

**Local Law No. 1 of 2006**

***A Local Law amending the Town of Clinton Zoning Law, Section 5.51 Wetlands, Watercourses, Lakes, Ponds and Floodplains***

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

**SECTION 1.**

The existing Section 5.51, Wetlands, Watercourses, Lakes, Ponds and Floodplains, of the Town of Clinton Zoning Law is hereby amended to read as follows:

**5.51 WETLANDS, WATERCOURSES, LAKES, PONDS AND FLOODPLAINS**

**A. Purpose**

The intent of this regulation is to minimize any negative impacts caused by development to wetlands, watercourses, lakes, ponds, and floodplains and to regulate their use to maximize the public's rights to enjoy these areas. This section is intended to protect water supplies, aquifers, storm water management capacity, chemical and pollutant filtration ability, habitat and breeding environment, and recreation opportunities provided by the Town's water resources.

**B. Applicability**

1. While all uses and activities, including those undertaken by the Town, should avoid, to the maximum extent practicable, adverse alteration of a wetland, watercourse, lake, pond, or floodplain, as defined in Article 8, the standards and procedures of this section apply only to the following:

- a. Applications being reviewed for a subdivision, site plan, special permit, variance or other permit under this law; and
- b. Any area within one hundred (100) feet of a watercourse, lake, pond, DEC-regulated wetland (see Section 3.3 for additional requirements for the C district), *or*
- c. Land within the 100 year floodplain; and

*d. Any wetland between 12.4 and 5 acres, including any area within one hundred (100) feet of such wetland.*

2. Within the areas specified in subsection 1 above, those activities that may be deemed to adversely alter, impinge upon or otherwise negatively affect such environments include:

- a. Placement or construction of any structure, except as provided in subsection C or elsewhere in this law;
- b. Placement or construction of any part of a septic system or other type of sewage disposal system, including a sewage treatment plant;
- c. Construction or installation of any road, *driveway*, utilities or utility corridor, or other improvements, including the driving of pilings or placement of other obstructions, unless all other alternatives are clearly impractical;
- d. Any form of draining, dredging, excavation or removal of material either directly or indirectly, except as provided in subsection C;
- e. Any form of dumping, filling or depositing of material either directly or indirectly, except as provided in subsection C;
- f. Introduction of any form of pollution, including but not limited to surface or water discharge from a sewage system, the deposition or introduction of inorganic chemicals, animal wastes, pesticides or fertilizers and the discharging of solid, liquid or gaseous wastes;
- g. Alteration or modification of natural features and contours or natural drainage patterns;
- h. Construction of dams, docks or other water control devices;
- i. Clearcutting of trees or vegetation, at once or over time, not regulated under Section 5.44, Soil Erosion and Sediment Control;
- j. Creating an increase or decrease in the flow, velocity of volume of water in any wetland, watercourse, lake, or pond, excluding customary seasonal raising and/or lowering;

k. Any other activity that may impair the natural function(s) of a wetland, watercourse, lake, pond, or floodplain.

***l. Cutting of any vegetation within twenty-five (25) feet adjacent to a watercourse (a no-cut zone), except to establish and maintain a view corridor and/or recreational trails.***

### C. Exempt Activities

The following activities shall be exempt from regulation under this section:

1. The deposition or removal of the natural products of the wetlands and adjacent areas by recreational or commercial fishing, aquaculture, hunting or trapping, where otherwise legally, permitted and regulated;

2. Ordinary maintenance and repair of existing structures or improved areas which do not involve expansion or substantial modification, including but not limited to bridges, roads, driveways, highways, bulkheads, docks, piers or pilings;

3. Public health activities under orders and regulations of the New York State Department of Health, provided that copies of all such orders and regulations affecting wetlands have been filed with the Planning Board and that the Planning Board may request modification of such orders if it deems it necessary to implement this law;

4. Any actual or ongoing emergency activity which is immediately necessary for protection and preservation of life or property or the protection or preservation of natural resource values;

***5. Timber harvesting, under the direction of a DEC Cooperating Forester utilizing the “Best Management Practices” (BMP’s) for silviculture by Dutchess County Soil and Water Conservation District, and NYS Forestry Best Management for Water Quality;***

6. The application of non-polluting chemicals and dyes for the purpose of maintenance;

7. Accepted agricultural practices, except where alteration is being reviewed as part of an application for permit under subsection (B) (1) (a) above.

***8. The establishment and maintenance of recreational trails (limited to activities such as walking, hiking, equine and non-gasoline powered recreational activities). Within the no-cut zone, recreational trails running parallel to watercourses shall be limited to one.***

***9. The establishment and maintenance of a view corridor within one hundred (100) feet of a watercourse, lake, pond, DEC-regulated wetland and wetlands between 12.4 and 5 acres.***

***10. All activities listed in Section 24-0701(3) through (8) of the N.Y. Environmental Conservation Law as exempt from the permit requirements of the New York State Department of Environmental Conservation, and defined by 6NYCRR of 663.2(c) New York State Environmental Conservation Rules and Regulations.***

#### D. Approval Standards

In approving or denying any application for a subdivision, site plan, special permit, variance, soil erosion and sediment control or pond permit under this law, the appropriate board shall consider the effect of the proposed activity on the ecology of the wetland, watercourse, lake, pond, or floodplain, on the public health and welfare, on flood hazards, water supply and on the maintenance and enhancement of other benefits provided by such resources. The boards shall insure that:

1. The potential negative impacts of the proposed activity, and existing and reasonably anticipated similar activities, upon neighboring land uses and wetlands, watercourses, lakes, ponds, and floodplains are eliminated or minimized. These activities include:

- a. Infilling or other modification of natural topographic contours;
- b. Disturbance or destruction of natural flora and fauna;
- c. Influx of sediments or other materials causing increased water turbidity or substrate aggradation;
- d. Removal or disturbance of wetland soils;
- e. Reductions in water supply;
- f. Interference with water circulation;
- g. Reduction or increases in nutrients;
- h. Influx of toxic chemicals or heavy metals;
- i. Thermal changes in the water supply;
- j. Changes affecting natural aesthetic values.

2. The impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage and water quality are eliminated or minimized;

3. The potential for damage from flooding, erosion, winds, soil limitations and other hazards due to the activity is eliminated or minimized;
4. Water supply and waste disposal facilities, on and off site and in areas where future development can be reasonably expected, will be adequate after the completion of the proposed activity;
5. The activity is consistent with federal, state, county and local comprehensive land use plans and regulations including New York State Environmental Conservation Law, Article 24;
6. All reasonable alternatives on other sites or on the subject parcel have been thoroughly explored and no other alternative is available on a site which is not a wetland, watercourse, lake, pond, or floodplain.

#### E. Procedures

1. Review of any impacts on a wetland, watercourse, lake, pond, or floodplains shall take place in concert with the review of the principal activity;
2. The Town Board, Zoning Board of Appeals, or Planning Board may make referrals to other boards, the Conservation Advisory Committee, consultants or interested parties prior to approving any activity which includes the impingement upon or other disturbance of wetlands, watercourses, lakes, ponds, or floodplains;
3. Documentation necessary to determine the extent, delineate the boundaries, and analyze the properties of any wetland, watercourse, lake, pond, or floodplain shall be gathered as part of the state Environmental Quality Review Act process;
4. The Town, through the appropriate Board acting as its agent, hereby reserves the right to hire a consultant at the expense of the applicant for the purpose of collecting information necessary to make an appropriate determination of impacts on any wetland, watercourse, lake, pond, or floodplain.
5. ***In addition, any regulated activity as described within Sections 5.51 B.1 & 2 that is not otherwise reviewed under these sections, will require review and approval by the Planning Board.***

## **SECTION 2.**

The following definitions are added to Section 8.2 of the Town of Clinton Zoning Law:

***No-cut zone - An area twenty-five (25) feet wide. In that zone there will be no cutting of vegetation including mature trees, except for those trees that are diseased, threaten human safety, or threaten the integrity of the water course bank.***

***View Corridor - Property owners may clear and prune vegetation through a portion of the no-cut zone to establish a view corridor. The maximum width of the view corridor shall be fifty (50) feet or 1/4 of the lot width at the waters edge, whichever is more narrow. Further cutting is restricted to an annual cutting, except for a path to the water resource which may be up to six (6) feet wide. That path may be mowed as required. In establishing such a path, no mature trees will be removed within the twenty-five (25) foot no-cut zone except as exempted above. Lower branches may be trimmed.***

***Wetland - Any area, which meets one or more of the following criteria:***

***A. Lands and waters that meet the definition provided in Section 24-0107.1 of the New York State Environmental Conservation Law, "Freshwater Wetlands Act," or as amended and updated. The approximate boundaries of such lands and waters are indicated on the official wetlands map promulgated by the Commissioner of the New York State Department of Environmental Conservation, or as amended and updated.***

***B. An area that is comprised of hydric soils and/or are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and under normal conditions do support, a prevalence of hydrophytic vegetation as defined by the Federal Interagency Committee for Wetlands Delineation, 1989, in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, Washington, DC, and adopted by the US Army Corps of Engineers, US Environmental Protection Agency, and the US Fish and Wildlife Service, or as amended and updated. Hydric soils referenced above shall include the soil types taken from the revised Dutchess County Soil Survey Series, 1991, or such revised, updated and adjusted soil surveys as may be completed.***

## **SECTION 3.**

Any portion of laws, ordinances, resolutions or regulations in conflict with this Local Law are hereby repealed.

**SECTION 4.**

The remaining portions of Town of Clinton Zoning Law shall remain in full force and effect.

**SECTION 5.**

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Clinton hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

**SECTION 6.**

This Local Law shall become effective immediately upon filing in the Office of the Secretary of State in accordance with Section 27 of the N.Y. Municipal Home Rule Law.