TOWN of GREENBURGH
Local Law No. /2011

A local law repealing and replacing Chapter 280 of the Code of the Town of Greenburgh to regulate and protect wetlands, watercourses and adjacent (buffer) areas in the Town of Greenburgh pursuant to NYS Constitution Article IX, and the New York Municipal Home Rule Law § 10.

§ 1. Enactment of Chapter 280 entitled, “WETLAND AND WATERCOURSE PROTECTION.”

§ 280-1. Title.
§ 280-2. Legislative Findings.
§ 280-3. Legislative Intent.
§ 280-4. Applicability; non-conforming activities.
§ 280-5. Definitions.
§ 280-6. Authorized clearance form required.
§ 280-7. Allowable, prohibited, and regulated activities.
§ 280-10. Standards for permit decisions.
§ 280-11. Mitigation policy; plan requirements.
§ 280-12. Permit form and conditions.
§ 280-14. Performance bonds and letters of credit.
§ 280-15. Compliance with other laws.
§ 280-16. Suspension or revocation of permits.
§ 280-17. Fees; escrow.
§ 280-18. General powers of approval authority.
§ 280-20. Penalties for offenses.
§ 280-22. Severability; taking without compensation.
§ 280-23. Amendments.

§ 2. Effective date.
BE IT ENACTED by the Town Board of the Town of Greenburgh as follows:

§ 1. Chapter 280 of the Code of the Town of Greenburgh is hereby repealed and replaced as follows:

§ 280-1. Title.

This chapter is entitled, "Wetland and Watercourse Protection."

§ 280-2. Legislative findings.

A. The Town Board of the Town of Greenburgh has determined that the public interest, health, safety and the economic and general welfare of the residents of the Town will be best served by providing for the protection, preservation, proper maintenance and use of its and neighboring ponds, lakes, reservoirs, rivers, streams, brooks, waterways, natural drainage systems, watercourses, wetlands, and adjacent land areas from encroachment, spoiling, pollution or elimination.

B. The Town Board finds that growth, the spread of development and increasing demands upon natural resources have the potential of encroaching upon, despoiling, polluting or eliminating many of the wetlands, watercourses and water-retention areas in the Town. The Town Board further finds that these natural resources, when preserved, constitute important physical, economic, social, aesthetic, ecological and recreational assets to the Town and its present and future residents.

C. In their natural condition and state, wetlands, watercourses and wetland/watercourse buffers are valuable natural resources which serve multiple functions, including but not limited to:

(1) Removing pollutants and detoxifying chemicals by trapping sediment;

(2) Recharging groundwater, including aquifers, and surface waters, thereby maintaining stream flows needed by plants and animals to survive;

(3) Protecting and maintaining the stability of stream and watercourse channels, and banks, thereby controlling and reducing erosion, flooding and related property damage, protecting reservoirs and watersheds vital to the community and to the water supply of Westchester County and New York City;

(4) Providing unique or essential habitat for diverse fish and wildlife species, including many of those on the New York State and federal lists of special concern, threatened, rare and endangered species;

(5) Supporting unique vegetative and biotic associations specifically adapted for survival in low-oxygen environments;
(6) Providing areas of comparatively high plant productivity which support wildlife diversity and abundance;

(7) Providing open space and visual relief from intense development in urbanized and growing areas;

(8) Providing recreational opportunities, including fishing, swimming, nature study, hiking and wildlife watching; and

(9) Serving as outdoor laboratories and living classrooms for the study and application of biological, natural and physical sciences.

D. In addition, sufficiently wide naturally vegetated wetland/watercourse buffers improve water quality by filtering out non-point source pollutants (polluted stormwater), lowering stream temperatures, serving as visual and noise barriers for wildlife, controlling erosion, lessening impacts from flooding, providing transitional habitats and improving floral and faunal habitat diversity.

E. Throughout Westchester County, significant areas of these important natural resources have been lost or impaired by draining, dredging, filling, excavating, building, polluting, and other acts inconsistent with the natural uses of such areas. Loss or impairment of wetlands and their ecosystems can cause or aggravate flooding, erosion, degradation and diminution of water supply for drinking and waste treatment. Remaining wetlands are in jeopardy of being lost, despoiled, or impaired by such acts, contrary to public safety and welfare.

F. It is therefore the policy of the Town of Greenburgh to protect its residents, including future generations, by preventing the despoliation and destruction of wetlands and watercourses while taking into account varying ecological, water quality, economic, recreational, and aesthetic values. Activities that may damage the functions or cause the loss of wetlands and watercourses should be regulated.

§ 280-3. Legislative intent.

It is the intent of the Town of Greenburgh to regulate activities within wetlands, watercourses and wetland/watercourse buffer areas throughout the Town so as to not hinder the benefits set forth in the legislative findings. Activities in and around wetlands, watercourses and their buffer areas must conform with all applicable building codes, stormwater management control regulations, and other regulations, so that such activities do not threaten public safety, the natural environment, or cause nuisances by:

(a) Impeding flood flows, reducing flood storage areas or destroying storm barriers, thereby resulting in an increase in the heights, frequencies and/or velocities of floods on other lands;
(b) Increasing water pollution through location of domestic waste disposal systems in wet soils; inappropriate siting of stormwater management facilities; unauthorized application of inorganic fertilizers, pesticides, herbicides, fungicides and algaecides; disposing of solid wastes at inappropriate sites; creating of unstabilized fills; or destroying wetland soils and vegetation serving pollution and sediment control functions;

(c) Increasing erosion;

(d) Decreasing breeding, nesting, and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;

(e) Interfering with the exchange of nutrients needed by fish and other forms of wildlife;

(f) Decreasing habitat for fish and other forms of wildlife;

(g) Adversely altering the recharge or discharge functions of wetlands, thereby impacting ground water or surface water supplies;

(h) Significantly altering the wetland hydroperiod and thereby causing either short or long-term changes in vegetational composition, soils characteristics, nutrient recycling, or water chemistry;

(i) Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;

(j) Interfering with public rights for recreation opportunities provided by wetlands and watercourses for fishing, swimming, hiking, bird watching, photography, camping, and other passive uses; or

(k) Destroying or damaging aesthetic and property values.

§ 280-4. Applicability; nonconforming activities.

A. Applicability. This chapter shall apply to all land defined as "wetland," "watercourse," or "wetland/watercourse buffer" in § 280-5. This chapter establishes those activities which must be regulated due to the potential adverse effects of such activities.

B. Rules for establishing and interpreting wetland boundaries. The boundaries of a wetland or watercourse ordinarily shall be determined by field investigation and delineation by a qualified environmental professional and subsequent survey by a licensed land surveyor unless the latter is waived by the approval authority. The approval authority may consult, and/or require the applicant to consult, with the Town's wetland scientist, and/or additional biologists, hydrologists, soil scientists, ecologists/botanists, or other experts as necessary to make this determination of wetland boundaries.
C. Grandfathered projects. The provisions of this chapter shall not apply to any land use, improvement or development which has received final approval and has received work permits, as defined in this chapter, prior to the effective date of this chapter.

D. Current projects. Any regulated activity that was approved prior to the effective date of this chapter and to which significant economic resources have been committed, but which is not in conformity with the provisions of this chapter, may be continued, subject to the following:

1. All such activities shall continue to be governed by the laws of the Town in effect at the time of approval.

2. No such activity shall be expanded, changed, enlarged, or altered in such a way that increases its nonconformity without a permit.

3. If a nonconforming activity is discontinued for six consecutive months, any resumption of the activity shall conform to this chapter.

4. If any nonconforming use or activity is destroyed by human activities or a natural catastrophe, it shall not be resumed except in conformity with the provisions of this chapter.

5. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming activities.

§ 280-5. Definitions.

Words or phrases used in this chapter shall be interpreted as defined below, and as defined in § 285-5 and § 250-3 and, where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out the regulatory goals as set forth in the legislative findings:

ADJACENT AREA — See "wetland/watercourse buffer."

APPLICANT — Any person, corporation, partnership or other entity that files an application for a clearance form and/or permit under this chapter and is either the owner of the land on which the proposed regulated activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such person.

APPROVAL AUTHORITY — The municipal or administrative board, public official or public employee that is empowered to grant or deny permits under this chapter, require the posting of bonds as necessary, and revoke or suspend a permit where lack of compliance to the permit is established. This shall be as follows:

1. The Town Wetland Inspector of the Town of Greenburgh for any regulated activity classified as a minor project requiring a permit as specified in § 280-7C(1).
The Planning Board of the Town of Greenburgh for any regulated activity classified as a major project requiring a permit as specified in § 280-7C(2).

The Zoning Board of Appeals for variances, as specified in § 280-12.

AQUICULTURE — The cultivating and harvesting of products, including fish and vegetation, that are produced naturally in freshwater wetlands, and includes the installation of cribs, racks, and other in-water structures for cultivating these products; but does not include filling, dredging, peat mining, clear cutting, or the construction of any buildings or any water-regulating structures such as dams.

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

CAC—The Conservation Advisory Council, established pursuant to Chapter 520 of the Town of Greenburgh Town Code.

CLEARANCE FORM — A written form issued by the Town Wetland Inspector indicating whether or not a permit is required.

CLEAR CUTTING — Any cutting of more than 30 percent of trees four (4) inches and greater in diameter (12” circumference) at breast height (dbh) at any one time as determined on the basis of wetland area per lot or group of lots under single ownership, including any cutting of trees which results in the total removal of one or more naturally occurring species, whether or not the cut meets or exceeds the 30 percent threshold and where the average residual basal area of trees over six inches dbh remaining after such cutting is less than 30 square feet per acre, measured within the area harvested. Provided, however, that where regeneration is assured by stand conditions such that after such cutting, the average residual basal area of trees at least one inch dbh is at least 30 square feet per acre, measured within the area harvested, a clear cut will not be deemed to have taken place unless the average residual basal area of trees over four (4) inches dbh is less than 10 square feet per acre, similarly measured.

CREATION — To construct a new wetland, often by excavating and/or flooding land not previously occupied by a wetland.

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

DEPOSIT — To fill, grade, discharge, emit, dump, or place any material or the act thereof covering an area greater than 500 square feet.

DEVELOPMENT ACTIVITIES — Any building activity or mining operation, the making of any material change in the use or intensity of use of any structure or land and the creation or termination of rights of access or riparian rights, as further regulated in § 280-7.
DISCHARGE — The emission of any water, substance, or material, as defined herein, into a wetland, watercourse or adjacent area, whether or not such substance causes pollution.

DOMINANT(S) or DOMINANCE — A dominant species is either the predominant plant species (i.e., the most conspicuous species occupying a vegetative unit) or a co-dominant species (i.e., a species which is as prevalent as one or more other species, considered collectively, that occupy most of the area within when two or more species dominate a vegetative unit). Dominant species are considered to be those with 20% or more aerial coverage or spatial extent within the vegetative unit or plant community. The measures of spatial extent are percent aerial cover for all vegetation units other than trees, and basal area for trees. With respect to this Chapter, dominance refers to the spatial extent of a vegetative species because spatial extent is directly discernible or measurable in the field.

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

DREDGE — To excavate or remove sediment, soil, mud, sand, gravel, or other aggregate from the bottom of a wetland or watercourse.

DRIP LINE — The outermost limit of the canopy of a tree as delineated by the perimeter of its branches and which, when extended perpendicularly to the ground, encloses the tree.

EXCAVATE — To dig out and remove any material from a wetland/watercourse buffer.

FACULTATIVE SPECIES — A list of wetland plant species which separates vascular plants into four basic groups (commonly called "wetland indicator status") based on a plant species' frequency of occurrence in wetlands. Vegetative species can occur in both upland and wetland systems. There are five subcategories of facultative species: obligate wetland species, facultative wetland, straight facultative, facultative upland and obligate upland plant. Under natural conditions, obligate wetland species (OBL) occur almost always (estimated probability >99%) in wetlands, a facultative wetland species (FACW) is usually (estimated probability of 67 percent to 99 percent) found in wetlands, although occasionally can be found in non-wetlands or upland areas; a straight facultative species (FAC) has a similar likelihood (estimated probability of 34 percent to 66 percent) of occurring in both wetlands and uplands; a facultative upland species (FACU) is usually (estimated probability of 67 percent to 99 percent) found in uplands, but occasionally in wetlands, and an Obligate upland plant species (UPL) occurs almost always (estimated probability >99%) in non-wetland areas. UPL plants do not usually appear on the wetland plant list and are not a facultative species with respect to this definition; they are listed only when found in wetlands with a higher probability in a particular region of the country. If a species is not on the list, it is most probably an upland plant. When in doubt about an unlisted species, that species should be treated as neutral and the boundary delineation based upon other dominant or sub-dominant vegetation present, along with soils and/or hydrology as necessary. New York State's wetland plants list should be used when evaluating whether the hydrophytic vegetation criterion is satisfied for the purposes of delineating wetland boundaries in New York State.
FILL — See "deposit."

FRESHWATER WETLANDS MAP — The final freshwater wetlands maps for Westchester County promulgated by the Commissioner of the New York State Department of Environmental Conservation pursuant to Subdivision 24-0301.5 of the New York State Freshwater Wetland Act, Editor's Note: See Environmental Conservation Law § 24-0301, Subdivision 5, or such map as has been amended or adjusted, and on which are indicated the approximate locations of the actual boundaries of wetlands regulated pursuant to Article 24 of the Environmental Conservation Law.

GRADING — To adjust the degree of inclination of the natural contours of the land, including leveling, smoothing, and other modification of the natural land surface consisting of 500 square feet or more.

GROWING SEASON — The portion of the year when soil temperatures at a depth of 20 inches are above biological zero (5º C.); the growing season for Westchester County is March through October.

HYDRIC SOIL — A soil that is described in the Soil Survey of Putnam and Westchester Counties, New York (1994) as "somewhat poorly drained," "poorly drained" or "very poorly drained." Under normal circumstances hydric soils are inundated or saturated to within 16 inches of the surface during the growing season. Hydric soils exhibit diagnostic colors or mottled features as described in the Army Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory Technical Report Y-87-1).

HYDROPHYTIC VEGETATION — Vascular plant species that are adapted to growing in inundated soils or soils saturated within 18 inches of the surface for extended periods of time during the growing season. Hydrophytic vegetation includes obligate wetland, facultative wetland and in some cases straight facultative species, as defined in this section.

LONG DURATION — A duration class referring to flooding or inundation in which inundation for a single event ranges from 7 days to 1 month.

MAJOR PROJECT (OR PROJECTS) — Any activity or activities requiring a wetland/watercourse permit under this chapter, where the approval authority is the Planning Board, as specified in § 280-7C(2).

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

MINOR PROJECT (OR PROJECTS) — Any activity or activities requiring a wetland/watercourse permit under this chapter, where the approval authority is the Town Wetland Inspector, as specified in § 280-7C(1).
MITIGATION PLAN — A physical plan and a written report prepared on behalf of the applicant by a qualified professional in accordance with § 280-10 when it has been demonstrated that either losses or impacts to the wetland, watercourse or wetland/watercourse buffer are necessary and unavoidable and have been minimized to the maximum extent practicable.

MUNSELL SOIL COLOR CHARTS — A soil color designation system that specifies the relative degree of the three simple variables of color: hue, value, and chroma, produced by the Kollmorgen Corporation in 1992, or as amended or updated from time to time.

PERMIT — That form of written Town approval required by this chapter for the conduct of a regulated activity within a wetland, watercourse or wetland/watercourse buffer.

POLLUTION — Any harmful thermal effect or the contamination or rendering unclean or impure of any wetland, watercourse or wetland/watercourse buffer by reason of erosion, or by any waste or other materials discharged or deposited therein.

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

PUBLIC FACILITIES — Any community facilities operated by a unit of local, county, state or federal government (or by a third party on behalf of a unit of local, county, state or federal government), primarily sited, designed, constructed, and operated for the purpose of providing public health, safety and welfare services to the immediate area or neighborhood in which they are sited. Public facilities include, but are not limited to: police stations, fire stations, libraries, civil defense buildings, parks, public roadways, bus stop shelters, electrical substations, water pumping and filtration facilities, stormwater collection pipes, including culverts and sluices, gas, electric, cable and telephone utility lines, parks and recreation buildings and special use areas, branch governmental and administrative offices, storage and associated maintenance buildings and yards.

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

RENDERING UNCLEAN OR IMPURE — Any alteration of the physical, chemical, or biological properties of any wetland, watercourse or wetland/watercourse buffer, including but not limited to change in odor, color, turbidity, or taste.

RESTORATION — To reclaim a disturbed or degraded wetland in order to bring back one or more functions that have been partially or completely lost by such actions as draining or filling.

SELECTIVE CUTTING — Any cutting of trees within the boundaries of a wetland, watercourse, or wetland/watercourse buffer that is not “Clear Cutting” as defined in this section.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) — Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.
STORMWATER MANAGEMENT FACILITY—One or more of a series of stormwater management practices installed, stabilized and operating for control of stormwater runoff.

STRUCTURE — Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground, including but not limited to buildings, athletic courts, and swimming pools.

TOWN WETLAND INSPECTOR — The administrative official, appointed by the Town Board to fulfill the responsibilities set forth in this chapter, having special knowledge by reason of education and work related to the identification, delineation, functional assessment and management of wetlands, including detailed knowledge of wetland flora and fauna and wetland hydrology to a degree acceptable to the Town Board.

VERNAL POOL — An open area of surface water formed in a shallow basin within an upland area that retains a minimum depth of six inches for three to four months during the growing season (usually March through June) and contains amphibians (adults, egg masses, or larval stages) during the growing season. Vernal pools are devoid of fish and are the exclusive breeding habitats of amphibians.

VERY LONG DURATION — A duration class referring to flooding or inundation in which inundation for a single event is greater than one month.

WATERCOURSE — Any natural, artificial, permanent or intermittent public or private water body or water segment, including, but not limited to, ponds, lakes, reservoirs, rivers, streams, brooks, waterways or natural drainage systems, that are contained within, flow through, or border on the Town of Greenburgh. For the purposes of this definition, "intermittent" shall mean that water stands or flows for a total of three months in a consecutive twelve-month period. A man made drainage ditch, swale or surface feature (e.g. rain garden, detention basin) that contains water only during and immediately after a rainstorm or a snow melt shall not be considered a watercourse.

WATER TABLE — The zone of saturation at the highest average depth during the wettest season (April-June).

WETLAND —
(1) Areas of at least 500 square feet that comprise hydric soils or are inundated or saturated by surface or ground water at a frequency and duration (long or very long) sufficient to support and, under normal circumstances, do support a prevalence of hydrophytic vegetation and, that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions, as further defined by the Federal Manual for Interagency Committee of the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the U.S.D.A. Natural Resources Conservation Service Cooperative Technical Publication; or
A "Wetland" as defined and regulated under this chapter, shall include lands and waters that meet the definition provided in § 24-0107, Subdivision 1, of the New York State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law) and have an area of at least 12.4 acres or, if smaller, have unusual local importance as determined by the Commissioner of the New York State Department of Environmental Conservation pursuant to § 24-0301, Subdivision 1, of the Act. The approximate boundaries of such lands and waters are indicated on the Official Freshwater Wetlands Map promulgated by the Commissioner of the New York State Department of Environmental Conservation pursuant to § 24-0301, Subdivision 5, or such a map that has been amended or adjusted pursuant to § 24-0301, Subdivision 6, of Title 23. The amendment to this subsection which extends the provisions of this Chapter 280 to wetlands regulated by the New York State Department of Environmental Conservation shall be subject to the applicable provisions of § 280-8 of this chapter.

WETLAND HYDROLOGY — The sum total of wetness characteristics in areas that are inundated or have saturated soils for a sufficient duration (long or very long) to support hydrophytic vegetation. Wetland hydrology encompasses, all hydrological characteristics of areas that are periodically inundated or have soils saturated to the surface at some time during the growing season. Areas with evident characteristics of wetland hydrology are those where the presence of water has an overriding influence on characteristics of vegetation and soils due to anaerobic and reducing conditions respectively.

WETLAND PLANTS OF THE STATE OF NEW YORK — Those plant species listed in the National List of Plant Species That Occur In Wetlands: Northeast (1988), that are classified as facultative, facultative wetland, or obligate wetland species developed by the U.S. Department of the Interior, Fish and Wildlife Service, for the National Wetland Inventory, as amended and updated from time to time.

WETLAND SCIENTIST — A person having specialized or expert knowledge of the physical, chemical and biological sciences related to the structural and functional ecology of wetlands and associated upland communities, including flora and fauna; and of methods to identify, delineate and describe wetland and watercourse resources, communities and habitats. This person must possess a minimum of two years field experience in wetland/watercourse delineation and wetland/watercourse report preparation and must hold at least a bachelors degree, with a minimum of 30 semester hours (credits), or equivalent, in biology, physical science and/or chemistry, along with a minimum of eight semester hours (credits), or equivalent, in botany, including field identification of animal and plant species. Individuals who do not meet the above minimum qualifications but who possess at least 10 years experience identifying and mapping native vegetation are qualified if they have completed at least 12 semester hours (credits), or equivalent, in botany, including field identification of animal and plant species.

WETLAND/WATERCOURSE BUFFER — The area of land extending 100 feet horizontally away from and parallel to the outermost boundary of a wetland and/or point of mean high water of a watercourse. The wetland/watercourse buffer may be greater than 100 feet where it has been so designated by either the Commissioner of the New York State Department of Environmental Conservation or the local approval authority. The wetland/watercourse buffer provides several
ecological benefits to wetlands and watercourses and some degree of protection from human encroachment associated with development. The wetland/watercourse buffer shall be subject to the regulations for wetlands as defined in this chapter.

§ 280-6. Authorized clearance form required.

A. All applications for any permit involving development activities issued by the Building Department, Department of Public Works, Antenna Review Board, Town Board, Planning Board, or Zoning Board of Appeals of the Town of Greenburgh must be accompanied by an authorized wetland/watercourse clearance form. An applicant must provide sufficient information to enable the Town Wetland Inspector or other authorized representative to properly determine if the proposed activity is an allowable activity or exempt, as defined herein, or use that does not also require an activity permit; is a prohibited activity; or is a regulated activity or use which requires an activity permit as issued by the approval authority in accordance with the standards and procedures set forth herewith. No permits, certificates of occupancy or temporary certificates of occupancy and/or certificates of completion may be issued without the prior approval of the approval authority for any project involving a wetland/watercourse permit.

B. False or misleading statements or information provided in a clearance form or to the approval authority shall result in the invalidation of any authorization. The applicant shall be subject to the penalties and sanctions set forth in this chapter for any activities conducted which would have otherwise required a wetland/watercourse activity permit.

C. The Town Wetland Inspector or other authorized representative may require an applicant to provide additional information, including but not limited to a qualified wetland delineation, report and/or survey, to assist in making such a determination; and may further defer the making of said determination to the Planning Board.

D. Upon submission of a completed clearance form by an applicant, the Town Wetland Inspector or other authorized representative must determine one of the following, provided the proposed activity is not prohibited pursuant to this chapter:

(1) That the proposed activity or use is an allowable activity or use pursuant to this chapter, and no wetland/watercourse permit is required. The Town Wetland Inspector shall sign and issue a wetland/watercourse clearance form indicating same.

(2) That the proposed activity or use does not impact or occur within a wetland, watercourse or wetland/watercourse buffer area, and no wetland/watercourse permit is required. The Town Wetland Inspector shall sign and issue a wetland/watercourse clearance form indicating same.

(3) That a minor project wetland/watercourse permit is required in accordance with the standards and procedures set forth in this chapter.
(4) That a major project wetland/watercourse permit is required in accordance with the standards and procedures set forth in this chapter.

§ 280-7. Allowable, prohibited, and regulated activities.

A. Allowable activities not requiring a permit. The following activities shall be permitted as-of-right within a wetland, watercourse, or wetland/watercourse buffer, and do not require a wetland/watercourse permit to the extent that they are not prohibited by this or any other ordinance, law, local law, rule or regulation; and to the extent that they do not constitute a pollution or erosion hazard or interfere with proper drainage; and provided they do not require new structures, grading, fill, draining, or dredging of non-manmade wetlands.

(1) An approved clearance form must be obtained before any of the following activities are commenced:

(a) “In kind” repair or replacement of sidewalks, walkways, stairwells, terraces, patios, driveways, roadways or other paved areas, fences, walls, decks, in-ground pools and athletic courts, provided that the height, size and/or spatial extent of the affected area does not change (i.e., no increase in the area beyond the existing footprint) and where appropriate stormwater pollution prevention control measures, as required by § 248-8, are installed and maintained during the course of work;

(b) “In kind” restoration of preexisting structures partially or entirely destroyed by casualty loss after the effective date of this chapter, provided that such “in kind” restoration commences within twelve months of the date of loss;

(c) Routine maintenance activities to an existing stormwater management facilities involving less than 5000 square feet of soil disturbance and which are performed to maintain the original line and grade, hydraulic capacity or original purpose of such facility;

(d) Any land disturbing activity, excluding those activities listed in § 280-7A(2), involving less than 500 square feet of soil disturbance and located no closer than 50 feet to a wetland or watercourse;

(e) Depositing organic herbicides, organic pesticides and/or organic fertilizers in a wetland/watercourse buffer in accordance with manufacturers’ recommendations and accepted horticultural practices.

(f) The digging of test pits associated with a project site within a wetland/watercourse buffer, whereby the plans provide for appropriate soil erosion and sediment control measures.

(2) An approved clearance form is not required before any of the following activities are commenced:
(a) Installation of landscape plantings in a wetland/watercourse buffer resulting in less than 500 square feet of soil disturbance;

(b) Normal ground maintenance of existing landscaped areas, including mowing, trimming of existing vegetation and removal of dead or diseased vegetation on a property and located within a wetland/watercourse buffer, excluding the use of inorganic fertilizers, inorganic pesticides, and/or inorganic herbicides. However, a tree removal permit may be required under §260-6. Regulated Activities;

(c) Selective cutting, as defined in §280-5, provided that stumps are left in place and work is accomplished without the assistance of any motorized vehicles. However, a tree removal permit may be required under §260-6. Regulated Activities;

(d) Installation of fencing, signage, telephone and electric poles and other kinds of posts or poles, within a wetland/watercourse buffer;

(e) Agricultural activities as set forth in ECL §24-0701(4);

(f) The existing, yearly activities of farmers and other landowners in growing of crops and plant material that directly produce agricultural and horticultural products;

(g) Digging of cemetery graves;

(h) Construction and repair of sluices and culverts by the State, County and Town, in accordance with New York State Law;

(i) Maintenance, repair, replacement or rehabilitation of existing public facilities;

(j) Work by any utility not involving substantial engineering redesign for the purpose of inspection, maintenance or renewal on established utility rights-of-way or the likes, and any work pertaining to water supply for the residents of Westchester County;

(k) Emergency activity immediately necessary to protect life, property or natural resources, as determined by the Town Engineer, Commissioner, Department of Public Works, Building Inspector, and/or Commissioner, Department of Community Development and Conservation.

(l) Public health activities, orders, and regulations of the Westchester County Department of Health and/or the New York State Department of Health for emergencies, only with notification to the Town Engineer, Commissioner, Department of Public Works, Building Inspector, and/or Commissioner, Department of Community Development and Conservation.

(m) A change of occupants in a pre-existing structure:
(n) **Reestablishment of a use which has been abandoned for up to one (1) year.**

B. **Prohibited activities.**

(1) All activities that are not specifically permitted under § 280-7A or regulated by permit under § 280-7C shall be prohibited. Prohibited activities include, but are not limited to, the following:

(a) **Depositing inorganic herbicides, inorganic pesticides and/or inorganic fertilizers in a wetland, watercourse or wetland/watercourse buffer;**

(b) Placement of a sewage disposal tank or plant or septic field within a wetland or watercourse;

(c) Direct discharge of untreated stormwater into a wetland or watercourse;

(d) The placement of aboveground or underground chemical storage facilities or bulk petroleum storage tanks within a wetland, watercourse or wetland/watercourse buffer area;

(e) Deposit or fill consisting of construction and demolition materials, asphalt or other materials including, but not limited to lawn clippings, leaves and other organic materials, within a wetland, watercourse or adjacent (buffer) area.

(f) **Clear cutting, as defined in § 280-5.**

C. **Regulated activities: any activity or use within a wetland, watercourse or wetland/watercourse buffer, other than those specified in § 280-7A and § 280-7B, which may be permitted only upon issuance of a permit from the approval authority.**

(1) **Town Wetland Inspector Approvals**

The following regulated activities shall be subject to the review and approval of the Town Wetland Inspector:

(a) The construction of sidewalks, walkways, stairwells, terraces, patios, driveways, roadways or other paved areas, fences, walls, decks, in-ground pools, athletic courts, and accessory buildings or structures, or any combination thereof, involving greater than 500 square feet but less than 5,000 square feet of soil disturbance, where such disturbance is located no closer than 50 feet to a wetland or watercourse.

(b) Any land disturbing activity, excluding those activities listed in § 280-7A(2) and § 280-7B(2), involving greater than 500 square feet but less than 5,000 square feet of soil disturbance, where such disturbance is located no closer than 50 feet to a wetland or watercourse.
(c) Single family residential or commercial building additions of less than 500 square feet in area and located no closer than 50 feet to a wetland or watercourse.

(d) Repair of existing septic systems located within a wetland/watercourse buffer.

(2) Planning Board Approvals

The following regulated activities shall be subject to the review and approval of the Town of Greenburgh Planning Board:

(a) The construction of sidewalks, walkways, stairwells, terraces, patios, driveways, roadways or other paved areas, fences, walls, decks, in-ground pools, athletic courts, and accessory buildings or structures, or any combination thereof, involving greater than 500 square feet of soil disturbance, where such disturbance is located less than 50 feet from a wetland or watercourse.

(b) The construction of sidewalks, walkways, stairwells, terraces, patios, driveways, roadways or other paved areas, fences, walls, decks, in-ground pools, tennis courts, and accessory buildings or structures, or any combination thereof, involving 5000 square feet or greater of soil disturbance, where such disturbance is located no closer than 50 feet to a wetland or watercourse.

(c) Single family residential or commercial building additions of any size, where soil disturbance is located less than 50 feet from a wetland or watercourse.

(d) Single family residential or commercial building additions of greater than 500 square feet in area, where such disturbance is located no closer than 50 feet to a wetland or watercourse.


A. Permit procedures. Where any alteration or activity is proposed on any lot which is within or contains within it a wetland, watercourse or wetland/watercourse buffer, the Town Wetland Inspector must determine whether such an area is subject to the regulations set forth herein and if a clearance form and/or permit is required. The initial burden of proof and expense shall be upon the applicant to verify the presence and/or extent of a wetland, watercourse or wetland/watercourse buffer on the subject property. The finite areas of wetlands, watercourses and wetland/watercourse buffers shall ultimately be determined by the approval authority pursuant to the criteria set forth herein after consultation with the Town Wetland Inspector and, if necessary, a Wetland Scientist. All costs incurred by the Town for purposes of review and verification in accordance with this chapter are to be borne by the applicant in accordance with this chapter, SEQRA and § 280-16.

B. Permit application contents for minor projects subject to the review and approval of the Town Wetland Inspector.
(1) Where an applicant proposes a minor project subject to the approval of the Town Wetland Inspector, application submission requirements as set forth in Subsection C may be waived in part, at the discretion of the Town Wetland Inspector, if all of the following conditions are met:

(a) Request for utilization of this process shall be in writing. The letter must outline the specific submission requirements requested to be waived and clearly state the reasons in support of such request, in order to allow the Town Wetland Inspector to determine that the granting of any such request is no less protective of wetlands, watercourses and wetland/watercourse buffer areas.

(b) The proposed activity, taken as a whole, must constitute a Type II action pursuant to SEQRA.

(2) For each application or renewal application submitted, the applicant shall pay an application fee as set by Town Board resolution.

C. Permit application contents for major projects subject to the review and approval of the Town Planning Board.

Four (4) copies of the application for a permit together with all filing fees and an escrow deposit shall be made to the Secretary to the Planning Board on forms furnished by the Town before any activity is conducted, and must include the following items:

(1) Name, address and telephone number of the applicant and/or owner. If the applicant is not the owner, an affidavit of ownership must be attached.

(2) Street address and tax parcel identification number of the property, along with an accurate certified property and land survey.

(3) A narrative description of the proposed regulated activity or use, including location of the subject property and area to be affected; environmental impact assessment and description of the wetland, watercourse and/or wetland/watercourse buffer area proposed to be disturbed or altered; intended purpose of the proposed activity or use and the applicant's interest in the subject property and area to be affected; intended purpose and extent of impact or alteration on the affected wetland, watercourse and/or wetland/watercourse buffer area; explanation of why the proposed regulated activity cannot be located at another site or location with no or less impact upon the wetland, watercourse and/or wetland/watercourse buffer area; explanation as to whether or not the proposed activity is dependent on the affected wetland, watercourse and/or wetland/watercourse buffer area; the alternatives to the proposed activity considered, and why the proposal to disturb or alter the affected wetland, watercourse and/or wetland/watercourse buffer area was chosen instead; and the mitigation measures proposed to avoid or reduce impact on the affected wetland, watercourse and/or wetland/watercourse buffer area.
(4) An estimate for the proposed site improvements.

(5) A project location map, showing the subject property as a parcel surrounded by adjacent parcels within 500 feet, which shall include a north arrow, surrounding zoning, street names, water-related resources, and have a scale of no less than one inch equals 250 feet.

(6) Four (4) copies of complete plans drawn to a scale of not less than one inch equals 50 feet, certified by a New York State Licensed Professional Engineer, Registered Architect or Land Surveyor. A New York State Licensed Landscaped Architect may also prepare plans as allowed by New York State Education Law, which shall include the following:

(a) Existing conditions map, including surveyed location of existing buildings, structures, walls, fences, areas of one-hundred-year floodplain, vegetative cover, including dominant species, and the location of all trees with a dbh of four inches or greater, including the species, size and drip line area of such trees;

(b) Delineation of the soil types on site;

(c) Location of the construction area or area proposed to be disturbed, and its relation to property lines, roads, buildings, structures, walls, fences, areas within 300 feet of a floodplain, trees with a dbh of four inches or greater, and wetlands and watercourses within 250 feet of the proposed activity;

(d) The exact locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal (trees with a dbh of four inches or greater proposed for removal shall be marked with an “X”), including the amount computed from cross-sections, estimated quantities and the nature of material to be deposited or removed, and the procedures to be used;

(e) Location of any septic systems or well(s), and depth(s) thereof, and any disposal system within 100 feet of areas to be disturbed;

(f) Existing and proposed contours at two-foot intervals in all proposed disturbed areas and to a distance of 100 feet beyond; at the discretion of the approval authority, the existing elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than five feet may be submitted, upon written request;

(g) Details of any drainage, diversion, detention or retention system proposed both for the conduct of work, and after completion thereof, including locations of any point discharges, artificial inlets, or other human-made conveyances which would
discharge into the wetland, watercourse or wetland/watercourse buffer, and measures proposed to control erosion both during and after the work;

(h) Groundwater table elevations, indicating depth to groundwater, direction of flow and hydrologic connections with surface water features, and analysis of the wetland/watercourse hydrologic system, including seasonal water fluctuation, inflow/outflow calculations and soil subsurface, geology and groundwater conditions;

(i) Erosion and sedimentation control plan, including installation details of proposed control measures, directive construction notations and a schedule for the installation and maintenance of proposed control measures;

(j) Where creation of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other water control devices, and an analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and subsurface drainage, soil and bedrock geology, and groundwater conditions; and

(k) Where creation of a detention basin is proposed, with or without excavation, details of the construction of any dams, berms, embankments, outlets, or other bank or bottom stabilizing or water control devices, and an analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and subsurface drainage, soil and bedrock geology, and groundwater conditions.

(7) Proposed mitigation plans pursuant to § 280-10.

(8) When the application affects the water-retention capacity, water flow or other drainage characteristics of any pond, lake, reservoir, natural drainage system or wetland, a statement of the impact of the project on upstream and downstream areas, giving appropriate consideration to other-than-normal levels of watercourses and amounts of rainfall.

(9) Wetland/Watercourse delineation map, certified by a wetland scientist not more than 12 months prior to the date of the formal filing of the application, showing the certified boundaries of all wetlands, watercourses and wetland/watercourse buffers as defined herein. The delineation limits of all wetlands, watercourses and wetland/watercourse buffer areas shall be subject to field verification and acceptance by the approval authority and its authorized agents.

(10) Wetland/Watercourse delineation report and assessment prepared by a Wetland Scientist as defined by this chapter, which shall include identification, description and assessment of the following:
(a) The vegetative cover of the regulated area, including dominant species, and hydrophytic vegetation;

(b) On-site soil types, including groundwater table elevations showing depth to water table and direction of flow and hydrologic connections with surface water features;

(c) Wetland/Watercourse hydrology;

(d) Wetland/Watercourse and wetland/watercourse buffer area functions and benefits; and

(e) Site flora and fauna, including upland and hydrophytic vegetation with their wetland classified status (OBL, FACW, FAC, FACU, UPL) and dominant woody and herbaceous species.

(11) A complete and accurate long-form environmental assessment form (EAF) in accordance with the procedures of the State Environmental Quality Review Act.

(12) The approval authority may require additional information as needed, such as the study of flood, erosion, or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards, and other information deemed necessary to evaluate the proposed use in terms of the goals and standards of this chapter.

(13) A list of the names and addresses of property owners and tenants for all properties within 500 feet of the exterior boundaries of the property that is the subject of the application, and which shall also include the parcel identification number for each property. Any properties with multiple unit addresses must include the name and address of the property owner and tenant for each unit (if owned separately). In the event current tenant names cannot be obtained, the name “OCCUPANT” shall be provided as substitute. The list must include the names and addresses of the owners of record of lands adjacent to the wetland or watercourse and wetland/watercourse buffer in which the project is to be undertaken which relate to any land within 500 feet of the boundary of the property on which the proposed regulated activity would be located. In the event the subject site is within 500 feet of the boundary of a cooperative, notice shall be given to the managing agent.

(14) An application fee and engineering and inspection/monitoring fees shall be charged according to § 280-16. Necessary escrow funds shall be deposited with the Town from time to time as necessary to cover costs for technical assistance and monitoring when the Planning Board deems necessary. The applicant shall be notified in writing of the expenses and shall deposit said necessary funds prior to the cost being incurred.

(15) A statement that the property owner and applicant will indemnify and hold the Town or its representatives harmless against any damage or injury and that the owner and applicant consent to the approval authority's (including its agents or employees) entry
upon lands or waters for the purpose of undertaking any investigations, inspections, examination, survey, or other activity for the purposes of this chapter.

(16) A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter 248, Stormwater Management, shall be required for any wetland/watercourse permit approval that qualifies as, or authorizes, a minor or major land development activity as defined in Chapter 248. The SWPPP shall meet the performance and design criteria and standards in Chapter 248. The approved wetland/watercourse permit shall be consistent with the provisions of that chapter.

D. All applications for a wetland/watercourse major project permit shall be referred to the Town of Greenburgh Conservation Advisory Council (CAC) for review and recommendations, and the CAC shall have 60 days from the date of receipt to make its recommendation to the Planning Board. Failure to render a recommendation within the specified time period will be interpreted as no objection to the application.

E. The Planning Board may establish a mailing list of all interested persons and agencies who wish to be routinely notified of major project permit applications. Upon receipt of the completed application, the Department of Community Development and Conservation shall direct the applicant to notify the individuals and agencies, including federal, state, and local agencies having jurisdiction over or an interest in the subject matter, to provide such individuals and agencies with an opportunity to comment.

F. All information relating to a permit application, including but not limited to the application itself, additional required materials or information, notices, record of hearings, written comments, and findings, shall be maintained on file in the Department of Community Development and Conservation.


When the approval authority is the Planning Board, it shall hold a public hearing on the application at such time as it deems appropriate, in order to give the public at least 10 days' notice thereof. The applicant shall also give at least 10 days' notice by certified mail to each of the owners of property within a five-hundred-foot radius from the boundary of the property, and such notice shall include the notice required for any other required public hearing in connection with the application, if practicable. In the event the subject site is within 500 feet of the boundary of a cooperative, the managing agent shall be notified. Insofar as practicable, any public hearing on the application may be integrated with any public hearing required or otherwise held pursuant to any other law, including the State Environmental Quality Review Act. Any hearing will be held by the Planning Board. At the hearing, the applicant shall bear the burden of proof and have the burden of demonstrating that the proposed activity will be in accord with the goals and policies of this chapter and the standards set forth in § 280-10.

§ 280-10. Standards for permit decisions.
A. When the Town Wetland Inspector is the Approval Authority:

(1) The Town Wetland Inspector shall either grant, conditionally grant or deny a permit application within 45 days of the application being submitted and deemed complete; provided, however, that should additional information or documentation be required by the Town Wetland Inspector, such decision shall be rendered within 45 days of the receipt of such additional information or documentation.

(2) In granting, denying, or conditioning any permit, the Town Wetland Inspector shall evaluate wetland, watercourse and wetland/watercourse buffer functions and the role of each, as the case may be, in the hydrologic and ecological system in which it is part, and shall determine the impact of the proposed activity upon public health, safety and welfare, flora and fauna, water quality, and additional wetland, watercourse and wetland/watercourse buffer functions listed in § 280-2 of this chapter. Regardless of the level of impact of the proposed activity, avoidance of any direct or indirect impacts shall be the primary criteria used to judge the appropriateness of the action. The Town Wetland Inspector shall consider and issue written findings, with respect to the parameters outlined in § 280-10B(2) below.

B. When the Planning Board is the Approval Authority:

(1) The Planning Board shall either grant, conditionally grant or deny a permit application within 60 days of the close of the public hearing; provided, however, that should additional information or documentation be required by the Planning Board, such decision shall be rendered within 60 days of its receipt of such additional information or documentation.

(2) In granting, denying, or conditioning any permit, the Planning Board shall evaluate wetland, watercourse and wetland/watercourse buffer functions and the role of each, as the case may be, in the hydrologic and ecological system in which it is part, and shall determine the impact of the proposed activity upon public health, safety and welfare, flora and fauna, water quality, and additional wetland, watercourse and wetland/watercourse buffer functions listed in § 280-2 of this chapter. Regardless of the level of impact of the proposed activity, avoidance of any direct or indirect impacts shall be the primary criteria used to judge the appropriateness of the action. The Planning Board shall consider the following factors, and shall issue written findings with respect to:

(a) The overall direct and indirect impact(s) of the proposed activity, and existing and reasonably anticipated similar activities, upon neighboring land uses and wetland, watercourse and wetland/watercourse buffer functions as set forth in § 280-2 of this chapter including, but not limited to, the:

[1] Infilling of a wetland, watercourse or other modification of natural topographic contours;
[2] Disturbance or destruction of natural flora and fauna;
[3] Influx of sediments or other materials causing increased water turbidity or substrate aggradation;
[4] Removal or disturbance of wetland or watercourse soils;
[5] Reduction in wetland or watercourse ground or surface water supply;
[6] Interference with wetland or watercourse water circulation;
[7] Changes in the amount or type of wetland or watercourse nutrients;
[8] Physical and chemical changes to the wetland or watercourse water supply;
[9] Destruction of natural aesthetic values;
[10] Reduction in public recreational or educational use and access; and
[11] Impact to, and alteration or disturbance of wetland/watercourse buffer areas associated with wetlands and watercourses.

(b) Any existing wetland, watercourse and wetland/watercourse buffer impact(s) and the cumulative effect of reasonably anticipated future activities in the wetland, watercourse or wetland/watercourse buffer subject to the application;

(c) The impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage, storm barriers, shoreline protection, and water quality;

(d) The potential effect of flooding, erosion, hurricane winds, soil limitations, and other hazards, and possible losses to the applicant and subsequent purchasers of the land;

(e) The adequacy of water supply and waste disposal for the proposed use;

(f) Consistency with federal, state, county and Town comprehensive land use plans, and regulations;

(g) The availability of preferable or environmentally compatible alternative locations on the subject parcel or on another parcel owned by the applicant; and

(h) The demonstration by the applicant that any direct and/or indirect impact(s) are necessary and unavoidable and have been minimized to the maximum extent practicable for the purposes of this chapter. Wetland, watercourse and wetland/watercourse buffer impacts will be deemed necessary and unavoidable only if the applicant satisfies all of the following criteria as determined by the Planning Board:

[1] The proposed activity is compatible with the public health and welfare.
[2] There is no reasonably feasible on-site alternative to the proposed activity, in the judgment of the Planning Board, including reduction in density, change in use, revision of road and lot layout, revision in the location of buildings, structures, driveways and other site construction and land-altering activities and/or related site planning considerations, that could otherwise reasonably accomplish the applicant's objectives.
[3] There is no reasonably feasible alternative to the proposed activity on another site or site location that is not a wetland, watercourse or wetland/watercourse buffer as defined herein.

C. The approval authority must deny a permit if:

(1) The applicant has not demonstrated that all reasonable alternatives have been explored; that reasonable alternatives exist which could avoid or reduce potential losses or impacts to the wetland, watercourse or wetland/watercourse buffer; or that any unavoidable losses or impacts to wetlands, watercourses, and wetland/watercourse buffer areas have not been minimized to the maximum extent practicable.

(2) The proposed activity may threaten public health, safety or welfare; results in fraud, causes nuisances, impairs public rights to the enjoyment and use of public lands and waters; threatens a special concern, rare or endangered plant or animal species; violates pollution control standards; or violates any other Town, state, city or federal regulations or laws; or

(3) Both the affected landowner and the local government have been notified by a duly filed notice in writing that the state or any agency or political subdivision of the state is in the process of acquiring the wetland, watercourse or wetland/watercourse buffer by negotiation or condemnation with the following provisions:

(a) The written notice must include an indication that the acquisition process has commenced, such as that an appraisal of the property has been prepared or is in the process of being prepared.

(b) If the landowner receives no offer for the property within one (1) year of the permit denial, this prohibition shall lapse. If its negotiations with the applicant are broken off, the state or any agency or political subdivision must, within six months of the end of negotiation, either issue its findings and determination to acquire the property pursuant to § 204 of the Eminent Domain Procedure Law or issue a determination to acquire the property without public hearing pursuant to § 206 of the Eminent Domain Procedure Law, or this prohibition shall lapse.

D. The approval authority shall give consideration to activities that must have wetland location to function and that will have as little impact as possible upon the wetland, watercourse and/or the watercourse/wetland buffer area. In general, permission will not be granted for dredging or ditching solely for the purpose of draining wetlands or watercourses, controlling mosquitoes, creating ponds, constructing industrial facilities, providing soil and dump sites, or building roads, driveways or buildings or structures that may be located elsewhere. All reasonable measures must be taken to minimize all direct and indirect impacts upon the wetland, watercourse and wetland/watercourse buffer area.

E. The approval authority shall require preparation of a mitigation plan by the applicant pursuant to § 280-11 when the approval authority has determined that all alternatives have
been explored and that wetland, watercourse and buffer impacts are necessary and unavoidable and have been minimized to the maximum extent practicable. In the evaluation of the least environmentally damaging practicable alternatives, mitigation may be used as a means of reducing environmental impacts; a mitigation wetland is designed to replace lost wetland acreage and functions.

§ 280-11. Mitigation policy; plan requirements.

A. After it has been determined by the approval authority that impacts to a wetland, watercourse or wetland/watercourse buffer are necessary and unavoidable and have been minimized to the maximum extent practicable, the applicant shall cause to have a proposed mitigation plan and report prepared and submitted by a qualified professional. The plan shall specify proposed mitigation measures that provide an enhancement to, or replacement of, impacted wetland, watercourse or wetland/watercourse buffer area, in terms of type, vegetative composition, functions, geographic location and setting.

B. All mitigation measures shall balance the benefits of regaining new wetland, watercourse or wetland/watercourse buffer area with the loss to the natural areas due to creation of such. On-site mitigation shall be the preferred approach; off-site mitigation shall be permitted only in cases where an on-site alternative is not possible, as determined in writing by a qualified professional, subject to the review and approval of the approval authority.

C. All mitigation plans shall be based on the following order of preference:

(1) Minimization of impacts and disturbance to wetlands, watercourses and adjacent (buffer) areas, in that order.

(2) Preservation of remaining wetlands, watercourses and adjacent (buffer) areas through the dedication and establishment of perpetual conservation easements, development restriction areas, deed restrictions, or equivalent.

(3) Rectification by repairing or restoring existing damaged wetlands, watercourses or adjacent (buffer) areas, including enhancement thereto.

D. Mitigation may take the following forms, either singularly or in combination, for disturbances in wetlands, watercourses and adjacent (buffer) areas:

(1) For disturbance in a wetland/watercourse buffer:

(a) Implementation of preventative practices to protect the natural condition and functions of the wetland/watercourse buffer and its associated wetland; and/or

(b) Restoration or enhancement (e.g., improving the density and diversity of native woody plant species) of remaining or other upland buffer to offset the impacts to the original buffer.
(2) For disturbance in a wetland:

(a) Restoration of areas of significantly disturbed or degraded wetlands, as determined by a qualified professional subject to the review and acceptance of the approval authority, at a ratio of at least 1.5 (restored wetland) to 1.0 (impacted wetland) by reclaiming such significantly disturbed or degraded wetland in order to bring back one or more of the functions that have been partially or completely lost by such actions including, but not limited to, draining or filling, provided the area of proposed mitigation occurs in a confirmed disturbed or degraded wetland having significantly lesser functional values as a result of disturbance or degradation; and/or

(b) The in-kind replacement of the impacted wetland by the construction of a new wetland area, usually by flooding or excavating lands that were not previously occupied by a wetland, that recreates as nearly as possible the original wetland in terms of type, functions, geographic location and setting, and that is larger than, by a ratio of at least 1.5 to 1.0, the original wetland.

(3) For disturbance in a watercourse:

(a) Implementation of preventative practices to protect the natural condition and functions of the watercourse; and/or

(b) Restoration or enhancement (e.g., improving/stabilizing the banks, removal of debris) of remaining or other areas of watercourse to offset impacts to the subject area of watercourse.

E. The approval authority shall inspect and monitor, or shall cause to have inspected and monitored, approved projects according to the specifications and conditions set forth in the permit, to determine whether the elements of the mitigation plan and permit conditions have been satisfied and whether the restored or created wetland function(s) and acreage mitigate the impacted function(s) and acreage. To this end, the approval authority may contract with an academic institution, an independent research group, or other qualified professionals at the expense of the applicant, and with ten (10) days notice to the applicant. An annual, or more frequent, monitoring report prepared by a qualified professional shall be submitted to the approval authority. All approved and completed mitigation shall be monitored for an appropriate period of time, as determined by the approval authority, on a case-by-case basis. Long-term monitoring is generally needed to assure the continued viability of mitigation wetlands. In general, the monitoring period shall be from three to five years. The requirements for monitoring shall be specified in the mitigation plan and report, and shall include, but not be limited to:

(1) The time period over which compliance monitoring shall occur;

(2) Field measurements to verify the size and location of the impacted wetland area and the mitigation (restored or replacement) wetland area;
F. All mitigation plans prepared pursuant to this section and accepted by the approval authority shall become part of the permit for the application to conduct a regulated activity, and shall include:

(1) A map with sufficient detail and at a scale to be able to determine where the wetland, watercourse and/or wetland/watercourse buffer is located and its size, boundaries and topographic features;

(2) Baseline data as needed to adequately review the effectiveness of the plan.

(3) A narrative which describes the goals and specific objectives for the mitigation wetland, watercourse and/or wetland/watercourse buffer, including the functions and benefits to be provided and clear performance standards and criteria for assessing project success;

(4) A description of the physical, hydrological and ecological characteristics of the impacted wetland, watercourse and/or wetland/watercourse buffer and proposed restoration and/or created wetland, watercourse and/or wetland/watercourse buffer in sufficient detail to enable the approval authority to determine whether wetland, watercourse and/or adjacent buffer impacts will be permanently mitigated;

(5) Details on construction, including:

   (a) Diking, excavation, or other means by which the wetland or wetland/watercourse buffer will be restored or created, including existing and proposed topographic contours;

   (b) Construction schedule;

   (c) Measures to control erosion and sedimentation during construction;

   (d) Plantings: species, size, quantity, source of stock, procedures for planting/seeding the stock, area(s) to be planted, and planting schedule. If vegetation from the wild is to be used, identify the source and measures to prevent introduction of undesirable exotics.

   (e) Organic chemicals: if applicable, explain why organic chemicals will be used and precautions to be taken to minimize their application and protect the wetland and/or watercourse from excessive chemicals;

(6) Details on management of the mitigation site, including:
(a) Measures to assure persistence of the wetland, watercourse and/or wetland/watercourse buffer (e.g., protection against predation by birds and other animals);

(b) Vegetative management and replacement requirements;

(c) Sediment and erosion control;

(d) Plans for monitoring the site during and after construction, including methods and schedule for data collection and provisions for mid-course corrections;

(e) Provisions for long-term protection of the site (e.g., permanent conservation easement, deed restriction);

(f) Provision for bonding or other financial guarantees;

(7) A description of the periodic reporting, including: at the end of construction, during the monitoring period, and at the end of the monitoring period; and

(8) The name, qualifications and experience of the person(s) implementing the mitigation plan (i.e., contractor who will restore or construct the wetland).

G. Mitigation measures and permit conditions associated with a wetland/watercourse major project permit approval shall be set forth in a covenant to be recorded in the County Clerk's office, to run with the land and bind subsequent owners. The Planning Board may require the applicant to provide a covenant or easement to enable the Town to inspect any mitigation measures of approval. If mitigation measures are removed or not properly maintained, the Town, following service of a notice to cure to the property owner, may undertake corrective action, charge the property owner for such expense, and, if not fully reimbursed, place the costs on the real property tax bill.

§ 280-12. Permit form and conditions.

A. Any permit issued pursuant to this chapter may be issued with conditions. Such conditions may be attached to the permit, as the approval authority deems necessary, to assure the preservation and protection of affected wetland, watercourses and wetland/watercourse buffers, and compliance with the policy and provisions of this chapter.

B. Every permit issued pursuant to this chapter shall be in written form and shall contain the following conditions:

(1) Work conducted under a permit shall be open to inspection at any time, including weekends and holidays, by the Town Wetland Inspector, Building Inspector, or designated representative.
The permit will expire on a specified date, and unless otherwise indicated, the permit will be valid for two (2) years, or for the same term as any associated building permits, whichever term is longer.

The permit holder must notify the approval authority, in writing, of the date on which the regulated activity is to begin, at least five (5) days in advance of such date, through submission of a Wetland/Watercourse Permit Commencement Notification Form.

A copy of the approved wetland/watercourse permit with conditions and the approved plans must be maintained on site while the regulated activities authorized by the permit are being undertaken.

The boundaries of the regulated activity and wetlands and watercourses shall be staked and appropriately marked in the field so as to be clearly visible to those at the project site.

The applicant must comply with all applicable provisions of the “NYS Standards and Specifications for Erosion and Sediment Control,” where applicable.

Prior to the start of earth work activities, the Town Wetland Inspector must be contacted to schedule a site inspection to confirm that erosion and sediment control measures, and any necessary tree protection measures, have been properly installed.

During the period of construction, all erosion and sediment controls must be maintained in proper working order at all times and must remain in place until construction is completed and all disturbed soils have been fully re-vegetated. No construction shall take place down slope of the silt fence line.

During the period of construction, any soil stockpile located on-site must be rimmed with a perimeter of properly installed silt fencing or covered with properly secured plastic sheeting. No stockpiled or side-cast soils shall be allowed to erode and disperse sediment away from the stockpile.

The contractor must continually inspect all protection and control measures, and maintain the silt fencing throughout the duration of the project. The contractor must maintain a log listing the date and time of all inspections. Accumulated sediment behind the silt fence must be removed and disposed of in conformance with all applicable codes.

Work within the wetland, watercourse, and/or adjacent (buffer) area shall be conducted so as to avoid damage to the resources by either construction vehicles, or excavation, or grading. No concrete trucks or other equipment shall be washed out where the contaminated water will run into the wetland or watercourse. No fuels, lubricants, coolants, hydraulic fluids, etc. shall be discharged on any part of the site.

Deposit or fill consisting of construction and demolition materials, asphalt or other materials, including, but not limited to lawn clippings, leaves and other organic
(13) Mitigation measures shall be enumerated as conditions of the written permit.

C. Any permit, the issuance of which is based on erroneous or incomplete information, including, but not limited to, the failure to completely identify wetland, watercourse and/or adjacent (buffer) areas, shall be subject to revocation by the approval authority.

D. Additional conditions. The approval authority shall set forth in writing all conditions attached to any permit. Such conditions may include, but are not limited to: limitations on lot size for any activity; limitations on the total portion of any lot or the portion of the wetland, watercourse or wetland/watercourse buffer area on the lot that may be cleared, regraded, filled, drained, excavated or otherwise modified; modification of waste disposal and water supply facilities; imposition of operational controls, sureties, and deed restrictions concerning future use and subdivision of lands such as preservation of undeveloped areas in open space use, and limitations on the removal of vegetation; dedication of easements and development restriction areas to protect wetlands/watercourses and adjacent (buffer) areas; erosion control measures; setbacks for structures, fill, excavation, deposit of soil, and other activities from a wetland or watercourse; modifications in project design to ensure continued ground and surface water supply to the wetland/watercourse or adjacent (buffer) area and circulation of waters; replanting of wetland/watercourse or adjacent (buffer) area vegetation; and/or construction of new wetland areas to replace damaged or destroyed areas.

E. All permits will expire on a specified date, and unless otherwise indicated, will be valid for two (2) years, or for the same term as any associated building permits, whichever term is longer. An extension of an original permit may be granted upon written request to the approval authority by the original permit holder and/or the legal agent for the permit holder at least 30 days prior to the expiration date of the original permit. When the approval authority is the Planning Board, it may require new public hearings if, in its judgment, the original intent of the permit is altered or extended by the extension, or if changed circumstances or conditions in the area may exist or if the applicant has failed to abide by the terms of the original permit in any way. The request for extension of a permit shall follow the same form and procedure as the original application, except that the approval authority shall have the option of not holding a hearing if the original intent of the permit is not altered or extended in any significant way.


A. Any person, upon a showing of extraordinary hardship caused by the provisions of this chapter on development in a wetland, watercourse or wetland/watercourse buffer area, may apply to the Zoning Board of Appeals for a variance from this chapter. Such variance may be granted only if the applicant establishes that:

(1) Denial of such variance would result in an extraordinary hardship, as distinguished from an inconvenience, if the provisions of this chapter are literally enforced. An applicant shall be deemed to have established the existence of extraordinary hardship only if the
applicant demonstrates, based on specific facts, that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this chapter, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:

(a) Do not apply to or affect other property in the immediate vicinity;

(b) Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and

(c) Are not the result of any action or inaction by the applicant or the owner or predecessors in title, including any transfer of contiguous lands which were previously in common ownership.

(2) There is a compelling public need for development of the parcel in question based upon one of the following:

(a) The proposed development will serve an essential health or safety need of the municipality such that the public benefits from the proposed use override the importance of the protection of the wetland, watercourse or adjacent (buffer) area as established in this chapter, that the proposed use is required to serve existing needs of the residents; and that no feasible alternatives exist outside the wetland, watercourse or adjacent (buffer) area to meet such established public need; or

(b) The proposed development constitutes an adaptive reuse of an historic resource and said reuse is necessary to ensure the integrity and continued protection of the designated historic resource; and, further,

B. Additional findings required. An application for a hardship variance to permit development on, near, or in a wetland, watercourse or adjacent (buffer) area shall be approved only if the Zoning Board of Appeals specifically finds that:

(1) The proposed development will not be materially detrimental or injurious to other properties or improvements in the area in which the subject property is located, increase the danger of fire or flood, endanger public safety or result in substantial impairment of the resources of the wetland, watercourse or adjacent (buffer) area;

(2) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this chapter; and

(3) The variance is the minimum relief necessary to relieve the extraordinary hardship established by the applicant.

C. A variance granted under the provisions of this chapter by the Zoning Board of Appeals shall not constitute an approval of the entire development proposal, nor shall it constitute a
variance of any other requirements contained within any other applicable local, county or state laws or ordinances or regulations.

§ 280-14. Performance bonds and letters of credit.

A. The approval authority may require that, prior to commencement of any work approved under a permit issued pursuant to this chapter, the applicant or permittee post a performance bond, cash escrow, or irrevocable letter of credit from an approved financial institution or surety, as approved by the Town Attorney, to secure compliance with the conditions and limitations set forth in the permit. The particular amount and the conditions of the bond and/or letter of credit shall be consistent with the purposes of this chapter. The bond, cash escrow and/or letter of credit shall remain in effect until the approval authority or its designated agent certifies that the work has been completed in compliance with the terms of the permit and the bond, cash escrow and/or letter of credit is released by the approval authority or a substitute bond is provided. In the event of a breach of any condition of any such bond, cash escrow and/or letter of credit, the approval authority may institute an action in the courts and prosecute the same to judgment and execution.

B. The approval authority shall set forth in writing its findings and reasons for imposing a bond, cash escrow and/or letter of credit pursuant to this section.

§ 280-15. Compliance with other laws.

No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or Town law or regulation including, but not limited, to the acquisition of any other required permit or approval.

§ 280-16. Suspension or revocation of permits.

A. The approval authority may suspend or revoke a permit and the Town Wetland Inspector or designee shall issue a stop-work order if it is found that the applicant or permittee has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit, has failed to undertake the project in the manner set forth in the approved application or has provided information, in whole or in part, which subsequently proves to be false, deceptive, incomplete or inaccurate.

B. The approval authority shall set forth in writing in the file it keeps regarding a permit application its findings and reasons for revoking or suspending a permit pursuant to this section.

§ 280-17. Fees; escrow.

All permit application and review fees and escrow deposits shall be in an amount set forth in a schedule established by the Town of Greenburgh Town Board by resolution.
§ 280-18. General powers of approval authority.

In order to carry out the purposes and provisions of this chapter, and in addition to the powers specified elsewhere in this chapter, the approval authority shall have the following powers:

A. To do any and all things necessary or convenient to carry out the policy and intent of this chapter; and

B. To consult or contract with expert persons or agencies in reviewing a permit application; and

C. To hold hearings in the exercise of its powers, functions, and duties provided for by this chapter.


A. The Town of Greenburgh is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions of this chapter and/or compel the restoration of the affected wetland, watercourse, or wetland/watercourse buffer to its condition prior to the violation of the provisions of this chapter.

B. The approval authority will require the inspection of each site approved for a permit to ascertain the degree of compliance with the approved plans and permit conditions. The frequency of such inspections will be in proportion to the site complexity and potential harm of each project. The inspection shall be carried out by the Town Wetland Inspector or by a Wetland Scientist when deemed necessary by the approval authority. The cost of such inspection shall be determined by the approval authority and borne by the permit holder. The reports of such inspection shall become part of the public record and be maintained in the permit application file in the Department of Community Development and Conservation.

§ 280-20. Penalties for offenses.

A. Administrative sanctions.

(1) Damages. Any person, corporation, partnership, or other entity who undertakes any regulated activity without a permit issued pursuant to this chapter, or who violates, disobeys, or disregards any provision of this chapter or any rule or regulation adopted by the approval authority pursuant to this chapter, shall be required to suspend all activity by a written stop-work order issued by the Town Wetland Inspector, or other Town representative, and shall be liable to the Town of Greenburgh for civil damages caused by such violation for every such violation. Each consecutive day of the violation will be considered a separate offense. Such civil damages may be recovered in an action brought by the Town of Greenburgh at the request and in the name of the Planning Board in any court of competent jurisdiction.

(2) Restitution. The Town of Greenburgh shall have the authority, following a discussion before the Planning Board and on notice to the violator, "Notice of Violation," to direct
the violator to restore the affected wetland/watercourse to its condition prior to violation, insofar as that is possible, within a reasonable time period and under the supervision of the Planning Board or its designate. Alternatively, the Planning Board shall have the right to direct the violator to apply for all necessary and required permits of the Town in order to legalize and complete such work. Further, the Planning Board shall be able to require an adequate bond in a form and amount approved by the Planning Board to ensure the restoration of the affected wetland/watercourse or completion of the project. Any such order of the Planning Board shall be enforceable in an action brought in any court of competent jurisdiction. Any order issued by the Planning Board pursuant to this subsection shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules. The Planning Board may attach any order issued pursuant to this subsection to the land records of the Town of Greenburgh for the property on which the violation occurred. This order shall remain attached to the land records for the duration of the violation; the Planning Board shall, upon satisfactory removal of the violation, remove the order from the land records.

(3) Stop-work order. The Department of Community Development and Conservation may suspend or revoke a permit in the form of a stop-work order if it finds that the applicant or permittee has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit, or has failed to undertake the project in the manner set forth in the approved application.

(a) If a stop-work order is issued it shall be set forth in writing, a copy of which shall be filed with the Department of Community Development and Conservation, and shall contain the findings and reasons for issuing the stop-work order pursuant to this section.

(b) The stop-work order shall have the effect of suspending all authorizations and permits granted by the Town or any agency thereof.

(c) The stop-work order shall remain in effect until the approval authority is satisfied that the permittee has complied with all terms of the subject permit or until a final determination is made by the approval authority.

(4) Any offender also may be ordered by the approval authority to restore the affected wetland, watercourse or wetland/watercourse buffer area to its condition prior to the offense, insofar as possible. The approval authority shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Town of Greenburgh.

B. Criminal sanctions. Any person convicted of having violated or disobeyed any provision of this chapter, any order of the approval authority or any condition duly imposed by the approval authority in a permit granted pursuant to this chapter, shall, for the first offense, be punishable by a fine of not less than $1,000. For each subsequent offense, such person shall be punishable by a fine of not less than $2,000, nor more than $15,000, and/or a term of
imprisonment of not more than 15 days. Each consecutive day of the violation may be considered a separate offense.


Any determination, decision or order of the approval authority may be judicially reviewed by the applicant or any other aggrieved party by the commencement of an action pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York within 30 days after the date of the filing of the determination, decision or order of such approval authority with the Clerk of the Town of Greenburgh and/or County of Westchester.

§ 280-22. Severability; taking without compensation.

A. If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances, and to this end the provisions of each section of this chapter are hereby declared to be severable.

B. In the event that any court finds the action of the approval authority constitutes a taking without compensation and the land so regulated merits protection under this chapter, the court may, at the election of the approval authority, either set aside the order or require the approval authority to proceed under the condemnation law to acquire the wetlands or such less than fee rights therein as have been taken.

§ 280-23. Amendments

This chapter may, from time to time, be amended in accordance with the procedures and requirements of the general statutes and as new information concerning soils, hydrology, flooding or botanical species peculiar to wetlands becomes available.


Assessors and Boards of Assessors shall consider wetland regulations in determining the fair market value of land. Any owner of an undeveloped wetland who has dedicated an easement or entered into a perpetual conservation restriction with the approval authority or a nonprofit organization to permanently control some or all regulated activities in the wetland shall be assessed consistent with those restrictions. Such landowner shall also be exempted from special assessment on the controlled wetland to defray the cost of municipal improvements, such as sanitary sewers, storm sewers and water mains.

§ 280-25. Effective date.

This chapter shall take effect immediately upon filing with the Secretary of State.