SECTION 4

INLAND WETLANDS AND WATERCOURSES REGULATIONS

For the Town of Kent, Connecticut

Kent Inland Wetlands Regulations

Revised Effective Date: March 15, 2018

Originally Adopted July 1, 1988

Please note: As of February 27, 1999, the Kent Conservation Inland Wetlands Commission has been changed to the Kent Inland Wetlands Commission.

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Section 1

Title and Authority

1.1 The inland wetlands and watercourses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses are an interrelated web of nature 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 Kent."

1.3 The Conservation Inland Wetlands Commission of the Town of Kent was established in accordance with an ordinance adopted November 20, 1981 and shall implement the purposes and provisions of the regulations and the Inland Wetlands and Watercourses Act in the Town of Kent.

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 Agency shall enforce the Inland Wetlands and Watercourses Act and shall issue, issue with terms, conditions, limitations and modifications, or deny permits for all regulated activities in the Town of Kent pursuant to Sections 22a-3 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.

Section 2
Definitions

2.1 As used in these regulations:

"Act" means the Inland Wetlands and Watercourses Act, Sections 22a-36 through 22a-45, inclusive, of the Connecticut General Statutes, as amended.

"Agency" means the Conservation Inland Wetlands Commission of the Town of Kent.

"Bogs" are watercourses distinguished by evergreen trees and shrubs underlain by peat deposits, poor and very poor drainage, and highly acidic conditions.

"Clear cutting" means the harvest of timber in a fashion which removes all trees down to a two inch diameter at breast height.

"Commissioner of Environmental Protection" means the Commissions of the State of Connecticut Department of Environmental Protection.

"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.

"Deposit" includes, but shall not be limited to, fill, grade, dump, place, discharge or emit.

"Discharge" means emission of any water, substance, or material into of the State whether or not such substance causes pollution.

"Essential to the farming operation" means that the proposed activity is necessary and indispensable to sustain farming activities on the farm.

"Farming" shall be consistent with the definition as noted in Section 1-1(a) of the CT General Statutes.

"Feasible" means to be constructed or implemented consistent with sound engineering principles.

"License" means the whole or any part of the permit, certificate of approval or similar form of permission which may be required of any person by the provisions of Sections 22a-36 to 22a-45, inclusive.

"Management practice" means a practice, procedure, activity, structure or facility designed to prevent or minimize pollution or other environmental damage or to maintain or enhance existing environmental quality. Such management practices include, but are not limited to: erosion and sedimentation controls; restrictions on land use 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.

"Marshes" are watercourses that are distinguished by the absence of trees and shrubs and dominance of soft-stemmed herbaceous plants. The water table in marshes is 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.

"Material" means any substance, solid or liquid, organic or inorganic, including but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris sand, refuse or waste.

"Municipality" means the Town of Kent.

"Nurseries" Means places where plants are grown for sale, transplanting or experimentation.

"Permit" See License

"Permittee" means the person to whom a permit has been issued.

"Person" means any person, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

"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.

"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 deciding what is prudent, and further, provided a mere showing of expense will not necessarily mean an alternative is imprudent.

"Regulated activity" means any operation within, or use of, a wetland or watercourse involving removal or deposition of material, or an obstruction, construction, alteration or pollution of such wetlands or watercourses and any earth moving filling construction, or clear-cutting of trees within one hundred (100) feet of wetlands and within two hundred (200) feet of watercourses, but shall not include the specified activities in Section 4 of these regulations. The agency may rule that any other activity in an upland review area or any other non-wetland or non-watercourse area is likely to impact or effect wetlands or watercourses and is a regulated activity.

"Remove" includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.

"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.

"Significant impact activity" means any activity, including, but not limited to, the following activities which may have a major effect:

a. Any activity involving deposition or removal of material which will or may have a substantial effect or significant impact on wetlands or watercourses or on the wetlands or watercourses outside the area for which the activity is proposed.
b. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system.
c. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support aquatic, plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions.
d. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse.
e. Any activity which causes a substantial diminution of flow of a natural watercourse or groundwater levels of the wetland or watercourse.
f. Any activity which is likely to cause or has the potential to cause pollution of a wetland or watercourse.
g. Any activity which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.

"Soil scientist" means an individual duly qualified in accordance with standards set by the Federal Office of Personnel Management.

"Swamps" are watercourses that are distinguished by the dominance of wetland trees and shrubs.

"Submerged lands" means those lands which are inundated by water on a seasonal or more frequent basis.

"Town" means the Town of Kent.

"Upland review area" means any area defined by the agency or the agency's staff after an initial review of materials submitted by an applicant that is greater than the distances of one hundred (100) feet from wetlands and two hundred (200) feet from watercourses due to special circumstances that may include, but shall not be limited to: steep slopes, impervious surfaces, topographical features, or any other reason the agency or agency's staff may deem necessary to include for the purpose of conducting its review operations.

"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.

"Watercourses" 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 Sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two 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; and © the presence of hydrophytic vegetation.

"Wetlands" means land, including submerged land as defined in this section, not regulated pursuant to Sections 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.

Section 3
Inventory of Wetlands and Watercourses

3.1 The map of regulated areas entitled "Kent Wetlands and Watercourses" dated July, 2008 as may be amended, delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of this map are available for inspection at the Office of the Town Clerk or the Agency. In all cases, the precise location of wetlands and watercourses shall be determined by the actual character of the land, the distribution of wetland soil types and location of watercourses. The Agency 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 Agency for an amendment to the map. 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 Agency may require such an owner to provide an accurate delineation of regulated areas in accordance with Section 15 of these regulations.

3.3 The Agency or its designated agent(s) shall maintain a current inventory of wetlands and watercourses within the town. The Agency may amend its map as more accurate information becomes available.

3.4 All map amendments are subject to the public hearing process outlined in section 15 of these regulations.

Section 4

Permitted Uses as of Right and Nonregulated Uses

4.1 The following operations and uses shall be permitted in inland wetlands and watercourses, 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 subdivision 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, or the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale;

b. a residential home (A) for which a building permit has been issued or (B) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date or promulgation of the municipal regulations pursuant to Subsection (b) of Section 22a-42a of the Connecticut General Statutes, or as of July 1, 1974, whichever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the permit was obtained on or before July 1, 1987;

c. boat anchorage or mooring;

d. uses incidental to the enjoyment or maintenance of residential property; such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the municipality. Where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres. 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 into a wetland or watercourse, or diversion or alteration of a watercourse;

e. construction and operation, by water companies as defined by Section 16-1 of the Connecticut 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 through 22a-403 of the Connecticut General Statutes: and

f. maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to Section 22a-42a of the Connecticut General Statutes or July 1, 1974, whichever is earlier, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of

this subdivision, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place;

g. routine maintenance of town roads by the Town of Kent. Here "maintenance" means the removal of roots accumulated leaves, soil and other debris whether by hand or machine, but does not include excavation;

h. Withdrawals of water for fire emergency purposes.

4.2 The following operations and uses shall be permitted as nonregulated uses in wetlands and watercourses, provided they do not disturb the natural and indigenous character of the wetland or watercourse by removal or deposition of material, alteration or obstruction of water flow or pollution of the wetland or watercourse:

a. conservation of soil, vegetation, water, fish, shellfish, and wildlife, and;

b. outdoor recreation including the use of play and sporting areas, golf courses, field trails, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shell fishing where otherwise legally permitted and regulated.

c. The installation of a dry hydrant by or under the authority of a municipal fire department, provided such dry hydrant is only used for firefighting purposes and there is no alternative access to a public water supply. For purposes of this section, "dry hydrant" means a non-pressurized pipe system that: (A) is readily accessible to a fire department apparatus from a proximate public road, (B) provides for the withdrawal of water by suction to such fire department apparatus, and (C) is permanently installed into an existing lake, pond or stream that is a dependable source of water.

4.3. Any dredging or any erection, placement, retention or maintenance of any structure, fill, obstruction or encroachment, or any work incidental to such activities, conducted by a state agency, which activity is regulated under sections 22a-28 to 22a-35, inclusive, or sections 22a-359b to 22a-363f, inclusive shall not require any permit or approval under sections 22a-36 to 22a-45, inclusive.

4.4. All activities in wetlands or watercourses involving filling, excavating, dredging, clear cutting, clearing, or grading or 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 Agency in accordance with Section 6 of these regulations~~.~~, or for certain regulated activities located outside of wetlands and watercourses from the duly authorized agent in accordance with section 12 of these regulations.

4.5. To carry out the purposes of this section, any person proposing to carry out a permitted operation and use or nonregulated operation and use shall, prior to commencement of such operation or use, notify the Agency on a form provided by it, and provide the Agency with

sufficient information to enable it to properly determine that the proposed operation and use is a permitted or nonregulated use of the wetland or watercourse. The Agency shall rule that the proposed operation or use or portion of it is a permitted or nonregulated operation and use, or that the proposed operation and use is a regulated activity and a permit is required.

Section 5

Activities Regulated Exclusively by the Commissioner of Environmental Protection

5. 1 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.

5. 2 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 Connecticut General Statutes, as amended.

5. 3 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 or 22a-41 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.

5.4 The Commissioner of Environmental Protection shall have exclusive jurisdiction over 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 Licensed

6.1 No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the Inland Wetlands Commission of the Town of Kent.

6.2 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Agency, 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

7.1 Any person intending to conduct a regulated activity, or to renew or amend a permit to conduct such activity, shall apply for a permit on a form provided by the Agency. The application shall contain the information described in this Section and any other information the Agency may reasonably require. Application forms may be obtained in the offices of the Kent Town Clerk or the Agency.

7.2 If an application to the Town of Kent Planning and Zoning Commission for subdivision or resubdivision of land involves land containing a wetland or watercourse, the applicant shall submit, in accordance with Section 8-3(g), 8-3c, or 826, as applicable, of the Connecticut General Statutes, an application for a permit to the Agency in accordance with this section, no later than the day the application is filed with such planning and zoning commission.

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

7.4 A prospective applicant may request the Agency to determine whether or not a proposed activity involves a significant impact activity.

7.5 All applications shall include the following information in writing or on maps or drawings:

a. the applicant's name, home and business mailing addresses and telephone numbers; if the applicant is a Limited Liability Corporation or a Corporation, the managing member's or responsible corporate officer's name, address, and telephone number;
b. the owner's name, mailing address and telephone number and written consent of the land owner if the applicant is not the owner of the land upon which the subject activity is proposed;
c. the applicant's interest in the land;
d. the geographical location of the land which is the subject of the proposed activity and a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, the area(s) (in acres or square feet) of wetlands or watercourses to be disturbed, soil type(s), and wetland vegetation;
e. the purpose and a description of the proposed activity and proposed erosion and sedimentation controls and other management practices and mitigation measures which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to: (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;

f. alternative which would cause less or no environmental impact to the wetlands and watercourses and why the alternative as set forth in the application was chosen; all such alternatives shall be diagrammed on a site plan or drawing;

g. a site plan showing the proposed activity and existing and proposed conditions in relation to wetlands and watercourses and identifying any further 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 or watercourses;

h. names and mailing addresses of adjacent land owners;

i. statement by the applicant that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information;

j. authorization for the members and agents of the Agency to inspect the subject land, at reasonable times, during the pendency of an application and for the life of the permit;

k. a completed DEP reporting form. The Agency shall revise or correct the information provided by the applicant and submit the form to the Commissioner of Environmental Protection in accordance with Section 22a-39-14 of the Regulations of Connecticut State Agencies;

l. any other information the Agency deems necessary to the understanding of what the applicant is proposing; and

m. submission of the appropriate filing fee based on the fee schedule established in chapter 8 of the Code of the Ordinances of the Town of Kent, CT, codified November 1, 2002.

7.6 At the discretion of the Agency or its agent, or when the proposed activity involves a significant impact, additional information, based on the nature and anticipated effects of the activity, including but not limited to the following, is required:

a. site plans for the proposed activity and the land which will be affected thereby which show existing and proposed conditions, wetland and watercourse boundaries, land contours, boundaries of land ownership, proposed alterations and uses of wetlands and watercourses, 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;

b. engineering reports and analyses and additional drawings to fully describe the proposed activity including any filling, excavation, drainage or hydraulic modifications to watercourses and the proposed erosion and sedimentation control plan;

c. mapping of soil types consistent with the categories established by the National Cooperative Soil Survey of the U.S. Natural Resources Conservation Service; the

wetlands shall be delineated in the field by a soil scientist and the soil scientist's field delineation shall be depicted on the site plans;

d. a description of the ecological communities and functions of the wetlands or watercourses involved with the application and the effects of the proposed activity on these communities and wetland functions;

e. a description of how the applicant will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application and each alternative which would cause less or no environmental impact to wetlands or watercourses, and a description of why each alternative considered was deemed neither feasible nor prudent;

f. analysis of chemical or physical characteristics of any fill material; and

g. management practices and other measures designed to mitigate the impact of the proposed activity.

7.7 The applicant shall certify whether:

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. Traffic attributable to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;

c. Sewer or water drainage from the project site will flow through and impact the sewage or drainage system within the adjoining municipality; or,

d. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

7.8 Eight copies of all application materials shall be submitted to comprise a complete application unless an applicant is otherwise directed, in writing, by the Agency.

7.9 Any application to renew or amend an existing permit shall be filed with the Agency in accordance with Section 8 of these regulations at least sixty-five (65) days prior to the expiration date of the permit. Any application to renew or amend such an existing permit shall contain the information required under Section 7 of the regulations provided:

a. The application may incorporate the documentation and record of the prior application;

b. 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;

c. The application shall state the reason why the authorized activity was not initiated or completed within the time specified in the permit;

d. The application shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses or use of the land for which the permit was issued;

e. The Agency may, prior to the expiration of a permit, accept an untimely application to renew the permit if the authorized activity is ongoing, and allow the continuation of work beyond the expiration date if, in its judgment, the permit is likely to be renewed and the public interest or environment will be best served by not interrupting the activity.

7.10 Any application to renew a permit shall be granted upon request of the permit holder unless the Agency 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 the permit was issued provided a) no permit issued during the time period from July 1, 2006 to July 1, 2009, inclusive, shall be valid for more than eleven years; and b) no permit issued prior to July 1, 2006 or after July 1, 2009 may be valid for more than ten (10) years.

7.11 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 purposes 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 filling of the permit application.

d. in lieu of such notice pursuant to subsection 7.11c, 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.

Section 8
Application Procedures

8.1 All petitions, applications, requests or appeals shall be submitted to the Inland Wetlands Commission of the Town of Kent.

8.2 The Agency 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 affected by a decision of the agency is within five hundred feet of the boundary of the 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 on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or

d. water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, appeal, request or plan.

8.3 When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in Section 16-1 of the Connecticut General Statutes, the applicant shall provide written notice of the application to the water company provided such water company 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 inland wetlands agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed with seven (7) days of the application. The water company, through a representative, may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the Agency.

8.4 The date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of the Agency, immediately following the day of submission to the Agency or its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner.

8.5 At any time during the review period, the applicant shall provide such additional information as the Agency may reasonably require. Requests for such additional information shall not stay the time limitations as set forth in Subsection 11.2 of these regulations.

8.6 All applications shall be open for public inspection.

8.7 Incomplete applications may be denied.

Section 9
Public Hearings

9.1 The inland wetlands agency shall not hold a public hearing on an application unless the inland wetlands agency determines that the proposed activity may have a significant impact on wetlands or watercourses, a petition signed by at least twenty-five 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 inland wetlands agency not later than fourteen days after the date of receipt of such application , or the inland wetlands agency finds that a public hearing regarding such application would be in the public interest. The inland wetlands agency may issue a permit without a public hearing provided no petition provided for in this section is filed with the inland wetlands 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 days after the receipt of such application. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing any person or persons may appear and be heard.

9.2 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 wetland and watercourse are located.

9.3 Notice of the public hearing shall be mailed to persons who own (or occupy) land that is adjacent to the land that is the subject of the hearing. For purposes of such notice, (1) proof of mailing shall be evidenced by a certificate of mailing, and (2) the person who owns land shall be the owner indicated on the property tax map or on the last completed grand list as of the date such notice is mailed.

Section 10
Considerations for Decision

10.1 The Agency may consider the following in making its decision on any application:

a. The application and its supporting documentation.

b. Reports from other agencies and commissions including but not limited to the Town of Kent:

(1) Conservation Commission

(2) Planning and Zoning Commission

(3) Building Official

(4) Health Officer

c. The Agency may also consider comments on any application from the Litchfield County Soil and Water Conservation District, the Northwestern Connecticut Regional Planning Agency or other regional organizations (i.e., Council of Elected Officials); 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.

d. Non-receipt of comments from agencies and commissions listed in Subdivision 10.1**b** and **c** above within the prescribed time shall neither delay nor prejudice the decision of the Agency.

e. For an application for which a public hearing is held, public comments, evidence and testimony.

10.2 Criteria for Decision. In carrying out the purposes and policies of Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:

a. The environmental impact of the proposed regulated activity on wetlands or watercourses;

b. The applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses;

c. The relationship between the short term and long term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long term productivity of such wetlands or watercourses.

d. Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to: (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;

e. The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and

f. Impacts of the proposed regulated activity on wetlands or watercourses 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 or watercourses.

10.3 In the case of an application which received a public hearing pursuant to a finding by the Agency that the proposed activity may have a significant impact on wetlands or watercourses, a permit shall not be issued unless the Agency finds on the basis of the records that a feasible and prudent alternative does not exist. In making this finding the Agency shall consider the facts and circumstances set forth in subsection 10.2 of this Section. The finding and the reasons therefore shall be stated on the record in writing.

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

10.5 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.

10.6 A municipal inland wetlands agency 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.

10.7 In reaching its decision on any application after a public hearing, the Agency shall base its decision on the record of that hearing. Documentary evidence or other material not in the hearing record shall not be considered by the Agency in its decision.

10.8 In the case of an application where the applicant has provided written notice pursuant to subsection 7.11c of these regulations, the holder of the restriction may provide proof to the inland wetlands agency 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 inland wetlands agency shall not grant the permit approval.

10.9 In the case of an application where the applicant fails to comply with the provisions of subsections 7.11c or 7.11d 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 inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction.

Section 11
Decision Process and Permit

11.1 The Agency, or its duly authorized agent acting pursuant to Section 12 of these regulations, may, in accordance with Section 10 of these regulations, grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity designed to carry out the purposes and policies of the Act, or deny the application. Such terms may include any reasonable measures which would mitigate 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 of priority: restore, enhance and create productive wetland or watercourse resources.

11.2 No later than sixty-five (65) days after receipt of an application, the Agency may hold a public hearing on such application. At such hearing any person or persons may appear and be heard and may be represented by agent or attorney. The hearing shall be completed within thirty-five (35) days of its commencement. Action shall be taken on applications within thirty-five (35) days after completion of a public hearing. In the absence 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 the periods specified in this subdivision, provided the total extension of all such periods shall not be for longer than sixty-five (65) days, or may withdraw the application. The failure of the Agency to act within any time period specified in this subdivision, or any extension thereof, shall not be deemed to constitute approval of the application. An application deemed incomplete by the Agency shall be withdrawn by the applicant or denied by the Agency.

11.3 The Agency shall state upon its records the reasons and bases for its decision.

11.4 The Agency shall notify the applicant and any person entitled to such notice of its decision within fifteen (15) days of the date of the decision by certified mail, return receipt requested, and the Agency shall cause notice of its order in the issuance or denial of the permit, to be published in a newspaper having general circulation in the town wherein the inland wetland or watercourse lies. In any case in which such notice is not published within such fifteen day period, the applicant may provide for the publication of such notice within ten (10) days thereafter.

11.5 If an activity authorized by an inland wetland permit also involves an activity which requires a zoning or subdivision approval, special zoning permit, or variance or special exception, under Section 8-3(g), 8-3c, or 8-26 of the Connecticut General Statutes, the Agency shall file a copy of the decision and report on the application with the Town of Kent Planning and Zoning Commission within fifteen (15) days of the date of the decision thereon.

11.6 Any permit issued by the Agency prior to July 1, 2006 or after July 1, 2009 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 Agency may establish a specific time period within which any regulated activity shall be conducted. Any permit issued by the Agency prior to July 1, 2006 or after July 1, 2009 for any other activity shall be valid for not less than two (2) years and not more than five (5) years. Any permit issued by the Agency during the time period from July 1, 2006 to July 1, 2009, inclusive, shall expire not less than six years after the date of such approval.

11.7 No permit issued by the Agency shall be assigned or transferred without the written permission of the Agency.

11.8 If a bond or insurance is required in accordance with Section 13 of these regulations, the Agency may withhold issuing the permit until such bond or insurance is provided.

11.9 General provisions in the issuance of all permits:

a. The agency has 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 Agency are subject to and do not derogate any present or future rights or powers of the Agency or the Town of Kent, 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 subject land or activity.

c. If the activity authorized by the Agency's permit also involves an activity which requires zoning or subdivision approval, special permit, variance or special exception under Section 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit may begin until such approval is obtained.

d. In constructing the authorized activities, the permitee shall implement such management practices consistent with the terms and conditions of the permit as needed to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.

e. Permits are not transferable without the prior written consent of the Agency.

Section 12
Action by Duly Authorized Agent

12.1 The Agency may delegate to its duly authorized agent the authority to approve or extend a permit for an activity that is not located in a wetland or watercourse when such agent finds that the conduct of such activity would result in no greater than a minimal impact on any wetlands or watercourses provided such agent has completed the comprehensive training program developed by the Commissioner of Environmental Protection pursuant to Section 22a-39 of the Connecticut General Statutes. Requests for such approval shall be made on a form provided by the Agency and shall contain the information listed under Section 7.5 of these regulations and any other information the Agency may reasonably require. Notwithstanding the provisions for receipt and processing applications prescribed in Sections 8, 9 and 11 of these regulations, such agent may approve or extend such an activity at any time.

12.2 Any person receiving such approval from such agent shall, within ten (10) days of the date of such approval, publish, at the applicant's expense, notice of the approval in a newspaper having a general circulation in the town wherein the activity is located or will have an effect. Any person may appeal such decision of such agent to the Agency within fifteen (15) days after the publication date of the notice and the Agency shall consider such appeal at its next regularly scheduled meeting provided such meeting is no earlier than three (3) business days after receipt of such Agency or its agent of such appeal. The Agency shall, at its discretion, sustain, alter, or reject the decision of its agent or require an application for a permit in accordance with Section 7 of these regulations.

Section 13
Bond and Insurance

13.1 The agency may require as a permit condition the filing of a bond with such surety in such amount and in a form approved by the Agency.

13.2 The bond or surety shall be conditioned on compliance with the provisions of these regulations and the terms, conditions and limitations established in the permit.

Section 14
Enforcement

14.1 The Agency may appoint an agent or agents to act in its behalf with the authority to notices of violation or cease and desist orders and carry out other actions or investigations necessary for the enforcement of these regulations. In carrying out the purposes of this section, the Agency or its duly authorized agent shall take into consideration the criteria for decision under Section 10.2 of these regulations.

14.2 The Agency or its agent may make regular inspections, at reasonable hours, of all regulated activities for which permits have been issued with the consent of the property owner or the authorized agent of the owner during the life of the permit.

14.3 In the case in which a permit has not been issued or a permit has expired, the Agency or its agent may make regular inspections at reasonable hours with the consent of the property owner or the authorized agent of the property owner.

14.4 If the Agency or its duly authorized agent finds that any person is conducting or maintaining any activity, facility or conditions which is in violation of the Act or these regulations, the Agency or its duly authorized agent 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. With ten (10) calendar days of the issuance of such order the Agency 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 Agency 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 that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The Agency 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 Agency affirms, revises or withdraws the order. The issuance of an order pursuant to this subsection shall not delay or bar an action pursuant to Section 22a-44(b) of the Connecticut General Statutes, as amended; and

b. Issue a notice of violation to such person conducting such activity or maintaining such facility or condition, stating the nature of the violation, the jurisdiction of the Agency, and prescribing the necessary action and steps to correct the violation including,w ithout limitation, halting work in wetlands or watercourses. The Agency may request that the individual appear at the next regularly scheduled meeting of the Agency to discuss the aunauthorized 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 14.3(a) or other enforcement proceedings as provided by law.

14.5 The agency may suspend or revoke a permit if it finds that the permittee 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 or suspending any permit, the Agency 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. The Agency shall hold a hearing to provide the permittee an opportunity to show that it is in compliance with its permit and any and all requirements for retention of the permit. The permittee shall be notified of the Agency's decision to suspend, revoke, or maintain a permit by certified mail within fifteen (15) days of the date of its decision. The Agency shall publish notice of the suspension or revocation in a newspaper having general circulation in the municipality.

Section 15
Amendments

15.1 These regulations and the Inland Wetlands and Watercourses Map for the Town of Kent may be amended, from time to time, by the Agency in accordance with changes in the Connecticut General Statutes or regulations of the Connecticut Department of Environmental Protection, or as new information regarding soils and inland wetlands and watercourses becomes available.

15.2 An application filed with the Agency which is in conformance with the applicable inland wetlands regulations as of the date of the receipt of such application shall not be required thereafter to comply with any change in inland wetland regulations, including changes to setbacks and buffers, 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 coundaries of inland wetlands or watercourse, or (2) to any change in regulations necessary to make such regulations consistent with the provisions of the Act as of the date of such receipt.

15.3 These regulations and the Town of Kent Inland Wetlands and Watercourses Map shall be amended in the manner specified in Section 22a-42a of the Connecticut General Statutes, as amended. The Agency 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.

(Note: Application fee schedules shall be adopted as Agency regulations or as otherwise provided by town ordinance.)

15.4 Petitions requesting changes or amendments to the Inland Wetlands and Watercourses Map, Kent, Connecticut, shall contain at least the following information:

a. The petitioner's name, mailing address and telephone number;
b. The address, or location, of the land affected by the petition;
c. The petitioner's interest in the land affected by the petition;
d. Map(s) showing the geographic location of the land affected by the petition and the existing and the opposed wetland(s) and watercourse(s) boundaries on such land in accurate detail together with the documentation supported such proposed boundary locations; and

e. The reasons for the requested action.

15.5 Any person who submits a petition to amend the Inland Wetlands and Watercourses Map, Kent, Connecticut, 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 Agency. If such person is the owner, developer or contract purchaser of the land which is the subject of the petition, or is such person is representing the interest of such an owner, developer or purchaser, in addition to the information required in Subsection 15.4, the petition shall include:

a. The name, mailing address and telephone number of the owner(s) of such land and owner(s)' agent or other representative.

b. The names and mailing addresses of the owners of abutting land;

c. Documentatioin by a soil scientist of the distribution of wetland soils on said land. Such documentation shall at a minimum include the report of the soil scientist documenting the location of wetland soils on the land and a map of the said land indicating the flag locations set by the soil scientist and efining the buondaries of wetland soil types; and

d. Map(s) showing any proposed development of the land in relation to existing and proposed wetland and watercourse boundaries.

15.6 Watercourses shall be delinated by a soil scientist, geologist, ecologist or other qualified individual.

15.7 A public hearing shall be held on petitions to amend the regulations and the Inland Wetlands and Watercourses Map. Notice of the hearing shall be published in a newspaper having a general circulation in the municipality where the land that is the subject of the hearing is located at least twice at intervals of not less than two days, the first not more than fifteen days, nor less than ten days, and the last not less than two days before the date set for the hearing. All materials including maps and documents relating to the petition shall be open for public inspection.

15.8 The Agency 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 the 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 longer than sixty-five (65) days or may withdraw such petition. Failure

of the agency to act within any time period specified in this subsection or any extension thereof, shall not be deemed to constitute approval of the petition.

15.9 The Agency shall make its decision and state, in writing, the reasons why the change in the Inland Wetlands and Watercourses Map was made.

Section 16
Appeals

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

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

Section 17
Conflict and Severance

17.1 If there is a conflict among 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, subdivision or provision of these regulations shall not affect the validity of any other part which can be given effect without such invalide part or parts.

17.2 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 18
Other Permits

18.1 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 Kent, the State of Connecticut, of 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 applicants.

Section 19

Effective Date of Regulations

19.1 These regulations are effective upon filing in the Office of the Town Clerk of Kent and publication of a notice of such filing in a newspaper having general circulation in the Town of Kent.

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KENT TOWN CLERK
2018 JAN 26 A 10: 36
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