

Chapter 116 of the Code of the Town of Poughkeepsie  
AQUATIC RESOURCES PROTECTION LAW

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[HISTORY: Adopted by the Town Board of the Town of Poughkeepsie 8-25-1976 as L.L. No. 7-1976 (Part I, Subpart 13 of the 1964 Code). Amended by the Town Board of the Town of Poughkeepsie...]

GENERAL REFERENCES

Building Construction-See Ch. 68  
Fees - See Ch. 105  
Erosion and Sediment Control - See Ch. 97

Flood Damage Prevention--See Ch. 113  
Subdivision of Land-See Ch. 177.  
Zoning --See Ch. 210

§116-1 Title and Purpose

This Chapter shall be known as the “Aquatic Resources Protection Law of the Town of Poughkeepsie.” Its purpose is to regulate the dredging, filling, deposition, or removal of materials, including vegetation; the diversion or obstruction of water flow; the placement of structures in, and other uses of, the streams, ponds, lakes, reservoirs, natural drainage systems, and wetlands located in the Town of Poughkeepsie; and the requirement of permits therefore, providing for the protection, preservation, and control of activities that may impact wetlands, waterbodies, and watercourses. This text replaces the previously adopted text of Chapter 116 in its entirety.

§ 116-2 Legislative Intent

A. The Town Board of the Town of Poughkeepsie has determined that the public interest, health, and safety, and the economic and general welfare of the residents of the Town of Poughkeepsie will be best served by providing for the protection, preservation, proper maintenance, and use of the Town’s aquatic resources, including, but not limited to ponds, lakes, reservoirs, waterbodies, rivers, streams, watercourses, wetlands, natural drainage systems, and adjacent land areas from encroachment, spoiling, polluting, or elimination resulting from recreational or commercial development, housing, road construction, utility placement, and/or disregard for natural resources.

B. The wetlands, watercourses, waterbodies, and adjacent buffers in the Town of Poughkeepsie are valuable natural resources which serve to benefit the entire Town and the surrounding region by performing one or more of the following functions:

- (1) Providing common linkages between aquatic systems (aquifers, floodplains, wetlands, lakes, rivers, etc.).

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- (2) Preventing watershed diversion of ground or subsurface water.
- (3). Preventing uncontrolled storm water drainage.
- (4) Providing drainage and flood control through hydrologic absorption, natural storage, and flood conveyance.
- (5) Protecting subsurface water resources, watersheds, and groundwater recharge systems.
- (6) Providing critical living, breeding, nesting, and feeding environments for many forms of wildlife, including, but not limited to, mammals, wildfowl, shorebirds, rare species, especially endangered and threatened species, and other dependent plants and animals.
- (7) Reducing pollution through natural biological degradation and chemical oxidation.
- (8) Controlling erosion by serving as sedimentation areas and filter basins, capturing silt and organic matter.
- (9) Providing sources of nutrients in freshwater food cycles.
- (10) Serving as nursery grounds and sanctuaries for freshwater fish.
- (11) Providing recreation areas for hunting, fishing, boating, hiking, bird watching, photography, camping, and other uses.
- (12). Serving as educational and research resources.
- (13) Preserving natural open space which serves to satisfy human psychological and aesthetic needs.

C. Areas adjacent to wetlands, watercourses, and waterbodies provide essential protection by reducing impacts from the impacts of activities taking place on surrounding lands. For the purpose of this Chapter, these adjacent areas are defined as buffers.

D. The protection of wetlands, watercourses, waterbodies, and buffers is a matter of concern to the entire Town. The establishment of regulatory and conservation practices for wetlands, watercourses, and buffers serves to protect the Town by insuring review and regulation of any activity on or along wetlands, watercourses, and buffers that might adversely affect the health, safety, and welfare of the citizens of the Town.

E. Wetlands, watercourses, waterbodies, and buffers in the Town and other areas form an ecosystem that is not confined to any one property owner or neighborhood. Experience has demonstrated that effective wetlands protection requires consistency of approach to preservation and conservation efforts throughout the Town.

F. Loss of wetlands or waterbodies, or any activity along watercourses and their buffers can cause or aggravate flooding, erosion, sedimentation, diminution of water supply and water quality for drinking and waste treatment, and may pose a threat to the health, safety, and welfare of the people of the Town and the surrounding region.

G. Pursuant to §24-0501 of the New York State Freshwater Wetlands Act (Article 24 of the New York Environmental Conservation Law; “the Act”), the Town of Poughkeepsie shall fully undertake and exercise its regulatory authority with regard to activities subject to regulation under the Act in freshwater wetlands, as shown on the NYSDEC Freshwater Wetlands Map, as such map may from time to time be amended, filed with the Department of Environmental Conservation pursuant to the Act, and in all areas adjacent to any such freshwater wetland up to one hundred (100) feet from the boundary of such wetland. Such regulatory authority shall be undertaken and exercised in accordance with all of the procedures, concepts, and definitions set forth in Article 24 of the New York Environmental Conservation Law and Title 23 of Article 71 of such law relating to the enforcement of Article 24, as such law may, from time to time be amended, with the following exceptions, additions, and modification. [See §24-0501, Subdivision 3, for a specification of any exceptions, additions, and modifications to the procedures of Article 24.] It is not the intent of this Chapter to regulate activities in wetlands under NYSDEC jurisdiction pursuant to the Act.

H. This Chapter is enacted pursuant to the above-referenced law and any and all applicable laws, rules, and regulations of the State of New York, and nothing contained herein shall be deemed to conflict with any such laws, rules, or regulations.

I. The Federal government, through the U.S. Army Corps of Engineers, in cooperation with the Environmental Protection Agency and the Fish and Wildlife Service, regulates certain activities affecting wetlands, water courses, and water bodies in the Town, as part of its nation-wide jurisdiction over such aquatic resources. It is the intent of this Chapter to provide local protection for these resources, without replacing, limiting, or conflicting with this Federal jurisdiction.

J. It is the intent of this Chapter to incorporate the consideration of the protection of wetlands, watercourses, and waterbodies, as well as that of their buffers, into the land use and development approval procedures of the Town, so as to provide a reasonable balance between the rights of the individual property owners to the use of their property and the rights of present and future generations.

§ 116-3 Definitions

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. The word “shall is intended to be mandatory.

B. As used in this Chapter, the following terms shall have the meanings indicated:

ACTIVITY - Any act, action, deed, operation, or procedure by any individual or individuals, firm, partnership, association, corporation, company, organization, or other legal entity of any kind, including municipal corporations, governmental agencies, or subdivisions.

ALTER - To change, move, or disturb any vegetation, soil, drainageway, or other natural material or system within a wetland, watercourse, or buffer as defined by this Chapter.

APPLICANT - Any individual or individuals, firm, partnership, association, corporation, company, organization, or other legal entity of any kind, including municipal corporations, governmental agencies, or subdivisions thereof, who has a request for a permit to conduct a regulated activity before the Code Enforcement Officer or who has an application pending pursuant to Article 111, § 116-6 of this Chapter before the Planning Board.

AQUACULTURE - Any cultivating and harvesting products, including fish and vegetation, that are produced naturally in freshwater wetlands and installing cribs, racks, and other in-water structures for cultivating these products, but does not include filling, dredging, peat mining, or the construction of any buildings or any water-regulating structures, such as dams.

AQUATIC RESOURCE - Any wetland, watercourse, or waterbody and associated buffers.

BOUNDARY OF A WETLAND - The outer limits of the environmental characteristics of a wetland, as defined under “Wetlands” in this Section.

BUFFER AREA - Protective areas surrounding or adjacent to wetlands, watercourses, or water bodies that are subject to regulation. The site or extent of the buffer areas are defined under “Wetland/watercourse/waterbody Buffer” in this Section.

CLEAR CUTTING - Complete cutting and removing of an entire stand of trees, replaced by natural or planted regeneration.

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CODE ENFORCEMENT OFFICER - The individual designated by the Town Board and charged with the enforcement of this Chapter.

COMPENSATORY MITIGATION - The restoration, creation, and/or enhancement of a wetland, watercourse, or waterbody area for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

CONSERVATION ADVISORY COMMISSION (CAC) - The duly appointed Conservation Commission of the Town of Poughkeepsie as created pursuant to Section 239 of the General Municipal Law.

CREATION - The establishment of a wetland or other aquatic resource where one did not formerly exist.

DAMS AND WATER CONTROL DEVICES - Barriers used to obstruct the flow of water to raise, lower, or maintain the water level in wetlands.

DATE OF RECEIPT OF COMPLETE APPLICATION - A complete application shall be deemed received by the Planning Board on the date of the first regular meeting of the Planning Board following the filing of the complete application and supporting plans with the Planning Board by the Code Enforcement Officer pursuant to the provisions of § 116-6 of this Chapter.

DELINEATION - The determination, in the field, of the boundary between areas containing aquatic diagnostic environmental characteristics and those containing non-aquatic characteristics, using the multiparameter (soil, hydrologic, and vegetation) approach. The relative dominance of aquatic characteristics over non-aquatic characteristics may be used where this boundary is transitional over a relatively broad area.

DELINEATION MANUAL - See "WETLANDS DELINEATION MANUAL"

DEPOSIT - To fill, place, eject, or dump any material, but not including storm water.

DISCHARGE - The emission of any water, substance, or material into a wetland, watercourse, or waterbody, or associated buffers.

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.

ENHANCEMENT - Activities conducted in existing wetlands or other aquatic resource which increase one or more aquatic functions.

EXCAVATE - To dig out and remove any material

FILLING - see “DEPOSIT”

GRADING - To alter the natural contours of the land, including leveling, smoothing, and any other modification of the natural land surface.

MAJOR PERMIT - A permit issued by the Planning Board to conduct any of the activities listed in §116-4(A) in any aquatic resource or buffer, if said activity impacts a portion, greater than or equal to 1/3 acre in extent, of a wetland, watercourse, or waterbody and/or adjacent buffer: An activity that affects a lesser area may be subject to a Major Permit, if it is found to have the potential to cause significant impacts on the environment, safety and/or health, or the reasonable use of property, or is otherwise potentially unsuitable to the area for which it is proposed.

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

MINOR PERMIT - A permit issued by the Code Enforcement Officer to conduct any of the activities listed in §116-4(A), if said activity impacts a portion, of at least 1/10 acre and less than 1/3 acre in extent, of a wetland, watercourse, or waterbody and/or adjacent buffer, and is not otherwise found to have the potential to cause significant impacts on the environment, safety and/or health, or the reasonable use of property, or is otherwise potentially unsuitable to the area for which it is proposed.

NYSDEC - The New York State Department of Environmental Conservation

PERMIT - That form of Town approval required by this Chapter for the conduct of a regulated activity within any wetland, watercourse, waterbody, and/or buffer by any individual or individuals, firm, partnership, association, corporation, company, organization, or other legal entity of any kind, including municipal corporations, governmental agencies, or subdivisions thereof, who propose(s) to undertake a regulated activity pursuant to §116-4(A).

PLANNING BOARD - The duly appointed Planning Board of the Town of Poughkeepsie.

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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.

PROJECT - Shall mean any action resulting in direct or indirect physical or chemical impact on a wetland, watercourse, or buffer, including, but not limited to, any regulated activity. For the purpose of the Chapter, a project is considered the total action proposed or accomplished by one owner/developer or partnership or other association of owners/developers.

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

RESTORATION - Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEORA) - The law pursuant to Article 8 of the. New York Environmental Conservation Law providing for environmental quality review of actions which may have a significant effect on the environment.

STRUCTURE - Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground. The term includes, but is not limited to, tennis courts and swimming pools.

TIMBER HARVESTING - Any activity which may alter the physical characteristics of any forested land including, but not limited to, any activity involving or associated with the cutting of trees, except that the following activities shall not be considered to be timber harvesting:

- (1) the routine maintenance of roads, easements, and rights of way and the clearing of farm fence lines; and
- (2) the clearing of approved subdivision roads, site plans, and public utility easements.

TOWN - Town of Poughkeepsie

TOWN BOARD - The duly elected Town Board of the Town of Poughkeepsie.

TOWN CLERK - The duly elected Town Clerk of the Town of Poughkeepsie.

TOWN ENGINEER - Any person or firm employed by the Town of Poughkeepsie as the Town Engineer.

WATERBODY - Any natural or artificial, permanent, ephemeral, or intermittent, public or private pond, lake, reservoir, or other area which usually or intermittently contains water and which has a discernible shoreline.

WATERCOURSE - Any natural or artificial, permanent, ephemeral, or intermittent, public or private water segment, such as rivers, streams, brooks, waterways, or natural drainage swales, that is contained within, flows through, or borders on the Town of Poughkeepsie.

WETLAND/WATERCOURSE/WATERBODY BUFFER - The upland areas surrounding or adjacent to a wetland, watercourse, or waterbody are also subject to regulation. These buffers provide a variety of aquatic habitat functions and values and help improve or maintain local water quality. A buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to a wetland, watercourse, or waterbody. Mowed lawns are not considered buffers because they provide little or no aquatic habitat functions and values. The size and extent of the buffers shall be as follows:

A. For wetlands and water bodies of at least one acre but less than five acres, the buffer shall be 50 feet. For wetlands and waterbodies of at least 5 acres, the buffer shall be 100 feet. The buffers cited above may be greater where designated by the Town Planning Board. The buffers shall be measured horizontally and in a direction perpendicular to the waterbody boundary, thus the buffer boundary shall parallel the wetland or waterbody boundary.

B. The buffer for NYSDEC-classified streams shall be 50 feet on either side of the center lines; a buffer zone shall extend 200 feet from the centerline of the Wappinger Creek.

C. The Town Planning Board may increase the size of the buffer area based on the presence of one or more of the features described as follows:

(1) Slope: Runoff velocities increase with increased slope. Hence, a wider buffer is required in areas of steep slopes to adequately slow runoff into the aquatic resource.

(2) Development Intensity - Wider buffers are required in areas with a greater percentage of impervious area in the vicinity of the wetland, watercourse, or waterbody, to successfully dissipate the energy of rainfall and runoff.

(3) Soil Erodability: A larger buffer zone is needed to separate the disturbed area from the wetland if the soil of the area adjacent to the water feature bears a high erosion potential.



WETLANDS - The following definition, diagnostic environmental characteristics, and technical approach comprise a guideline for the identification and delineation of wetlands:

A. Definition. For the purposes of this Chapter, wetlands are defined as all geographic areas (but not including wetlands regulated by NYSDEC) characterized by any or all of the following: those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions.

B. Diagnostic environmental characteristics. Wetlands have the following general diagnostic environmental characteristics:

(1) Vegetation. The prevalent vegetation consists of macro-phytes that are typically adapted to areas having hydrologic and soil conditions described in a above. Hydrophytic species, due to morphological, physiological, and/or reproductive adaptation(s), have the ability to grow, effectively compete, reproduce, and/or persist in anaerobic soil conditions. Indicators of vegetation associated with wetlands are listed in paragraph 35 of the U.S. Army Corps of Engineers *1987 Wetlands Delineation Manual*. Species (e.g. *Acer rubrum*) having broad ecological tolerances occur in both wetlands and non-wetlands.

(2) Soils: Soils are present and have been classified as hydric, or they possess characteristics that are associated with reducing soil conditions. Indicators of soils developed under reducing conditions are listed in paragraphs 44 and 45 of the U.S. Army Corps of Engineers *1987 Wetlands Delineation Manual*.

(3) Hydrology. The area is inundated either permanently or periodically at mean water depths of less than 6 ft. or the soil is saturated to the surface at some time during the growing season of the prevalent vegetation. Indicators of hydrologic conditions that occur in wetlands are listed in paragraph 49 of the U.S. Army Corps of Engineers *1987 Wetlands Delineation Manual*.

C. Technical approach for the identification and delineation of wetlands. Evidence at a minimum of one positive wetland indicator from each parameter (hydrology, soil, and vegetation) must be found in order to make a positive wetland determination. Delineations must be prepared in accordance with the current method required by the U.S. Army Corps of Engineers. Finite boundaries of wetlands shall be established on each parcel or parcels by an appropriately qualified individual, as approved by the Planning Board or Code Enforcement Officer.

WETLANDS DELINEATION MANUAL - The 1987 Manual produced by the U.S. Army Corps of Engineers, which presents approaches and methods for identifying and

delineating wetlands for purposes of Section 404 of the Clean Water Act. It is designed to assist users in making wetland determinations using a multiparameter (soil, hydrology, and vegetation} approach.

#### §116-4 Applicability

##### A. Regulated Acts which Require an Aquatic Resources Permit

Except as otherwise provided in §116-4(B) or §116-6(F) below, it shall be unlawful, in the absence of a permit issued pursuant to this Chapter, to do any of the following activities in any aquatic resource or buffer within the Town, if the activity impacts a portion, greater than or equal to 1/10 acre, of a wetland, watercourse, or waterbody and/or adjacent buffer:

- (1) Place or construct any structure.
- (2) Conduct any form of draining, dredging, excavation, or removal of material, either directly or indirectly.
- (3) Conduct any form of dumping, filling, or depositing any sort of material, either directly or indirectly.
- (4) Install any service lines or cable conduits.
- (5) Introduce any form of pollution, including, but not limited to, the installing 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 or watercourse. Deposit or introduce organic or inorganic chemicals, such as fertilizers, herbicides, pesticides. etc.
- (6) Alter or grade natural and/or existing man-made features and contours, alter drainage conditions, or divert any flow of a wetland, watercourse, or waterbody.
- (7) Construct docks, bridges, pilings, dams, impoundments, or other water control devices (including swales) whether or not they change the ebb and flow of the water.
- (8) Install any pipes or wells.
- (9) Construct a driveway or road.
- (10) Strip any area of vegetation, including clear caning

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(11) Conduct any other activity that impairs or may impair any of the functions that wetlands, watercourses, waterbodies, and buffers perform as described in § 116-2(B) of this Chapter.

### B. Acts Allowed without a Permit

The following acts are allowed, without a permit within wetlands, watercourses, waterbodies, or adjacent buffers, provided they do not constitute a pollution or erosion hazard, interfere with proper drainage, or adversely affect reasonable water use by others. Such acts must conform to the Town of Poughkeepsie Zoning Ordinance, Building Code, and any and all other applicable laws and statutes.

- (1) Any acts listed in §116-4(A) if the activity impacts a portion less than 1/10 acre in area, of a wetland, watercourse, or waterbody, and/or adjacent buffer.
- (2) Normal ground maintenance, including mowing, trimming of vegetation, and removal of dead or diseased vegetation around a residence.
- (3) Repair of existing walkways and walls.
- (4) Maintenance and repair of pre-existing structures (excluding expansion of any existing facilities).
- (5) Decorative landscaping and planting, excluding those items regulated in §116-4(A), which regulates the use of organic or inorganic chemicals, including fertilizers, pesticides, and herbicides.
- (6) Operation and maintenance of existing dams and water control devices in lakes, involving the adjustment of water elevations less than 18” in height for periods of less than 1 week, after which the water level is returned to its previous level.
- (7) Public health activities, orders, and regulations of the Department of Health for emergencies only.
- (8) The. depositing or removal of the natural biological products of aquatic resources through recreational or commercial fishing, aquaculture, hunting, or trapping where otherwise legally permitted.

### §116-5 Conflicting Provisions

Where this chapter imposes grater restrictions than are imposed by the provision of any law, ordinance, regulation or private agreement, this chapter shall control. Where greater

restrictions are imposed by any law, ordinance, regulations, or agreement than are imposed by the chapter, such greater restriction shall control.

## §116-6 Permit Applications

### A. General Procedures

- (1) Any person proposing to conduct or causing to be conducted a regulated activity requiring a permit under §116-4(A) of this law shall file five (5) copies of an application for a Minor Permit with the Code Enforcement Officer, or fourteen (14) copies of an application for a Major Permit with the Planning Department.
- (2) All permit applications must include the following:
  - (a) Name(s), address(s), and telephone number(s) of the applicant and the landowner.
  - (b) Street address and tax map designation of the property.
  - (c) Statement of authority from the owner for any agent making application.
  - (d) Description of proposed work and purpose.
  - (e) Copies of any correspondence and/or any Article 24 Wetland Permit, Article 15 Stream Disturbance, or other applicable permits from NYSDEC with reference to an adjacent New York State regulated wetland, watercourse, or waterbody.
  - (f) Copies of any correspondence and/or any jurisdictional determination from the US Army Corps of Engineers with reference to the subject site.
  - (g) An estimate of the costs of providing temporary and permanent vegetation and drainage, erosion and sediment control, and restoration of the aquatic resource at the completion of the activity or in the event that the activity is not completed.
- (3) Additional information required for an application for a minor permit shall include:
  - (a) A sketch plan indicating the existing conditions, including (i) boundaries of property parcel, (ii) boundaries of wetland, watercourse and water body and buffers; along with proposed conditions including (i) limits of proposed activities, (ii) areas of filling, dredging, or other land contour changes, and (iii) areas of vegetation removal.
  - (b) Completed Short Environmental Assessment Form.
- (4) Additional information required for an application for a Major Permit shall include:
  - (a) A Site Plan indicating the existing conditions, including (i) boundaries of property parcel, (ii) delineation of wetland, watercourse and water body boundaries and buffers, (iii) site soil designations, and (iv) existing

topographic contours; along with proposed conditions including (i) limits of proposed activities, (ii) proposed topographic contours, and (iii) areas of vegetation removal. Wetland boundaries shall be delineated in accordance with the methodology contained within the Wetland Delineation Manual.

- (b) A Long Environmental Assessment Form

#### B. Single Application Required

Where an application has been made to the Building Department, Town Board, or Planning Board for an action that is subsequently determined to require a permit pursuant to this Chapter, a permit application prepared pursuant to the Chapter, including the items contained in §116-4(A), shall be required as well.

#### C. Additional Information

Where deemed appropriate and necessary, the applicant may be required to submit more detailed information and submit plans for the proposed site alterations. Said plans may be required to be certified by an engineer, architect, land surveyor, or landscape architect, licensed in the State of New York, and such additional information may include any or all of the following:

- (1) Location of construction, or area proposed to be temporarily or permanently disturbed, including access and staging areas, and its relation to property lines, roads, wetlands, watercourses, waterbodies, and buffers.
- (2) Estimated quantities of material for excavation or fill, computed from cross sections, and location of disposal sites for excavated materials.
- (3) Location of any well, and its depth, if known, and any subsurface sanitary disposal system within 200 feet of the proposed disturbed area,
- (4) Existing and adjusted contours at two-foot intervals in the proposed disturbed area, to a distance of 50 feet beyond the disturbed area, and at one-foot intervals on those parts of a plan where one-foot intervals are deemed necessary in order to analyze the impact of the alteration.
- (5) Details of any drainage system proposed both for conduct of the work and after completion thereof and measures proposed to control erosion both during and after the work.
- (6) A detailed assessment of the functions and values of the affected wetlands, watercourses, and buffers and the potential impact of the proposed project on each.

- (7) A written narrative explaining the nature of the proposal, including any future development proposals for the property and whether alternative locations exist for the proposed activity.
- (8) A detailed description of compensatory mitigation proposed for unavoidable adverse impacts on any wetland, watercourse, or waterbody.
- (9) Erosion and sediment control measures.

#### D. Fees for Technical Review

A filing fee, as provided in Chapter 105, Fees, shall be provided at the time the application is submitted. The fee shall be deemed a reasonable sum to cover the cost of administration and shall in no part be returnable to the applicant(s). In the event that an application requires the Town to incur additional expenses for technical assistance in the review of an application, the applicant shall pay the reasonable expenses incurred by the Town. The applicant shall be notified of the expenses and shall deposit said necessary funds prior to the cost being incurred.

#### §116-7 Administration of Permit Application

##### A. Review of Application

- (1) Applications for Minor Permits will be forwarded to the Planning Department for review and comment.
- (1) The Code Enforcement Officer, in the case of a Minor Permit, or the Planning Board, in the case of a Major Permit, shall notify the applicant in writing of the information which must be filed in order to make the application complete.
- (2) If it is determined, upon review of an application for a Minor Permit, that the activity requires a Major Permit, the applicant shall be notified and the application returned to the applicant, for refiling.
- (3) If deemed appropriate by the Code Enforcement Officer or the Planning Board, the application and supporting documents may also be referred to the Town Engineer and/or the Conservation Advisory Commission. Those bodies receiving the application materials shall submit a written report to the Planning Board within 30 calendar days of receipt.
- (4) The Code Enforcement Officer and/or Planning Board will consider any comments from the U.S. Army Corps of Engineers, NYSDEC, and/or other governmental

agencies concerning the proposed activity's compliance with the terms and conditions of applicable laws and regulations.

#### B. Inspections

The Planning Board, Building Inspector, Code Enforcement Officer, Town Engineer, and/or the Conservation Advisory Commission may enter upon the lands or waters for the purpose of inspections to determine compliance with this Chapter and/or for the purpose of undertaking any investigations, examinations, surveys, or other activities necessary for the purposes of this Chapter. When at all possible, the landowner shall be notified prior to field investigation.

#### C. Public Hearing

The Planning Board may, upon its discretion, conduct public hearing on permit application, which hearings shall be fixed at a reasonable time and shall be given notice by a newspaper of general circulation in the Town at least ten (10) days prior to the date thereof. The applicant must provide the planning Board with an affidavit of publication. To the greatest extent practicable, said Public Hearing will be incorporated with any other hearing required by other local law or by the New York State Environmental Quality Review Act.

#### D. Waiver of Requirements

Should the Planning Board determine, after review of said application and upon recommendation of the Code Enforcement Officer, Town Engineer, CAC, or Building Inspector that an action proposed for a regulated area is insignificant, the Board shall have the power to:

- (1) Waive any information requirements contained in §116-6(A) and §116-6(C).
- (2) Waive the Public Hearing required in §116-7C.
- (3) Waive referrals to outside agencies.
- (4) Waive any requirements for a Performance Bond contained in §116-711.
- (5) Suspend the permitting process for the action and authorize the immediate issuance of the permit.

Where the Planning Board finds that any waivers are appropriate, they shall set forth their decision and reasons therefore in writing and file same with the Code Enforcement

Officer, the Conservation Advisory Commission, the Town Engineer, and the Town Clerk.

E. Permit Decisions

- (1) In approving or denying any permit, the Code Enforcement Officer or Planning Board shall consider the effect of the proposed activity with reference to the protection or enhancement of the several functions of the affected wetlands, watercourse and/or buffers, and the benefits they provide, which are set forth in §116-2 of this Chapter and in Section 24-0103 of the Environmental Conservation Law.
- (2) In granting or denying any permit, the Code Enforcement Officer or Planning Board shall consider the following:
  - (a) All evidence offered at any Public Hearing;
  - (b) Any reports from other commissions and/or federal, county, state, or town agencies;
  - (c) Additional requested information;
  - (d) All relevant facts and circumstances, including, but not limited to, the following:
    - (i) the environmental impact of the proposed action;
    - (ii) the alternatives to the proposed action;
    - (iii) irreversible and irretrievable commitments of resources that would be involved in the proposed activity;
    - (iv) the character and degree of injury to, or interference with, safety and/or health, or the reasonable use of property that is caused or threatened; (v) the suitability or unsuitability of such activity to the area for which it is proposed;
    - (vi) the availability of further technical improvements or safeguards that could feasibly be added to the plan or action;
    - (vii) the possibility of further avoiding reduction of the natural capacity of the wetlands, watercourses, waterbodies, and/or adjacent buffers to support desirable biological life, prevent flooding, supply water, control sedimentation and/or



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prevent erosion, assimilate wastes, facilitate drainage, and provide recreation and open space.

(3) No permit shall be approved and issued pursuant to this law unless it is found that:

- (a) The proposed regulated activity is consistent with the policy of this law to preserve, protect, and conserve aquatic resources of the Town, and the benefits derived therefrom, and to regulate the development of such resources in order to secure the natural benefits derived therefrom, consistent with the general welfare and the beneficial economic and social development of the Town of Poughkeepsie.
- (b) The proposed regulated activity is compatible with the public health and welfare.
- (c) The proposed regulated activity is reasonable and necessary.
- (d) There is no practicable alternative for the proposed regulated activity on a site which is not a wetland, watercourse, waterbody, or buffer, or which cannot practicably be relocated on the site so as to eliminate or reduce the intrusion into the wetland and/or controlled area.

(4) The applicant shall have the burden of proof with regard to the required findings set forth in this section.

### F. Permit Conditions

- (1) Every permit issued pursuant to this Chapter shall contain the following general conditions:
  - (a) The Planning Board, Building Department, Code Enforcement Officer, Town Engineer, and/or Conservation Advisory Commission have the right to inspect the project at any reasonable time, including weekends and holidays.
  - (b) The permit holder shall notify the Code Enforcement Officer of the date on which project construction is to begin at least five (5) days in advance of such date.
  - (c) The permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit.
  - (d) The boundaries of the project shall be clearly staked or marked.
  - (e) All permits shall be valid for a period of one year, unless otherwise indicated, but shall expire upon completion of the acts specified.

- (2) Any permit issued pursuant to this Chapter may also be issued with specific conditions beyond those listed above. Such conditions may be attached as are necessary to assure the preservation and protection of affected freshwater wetlands and to assure compliance 'with the policy and provisions of this law and the provisions of all other applicable rules and regulations.

#### G. Time Extensions

Any time period referenced in these regulations can be extended by mutual consent of the applicant and the Planning Board.

#### H. Performance guaranty.

- (1) After the approval of the application and before the issuance of any permit, the applicant shall file with the Town Clerk, in an amount of the estimated costs of providing temporary and permanent vegetation and drainage, erosion and sediment control, and restoration of the aquatic resource at the completion of the activity or in the event that the activity is not completed, as submitted under §116-6A(2) and verified by the Town Engineer.
- (2) The form of the guaranty shall be a) a certified check, b) a performance bond which shall be satisfactory to the Town Board, and Town Attorney as to form, sufficiency, manner of execution, surety, and period of execution, or c) a letter of credit from a bank approved by the Town Board and Town Attorney.
- (3) The party or pates filing the performance guaranty shall provide that either upon termination of the permit or the activity, whichever comes first, the project shall be in conformity with both the approved specific requirements of the permit and the provisions of this Chapter. In the event of default of such and violations of any other applicable laws, such performance guaranty shall be forfeited to the Town. The Town shall return to the applicant any amount that is not needed to cover the costs of restoration, administration, and any other expensed incurred by the Town as a result of the applicant's default. Such performance guaranty shall continue in full force and effect until a certificate of compliance shall have been issued by the Town Engineer after such consultation with any agencies or individuals as he or she deem necessary to ensure that all provisions of this Chapter and of the permit have been met.

#### I. Permit Renewal

Upon written request of the applicant, a permit may be renewed for a period of one (1) year, if authorized by the Code Enforcement Officer. The fee for a permit renewal will be provided for under Chapter 105, Fees.

#### §116-8 Penalties and Corrective Action

##### A. Stop Work Order

The Code Enforcement Officer may issue a Stop Work Order when the he/she finds that the permittee is in violation of the provisions of this Chapter, has not complied with any term of such permit issued pursuant to this Chapter, has exceeded the authority granted in the permit, or has failed to undertake or complete the project in the manner set forth in the permit. A Stop Work Order shall be issued by notifying the permittee performing the work to suspend all work. Any person served with a Stop Work Order shall forthwith suspend all activity until the Stop Work Order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which work may be resumed, and shall be served upon the person to whom it is directed either by delivering it to the individual personally or by posting the same upon a conspicuous portion of the area and sending a copy of the same, by registered or certified U.S. mail, return receipt requested, to the permittee at the address shown on the permit.

The Code Enforcement Officer shall immediately notify the Planning Board, Town Engineer, and Building Department when a Stop Work Order has been issued. The Code Enforcement Officer must inspect and approve corrective actions prior to any lifting of a Stop Work Order issued.

##### B. Corrective Action

If, upon inspection, it is found that any of the activities have not been undertaken in accordance with the permit, the applicant shall be responsible for completing those activities according to the permit. Failure of the code Enforcement Officer to carry out inspections shall not in any way relieve the applicant or the bonding company of their responsibilities.

When any person has been found violating any provision of this Chapter or conditions imposed by the Planning Board upon an approved permit, and whose permit has been suspended or upon whom a Stop Work Order has been issued, corrective action shall be carried out as follows:

(1) When the terms of an approved permit have been violated and a Stop Work Order has been issued, the Code Enforcement Officer may provide a reasonable and specified time within which corrective action shall be completed by the violator to restore, insofar as possible, the affected wetland, watercourse, waterbody, and/or buffer to its condition

prior to the violation, or mitigate the impact in a manner acceptable to the permit or approval-granting authority.

(2) When the violation of the terms of the permit is of such a serious nature that the Code Enforcement Officer has suspended the permit or recommends the revocation of the permit, the Code Enforcement Officer shall refer the matter to the Planning Board for their determination.

(3) In event there is a failure to take corrective action in a timely manner, the Planning Board may declare the permit to be in default and direct that the performance guaranty be forfeited to the Town. The Town shall return to the applicant any amount that is not needed to cover the costs of restoration, administration, and any other expensed incurred by the Town as a result of the applicant's default.

#### C. Penalties for Offenses.

Any infraction of the provisions of this Chapter by failure to comply with any of its requirements, including any infraction of a condition of a permit issued pursuant to this Chapter, shall constitute a violation. Any person violating any order of the Town, regulating aquatic resources, shall, for the first offense, be guilty of a violation punishable by a fine not exceeding two hundred fifty dollars (\$250). Each day's continued violation shall constitute an additional offense. The application of a penalty or penalties for a violation of the provisions of the Chapter shall not be held to prevent the removal of conditions prohibited by the Chapter by such legal means as may be proper.

#### §116-9 Exceptions

Where practical difficulties, unnecessary hardships and results inconsistent with the general purpose of the chapter or certain provisions thereof are encountered, exceptions may be granted by the Town Board.