

Chapter 227

WETLANDS

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[HISTORY: Adopted by the Board of Trustees of the Village of Croton-on-Hudson 7-16-2007 by L.L. No. 4-2007.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Environmental compliance — See Ch. 115.	Steep slopes — See Ch. 195.
Environmental quality review — See Ch. 116.	Stormwater, drainage, erosion and water pollution control — See Ch. 196.
Excavation, filling and topsoil removal — See Ch. 120.	Trees — See Ch. 208.
Flood damage prevention — See Ch. 129.	Zoning — See Ch. 230.
Professional fees — See Ch. 178.	

§ 227-1. Legislative findings.

The Board of Trustees of the Village of Croton-on-Hudson finds that growth of population and attendant residential and commercial development and increasing demands upon natural resources have the potential of encroaching upon, despoiling, polluting or eliminating many of the wetlands, water bodies and watercourses of the Village which, if preserved, constitute important physical, economic, social, historic, archaeological, aesthetic, recreational and ecological assets to present and future residents of the Village and provide important beneficial functions, including natural flood and stormwater control, groundwater recharge, natural pollution treatment, erosion and sediment control, wildlife habitat creation, recreation and open space enhancement and educational opportunities.

§ 227-2. Legislative intent.

It is the intent of this chapter to protect the public interest, general health, safety, economic and general

1. Editor's Note: This local law also repealed former Ch. 227, Wetlands and Watercourses, adopted 6-20-1988 by L.L. No. 4-1988, as amended.

welfare of the citizens of the Village by providing for the protection, preservation, proper maintenance and use of its wetlands, water bodies and watercourses by preventing damage from erosion or siltation, minimizing disturbance, preserving natural habitats and protecting against flood and pollution and otherwise protecting the quality of such areas for their conservation, economic, aesthetic, recreational and other public uses and values. Further, it is the intent of this chapter to protect the surface water and groundwater resources wholly and partly within the Village from the threat of pollution, misuse or mismanagement. Therefore, because all wetlands, water bodies and watercourses are presumed to be of importance, it is hereby declared that the regulation of wetland and wetland buffer areas of the Village, as defined in § 227-3 of this chapter and as this chapter becomes effective relative to any specific area as described herein, is essential to the health, safety, economic and general welfare of the citizens of the Village.

§ 227-3. Definitions.

As used in this chapter, the following terms, phrases or words and their derivations shall have the meanings given herein:

AGRICULTURE — The act of raising crops for economic gain; as further defined in 6 NYCRR 663.2(c).

APPLICANT — Any individual or individuals, firm, partnership, association, corporation, company, organization or other legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof, filing an application pursuant to this chapter.

APPROVING AUTHORITY — The Planning Board, Water Control Commission, or the Village Engineer as specified in § 227-7G.

BOARD OF TRUSTEES — The Board of Trustees of the Village of Croton-on-Hudson.

CLEAR-CUTTING — ~~The removal of four (4) or more trees from a property without the benefit of a current and valid tree removal permit.~~

~~utting of more than 10 trees with a DBH of four inches or greater on a lot, within any twelve month period.~~

DEPOSIT — To fill, place, eject or dump any liquid, solid or gaseous material, or the act thereof, but not including stormwater.

DIAMETER AT BREAST HEIGHT (DBH) — The diameter of a tree measured at a point ~~4.5-4.2~~ feet above the ground, or at the highest point of the remaining stump if less than ~~4.5-4.2~~ feet, on the uphill side of the tree.

FRESHWATER WETLANDS MAP — The final Freshwater Wetlands Map promulgated by the New York State Department of Conservation as defined in 6 NYCRR 663.2(p).

HYDRIC SOIL — A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part, as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, prepared by the federal government and as updated from time to time, and as on file with the Village Clerk of the Village of Croton-on-Hudson.

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 as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, prepared by the federal government and as updated from time to time, and the Wetlands Plants of the State of New York, 1988, published by the United States Fish and Wildlife Service in cooperation with the National and Regional Wetlands Plant List Review Panels, and as updated from time to time, and as on file with the Village Clerk of the Village of Croton-on-Hudson.

LOT — Any parcel of land, not necessarily coincident with a lot or lots shown on a map of record, which is occupied or which is to be occupied by a building and its accessory buildings, if any, or by a group of

buildings having any land in common and the buildings accessory thereto, if any, together with the required open spaces appurtenant to such building or group of buildings.

MATERIAL — Substances including but not limited to soil, silt, gravel, rock, sand, clay, peat, mud, debris and refuse, any organic or inorganic compound, chemical agent or matter (excluding pesticides, herbicides, algacides and agricultural or radioactive wastes to the extent that the same are exempt or regulated exclusively by the state), sewage sludge or effluent or solid waste (industrial or municipal).

MITIGATION PLAN — A plan prepared by the applicant which shall specify mitigation measures that provide for replacement wetlands and wetlands buffers that recreate as nearly as possible the original wetlands and wetlands buffers in terms of type, function, geographic location and setting.

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

PLANNING BOARD — The Planning Board of the Village of Croton-on-Hudson.

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

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

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) — Article 8 of the New York State Environmental Conservation Law.

TREE — A living woody plant with an erect perennial trunk which is four inches or more in DBH. Any woody perennial plant of a species which grows at maturity to an overall height of 10 feet or more and has a main stem or trunk or multiple trunks at maturity which, in combination normally attain a DBH of four inches or greater.

VERNAL POOL — Relatively open areas of surface water formed in depressions within uplands that are inundated to a minimum depth of six inches for three to four months during the growing season (usually March through June) and that are devoid of fish and contain amphibians (adults, egg masses or larval stages) during the growing season.

VILLAGE — The Village of Croton-on-Hudson, New York.

VILLAGE ENGINEER — The person employed as a Village Engineer of the Village of Croton-on-Hudson, or his or her designee.

WATER CONTROL COMMISSION — The Water Control Commission of the Village of Croton-on-Hudson.

WATER BODY — Any natural or artificial, permanent or intermittent, public or private water segment such as ponds, lakes or reservoirs, that are contained within, flow through, or border on the Village of Croton-on-Hudson. For purposes of this definition, "intermittent" shall mean that water stands for at least three consecutive months in a twelve-month period. A water body is intermittently, seasonally or permanently covered by water and contains a discernible shoreline.

WATERCOURSE — Any natural or artificial, permanent or intermittent, public or private water segment such as rivers, streams, brooks or waterways, that is contained within, flows through, or borders on the Village of Croton-on-Hudson. For purposes of this definition, "intermittent" shall mean that water flows for at least three consecutive months in a twelve-month period. A drainage ditch, swale or surface feature that contains water only during and immediately after a rainstorm or a snow melt shall not be considered a watercourse.

WETLANDS —

A. Those geographical areas of 5,000 square feet or more, with the exception of vernal pools as

defined in this chapter that are regulated regardless of size, inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, vernal pools, wet meadows, fens and similar areas. For the purposes of this regulation, wetlands are defined as having one or more of the following characteristics:

- (1) Hydrophytic vegetation.
 - (2) Hydric soils.
 - (3) Wetlands hydrology.
- B. Water bodies shall be encompassed under the term "wetland" as used in this chapter. For purposes of identification, the minimum area requirement of 5,000 square feet for the "wetland" definition shall not apply and a minimum area requirement of 2,500 square feet shall apply instead.
- C. Watercourses shall be encompassed under the term "wetland" as used in this chapter. For purposes of identification, the minimum area requirement of 5,000 square feet for the "wetland" definition shall not apply.
- D. "Wetland," as defined and regulated under this chapter, shall include lands and waters that meet the definition provided in Section 24-0107, Subdivision 1, of the New York State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law) and have an area of at least 12.4 acres or, if smaller, have unusual local importance as determined by the Commissioner pursuant to Section 24-0301, Subdivision 1, of the Act. The approximate boundaries of such lands and waters are indicated on the Official Freshwater Wetlands Map promulgated by the Commissioner pursuant to Section 24-0301, Subdivision 5, or such a map that has been amended or adjusted pursuant to Section 24-0301, Subdivision 6.

WETLANDS BUFFER — A specified area surrounding a wetlands, which is intended to provide protection to the wetlands from human activity and other encroachment associated with development. The wetlands buffer shall be determined to be the area extending 120 feet horizontally from and paralleling the outermost wetlands boundary or top of the bank of the watercourse.

WETLANDS HYDROLOGY — The sum total of wetness characteristics in areas that are inundated or have saturated soils for a sufficient duration to support hydrophytic vegetation.

§ 227-4. Water Control Commission.

- A. The Board of Trustees is hereby authorized and empowered to create a Water Control Commission, which shall consist of five resident members, qualified by reason of training or experience in engineering, in water-related science, community planning, conservation, landscape architecture, wildlife management, forestry, ecology, hydrology or other related business or profession.
- B. The members and the Chairman of the Water Control Commission shall be appointed by the Mayor subject to the approval of the Board of Trustees, and the Board of Trustees may authorize and budget for such expenses as may be necessary and proper. Each member of the Commission shall serve for a term of five years, provided that, of the members first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years and one for the term of five years. If a vacancy shall occur other than by expiration of a term, it shall be filled by the Mayor, subject to the approval of the Board of Trustees, by appointment to the

unexpired term. The Mayor shall, subject to the approval of the Board of Trustees, designate a member of the Commission to act as Chairman thereof, or, on failure so to do, the Commission shall elect a Chairman from its own members.

- C. Meetings of the Commission shall be held at such times as the Commission may determine. All business of the Commission shall be conducted at public meetings. Three members of the Commission shall constitute a quorum for holding a hearing and making a decision on an application. The Commission shall keep minutes of its proceedings, showing the vote of each member upon any question or, if absent or failing to vote, indicating such fact, and shall also keep records of its official actions.
- D. Every decision, recommendation or determination of the Commission shall be filed in the office of the Village Engineer and shall be a public record. The Water Control Commission shall have the power to adopt, amend and repeal rules and regulations consistent with this chapter governing its procedure and transaction of business consistent with Article 7 of the Public Officers Law. All rules and regulations and amendments or repeal thereof shall take effect immediately upon filing in the office of the Village Manager, after approval by the Board of Trustees.
- E. The Village Engineer or consulting engineer shall furnish to the Water Control Commission such recommendations and engineering data as the Water Control Commission shall request and require. The Village Engineer or consulting engineer shall advise the Water Control Commission on all other matters within the jurisdiction of the Water Control Commission under this chapter and, upon request of the Water Control Commission, shall be present at the meetings and deliberations of the Water Control Commission.
- F. The powers and duties of the Water Control Commission under this chapter shall be as follows:
 - (1) The Water Control Commission shall review applications for and take appropriate action on projects submitted within its jurisdiction pursuant to § 227-7 of this chapter, and in accordance with the New York State Environmental Quality Review Act and other applicable laws.
 - (2) The Water Control Commission shall investigate and report upon water conservation and drainage problems referred to it by the Board of Trustees, the Village Planning Board, or the Village Engineer; as directed by the Village Board of Trustees, evaluate Village of Croton-on-Hudson water planning with the planning of adjacent communities, counties and adjacent governmental authorities; and increase public knowledge and awareness of sound wetland management.

§ 227-5. Regulated activities.

Except as provided in § 227-6 hereof, it shall be unlawful to conduct, directly or indirectly, any of the following activities upon any wetlands or within the wetlands buffer unless a permit is obtained pursuant to § 227-7 hereof:

- A. Placement or construction of any structure.
- B. Any form of draining, dredging, excavation or removal of material, either directly or indirectly.
- C. Any form of dumping, filling or depositing of material, either directly or indirectly.
- D. Installation of any service lines or cable conduits.
- E. 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.

- F. Alteration or modification of natural features and contours.
- G. Alteration or modification of natural drainage patterns.
- H. Construction of dams, docks or other water control devices, pilings or bridges, whether or not they change the natural drainage characteristics.
- I. Installation of any pipes or wells.
- J. Clear cutting.

~~K.~~ Removal or cutting of any vegetation except as permitted in § 227-6C, F and G hereof.

~~K-L.~~ Removal of any tree that is four inches or more in DBH within a wetland, watercourse, or wetland/watercourse buffer as defined herein.

~~L-M.~~ Depositing or introducing of chemicals, including herbicides, pesticides and fertilizers, except as permitted in § 227-6K.

~~M-N.~~ The grazing and watering of one or more horses or other animals other than those directly producing agricultural products.

~~N-O.~~ Any other activity that may impair the natural function(s) of a wetlands as described in § 227-1 hereof.

~~O-P.~~ Decorative landscaping and planting, except that decorative landscaping and planting in a wetlands buffer shall not require a permit.

§ 227-6. Activities permitted by right without permit.

The following activities are permitted by right within any wetlands or wetlands buffer:

- A. The depositing or removal of the natural products of the wetlands by recreational or commercial fishing, shellfishing, aquaculture, hunting or trapping where otherwise legally permitted.
- B. Outdoor recreational activity that does not materially alter the natural state of the land or require construction, including use of field trails for nature study, hiking, swimming, skin diving and boating, where otherwise legally permitted.
- C. Normal ground maintenance, including mowing, trimming of vegetation and removal of dead or diseased vegetation, around a residence except for the use of fertilizers, pesticides and herbicides in wetlands.
- D. Repair of walkways and walls when the work does not involve the use of any machinery.
- E. Operation and maintenance of such dams, retaining walls, terraces, sluices, culverts or other water control structures or devices as legally existed on the effective date of this chapter.
- F. Selective trimming and pruning in landscaped areas to improve the health or appearance of vegetation.
- G. Public health activities pursuant to the order of the Westchester County Department of Health or New York State Department of Health.
- H. Any actual and ongoing emergency activity that is immediately necessary for the protection and preservation of life or property.

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- I. The growing of crops that directly produce agricultural products.
- J. The grazing and watering of one or more horses or other animals that directly produce agricultural products.
- K. Depositing herbicides, pesticides or fertilizers in a wetlands buffer in accordance with manufacturers' recommendations and accepted horticultural practices.
- L. Decorative planting in a wetlands buffer.

§ 227-7. Permits.

- A. Any person proposing to conduct or cause to be conducted a regulated activity specified in § 227-5 hereof upon any wetlands or wetlands buffer shall file an application for a permit with the approving authority as hereinafter provided. Such application shall include the following information:
 - (1) The name and address of the property owner and applicant, if different.
 - (2) The street address and Tax Map designation of the property.
 - (3) A statement of authority from the owner for any agent making application for a permit.
 - (4) A statement of the proposed work and purpose thereof.
 - (5) A completed environmental assessment form as required by the New York State Environmental Quality Review Act and any other forms as required by law.
 - (6) A statement that the property owner and applicant will indemnify and hold the Village or its representatives harmless against any damage or injury in accordance with § 227-10 hereof.
 - (7) An explanation as to why the proposed activity cannot be located on a different portion of the site or on another lot under the applicant's ownership or control.
 - (8) A sketch plan to scale.
 - (9) A United States Geological Survey (USGS) topographic map (1:24,000 scale) 7.5-minute quadrangle with the subject property outlined.
 - (10) Amount of area to be disturbed.
 - (11) Pre- and postdevelopment impervious surface area.
 - (12) A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter 196, Article I, Stormwater Management and Erosion and Sediment Control, shall be required for any wetlands permit approval that qualifies as or authorizes a land development activity as defined in Chapter 196, Article I. The SWPPP shall meet the performance and design criteria and standards in Chapter 196, Article I. The approved wetlands permit shall be consistent with the provisions of Chapter 196, Article I.
- B. Additional information may be requested by the approving authority, including any of the following:
 - (1) A description of all functions currently provided by the wetlands under review.
 - (2) Complete plans for the proposed site improvements, which shall be certified by an 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:

- (a) The location of all wetlands and wetlands buffers as determined by a qualified individual no earlier than 12 months prior to the date of filing the application. The finite boundaries of a wetlands shall be determined by field investigation and flagging after appropriate field survey work by qualified individuals in a manner acceptable to the approving authority. The boundaries shall subsequently be surveyed by a licensed land surveyor unless this requirement is waived by the approving authority. The approving authority may consult and/or may require the applicant to consult with biologists, hydrologists, soil scientists, ecologists/botanists or other experts as necessary to make this determination pursuant to the definition contained in § 227-3. The survey plan shall be submitted in digital format.
 - (b) A description of the vegetative cover of the wetlands and wetlands buffer, including dominant species, as well as a survey of all trees of eight inches or more in DBH located wholly or partially in the wetlands buffer.
 - (c) A description of the soil types on site and a copy of the Soil Conservation Service (SCS) map with the subject property outlined.
 - (d) The location of the construction area or area proposed to be disturbed, and its relation to property lines, roads, buildings, and wetlands within 250 feet.
 - (e) The exact locations, details, specifications and amount of all pre- and post-development proposed draining, fill, grading, dredging and vegetation removal or displacement, and the procedures to be used to undertake such work.
 - (f) The location of any wells and the depths thereof, and any sewage disposal system within 50 feet of the areas to be disturbed.
 - (g) The existing and proposed contours at two-foot intervals in the proposed disturbed area and to a distance of 50 feet beyond such area; and elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than five feet.
 - (h) Details of any temporary or permanent drainage system proposed both for the conduct of work and after completion thereof, including locations of any point discharges, artificial inlets or other human-made conveyances that would discharge into the wetlands or wetlands buffer, and measures proposed to control erosion both during and after completion of the work.
 - (i) 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 wetlands hydrologic system, including seasonal water fluctuation, inflow/outflow calculations and subsurface soil, geology and groundwater conditions.
 - (j) Where creation of a detention basin is proposed, with or without excavation, details of the construction of any dams, berms, embankments, outlets or other water control devices and an analysis of the wetlands hydrologic system, including seasonal water fluctuation, inflow/outflow calculations and subsurface soil, geology, and groundwater conditions.
- (3) Copies of all applicable County, state or federal permits or permit applications that are required for such work or, if none have been submitted at the time of wetlands permit application, a list of all permits that will ultimately be required.

- (4) A list of the names to whom notice of the application was sent, as specified in § 227-7E.
 - (5) Additional information as needed, such as the study of flood, erosion or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards; and other information deemed necessary to evaluate the proposed use in terms of the goals and standards of this chapter.
- C. An application fee in an amount set forth by resolution of the Board of Trustees shall be submitted with the application.
- D. 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 Village Engineer.
- E. For applications to the Planning Board as approving authority, the Village shall publish a notice of such application in the Village's official newspaper(s). For applications to the Planning Board, the Village shall also notify, in writing, all property owners of record within 200 feet of the boundary of the property on which the proposed regulated activity will be located, as shown in the Village Tax Assessor's office, of the filing of the wetlands permit application. For applications to the Water Control Commission as approving authority, the Village shall, within 10 days after filing the application, notify, in writing, all property owners of record within 200 feet of the boundary of the property on which the proposed regulated activity will be located.
- F. The approving authority for all applications shall be the Water Control Commission, except as follows:
- (1) The Planning Board shall be the approving authority for any application involving property that is also the subject of a pending site plan, minor site plan, subdivision or special permit application, or fill or excavation permit, in accordance with the Code of the Village of Croton-on-Hudson, and for any application that also involves the construction or establishment of a principal building or use.
 - (2) The Village Engineer shall be the approving authority for any of the following activities proposed to be conducted on property not subject to regulation by the State of New York, and no public hearing shall be required:
 - (a) Removing water-deposited silt and/or other material in order to restore the preexisting land elevations, provided that the total amount removed does not exceed 15 cubic yards of material.
 - (b) Removal of any tree that is four inches or more in DBH within a wetland, watercourse or wetland/watercourse buffer as described herein.
 - (c) Restoring land elevations that have been altered by erosion or storm damage.
 - (d) The construction, expansion or improvement of private residential or recreational facilities, as otherwise legally permitted, provided that the total amount of material deposited, removed or regraded does not exceed 15 cubic yards.
 - (e) The construction of driveways not associated with any other construction approvals where alternative means of access are proved to be impractical, provided that the amount of material to be deposited or regraded in connection with such construction does not exceed 100 cubic yards.
 - (f) The use of harmless chemicals, dyes and other similar substances to maintain or study any wetland.

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~~(f)~~(g) Decorative landscaping and planting in wetlands when covering less than 1/10 of an acre.

- (3) Where the Water Control Commission or Village Engineer initiates a review of an application submitted pursuant to this chapter and determines that because of the scope, nature, location or potential environmental impact of the action which could result from approval of the wetlands permit a public hearing would be either necessary or appropriate, the application shall be immediately forwarded to the Planning Board for public hearing, whereupon the Planning Board shall become the approving authority for such application.
- G. The Planning Board, upon receipt of an application meeting the requirements of this section, shall refer the application submitted to it, as the approving authority pursuant to this chapter, to the Water Control Commission for review and report. The Water Control Commission 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 Planning Board will be guided by the Water Control Commission's report. The Water Control Commission's failure to report within the specified time period may be interpreted by the Planning Board as evidence of no objection to the application.
- H. An application shall not be deemed complete until and unless the applicant has complied with the procedures of the State Environmental Quality Review Act.
- I. When the Planning Board is the approving authority, no sooner than 14 days and no later than 60 days after the receipt of a completed application, the Planning Board shall hold a public hearing on any application submitted pursuant to this chapter. These time periods may be extended by mutual agreement between an applicant and the Planning Board. The Planning Board shall cause notice of such hearing to be published in the Village's official newspaper(s) at least seven days prior to the date set for such hearing. All applications and maps and documents relating thereto shall be open for public inspection at the office of the Village Engineer. [Amended 10-4-2021 by L.L. No. 12-2021]
- J. Within 45 days of the date that such application is considered complete or within 45 days of the date of the close of any public hearing that may be conducted on said application, whichever period is longer, the approving authority shall render a decision to approve, approve with modifications and/or conditions or disapprove the issuance of a permit for the proposed activity. Nothing in this section shall be construed as authorizing a default approval in the event that these periods are exceeded.

§ 227-8. Considerations in granting permit; mitigation plans; monitoring; issuance of permits; security.

- A. In making its determination to grant, deny or grant with modifications and/or conditions a permit under this chapter, the approving authority shall consider the following:
 - (1) Whether the proposed activity is consistent with the findings and intent of this chapter as set forth in §§ 227-1 and 227-2 hereof.
 - (2) Whether the proposed activity will have an environmental impact and the extent of that impact.
 - (3) Whether there are possible or practicable alternatives to the proposed activity.
 - (4) Whether the proposed activity will have a deleterious effect on the health, safety or welfare of the residents of the Village or its neighboring communities.
 - (5) Whether the proposed activity will have adequate safeguards for the protection and preservation of the environment and the wetlands, and for the natural functions of and benefits derived from such areas.

- (6) Whether the proposed activity will have adequate safeguards employing the best available technology to protect the surface water and groundwater supplies of the Village from drought, pollution, overuse and other forms of misuse.
- (7) Whether the proposed activity has been planned or designed so as to create minimal disturbance; to prevent or mitigate damage from erosion, turbidity or siltation; to preserve the natural flora and fauna and their habitat; to protect against flood and pollution of the wetlands; and to protect any other benefits of wetlands as enumerated in §§ 227-1 and 227-2 hereof; and is the best practicable alternative available for accomplishing the proposed action.
- (8) Whether there is a practicable alternative site for the proposed activity in another area of the subject property that is not a wetland.
- (9) Any additional information as contained in:
 - (a) Any report from other Village boards and agencies and/or federal, state or other local governmental agencies.
 - (b) Any additional requested information.
- B. The applicant shall have the burden of demonstrating that the proposed activity is not adverse to the health, safety and welfare of the residents of the Village or its neighboring communities and that it will not degrade the environment or be inconsistent with the purpose of this chapter as stated in §§ 227-1 and 227-2 hereof or, in the alternative, that the applicant will otherwise suffer undue hardship if a permit is not issued.
- C. The approving authority may require the preparation of a mitigation plan by the applicant pursuant to § 227-8E hereof when the applicant has demonstrated that either losses or significant impacts to the wetlands or wetlands buffer are necessary and unavoidable. For the purposes of requiring a mitigation plan, wetlands impacts are necessary and unavoidable only if all of the following criteria are satisfied:
 - (1) There is no feasible on-site alternative to the proposed activity, including reduction in density, change in use, revision of road and lot layout and related site planning considerations that could accomplish the applicant's objectives; and
 - (2) There is no feasible alternative to the proposed activity on another site available to the applicant that is not a wetlands or wetlands buffer.
- D. The approving authority shall monitor or shall cause to have monitored projects in accordance with the specifications set forth in the permit to determine whether the elements of the permit and/or mitigation plan have been met. The Planning Board may contract with an academic institution, independent research group or other qualified professionals to assist and discharge its obligations hereunder at the expense of the applicant. The requirements for monitoring shall be specified in the permit and/or mitigation plan and may include, but not be limited to:
 - (1) The time period over which monitoring shall occur.
 - (2) Field measurements to verify the size and location of the impacted wetlands area and the restored/replacement wetlands area.
 - (3) The date of completion of the work or restoration/replacement.
 - (4) Field verification of the vegetative, hydrologic and soils criteria as specified in the permit and/or mitigation plan.

- E. In the event that the approving authority so requires pursuant to § 227-8C hereof, the applicant shall prepare a mitigation plan.
- (1) All mitigation measures shall balance the benefits of regaining new wetlands areas with the loss to other natural areas caused by wetlands creation. 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.
 - (2) Mitigation plans developed to compensate for the loss of wetlands or wetlands buffers shall include baseline data as needed to adequately review the effectiveness of this plan. The mitigation plan shall also include a monitoring schedule for a specified period of time as agreed to by the approving authority.
 - (3) Any mitigation plan prepared pursuant to this section and accepted by the approving authority shall become part of the permit for the application.
- F. Any permit issued pursuant to this chapter may be issued with conditions. Such conditions may be attached as the approving authority deems necessary to ensure the preservation and protection of affected wetlands and to ensure compliance with the policies and provisions of this chapter and the provisions of the approving authority's rules and regulations, if any, adopted pursuant to this chapter.
- G. Every permit issued pursuant to this chapter shall be in written form and shall contain the following conditions:
- (1) Work conducted under a permit shall be open to inspection during daylight hours, including weekends and holidays, by the approving authority or its designated representative or the Village Engineer.
 - (2) The permit expiration date as determined by the approving authority shall be stated.
 - (3) The permit holder shall notify the approving authority of the date on which the work is to begin at least five days in advance of such commencement date.
 - (4) The approving authority's permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit.
- H. The approving authority shall include in the permit application file it keeps a copy of any mitigation plan prepared pursuant to § 227-8E hereof and a record of any hearing held pursuant to § 227-7J hereof.
- I. The Planning Board, as the approving authority, may require prior to the commencement of work authorized under any permit issued pursuant to this chapter that the applicant shall post a bond or other security acceptable to the Board of Trustees 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 bond or other security shall be consistent with the purposes of this chapter. The bond or other security shall remain in effect until the issuance of a certificate of completion as described in § 227-12 hereof and until the bond or other security is released by the Planning Board or a substitute bond or other security is provided. In the event that any condition of any such bond or other security is breached, the Planning Board, as the approving authority, may recommend that the Village institute an action in the courts upon such bond or other security and prosecute the same to judgment and execution.
- J. No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all

respects with the applicable provisions of any other federal, state or local law or regulation, including but not limited to the securing of any other required permit or approval.

- K. The approving authority after notice to the permit holder and an opportunity to be heard may revoke or suspend a wetlands permit if it finds that the applicant has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit or has failed to undertake the project in the manner set forth in the approved application. **[Amended 7-21-2008 by L.L. No. 2-2008]**
- (1) Issuance of a stop-work order by the Village Engineer shall be as provided in § 86-14 of the Village Code. A stop-work order may be appealed by filing a written notice of appeal with the Planning Board not later than thirty (30) days after service of the stop-work order upon the applicant. A hearing shall be scheduled by the Planning Board within 20 days of receipt of request for a hearing. After the close of the hearing, the Planning Board may confirm, modify or cancel the stop-work order.
 - (2) The approving authority shall set forth, in writing, in the permit application file it keeps its findings and reasons for revoking or suspending a permit pursuant to this section.
- L. No permit shall be valid for more than one year after approval of an application by the approving authority unless otherwise specified by the approving authority. All permits shall expire upon the completion of the work specified therein. The validity of any work duly completed pursuant to an existing permit shall not be affected by the expiration of the permit, but such work shall not be continued beyond the expiration date. Permits may be renewed by the approving authority upon application submitted at least 60 days before the expiration of the permit. Standards for issuance of renewals shall be the same as for the issuance of permits. Permits, including all of their conditions, shall be binding on successors and assignees of the applicant.

§ 227-9. Appeals.

- A. A determination by the Planning Board to grant or deny a wetlands permit may be reviewed by the applicant or any other aggrieved person by the commencement of an action pursuant to the provisions of Article 78 of the Civil Practice Law and Rules.
- B. In the case of an application decided by the Water Control Commission or the Village Engineer, the applicant or any other party aggrieved by such determination may seek review by appealing to the Planning Board, in which case the Planning Board shall become the approving authority for such application. Such review shall be requested not later than 20 days after the filing of the subject decision by the approving authority.

§ 227-10. Inspection; 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 Village Engineer, the Building Inspector or by members of the Water Control Commission, the Planning Board or their designated representatives. The applicant, by making application for such permit, shall be deemed to have given its consent to such inspection. The applicant shall indemnify and hold the Village 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 construction or performance of the work or within one year after the completion of work.

§ 227-11. Exemptions.

This chapter shall not apply to any work shown on construction drawings or improvement plans for subdivisions, site plans, minor site plans, or special permits for which a wetlands permit has previously been granted prior to the effective date of this chapter.

§ 227-12. Completion of work.

- A. Within 30 days after completion of all work authorized under a permit issued in accordance with this chapter, the applicant shall notify the Village Engineer of such completion. For all work undertaken pursuant to permits approved by the Planning Board or Water Control Commission, the applicant shall, if required, submit as-built drawings. Within 30 days of such notification and submission, the Village Engineer shall inspect the work for compliance with all conditions of the permit.
- B. When all work authorized under a permit is deemed acceptable, the Village Engineer shall issue a certificate of completion, which shall be accompanied by cancellation or return of any bond collected for such permit.
- C. When work authorized under a permit is deemed not acceptable, the Village Engineer shall so notify the applicant. The notification of noncompliance shall include a list of all conditions in violation of the terms of the permit and shall specify a time limit for the correction of all items so listed.

§ 227-13. Penalties for offenses; enforcement.

- A. Any person who undertakes any regulated activity within a wetlands or wetlands buffer without a wetlands permit required by this chapter or who violates any condition attached to a wetlands permit or who otherwise violates any provision of this chapter shall be guilty of an offense, punishable by a fine of not less than \$500 nor more than \$1,000. For a second and each subsequent offense, the violator shall be guilty of an offense punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of not more than 15 days, or both. Each violation of the provisions of this chapter shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. In addition, the court may order or direct a violator to restore the affected wetland or wetlands buffer 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 Village Engineer.
- B. In addition to the criminal penalties provided under § 227-13A, any person who undertakes any regulated activity within a wetlands or wetlands buffer without a permit required by this chapter or who violates any condition attached to a wetlands permit or who otherwise violates any provision of this chapter shall be liable for a civil penalty not to exceed \$3,000 for every such violation. Each consecutive day of the violation shall be considered a separate offense. Before assessment of the civil penalty, the alleged violator shall be afforded a hearing or opportunity to be heard before the Planning Board upon due notice and with rights to specification of the charges and representation by counsel. Such civil penalty may be recovered in an action brought by the Village in any court of competent jurisdiction. Such civil penalty may be released or compromised by the Village, and any action commenced to recover the same may be settled and discontinued by the Village.
- C. The Planning Board also shall have the power, following a hearing, to direct a violator to cease violation of this chapter and, under the Board's supervision, to restore satisfactorily the affected wetland or wetlands buffer to its condition prior to the violation, insofar as that is possible, within a reasonable time. Exercising of such power may be with or without the imposition of a fine or civil

penalty under Subsections A and B hereof.

- D. Any civil penalty or order issued by the Planning Board shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
- E. The Village also shall have the right to seek equitable relief to restrain any violation or threatened violation of any provision of this chapter and to compel the restoration of the affected wetlands or wetlands buffer to its condition prior to the violation of the provisions of this chapter.
- F. The Village shall not issue a building permit, temporary certificate of occupancy or certificate of occupancy for any property for which a violation of this chapter has been served, or for which an administrative or judicial proceeding has been commenced under this section, until said violation or proceeding is dismissed or resolved to the satisfaction of the approving authority or court, as is appropriate.
- G. The Village Engineer and Code Enforcement Officer(s) are hereby authorized to issue appearance tickets for violations of this chapter.

§ 227-14. Severability.

If any provision of this chapter shall be held for any reason to be invalid, such determination shall not invalidate any other provision hereof.