which constitute wetlands, as defined herein, since large areas of the Village may not be mapped at this time. The actual boundary of a wetland shall be determined on a site-by-site basis and confirmed by the approval authority.

### **§ 149-3 Rules for establishing and interpreting wetland and buffer area boundaries.**

Wetlands. The applicant shall be responsible for having the boundaries of the wetland(s) and buffer area(s) delineated by a qualified environmental professional by field investigation during a growing season, with soils not snow covered or frozen, and with each turning point flagged and identified and subsequently surveyed and mapped by a New York State licensed land surveyor. A full report regarding the delineation with data sheets shall also be submitted by the qualified environmental professional. The approval authority may also consult, at the expense of the applicant, with biologists, hydrologists, soil scientists, ecologists/botanists, land surveyors or other experts and professionals as deemed necessary by said authority to confirm this delineation. The approval authority may require payment by the applicant of an amount to be held in escrow for these expenses.

### **§ 149-4 Applicability.**

- A. The provisions of this chapter shall apply to all lands defined and/or designated as wetlands, watercourses, water bodies and buffer areas.
- B. Activities undertaken by the Village of Ossining within any wetlands, watercourses, waterbodies, or buffer areas are exempt from the requirements of this Chapter.

### **§ 149-5 Allowable, regulated and prohibited acts.**

No regulated activity shall be conducted in a wetland, watercourse, water body

or buffer area without a written permit from the approval authority and full compliance with the terms hereof and other applicable regulations.

A. Allowable activities. The following uses shall be allowed without a permit within a wetland or buffer area as specified below:

- (1) On a private residential lot, normal ground maintenance, including mowing, trimming of vegetation and removal of dead or diseased vegetation.
- (2) Repair of existing walkways and walls.
- (3) Maintenance of existing decorative landscaping and planting in buffer areas only.
- (4) Public health activities and orders of the Westchester County Department of Health and/or the New York State Department of Health for emergencies only.
- (5) Normal gardening activities and the composting of leaves, grass clippings or other vegetation in buffer areas only, located within a private residential lot.
- (6) Operation and maintenance of existing dams and water control devices, excluding the adjustment of water elevations over 18 inches in height.
- (7) Maintenance of existing drainage channels where impedance of flow may cause flooding or threaten public safety on highways or in dwellings or other structures.
- (8) Maintenance and repair of any best management practice (BMP) installed for stormwater management purposes.
- (9) Manual removal of accumulated sediment, up to a maximum of two cubic yards, located within five feet of the end of a pipe which crosses under a road or driveway.

B. Regulated acts which require a permit. It shall be unlawful, in the absence of a written permit issued by the approval authority, to do any of the following activities in any wetland, watercourse, water body or buffer

area:

- (1) Placement or construction of any structure that requires a Building Permit.
- (2) The installation of an impervious area over 150 square feet.
- (3) Any form of draining, dredging, excavation or removal of material, or any dumping, filling or depositing of material, either directly or indirectly.
- (4) Installation of any private service or utility lines, cable, or conduits (including but not limited to sewer, water, gas, or electric).
- (5) Installation of a septic tank, the running of a sewer outfall or the discharging of sewage treatment effluent or other liquid wastes into or so as to drain into a wetland, watercourse, water body or buffer area, provided the approval of the Westchester County Department of Health also has been obtained.
- (6) Grading.
- (7) Alteration or modification of natural drainage patterns or watercourses.
- (8) Construction of dams, docks or other water-control devices, pilings or bridges, whether or not they change the natural drainage characteristics.
- (9) Operation of existing dams and water-control devices, involving the adjustment of water level more than 18 inches or any adjustment of water level which is in place for more than one week.
- (10) Installation of any private pipes or wells.
- (11) The cutting of more than three regulated trees pursuant to Chapter 248.
- (12) Deposition or introduction of organic or inorganic chemicals, including pesticides and fertilizers.
- (13) Grazing of horses or other animals (except as provided in Chapter 75).
- (14) Any other activity that may impair the natural function(s) of a wetland as described in § 149-1.C of this chapter.

C. Prohibited acts. It shall be unlawful to place or deposit chemical wastes or to introduce influents of such thermal content so as to cause deleterious ecological effect in any wetland, watercourse, water body or buffer area. Also unlawful shall be the installation of a septic tank, the running of a sanitary sewer outfall or the discharging of sewage treatment effluent or other liquid wastes into or so as to drain into a wetland, watercourse, water body or buffer area without the approval of the Westchester County Department of Health.

**§ 149-6 Application procedure for permits issued by Building Inspector.**

A. Application contents.

(1) The application shall be submitted electronically and an application review fee as determined by the Village Board shall be submitted to the Building Department office. It will be in the discretion of the Building Inspector if paper copies of any portion of the application are required. The application shall contain the following information:

(a) The name and address of the owner and applicant.

(b) The street address and tax map designation of the property to which the application pertains.

(c) A statement of consent from the owner for any agent making application.

(d) A statement of proposed project and purpose thereof.

(e) Applications affecting the water retention capacity, water flow and other drainage characteristics of any wetland shall include a statement of the impact of the project on upstream and downstream areas, giving appropriate consideration to flood or drought levels of watercourses and amounts of rainfall.

(f) A discussion of the existing specific ecological functions of the wetland being affected, based on the functions described in § 149-1.C herein, and the impacts to those functions by the proposed project.

(g) Copies of all applicable county, state and/or federal permits or permit applications that are required for the proposed project.

- (h) The delineation mapping and report specified in § 149-3 of this chapter.
- (i) For all Type I and Unlisted Actions (as defined in 6 NYCRR Part 617), a completed Environmental Assessment Form as promulgated by the New York State Department of Environmental Conservation.
- (i) A statement that the property owner and applicant will indemnify and hold the Village or its representatives harmless against any damage or injury in accordance with section 149-13.A herein.
- (2) The Wetlands Consultant on behalf of the Building Inspector may request information in addition to the items listed in Subsection A(1) immediately above.
- (3) The Building Inspector upon consultation with the Wetlands Consultant shall have the authority to waive submission requirements whenever, in his opinion (with the assistance of the wetland consultant or other experts as needed), such waiver will be consistent with the purposes of this Chapter.
- B. Referrals. Upon receipt of an application involving property abutting another municipality, which property contains a wetland, watercourse or water body, upon receipt of the application, the Building Inspector upon consultation with the Wetlands Consultant shall forward a copy of the application to the Clerk of the abutting municipality.
- C. Initial review of application by Building Inspector.
  - (1) The Building Inspector shall forward the application to the Wetlands Consultant to review each application for the purpose of determining whether the application is eligible for processing under the provisions of Subsection D(1) below ("Regulated acts permitted with permit issued by Building Inspector") and, if so, the Wetlands Consultant or other experts as needed, shall process the application within 21 days of receipt of a complete application in accordance with the provisions of this chapter.
  - (2) If the Wetlands Consultant determines that the application is not eligible for processing under the provisions of Subsection D(1) below, he/she shall

notify the Building Inspector to provide written notice of such decision to the applicant within 21 days of receipt of a complete application and to refer the application to the Planning Board for processing pursuant to § 149-7.

- (3) If the Wetlands Consultant, with the assistance of such additional consultants as needed, determines that the granting of a permit for one or more of the activities in Subsection D(1) below would be appropriate in light of the standards set forth in § 149-8 herein, the Wetlands Consultant shall recommend that the Building Inspector issue the permit within 21 days of receipt of a complete application. Notwithstanding the foregoing, the Building Inspector, upon recommendation of the Wetlands Consultant, may forward any application for a permit to the Planning Board for processing in accordance with the provisions of § 149-7 below.
- (4) However, in the event that the Wetlands Consultant recommends that the granting of a permit for one or more of the activities in Subsection D(1) below would be inappropriate in light of the standards set forth in § 149-8 herein, the Building Inspector shall neither approve nor deny the application, but rather shall notify the applicant within 21 days of receipt of a complete application and shall forward the application to the Planning Board for processing in accordance with the procedures set forth in § 149-7 below. The Planning Board also shall be the approval authority for any application involving property that is the subject of a pending site plan, subdivision or special use permit application and for any application that involves the construction or establishment of a principal building or use.
- (5) In the case of a permit issued by the Building Inspector, any party aggrieved by the determination may seek review by appealing to the Planning Board, in which case the Planning Board shall become the approval authority for such permit. Such review shall be requested not later than 21 days after the filing of the approval by the Building Inspector.
- (6) The time periods described in Subsections C(1) – C(4) immediately above may be extended by mutual agreement with the applicant for a period not to exceed 30 days upon recommendation of the Wetlands Consultant.

D. Regulated acts permitted with permit issued by the Building Inspector.

(1) The following regulated acts are determined by this chapter to be limited in scope and potential impact and are the activities within wetlands or buffer areas for which a permit issued by the Building Inspector may be granted:

(a) Construction of a driveway when the length of a wetland or buffer area crossing or intrusion is less than 100 feet, excluding the construction of driveways of any length which cause hydrological isolation of a portion of a wetland; if a natural drainage system crossing is proposed, where a single culvert of less than 25 feet in length and 18 inches in diameter is required.

(b) The application of nonpolluting chemicals or dyes for the purpose of maintenance that does not change the character of the wetland (such as Health Department testing).

(c) Decks and patios.

(d) Covered porches with a footprint of 500 square feet or less located more than 50 feet from a wetland or watercourse, provided that no grading is required for their construction other than for posts or footings.

(e) Single-story movable sheds, without foundation or footings, with a footprint of 144 square feet or more, provided that:

[1] Such sheds are not used for the storage of gasoline, oil, pesticides or other chemicals or toxic substances or any tools, machinery or equipment which use any such substances; and

[2] No grading is required for installation.

(f) Dry-laid stone walls, containing no mortar or cement, where the wall is designed to permit the passage of small animals by permitting openings at fifteen-foot intervals at least six inches in height above ground level and 12 inches in length, and where the construction of said wall will not inhibit or alter the natural drainage flow or cause the blocking or damming of surface water.

- (2) Notwithstanding the foregoing, no regulated activity shall be permitted with a permit issued by the Building Inspector when such activity is proposed for an area designated as a wetland on the New York State Freshwater Wetlands Map.

**§ 149-7 Procedures for permit applications to Planning Board.**

**A. Application contents.**

- (1) The application shall be filed electronically and an application review fee as determined by the Village Board shall be submitted to the Building Department for referral to the Wetlands Consultant. If the application is determined by the Wetlands Consultant to require action by the Planning Board, the application will then be referred to the Planning Board for consideration. The applicant may be directed by the Planning Director and/or Planning Board to submit hard copies of the application (or selected portions thereof) to the Planning Department. The application shall contain the following information:
- (a) The information specified in § 149-6.A above.
- (b) An explanation of why the proposed activity cannot be located outside of the wetland or buffer area.
- (c) A list of names of the owners of record of lands located within 300 feet of a wetland, watercourse, water body and/or buffer area in which the project is to be undertaken, and the names of claimants of water rights which relate to any land within or within 100 feet of the edge of the buffer area in which the regulated activity is proposed to be located.
- (d) A stormwater plan showing stormwater flow off of the development and how it will mitigate peak discharge runoff rates, and how it will not decrease the quality of water found before construction entering into the wetland, watercourse and/or water body.
- (e) A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter 227 (Stormwater Management and Erosion and Sediment Control) of the Village Code shall be required for any wetlands permit approval that qualifies as a Land Development/Redevelopment



Activity as defined in section 227-6.

(2) The Planning Director and/or the Planning Board in consultation with the Wetlands Consultant reserve the right to request additional information, including any of the following:

(a) Complete plans and estimates for the proposed site improvements, which shall be certified by a professional engineer, architect, land surveyor or landscape architect licensed in the State of New York, drawn to a scale no less detailed than one inch equals 50 feet and showing the following:

[1] The location of all wetlands, watercourses and water bodies on the site under review and within 200 feet of the site no earlier than 12 months prior to the date of filing the application.

[2] A description of the vegetative cover of the regulated area.

[3] A description of the soil types on-site.

[4] Location of the construction area and the area proposed to be disturbed, and their relation to property lines, roads, buildings and watercourses within 250 feet.

[5] The exact locations, specifications and amount of all proposed draining, filling, grading, dredging and vegetation removal or displacement, and the procedures to be used to do the work.

[6] Location of all wells and depths thereof, and all sewage disposal systems.

[7] Existing and adjusted contours at two-foot intervals in the proposed disturbed area and to a distance of 50 feet beyond; and elevations of the site and adjacent lands within 200 feet of the proposed work site at contour intervals of no greater than 10 feet.

[8] Details of any temporary or permanent drainage system proposed both for the conduct of the work and after completion thereof, including locations at any point discharges, artificial inlets or other man-made conveyances which would discharge into the wetland or wetland buffer, and measures proposed to control erosion, flooding and water pollution both during and

after the work.

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

[10] On the plan for development, a means on-site for a line of demarcation between the development and the wetland and/or wetland buffer area.

(b) Any additional information as needed. Such additional information may include but is not limited to the study of flood, erosion or other hazards at the site; the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to evaluate the proposed use in terms of the goals and standards hereof.

(3) The Planning Board shall have the authority to waive submission requirements whenever, in its opinion (with the assistance of the wetland consultant or other experts as needed), such waiver will be consistent with the purposes of this Chapter.

#### B. Procedure.

(1) Upon receipt of an application for review by the Planning Board, the Planning Board shall refer the application to the Environmental Advisory Council for its review and report. The Environmental Advisory Council shall issue its report and recommendations to the Planning Board within 30 days of the referral date or within such other period as may be specified by the Planning Board. The date for the Environmental Advisory Council to submit its report and recommendations may be extended by mutual consent among the Planning Board, the applicant and Environmental Advisory Council. If the report and recommendations are not provided in a timely manner, the Planning Board may assume that there is no objection to the granting of the application.

(2) In the case of permits sought in conjunction with subdivision approval, the Planning Board shall hold a public hearing on the requested permit

concurrently with the public hearing on preliminary subdivision plat approval. Public notice and notice to interested parties of the wetland permit hearing shall be provided along with the notice required by the Village Code for the hearing on preliminary subdivision plat approval. The Planning Board shall issue a final written decision on the wetland permit as part of the decision on final subdivision plat approval.

(3) In the case of permits sought in conjunction with site plan approval, the Planning Board shall hold a public hearing on the requested permit concurrently with the public hearing on site plan approval. Public notice and notice to interested parties of the wetland permit hearing shall be provided along with the notice required by the Village Code for the hearing on site plan approval. The Planning Board shall issue a final written decision on the wetland permit as part of the decision on site plan approval.

(4) In the case of all other permits, the Planning Board shall hold a public hearing within 30 days of its finding the application complete. Notice of said hearing and of the substance of the application shall be in compliance with the Village Code provisions relating to notice for subdivision and site plan approvals. Notice shall be given by publication in the official newspaper of the Village at least 10 days before the date of such hearing. In addition to such published notice, the Applicant cause such notice to be mailed at least 10 days before the hearing to all owners of property which lies within 300 feet of any lot line of the property for which the permit is sought and to such other persons as the Planning Board may deem advisable. The names of said owners shall be taken as they appear on the last completed tax roll of the Town of Ossining. An affidavit of mailing shall be filed with the Planning Department no less than three days prior to the public hearing. Provided that due notice shall have been published as above provided and that there shall have been substantial compliance with the remaining provisions of this subsection, the failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the Planning Board in connection with the granting of a permit. Within 30 days of the close of the public hearing, the Planning Board shall render a written decision on the application.

(5) The Planning Board, in its discretion, may waive its power of review and approval in cases where the Planning Board determines that the proposed nature or scope of activity is such that the application should be handled administratively by the Building Inspector. In such cases, the Planning Board shall direct the Building Inspector to decide the matter in accordance with the normal administrative procedures for applications submitted pursuant to the requirements of section 149-6 of this chapter.

C. Notice provisions. The final plat of any land subdivided subsequent to the enactment hereof shall describe all wetlands, watercourses, water bodies and buffer areas on said land which are regulated by this chapter, and shall include a note on the final plat that any construction within these areas requires a permit.

D. The Planning Board, Building Inspector and Environmental Advisory Council, in review of any application for wetlands permit approval, may refer such application to such consultants including planner, engineer, environmental expert, wetlands consultant, attorney or other consultant engaged by the Village to review the application as deemed necessary. In the event the differing reviewing authorities want to use consultants for their review, the authorities should attempt to coordinate use of the same consultants and duplication of consultants' reports shall be avoided whenever possible to minimize the cost of the reports to the applicant. All provisions of Chapter 91, Article III (Building Construction, Fees) shall be applicable to wetlands permit applications.

**§ 149-8 Standards and findings for permit decisions.**

A. Consideration. In granting, denying or conditioning any permit, the approval authority shall consider all relevant facts and circumstances including but not limited to the following:

(1) The environmental impact of the proposed action and the extent of that impact.

(2) The alternatives to the proposed action, including the availability of preferable alternative locations on the subject parcel or on any other parcel under the control of the applicant.

- (3) The suitability or unsuitability of the proposed activity to the area for which it is proposed.
  - (4) The effect of the proposed activity relative to protection or enhancement of the functions of wetlands and the benefits they provide which are set forth in § 149-1.C hereof.
  - (5) The availability of further technical improvements, safeguards or other mitigation measures that could feasibly be added to the plan or action.
  - (6) The possibility of further avoiding reduction of the wetland's natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation and/or prevent erosion, assimilate wastes, facilitate drainage and provide recreation and open space.
- B. Findings. Permits will be issued by the approval authority pursuant to this chapter only if the applicant demonstrates and the approval authority finds that:
- (1) The proposed regulated activity is consistent with the policy hereof to preserve, protect and conserve wetland functions and the benefits they provide, as set forth in § 149-1.C hereof, by preventing to the maximum extent practicable the degradation and destruction of wetlands as balanced against private property rights.
  - (2) The proposed regulated activity is compatible with the public health and welfare for the residents of the Village of Ossining and neighboring communities.
  - (3) The proposed regulated activity cannot practicably be relocated on the site so as to eliminate or reduce the intrusion into the wetland, watercourse, water body and/or buffer area.
  - (4) All proposed culverts and dams meet the guidelines of the New York Department of Environmental Conservation for the migration of aquatic wildlife, if applicable.
  - (5) Pipes installed to convey a watercourse shown on the USGS maps or classified by the New York State Department of Environmental

Conservation as a type A, B or C stream pursuant to Article 15 of the Environmental Conservation Law and its implementing regulations will require culverts designed in accordance with the stream crossing guidelines document published by the New York State Department of Environmental Conservation.

**§ 149-9 Permits.**

A. Permits issued pursuant to this chapter may contain conditions designed to ensure the preservation and protection of affected wetlands, and compliance with the policy and provisions of this chapter.

B. Permits issued pursuant to this chapter shall be in written form and shall contain conditions including the following:

(1) Work conducted under a permit shall be open to inspection at any time, including weekends and holidays, by selected members of the Planning Board, the Building Inspector, Director of Planning and their designated representative(s).

(2) The permit shall expire on a specified date.

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

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

C. Conditions may include but shall not be limited to the following:

(1) Limitation on the total portion of any lot or the portion of the wetland on the lot that may be graded, filled or otherwise affected.

(2) Setbacks for structures, fill and other activities from the wetland.

(3) Modifications in project design to ensure continued water supply to the wetland and circulation of waters.

(4) Replanting of wetland vegetation and construction of new wetland areas

to replace damaged or destroyed areas.

(5) Mitigation and monitoring.

D. Performance bond.

(1) The approval authority may require that, prior to commencement of work under any permit issued pursuant to this chapter, the applicant shall post a performance guarantee in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit and to indemnify the village for restoration costs in the event of a failure to comply. The particular amount and the conditions of the performance bond shall be consistent with the purposes of this chapter. The performance bond shall remain in effect until the approval authority or its designated agent certifies in writing that the work has been completed in compliance with the terms of the permit and the performance bond is released by the approval authority, or until a substitute performance bond is provided. In the event of a breach of any condition of the bond, the approval authority may recommend that the Village institute an action in the Supreme Court, upon such bond and prosecute the same to judgment and execution.

(2) The approval authority shall set forth in writing in the approval resolution its findings and reasons for imposing a performance bond pursuant to this section.

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

F. Expiration of permit.

(1) All permits shall expire on completion of the acts specified therein and shall be valid for a period of one year from the date of issue. The approval authority may extend the time in which the acts specified in the permit must be completed if, in its opinion, such extension is warranted by the particular circumstances involved. Upon the request of the applicant, the

approval authority may grant an extension for a period not to exceed one year. There shall be up to two extensions that may be granted, for a total time period of all the extensions, taken together, of no more than two years. In the case of a permit where no work on the wetland(s) has been accomplished, extensions shall not exceed two additional periods of 90 days each. In this case, should a permittee fail to complete the acts specified in the permit prior to the expiration of the second ninety-day extension, at the discretion of the approval authority the original permit may become null and void and an application would then need to be made for a new permit. 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 of not holding a public hearing if the original intent of the permit is not altered or extended in any significant way.

- (2) In the case of a permit where the work on the wetland(s) is partially completed, the number and length of extensions shall be at the sole discretion of the approval authority but not to exceed the limit in 149-9 F(1).
- (3) Upon expiration of a permit, any ongoing condition(s) attached to its approval shall remain in full force and effect.
- (4) A request for an extension of an original permit shall be made in writing to the approval authority at least 30 days prior to the expiration date of the original permit and each extension.

#### **§ 149-10 Mitigation policy and plan requirements.**

##### **A. Mitigation policy.**

- (1) Mitigation shall be required as compensation to enhance the existing benefits provided by a wetland, watercourse, waterbody or buffer area or to create and maintain new benefits in order to increase the likelihood that a proposed activity will meet the applicable standards for permit issuance.
- (2) The Planning Board shall, and the Building Inspector may, as approval authority, upon consultation with the Wetlands Consultant require the preparation of a mitigation plan which shall specify mitigation measures



that replace and/or restore the affected area at a minimum 1:1 ratio. Such measures shall, to the greatest extent reasonably practical, restore the functions of the original wetland and/or buffer area in terms of type, ecological benefits, geographic location and setting, and size.

(3) For the purposes of mitigation, on-site mitigation shall be the preferred approach; off-site mitigation shall be permitted only in cases where an on-site alternative is not possible.

(4) Mitigation for intrusion into wetlands shall be such as to provide no overall net loss of wetlands in terms of ecological characteristics and function, similar geographic location and setting, and size. A greater than 1:1 replacement may be necessary in areas where there is a reasonable possibility of the failure of the viability of the replacement/restored wetlands. Mitigation for intrusion into buffer areas shall be such as to preserve the ecological characteristics and functions of the associated wetland, and may include new plantings.

(5) Where off-site mitigation is proposed, it shall be within the same drainage basin affected by the development. In this regard, contribution to a Village Board adopted drainage basin and/or wetland improvement plan may be considered by the approval authority.

B. Mitigation plan requirements. Mitigation plans shall be designed to minimize impacts to wetlands, watercourses, water bodies and buffer areas. Said plans may also provide for the preservation of remaining wetlands via the establishment of restrictive covenants or conservation easements.

(1) Mitigation plans shall include baseline data as needed to adequately review the effectiveness of the plan.

(2) When required by the approval authority, the applicant shall monitor or shall cause to be monitored acts specified by the permit in order to determine whether the elements of the mitigation plan and permit conditions have been met and whether the wetland acreage created replaces the wetland acreage lost. The applicant shall submit written

reports to the approval authority at a frequency to be determined by the approval authority addressing the progress of the work under the permit and the mitigation plan. The approval authority may contract with an expert in the area of wetlands, at the expense of the applicant, to assess the applicant's work and monitoring reports conducted under the permit and mitigation plan. Where the approval authority deems monitoring to be necessary, the applicant shall be required to post a bond, or other form of security acceptable to the Village.

(3) The requirements for monitoring shall be specified in the mitigation plan and shall include but not be limited to the following:

(a) The time period over which compliance monitoring shall occur.

(b) Field measurements to verify the size and location of the impacted wetland area and the restored/replacement wetland area.

(c) The date of completion of the restoration/replacement.

(4) All wetland replacement shall be implemented and approved by the approval authority or its designated representative before the proposed wetland intrusion unless an alternate construction sequence is accepted by the approval authority.

#### **§ 149-11 Penalties for offenses and restoration.**

##### **A. Penalties.**

(a) General. Any person who undertakes any regulated activity within a wetlands or wetlands buffer without a permit or who violates, disobeys, or disregards any provision of this chapter shall be guilty of a violation (i.e., not a misdemeanor or a felony) and subject to a fine not to exceed \$3,000 for every such violation. Each consecutive day of the violation will be considered a separate offense.

(b) Civil Penalties. In addition to the above, any person who undertakes any regulated activity within a wetlands or wetlands buffer without a permit or who violates, disobeys, or disregards any provisions of this chapter shall be shall be liable to a civil penalty of \$500 for a first violation. For a second

and each subsequent violation, the violator shall be liable to a civil penalty of \$1,000. Each violation shall be a separate and distinct violation and, in the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation. The term "person," as used herein, shall mean a natural person or a corporation.

(c) In addition to the punishments described above, any violator may be punished by being ordered by the court to appear before the Planning Board in order to restore the affected freshwater wetlands to its condition prior to the offense, insofar as that is possible, pursuant to Subsection (B) below.

B. Injunctive Relief. The Village shall have the right to seek equitable relief to prevent, restrain, enjoin, correct, or abate any violation or threatened violation of any provision of this chapter; or to compel the restoration of affected wetlands or wetlands buffer to its condition prior to the violation of the provision of this chapter; or to enforce any provision of this chapter.

C. The Planning Board shall have the authority, following a hearing, to direct the violator to cease violation of this chapter and to restore the affected wetland, watercourse, water body or buffer area to its condition prior to violation, insofar as that is possible, within a reasonable time and under the supervision of the Planning Board or its designee. Further, the Planning Board shall have the authority to require an adequate performance bond in a form and amount deemed necessary by the Planning Board to ensure the restitution of the affected wetland, watercourse, water body or buffer area.

D. Any order issued by the Planning Board shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules within 30 days of the filing of the decision in the Office of the Village Clerk of the Village of Ossining.

E. Stop-work order; revocation of permit. In the event that any person holding a permit issued pursuant to this chapter violates the terms of the permit, fails to comply with any of the conditions or limitations set forth in

the permit, exceeds the scope of the activity as set forth in the application or operates so as to be materially detrimental to the public welfare or injurious to a wetland, watercourse, water body or buffer area, the Building Inspector may suspend or revoke the permit as follows:

(a) Suspension of a permit shall be by a written stop-work order issued by the Building Inspector and delivered to the permittee or his agent or the person performing the work. The stop-work order shall be effective immediately, shall state the specific violations cited and shall state the conditions under which work may be resumed. A stop-work order shall have the effect of suspending all authorizations and permits granted by the Village. The stop-work order shall remain in effect until the approval authority is satisfied that the permittee has complied with all terms of the subject permit.

(b) Public hearing; notice; determination.

[1] No wetlands permit shall be permanently suspended or revoked until a public hearing is held by the Planning Board. Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state:

[a] The grounds for complaint or reasons for suspension or revocation.

[b] The time and place of the hearing to be held.

[2] Such notice shall be served on the permittee at least one week prior to the date set for the public hearing unless the stop-work order is issued for a violation occurring less than one week before the next regularly scheduled public meeting of the Planning Board. At such hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence on his behalf. At the conclusion of the hearing, the Planning Board shall determine whether the permit shall be reinstated, suspended or revoked.

F. The Village Director of Planning, Building Inspector, Assistant Building Inspector, Village Engineer and their designees are hereby authorized to issue Orders to Remedy, Appearance Tickets and such other summonses

consistent with the Village Code and state law.

**§ 149-12 Existing or prior operations or projects.**

The provisions of this chapter shall not apply to any land use, improvement or development for which a valid, existing final approval shall have been obtained prior to the effective date of this local law from the authority or authorities of the Village of Ossining having jurisdiction over such land use. As used in this section, the term "final approval" shall mean:

- A. In the case of the subdivision of land, approval of a final plat as the term is defined in the Village Code and the Village Law of the State of New York.
- B. In the case of a site plan, special permit or conditional use permit not involving the subdivision of land, approval by the appropriate board.
- C. In those cases not covered by Subsection A or B immediately above, the issuance of a building permit for the commencement of the use, improvement or development for which such permit was issued or, for those uses, improvements and developments for which the Village of Ossining does not require such permits, the actual commencement of the use, improvement or development of the land.

**§ 149-13 General provisions.**

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

- A. Inspection and indemnification. Any site for which an application has been submitted shall be subject to inspection upon notice to the property owner and applicant at any reasonable time, including weekends and holidays, by the approval authority or its designated representatives, (including, for purposes of permits issued by the Planning Board pursuant to section 149-7, members of the Environmental Advisory Council). The property owner and applicant, by making application for a permit, shall be deemed to have given consent to such inspection. The property owner and applicant shall indemnify and hold the Village of Ossining harmless against any damage or injury that may be caused by or arise out of any entry onto the subject property by representatives of the Village, Wetlands Consultant

and/or other retained consultants in connection with the processing of the application, during proposed work, or within one year after the completion of the work.

B. Conflicts. Wherever this chapter is inconsistent with any other law of the Village of Ossining, whichever law imposes the more stringent restriction shall prevail.

C. Severability. The provisions and sections of this chapter shall be deemed to be severable, and the invalidity of any portion of this chapter by a court of competent jurisdiction shall not affect the validity of the remainder of this chapter.

D. Effective date. This chapter shall become effective on January 1, 2021.