

New York State Department of Environmental Conservation
Hudson Valley Catskill Region, Region 3
21 South Putt Corners Road, New Paltz, NY 12561
Phone: (845) 256-3033 • Fax: (845) 255-3042
Website: www.dec.ny.gov



Joe Martens
Commissioner

May 17, 2012

Attorneys at Law

Re: Determination on Petition to Designate Freshwater Wetlands
of Unusual Local Importance at the Patrick Farm Site.

Dear

I write in response to your December 12, 2011 petition brought pursuant to Environmental Conservation Law Sections 24-0301 and 24-0105. Specifically, the petition requested that the Department designate an unmapped wetland area in the Town of Ramapo, Rockland County New York as freshwater wetlands of unusual local importance. A project known as the Patrick Farm Development Project has been proposed for the property where the wetlands are located (the "Site"). Department staff has also reviewed the additional information provided in your February 9, 2012 correspondence, and has reviewed the "White Paper" in support of your request. For the following reasons, the Department is not granting your petition.

The Environmental Conservation Law gives the Department authority to regulate freshwater wetlands in the state of New York which have an area of at least 12.4 acres or more. It is the policy of the state

to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoliation and destruction of freshwater wetlands, and to regulate use and development of such wetland to secure the nature benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the state.

ECL § 24-0103. Regulation of smaller wetlands is possible as either a discretionary or mandatory action under authority given to the Commissioner by law. Regulation of freshwater wetlands smaller than 12.4 acres is at the discretion of the Commissioner if it is determined by the Commissioner that the wetlands have "unusual local importance for one or more of the specific benefits set forth in subdivision seven of [Environmental Conservation Law] section 24-0105." See ECL § 24-0301. The Commissioner, however, shall designate an area of land or water of less than 12.4 acres as a wetland having unusual local importance if it contains any Class I characteristics. See 6 NYCRR § 664.7(c)(1).

THE PETITION FOR THE PATRICK FARM WETLANDS

On January 3, 2012, in my correspondence responding to your initial December 12, 2011 petition, I noted that Department staff have conducted field inspections of the Site and at that time determined that the wetland area does not meet the minimum legal threshold of 12.4 acres in area necessary for the Department to map and designate the wetland as regulated under the Environmental Conservation Law. At that time, the Department also determined that the wetland does not meet the established criteria as a freshwater wetland of unusual local importance. This initial determination was based upon Department staff observations during field inspections of the Site.

On February 9, 2012, Department staff received additional information in support of the petition to designate the Patrick Farm wetland as a freshwater wetland of unusual local importance. Department staff has reviewed that information and has revisited the January 3, 2012 determination declining to designate the wetland as a freshwater wetland of unusual local importance.

THE UNUSUAL LOCAL IMPORTANCE ANALYSIS

The Department's regulatory jurisdiction is generally limited to wetlands 12.4 acres or larger, unless a smaller wetland is determined to have "unusual local importance." The Department is obligated to designate a freshwater wetland as having "unusual local importance" if it can be classified as a Class I wetland. See 6 NYCRR § 664.7.

Is it a Class I Freshwater Wetland?

The six Class I freshwater wetland characteristics include:

- it is a classic kettlehole bog,
- it is resident habitat of an endangered or threatened animal species,
- it contains an endangered or threatened plant species,
- it supports an animal species in abundance or diversity unusual for the state or for the major region of the state in which it is found,
- it is tributary to a body of water which could subject a substantially developed area to significant damage from flooding or from additional flooding should the wetland be modified, filled, or drained, and
- it is adjacent or contiguous to a reservoir or other body of water that is used primarily for public water supply, or it is hydraulically connected to an aquifer which is used for public water supply.

Department staff found no evidence of endangered animal or plant species, or animal species in unusual abundance or diversity in the wetland. The wetland is not a kettlehole bog. There is no evidence demonstrating that alterations of the wetland would impact the flooding risks to the area, so the fifth characteristic is also not present. Regarding the first part of the sixth characteristic, the wetland is not adjacent to or contiguous with a reservoir or other body of water that is used for public water supply, and moreover, it does not appear that the water bodies downstream from the area are used "primarily" for water supply purposes. Regarding the second part of the sixth criteria, Department staff has determined that the wetland is not hydraulically connected to an aquifer. Although the property is near an aquifer used for public water supply, the wetland is not within the boundaries of the aquifer according to the Department's Geological Information Survey data and therefore cannot be considered "hydraulically connected." There is a stream that leaves the wetland, flows down-slope for a considerable distance, and then runs over that aquifer, but there is no evidence that this stream connects to the aquifer either underground or via surface flow, based upon Department staff's review of the geologic conditions of the Site.

For these reasons, Department staff has concluded that the petitioned Patrick Farm wetland does not possess any characteristics of a Class I wetland, and therefore, the wetland is not required by law to be designated as having "unusual local importance."

Does the Wetland Contain 4 or More Class II Characteristics Authorizing it to be considered Class I?

A freshwater wetland also may be considered a Class I wetland if "it contains four or more of the

enumerated Class II characteristics." 6 NYCRR § 664.5(a)(7). There are seventeen Class II characteristics. The most relevant characteristics for this inquiry include:

- it contains two or more wetland structural groups,
- it is associated with permanent open water outside the wetland,
- it is adjacent or contiguous to streams classified C(t) or higher, and
- it is within an urbanized area.

Portions of the wetland area on the Site possess three of the four characteristics. The area contains at least two wetland structural groups, is adjacent or contiguous to a Class B stream, and is located in an "urbanized area." However, a review by Department staff has determined that the wetland is not associated with permanent open water outside the wetland. Thus, the wetland does not possess the necessary four of the seventeen Class II characteristics required for designation as having "unusual local importance."

The Commissioner of the Department also has the discretion to determine that freshwater wetlands have "unusual local importance for one or more of the specific benefits set forth in subdivision seven of [Environmental Conservation Law] section 24-0105." ECL § 24-0301(1)(a). Such specific freshwater wetland benefits include, among others, flood and storm control, wildlife habitat, protection of subsurface water resources recreation, pollution treatment, erosion control and open space. ECL § 24-0105(7). Department staff have thoroughly reviewed the information submitted with the petition, and while there is no question that the Patrick Farm wetland provides some of these valuable wetlands benefits, it provides benefits that can be attributed to nearly any wetland and there is no evidence to suggest that any of these wetlands benefits provided rise to the level of having "unusual local importance" warranting such a designation.

Therefore, based on Department Staff's review of the petition and the additional information submitted for our consideration regarding the wetland on the Patrick Farm Site, the regulatory criteria are not sufficiently met authorizing us to designate the freshwater wetland as having "unusual local importance." On behalf of the Department staff, I thank you for your thoughtful submission and for your interest in protecting wetlands in the Hudson Valley area that you value.

Please feel free to contact me if I can be of any further assistance.

Sincerely,



William C. Janeway
Regional Director

CC: John Parker
Roy Jacobson
Dan Whitehead

New York State Department of Environmental Conservation
Hudson Valley Catskill Region, Region 3
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Joe Martens
Commissioner

November 16, 2012

Ramapo Organized for Sustainability and a Safe Aquifer (ROSA, Inc.)

Re: Determination on Petition to Designate Freshwater Wetlands of Unusual Local Importance at the Patrick Farm Site.

Dear

I write in response to the December 12, 2011 petition brought pursuant to Environmental Conservation Law Sections 24-0301 and 24-0105 and ROSA Inc.'s March 16, 2012 "Memorandum & Exhibits in Support of the Proposed Amendment of the Department's Freshwater Wetlands Map of Rockland County to Confirm Additional Wetlands on the Property Known as the Patrick Farm." Specifically, the petition requested that the Department designate an unmapped wetland area in the Town of Ramapo, Rockland County New York as freshwater wetlands of unusual local importance. A project known as the Patrick Farm Development Project has been proposed for the property where the wetlands are located (the "Site").

Department staff reviewed the additional information provided in the February 9, 2012 correspondence from Susan and Milton Shapiro, and the "White Paper" in support of the petition. Department staff has also reviewed the information provided in the March 16, 2012 correspondence from Suzanne Mitchell of ROSA, Inc. and the aforementioned Memorandum and Exhibits.

Based on Department Staff's review of the petition and the additional information submitted regarding the wetland on the Patrick Farm Site, the Department staff has determined that the Site did not sufficiently meet the regulatory criteria to authorize the Department to designate the freshwater wetland as having "unusual local importance." The Department set forth the basis for its decision to not grant the petition request in a letter dated May 17, 2012 to Susan and Milton Shapiro, which is enclosed for your reference. In arriving at that determination, Department staff thoroughly reviewed the February 9, 2012 submissions made by Susan and Milton Shapiro and March 16, 2012 submission by Suzanne Mitchell of ROSA, Inc., as well as the findings of Department staff regarding the geological and hydrological conditions of the Site. Department staff has also visited the site as part of its consideration of the submission by Petitioners.

Thank you for providing a thoughtful and well reasoned petition to the Department. Please feel free to contact me if I can be of any further assistance.

Sincerely,

William C. Janeway
Regional Director

Encs.

CC: Kelly Turturo
Dan Whitehead

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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September 1, 2015

ROSA 4 Rockland Inc.

Re: Petition to Amend Environmental Conservation Law (ECL) Article 24 Freshwater Wetland Map on the Patrick Farm Property

Dear

The New York State Department of Environmental Conservation (NYSDEC or Department) has reviewed your petition dated January 13, 2015 to amend the Thiels Quadrangle for the Rockland County Article 24 Freshwater Wetland Regulatory Map. The petition requests the inclusion and subsequent regulation of wetlands associated with an existing farm pond on the “Patrick Farm” property that is located in the Town of Ramapo, Rockland County. The request was predicated on the United States Army Corps of Engineers Jurisdictional Determination (ACOE JD) entitled *Patrick Farm Wetland Delineation Map* dated 6/17/2104 [2014] by Carpenter Environmental Associates, Inc.

Environmental Conservation Law Article 24 Freshwater Wetland Law requires that for the Department to assert jurisdiction over a wetland that the wetland be included on the regulatory map. Wetlands are eligible to be included or added to the regulatory map if they are greater than 5 Hectares (12.4 acres) in total area. The intent of the regulatory map is to provide notice to landowners and the public about what wetlands are subject to regulation under Article 24. There is a formal process outlined in 6 New York Codes Rules and Regulations Part 664 for amending the regulatory map.

Throughout the Patrick Farm planning and approval process at the local and state level, Department staff have made numerous site visits to this property for the purpose of determining Department jurisdiction under multiple Environmental Conservation Laws and their associated implementing regulations. Based on these site visits, and through the use of GIS and other mapping tools, the Department previously determined that the wetlands associated with the farm pond, tributaries to the farm pond, and the outlet of the impoundment collectively do not meet the criteria necessary to be regulated under

Article 24. On November 21, 2006 Department Staff validated the wetland boundary for the two wetlands on the property that do appear on the regulatory map for the owner (TH-14 and TH-30). This was renewed on 2009 and is valid for 10 years.

The initial site visit on November 6, 2006 focused specifically on wetlands that were already on the regulatory map labeled TH-14 and TH-30. Subsequently, on 8/11/2011, staff returned to the site to look specifically at the wetlands associated with the farm pond in response to a previous request from ROSA 4 Rockland for the Department to assert Article 24 jurisdiction over these wetlands. During this site visit, staff determined that, based on conditions at that time, there was a little over 200' foot break in wetland vegetation between Wetland 4 and Wetland 5, as also shown on the 2014 ACOE JD provided with the current petition. Based on criteria in 6 NYCRR Part 664.7(b), these two wetland areas, although hydrologically connected, were greater than 50 Meters (164.04 feet) apart and were considered to be separate wetlands for purposes of mapping. Separating these wetland areas for the purpose of determining acreage resulted in the two wetland areas being significantly below the 5 Hectare (12.4 acre) regulatory threshold.

In response to the current ROSA 4 Rockland Petition, and as indicated in my April 3, 2015 initial response to your petition, Department staff performed another site visit with the property owner's environmental consultant on May 12, 2015. The purpose of the site visit was to determine if the ACOE JD mapping in the vicinity of the existing farm pond was consistent with the Department's Freshwater Wetland Delineation Manual and to make observations to determine if these wetlands meet the criteria for New York State DEC jurisdiction as outlined in 6 NYCRR Part 664 Freshwater Wetland Map and Classification Regulations.

During that May 2015 site visit, Department staff thoroughly checked the hydrologic connection between wetlands 4 and 5. Staff determined the length through field measurements of the hydrologic connection (absent wetland vegetation) of Tributary 3 for comparison to the threshold distance in 6 NYCRR Part 664.7(b). While close to the threshold criteria, results of the re-measurement were not compelling enough to allow us to use the cumulative acreage of both wetlands in determining the state's jurisdiction. Therefore, the new information or evidence does not support a determination that the area of the combined wetlands exceeds the regulatory threshold of 12.4 acres.

Additionally, Department staff also observed that the ACOE JD consistently depicts the delineated wetland boundary to be upland of where the guidance established in the Department's Freshwater Wetland Delineation Manual would dictate. Additionally, the ACOE JD does not separate out upland areas located entirely within the wetland boundary. Based on these observations, Department staff have concluded that the wetland boundaries shown on the ACOE JD, and the acreage calculations extrapolated from the ACOE JD, cannot be utilized directly to support the wetland's regulation under ECL Article 24.

Based on the above, the petition and additional information submitted do not provide a sufficient basis for us to overturn our previous determination. We have thus again concluded that this wetland does not meet the criteria to be regulated under ECL Article 24 and therefore cannot amend the regulatory map as requested by ROSA 4 Rockland.

If you have any specific questions regarding this determination, please feel free to contact Bill Rudge, Natural Resources Supervisor, at (845) 256-3094.

Sincerely,



Martin D. Brand
Regional Director

- cc: Assemblywoman Ellen C. Jaffee
- Senator David Carlucci
- Assemblyman Kenneth P. Zebrowski
- Edwin J. Day, Rockland County Executive
- Christopher St. Lawrence, Supervisor, Town of Ramapo
- Yechiel Lebovits, Applicant/Sponsor for Patrick Farms

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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January 18, 2018

Village of Pomona

Dear

I write in response to your correspondence related to the parcel of land in Rockland County where Scenic Development LLC has proposed to build a residential development called "Patrick Farm". The New York State Department of Environmental Conservation ("DEC" or "Department") has reviewed the Village of Pomona's request and the information submitted in support of the request that DEC consider certain wetlands on the Patrick Farm property to be Wetlands of Unusual Local Importance so that the wetlands can be added to the Freshwater Wetland Regulatory Map for Rockland County and become regulated by New York State.

Over the past several years, the Department has reviewed six requests to add the wetlands on the Patrick Farm property to the State's official freshwater wetlands maps. Three of those requests were for the Department to designate the wetland as a Wetland of Unusual Local Importance because the wetland area is less than the statutory minimum 12.4 acres required to be a state regulated wetland (see 6 NYCRR Part 664.7(c)). The Department responded to the three requests in 2012 and advised that the wetland area did not meet the regulatory criteria to require designation as a Wetland of Unusual Local Importance and declined to amend the Freshwater Wetland Regulatory Map. I have enclosed those letters for your reference, including January 3, 2012 from DEC Regional Director William C. Janeway to Ms. Susan Shapiro, Esq.; May 17, 2012 from DEC Regional Director William C. Janeway to Milton B. Shapiro and Susan Hito Shapiro; and November 16, 2012 from Regional Director William C. Janeway to Ms. Melanie Golden.

The Department's 2012 determinations were based upon the same facts and issues raised in your correspondence, and reflect that among several other reasons, the subject wetland does not possess any Class I characteristics including that it is not located directly over an aquifer which is used for public water supply nor does it

possess at least four Class II characteristics. Therefore, the Department determined in 2012 that the Patrick Farm wetlands did not meet the regulatory criteria to require designation as a Wetland of Unusual Local Importance and declined to amend the regulatory map.

The above referenced letters remain the agency's determination regarding the presence of wetlands of Unusual Local Importance on the Patrick Farm property. DEC therefore declines to make any further determination regarding this issue.

Thank you for your continued interest in the protection of local wetlands and the State's natural resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly R. Turturro", with a long horizontal flourish extending to the right.

Kelly R. Turturro
Regional Director

Enclosure

38 A.D.3d 903, 832 N.Y.S.2d
653, 2007 N.Y. Slip Op. 02763

****1** In the Matter of Park Ridge
Neighborhood Association et al., Petitioners

v

Erin M. Crotty et al., Respondents. (Proceeding
No. 1.) In the Matter of Westchester Country
Club, Inc., et al., Appellants, v Erin M. Crotty
et al., Respondents. (Proceeding No. 2.)

Supreme Court, Appellate Division,
Second Department, New York
13745/05, 13813/05, 2005-09858
March 27, 2007

CITE TITLE AS: Matter of Park
Ridge Neighborhood Assn. v Crotty

HEADNOTE

[Environmental Conservation](#)
[Water Supply](#)
Water Quality Certification

Respondents, their agents, servants and employees were enjoined from proceeding with any work on certain parcels pending issuance of water quality certification by State Department of Environmental Conservation (Department)—regulations governing Department's response to requests for water quality certifications under section 401 of Clean Water Act (33 USC § 1341 [a] [1]) provide that applicant for such permit “must apply for *and obtain* a water quality certification from the department” (6 NYCRR 608.9 [a] [emphasis supplied]); although applicable federal statute allows state to which permitting authority under Clean Water Act has been delegated to grant waiver of water quality certification (*see* 33 USC § 1341 [a]), Department's regulations, by which it is bound, do not; Department was without authority to grant waiver at issue.

Zarin & Steinmetz, White Plains, N.Y. (Daniel M. Richmond and David S. Steinmetz of counsel), for appellant Westchester

Country Club, Inc., and Collier, Halpern, Newberg, Nolletti & Bock, LLP, White Plains, N.Y. (William J. Collier, Jr., and William Walsh of counsel), for appellant Harrison-Rye Realty Corp. (one brief filed).

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and Norman Spiegel of counsel; Tomas Carbonell on the brief), for respondents Erin M. Crotty, as Commissioner of the New York State Department of Environmental Conservation, and New York State Department of Environmental Conservation in proceeding No. 2.

Thacher Proffitt & Wood LLP, White Plains, N.Y. (Kevin J. Plunkett and Darius P. Chafizadeh of counsel), for respondents Atlantic Development, LLC, Iliana Gardens, LLC, Collin Estates, LLC, and Sunshine Properties of Westchester, LLC, in proceeding No. 2.

Friedman, Harfenist, Langer & Kraut, Purchase, N.Y. (Steven Jay Harfenist of counsel), for amicus curiae Town/Village of Harrison.

In two related proceedings pursuant to CPLR article 78 to review a determination of the New York State Department of Environmental Conservation dated July 11, 2005, which granted a waiver of water quality certification in connection with an application by Atlantic Development, LLC, to fill federally-regulated wetlands, Westchester Country Club, Inc., and Harrison-Rye Realty Corp. appeal, as limited by their brief, from so much of an order and judgment (one paper) of the Supreme Court, Westchester County (Nicolai, J.), dated September 14, 2005, as denied the petition in proceeding No. 2, dismissed proceeding No.2, and vacated a temporary restraining order of the same court dated August 18, 2005, enjoining Atlantic Development, LLC, Iliana Gardens, LLC, Collin Estates, LLC, Sunshine Properties of Westchester, LLC, and Michael DeMartino, and their agents, servants, and employees from proceeding with any work on parcels designated as Blocks 12, 13, and 14 on Westchester County Tax Map No. 3322 until September 15, 2005.

Ordered that the order and judgment is reversed insofar as appealed from, on the law, with costs payable by the respondents *904 appearing separately and filing separate briefs, the petition in proceeding No. 2 is granted, the determination is annulled, and Atlantic Development, LLC, Iliana Gardens, LLC, Collin Estates, LLC, Sunshine Properties of Westchester, LLC, and Michael DeMartino, and their agents, servants, and employees are enjoined from

Matter of Park Ridge Neighborhood Assn. v Crotty, 38 A.D.3d 903 (2007)

832 N.Y.S.2d 653, 2007 N.Y. Slip Op. 02763

proceeding with any work on parcels designated as Blocks 12, 13, and 14 on Westchester County Tax Map No. 3322 pending the issuance of a water quality certification by the New York State Department of Environmental Conservation.

The regulations of the New York State Department of Environmental Conservation (hereinafter the Department) that govern the Department's response to requests for water quality certifications under section 401 of the Clean Water Act ([33 USC § 1341](#) [a] [1]) provide that the applicant for such a permit “must apply for *and obtain* a water quality certification from the department” ([6 NYCRR 608.9](#) [a] [emphasis supplied]). Although the applicable federal statute allows a state to which permitting authority under the Clean Water Act [formerly the Federal Water Pollution Control Act] has been delegated to grant a waiver of water quality certification (*see* [33 USC § 1341](#) [a]), the Department's regulations, by which it is bound (*see Matter of Frick v Bahou*, [56 NY2d 777, 778](#) [1982]; *Matter of Steck v Jorling*, [219 AD2d 727, 729](#) [1995]), do not. The Department's argument that its regulations require water quality certification only where the waters in issue fall within its jurisdiction under the Freshwater Wetlands Act (ECL art 24) is inconsistent

with the terms of the regulation, pursuant to which the certification requirement applies to any permit “that may result in any discharge into navigable waters as defined in section 502 of the Federal Water Pollution Control Act” ([6 NYCRR 608.9](#) [a]). In addition, although the regulations authorize the Department to grant statewide water quality certifications in certain circumstances, they provide for no such certification, and no exemption or other such relief, on the ground that the wetland in issue is not subject to the Department's jurisdiction by virtue of federal jurisdiction over the wetland (*see* [6 NYCRR 608.9](#) [b]; *cf.* [6 NYCRR 608.9](#) [a]). The Department was without authority to grant the waiver at issue. Accordingly, the petition in proceeding No. 2 should have been granted and the determination granting the waiver of water quality certification should have been annulled. In light of this determination, it is unnecessary for us to address the appellants' contentions with respect to the applicability of the New York State Environmental Quality Review Act (ECL art 8) to such a determination. Miller, J.P., Spolzino, Goldstein and McCarthy, JJ., concur. *905

Copr. (C) 2019, Secretary of State, State of New York

Chapter 78

FRESHWATER WETLANDS

GENERAL REFERENCES

Conservation Commission — See Ch. 10.

Subdivision of land — See Ch. 123.

Flood damage prevention — See Ch. 74.

Zoning — See Ch. 138.

Stormwater management and erosion and sediment control - See Ch. 119.

§ 78-1. Purpose; findings.

- A. Declaration of policy. It is declared to be the public policy of the Town of Southeast to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoliation and destruction of wetlands and watercourses, in order to secure the natural benefits therefrom for the protection of public health and safety and consistent with the general welfare and the beneficial economic, social and agricultural development of the Town.
- B. Findings. The following findings are made:
- (1) Wetlands and watercourses in the Town of Southeast are invaluable resources for flood protection, wildlife habitat, open space, nutrient retention and sediment trapping, visual/aesthetic reasons, water-based recreation, groundwater protection potential and drinking water.
 - (2) Wetlands and watercourses in the Town have been or are in jeopardy of being lost, despoiled or impaired by unregulated draining, dredging, filling, excavating, building, pollution or other acts inconsistent with the natural uses of such wetlands and watercourses.
 - (3) Recurrent flooding of areas of the Town, aggravated or caused by the loss of wetlands or alteration of watercourses, has serious effects upon natural ecosystems and presents serious hazards to the health, safety, welfare and property of the people in the Town, within and outside such wetlands and watercourses, including loss of life, loss and damage to private and public property, disruption of lives and livelihoods, interruption of commerce, transportation, communication and governmental services, and unsanitary and unhealthful living and environmental conditions.
 - (4) Wetlands and watercourses conservation is a matter of concern to the entire Town, and the establishment of preservation, protection and conservation practices is essential to the public health, safety

and welfare since actions on wetlands and watercourses in one location affect persons and property in other locations.

- (5) Wetlands and watercourses overlap many properties and neighborhoods, and experience has demonstrated that effective wetlands and watercourses protection requires uniformity of preservation, protection and conservation throughout the Town.
- (6) Loss, despoliation or impairment of wetlands deprives people of the Town some or all of the many and multiple benefits to be derived from wetlands, such as the following:
 - (a) Flood and stormwater runoff control by hydrologic adsorption and storage capacity of wetlands;
 - (b) Wildlife habitat by providing for breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare species.
 - (c) Protection of subsurface water resources and provision for valuable watersheds and recharging of groundwater supplies;
 - (d) Recreation by providing resource areas for hunting, fishing, boating, hiking, bird watching, photography, camping and other uses;
 - (e) Pollution treatment by serving as biological and chemical oxidation basins;
 - (f) Erosion control by serving as sedimentation areas and filtering basins, absorbing silt and organic matter, protecting channels and water bodies, dissipating erosive forces and anchoring shorelines;
 - (g) Education and scientific research by providing outdoor biophysical laboratories, living classroom and resources for training and education.
 - (h) Open space and aesthetic appreciation;
 - (i) Sources of nutrients in freshwater food cycles and the nursery ground and sanctuary for fish; and
 - (j) Vegetation providing temperature modification, purification of the air and natural products for harvest.
- (7) Improper use and the despoliation or impairment of water sources deprives people of the benefits thereof, such as the following:
 - (a) Surface draining free from erosion and sedimentation and with capacity to carry runoff without danger of flooding;
 - (b) Fresh waters for potable water supply and for boating, swimming, fishing and other recreation; and

- (c) Continuity of water flows and supplies throughout the year.
- (8) Regulation of wetlands and watercourses is consistent with the legitimate interests of farmers and other landowners to graze and water livestock, make reasonable use of water resources, harvest natural products of the wetlands and selectively cut timber.

§ 78-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated below:

CONSERVATION COMMISSION — That municipal body heretofore created by the Town Board in accordance with the General Municipal Law of the State of New York and pursuant to Chapter 10 of the Town Code.

CONTROLLED AREA — Shall include all wetlands and the area surrounding the same based on hydrological soil grouping and all watercourses and adjacent contributory surfaces based on hydrological soil grouping and slope percentage as indicated by the distances on the chart below. "Hydrological soil grouping" (HSG) is defined as a system of grouping soils according to the water infiltration and transmission rate characteristics when the soil is thoroughly wet.

Wetland Buffer by Hydrological Soil Group

HSG	Buffer (feet)
A High infiltration, transmission deeply drained	100
B Moderate infiltration and transmission and moderately drained	133
C Slow infiltration, transmission poor to well drained	166
D Very slow infiltration, transmission, permanent water	200

Watercourse Buffer by Hydrological Soil Group or Slope Percentage

HSG	Slope%	Buffer (feet)
A or A and B	0-3%; 3-8%	100
B or C	8-15%	100
C or D	15-25%	130
D or E	25-35%	170
F	35-60%	200

PERSON — Shall include any person, corporation, firm, partnership, association, trust, estate, individual, joint venture, and any unit of government, agency or subdivision thereof that is subject to this chapter.

POLLUTION — Shall include, in addition to its usual meaning, the presence in the environment of man-induced conditions or contaminants in quantities or with characteristics which are or may be injurious to human, plant, wildlife, animal forms or life or property.

WATERCOURSES — Shall include the following:

- A. Rivers, streams, brooks and waterways which are delineated on the current edition of the U.S. Department of Interior, Geological Survey, 7.5 Minute Series (topographic maps covering the Town of Southeast);
- B. Any other streams, brooks and waterways containing running water more than six months a year; and
- C. Lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, which are fed by or have surface discharge to another wetland or watercourse.

WETLANDS —

- A. Lands and waters consisting of any of the following:
 - (1) Soil types which are poorly drained, very poorly drained, alluvial and floodplain soils as defined by the U.S. Department of Agriculture, Soil Conservation Service, which soil types in the Town of Southeast have the following map codes and names:

Map Code	Name
25	Sun silt loam
27	Sun (stony silt loam)
28	Fredon loam
35	Raynham silt loam
100	Fluvaquents
101	Carlisle muck
103	Freshwater marsh (aquents)
108	Udorthents wet substratum
251	Ridgebury loam
252	Ridgebury very stony loam
311	Fluvaquents
1011	Palms muck
1251	Leicester loam
1252	Leicester very stony loam

- (2) Lands and submerged lands, commonly called "marshes," "swamps," "sloughs," "bogs" and "flats," supporting aquatic or semiaquatic vegetation of the following vegetative types.
- (a) Wetland trees, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other trees, including, among others, red maple (*Acer rubrum*), willows (*Salix* spp.), black spruce (*Picea mariana*); swamp white oak (*Quercus bicolor*), red ash (*Fraxinus pennsylvanica*), American elm (*Ulmus americana*) and larch (*Larix laricina*);
 - (b) Wetland shrubs, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other shrubs, including, among others, alder (*Alnus* spp.), bottonbrush (*Cepha lanthus occidentalis*), bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calyculata*), spice bush (*Lindera benzoin*), winter berry (*Llex montans*), red-osier dogwood (*Cornus stolonifera*) and highbush blueberry (*Vaccinium corymbosum*);
 - (c) Emergent vegetation, including, among other, cattails (*Typha* spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.), arrow arum (*Peltandra virginica*), arrowheads (*Saggittaria* spp.), reed (*Pharagnites communis*), wild rice (*Zizania aquatica*), bur-reeds (*Spargantum* spp.), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodor verticillatus*) and water plantain (*Alisma plantago-acquatica*);
 - (d) Rooted, floating-leaved vegetation, including, among others, water lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*) and spatterdock (*Nuphar* spp.);
 - (e) Free-floating vegetation, including, among others, duck weed (*Lemna* spp.), big duckweed (*Spirodela Polyrhiz*) and watermeal (*Wolffia* spp.);
 - (f) Wet meadow vegetation, which depends upon seasonal or permanent flooding or sufficiently waterlogged soils to give it a competitive advantage over other open land vegetation, including, among others, sedges (*carex* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice cut grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinaceae*), swamp loosestrife (*Decodon verticillatus*), spikerush (*Eleocharis* spp.), skunk cabbage (*Symplocarpus foetidus*) and false hellebore (*Veratrum viride*);
 - (g) Bog mat vegetation, including, among others, sphagnum mosses (*Sphagnum* spp.), bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calculata*), pitcher

plant (*Sarracenia purpurea*), and cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*);

- (h) Submergent vegetation, including, among others, pondweeds (*Potamoziton* spp.), mavadas (*Najas* spp.), bladderworts (*Utricularia* spp.), wild cherry (*Vallisneria spiralis*), coontails (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* spp.), muskgrass (*Chara*), stonewort (*Nitella* spp.), water weeds (*Elodea* spp.), and water smartweed (*Polygonum amphibium*).
 - (3) Lands and submerged lands containing remnants of any vegetation that is not aquatic or semiaquatic that has died because of wet conditions over a significantly long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six feet, and provided further that such conditions can be expected to persist indefinitely, barring human intervention.
 - (4) Lands enclosed by aquatic or semiaquatic vegetation as set forth in Subsection A(2) and dead vegetation as set forth in Subsection A(3), the regulation of which is necessary to protect and preserve the aquatic and semiaquatic vegetation.
 - (5) Waters overlying the areas set forth in Subsection A(1) and A(3) and lands underlying areas set forth in Subsection A(4).
 - (6) Lands and waters possessing the characteristics described in Subsection A(1), (2), (3), (4) and (5) that are less than one acre but are both hydrologically connected to and within 50 meters (165 feet) of other wetlands and together with these exceed one acre.
- B. Unvegetated open water is part of a wetland if it is more than 50% enclosed by wetland vegetation and is no larger than 2.5 hectares (6.2 acres). If the body of open water, substantially enclosed by wetland vegetation, is larger than 2.5 hectares, then only that portion within 50 meters (165 feet) of the wetland vegetation is part of the wetland.
 - C. Unvegetated open water adjacent to wetlands but not substantially surrounded by wetland vegetation may be considered to be part of the wetland to a depth of two meters (6.6 feet) below low water or to the maximum extent of nonpersistent emergents, if these grow at depths greater than two meters.
 - D. All areas within the one-hundred-year floodplain as shown on the latest map entitled "FIRM, Flood Insurance Rate Map; Town of Southeast, New York, Putnam County," prepared by the United States Department of Housing and Urban Development, Federal Insurance Administration, as amended from time to time.

WETLANDS INSPECTOR — The agent appointed by the Town Board to fulfill the designated enforcement and permit-processing responsibilities set forth in this chapter. A qualified Wetlands Inspector shall have a degree

from an accredited college or university in a related field, a minimum of two years of delineation experience, and scientific knowledge about the biogeophysical structure, function, or interrelationships of terrestrial and aquatic/semiaquatic plant and animal communities. **[Added 7-20-2006 by L.L. No. 7-2006]**

§ 78-3. Regulated activities; exclusions; permit application; application transmittal.

- A. Regulated activities and permits. Any person desiring to conduct a regulated activity as set forth in § 78-3B in any controlled area shall obtain a permit therefor as hereinafter provided.
- B. Activities regulated. Activities subject to regulation under this chapter shall include the following:
- (1) Any form of dredging, draining, or excavation and any grading or removal of soil, mud, sand, gravel, silt or other earth material from any controlled area, either directly or indirectly; or
 - (2) Any form of dumping, filling or deposition of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind in any controlled area, either directly or indirectly; or
 - (3) Erecting any building or other structure, construction of any road, driveway or motor vehicle parking facility, drivings or pilings, installation of any pipe or other conduit or the placing of any other obstructions within a controlled area, whether or not the same affect the ebb and flow of water; or
 - (4) The use of any chemicals, dyes, fertilizers, herbicides or similar materials in any controlled area such that the same may cause pollution of waters; or
 - (5) Creating a diversion of water flow in any watercourses; or
 - (6) Creating an increase or decrease in the flow, velocity or volume of water in any watercourse; or
 - (7) Introducing any influents of high thermal content such that the same are capable of causing deleterious ecological effect; or
 - (8) Destroying or permitting the destruction of any trees or other plant life within the controlled area of a watercourse or wetland. These actions shall be reviewed by the administering authority so as to determine if such acts affect the prevailing surface water runoff conditions, directly or indirectly; or
 - (9) Any other activity which substantially impairs any of the several functions served by the wetlands and watercourses or the benefits derived therefrom as the same are set forth in § 78-1 of this chapter.

- C. Exclusions. Activities excluded from regulation under this chapter shall include the following:
- (1) (Reserved)
 - (2) (Reserved)
 - (3) Public health activities under orders and regulations of the Putnam County Department of Health, provided that copies of such orders and regulations have been filed with the Town Clerk of the Town of Southeast and that the Water Control Board may request modification of such orders if it deems it necessary to implement the policy of this chapter;
 - (4) Mosquito control projects approved in writing by the New York State Department of Environmental Conservation;
 - (5) The operation, maintenance and repair of dams, retaining walls, docks and water control structures that were in existence on the effective date of this chapter;
 - (6) Emergency work which is necessary to protect health and safety or prevent damage to property, provided that the Town Clerk is given written notice within 48 hours after commencement of such work and within 48 hours after completion of the work, and provided that such work is limited to alleviation of the emergency condition; and
 - (7) Trimming, pruning and bracing of trees; decorative landscaping; including the addition of trees and plants.
- D. Application for permit. Any person proposing to conduct a regulated activity as specified in § 78-3B shall file an application for a permit with the Wetlands Inspector in a form and with such information as the Wetlands Inspector may prescribe. The application shall be accompanied by a fee as set from time to time by the Town Board and four copies of at least the following information. If the same shall show sufficient detailed information the administering authority may waive the map requirement below and accept as a substitute therefor any subdivision plat map, grading plans and construction plans as the same may have been prepared for submission pursuant to the Town of Southeast Land Subdivision Regulations.¹ **[Amended 7-20-2006 by L.L. No. 7-2006]**
- (1) The names of the owners of record of the land on which the activity is to be conducted and all adjacent owners;
 - (2) A detailed description of the proposed activity;
 - (3) A map showing the controlled area affected and any wetlands or watercourses therein, and the location, extent and nature of proposed activity. Said map shall be prepared and certified by a

1. Editor's Note: See Ch. 123, Subdivision of Land.

licensed surveyor, professional engineer or professional architect and show contours at two-foot intervals, stone walls, fence lines, tree lines and other major features of the land; and

- (4) The names of all known claimants of water rights in, or adjacent to, the wetlands or watercourses.
- E. Transmittal of application. Upon receipt, the Wetlands Inspector shall transmit a copy of each application, as follows: **[Amended 7-20-2006 by L.L. No. 7-2006]**
- (1) To the Planning Board. **[Amended 8-30-2012 by L.L. No. 7-2012]**
 - (2) In the event that the wetland or watercourse crosses Town lines, to the Clerk of such adjoining township.
 - (3) In the event that the wetland or watercourse crosses Putnam County lines, to the Clerk of the adjoining county.

§ 78-4. Application procedure. [Amended 7-20-2006 by L.L. No. 7-2006]

- A. Action on application by Wetlands Inspector.
- (1) Upon receipt of the application, the Wetlands Inspector may request the submission of such additional information as he may deem necessary to determine compliance with this chapter, including but not limited to the following:
 - (a) An environmental inventory and an assessment of the location and the effects of the proposed activity;
 - (b) A chemical and biological evaluation of the waters involved and the effects thereupon by the proposed activity;
 - (c) Hydraulic and hydrological studies of the wetlands and watercourses;
 - (d) A geologic evaluation of the wetland setting; and
 - (e) A program consisting of a schedule, sequence and type of equipment to be used in the conduct of the proposed activity.
 - (2) The Wetlands Inspector shall also, upon receipt of the application, determine whether the proposed activity involves a project development plan application, as the same may be required pursuant to the Town of Southeast Zoning Ordinance,² or a subdivision application. In the event either, or both, of these are determined to be required, the Wetlands Inspector shall forthwith

2. Editor's Note: See Ch. 138, Zoning.

advise the Planning Board and request a recommendation from said Board.

- B. Notice and hearing. The following notice and hearing requirements shall be applicable in the case of any application transmitted to the Planning Board and proposing a regulated activity that has other than minor significance as specified in § 78-4H. **[Amended 8-30-2012 by L.L. No. 7-2012]**
- (1) The applicant shall post a sign on the property consistent with the requirements of § 138-44A.
 - (2) No sooner than five days and not later than 30 days after such publication of notice, the Planning Board shall hold a public hearing on the application, except that, if no notice of objection to the application is necessary, the Planning Board may dispense with such hearing. If no public hearing is to be held the Planning Board shall publish notice of its decision, setting forth the reasons therefor, and a copy of such notice shall be filed with the Town Clerk and transmitted to the officials and agencies specified in § 78-3E.
 - (3) Not less than 10 days prior to a hearing, if any, the applicant shall send notice of such hearing by U.S. Postal Service certified or registered mail, return receipt requested, to the owners of all lots in the Town abutting the property where the activity is proposed, or at the Planning Board's discretion to all property owners within 500 feet of the lot where the activity is proposed.
 - (4) Notice of any public hearing shall be published by the Planning Board in one newspaper having a general circulation in the Town not less than five days before such hearing. A copy of the notice shall be transmitted to the officials and agencies specified in § 78-3E.
 - (5) All such applications and the accompanying maps and documents, shall be open for public inspection in the office of the Town Clerk from and after publication of first notice under § 78-4B(1).
- C. Report. Within 65 days after the application is received, or after notice has been published by the applicant under § 78-4B(1), whichever is later, the Planning Board, having received a report from the Wetland Inspector, shall make a determination as to whether or not the proposed regulated activity, with or without modification set by the Planning Board, conforms to the criteria set forth in § 78-4G. **[Amended 8-30-2012 by L.L. No. 7-2012]**
- D. Extension of time. The applicant and the Planning Board may by mutual consent extend the time for a determination on the application.
- E. Conditions. The Planning Board may specify requirements for modification of the proposed regulated activity and conditions or

limitations for conduct of the activity, including but not limited to the time for conduct and completion of the activity and a requirement to post a bond to guarantee completion of the work in accordance with plans.

- F. Determination. The Planning Board shall make a written determination, including the reasons therefor and any modifications, conditions and limitations, at a Planning Board meeting to approve or deny the application and whether or not a permit is to be issued under this chapter. **[Amended 8-30-2012 by L.L. No. 7-2012]**
- G. Criteria for approval. The following are criteria applicable to the approval of permits for proposed regulated activities in controlled areas, including wetlands and watercourses:
- (1) The activity will not have a substantial adverse effect upon the natural function and benefits of a wetland or watercourse as set forth in § 78-1B(6); and
 - (2) The activity will not substantially change the natural channel of a watercourse or substantially inhibit the natural dynamics of a watercourse system; and
 - (3) The activity will not result in the degrading or pollution of waters; and
 - (4) The activity will not increase the potential for flooding; and
 - (5) Sufficient provision has been made for control of erosion, siltation and sedimentation during and after conduct of the activity; or
 - (6) The activity will alleviate or remove a hazard to the public health or safety.
- H. Activities of minor significance. Any or all parts of § 78-3D can be waived at the discretion of the Planning Board with regard to activities of minor significance. Proposed regulated activities of minor significance which may be approved by the Planning Board include the following: **[Amended 8-30-2012 by L.L. No. 7-2012]**
- (1) Activities for which a site plan, subdivision plat maps, construction plans and grading plans and plat plans for grading and removal of earth are not required.
 - (2) Where no building or other structure or sewage disposal system or well is proposed in a controlled area.
 - (3) Installation of a driveway to a one-family dwelling.
 - (4) Excavation, grading or depositing of less than 20 cubic yards of earth materials in a controlled area of a wetland or watercourse per application.
 - (5) Modification to less than 25 feet of a watercourse on a lot or parcel.

- (6) The activity is not to be conducted in a floodplain.
 - (7) Removal of water-deposited silt or debris in order to restore the controlled area, including the wetland or watercourse, to the condition existing before the deposit.
 - (8) Incidental removal of trees and shrubs within the controlled area of wetlands or watercourses.
 - (9) Provided that all of the above activities are conducted in a manner to conform to the criteria set forth in § 78-4G(1) through (6) of this chapter.
- I. Permit issuance or denial. Upon receipt of the determination of the Planning Board as provided in § 78-4F of this chapter, the Wetland Inspector shall issue or deny issuance of a permit, subject to any resolution adopted by the Planning Board, in accordance with § 78-4F. Such permit shall contain and be made subject to any and all conditions imposed by the Planning Board determination. **[Amended 8-30-2012 by L.L. No. 7-2012]**

§ 78-5. Administration and enforcement. [Amended 7-20-2006 by L.L. No. 7-2006]

- A. Administration. This chapter shall be administered and enforced by a Wetland Inspector appointed by the Town Board. The Planning Board shall consult the Wetland Inspector prior to making a determination on a permit application. The Wetland Inspector shall keep records of all applications and permits, of all identifiable complaints of any violation of this chapter and of all notices of violation served by him and the action taken consequent thereon, which records shall be public records. He shall be in charge of all such records and public access thereto pursuant to the provisions of the Freedom of Information Law³ and applicable rules. He shall file with the Southeast Town Clerk and the Planning Board Secretary a copy of each order or decision rendered by him. **[Amended 8-30-2012 by L.L. No. 7-2012]**
- B. Procedures. The Town Board may by resolution adopt rules and procedures for the administration of this chapter, including the submission of applications.
- C. Inspections. The Wetlands Inspector, or his authorized agents, may enter upon land or waters for the purpose of inspection to determine compliance with this chapter and for the purpose of undertaking any investigations, examinations, surveys or other activity necessary for the purpose of this chapter.
- D. Suspension and revocation. The Wetlands Inspector is authorized to suspend or revoke a permit if he finds that the applicant has not complied with any of the conditions or limitations set forth in the permit

3. Editor's Note: See Public Officers Law § 84 et seq.

or has exceeded the scope of the activity as set forth in the application. The Wetlands Inspector may suspend the permit if the applicant fails to comply with the terms and conditions set forth in the application.

- E. Remedies. The Wetlands Inspector is authorized to order, in writing, the cessation of any regulated activity being conducted in violation of this chapter; he shall withdraw such order when he determines there is compliance herewith. The Wetlands Inspector is authorized to order, in writing, the remedying of any condition which is found to be in violation of this chapter. Any person who willfully violates this chapter shall be guilty of a misdemeanor, punishable by a fine of not less than \$250 nor more than \$1,000. The Town Board may impose, by order after a hearing, a civil penalty not to exceed \$250 for each violation of this chapter. Each day of continued violation shall constitute a separate and additional violation. An order imposing a civil penalty shall be deemed a final determination for purposes of judicial review and the Town of Southeast may bring an action to recover such civil penalty in any court of competent jurisdiction. Such action shall be brought on behalf of the Town, and any amount recovered shall be paid into the general revenue funds of the Town. Such right of action or recovery may be released, compromised or adjusted by the Town Board. The proper authorities of the Town of Southeast may institute any appropriate action or proceeding to prevent, restrain, correct or abate any violation of this chapter and to achieve restoration of the affected wetland or watercourse to its condition prior to the violation.
- F. Other laws. Approval of an application and issuance of a permit under this chapter shall not be construed to constitute compliance with any other regulation, ordinance or law nor to relieve the applicant from responsibility to obtain a permit thereunder. The Wetlands Inspector may at his discretion withhold issuance of a permit hereunder until any other required permit has been obtained by the applicant. This chapter is in addition to, and does not abrogate or lessen the effect of, any other regulation, ordinance or law pertaining to activities regulated hereunder and controlled areas to which this chapter is applicable.
- G. Appeals. Any person aggrieved by any order or decision under this chapter may seek judicial review pursuant to Article 78 of the Civil Practice Law and Rules in the Supreme Court for the County of Putnam within 30 days after the date of the filing of such order or decision with the Southeast Town Clerk. In the alternative, any person aggrieved by any order or decision under this chapter may seek review by the Freshwater Wetlands Appeals Board of the New York State Department of Environmental Conservation within 30 days after the date of the filing of such order or decision with the Town Clerk.
- H. Severability. The provisions of this chapter shall be severable, and if any clause, sentence, paragraph, subdivision or part thereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence,

paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.