

A LOCAL LAW ENTITLED AMENDMENTS TO
CHAPTER 129, WETLANDS, RE CAUSEWAY WETLAND PERMIT

Be it enacted by the Town Board of the Town of Shelter Island, as follows:

Section 1. Purpose. This law is to establish a Causeway wetland permit for the properties in the Causeway District, which are particularly susceptible to flooding and require special attention during development, as more specifically set out in the addition to the purpose clause of this section.

Section 2. Amends Chapter 129-1 Purpose to add new section (E) to read as follows:

§ 129-1. Purpose; findings.

E. The properties in the Causeway Overlay District (133-11.1) are especially sensitive wetland areas which are prone to frequent flooding. The Town has a special causeway wetland permit requirement for properties in this zone which establishes standards and procedures for minimizing and preventing damage to development from coastal flooding and to protect natural protective features and other natural resources, which includes native vegetation. The goal will be to minimize or prevent damage or destruction to man-made property, private and public property, natural protective features, viewscapes and other natural resources.

Section 3. Amends Chapter 129-2 Permit Required to read as follows:

§ 129-2. Permit required.

Any regulated activity in, on or over or within the regulated area, entirely or in part, shall require a wetlands permit unless it is specifically exempted or allowed without a permit, as indicated in the following table. Any regulated activity for which a permit is required, which is carried out without a permit or in violation of the conditions of a permit, is a violation of this Code and subject to criminal and civil penalties.

Key:

No = Activity not allowed, however applications may be processed in consideration of differences between Town Law and DEC laws, if all other remedies have been exhausted and DEC approval is obtained or letter of nonjurisdiction is applicable.

NPR = Activity does not require wetlands permit.

PR = Wetlands permit required.

CPR = Causeway wetland permit required

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Type of Activity <u>zone</u>	Within Vegetative Buffer	Within Adjacent Vegetative Buffer	<u>Causeway</u>
New structure on lot with or without bulkhead			
New construction (less than or equal to 100 square feet)	NPR	NPR	CPR
Other new construction	No	PR	
Existing structure on lot with bulkhead			
Repair	NPR	NPR	NPR
Reconstruction (no expansion)	PR	NPR	CPR
Reconstruction with expansion upward within footprint	PR	NPR	CPR
Reconstruction with expansion beyond footprint if it is farther away from the designated wetlands than the nearest point of the existing structure	No	NPR	CPR
New construction with expansion upward within footprint	PR	NPR	CPR
New construction (less than or equal to 100 square feet)	NPR	NPR	CPR
New construction (outside footprint)	No	PR	CPR
New construction (all other)	No	PR	CPR
Existing structure on lot without bulkhead			
Repair	NPR	NPR	NPR
Reconstruction (no expansion)	PR	PR	CPR
Reconstruction with expansion upward within footprint	PR	PR	CPR
Reconstruction with expansion beyond footprint if it is father away from the designated wetlands than the nearest point of the existing structure	No	PR	CPR
New construction with expansion upward within footprint	PR	PR	CPR
New construction (less than or equal to 100 square feet)	NPR	NPR	CPR
New construction (outside footprint)	No	PR	CPR
New construction (all other)	No	PR	CPR
Clearing	NPR	NPR	CPR
Necessary public facilities	NPR	NPR	NPR
Landscaping (per code restrictions)	NPR	NPR	CPR
Construction, creation, elimination, alteration, relocation or enlargement or diminishment of waterway	PR	PR	CPR
Demolition	PR	PR	CPR
Dock	NPR	NPR	No
Bulkhead	NPR	NPR	CPR
Fill	PR	PR	CPR
Fence	NPR	NPR	CPR
Driveway	No	PR	CPR
Utilities (including well)	NPR	NPR	CPR
Septic (changes to existing)	PR	PR	CPR
Septic (new)	No	No	CPR

Section 4. Adds Chapter 129-4.1, Causeway Wetland Permit Regulations to read as follows:

§ 129-4.1. Causeway Wetland Permit Regulations.

The owner or authorized agent of the owner proposing to construct or develop a property within the causeway shall meet the following additional requirements in submitting their application regardless of the distance of the development from the wetlands

A. Additional application requirements.

1. In addition to the application requirements set forth in 129-4, applicant shall submit the following additional information:

a. A survey drawn to a scale no smaller than one inch to fifty feet, showing the location of the proposed activity, and depicting the existing natural vegetation and the proposed areas to be disturbed;

b. A plan showing all areas proposed to be disturbed or upon which equipment is to be staged during construction;

c. A native revegetation and restoration plan for the disturbed areas;

d. An analysis of a plan to grade or otherwise alter the existing topography, including calculations as to the amount of material to be disturbed, the source of the material, and the plan to stabilize the material. **A plan should be submitted showing existing grades and post-construction grades. The post-construction grading shall be designed to facilitate grading by original natural patterns;**

e. Full design specifications for the septic system, including Board of Health approval and a copy of all submissions, reports and materials sent to and received back from the Board of Health;

f. Design specifications for any foundation or pilings proposed for the project, including number of piles, distance driven into the earth, height above natural grade and material used;

g. Elevation plans for the proposed structure.

h. Each application for development shall include erosion and sedimentation control measures during and post construction, identifying all measures and showing proposed locations. The plan shall also identify all devices used to collect and recharge stormwater runoff from impervious surfaces.

B. Design specifications for Causeway Wetland Permit

All applications for a Causeway Wetland Permit shall meet the following design specifications.

1. Natural vegetation protection measures.

a. The causeway footprint of any dwelling on the property shall be limited as follows:
1,800 s.f. causeway footprint on a lot of more than 200,000 s.f. (excluding wetlands)
1,200 s.f. causeway footprint on a lot between 40,000 and 200,000 s.f. (excluding wetlands)

1,000 s.f. causeway footprint on a lot of less than 40,000 s.f. (excluding wetlands)

b. The total area of clearing or other disturbance of native vegetation or natural grades ("site disturbance") shall not exceed the causeway footprint of the structure plus a 25 foot radius around it. An additional 25' radius may be cleared around the well and septic system. Invasive vegetation may be removed.

c. Landscaping within the approved site disturbance area shall be at the discretion of the Town Board. In the application for a causeway wetland permit, the Owner shall submit a survey by a licensed surveyor identifying the limits of proposed site disturbance and the amount and percentage of the lot to be cleared or disturbed.

d. Stormwater runoff from impervious surfaces should be collected and recharged.
e. The landscaping shall not involve the addition of any fill, with the exception of that needed for a raised septic system and the required screening planting around the septic system.

f. Any and all applications for a causeway wetland permit or building permit within the causeway zone shall include native revegetation and restoration measures sufficient to meet the standards set forth below:

(1) The limits of site disturbance shall be identified.

(2) The applicant for a permit shall have the proposed building and/or structure and the areas to be disturbed staked by a licensed surveyor in accordance with the survey. In addition, stakes shall be installed marking the perimeter of the area to be disturbed.

(3) Each application for development shall include a revegetation and restoration plan, which utilizes native vegetation and which revegetates and restores areas that are temporarily cleared or disturbed beyond the limits set forth in § 49-7(B) during development activities, or are required to be revegetated pursuant to a plan approved by the Town Board.

(4) Applicants are advised that all disturbed area other than the actual construction footprint should be replanted with native vegetation. No lawns or non-native plantings are anticipated as the frequent flooding of these properties makes the viability of such landscaping unlikely.

(5) Revegetation and restoration shall, to the maximum extent possible, result in the reestablishment of the native vegetation which existed prior to site disturbance.

(6) Native vegetation authorized and approved by Conservation Advisory Committee shall be used for revegetation and restoration purposes.

g. All driveways must be permeable and use crushed shells or other materials with little visual impact. The largest materials used should be ¾" crushed multi-color blend rock.

2. Shoreline protection measures.

a. In the causeway zone, construction of new erosion protection structures is not allowed. Reconstruction or modification of lawfully preexisting erosion protection structures is allowed in accordance with Section 133-23.

b. No new bulkheads, docks or shoreline hardening devices may be constructed on causeway zone property.

3. Aquifer and Water Protection measures.

a. Accessory uses, buildings and structures are prohibited, in order to reduce demands on the limited aquifer in the causeway zone. This includes garages, sheds, swimming pools and other accessory structures and uses.

b. An accessory apartment or accessory sleeping quarters, separate from the dwelling, is prohibited.

c. All development involving the use of a reverse osmosis system in the causeway zone shall be subject to the standards set forth below:

(1) Brine, or other byproducts of the reverse osmosis products, may not be put back into the aquifer, and provision must be made for collection in a holding tank and off-island disposal at a qualified facility;

(2) Applicant shall submit a plan showing the following:

- (a) The manufacturer, size and location of the proposed reverse osmosis system, including the size, location and specifications for the proposed holding tank;
 - (b) The approval of the Suffolk County Health Department and other applicable agencies of the proposed system;
 - (c) The plan and timing of collection and off-island disposal at a qualified facility, including the name and location of the proposed facility.
- d. The brine tank must be set back at least 5' from any side yard line and must be screened from public view by plantings at least as tall as the tank. The plantings must be of native vegetation and applicant shall submit a plan showing the location and type of screening proposed;
4. Septic System Protection measures.
- a. Any and all applications for a causeway wetland permit to construct a raised septic system within the causeway zone shall include measures sufficient to meet the standards set forth below:
 - (1). A septic system must be located at least 150 feet from a wetland, as defined in Chapter 129;
 - (2). A raised septic system must be screened from public view by plantings at least as tall as the raised septic system. The plantings must be of native vegetation and applicant shall submit a plan showing the location and type of screening proposed;
 - (3) A raised septic system retaining wall must be set back 5' from the property line in order to provide room for the screening plantings on the owner's property;
 - (4) Applicant must make every effort to minimize ground disturbance and the use of fill in constructing the raised septic system, and shall submit a plan showing the following:
 - (a) The height and location of the proposed raised septic system;
 - (b) The Suffolk County Health Department approval of the proposed system;
 - (c) The limits of site disturbance shall be identified;
 - (d) The applicant shall indicate the amount of fill needed to install the system and the source of fill material.
5. Viewshed Protection measures.
- a. Any and all applications for a causeway wetland permit to construct a dwelling within the causeway zone shall include measures sufficient to meet the standards set forth below:
 - (1) Building height, as defined in Chapter 133, shall not exceed 25' from natural grade;
 - (2) Fill may not be used to alter the natural grade;
 - b. Accessory uses, buildings and structures are prohibited. This includes garages, sheds, swimming pools, sports courts and other accessory structures and uses.
 - c. Driveway design standards. Driveways should not have a driveway apron. If possible, driveways should be S-shaped to screen the house from the road.
 - d. There shall be a 20' undisturbed natural vegetation buffer maintained between the road and the house, to minimize the visual impact of development.
 - e. There shall be no regrading of the property to block the natural flow of water that currently flows off the road onto the property.

f. Catwalks that are constructed solely for pedestrian use and built by an individual property owner for the limited purpose of providing noncommercial access to the beach are allowed if they meet the following criteria:

- (1) They are no more than three foot wide;
- (2) The surface shall be of light permeable deck grating;
- (3) The structure shall be built with non-chemically treated material.

Section 5. Adds Chapter 129-5.1 ,Criteria for Causeway wetland permit issuance, to read as follows:

§ 129-5.1. Criteria for Causeway wetland permit issuance.

A causeway wetland permit will be issued only with a finding by the Town Board [or Zoning Bd] that the proposed regulated activity meets the findings of §129-5 and meets the following additional requirements:

- A. Is reasonable and necessary, considering reasonable alternatives to the proposed activity and the extent to which the proposed activity requires a shoreline location;
- B. Is not likely to cause a measurable increase in flooding or erosion at the proposed site and at other locations; and
- C. Prevents, if possible, or minimizes adverse effects on natural protective features and their functions and protective values and natural resources, including, but not limited to, significant fish and wildlife habitats.
- D. Is constructed and placed in a way to minimize or prevent damage or destruction to man-made property, private and public property, natural protective features, viewsapes and other natural resources.
- E. Will not overly stress or contaminate the aquifer in the neighborhood of the project.

Section 6. Adds Chapter 129-5.2, Permitting Body for Causeway wetland permit, to read as follows: The Shelter Island Town Board [or Zoning Board] shall be the body responsible for reviewing and issuing causeway wetland permits. [To the extent possible, this process shall occur simultaneously with any zoning review by the Zoning Board of Appeals].

Section 7. Amend Chapter 129-8, Definitions, to read as follows:

CAUSEWAY FOOTPRINT - The causeway footprint shall be calculated from the aerial visible building/structure projection, including conditioned and non-conditioned spaces.

UNREGULATED ACTIVITY - Excepted activities which are not regulated by this chapter include but are not limited to repairs; normal beach grooming or cleanup; maintenance of preexisting nonconforming structures when normal and customary and/or in compliance with an approved maintenance program; maintaining native vegetation.

Section 8. Amend Chapter 129-13, Appeals, as follows:

Any person aggrieved by the issuance, denial, suspension, or revocation of a permit, waiver, variance, or other decision made under this Chapter may seek judicial review pursuant to article seventy-eight of the New York Civil Practice Law and Rules. Such proceedings shall be instituted within 30 days after the filing of a decision in the Office of the Town Clerk. In the event that the court may find that the determination challenged therein constitutes the equivalent of a taking without compensation, and the land so regulated otherwise meets the interest and objectives of this chapter, it may, at the election of the Town Board, either set aside the determination or require the Town to

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acquire the tidal wetlands or such rights in them as have been taken, proceeding under the power of eminent domain.

Section 9. Severability.

The provisions of this Local Law are intended to be severable. If any provisions of this Local Law shall be found by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such finding shall not be deemed to invalidate the Local Law as a whole, nor any other section or provision thereof, other than that which is found to be unconstitutional or otherwise invalid.

Section 10. Effective Date. This Local Law shall take effect immediately upon filing with the Secretary of State.