

Weekly Town Board Meeting
April 10, 2013 7:30 p.m. Town Hall

AGENDA

1. Authorize the Town Clerk to advertise for bidders for the Spring Town-wide Cleanup scheduled for May 4, 2013. (Nunc Pro Tunc)
2. Resolution authorizing Supervisor Shea to sign the contract between the Town and the County of Putnam Office of the Aging for the Outreach Worker.
3. Resolution advocating the establishment of a program for equitable sharing of sales tax revenue with local municipalities in Putnam County.
4. Resolutions referring six local laws to Putnam County Division of Planning and the Philipstown Planning Board:
 - A Law Amending the Town Code of the Town of Philipstown to Revise Chapter 93. (***Wetlands***)
 - A Law Amending the Town Code of the Town of Philipstown to implement the revised Zoning Law and designation of the Conservation Board.
 - A Law Amending Chapter 159 of the Town Code of the Town of Philipstown. (***to implement the Natural Resource and Open Space Plan***)
 - A Law Amending Chapter 112 of the Town Code of the Town of Philipstown with respect to Open Development Area subdivisions.
 - A Law Amending the Town Code of the Town of Philipstown to make clarifications and technical corrections to Chapter 175.
 - A Law Amending the Town Code of the Town of Philipstown to prohibit hydraulic fracturing.
5. Resolution appointing Joel Conybear to the Friends of the Philipstown Recreation.
6. Any other business that may come before the Town Board.
7. Adjournment.

**NOTICE TO BIDDERS
TOWN OF PHILIPSTOWN
PUTNAM COUNTY, NY
PROPOSED TOWN-WIDE BULK CLEANUP**

The Town of Philipstown proposes to conduct a Town-Wide Bulk Cleanup for Town residents on May 4, 2013, at the Garrison Firehouse, Route 9, Garrison, NY. The hours of operation will be from 8:00 a.m. until 1:00 p.m.

Sealed bids for proposals will be received in the Town Clerk's Office of the Town of Philipstown at the Town Hall, 238 Main Street, Cold Spring, New York until 2:00 p.m. local time on April 24, 2013. The bids will be opened publicly and read aloud in the Town Clerk's Office of said building.

Specifications and bid documents may be seen and procured in the Town Clerk's Office, of the Town of Philipstown, at 238 Main Street, Cold Spring, New York.

The Town of Philipstown reserves the right to reject any and all bids. No bidder may withdraw his bid except by written request submitted at least twenty-four (24) hours before the time of opening or until the lapse of forty-five (45) days after the actual opening thereof.

**TOWN OF PHILIPSTOWN
TOWN BOARD OF PHILIPSTOWN
Tina M. Merando
Town Clerk**

Dated: April 10, 2013

MARYELLEN ODELL
County Executive



ADD ON #1

PATRICIA SHEEHY
Director

NEXT
WEDNESDAY

PUTNAM COUNTY
OFFICE FOR THE AGING

March 29, 2013

Town of Philipstown
Richard Shea, Town Supervisor
238 Main St., P.O Box 155
Cold Spring, NY 10516

Dear Supervisor Shea,

Enclosed please find the contract between the Putnam County Office for the Aging and the Town of Philipstown for the year 2013.

Please **sign** and **notarize the contract** and send it back as soon as possible, so it may be put through the proper channels for execution.

Thank you, in advance, for all your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Doreen Crane".

Doreen Crane

Coordinator of Services

DC:mev

authorize RS to
sign

furnished by the COUNTY and agreeable to the TOWN, in accordance with the terms and conditions set forth herein.

SECOND: The COUNTY agrees to provide an Outreach Worker to the TOWN, upon the terms and conditions set forth herein:

Duties:

- a) The Outreach Worker shall actively seek out and assist persons residing in the TOWN's geographical area who are over the age of 60 years and have health and/or financial problems and/or are in need of governmental assistance; and
- b) The Outreach Worker shall provide such persons with the guidance and assistance necessary to contact and/or make application for/to obtain services from the proper governmental agencies and other available resources.

Hours:

- a) The Outreach Worker shall be available to guide and assist such persons at a designated area provided by the Office for the Aging and provide office hours and home visits, on demand and as deemed necessary to carry out the foregoing services, for a minimum of 35 hours per week.

THIRD: The TOWN agrees that it will at all times faithfully, industriously and to the best of its ability, perform all of the duties that may be required of and from it pursuant to express and implicit terms hereof, to the reasonable satisfaction of the COUNTY.

FOURTH: The term of this Agreement will commence January 1, 2013 and will terminate on December 31, 2013, unless otherwise terminated in accordance with paragraphs "SEVENTH" or "EIGHTH" hereof.

FIFTH: As also provided in Paragraph "FIRST" herein, for the services rendered by the Outreach Worker according to Paragraph "SECOND," the TOWN shall submit full payment in the amount of \$15,000.00 to the COUNTY on or before December 31, 2013. It is understood and agreed that any reduction in payment to the COUNTY by the TOWN may result in reduced hours (including benefits) of the Outreach Worker.

The COUNTY shall be responsible for the payment of the Outreach Worker's salary and benefits, including training expenses and other related costs, over and above the sums payable to the COUNTY by the TOWN under this Agreement. Additionally, to the extent the Outreach Worker is required to use his/her personal vehicle in the performance of his/her duties under the terms of this Agreement, the COUNTY shall reimburse the Outreach Worker for such expenses at the current Internal Revenue Service approved mileage rate.

Any and all requests for payment to be made will be submitted on properly executed claim forms (or invoices) of the COUNTY and paid only after approval by the Director of the Office for the Aging or his/her duly authorized representative.

Prior to the making of any payments hereunder, the COUNTY may, at its option, audit all files and disbursement records of the TOWN as are reasonably pertinent to this Agreement to substantiate the basis for payment, including but not limited to the TOWN'S records of its financial transactions with the COUNTY. The TOWN'S files and records shall be kept in accordance with sound accounting practices and each transaction shall be fully documented. Should the COUNTY request such files and records, the TOWN shall provide the files and records to the County Auditor or his/her authorized representative, as well as to the County

Commissioner of Finance, or his/her duly authorized representative, within ten (10) business days of the COUNTY'S request.

SIXTH: The work to be performed pursuant to the terms of this Agreement will commence promptly upon assignment by the Director of the Office for the Aging or his/her duly authorized representative and will be conducted in the best interest of the COUNTY.

SEVENTH: It is understood and agreed by and between the parties hereto that payment by the TOWN under the terms of this Agreement is a material element of this Agreement. Any failure to provide said payment will be deemed a material breach and this Agreement will terminate without notice. No substitution of the services will be permitted during the term of this Agreement without the express written consent of the COUNTY.

EIGHTH: Except as otherwise provided in paragraph "SEVENTH" herein, the COUNTY, upon ten (10) days' notice to the TOWN, may terminate this Agreement, in whole or in part, when the COUNTY deems it to be in its best interest. In such event, reimbursement to the TOWN for payments already made by the TOWN will be prorated and the COUNTY will be liable only for payment for services already rendered and expenses incurred under this Agreement prior to the effective date of termination.

The TOWN, upon thirty (30) days' notice to the COUNTY, may terminate this Agreement, in whole or in part, when the TOWN deems it to be in its best interest.

In the event of a dispute as to the value of the services rendered to the TOWN by the Outreach Worker prior to the date of termination, it is understood and agreed that the Director of the Office for the Aging or his/her duly authorized representative will determine the value of

such services rendered by the Outreach Worker. Such reasonable and good faith determination will be accepted by the TOWN as final.

NINTH: Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the COUNTY is void.

TENTH: Where applicable, the TOWN will comply, at its sole expense, with the provisions of all state and municipal requirements and with all state and federal laws applicable to the TOWN as an employer of labor or otherwise. The TOWN will further comply with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and others employed to render the services hereunder, as applicable.

CONTRACTOR expressly agrees that it shall be solely responsible for supervising its employees; that it shall comply with all rules, regulations, orders, standards, and interpretations promulgated pursuant to the Occupational Health and Safety Act of 1970 and the Public Employees Safety and Health Act (hereinafter referred to as "PESH"), including but not limited to training; provision of personal protective equipment; adherence to all appropriate lockout/tagout procedures; and providing all notices, material safety data sheets, labels, etc. required by the right-to-know standard.

Nothing contained herein to the contrary, the conduct and control of the performance of the services contemplated hereunder lie solely with the CONTRACTOR.

ELEVENTH: No discrimination by the TOWN will be permitted during the performance of this Agreement with respect to race, religion, creed, color, national origin, sex, age, handicap, political affiliation or beliefs.

TWELFTH: In addition to, and not in limitation of, the insurance requirements contained in Schedule "A" entitled "Putnam County Insurance Requirements," attached hereto and made a part of this Agreement, the TOWN agrees, to the fullest extent permitted by law, to protect, defend, indemnify and hold the County of Putnam and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof, unless that liability was created by the sole and exclusive negligence of the COUNTY. The TOWN further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at its sole expense, and agrees to bear all costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent.

THIRTEENTH: The failure of the COUNTY to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect. No waiver by the COUNTY of any provision hereof shall be implied.

FOURTEENTH: All notices of any nature referred to in this Agreement shall be in writing and hand delivered or sent by registered or certified mail, postage pre-paid, to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing:

To the COUNTY:

COUNTY ATTORNEY
48 Gleneida Avenue
Carmel, New York 10512

To the TOWN:

TOWN OF PHILIPSTOWN
238 Main Street, P.O. Box 155
Cold Spring, New York 10516

All notices shall be effective on the date of mailing.

FIFTEENTH: This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It will not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

SIXTEENTH: This Agreement will be deemed executory only to the extent of the monies available to the COUNTY for the performance of its terms and no liability will be incurred by the COUNTY beyond the monies so available.

SEVENTEENTH: This Agreement will be construed and enforced in accordance with the laws of the State of New York. Any and all disputes and/or legal actions or proceedings arising out of this Agreement shall be venued in Putnam County, New York.

EIGHTEENTH: Unless specifically provided by law, electronic signatures may be used in lieu of a signature affixed by hand. The use of said electronic signatures shall have the same force and effect of law and shall be deemed binding. Moreover, this contract shall not be deemed effective until fully executed by the TOWN, the required COUNTY signatories and the County Executive.

NINETEENTH: The TOWN is required to provide the following documents to the COUNTY before this Agreement will be finalized and/or executed by the COUNTY, and before the COUNTY will approve any voucher/invoice submitted for payment:

1. "Request for Taxpayer Identification Number and Certification" form (IRS Form W-9).
2. "Notice of Application to Certify Compliance with Federal Law" and "Affidavit of Compliance," in accordance with the provisions of 8 U.S.C. §1324a and Chapter 134 of the Putnam County Code. Where applicable, in the event that the TOWN subcontracts any part of the work under this Agreement in accordance with paragraph "NINTH" of this Agreement, the TOWN shall provide the COUNTY with a completed "Notice of Application to Certify Compliance with Federal Law" and an "Affidavit of Compliance" for each and every subcontractor hired to perform work under this Agreement.
3. Appropriate Certificate of Insurance, in accordance with paragraph "TWELFTH" of this Agreement and the requirements contained in Schedule "A".

IN WITNESS WHEREOF, the parties have executed this Agreement in Carmel, New York, on the date hereinabove set forth.

TOWN OF PHILIPSTOWN
238 Main Street, P.O. Box 155
Cold Spring, New York 10516

By: RICHARD SHEA, SUPERVISOR
Please Print Name & Title

ACKNOWLEDGMENT OF TOWN:

STATE OF NEW YORK)
) ss.:
COUNTY OF Putnam)

On this 11 day of April, 2013 before me personally appeared Richard Shea personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

TINA M. MERANDO
NOTARY PUBLIC, STATE OF NEW YORK
REG 01ME5079624
QUALIFIED IN PUTNAM COUNTY
COM EXP. RES JUNE 9 2015

Tina M. Merando
Notary Public

SCHEDULE A

PUTNAM COUNTY INSURANCE REQUIREMENTS

- I. It is the requirement of the County of Putnam and/or Putnam County Highway Department that for work performed under contract and/or permit authorized by the County and/or Highway Department and/or any event or performance conducted on county property that the contractor or permittee procure and maintain at their own expense and without expense to the County, until final acceptance of the work by the County, the insurances listed below.
- Before commencement of any work, event or performance a certificate or certificates of insurance must be furnished to the county and/or highway department in forms satisfactory to the County and/or Highway Department.
 - All insurance coverages must be from an A.M. Best Rated "secured" (B+-A++), New York State admitted insurer.
 - All certificates of insurance must provide that the policy or policies shall not be changed or canceled until at least thirty (30) days prior written notice has been given to the County and/or Highway Department.
 - When required by the Highway Department the "XCU" exclusion of the policy or policies shall be eliminated or show proof that "XCU" is covered.
- II. The Contractor shall provide and maintain at its own expense the following minimum insurance coverage:
- A. Workers' Compensation Insurance - This is statutorily required and is required for all contracts. Each policy must cover all operations and all locations involved in the contract. If applicable, the policy should also include New York State Disability Benefits.
- B. Commercial General Liability Insurance - Each policy must cover all operations and all locations involved in the contract and include the following:
- \$1,000,000 for each occurrence
 - \$50,000 for the Fire Damage Legal Liability Limit
 - \$5,000 for the Medical Expense Limit
 - \$1,000,000 for the Personal & Advertising Injury Limit
 - \$2,000,000 for the General Aggregate Limit
 - \$2,000,000 for the Products/Completed Operations Aggregate Limit
- C. Commercial Automobile Liability Insurance - Each policy must cover all operations and locations involved in the contract and including the following:
- (1) Owned Automobiles
 - (2) Hired Automobiles
 - (3) Non-Owned Automobiles

Unless specifically required, each policy shall provide Combined Single Limits of not less than \$1,000,000 for Bodily Injury and Property Damage.

D. **Professional Liability Insurance (if applicable)** - Each policy must cover errors and omissions. The policy limit shall be no less than \$1,000,000 per claim.

E. **Excess Liability Insurance or an Umbrella Policy (if applicable)** - A policy is required if the amount paid under the contract is above \$100,000. The limits required on the policy depend on the total contract amount.

- \$100,000 - \$250,000 - 1 million
- \$250,001 - \$500,000 - 5 million
- \$500,000+ - 10 million

F. **Bid, Performance/Payment, Labor & Material Bonds** - A policy is required for any contract in excess of \$250,000. These bonds shall be provided by a New York State admitted surety company in good standing.

III. **Specific information MUST appear on each and every Insurance Certificate provided to the County.**

A. The following must appear under the section entitled, "Certificate Holder"

**COUNTY OF PUTNAM
48 GLENEIDA AVENUE
CARMEL, NEW YORK 10512
ATTN.: LAW DEPT./RISK MANAGER**

B. The following language must appear in the section entitled, "Description of Operations/Locations, etc.":

"Putnam County is included as an additional insured except for Professional Liability and Workers' Compensation."

STANDARD INSURANCE REQUIREMENTS AND INDEMNIFICATION REQUIREMENT:

All policies and certificates of insurance of the contractor shall contain the following clauses:

1. Putnam County is named as an additional insured and as Certificate Holder. Insurers shall have no right of recovery or subrogation against the County of Putnam (including its agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance.
2. The Clause "other insurance provisions" in a policy in which the County of Putnam is named as an additional insured, shall not apply to the County of Putnam.
3. The insurance companies issuing the policy or policies shall have no recourse against the County of Putnam (including its agents or agencies) for payment of any premiums or for assessments under any form of policy.
4. Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the risk of the contractor.

RESOLUTION __ - 13

WHEREAS, equitable sharing of sales tax revenue among county government and local municipalities eases the financial burden of local municipalities and benefits county residents by providing funds for local improvements, programs and services; and

WHEREAS, Putnam County is one of the few counties in New York State which does not have a program for sharing sales tax revenue with its towns and villages; and

WHEREAS, neighboring counties such as Dutchess, Orange, Westchester and Rockland counties currently share their sales tax dollars with local municipalities; and

WHEREAS, it appears that Putnam County will collect sales taxes this year which are substantially in excess of the County government's budgetary requirements; and

WHEREAS, it is in the best interests of the Town of Philipstown to propose to the County a program initiating sales tax revenue sharing in Putnam County, which program would include a threshold amount to initiate the distribution of funds and an equitable basis for such distribution;

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

1. THAT the Town of Philipstown Town Board supports and actively advocates establishment of a program for equitable sharing of sales tax revenue with local municipalities in Putnam County; and
2. THAT the Town Supervisor is requested and directed to prepare a written proposal for a sales tax revenue sharing program to be initiated in Putnam County; and
3. THAT a copy of the said proposal, along with a certified copy of this resolution shall be forwarded to the Putnam County Legislature, County Legislator Barbara J. Scuccimarra and County Executive Mary Ellen Odell.

_____ presented the foregoing resolution which was seconded
by _____.

The vote on the foregoing resolution was as follows:

David Merandy, Councilman, voting _____

John VanTassel, Councilman, voting _____

Betty Budney, Councilwoman, voting _____

Nancy Montgomery, Councilwoman, voting _____

Richard Shea, Supervisor, voting _____

Town of Philipstown

Local Law No. of the Year 2013

A Local Law to amend Chapter 93, “Freshwater Wetlands and Watercourses” of the Code of the Town of Philipstown in order to fully implement changes in Chapter 175, “Zoning,” to implement the redesignation of the Town’s Conservation Advisory Council as a Conservation Board, and to bring Chapter 93 into consistency with other sections of the Town Code and the Comprehensive Plan.

Be it enacted by the Town Board of the Town of Philipstown as Follows:

SECTION 1. TITLE

This local law shall be known as “A Law Amending the Town Code of the Town of Philipstown to Revise Chapter 93.”

SECTION 2. AUTHORITY

This local law is enacted pursuant to the Municipal Home Rule Law, the Environmental Conservation Law, including but not limited to Articles 24 and 71 thereof, and the official compilation of Codes, Rules and Regulations of the State of New York, including but not limited to Title 6, Part 665 thereof (6 NYCRR 665), and any and all applicable laws, rules and regulations of the State of New York. This law establishes a wetlands regulatory system separate from, and in addition to, any applicable requirements under state or federal law. Nothing contained herein shall be deemed to conflict with any such laws, rules and regulations.

SECTION 3. PURPOSE AND FINDINGS

This local law is intended to more fully implement the Philipstown Comprehensive Plan, adopted March 9, 2006, by bringing the Town Code into consistency with it and with the recently enacted revision of the Town’s Zoning Law, Chapter 175 of the Town Code (Local Law # 1 of the Year 2011). This local law is also intended to implement the recommendation of the Town’s Comprehensive Plan to redesignate the Conservation Advisory Council as a Conservation Board, with enhanced powers as provided in Section 239-y of the General Municipal Law, including plan approval authority for certain wetland permit applications, and to ensure that Chapter 93 is consistent with other parts of the Town Code.

The Town Board finds that changes to Chapter 93 are necessary in order both to give fuller effect to the Comprehensive Plan and to avoid conflicts between existing chapters of the Town Code and the provisions of new Zoning Law.

SECTION 4. AMENDMENTS TO CHAPTER 93

Chapter 93, "Freshwater Wetlands and Watercourses" of the Code of the Town of Philipstown, is hereby amended to read as follows (added language is underlined and deleted language is struck out):

§ 93-1 Title.

This chapter shall be known as the "Freshwater Wetlands and Watercourse Law of the Town of Philipstown." It is a law regulating the dredging, filling, deposition or removal of materials, diversion or obstruction of water flow, placement of structures and other uses in wetlands and watercourses and in certain associated lands and waters located in the Town of Philipstown. It further sets forth permit requirements governing such actions.

§ 93-2 Findings.

A. The Town Board of the Town of Philipstown has determined that the public interest, health and safety and the economic and general welfare of the residents of the Town of Philipstown will be best served by:

- (1) The preservation and the proper maintenance and use of its wetlands and watercourses; and
- (2) The protection of these and adjacent land areas from encroachment, spoiling, pollution or elimination resulting from population growth attended by commercial development, housing, road construction and disregard for natural resources.

B. The wetlands and watercourses in Philipstown are valuable natural resources which function and benefit the entire Town and the surrounding region in one or more of the following ways:

- (1) Protecting subsurface water resources, watersheds and groundwater recharge systems.
- (2) Treating pollution through chemical and biological degradation and adsorption processes.
- (3) Providing drainage and flood control through ground absorption, natural storage and flood conveyance.
- (4) Controlling erosion and water turbidity by serving as sedimentation areas and filter basins, absorbing silt and organic matter.
- (5) Providing sources of nutrients in freshwater food cycles.
- (6) Serving as nursery grounds and sanctuaries for freshwater fish.
- (7) Providing a suitable living, breeding, nesting and feeding environment for many forms of wildlife, including wild fowl, shorebirds and rare species.
- (8) Providing suitable habitat for endangered flora.
- (9) Preserving open space and aesthetic values by providing open space in areas threatened with crowding from commercial and residential development.

3. Amendments to Wetlands, Chapter 93, March, 2013

(10) Furthering education and scientific research by providing readily accessible outdoor biophysical laboratories, living classrooms and vast training and education resources.

C. Wetlands and watercourse protection is a matter of concern to the entire Town. The establishment of regulatory and conservation practices for these areas serves to protect the Town by ensuring review and regulation of any activity on wetlands and watercourses that might adversely affect the Town's residents' health, safety and welfare.

D. Wetlands and watercourses in Philipstown form an ecosystem that is not confined to any one property owner or neighborhood. Experience has demonstrated that effective wetlands and watercourses protection requires uniformity of approach to preservation and conservation efforts throughout the Town.

E. Interference with wetlands and watercourses can cause or aggravate flooding, erosion and diminution and pollution of water supply for drinking and waste treatment and may pose a threat to the health, safety and welfare of the people of Philipstown and the surrounding region.

F. This chapter is enacted pursuant to the Municipal Home Rule Law, the Environmental Conservation Law, including but not limited to Articles 24 and 71 thereof, and the official compilation of Codes, Rules and Regulations of the State of New York, including but not limited to Title 6, Part 665 thereof (6 NYCRR 665), and any and all applicable laws, rules and regulations of the State of New York. This law establishes a wetlands regulatory system separate from, and in addition to, any applicable requirements under state or federal law. Nothing contained herein shall be deemed to conflict with any such laws, rules and regulations.

§ 93-3 Intent.

A. It is the intent of the Town of Philipstown to control and regulate the use of wetlands and watercourses, as defined herein, within the Town to ensure that the benefits found to be provided by them will not be lost and to protect the important physical, ecological, social, educational, aesthetic, recreational and economic assets of the present and future residents of the Town so as to protect the public interest.

B. It is not the intent of this chapter to prevent property owners from the reasonable use of their land. It is the intent of this chapter to allow reasonable use of land consistent with responsible land management and to conserve and protect freshwater wetlands and watercourses to the extent reasonably practicable, consistent with this objective.

C. It is the intent of this chapter that consideration should be given to the functional significance of a wetland involved in any particular application or proceeding. Wetlands vary in their importance and value to the environment. The decisions of activities to be permitted under this chapter should consider and reflect the relative significance or importance of any particular wetland. It is intended that the methodology set forth in § 93-8, Criteria for approval, should be used in making these decisions.

§ 93-4 Definitions.

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

APPLICANT-- A person who files an application for a permit under this chapter, who 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.

APPELLANT— A person who appeals a decision of the Conservation Board pursuant to Section 93-10.

CLEAR-CUTTING--A method of harvesting where 75% or more of the trees of six inches in diameter or greater at breast height (4 1/2 feet) on a controlled area on an applicant's land are to be removed.

CONSERVATION BOARD--The Conservation Board of the Town of Philipstown.

CONTROLLED AREA--A controlled wetland, a watercourse, a wetland and/or watercourses buffer zone or any combination thereof.

CONTROLLED WETLAND--A wetland, as defined in this § 93-4, which covers 1/4 of an acre or more, whether or not it appears on the map as defined in this § 93-4, or a smaller wetland of critical value or unique quality, as may be provided by amendment to this chapter.

COUNCIL ~~The Conservation Advisory Council of the Town of Philipstown.~~

DREDGING--Excavating or removing sediment, soil, mud, sand, shells, gravel or other aggregate, whether natural or artificial, except for small samples.

EROSION--The wearing away of land surface by action of wind, weathering, water, gravity or other natural force.

EXCLUDED ACTIVITY--Any activity listed in § 93-6.

FILLING--Depositing any soil, stones, sand, gravel, mud, rubbish, material, matter or fill of any kind.

FLOODPLAIN--That portion of a watercourse adjacent to the channel of the watercourse which is built of sediments deposited during the present regimen of the watercourse and is covered with water when the watercourse overflows its banks at flood stage, such as but not limited to those mapped by the Federal Emergency Management Agency (FEMA) located along Clove Creek, Foundry Brook, Canopus Creek and the Hudson River.

GRADING--The alteration of the slope of surface or subsurface conditions of land, lakes, ponds or watercourses by excavation or filling.

HYDRIC SOILS -- Soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part, and as further defined by the technical publication "Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989)," which manual shall be available for inspection in the office of the Town Clerk. Hydric soils listed in Philipstown include the following listed by numeric field symbols, names, symbol and hydrologic soil group:

3. Amendments to Wetlands, Chapter 93, March, 2013

Numeric Field (nmf)	Name	Symbol (hydrologic soil group)
101	Carlisle	(Ce)D
102	Ipswich	(Ip)D
100	Fluvaquents	(Ff) flooded
311	Fluvaquents	(Ff) flooded
28	Fredon	(Fr)C
1251A	Leicester	(LcA)C
1251B	Leicester	(LcB)C
1252B	Leicester	(LcB)C
1011	Palms	(Pa)D
1101	Palms	(Pa)D
1012	Palms	(Pa)D
103	Aquents	(Pc) flooded
35	Raynham	(Ra)C
25	Sun	(Sh)D
27	Sun	(Sm)D
251A	Ridgebury	(Rd)C
251B	Ridgebury	(Rd)C
252B	Ridgebury	(Rg)C
<u>HYDROPHYTI</u>		
<u>C</u>		

VEGETATION -- Macrophytic plant life growing in water or on soils that are at least periodically anaerobic as a result of excessive water content, and as further defined by the technical publication "Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989)," which manual shall be available for inspection in the office of the Town Clerk. Examples of hydrophytic vegetation include the following:

A. Wetland trees, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other trees, including, among others, red maple (*Acer rubrum*), willows (*Salix* species), black spruce (*Picea mariana*), swamp white oak (*Quercus bicolor*), red ash (*Fraxinus pennsylvanica*), black ash (*Fraxinus nigra*), silver maple (*Acer saccharinum*), American elm (*Ulmus americana*) and larch (*Larix laricina*).

B. Wetland shrubs which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other shrubs, including, among others, alder (*Alnus* species), buttonbush (*Cephalanthus occidentalis*), bog rosemary (*Andromeda glaucophylla*), dogwoods (*Cornus* species) and leatherleaf (*Chamaedaphne calyculata*).

C. Emergent vegetation, including, among others, cattails (*Typha* species), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* species), arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* species), reed (*Phragmites*

communis), wildrice (*Zizania aquatica*), burr-reeds (*Sparganium* species), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*) and water plantain (*Alisma plantagoaquatica*).

D. Rooted, floating-leaved vegetation, including, among others, water lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*) and spatterdock (*Nuphar* species).

E. Free-floating vegetation, including, among others, duckweed (*Lemna* species), big duckweed (*Spirodela polyrhiza*) and watermeal (*Wolffia* species).

F. Wet meadow vegetation which depends upon seasonal or permanent flooding or sufficiently water-logged soils to give it a competitive advantage over other open land vegetation, including, among others, sedges (*Carex* species), rushes (*Juncus* species), cattails (*Typha* species), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), swamp loosestrife (*Decodon verticillatus*) and spikerush (*Eleocharis* species).

G. Bog mat vegetation, including, among others, sphagnum mosses (*Sphagnum* species), bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calyculata*), pitcher plant (*Sarracenia purpurea*) and cranberries (*Vaccinium macrocarpon* and *Vaccinium oxycoccos*).

H. Submergent vegetation, including, among others, pondweeds (*Potamogeton* species), naiads (*Najas* species), bladderworts (*Utricularia* species), wild celery (*Vallisneria americana*), coontail (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* species), muskgrass (*Chara* species), stonewort (*Nitella* species), water weeds (*Elodea* species) and water smartweed (*Polygonum amphibium*).

MAJOR PROJECT — Any activity that does not qualify as a minor project or which requires other permits or approvals from either the Planning Board or the Town Board. Where multiple applications for a specific project are involved, if at least one activity constitutes a major project as defined herein, each proposed activity shall be treated as a major project, notwithstanding anything contained herein to the contrary.

MAP-- A map, accompanying this chapter, on file in the office of the Town Clerk, entitled "Guide to Regulated Freshwater Wetlands and Watercourses, Town of Philipstown, Putnam County, New York," dated May 4, 1989, revised May 1, 1991, revised January 9, 2001, on which are indicated the approximate locations of watercourses and the boundaries of controlled wetlands. Said map is intended to be only a guide to the approximate location of wetlands and watercourses; their precise location is to be determined by field inspection in accordance with the specifications set forth in this chapter. However, any wetland which meets the definition of "controlled wetland" appearing in this § 93-4 is a controlled wetland, whether or not it appears on the map.

MINOR PROJECT: Any activity requiring a wetlands permit where the wetland Inspector has determined this activity is to be performed on an individual residential single-family building lot, where the use of mechanical earthmoving equipment may be permitted. It is provided, however, that such activities shall not take place within any portion of any wetlands, water bodies, or watercourses and also that such activities will not require the excavation of more than 15 cubic yards or disturb more than 1,000 square feet of any areas within 100 feet of said wetlands, water bodies, or watercourses.

MITIGATION PLAN--The plan prepared by the applicant, pursuant to § 93-13, when the applicant has demonstrated that the losses or impacts to the wetland, watercourse, or wetland/watercourse buffer are necessary and unavoidable, as defined in § 93-12, and have been minimized to the maximum extent practicable.

NATURAL RESOURCES REVIEW OFFICER-- The Town employee or consultant appointed to review development applications for compliance with Town environmental regulations, including but not limited to wetlands, steep slopes, and conservation analysis requirements of zoning. This position may be held by an official with other duties or titles, such as Wetlands Inspector, Town Planner, or Town Engineer.

PERMIT--The written approval issued by any Town board, agency, or official the permitting authority where required for conducting a regulated activity in a controlled area any activity regulated under the Philipstown Town Code.

PERSON --Any corporation, firm, partnership, association, trust, estate, one or more individuals or any unit of federal, state or local government or any agency or subdivision thereof, including any state department, bureau, commission, board or other agency, public authority or public benefit corporation.

PLAN REVIEW: Review by the Conservation Board of a major project wetlands permit application prior to the issuance of such wetlands permit by the Natural Resources Review Officer.

POLLUTION --The presence in the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant or animal life or well-being or to property.

REGULATED ACTIVITY--Any activity listed in § 93-5 of this chapter.

STRUCTURE --A combination of materials to form a construction that is safe and stable, and includes, among other things, trailers, stadiums, platforms, radio towers, sheds, storage bins, billboards, display signs, docks, wharves, boathouses, underground lines and pipes and apparatus for transmission of electric power and standards and towers and lines for transmission of electrical power; it excludes poles for local electrical power distribution lines and telephone lines in the Town of Philipstown and underground lines and pipes and apparatus for local distribution of electric power or telephone service in the Town of Philipstown; it includes 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, bridges, dams, tennis courts, swimming pools, paved surfaces and playing fields.

TOWN--The Town of Philipstown, Putnam County, New York.

WATERCOURSES--Rivers, streams, brooks, ponds, lakes, reservoirs and waterways, whether running constantly or intermittently, which are delineated on the current edition of the United States Department of Interior, Geological Survey, 7.5 Minute Series (Topographic) maps bearing the date 1981 (Peekskill Quadrangle), 1981 (West Point Quadrangle) and 1979 (Oscawana Lake Quadrangle), covering the Town of Philipstown; and any other streams, brooks and waterways which are contained within, flow through, or border on the Town of Philipstown, and any additional streams, brooks and waterways which are delineated on the map

WETLAND HYDROLOGY--The sum total of wetness characteristics in areas that are inundated or have saturated soils for a sufficient duration to support hydrophytic vegetation.

WETLANDS

A. All areas that comprise hydric soils, as defined in this § 93-4, that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation, as defined in this § 93-4; or lands and submerged lands containing remnants of any vegetation that is not aquatic or semi-aquatic that has died because of wet conditions over a sufficiently long period, provided that such conditions can be expected to persist indefinitely, barring human intervention.

B. For the purposes of this chapter, "wetlands" within 50 meters of each other and hydrologically connected are considered to be one "wetland."

C. Lands and waters substantially enclosed by hydrophytic vegetation, as defined in this § 93-4, the regulation of which is necessary to protect and preserve the hydrophytic vegetation; and

D. The waters overlying the areas set forth in Subsections A and B above and the lands underlying the waters set forth in Subsection C above.

WETLANDS INSPECTOR-- An individual appointed by the Town Board who shall serve at the pleasure of the Town Board to investigate, report on, and enforce compliance with the provisions of this chapter, who may also be the Natural Resources Review Officer.

WETLANDS OR WATERCOURSE BUFFER ZONE ("BUFFER")--A controlled area adjacent to a controlled wetland or watercourse or to a combination of controlled wetlands and watercourses. A "wetlands buffer zone" consists of the land adjacent to a controlled wetland, as defined in this § 93-4, that lies within 100 feet of the boundary of said controlled wetland. A "watercourse buffer zone" consists of the land adjacent to a watercourse, as defined in this § 93-4, that lies within 100 feet, measured horizontally, of the mean high water mark of said watercourse.

WETLANDS PERMIT--The written approval issued by Natural Resources Review Officer /Wetlands Inspector where required by this chapter for conducting a regulated activity in a controlled area.

§ 93-5 Regulated activities.

Activities regulated under this chapter are:

A. Dredging or excavation; grading; and removal of soil, mud, sand, gravel, silt, earth material and other aggregate, either directly or indirectly.

B. Dumping or deposition of soil, stones, sand, gravel, mud, rubbish, material, matter or fill of any kind, either directly or indirectly.

C. Construction or installation of any structure or facility, including but not limited to roads, buildings, driveways, parking facilities, swimming pools, tennis courts, bridges, pipes or conduits; installation of sewage disposal systems or sewer outfall; drilling of wells; placing of other obstructions; or driving of pilings.

D. Alteration or diversion of any flow of watercourse or wetland. This includes but is not limited to docks, dams, pilings and bridges.

E. Use of chemicals, dyes, fertilizers, animal waste, herbicides, pesticides, deicing materials or similar materials.

F. Influent of high thermal content capable of causing harmful ecological effects unless water is properly treated in recycling, including but not limited to groundwater heat pumps for other than one-family dwellings.

G. Clear-cutting or other vegetation removal affecting surface water runoff.

H. Establishment of trails for such purposes as, but not limited to, walking, skiing, horseback riding, bicycling, motorcycling, snowmobiling and off-road vehicle travel.

I. Installation of service lines, cable conduits or utilities.

J. Introduction of any form of pollution, by means including, but not limited to, the installation of a septic system, running of a sewer or stormwater outfall, or discharge of sewage treatment or other solid waste into or so as to drain into a controlled area.

K. Installation of drainage or water supply pipes or wells.

L. Installation of dry wells, retention basins, filters, open swales or ponds.

M. Any other activity that may impair the natural functions of a wetland or watercourse as found in § 93-2.

§ 93-6 Excluded activities.

The following activities are excluded from regulation under this chapter.

A. The depositing or removal of the natural products of freshwater wetlands by recreational or commercial fishing, shellfishing, hunting or trapping.

B. Public health activities, orders and regulations of the Putnam County Department of Health or New York State Department of Health, provided that copies of all such orders or regulations affecting wetlands are filed with the Department of Environmental Conservation in advance and are for emergencies only.

C. Any activity for which, prior to the effective date of this chapter, the Planning Board has otherwise granted approval of a preliminary plat, conditional or otherwise, or the Building Inspector has granted a building permit, or, in the case of any activity not requiring action by the Planning Board or the Building Inspector, any otherwise necessary permit has been granted by the Town official or agency responsible for review of the activity.

D. Any routine road, highway, street or driveway maintenance, if the activity will not cause pollution or erosion of a watercourse or a controlled wetland, or interfere with natural drainage.

E. Normal grounds maintenance, gardening, selective trimming, pruning or bracing of vegetation, removal of dead or diseased vegetation, and decorative landscaping and planting, incidental removal of vegetation, addition of vegetation, but not including the use of fertilizers and pesticides within a controlled area.

F. Ordinary maintenance and repair of existing structures, facilities or trails, including but not limited to those set forth in § 93-5C and H, where the work does not entail the use of machinery within a controlled wetland or a watercourse.

G. Mosquito control projects approved in writing by the New York State Department of Environmental Conservation.

H. 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.

I. Emergency work which is immediately necessary to protect health and safety or prevent damage to property, provided that the ~~permitting authority~~ Natural Resources Review Officer 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.

§ 93-7 Activities of minor significance.

The Natural Resources Review Officer or Conservation Board may, at ~~its~~ their discretion, waive any or all parts of § 93-9C, D, E and ~~G~~ F if ~~it determines~~ they determine that a proposed regulated activity is an activity of minor significance.

A. A proposed regulated activity may be designated an activity of minor significance if it is:

- (1) An activity that entails no building or other structure, no sewage system, no sewage disposal system or no well in a controlled area; or
- (2) ~~Installation of a driveway to a one-family dwelling, where less than 15 cubic feet of material is to be removed or deposited in a controlled area, and installation does not involve disturbance to a controlled wetland or watercourse;~~
- (3) ~~Excavation, grading or depositing of less than 25 cubic yards of earth material in a controlled area but outside of a wetland or watercourse;~~
- (2) Removal of water-deposited silt or debris in order to restore the controlled area to the condition existing before the deposit, where the work does not involve use of any machinery within a controlled wetland or a watercourse.

B. Provided that said activity:

- (1) Does not require a site plan, subdivision plat, ~~map~~ or construction plans, grading plans and/or plot plans for grading and removal of earth;
- (2) Is not to be conducted on a floodplain; and
- (3) Will not result in a change or modification to a controlled area that will affect adjoining property, increase pollution or affect water flow upstream or downstream from the proposed activity.

§ 93-8 Criteria for approval.

A. The following are criteria applicable to the approval of wetlands permits for proposed regulated activities in controlled areas:

- (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 § 93-2B;
- (2) The activity will not substantially change the natural channel of a watercourse or substantially inhibit the dynamics of a watercourse system;
- (3) The activity will not result in the degrading or pollution of waters;
- (4) The activity will not increase the potential for flooding;

- (5) Sufficient provision has been made for control of pollution, erosion, siltation and sedimentation during and after conduct of the activity;
- (6) No practicable alternative location is available on the subject parcel; and
- (7) No additional technical improvements or safeguards can reasonably be added to the plan or activity which would minimize the impact on a controlled area; or
- (8) The activity will alleviate or remove a hazard to the public health or safety.

B. In evaluating the criteria and the determination required in § 93-8A above, the Natural Resources Review Officer and Council and the permitting authority Conservation Board shall utilize the objective methodology for determining the functions of a wetland set out in the publication entitled "A Rapid Procedure for Assessing Wetland Functional Capacity," dated May 1998, by Magee and Hollands, a copy of which is on file in the office of the Town Clerk of the Town of Philipstown.

§ 93-9 Wetlands Permit procedure.

A. No person shall undertake, permit, conduct or cause to be undertaken, permitted or conducted a regulated activity in a controlled area without applying for and obtaining a wetlands permit therefor as provided in this chapter. All wetlands permits shall be, written, issued, and enforced by the Natural Resources Review Officer/ Wetlands Inspector. Applications for minor projects shall be reviewed only by the Natural Resources Review Officer/Wetlands Inspector. For major projects, the Natural Resources Review Officer shall transmit the application to the Conservation Board for plan review. Once the Conservation Board has approved a plan for a wetlands permit, with appropriate conditions as deemed necessary, the Natural Resources Review Officer shall issue the wetlands permit subject to the conditions adopted by the Conservation Board in its plan approval. Approval of a plan by the Conservation Board shall be by a majority vote of the members of Board present at a duly constituted meeting in which a quorum is in attendance. Any person may is encouraged to confer with the Conservation Advisory Council Conservation Board and/or Natural Resources Review Officer for advice as to whether or not an activity proposed to be undertaken, permitted or conducted is a regulated activity in a controlled area. The permitting authority may refer any application for any other permit or approval to the Council for advice as to whether or not such application involves a regulated activity in a controlled area.

B. Application. Any person proposing to conduct or cause to be conducted a regulated activity in a controlled area shall file an application for a wetlands permit with the Natural Resources Review Officer, in such form and with such information as the ~~Town~~ Conservation Board may from time to time prescribe. The application shall be accompanied by a fee as set by the Town Board, which fee may be amended from time to time by resolution of the Town Board. It is the intention of this chapter that any such application for a wetlands permit shall be filed at the same time as ~~the an~~ application for any other permit or approval ~~is sought from any town official, agency, or board in connection with the same activity or project. the permitting authority.~~ If an application for a wetlands permit has not been filed under this chapter and ~~the board or official reviewing an permitting authority, in connection with consideration of the~~ application for any other permit or approval, determines that such other application involves a regulated activity in a controlled area, then an application for a wetlands permit under this chapter

shall promptly be filed with the Natural Resources Review Officer in order to ensure proper coordination of all related ~~that all applications may be coordinated and decided within their respective time limits as may be specified by law.~~

C. The number of copies of the application to be submitted under § 93-9B shall be established by the Conservation Board as part of its rules of procedure and shall take into consideration the need to transmit the application to other agencies, officials, or boards with permitting jurisdiction over the same project. ~~the greater of either eight, or eight plus a number equal to the number of copies required of any accompanying application to be submitted to the permitting authority.~~ Each copy of the above copies of the application shall include the following information:

- (1) A detailed description of the proposed activity and a comparison of the activity to the criteria for approval specified in § 93-8.
- (2) A map showing the controlled area affected, any wetland or watercourse therein and the location thereof and the location, extent and nature of the proposed activity, prepared by a licensed surveyor or engineer. If showing sufficient information, any map, plat or plan acceptable to the ~~permitting authority~~ Natural Resources Review Officer and required to be submitted for any other permit or approval in connection with any regulated activity may be used for the required map.
- (3) The names of claimants of water rights in the wetland or watercourse of whom the applicant has record notice.
- (4) A completed short form environmental assessment form.
- (5) If a Major Project application affects the water retention capacity, water flow or other drainage characteristics of any pond, lake, reservoir, natural drainage system or wetland, it shall include a statement prepared by a professional engineer licensed in the State of New York stating the impact of the project on upstream and downstream areas, giving appropriate consideration to flood or drought levels of watercourses and amounts of rainfall.
- (6) Copies of all applicable county, state or federal ~~permits or permit applications and permits~~ that are required for such work, unless the granting of such permits or the submission of such permit applications is conditioned upon first obtaining a permit under this chapter.

D. Request for additional information. The ~~permitting authority~~ Conservation Board or Natural Resources Review Officer may identify additional information that may be needed in order to make a determination. Such information may include but not be limited to the following:

- (1) Complete plans for the proposed activity, which shall be certified by an engineer, architect, land surveyor or landscape architect licensed in the State of New York, drawn to a scale no less detailed than one inch equals 20 feet, and showing the following:
 - (a) The location of all controlled wetlands, watercourses and wetland and watercourse buffer zones as determined no earlier than 12 months prior to the date of filing the application. The boundaries of a wetland and the mean high water mark of a watercourse shall be determined by field investigation and as defined in § 93-4;

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- (b) A description of the vegetative cover of the controlled area, including dominant species;
- (c) A description of the on-site soil types;
- (d) The location of the construction area or the area proposed to be disturbed and its relation to property lines, roads, buildings, wetlands and watercourses within 250 feet of the proposed activity;
- (e) The exact locations, specifications and amount of all proposed draining, filling, grading, dredging and vegetation removal or displacement, and the procedures to be used to do the work;
- (f) The location of any wells and depths thereof, and any disposal system;
- (g) The existing and proposed contours at two-foot intervals in the proposed disturbed area and to a distance of 50 feet beyond, and elevations of the site and adjacent lands within 200 feet of the proposed activity;
- (h) Details of any temporary or permanent drainage system proposed both for the conduct of the work and after completion thereof; including locations of discharges, artificial inlets, or other human-made conveyances that would discharge into the controlled area, and measures proposed to control erosion both during and after work;
- (i) Where creation of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other water control devices, and analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations and subsurface soil, geology and groundwater conditions;
- (j) Where creation of a detention basin is proposed, with or without excavation, details of the construction of any dams, berms, embankments, outlets or other water control devices, and analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations and subsurface soil, geology and groundwater conditions;
- (k) Details of erosion and sediment control practices, including a diagram showing what and where erosion and sediment control practices will be implemented and a schedule for their installation and maintenance;
- (l) Functional analysis of the wetlands to be affected, showing existing wetlands formation and impacts to those functions from the proposed activity;
- (m) A completed long form environmental assessment form when required by the New York State Environmental Quality Review Act.

E. Transmittal of application.

In the case of a regulated activity within 500 feet of the Town line on a watercourse that crosses the Town line, or any regulated activity on a wetland that crosses the Town line, the ~~permitting authority~~ Natural Resources Review Officer shall, if the application is not one for an activity of minor significance, transmit a copy of the application to the Clerk of the relevant abutting municipality.

~~F. Upon receipt of a complete application, the permitting authority shall refer any application submitted to it pursuant to this chapter to the Conservation Advisory Council~~

~~for review and report. The Council shall report back to the permitting authority within 21 days of the date of referral. The permitting authority shall continue to process and/or act on the application after such twenty one day period, whether or not it receives a report from the Council. Failure to report within such period may be deemed by the permitting authority as indicating no objection to the application.~~

F. Public hearing. (1)

For Major Projects, a joint public hearing shall be held by the permitting authority Conservation Board and any other local board or agency with permit or approval jurisdiction over the same project, whenever a public hearing is required for the granting of the such other permit or approval required of such permitting authority pursuant to statute or the local laws and ordinances of the Town of Philipstown. Such joint public hearing shall be held at such time, under such circumstances and upon such notice as may be required for the granting of such other permit or approval.

~~(2)~~

~~Although it is the objective of this chapter that the Council should have at least 21 days from the date of referral to report to the permitting authority, where a shorter time period for the holding of the public hearing on an application for such other permit or approval is specified by statute, local laws or ordinances, then the Council shall report back to the permitting authority by the date of the required public hearing, even though this is less than 21 days from the date of referral. Failure to report within such shorter period shall be deemed by the permitting authority as indicating no objection to the application.~~

G. Approval or disapproval of wetlands permit.

(1) On major project applications for which no public hearing is required, the permitting authority Conservation Board shall make a determination to approve, approve with modifications or disapprove the issuance of such a wetlands permit within 30 days following receipt of a completed application therefor.

(2) On major project applications for which a public hearing is required, the permitting authority Conservation Board shall make a determination to approve, approve with modifications or disapprove the issuance of a wetlands such permit prior to or simultaneously with the determination by the permitting board of for the other permit or approval for which application was made.

(3) For minor project applications, the Natural Resources Review Officer shall issue or deny a wetlands permit within 15 days of receiving a complete application.

~~If the action of the permitting authority is contrary to the report of the Council, it shall set forth the reasons for its action in its decision.~~

(4) The permitting authority Conservation Board, or Natural Resources Review Officer in connection with its their determination to approve or approve with modifications the issuance of such a wetlands permit, may impose such conditions that as the permitting authority Conservation Board or Natural Resources Review Officer deems necessary to conform the activity to the criteria for

approval in § 93-8 and to ~~maintain~~fulfill the purposes of this chapter. In connection with such wetlands permit, the ~~permitting authority~~ Conservation Board or Natural Resources Review Officer may establish time periods within which the regulated activity, or phases thereof, shall be commenced and/or be completed. The ~~permitting authority~~ Conservation Board or Natural Resources Review Officer may extend such time periods and the permit for good cause demonstrated to the satisfaction of the ~~permitting authority~~ Conservation Board or Natural Resources Review Officer when it is shown that the regulated activity is or will be conducted in accordance with the wetlands permit as originally issued and an extension fee has been paid as set by the Town Board in accordance with § 93-14B.

(5) The ~~permitting authority~~ Conservation Board or Natural Resources Review Officer may determine to approve or issue an amended wetlands permit, upon application made in the same manner as required for the original application.

(6) Copies of all determinations by the ~~permitting authority~~ Conservation Board or Natural Resources Review Officer shall be filed in the office of the Town Clerk and mailed to the applicant by certified mail, return receipt requested.

H. Extension of time. The applicant may, by mutual consent with the ~~permitting authority~~ Conservation Board or Natural Resources Review Officer, extend any of the time periods specified herein.

I. Transfer of Permits. Permits may be transferred to new legal owners of the affected property so long as the conditions and plans as approved remain unchanged. Notice of such transfer of permit must be filed with the Wetland Inspector within 30 days of the transfer.

§ 93-10 (Reserved) Appeal of Wetland Permit Conservation Board Decisions

(Note: This section has gotten much more complicated now that there are two possible decision-makers, i.e. the CB or the NRRO. I thought it would be too cumbersome to have a decision of the NRRO appealed to the CB, then to the TB, and then to Court, so I structured it as a direct appeal from the NRRO to the TB.)

Any person aggrieved by a decision of the Conservation Board or Natural Resources Review Officer under this chapter may appeal such decision to the Town Board as provided below.

- A. Such appeal shall be submitted to the Town Clerk within 14 days of the filing of the Conservation Board's or Natural Resources Review Officer's decision in the office of the Town Clerk, on forms approved by the Town Board and provided by the Town Clerk.

- B. The Town Board shall apply the same criteria in its review of an approval as the Conservation Board or Natural Resources Review Officer is required to apply by this chapter. However, the Town Board shall not require the submission of additional information unless the appellant alleges that insufficient information was available to the Conservation Board or Natural Resources Review Officer when the decision was made. The Town Board shall defer to the judgment of the Wetlands Inspector or Natural Resources Review Officer with respect to matters of technical and scientific judgment. In the case of an appeal of the Natural Resources Review Officer's determination to issue or deny a wetlands permit for a minor project, the Conservation Board shall have an opportunity to review and comment on the appeal before or at the time of the Town Board's public hearing.
- C. The Town Board shall hold a public hearing on the appeal within 31 days of its submission to the Town Clerk. The Board shall publish notice of such hearing in the official newspaper at least five days prior to the date thereof. The cost of giving all notices shall be charged to the appellant.
- D. The Town Board shall render its decision within 31 days of the public hearing and file such decision in the office of the Town Clerk immediately thereafter. The decision shall also be mailed to the appellant and the applicant (if different) by certified mail, return receipt requested.
- E. Judicial review of the Town Board's decision shall be available as provided in Section 93-18D.

§ 93-11 Wetlands Inspector and Natural Resources Review Officer.

A. This chapter shall be enforced by the Wetlands Inspector and/or Natural Resources Review Officer. ~~appointed by the Town Board, who shall serve at the pleasure of the Town Board.~~ The Town Board may also designate a Deputy Wetlands Inspector who shall also serve at the pleasure of the Town Board. The Wetlands Inspector and/or Natural Resources Review Officer shall coordinate his activities with ~~and be under the supervision of the Building Inspector.~~ ~~Neither the~~ The Wetlands Inspector, Natural Resources Review Officer, and the Deputy Wetlands Inspector may not be members of the ~~Conservation Advisory Council~~ Conservation Board.

B. Qualifications for Wetlands Inspector. The Wetlands Inspector, ~~and any~~ Deputy Wetlands Inspector, and any Natural Resources Review Officer performing the duties of the Wetlands Inspector must have training and experience adequate to:

- (1) Identify, locate and stake or flag wetlands and watercourses in the field, and verify the identification, location and mapping thereof done by others;
- (2) Consider the effects of specific proposals on the functions and benefits of the specific wetland(s) and watercourse(s) affected, as specified in § 93-2B and § 93-8A;
- (3) Determine whether the proposed use is consistent with applicable minimum land use regulations weighed against criteria for permit issuance set forth in § 93-8A;
- (4) Assess an applicant's proposals to enhance, mitigate or compensate for the functions and benefits of existing wetland(s) and watercourse(s);

- (5) Prepare a recommendation to grant, deny or condition a permit; and
- (6) Enter his/her findings and supporting rationale in the public record.~~and~~
- (7) Issue or deny wetland permits as provided in § 93-9. ~~Act as the permitting authority when required under § 93-12.~~
- (8) Perform all administrative functions of the Conservation Board, including but not limited to acceptance and review of applications, coordinating technical review as necessary with other Town departments and consultants, monitoring compliance with wetlands permit conditions and mitigation plans, and inspecting projects to ensure compliance with the terms of wetland permits.

C. Suitable qualifications include either a bachelor's degree in wildlife management, fisheries management, forestry, ecology, hydrology or a closely related field; an associate degree in one of the above fields and two years' full-time experience in work closely associated with wetlands protection; or any other training and experience which assures a technical knowledge of wetlands and their functions and benefits sufficient to perform the tasks identified above.

D. Services. The Wetlands Inspector shall investigate, report on and enforce compliance with the provisions of this chapter and provide the services identified in § 93-11B, coordinating such enforcement activities and services with the responsibilities of the Town Board, the Council and the permitting authority Conservation Board, the Building Inspector, and all other Town officials and agencies with permitting jurisdiction. The Wetlands Inspector shall also act as the permitting authority when required under § 93-12.

§ 93-12 Permitting authority Conservation Board Authority.

The Conservation Board shall have the authority to grant and deny approval of plans for major project wetland permits as provided in § 93-9 of this chapter and such other authority as may be provided in other chapters of the Town Code. ~~shall be exercised as provided herein. The permitting authority hereunder shall be as follows:~~

A.

The Zoning Board of Appeals shall be the permitting authority with respect to any application which requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of Philipstown, except as provided in § 93-12B and C.

B.

The Planning Board shall be the permitting authority with respect to any application which requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of Philipstown, including any application which also requires the issuance of any permit or approval by the Zoning Board of Appeals, except as provided in § 93-12C.

C.

~~The Town Board shall be the permitting authority with respect to any application which requires the issuance of any other permit or approval by it (other than approval of a bond, letter of credit or other security, and other than acceptance of documents related to actions by other agencies) pursuant to the local laws and ordinances of the Town of Philipstown, including any application which also requires the issuance of any permit or approval by the Planning Board or Zoning Board of Appeals.~~

D.

~~The Wetlands Inspector shall be the permitting authority with respect to all other regulated activities, and no public hearing shall be required.~~

§ 93-13 Required findings.

No major project wetlands permit shall be approved issued by the ~~permitting authority~~ Conservation Board pursuant to this chapter unless the ~~permitting authority~~ Conservation Board finds that the proposed regulated activity is consistent with the intent of this chapter as set forth in § 93-3.

A. Permit conditions. Any major project wetlands permit issued pursuant to this chapter shall be issued with conditions as deemed necessary by the ~~permitting authority~~ Conservation Board or Natural Resources Review Officer. The Conservation Board shall set forth in writing findings and reasons for all conditions attached to any major project permit. ~~very permit~~ Permits issued pursuant to this chapter shall be in written form and shall contain, at a minimum, the following conditions:

- (1) Work conducted under said permit shall be open to inspection by the ~~permitting authority~~ Natural Resources Review Officer, Code Enforcement Officer, or Conservation Board or its designated representative, at any time, including weekends and holidays;
- (2) The permit shall expire on a specified date that is one year from its issuance if work has not commenced.
- (3) The permit holder shall notify the ~~permitting authority~~ Natural Resources Review Officer of the date on which the work is to begin at least five days in advance of such date.
- (4) The permit shall be maintained and prominently displayed at the project site during the time that the activities authorized by the permit are being carried on. ~~The permitting authority shall set forth in writing findings and reasons for all conditions attached to any permit.~~

B. Mitigation plan requirements.

- (1) The ~~permitting authority~~ Conservation Board may require the applicant to prepare and implement a mitigation plan for major projects when the applicant has demonstrated that losses or significant impacts to a controlled wetland or wetland buffer are necessary and unavoidable. In determining whether and to

what degree to impose such requirement, the ~~permitting authority~~ Conservation Board shall consider the following:

(a) Whether there is no reasonable on-site alternative to the proposed activity, including but not limited to reduction in density, change in use, revision of road and layout, and related site planning considerations that would accomplish the applicant's objective; and

(b) Whether there is a reasonable alternative to the proposed activity on another site available to the applicant that is not a controlled area.

(2) ~~Adequate~~ Mitigation for intrusion into wetlands shall ~~be adequate to~~ ensure that there will be no overall net loss of wetlands in terms of ecological characteristics and function, geographic location and setting and size. To ensure no net loss, mitigation measures must provide for replacement wetland at a ratio of at least 1.0 to 1.0.

(3) The ~~permitting authority~~ Conservation Board may require additional information if the plan does not provide sufficient detail to evaluate its effectiveness.

(4) On-site mitigation shall be the preferred approach. Off-site mitigation shall be permitted only when on-site alternatives are not possible; in these instances, emphasis shall be placed on mitigation within the same watershed as the original wetland.

(5) The ~~permitting authority~~ Conservation Board shall monitor or cause to have monitored projects, in accordance with the conditions set forth in the permit, to determine whether the elements of the mitigation plan have been met. The ~~permitting authority~~ Conservation Board may retain qualified professionals, at the expense of the applicant, to discharge its obligation hereunder. The time period for all monitoring activities shall be a minimum of three years. The requirements for monitoring shall be specified in the permit and/or mitigation plan. They may include, but not necessarily be limited to:

(a) Field measurements to verify the size and location of the impacted wetland area and of the restored/replacement wetland area;

(b) The date of completion of the work or restoration/replacement;

(c) Field verification of the structural details, best management practices, mitigation measures, and vegetative, hydrologic and soils criteria specified in the permit and/or mitigation plan.

§ 93-14 General powers and duties.

In order to carry out the purposes and provisions of this chapter, the Conservation Board and the Town Board, ~~the Council, the Wetlands Inspector and the permitting authority, as the case may be,~~ shall have the following powers and duties, in addition to those specified above:

A. The Conservation Board ~~Town Board~~ shall have the power and duty to prepare forms designated in this chapter for the purpose of administration of this chapter and may amend the same from time to time. ~~The Council~~ Conservation Board shall hold regular meetings no less frequently than once per month and shall hold such additional meetings

as shall be necessary for the timely processing of applications The Conservation Board may contract for professional and technical assistance and advice, not exceeding any budget appropriation that may be made therefor by the Town Board, and may, in addition, require escrow deposits pursuant to Section 71-3 of the Town Code for such professional and technical assistance.

B. The Town Board shall have the power and duty to establish a schedule of fees hereunder and may amend the same from time to time by resolution. The Town Board shall also have the power to hear appeals pursuant to Section 93-10 above.

C. ~~The permitting authority may contract for professional and technical assistance and advice, not exceeding any budget appropriation that may be made therefor by the Town Board.~~

§ 93-15 Effect on other provisions. No permit granted pursuant to this chapter shall remove any person's obligation to comply in all respects with the applicable provisions of any other federal, state or local law or regulation, including but not limited to the acquisition of any other required permit(s) or approval(s).

§ 93-16 Bonding requirements.

The ~~permitting authority~~ Conservation Board, ~~with or without the recommendation of the Council,~~ may determine that, prior to commencement of work under any major project permit issued pursuant to this chapter and as a condition thereof, the applicant should post a bond, cash or otherwise, or letter of credit, conditioned upon the faithful compliance with the terms of such permit and for the indemnification of the Town of Philipstown for restoration costs which may result from failure to so comply. If the ~~permitting authority~~ Conservation Board so determines, it shall make such recommendation to the Town Board. The Town Board shall fix the conditions and amount of such bond or letter of credit within its sole discretion. The same shall remain in effect until the ~~permitting authority~~ Conservation Board certifies that the work has been completed in compliance with the terms of the permit and the bond is released by the Town Board or a substitute bond or letter of credit is provided that is acceptable to the Town Board.

§ 93-17 Suspension or revocation of permit; stop-work orders.

A. The Wetlands Inspector/ Natural Resources Review Officer shall make such on-site inspections during the conduct of the permitted activity as are necessary to determine whether the activity is being carried on in conformity with the provisions of the permit.

B. The Wetlands Inspector and/or the ~~permitting authority~~ Conservation Board may, on written notice to the applicant, suspend or revoke a permit issued pursuant to this chapter where it finds that the applicant has not complied with any or all terms or conditions 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 application.

C. The ~~permitting authority~~ Conservation Board and/or the Wetlands Inspector shall set forth in writing, in the file kept regarding a permit application, the findings and reasons for revoking or suspending a permit pursuant to this section.

D. The Wetlands Inspector is authorized to issue a stop-work order if, in his judgment, a regulated activity, as defined in § 93-5 of this chapter, is not being carried out in compliance with this chapter. He shall withdraw such stop-work order when he determines that there is compliance with this chapter. The Wetlands Inspector is authorized to order, in writing, the remedying of any condition found to be in violation of this chapter.

E. All powers granted herein to the Wetlands Inspector are also granted to the Natural Resources Review Officer.

§ 93-18 Penalties for offenses; additional remedies.

A. Civil sanctions; cease-and-desist order. In addition, the Town Board shall have the power, after a hearing or opportunity to be heard upon due notice and with the rights to specification of the charges and representation by counsel at such hearing, to direct the violator to cease his or her violation of this chapter and to restore the affected freshwater wetland to its condition prior to the violation, insofar as that is possible, within a reasonable time and under the supervision of the Wetlands Inspector and/or the ~~permitting authority~~ Conservation Board. Any such order of the Town Board shall be enforceable in an action brought by the Town in any court of competent jurisdiction.

B. Criminal sanctions.

(1) Criminal fine and imprisonment. Any person who violates any provision of this chapter or an order, permit, rule or regulation of the ~~permitting authority~~ Conservation Board regulating controlled areas pursuant to this chapter shall, in addition to any other civil sanctions, be guilty of a violation punishable by a fine of not more than \$1,000 or a term of imprisonment of not more than 15 days, or both.

(2) Restoration order. Instead of these punishments, any offender may be punishable by being ordered by the court to restore the affected controlled area to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Wetlands Inspector and/or the ~~permitting authority~~ Conservation Board.

(3) Continuing offense. For the purposes of criminal sanctions only, each offense shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

C. Equitable relief. The Town Board shall have the right to seek equitable relief to restrain any violation or threatened violation of any provisions of this chapter in any court of competent jurisdiction.

D. Judicial review. Any decision or order of the Town Board made on an appeal from the ~~permitting authority~~ Conservation Board or Natural Resources Review Officer pursuant to or within the scope of this chapter may be reviewed at the request of any person aggrieved by such decision or order, in accordance with Article 78 of the New York Civil

3. Amendments to Wetlands, Chapter 93, March, 2013

Practice Law and Rules, provided that such review is commenced within 30 days of the later of the filing of such Town Board decision or order in the office of the Town Clerk and the mailing of the same to the appellant and the applicant by certified mail, return receipt requested

Town of Philipstown

Local Law No. of the Year 2013

A **Local Law** to amend certain chapters of the Code of the Town of Philipstown in order to fully implement changes in Chapter 175, “Zoning,” and to implement the redesignation of the Town’s Conservation Advisory Council as a Conservation Board.

Be it enacted by the Town Board of the Town of Philipstown as Follows:

SECTION 1. TITLE

This local law shall be known as “A Law Amending the Town Code of the Town of Philipstown to implement the revised Zoning Law and designation of the Conservation Board.”

SECTION 2. AUTHORITY

This Local Law is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, §10 et seq., the Consolidated Laws of the State of New York, Chapter 62, Article 16 (the “Town Law”), and Section 239-y of the General Municipal Law.

SECTION 3. PURPOSE AND FINDINGS

This local law is intended to more fully implement the Philipstown Comprehensive Plan, adopted March 9, 2006, by bringing the Town Code into consistency with it and with the recently enacted revision of the Town’s Zoning Law, Chapter 175 of the Town Code (Local Law # 1 of the Year 2011). This local law is also intended to implement the recommendation of the Town’s Comprehensive Plan to redesignate the Conservation Advisory Council as a Conservation Board, with enhanced powers as provided in Section 239-y of the General Municipal Law.

The Town Board finds that changes to Chapters 10, 30, 38, 62, 71, and 85, along with the repeal of Chapter 147, are necessary in order both to give fuller effect to the Comprehensive Plan and to avoid conflicts between existing chapters of the Town Code and the provisions of new Zoning Law. Because the designation of the Conservation Board involves changes to many of the same chapters of the Town Code as are required for consistency with the Zoning Law, these changes are being made simultaneously in this local law in order to update all relevant sections of the Town Code.

SECTION 4. AMENDMENTS TO CHAPTER 10 *(ALL NEW MATERIAL)*

Chapter 10 of the Town Code of the Town of Philipstown, entitled "Conservation Advisory Council," is hereby repealed and a new Chapter 10, entitled "Conservation Board" is adopted, as follows:

§ 10-1 Establishment.

The Town Board of the Town of Philipstown, having adopted an Open Space Index, does hereby designate its Conservation Advisory Council as a Conservation Board pursuant to §239-y of the General Municipal Law.

§ 10-2 Membership; terms; officers.

A. The Board consists of seven members appointed by the Town Board of the Town of Philipstown for two year terms. Persons residing within the Town of Philipstown who are interested in the improvement and preservation of the environment and employees of non-profit environmental organizations in the Town of Philipstown are eligible for appointment as members of the Board. The Town Board shall appoint a Chair from among the members.

B. The current members of the Conservation Advisory Council, and their two-year terms as they exist on the effective date of this local law, shall be converted to terms on the Conservation Board. Vacancies on the Board occurring other than by the expiration of a term shall be filled for the unexpired term in the same manner as an original appointment.

C. The Chairman of the Board shall be appointed by the Town Board from among the members appointed to the Board.

D. The Board shall either elect a recording secretary from its members or employ a recording secretary to take minutes of meetings.

E. The Town Board shall have authority to remove any member of said Board so appointed for cause, after a public hearing, if requested.

§ 10-3 Meetings and reports.

The Board shall keep accurate records of its meetings and actions and shall file an annual report with the Town Board of the Town of Philipstown on or before the 31st day of December in each and every year. Once approved, the Town Board shall forward a copy of this report to the State Commissioner of Environmental Conservation.

§ 10-4 Powers and duties.

A. The powers and duties of the Board shall be to:

(1) Conduct research into the land area of the Town of Philipstown.

- (2) Seek to coordinate the activities of unofficial bodies organized for similar purposes and to cooperate with other official municipal bodies active in the area of community planning for the particular municipality.
- (3) Keep and update the Open Space Index, as defined in §239-y of the General Municipal Law, with the plan of obtaining information pertinent to proper use of such open lands, including lands owned by the state, any other municipality within the state or by the Town itself.
- (4) Keep and update an inventory and map of all open marshlands, swamps and all other wetlands in a like manner, and with the option of recommending to the Town Board a program for ecologically suitable use of all such areas.
- (5) Review and report to any other boards or committees on such applications or matters as they may refer to it.
- (6) Have the duties, powers and authority conferred on it by the following chapters of the Town Code: Chapter 62, Building Code, Chapter 78, Driveways, Chapter 93, Freshwater Wetlands and Watercourses, Chapter 112, Land Development, Chapter 159, Timber Harvesting and Forest Management, and Chapter 175, Zoning.
- (7) Hold regular meetings no less frequently than once per month and hold such additional meetings as shall be necessary for the timely processing of applications.
- (8) In addition to the foregoing, carry out any other duties, tasks or responsibilities consistent with the objectives of this chapter.

B. The Board may:

- (1) Prepare, print and distribute books, maps, charts, plans and pamphlets.
- (2) Request the Department of Environmental Conservation to render such assistance and advice as the Board deems necessary and as may be permitted by law.

§ 10-5 Compensation and expenses.

The members of the Board may receive compensation at the discretion of the Town Board. The members of the Board may also be reimbursed for reasonable and necessary expenses incurred in the performance of their duties within appropriations made therefor.

§ 10-6 Notice to state.

Within 30 days following the designation of the Board, written notification thereof shall be sent by the Town Board to the State Commissioner of Environmental Conservation.

§ 10-7 Interpretation.

This chapter shall be deemed an exercise of the powers of the Town of Philipstown to preserve and improve the quality of the natural and man-made environment on behalf of the present and future citizens of the town. This chapter is not intended and shall not be deemed to impair the powers of any other public corporation.

SECTION 5. AMENDMENT TO CHAPTER 30

Section 30-9 of Chapter 30 of the Town Code of the Town of Philipstown, entitled "Officers and Employees," is hereby amended to read as follows (added language is underlined):

§ 30-9 Residency requirement; state law superseded.

A. The Wetlands Inspector of the Town of Philipstown, who may also be designated by the Town Board as the "Natural Resources Review Officer," shall not be required to be a resident of the Town.

B. Pursuant to the power granted to the Town of Philipstown by the Municipal Home Rule Law, this article supersedes New York State Town Law § 23, Subdivision 1, and New York State Public Officers Law § 3, Subdivision 1, to the extent necessary to give this article full force and effect.

SECTION 6. AMENDMENTS TO CHAPTER 38

Chapter 38 of the Town Code of the Town of Philipstown, entitled "Planning Board," is hereby amended as follows:

1. §38-3, "General Duties and Responsibilities," is hereby amended by deleting subsection A(3)(d) and renumbering subsection A(3)(e) as A(3)(d).
2. A new §38-15 is hereby added after §38-14, to read as follows:

38-15 Appointment of Alternate Planning Board Members.

The Town Board may appoint alternate members of the Planning Board for terms specified by resolution for purposes of substituting as needed for a regular member in the event such member is unable to participate in a particular matter or matters because of a conflict of interest or because of an expected extended absence. The chairperson of the Planning Board may designate one of the duly appointed alternate members to substitute for a regular member where a regular member has a conflict of interest or expects to have an extended absence. Such designation of an alternate member shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made. To the extent that the preceding three sentences may be inconsistent with Section 271(15) of the Town Law, the Town Board hereby expresses its intention to supersede the Town Law in accordance with Municipal Home Rule Law, Article 2, §10, et seq.

SECTION 7. AMENDMENTS TO CHAPTER 62

Chapter 62 of the Town Code of the Town of Philipstown, entitled "Building Construction and Fire Prevention," is hereby amended as follows (added language is underlined):

1. §62-2, “Definitions,” is hereby amended by adding the following definitions in the appropriate places alphabetically within the Section:

CONSERVATION BOARD: The officially appointed Conservation Board, as described in Section 239-y of the General Municipal Law and Chapter 10 of the Town Code of the Town of Philipstown.

NATURAL RESOURCES REVIEW OFFICER: A Town employee or consultant appointed to review development applications for compliance with Town environmental regulations, including but not limited to wetlands, steep slopes, and conservation analysis requirements of zoning. This position may be held by an official with other duties, such as Wetlands Inspector, Town Planner, or Town Engineer.

OPEN SPACE INDEX: The officially adopted Open Space Index adopted by the Town Board, consisting of a conservation open areas inventory and conservation open areas map.

2. §62-4F is hereby amended to read as follows:

F. Issuance of building permits. An application for a building permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code, Energy Code and Town Code. The Code Enforcement Official shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code, Energy Code and Town Code. If the proposed work is to be conducted on a property listed on the Open Space Index, the Code Enforcement Official shall refer the application to the Natural Resources Review Officer as provided in §62-19, Referral to Natural Resources Review Officer, and follow the procedures therein prior to issuing a building permit.

3. A new §62-19, entitled “Referral to Natural Resources Review Officer,” is hereby added after §62-18, as follows:

§ 62-19 Referral to Natural Resources Review Officer

- A. Upon receipt of an application for a Building Permit, the Code Enforcement Official shall ascertain whether the property on which the proposed work will occur is listed on the Town’s Open Space Index (OSI).
- B. In the event that the property is listed on the OSI, the Code Enforcement Official shall immediately forward copies of the application to the Conservation Board and the Natural Resources Review Officer.
- C. The Natural Resources Review Officer, after consultation with the Chair of the Conservation Board, shall review such application and submit a written report to the Code Enforcement Official within seven days of receiving the application. In the event that the Natural Resources Review Officer does not submit his/her report within seven days, the Code Enforcement Official may issue the Building Permit without such report.

- D. The Natural Resources Review Officer's report shall evaluate the proposed work in terms of the Town's open space planning objectives, as expressed in the Philipstown Natural Resource and Open Space Protection Plan, to determine the effect of the proposed work on the Open Space Index. The report shall make recommendations as to the most appropriate use or development of the open area and may include preferable alternative use proposals consistent with open areas conservation. A copy of such report shall be filed with the Town Board and shall also be made available to the public in the office of the Natural Resources Review Officer.
- E. In the event that the issuance of the Building Permit does not follow the recommendations in the Natural Resources Review Officer's report, The Code Enforcement Official shall provide a written statement of the reasons for not following such recommendations, which shall be filed with the Town Board and shall also be made available to the public in the office of the Natural Resources Review Officer.

SECTION 8. AMENDMENTS TO CHAPTER 71

Section 71-3 of Chapter 71 of the Town Code is hereby amended as follows (added language is underlined and deleted language is struck out):

71-3. Professional review services; payments; application for special arrangements.

A. Escrow deposit ~~required~~ requirement.

- (1) At the time of submission of any application to any board, including but not limited to the Planning Board, Town Board, Conservation Board, and Zoning Board of Appeals, the applicant ~~shall~~ may be required to deposit funds with the Town.—The amount of the deposit shall be established by resolution of the Town Board in its Fee Schedule. For Planning Board reviews, the amount shall be \$5,000; for Zoning Board reviews, \$1,000. The funds shall be used by the Town to pay the Town's consultants for all reasonable costs of planning, engineering, legal, architectural, accounting and/or other consultants deemed appropriate by the applicable Board. Proof of this deposit shall be submitted with the application to the applicable Board. The Board Secretary will ensure proof of this escrow fund prior to placing the application on the Board's agenda. This fund shall be monitored by the Board's secretary as to applicable debits and credits. ~~Either The~~ The Board may increase or decrease the amount of escrow, if it is appropriate to the application.
- (2) Withdrawals shall be made from this fund to pay for the costs of professional review services. In the event that the escrow account is subsequently reduced by more than half, the applicant shall replenish the account to its original balance.
- (3) For applications pending at the time of adoption of this provision, applicants shall be required to deposit funds in escrow and pay for such expenses incurred after

the date of such adoption. Either Board may increase or decrease the amount of the escrow if it is appropriate to the application.

B. Return of funds. In the event the amount held in escrow by the Town is more than the amount of the actual billing or invoicing, the difference between such amount and the actual billing or invoicing shall be promptly refunded to the applicant after final action is taken on the application or if the application is withdrawn.

C. Failure to pay fees or replenish escrow account.

(1) No action or approval shall be taken or issued by the Town if any required escrow payment has not been made.

(2) In the event final approval has been granted and an outstanding balance for consulting fees remains unpaid, the Building Inspector shall not grant a building permit and/or certificate of occupancy until payment of approved outstanding consulting fees has been made in full.

D. Payment of funds required for complete application or action. An application for approval, or for any intermediate approval process, or for any action covered by this article ~~by the Planning Board or Zoning Board~~ shall not be deemed complete for any purpose until such time as the funds required by such Boards shall have been paid to the Town.

E. Application for special arrangements. Whenever any boards, departments or officers of the Town deem it necessary and advisable to have engineering or other technical or special advice in connection with the aforesaid matters for which specific provision is not otherwise made in law or by local law, ordinance or resolution, they or any of them shall apply to the Town Board.

SECTION 9. AMENDMENTS TO CHAPTER 85

Chapter 85 of the Town Code of the Town of Philipstown entitled "'Environmentally Sensitive Lands — Identification; criteria For Use, Protection and Management," is hereby amended to read as follows (added language is underlined and deleted language is struck out):

§ 85-1 Title.

This chapter shall be known as and may be cited as "Environmentally Sensitive Lands — Identification; criteria For Use, Protection and Management."

§ 85-2 Purpose.

The way in which currently undeveloped acreage in the Town of Philipstown is developed is of critical importance to the public interest. It is hereby declared to be the purpose of this chapter to identify, and to protect and provide for proper management of, environmentally sensitive lands in order to ensure the public health, safety and general

welfare for present and future residents of the Town of Philipstown. Pursuant to such purpose, this chapter also establishes criteria regarding the manner in which undeveloped acreage is developed, so that land may be appropriately used while protecting and providing for proper management of environmentally sensitive lands.

§ 85-3 Definitions; word usage.

A. Except where specifically defined herein, all words in this chapter shall carry their customary meanings. Words used in the present tense include the future ~~anti~~ and the plural includes the singular.

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

BUILDABLE AREA

An area on a building lot which is free of environmentally sensitive lands and which is located so as to be usable for buildings in compliance with the building setback requirements specified in Zoning Law, Chapter 175, and which is in addition to land used or suitable for use for an on-site sewage disposal system in accordance with regulations established by the Putnam County Department of Health.

BUILDING LOT

A "lot" as defined in Chapter 175.

LAND DISTURBANCE

Site preparation, consisting of the removal of vegetation and/or the excavation, filling, grading or removal of earth, soil or rock, or retaining structures, whether by labor, machine or explosive. The condition of land disturbance is deemed to continue until the area of disturbance is returned to its original state or to a state complying with a permit for such disturbance granted in accordance with the Code of the Town of Philipstown or complying with standards for completion of a land disturbance in accordance with such Code.

DWELLING

A "dwelling" as defined in Chapter 175.

ENVIRONMENTALLY SENSITIVE LANDS

Consist of and are defined as the following:

- (1) SPECIAL FLOOD HAZARD AREAS — As defined in Chapter 90.
- (2) STEEP TERRAIN — ~~Consisting of Class I, II and III slopes~~ As defined in Chapter ~~147~~ 175.
- (3) STEEP TERRAIN WETLAND/WATERCOURSE TRANSITION AREAS — As defined in Chapter ~~147~~ 175.
- (4) WATERCOURSES/WATERCOURSE BUFFER ZONES — As defined in Chapter 93.
- (5) WETLANDS/WETLANDS BUFFER ZONES — Consisting of:
 - (a) Lands that are regulated by the State of New York pursuant to the Freshwater Wetlands Act (Article 24 of the New York Environmental Conservation Law); and/or
 - (b) Controlled wetlands and wetlands buffer zones as defined in Chapter 93.

STREET/STREET LINE

As defined in Chapter 175.

§ 85-4 Criteria for residential building lots.

A. The following criteria are applicable to each lot created after the effective date of this chapter and intended for use or used for a dwelling:

(1) It shall contain a minimum buildable area of at least 6,000 contiguous square feet having a minimum dimension of 60 feet in any direction measured on a horizontal plane; and

(2) It shall have a usable motor-vehicle driveway, or location for such driveway, from the minimum buildable area to the boundary of the lot that is also the street line of the street constituting access to the lot, and no part of such driveway shall be on steep terrain consisting of ~~Class III slopes~~ with a topographic gradient of 35% or greater.

B. The criteria in § 85-4A above are also applicable whenever ~~the preparation of a~~ conventional subdivision plan is prepared ~~required~~ in order to establish a maximum dwelling unit or lot count for some other purpose, ~~such as in a conservation subdivision under provisions of § 278 of the Town Law.~~

§ 85-5 Criteria for land disturbance.

Land disturbance within special flood hazard areas is also subject to the criteria, standards and requirements of Chapter 90. Land disturbance within watercourses/watercourse buffer zones and wetlands/wetlands buffer zones is also subject to the criteria, standards and requirements of the State of New York Freshwater Wetlands Act and/or Chapter 93, as applicable. Land disturbance on steep terrain is also subject to criteria, standards and requirements of Chapter 147-175.

§ 85-6 Criteria for special flood hazard areas.

Criteria, standards and requirements for use, protection and management of special flood hazard areas are as set forth in Chapter 90.

§ 85-7 Criteria for steep terrain; steep terrain wetland/watercourse transition areas.

Criteria for use, protection and management of steep terrain ~~consisting of Class I, II and III slopes~~ and steep terrain wetland/watercourse transition areas are as set forth in Chapter 147. 175, Section 175-36B.

§ 85-8 Criteria for watercourses and wetlands.

Criteria, standards and requirements for use, protection and management of watercourses/watercourse buffer zones and wetlands/wetlands buffer zones are set forth in the State of New York Freshwater Wetlands Act (Article 24 of the New York Environmental Conservation Law) and/or as set forth in Chapter 93.

§ 85-9 (Reserved)

§ 85-10 Severability

If any clause, sentence, paragraph, section or part of this chapter 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, section or part thereof directly involved in the controversy in which such judgment shall have been rendered or as determined by such judgment.

SECTION 10. REPEAL OF CHAPTER 147

Chapter 147, entitled “Steep Terrain,” is hereby repealed.

SECTION 11. VALIDITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudicated invalid by a 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 Philipstown hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

SECTION 12. REPEAL

All ordinances, local laws and parts thereof that are inconsistent with this Local Law are hereby repealed.

SECTION 13. EFFECTIVE DATE

This Local Law shall take effect immediately after its adoption and filing in the office of the New York State Secretary of State.

Town of Philipstown

Local Law No. of the Year 2013

A Local Law to amend Chapter 159 of the Code of the Town of Philipstown, entitled “Timber Harvesting and Forest Management,” in order to implement the Town’s Natural Resource and Open Space Plan and its redesignation of the Town’s Conservation Advisory Council as a Conservation Board.

Be it enacted by the Town Board of the Town of Philipstown as Follows:

SECTION 1. TITLE

This local law shall be known as “A Law Amending Chapter 159 of the Town Code of the Town of Philipstown.”

SECTION 2. AUTHORITY

This Local Law is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, §10 et seq. and the Consolidated Laws of the State of New York, Chapter 62, Article 16 (the “Town Law”).

SECTION 3. PURPOSE

This local law is intended to implement the Philipstown Comprehensive Plan, adopted March 9, 2006, by amending Chapter 159 to empower the Natural Resources Review Officer and Conservation Board to play a more significant role in administering the Town’s local law regulating timber harvesting and forest management and to make Chapter 159 consistent with the newly adopted Zoning Law, Chapter 175.

SECTION 4. REVISION OF CHAPTER 159

Chapter 159 of the Town Code of the Town of Philipstown, entitled “Timber Harvesting and Forest Management,” is hereby amended to read as follows (added language is underlined and deleted language is struck out):

§ 159-1 Title.

This chapter shall be known and cited as the "Timber Harvesting and Forest Management Law of the Town of Philipstown."

§ 159-2 Findings.

A. While it is known that trees and forests have commercial value and may be a source of income to the landowner, it has also been established that trees and forests stabilize the soil, especially on steep slopes; control water pollution by preventing soil erosion and flooding; control air pollution through the absorption of carbon dioxide and the provision of oxygen; yield advantageous microclimatic effects including cooling shade and fire breaks; provide recreation; offer a natural barrier to noise; provide a natural habitat for wildlife; and yield mulch, nuts, fruits and maple syrup.

B. Timber harvesting is not incompatible with maintenance of a forested landscape. Good forest management helps to maintain forests and is often necessary for the health of a forest.

C. However, indiscriminate, unregulated cutting, clearing or other removal of trees and forests may deprive the landowner, individual and the community of these benefits; have adverse impact on future growth of trees and forests; adversely affect soils and water resources and supplies and result in soil erosion and sedimentation; create a detrimental effect on neighboring property; and disrupt ecological systems in which trees and forests are an integral part.

§ 159-3 Policy and purpose.

It is hereby declared to be the policy of the Town of Philipstown and the purpose of this Timber Harvesting and Forest Management Law to conserve, manage, protect and make the best use of trees and forests which are an integral part of the natural resources and environment of the Town as well as its economy, by regulating the cutting and harvesting of trees and using professional management practices therefor and by improving and coordinating plans for tree cutting, harvesting, forest restoration and forest management, in order to enhance the health, safety and welfare of its people and their overall economic well-being.

§ 159-4 Definitions.

Whenever used in this chapter, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of this chapter, the following terms shall have the meanings indicated:

APPLICANT

The individual, corporation, copartnership or other entity which files an application under § 159-7 of this chapter.

AREA OF SPECIAL FLOOD HAZARD

This term shall have the same meaning as defined in Chapter 90 of the Code of the Town of Philipstown.

BASAL AREA PER ACRE

The total cross-sectional area of trees on one acre measured at diameter breast height (DBH) expressed in square feet.

BENCH

A relatively flat interruption of an otherwise relatively steep slope or hillside. Benches are typically longer than they are wide and follow the contour of the slope.

BOARD FOOT

A measure of lumber one foot by one foot by one inch as measured by the International 1/4 Log Rule. "MBF" equals 1,000 board feet.

BUILDING INSPECTOR

The Building Inspector for the Town of Philipstown.

CLEAR CUTTING

A method of cutting, removal or harvesting that removes 75% or more of the trees of six inches in diameter or greater at breast height (DBH) in either a stand of trees in an area of more than two acres, or in any area of more than two acres.

CODE ENFORCEMENT OFFICER

The Enforcement Officer appointed by the Philipstown Town Board.

CONSERVATION BOARD (CB) ~~ADVISORY COUNCIL (CAC)~~

The Town of Philipstown Conservation Board. ~~Advisory Council.~~

CONSULTANT FORESTER

A professional forester to assist the Wetlands Inspector or Natural Resources Review Officer in both the permit process and enforcement of the provisions of this chapter. (cf "professional forester" defined below.)

CORD

Four feet by four feet by eight feet or equivalent.

CUBIC FOOT

A unit of timber volume measuring 12 inches by 12 inches by 12 inches.

DIAMETER BREAST HEIGHT (DBH)

The diameter of a tree 4 1/2 feet in height from ground level at the base of a tree.

EXEMPT OPERATIONS

Tree cutting and timber harvesting operations specifically exempted by this chapter from the need to obtain a timber harvesting permit.

FOREST MANAGEMENT

A long-range plan for the forest cycle of regeneration, tending and harvesting to yield a sustainable forest.

HAUL OR TRUCK ROAD

Construction road utilized for moving cut trees from a point where they are loaded on a truck to an exit from the site.

INTERNATIONAL 1/4 LOG RULE

A professionally recognized and accepted methodology for estimating board foot volume in standing trees.

LANDING

Open or cleared areas used for loading logs onto trucks or any general purpose such as storing logs or servicing equipment.

LOT

The same meaning as defined in Chapter 175, the Zoning Law of the Town of Philipstown.

MAJOR TIMBER HARVESTING OPERATION

The cutting, removal or harvesting of timber or trees from an area of 10 acres or more in size on any lot, or from a contiguous area of 10 acres or more in size on adjacent lots.

MINOR TIMBER HARVESTING OPERATION

The cutting, removal or harvesting of timber or trees from an area of up to 10 acres in size on any lot, or from a contiguous area of up to 10 acres in size on adjacent lots.

NATURAL RESOURCES REVIEW OFFICER: A Town employee or consultant appointed to review development applications for compliance with Town environmental regulations, including but not limited to wetlands, steep slopes, and conservation analysis requirements of zoning. This position may be held by an official with other duties, such as Wetlands Inspector, Town Planner, or Town Engineer.

PROFESSIONAL FORESTER

One who has a minimum of either a bachelor of science degree in forestry or other closely related environmental field from a four-year college accredited by the Society of American Foresters, or an associates degree in such field, with two years' full-time experience in work closely associated with forestry management.

RIDGE

The topmost elevation of a steep slope which may either continue relatively flat on the same contour or drop off to a lower elevation on the back side.

SILT FENCE

Filter fabric attached to stakes one inch by two inches by two and one-half feet to collect siltation.

SKID TRAIL OR ROAD

Trail or rough road used to move a tree from the place where it was cut to a pile or landing where it is loaded onto a truck.

SLASH

Those portions of trees remaining on the ground following a timber harvest, including limbs, branches and other unmarketable portions of the tree.

STAND

A contiguous group of trees sufficiently uniform in species composition, age class and condition to be a homogenous and distinguishable unit.

STEEP SLOPES

Slopes with an angle of 25% or more.

STREAM

The same meaning as "watercourse."

SUGARBUSH

A stand consisting primarily of sugar maple (*acer saccharum*) trees annually tapped for the commercial production of maple syrup, maple sugar, maple candy or other typical maple products.

TIMBER HARVESTING

The cutting, removal or harvesting of any timber or trees from any property or lot in the Town of Philipstown, and includes the term "timber harvesting operation."

TOWN BOARD

The Town of Philipstown Town Board.

WATERBARS

Small humps or diversions for the purpose of erosion and sediment control which are built up across roads and/or landings which catch and then divert runoff into adjacent vegetated areas in a nonerosive manner.

WATERCOURSE

Includes the term "stream" and shall also have the same meaning as defined in Chapter 93 of the Code of the Town of Philipstown.

WETLANDS

The same meaning as defined in Chapter 93 of the Code of the Town of Philipstown.

WETLANDS INSPECTOR

The same meaning as defined in Chapter 93 of the Code of the Town of Philipstown. Also known as Natural Resources Review Officer.

§ 159-5 Timber harvesting; permit required.

A. All trees or timber cut, removed or harvested from any property or lot in the Town of Philipstown shall only be cut, removed or harvested as provided by this chapter, except for exempt operations as set forth in this chapter.

B. A timber harvesting permit shall be obtained from the Natural Resources Review Officer ~~Wetlands Inspector~~ to cut, remove or harvest timber or trees from any property or lot in the Town of Philipstown, except that such permit shall not be required for exempt operations as set forth in this chapter. Prior to granting such timber harvesting permit, approval of the Conservation Board shall be required for major timber harvesting operations.

§ 159-6 Exempt operations.

A timber harvesting permit is not required for the following operations:

A. The cutting, removal or harvesting of trees or timber from an area of 40,000 square feet ~~two acres~~ or less in size on any lot or from a contiguous area of two acres or less in size on adjacent lots.

B. The harvesting of evergreens specifically planted for Christmas trees or the thinning of sugarbush.

C. The cutting or removal of timber or trees reasonably necessary in connection with the bona fide construction or alteration of a building, other structure, outside storage area or off-street parking or loading area for which any required building permit has been issued and an application for certificate of occupancy has been approved.

D. A bona fide landscaping operation, provided that such operation also conforms to the requirements of Town Code § 175-33I (5). ~~42A(5)~~

E. The cutting or removal of timber or trees in connection with a bona fide operation for which a special use permit has been issued pursuant to Town Code Chapter 175, Article IX XI.

F. The cutting or removal of timber or trees in connection with the construction of streets, drainage and other improvements and the changing of contours in an approved subdivision plat or in connection with an approved site plan in accordance with

construction plans and contour plans approved by the Philipstown Planning Board pursuant to Town Code Chapter 112 or Chapter 175.

G. The cutting or removal of timber or trees in connection with and within the area of a soil extraction operation authorized under Town Code Chapter 175, Sections 175-17 through 175-17.4. ~~Article X~~

H. The cutting, removal or harvesting on any property or lot of trees or timber in any twelve-month period of either 10,000 or less board feet of timber as measured by the International 1/4 Log Rule or 20 full cords or less, whichever is greater.

I. The normal maintenance of trees or property through the pruning or topping of trees or timber, or the cutting, removal or harvesting of trees or timber which are dead or diseased or are a hazard to public safety or health or property.

J. The cutting or removal of timber or trees in the case of a bona fide emergency to protect or preserve health, safety or welfare of persons or property as determined by the Natural Resources Review Officer ~~Wetlands Inspector~~ or other competent public safety or public health authority.

K. Any forestry use or timber harvesting operation for which a building permit has been issued or an application for certificate of occupancy has been approved prior to the adoption of this chapter.

§ 159-7 Application for major or minor timber harvesting permit

A. An applicant seeking a timber harvesting permit shall file an application for such permit with the Natural Resources Review Officer ~~Wetlands Inspector~~, together with the required fee. Where required, an application for a wetlands permit shall be included. The Town Board may adopt or amend forms and/or a fee schedule for use in connection with this chapter by resolution from time to time.

B. The application shall be accompanied by the number of copies required by the permitting authority and shall include:

(1) A written report of the proposed operation prepared by the applicant or his/her designated representative, which shall contain the following information:

(a) The purpose of the operation.

(b) A description of the proposed activity to be performed.

(c) The dates between which such activity will occur.

(d) The names, addresses and phone numbers of the owners of all property on which the timber harvesting operations are to be conducted and satisfactory proof of ownership.

(e) The name, address and phone number of the persons, company or corporation (contractor) who will be performing the cutting and harvesting operation.

(f) In the case of a major timber harvesting operation, the name, address and phone number of the professional forester, hired by the applicant, who is to be consulted in connection with the operation.

(g) The names and addresses of all adjacent property owners.

(h) The total land area involved in the operation.

(i) An estimate of the range, in inches of diameter, of the trees to be cut, measured 4 1/2 feet above the ground, and the range in diameter of the stand remaining.

(j) The average number of trees per acre to be cut.

(k) An estimate of the total volume of timber to be removed from the cutting area.

- (l) A detailed program for restoration (reclamation) of the property and the access driveways, roads and/or trails, which plan shall address the items set forth in § 159-10E.
- (m) The contract price or estimate for the job.
- (n) A certificate of insurance.
- (o) Said report shall be signed by the applicant, the contractor, if any, the property owner and, in the case of a major timber harvesting operation, by a professional forester hired by the applicant.
- (2) Any map, plat, plan or sketch, and attachments, that shows the following required information:
 - (a) A key map of the location and boundaries of the lot or lots where the timber harvesting or forest management operation is proposed and all lots and streets within 200 feet.
 - (b) All public and privately owned streets and roads within 200 feet of the area of the proposed timber harvesting or forest management operation.
 - (c) All structures within 200 feet of the area of operation.
 - (d) The proposed location and bounds of the areas within the lot or lots where cutting and harvesting will occur.
 - (e) All existing or intermittent streams, bodies of water, watercourses, wetlands and areas of special flood hazard located in or within 200 feet of the area of the operation and slopes of 25% or more.
 - (f) Access roads into the lot and proposed roads and skid trails into and within the area of operation.
 - (g) The location and size of proposed product loading areas and storage piles.
 - (h) The location of areas within the lot or lots where previous harvesting activity has occurred within the last 20 years.
- (3) Statement of trees to be cut:
 - (a) A statement that each tree to be cut, removed or harvested shall be designated with paint or other descriptive means at two points so as to be readily visible by the contractor or logger. One point shall be low enough on the tree so as to be visible on the stump after the tree is removed.
 - (b) In the case of a major timber harvesting operation, a statement that such designation has been made by the professional forester hired by the applicant.

§ 159-8 Application review procedure.

A. Minor timber harvesting operation.

(1) Within 10 business days after an application for a minor timber harvesting operation is deemed complete, the Natural Resources Review Officer ~~Wetlands Inspector~~ shall approve the permit, deny the permit or approve the permit with modifications and/or additional conditions. The Natural Resources Review Officer ~~Wetlands Inspector~~ may consult with the town's Consultant Forester and/or the Conservation Board if he/she deems it necessary. If a permit is denied, the grounds for denial shall be set forth. Upon grant or denial of a permit, the Natural Resources Review Officer ~~Wetlands Inspector~~ shall notify the Conservation Board ~~Advisory Council~~ of the action. In the event of a denial of permit for a minor timber harvesting operation, an applicant may appeal as provided in Section 93-10 of the Wetlands Law.

(2) The ten-business-day time period in which the Natural Resources Review Officer ~~Wetlands Inspector~~ must take action may be extended by mutual consent of the applicant and the Natural Resources Review Officer ~~Wetlands Inspector~~.

B. Major timber harvesting operation.

(1) Within three business days after an application for a major timber harvesting operation is deemed complete, the Natural Resources Review Officer ~~Wetlands Inspector~~ shall refer same to the Philipstown Conservation Planning Board, which shall review the application according to its procedures and time line for major project wetlands permit plan approval under Section 93-9 of the Wetlands Law. ~~a site plan application.~~

(2) The Conservation Board shall issue a decision setting forth findings whether the standards and guidelines set forth in § 159-10 have been met and recommending ~~to that~~ the Natural Resources Review Officer ~~Wetlands Inspector~~ ~~to approve~~ issue the permit, deny the permit, or approve the permit with modifications and/or additional conditions.

(3) Upon receipt of said decision from the Planning Conservation Board, the Natural Resources Review Officer ~~Wetlands Inspector~~ shall promptly take action on the application for permit in accordance with said decision.

§ 159-9 Duration of permit.

A. Permits issued pursuant to this chapter shall expire 12 months from the date of issuance.

B. A minor timber harvesting permit may be extended by the Natural Resources Review Officer ~~Wetlands Inspector~~ for one additional period of 12 months. In making a determination on extension, the Natural Resources Review Officer ~~Wetlands Inspector~~ may consult with the Conservation Board and shall make a complete review of all plans and examine ~~make an examination of~~ all work accomplished.

C. For major timber harvesting permits, the Planning Conservation Board may extend the permit for additional periods of one year when it determines the circumstances of the application so warrant, provided that the Conservation Board is given a 30-day period in which to comment on the proposed extension.

D. The Town Board may establish a fee for any such application for extension.

§ 159-10 Standards and guidelines.

All timber cutting, removal or harvesting operations requiring a timber harvesting permit shall be designed and conducted in accordance with the policy and purpose of this chapter and shall adhere to the following standards and guidelines:

A. General.

(1) Clear cutting is not permitted.

(2) No tree cutting, harvesting or removal, other than exempt operations, shall take place between the hours of 6:00 p.m. and 7:00 a.m., or on Sundays or legal holidays.

(3) All trees shall be felled so that no trees or debris shall fall on any adjoining property or on any roads.

(4) All stumps shall be kept as low as possible and in general, when measured on the uphill side, no higher than the diameter of the tree trunk.

(5) Landing or loading areas should be located, if possible, in the same vicinity as the operations. They shall be smoothed to remove all ruts and debris at the conclusion of the operation.

(6) There shall be no tree cutting, harvesting or removal on slopes over 25%, unless such property has been granted a real property tax exemption pursuant to Real Property Tax Law § 480 or 480-a.

(7) The Natural Resources Review Officer ~~Wetlands Inspector~~ or Code Enforcement Officer shall have the authority to issue a stop-work order for all or part of the cutting and harvesting activity if in his opinion conditions created by a spring thaw, adverse weather conditions or any other cause may make damage to public roads likely or may result in soil erosion or other damage beyond or outside of the boundaries of the area of the timber harvesting operation.

B. Stream crossings.

(1) Stream crossing shall be kept to a minimum and shall be designed and planned so that streams shall be crossed at the most direct route at a ninety-degree angle to the flow of the stream, and all crossings at heads of pools are to be avoided.

(2) Silt fences, ~~hay~~ straw bales, or the equivalent shall be installed and/or maintained across the roads at stream crossings when the road is not in use.

(3) Stream crossing sites shall be at locations with low, stable banks, a firm stream bottom and gentle slopes along the approaches. All temporary culverts, bridges or runways, etc., must be removed after use.

(4) There shall be no skidding in any stream channel, and all fallen trees, bushes and debris shall be promptly removed from any stream channel.

(5) In order to keep stream banks stable and to minimize stream temperature variations, no trees shall be cut within 50 feet of stream banks unless a permit has been issued pursuant to Town Code Chapter 93.

(6) There shall be no cleaning, draining of oils, gasoline, hydraulic fluids, antifreeze, etc., or any other maintenance of any machinery, vehicles, chainsaws, etc., and no refueling of any equipment with said or similar fluids within 100 feet of any water body or dry stream channel.

(7) Running water from skid trails and haul roads shall not be diverted directly into a stream or other water body but should be diverted into a well-vegetated area.

C. Road and skid trails.

(1) A driveway permit shall be obtained from the appropriate town, county or state agency for any new access road to the timber harvesting operation.

(2) Whenever practical, haul roads and skid trails shall be located on benches and ridges and off of steep slopes to minimize erosion. They must be kept out of wet and poorly drained areas and off the tops and toes of banks and slopes. Roads should be designed so that their construction causes a minimum amount of soil removal and shall not exceed 14 feet in width. Any haul road or skid trail constructed within 100 feet of a town-controlled wetland or within 50 feet of mean high water of a watercourse, as defined in § 93-4 of the Philipstown Freshwater Wetlands and Watercourse Law, shall require a wetlands and watercourse permit.

(3) Whenever practical, haul roads and skid trails shall be kept back from streams, ponds, wetlands and other water bodies at least 100 feet on slopes of 25% or less and at least 150 feet from steeper slopes.

(4) Running water shall be diverted off haul roads and skid trails by waterbars placed at the following intervals:

Road Grade	Spacing (in feet)
2% to 5%	300 to 500
6% to 10%	200 to 300
11% to 15%	100 to 200
Over 15%	100

(5) No haul road or skid trail shall exceed a slope of 25% for a distance of more than 100 feet.

D. Landings and buffer zones.

(1) Whenever practical, landings shall be located so as to avoid erosion by keeping such landings out of low spots and poorly drained places. Whenever possible, landings shall be located on gently sloping ground that provides good drainage. Whenever possible, landings shall not be located in areas of special flood hazard and shall be set back at least 200 feet from streams, ponds, lakes, swampy areas and marshes.

(2) Whenever practical, landings shall be located at least 200 feet from all roads and adjacent property. Access roads to such landing areas should be designed to reduce visibility from the road whenever reasonably possible.

(3) The nature and dimension of buffers between the harvesting area and any public or private road or any adjacent property, if applicable, must be addressed in the applicant's forest management plan.

E. Reclamation. Upon completion or termination of the cutting and harvesting activity, or upon revocation of the timber harvesting permit, reclamation of the site shall be performed by the applicant as follows:

(1) All stream crossings, stream culverts, bridges and runways shall be treated according to the requirements of the Department of Environmental Conservation (DEC) and/or the Wetlands and Watercourse Law.

(2) Haul roads and skid trails shall be smoothed and sloped. Said haul roads and skid trails shall also be seeded with grass.

(3) Landings and loading areas shall be smoothed to remove all ruts and debris and shall be seeded with perennial grass.

(4) All trash and debris within the area covered by the permit, such as oil cans, food containers, cables, etc., shall be removed during and after the operation.

(5) All structures erected during the operation shall be removed upon completion, unless a certificate of occupancy is obtained for same.

(6) All hung-up or partly fallen trees shall be pulled down during the operation and at the termination of the operation. As slash constitutes a serious fire hazard, all slash must be chopped into a layer not more than four feet thick, in contact with the ground or piled and burned under controlled conditions. Quick decay or removal of slash is key to fire prevention and forest regeneration.

(7) On land that is not intended for immediate building or other development, native and/or noninvasive seed trees shall be left or planted for restoration of the forest, and small trees shall be retained on steep slopes.

(8) All reclamation efforts shall be subject to inspection and review by the Natural Resources Review Officer ~~Wetlands Inspector~~ and/or Code Enforcement Officer to assure compliance with this chapter.

(9) Upon completion of the operation, a statement shall be filed with the Natural Resources Review Officer ~~Wetlands Inspector~~ by the contractor, forester and property owner certifying that the operation was performed in accordance with the application and all the standards set forth herein.

F. Additional standards.

(1) The Natural Resources Review Officer ~~Wetlands Inspector~~, or the Planning Conservation Board, in the case of a major timber harvesting operation, may impose such other additional standards as may be warranted by specific circumstances.

(2) In the event that any other or stricter standards, measures or permits are required by any federal, state, county or Town governmental authority, agency or department having jurisdiction thereof (for example, the Freshwater Wetlands and Watercourse Law of the Town of Philipstown,

Editor's Note: See Ch. 93, Freshwater Wetlands and Watercourses.

New York Water Resources Law and New York fire laws) the same shall be complied with by the persons conducting such operation.

(3) The Natural Resources Review Officer ~~Wetlands Inspector~~, Planning Code Enforcement Officer or the Philipstown Superintendent of Highways shall have the right to restrict the weight of logging trucks and equipment in accordance with the capabilities or conditions of Town and private roads, bridges and culverts. The Natural Resources Review Officer ~~Wetlands Inspector~~, Planning Code Enforcement Officer or Highway Superintendent shall have the right to require the repair of roads, bridges and culverts damaged as a result of any operation.

(4) Applications for timber harvesting permits are subject to the State Environmental Quality Review Act.

§ 159-11 Performance bond and certificate of completion.

As a part of the permit procedure and to ensure compliance by the applicant with the conditions of the permit and all of the standards set forth in this chapter, a bond shall be posted with the Town of Philipstown in an amount to be determined by the Natural Resources Review Officer ~~Wetlands Inspector~~ or, in the case of major timber harvesting operations, by the Planning Conservation Board. Such amount shall be no less than 10% of the contract price. Said Bond shall remain in full force and effect throughout the operation and will be released once a certificate of completion has been issued by the Natural Resources Review Officer ~~Wetlands Inspector~~ or Code Enforcement Officer following a site inspection indicating that all of the provisions of this chapter and any additional permit conditions have been complied with. The bonding or surety company, or the security posted by the owner, is subject to the approval of the Town Board, as is the form, sufficiency and manner of execution of the bond. Such bonds may be but are not limited to surety bonds, cash bonds or irrevocable letters of credit.

§ 159-12 Enforcement.

A. Inspections; investigation of complaints.

(1) This chapter shall be enforced by the Natural Resources Review Officer ~~Wetlands Inspector~~ and/or Code Enforcement Officer, who shall inspect the progress of the work as needed. The Natural Resources Review Officer ~~Wetlands Inspector~~, Code Enforcement Officer and/or the town's consultant forester shall be authorized and have the right at any time in the performance of their duties to enter upon any property proposed to be harvested, or in the process of being harvested or reclaimed, and to make such inspections as are necessary to determine satisfactory compliance with the provisions of this chapter. Owners, agents or contractors on a property being harvested shall be responsible for allowing access to all parts of the premises within their control to the Natural Resources Review Officer ~~Wetlands Inspector~~, the Code Enforcement Officer and/or the town's consultant forester.

(2) It shall be the duty of the Natural Resources Review Officer ~~Wetlands Inspector~~ and/or Code Enforcement Officer to investigate all complaints made under this chapter and to take appropriate legal action on all violations of this chapter.

B. Stop-work orders; correction of violations.

(1) Upon determination by the Natural Resources Review Officer ~~Wetlands Inspector~~ and/or Code Enforcement Officer that there has been a violation of any provision of this chapter or violation of the conditions under which a permit has been granted, he/she shall serve the property owner and/or contractor with a written stop-work order to cease and desist immediately and directing that the violations therein specified be corrected within five working days after service of the order. The order shall also contain an outline of remedial action which, if taken, will effect compliance.

(2) Where violations cannot reasonably be corrected within five days and where an alleged violator has demonstrated good-faith efforts to comply, said time period may be extended by the Natural Resources Review Officer ~~Wetlands Inspector~~ and/or Code Enforcement Officer for up to a maximum of 30 days.

C. Failure to comply; revocation of permit.

(1) If, after the expiration of such period, said violations are not corrected, the Natural Resources Review Officer ~~Wetlands Inspector~~ and/or Code Enforcement Officer shall serve a written notice requiring the alleged violator to appear before the Town Board of the Town of Philipstown, at a time to be specified in such notice, for a hearing to determine whether or not such permit should be revoked.

(2) The Philipstown Town Board may, after such hearing, issue such order as it deems appropriate, including revoking such permit if it finds that the violations described in the stop-work order exist and have not been corrected, and may direct termination of timber harvesting activities and reclamation of the site. In addition, the Town Board may use the proceeds of the performance bond to achieve compliance with 159-10, Standards and guidelines, including reclamation of the site.

§ 159-13 Penalties for offenses.

Any violation of this chapter is hereby declared to be a violation, punishable by a fine not exceeding \$1,000 or by imprisonment for a period not to exceed 15 days, or by both such fine and imprisonment. Each day's continued violation shall constitute a separate additional violation.

§ 159-14 Severability.

If any part of or provision of this chapter or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision of this chapter 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 chapter or the application thereof to other persons or circumstances.

SECTION 5. VALIDITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudicated invalid by a 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 Philipstown 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. REPEAL

All ordinances, local laws and parts thereof that are inconsistent with this Local Law are hereby repealed.

SECTION 7. EFFECTIVE DATE

This Local Law shall take effect immediately after its adoption and filing in the office of the New York State Secretary of State.

Town of Philipstown

Local Law No. of the Year 2013

A Local Law to amend Chapter 112 of the Code of the Town of Philipstown, entitled “Land Development,” in order to require maintenance agreements for Open Development Area subdivisions accessed by shared rights-of-way.

Be it enacted by the Town Board of the Town of Philipstown as Follows:

SECTION 1. TITLE

This local law shall be known as “A Law Amending Chapter 112 of the Town Code of the Town of Philipstown with respect to Open Development Area subdivisions.”

SECTION 2. AUTHORITY

This Local Law is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, §10 et seq. and the Consolidated Laws of the State of New York, Chapter 62, Article 16 (the “Town Law”).

SECTION 3. PURPOSE

This local law is intended to require maintenance agreements for Open Development Area subdivisions accessed by shared rights-of-way in order to solve a long-standing problem in the Town and provide a secure legal basis for a requirement that the Planning Board has attempted to institute in its discretion, as a matter of good practice.

SECTION 4. REVISION OF CHAPTER 112

Section 112-64 of Chapter 112 of the Town Code of the Town of Philipstown, entitled “Land Development,” is hereby amended by inserting a new subsection J after subsection I (renumbering existing subsection J as subsection K), as follows:

- J. Requirement of Recorded Right-of-Way Maintenance Agreement
- (1) Prior to granting final approval of a new open development area subdivision pursuant to these regulations, the Planning Board shall require the applicant to submit a right-of-way maintenance agreement that complies with the criteria in subsection (4) below.
 - (2) Final approval of the subdivision shall be conditioned upon recording the approved maintenance agreement in the County Clerk’s office, and the Planning Board chair shall not sign the plat until the applicant has shown proof of such recording and provided a suitable notation of such recording on the plat.

- (3) An applicant may substitute a recorded property owners association agreement for a recorded right-of-way maintenance agreement, provided that the Town Attorney finds that the property owners association documents provide assurances of maintenance of the right-of-way that meet the requirements in subsection (4). The property owners association agreement shall be recorded in the County Clerk's office prior to or simultaneously with final approval of the plat.
- (4) The right-of-way maintenance agreement or property owners' association (POA) agreement shall meet the following minimum requirements:
 - a. The signatories to the maintenance agreement or the POA agreement shall have adequate powers to charge the subdivision lot owners for their proportionate share of the maintenance costs of the private road.
 - b. The maintenance agreement or the POA agreement shall ensure that the road will be maintained and kept open to permit emergency vehicle access.
 - c. The maintenance agreement or POA agreement shall bind all lot owners in the subdivision and their successors in title.

SECTION 5. VALIDITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudicated invalid by a 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 Philipstown 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. REPEAL

All ordinances, local laws and parts thereof that are inconsistent with this Local Law are hereby repealed.

SECTION 7. EFFECTIVE DATE

This Local Law shall take effect immediately after its adoption and filing in the office of the New York State Secretary of State.

Town of Philipstown

Local Law No. of the Year 2013

A **Local Law** to amend Chapter 175, “Zoning,” of the Code of the Town of Philipstown in order to make clarifications and technical corrections.

Be it enacted by the Town Board of the Town of Philipstown as Follows:

SECTION 1. TITLE

This local law shall be known as “A Law Amending the Town Code of the Town of Philipstown to make clarifications and technical corrections to Chapter 175.”

SECTION 2. AUTHORITY

This Local Law is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, §10 et seq. and the Consolidated Laws of the State of New York, Chapter 62, Article 16 (the “Town Law”).

SECTION 3. PURPOSE AND FINDINGS

This local law is intended to make technical corrections, resolve ambiguities, and refine the provisions of the Town’s Zoning Law, Chapter 175 of the Town Code (Local Law # 1 of the Year 2011).

SECTION 4. AMENDMENTS TO CHAPTER 175

1. Section 175-10B of the Town Code of the Town of Philipstown, is hereby amended by adding the words “Minor Project” at the beginning of the first footnote on the Use Table so that the footnote reads as follows:

() Minor Project Site Plan review required when footprint area exceeds 3,000 square feet. Additions to dwellings where the total cumulative footprint will be greater than 3000 square feet shall require minor project site plan review if the footprint of the addition exceeds 1000 square feet.*

2. Section 175-10B of the Town Code of the Town of Philipstown, is hereby amended by deleting the word “subject” from the second footnote on the use table so that the footnote reads as follows:

(#) Permitted by right if operated in conjunction with the primary institutional use as defined in §175-74; otherwise a special permit is required. See §175-10J.

3. Section 175-11 of the Town Code of the Town of Philipstown, is hereby amended by adding a new subsection F after subsection E, to read as follows:

"F. Lot Size Calculation for Land in More than One Zoning District

For purposes of calculating and determining compliance with minimum lot size requirements on a lot or parcel that lies in more than one zoning district, the required minimum lot size shall be the minimum lot size for the zoning district which encompasses the largest portion of the lot. The remaining land on the lot, lying in one or more other districts, shall be counted toward the minimum lot size requirement as determined above. Land on a contiguous parcel in the same ownership may also be counted toward minimum lot size if so desired by the landowner."

4. The first sentence of Section 175-62E(4) of the Town Code of the Town of Philipstown, is hereby amended to read as follows:

"Upon receipt of application materials it deems to be complete, the Planning Board shall also refer to the Town's Conservation Board any application for a Major Project Special Permit or any application for a Minor Project Special Permit located within the OSO, WSO, SPO, or FPO Districts, or within a Ridgeline and Hillside Protection Area, together with any SEQR documents submitted with the application."

5. Section 175-65A(2) of the Town Code of the Town of Philipstown, is hereby amended to read as follows:

"2. The procedures for review of Site Plans for Major and Minor Projects (as defined in Article XII) are described in §§175-66 and 175-67. Agricultural structures with a footprint of over 15,000 square feet shall require Minor Project site plan approval. Agricultural structures with a footprint of 15,000 square feet or less are exempt from site plan approval requirements."

6. The fourth sentence of Section 175-67D of the Town Code of the Town of Philipstown, is hereby amended to read as follows:

"At the discretion of the Planning Board, a minor project site plan may be referred to the Conservation Board if it is located within the OSO, WSO, SPO, or FPO Districts, or within a Ridgeline and Hillside Protection Area."

7. Section 175-74B of the Town Code of the Town of Philipstown, is hereby amended by changing the definition of Lot/Parcel to read as follows:

"Lot/Parcel: An area of land with definite boundaries, all parts of which are owned by the same person(s) or entities, the boundaries of which were established by the filing of an approved subdivision plat or by the recording of a deed prior to the adoption of Subdivision Regulations of the Town of Philipstown on June 17, 1968. A lot may also exist if it was established by the recording of a deed after the adoption of Subdivision Regulations of the Town of Philipstown if the Subdivision Regulations then in effect did not require subdivision approval for the creation of the lot or parcel. The property owner shall have the burden of proving that the Subdivision Regulations in effect at the time the lot was created did not require subdivision approval for such lot."

8. Section 175-34F of the Town Code of the Town of Philipstown, is hereby amended to read as follows:

"F. Excavation, clearcutting, or grading of any area exceeding 2,000 square feet and/or filling with more than 100 cubic yards of material shall require a permit from the Natural Resources Review Officer, unless such excavation, grading, filling, or clearcutting is performed pursuant to an approved Site Plan, Special Permit, subdivision plat, Building Permit, or timber harvesting plan, or as a normal and customary activity conducted in conjunction with a farm operation (as defined in Article XII). The Natural Resources Review Officer shall not issue a permit for such activities unless the applicant has demonstrated that the activities will not alter the run-off characteristics of the property or otherwise adversely affect natural drainage or structural safety of buildings or lands, cause erosion or sedimentation, or create any noxious conditions or hazard to public health or safety. Any land disturbance involving more than 20,000 square feet of land that is not performed in connection with an approved building permit, special permit, or site plan, shall require plan approval from the Conservation Board using the procedures provided for in Section 93-9 of the Town Code for wetlands permit plan review."

SECTION 5. VALIDITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudicated invalid by a 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 Philipstown 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. REPEAL

All ordinances, local laws and parts thereof that are inconsistent with this Local Law are hereby repealed.

SECTION 7. EFFECTIVE DATE

This Local Law shall take effect immediately after its adoption and filing in the office of the New York State Secretary of State.

Town of Philipstown

Local Law No. of the Year 2013

A Local Law to amend Chapter 175, “Zoning,” of the Code of the Town of Philipstown in order to ensure that the practice known as hydraulic fracturing and its associated impacts are prohibited in the Town of Philipstown.

Be it enacted by the Town Board of the Town of Philipstown as Follows:

SECTION 1. TITLE

This local law shall be known as “A Law Amending the Town Code of the Town of Philipstown to prohibit hydraulic fracturing.”

SECTION 2. AUTHORITY

This Local Law is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, §10 et seq. and the Consolidated Laws of the State of New York, Chapter 62, Article 16 (the “Town Law”).

SECTION 3. PURPOSE AND FINDINGS

This local law is intended to prohibit hydraulic fracturing and associated activities, including disposal and transport of products and wastes in connection with drilling for fossil fuel products. While hydraulic fracturing and directional gas drilling are not permitted in any zoning district in the Town, the Town Board desires to take further steps to ensure that hydraulic fracturing, directional gas drilling or any ancillary or related uses or activities do not take place within the Town. Serious health and environmental impacts caused by these uses could threaten the health of the residents in the Town, could require the use of massive amounts of water, or the transportation of massive amounts of water causing impact to Town highways and could cause other aesthetic, environmental and public health impacts, resulting in the degradation of the quality of life in the Town of Philipstown and the Town’s infrastructure. It is the purpose of this local law to prohibit hydraulic fracturing, directional gas drilling and related or ancillary uses in order to avoid such negative impact within the Town. The Town’s zoning law includes an aquifer overlay district, Section 175-16, that applies townwide and already affords substantial protection against these hazards. However, Section 175-16 does not specifically mention hydraulic fracturing and associated activities as prohibited uses. It is the intent of this local law to make it clear that such practices and activities are prohibited throughout the Town of Philipstown.

SECTION 4. AMENDMENT TO CHAPTER 175

The Town of Philipstown Zoning Law, Chapter 175 of the Town Code (Local Law # 1 of the Year 2011) is hereby amended by adding to the list of uses prohibited throughout the Town a new subsection 175-16E(1)(d) after subsection 175-16E(1)(c), as follows:

d. Exploration, vertical or directional drilling for natural gas, oil, or any other fossil fuel, and production or processing of any materials resulting from such drilling for fossil fuels, including liquid, gaseous, or solid products, byproducts, and wastes. This prohibition specifically covers high-volume hydraulic fracturing ("hydrofracking") for fossil fuel recovery, the storage or use of equipment, product, or materials needed for or resulting from such hydrofracking, as well as the transport and disposal of such equipment, product, or materials.

SECTION 5. VALIDITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudicated invalid by a 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 Philipstown 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. REPEAL

All ordinances, local laws and parts thereof that are inconsistent with this Local Law are hereby repealed.

SECTION 7. EFFECTIVE DATE

This Local Law shall take effect immediately after its adoption and filing in the office of the New York State Secretary of State.

Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR Town of Philipstown	2. PROJECT NAME Town Code Amendments
3. PROJECT LOCATION: Municipality Philipstown County Putnam	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) Entire Town of Philipstown	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Package of six amendments to the Town Code, more fully described in Attachment A.	
7. AMOUNT OF LAND AFFECTED: Initially Townwide acres Ultimately Townwide acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: NA	
10. DOES ACTION INVOLVE A PERMIT APPROVAL OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: NA	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: Richard Shea, Town Supervisor, Town of Philipstown Date: _____ Signature: _____	

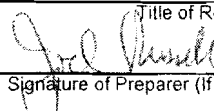
If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)	
C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:	
NO	
C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:	
NO	
C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:	
NO	
C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:	
NO	
C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:	
NO	
C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:	
NO	
C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:	
NO	
D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No If Yes, explain briefly:
E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?	
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No If Yes, explain briefly:

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

<input type="checkbox"/> Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.	
<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.	
Town Board, Town of Philipstown	
_____ Name of Lead Agency	_____ Date
Richard Shea _____ Print or Type Name of Responsible Officer in Lead Agency	Town Supervisor _____ Title of Responsible Officer
_____ Signature of Responsible Officer in Lead Agency	 _____ Signature of Preparer (if different from responsible officer)

Reset

ATTACHMENT A TO SHORT ENVIRONMENTAL ASSESSMENT FORM,
TOWN OF PHILIPSTOWN, PROPOSED AMENDMENTS TO TOWN CODE

APRIL 2013

This EAF evaluates the environmental impacts of six proposed local laws, attached hereto and dated March, 2013, as follows:

1. Revision of Chapter 93, Wetlands, to expand the powers of the Conservation Board and make Chapter 93 consistent with the new zoning. By resolution of the Town Board dated May 5, 2011, the Philipstown Conservation Advisory Council was redesignated as a Conservation Board pursuant to Section 239-y of the General Municipal Law. By itself, the redesignation did not give any additional powers to this body. It simply authorized this body to be given additional powers. To exercise these powers, it was necessary to amend Chapter 93, as well as other chapters of the Town Code, to give the Conservation Board the powers that it needs to carry out the intent of the redesignation. The attached revisions to Chapter 93 give the Conservation Board plan approval authority for certain types of wetland permits under Chapter 93 and also provide that the Natural Resources Review Officer will issue all wetland permits. This proposed local law is primarily procedural in nature and makes no material substantive changes to Chapter 93. To the extent that it provides for more thorough review of wetland permit applications by the Conservation Board, it is expected to have only beneficial environmental impacts.
2. Amendments to various chapters of the Town Code (10, 30, 38, 62, 71, and 85) to implement provisions of the new Zoning Law passed in May, 2011 and to expand the powers of the Conservation Board, including amendments that provide for the position and authority of the Natural Resources Review Officer, appointment of alternate members of the Planning Board, procedural and definitional amendments to the building code chapter, modification of the provisions on escrow accounts for review of applications, definitional changes to the chapter on environmentally sensitive lands to correspond to changes already made in the zoning, and repeal of the steep terrain provisions of Chapter 147 which have been incorporated into the zoning. These changes are technical in nature, do not change the substantive provisions of any existing chapter of the Town Code, resolve inconsistencies between these chapters and the new Zoning Law, and implement the prior designation of the Conservation Board.
3. Amendments to Chapter 159, Timber Harvesting, to expand the role of the Conservation Board and to make Chapter 159 consistent with the new zoning.
4. Amendment of Chapter 112 to require recorded maintenance agreements for rights of way in Open Development Areas.
5. Technical amendments to the Zoning Law (Chapter 175) to correct minor mistakes and clarify and resolve ambiguities.
6. An amendment to the Zoning Law to (Chapter 175) to clarify that hydraulic fracturing and related activities associated with drilling for petroleum products is prohibited throughout the Town.

Inasmuch as these Town Code amendments are technical and procedural in nature, more fully implementing previously adopted measures by the Town Board, they will have no environmental impact.

RESOLUTION

The following Resolution was presented by _____, seconded by _____ :

RESOLUTION of the Town Board of the Town of Philipstown introducing six Local Laws including the following:

- A Law Amending the Town Code of the Town of Philipstown to Revise Chapter 93. (***Wetlands***)
- A Law Amending the Town Code of the Town of Philipstown to implement the revised Zoning Law and designation of the Conservation Board.
- A Law Amending Chapter 159 of the Town Code of the Town of Philipstown. (***to implement the Natural Resource and Open Space Plan***)
- A Law Amending Chapter 112 of the Town Code of the Town of Philipstown with respect to Open Development Area subdivisions.
- A Law Amending the Town Code of the Town of Philipstown to make clarifications and technical corrections to Chapter 175.
- A Law Amending the Town Code of the Town of Philipstown to prohibit hydraulic fracturing.

WHEREAS, on March 9, 2006 the Town Board adopted a new Comprehensive Plan for the Town of Philipstown; and

WHEREAS, on May 5, 2011 the Town Board adopted Local Law Number 1 of the Year 2011, a comprehensive revision of its Zoning Law, to make the Zoning Law consistent with the Town's Comprehensive Plan; and

WHEREAS, the Town Board wishes to more fully implement the recommendations of the Town's Comprehensive Plan by re-designating the Conservation Advisory Council as a Conservation Board, with enhanced powers as provided in Section 239-y of the General Municipal Law, and to make changes to other chapters of the Town Code necessary to implement the new Zoning Law and other recommendations in the Comprehensive Plan as set forth in these local laws: and

WHEREAS, the Town Board intends to act as Lead Agency for purposes of the State Environmental Quality Review Act ("SEQRA") in connection with these six local laws, has determined that there are no other involved agencies, and has determined that the enactment of each of these local laws is an unlisted action under SEQRA; and

WHEREAS, the Town Board has received a Short Environmental Assessment Form for the proposed local laws, as required for SEQRA review.

NOW, THEREFORE, AFTER DUE CONSIDERATION, IT IS HEREBY RESOLVED, that the Town Board introduces the aforementioned six local laws, and it is further,

RESOLVED, that a copy of this Resolution and the local laws introduced by this Resolution, together with the Environmental Assessment Form, shall be immediately referred to the Town Planning Board and the Putnam County Division of Planning for their review and comment; and it is further,

ROLL CALL VOTE

Supervisor Shea
Councilwoman Budney
Councilman Van Tassel
Councilwoman Montgomery
Councilman Merandy

The Resolution was thereupon adopted.

CERTIFICATION

I, **Tina M. Merando**, the duly qualified and acting Town Clerk of the Town of Philipstown, Putnam County, New York, do hereby certify that attached hereto is a true and correct copy of an extract from the minutes of the Monthly Meeting of the Town Board of the Town of Philipstown, held on April 10, 2013, and that the Resolution set forth herein is a true and correct copy of the Resolution of the Town Board of said Town adopted at said meeting.

I FURTHER CERTIFY that pursuant to section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the said Town, this 10th day of April, 2013.

Tina M. Merando
TOWN CLERK

(seal)

A true copy of this Resolution was filed in the Office of the Town Clerk on January 3, 2013.

Tina M. Merando
TOWN CLERK