TO: Town of Lewisboro Town Board
Town of Lewisboro Planning Board
Westchester County Planning Department

FROM: Lewisboro Conservation Advisory Council

SUBJECT: CAC Response to Wetland Code Revision Referral

REFERENCE: Wetlands Law Referral memo from Mary Hafter to the CAC dated November 10, 2016

DATE: January 10, 2017

The proposed wetland code revisions were referred to the CAC. By mission and law, a key component of the CAC's role is to work to preserve and protect Lewisboro's environment and natural resources, including its watercourses and wetlands, and to advocate for environmentally sound policy and code. [1] We are glad to have the opportunity to comment on these changes before the code changes are finalized and brought to a public hearing.

The CAC met to review the proposed changes to the wetland code. According to the fact sheet, the proposed changes have two purposes. First, to move the jurisdictional venue for wetland violations from the Planning Board to the courts, and to move the responsibility for managing the wetland violations, including issuing the notice of violation and presenting the case, from the Wetland Consultant to the Building Inspector. A second expressed intent is to simplify the process for residential wetland permits by making the majority of them administrative permits, and to speed development by exempting many activities from regulation. The CAC certainly supports the intent of a speedier and more efficient process. And we agree that some activities are appropriate for administrative handling or exemption from regulation. As written, however, the proposed code significantly reduces wetland protections and decreases the transparency of Town actions. The CAC cannot support the proposed wetland code changes as written.

Planning Board reviews are currently subject to transparency through agenda, minutes, and public participation. Under the proposed changes, a large portion of these applications would be designated as administrative. The CAC is concerned that too many activities will occur without public notice or the public's ability to comment. In addition, administrative permits would not be subject to reporting or summarization. As a result, the public will not have any visibility to assess the effects of these dramatic changes to the code.

In order to better assess the impact of the proposed code, we strongly recommend a review of all recent wetland permits for the past two years to see which of these recent permits would have been exempted from any review, which would have been administrative, and which would remain with the Planning Board under the proposed rules. This would enable an assessment of the effect of the changed law and might highlight any situations where the current review process or public participation was important to the outcome or to community interests. In addition, we strongly recommend compilation of the approved distance from wetlands

[1] Article 12-F Section 239-x of the State of New York General Municipal Law

for various activities so that if this law is implemented, we can see if and how wetland protection erodes if these changes are implemented. It would also be helpful to track the timing of the process from the start to the end.

Review of the proposed code. We review the proposed law section by section with comments or recommendations for further changes as it applies to each section.

217-2. Definitions

- Commissioner – no longer referenced, definition can be removed
- Environmental Questionnaire Form – typo – remove hyphen in "carry-out"
- Manure Storage – add "covered" before container. When manure storage is in a buffer and can abut a wetland, covering the contents against precipitation should be required.
- Clear-cutting is defined with hyphen, but used without: clear cutting. It should be used consistently.
- Town Wetland Consultant – This change from inspector may be to avoid the civil service definition, but use of consultant appears to codify the requirement that the wetland official must be external to the town. Better terminology options exist, including: Official, Inspector, Authority, Administrator, Executive, Advisor, Expert, Professional, Specialist, Supervisor, Doyen, Maven
- Watercourse & Wetland – The CAC suggests explicit clarification that wetlands and watercourses are both included in the Town's jurisdiction under the wetland law, since the phrase "wetland, watercourse, and buffer area" is not used consistently throughout the code.
- Wetland – the definition seems to be based on plant types only and should be clarified. We understand that the intent is to change the definition of a wetland from requiring any **one** of the elements of a wetland to requiring **all three** of the elements of a wetland (soil characteristics, hydrology, and plants) as specified in Appendix A. This change appears to be a significant reduction in the law. However, the Town's practice has been to look at all three characteristics, so this change in code is meant to document current practice. The Town should recognize this practice has already reduced the amount of area that is classified as wetland from when the law was originally implemented.

The definitions section should also contain new definitions for seawall, best management practices, recreational trails, bog and foot bridges, chemical storage facilities, and bulk petroleum storage.

217-3 A.

Smaller wetlands (less than 2500 square feet) lose buffer protection under the proposed code.

- Small wetlands may be adjacent to a lake or stream and be a component of a larger hydrological complex. This should be recognized in code and the buffers should be protected as well as the watercourse.
- Several small wetlands that individually do not meet the size criteria may form a wetland complex together and that buffer should be protected.
- Bedford, North Salem, Ridgefield do not have minimum wetland sizes, and Yorktown has 1000 square feet. No criteria for the selection of 2500 square feet was provided. The CAC feels that the proposed wetland size for removal of buffer protection is arbitrarily large and the size limit should be removed or reduced.
- It is difficult to determine how much of the Town's wetland resources would fail to get protection if this change is implemented. We suggest that the recent wetland permits be examined to see how many of the wetlands would have been subject to this loss of protection.

The intent of this section is apparently to exclude buffer protection for small, manmade, lined ornamental ponds with no inlets or outlets such as ornamental koi ponds, and if so, that is what the code should say. This section

should be revised. No effective case has been made for this change. The CAC does not support a minimum size for a wetland to get buffer protection. However, if a minimum size is imposed, it is essential to implement vernal pool protection.

Vernal pools are critical habitat but this code as written may not provide adequate protection.

- Vernal pool determination is dependent upon time of year. Applications would be delayed while waiting to see the summer time water level, and even more when breeding animal verification is desired. Breeding animals may only be present for a week or two in the spring, their egg masses and sounds can be difficult to identify or document, and the timing can vary from year to year. This difficulty may mean that many wetlands that are vernal pools are not identified as such and lose buffer protection.
- If vernal pools are defined as a unique wetland type, vernal pool buffers should be more carefully protected and expanded. Vernal pools need a minimum of 300 feet of buffer, and many studies call for even larger buffers.[2] Any impervious surface, and especially activities such as animal pens, paddocks, waste, chicken coops, and dog runs must be kept out of vernal pool buffers, as minimally disturbed upland habitat is critical for migrating amphibians and successful vernal pool functions.

Buffer protection is further eroded by additional proposed code changes. The minimum wetland size together with removal of other buffer protections may have a larger collective impact than either change alone.

217-5 A. Prohibited activities.

1. We suggest inserting "any portion of a sewage system" to result in the following code language: "Placement of any portion of a sewage system, sewage disposal tank…." This would clarify the prohibition.
3. Removal of the buffer area prohibition for chemical and petroleum storage is a concern. The terms "chemical storage facilities" and "bulk petroleum storage tanks" need to be defined. Does chemical storage include bags of fertilizers, pesticides, herbicides, pool chlorine, or does it mean large scale salt domes? Does bulk petroleum storage tank mean heating oil tanks, propane tanks of any size, gas cans? Depending on the definition, removing the buffer prohibition could be very harmful to the ability to protect watercourse and wetlands. If this is intended to allow improvement of grandfathered buffer intrusions such as the removal of in-ground heating oil storage tanks and replacement by above-ground tanks, that should be stated, rather than a mass extinction of buffer protection. In any case, the code must continue to prohibit new in-ground oil tanks in the buffer. We are more concerned with the potential for in-ground fuel oil or diesel storage tanks for generators than we are with in-ground propane tanks and feel that this distinction should be made in definitions. In addition, we suggest that this provision be reconciled with the provisions of the Croton Plan for Westchester, [3] since Lewisboro is a signatory to the Croton Plan.
4. Removal of the buffer area prohibition for animal pens and manure storage is a significant concern and the CAC feels it must be reconsidered. Animal wastes are a source of phosphorus, a pollutant of concern for most of our Town because of harm it does to our lakes as well as to the NYC watershed.
    - This proposal runs counter to the other regulatory directions of the DEP. The DEP has publicized their implementation of buffers between animals and watercourses in their watershed. [4]
    - This also runs counter to the direction of the NYS stormwater permit regulations. The new draft stormwater permit recommends a model town law with vegetated natural buffers 100' from all waterbodies and wetlands without regard to size.[5]

[2] Maine recommends 750 feet, Vermont recommends 400-600 feet, and ACOE recommends 750 feet.
[3] http://planning.westchestergov.com/crotonplan
[4] http://www.nyc.gov/html/dep/html/watershed_protection/watershed_regulations.shtml
[5] . http://www.dec.ny.gov/chemical/41392.html

- The motivation for this change is apparently to allow approval of improvements to existing grandfathered activities. Because of the substantial environmental concern with this proposed change, we would like to understand how often grandfathered animal pens and manure storage areas have been an issue in the past. and why this should move from a prohibition to an administrative permit. The CAC feels that an allowance for enhancements to existing facilities should be explicitly stated in this code rather than removing buffer protection for new activities.
- We note that both Pound Ridge and Bedford prohibit animal pens in their buffers (150' in Pound Ridge, and the greater of 100' or a 5' rise in elevation for Bedford). This comparison to other towns argues for a continuation of this prohibition in our Town.
- This change is of special concern because projections are for more frequent intense precipitation events in the future, which could overwhelm the design size of stormwater BMPs.
- Histories of the New York City water system document that in the late 1800's horse corrals, pig pens, and chicken coops were removed from lake shores and stream sides, sometimes forcibly. For example, in 1893 Daly's Raids were carried out in the Croton Watershed to protect the source of New York City's water. "Armed with a law to 'provide for the sanitary protection' of New York's water, and a directive from the Common Council to provide a 300-foot margin around the reservoirs and along the streams that fed them, Daly and his men fanned out across the countryside, ordering homes evacuated, barns and pigsties removed, privies burned."[6] One hundred and twenty-five years later this code would invite animals and their manure to return to the shores, despite improved knowledge of nutrient pollution, increasing population pressures, and generally deteriorating water quality trends. This proposed change is incomprehensible and unsupportable as written.

5. Deposit of fill of any sort should be prohibited within a wetland or watercourse. This prohibition should not be limited to construction debris.

217-5 B. Allowable activities without permit and without an environmental clearance form. Many new activities require no permit or review. We have concerns with some of these and explain our concerns below.

1. Mowing of existing lawn areas. It is hard to see how anyone would be stopped from creating new lawn within a buffer given this provision especially when combined with others below. If mowing has been restricted by a site plan or permit as part of mitigation plans, the code should make clear that those restrictions endure despite this proposed provision.

8. Maintenance of swimming pools should include a requirement for treatment of chlorinated or salt pool water before being released into the buffer or wetland. This is also required by the stormwater permit.

9. The new provision allowing the installation of "plants and trees" within a buffer must exclude turf grass and should mandate that no mechanical equipment should be used for digging or transport of the materials. Consider rewording to "shrubs and trees". With no permit or notice required, how would the proposed 1000 square foot limit and chemical prohibitions be enforced and communicated to vendors? Are mulching and wood chips allowed in buffers adjacent to wetlands as part of installing plants? This provision needs additional limits and restrictions. As it stands it could erode wetland protection.

10. Allowing almost any activities within 25 feet of an existing building, accessory building, or structure, including allowing a building expansion, is far too permissive.
    - The implied protection of an existing building is illusory. As soon as a building or structure is completed, this expansion can begin, making limitations during the original site development moot.
    - Nothing limits how many 25 foot extensions can be added to intrude into the buffer.

[6] Charles H. Weidner, Water for a City, Rutgers University Press, 1974.

- The Wetland Consultant is supposed to check the 300 square foot size limit but when no questionnaire is required, no mechanism exists for the Wetland Consultant to know of any activity.
- Many lakeside homes are less than 25 feet away from the shore and this would allow building or patios out to the shore. This would eliminate shoreline buffers, which are an important contributor to water quality. This would eliminate many of the mitigation activities imposed by past permits.
- We note that the draft stormwater permit[7] considers activities within 100 feet of lakes and 50 feet of streams to be high risk activities requiring additional oversight, possibly counter to this provision.
- The inclusion of accessory buildings in this provision allows shed and building expansions far from the main residence.
- Including structures like docks, pavilions, fences, and walls to be the basis for a 25' activity area would allow widespread construction without regulation, including along lake shores and stream banks.

The intent of this 25 foot proposal is apparently to allow for the installation of generators, air conditioners, or small walkways or driveway extensions. If so, that should be what the code says. The CAC would be likely to support such allowable activities if they were within some distance of the **main residence**, but perhaps less than 25 feet on small lots. It should also be clear that such activities should not extend into actual wetlands or watercourses. Otherwise, we feel that building around any structure should continue to be a regulated activity. We note that a building permit may still be required, depending on the activity. A 25-foot zone for any activity around any structure is far too damaging to stay in the code as written. This unlimited provision would significantly increase the potential for wetland and watercourse pollution.

11. Seawalls are not defined but from the context this is meant to be any wall adjacent to a watercourse, not just marine waters. Consider limiting materials to require replacement in kind or prohibit chemically treated lumber. Lacking constraints as written, this should be moved to a regulated administrative activity.

It may be appropriate to require environmental questionnaires for these activities rather than to classify them as an activity by right and to eliminate any Town awareness of the activity.

Another concern with the widespread removal of buffer protections and the increase in allowable activities without a permit is that residents and the DEC may be unaware activities are within the DEC 100' wetland buffer until after the fact, resulting in more DEC enforcement. In addition, NYC DEP has regulations about building activities or paving driveways within 100' of a stream in their watershed. Consider updating the Environmental Questionnaire Form to indicate whether a DEC checkzone or DEP restrictions might apply to the area. Of course, this won't help in the allowed activities where an environmental questionnaire form is not required.

One of the reasons that Town regulations exist are to help limit neighbor to neighbor conflicts. Even some residents who feel that they should be able to do anything on their property may not be as enthusiastic to grant their neighbor the same right. As just one example, some lake associations have imposed constraints on dock size and lakeside sheds so that a common set of standards is voluntarily recognized by the community.

The CAC was told that one reason to exempt so many of these activities from regulation is that the clearance form process is thought to take a long time. It appears that under the current process it may take three weeks to determine if a proposed activity requires review. If this is accurate, the process should be changed, not eliminated. For example, one process improvement might be to allow online completion or submission of environmental questionnaire forms so that a week will not pass before the Wetland Consultant sees them. The Wetland Consultant could make it the practice to visit the sites the week that the forms are received rather than

[7] http://www.dec.ny.gov/chemical/41392.html

scheduling visits a week after collecting forms at the office. Alternatively, the fees from the wetland clearance form might be sufficient for the Town to hire a part time person to be on call or in the office an additional day each week. In sum, the perceived slowness of the current process does not mean regulatory oversight should be removed: instead the process should be improved. The CAC strongly supports process redesign.

217-5 C 1. Regulated activities – administrative permit

Under the proposed code, any residential or non-residential construction permit will be administrative unless it is on a vacant lot or requires a new septic system. All miscellaneous activities which have less than 5000 square feet of disturbance are made administrative. This delegation is far too broad and limits should be imposed.

a. Defining any additions and alterations to an existing building, accessory building, or structure as an administrative permit without regard to the size of the building, amount of disturbance, or distance from the wetland is a significant change and a concern. Current limits are 600 square feet, a 50 foot buffer, or 10,000 square feet of disturbance. Some limits should be imposed if only to encourage applicants to respect these limits in order to qualify for an administrative permit.

b. Making the construction of any accessory building or structure an administrative permit without regard to size, disturbance, or proximity to wetland is a concern. Current limitations are the 100 foot buffer, 10,000 sq. ft. of disturbance, and grade change less than 2 feet. Some limits should be imposed.

c. A new provision for animal feed lots, pasture, and manure storage with in a buffer moves these activities from a prohibited activity to an administrative activity. This is a significant change. This activity can be highly visible to neighbors, can be highly detrimental to wetlands and watercourses, and may use BMPs that require continued maintenance to function effectively. Manure management plans should be required. This is the wrong direction when the frequency, intensity, and damage of storms is projected to escalate significantly and other regulatory agencies are imposing restrictions. Also, the pens would be structures and thus enable completely unregulated activities within 25 feet. See additional comments under 217-5 A 4.

d. Recreational trails. Clarify if this applies to residential and non-residential property. As written, no incentive exists to minimize the presence of trails and bridges within a wetland or watercourse. While various Scout and Town hiking trail projects should be administrative, this is again too broadly permissive. Do recreational trails include horse, bike, ATV, and snowmobile trails? While the CAC will agree that foot trails can be an administrative category, we feel that trails for motorized vehicles should have Planning Board review.

e. The new provision for vegetation removal and / or management within any wetland or watercourse to be administrative is extraordinarily lax and broad in scope. As written, this could cover anything from cutting trees and shrubs, to dredging, to herbicide treatments in drinking water lakes. The potential for disruption of shared lake areas, drinking water lakes, and downstream areas is a concern. While in some cases this could be appropriately handled administratively, in many cases the scope of impact calls for more review and a public hearing. If the intent is to allow for the control and removal of invasive species in a buffer, then that is what the code should say. As written, this clause is far too broad and permissive. Limits on activities and scope of this provision must be imposed.

f. This new provision says basically anything not specifically required to go to the Planning Board can be administrative as long as land disturbance is less than 5000 square feet. Again, this is extraordinarily broad language with the potential for disruptive activities without any prior awareness or comments by neighbors. Retention of this clause diminishes any improvements made to all of the sections identified above. Activities that may stretch our imagination would be administrative, including pesticide and herbicide applications in lakes and streams, clearing along shores, public or private boat launches and beaches, musical fountains, water slides, zip lines, water withdrawals for agricultural or commercial interests, geothermal installations in lakes, etc. We feel that it is more appropriate to have the Planning Board discuss novel activities. Also,

chemical treatments that may be business as usual in one lake are extremely controversial in another, and a Wetland Consultant may be oblivious to these nuances until after implementation and public uproar.

The cumulative effect of these provisions is an extensive increase in the activities, authority, and discretion of the Wetland Consultant. In addition to the range and scope of residential activities, the proposed delegated authority includes non-residential properties. These activities occur without the benefit of Planning Board input, possible public hearings, minutes, and of course the wise advice of the CAC. We feel it is important to get a numerical assessment of the number of recent Planning Board applications that would have been delegated and whether the Planning Board review process generated changes to the application.

We feel the threat of a full Planning Board review provides leverage to minimize buffer intrusion and disturbance. Without the incentive of administrative delegation, applicants have no reason to propose activities that are 145 feet rather than 5 feet from the wetland. Currently, we are convinced that the more minimal the intrusion, the more likely the Planning Board will delegate this activity, and that consideration affects the applications.

The proposed code changes rely upon the continued presence of a dedicated and skilled professional. No mechanism exists to see if conditions or standards start to slip in the future. No summary of permits is required, no assessment of the encroachment on buffers before or after this change, no trends over time can be compiled. The discretion and interpretation of the wetland inspector is absolute. Once a permit is granted, even if neighbors complain, it is irrevocable.

Also, no assessment of the fiscal impact of the reduction in wetland permit fees to the operating budget of the town has been made. This estimate should be prepared for consideration with these code changes.

217-5 D 1. Regulated activities – wetland permit

b. We feel the additional phrase in (a) means (b) can be eliminated. We note, however, that 217-5 C (1) (f) is very broad in scope.

f. This new provision enables the construction of a new or expanded septic system within a wetland or watercourse. This is and must remain a prohibited activity. This phrase conflicts with the prohibition in 217-5 (A) (1). The words “wetland” and “watercourse” must be deleted from this provision.

217-6. Permit procedures.

D. 3. The elimination of the requirement for the wetland consultant to report on the approval and denial of administrative permits is especially concerning given the proposed increased scope and discretion of the wetland consultant. Indeed, the reporting requirement is more important than ever, and should be formalized and available to the public so that the impact and any unintended consequences of this change in law can be assessed. The elimination of this provision means that some of the current work of the Planning Board that is subject to public hearings, minutes and recording is not only given to the Wetland Consultant, it is done so in a way that is opaque to the public. This is a disservice to the residents of the Town and should not be approved as proposed.

217-7 Permit application materials

A. 5. If the size of the wetland and the vernal pool status are retained to determine whether a buffer is required, the permit should require documentation of wetland and watercourse size and vernal pool characteristics.

217-8. Standards for wetland permit decisions
As written, these changes say that standards only apply to Planning Board permits and do not apply to administrative permits. This again means that the Wetland Consultant is freed from any regulatory constraints or standards to approve or deny a permit. We cannot believe this was intended. This is not acceptable as written and must be changed.

A. 1 a. Take this opportunity to correct the apparent typo: change "Milling" to "Filling"

217-12 Enforcement. The proposed process for violation and adjudication shifts the responsibility to the Code Enforcement Officer (the Building Inspector) from the Wetland Inspector. However, since the Building Inspector is not primarily trained or interested in wetlands, watercourses, or buffers, this arrangement is highly dependent upon a strong working partnership with the Wetland Consultant. It is not clear how this partnership would work, especially since the code does not mandate this partnership. Presumably this would incur additional costs in the consulting contract. Court Officials may need to be educated as to the purpose and import of the Wetland Law and the impact of the violation, and again the Wetland Consultant is not required to provide education in the proposed code. We are concerned that this change may effectively eliminate code enforcement if the Building Inspector is not appropriately supported. We urge the board to ask the Building Inspector for his views.

Before the current wetland law was enacted, the Building Inspector was responsible for enforcement, and apparently the institutional memory of the issues with that approach has been lost. We suggest reaching out to people who served on the Planning Board at that time for their insights.

We are concerned that a defendant could point out that wetland enforcement is not within the civil service description of the Building Inspector, and that could jeopardize the imposition of sanctions. The Manbeck case tested and confirmed the current approach. The CAC is not convinced that there is an issue with the current process, nor that the proposal is the best solution.

If the Town desires adjudication to move from the Planning Board to the Court, we see no reason why the Wetland Consultant cannot continue to issue the notice of violation and represent the Town in front of the court, rather than in front of the Planning Board. This seems more effective than to handoff the responsibility to someone who is not trained, knowledgeable, or interested in wetland matters.

The CAC is concerned that without effective enforcement, the number of violations will increase. We would be interested in what procedures and processes other Towns use in enforcement and whether a more effective approach is possible. As written, the CAC cannot support this change.

217-12 D 1 Sanctions
On one hand, the requirement that a violation of the wetland code may mean a court appearance appears to elevate the consequences of breaking the law. However, changing the first wetland offense to a fine of not more than $250 (from not less than $500 and in some circumstances up to $7500) defangs the law substantially. Why would anyone not just take the risk of being caught and having to deal with a violation that may be remedied before a court appearance? We feel the potential fine should be significant compared to the cost of getting a wetland or administrative permit. Also, the proposed code allows the Court to direct the defendant to obtain a wetland permit or administrative wetland permit, but without some agreement to the extent of remediation or

mitigation at the court appearance, this could be a contentious process. This reiterates the need for the court personnel and prosecutor to understand and be advised on wetland functions and vulnerabilities. Although in the proposed code the court is advised by the Building Inspector, we remain concerned that this is not an effective solution absent the skill and knowledge of the Wetland Consultant.

Also, the last sentence of this section should include watercourse as well as wetland and buffer area.

We urge the Town to take this opportunity to consider some additional changes to the code.

- Since our Town is under a mandated stormwater obligation to reduce phosphorus, add phosphorus removal to permit approval standards. Consider adding phosphorus reduction to mitigation activities.
- Incorporate 100 year and 500 year floodplain protections or add them as a standard for considering permit approval or rejection
- Clarify conditions under which mitigation can occur within buffers, and consider restricting acceptable mitigation activities within wetlands or watercourses.

Reasons for change - The CAC has heard a variety of reasons to change the law. We address them below.

- Reduced wetland constraints will increase the assessed valuation in the town. We understand that in the past year, the town lost approximately $1.8M of assessed value resulting in $38K less taxes. That decrease was largely driven by the reduction in appraised value of several multimillion dollar homes. This code will not change that fact. Many of the proposed changes to this wetland law will eliminate wetland and buffer protections without greatly increasing assessed value. Generators, patios, and decks are not living space and their installation will have minimal if any assessed value changes. Late in 2016, of the 384 building permits issued, 217 did not result in an assessment change. We reject the premise that house values will increase and fear the cost of a huge reduction in wetland and watercourse protection for no assessment value benefit.
- Easier wetland construction will eliminate zombie houses. These houses are held by banks at a book value above market value, and banks are reluctant to sell the houses for market value and record a loss. Changing the wetland code will not modify this dynamic.
- Fewer wetland permit requirements will increase the market attractiveness of homes in this town by making upgrades easier. We believe that people move to our town largely because of the schools and the open space amenities. Since our neighboring towns have similar wetland restrictions, we do not see this as a persuasive reason to significantly reduce wetland protection.
- Fewer regulatory restrictions will make the process quicker and cheaper for people to upgrade their homes. If there is a process problem, we feel that it's appropriate to address the process steps, not to eliminate the regulations that protect our water resources. It appears that other towns may have more efficient processes and we should understand those approaches to see if they can be implemented for our residents.

Unintended consequences. This proposed code essentially removes many buffer protections and prohibitions from the code. No higher standard is required for actions within 5 feet of a wetland than for those within 145 feet of a wetland. No summary has been prepared of approved applications and no provision for ongoing reporting to see if trends appear. Without a summary of the conditions in recent approvals, we have no estimate of the impact of these proposals. We are concerned that with no pressure from the Planning Board and no advice from the CAC, the applicant is less likely to make the application more compliant in order to obtain delegated administrative action.

Environmental Impacts. Overall, the proposed changes to the code do not seem to recognize the scientific reality that the health of wetlands, lakes, ponds, and streams is a direct reflection of the activities in the watershed. Typical buffer protections only protect a portion of the watershed. These water resources are directly tied to the health and safety of the drinking water supplied through wells and lakes for the residents of Lewisboro. Aquifer protection is an increasing concern of not only the DEC, DEP, and the Westchester Department of Health, but also of Town residents. For example, at the December 2016 Planning Board public hearing on the Silvermine application, many neighbors expressed concerns about the impact of the development upon their water supply.

Water resources are also a source of recreation and enjoyment for Town residents. Current data show that lake temperatures are increasing more rapidly than air and ocean temperatures, leading to faster water quality degradation and more frequent incidents of harmful algal blooms and toxins.[8] The EPA has recently proposed health guidelines associated with harmful algal blooms.[9] Higher temperatures make nutrient pollution prevention and shoreline buffers even more essential to water quality. The health and appeal of lakes, ponds, and streams is reflected in property values and tax revenue to the Town. We cannot support changes which endanger these critical water resources.

The proposed new code goes far beyond the expressed intent of making process improvements while protecting the environment. As we have shown, this code eliminates buffer protections, jettisons effective sanctions, and invites an escalating cycle of unintended consequences. Reduction of buffer protections is counter to common sense, the direction of the DEC and DEP, more rigorous stormwater requirements, and to the trend towards more intense precipitation events. Moreover, the CAC believes these changes are counter to the interests of the residents of the Town. These proposals remove essential protections from the Town's important wetland and watercourse resources and should be rejected as written. We fully support the intent of improving the process, but not with these draconian reductions in protections for our essential water resources and drinking water supplies.

The CAC suggests that any further consideration of these changes be accompanied by an analysis of the wetland permit applications for the past two years and how they would have been handled under these proposed rules. We also feel a summary of the number of wetland violations and the penalty amounts would be useful as this law is considered. We would like an assessment of the budget impact of these changes. We strongly urge that this proposed code be redrafted and take our comments into consideration before a public hearing is scheduled.

[8] http://climate.nasa.gov/news/2378/study-climate-change-rapidly-warming-worlds-lakes/
[9] https://www.epa.gov/sites/production/files/2016-12/documents/draft-hh-rec-ambient-water-swimming-document.pdf