

# Code of the Town of Ossining, New York (Westchester County)

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## Chapter 105: FRESHWATER WETLANDS, WATERCOURSES AND WATER BODY PROTECTION

[HISTORY: Adopted by the Town Board of the Town of Ossining 2-24-1998 by L.L. No. 2-1998. Editor's Note: This local law also repealed former Ch. 105, Freshwater Wetlands, adopted 8-24-1976 by L.L. No. 7-1976, as amended. Amendments noted where applicable.]

### GENERAL REFERENCES

Environmental quality review — See Ch. 85.  
Excavations — See Ch. 87.  
Filling and grading — See Ch. 92.  
Streams and watercourses — See Ch. 169.  
Subdivision of land — See Ch. 176.  
Tree protection — See Ch. 183.

### § 105-1. Title and purpose; statutory authority.

- A. Title and purpose. This chapter shall be known as the "Freshwater Wetlands, Watercourses and Water Body Protection Law of the Town of Ossining." It is a chapter regulating the dredging, filling, deposition or removal of materials; diversion or obstruction of water flow; and placement of structures and other uses in the water bodies, watercourses and wetlands in the Town of Ossining.
- B. Enabling authority. This chapter is enacted pursuant to the Municipal Home Rule Law and any and all applicable laws, rules and regulations of the State of New York. Nothing contained herein shall be deemed to conflict with any such laws, rules and regulations.
- C. Functions.
  - (1) In their natural state, wetlands serve a myriad of valuable ecological functions important to the public welfare. These functions include but are not limited to the following:
    - (a) Protecting water resources by providing sources of surface water, recharging groundwater and aquifers, serving as chemical and biological oxidation basins, and/or functioning as settling basins for naturally occurring sedimentation.
    - (b) Controlling flooding and stormwater runoff by storing or regulating natural flows.
    - (c) Providing unique nesting, migratory and wintering habitats for diverse wildlife species, including many on the New York State and federal endangered species lists.
    - (d) Supporting unique vegetative associations specifically adapted for survival in low-oxygen environments.
    - (e) Providing areas of unusually high plant productivity which support significant wildlife diversity and abundance.
    - (f) Providing breeding and spawning grounds, nursery habitat and food for various species of fish.
    - (g) Serving as nutrient traps for nitrogen and phosphorus, and filters for surface water pollutants.
    - (h) Helping to maintain biospheric stability by supporting particular efficient photosynthesizers capable of producing significant amounts of oxygen, and supporting bacteria which process excess nitrates and nitrogenous pollutants and return them to the atmosphere as inert nitrogen gas.

- (i) Providing open space and visual relief from intense development in a rapidly growing area.
  - (j) Serving as outdoor laboratories and living classrooms for the study and appreciation of natural history, ecology and biology, and serving generally as an education and research resource.
  - (k) Providing recreation areas for fishing, boating, hiking, bird watching, photography, camping and other uses.
  - (l) Controlling erosion by serving as sedimentation areas and filter basins, absorbing silt and organic matter.
- (2) A significant amount of the town's wetland base has been lost or impaired by draining, dredging, filling, excavating, building, polluting and other acts inconsistent with the natural uses of such areas. The remaining wetlands are potentially in jeopardy of being lost in a similar fashion.
- D. Legislative intent. It is the intent of the Town of Ossining that activities in and around wetlands, watercourses and water bodies conform with all applicable building codes and other regulations. Such activities shall not threaten public safety or welfare or the natural environment, or cause nuisances by factors including but not limited to the following:
- (1) Impeding flood flows, reducing flood storage areas or destroying storm barriers, thereby resulting in increased flood heights, frequencies or velocities on other lands;
  - (2) Increasing water pollution through location of domestic waste disposal systems in wet soils; inappropriate siting of stormwater control facilities; improper and careless application and/or disposal of fertilizers, pesticides, herbicides and algaecides in a wetland; disposal of solid wastes at inappropriate sites; creation of unstabilized fills; or the destruction of wetland soils and vegetation serving pollution and sediment control functions;
  - (3) Increasing erosion; or
  - (4) Adversely affecting any of the other wetland functions specified in § 105-1C above.
- E. Policy.
- (1) It is declared to be the intent of the town to control, protect, preserve, conserve and regulate the use of wetlands within the town to ensure that the benefits found to be provided by wetlands as set forth in § 105-1C hereof will not be lost.
  - (2) These regulations are enacted with the intent of providing a reasonable balance between the rights of the individual property owners and the public interest in preserving the valuable functions of wetlands.
  - (3) It is the intent hereof to incorporate wetlands protection into the town's land development regulations.

**§ 105-2. Definitions and word usage.**

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

APPLICANT — Any individual, firm, partnership, association, corporation, company, organization or other legal entity of any kind, excluding the Town of Ossining and its governmental agencies, who request the approval authority to issue a permit or to whom a permit has been granted under the provisions of this chapter. This chapter shall only serve as a guide to the Town of Ossining and its governmental agencies.

APPROVAL AUTHORITY — The town agency(s) or public official(s) empowered to administer the permit procedures of this chapter, as described herein.

**BOUNDARY OF A WETLAND** — The outer limit of the soils, hydrology and/or vegetation as defined under the term "wetland."

**BUFFER AREA** — An area surrounding a wetland, watercourse or water body that is also subject to the regulations as specified herein.

**BUILDING INSPECTOR** — The Building Inspector of the Town of Ossining.

**DAMS AND WATER-CONTROL MEASURES** — Barriers used to or intended to or which, even though not intended, in fact do obstruct the flow of water or raise, lower or maintain the level of water.

**DEPOSIT** — To fill, grade, discharge, emit, dump or place any material.

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

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

**DREDGE** — To excavate or remove sediment, soil, mud, sand, shells, gravel or other aggregate.

**ENVIRONMENTAL ADVISORY COMMITTEE** — -The Environmental Advisory Committee of the Town of Ossining.

**EXCAVATE** — To dig out and remove any material.

**FILL** — Same as the term "deposit."

**FRESHWATER WETLAND** — Same as the term "wetland."

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

**GRADING** — To adjust the degree of inclination of the natural contours of the land, including leveling, smoothing and other modification of the natural land surface.

**HYDRIC SOIL** — A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part, and as further defined under the term "wetland."

**HYDROPHYTIC VEGETATION** — Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content and as further defined under the term "wetland."

**MATERIAL** — All liquid, solid or gaseous substances.

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

**PLANNING BOARD** — The Planning Board of the Town of Ossining.

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

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

**STATE ENVIRONMENTAL QUALITY REVIEW ACT** — The law pursuant to Article 8 of the New York Environmental Conservation Law providing for environmental quality review of actions.

**STRUCTURE** — 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, tennis courts, swimming pools and decks.

**TOWN** — The unincorporated portions of the Town of Ossining.

**TOWN BOARD** — The Town Board of the Town of Ossining.

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

**WATERCOURSE** — A running stream of water; a natural stream fed from permanent or natural sources, including rivers, creeks, springs, runs and rivulets; a stream, usually flowing in a particular direction, though it need not flow continuously (it may sometimes be dry). To meet this definition, it must flow in a definite channel, having a bed or banks. It usually discharges itself into some other stream or body of water. It must be something more than mere surface drainage over the entire face of the tract of land, occasioned by unusual freshets or other extraordinary causes.

**WETLAND:**

- (1) Any area which meets one or more of the following criteria:
  - (a) A watercourse;
  - (b) A water body;
  - (c) Land shown as a wetland on the New York State Freshwater Wetlands Map, as defined herein;
  - (d) An area 1/2 acre or more in size inundated or saturated by surface or ground water at a frequency and duration sufficient under normal circumstances to support a prevalence of hydrophytic vegetation;
  - (e) An area specified as a wetland on the Town of Ossining Wetlands and Drainage Map; or
  - (f) An area specified as being comprised of hydric soils on the Town of Ossining Wetlands and Drainage Map, which is determined by the approval authority to constitute a wetland, and which is at least 1/2 acre in size.
- (2) This term "wetland," as used in this chapter, shall include watercourses and water bodies.

**WETLANDS AND DRAINAGE MAP** — The most current Town of Ossining Wetlands and Drainage Map, dated February 24, 1998, adopted by the Town Board and as from time to time updated, which shows the approximate location of areas classified as wetlands. This map is intended to provide general guidance in locating and determining those areas which constitute wetlands, as defined herein. The actual boundary of a wetland shall be determined on a site-by-site basis and confirmed by the approval authority.

**ZONING BOARD OF APPEALS** — The Zoning Board of Appeals of the Town of Ossining.

### **§ 105-3. Rules for establishing and interpreting wetland and buffer area boundaries.**

- A. Wetlands. The applicant shall be responsible for having the boundaries of the wetland(s) and buffer area(s) determined by field investigation, flagging and subsequent survey by a licensed land surveyor. The approval authority may also consult, at the expense of the applicant, and/or may also require the applicant to consult with biologists, hydrologists, soil scientists, ecologists/botanists or other experts and professionals as deemed necessary to make this determination.
- B. Buffer areas. The exact size of the buffer area shall be determined as follows:
  - (1) For all water bodies and for all non-watercourse wetlands, the buffer area shall extend 100 feet away from the edge of said water body or wetland as measured horizontally from the boundary of said water body or wetland.
  - (2) For all watercourses, the buffer area shall extend 50 feet away from the edge of said watercourse as measured horizontally from the boundary of said watercourse.

### **§ 105-4. Applicability.**

The provisions of this chapter shall apply to all lands defined and/or designated as wetlands, watercourses, water bodies and buffer areas.

**§ 105-5. Allowable, regulated and prohibited acts.**

No regulated activity shall be conducted in a wetland, watercourse, water body or buffer area without a written permit from the approval authority and full compliance with the terms hereof and other applicable regulations.

- A. Allowable activities. The following uses shall be allowed without a permit within a wetland or buffer area as specified below:
- (1) Normal ground maintenance, including mowing, trimming of vegetation and removal of dead or diseased vegetation around a residence.
  - (2) Repair of existing walkways and walls.
  - (3) Maintenance of existing decorative landscaping and planting in buffer areas only.
  - (4) Public health activities and orders of the Westchester County Department of Health and/or the New York State Department of Health for emergencies only.
  - (5) Normal gardening activities and the composting of leaves, grass clippings or other vegetation in buffer areas only, located within a private residential lot.
- B. Regulated acts which require a permit. It shall be unlawful, in the absence of a written permit issued by the approval authority, to do any of the following activities in any wetland, watercourse, water body or buffer area:
- (1) Placement or construction of any structure.
  - (2) Any form of draining, dredging, excavation or removal of material, or any dumping, filling or depositing of material, either directly or indirectly.
  - (3) Installation of any service lines or cable conduits.
  - (4) Introduction of any form of pollution including but not limited to the installation of a septic tank, the running of a sewer outfall or the discharging of sewage treatment effluent or other liquid wastes into or so as to drain into a wetland, watercourse, water body or buffer area.
  - (5) Alteration or modification of natural features or contours.
  - (6) Alteration or modification of natural drainage patterns or watercourses.
  - (7) Construction of dams, docks or other water-control devices, pilings or bridges, whether or not they change the natural drainage characteristics.
  - (8) Operation of existing dams and water-control devices, involving the adjustment of water level more than 18 inches or any adjustment of water level which is in place for more than one week.
  - (9) Installation of any pipes, wells or utility lines.
  - (10) Within the same one-acre area, the cutting of more than three trees which are over six inches in diameter at a point four feet from ground level within an eighteen-month period.
  - (11) Plowing or harrowing of over 1/4 acre.
  - (12) Grazing of horses or other animals.
  - (13) Any other activity that may impair the natural function(s) of a wetland as described in § 105-1C of this chapter.
- C. Prohibited acts. It shall be unlawful to place or deposit chemical wastes or to introduce influents of such thermal content so as to cause deleterious ecological effect in any wetland, watercourse, water body or buffer area.

**§ 105-6. Application procedure for permits issued by Building Inspector.**

- A. Application contents. Five copies of the application and an application review fee as determined by the Town Board shall be submitted to the Town Building and Planning Department office. The application shall contain the following information:
- (1) The name and address of the owner and applicant.
  - (2) The street address and tax map designation of the property to which the application pertains.
  - (3) A statement of consent from the owner for any agent making application.
  - (4) A statement of proposed work and purpose thereof.
  - (5) Applications affecting the water retention capacity, water flow and other drainage characteristics of any wetland shall include a statement of the impact of the project on upstream and downstream areas, giving appropriate consideration to flood or drought levels of watercourses and amounts of rainfall.
  - (6) A discussion of the existing specific ecological functions of the wetland being affected, based on the functions described in § 105-1C herein, and the impacts to those functions by the proposed activity.
  - (7) Copies of all applicable county, state and/or federal permits or permit applications that are required for the proposed work or improvement.
- B. Referrals. The Building Inspector, upon receipt of an application meeting the requirements of this section, shall refer the application to the Environmental Advisory Committee for its review and report. For permits issued by the Building Inspector, the Environmental Advisory Committee shall render a report to the Building Inspector within 10 days of the referral date; for permits issued by the Planning Board, the Environmental Advisory Committee shall report to the Planning Board within 30 days of the referral date or within such other period as may be specified by the Planning Board. The approval authority shall have no obligation to consider the Environmental Advisory Committee's report, unless said report is rendered within the time frames specified herein. In the case of a wetland, watercourse or water body crossing a municipal line, upon receipt of the application, the Building Inspector shall also forward a copy of the application to the Clerk of the abutting municipality.
- C. Initial review of application by Building Inspector.
- (1) The Building Inspector shall review the application for the purpose of determining whether the application is eligible for processing under the provisions of Subsection D immediately below (Regulated acts permitted with permit issued by Building Inspector) and, if so, the Building Inspector shall process the application within 21 days of receipt of a complete application in accordance with the provisions of this chapter.
  - (2) If the Building Inspector determines that the application is not eligible for processing under the provisions of Subsection D immediately below, he/she shall provide written notice of such decision to the applicant within 21 days of receipt of a complete application and shall refer the application to the Planning Board for processing pursuant to § 105-7.
- D. Regulated acts permitted with permit issued by the Building Inspector.
- (1) The following two regulated activities are determined by this chapter to be limited in scope and potential impact, and are the two activities within wetlands or buffer areas for which a permit issued by the Building Inspector may be granted:
    - (a) Construction of a driveway when the length of a wetland or buffer area crossing or intrusion is less than 100 feet, excluding the construction of driveways of any length which cause hydrological isolation of a portion of a wetland; if a natural drainage system crossing is proposed, where a single culvert of less than 25 feet in length and 18 inches in diameter is required; and
    - (b) The application of nonpolluting chemicals or dyes for the purpose of maintenance that does not change the character of the wetland (such as Health Department testing).

- (2) Notwithstanding the foregoing, no regulated activity shall be permitted with a permit issued by the Building Inspector when such activity is proposed for an area designated as a wetland on the New York State Freshwater Wetlands Map.
- (3) If the Building Inspector determines that the granting of a permit for one or both of the activities in Subsection D(1) immediately above would be appropriate in light of the standards set forth in § 105-8 below, the Building Inspector shall grant the permit within 21 days of receipt of a complete application. Notwithstanding the foregoing, the Building Inspector, in his/her sole discretion, may forward any application for a permit to the Planning Board for processing in accordance with the provisions of § 105-7 below.
- (4) However, in the event that the Building Inspector determines that the granting of a permit for one or both of the activities in Subsection D(1) immediately above would be inappropriate in light of the standards set forth in § 105-8 below, the Building Inspector shall neither approve nor deny the application, but rather shall notify the applicant within 21 days of receipt of a complete application and shall forward the application to the Planning Board for processing in accordance with the procedures set forth in § 105-7 below.

### **§ 105-7. Procedures for permit applications to Planning Board.**

#### **A. Application contents.**

- (1) Ten copies of the application and an application review fee as determined by the Town Board shall be submitted to the Town Building and Planning Department office. The application shall contain the following information:
  - (a) The information specified in § 105-6A above.
  - (b) An explanation of why the proposed activity cannot be located at another site.
  - (c) A list of names of the owners of record of lands adjacent to the wetland, watercourse, water body and/or buffer area in which the project is to be undertaken, and the names of claimants of water rights which relate to any land within or within 100 feet of the edge of the buffer area in which the regulated activity is proposed to be located.
  - (d) A stormwater plan showing stormwater flow off of the development and how it will not increase or decrease the amount of water leaving the development, and how it will not decrease the quality of water found before construction entering into the wetland, watercourse and/or water body.
- (2) Additional information may be requested by the Planning Board including any of the following:
  - (a) Complete plans and estimates for the proposed site improvements, which shall be certified by a professional engineer, architect, land surveyor or landscape architect licensed in the State of New York, drawn to a scale no less detailed than one inch equals 50 feet and showing the following:
    - [1] The location of all wetlands, watercourses and water bodies on the site under review and within 200 feet of the site no earlier than 12 months prior to the date of filing the application.
    - [2] A description of the vegetative cover of the regulated area.
    - [3] A description of the soil types on-site.
    - [4] Location of the construction area and the area proposed to be disturbed, and their relation to property lines, roads, buildings and watercourses within 250 feet.
    - [5] The exact locations, specifications and amount of all proposed draining, filling, grading, dredging and vegetation removal or displacement, and the procedures to be used to do the work.
    - [6] Location of all wells and depths thereof, and all sewage disposal systems.

- [7] Existing and adjusted contours at two-foot intervals in the proposed disturbed area and to a distance of 50 feet beyond; and elevations of the site and adjacent lands within 200 feet of the proposed work site at contour intervals of no greater than 10 feet.
- [8] Details of any temporary or permanent drainage system proposed both for the conduct of the work and after completion thereof, including locations at any point discharges, artificial inlets or other man-made conveyances which would discharge into the wetland or wetland buffer, and measures proposed to control erosion, flooding and water pollution both during and after the work.
- [9] Where creation of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other water control devices, and analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations and subsurface soil, geology and groundwater conditions.
- [10] On the plan for development, a means on-site for a line of demarcation between the development and the wetland and/or wetland buffer area.
- [11] A completed full environmental assessment form as required by the New York State Environmental Quality Review Act.

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

**B. Procedure.**

- (1) In the case of permits sought in conjunction with subdivision approval, the Planning Board shall hold a public hearing on the requested permit concurrently with the public hearing on preliminary subdivision plat approval. Public notice and notice to interested parties of the wetland permit hearing shall be provided along with the notice required by the Town Code for the hearing on preliminary subdivision plat approval. The Planning Board shall issue a final written decision on the wetland permit as part of the decision on final subdivision plat approval.
- (2) In the case of permits sought in conjunction with site plan approval, the Planning Board shall hold a public hearing on the requested permit concurrently with the public hearing on site plan approval. Public notice and notice to interested parties of the wetland permit hearing shall be provided along with the notice required by the Town Code for the hearing on site plan approval. The Planning Board shall issue a final written decision on the wetland permit as part of the decision on site plan approval.
- (3) In the case of all other permits, the Planning Board shall hold a public hearing within 30 days of its finding the application complete. Public notice of such hearing shall be given at least 10 days prior to the date set for the hearing in a newspaper having general circulation in the town. Within 30 days of the close of the public hearing, the Planning Board shall render a written decision on the application.

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

**§ 105-8. Standards and findings for permit decisions.**

- A. Consideration. In granting, denying or conditioning any permit, the approval authority shall consider all relevant facts and circumstances including but not limited to the following:
  - (1) The environmental impact of the proposed action.

- (2) The alternatives to the proposed action, including the availability of preferable alternative locations on the subject parcel or on any other parcel under the control of the applicant.
  - (3) The suitability or unsuitability of the proposed activity to the area for which it is proposed.
  - (4) The effect of the proposed activity with reference to the protection or enhancement of the functions of wetlands and the benefits they provide which are set forth in § 105-1C hereof.
  - (5) The availability of further technical improvements, safeguards or other mitigation measures that could feasibly be added to the plan or action.
  - (6) The possibility of further avoiding reduction of the wetland's natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation and/or prevent erosion, assimilate wastes, facilitate drainage and provide recreation and open space.
- B. Findings. Permits will be issued by the approval authority pursuant to this chapter only if the applicant demonstrates and the approval authority finds that:
- (1) The proposed regulated activity is consistent with the policy hereof to preserve, protect and conserve wetland functions and the benefits they provide, as set forth in § 105-1C hereof, by preventing to the maximum extent practicable the degradation and destruction of wetlands as balanced against the need for development of the town.
  - (2) The proposed regulated activity is compatible with the public health and welfare.
  - (3) The proposed regulated activity cannot practicably be relocated on the site so as to eliminate or reduce the intrusion into the wetland, watercourse, water body and/or buffer area.

#### **§ 105-9. Permits.**

- A. Permits issued pursuant to this chapter may contain conditions designed to assure the preservation and protection of affected wetlands, and compliance with the policy and provisions of this chapter.
- B. Permits issued pursuant to this chapter shall be in written form and shall contain conditions including the following:
- (1) Work conducted under a permit shall be open to inspection at any time, including weekends and holidays, by the Planning Board, the Building Inspector and their designated representative(s).
  - (2) The permit shall expire on a specified date.
  - (3) The permit holder shall notify the Town Building and Planning Department of the date on which the work is to begin, at least five days in advance of such date.
  - (4) The approval authority's permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit.
- C. Conditions may include but shall not be limited to the following:
- (1) Limitation on the total portion of any lot or the portion of the wetland on the lot that may be graded, filled or otherwise affected.
  - (2) Setbacks for structures, fill and other activities from the wetland.
  - (3) Modifications in project design to ensure continued water supply to the wetland and circulation of waters.
  - (4) Replanting of wetland vegetation and construction of new wetland areas to replace damaged or destroyed areas.
- D. Performance guarantee.
- (1) The approval authority may require that, prior to commencement of work under any permit issued pursuant to this chapter, the applicant shall post a performance guarantee in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations

set forth in the permit. The particular amount and the conditions of the performance guarantee shall be consistent with the purposes of this chapter. The performance guarantee shall remain in effect until the approval authority or its designated agent certifies in writing that the work has been completed in compliance with the terms of the permit and the performance guarantee is released by the approval authority, or until a substitute performance guarantee is provided. In the event of a breach of any condition of any permit, the approval authority may act to obtain and make appropriate use of the proceeds of the performance guarantee.

- (2) The approval authority shall set forth in writing in the file it keeps regarding a permit application its findings and reasons for imposing a performance guarantee pursuant to this section.

E. Expiration of permit.

- (1) All permits shall expire on completion of the acts specified therein and, unless otherwise indicated, shall be valid for a period of one year from the date of issue. No original permit granted pursuant to this chapter shall be valid for greater than a period of three years from the date of issue. The approval authority may extend the time in which the acts specified in the permit must be completed if, in its opinion, such extension is warranted by the particular circumstances involved. In the case of a permit where no work on the wetland(s) has been accomplished, extensions shall not exceed two additional periods of 90 days each. In this case, should a permittee fail to complete the acts specified in the permit prior to the expiration of the second ninety-day extension, at the discretion of the approval authority the original permit may become null and void and an application would then need to be made for a new permit. The request for a new permit shall follow the same form and procedure as the original application, except that the approval authority shall have the option of not holding a public hearing if the original intent of the permit is not altered or extended in any significant way.
- (2) In the case of a permit where the work on the wetland(s) is partially completed, the number and length of extensions shall be at the sole discretion of the approval authority.
- (3) A request for an extension of an original permit shall be made in writing to the approval authority at least 30 days prior to the expiration date of the original permit and each extension.

**§ 105-10. Mitigation policy and plan requirements.**

A. Mitigation policy. Mitigation shall be permitted as compensation only for unavoidable wetland, watercourse, water body and buffer area losses. For the purpose hereof, said losses are necessary and unavoidable only if there is no reasonable on-site alternative to the proposed activity, including a reasonable reduction in density or a revision of road, building, utilities and/or lot layout.

B. Mitigation plan.

- (1) Upon a determination pursuant to Subsection A immediately above that a loss of wetland or buffer area is necessary and unavoidable, the Planning Board shall, and the Building Inspector may, as approval authority, require the preparation of a mitigation plan which shall specify mitigation measures that replace and/or restore, to the greatest extent reasonably practical, the functions of the original wetland in terms of type, ecological benefits, geographic location and setting, and size.
- (2) For the purposes of mitigation, on-site mitigation shall be the preferred approach; off-site mitigation shall be permitted only in cases where an on-site alternative is not possible.
- (3) Mitigation for intrusion into wetlands shall be such as to provide no overall net loss of wetlands in terms of ecological characteristics and function, similar geographic location and setting, and size. A greater than 1:1 replacement may be necessary in areas where there is a strong possibility of the failure of the viability of the replacement/restored wetlands. Mitigation for intrusion into buffer areas shall be such as to preserve the ecological characteristics and functions of the associated wetland.
- (4) Where off-site mitigation is proposed, it shall be within the same drainage basin affected by the

development. In this regard, contribution to a Town-Board-adopted drainage basin and/or wetland improvement plan may be considered by the approval authority.

C. Mitigation plan requirements.

- (1) Mitigation plans shall include baseline data as needed to adequately review the effectiveness of the plan.
- (2) The applicant shall monitor or shall cause to be monitored acts specified by the permit in order to determine whether the elements of the mitigation plan and permit conditions have been met and whether the wetland acreage created replaces the wetland acreage lost. The applicant shall submit written reports to the approval authority at a frequency to be determined by the approval authority addressing the progress of the work under the permit and the mitigation plan. The approval authority may contract with an expert in the area of wetlands, at the expense of the applicant, to assess the applicant's work and monitoring reports conducted under the permit and mitigation plan.
- (3) The requirements for monitoring shall be specified in the mitigation plan and shall include but not be limited to the following:
  - (a) The time period over which compliance monitoring shall occur.
  - (b) Field measurements to verify the size and location of the impacted wetland area and the restored/replacement wetland area.
  - (c) The date of completion of the restoration/replacement.
- (4) All wetland replacement shall be implemented and approved by the approval authority or its designated representative before the proposed wetland intrusion unless an alternate construction sequence is accepted by the approval authority.

**§ 105-11. Penalties for offenses.**

A. Administrative sanctions.

- (1) Damages. Any person who undertakes any activity regulated by this chapter without a permit issued hereunder, or who violates, disobeys or disregards any provision of this chapter, shall be liable to the town for civil damages caused by such violation for every such violation. Each consecutive day of the violation will be considered a separate offense. Such civil damages may be recovered in an action brought by the municipality at the request and in the name of the approval authority in any court of competent jurisdiction.
- (2) Restitution. The Planning Board shall have the authority to direct the violator to restore the affected wetland, watercourse, water body or buffer area to its condition prior to violation, insofar as that is possible, within a reasonable time and under the supervision of the Planning Board or its designee. Further, the Planning Board shall have the authority to require an adequate performance guarantee in a form and amount deemed necessary by the Planning Board to ensure the restitution of the affected wetland, watercourse, water body or buffer area.
- (3) Stop-work order; revocation of permit. In the event that any person holding a permit issued pursuant to this chapter violates the terms of the permit, fails to comply with any of the conditions or limitations set forth in the permit, exceeds the scope of the activity as set forth in the application or operates so as to be materially detrimental to the public welfare or injurious to a wetland, watercourse, water body or buffer area, the approval authority may suspend or revoke the permit as follows:
  - (a) Suspension of a permit shall be by a written stop-work order issued by the Building Inspector and delivered to the permittee or his agent or the person performing the work. The stop-work order shall be effective immediately, shall state the specific violations cited and shall state the conditions under which work may be resumed. A stop-work order shall have the effect of suspending all authorizations and permits granted by the town or any

agency thereof. The stop-work order shall remain in effect until the approval authority is satisfied that the permittee has complied with all terms of the subject permit or until a final determination is made by the Planning Board as provided in Subsection A(3)(b) immediately below.

(b) Public hearing; notice; determination.

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

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

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

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

B. Other sanctions. Any person convicted of having violated or disobeyed any provision hereof, any order of the approval authority or any condition duly imposed by the approval authority in a permit granted pursuant to this chapter, for the first offense shall be punishable by a fine of not less than \$1,000 per day of offense. Each subsequent offense shall be punishable by a fine of not less than \$2,000 per day. Each consecutive day of the violation shall be considered a separate offense. The term "person," as used herein, shall mean a natural person or a corporation.

**§ 105-12. Enforcement.**

The town is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions hereof and/or to compel the restoration of the affected wetland, watercourse, water body or buffer area to its condition prior to the violation of the provisions of this chapter.

**§ 105-13. Wetland acquisition.**

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

- A. The written notice must include an indication that the acquisition process has commenced, such as that an appraisal of the property has been prepared or is in the process of being prepared.
- B. If the landowner receives no offer for the property within one year of the permit denial, this bar to the permit lapses. If its negotiations with the applicant are broken off, the state or any agency or political subdivision must, within six months of the end of negotiation, either issue its findings and determination to acquire the property pursuant to § 204 of the Eminent Domain Procedure Law, or issue a determination to acquire the property without public hearing pursuant to § 206 of the Eminent Domain Procedure Law, or this ban to the permit lapses.

**§ 105-14. Appeals.**

Any final determination, decision or order of the Building Inspector may be appealed by means of the procedure specified for zoning matters in Chapter 200, Zoning, of the Ossining Town Code.

### **§ 105-15. Existing or prior operations or projects.**

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

- A. In the case of the subdivision of land, approval of a final plat as the term is defined in § 276 of the Town Law.
- B. In the case of a site plan, special permit or conditional use permit not involving the subdivision of land, approval by the appropriate board.
- C. In those cases not covered by Subsection A or B immediately above, the issuance of a building permit for the commencement of the use, improvement or development for which such permit was issued or, for those uses, improvements and developments for which the Town of Ossining does not require such permits, the actual commencement of the use, improvement or development of the land.

### **§ 105-16. General provisions.**

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

- A. Inspection and indemnification. Any site for which an application has been submitted shall be subject to inspection upon notice to the property owner and applicant at any reasonable time, including weekends and holidays, by the approval authority or its designated representatives. The property owner and applicant, by making application for a permit, shall be deemed to have given consent to such inspection. The property owner and applicant shall indemnify and hold the Town of Ossining harmless against any damage or injury that may be caused by or arise out of any entry onto the subject property in connection with the processing of the application, during proposed work, or within one year after the completion of the work.
- B. Conflicts. Wherever this chapter is inconsistent with any other law of the Town of Ossining, whichever law imposes the more stringent restriction shall prevail.
- C. Severability. The provisions and sections of this chapter shall be deemed to be severable, and the invalidity of any portion of this chapter by a court of competent jurisdiction shall not affect the validity of the remainder of this chapter.
- D. Effective date. This chapter shall become effective immediately upon publishing and posting as required by law.