

Town of Gardiner

WATER RESOURCES PROTECTION AMENDMENT WITH GENERAL REFERENCES

§ 220-35-1. Title; Purpose.

This local law shall be known as the "Water Resources Law of the Town of Gardiner." The intent of this chapter is to promote the health and welfare of the citizens of Gardiner by preserving and protecting the town's water resources so that they may continue in their natural functions to provide benefits for the Town, including, but not limited to, protection from flood damage and provision of good quality drinking water. This law will also contribute to the overall protection of regional watersheds.

§ 220-35-2. Legislative Findings,

A. The Gardiner Town Board has determined that the public interest, safety and the economic and general welfare of its residents will be best served by providing for the protection, preservation, proper maintenance and use of its water resources. These resources provide a variety of benefits to the Gardiner community including:

1. Protection from flooding.

Wetlands and ponds slow flood flows, dissipating them by allowing some floodwaters to soak into the ground, and storing and slowly releasing the rest. According to the U.S. Environmental Protection Agency, one acre of wetland can store up to 1.5 million gallons of water.

2 Natural control of stormwater runoff.

The presence of wetlands and small streams across the landscape intercepts and slows stormwater runoff. These water resources serve as natural sedimentation areas and filter basins, while wetlands detain and treat runoff, directing untreated stormwater into them and other water resources damages them and reduces their ability to provide the benefits listed herein.

3. Protection and improvement of water quality.

Wetlands improve water quality by acting as settling ponds for sediment carried by stormwater. They trap and filter pollutants, and facilitate biological degradation and chemical oxidation.

4. Drinking water.

Wetlands, lakes and streams are the delivery system for surface water sources, and part of the recharge system for aquifers. They also maintain the quantity and quality of surface and groundwater sources of drinking water.

5. Food chain support and nutrient cycling

Wetlands, ponds, and streams supply food and organic detritus that support fish and wildlife, and they facilitate nutrient export to other habitats.

6. Habitat and corridors for plants and wildlife

Wetlands, ponds, streams and riparian corridors support a variety of habitats, a high diversity of species, and are home to a number of rare plants and animals.

7. Recharge and base flow.

Wetlands release stored water into the ground slowly, replenishing groundwater supplies and maintaining stream flows during drought. Groundwater is a significant source of water for some streams, ponds and wetlands.

8. Social and economic benefits

Water resources provide a variety of economic benefits to human communities. In addition to the benefits described above, they provide areas for fishing, boating, hiking, bird watching, photography and other recreational uses, protect and enhance property values, and serve as significant open space contributing to rural character and aesthetics. They also provide outdoor laboratories for research and living classrooms for schoolchildren in hands-on environmental studies. Maintenance of naturally functioning water resources protects property values.

B. Land use activities affect water resources and their services. Buffers between these activities and water resources provide essential protection for the water resource functions and benefits described in paragraph A above and contribute to those benefits themselves. The effectiveness of a buffer depends on its size, slope, soils, extent along the shoreline, conditions of its vegetation and intensity of adjacent land use. According to current research, buffers of 100 feet are able to remove the majority of contaminants from stormwater runoff and provide minimum habitat protection.

C. Gaps in federal and state wetland and stream protection regulations allow many water resources to remain unprotected. These gaps in protection include the following:

1. State wetland regulations generally apply only to selected wetlands that are 12.4 acres or larger and that appear on the official State Wetland Maps;
 2. Current state freshwater wetland Maps do not include all wetlands that are 12.4 acres or larger;
 3. Federal jurisdictional criteria leave many wetlands unprotected, and many of the most substantial infringements on wetlands in Gardiner would be permitted without individual review under one or more of the Army Corps of Engineers' nationwide permits;
 4. Federal wetland protection does not include buffers;
 5. Many small streams are not protected under either federal or State regulations;
 6. Federal and State water resource protection agencies acknowledge these deficiencies and recognize the need for local protections. The New York Department of Environmental Conservation (DEC) encourages local governments to adopt local water resource regulations.
- D. Many of these unprotected resources are small streams and wetlands that collectively play a critical role in the health of larger streams and rivers. They provide important hydrologic, water quality, and ecological services. Since these resources are commonly impacted by land use activities, local laws are the only practical means of protection.
- E. Water resources are interconnected above and below ground. Water contaminants may travel between surface water and groundwater. Public health and property in one area of a watershed may be affected by loss of buffers, wetland, or stream functions in another area of the watershed.
- F. Interference with the natural functions of water resources can cause or aggravate flooding and erosion and degrade or impair water quality and/or supply.
- G. Water resource protection is consistent with the legitimate needs of farmers and other landowners to graze and water livestock, grow crops, and make all other reasonable uses of Gardiner's shared water resources. Agricultural operations benefit from a consistent supply of clean water.
- H. Wetlands and other water resources may be damaged or destroyed by a variety of human activities. Among the most common agents of degradation are the following:
1. Draining can totally destroy or seriously degrade a wetland or small stream. Generally, draining lowers groundwater levels, may increase down-stream peak flows, and may decrease water storage capacity and downstream base flow. It may also cause changes in vegetation and water temperature, increased stream bed scouring, and sediment deposition.

2. Filling decreases the number and size of wetlands, thereby decreasing their ability to collect runoff and prevent erosion and sediment deposition downstream. It can also completely destroy or wholly alter wetlands and watercourses. Certain fill materials may adversely affect water quality. Disposal of dredge material may result in erosion and cause turbidity and sediment deposition. Filling eliminates habitat for fish and wildlife, may alter the water table and groundwater flow and adversely affect groundwater recharge.
 3. Grading a wetland, stream or adjacent area can substantially alter surface water drainage and flow patterns, may temporarily increase erosion, and may eliminate fish and wildlife habitat.
 4. Clear-cutting removes the vegetative cover of wetlands, which may raise the water temperature in wetlands, lakes and streams, and may reduce their ability to absorb water and serve as habitat. It may also cause soil erosion.
 5. Dredging or excavation in wetlands, lakes and streams may increase water depth and remove vegetation, thus altering the basic characteristics of, and perhaps destroying, the aquatic resource. Fish and wildlife feeding or reproductive capacities may be altered, as may cover types, turbidity, sediment deposition, and erosion patterns.
 6. Any of these activities can cause the permanent loss of benefits and may, in fact, destroy the aquatic resource entirely.
 7. Introduction of sewage effluent, runoff of pesticides, toxic substances and other contaminants into aquatic resources or adjacent areas may contaminate ground and surface water with undesirable chemicals, nutrients, and organisms. The contamination may be temporary or permanent. It may result from activities located directly in wetlands or within adjacent areas, but, due to runoff and drainage patterns, it may also be caused by activities located some distance away. The presence of pollutants or pesticides in wetlands or adjacent areas may increase mortality rates among fish and wildlife, alter their behavior or reproductive capability, and adversely affect their value as a food source.
 8. Excessive nutrients from sewage effluent, leaking septic systems, and runoff of fertilizers beyond the initial construction alter vegetative cover, fish, wildlife distribution, and water quality. Resulting organisms may also create a health hazard.
- I. Intact vegetated buffers are essential to protect water resources and their functions. They incidentally also provide many of the benefits of water resources including: flood control; pollutant removal; bank stabilization and shoreline anchoring; protection of natural areas and rural character; food web support; habitat enhancement; visual/noise barrier; recreation; and water temperature regulation.

§ 220-35- 3. Intent

- A. It is the intent of the Town of Gardiner to, protect, preserve, conserve water resources within the Town and regulate the use of them to ensure that water resource benefits as set forth in § 220-35-2 hereof will not be lost or impaired, and to protect the important physical, ecological, recreational, and economic assets for the present and future residents of the town.
- B. These regulations are enacted with the intent of providing a reasonable balance between land use and water resource protection, and individual property interests and shared community water resources.
- C. It is the intent of this chapter to incorporate the consideration of water resources protection into the Town's land use and development approval procedures.

§ 220-35-4. Definitions.

- A. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future and the plural includes the singular. The word "shall" means "must," a mandatory obligation.
- B. As used in this chapter, the following terms shall have the meanings indicated:

1. AGRICULTURAL LANDS

Lands that are located within an established Agricultural District adopted by Ulster County and certified by the State of New York and qualified under Ulster County and New York State law for an agricultural exemption by the Town Assessor.

2. AQUIFER

An Aquifer is a geologic formation that contains a significant amount of groundwater, often providing a community drinking water source.

3. BUFFER

See Water Resource Buffer

4. DAM

A manmade barrier which regulates or obstructs the flow of water or raises, lowers, or maintains the level of water in ponds, lakes, natural drainage systems and wetlands.

5. DISCHARGE

The emission of any water, liquid, or solid material into a wetland, watercourse, or waterbody, or their buffers.

8. ENVIRONMENTAL CONSERVATION COMMISSION-The duly appointed Town of Gardiner Commission for the Conservation of the Environment as established under chapter 16 of the Town of Gardiner code.

9. FLOODPLAIN

The land adjacent to a water resource that is susceptible to being flooded. For purposes of this law, this includes the "Special Flood Hazard Areas Subject to Inundation by the 1% Annual Chance Flood", "Floodway Areas", and "Other Flood Areas" as shown on the most recent flood risk maps produced by the Federal Emergency Management Agency (FEMA).

10. GROUNDWATER

Water located beneath the ground surface in soil pore spaces, cracks in the soil, sand, or rock. The depth at which soil pore spaces or fractures and voids in rock become completely saturated with water is called the water table. Groundwater is recharged from, and can eventually flow to, the surface naturally; natural discharge often occurs at springs and seeps, and can form wetlands.

11. HYDROPERIOD

The period during the year in which an area is sufficiently saturated with water to be a wetland or other aquatic resource.

12. HYDRIC SOIL

A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of plants that are adapted to thrive in wet conditions. Hydric soils indicate the likely presence of wetlands.

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

14. NATIONAL WETLANDS INVENTORY (NWI) WETLANDS

Wetland habitats mapped by the U.S. Fish and Wildlife Service available for viewing online via the National Wetlands Mapper (see Appendix C). NWI Wetlands differ from jurisdictional wetlands under the federal Clean Water Act and do not necessarily correspond with the U.S. Army Corp of Engineers (ACOE) wetland determinations.

15. NATIONAL WETLAND PLANT LIST

This national list of wetland plants by species provides general information about wetland plant and is used extensively by federal and state agencies, the scientific and academic communities, and the private sector in wetland delineations and the planning and monitoring of wetland mitigation and restoration sites. Wetland plant indicator status, as noted on this list, falls into several categories:

- a. Obligate: Plants that almost always grow in wetlands;
- b. Facultative-Wet: Plants that usually occur in wetlands, but that may also occur in non- wetlands. These plants usually grow on hydric soils, often on sites where water saturates the soil or floods the soil surface at least periodically;
- c. Facultative: These plants can grow in a variety of different habitats (wetland or upland) depending on site conditions;
- d. Facultative-Upland; Plants usually occur in non-wetlands, but may occur in wetlands.

16. POLLUTANT

Substance including, but not limited to, liquid or solid waste, biological or radioactive materials, heat, chemicals, sediment, wrecked or discarded equipment, industrial, municipal, and agricultural waste, fill, structures, or any other material artificially discharged, placed or introduced into a Regulated Area which has potential to degrade the function of the Regulated Area.

17. POLLUTION

Introduction or presence of pollutants in quantities that are or may be injurious to human, plant, or animal life or to property or that unreasonably interfere with the comfortable enjoyment of life and property.

18. QUALITY VERNAL POOL

a. A vernal pool, as defined herein, that provides essential breeding habitat for pool-breeding amphibians and invertebrates including, but not limited to, the following species: Spotted salamander, Marbled salamander, Jefferson salamander, Blue- spotted salamander, and Wood frog. Quality vernal pools must have an area greater than one hundred (100) square feet to be regulated areas under this Chapter. Quality vernal pools must satisfy any of the following criteria set forth below:

There is evidence of a naturally-occurring confined basin depression with no permanently flowing outlet and evidence of non-incident breeding by one or more species of obligate vernal pool species (wood frog, spotted salamander, Jefferson salamander, marbled salamander, fairy shrimp, clam shrimp, fingernail clams).

Acceptable evidence of non-incident breeding includes:

1. frog breeding choruses and/or mated pairs
2. salamander mating and/or spermatophores
3. egg masses
4. larvae (tadpole or salamander larvae)

5. transforming juveniles

i. frogs: tail remnants evident

ii salamanders: gill remnants evident

6. young of the year (metamorphs)

7. presence of fairy shrimp, dam shrimp or their eggs; or

8. fingernail clams

b. There is evidence of a naturally-occurring confined basin depression with no permanently flowing outlet AND of standing water that dries up during the year (or which for other reasons does not contain reproducing fish) AND evidence of non-incident presence of two or more species of facultative vernal pool species (blue- spotted salamander, spring peeper, gray tree frog, Fowler's toad, pickerel frog, leopard frog, four-toed salamander, red-spotted newt, spotted turtle, wood turtle, painted turtle, snapping turtle);

or

c. there is evidence of a naturally-occurring confined basin depression with no permanently flowing outlet and evidence of standing water that dries up during the year (or which for other reasons does not contain reproducing fish) for which:

1.) sufficient accessible critical terrestrial habitat exists to support vernal pool-breeding amphibians; and

2.) the conditions of either paragraph (a) or paragraph (b) of this definition is likely to be satisfied

19. REGULATED ACTIVITY

Those activities that require a Water Resources Permit from the Town to be conducted in Regulated Areas. These activities are listed in §220-35-6-B of this law.

20. REGULATED AREA

All water resources and water resource buffers as defined in this section and placed under the jurisdiction of this law.

21. VERNAL POOL

A seasonally flooded, isolated pool of standing water that is devoid of naturally occurring fish and that persists, in a year of average precipitation, for at least two

(2) months (annual precipitation in Ulster County normally ranges from 40 to 48 inches).

22. WATERBODY

Any natural or artificial reservoir, pond, or lake which usually or intermittently contains water and which has a discernible shoreline.

23. WATERCOURSE

Any natural channel containing a permanent, seasonal, or intermittent water flow including rivers, streams, brooks or other waterways which normally flow by gravity in a particular direction.

24. WATER RESOURCE

For the purposes of this law, water resources are: waterbodies, watercourses, wetlands including quality vernal pools, 100 year floodways and floodplains as shown on the most recent FEMA Flood Insurance Rate Maps, and natural drainage systems. [Aquifers are proposed protected under Draft § 220-15 of the Gardiner Zoning Law, Aquifer Overlay District].

25. WATER RESOURCE BUFFER

A water resource buffer is an upland area, surrounding a wetland, watercourse, or waterbody that is intended to protect water resources from human activity and other encroachments. For the purposes of this law, the Water Resource Buffer shall be an area extending one hundred (100) feet horizontally away from and adjacent to a wetland, quality vernal pool, or waterbody boundary or the normal (mean) waterline of a watercourse.

26. WATER RESOURCE PROFESSIONAL (WRP)

A qualified environmental scientist, contracted by the Gardiner Town Board, to carry out the functions described in this law. A qualified WRP will have a undergraduate or graduate degree from an accredited 4-year college or university in ecology, biology, botany, or a related field, a minimum of two years of wetland delineation experience and knowledge about watershed functions and the interrelationship between water features and ecological communities.

27. WATERSHED

The watershed for any water resource is the entire land area, including associated streams and rivers, which drains or contributes water to that resource.

28. WETLAND/FRESHWATER WETLAND

For the purposes of this chapter a wetland is a resource with characteristics specified in the U.S. Army Corp of Engineers, as specified in the Corps of Engineers Wetlands Delineation Manual (1987) and Regional Supplement: Northcentral and Northeast Region, January 2012 (see Appendix C).

As a general description, wetlands are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances, do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to: swamps, marshes, bogs, fens, intermittent streams, quality vernal pools, and shallow water zones of rivers, lakes, ponds and other waterbodies. In order to be considered a wetland, or

when a wetland is delineated to determine its boundaries, criteria for wetland plant

indicator species, soils, and hydrology must all be met. General diagnostic environmental characteristics of wetlands are:

Vegetation. The prevalent vegetation is typically adapted to areas having the soil and hydrologic characteristics described and evaluated according to wetland indicator status on the U.S. Fish and Wildlife Service National List of Plant Species that Occur in

Wetlands (see Appendix C).

Soil. Wetland soil is either classified as *hydric*, or possesses specific characteristics associated with saturated soil conditions.

Hydrology. Wetlands are inundated either permanently or periodically at mean water depths less than 6.6 feet, or the soil is saturated at some time during the growing season of the prevalent vegetation.

§ 220-35-5. Exempt Activities

The following activities are allowed within regulated areas without a Permit provided that they do not constitute a pollution or erosion hazard, interfere with proper drainage, adversely affect reasonable water use by others, or substantially damage the functioning of the regulated area as described in section 220-35-2 of this chapter. These activities must conform to the Town of Gardiner zoning law and any and all other applicable laws and statutes.

- A. Normal maintenance including mowing, trimming of vegetation, and removal of dead or diseased vegetation;
- B. Ordinary maintenance, repair and/or replacement of existing structures, including wells, bridges, streets, driveways, fences, walkways, and walls which do not involve expansion or substantial modification;
- C. Operation and maintenance of existing dams and water control devices, excluding the adjustment of water elevations by more than eighteen (18) inches in height;
- D. Recreation including wildlife observation, fishing, boating, hiking, and hunting, where such activities are not otherwise prohibited;
- E. Public health and safety activities, orders, and regulations of the New York State or Ulster County Departments of Health or the New York State Department of Environmental Conservation, local fire or highway department for emergencies only;
- F. Maintenance of existing drainage channels where impedance of flow may cause flooding or threaten public safety on highways or in dwellings or other structures;

- G. Removal of trees to provide firewood for residential use. This does not include clearcutting or removal of trees for commercial use or sale;
- H. Selective harvesting and sustained-yield forestry when conducted in accordance with a Forest Management Plan prepared by a New York Department of Environmental Conservation Cooperating Forester in accordance with New York State's Forestry Best Management Practices for Water Quality, Timber Harvesting Guidelines and Forest Road Construction Handbook (see Appendix C). Such Forest Management Plan shall be placed in file with the Building Inspector). Construction of landing areas and haul roads are activities which require a Permit.
- I. Removal of invasive species, as defined by the DEC;
- J. Placement of biodegradable yard waste typically associated with residential yard maintenance in Water Resource Buffers;
- K. Planting of native, non-invasive, vegetation, including trees, for purposes of landscaping or providing a buffer for a Water Resource;
- L. Activities comprising "farm operations" as defined in Section 301(11) of the State of New York Agriculture and Markets Law (AML), as the same may be amended from time to time, excepting such activities which pose a threat to public health or safety within the meaning of Section 305-a(1)(a) of the AML, on lands located within an established agricultural district as certified by the state Commissioner of Agriculture pursuant to Article 25-AA of the AML. Riparian buffer strips should be maintained in order to prevent erosion and uncontrolled runoff;
- M. No activity pursuant to a subdivision which has received preliminary approval from the Planning Board before the effective date of this law shall require a permit under this chapter for a period of three (3) years from the date of filing of the approved plan.

§ 220-35-6. Regulated Activities

- A. Activities requiring a permit.

The following activities have potential to cause substantial adverse impacts in regulated areas. It shall be unlawful to perform any of the following activities within regulated areas without a Water Resources Permit or Letter of Permission from the Town of Gardiner under this chapter.

Construction activities including, but not limited to:

1. Storage of construction materials, equipment, machinery, stockpiles;

2. Construction or expansion of paved or unpaved public or private roads or driveways or other pathways for motorized vehicles;
3. Installation of pipes, wells, service lines, conduits, or cables; d Installation of wells;
4. Any form of dumping, filling or depositing of material of any type including, but not limited to, oil, gravel, sand, wood chips, stones, and solid waste, either directly or indirectly, except as specified in Exempt Activities;
5. Discharging pollutants including, but not limited to:
 - a. influents that would raise, or otherwise affect, the temperature of water resources;
 - b. liquid wastes including sewage or sanitary sewage disposal system effluent, untreated stormwater runoff, animal wastes, or other effluent unless pursuant to a discharge permit issued by the State of New York, and in compliance with all other Town of Gardiner requirements including, but not limited to, dedication of community wastewater treatment plants to the Town;
6. Placing or constructing any part of a septic system or other type of sewage disposal system, including a sewage treatment plant, unless it is a replacement of an existing system (see § 220-35-6-B).
7. Alteration or grading of natural features and contours, or other natural drainage patterns;
8. Diversion or alteration of water flow into or from a wetland, watercourse, or waterbody.
9. Draining, dredging, dewatering, excavation, or removal of material, either directly or indirectly.
10. Placing or constructing animal feedlots or pens, manure stockpiles, or similar animal storage areas.
11. Construction of docks, dams, or other water control devices, pilings or bridges whether or not they change the flow of water.
12. Wetland restoration projects including removal of invasive plants and revegetation.
13. Removal of vegetation, except as specifically authorized under this chapter
14. Conducting any other activity that may alter or impair any of the water resource or buffer functions or benefits as described in § 220-35-2 of this chapter.

B. Prohibited Activities

The following activities cause substantial harm to water resources and the services they provide to the residents of the Town. It shall be unlawful to perform any of the following activities within regulated areas, unless specifically authorized by state law or another provision of this chapter

1. Placement of any impervious surface or new structure or facility, including without limitation swimming pools, gazebos, sheds, garages, underground services, and additions to an existing structure that enlarge its footprint, in a wetland as defined in this chapter;
2. Discharges of chemical wastes, including pesticides, herbicides, fungicides, dye, fertilizers, fuels, industrial chemicals, deicing materials, petroleum produces, solvents, paints, cleansers, detergents and other household or industrial chemicals into a regulated area;
3. Discharges of radioactive wastes into a regulated area;
4. Diversion of a watercourse so as to eliminate its supply of water to a wetland;
5. Clearcutting or removal of all trees, shrubs, and other vegetation over an area more than 5,000 square feet within a wetland, except as necessary for wetland restoration projects, or removal of invasive species as determined by the WRP.

§ 220-35-7. Permit Procedures

A. Permit requirement

After the effective date of this law, no Regulated Activity may be conducted within a Regulated Area, without first obtaining a Water Resources Permit or Letter of Permission, as provided herein.

B. Determination of need for a Water Resources Permit or Letter of Permission on building permit Applications:

1. Building permit application packages, including any additional information (e.g., sketch plans, surveys) will be referred by the Building Inspector to the WRP to determine if the proposed action includes a Regulated Activity within a Regulated Area. No referral will be required if the building inspector determines that all construction will be entirely within the confines of an existing structure.

2. The WRP may utilize additional information, including (but not limited to):

- a. site maps;
- b. soils map (Ulster County Soils Survey);
- c. United States Geological Survey (USGS) topographic maps;
- d. New York State DEC and National Wetlands Inventory maps;
- e. Town of Gardiner information, including geographic information system (GIS) data layers;
- f. aerial photography

A site visit may also be necessary for this determination.

C. Regulated Activities within Regulated Areas, not requiring a Building Permit:

1. The following minimum information shall be submitted to the WRP for review:

- a. the name, address, and telephone number of the applicant, and written consent of the owner, if different from the applicant;
- b. the street address and tax map designation of the property involved;
- c. a description of the proposed work, and purpose thereof;
- d. sketch plans, reports, or such other documentation as needed to fully describe the proposed activity.
- e. an acceptable demonstration as to why the activity cannot be located outside of the regulated area.

2. A copy of the submittal shall be sent to the Building Department.

D. Regardless of the need for a building permit, within seven business days of receipt by the WRP of the information specified above, the WRP shall make one of the following determinations:

1. The proposed activity does not have the potential to cause a substantial adverse effect on the Regulated Area, and may proceed, as either an exempt activity, or by “Letter of Permission”, as specified in paragraph E, below. Said determination shall include the date of the review of the referral, date and observations of any site inspection, findings, and conditions necessary to ensure compliance with the purposes and intent of this law, with the reasons supporting this determination. No further review or action is required.
2. The proposed Regulated Activity within a regulated Area has the potential to cause substantial adverse effects on the Regulated Area, and requires the applicant to submit a Water Resources Permit Application (WRPA) to the Planning Board. Said determination shall include the date of review of the submission(s), the findings of any site visits, and supporting reasons for this determination. This determination shall consider the biological quality, values, functions, and benefits of the Regulated Area, the availability of any reasonable alternative, and recommend mitigative measures that the Planning Board might need to consider. This finding shall be filed with the Planning Board and the Building Inspector, and a copy provided to the applicant, and shall be part of the public record of the Planning Board.
3. Additional information is required in order to make a determination. The specific items needed shall be listed, and notify the applicant. Upon receipt of the requested information by the WRP, a determination made within seven (7) business days, and notification provided to the applicant.
4. Denial of the application, with the reason(s) for the denial.

E. Letters of Permission are authorized for, but not limited to, the following activities, unless the WRP determines that the activity is likely to cause substantial adverse impact upon the Regulated Area:

1. New construction of structures or facilities, or expansion of pre-existing, lawfully permitted structures or facilities located within a Water Resource Buffer, provided that the as-built footprint of all construction after the originally approved work, does not exceed 600 square feet of ground surface. Such activity may not create any new non-compliance, or increase the degree of existing non-compliance with the provisions of this chapter, and may not be associated with any application for subdivision or site plan approval before the Planning Board.

No Letter of Permission shall be issued under this provision for work that cumulatively exceeds 600 square feet, on any individual lot for all Regulated Activities commenced after the effective date of this law, in the buffer area.

2. Restoration, reconstruction, or modification of any pre-existing, lawfully permitted, structure or facilities, located within a Water Resource Buffer. Such activity shall disturb the minimum area reasonably necessary for its completion. Such activity may not create any new non-compliance, or increase the degree of existing non-compliance with this law.
3. Drilling a well within a Water Resource Buffer, pursuant to a permit issued by the Ulster County Department of Health, to supply potable water to a pre-existing residence.
4. Cutting vegetation, other than trees, in a Water Resource Buffer up to a cumulative 2,000 contiguous square foot linear path or driveway, not to exceed 15 feet in width.
5. Cutting no more than three (3) trees in a Water Resource Buffer, in any one (1) calendar year, other than as provided in section 220-35-6 B, and in such manner that that the functions and benefits of the Regulated Areas are not adversely affected or impacted.
6. Application of a pesticide to the ground within a Water Resource Buffer, when such use is consistent with the intent and purposes of this law, and when such use is by the owner or their agent.
7. Construction of a septic system specified in an approval or permit which predates the effective date of this Chapter, or the repair or reconstruction of an existing system. The WRP shall issue the Letter of Permission pursuant to this clause, upon a showing that such septic system and leach field will
 - a). not have any impact upon the Regulated Area, or
 - b) will avoid impact upon the Regulated Area to the maximum extent practicable.
8. Projects with a total estimated cost that does not exceed five thousand (\$5,000.00) dollars.

F. All activities authorized by a Letter of Permission shall disturb the minimum area reasonably necessary for its completion. The WRP shall coordinate with the Building Department, and is authorized to monitor compliance with the terms of the Letter of Permission during and post construction, and request enforcement action by the Building Department as needed. In cases of non-compliance resulting in a need for remedial action, the Building department, upon advice of the WRP, may require such actions as necessary and appropriate.

G. In issuing the Letter of Permission, the WRP may impose such conditions or limitations as needed, to ensure compliance with the intent, purposes, standards, and policy of this Chapter, and to minimize the reduction in function of a Water Resource. The WRP shall maintain a written record of recommendations, findings, and reasons for all actions taken, a copy of

which shall be filed with the Town Clerk and a copy shall be sent to the applicant.

H. The Letter of Permission shall require the applicant to strictly conform with the submitted plans and project description, and any conditions specified by the WRP, including without limitation the establishment and maintenance of silt fencing, or other adaptations to the applicant's proposal.

I. Applications subject to Planning Board review

1. All subdivision applications, site plan reviews, and special use applications submitted to the Planning Board will be subject to review by the WRP to determine if the proposed action includes a Regulated Activity within a Regulated area. If so, a Water Resources Permit will be required from the Planning Board, and the WRP may request the submission of a Water Resources Permit application (WRPA) or any other necessary information be submitted.

The WRP shall make a determination within 7 days of receipt. The WRP shall review and consider all other relevant material submitted to the Planning Board, including those related to the requirements of the State Environmental Quality Review Act (SEQRA).

2. The WRP shall advise the Planning Board with regards to his/her review of the Water Resource Permit Application, and is hereby authorized to conduct a site visit whenever deemed necessary for evaluating the Water Resource Permit Application. The WRP is authorized to verify delineation boundaries, and adjust them as necessary, based upon the methodology described in the definition of Freshwater wetlands, contained in section 220-35-4, and detailed in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and Northeast Regional supplement.
3. The Planning Board shall deem an application complete when all required information, including wetlands delineations, site visit(s), and other information requested by the WRP or Planning Board has been provided.
4. The Planning Board may request the advice of the Environmental Conservation Commission (ECC), consultants, or interested parties, prior to approving or denying any regulated activity. Any costs associated with consultations shall be paid by the applicant.
5. The Planning Board shall integrate and combine review of the Water Resources Permit Application with all other reviews and approval procedures, including SEQRA, to the maximum extent practicable.
6. The completed application shall be reviewed according to the standards in §220-35-9 of this law

7. Following the decision to approve, or approve with modifications a Water Resources Permit application, the Planning Board shall issue a written resolution which shall be filed with the Town Clerk within five (5) business days and shall include the following:

- a. an assigned application number;
- b. the name and address of the applicant;
- c. the name and address of the property owner if different from the applicant;
- d. the address and Tax Map designation of the property;
- e. the date of the Planning Board action on the application;
- f. all conditions placed on the Permit;
- g. the expiration date of the Water Resources Permit.

8. Following action to deny an application, the applicant will be notified in writing of the denial and the reasons therefor. If the Planning Board is unable to pass a resolution, the foregoing information shall be filed with the town clerk with the record of the vote on the resolution

J. "Letters of Permission" and Water Resource Permits shall become part of any applicable building permits, and the Building Department is hereby authorized to, and shall enforce, their conditions, whether as part of a building permit, an addendum to a Building Permit, or as an independent permit / site-plan approval from the Planning Board.

K. Expiration of a Water Resources Permit

1. All Water Resources Permits, unless otherwise indicated, shall run concurrent with site plan approvals, and be subject to the expiration and extension provisions contained in Section 220-68-E(1) of the Town of Gardiner Municipal Code, or eighteen months, whichever occurs sooner.
2. Applications for Water Resources Permit renewals shall be filed with the Planning Board at least 60 days in advance of expiration of the permit. The Planning Board may require the applicant to re-apply if material conditions have changed since the issuance of the Permit.

L. Inspections and Fees

The costs of initial review of plans by the Building Inspector and the WRP will be covered by the Building Permit Application fee, set annually by the Town Board. All other review and inspection costs are charged to the applicant at hourly rates set annually by the Town. No Water Resources Permit or final Certificate of occupancy shall be issued until all associated fees have been paid.

M. Public Hearings

Water Resource Permit applications shall be subject to the same procedures for public hearings as other site plan reviews, as outlined in Section 220-62-G(2) of the Town of Gardiner Municipal Code.

§ 220-35-8. Permit Application Contents

A A long form application for a Water Resources Permit subscribed by the owner or agent shall be filed with the Planning Board, with a copy to the WRP, and shall contain the following information:

1. name, post office address and telephone number of owner and applicant;
2. street address and Tax Map designation of property covered by the application;
3. statement of consent from owner for any agent making application;
4. statement of proposed work and purpose including maps and diagrams;
5. owner's permission to allow visits to site;
6. location of the property on a USGS topographic map and Ulster County Tax Map;
7. plans for the proposed regulated activities;
 - a. the plans shall be certified by an engineer, architect, land surveyor or landscape architect licensed by the State of New York, and:
 - b. plans shall show the following, unless otherwise modified by the WRP:
 - i. the watershed in which the site lies, and the sub-basin for all streams or stream segments;
 - ii. the location of all regulated areas, including floodplains and wetlands, on, and immediately adjacent to, the site.
 - iii. wetland locations shall be determined by a qualified professional (ecologist, botanist and/or soil scientist) within twelve (12) months prior to application

filing date;

c. Completed Wetland delineations shall be conducted in accordance with the methods described in Part IV of the 1987 US Army Corps of Engineers Wetland Delineation Manual and updates described in the 2012 Northeast Supplement. The delineation may require verification by a third party professional ecologist, botanist or soil scientist consultant to whom the Planning Board may refer for certification of the submittal to confirm an applicant's delineation. The Planning Board may require re-delineation of any Wetland in cases where original delineations were conducted outside the normal growing season, on sites where wetland vegetation has been removed, so that species identification is hindered, or when specific site conditions warrant additional examination;

d. location of proposed construction disturbance area (all areas where vegetation is proposed to be removed and areas to be traversed by heavy equipment) and its relationship to property lines, buildings, roads, and regulated areas within two hundred fifty (250) feet.;

e. estimated quantities and composition of materials for excavation or fill;

f. location of any well, its depth, and any sewage or wastewater disposal system within one hundred (100) feet of the disturbed area;

g. existing and adjusted contours, at two-foot intervals, within the proposed disturbance area and to a distance of one hundred (100) feet beyond;

h. locations and details of any existing and proposed stormwater management facilities, during construction and post-construction including point discharges, detention basins, erosion controls, and schedules for the maintenance of such facilities;

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

B. limits-of- construction line to be located on the ground before any construction activities begin. The other regulatory decisions by federal, state, or county authorities.

C. Any activity authorized by Letter of Permission under this paragraph shall disturb the minimum area required for its completion, and the WRP shall have the authority to require restoration of affected resources.

D. In approving any application, the WRP shall impose such conditions or limitations as necessary to

1. ensure compliance with the intent, purposes, standards, and public policy of this chapter, and
2. minimize the reduction in function of a water resource. Conditions may include reducing the size or extent of any Regulated Activity. The WRP shall issue a written record of findings and reasons for all actions taken.

E. After consulting with the WRP, the Planning Board shall notify the applicant if additional information is necessary. The Planning Board shall issue such notification within 40 days of receipt of an application. The following additional information may be required based on the size, scope, or location of the project and as necessary for proper review of the application:

1. description of the vegetative cover of the regulated area;
2. description of potential changes to wetland hydroperiod or to seasonal stream flow;
3. groundwater table elevations indicating depth to groundwater, direction of groundwater flow, and hydrologic connections with surface water features;
4. assessment of the condition and quality of all potentially affected stream habitats including the following:
 - a. physical assessment of stream corridor habitat i.e., measures of physical habitat quality, including-water temperature, turbidity, algal growth, riffle size, pool/riffle ratio, substrate size and embeddedness, shelter for fish, flow pattern, channel alteration, streambank cover and stability, and riparian vegetation-as described in Chapter 5 of the U.S. Environmental Protection Agency's Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers: Periphyton, Benthic Macroinvertebrates, and Fish (CITE; available in the office of the Town Clerk).
 - b. water quality. In addition to direct measurement of pollutant levels, this may include a survey for benthic macroinvertebrates and assessment of chemical parameters conducted for at least two locations on each perennial stream on a project site, one upstream and one downstream of proposed project construction. The Hudson Basin River Watch Guidance Document protocols should be followed to the Tier 3 level of analysis for benthic macroinvertebrates and Tier 2 for chemical parameters.

Planning Board Review Procedure

1. All subdivision applications, site plan reviews, and special use permit applications submitted to the Planning Board will be subject to review by the **WRP** to determine if the proposed action includes a Regulated Activity within a Regulated Area. The WRP shall follow the same procedure provided for initial review of Building Permit applications in paragraph 220-35-7 of this section. The WRP may also consider any materials submitted to the Planning Board pursuant to the subdivision, site plan reviews, and/or special use Permit application.

Following action to deny an application, the applicant will be notified in writing of the denial and the reasons therefor. If the Planning Board is unable to pass a resolution, the foregoing information shall be filed with the town clerk with the record of the vote on the resolution.

G. Expiration of Water Resources Permit

1. All Permits, unless otherwise indicated, shall expire on completion of the permitted activities, and shall be valid for a period of 18 months whichever occurs sooner;
2. Permits may be renewed one time by the Planning Board. Application for renewal must be submitted at least sixty (60) days before the Permit expiration date. The Planning Board may require an applicant to re-apply if material conditions have changed since issuance of the Permit.
3. The Gardiner Building Department shall be responsible for enforcing this law including all conditions of any Water Resources Permit or Letter of Permission. The Gardiner Building Department shall not give a building permit or Certificate of Occupancy approval without prior, written, approval of the WRP for any projects requiring a Water Resources Permit or Letter of Permission.

§ 220-35-9. Standards for Permit Decisions.

A. Consideration.

In granting, denying, or conditioning any Notice of Permission or Water Resources Permit, the WRP and the Planning Board, respectively, shall consider all evidence and circumstances relevant to the potential reduction of functions and benefits of the Regulated Area, including ecological impacts outside of the Regulated Area and impacts on land uses downstream which may occur as a result of the Regulated Activity, including but not limited to the following:

1. Adverse effects of the Regulated Activity on size or function of a Regulated Area;
2. Modification of topographic contours;
3. Degradation of water quality;
4. Impacts on streamflow, perennial, seasonal, and transient;
5. Disturbance or destruction of habitat for native species;
6. Use of, or reliance on, the Regulated Area by any endangered, threatened, or otherwise ecologically sensitive or valuable species;
7. Adverse effects of the Regulated Activity on life stages of aquatic life and other wildlife, including fragmentation of habitat, the transfer of pollutants or their byproducts, or damage to food webs through biological, physical, and chemical processes within or outside of the Regulated Area;
8. Adverse effects of the Regulated Activity on aquatic ecosystem diversity, productivity, and stability;
9. Influx of sediments or other materials causing increased water turbidity, nutrient levels and/or accumulation on the bottom of the resource;
10. Removal or disturbance of soils;
11. Destabilization of a channel or bank;
12. Reductions or increases in circulation or supply of water;
13. Reductions or increases in protection provided by a Water Resource Buffer;
14. Changes in water temperature;
15. Adverse effects of the Regulated Activity on recreational, aesthetic, and economic values;
16. Alterations to flood flows and flood storage, and storm water attenuation;
17. Cumulative adverse effect of any proposed or reasonably anticipated future activities on regulated areas subject to the application;
18. The potential for adverse impacts on the size and function of the Regulated Area to be mitigated by placing conditions on the permit.

The WRP or Planning Board may also consider the hardship to the applicant if the permit is not granted, as well as the compatibility of the proposed regulated use with the regulated area and the availability of alternatives as described in paragraph B below.

A. Compatibility and alternatives

In general, no Regulated Activity shall be permitted in a Regulated Area if there is a practicable alternative which would have less adverse impact on the size or functioning of the Regulated Area, so long as the alternative does not have other significant adverse environmental consequences.

1. For the purpose of this requirement, practicable alternatives include, but are not limited to, locating the Regulated Activity outside of the Regulated Area or the Water Resource.
2. Where a Regulated Activity does not require access or proximity to or siting within a Water Resource (*i.e.*, is not "water dependent"), practicable alternatives that do not involve a Water Resource are presumed to be available, unless demonstrated otherwise by clear and convincing data and analysis. In addition, where a Regulated Activity is proposed in a Water Resource, alternatives located outside the Water Resource are presumed to have less adverse impact on it, unless demonstrated otherwise by clear and convincing data and analysis.
3. The compatibility of a Regulated Activity depends on the degree of loss of functioning it causes to a Regulated Area. For the purposes of this Chapter, the standards set forth in Appendix A shall govern the compatibility of Regulated Activities in Wetlands and their associated Water Resources Buffers.

C. Burden of proof.

1. The Planning Board may issue a Water Resources Permit only if the applicant demonstrates the following by clear and convincing data and analysis:
2. There will be no substantial adverse effect on the continued function of the Water Resource or Water Resource Buffer or on its ability to provide the services and benefits described in sections 220-35-2 and 220-35-9A of this chapter, including benefits to adjacent properties, downstream areas, or other connected water resources as it did before the occurrence of the Regulated Activity
 - a. There is no practicable alternative to the proposed regulated activity, including a reduction in the density, intensity of use, or scope of the proposed regulated activity, or alternative site, which would reduce or avoid adverse effect to the function and ability of the of regulated area to provide the services and benefits described in sections 220- 35-2 and 220-35-9A,

- b. The Water Resources Permit contains any condition necessary to ensure the use of technology or safeguards to reduce the prospective impact of the Regulated Activity on the Water Resource and
 - c. Any adverse effect of the proposed Regulated Activity on the function served by the Water Resource(s) or the benefits derived therefrom, has been minimized to the maximum extent practicable.
3. In making any determination to issue a Water Resources Permit, or issue a permit with conditions, the Planning Board must make explicit findings regarding each of the criteria listed in paragraph 1 above. The Planning Board must consider each applicable services and benefit described in sections 220-35-2 and 220-35-9A of this chapter to the criteria listed in paragraph 1 above in making its determination.
4. For purposes of this section, "clear and convincing data and analysis" is the level of proof demonstrating that the findings required in this section are highly likely to be true. Among other things, such proof requires data and analysis demonstrating that the required findings are substantially more likely be true than any contrary data or applicable presumptions.

§ 220-35-10. Judicial Review.

Any decision made pursuant to or within the scope of this chapter may be reviewed at the request of any person aggrieved by the action in accordance with Article 78 of the State Civil Practice Law and Rules.

§ 220-35-11. Enforcement and Penalties.

- A. Whenever the Town's Code Enforcement Officer (CEO) has reasonable grounds to believe that the applicant or property owner has not complied with any or all of the terms of this Law, has failed to undertake a project in the manner set forth in a Water Resources Permit, has violated any condition attached by the approval authority in a Letter of Permission or a Water Resources Permit issued pursuant to this Law, or has exceeded the authority granted in a Water Resources Permit or Letter of Permission issued pursuant to this Law, the CEO shall notify the landowner or responsible person and issue a written Notice to Remedy and post a Stop Work Order. All work shall be suspended and shall not resume again until such a time that the Stop Work Order has been rescinded by the CEO.
- B. The Code Enforcement Officer is hereby authorized to enforce the provisions of this Law, including conditions of a Letter of Permission or Water Resources Permit and to issue citations for violations thereof. A copy of the appearance ticket shall be filed with the Planning Board.

C. The Town of Gardiner is specifically empowered to seek injunctive relief in a court of competent jurisdiction to:

1. restrain any violation or threatened violation of this Law or any condition attached to a Letter of Permission or Water Resources Permit;
2. compel the restoration of the affected Regulated Area, within a reasonable time and under the supervision of the CEO and WRP, to its condition prior to violation of the provisions of this Law or any condition attached to a Letter of Permission or Water Resources Permit pursuant to this Law. If the Town is successful in obtaining preliminary and/or permanent injunctive relief, it shall be entitled to an award by the court of its reasonable attorneys' fees.

D. A violation of any provision of this Law or any condition attached to a Water Resources Permit or Letter of Permission issued pursuant to this Law shall constitute an offense. Any person, corporation or any other legal or commercial entity convicted of having violated any provision of this Law, or any condition attached by the WRP or the Planning Board to a Letter of Permission or a Water Resources Permit issued pursuant to this Law shall, for the first offense, be punished by a fine not to exceed \$2500. Each day of violation shall constitute a separate and distinct offense punishable by a like fine or penalty as herein set forth.

§ 220-35-12. 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. The Town Board intends that all valid portions of this Law be given the fullest effect possible to realize the remedial purposes of this Law.

§ 220-35-13. Conformity with other laws required.

Conformance with this chapter does not eliminate the necessity for any applicant to obtain the approval or permits required by any other agencies prior to undertaking any Regulated Activity. Obtaining such approval or permits is the responsibility of the applicant. No operations shall be initiated until such approvals or permits have been issued. All acts, whether allowed by right or by permit, must conform to the Town of Gardiner Zoning Ordinance and any and all other applicable laws and statutes.

§ 220-35-14 No concurrent jurisdiction

This Law does not intend to supersede or to establish concurrent jurisdiction over activities subject to regulation by the Department of Environmental Conservation under Title 5 of ECL Article 15, Title 8 of ECL Article 17, or ECL Article 24. No Water Resources Permit or Letter of Permission shall be required hereunder for any aspects of any Regulated Activity which require a permit from the Department of Environmental Conservation under the said state regulatory requirements for Protection of Waters, State Pollutant Discharge Elimination, or Freshwater Wetlands.