



**North Fork Environmental Council**

**NEWS  
RELEASE**

For Immediate Release

12700 Main Road & Love Lane, Mattituck, NY 11952  
Phone: 631-298-8880 • Fax: 631-298-4649 • [www.NFEC1.org](http://www.NFEC1.org)

**SOUTHOLD TOWN CODE  
WETLANDS PROTECTION  
WEAKNESSES & CORRECTIONS  
North Fork Environmental Council, December 2006**

Southold's waterfront and wetlands are among the most precious and irreplaceable resources in our community. Since events during 2006 indicated that protection of these environmentally sensitive areas could be strengthened, a subcommittee of the Southold Land Use Committee began a review of Southold's wetlands code.

The subcommittee reviewed the code and the town's Local Waterfront Revitalization Plan (LWRP) to identify weaknesses in the code and has recommended related corrections that we hope will ensure the town continues to comply with the LWRP and protects its valuable coastal resources.

The Preface and Executive Summary of the report are given on the pages below. If you wish to view/print the entire report, please see the information given at the end of the Executive Summary. We welcome your feedback on the report. Our address, phone and fax numbers are at the top of this page. You can send us an email by clicking on the [Contact Us](#) item on the main menu of this website.

**SOUTHOLD TOWN CODE WETLAND PROTECTIONS  
WEAKNESSES AND CORRECTIONS REPORT  
North Fork Environmental Council, December 2006**

**Preface:**

- **The Town Code and the LWRP espouse protection of wetlands but interpretations by the empowered boards can erode the intent.**
- **Events during 2006 indicate that environmentally sensitive land may not be as well protected by government as we would like it to be -- particularly the protection afforded by decisions of the Southold Board of Town Trustees.**
- **This is not to say that the Trustees have not well served Southold over the years. Rather, to say that under the skills and pressures of today's exploitive society, weaknesses in the code can put the community in an unprotected position.**
- **A subcommittee of the Southold Land Use Committee is engaged in a review of the Town Code and the LWRP in this regard.**
- **This wetlands code review seeks to identify weaknesses in the code as well as correction of these weaknesses. It is designed to be constructive.**
- **The subcommittee presents its findings to the LWRP Council with the expectation being that steps will soon be taken by the Town Board to correct the weaknesses.**

**Twelve weaknesses and associated corrections were identified for action by the LWRP Council and the Town Board. The twelve to be discussed are:**

- 1. Ambiguity of the Trustees' Authority and Responsibilities.**
  - 2. Inadequate Jurisdiction description of the Board of Town Trustees.**
  - 3. Set-back limits too easily yield to variance.**
  - 4. Vertical Set-Back Limits not in Town Code.**
  - 5. Mitigation Criteria not in Town Code.**
  - 6. Storm-water Road Run-off Monitoring System responsibility not defined:**
  - 7. Southold Town Code Chapter 275 contains no provision for an appeals board.**
  - 8. Requirements/Standards/Criteria/Format for Permit Applications to Trustees inadequate or inadequately met.**
  - 9. Compounded Variances lead to Code destruction via Whip-Sawing.**
  - 10. Code requirements can be "gamed" and thus circumvented.**
  - 11. Public availability of LWRP Consistency Determinations is awkward.**
  - 12. Southold Wetlands Code is less stringent than NYS Requirements.**
- In addition, "mitigation", 'variance' and other terms are not well defined.**

**The 16 page report devotes one page to each weakness and associated correction, focusing in each case on the following points: Item title, Weakness, Citation, Consequence, Correction, Reference.**

**A page devoted to definition of terms is included.**

**A short essay on understanding the basic perspectives of Property Rights and Community Compromise ends the report.**

**SOUTHOLD TOWN CODE WETLAND PROTECTIONS  
WEAKNESSES AND CORRECTIONS REPORT  
North Fork Environmental Council, December 2006**

**Findings – Executive Summary:**

**The Board of Town Trustees has questionably stated regulatory authority over fresh and salt water wetland beyond those lands it owns.**

- Assign and specify such authority to the Board of Town Trustees in Chapter 275.

**The Board of Town Trustees has questionably stated authority to mitigate wetlands code requirements, and no mitigation criteria.**

- Provide mitigation authority to the Board of Town Trustees in Chapter 275.
- Add criteria for mitigation of code requirements in Chapter 275.

**Code requirements are insufficiently specified.**

- Specify a 150 foot Board of Town Trustees jurisdiction.
- Specify distances between significant features in describing requirements.
- Replace subjective requirements with measurable requirements insofar as possible.

**When acting in a nebulous regulatory mode, the Trustees claim to be unbridled in their authority.**

- Put limits on how far the Trustees can go in mitigating code requirements.
- Trustees' are not unbridled in that decisions must be consistent with the LWRP.

**Greater reliance must be placed upon science based information.**

- Release LWRP consistency determinations to the public in a timely way.
- Continue professional environmental staff and consider a natural resources department.

**The code needs more “black letter law” to stop capricious and arbitrary variances.**

- Require the code enforcement officer and the bay constables to make written code change requests concerning shortcomings that frustrate the intent of the code and its enforcement.

**The Board of Town Trustees must be protected from skilled applicants eroding Code intent.**

- Additional black letter law will insulate the Board of Town Trustees and the Town from appeals and exploitive suits. Such actions are often based upon case law arising from unlimited power to mitigate and result in the whip-sawing of code requirements.

**Southold Wetlands Protection is not as stringent as New York State Requirements.**

- Attain the technical and administrative capacity to meet state standards.

If you wish to view/print the entire report, please click on the [NFEC News](#) item of the main menu of this website and choose the [Article entitled NFEC Southold Town Wetlands Code Weaknesses and Corrections Report.](#)