

Chapter 139

WETLANDS AND WATERCOURSE PROTECTION

GENERAL REFERENCES

Environmental Commission – See Ch. 12.	Conservation	Subdivision of land – See Ch. 121.
		Tree conservation – See Ch. 130.
Agriculture and open space preservation and acquisition – See Ch. 44.		Water conservation – See Chs. 138 and 138A.
Flood damage prevention – See Ch. 82.		Zoning – See Ch. 140.
Sewers – See Ch. 113.		

§ 139-1. Title; purpose.

- A. This chapter shall be known as the "Wetland and Watercourse Protection Law of the Town of New Paltz."
- B. It is the purpose of this chapter to protect the health, safety and well-being of the citizens of the Town of New Paltz and of property therein by preventing the despoliation and destruction of wetlands, waterbodies and watercourses, and associated buffer areas, collectively referred to in § 139-5 herein as "regulated areas," recognizing their varying ecological, water quality, and recreational values. The Town of New Paltz hereby regulates activities that may cause a substantial adverse effect on the function served by regulated areas or the benefits derived therefrom.

§ 139-2. Findings.

The Town Board of the Town of New Paltz has reviewed, finds and affirms the following:

- A. The Town has the authority to conserve and protect the regulated areas described in § 139-5 pursuant to the police power vested in and granted to the Town of New Paltz under the Municipal Home Rule Law, which recognizes the right of local governments to protect the general health, safety and well-being of persons and property therein.
- B. The Town has the authority to conserve and protect certain of the regulated areas described in § 139-5 by local statute under the New York State Freshwater Wetlands Act, found in Article 24 of the Environmental Conservation Law, provided that the provisions of such local statute are at least as protective of the regulated areas as the Freshwater Wetlands Act and regulations promulgated thereunder.
- C. Federal, state, and local agencies and private researchers highlight numerous values and beneficial services of wetlands, which are

important to the health and welfare of the people of the Town of New Paltz. These include, but are not limited to, the following:

- (1) The protection of water 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) The protection of aquifers and waterbodies that are and may be used 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 floodwater and stormwater by slowing water runoff and absorbing and temporarily storing water, thus helping to protect downstream areas from flooding. Public health and private property in one part of a watershed may be harmed if wetlands are destroyed in a different part of that watershed.
- (5) The provision of important breeding, nesting, feeding, migratory, cover, and wintering habitat for diverse fish and other wildlife species, including many listed as "special concern," "threatened," "endangered" and "rare" by New York State or other government entities, including the United States Fish and Wildlife Service. The perpetuation of scores of species depends upon them. Many of the species are migratory and must have nesting, migration, and wintering habitat. The destruction of one kind of wetland habitat in one place may reduce populations of wildlife elsewhere. Vernal pools in particular are unique and critical habitats for native species of amphibians and reptiles.
- (6) Supplying food and organic detritus that support the fish and wildlife of adjacent waters.
- (7) The support of distinctive and less common noninvasive vegetative associations specifically adapted for survival in low-oxygen environments.
- (8) The provision of areas of unusually high productivity that support significant biological diversity and help to maintain ecological integrity.
- (9) The provision of recreational uses throughout the Town directly and by supporting recreation provided by other areas. Such recreation includes hunting, fishing, boating, hiking, bird-watching, photography, camping and other uses, which are a social and economic value to the Town.

- (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 and sense of connection with the natural world.
- D. New Paltz is benefited by water resources that have contributed and continue to contribute greatly to agriculture, commerce, outdoor recreation, property values, scenery and quality of life. Adequate and suitable water for water supply; domestic, municipal, industrial, agricultural and commercial uses; the growth of forests; the support of fish and wildlife; recreational enjoyment; and other uses is essential to the health, safety and welfare of the economic growth and prosperity of the Town.
- E. In recent years, population growth and economic and recreational activities have made and will continue to make new and greater demands on waterbodies and watercourses for boating, fishing, bathing and water sports and on the lands adjacent thereto for access areas and recreation. Urban development has in many cases resulted in the filling in, diversion and destruction of watercourses, necessarily destroying aquatic habitat and lessening supplies of water for multiple use purposes. The unreasonable, uncontrolled and unnecessary interference with or defilement and disturbance of watercourses can create hazards to the health, safety and welfare of the people of the Town, causing great economic loss by erosion of soil, increased costs of water purification and treatment, flooding, the destruction and failure of natural propagation of fish and aquatic resources and the loss of water for domestic, industrial, navigational, municipal, agricultural, recreational and other beneficial uses and purposes. The Town of New Paltz has the authority and responsibility to preserve, protect and conserve such resources from destruction and damage and to promote the natural propagation of associated biota.
- F. The integrity of wetlands, waterbodies and watercourses, and the maintenance of their full function and benefit, is inextricably linked to the presence of intact surrounding natural communities on adjacent buffer areas. As boundaries between ecosystems, such riparian zones are exceptionally rich in biodiversity and can protect or ameliorate water quality impacts from adjacent land uses. Among the essential functions and values provided by riparian buffers are:
- (1) Providing important, often critical, travel corridors and wetland-to-upland transitional habitats vital to many wetland/watercourse-dependent species, including many amphibians, reptiles, birds and mammals. While undisturbed adjacent buffer areas comprise a relatively small portion of the landscape, they, in combination with wetlands and watercourses, are irreplaceable habitat links in the life cycles of the greatest proportion of area wildlife, including game and nongame species, a number of which are federal-, state-

and county-listed as special concern, rare, threatened or endangered.

- (2) Serving as visual and noise barriers, protecting wetland/watercourse wildlife from human disturbance.
 - (3) Ameliorating potentially harsh environmental conditions by absorbing wind and solar energy, facilitating the warming of surface waters during early spring to produce water temperatures vital to the initiation of the breeding cycles of many water-dependent invertebrates, amphibians, reptiles and fish; and providing shade, particularly during the growing season when the ambient heat load progresses, and allowing wetlands, watercourses and waterbodies to maintain cool, well-oxygenated water supplies during dry or warm periods.
 - (4) Controlling flooding by slowing overland runoff and absorbing and storing substantial amounts of sheet flow, thereby assisting wetlands and watercourses in controlling flooding and gradually releasing flood flows to lower watersheds.
 - (5) Trapping sediments in sheet flow, removing and assimilating excess nutrients from runoff and floodwaters, and intercepting soil-erosive waters, thereby protecting wetlands, waterbodies and watercourses against eutrophication (excess nutrient enrichment) and sedimentation, which can adversely affect proper wetland and watercourse functions and values.
 - (6) Providing the first line of defense in the protection of wetlands, waterbodies and watercourses against the adverse impacts of stormwater-borne pollutants, including fertilizers, herbicides, pesticides, heavy metals, viral and bacterial agents associated with septic leachate, and various types of petroleum products. Buffer areas work synergistically with aquatic resources to protect groundwater and surface water quality. Buffers provide a practical and cost-effective means of protecting wetlands and watercourses and reducing or preventing pollution.
 - (7) Providing often unique wetland-to-upland transitional communities, with their own distinctive flora and fauna, unlike the habitat of wetlands, waterbodies and watercourses and drier uplands between which they lie. Consequently, buffer areas are critical ecological communities in their own right and serve as unique areas of substantial value for passive recreation, outdoor education and scientific research.
- G. Unregulated land development activities and water withdrawals (wells and surfacewater intakes), and sewage collection systems may alter the hydrology of ground- and surface waters, which can lead to a substantial adverse effect on the function served by regulated areas or the benefits derived therefrom, thus posing a threat to the general

health, safety and well-being of the persons and property of the Town of New Paltz and the surrounding region.

- H. Destruction of wetlands has taken place in the past in numerous land use projects, and the present state and federal permitting system does not adequately protect local resources. First, state and federal permitting requirements are subject to change from time to time. The likelihood that all state and federal regulations are followed is undermined because local officials may not engage these regulations on a routine basis and therefore may be ineffective in securing the integrity of the regulated areas. Second, both state and federal permitting systems lack adequate staffing for enforcement and compliance, which particularly allows for the destruction of smaller wetlands because there is no effective local presence available to monitor these resources.
- I. Considerable acreage of freshwater wetlands in the state of New York has been lost, despoiled or impaired by unregulated draining, dredging, filling, excavating, building, pollution or other acts inconsistent with the natural uses of such areas. Other freshwater wetlands are in jeopardy of being lost, despoiled or impaired by such unrelated acts. Any loss of freshwater wetlands deprives the public of some or all of the many and multiple benefits to be derived from wetlands.
- J. Some wetlands in New York State and adjacent buffers have no regulatory oversight from the state or federal governments. State regulatory jurisdiction typically extends only to wetlands of greater than 12.4 acres, unless officially recognized as of "unusual local importance," and recent court and administrative decisions have limited federal regulatory jurisdiction over certain wetlands. Additionally, federal regulations do not regulate adjacent buffers of any size around federal wetlands. The State Legislature has not enacted legislation to close these jurisdictional loopholes.
- K. "Mitigation" projects provide uncertain benefits and are unreliable to replace the value inherent in a natural wetland that may be degraded.
- L. Nonpoint source pollution is the primary cause of water quality problems in more than 90% of New York State's impaired waterbodies. Nonpoint source pollution results from the activities of the population as a whole, including small and large businesses, farmers, developers, large and small landowners and individuals. Local legislation to avoid the destructive impacts of such activities, by protecting watercourse and wetland buffers, is warranted to reduce the damage from water-polluting and degrading activities.
- M. The objectives of the Town of New Paltz Comprehensive Master Plan ("Master Plan") include protecting the community's many resources for the future by enhancing the natural beauty and rural quality of the community and protecting environmentally sensitive areas and natural resources, waterways, floodplains and wetlands. The Master Plan also

encourages the Town to consider techniques for "protecting the unique physical attributes of the community." State agencies such as New York State Department of Environmental Conservation (NYSDEC) and the Department of State encourage towns to preserve wetlands and open spaces, including by local regulatory legislation. In the case of wetlands, this responsibility lends itself to local legislation to preserve, protect, and conserve wetlands currently not included under pertinent federal and state regulatory protection.

§ 139-3. Intent.

- A. It is the intent of this chapter to conserve and protect the regulated areas, described herein, within the municipality but outside the jurisdiction of the incorporated Village under the police power vested in and granted to the Town of New Paltz pursuant to Municipal Home Rule Law § 10, to protect the general health, safety and well-being of persons and property therein.
- B. It is the intent of this chapter to conserve and protect the regulated areas described herein and, consistent with this objective, to avoid the loss or impairment of the natural functions and values of regulated areas.
- C. It is the intent of this chapter to protect areas that are not currently regulated under state and federal programs and to provide locally increased protection to areas currently regulated by state and federal programs. It is also the intent of this chapter to discourage impacts by activities that are not dependent on aquatic resources, as exemplified in federal Environmental Protection Agency regulations prohibiting discharges of dredged or fill material in wetlands when less damaging alternatives are available, and presuming such alternatives to be available if a project is not a water-dependent project.
- D. It is the intent of this chapter to exercise concurrent jurisdiction rather than to supersede that of the New York State Department of Environmental Conservation, under Environmental Conservation Law Article 24, and the United States Army Corps of Engineers, under Section 404 of the federal Clean Water Act (33 U.S.C. § 1344), for wetland areas within the Town. This chapter does not intend to exercise jurisdiction over activities subject to regulation by the New York State Department of Environmental Conservation under Title 5 of Environmental Conservation Law Article 15.
- E. It is the intent of this chapter to establish policy and controls reasonably necessary to avoid a substantial adverse effect on the functions served by regulated areas or the benefits derived therefrom.
- F. It is consistent with the intent and purpose of this chapter to further coexistence with wildlife, including beavers, to the extent that they enhance the regulated areas described herein.

- G. It is the intent of this chapter to further the goals and objectives stated herein by strictly regulating activities with potential to substantially degrade the Town's wetlands, watercourses and waterbodies and to separately strengthen and concurrently enhance a goal of the State Environmental Quality Review Act (SEQRA) in reducing the likelihood of significant adverse environmental impacts on important resources. It is the intent of this chapter to avoid such impacts wherever feasible and appropriate, particularly where a reasonable alternative to the proposed regulated activity exists, and to favor the avoidance and reduction of impacts over mitigative or compensatory projects.
- H. It is the intent of this chapter to administer the provisions of this chapter to ensure administrative efficiency with the Town's separate land use regulatory processes.

§ 139-4. Word usage; definitions.

- A. Words and phrases used in this chapter shall be interpreted as defined below and, if not listed below, then as defined in Article 16 of the New York State Town Law, or as defined in New York State Department of Environmental Conservation regulations promulgated in 6 NYCRR §§ 663.2 and 664.2, or as found elsewhere in the Code of the Town of New Paltz. Where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out the regulatory purpose and intent as set forth herein.
- B. As used in this chapter, the following terms shall have the meanings indicated:

ADJACENT AREAS — See "associated buffer area."

AGRICULTURE — Activities comprising "farm operations," as defined in § 301, Subdivision 11, of the State of New York Agriculture and Markets Law (AML), as the same may be amended from time to time, excepting such activities that pose a threat to public health or safety within the meaning of § 305-a, Subdivision 1a, of the AML.

APPLICANT — A person, as defined herein, who files an application for a permit under this chapter, including the owner of the property on which the proposed regulated activity would be located, and any contract vendee, lessee of the land, or person who would actually control and direct the proposed regulated activity, and/or the authorized agent of such person.

APPLICATION FEE — A sum paid by an applicant to accompany either a short-form or long-form application and collected by the Town in accordance with a fee schedule, as shall be established from time to time by action of the Town Board and made available by the office of the Town Clerk, the Building Department, and the Planning Board.

ASSOCIATED BUFFER AREA — A regulated area surrounding or adjacent to wetlands, watercourses, or water bodies that provides benefits important in maintaining their functional integrity and

protection from human activity or other encroachment associated with regulated activities. The extent of associated buffer areas is described in § 139-5, Regulated areas.

BANK — That land area immediately adjacent to, and which slopes toward, the bed of a watercourse. For purposes of this chapter, a bank will not be considered to extend more than 50 feet horizontally from the mean high-water line, with the following exception: Where a generally uniform slope of 45° (100%) or greater adjoins the bed of the watercourse, the bank is extended to the crest of the slope or the first definable break in slope, either a natural or constructed (i.e., road or railroad grade) feature, lying generally parallel to the watercourse.

BEAVER DAMS — Usually built along perennial streams and result in the formation of a pond deep enough for the construction of beaver lodges. A typical dam consists of cut tree sticks jammed into the streambed and anchored with rocks; this foundation is then piled with branches, leaves, roots and other debris.

BEAVER IMPOUNDMENTS — The wetland area created by beaver dams. Beaver impoundments enlarge existing wetlands or create ponded water conditions in watercourse areas.

BEAVER LODGES — A dome of woody debris that is partly above the waterline, while the foundation of the structure is deep into the watercourse bed with hollow tunnels to allow the beavers safe entry and exit. A lodge provides shelter for beavers, storage of nutrients, and refuge for waterfowl, fish and other furbearers.

BERM — The land area immediately adjacent to, and which has been constructed to slope toward, the bed of a 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 A WETLAND — The outer limit of a regulated area characterized by wetland soils, wetland hydrology, and wetland vegetation as defined under "wetland/freshwater wetland."

BUFFER AREA — See "associated buffer area."

BUILDING — As defined in § 140-4 of Chapter 140, Zoning, of the Town of New Paltz Code.

CEO — The Code Enforcement Officer of the Town of New Paltz.

CERTIFICATE OF COMPLIANCE — A certificate issued by the Wetlands Inspector to certify that the regulated activity has been satisfactorily completed in accordance with permit approval in consultation with the Building Inspector, prior to the issuance of a certificate of occupancy and/or other relevant permit for the proposed use of the property.

CHANNELIZATION — The process of straightening, widening, and excavating gravel, rock and soil from a bed within a watercourse.

CLEARING — The Destruction and removal of areas of vegetation by manual, mechanical, biological or chemical methods.

CONSERVATION CERTIFICATE — A certificate issued by the Wetlands Inspector to indicate that work undertaken pursuant to a conservation plan approved by the Planning Board, in lieu of permit denial, has been completed in a satisfactory manner or that a bond or letter of credit has been received by the Town to ensure performance of any work that is incomplete or unsatisfactory prior to the issuance of a certificate of occupancy and/or other relevant permit for the proposed use of the property.

CONSERVATION FEE — The payment by an applicant to the Town of New Paltz of a fee to protect or enhance regulated areas from impacts due to a regulated activity and/or to mitigate such impacts. Among other things, a conservation fee may ensure that an off-site regulated area will not have any regulated activity within the Town in the future, or it may fund natural resource protection and/or restoration projects within Town boundaries. A conservation fee will be held by the Town of New Paltz in a dedicated account and will correspond to the amount required to create the off-site mitigation, including land costs, costs of maintenance and monitoring and costs to administer the conservation plan. Such funds shall only be dispersed by resolution of the Town Board.

CONSERVATION PLAN — A plan prepared and implemented by an applicant in accordance with this chapter in order to mitigate a substantial adverse effect on regulated areas.

CONSERVATION RESTRICTION — An imposition on lands by deed restriction to preserve the environmental, ecological, biological, hydrological, or other functional values of regulated areas. Such a restriction shall run with the land and bind subsequent owners and shall be documented on a survey map or plan, which shall be filed in the office of the County Clerk in such form as is adequate to provide notice of the restriction. A conservation restriction does not require a dedication of lands for public use, and the owners of the property, their successors and assigns otherwise retain their rights to full use and quiet enjoyment of their property.

CRITICAL TERRESTRIAL HABITAT — An upland area adjacent to a quality vernal pool that provides essential habitat for amphibians during the nonbreeding season for foraging, dispersing, and hibernating and migration to the pool during breeding season.

DAMS AND WATER CONTROL MEASURES — Barriers that intentionally or unintentionally obstruct the natural flow of water, either to raise it, lower it, or artificially maintain its level.

DATE OF RECEIPT OF APPLICATION BY PLANNING BOARD — An 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 an application and supporting plans pursuant to the provisions of this chapter.

DEPOSIT or DEPOSITING — The act of filling, grading, discharging, emitting, dumping or the placement of any material.

DISCHARGE — The emission of any water, substance, or material into a regulated area as defined herein.

DOMINANT SPECIES — A species that, alone or in combination with an assemblage of other species, exhibits the greatest areal extent (ground or canopy cover) or greatest density (number of plants per unit area) within one or more layers (tree, shrub, or herb) of a naturally occurring plant community.

DRAIN — To deplete or empty of water by drawing off by increments.

DREDGE — To excavate, move, or remove sediment, soil, mud, sand, shells, gravel, or other aggregate, either by hand or machine.

ENVIRONMENTAL CONSERVATION BOARD (ENCB) — The Environmental Conservation Board of the Town of New Paltz, New York.

ENVIRONMENTAL CONSERVATION LAW (ECL) — The Environmental Conservation Law of the State of New York.

EPA — The United States Environmental Protection Agency.

EXCAVATE — To dig out, move, or remove any material, either by hand or machine.

FEMA — The United States Federal Emergency Management Administration.

FILL or FILLING — Placing material in a regulated area so as to alter its elevation or topography, including bottom elevation or topography if submerged, or its aquatic function.

FLOODPLAIN — A land area adjoining a river, stream, lake, intermittent or perennial watercourse, waterbody or wetland, which area is inundated by water from any source, usually associated with the one-hundred-year storm event return interval. Flood Insurance Rate Maps, Drainage Reports, and Flood Insurance Studies produced by the Federal Emergency Management Administration (FEMA) are definitive for the purposes of this chapter.

GIS — Maps and data presented by Geographic Information System technology.

GRADIENT — The general direction of surface water flow paths which can be inferred from local topography.

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 or excavation.

GROWING SEASON — The portion of the year when soil temperatures are above biologic zero (5° C.); the growing season for Ulster County is approximately May 15 through September 15.

HYDROPHYTIC VEGETATION — The readily observable plant species growing as dominant species in inundated, saturated, or periodically inundated or saturated soils, as listed on the United States Fish and Wildlife Service National List of Vascular Plant Species that Occur in Wetlands: 1996 National Summary.

IN-KIND REPLACEMENT — A constructed mitigation or replacement wetland, watercourse or waterbody, usually by flooding or excavating lands not previously occupied by a wetland, watercourse or waterbody, that re-creates as nearly as possible the type and function of the original resource and is located on site or within the same subwatershed with the Town of New Paltz, provided that adequate and sufficient wetland/watercourse hydrology can be verified, under the terms of an approved conservation plan, as defined herein.

INTERMITTENT WATERCOURSE — A regulated area that comprises a stream, creek, or brook, through which surface water travels in a well-defined channel on a seasonal basis, but not continuously throughout the year, as well as the associated bank, as defined herein. For the purposes of this chapter, intermittent watercourses are those where water stands or flows for at least three consecutive months in a twelve-month period, except that waterways specifically designed and constructed to serve a stormwater conveyance or treatment function, such as grassy swales, drainage ditches, and other structures engineered to concentrate and convey stormwater from development and only retain water for a short duration after a rainstorm or spring snow-melt, are not considered intermittent watercourses.

LAND STEWARDSHIP PLAN — A written description of land management and stewardship practices, as defined more fully in § 140-117.3 of Chapter 140, Zoning, of the Town of New Paltz Code.

LOGGING — The commercial harvesting of live timber.

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

MEAN HIGH-WATER LINE — As defined in Section 608.1(r) of 6 NYCRR Part 608, Use and Protection of Waters.

MINIMIZATION — The removal or reduction, to the maximum extent feasible, of substantial adverse effects of a regulated activity on a regulated area.

MITIGATION PLAN — A strategy to redress unavoidable substantial adverse effects of a regulated activity on a regulated area.

MUNSELL SOIL COLOR CHARTS — A soils color designation system based on a collection of color-reproduced chips that visually

demonstrate the relative degree of the three fundamental variables of color: hue, value, and chroma, as produced by the Kollmorgen Corporation, 1975, or as amended or updated from time to time. Each color chart shows the range and variation in value and chroma for a specific hue.

1987 FEDERAL WETLANDS DELINEATION MANUAL/U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL, JANUARY 1987 FINAL REPORT — Wetlands Research Program's Technical Report Y-87-1, on file in the office of the Town Clerk, used for the delineation of federally regulated wetland areas.

NOTICE OF DETERMINATION — A written notification from the Wetlands Inspector to an applicant issued in response to a short-form application to conduct a regulated activity.

NOTICE OF REVIEW — A formal written request to the Planning Board to review a decision or order of the Wetlands Inspector or any officer of the Building Department made pursuant to or within the scope of this chapter, which shall specify the grounds for seeking review.

NYCRR — The New York Codes, Rules and Regulations.

NYSDEC — The New York State Department of Environmental Conservation.

PERENNIAL WATERCOURSE — A regulated area that comprises a river, stream, creek, or brook, through which surface water travels on a continual basis, as well as the associated bank as defined herein.

PERMIT — That form of written approval required by this chapter for the conduct of a regulated activity within a regulated area.

PERSON — Any individual, firm, partnership, association, trust, corporation, company, organization, or legal entity of any kind, including municipal corporations, governmental agencies, or subdivisions thereof.

PLANNING BOARD — The Planning Board of the Town of New Paltz, New York; the municipal board empowered to approve, approve with conditions, or deny permits pursuant to this chapter.

POLLUTION — The contamination or the departure from the range of normal variation in physical or chemical factors of any wetland or watercourse, by reason of erosion or by any waste or other materials discharged or deposited therein.

PROJECT — Any proposed or ongoing action that may result in a direct or indirect physical or chemical impact on a regulated area, including but not limited to any regulated activity as defined by this chapter.

QUALITY VERNAL POOL —

- (1) A regulated area that comprises a seasonally flooded, isolated pool of standing water that is devoid of naturally occurring fish and that persists, in a year of average precipitation, for at least two months.

(Annual precipitation in Ulster County normally ranges from 40 inches to 48 inches).

- (2) Quality vernal pools are those that provide essential breeding habitat for pool-breeding amphibians, including, but not limited to, the following species:
 - (a) Spotted salamander;
 - (b) Marbled salamander;
 - (c) Jefferson salamander;
 - (d) Blue-spotted salamander; and
 - (e) Wood frog.
- (3) Quality vernal pools must have an area greater than 100 square feet to be regulated areas under this chapter.
- (4) Quality vernal pools must satisfy any of the following criteria set forth below:
 - (a) There is evidence of a naturally occurring confined basin depression, with no permanently flowing outlet, and evidence of nonincidental breeding by one or more species of obligate vernal pool species (wood frog, spotted salamander, Jefferson salamander, marbled salamander, fairy shrimp, clam shrimp, fingernail clams). Acceptable evidence of nonincidental breeding includes:
 - [1] Frog breeding choruses and/or mated pairs;
 - [2] Salamander mating and/or spermatophores;
 - [3] Egg masses;
 - [4] Larvae (tadpole or salamander larvae);
 - [5] Transforming juveniles:
 - [a] Frogs: tail remnants evident;
 - [b] Salamanders: gill remnants evident;
 - [6] Young of the year (metamorphs);
 - [7] The presence of fairy shrimp, clam shrimp or their eggs;
 - [8] Fingernail clams; or
 - (b) There is evidence of:
 - [1] A naturally-occurring confined basin depression with no permanently flowing outlet; and

- [2] Standing water that dries up during the year or which, for other reasons, does not contain reproducing fish; and
 - [3] Nonincidental presence of two or more species of facultative vernal pool species (blue-spotted salamander, spring peeper, gray tree frog, Fowler's toad, pickerel frog, leopard frog, four-toed salamander, red-spotted newt, spotted turtle, wood turtle, painted turtle, snapping turtle); or
- (c) There is evidence of a naturally-occurring confined basin depression with no permanently flowing outlet and evidence of standing water that dries up during the year or which, for other reasons, does not contain reproducing fish, for which:
- [1] Sufficient accessible critical terrestrial habitat exists to support vernal pool-breeding amphibians; and
 - [2] The conditions of either Subsection (4)(a) or (b) of this definition is likely to be satisfied.

REGRADING — See "grading."

REGULATED ACTIVITY — Any activity, as enumerated in § 139-8 of this chapter, that may potentially have a substantial adverse effect, as defined herein, on a regulated area.

REGULATED AREAS — Those areas enumerated in § 139-5, pursuant to the purpose and intent of this chapter.

REIMBURSABLE COSTS — Those costs incurred by the Planning Board or other Town agency for professional consultation fees (including services by the Wetlands Inspector, as defined herein) to provide technical, biological, and engineering services, legal fees, or other expenses in connection with the review of a proposed permit application and/or conservation plan that are charged to the applicant. Separate and apart from application fees, reimbursable costs will be no higher for an applicant than they are for the Town, subject to audit and open to inspection by the applicant. Such sums must be paid in full prior to the issuance of a permit.

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

ROUTINE MAINTENANCE AND LANDSCAPING — The mowing, weeding, cultivating, planting, and trimming of vegetation or the removal of dead or diseased trees in natural or improved landscaped areas.

SUBSTANTIAL ADVERSE EFFECT — An activity that will substantially alter or impair the natural functions or benefits of a regulated area.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) — Article 8 of the Environmental Conservation Law, providing for environmental

quality review of actions that may have a significant effect on the environment, and regulations established pursuant thereto.

STEEP LAND — Any associated buffer area having a topographical gradient (ratio of vertical distance to horizontal distance) of 15% or greater, with a minimum horizontal dimension of 10 feet.

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, including but not limited to buildings, septic systems, water wells, recreation courts, sheds, storage bins, reviewing and display stands, platforms, towers, walls, fences, swimming pools, gasoline pumps, billboards, satellite dishes, signs and mobile dwellings, bridges, roads, impervious surfaces and paved parking areas.

SUBWATERSHED AREAS — Areas located within the Town of New Paltz that are tributary drainages to the Wallkill River as identified on a Town topographic map.

USACE — The United States Army Corps of Engineers.

USDA — The United States Department of Agriculture.

UTILITY SERVICE — Electric, telephone or other utility service from an existing utility distribution facility, except for activities regulated by Article VII or VIII of the Public Service Law.

VERNAL POOL — See "quality vernal pool."

WATERBODY — A regulated area that comprises any natural or artificial pond, lake, or other area that usually or intermittently contains water and that has a discernible shoreline. Regulated waterbodies do not include detention and retention, infiltration and detention basins. For the purposes of this chapter, the associated buffer shall be designated as if it were a wetland based on acreage, with boundary determination of the waterbody based on the location of its banks. A waterbody must have an area greater than 1/10 acre to be a regulated area under this chapter.

WATERCOURSE — A regulated area that comprises any natural, permanent, seasonal, or intermittent channel or water segment, rivers, streams, brooks, naturally occurring impoundments within such channels or other waterways that are contained within, flow through, or border on the Town of New Paltz. A watercourse contains a discernible channel, bed, banks and/or berm and usually flows in a particular direction. Artificial water segments, such as swales and ditching, shall not be considered a regulated area.

WATER TABLE — The zone of saturation closest to the soil surface during the wettest season.

WETLAND DELINEATOR — A person having detailed scientific knowledge about the biogeophysical structure, function, or interrelationships of terrestrial and aquatic/semiaquatic plant and

animal communities. This person must demonstrate training and experience in the identification of regulated areas and the use of the 1987 Federal Wetlands Delineation Manual and the New York State Freshwater Delineation Manual (DEC 1995), including preparation of state and federal data forms and wetland delineation reports. A qualified wetland delineator must have a degree from an accredited university in a related field and a minimum of two years of continuous delineation experience as set forth herein.

WETLAND or FRESHWATER WETLAND — A regulated area that comprises hydric soils and/or is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, vernal pools, wet meadows, fens and similar areas. For the purposes of this regulation, wetlands are defined in accordance with the methodology set forth in NYCRR Part 664 and in the 1987 Federal Wetlands Delineation Manual. Regulated wetlands do not include detention, infiltration and retention basins. A wetland must have an area greater than 1/10 acre to be a regulated area under this chapter.

WETLAND HYDROLOGY — The sum total of wetness characteristics in areas that are inundated or have saturated soils to within 18 inches of the surface for a sufficient duration to support hydrophytic vegetation.

WETLANDS INSPECTOR — The agent appointed by the Town Board, upon recommendation by a committee consisting of one member of the Town Board, two members of the Planning Board, and two members of the New Paltz Environmental Conservation Board, to fulfill the designated enforcement and permit processing responsibilities set forth in this chapter. A qualified wetlands inspector shall have a degree in a related field from an accredited college or university, a minimum of two years of delineation experience, and scientific knowledge about the biogeophysical structure, function, or interrelationships of terrestrial and aquatic/semiaquatic plant and animal communities. The expenses associated with professional services provided by the Wetlands Inspector (see "reimbursable costs," as defined in § 139-4 of this chapter) and any inspection of a parcel and mapping by the Wetlands Inspector (as provided at the sole cost of the municipality) shall be incurred by the Town's "b" fund (Town-outside-village), which is funded by fees and other revenue streams that do not rely on local property taxes.

WIDENING — The process of increasing the width of a watercourse beyond the natural width found up- and downstream.

ZONING BOARD OF APPEALS (ZBA) — The Zoning Board of Appeals of the Town of New Paltz, New York.

§ 139-5. Regulated areas.

Regulated areas protected under this chapter include the following:

- A. Associated buffer area, as defined in § 139-4 of this chapter and specified herein.
- B. Intermittent watercourse, as defined in § 139-4 of this chapter, with an associated buffer area to include all adjacent land extending 50 feet as measured horizontally from the bank of the watercourse.
- C. Perennial watercourse, as defined in § 139-4 of this chapter, with an associated buffer area of 100 feet as measured horizontally from the bank of the watercourse as defined in § 139-4 of this chapter, except that for the Wallkill River such associated buffer shall extend for 200 feet as measured horizontally from the top of the river bank.
- D. Quality vernal pools, as defined in § 139-4 of this chapter, greater than 100 square feet in area, with an associated buffer area of 100 feet measured horizontally from the edge of such quality vernal pool. When requested by an applicant, the presence of pool-breeding amphibian habitat may be confirmed in the spring.
- E. Waterbody, as defined in § 139-4 of this chapter, with an associated buffer area designated as if the waterbody were a wetland based on its acreage. Waterbodies of less than or equal to 1/10 acre shall not be considered a regulated area.
- F. Wetlands (freshwater wetlands) and waterbodies, as defined in § 139-4 of this chapter, greater than 1/10 acre but smaller than one acre, with an associated buffer area of 50 feet measured horizontally from the edge of such wetlands and waterbodies.
- G. Wetlands (freshwater wetlands) and waterbodies, as defined in § 139-4 of this chapter, equal to or greater than one acre, with an associated buffer area of 100 feet measured horizontally from the edge of such wetlands and waterbodies.

§ 139-6. Notice of regulations; mapping; map updates; inspections.

- A. No person shall conduct a regulated activity within regulated areas without compliance with the provisions of this chapter as of the effective date of this chapter. To secure compliance with this chapter, the Town of New Paltz shall provide written notice to all owners of real property, as identified on the current tax assessment rolls, within 45 days of the enactment of this chapter and shall post a notice on the Town's website. Such notice shall, at a minimum, contain the following information:
 - (1) Notice of the effective date of this chapter;
 - (2) A summary of the intent and purpose of this chapter;

- (3) Regulated areas as described in § 139-5 of this chapter;
- (4) Regulated activities as described in § 139-8 of this chapter;
- (5) Exempt activities and activities allowed without a permit as described herein.

B. Mapping.

- (1) This written notice shall identify available mapping and other resources to assist in the identification of regulated areas. It shall also inform recipients of the notice that, after generally mapping regulated areas throughout the municipality, the Town has adopted the official Town of New Paltz Wetlands and Watercourse Map and that such official map is available to the public in the Town Hall and on the Town's website as a reference for the Town and property owners. This notice should indicate that the Town Wetlands and Watercourse Map is an accurate representation of the approximate boundary of these regulated resources, but that, due to the scale of the map, the exact location of the boundary of these resources and their buffer areas can only be determined (or verified) in the field by the Town Wetlands Inspector or other trained individual acting for the Town.
- (2) This notice shall request from the recipients additional information that may assist the Town in identifying regulated areas and in developing municipal maps.
- (3) The sources for the evolving municipal maps include, but are not limited to, the following:
 - (a) NYSDEC Freshwater Wetlands Maps;
 - (b) United States Fish and Wildlife Service National Wetlands Inventory Maps;
 - (c) USDA Soil Conservation Service Revised Soil Survey for Ulster County;
 - (d) Aerial photographs, which may be obtained from the USDA Soil Conservation Service Revised Soil Survey for Ulster County;
 - (e) Flood Insurance Rate Maps, drainage reports, and flood insurance studies produced by the Federal Emergency Management Agency;
 - (f) Town of New Paltz GIS Open Space Inventory Maps;
 - (g) A survey map provided by an applicant, illustrating a regulated area delineated in accordance with the methodology set forth in § 139-13, Boundary delineation methodology;

- (h) Any additional information used by the Wetlands Inspector to investigate a regulated area, issue a notice of determination or make a recommendation on an application, including but not limited to a tax map, survey map, site plan, aerial photograph, site inspection and any future mapping created during the administration of this chapter.

C. Map updates.

- (1) The Wetlands Inspector shall compile and keep a file of such information on regulated areas gained from site inspections and other sources in the course of administration of this chapter and shall recommend such information, as applicable, to the map at least once per year.
- (2) The Town Board shall adopt by resolution any revisions to the Official Map.
- (3) The Town shall provide notice by mail, within 45 days of the update, to any property owners affected by such updated information. The update notice shall summarize:
 - (a) The regulated areas that were added or deleted from the Official Map;
 - (b) The mapped wetlands that had their boundaries expanded or reduced; and
 - (c) The basis for each of those actions.
- (4) For any such update, a detailed map update report of any map changes shall be prepared by the Wetlands Inspector and should be available to the public in the Town Hall and on the Town's website.

D. Inspections.

- (1) Owners of real property who are unsure of the existence of a regulated area on their land may request an inspection of the subject parcel by the Wetlands Inspector, at the sole cost of the municipality, by completion of a short-form application, as provided in § 139-12, Permit applications; review; notice of determination; public hearing; extensions. This is limited to one inspection per lot and is unavailable on lots that have already been provided such an inspection under this section.
- (2) The Wetlands Inspector shall reply to any such inquiry with a written determination of the existence of regulated areas on such property within 60 days. If weather or ground conditions do not allow for a reliable determination of regulated areas on their property, the Wetlands Inspector shall so inform such owners, in writing, within such sixty-day period and shall further indicate a time as early as practicable when such determination may take place.

- (3) Any reply or determination by the Wetlands Inspector regarding the presence of a regulated area shall be available for public inspection in the office of the Town Clerk and may be subject to administrative review under the provisions of § 139-20, Administrative review.

§ 139-7. Action required for regulatory activities and uses; preapplication conferences.

- A. Activities and uses in regulated areas, as defined in § 139-5 of this chapter, that shall be regulated under this chapter are those that have the potential to cause a substantial adverse effect, as defined in § 139-4 of this chapter, and those that are not specifically exempted in § 139-9, Exemptions for preexisting lawful actions, and § 139-10, Activities allowed without permits.
- B. It shall be unlawful for any person to engage in a regulated activity, as described in § 139-8 herein, without first having obtained:
 - (1) A notice of determination, as defined in § 139-12, Permit applications; review; notice of determination; public hearing; extensions; or
 - (2) A permit for such an activity; or
 - (3) If applicable, a permit associated with an approved conservation plan and/or the payment of a conservation fee, issued pursuant to the provisions of § 139-16, conservation plan in lieu of permit denial.
- C. If a person wishing to conduct an activity is in doubt about whether the activity is exempt or about which procedural requirements may apply, or if he or she wishes to discuss with the Wetlands Inspector any phase of the proposed project as it relates to the activity or to the permit, that person may contact the Inspector to schedule a preapplication conference at a reimbursable cost (fee) as defined in § 139-4 of this chapter and as shall be established, when appropriate, by action of the Town Board.

§ 139-8. Regulated activities.

Activities, other than those specifically exempted in §§ 139-9 and § 139-10 of this chapter, that have the potential to cause substantial adverse effect in regulated areas, as described in § 139-5 of this chapter, include those prescribed in 6 NYCRR 663.2, as well as, but not limited to, the following:

- A. Any form of mining, dredging or excavation and any grading or removal of soil, mud, sand, gravel, peat, silt or any other earth material from any regulated area, either directly or indirectly;

- B. Any form of dumping, filling or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind in any regulated area, either directly or indirectly;
- C. Erecting or constructing any structure, as defined in § 139-4 of this chapter, including those for which a building permit is typically issued (Refer to § 140-51.1 of Chapter 140, Zoning, of the Code of the Town of New Paltz.);
- D. Placing any other obstructions within any regulated area, channelization or berming, as defined in § 139-4 of this chapter, whether or not the same affect the ebb and flow of water;
- E. The introduction or storage of any substance, sewage effluent, the runoff of pesticides, or the disposal of toxic material, including chemicals, dyes, fertilizers or other organic materials, fuels, herbicides; pesticides, de-icing materials, or similar materials in any regulated area, if such materials are likely to cause the pollution of waters, except as provided in § 139-10K and where necessary for the public health, safety, and well-being of persons and property therein;
- F. Draining or ditching within any regulated area;
- G. Introducing any influents of high thermal content, such that the same are capable of causing deleterious ecological effects on any regulated area;
- H. Installing septic disposal systems or swimming pool drainage systems or installing any pipe or other conduit for the same;
- I. Withdrawing, diverting, detaining or retaining groundwater or surface water in excess of 2,500 gallons per day for more than seven days in the course of one year, which may cause an increase or decrease in the flow, velocity or volume of water (excluding the natural seasonal fluctuations of the subject watercourse or waterbody);
- J. Clearing, as defined in § 139-4 of this chapter, within any regulated area, except routine maintenance or landscaping, as defined in § 139-4 of this chapter. Any activity regulated pursuant to Chapter 130, Tree Conservation, of the Code of the Town of New Paltz shall be regulated under this chapter as well if such activity occurs in a regulated area;
- K. Except as lawfully permitted pursuant to ECL § 11-0505, displacement or destruction of that proportion of beaver lodges and beaver dams that would result in deleterious changes to the hydrology of wetlands, watercourses and beaver impoundments and/or negative impacts to wetland vegetation, flora and fauna, except in cases in which beaver impoundments are impacting or threatening to impact existing structures, roads, and driveways. Nonlethal approaches to beavers should be encouraged as the preferred solution, but this chapter shall not supersede NYSDEC jurisdiction over beaver trapping permits;

- L. Any other activity that is determined by the Wetlands Inspector, with concurrence by the Planning Board, to have the potential for substantial adverse effects on the regulated areas.

§ 139-9. Exemptions for lawful preexisting actions and uses.

- A. The provisions of this chapter shall not apply to the following preexisting actions, including uses and structures lawfully approved, or lawfully approved and constructed prior to the effective date of this chapter, provided that those actions that occurred in regulated areas subject to NYSDEC jurisdiction under ECL Article 24, the Freshwater Wetlands Act, were established in compliance with 6 NYCRR Parts 663 through 664.
 - (1) Activities pursuant to a preliminary subdivision plat, or site plan, special exception permit or clearing and grading permit that has been duly approved following an environmental review, as provided under SEQRA, by the Planning Board, which permit or approval remains valid on the date of the action or construction of the structure;
 - (2) Activities pursuant to a valid building permit and/or certificate of occupancy that has been lawfully issued by the Building Department;
 - (3) Activities pursuant to a use variance, area variance or special exception permit following an environmental review, as provided under SEQRA, that has been duly issued by the Zoning Board of Appeals (ZBA) and which permit or approval remains valid on the effective date of this chapter.
- B. The activities enumerated above shall not be expanded, changed, enlarged or altered, except in accordance with the provisions of this chapter. Should preexisting activities or uses be discontinued, said activities shall no longer be permitted as a preexisting lawful action under this section and shall be subject to the requirements of this chapter.
- C. The construction of a septic system specified in a preliminary subdivision plat, described in Subsection A(1) of this section, shall be permitted without any further review by the Wetlands Inspector or Planning Board if said septic system has received approval from the Ulster County Health Department, pursuant to §17-1505 of the Environmental Conservation Law. The construction of all other septic systems specified in preexisting permits and approvals described in Subsections A through C of this section shall be subject to review by the Wetlands Inspector as provided in § 139-12A(5)(a)[5][h] of this chapter.
- D. Actions, activities or uses in regulated areas as depicted on a valid site plan or a subdivision plan granted preliminary approval by the Planning Board on or before the effective date of this chapter must be completed

within three years from the date of approval, provided that the action, activity or use conforms to such valid site plan or subdivision plan, including any conditions or restrictions thereon, any representations relating to the proposed activity submitted by the applicant pursuant to SEQRA, including but not limited to the environmental assessment form and draft and final environmental impact statements, and any finding, determination, requirement or condition made under SEQRA by the lead agency at the time of approval.

- E. Actions, activities or uses in a regulated area for which a valid building permit or special exception permit has been issued on or before the effective date of this chapter shall expire if the work to be performed on the project is not begun within 12 months of the date of approval. Such approval may be extended by the Planning Board or, if applicable, the ZBA upon Planning Board referral before such approval expires, for an extension of not more than six months for good cause shown. The construction activities must be completed within 24 months.

§ 139-10. Activities allowed without permits.

The following activities are exempt from the permitting requirements for regulated areas as set forth herein:

- A. The deposition or removal of natural products of wetlands and watercourses for the purpose of recreational or commercial fishing, shell fishing, hunting, or trapping where lawfully permitted.
- B. The ordinary maintenance and repair of existing functional structures, facilities, or improved areas, including but not limited to septic systems, water wells, bridges, highways and paved streets, driveways, walkways, walls, fences, railroad beds, bulkheads, docks, piers, or pilings, which maintenance and repair does not involve the expansion of such structures, facilities, or improved areas. For the purposes of this subsection, paving an existing driveway shall constitute ordinary maintenance and repair, so long as such paving does not raise the surface of such driveway by more than six inches or expand its horizontal boundaries.
- C. The normal grounds maintenance of existing natural or improved landscaped areas, including gardening, mowing and trimming of vegetation, the removal of nonnative vegetation or the removal of dead or diseased trees.
- D. The reasonable application of de-icing compounds on roads, driveways and sidewalks for pedestrian and vehicular safety.
- E. The operation, maintenance and replacement, but not the expansion or enlargement, of dams, retaining walls, terraces, sluices, culverts, or other water-control structures or devices, involving the adjustment of water elevations of no greater than two inches from existing levels.

- F. Agriculture, as defined in § 139-4 of this chapter, on lands located within an established agricultural district, as certified by the New York State Commissioner of Agriculture pursuant to Article 25-AA of the AML.
- G. The activities of landowners, other than those engaged in agriculture and farm operations as identified above, in grazing and watering livestock and domestic animals, making reasonable use of water resources.
- H. Establishing scenic, historic, wildlife and scientific preserves where no substantial adverse effect is involved.
- I. Boating, hiking, swimming, camping, picnicking, and other similar outdoor activities, including the establishment of walking trails and individual recreational moorings, where no substantial adverse effect is involved, except for the intensive, organized and repetitive use of all-terrain vehicles, air- and motorboats and snowmobiles.
- J. Conducting educational and scientific research activities where no substantial adverse effect is involved.
- K. Emergency activities for the protection of public health and safety, including the following:
 - (1) Activities and uses essential to ensure adequate police, fire, and rescue functions undertaken either by the Town of New Paltz or by a nonprofit organization authorized by contract with the Town to provide these public services;
 - (2) Essential activities to promote public health, safety, and the well-being of persons and property and to implement orders and regulations of the Ulster County Department of Health and/or the New York State Department of Health, with notification to the Town Board and Planning Board;
 - (3) Any actual and ongoing emergency activity that directly addresses an imminent threat to public health or safety, property or structures, established roads or driveways, or natural resources. Such emergency activities may include, but are not limited to:
 - (a) Search-and-rescue operations;
 - (b) Preventative or remedial activities related to the mitigation, cleanup, or control of contamination of groundwater and surface water;
 - (c) Preparation for or response to floods, hurricanes, and other storms that follows established emergency response plans for a watercourse or that secures access reasonably necessary to public health and safety;
 - (d) Firefighting and other public health concerns.

- L. Activities pursuant to an approved land stewardship plan, as defined in § 139-4 of this chapter and in compliance with 6 NYCRR Parts 663 through 664.

§ 139-11. Exemption for Highway Department; memorandum of understanding.

- A. The Town of New Paltz Highway Department shall be exempt from the procedural requirements of this chapter upon filing a memorandum of understanding (MOU), along with the annual 284 Agreement, pursuant to the provisions of § 284 of the New York State Highway Law, with the Town Board.
- B. Such MOU shall be as protective as the provisions of this chapter and shall be subject to annual review, requiring practices in keeping with the substantive purpose, intent and spirit of this chapter. Such MOU shall, at a minimum, contain the following provisions:
 - (1) The Highway Department shall select and apply practices that reduce the amount of total runoff and associated pollution, including sediment and gravel. Such practices shall include the avoidance of curbing to the maximum extent consistent with public health and safety.
 - (2) The Highway Department shall adopt the following practices to reduce potential pollution from roadside ditches:
 - (a) When possible, discontinue the practice of scraping to remove excess vegetation;
 - (b) Utilize mowing to manage vegetation;
 - (c) If scraping is necessary, utilize hydroseed immediately after scraping to reestablish vegetative cover;
 - (d) Divert ditch outflows to infiltration basins, constructed wetlands or similar structures to limit direct discharges to streams, and regularly maintain such devices.
- C. The Town Board shall refer said MOU to the Planning Board and the Wetlands Inspector for review and comment.

§ 139-12. Permit applications; review; notice of determination; public hearing; extensions.

- A. Short-form applications.
 - (1) A short-form application shall be made to the Building Department for all regulated activities that are listed in § 139-8, Regulated activities, and are not specifically exempted in § 139-9 or 139-10 of this chapter. For regulated activities where the applicant has submitted or will submit an application to the Planning Board for an approval or permit authorized by provisions of the Town Code

other than this chapter, the short-form application shall be submitted to the Planning Board. The short-form application shall be submitted on forms provided by the Building Department and shall include the following:

- (a) The name, address and telephone number of the applicant and, if the applicant is not the owner, the written consent of the owner.
 - (b) The street address and Tax Map designation of the property involved.
 - (c) A description of the proposed work and the purpose thereof, and an explanation why the proposed activity cannot be located outside of regulated areas.
- (2) The application shall include any pertinent documentation deemed appropriate by the applicant and a fee, as shall be established from time to time by action of the Town Board.
 - (3) The short-form application shall be referred to the Wetlands Inspector. The Wetlands Inspector shall determine, within 14 business days of the receipt of such a referral, whether any additional documentation or information is necessary.
 - (4) The Wetlands Inspector shall be authorized to conduct a site visit whenever deemed necessary for the purpose of evaluating the short-form application.
 - (5) Upon review of the application, if the proposed activity is determined to be within a regulated area, as described in § 139-5, Regulated areas, the Wetlands Inspector shall make either of the following two determinations:
 - (a) The proposed activity does not have the potential to cause substantial adverse effects on a regulated area, or would otherwise be authorized to proceed as enumerated below by a notice of determination, as defined herein, without a permit.
 - [1] Said determination shall include the date of the review of the referral, any site inspection, finding and conditions deemed necessary by the Wetlands Inspector to ensure compliance with the purpose and intent of this chapter, and the supporting reasons for the determination. No further review or action is required.
 - [2] The notice of determination shall indicate that the applicant must be in strict conformance with the submitted plans and project description, as they may be adapted by the Wetlands Inspector, and any conditions specified by the Wetlands Inspector, including, without

limitation, the establishment and maintenance of silt fencing.

- [3] The notice of determination may also require a limits-of-construction line to be located on the ground before any construction activities begin.
- [4] The notice of determination and findings shall be filed with the offices of the Building Inspector and the Town Clerk, and a copy shall be sent to the applicant. The notice of determination and findings shall also be filed with the Planning Board if there is a pending application before the Planning Board relating to the proposed activity.
- [5] Notices of determination are authorized for, but not limited to, the following activities:
 - [a] The new construction of structures or facilities or the expansion of any preexisting lawfully permitted functional structures or facilities located within an associated buffer area, as defined in § 139-4 of this chapter, provided that it shall result in an as-built footprint of less than 600 square feet of ground surface.
 - [i] Such activity may not create any new noncompliance or increase the degree of existing noncompliance with the provisions of this chapter and may not be associated with any application for subdivision or site plan approval before the Planning Board.
 - [ii] Such activity shall disturb the minimum area reasonably necessary for its completion, and the Wetlands Inspector shall have the authority to require remediation of any area disturbed during construction, including best management practices, necessary to accomplish the purposes of this chapter.
 - [iii] No notice of determination shall be issued under this Subsection A(5)(a)[5][a] for activities in areas regulated by the NYSDEC under Article 15 or 24 of the State Environmental Conservation Law. No notice of determination shall be issued under this Subsection A(5)(a)[5][a] for any exceedance of 600 square feet of cumulative as-built footprint in regulated areas on any individual lot by all regulated activities subsequent to the effective date hereof. No notice of determination shall be issued under this Subsection A(5)(a)[5][a] for any

regulated activity in a watercourse or waterbody, including any bank associated therewith.

- [b] The restoration, reconstruction or modification of any preexisting lawfully permitted functional structure or facilities located within an associated buffer area, as defined in § 139-4 of this chapter.
 - [i] Such activity shall disturb the minimum area reasonably necessary for its completion, and the Wetlands Inspector shall have the authority to require remediation of any area disturbed during construction, including best management practices, necessary to accomplish the purposes of this chapter.
 - [ii] Such activity may not create any new noncompliance or increase the degree of existing noncompliance with the provisions of this chapter.
 - [iii] No notice of determination shall be issued under this Subsection A(5)(a)[5][b] for activities in areas regulated by the NYSDEC under Article 15 or 24 of the State Environmental Conservation Law or any regulated activity in the bank of a watercourse or waterbody, as defined in § 139-4 of this chapter.
- [c] Drilling a well for potable water to serve a preexisting individual residence on land located within an associated buffer area, pursuant to a permit issued by the Ulster County Department of Health.
- [d] The installation of utility service, as defined in § 139-4 of this chapter, within an associated buffer to serve a preexisting structure.
- [e] Cutting vegetation, other than trees, in the associated buffer area.
- [f] Cutting no more than two trees in an associated buffer area in any one calendar year, such that the functions and benefits of the regulated areas are not adversely affected or environmentally impacted, except where such activities are regulated pursuant to Chapter 130, Tree Conservation, of the Code of the Town of New Paltz or are allowed under § 139-10C of this chapter.
- [g] The application of a pesticide to the ground within an associated buffer area within 50 feet of a private residence when such use is by the owner or his/her agent.

[h] The construction of a septic system specified in an approval or permit that predates the effective date of this chapter, or the reconstruction or repair of an existing septic system. The Wetlands Inspector shall issue a notice of determination pursuant to this Subsection A(5)(a)[5][h] upon a showing that such septic system and associated leachfield will not have any impact on regulated areas or will avoid impact on regulated areas to the maximum extent practicable.

[6] Any activity authorized by a notice of determination under this Subsection A(5)(a) shall disturb the minimum area reasonably necessary for its completion, and the Wetlands Inspector shall have the authority to require remediation.

(b) The proposed activity is a regulated activity, as enumerated in § 139-8, that has the potential to cause substantial adverse effects on regulated areas and requires a long-form permit application prepared by the applicant. Said determination shall include the date of the review of the application, any site inspection, and the supporting reasons for the determination. This determination shall identify the potential substantial adverse effects on the regulated areas and shall consider the biological quality, values, functions and benefits of the regulated area, the potential impact on the regulated area, and the availability of a reasonable alternative. This finding shall be filed with the offices of the Planning Board and the Building Inspector, and a copy shall be sent to the applicant.

B. Long-form applications.

(1) An application for a long-form wetland permit shall be filed with the Planning Board on forms furnished by the Secretary of the Planning Board and accompanied by a fee, as shall be established from time to time by action of the Town Board.

(2) The application shall be accompanied by a number of copies thereof as shall be established from time to time by action of the Planning Board. These copies and a copy of the application in a digital format authorized by the Planning Board shall be filed with the offices of the Planning Board, Building Inspector, and the EnCB, in accordance with the standards and procedures set forth herein, and shall include a copy of the short-form and the following information:

(a) A completed environmental assessment form (EAF) as required by SEQRA, with particular specificity regarding the potential substantial adverse environmental impacts on the function of regulated areas. The Wetlands Inspector or the Planning Board may, at their option, require submittal of a full (long-form) EAF,

as specified in 6 NYCRR 617.20, Appendix A, to accompany the application.

- (b) A project location map that indicates the approximate boundaries of the property in relation to surrounding land and roadways on a United States Geological Survey or New York State Department of Transportation topographic map having a scale of no less than one inch equals 2,000 feet.
 - (c) A detailed survey map, at a scale no greater than one inch equals 100 feet, which shall be certified by an engineer, architect, land surveyor, or landscape architect licensed in the State of New York, to include:
 - [1] All existing structures and improvements, natural features such as woodlands, and stone walls, drainage structures, wells and septic systems located on the property within 250 feet of proposed regulated activities;
 - [2] Contour lines at two-foot intervals in the regulated area to be disturbed, depicting existing and proposed topographic conditions;
 - [3] The boundaries of any one-hundred-year floodplain; and
 - [4] All proposed site improvements, including structures and roads, grading, drainage, and excavation plans.
 - (d) A regulated area delineation report and map in accordance with the standards set forth in § 139-13, Boundary delineation methodology, of this chapter, prepared by USACE, by NYSDEC or by a wetland delineator, as defined in § 139-4 of this chapter.
 - (e) Copies of all applicable local, county, state, and federal permits or other permit applications required for proposed activities.
- C. Based on the scope of the project and comments from the Wetlands Inspector, Town Engineer or other professional consultant, the Planning Board may require, as is necessary for the proper review of the application, the following additional information:
- (1) The boundaries of all regulated areas, as identified and delineated in accordance with standards set forth in § 139-13 of this chapter no more than 18 months prior to the date of filing of the application, on a topographic survey of the property, containing notation documenting the field delineation.
 - (2) The description of the vegetative cover of the regulated area shall include the dominant species, as defined in § 139-4 of this chapter, and their wetland classified status.

- (3) Groundwater table elevations indicating depth to groundwater, direction of groundwater flow and hydrologic connections with surface water features.
- (4) The location of the construction area and area proposed to be disturbed, and its relation to property lines, roads, buildings, and regulated areas within 250 feet.
- (5) The locations and specifications for any proposal to drain, fill, grade and dredge, and to clear vegetation, including areas and quantities proposed for deposition or removal, the procedures to be used and dominant species of vegetation to be removed.
- (6) The locations and details of any existing and proposed stormwater drainage facilities, including any point discharges, artificial inlets, or other conveyances that would discharge into regulated areas, and measures proposed to control erosion or other potential adverse effects on the regulated areas both during and after the proposed work, including a schedule for installation and maintenance for such measures.
- (7) Where the creation of a lake, pond, detention or other water impoundment is proposed, details of the construction of any dam, berm, embankment, spillway, outlet or other water-control device.
- (8) 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 other drainage characteristics. Applications for projects affecting the water retention capacity, water flow, or other drainage characteristics of any pond, lake, reservoir, natural drainage system or wetland shall include a statement and numerical calculations of the impact of the project on upstream and downstream areas, giving appropriate consideration to other than normal levels of watercourses and amounts of rainfall, specifically the one-hundred-year-storm event.
- (9) A habitat assessment done in accordance with the Habitat Assessment Guidelines of the Town of New Paltz (April 2006), including critical terrestrial habitat, as defined in § 139-4 of this chapter, and a narrative to explain how on-site habitats will be affected by the proposed action, with particular emphasis on federal and New York State endangered, threatened, or special-concern species and regionally declining and ecologically sensitive species, as identified in Hudsonia's Biodiversity Assessment Manual for the Hudson River Estuary Corridor. This assessment can be based on existing information available from the Natural Heritage Program at the NYSDEC in Albany or from other sources. In cases where no site-specific information is available, an original assessment may be required. For quality vernal pools, the following sources will be considered guidance for the determination of

critical terrestrial habitat: from the Metropolitan Conservation Alliance, Best Development Practices: Conserving Pool-Breeding Amphibians in Residential and Commercial Developments in the Northeastern United States (Calhoun & Klemens 2002), and from Hudsonia, Biodiversity Assessment Manual for the Hudson River Estuary Corridor (Kiviat & Stevens 2001). Copies of all guidance cited in this Subsection C(9) shall be available for reference in the office of the Town Clerk.

- D. The Planning Board may waive any application information requirements as set forth herein, provided that the decision and reasons for any such waiver shall be clearly set forth in the official record and shall be no less protective of regulated areas.
- E. Within 32 days of the receipt of an application for a wetland permit, the Planning Board shall determine whether such application is complete or if additional information is required. The Planning Board shall refer a complete application to the EnCB and the Wetlands Inspector for review and comment. The EnCB and the Wetlands Inspector shall submit comments to the Planning Board within 62 days of the date of referral.
- F. Upon a determination by the Planning Board that an application is complete, a public hearing shall be scheduled as follows:
 - (1) The public hearing shall commence no later than 32 days after the determination by the Planning Board that an application for a wetland permit is complete. Any public hearing on the application may be held concurrently and coordinated with any other required public hearing held pursuant to any other law, including SEQRA.
 - (2) All application documents, including maps and findings relating to the proposed regulated activity, shall be open for public inspection in the office of the Planning Board at least 10 days prior to the public hearing.
 - (3) Notice of the public hearing shall be advertised at least once in the official newspaper of general circulation in the Town at least five days before such hearing. A copy of said notice shall also be mailed by the Secretary of the Planning Board, at the expense of the applicant, to all owners of property contiguous to the parcel containing the proposed regulated activity and to all owners of property within a distance of 500 feet up-gradient and down-gradient from the subject regulated area within the same subwatershed area, as defined in § 139-4 of this chapter, regardless of municipal boundaries, at least 10 days before the opening of such hearing. A list of such property owners shall be obtained by the applicant from the current tax rolls and supplied to the Secretary of the Planning Board, along with addressed, stamped, business-sized envelopes, for this purpose. The Planning Board may, at its discretion, require that the list of property owners also

include those properties within or contiguous to the subject regulated area for a distance of 1,000 feet up-gradient and/or down-gradient within the same subwatershed area, as defined in § 139-4 of this chapter, where the regulated activity clearly has the potential to significantly impact such properties.

- G. The Planning Board may waive public hearing requirements as set forth herein, provided that the decision and reasons for any such waiver pursuant to this Subsection shall be clearly set forth in the official record and shall be no less protective of regulated areas.
- H. Notwithstanding any other provision of this section, whenever the Planning Board is reviewing an application for an approval or permit authorized by provisions of the Town Code other than this chapter, for any activity for which an application has also been filed under this chapter, the Planning Board shall combine and integrate all permitting procedures to the maximum extent practicable, including but not limited to the public hearing and public notice procedures under this section and SEQRA procedures.
- I. The applicant and Planning Board may, by mutual consent, extend the time for any determination or decision on the application. Any such extension must be in writing and must be recorded in the minutes of a noticed meeting of the Planning Board.

§ 139-13. Boundary delineation methodology.

- A. If a long-form permit application is required by the Wetlands Inspector pursuant to § 139-12, Permit applications; review; notice of determination; public hearing; extensions, the applicant shall identify the boundaries of regulated areas according to the methodology set forth below. Such boundaries will be permanently marked when appropriate in a manner to be defined in consultation with the Planning Board.

(1) Wetland boundaries.

- (a) Wetland boundaries for those wetlands regulated under this chapter which are also mapped and regulated by the NYSDEC under ECL Article 24, known as the State Freshwater Wetlands Act, shall be delineated by methodology at least as protective as that specified in such Act and in the New York State Freshwater Delineation Manual (DEC 1995).
- (b) Wetland boundaries for all other wetlands regulated under this chapter shall be delineated by methodology at least as protective as that set forth in the 1987 Federal Wetlands Delineation Manual or any future approved wetlands delineation manual adopted by action of the Town Board.
- (c) The methodology for the delineation of NYSDEC-regulated wetlands shall conform with the hydrophytic vegetation

specified in Subdivision 1(a) and (b) of § 24-0107 of the Freshwater Wetlands Act of the ECL and of the lands and waters specified in Subdivision 1(c) and (d) of § 24-0107 of the Act.

- (d) The methodology for the delineation of all other wetlands regulated under this chapter shall employ positive wetland indicators of all three parameters that are normally present in wetlands: hydrophytic vegetation; hydric soils; and wetland hydrology, as more particularly described hereafter:
- [1] Hydrophytic vegetation: the frequency of vegetation occurrence in wetlands, as referred to in the New York State Freshwater Delineation Manual (DEC 1995) and ECL § 24-0107, Subdivision 1, for NYSDEC-regulated wetlands. For the delineation of federally regulated wetland areas, refer to the vegetation criteria of the federal 1987 Federal Wetlands Delineation Manual.
 - [2] Hydric soils: soils that are saturated, flooded or ponded long enough in the growing season to develop anaerobic conditions that support the growth of hydrophytic vegetation. Hydric soils are soil types that are poorly drained, very poorly drained, alluvial or floodplains soils, as documented in Lawrence A. Tornes' Soil Survey of Ulster County, New York, United States Department of Agriculture Soil Conservation Service and Cornell University Agricultural Experiment Station, June 1979, on file in the office of the Town Clerk.
 - [3] Wetland hydrology: all hydrologic characteristics of areas that are periodically inundated or have soil saturated to the surface during the growing season, as more particularly specified in the 1987 Federal Wetlands Delineation Manual. Indicators of wetland hydrology may be used to confirm that a site without apparent hydrophytic vegetation and hydric soils still exhibits hydrologic conditions typically associated with such vegetation and soils. Such indicators include, but are not limited to the following:
 - [a] Recorded data, such as stream gauges, flood predictions, aerial photographs or other historical data;
 - [b] Visual observation of inundation;
 - [c] Visual observation of soil saturation within the upper 12 inches of soil;
 - [d] Sediment deposits as a result of flooding;

- [e] Drift lines as a result of flooding;
 - [f] Surface scouring as a result of flooding; and
 - [g] Meandering drainage patterns.
- (e) Wetland boundaries shall be identified by field investigation and flagging by a qualified wetland delineator, as defined in § 139-4 of this chapter, in accordance with the methodology above, as follows:
- [1] The boundaries of a wetland that is subject to the jurisdiction of the USACE or NYSDEC may be established by an existing jurisdictional and/or boundary determination issued by the USACE or NYSDEC at any time prior to 90 days of the effective date of this chapter. Such delineation shall be valid for a period not to exceed five years from the date the delineation.
 - [2] The boundaries of a wetland that is subject to the jurisdiction of the USACE or NYSDEC may also be established by a jurisdictional and/or boundary determination issued by the USACE or NYSDEC after 90 days of the effective date of this chapter following field investigation, provided that the Wetlands Inspector is notified, in writing, of a boundary inspection by the applicant at least five business days prior to the inspection and had an opportunity to participate in the field investigation by USACE or NYSDEC staff. Such delineation shall be valid for a period not to exceed five years from the date of the delineation.
 - [3] All wetlands without a USACE jurisdictional determination or NYSDEC boundary determination shall be delineated by field investigation and flagging by a qualified wetland delineator. Such delineation shall be based upon standards and criteria at least as protective as that established in Subsection A(1)(e)[1] of this section, and shall be in accordance with the standards set forth above, and shall be shown on a survey or site plan of the property prepared by a licensed land surveyor, landscape architect or professional engineer at any time prior to 90 days of the effective date of this chapter, or after 90 days of the effective date of this chapter following field investigation, provided that the Wetlands Inspector is notified, in writing, of a boundary inspection by the applicant at least five business days prior to the inspection and had an opportunity to participate in the field investigation. Such delineation shall be valid for a period not to exceed five years from the date of delineation.

- (2) A watercourse boundary shall be delineated by field investigation and flagging by a qualified wetland delineator, through locating the banks of the watercourse in the manner described in 6 NYCRR Part 608, Use and Protection of Waters, and with reference to average annual rainfall conditions.
 - (3) A quality vernal pool boundary shall be identified by a qualified wetland delineator through field investigation and aerial photo interpretation, where available, as well as through any information available from the New York Natural Heritage Program.
- B. All boundary determinations, whether by the USACE or NYSDEC or by a qualified wetland delineator, shall be subject to review by the Wetlands Inspector, who may consult with biologists, hydrologists, soil scientists, ecologists, botanists or such other experts as are necessary to confirm that the boundary determination complies with the requirements of this chapter and the intent and purpose of this chapter. The reasonable and necessary costs of such consultations, including the preparation of an additional survey, shall be the responsibility of the applicant for the permit.

§ 139-14. Review of applications; permit decisions.

If a public hearing held by the Planning Board is scheduled in conjunction with a public hearing required for any other permit, SEQRA action, or approval, the Planning Board shall take action on the permit application for regulated areas within the time frame provided for other such permit or approval. Otherwise, within 62 days following the close of a public hearing or decision to waive a public hearing pursuant to this chapter, the Planning Board shall approve/approve with conditions, approve with modification of associated buffer areas, issue a notice of intent to deny (See § 139-16, conservation plan in lieu of permit denial), or deny the application, as provided below.

- A. 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:
- (1) 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 substantial adverse effects on the regulated areas; and
 - (2) That the substantial adverse effect of the proposed regulated activity on the function served by the regulated areas, or the benefits derived therefrom, has been minimized to the maximum extent feasible.
- B. To determine if the applicant has complied with criteria above, the Planning Board, in consultation with the Wetlands Inspector and the Town Engineer, shall evaluate the adverse effect of the proposed

regulated activities upon regulated area functions and land uses within the same subwatershed, as enumerated below:

- (1) Depositing fill in a regulated area, or other modification of topographic contours;
- (2) The disturbance or destruction of flora and fauna, endangered and threatened species, ecologically sensitive species, and significant habitats in a regulated area;
- (3) The influx of sediments or other materials causing increasing water turbidity and/or substrate aggradations in a regulated area;
- (4) The removal or disturbance of regulated area soils;
- (5) The destabilization of a regulated area channel or bank;
- (6) The reductions and/or increases in regulated area water supply;
- (7) The reductions and/or increases in an associated buffer area;
- (8) Interference with the circulation of water within or through a regulated area;
- (9) Damaging thermal changes and/or nutrient levels in the water supply within or through a regulated area;
- (10) Alterations to flood flows, flood storage, stormwater, upstream and downstream channel and bank stability, storm barriers, and water quality of regulated areas;
- (11) The impacts of flooding, erosion, hurricane winds, soil limitations, and other hazards, such as fire or landslides, on regulated areas;
- (12) The impacts on the water supply and waste disposal of regulated areas;
- (13) The cumulative adverse effect of any proposed or reasonably anticipated future activities on regulated areas subject to the application;
- (14) Consistency with public health and safety, as well as with any existing federal, state, county, and local comprehensive land use plans and regulations;
- (15) Consideration of the biological quality, values, functions and benefits of the regulated areas and any other considerations that the Planning Board deems pertinent to the function of regulated areas and land uses in the same subwatershed area.

C. Decision alternatives.

- (1) Approval of the permit/approval with conditions.

- (a) Following an evaluation as set forth above, and after finding that the application will eliminate any substantial adverse effects on the regulated areas, the Planning Board may approve a permit application or approve with such conditions as may be deemed necessary to assure compliance with the purposes and intent of this chapter.
 - (b) Prior to any site disturbance, clearing or grading or other work on the property, when appropriate, a maintenance bond or letter of credit, as provided in § 139-15M, is required, which bond or letter of credit shall remain in effect until the Wetlands Inspector has certified that the regulated activity has been completed in accordance with permit approval.
 - (c) The Planning Board shall incorporate the necessary conditions within its written findings with respect to the proposed regulated activity and shall repeat those conditions on the face of the permit itself.
- (2) Approval with modification of associated buffer areas.
- (a) The Planning Board, in consultation with the Wetlands Inspector, Town Engineer, and EnCB, may decrease the width of the associated buffer area (i.e., the distance from the protected wetland, watercourse, or waterbody to the edge of the regulated area) if, after such reduction, there is no substantial adverse effect on the function of such buffer, and, where appropriate, may increase the size of the associated buffer area to compensate for any potential loss in such function, in due consideration of the features of the buffer, as follows:
 - [1] Slope. The greater the slope of the buffer zone area, the larger the area must be to adequately slow runoff velocities into the wetland.
 - [2] Depth to bedrock. Steep land, as defined in § 139-4 of this chapter, with shallow soil type of less than three feet requires a larger buffer zone area to address rapid storm flow.
 - [3] Ground cover. The less vegetative cover and associated organic debris a buffer zone has, the more area is needed to successfully dissipate the energy of rainfall and runoff.
 - [4] Soil erodability. If the soil of the area adjacent to a wetland bears high erosion potential, a larger buffer zone is needed to separate the disturbed area from the wetland.
 - [5] Wetland value or sensitivity. The higher the quality of the wetland, in terms of habitat and species present, and the more sensitive it is to potential impacts, the greater the

need for a buffer area large enough to assure its viability and to provide adequate protection for a wetland species and its critical terrestrial upland habitat.

- (b) Approval with modification of associated buffer areas under this Subsection C(2) shall not apply to wetlands or associated buffer areas subject to NYSDEC jurisdiction under ECL Article 24, the Freshwater Wetlands Act, or to regulated activities in a waterbody, watercourse or bank associated therewith, as defined in § 139-4 of this chapter.
- (3) Notice of intent to deny a permit.
- (a) The Planning Board shall issue a written notice of intent to deny a permit if it finds that the proposed regulated activity will have a substantial adverse effect on the function of regulated areas, despite the applicant's due diligence to comply with the standards and criteria above, and it shall invite the applicant to devise a conservation plan in compliance with § 139-16, conservation plan in lieu of permit denial, within 60 days.
 - (b) The basis for the Planning Board's issuance of a notice of intent to deny shall be included within the written findings with respect to the regulated activity and on the face of the notice of intent itself.
- (4) Denial of the permit.
- (a) Should the applicant fail to exercise due diligence to comply with the standards and criteria above, the Planning Board shall deny the permit application to avoid substantial adverse effects on the regulated areas by the proposed regulated activity.
 - (b) The basis for the Planning Board's decision to deny the permit, as enumerated above, shall be included within the written findings with respect to the regulated activity and on the face of the permit denial itself.

§ 139-15. Standards for issuance of notices of determination and permits.

General standards applicable to the issuance of notices of determination and permits are as follows:

- A. Site access. The Wetlands Inspector and Planning Board and its agents or employees may enter upon any lands or waters for good cause shown so as to undertake investigations, examinations, surveys, or other activity, including the review of applications and determinations of compliance, all for the purpose of administering and enforcing this chapter. For any parcel that is not the subject of an application under

this chapter, no entry onto any such parcel under this subsection shall occur, absent the agreement of the landowner.

- B. File documents. All information relating to a permit application, including but not limited to the application itself, additional required materials or information, notices, record of hearings, written comments, and findings, shall be maintained on file in the office of the Planning Board.
- C. Protection of waters jurisdiction. No notice of determination or permit shall be required under this chapter for any regulated activity for which a permit is required under Article 15, Title 5, of the Environmental Conservation Law; provided, however, that to the extent that such regulated activity is conducted in a regulated area for which no permit is required under Article 15, Title 5, of the Environmental Conservation Law, a notice of determination or permit shall be required hereunder.
- D. Sound management and practices. The Wetlands Inspector and Planning Board shall provide information to assist applicants and shall issue guidelines and opinions on sound management practices and permissible activities in regulated areas. Updated compilations of such guidelines and opinions will be periodically printed and made available to the public.
- E. Construction fencing and erosion control. For all projects that receive a notice of determination or permit, the limits of disturbance to any regulated areas will be identified by construction fencing prior to the issuance of a building permit, and erosion control measures as are appropriate to protect regulated areas shall be installed, and such protection shall remain in place and in good condition until all construction activities are completed and a certificate of occupancy is issued.
- F. Written issuance, inspection, expiration and posting. All notices of determination by the Wetlands Inspector and permits approved by the Building Inspector following compliance with the sections of this chapter shall be issued in written form in accordance with the following:
 - (1) Work conducted under a notice of determination or permit shall be open to inspection at any time by the Wetlands Inspector, Building Inspector, and Planning Board and its agents or employees.
 - (2) The notice of determination or permit expiration date shall be clearly noted and shall be pursuant to the time periods specified by this chapter.
 - (3) The notice of determination or permit shall be prominently displayed at the project site during the undertaking of the authorized activities.

- G. Other laws and regulations. No notice of determination or 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 acquisition of any other required permit or approval.
- H. Payment of fees and reimbursable costs. Application fees and other reimbursable costs, as defined in § 139-4 of this chapter, and any conservation fee required pursuant to § 139-14, shall be charged to the applicant. In no event shall a notice of determination or permit be issued until all such sums have been paid in full.
- I. Inactive applications or renewals. Applications must be diligently pursued by the applicant. Should any application before the Planning Board remain inactive for one year pending the submission of required information, the application shall be considered withdrawn. Withdrawn applications may be resubmitted as renewal applications within one year from the date of withdrawal, subject to a permit renewal fee, determined by resolution of the Town Board, and the applicable review requirements of this chapter, provided that the applicant demonstrates that such renewal is warranted by good cause. Inactive applications do not include those where the applicant is actively preparing a report at the request of the Planning Board or Wetlands Inspector.
- J. Expiration and extensions. Notices of determination and permits shall remain in effect until the termination of the activities specified and, unless otherwise indicated, shall be valid to commence the permitted activities for a period of one year from the date of issue. Upon written request of the applicant prior to the expiration date of a notice of determination or permit, the Planning Board may extend the commencement of the permitted activity for a time not to exceed two additional periods of 90 days each, provided that the applicant demonstrates that such extension is warranted by good cause.
- K. Documents filed by the Planning Board. A wetlands permit approval, approval with conditions, approval with modification of associated buffer areas, notice of intent to deny, or permit denial shall be filed by the Secretary of the Planning Board in the offices of the Wetlands Inspector, Building Inspector, EnCB and Town Clerk. A notice of intent to deny a permit, absent the applicant's compliance with § 139-16, conservation plan or fee in lieu of permit denial, will be filed by the Secretary of the Planning Board in the offices of the Wetlands Inspector and Building Inspector.
- L. Certificate of compliance. A certificate of compliance, as defined in § 139-4 of this chapter, shall be issued by the Wetlands Inspector to certify that the regulated activity has been satisfactorily completed in accordance with permit approval. Failure to comply with the conditions specified in a notice of determination or permit shall result in a revocation.

- M. Maintenance bond or letter of credit required. A maintenance bond or irrevocable letter of credit shall be in the amount of the cost of the work to be performed pursuant to the permit approval to ensure performance of any work that is not complete or satisfactory to the Wetlands Inspector. If a sufficient bond or letter of credit has already been filed for site improvements associated with the project, the Planning Board has the discretion not to require a separate maintenance bond or letter of credit. A bond or letter of credit shall remain in effect until the issuance and filing of a certificate of compliance, or shall continue, when appropriate, until a certificate of occupancy is issued by the Building Department. If a bond has been filed to allow the issuance of a temporary certificate of occupancy, it shall be a condition of such certificate that the work be completed within two years.
- N. Certificates of occupancy. A certificate of occupancy may be issued after the Wetlands Inspector has issued a certificate of compliance, as provided above.

§ 139-16. Conservation plan or fee in lieu of permit denial.

- A. Planning Board findings.
- (1) In the event that the Planning Board issues a notice of intent to deny a permit for a regulated activity pursuant to § 139-14, an applicant may submit to the Planning Board a conservation plan after the Planning Board finds, by clear and convincing data and analysis, that all reasonable efforts were undertaken to comply with the criteria set forth in § 139-14 A(1) and (2) and that:
 - (a) The proposed project satisfies a compelling need of the community related to the health, safety and well-being of persons and property therein and clearly and substantially outweighs the loss or detriment to the function served by the regulated area and the benefits derived therefrom; or
 - (b) A court of competent jurisdiction may reasonably find that a denial of the permit would preclude substantially all uses for which a property is zoned and suitable, so as to deny the owner all economically beneficial or productive use of his or her property, or that the economic effect of the regulation is so substantial as to work a regulatory taking of property.
 - (2) Failure to comply with at least one of these conditions shall result in a permit denial that shall be filed in accordance with § 139-15, Standards for issuance of notices of determination and permits. For the purposes of this subsection, connecting roads other than principal roads or thoroughfares with each other, so as to permit travel between neighborhoods without utilizing such principal roads and thoroughfares, shall constitute a compelling need of the community.

- (3) The applicant may request such findings from the Planning Board at any time during the Planning Board's consideration of the application, up to six months after the Planning Board issues a notice of intent to deny a permit.
- (4) The Planning Board shall issue a written determination of its findings and shall include such findings in its notice of intent to deny if it makes such findings prior to issuing such notice of intent to deny or shall separately issue such findings and provide a copy to the applicant if said findings are subsequent to such notice of intent to deny.
- (5) Should the Planning Board's findings authorize the applicant to submit a conservation plan under Subsection A(1)(a) of this section, the applicant shall submit such conservation plan within six months of its receipt of such findings.

B. Conservation plan.

- (1) A conservation plan, as defined in § 139-4 of this chapter, is a narrative that shall explain the nature of the substantial adverse effects on the regulated area and associated natural resources by the proposed regulated activity and shall propose a strategy to mitigate the impacts. The narrative shall address any impacts on up-gradient and down-gradient property in the same subwatershed and shall explain the degree to which the proposed mitigation will attempt to redress the adverse environmental impacts on the regulated area. The plan must include a schedule for implementing the proposed work.
- (2) The conservation plan may include, but is not limited to, the following mitigation activities, individually or in combination, to redress adverse effects by the regulated activity:
 - (a) The establishment of a conservation restriction, as defined in § 139-4 of this chapter, to permanently protect the natural condition and functions of the remaining regulated areas of the subject parcel up-gradient or down-gradient in the same subwatershed as the area subject to the regulated activities that do not comply with the permit approval standards established in § 139-14 C(1) and (2) by precluding any future regulated activities within those areas pursuant to this section.
 - (b) The restoration or enhancement of native vegetation (for example, improving the density and diversity of native woody plant species) in adjacent associated buffer areas to offset the impacts on the affected regulated area.
 - (c) The repair or restoration of degraded or disturbed regulated areas, similar to those that have been or are proposed to be filled, drained, or damaged, or the construction of new regulated areas by in-kind replacement, as defined in § 139-4

of this chapter, of at least twice the area as the replaced wetland, watercourse or waterbody.

- (d) The construction of infiltration basins and the utilization of bioretention and detention techniques to maximize stormwater infiltration on-site, or the retrofitting of existing stormwater infrastructure to the extent not otherwise required by applicable law.
 - (e) The increase of the width of other associated buffer areas to offset the adverse impacts that will have resulted from a regulated activity, in accordance with the criteria set forth in § 139-14C(2).
- C. The Planning Board will conduct a preliminary review within 32 days of receipt of the draft conservation plan to determine whether the plan is sufficiently complete, will set a date for a public hearing on the same in accordance with § 139-12F, and will forward a copy of the application, draft plan and notice of hearing to the Wetlands Inspector, the EnCB, and the Town Board.
- D. The Wetlands Inspector and EnCB shall, within 62 days of referral of a proposed conservation plan, report to the Planning Board the extent to which the draft conservation plan mitigates substantial adverse effects on the regulated areas. The reasonable costs of review, as defined in § 139-4 of this chapter, incurred by the Wetlands Inspector, the EnCB and the Planning Board for private consultation fees shall be reimbursed by the applicant.
- E. After the lapse of the sixty-two-day referral period, the Planning Board shall determine whether the applicant has satisfactorily complied with this section and shall make one of the following decisions, which shall be issued and filed in accordance with § 139-15, Standards for issuance of notices of determination and permits:
- (1) Approve the conservation plan/approve the plan with modifications. The Planning Board may approve or approve with such modifications or conditions as the Planning Board determines are necessary to mitigate the substantial adverse effects on the function of the regulated areas by the proposed regulated activity. Upon approval of a conservation plan, a permit shall be issued. The applicant may be required to issue a maintenance bond or letter of credit as provided herein, prior to any site disturbance, clearing, grading or other work on the property that may adversely affect regulated areas.
 - (2) Disapprove the conservation plan. The Planning Board may disapprove the conservation plan when the applicant has failed to mitigate the adverse effects of the proposed regulated activity despite available opportunities and strategies to mitigate the impacts. Disapproval of a plan shall result in a permit denial.

- (3) Notice of intent to deny the conservation plan. When a plan is not feasible, despite the applicant's due diligence to comply with the standards and criteria above, the Planning Board may invite the applicant to pay a conservation fee, as defined in § 139-4 of this chapter, in lieu of plan denial.
- F. Documents filed by the applicant. Should an approved conservation plan include a conservation restriction, as defined in § 139-4 of this chapter, the applicant shall file the restriction in accordance with § 139-15K and in the offices of the County Clerk and Town Assessor.
- G. Conservation fee.
 - (1) To avoid disapproval of the conservation plan and permit denial when the Planning Board determines that there are no feasible mitigation strategies available to the applicant, despite the applicant's due diligence, or that available mitigation measures are inadequate alone, the applicant may, in its sole discretion, propose the payment of a conservation fee.
 - (2) Upon such application, the Planning Board shall establish the conservation fee in an amount necessary to mitigate the substantial adverse effects or to replace the resources lost as a result of the proposed regulated activity. In determining the conservation fee, the Planning Board shall duly consider the costs of land, construction, maintenance, monitoring and program administration.
 - (3) Upon the applicant's agreement to pay the conservation fee established by the Planning Board pursuant to the applicant's proposal hereunder, and upon the applicant's payment of the conservation fee, the Planning Board shall issue a permit with such conditions as it finds necessary to effect the purposes of this chapter.
- H. Maintenance bond or letter of credit required.
 - (1) Prior to any site disturbance, clearing or grading or other work on the property, the applicant shall file a maintenance bond or letter of credit in the amount of the cost of the work to be performed pursuant to the conservation plan to ensure performance of any work that is not complete or satisfactory to the Wetlands Inspector.
 - (2) If a sufficient bond or letter of credit has already been filed for site improvements associated with the project, the Planning Board has the discretion not to require a separate maintenance bond or letter of credit.
 - (3) A bond or letter of credit shall remain in effect until the issuance and filing of a conservation certificate or shall continue, where appropriate, until a certificate of occupancy can be issued by the Building Department.

- (4) If a bond has been filed to allow the issuance of a temporary certificate of occupancy, it shall be a condition of such certificate that the work be completed within two years.
- I. Conservation certificate. Upon satisfactory completion of a project authorized under the terms of a conservation plan and/or upon payment of a conservation fee, a conservation certificate, as defined in § 139-4 of this chapter, shall be issued by the Wetlands Inspector. The Wetlands Inspector shall issue a conservation certificate stating that the work of the authorized conservation plan has been completed in a satisfactory manner.
- J. Certificates of occupancy. A certificate of occupancy may be issued after the Wetlands Inspector has issued a conservation certificate as provided above.

§ 139-17. Referral of zoning variance applications to wetlands inspector.

To ensure administrative efficiency with the Town's separate land use development regulatory processes, applications for zoning variance made to the Zoning Board of Appeals (ZBA) affecting a regulated area and concerning a regulated activity shall be referred to the Wetlands Inspector for application, review, comment and administration under the provisions of this chapter.

§ 139-18. Penalties for offenses.

- A. Administrative sanctions.
- (1) Any person who undertakes any regulated activity without a required permit or notice of determination issued under this chapter, or who violates, disobeys, or disregards any provision of this chapter, including any provision of any permit issued, any condition set or fee required by the Planning Board or Town pursuant to this chapter, shall be liable to the Town of New Paltz for a civil penalty of not more than \$5,000 for every such violation. Each consecutive day of the violation will be considered a separate offense. Such civil penalty may be recovered in an action brought by the Town at the request and in the name of the Planning Board in any court of competent jurisdiction. Such civil penalty may be released or compromised by action of the Town Board, and any action commenced to recover the same may be settled and discontinued by the Town Board.
- (2) The Town Board shall have the power, following a hearing, to direct the violator to restore the regulated area to its condition prior to the violation, insofar as that is possible, within a reasonable time and under the supervision of the Planning Board or its designee. Any such order of the Town Board shall be enforceable in an action brought in any court of competent jurisdiction. Any civil penalty or

order issued by the Town Board pursuant to the criteria set forth herein shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules.

B. Criminal sanctions.

- (1) Any person who undertakes any regulated activity without a notice of determination or required permit issued under this chapter, or who violates, disobeys, or disregards any provision of this chapter, including any provision of any permit issued, any condition set or fee required by the Planning Board or Town pursuant to this chapter, shall, in addition, for the first offense, be guilty of a violation punishable by a fine of not less than \$500 and not more than \$1,000. For a second and each subsequent offense, he/she shall be guilty of a misdemeanor, punishable by a fine of not less than \$1,000 nor more than \$2,000, or by a term of imprisonment of not less than 15 days nor more than six months, or both. Each violation shall be deemed a separate and distinct offense, and in the case of continuing violation, each day in continuance thereof shall be deemed a separate and distinct offense.
- (2) In addition to these punishments, any offender may be ordered by the court to restore the affected wetland, watercourse, or buffer area to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Planning Board or its designee.

§ 139-19. Enforcement.

- A. The Building Inspector and CEO, as defined in § 139-4 of this chapter, shall have the authority and responsibility to enforce the requirements of this chapter. The Wetlands Inspector shall inform the Building Inspector or CEO of any potential violations of this chapter that he or she is aware of:
- B. Whenever the Building Inspector or CEO becomes aware of any potential violation of this chapter, either of them may, in addition to any other action authorized under any other state or local law, undertake further investigation, or request the Wetlands Inspector to undertake further investigation, of such potential violation.
- C. Stop-work and compliance orders.
 - (1) Whenever the Building Inspector or CEO has reasonable grounds to believe that any person has violated any provision of this chapter, has failed to undertake a project in the manner set forth in a permit or notice of determination issued pursuant to this chapter, or has violated any condition or exceeded the authority granted in any such permit or notice of determination, he/she may, in addition to any other action authorized under any other state or local law:

- (a) Issue and serve one or more stop-work orders to abate such violations and/or to halt any work that is contrary to any applicable provision of this chapter or any requirement, limitation or condition in such permit or notice of determination; and/or
 - (b) Issue a compliance order, requiring the remedying of any such violation and/or the restoration of the physical condition of the site of any such violation. The compliance order shall:
 - [1] Be in writing;
 - [2] Be dated and signed by the CEO;
 - [3] Specify the condition or activity that violates this chapter;
 - [4] Specify the provision or provisions of this chapter or any such permit or notice of determination that are violated by the specified condition or activity;
 - [5] Specify the period of time that the Building Inspector or CEO deems to be reasonably necessary for achieving compliance;
 - [6] Direct that compliance be achieved within the specified period of time; and
 - [7] State that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time.
- (2) The Building Inspector or CEO shall cause the stop-work or compliance order, as the case may be, or a copy thereof, to be served on the owner of the affected property personally or by certified mail, return receipt requested, and by regular first-class mail. The CEO is authorized, but not required, to cause a copy of the stop-work or compliance order to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property, personally or by mail, and is further authorized, but not required, to post such stop-work or compliance order on the site of the violation; provided, however, that the failure to serve any person mentioned in this sentence or to post such stop-work or compliance order shall not affect the effectiveness or the enforceability of such order. The stop-work or compliance order may state the conditions under which work may resume, if any.
- D. The Building Inspector and CEO are hereby authorized to issue appearance tickets before the Town Justice and to enforce the provisions of this chapter, including the conditions of the permit approval, conservation plan or conservation fee approved by the

Planning Board. A copy of the appearance ticket shall be filed with the Planning Board.

- E. The Town of New Paltz is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions of this chapter and/or to compel the restoration of the affected regulated area to its condition prior to the violation of the provisions of this chapter.
- F. Whenever a violation of this chapter is alleged, any person may file a complaint in regard thereto. The CEO shall record such complaints and shall promptly investigate and take enforcement action against such violation under this section if appropriate and/or shall report thereon to the Town Board for appropriate action.

§ 139-20. Administrative review.

Any decision or order of the Wetlands Inspector or any officer of the Building Department made pursuant to or within the scope of this chapter (other than to issue an appearance ticket), including the identification or mapping of a regulated area, as provided in § 139-6, notice of regulations; mapping; map updates; inspections, a notice of determination for any activity, as provided under § 139-12, Permit applications; review; notice of determination; public hearing; extensions, may be reviewed by the Planning Board at the request of any person affected thereby, including but not limited to the owner of the affected regulated area; any resident or owner of property contiguous to the subject parcel; any resident or owner of property within or contiguous to the subject regulated area for a distance of 1,000 feet up-gradient and down-gradient, regardless of municipal boundaries; or any person who uses or is directly affected by the regulated area, provided that such review is commenced upon filing with the Town Clerk or filing in the office of the Planning Board a notice of review within 30 days after filing of such with the Town Clerk. Such notice shall specify the grounds for seeking review and shall include a description of any new proof, if applicable. A review decision by the Planning Board shall be filed in accordance with § 139-15, Standards for issuance of notices of determination and permits.

§ 139-21. Relief from Planning Board decisions.

Persons who may be individually, jointly or severally aggrieved by any permit approval, permit denial, conservation plan, or conservation fee may apply to the Supreme Court of the State of New York for review of such decision under Article 78 of the Civil Practice Law and Rules of the State of New York.

§ 139-22. Annual review.

The Planning Board shall submit an annual report to the Town Board not later than the 10th day of December of each year concerning the administration, efficacy and enforcement of this chapter. The EnCB and the

Wetlands Inspector shall provide to the Planning Board such information as the Planning Board may request to assist it in compiling the annual report required under this section. Such reports and recommendations shall assist the Town Board in monitoring and evaluating the extent to which the intent and purpose of this chapter have been served.

§ 139-23. Amendments.

This chapter or any part thereof may, from time to time, be amended, in accordance with the procedures and requirements of the laws of the State of New York and the Code of the Town of New Paltz and as new information concerning soils, hydrology, flooding, stream channel geometry, or animal or botanic species peculiar to regulated areas becomes available. Every such proposed amendment shall be referred to the Planning Board and the EnCB for written reports before any public hearing, which may be held by the Town Board pursuant to the Municipal Home Rule Law. The Town Board shall not take action on any such amendment without such reports from the Planning Board and New Paltz Environmental Conservation Board unless 90 days have passed from the date of referral by the Town Board.

§ 139-24. Compliance with State Environmental Quality Review Act.

Prior to any decision under § 139-14, Review of applications; permit decisions or § 139-20, Administrative Review, of this chapter, the Planning Board shall first comply with the provisions of the State Environmental Quality Review Act (SEQRA) under Article 8 of the Environmental Conservation Law and its implementing regulations.

§ 139-25. Conflict with other regulations.

Where the standards and management requirements of this chapter are in conflict with other land use development regulations and policies regarding streams, steep slopes, clearing and grading, erodible soils, wetlands, floodplains, timber harvesting, land disturbance activities, or other environmental protective measures, the more restrictive shall apply.

§ 139-26. Filing of referenced regulations, maps and documents; availability; applicability of amendments.

All laws, regulations, maps and documents referenced in this chapter shall be filed with the Town Clerk and shall be available to the public for review upon request. Subsequent amendments to those laws and regulations and subsequent editions of those documents shall only apply to this chapter upon their adoption by the Town Board.