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Town of Rhinebeck

PROPOSED Local Law No. 7 Of the year 2009

A local law creating Chapter 120 of the Code of the Town of Rhinebeck entitled
“Freshwater Wetlands Law of the Town of Rhinebeck”

Be it enacted by the Town Board of the Town of Rhinebeck as follows:

SECTION 1. AMENDMENTS TO THE TOWN CODE

A new Chapter 120 is added as follows:

Chapter 120 Freshwater Wetlands

[§ 120-1. Title](#)

[§ 120-2. Purposes and Intent](#)

[§ 120-3. Findings](#)

[§ 120-4. Approval Authority](#)

[§ 120-5. Regulated Areas](#)

[§ 120-6. Controlled Acts](#)

[§ 120-7. Nonconforming Uses, Area and Bulk](#)

[§ 120-8. Waivers](#)

[§ 120-9. Procedures for Permits](#)

[§ 120-10. Standards for Wetlands Permit Decisions](#)

[§ 120-11. Judicial Review](#)

[§ 120-12. Enforcement and Penalties](#)

[§ 120-13. Conflict with Other Regulations](#)

[§ 120-14. Severability](#)

[§ 120-15. References, Definitions and Word Usage](#)

§ 120-1. Title.

This Local Law shall be known and may be cited as the “Freshwater Wetlands Law of the Town of Rhinebeck.” [\[Back to Top\]](#)

§ 120-2. Purposes and Intent.

The purpose of this Local Law is to promote the health, safety and welfare of the residents of Rhinebeck and to implement the recommendations of the Town's adopted *Comprehensive Plan* by regulating the dredging, filling, deposition or removal of materials; degradation of water quality; the diversion or obstruction of water flow; and the placement of structures in, and other uses of wetlands in the Town of Rhinebeck.

This Local Law is intended to preserve, protect and conserve wetlands through careful regulation and control so that the multiple functions and benefits they provide may continue, thereby helping to protect property from damages caused by flooding and other losses due to wetlands destruction. This Local Law is also intended to protect regional watersheds because portions of the headwaters of the Crum Elbow Creek, Landsman Kill, and Saw Kill are located within the Town and several tributaries of the Hudson River feed directly into an area of the River where several public water supply intakes are located. [\[Back to Top\]](#)

§ 120-3. Findings.

The Town Board of the Town of Rhinebeck finds and affirms the following:

- A. The Town Board has the authority to preserve, protect and conserve freshwater wetlands, under Subsections 10(1)(ii)(a)(11) and (12) of the New York State Municipal Home Rule Law.
- B. The Town of Rhinebeck has determined that it will exercise shared authority to regulate freshwater wetlands with the New York State Department of Environmental Conservation and the United States Army Corps of Engineers.
- C. It is the policy of the Town of Rhinebeck to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom; to prevent their despoliation and destruction; and to regulate development in wetlands and their adjacent upland buffers in order to secure the multiple benefits derived therefrom, consistent with the economic, social and environmental welfare of the community.
- D. Federal, state, and local agencies as well as private researchers have increasingly understood and documented numerous values and beneficial services of wetlands and their adjacent upland areas. These values and services are essential to the health, safety and welfare of residents of the Town of Rhinebeck. These valuable natural resources benefit the entire town and the surrounding region. The integrity of these water resources and maintenance of their full functions and benefits is inextricably linked to the presence of intact, surrounding natural communities on adjacent upland buffer areas. Such communities are exceptionally rich in biodiversity and can protect or ameliorate water quality impacts from adjacent land uses. The essential functions and values provided by wetlands and adjacent buffer areas include but are not limited to:
 1. Water quality protection and improvement. Wetlands act as settling ponds, filtering and trapping nutrients, like nitrogen and phosphorus, and other pollutants from

Town of Rhinebeck Freshwater Wetlands Law

- stormwater runoff and facilitating chemical breakdown of pollutants. Wetlands also act as chemical and biological oxidation basins, treating pollutants including toxic substances through natural biological degradation and chemical oxidation. Natural buffer zones surrounding these wetlands filter overland runoff, protecting surface waters from eutrophication and reducing or removing pollutants from stormwater runoff before they reach wetlands and streams.
2. **Watersheds.** Wetlands are an important component of watersheds, upon which thousands of Northern Dutchess County and Ulster County residents depend for a clean water supply. Public health and property in one area of a watershed may be affected by loss of wetland functions in another area of the same watershed.
 3. **Groundwater recharge and discharge.** Wetlands recharge groundwater aquifers upon which almost all of Rhinebeck's residents, outside of the Village of Rhinebeck, depend upon as a source of drinking water,
 4. **Wetlands comprise the surface water sources (headwaters) of the Landsman Kill, Saw Kill, Fallsburg Creek, Rhinebeck Kill, and Crumb Elbow Creek as well as several tributaries that flow directly into the Hudson River, helping to maintain stream flow and an unpolluted source for surface water supplies.**
 5. **Flood control.** Wetlands store and slowly release floodwaters conveying floodwater flows from upstream to downstream points, reducing stream flows during periods of high water and maintaining base flows during droughts. Natural upland buffer zones intercept, slow, and absorb overland runoff, protecting floodplains, and providing for the gradual release of floodwater flows within watersheds.
 6. **Sediment control.** Wetlands function as settling basins for naturally occurring sedimentation. Wetland vegetation binds soil particles and retards the movement of sediment in slowly moving waters thereby helping maintain water quality.
 7. **Recreation.** Wetlands and their adjacent buffer areas provide recreation areas for hunting, fishing, boating, hiking, bird-watching, photography, and other beneficial recreational uses.
 8. **Food chain support and nutrient cycling.** Wetlands and streams supply food and organic detritus that support fish and wildlife of adjacent waters and they facilitate nutrient export to other habitats.
 9. **Wildlife habitat.** Wetlands serve as nursery and sanctuary for freshwater fish and they provide important nesting, breeding, feeding, migratory cover, and wintering habitat for diverse amphibians, reptiles, fish and other wildlife species including species of conservation concern such as those listed by New York State as endangered, threatened, and special concern. The viability of scores of species depends upon wetlands, including vernal pools and other water resources. Natural buffer zones provide important and often critical, travel corridors and wetland-to-upland transitional habitats vital to the survival of many wetland and stream dependent species. Undisturbed natural buffers are an irreplaceable habitat link in the life cycles of many

Town of Rhinebeck Freshwater Wetlands Law

species. Stream buffers of at least one hundred (100) feet on both sides of a stream, with sufficient undisturbed native vegetation, are critical for the maintenance of viable trout and other fisheries.

10. Biodiversity. Wetlands are characterized by very high productivity and support a significant biological diversity of species, including many rare plants. More than 40 percent of the world's species are estimated to inhabit freshwater wetlands. Native biological diversity is diminishing in Rhinebeck and elsewhere at a pace that is of great concern to scientists and others.
 11. Turtles. The Hudson Valley, including the Town of Rhinebeck, has one of the most diverse turtle populations in the country. Preservation of healthy wetlands and natural buffer zone habitat is critical to their survival.
 12. Natural areas. Wetlands, streams and natural buffer areas preserve natural open space and rural character; provide visual and aesthetic relief from development and a sense of connection with the natural world.
 13. Education and research. Wetlands, streams and natural buffer areas provide outdoor laboratories for research and living classrooms for schoolchildren in hands-on environmental studies.
 14. Ecosystem values. Ecosystem values were estimated in a 1997 peer reviewed article in the *Journal Nature* to be as high as \$7,924 (\$10,673 in 2009 dollars) per acre per year for wetlands and floodplains. These factors are extremely important ones for Rhinebeck from an economic as well as an ecological perspective.
 15. Climate Change Mitigation. Wetlands have been estimated to store as much as 40 percent of global terrestrial carbon. Destruction of wetland areas cause the release of carbon dioxide, the gas that accounts for a majority of the global warming effect.
- E. Wetland buffer zones provide benefits that are important to maintaining a wetland's functional integrity by providing protection against the impacts to the wetland from activities in adjacent upland areas. It is the intent of the Town of Rhinebeck to ensure that activities in and adjacent to wetlands do not unduly impact the public safety, the natural environment or cause environmental degradation.
- F. Population growth in Rhinebeck along with its attendant economic and recreational activities have made and will continue to make new and greater demands on water resources for boating, fishing, bathing and water sports, and the lands adjacent thereto for access areas and recreation. Uncontrolled development in and adjacent to wetlands and streams has resulted in the filling in, diversion and destruction of wetlands and watercourses, destroying aquatic habitats and lessening supplies of water for multiple use purposes. The uncontrolled and unnecessary interference with and disturbance of wetlands and streams can create hazards to the health, safety and welfare of the town's residents, causing great economic loss by erosion of soil, increased costs of water purification and treatment, flooding, the destruction and failure of natural propagation of fish and aquatic resources and the loss of water for domestic, municipal, agricultural,

recreational and other beneficial uses and purposes. The Town of Rhinebeck has the responsibility to preserve, protect and conserve such resources from destruction and damage and to promote the natural propagation of associated biota.

- G. Runoff from land use development activities, also known as non-point source pollution, is the primary cause of water quality degradation. Non-point source pollution results from the activities of the population as a whole and is increased every time additional impervious surfaces are constructed. Town regulations are needed to avoid the destructive impacts of such activities, by protecting wetlands and their associated natural buffers, thereby reducing the damage from water-polluting and degrading activities.
- H. The objectives of the Town of Rhinebeck *Comprehensive Plan* include protecting the community's many resources for the future by enhancing the natural beauty and rural quality of the community and protecting environmentally sensitive areas and natural resources, waterways, flood plains and wetlands. The *Comprehensive Plan* recommends that the Town protect its unique physical attributes and natural resources.
- I. Article XIV of the New York State Constitution states "*The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and regulation of water resources.*" New York State agencies such as the Department of Environmental Conservation and the Department of State encourage municipalities to preserve wetlands and open spaces, including the adoption of local regulatory legislation. In the case of wetlands, this responsibility can most effectively and efficiently be accomplished by enactment of local legislation to preserve, protect, and conserve wetlands and to develop a coordinated regulatory approach to accomplish such tasks, which is currently lacking under Federal and State regulatory protection. [\[Back to Top\]](#)

§ 120-4. Approval Authority.

The Planning Board of the Town of Rhinebeck is hereby authorized to issue Wetland Permits in accordance with the review and approval procedures found in §§ 120-9 and 120-10 of this Local Law. The Planning Board shall be empowered to require the posting of bonds, as necessary, and to revoke or suspend a Wetlands Permit where lack of compliance is established. [\[Back to Top\]](#)

§ 120-5. Regulated Areas.

Regulated areas protected under this Local Law include the following:

- A. Freshwater Wetlands as defined herein.

- B. Associated Buffer Areas as defined herein. In certain circumstances, for the purposes of protecting water quality or wildlife habitats based upon the findings of the wetland delineation, habitat assessment report or other information ascertained during the Wetlands Permit review process, the Planning Board may increase the minimum buffer area. Examples include, but are not limited to the following: watershed protection, trout streams, steep eroding banks, or riparian habitat for species of conservation concern. [\[Back to Top\]](#)

§ 120-6. Controlled Acts.

- A. **Prohibited Acts.** The following activities are prohibited within regulated areas, except as otherwise noted, because of their potential to significantly disrupt the ecological functioning of regulated areas:
1. Draining. The depletion of water, directly or indirectly, except for agricultural purposes as noted in § 120-6.C.7.
 2. Discharging substances and materials that are toxic or otherwise harmful to the biota and ecological functioning of regulated areas, including but not limited to:
 - a. Chemicals including pesticides, herbicides, fungicides, dye, fertilizers, fuels, and de-icing materials except as necessary for wetland restoration projects (see § 120-6.B.10, or for agricultural purposes (see § 120-6.C.7).
 - b. Influent of sufficiently high thermal content to cause harm to regulated area biota.
 - c. Sewage or sanitary sewage disposal system effluent, untreated or insufficiently treated effluent or other liquid wastes including untreated stormwater runoff.
 - d. Radioactive wastes.
 3. Removal of vegetation:
 - a. Clearcutting, as defined herein, or removal of trees, shrubs, and other vegetation except for activities listed under § 120-6.C.1 and C.5, or as necessary for wetland restoration projects (§ 120-6.B.10).
 - b. Replacement of buffer vegetation with lawn.
 4. Commercial Soil Mining activities.
 5. The location of animal feedlots or pens, manure stockpiles or similar animal storage areas.
 6. The use of all motorized vehicles except for maintenance, agriculture or forestry purposes as defined in the Town of Rhinebeck Zoning Law.
- B. **Regulated Acts.** Regulated acts are any activities that have the potential to cause substantial adverse impacts in regulated areas. It shall be unlawful to perform any of the following activities within regulated areas without a Wetlands Permit from the Town of

Town of Rhinebeck Freshwater Wetlands Law

Rhinebeck:

1. Dredging or grading. The removal of soil, mud, sand, gravel, peat, silt or other earth materials; alteration of natural drainage patterns; diversion or alteration of any flow of a wetland.
2. Filling. Placement of fill materials of any type including but not limited to soil, gravel, sand, wood chips, stones, and solid waste except as noted in § 120-6.C.7., for agricultural purposes.
 - a. The dumping of biodegradable yard waste (including grass clippings) is prohibited within wetlands, but is a non-regulated act within buffer areas (see § 120-6.C.6).
 - b. Sanitary sewage disposal systems: Replacement of existing sanitary sewage disposal systems on previously approved lots, or installation of a new system for a previously approved lot where no other alternative location is available.
3. Construction. All construction activities within associated buffer areas including but not limited to:
 - a. Placement of any impervious surface or new structure or facility including but not limited to gazebos, sheds, garages, swimming pools, and additions to existing structures that enlarge the structure's footprint.
 - b. Storage of construction materials, stockpiles, machinery or equipment.
 - c. Construction or expansion of paved or unpaved public or private roads or driveways or other pathways for motorized vehicles.
 - d. Installation of pipes, wells, service lines, conduits or cables.
4. Limited construction is regulated within buffer areas (see § 120-6.B.3.), but any new construction of structures within a wetland is a prohibited act, except for agricultural purposes (see § 120-6.C.7) or as noted in § 120-7.C.
5. Construction of stormwater management facilities including detention/retention basins and ponds.
6. The installation of a sanitary sewage disposal system for new construction (for replacement or repair of sanitary sewage disposal systems on previously approved lots see § 120-6.B.2).
7. Docks, dams, and other water control devices, pilings or bridges, whether or not they change the flow of the water.
8. Expansion, restoration, or modification of existing structures including but not limited to:
 - a. Buildings, wells, bridges, driveways, walkways, walls, and fences.
 - b. Structures associated with town, county or state highways or streets including stormwater facilities

Town of Rhinebeck Freshwater Wetlands Law

9. Acts that affect hydrology: Activities that result in direct or indirect alteration of existing wetland hydrology, hydroperiod, or water flow including the following:
 - a. Operation and maintenance of existing dams and water control devices involving the adjustment of water elevations over 18 inches in height.
 - b. Displacement or destruction of beaver lodges and dams (where beaver impoundments are impacting existing structures, roads or driveways) which would result in negative impacts on the hydrology or biota of regulated areas, except as lawfully permitted under ECL § 11-0505.
10. Wetland restoration projects including removal of invasive plant species and revegetation.

C. **Non-regulated Acts.** The following acts are considered non-regulated acts that may proceed within regulated areas without a Wetlands Permit, provided that they do not constitute a pollution or erosion hazard, interfere with proper drainage or adversely affect reasonable water use by others. Such non-regulated acts shall conform to the Town of Rhinebeck Zoning Law and all other applicable laws.

1. Normal maintenance of existing landscaped areas and residential gardens, including existing lawn areas, and trimming and removal of dead or diseased vegetation, including trees.
2. Ordinary maintenance and repair of existing structures including but not limited to sanitary sewage disposal systems, wells, bridges, highways, streets, driveways, walkways, walls, docks, and fences which do not involve expansion, restoration, or modification.
3. Maintenance of existing drainage channels where impedance of flow may cause flooding or threaten public safety on highways or in dwellings or other structures.
4. Operation and maintenance of existing dams and water control devices, excluding the adjustment of water elevations over 18 inches in height (see § 120-6.B.9.a).
5. Removal of vegetation as specified: Removal of naturally occurring vegetation within regulated areas for the following purposes, provided that such actions do not impair the natural function(s) of a regulated area:
 - a. Creation of non-paved foot-paths with a maximum width of three feet.
 - b. Annual or periodic removal of trees to provide firewood for normal residential use provided no mechanical equipment, other than hand operated chainsaws and similar equipment, are used. This does not include removal of trees for commercial use or sale. Clearcutting is a prohibited act (see § 120-6.A.3.a).
 - c. Selective harvesting and sustained-yield forestry when conducted in accordance with a forest management plan prepared by a New York State Department of Environmental Conservation Cooperating Forester in accordance with New York State's *Forestry Best Management Practices for Water Quality, Timber Harvesting Guidelines* and *Forest Road Construction Handbook*. Landing areas and log haul roads

Town of Rhinebeck Freshwater Wetlands Law

are considered regulated acts subject to § 120-6.B.3.c. of this Local Law when located within a regulated area. The forest management plan shall be on file with the Town Code Enforcement Officer.

6. Biodegradable yard waste in buffers. The placement of biodegradable yard waste typically associated with residential yard maintenance, including grass clippings, within the associated buffer area only (placement of these materials within a wetland is a regulated act).
7. Specified agricultural activities on Agricultural Lands. Activities associated with commercial grazing and watering livestock, crop production and making reasonable use of water resources on agricultural lands as defined in the Town of Rhinebeck Zoning Law including:
 - a. Harvesting the natural products of wetlands;
 - b. Clear-cutting of vegetation, other than trees, for growing agricultural products;
 - c. Constructing winter truck roads of less than five meters (approximately sixteen (16) feet) in width for removing trees cut in accordance with 6 NYCRR 663.2(c)(1)(iv), where such construction is limited to cutting vegetation and compacting ice and does not alter water flows;
 - d. Operating motor vehicles for agricultural purposes;
 - e. Draining for growing agricultural products;
 - f. Erecting structures, including fences, required to enhance or maintain the agricultural productivity of the land;
 - g. Using chemicals and fertilizers according to sound agricultural practices, as defined by the New York State Agriculture and Markets Law, in order to grow crops for human and animal consumption, in or adjacent to wetlands, where authorized by other state, federal or local laws, including application of stabilized sludge as fertilizer when applied at agronomic loading rates in accordance with a valid 6 NYCRR Part 360 or Part 364 landspreading permit;
 - h. Otherwise engaging in the use of wetlands for growing agricultural products such as crops, vegetables, fruits, or flowers.
8. Passive recreation: Bird and wildlife observation, photography, boating, hiking, swimming, camping, picnicking, hunting and fishing and other similar outdoor activities, including the establishment of nonpaved walking trails (excluding motorized vehicles) and individual recreational moorings, where no substantial adverse effect is involved or the activity is not otherwise prohibited.
9. Research: Conducting educational and scientific research activities where no substantial adverse effect is involved.
10. Public services: Activities and uses essential to ensure adequate police, fire, and rescue functions including emergency road maintenance undertaken by the Town of

Town of Rhinebeck Freshwater Wetlands Law

Rhinebeck, Dutchess County, State of New York, any political subdivision or by an organization authorized by contract with the Town to provide public services.

11. Installation of dry hydrants
 12. Any activity subject to the jurisdiction of DEC pursuant to Article 24 of the New York State Environmental Conservation Law for which a freshwater wetlands permit or other approval has been granted by DEC and which is in compliance therewith.
 13. Construction in the buffer area, accessory to an existing single family residence, an at-grade or above-grade structure or structures, totaling in the aggregate no more than 400 square feet.
 14. The establishment of an individual recreational mooring.
 15. Paving or repaving an existing driveway.
- D. **Unlisted Acts.** Any other activities not listed in Subsections A, B, or C herein, that are not deemed to be harmful to regulated area biota, ecological functioning, or watershed functioning, and that do not impair any of the wetland functions or benefits as described in § 120-3 of this Local Law are considered Unlisted Acts. For the regulatory status of Unlisted Acts, the Planning Board shall determine the necessity of obtaining a Wetlands Permit. In making such determination, the Planning Board shall consider to what extent the Unlisted Act is similar to the Controlled Acts classified as either Prohibited, Regulated or Non-regulated and shall seek the advise of the Conservation Advisory Council (CAC), which shall make its recommendations, if any, in writing to the Planning Board within 30 days of receipt by the CAC. [\[Back to Top\]](#)

§ 120-7. Nonconforming Uses, Area and Bulk.

- A. The lawful use of any land, building or structure or a part thereof, as defined in the District Schedule of Use Regulations of the Town of Rhinebeck Zoning Law (see Article III of the Zoning Law) and existing at the time of adoption of this Local Law may be continued, although such use does not conform with the provisions of this Local Law, except as otherwise provided herein.
- B. For maintenance, repair, expansion or modification of existing nonconforming structures, see § 120-6.B.8, Regulated Acts.
- C. Pre-existing, nonconforming lots. A lot in existence on the effective date of this Local Law, which because of its size or configuration and location relative to a regulated area does not allow for any permitted use of the land (as defined in the District Schedule of Use Regulations of the Town of Rhinebeck Zoning Law) due to strict adherence to the standards contained herein may be eligible for a Wetlands Permit. The Planning Board may consider waiver(s) from the standards in this Local Law provided:
 1. The lot complies with all the area and bulk regulations for the District in which it lies.

2. The applicant can demonstrate the following:
 - a. To the maximum extent practicable, proposed structures are located outside of a regulated area.
 - b. Stormwater management is developed, implemented and maintained so that water quality impacts to regulated areas are minimized to the greatest extent practicable including short term and long term impacts.
 - c. The use of native plant species appropriate for the revegetation of disturbed regulated areas is required. [\[Back to Top\]](#)

§ 120-8. Waivers.

- A. Where the Planning Board, after consulting with the CAC, finds that compliance with the standards herein would cause extraordinary difficulties due to exceptional conditions of topography, access, location, shape, or other physical features of the site, the minimum requirements of these regulations may be waived in order to mitigate the difficulty, provided that the public interest is protected, the Wetlands Permit is in keeping with the general spirit and intent of these regulations and full compliance with SEQR is still provided. Waivers shall be considered upon specific request by an applicant by resolution of the Planning Board.
- B. All applicant requests for waivers from the standards herein shall be submitted in writing, shall be expressly set forth in the minutes of the Board, shall be noted on the Wetlands Permit and shall include the following:
 1. Document existing conditions;
 2. Describe the applicant's intentions;
 3. Cite the specific sections of the regulations for which relief is requested and the proposal for relief;
 4. Describe how the proposal relates to the purposes of this Chapter.
- C. No such waiver may be granted if it would have the effect of nullifying the intent and purposes of this Chapter, the Town Comprehensive Plan, or Town Zoning Law.
- D. The Planning Board may, in granting waivers to the standards herein, incorporate such reasonable conditions as will, in its judgement, substantially secure the objectives of the requirements so waived.
- E. The Planning Board shall make a determination to approve or deny a request for a waiver within 45 days of a request submitted by an applicant. [\[Back to Top\]](#)

§ 120-9. Procedures for Permits.

- A. This Law applies to the following:

Town of Rhinebeck Freshwater Wetlands Law

1. Planning Board applications submitted on or after the effective date of this Local Law and as identified in § 120-9.A.3.
2. Any Subdivision applications which have received preliminary approval before the effective date of this Local Law shall be exempt from these regulations for a period of three years from the date of the filing of the approved plat at the Dutchess County Clerk's office.
3. Planning Board Applications. For all Subdivision, Site Plan and Special Use Permit applications filed with the Planning Board, the determination of whether a Town Wetlands Permit shall be required will be made concurrently during the application review process by the Planning Board.
4. Building Permit Applications. All Building Permit applications submitted on or after the effective date of this Local Law shall be required to obtain a Town Wetlands Permit if the proposed project involves a Regulated Act occurring within a regulated area.
 - a. All Building Permit applications will be subject to an initial review of the following readily available data by the Code Enforcement Officer, who may obtain the advise of the Town CAC and/or a wetlands professional, paid for at the applicant's expense in accordance with Article XIV of the Zoning Law:
 - i. A copy of the previously recorded final plat in the Dutchess County Clerk's Office including but not limited to restrictions, notes or blocks recorded.
 - ii. Hydric Soils Map from the Town's Natural Resource Inventory mapping (see *Town of Rhinebeck Comprehensive Plan*).
 - iii. Topographic features and streams from US Geological Survey topographic maps or other available topographic mapping.
 - iv. New York State Department of Environmental Conservation and United States Fish & Wildlife Service National Wetlands Inventory Wetlands maps, the Town of Rhinebeck Water Resources Overlay (WR-O) District map, and the Town of Rhinebeck Significant Habitat and Natural Resource Inventory mapping (see Figure 7 in the *Significant Habitat Study*, Appendix 6 to the *Town of Rhinebeck Comprehensive Plan*).
 - v. Aerial Photography.
 - vi. New York State, Dutchess County and/or Town of Rhinebeck Geographic Information System (GIS) mapping.
 - b. If a regulated area is not present, the application for a building permit proceeds according to existing Town procedures.
 - c. If a regulated area(s) is identified, the Code Enforcement Officer, in consultation with the CAC and/or a wetlands professional, will determine if the proposed action requires a Wetlands Permit application and shall refer the applicant to the Planning Board for Wetlands Permit review and approval in accordance with this Local Law.

B. General Procedures for Wetlands Permit Applications.

1. **Planning Board Action on a Wetlands Permit application.** The Planning Board shall, in accordance with the procedures outlined herein, render a decision to approve, approve with modifications, or deny the Wetlands Permit application. In approving a Wetlands Permit application, the Planning Board may impose such conditions or limitations as it deems necessary to ensure compliance with the intent, purposes, and standards of this Local Law. The Planning Board shall state upon the record its findings and conclusions for all actions taken. Prior to Planning Board action, the Wetlands Permit application shall be referred to the Conservation Advisory Council (CAC) for an advisory opinion. The CAC shall render its advisory opinion within 30 days after its receipt of the application referral by the Planning Board. Failure of the CAC to render an advisory opinion within 30 days after its receipt of the application shall be construed as no comment on an application.
2. **Other Planning Board Applications.** Wetlands Permit applications considered as part of a Planning Board review of Subdivision, Site Plan, or Special Use Permit. The decision to approve, approve with modifications or deny the Wetlands Permit shall be made at or before the decision on a Subdivision, Site Plan or Special Use Permit application has been granted by the Planning Board. Default approval of a Subdivision application shall not constitute a default approval of a Wetlands Permit.
3. **For all Building Permit Applications.** The Planning Board shall, within sixty-two (62) days of the filing of a complete Wetlands Permit application, render a decision on the application unless extended by mutual agreement between the Planning Board and applicant. An application will be deemed complete when all information reasonably necessary to make a Wetlands Permit decision has been submitted to the satisfaction of the Planning Board.
4. **Filing Resolution.** Following action by a concurring vote of a majority of members of the Planning Board to approve, approve with modifications or deny any Wetlands Permit application, a written resolution shall be issued by the Planning Board Clerk to the applicant and filed with the Town Clerk within 10 days of such action. Said resolution shall include:
 - a. An assigned application number;
 - b. The name and address of the applicant;
 - c. The name and address of the property owner (if different from the applicant);
 - d. The address and Tax Map designation of the property;
 - e. The date of the Planning Board action on the application;
 - f. All conditions placed on the regulated activity;
 - g. The expiration date of the Wetlands Permit.
5. **Site Visit(s).** The Planning Board and its consultants shall be authorized to conduct a

Town of Rhinebeck Freshwater Wetlands Law

site visit, whenever deemed necessary, for the purpose of evaluating the Wetlands Permit application. Following issuance of the Wetlands Permit, Article X of the Zoning Law, shall apply to inspection and enforcement of the terms and conditions of the Wetlands Permit.

6. **Public Hearing and Notice.** Upon receipt of a Wetlands Permit application, the Planning Board, at its discretion, may call for a public hearing on the Wetlands Permit application depending upon the importance of the wetland and the scope of the requested action.
 - a. The Planning Board shall provide notice of the substance of the application by certified mail, return receipt requested, of the public hearing to:
 - i. The applicant, at which hearing the applicant shall appear in person or by agent.
 - ii. The owners of the property abutting that held by the applicant in the immediate area, whether or not involved in such application, and all other owners within three hundred (300) feet, or such additional distance as the Planning Board may deem advisable, from the exterior boundaries of the land involved in such application, as the names of said owners appear on the last completed assessment roll of the Town.
 - b. The Board shall place a notice in the official Town newspaper for publication of the notice therein at least five days prior to the public hearing.
 - c. All costs incurred for publication and mailing of notices for the public hearing shall be paid for by the applicant.
7. **Expiration of Permit.**
 - a. A Wetlands Permit shall be valid for a period of two (2) years for those issued in conjunction with a Building Permit application, Site Plan approval or Special Use Permit approval.
 - b. A wetland permit shall be valid for a period of three (3) years from the date of the filing of the Final Plat when issued in conjunction with a Subdivision application.
 - c. The validity of a Wetlands Permit may be extended beyond its expiration by the Planning Board upon review of an application for extension submitted at least sixty (60) days before the expiration of the Wetlands Permit. Standards for issuance of renewals shall be the same as for the issuance of permits.
 - d. Upon completion of the work specified in the Wetlands Permit, the applicant shall be responsible for contacting the Code Enforcement Officer to verify that the Wetlands Permit conditions have been satisfactorily completed. The Building Department shall not issue a Certificate of Occupancy until satisfaction of the Wetlands Permit has been deemed complete.
8. **Inspections.** Work being conducted pursuant to a Wetlands Permit shall be open to

Town of Rhinebeck Freshwater Wetlands Law

inspection at any reasonable time, including weekends and holidays, by the Town Engineer, members of the Planning Board, Conservation Advisory Council or their designated representatives in accordance with the specifications of Article X of the Zoning Law. If necessary, the applicant shall reimburse the Town for the costs of such inspection when incurred by outside consultants hired by the Planning Board for this purpose.

9. **Other Permits.** Conformance with this Local Law does not eliminate the necessity for an applicant to obtain the approval or permits required by any other agencies including but not limited to the NY State Department of Environmental Conservation (DEC) or US Army Corps of Engineers, prior to activities authorized by the Wetlands Permit. Obtaining such approval or permits is the sole responsibility of the applicant. An applicant for a Freshwater Wetlands Permit from the DEC shall submit a complete copy of the State Permit Application to the Planning Board. The Planning Board shall submit its recommendation on a Freshwater Wetlands Permit Application, deemed to be a "Major Project" under the Uniform Procedures Act, to the DEC within sixty (60) days of the DEC determination that the State application is "complete." The Planning Board shall submit its recommendation on a Freshwater Wetlands Permit Application, deemed to be a "Minor Project" under the Uniform Procedures Act, to the DEC within thirty (30) days of the DEC determination that the State application is "complete."
10. **Fees.** Fees for Wetlands Permit applications are listed in the Town's Fee Schedule (See Chapter A126.1 of the Town Code) as amended by the Town Board from time to time.
11. **Reimbursement for Professional Consulting Services.** The Planning Board, in the review of a Wetlands Permit application, may refer such application to such environmental, planning, engineering, or other technical or legal consultant as deemed reasonably necessary by the Planning Board to enable it to review such application as required by law, with all consultant fees to be paid by the applicant. At the beginning of the review process, the Planning Board may require the applicant to fund an escrow account as outlined in Article XIV of the Zoning Law, from which the Town may draw, to ensure reimbursement of consultant fees.

C. Submission Requirements.

1. **Conflict.** Where there is a conflict between the submission requirements for Site Plan, Special Use Permit or Subdivision plat approval and the submission requirements of this Local Law, the more stringent regulation shall apply.
2. **General Application Contents.** An application for a Wetlands Permit shall be filed with the Clerk of the Planning Board, at least twenty-one (21) days prior to the regular meeting of the Planning Board, whether made in conjunction with Subdivision, Site Plan, Special Use Permit applications or upon referral by the Town Code enforcement Officer and shall contain the following information:
 - a. Name, post office address and telephone number of owner and applicant.
 - b. Street address and Tax Map designation of property covered by the application.

Town of Rhinebeck Freshwater Wetlands Law

- c. Statement with consent from owner for any agent making application.
- d. Statement of proposed work and purpose thereof.
- e. Owner's permission to allow visits to the parcel by Town authorities as designated herein.
- f. Short or Full Environmental Assessment Form under SEQR.
- g. Plans for the proposed regulated activities shall be submitted, unless otherwise specified by the Planning Board, based upon project size, configuration, and proximity to regulated areas, drawn to a scale of not less than one (1) inch equals thirty (30) feet. The plans shall be certified by an engineer, architect, land surveyor or landscape architect licensed by the State of New York. Plans shall show the following:
 - i. Delineation of all wetlands by a qualified professional ecologist, botanist and/or soil scientist no earlier than twelve (12) months prior to the date of filing the application. Delineations shall be conducted in accordance with the *Wetland Delineation Manual*, as referenced herein. The delineation may require verification by a third party professional ecologist, botanist or soil scientist qualified to conduct such delineations. The date(s) of the wetland delineation and the name of the qualified professional shall be clearly identified on the plans. The Town may require re-delineation of any wetland, in cases where original delineations were conducted outside the normal growing season, on sites where wetland vegetation has been removed so that species identification is impossible or not recognizable, or when specific site conditions warrant additional examination.
 - ii. Location of all wetlands and other waterbodies within five hundred (500) feet of the subject property, and their hydrologic connection to waterbodies onsite. This shall be based on existing aerial photography, soils or topographic maps. Delineation is not required to illustrate any wetlands located off the parcel.
 - iii. All areas of construction disturbance and post-construction impervious surfaces, and their relationship to property lines, buildings, roads and waterbodies within two hundred fifty (250) feet.
 - iv. Location of any well and depth thereof (if available) and any sewage or wastewater disposal system within one hundred (100) feet of the disturbed area.
 - v. Existing and adjusted contours at two-foot intervals in the proposed disturbed area and to a distance of one hundred (100) feet beyond.
 - vi. Locations and details of any existing and proposed stormwater management facilities, including point discharges, detention basins, and erosion controls, and schedules for the maintenance of such facilities.

vii. Where creation of a lake or pond or alteration of a wetland is proposed, details of the construction of any dams, embankments and outlets or other water control devices.

viii. A property location map at a scale not less than 1"=2,000'.

3. Additional Application Information:

- a. **Water Flow.** Applications affecting the water retention capacity, water flow or other drainage characteristics of any wetland shall include a statement, prepared by a professional engineer licensed in the State of New York, of the impact of the project on upstream and downstream areas considering drought and rainfall conditions.
- b. **Stormwater Management Areas.** In some instances stormwater management practices and facilities may negatively impact wetlands. Even the most optimally designed and maintained stormwater facilities do not remove all pollutants. Every effort shall be made to ensure that water quality will not be degraded and that hydroperiod and stream flow are not affected. A pollutant load analysis which compares the pollutant load for both pre- and post- development for individual pollutants shall be completed as part of the Stormwater Pollution Prevention Plan, if required. At a minimum, this analysis shall be conducted for each of the following common stormwater runoff contaminants: total suspended solids, total phosphorus, total nitrogen (including nitrates and nitrites), fecal coliforms, and chlorides (road salt). The Town reserves the right to require the analysis of additional pollutants identified in the NYS DEC *Stormwater Management Design Manual* and which is referenced herein, (2003 and as amended from time to time) depending on specific site and project conditions. The applicant may use the Simple Method (Scheuler, T. 1987, Metropolitan Washington Council of Governments, Washington, D.C.) described in *Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs.* , or a comparable professionally accepted method, but the same method shall be used for all calculations.
- c. Copies of all applicable town, county, state or federal permits or permit applications which are required for such work or improvement.
- d. The Planning Board, in consultation with its consultants including the Conservation Advisory Council, may require the following additional information based on the size, scope, or location of the project and as necessary for proper review of the application:
 - i. Description of the vegetative cover of the regulated area.
 - ii. Description of potential impacts to wetland hydroperiod or to stream flow.
 - iii. Groundwater table elevations indicating depth to groundwater, direction of groundwater flow and hydrologic connections with surface water features.
 - iv. A Habitat Assessment, pursuant to Article V, Section Y of the Zoning Law.

- v. A completed Vernal Pool Assessment Sheet (available from the Planning Board Secretary) and depiction of the recommended Vernal Pool Critical Terrestrial Habitat Area on the site map. Refer to the specific instructions and methods described in *Best Development Practices*.
 - vi. Other details as may be determined necessary by the Planning Board. The Planning Board shall notify the applicant within thirty (30) days of receipt of an application if such additional information is necessary.
4. **Submission Information Waivers.** Prior to making a formal submission to the Planning Board, applicants are encouraged to request a pre-application meeting with the Planning Board to review the submission requirements for their Wetlands Permit application. The Planning Board will consider waiver(s) from the submission requirements set forth below.
- a. All submission waivers shall be submitted in writing to the Planning Board, shall be rendered within 45 days of their request by an applicant, and shall be expressly set forth in the minutes of the Board.
 - b. In making a determination regarding waivers, the Planning Board, after consulting the CAC, will take into consideration the nature of the proposed action including but not limited to the size, scale, extent of regulated area affected and the specific activity requiring the Wetlands Permit. [\[Back to Top\]](#)

§ 120-10. Standards for Wetlands Permit Decisions.

- A. **Considerations.** In approving, approving with modifications, or denying any Wetlands Permit application, the Planning Board shall consider the following:
1. All evidence offered at or before any public hearing.
 2. All reports from federal, state or town agencies and other municipal boards.
 3. Habitat Assessment as described in Article V Section Y of the Zoning Law, including advise of the CAC.
 4. Avoidance of impacts to regulated areas by keeping regulated acts outside regulated areas, shall be considered the highest priority. Regulated acts that can be located outside regulated areas shall be so located.
 5. If avoidance of impacts is not possible, then mitigation for impacts on regulated areas is required as determined during the Planning Board's SEQR review process. The Planning Board shall review and approve the mitigation plan for a regulated area. The plan shall be prepared and approved as part of the Wetlands Permit application process. It shall include an assessment of specific impacts, regulated area functions to be replaced or restored, criteria for determining mitigation success and a monitoring plan that extends over at least two growing seasons. Mitigation plans are subject to modification based on Planning Board review and comment as part of the SEQR

- review process.
6. Additional requested information reasonably necessary to made a decision on the Wetlands Permit.
 7. All relevant facts and circumstances, including but not limited to the following:
 - a. The environmental impacts of the proposed action, specifically including but not limited to: cumulative impacts, watershed impacts, habitat impacts, and impacts on species of conservation concern.
 - b. The alternatives to the proposed action available if no other is physically or economically feasible. This does not mean that the most profitable or least costly alternative is the only feasible one nor that the least profitable or most costly alternative is the only feasible one.
 - c. Irreversible and irretrievable commitments of resources involved in the proposed activity.
 - d. The character and degree of injury to or interference with safety, health or the reasonable use of property which is impacted or threatened.
 - e. The suitability or unsuitability of such activity to the area for which it is proposed.
 - f. 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 herein.
 - g. The use of chemicals and fertilizers according to normally accepted agricultural practices on agricultural lands.
 - h. The possibility of further avoiding adverse impacts to the wetlands' natural capacity to support desirable biological life by application of recommended management guidelines to vernal pool critical terrestrial habitat, based on pool quality and specific site conditions. All applicants are encouraged to protect as much of the critical terrestrial habitat as possible including consideration for inclusion within land protection agreements in accordance with *Best Development Practices'* recommended management guidelines (copies available from the Planning Board Secretary).
 8. The availability of preferable alternative locations on the subject parcel or, in the case of activity of sufficient magnitude, the availability of other reasonable locations.
 - a. The availability of further technical improvements or safeguards which could feasibly be added to the plan or action.
 - b. The possibility of further avoiding adverse impacts to wetland functions, including but not limited to: the wetlands' 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.

- c. Avoidance of adverse impacts to the water quality and temperature of trout streams taking into consideration the existing conditions of the associated buffer area including slope, soils and vegetation.
 - d. The extent to which the exercise of property rights and the public benefit derived from such use may or may not outweigh or justify the possible degradation of the wetland, the interference with the exercise of other property rights and the impairment or endangerment of public health, safety or welfare.
9. Findings. No Wetlands Permit shall be issued pursuant to this Local Law unless the Planning Board shall find that:
- a. The proposed regulated activity is consistent with the Intent and Purposes of this Local Law to preserve, protect and conserve wetlands and the benefits they provide, to prevent their despoliation and destruction, and to regulate the development of such areas in order to secure their natural benefits consistent with the general welfare and beneficial economic, social and agricultural development of the town.
 - b. The proposed regulated activity is consistent with the Town of Rhinebeck Zoning Law.
 - c. The proposed regulated activity is compatible with the public health, safety and welfare.
 - d. The proposed regulated activity minimizes degradation to or loss of any part of the wetland or its associated buffer and minimizes adverse impacts to the greatest extent practicable on the functions and benefits which said areas provide. [\[Back to Top\]](#)

§ 120-11. Judicial Review.

- A. Any decision of the Town made pursuant to or within the scope of this Law may be reviewed at the instance of any person aggrieved by the action in accordance with Article 78 of the State Civil Practice Law and Rules, provided that such review is commenced within thirty (30) days of the filing of such decision or order in the Office of the Town Clerk. [\[Back to Top\]](#)

§ 120-12. Enforcement and Penalties.

- A. Whenever the Planning Board has reasonable grounds to believe that the applicant or property owner has not complied with any or all of the terms of this Local Law, has failed to undertake a project in the manner set forth in a Wetlands Permit, has violated any condition attached by the approval authority in a Wetlands Permit issued pursuant to this Local Law or has exceeded the authority granted in a Wetlands Permit issued pursuant to this Local Law, the Planning Board shall promptly refer the matter to the Code Enforcement Officer, who shall notify the landowner or responsible person and issue a

Town of Rhinebeck Freshwater Wetlands Law

written Notice to Remedy and post a Stop Work Order in accordance with Article X of the Zoning Law. The Code Enforcement Officer shall file a copy of such notice and order with the Planning Board, the Conservation Advisory Council, the Town Board and the Town Clerk.

- B. The Code Enforcement Officer is hereby authorized to enforce the provisions of this Local Law, including conditions of Wetlands Permit approval, to issue Stop Work Orders pursuant to Article X, Section G of the Zoning Law, and, pursuant to Criminal Procedure Law § 150.10, to issue appearance tickets requiring appearance in the Town of Rhinebeck Justice Court. A copy of the appearance ticket shall be filed with the Planning Board.
- C. The Town of Rhinebeck is specifically empowered to seek injunctive relief in a court of competent jurisdiction to restrain any violation or threatened violation of this Local Law or any condition attached by the approval authority to a Wetlands Permit and/or to compel the restoration of the affected regulated area, within a reasonable time and under the supervision of the Planning Board or professional wetland specialist specifically authorized by the Planning Board, to its condition prior to violation of the provisions of this Local Law or any condition attached by the approval authority in a Wetlands Permit issued pursuant to this Local Law. If the Town is successful in obtaining preliminary and/or permanent injunctive relief, it shall be entitled to an award by the court of its reasonable attorneys' fees.
- D. Any person convicted of having violated any provision of this Local Law, or any condition attached by the approval authority in a Wetlands Permit issued pursuant to this Local Law shall, for the first offense, be punished by a fine of not less than five hundred dollars (\$500) but not more than one thousand dollars (\$1000). For each subsequent offense, such person shall be punished by a fine of not less than one thousand dollars (\$1000), but not more than five thousand dollars (\$5000). Each consecutive day of violation shall constitute a separate and distinct offense.
- E. The foregoing provisions for enforcement of the regulations in this Local Law are not exclusive, but are in addition to any and all remedies available to the Town at law or in equity. [\[Back to Top\]](#)

§ 120-13. Conflict with Other Regulations.

- A. Where the standards and management requirements of this Local Law are in conflict with other land use development regulations, and policies regarding streams, steep slopes, clearing and grading, erodible soils, wetlands, floodplains, timber harvesting, land disturbance activities, or other environmental protective measures, the more restrictive standards and requirements shall apply. [\[Back to Top\]](#)

§ 120-14. Severability.

- A. The invalidity of any word, section, clause, paragraph, sentence, part or provision of this

Local Law shall not affect the validity of any other part of this Local Law, which can be given effect within such part or parts. [\[Back to Top\]](#)

§ 120-15. References, Definitions and Word Usage.

A. **References.** The following documents are referenced in this Local Law. Dates refer to the publications in effect at the time of adoption. The Town of Rhinebeck maintains and applicants are responsible for obtaining the most current version of the cited publication:

1. *US Army Corps of Engineers Wetland Delineation Manual*. (1987) herein referred to as the *Wetland Delineation Manual*.
2. *Best Development Practices: Conserving Pool-Breeding Amphibians in Residential and Commercial Developments in the Northeastern United States*, herein referred to as *Best Development Practices*. WCS/MCA Technical Paper No. 5. By Aram J. K. Calhoun and Michael W. Klemens, MCA, 2002, herein referred to as Calhoun and Klemens.
3. New York State Forestry, *Best Management Practices for Water Quality, BMP Field Guide*, NYSDEC, January 2000.
4. *Timber Harvesting Guidelines*, (1975). NYSDEC.
5. *Forest Road Construction Handbook*, (1973). NYSDEC.
6. *Stormwater Management Design Manual*, (2003). NYSDEC.
7. Town of Rhinebeck *Comprehensive Plan* including the *Significant Habitats Study* in Appendix 6 of such *Plan*.
8. Town of Rhinebeck *Zoning Law*, Chapter A136 of the Town Code.

B. **Definitions and Word Usage.**

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

AQUIFER - A geologic formation or groups of geologic formations that contain saturated, permeable material, such as sand and gravel, limestone or limestone overlaid with sand and gravel, sufficient to yield significant and usable quantities of water to drinking wells and springs.

ASSOCIATED BUFFER - A regulated upland area surrounding a wetland, that is intended to provide protection to the wetland from human activity and other encroachments. The associated buffer shall be that area extending a minimum of one hundred (100) feet horizontally away from and parallel to the wetland boundary or in the case of a stream that qualifies as a wetland, 100 feet on both sides of the stream. The buffer may extend beyond one hundred (100) feet where slopes are steep. The Planning Board may require larger buffers for effective protection and preservation of habitat and water quality pursuant to the standards enumerated in Article 24-0701.2 of the New York State Freshwater Wetlands Act and 6 NYCRR Part 664.7. Such an extension of the associated buffer shall be in

relation to the nature and importance of the wetland's benefits and the fragility and vulnerability of the wetland and its benefits and shall be made only after the Planning Board has made a written finding of the necessity of such a larger buffer.

BIODIVERSITY. Biodiversity describes the variety of life and its processes. The term refers to all the variation in nature, including ecosystems, biological communities, species and their genes. It also refers to the interactions of organisms with each other, and with the non-biological components of their environments such as soil, water, air and sunlight. Habitats with a high species richness (i.e. number of species) and habitats with low species richness may be equally important to overall biodiversity.

BOUNDARY OF A WETLAND - The outer limit of a regulated area characterized by wetland soils, wetland hydrology, and wetland vegetation as defined herein under "Wetland/Freshwater Wetland".

CLEAR-CUTTING. The indiscriminate removal of all or most trees, regardless of size or maturity, for a purpose other than development. This definition shall not include: the selective removal of tree species according to a forest management plan consistent with § 480-a of the New York State Real Property Tax Law or the *New York State Timber Harvesting Guidelines* or the New York State Cooperating Forester Program, and in accordance with environmentally sound and sustainable silvicultural principles; removal of dead trees; or removal of trees in accordance with a Subdivision Plat or Site Plan approved by the Town of Rhinebeck Planning Board.

CONSERVATION ADVISORY COUNCIL - The duly appointed Conservation Advisory Council of the Town of Rhinebeck.

DAMS AND WATER CONTROL MEASURES AND DEVICES - Barriers which regulate or obstruct the flow of water or raise, lower or maintain the level of water in ponds, lakes, natural drainage systems and wetlands.

DEPOSIT - The act of filling, grading, discharging, emitting, dumping, or the placement of any material, but not including stormwater.

DISCHARGE - The emission of any water, substance or material into a wetland or its associated buffer, whether or not such substance causes pollution.

DOMINANT(S) OR DOMINANCE - A dominant species is either the dominant plant species (i.e., the only species dominating a vegetative unit) or a co-dominant species (i.e., when two or more species dominate a vegetative unit). The measures of spatial extent are percent area cover for all vegetation units other than trees and basal area for trees. In this Local Law, dominance refers to the spatial extent of a vegetative species because spatial extent is directly measurable or discernible in the field.

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

DREDGE - To excavate or remove sediment, sand, soil, mud, shells, gravel or other aggregate from a wetland or water course.

Town of Rhinebeck Freshwater Wetlands Law

ECOLOGIST/BIOLOGIST - A person having a degree from an accredited college or university in the field of biological sciences related specifically to the identification and distribution of animal populations in wetland habitats and upland systems, and of methods to describe and classify those populations.

ECOLOGIST/BOTANIST - A person having a degree from an accredited college or university in the field of physical, chemical, and biological sciences related to the physiology, identification and distribution of native plants and vegetative associations in wetland and upland systems and of methods to describe, classify and delineate vegetative species and associations.

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

FACULTATIVE SPECIES - Vegetative species that can occur in both wetland and upland systems. There are three (3) subcategories of facultative species: facultative wetland (FACW), facultative (FAC), and facultative upland (FACU). Under natural conditions a facultative wetland species is usually (estimated probability 67-99%) found in wetlands, but occasionally in uplands. A facultative species has a similar likelihood (estimated probability of 34-66%) of occurring in both wetlands and uplands. The facultative upland species is usually (estimated probability 67-99%) found in uplands, but occasionally in wetlands. Facultative species for the Northeast are listed in the National List of Plant Species that Occur in Wetlands, New York State (1988), or as amended and updated.

FLAGGING - Placement of visible markers at the wetland boundary, which, upon Town verification by the Town of Rhinebeck, may be located in the field and transferred by a licensed land surveyor onto a survey, or a proposed Subdivision plan, Site Plan or other development project map.

FRESHWATER WETLAND - see Wetland/Freshwater wetland

HYDRIC SOIL - A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in its upper portion. The concept of hydric soils includes those developed under sufficiently wet conditions to support the growth and regeneration of hydrophytic vegetation. Soils that are sufficiently wet because of artificial measures are included in the concept of hydric soils. Also, soils in which hydrology has been artificially modified are hydric if the soil, in an unaltered state, was hydric. Some series, designated as hydric, have phases that are not hydric depending on water table, flooding, and ponding characteristics.

HYDROPERIOD - The seasonal pattern of water-level fluctuations in a wetland.

LAND PROTECTION AGREEMENT - An imposition on lands by deed restriction or, preferably, by conservation easement pursuant to Article 49 of New York State Environmental Conservation Law, to preserve the environmental, ecological, biological, hydrological, or other functional values of regulated areas. Such a restriction shall run with the land and bind subsequent landowners, and be documented on a survey map or plan, which shall in such form as is adequate to provide notice of the restriction as approved by the Planning Board Attorney, and which shall be recorded in the Office of the Dutchess

Town of Rhinebeck Freshwater Wetlands Law

County Clerk. A conservation restriction does not require a dedication of lands for public use, and the owners of the property, their successors and assigns otherwise retain their rights to full use and quiet enjoyment of their property.

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 same are exempt or regulated exclusively by the State of New York); sewage, sewage sludge or effluent; and industrial or municipal solid waste.

MITIGATION PLAN - The plan prepared by an applicant for a Wetlands Permit to compensate for the proposed wetland and wetland buffer impacts pursuant to the standards and requirements of this Local Law and SEQR.

OBLIGATE UPLAND SPECIES - Plant species that, under natural conditions, always occur in uplands (i.e., 99% of the time).

OBLIGATE WETLAND SPECIES - 1) Plant species that, under natural conditions, always occur in wetlands (i.e., greater than 99% of the time) and/or 2) Animal species that depend on vernal pools for successful breeding.

PERMIT, WETLANDS - That form of Town approval required by this Local Law for the conduct of a regulated activity within any area of the Town of Rhinebeck defined as a “wetland” or “associated buffer”.

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.

REGULATED ACTIVITY - Those activities to be conducted in wetlands and associated buffers, that require a Wetlands Permit from the Town Planning Board.

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

SOIL SCIENTIST - A person having special knowledge by reason of education or experience of the physical, chemical and biological sciences applicable to the genesis and morphology of soils as natural bodies and of the methods to describe, classify, and map soil units.

STATE FRESHWATER WETLANDS - Lands and waters of the state, as shown on the State Freshwater Wetlands Map, or as amended or updated from time to time, which contain any and all of the conditions described in Subdivision 1 of Section 24-0107 of the Environmental Conservation Law.

STORM WATER MANAGEMENT AREA - The area for which stormwater has been addressed in a Stormwater Pollution Prevention Plan (SWPPP) prepared pursuant to the Environmental Protection Agency’s (EPA) and New York State Department of

Town of Rhinebeck Freshwater Wetlands Law

Environmental Conservation's (NYSDEC) Phase II Storm Water Regulations or as amended or updated.

STRUCTURE - A static construction, or assembly, or materials, the use or occupancy of which requires a fixed location on the ground or attachment to an object having such a fixed location. "Structures" shall include, among others, buildings, stadiums, sheds, storage bins, reviewing and display stands, platforms, towers, walls, fences, swimming pools, tennis courts, gasoline pumps, billboards, signs, artwork, and mobile dwellings. "Structures" shall not include utility poles, wire and related equipment.

VERNAL POOL - A type of wetland as defined herein. In general, vernal pools are seasonal bodies of water that attain maximum depths in spring or fall and lack permanent surface water connections with other wetlands or water bodies. Pools fill with snowmelt or runoff in the spring, although some may be fed primarily by groundwater sources. The duration of surface flooding (hydroperiod), varies depending upon the pool and the year; vernal pool hydroperiods range from a continuum from less than 30 days to more than a year. Pools are generally small in size (< 2 acres), with the extent of vegetation varying widely. They lack established fish populations, usually as a result of periodic drying, and support communities dominated by animals adapted to living in temporary, fishless pools. Vernal pools provide essential breeding habitat for pool-breeding wildlife such as Fairy shrimp, Marbled salamander, Blue-spotted salamander, Jefferson's salamander, and Wood frog.

WATERBODY - Any natural or artificial pond, lake, reservoir or other surface water area which usually or intermittently contains water and which has a discernible shoreline.

WATERSHED - A region of land that drains downgradient to a particular body of water. A watershed has interconnected streams, lakes, wetlands, and underground waters moving generally downhill to the body of water that the watershed is named for.

WETLAND DELINEATION - Wetland delineation consists of methods that are described in detail in Part IV of the *Wetland Delineation Manual*. These are grouped into two general types. Routine delineation (Part IV, Section D) involves simple, rapidly applied methods that result in sufficient qualitative data for determining a wetland boundary. Comprehensive methods (Part IV, Section E,) should be used when the project area is complex and/or when the determination requires rigorous documentation. Use of the comprehensive method will result in maximum information for use in making determinations. Delineation on atypical sites and problem areas, as described in the Part IV Sections F and G, shall comply with the delineation methods described in those sections.

WETLAND/FRESHWATER WETLAND - Wetlands are lands inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include but are not limited to: swamps, marshes, bogs,

fens, intermittent streams, vernal pools, and shallow water zones of rivers, lakes, ponds and other water bodies.

Wetlands have the following environmental characteristics:

1. Wetland vegetation. The prevalent vegetation is typically adapted to areas having hydrologic and soil conditions described above. Wetland vegetation is present if more than 50 percent of the dominant species are listed as Obligate, Facultative Wet, or Facultative on the USFWS Wetland Plant List (National List of Plant Species That Occur in Wetlands: 1988 National Summary). Additional indicators of vegetation associated with wetlands are listed in Paragraph 35 of the *Wetland Delineation Manual*.
2. Wetland soil. Soils are present and have been classified as Hydric, or they possess characteristics that are associated with saturated soil conditions. Indicators of these soils are listed in Paragraphs 44 and 45 of the *Wetland Delineation Manual*.
3. Wetland hydrology. Wetlands are inundated either permanently or periodically at mean water depths equal to or less than 6.6 ft, or the soil is saturated to the surface at some time during the growing season. Indicators of hydrologic conditions that occur in wetlands are listed in Paragraph 49 of the *Wetland Delineation Manual*.

This definition is from the *Wetland Delineation Manual*. Except in certain situations, such as disturbed areas described in the *Wetland Delineation Manual*, evidence of a minimum of one positive wetland indicator from each parameter (vegetation, soils, and hydrology) must be found in order to make a positive wetland determination. [\[Back to Top\]](#)

SECTION 2. EFFECTIVE DATE

This Local Law shall take effect immediately after it is filed with the Secretary of State as provided in section twenty-seven of the Municipal Home Rule Law.

Town of Rhinebeck Freshwater Wetlands Law

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20 _____, in accordance with the applicable provisions of law.
(Elective Chief Executive Officer)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20 _____.
(Elective Chief Executive Officer)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on _____ 20 _____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20 _____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20 _____, in accordance with the applicable provisions of law.
(Elective Chief Executive Officer)*

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

Town of Rhinebeck Freshwater Wetlands Law

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 _____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: _____

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF _____

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

Title

County _____
City of _____
Town _____
Village _____

Date: _____