TOWN OF SHELTER ISLAND

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Chapter 129

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[HISTORY: Adopted by the Town Board of the Town of Shelter Island 7-20-2001 by L.L. No. 9-2001. Amendments noted where applicable.]

GENERAL REFERENCES

Docks - See Ch. 53.
Environmental quality review - See Ch. 60.
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Waterways - See Ch. 128.
Zoning - See. Ch. 133.

ARTICLE I
Policy
[Amended 5-23-2003 by L.L. No. 7-2003]

§ 129-1. Purpose; findings.

A. Rapid population growth, the spread of development and increasing demands upon natural resources are encroaching upon or disturbing many of the wetlands within the Town of Shelter Island, which, if preserved and maintained in an undisturbed and natural condition, are a highly important natural resource, as well as a physical, social, aesthetic, recreational and economic asset to the Town.

B. Wetlands constitute one of the most vital and productive areas in the natural world and collectively have many values including but not limited to marine food chain productions, wildlife habitat, conveyance of flood and storm water, outdoor recreation, waterfowl production, protection of water quality and

reduction in sediment, protection of groundwater recharge and discharge, sedimentation control, education and research, open space and aesthetic appreciation, and fisheries production. Therefore, the protection and preservation of both tidal and freshwater wetlands are essential.

C. The Shelter Island Comprehensive Plan calls for regulatory action which establishes a goal to protect the functions and values of the Town's sensitive wetlands. It is the purpose of this local law to provide for the protection, preservation, proper maintenance and use of the Town's wetlands, by preventing or minimizing erosion due to flooding and stormwater runoff, by maintaining the natural groundwater supplies, preserving and protecting the purity, utility, water retention capability, protecting and encouraging natural plant and wildlife diversity, ecological functions, recreational usefulness and natural beauty of all wetlands, and other related features of the terrain, and by providing and protecting appropriate habitats for natural wildlife. It is the policy of this local law that there shall be no net loss of wetlands due to development or other activities. [Amended 5-23-2003 by L.L. No. 7-2003]

D. The Town Board of the Town of Shelter Island hereby finds and declares it to be the public policy of the Town to preserve, protect, and maintain the functions and values of its wetlands and the benefits derived therefrom, to regulate their use and development in order to prevent their despoliation and destruction. Such policy is consistent with the Town's Comprehensive Plan and the general health and welfare of its inhabitants and the beneficial, economic and social development of the Town.

E. The properties in the Causeway Overlay District (133-11.1) are especially sensitive wetlands areas which are prone to frequent flooding. The Town has a special causeway wetlands 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. [Added 12-2-2011 by L.L. No. 7 - 2011, effective 12-12-2011]

ARTICLE II
Permits
[Amended 5-23-2003 by L.L. No. 7-2003]

§ 129-2. Permit required. [Amended 12-2-2011 by L.L. No. 7 - 2011, effective 12-12-2011]

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 wetlands permit required

Type of Activity	Within Vegetative Buffer	Within Adjacent Vegetative Buffer	Causeway zone
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	CPR
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

§ 129-3. General guidelines to activities within regulated area.

A. Planting, seeding, cultivating or maintaining a previously disturbed area is allowed so long as there is no use of sod, turf, fertilizers, pesticides, herbicides, fungicides or other pollutants. New or replacement plantings in the vegetative buffer shall be of native vegetation, as set forth in a list approved by the Town Board.

B. Undisturbed areas must remain in a natural, undisturbed state, except for the following:

1. Removal of dead, diseased or damaged trees when such removal is necessary for reasons of safety or to control the spread of disease.

2. Removal of obnoxious plant growth such as catbrier, poison ivy, wild grape, oriental bittersweet, Russian olive or other common invasive species.

3. Removal of vegetation on a five foot wide path for access to, or for construction of, a dock, bulkhead or boardwalk, or other access to the water.

4. Tree limbs may be trimmed upward from the ground to a maximum of 15 feet to permit water views. It is permitted to remove trees of less than four inches in diameter when measured four feet above ground level as long as root structure is not removed and the ground area remains vegetated.

5. Shrubs may be trimmed to a height of four feet to enhance growth of nearby ground vegetation.

C. Construction of a dock, bulkhead and boardwalk, does not require a wetlands permit so long as applicant has obtained a permit pursuant to Chapter 53 of this Code, and the project does not require any disturbance, removal or filling of wetlands or produce any negative impact on the wetlands. No new bulkheads will be allowed unless the applicant can demonstrate that land and/or a significant structure(s) on the property are in imminent peril of destruction from erosion and that other measures of curtailing erosion, such as rock revetments, vegetation restoration, etc., are not viable.

D. The depositing or removal of the natural products of wetlands during recreational or commercial fishing, shellfishing or aquaculture is allowed so long as there is no undue disturbance of the wetlands.

E. Any actual and ongoing emergency activity which is immediately necessary for the protection and preservation of life, property or natural resources may be done on a temporary basis without a permit, although the applicant must subsequently obtain a permit if one is required.

F. The dumping of sewage, liquid waste, refuse, toxic or other offensive materials shall not be permitted within the regulated area, except as permitted by the DEC and the Town.

G. Any activity which is not required to obtain a wetlands permit is still subject to all other permit requirements.

H. The wetlands permit exemption for new construction less than or equal to 100 square feet is an exemption of all new accumulated construction totaling 100 square feet or less. [Added 5-25-2007 by L.L. No. 4-2007, effective 5-31-2007]

§ 129-4. Permit procedure.

A. The owner or authorized agent of the owner proposing to conduct or cause to be conducted a regulated activity as defined herein upon or over any wetland or within a regulated area shall file an application for a permit on a form prescribed by the Town Board. Such application shall include the following:

(1) A current, certified survey prepared by a licensed surveyor showing the information as set forth in the application form approved by the Town Board.

(2) The "short form" Environmental Assessment Form (EAF) mandated by SEQRA and the Shelter Island local Environmental Quality Review Law, Chapter 60, setting forth the information and documentation required for a project permit involving wetlands or the regulated area, subject to a request by the Town Board for additional information in a long form EAF.

(3) A disapproval letter and application form indicating all proposed structures, and the requisite fee, established from time to time by resolution of the Town Board.

(4) A vegetation plan must be submitted for any proposal which involves new construction, showing the way in which the vegetative buffer will be affected and preserved.

(5) Additional hydrological computations, topographical or engineering studies, ecological site plan or other factual or scientific data as deemed necessary by the Town Board.

(6) Current photographs of proposed site showing proposed project location, current vegetative buffer, and existing sediment/erosion control controls.

(7) Copies of any such application shall be filed with the Town Clerk in the number prescribed by resolution of the Town Board. [Amended 8-9-2006 by L.L. No. 11-2006; 7-10-2009 by L.L. No. 10-2009, effective 7-15-2009]

(8) Proof of insurance in force: From the owner, a certificate of insurance for at least $500,000.00 liability on the location and operations covered by said permit. [Added 8-9-2006 by L.L. No. 11-2006]

B. Upon receipt of all copies of the application, the Town Clerk shall forward one (1) copy to the Planning Board, one (1) copy to the Conservation Advisory Council, and five (5) copies to the Town Board. The Planning Board and the Conservation Advisory Council shall review said application and shall have a forty-five (45) day period following transmittal of the application to forward their written report of findings and recommendations to the Town Board.

C. The Town Board will accept and process wetlands permit applications only if they are accompanied by a DEC wetlands permit and all other required permits, including the Health Department and Army Corps approvals.

D. Any application for a wetlands permit shall be subject to coordinated review with the Department of Environmental Conservation in accordance with the Lead Agency Agreement executed on June 20, 1983.

E. The Town Board shall schedule a public hearing on the application with no less than ten (10) days notice, to be given as follows [Amended 10-2-2009 by L.L. No. 16-2009, effective 10-8-2009]:

(1) Upon receipt of a complete application, the Board before which it will be heard shall fix a time and place for a public hearing and shall provide for giving notice of same by publishing a notice in the official newspaper at least ten (10) days prior to the hearing.

(2) In addition, at least 10 (ten) days prior to the hearing, the applicant shall mail notice of the time, date and nature of the hearing to the owners of record of every property which abuts and every property which is within two hundred (200) feet of the property involved in the application. Such notice shall be made by certified mail and addressed to the owners at the addresses listed for them on the local assessment roll. On or before the commencement of the public hearing, the applicant shall file a radius map prepared by a professional and an affidavit with postal receipts annexed thereto confirming mailing of said notices.

(3) The applicant or his agent shall also erect or cause to erect a sign or signs which shall be displayed on the parcel upon which the application is made, facing each public street on which the property abuts, giving notice that an application has been made to the Town Board, and stating the time and place where the public hearing will be held. The sign(s) shall not be located more than ten (10) feet from the street line, and shall not be less than two (2) nor more than six (6) feet above the natural grade at the street line. The sign(s) shall be displayed for not less than ten (10) days immediately preceding the public hearing date. The applicant shall file an affidavit with the Town Board that he has complied with the provisions of this section. Failure to submit such affidavit shall result in the adjournment of the public hearing.

F. Within sixty (60) days after the public hearing or receipt of any requested information, whichever is later, the Town Board shall render a decision to approve, approve with modifications or conditions or disapprove the issuance of a permit.

G. Should a permit be granted, the applicant shall, before the issuance of such permit, file with the Town Clerk, a certificate of insurance showing the Town of Shelter Island as additional insured under a comprehensive general liability policy with minimum limits of $500,000.00. The work covered by the permit must be substantially started within two (2) years of issuance, or the permit is void.

H. Any new or additional activity not covered in the original wetlands permit shall require an amendment to the wetlands permit. The amendment follows the same application process as a new wetlands permit.

I. A permit may be extended by resolution of the Town Board for an additional period of one year without a public hearing, provided that the request for same is submitted no later than the expiration date. [Added 5-29-2009 by L.L. No. 7-2009, effective 6-3-2009]

129-4.1. Causeway Wetlands Permit Regulations. [Added 12-2-2011 by L. L. No. 7 - 2011, effective 12-12-2011]

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.

i. Copies of all other necessary permits.

B. Design specifications for Causeway Wetlands Permit.

All applications for a Causeway Wetlands Permit shall meet the following design specifications in addition to the design specifications for all wetlands permits.

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 wetlands 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 shall 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 wetlands 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) The application shall contain a series of photographs showing existing vegetation on the property.

(4) 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.

(5) Applicants are advised that all disturbed area other than the actual construction footprint shall be replanted with native vegetation. No lawns, non-native plantings or plantings that require irrigation or fertilization are allowed as the frequent flooding of these properties makes the viability of such landscaping unlikely.

(6) Revegetation and restoration shall, to the maximum extent possible, result in the re-establishment of the native vegetation which existed prior to site disturbance.

(7) Native vegetation authorized and approved by the Conservation Advisory Council 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 pre-existing erosion protection structures is allowed in accordance with Section 133-23.

b. No new bulkheads, docks or shoreline hardening devices can 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, shall 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.

e. The Town Board would consider a trucked in water option in lieu of a reverse osmosis system if owner can get approval of the Suffolk County Health Department.

4. Septic System Protection measures.

a. Any and all applications for a causeway wetlands 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 the wetlands, 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 wetlands 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 shall 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 shall 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 re-grading 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 may be allowed if they meet the following criteria:

(1) They are no more than three feet wide;

(2) The surface shall be of light permeable deck grating;

(3) The structure shall be built with non-chemically treated material;

(4) Owner gets appropriate permits for such structure.

6. Flood Protection measures

a. Since the property is extremely susceptible to flooding, any issuance of a causeway wetlands permit will involve a weighing of the following factors:

(1) Whether the structure, use or operation under consideration is one for which the possibility of obtaining flood insurance is or should be a material consideration.

(2) Whether the structure, use or operation under consideration is appropriate and suitable to this flood-prone area and ways in which flood impacts on the public can be mitigated.

(3) Whether the development meets appropriate state and federal guidelines and standards for the use of lands extremely susceptible to flooding under FEMA criteria.

b. It shall be understood by all persons that issuance of a causeway wetlands permit for development in this flood-prone area is no guarantee that such development is prudent or desirable. All parties receiving a causeway wetlands permit shall sign a document on behalf of the owner or owner's heirs, assigns, personal representatives and estate releasing, forever discharging and covenanting not to sue the Town of Shelter Island, its departments, officers, boards, employees and volunteers with respect to any and all claims, liabilities, demands or causes of action which may arise in connection with issuance of permits for development in this flood-prone area.

§129-5. Criteria for permit issuance.

A. No permit shall be issued unless the applicant demonstrates, and the Town Board finds, that the following standards have been met:

1. The proposed action and location will not create a risk of impairing the function and value of the wetland and buffer.

2. The proposed project will not diminish any wetland in size, unless the approving authority finds that the proposed activity is water-dependent or requires access to the wetland as a central element of its basic function and will result in the minimum possible alteration or impairment of the wetland.

3. The proposed project will not have a negative impact on the quantity and quality of groundwater.

4. The proposed project will not create a net increase in the risk of runoff.

5. The applicant has demonstrated that there are no practicable alternatives which allow the project to be constructed outside the regulated area. Practicable alternatives are presumed to be available unless the applicant clearly demonstrates otherwise. In making this determination, note that the Town Board generally finds that conducting the proposed regulated activity on the side or landward side of the house is highly preferred to conducting it within the regulated area.

6. The applicant has submitted information to describe alternative site locations and configurations sufficient for a determination that the proposed work and location would have a less adverse environmental impact than any other practicable alternative in order for it to be approved. Practicable alternatives that are constructed entirely outside the vegetative buffer are presumed to have less adverse impacts on the wetlands than projects that do not meet such standards, unless the applicant clearly demonstrates otherwise.

7. The Town Board has determined that the applicant will voluntarily implement, within three months of the issuance of the permit, adequate mitigation measures that contribute to the protection and enhancement of wetlands and wetland benefits.

B. The Town Board reserves the right to impose any conditions and mitigation measures it deems to be compatible with the purpose and public policy of this local law.

§ 129-5.1. Criteria for causeway wetlands permit issuance. [Added 12-2-2011 by L. L. No. 7 - 2011, effective 12-12-2011]

A causeway wetlands permit will be issued only with a finding by the Town Board 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, viewscapes and other natural resources.
E. Will not overly stress or contaminate the aquifer in the neighborhood of the project.
F. The Town Board may waive some of the causeway wetlands permit requirements in order to achieve goals that further the stated purpose of the causeway wetlands permit legislation, but shall provide a written analysis of any such waivers.

§ 129-5.2. Permitting Body for Causeway wetlands permit. [Added 12-2-2011 by L. L. No. 7 - 2011, effective 12-12-2011]

The Shelter Island Town Board shall be the body responsible for reviewing and issuing causeway wetlands permits. To the extent possible, this process shall occur simultaneously with any zoning review by the Zoning Board of Appeals.

§ 129-6. Fees.

The fees for an application under this local law shall be set from time to time by resolution of the Town Board.

§ 129-7. Waiver

The Town Board, upon the request of an applicant for a permit, may waive the submission of any information required by the provisions of § 129-4, if it finds it to be unnecessary.

ARTICLE III
Definitions, Administration and Enforcement
[Amended 5-23-2003 by L.L. No. 7-2003]

§ 129-8. Definitions.

ADJACENT REGULATED AREA - The area lying outside the seventy-five (75) feet Vegetative Buffer but within the one hundred (100) feet regulated area.

BOARDWALK - a walk, or a stairway down a bluff, constructed of planking, which can be at ground level or elevated over vegetation and, which cannot be more than five (5) feet wide.

CAUSEWAY FOOTPRINT - The causeway footprint shall be calculated from the outermost projections of the building/structure using a direct overhead view and including conditioned and non-conditioned spaces. [Added 12-2-2011 by L. L. No. 7 - 2011, effective 12-12-2011]

EXPANSION - The construction of an addition to an existing structure.

FOOTPRINT - The outside perimeter of an existing foundation for a structure, including any covered porches attached to said structure but excluding patios, decks, stairways, steps, or balconies.

NEW CONSTRUCTION - The erection of a structure in a location where no structure previously stood, whether freestanding or attached to an existing structure.

RECONSTRUCTION - An alteration to any part of an existing structure which replaces fifty (50) percent or more of the existing structure, including walls, roofs, floors, wiring, plumbing and insulation.

REGULATED ACTIVITY - Activities requiring a permit, including but not limited to:

A. dredging, disturbing, excavating or mining, either directly or indirectly;

B. dumping, filling, or depositing, either directly or indirectly;

C. disturbing, clearing cutting or removing vegetation;

D. erecting or expanding any buildings or structures including docks, bulkhead, boardwalks, driveways, tennis courts, or pools;

E. constructing or expanding roads;

F. installing utilities, septic systems, sumps or catchment basins;

G. driving pilings or placing any obstructions, whether or not changing the ebb and flow of the water;

H. any form of pollution, including but not limited to installing an on-site sewage disposal system, running sewer outfall, discharging sewage treatment effluent, rainwater runoff, water discharge from a swimming pool, or other liquefied wastes into or so as to drain into a wetland and which occur within the regulated area;

I. any other activity which impacts any of the functions or benefits of wetlands.

REGULATED AREA - The area in, on or over a wetland and within one hundred (100) feet of the landward boundary of a tidal wetland or within one hundred (100) feet of the landward boundary of a freshwater wetland, as measured horizontally. It shall consist of the seventy-five (75) feet Vegetative Buffer plus the twenty-five (25) feet Adjacent Regulated Area.

REPAIR - An alteration to any part of an existing structure which replaces less than fifty (50) percent of the existing structure, including walls, roofs, floors, wiring, plumbing and insulation.

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. [Added 12-2-2011 by L. L. No. 7 - 2011, effective 12-12-2011]

VEGETATIVE BUFFER - There shall be a shoreline vegetative buffer which extends seventy-five (75) feet landward from the most landward point of tidal or freshwater wetlands, as those terms are defined herein.

WETLANDS (is amended as follows, the balance of the definition to remain unchanged):

A. TIDAL WETLANDS

(2) All lands generally covered or intermittently covered with, or which border on or lie beneath tidal waters such as banks, beaches, bogs, salt marsh, swamps, meadows, flats, bars, shoals, littoral zones, high marsh and salt meadow or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters and including waters immediately adjacent to bulkheads.

§ 129-9. Applicability.

This local law shall apply to all lands and lands under water over which the Town of Shelter Island has jurisdiction but shall not apply to the Incorporated Village of Dering Harbor.

§ 129-10. Enforcing officer.

It shall be the duty of the Wetlands Officer to administer and enforce the provisions of this local law.

§ 129-11. Notice of violation.

A. Whenever the Wetlands Officer has reasonable grounds to believe that operations regulated hereby are being conducted in violation of the provisions of this Chapter or not in compliance with a permit issued pursuant to this Chapter as it presently or formerly may have existed, he shall notify the owner of the property, or the owner's agent or the person performing such operations to suspend all operations until such notice of violation has been rescinded.

B. Such notice shall be in writing, shall specify the violation and conditions which must be complied with and the time within the compliance must be completed before operations may be resumed. Such notice shall also inform the alleged violator of the right to apply for a hearing before the Town Board before assessment of a civil penalty, as hereinafter provided.

C. Such notice shall be served by personal service upon the alleged violator, or by posting same in a conspicuous place on the premises where operations are being conducted and mailing a copy to such person by certified mail to the last known address.

D. In the event that the person upon whom a notice of violation has been served shall fail to immediately cease operations or comply with said notice, any permit issued pursuant to this local law shall be suspended.

§ 129-12. Penalties for offenses.

A. Any person who violates, disobeys or disregards any provision of this local law shall be liable for a civil penalty not to exceed twenty-five thousand ($25,000.00) dollars. [Amended 11-14-2014 by L.L. No. 9-2014, effective 11-21-2014]

B. Any disturbance of the vegetative buffer that exceeds the standards specified in §129-3, must be restored in its entirety, by submission of a revegetation plan which satisfies the Town Board and by the installation of native vegetation, as designated in a list prepared by the Conservation Advisory Council, to restore the vegetative buffer.

C. Before assessment of a civil penalty, the alleged violator shall be afforded the opportunity for a hearing before the Town Board, provided that a written request is filed with the Town Clerk within ten (10) days after service of the notice of violation.

D. In addition to the above, any person who violates any provision of this Chapter shall be guilty of an offense punishable by a fine not less than one thousand five hundred ($1,500.00) dollars. For a second and each subsequent offense, the violator shall be guilty of a misdemeanor punishable by a fine of not exceeding three thousand ($3,000.00) dollars or a term of imprisonment not to exceed fifteen (15) days, or both. [Amended 4-18-2008 by L.L. No. 3-2008, effective 4-24-2008]

E. Any offender may be ordered by the court to restore the affected wetland 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 Town Board of Shelter Island.

F. In the case of a continuing offense, each day shall be deemed a separate and distinct offense.

G. In addition to the above-provided penalties the Town shall have the right to seek equitable relief to restrain any violation or threatened violation of any provision of this local law.

§ 129-13. Appeals. [Amended 12-2-2011 by L. L. No. 7 - 2011, effective 12-12-2011]

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 78 of the New York Civil Practice Law and Rules. Such proceedings shall be instituted within thirty (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 acquire the property or such rights in them as have been taken, proceeding under the power of eminent domain.

§ 129-14. Severability. [Amended 12-2-2011 by L. L. No. 7 -2011, effective 12-12-2011]

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.

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