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INLAND WETLANDS and WATERCOURSES

REGULATIONS

TOWN OF NEW MILFORD

LITCHFIELD COUNTY, STATE OF CONNECTICUT

Effective March 6, 2010



**INLAND WETLANDS AND WATERCOURSES REGULATIONS
FOR THE TOWN OF NEW MILFORD**

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SECTION 1: TITLE AND AUTHORITY

- 1.1 The inland wetlands and watercourses of the State are an indispensable and irreplaceable but fragile natural resource with which the citizens of Connecticut have been endowed. The wetlands and watercourses are an interrelated network essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life.

Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses.

Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state.

It is, therefore, the purpose of these regulations to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.

- 1.2 These regulations shall be known as the "Inland Wetlands and Watercourses Regulations of the Town of New Milford."
- 1.3 The Inland Wetlands Commission of the Town of New Milford was established in accordance with an ordinance adopted March 17, 1988, and shall implement the purposes and provisions of the Inland Wetlands and Watercourses Act in the Town of New Milford.

- 1.4 These regulations have been adopted and may be amended, from time to time, in accordance with the provisions of the Inland Wetlands and Watercourses Act and these regulations.
- 1.5 The Commission shall enforce all provisions of the Inland Wetlands and Watercourses Act and shall issue, issue with terms, conditions, limitations or modifications or deny permits for all regulated activities on or requiring the use of inland wetlands and watercourses in the Town of New Milford, pursuant to Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.

SECTION 2: DEFINITIONS As used in these regulations:

- 2.1 *Act* means the Inland Wetlands and Watercourses Act, Sections 22a-36 through 22a-45 of the General Statutes, as amended.
- 2.2 *Bogs* are usually areas distinguished by evergreen trees and shrubs underlain by peat deposits, poor or very poor drainage, and highly acidic conditions.
- 2.3 *Buffer* means a vegetated area inclusive of trees, shrubs and herbaceous vegetation that exists or is established to protect a wetland or watercourse.
- 2.4 *Clear-cutting* means the harvest of timber in a fashion which substantially removes the existing trees that are 2" or greater in diameter at breast height.
- 2.5 *Commission* means the Inland Wetlands Commission of the Town of New Milford.
- 2.6 *Commission member* means a member of the Inland Wetlands Commission of the Town of New Milford.
- 2.7 *Commissioner of Environmental Protection* means the Commissioner of the State of Connecticut Department of Environmental Protection.
- 2.8 *Continual flow* means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low flow period of the annual hydrological cycle, June through September, but it recurs in prolonged succession.
- 2.9 *Deposit* includes, but shall not be limited to fill, grade, dump, place, discharge or emit.
- 2.10 *Duly Authorized Agent* means an individual designated by the Commission who has been empowered to act upon an application meeting the criteria outlined in Section 11 of these regulations.
- 2.11 *Discharge* means emission of any water, substance, or material into wetlands or watercourses whether or not such substance causes pollution.
- 2.12 *Disturbing the natural and indigenous character* of the wetlands, watercourses and upland review area means altering the inland wetlands, watercourses or upland review area by

reason of removal or deposition of material, clearing the land, alteration or obstruction of water flow, alteration of the vegetative habitat by selective clearing, or pollution.

- 2.13 *Essential to the farming operation* means that the activity proposed is necessary and indispensable to sustain farming activities on the farm.
- 2.14 *Farming* means use of land for the growing of crops, raising of livestock or other agricultural use.
- 2.15 *Feasible* means able to be constructed or implemented consistent with sound engineering principles.
- 2.16 *Floodplain* means the area bordering a watercourse or wetland subject to flooding. The 100 year floodplain and special flood hazard areas have been determined for certain watercourses in the Flood Insurance Study, Town of New Milford, Connecticut, prepared by the Federal Emergency Management Agency (FEMA) and are shown on the official flood insurance rate maps (FIRM) and flood hazard boundary maps of the Town as amended.
- 2.17 *Landscaping* means the modification of the land surface by altering the plant cover. Landscaping does not include construction, clearing, grubbing or grading upon the land within regulated area and / or upland review area.
- 2.18 *License* means the whole or any part of any permit, certificate of approval or similar form of permission which may be required of any person by the provisions of these regulations under the authority of the Inland Wetlands Commission.
- 2.19 *Management Practice* means a practice or procedure, activity, structure or facility that may affect pollution or other environmental quality. Best management practices are specifically designed to prevent or minimize pollution or other environmental damage or to maintain or enhance existing environmental quality. Such best management practices include, but are not limited to: erosion and sedimentation controls; restrictions on land uses or development; construction setbacks from wetlands or watercourses; proper disposal of waste materials; procedures for equipment maintenance to prevent fuel spillage; construction methods to prevent flooding or disturbance of wetlands and watercourses; procedures for maintaining continuous stream flows; confining construction that must take place in watercourses to times when water flows are low and fish and wildlife will not be adversely affected.
- 2.20 *Marshes* are areas with soils that exhibit aquic moisture regimes that are distinguished by the absence of trees and shrubs and are dominated by soft-stemmed herbaceous plants. The water table within marshes may be at or above the ground surface throughout the year and areas of open water, six inches or more in depth, are common, but seasonal water table fluctuations are encountered.
- 2.21 *Material* means any substance, solid or liquid, organic or inorganic, including but not limited to: soil, sediment, aggregate, land, gravel, clay, bog, peat, mud, debris, sand, refuse or waste.

- 2.22 *Nurseries* means land used for propagating trees, shrubs or other plants for transplanting, sale, or for use as stock for grafting.
- 2.23 *Permit* means the whole or any part of any license, certificate or approval or similar form of permission which may be required of any person by the provisions of these regulations and the Act or other municipal, state and federal law.
- 2.24 *Permittee* means the person to whom such permit has been issued.
- 2.25 *Person* means any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.
- 2.26 *Planning Commission* means the Planning Commission of the Town of New Milford.
- 2.27 *Pollution* means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.
- 2.28 *Prudent* means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.
- 2.29 *Regulated Activity* means any operation within or use of a wetland, watercourse or upland review area involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands, watercourses or upland review area or any operation or use of land that may disturb the natural and indigenous character of a wetland, watercourse or upland review area but shall not include the specified activities in Section 4 of these regulations. Furthermore, the Commission may rule that activities located within any non-wetland or non-watercourse areas are likely to impact or affect wetlands or watercourses and as such constitute a regulated activity.
- 2.30 *Regulated Area* means any wetlands or watercourses as defined in these regulations. *(Prior to March 6, 2010 regulated area was defined in the Inland Wetlands Regulations of the Town of New Milford as any wetlands, watercourses or the adjacent upland area as follows: within two hundred (200) feet of the ordinary high waterline of Candlewood Lake, the east or west branch of the Aspetuck River, the Still River, the Housatonic River or watercourses within the West Aspetuck River watershed, within one hundred (100) feet of the ordinary high waterline of any other watercourse, or within one hundred (100) feet of any wetlands which ever is greater. For further clarification see Upland Review area)*
- 2.31 *Remove* includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, grub, clear cut timber, bulldoze, dragline or blast.

- 2.32 *Rendering unclean or impure* means any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.
- 2.33 *Significant activity* means any activity, including, but not limited to, the following activities which may have a major effect or significant impact on the inland wetlands and watercourses:
- A. Any activity involving a deposition or removal of material which will or may have a major adverse effect or significant impact on the wetland or watercourse system, or
 - B. Any activity which may substantially change the natural channel or may inhibit the natural dynamics of a watercourse system including potential effects to regulated areas from alterations of the natural drainage patterns in upland areas, or
 - C. Any activity which may substantially diminish the natural capacity of an inland wetlands or watercourse to support desirable fisheries, wildlife, or other biological life, prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space, or perform other functions, or
 - D. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetlands or watercourse, or
 - E. Any activity which may cause a substantial diminution of flow of a natural watercourse, or groundwater levels of the regulated area, or
 - F. Any activity which causes or has potential to cause pollution of a wetlands or watercourse, or
 - G. Any activity which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.
- 2.34 *Soil Scientist* means an individual duly qualified in accordance with standards set by the Federal Office of Personnel Management.
- 2.35 *Swamp* is an area with soils that exhibit aquic moisture regimes and are dominated by a vegetation association recognized as wetlands species by their National Region 1 Indicator Status.
- 2.36 *Submerged lands* means those lands which are inundated by water on a seasonal or more frequent basis.
- 2.37 *Town* means the Town of New Milford, Litchfield County, in the State of Connecticut.
- 2.38 *Upland Review Area* means any portion of land within two hundred (200) feet of the ordinary high waterline of Candlewood Lake, the east or west branch of the Aspetuck River, the Still River, the Housatonic River or watercourses within the West Aspetuck River

watershed, within one hundred (100) feet of the ordinary high waterline of any other watercourse, or within one hundred (100) feet of any wetlands which ever is greater.

- 2.39 *Vernal* means appearing or occurring in the spring.
- 2.40 *Waste* means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the wetlands or watercourses of the Town.
- 2.41 *Watercourse* means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town or any portion thereof not regulated pursuant to Section 22a-28 through 22a-35 of the General Statutes, as amended. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of *two* (2) or more of the following characteristics:
- A. Evidence of scour or deposits of recent alluvium or detritus.
 - B. The presence of standing or flowing water for a duration longer than a particular storm incident.
 - C. The presence of hydrophytic vegetation.
- 2.42 *Watershed* means the total wetland and upland area that drains to a wetland or watercourse. Smaller watersheds drain into the overall watershed of larger watercourses.
- 2.43 *Wetlands* means land, including submerged land as defined in this section not regulated pursuant to Section 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial and floodplain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Natural Resource Conservation Service of the U.S. Department of Agriculture (USDA). Such areas may include filled, graded, or excavated sites which possess an aquic (saturated) soil moisture regime as defined by the USDA Cooperative Soil Survey.
- 2.44 *Wetlands Enforcement Officer* means an individual designated by the Commission to administer the application, permitting and enforcement process for the Commission, to advise the Commission on technical matters and otherwise carry out functions and purposes of the Commission.
- 2.45 *Zoning Board of Appeals* means the Zoning Board of Appeals of the Town of New Milford.
- 2.46 *Zoning Commission* means the Zoning Commission of the Town of New Milford.

SECTION 3: INVENTORY OF WETLANDS AND WATERCOURSES

- 3.1 The map entitled "Inland Wetlands and Watercourses Map, New Milford, Connecticut," delineates the general location and boundaries of inland wetlands and the general location of watercourses. A copy of this map is available for inspection in the office of the Town Clerk or the Inland Wetlands Commission. In all cases, the precise location of regulated areas shall be determined by the actual character of the land, the distribution of wetland soil types, and locations of watercourses. The Commission may use aerial photography, remote sensing imagery, resource mapping, soils maps, site inspection observations or other information in determining the location of the boundaries of wetlands and watercourses.
- 3.2 Any person may petition the Commission to change the Inventory of Wetlands and Watercourses map designation for any property. All petitions for a map change shall be submitted in writing and shall include all relevant facts and circumstances which support the change. The petitioner shall bear the burden of proof regarding the proposed map amendment. Such proof may include, but not be limited to aerial photography, remote sensing imagery, resource mapping or other available information. The Commission may require such person to provide an accurate delineation of regulated areas in accordance with Section 15 of these regulations.
- 3.3 The Inland Wetlands Commission, the wetlands enforcement officer or its duly authorized agent(s) shall maintain a current inventory of all regulated areas within the town. The Commission may amend its map from time to time as more accurate information becomes available.
- 3.4 All map amendments are subject to the public hearing process outlined in Section 15.2 of these regulations.

SECTION 4: PERMITTED OPERATIONS AND USES

- 4.1 Any person proposing to carry out a permitted or nonregulated operation or use as listed in sections 4.2 and 4.3 of these regulations, shall, prior to commencement of such operation or use, notify the Commission on the form attached to these regulations as Schedule B (see Appendix A), and provide the Commission with sufficient information to enable it to properly determine whether the proposed operation and use is a permitted or nonregulated use of the wetlands or watercourse. The Commission shall rule that the proposed operation or use is a permitted or a nonregulated use or operation or that a permit is required.
- 4.2 The following operations and uses shall be permitted in regulated areas, as of right:
- A. Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation and activities conducted by, or under the authority of the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this section shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of

timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale.

- B. A residential home: (1) for which a building permit has been issued, or (2) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by the Planning Commission as of July 1, 1974, and further provided no residential home shall be permitted as of right pursuant to this Subsection unless the building permit was obtained on or before July 1, 1987. The individual claiming a use of wetlands permitted as of right under this Subsection shall document the validity of said right by notifying the Commission on the form attached to these Regulations as Schedule B and made a part hereof, and by providing the Commission with the information required by such form, including a certified copy of the building permit and a site plan showing proposed and existing topographic contours, house and well locations, septic system, driveway, approval dates and any other necessary information to document his or her entitlement.
 - C. Boat anchorage or mooring, not to include dredging or dock construction.
 - D. Uses incidental to the enjoyment or maintenance of residential property, such property defined as containing a residence and equal to or smaller than the largest minimum residential lot site permitted anywhere in New Milford. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of significant amounts of material from or onto a wetlands or watercourse, or diversion or alteration of a watercourse.
 - E. Construction and operation, by water companies as defined by Section 16-1 of the General Statutes or by municipal water supply systems as provided for in Chapter 102, of the Connecticut General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in Sections 22a-401 and 22a -403 of the General Statutes.
 - F. Maintenance relating to any drainage pipe which existed before July 1, 1974, provided such pipe is on property which is zoned residential but which does not contain hydrophytic vegetation. For purposes of this section "Maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place.
- 4.3 The following operations and uses shall be permitted, as nonregulated uses in regulated areas, provided they do not disturb the natural and indigenous character of the wetlands or watercourses by removal or deposition of material, alteration or obstruction of water flow or pollution of the wetlands or watercourses:
- A. Conservation of soil, vegetation, water, fish, shellfish, and wildlife. Such operation or use may include, but is not limited to, minor work to control erosion, or to encourage proper fish, wildlife and silviculture management practices.
 - B. Outdoor recreation including the use of play and sporting areas, golf courses, field trails, nature study, hiking, horseback riding, swimming, skin and scuba diving, camping,

boating, water skiing, trapping, hunting, fishing and shell fishing and cross-country skiing where otherwise legally permitted and regulated.

4.4 All activities in wetlands or watercourses involving filling, excavating, dredging, clear cutting, clearing, or grading or any other alteration or use of a wetland or watercourse not specifically permitted by this section and otherwise defined as a regulated activity by these regulations shall require a permit from the Commission in accordance with Section 6 or Section 11 of these regulations.

SECTION 5: ACTIVITIES REGULATED BY THE STATE

5.1 In addition to any permit or approval required by the Commission, the Commissioner of Environmental Protection shall regulate activities in or affecting wetlands or watercourses subject to the following jurisdiction:

- A. Construction or placement of any obstruction within stream channel encroachment lines pursuant to Sections 22a-342 through 22a-349 of the General Statutes, as amended.
- B. Diversion of water, including withdrawals of surface or groundwater in excess of fifty thousand (50,000) gallons per day or any piping, culverting, channelization, relocation, damming or other alteration of the location of flow of any surface waters of the state where the tributary watershed area above the point of diversion is one hundred (100) acres or larger pursuant to Sections 22a-365 through 22a-378a of the General Statutes, as amended.
- C. Discharges into the waters of the state pursuant to Section 22a-430 of the General Statutes, as amended.

5.2 The Commissioner of Environmental Protection shall have exclusive jurisdiction over regulated activities in or affecting wetlands or watercourses, undertaken by any department, agency or instrumentality of the State of Connecticut, except any local or regional board of education pursuant to Sections 22a-39 or 22a-45a of the Connecticut General Statutes, as amended.

5.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to Sections 22a-28 through 22a-35 of the General Statutes, as amended.

5.4 The Commissioner of Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Environmental Protection under Section 22a-402 or a dam construction permit issued by the Commissioner of Environmental Protection under Sections 22a-403 of the Connecticut General Statutes. Any person receiving such dam repair or removal order or dam construction permit shall not be required to obtain a permit from a municipal wetlands agency for any action necessary to comply with said dam order or to carry out the activities authorized by said dam permit.

5.5 The Commissioner of Environmental Protection shall have exclusive jurisdiction over the Discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to Section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under Section 404 of the Federal Clean Water Act.

SECTION 6: REGULATED ACTIVITIES TO BE PERMITTED

6.1 Subject to the provisions of Section 4 hereof, regulated activities are prohibited except as they may be permitted by the Commission.

6.2 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Town of New Milford Inland Wetlands Commission, or violating any other provision of these regulations, shall be subject to the enforcement proceedings and penalties prescribed in Section 14 of these regulations and any other remedies as provided by law.

SECTION 7: APPLICATION REQUIREMENTS AND PROCEDURES

7.1 Any person intending to conduct a regulated activity or any activity which may involve a regulated activity, operation or use shall prior to the commencement of any such activity, operation or use, apply for a permit on a form provided by the Commission. The application shall include the information described in this section and any other information the Commission may reasonably require. Application forms may be obtained in the office of the New Milford Inland Wetlands Commission.

7.2 If an application to the Town of New Milford Planning or Zoning Commission involves land containing a wetland, watercourse or upland review area the applicant shall, in accordance with Section 8-3(g), 8-3(c), or 8-26, as applicable, of the Connecticut General Statutes, submit an application for a permit to the Town of New Milford Inland Wetlands and Watercourse Commission in accordance with this section, no later than the day the application is filed with such planning or zoning commission.

7.3 All applications, petitions, requests or appeals shall be filed with the Inland Wetlands Commission of the Town of New Milford.

7.4 The date of receipt of any application, petition, request or appeal shall be the day of the next regularly scheduled meeting of the Commission immediately following the date of submission to the Commission or its agent of such application, petition, request or appeal, or thirty-five (35) days after such submission, whichever is sooner.

7.5 The application shall contain such information as is necessary for a fair and informed determination thereon by the Commission.

7.6 All information submitted in the application shall be considered factual and binding. A failure of the applicant or any of his, her or its agents to provide correct information, or

performance exceeding the scope of the work as set forth in the application, shall be sufficient grounds for denial of the application or in the case where a permit has been issued, the revocation of any permit under these regulations and/or for penalties to be imposed.

7.7 At a minimum all applications shall include the following information in writing or on maps or drawings:

A. The original and 11 copies (total of 12) of an application form provided by the Commission which includes the following information: (See Schedule A Application Form -Appendix A)

1. Name of the project and street address of the project site;
2. The applicant's name, home and business address and telephone numbers;
3. The owner's name, address and telephone number and written consent if the applicant is not the owner of the land upon which the subject activity is proposed;
4. Applicant's interest in the land;
5. The geographical location of the property which is the subject of the proposed activity, including but not limited to a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, a computation of the area(s) (in acres or square feet) of wetlands or watercourse disturbance, and a description of soil type(s) and vegetation;
6. The purpose and a description of the proposed activity and proposed erosion and sedimentation controls; management practices; and avoidance, minimization and mitigation measures, in that order, which may be considered as a condition of issuing a permit for the proposed regulated activity. This may include measures that (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources and buffer areas;
7. Alternatives considered by the applicant and why the proposal to impact regulated and upland review areas set forth in the application was chosen; all such alternatives shall be diagramed on a site plan or drawing;
8. Names, addresses and mailing addresses, if different, of owners of properties adjacent to the project site;
9. List of the titles of the site plans submitted as part of the application;
10. Certification that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through inaccurate or misleading information;

11. Authorization for the Commissioners and agents of the Commission to inspect the property, except for a private residence, at reasonable times: both before and after a final decision has been issued; while the regulated activities are being conducted; and at any time thereafter up to and including the period of time in which the applicant's bond or surety is in effect in order to ensure that the activities are being conducted within the parameters of the permit;
12. Whether the proposed regulated activity will require subdivision or re-subdivision approval, a zoning permit, special permit or exemption, or a variance, from the Zoning Commission, Planning Commission or Zoning Board of Appeals, as the case may be;
13. Whether any of the following circumstances applies:
 - a. Any portion of the property on which the regulated activity is proposed is located within five hundred (500) feet of the boundary of an adjoining municipality.
 - b. Any portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site.
 - c. Any portion of the sewer or water drainage from the project site will flow through and impact the sewage or drainage system within the adjoining municipality.
 - d. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.
- B. If the Applicant is not the Owner of the property upon which the regulated activity is occurring then a letter of consent, with an original signature, authorizing the applicant to act as the owner's agent, is required.
- C. A completed "Statewide Inland Wetlands & Watercourse Activity Reporting Form" with a USGS map section indicating the location of the property.
- D. Submission of the appropriate filing fee based on the fee schedule authorized in Section 13 of these Regulations (See Appendix B).
- E. 12 copies of a site plan or drawing, as described in the Commission's checklist, showing the existing conditions and proposed activities and identifying any further activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity (See Appendix C). Information specified on the checklist shall be furnished to the Commission upon submission of an application unless waived by the Wetlands Enforcement Officer on the marked and signed checklist. Further information may be required by the Commission during the review process.
- F. Certification by the applicant that numbered wetland flags, as delineated by a soils scientist, and field stakes, as specified on the Commission Checklist (See Appendix C) are in place, unless such requirements are waived by the Wetlands Enforcement Officer on the marked and signed checklist.

- G. Any other information the Commission deems necessary to the understanding of what the applicant is proposing
- 7.8 At any time prior to issuance of a decision on an application for a permit or in the case of an application on which a public hearing is conducted, at any time prior to the close of the public hearing, the Commission may require the applicant to provide additional information about the regulated area or regulated activity which is the subject of the application, or wetlands, watercourses or upland review area that may be affected by the regulated activity.
- 7.9 The Commission may issue a permit without a public hearing provided that the Commission finds that the proposed activity is a regulated activity, but not a significant activity, or a petition of twenty five (25) persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed, has not been filed with the Commission on or before the fourteenth (14) day after the receipt of the application. The Commission may allow the activity with or without conditions. In order to grant a permit at this stage, the Commission, after full review of the considerations set forth in Section 9 and other pertinent factors, shall state upon the record reasons for granting the permit with or without conditions.
- 7.10 If the proposed activity is determined to be a significant activity by the Commission, additional information, based on the nature and anticipated effects of the activity, including but not limited to those items listed in this section, is required. The Commission may waive any or all of the requirements listed in this section. The applicant shall provide 12 copies of the additional information required.
- A. Site plans for the proposed activity and the land which will be affected thereby which show existing and proposed conditions, wetlands and watercourse boundaries, upland review areas, proposed and existing contours at two foot intervals, boundaries of land ownership, proposed alterations and uses of wetlands, watercourses and upland review areas, and other pertinent features of the land and the proposed activity, prepared by a professional engineer, land surveyor, architect or landscape architect licensed by the state, or by such other qualified person. The map shall be provided at a scale (generally 1"=40') and in such detail that the Commission can readily interpret the proposed project and its potential impacts to wetlands, watercourses and upland review areas.
- B. Engineering reports, analyses and additional drawings that fully describe the proposed activity including any filling, excavation, drainage or hydraulic modifications to existing drainage patterns, wetlands and watercourses and the proposed erosion and sedimentation control plan.
- C. Delineation of soils by a soil scientist showing the soil types classified as poorly drained, very poorly drained, alluvial, or flood plain according to the National Cooperative Soils Survey. Such documentation shall include a map of the land in question signed by a soil scientist on which the flag locations defining the boundaries of the regulated soil types are depicted.

- D. A description of any materials to be deposited on the affected property in terms of volume, chemical or physical characteristics, composition, and the possibility of erosion or leaching from deposited materials.
- E. A description of the proposed project including proposed construction, the erection of structures, filling, excavation, drainage or hydraulic modifications to wetlands and watercourses on the affected property including blueprints or engineering or architectural plan or designs, to the extent necessary to enable the Commission to determine the impact of such construction on any regulated area. Such description should include the purposes of such construction or activity.
- F. List of abutting property owners, property owners that lie opposite the parcel across any street, thoroughfare or easement or other property owners of whom the applicant has notice whose rights or interests will be significantly affected by the proposed activity. The applicant shall supply certification that the property owners are notified as described in Section 8.6 of these regulations.
- G. If the proposed activity upon the applicant's property may affect a watercourse lying within, partly within, or flowing through or adjacent to the applicant's property, the applicant shall submit information relative to the present character and the projected impact of the proposed activity upon the watercourse including the comparison of existing and proposed discharges where downstream flooding is a consideration.
- H. Description and plans of the measures which would avoid, minimize and mitigate, in that order, the impact of the proposed activity. Such measures include, but are not limited to, management practices, plans or actions which avoid destruction or diminution of wetlands or watercourses functions, recreational uses and natural habitats; which prevent flooding, degradation of water quality, erosion and sedimentation and obstruction of drainage; or which otherwise safeguard water resources. These measures may also include wetland and watercourse enhancement, restoration and creation actions that more than replace lost wetland and watercourse habitat and functions or other legal measures designed to preserve and protect adjacent wetlands, watercourses and natural buffer areas.
- I. An impact analysis of how the proposed project, inclusive of all activities, will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application, and a description of why each alternative considered was deemed neither feasible nor prudent.
- J. A biological evaluation of the affected property that contains any wetland, watercourse or upland review area. The applicant shall submit an evaluation of the extent of the presence of plant and animal species on and adjacent to the property. The applicant shall also submit an evaluation of the probable effect of the proposed activity upon those plant species and upon indigenous animal life.
- K. Description of the ecological communities and functions of the wetlands and/or watercourses involved with the application and the effects of the proposed regulated activities on these communities and wetland functions.

- 7.11 In the case of any application where any portion of the wetlands or watercourses on which the regulated activity is proposed is located within five hundred (500) feet of the boundary of New Fairfield, Sherman, Kent, Washington, Bridgewater, Brookfield or Roxbury, the applicant shall give written notice of the application, certified mail return receipt requested, to the Wetlands Commission of the adjacent municipality on the same day of filing an inland wetlands permit application with the New Milford Inland Wetlands Commission. Proof of such notice shall be provided by the applicant to the New Milford Inland Wetlands Commission within ten (10) days of the date of the filing of the application.
- 7.12 The Commission shall, in accordance with Connecticut General Statutes Section 8-7d(f), notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which:
- A. Any portion of the property upon which the regulated activity is proposed is located within five hundred (500) feet of the boundary of an adjoining municipality.
 - B. A significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site.
 - C. A significant portion of the sewer or water drainage from the project site will flow through and significantly impact the sewage or drainage system within the adjoining municipality.
 - D. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Notice of the pendency of such application shall be made by certified mail, return receipt requested and shall be mailed within seven (7) days of the date of receipt of the application, petition, appeal, request or plan.

- 7.13 When an application is filed to conduct or cause to be conducted a regulated activity upon a wetland or watercourse, any portion of which is within the watershed of a water company as defined in Section 25-32a of the General Statutes, the applicant shall provide written notice of the application to the water company and the Commissioner of Public Health in a format prescribed by said Commissioner, provided such water company or said Commissioner has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the Commission. Such notice shall be made by certified mail, return receipt requested, and shall be mailed not later than seven (7) days after the date of application. The water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the Commission.
- 7.14 For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply:
- A. For purposes of this section, “conservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other

instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.

- B. For purpose of this section, “preservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.
 - C. No person shall file a permit application, other than for interior work in an existing building or for exterior work that does not expand or alter the footprint of an existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction not later than sixty days prior to the filing of the permit application.
 - D. In lieu of such notice pursuant to subsection 7.14c, the applicant may submit a letter from the holder of such restriction or from the holder’s authorized agent, verifying that the application is in compliance with the terms of the restriction.
- 7.15 Any application to renew, extend or amend an existing permit shall be filed with the Commission at least sixty-five (65) days but, in the case of an extension or renewal, not more than one hundred and twenty (120) days prior to the expiration date for the permit. Any application to renew or extend such existing permit shall contain the following information.
- A. The application may incorporate by reference the documentation and record of the original application.
 - B. The application shall state the reason why the authorized activities were not initiated or completed within the time specified in the permit.
 - C. The application shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses or the property for which the permit was issued.
 - D. The Commission may prior to the expiration of a permit, accept an untimely application to extend the expiration date of a permit if the authorized activity is ongoing and allow the continuation of work beyond the expiration date if in its judgement, the permit is likely to be extended and the public interest or environment will be best served by not interrupting the activity.
 - E. The application shall describe the extent of work completed at the time of filing and the schedule for completing the activities authorized in the permit.

7.16 Any application to renew a permit shall be granted upon request of the permit holder unless the Commission finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which a permit was issued provided no permit shall be valid for more than ten (10) years.

7.17 All applications shall be open for public inspection at the Commission's office.

7.18 Incomplete applications may be denied.

SECTION 8: PUBLIC HEARINGS

8.1 The Commission shall not hold a public hearing on an application unless the Commission determines that the proposed activity is a significant activity as defined in these regulations, a petition signed by at least twenty-five (25) persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed, requesting a hearing is filed with the Commission not later than fourteen (14) days after the date of receipt of such application, or the Commission finds that a public hearing regarding such application would be in the public interest. The Commission may issue a permit without a public hearing provided no petition provided for in this section is filed with the agency on or before the fourteenth day after the date of receipt of the application. Such hearing shall be held no later than sixty five (65) days after receipt of such application. All applications and maps and documents relating to the hearing shall be open for public inspection. At such hearing any person may appear and be heard and may be represented by agent or by attorney.

8.2 Notice of the public hearing shall be published at least twice at intervals of not less than two (2) days, the first not more than fifteen (15) days and not fewer than ten (10) days, and the last not less than two (2) days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetlands and watercourse or any part thereof, is located.

8.3 In the case of any application which is subject to the notification provisions of Section 7.12 of these Regulations, a public hearing shall not be conducted until the clerk of the adjoining municipality(ies) has received notice of the pendency of the application. Proof of such notification shall be entered into the hearing record. Such adjoining municipality(ies) may, through a representative, appear and be heard at any hearing on the application.

8.4 Any public hearing on an application shall be held no later than sixty-five (65) days after receipt of any application. Where possible, public hearings shall be completed in a single session. However, the hearing may be continued (to a date certain) where necessary for the full development of the evidence, or for the full and adequate participation of the parties, or for such other substantial purposes, provided that the public hearing shall be completed within thirty five (35) days from the date of its commencement. Action shall be taken on applications within thirty-five (35) days of completion of the public hearing. The applicant may consent to one or more extensions of the periods specified in this section for the holding of the hearing and for action on such application, provided the total extension of all such periods shall not be for longer than sixty five (65) days, or may withdraw such application. Failure of the

Commission to act within any time period specified in this section, or any extension thereof, shall not be deemed to constitute approval of the application. An application deemed incomplete by the Commission may be withdrawn by the applicant or shall be denied by the Commission.

- 8.5 For any application involving a public hearing the applicant is required, at his expense, to placard the property with a sign of three (3) feet by four (4) feet minimum, set back no more than ten (10) feet from the front line. Said sign shall be visible to the public and composed of letters with a minimum height of four (4) inches. The message shall read: “a public hearing dealing with this property is to be held in the (list location) before the Inland Wetlands Commission at (time), (month, day, year), dealing with an application for (type of activity).” Said sign shall be in place at least fifteen (15) days prior to the public hearing and removed immediately after the public hearing is closed.
- 8.6 For any application involving a public hearing the applicant is required, at his expense, to send notice of said public hearing, via certified mail, return receipt requested, to the owner(s) of record, as indicated on the property tax map or on the last completed grand list, of the abutting land and also those properties that lie opposite the parcel across any street, thoroughfare or easement, no less than fifteen (15) days prior to the day of the public hearing. This notice shall include a brief description of the proposed activity and the date, time and place of the public hearing. Documentation of such notification shall be provided to the Commission at the start of the public hearing.

SECTION 9: CONSIDERATIONS FOR DECISION

9.1 The Commission may consider the following in making its decision on an application:

- A. The application and its supporting documentation;
- B. Public comments, evidence and testimony from a public hearing or meeting;
- C. Reports from other agencies and commissions including but not limited to those in the Town of New Milford such as: Conservation, Planning, Department of Public Works, Health Director, Solid Waste, Sanitation, Zoning, Town Planner, and Fire Marshal;
- D. The Commission may also consider comments on any application from the Litchfield County Natural Resource Conservation Service, Housatonic Valley Association, Candlewood Lake Authority, regional planning agencies or other regional organizations; agencies in adjacent municipalities which may be affected by the proposed activity, or other technical agencies or organizations which may undertake additional studies or investigations;
- E. Non-receipt of comments from agencies and commissions listed in 9.1 C and D above within the prescribed time shall neither delay nor prejudice the decision of the Commission.

9.2 Criteria for Decision. The Commission shall consider all relevant facts and circumstances in making its decision on any application for a permit, including but not limited to the following:

- A. The environmental impact of the proposed action, including the effect on the inland wetland's and watercourse's capacity to support fish and wildlife, to prevent flooding, to supply and protect surface and ground waters, to control sediment, to facilitate drainage, to control pollution, to support recreational activities, and to promote the health, welfare and safety of the public.
- B. The alternatives to the proposed action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity proposed in the application. This consideration should include, but is not limited to, the alternative of requiring actions of a different nature, such as different configurations or location of the proposed activity on the applicant's property, which would provide similar benefits with different environmental impacts.
- C. The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity, including consideration of the extent to which the proposed activity involves trade-offs between short-term environmental gains at the expense of long-term losses, or vice versa, and consideration of the extent to which the proposed action forecloses or predetermines future options.
- D. Irreversible and irretrievable commitments of resources which would be involved in the proposed activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources. This requires recognition that the inland wetlands and watercourses of the State of Connecticut are indispensable, irreplaceable and fragile natural resource, and that these areas may be irreversibly damaged by deposition, filling, and removal of material, by the diversion, diminution or obstruction of water flow including low flows, and by the erection of structures and other uses.
- E. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property, including abutting or downstream property, which would be caused or threatened by the proposed activity, or the creation of conditions which may do so. This includes recognition of potential damage from erosion, turbidity, or siltation, loss of fish and wildlife and their habitat, loss of unique habitat having demonstrable natural, scientific or educational value, loss or diminution of beneficial aquatic organisms and wetlands plants, the dangers of flooding and pollution, and the destruction of the economic, aesthetic, recreational and other public and private uses and values of wetlands and watercourses to the community.
- F. The suitability or unsuitability of the regulated activity to the area for which it is proposed. This requires a balancing of the need for the economic benefit of the state and the use of its land, with the need to protect its environment and ecology for the people of the state and the benefit of generations yet unborn.

- G. Impacts of the proposed regulated activity on regulated areas outside the area for which the activity is proposed and future activities associated with or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands and watercourses.
- H. Measures which would avoid, minimize and mitigate, in that order, the impact of any aspect of the proposed regulated activity(ies). Such measures include, but are not limited to, actions which would avoid adverse impacts or lessen impacts to wetlands and watercourses and which could be feasibly carried out by the applicant and would protect the wetland's or watercourse's natural capacity to support fish and wildlife, prevent flooding, supply water, control sedimentation, prevent erosion, assimilate wastes, facilitate drainage, and to provide recreation and open space.
- 9.3 For purposes of this section, (1) “wetlands or watercourses” includes aquatic, plant or animal life and habitats in wetlands or watercourses, and (2) “habitats” means areas or environments in which an organism or biological population normally lives or occurs.
- 9.4 The Commission shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.
- 9.5 In the case of an application where the applicant has provided written notice pursuant to Subsection 7.14c of these regulations, the holder of the restriction may provide proof to the Commission that granting of the permit application will violate the terms of the restriction. Upon a finding that the requested land use violates the terms of such restriction, the Commission shall not grant the permit approval.
- 9.6 In the case of an application where the applicant fails to comply with the provisions of Subsections 7.14c or 7.14d of these regulations, the party holding the conservation or preservation restriction may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the Commission, subject to the rules and regulations of the Commission relating to appeals. The Commission shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction.
- 9.7 In reaching its decision on any application after a public hearing, the Commission shall base its decision on the application and on the record of that hearing. Documentary evidence or other material not in the hearing record or which is submitted after the hearing is completed, shall not be accepted or considered by the Commission in its decision.
- 9.8 The Commission is not precluded from seeking advice, opinions and technical support from its own experts after the close of the public hearing on information already in the record of the public hearing.
- 9.9 In the case of an application which received a public hearing pursuant to a finding by the Commission that the proposed activity may have a significant impact on wetlands or watercourses, a permit shall not be issued unless the Commission finds on the basis of the

record that a feasible and prudent alternative that has less impact on wetlands, watercourses and upland review area does not exist. In making this finding the Commission shall consider the facts and circumstances set forth in Section 9.2 of these regulations. The finding and the reasons therefore shall be stated on the record in writing. A conclusion that a prudent and feasible alternative does not exist does not create a presumption that a permit should be issued. The applicant has the burden of demonstrating that his application is consistent with the purposes and policies of these regulations and Sections 22a-36 to 22a-45, inclusive of the Connecticut General Statutes.

- 9.10 In the case of an application which is denied on the basis of a finding that there may be a feasible and prudent alternative to the proposed regulated activity which has less adverse impact on wetlands or watercourses, the Commission shall propose on the record in writing the types of alternatives which the applicant may investigate. This subsection shall not be construed to shift the burden from the applicant to prove that he is entitled to the permit or to present specific alternatives to the proposed regulated activity.

SECTION 10: DECISION PROCESS AND PERMIT

- 10.1 The Commission may in accordance with Section 9 of these regulations, grant the application as filed; grant it upon such terms, conditions, limitations or modifications necessary to carry out the purposes of the Act; or deny the application. Such terms may include any reasonable measures which would avoid, minimize or mitigate, in that order, the impacts of the regulated activity and which would (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order or priority: restore, enhance and create productive wetland or watercourse or buffering resources.
- 10.2 Except in the instance of a public hearing, action shall be taken on applications within sixty-five (65) days from the date of receipt of the application. The applicant may consent to one or more extensions of such sixty-five (65) day period for action on such application, provided the total extension shall not be for longer than the original sixty-five (65) day period, or may withdraw such application. Failure of the Commission to act within such sixty-five (65) day period, or any extension thereof, shall not be deemed to constitute approval of the application.
- 10.3 The Commission shall state upon its record the reasons and basis for its decision and, in the case of any public hearing, such decision shall be based fully on the record of such hearing and shall be in writing and shall incorporate a statement relative to the consideration of feasible and prudent alternatives. The record of the decision shall indicate which Commission members, if any, visually inspected the site of the proposed activity.
- 10.4 The Commission shall notify the applicant and any named parties to the proceeding of its decision within fifteen (15) days of the date of the decision by certified mail, return receipt requested, and the Commission shall cause notice of its order granting or denying the permit, in a newspaper having general circulation in the town wherein the inland wetlands or watercourse lies. In any case in which such notice is not published within such fifteen (15)

day period, the applicant may provide for the publication of such notice within ten days thereafter.

10.5 If an application for an activity regulated by the Commission also involves an activity or project which requires zoning or subdivision or re-subdivision approval, a special zoning permit, variance or special exception, a copy of the decision and report on the application shall be filed with the Town of New Milford Planning Commission, Zoning Commission, or Zoning Board of Appeals, as the case may be, within fifteen (15) days of the date of the decision.

10.6 Permit expiration dates and time frames:

A. Any permit issued by the Commission for the development of land for which an approval is required under Section 8-3, 8-25 or 8-26 of the Connecticut General Statutes shall be valid for five (5) years provided the Commission may establish a specific time period within which any regulated activity shall be conducted. Any permit issued by the Commission for any other activity shall be valid for three (3) years. The effective date of a permit is the date of the scheduled meeting at which the application is approved.

B. Pursuant to public act 09-181 any permit issued between July 1, 2006 and July 1, 2009 shall be valid for six (6) years commencing upon the date of such approval. Any such permit shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances that requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no such permit shall be valid for more than eleven (11) years.

10.7 No permit shall be assigned or transferred without the written permission of the Commission. Such permission shall be granted upon receipt and review by the Commission of a written statement, on a form provided by the Commission, signed by the transferee, stating that the transferee has reviewed the applicable regulations and the terms and conditions of the permit and agrees to be bound thereby. If a bond or other security obligation is in place, the transferee shall also submit proof acceptable to the Commission that the transferee has assumed such obligation, or shall provide such substitute security as may be acceptable to the Commission. If no such bond or security obligation is in place, the Commission may require the transferee to file a bond or other substitute security acceptable to the Commission.

10.8 If a bond or other security is required in accordance with Section 12 of these regulations, the Commission may withhold issuing the permit until such bond or insurance is provided.

10.9 General provisions in the issuance of all permits:

A. In evaluating applications in which the Commission relied in whole or in part on information provided by the applicant, if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked.

- B. All permits issued by the Commission are subject to and do not derogate from any present or future rights or powers of the Commission or the Town of New Milford, and convey no rights in real estate or material nor any exclusive privileges, and are further subject to any and all public and private rights and to any federal, state, and municipal laws or regulations pertinent to the property or activity.
 - C. If the activity authorized by the inland wetlands permit also involves an activity or a project which requires zoning or subdivision approval, special permit, variance or special exception, no work pursuant to the wetlands permit may begin until such approval is obtained.
 - D. The permittee shall take such necessary steps consistent with the terms and conditions of the permit, to control storm water discharge and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.
- 10.10 An application filed with the Wetlands Commission which is in conformance with these Regulations as of the date of the receipt of such application shall not be required thereafter to comply with any change in these Regulations, including changes to upland review area, taking effect on or after the date of such receipt and any appeal from the decision of such agency with respect to such application shall not be dismissed by the Superior Court on the grounds that such a change has taken effect on or after the date of such receipt. The provisions of this section shall not be construed to apply (1) to the establishment, amendment or change of boundaries of wetlands or watercourses or (2) to any change in these Regulations necessary to make such Regulations consistent with the provisions of Chapter 440 of the General Statutes as of the date of such receipt.

SECTION 11: ACTION BY DULY AUTHORIZED AGENT

- 11.1 The Town of New Milford Inland Wetland Commission may delegate to its duly authorized agent the authority to act on an application meeting the criteria in this subsection of the regulations, provided that said agent has completed the comprehensive training program developed by the State Commissioner of Environmental Protection pursuant to Section 22a-39 of the *Connecticut General Statutes*, as amended and that said agent has taken either section two or three of the Connecticut Inland Wetlands Commissioner training program or other approved equal continuing education program within the last two calendar years. This authority shall be bestowed upon each individual agent by a two thirds vote of the Commission and must be reaffirmed each year at the Commission's annual meeting.
- 11.2 Application Requirements
- A. Application for such approval by the Commission's duly authorized agent shall be made by filing a complete application with the New Milford Inland Wetlands Office. A copy of the application is found in Appendix A of these Regulations.
 - B. The application shall contain the filing fee, required number of copies of the supporting documentation as listed within Section 7 of these Regulations and any other information the Commission or its agent may reasonably require.

11.3 Prerequisites to Action by Duly Authorized Agent

- A. The application seeks to approve minor construction projects, extend existing permits or transfer permits that are not located within a wetland or watercourse. Such activities may include but are not limited to decks, sheds, swimming pools, additions, landscaping and rain gardens.
- B. The application for duly authorized agent approval may not be in response to a notice of violation or cease and desist order issued by the Wetlands Enforcement Officer or Land Use Inspector.
- C. The duly authorized agent finds that the conduct of such activity would result in no greater than a minimal impact on any wetlands or watercourses, taking into account the considerations for decision set forth in Section 9 of these Regulations.
- D. Notwithstanding the above, the duly authorized agent has the sole discretion to forward any application received at the Wetlands office to the Commission for action by the Commission within the statutory time frames from the date of receipt.

11.4 Procedure

- A. The duly authorized agent shall review the application to ensure that it is complete.
- B. The duly authorized agent shall notify the Commission members about the pendency of a site walk and shall visit the project site with any interested Commission members. The duly authorized agent shall determine eligibility of the project for approval.
- C. The duly authorized agent shall obtain any other information necessary to fully understand the scope of the project.
- D. The duly authorized agent shall determine if the project can be approved or should be forwarded to the Wetlands Commission for full review.
- E. If approved the duly authorized agent shall issue a permit for the project and outline any specific permit conditions.

11.5 Decision and Publication of Decision

- A. Notwithstanding the provisions for receipt and processing of applications prescribed in Sections 8, 10, and 11 of these Regulations, such agent may approve or extend such an activity at any time.
- B. The Commission shall, within ten (10) days of the date of the duly authorized agent approval, publish notice of the approval in a newspaper having a general circulation in the town wherein the activity is located or will have an effect.

- C. The duly authorized agent shall notify the Commission of the permits, denials, extensions, transfers and other actions that have been issued by the duly authorized agent at the next regularly scheduled meeting of the Commission.

11.6 Appeal of Decision (request for full review by the Commission)

- A. Any person, including a member of the Commission, may appeal the decision of such agent to the Commission within fifteen (15) days after the publication date of the notice.
- B. The Commission shall review the application and consider the appeal at its next regularly scheduled meeting provided such meeting is no earlier than three (3) business days after receipt by the Commission or its agent of such appeal.
- C. Any person may appear and be heard at the meeting held to consider the appeal.
- D. The Commission shall, at its discretion, sustain, alter, or reject the decision of its duly authorized agent or require a Commission action in accordance with the New Milford Inland Wetland and Watercourse Regulations.

SECTION 12: BOND

- 12.1 Upon approval of the application and prior to issuance of a permit, the Commission is authorized to require the applicant to file a bond or other security in a form approved by the Town or Commission's attorney and in an amount which, in the Commission's discretion, shall be sufficient to cover the cost of any improvements authorized by the permit plus any anticipated remedial or other expenses necessitated by the activities conducted pursuant to the permit.
- 12.2 Any such bond or other security shall also be conditioned upon compliance with the terms, conditions and limitations established by the permit and with applicable provisions of the General Statutes and of these regulations.

SECTION 13: APPLICATION FEES

- 13.1 Fees are set to cover the reasonable cost of reviewing and acting on applications, petitions, and monitoring compliance with any permit or Commission order. A schedule of fees will be established annually by the Commission or whenever the regulations are amended. The fee schedule revisions will be effective immediately. (See Appendix B)
- 13.2 If an activity has occurred prior to the submission of an application, the Commission may require an additional filing fee to cover Commission costs including but not limited to field inspections, public hearings, public notices, consultants and technical staff research time.
- 13.3 The Town of New Milford, Connecticut, and the State of Connecticut shall be exempt from the payment of fees.

- 13.4 All fees required by these regulations shall be submitted to the Commission by certified check, money order or a valid personal check payable to the Town of New Milford at the time the application is filed with the Commission.
- 13.5 No application shall be granted or approved by the Commission unless the correct application fee is paid in full or unless a waiver has been granted by the Commission.
- 13.6 The application fee shall be refundable if the Commission finds that the application involves activities not regulated or as of right.

SECTION 14: ENFORCEMENT

- 14.1 The Commission may appoint an agent or agents to act in its behalf with the authority to enter and inspect property, except inside a private residence, and issue notices of violation or cease and desist orders and carry out other actions or investigations necessary for the enforcement of these regulations.
- 14.2 The Commission or its agent may make regular inspections, at reasonable hours, of all regulated activities for which applications, wetland and watercourse determination requests and permits have been received or issued under these regulations.
- 14.3 If the Commission, its duly authorized agent or wetlands enforcement officer finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the Act or these regulations, the Commission, its duly authorized agent or wetlands enforcement officer may:
 - A. Issue a written order by certified mail, return receipt requested, to such person conducting such activity or maintaining such facility or condition to immediately cease such activity or to correct such facility or condition. Within ten (10) calendar days of the issuance of such order the Commission shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Commission shall consider the facts presented at the hearing and within ten (10) days of the completion of the hearing notify the person by certified mail, return receipt requested, that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The Commission shall publish notice of its decision in a newspaper having general circulation in the municipality. The original order shall be effective upon issuance and shall remain in effect until the Commission affirms, revises or withdraws the order. The issuance of an order pursuant to this section shall not delay or bar an action pursuant to Section 22a-44(b) of the General Statutes, as amended.
 - B. Suspend or revoke a permit if it finds that the applicant has not complied with the terms, conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application including application plans. Prior to revoking any permit, the Commission shall issue notice to the permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action.

At a public hearing the permittee shall be given an opportunity to show that he or she is in compliance with the permit and any and all requirements for retention of the permit. The permittee shall be notified of the Commission's decision to suspend, revoke, or maintain a permit by personal service or certified mail, return receipt requested, within fifteen (15) days of the date of its decision. The issuance of an order pursuant to this section shall not delay or bar an action pursuant to Section 22a-44(b) of the General Statutes, as amended. The Commission shall publish notice of the suspension or revocation in a newspaper having general circulation in the municipality.

- C. Issue a notice of violation to such person conducting such activity or maintaining such facility or condition, stating the nature of the violation and the jurisdiction of the Commission and prescribing the necessary action and steps to correct the violation, including, without limitation, halting work in wetlands, watercourses, upland review areas or other areas that may effect wetlands and watercourses. The Commission may request that the individual appear at the next regularly scheduled meeting of the Commission to discuss the unauthorized activity and/or provide a written reply to the notice or file an application for the necessary permit. Failure to carry out the action(s) directed in a notice of violation may result in issuance of the order provided in subdivision 14. 3A or other enforcement proceedings as provided by law. Each day of violation shall be considered as a separate offence.

SECTION 15: AMENDMENTS

- 15.1 These regulations of the Town of New Milford Inland Wetlands and Watercourse Commission shall be amended in the manner specified in Section 8-7d and 22a-42a of the Connecticut General Statutes, as amended. The Commission shall provide the Commissioner of Environmental Protection with a copy of any proposed regulations and notice of the public hearing to consider any proposed regulations or amendments thereto, except map amendments, at least thirty-five (35) days before the public hearing on their adoption.
- 15.2 The Inland Wetlands and Watercourses Map for the Town of New Milford may be amended by the Commission as new information regarding soils and inland wetlands and watercourses becomes available.
 - A. Any person who submits a petition to amend the Inland Wetlands and Watercourse Map for the Town of New Milford shall bear the burden of proof for all requested map amendments. Such proof may include, but is not limited to, professional interpretation of aerial photography and remote sensing imagery, resource mapping, soils mapping, or other information acceptable to the Commission. Petitions requesting changes or amendments to the New Milford Inland Wetlands and Watercourses Map shall contain at least the following information:
 - 1. The applicant's name, address and telephone number;

2. The owner's name (if not the applicant), address, telephone number, and a written consent to the proposed petition set forth in the application;
 3. Address and description of the land upon which the change is requested;
 4. The applicant's interest in the land, if any;
 5. Map(s) showing the geographic location of the parcel of land affected by the petition and the existing and proposed wetland(s) and watercourse(s) boundaries on such land in accurate detail together with the documentation supporting such proposed boundary locations. The Applicant or property owner shall present documentation by a certified soil scientist showing the soil types and boundaries of the soils types on the map of the parcel of land with the locations of numbered flags designating the boundary between wetland and non wetland soils types according to the National Cooperative Soils Survey. Watercourses shall be delineated by a soil scientist, geologist, ecologist or other qualified individual;
 6. Map(s) showing any proposed development of the land in relation to existing and proposed wetland and watercourse boundaries;
 7. The reasons for the requested action;
 8. The name and addresses of adjacent property owners.
- B. A public hearing shall be held on petitions to amend the Inland Wetlands and Watercourses Map. Notice of the hearing shall be published in a newspaper having substantial circulation in the municipality at least twice at intervals of not less than two (2) days, the first not more than fifteen (15) days nor less than ten (10) days, and the last not less than two (2) days, before the date set for the hearing. A copy of such proposed boundary change shall be filed in the office of the town clerk, for public inspection at least ten (10) days before such hearing.
- C. The Commission shall hold a public hearing on a petition to amend the regulations and the Inland Wetlands and Watercourses Map within sixty-five (65) days after receipt of such petition. The hearing shall be completed within thirty-five (35) days after commencement. The agency shall act upon the changes requested in such petition within sixty-five (65) days after completion of such hearing. At such hearing any person or persons may appear and be heard and may be represented by agent or attorney. The petitioner may consent to one or more extensions of any period specified in this subsection provided the total extension of all such periods shall not be for longer than sixty-five (65) days or may withdraw such petition. Failure of the Commission to act within any time period specified in this subsection or an extension thereof, shall not be deemed to constitute approval of the petition.
- D. The Commission shall make its decision and state, in writing, the reasons why the change in the Inland Wetlands and Watercourses Map was made.

15.3 The appendices referenced within these regulations, except for the Fee Schedule, can be amended by the Commission as necessary. Any changes or alterations to the appendices will become effective immediately.

SECTION 16: APPEALS

16.1 Appeal on actions of the Commission shall be made in accordance with the provisions of Section 22a-43 of the General Statutes, as amended.

16.2 Notice of such appeal shall be served upon the Commission and the Commissioner of Environmental Protection.

SECTION 17: OTHER PERMITS

17.1 Nothing in these regulations shall obviate the requirements for the applicant to obtain any other assents, permits or licenses required by law or regulation by the Town of New Milford, State of Connecticut and the Government of the United States including any approval required by the Connecticut Department of Environmental Protection and the U.S. Army Corps of Engineers. Obtaining such assents, permits or licenses is the sole responsibility of the applicant.

SECTION 18: CONFLICT AND SEVERANCE

18.1 If there is a conflict between the provisions of these regulations, the provision which imposes the most stringent standards for the use of wetlands and watercourses shall govern. The invalidity of any word, clause, sentence, section, part, subsection or provision of these regulations shall not affect the validity of any other part which can be given effect without such valid part or parts.

18.2 If there is a conflict between the provisions of these regulations and the provisions of the Act, the provisions of the Act shall govern.

SECTION 19: RECORDS RETENTION AND DISPOSITION

19.1 The Commission shall retain complete administrative records of Commission actions and dispose of such records in accordance with the retention/disposition schedules set forth in subsection 19.2.

19.2 The public records administrator of the Connecticut State Library established the following record retention/ disposition schedules for municipal Inland Wetlands Agencies effective September 1998:

RECORD TITLE	MINIMUM RETENTION
Applications (inc. supporting Materials)	10 years
Decision Letters and Approved Site Plans	10 years
Legal Notices	1 year
Staff and Public Written Testimony (hearing records)	10 years
Minutes of Meetings & Public Hearings	Permanent
Tapes, Audio	1 year
Notices of Violation and Orders	10 years
Text of Changes Adopted In Regulations	Continuous Update/ Permanent
General Correspondence Issued or Received	5 years

SECTION 20: EFFECTIVE DATE OF REGULATIONS

20.1 These regulations, which include the Inland Wetlands and Watercourses Map and application forms, shall become effective upon filing in the Office of the Town Clerk and publication of a notice of such action in a newspaper having general circulation in the Town of New Milford.