

# **REGULATIONS FOR THE PROTECTION AND PRESERVATION OF WETLANDS AND WATERCOURSES WESTPORT, CONNECTICUT**

## **1.0 TITLE, AUTHORITY, AND PURPOSE**

1.1 These Regulations shall be known as the "Wetlands and Watercourses Regulations of the Town of Westport, Connecticut."

1.2 These Regulations as amended from time to time have been prepared and are adopted in accordance with the provisions of Section 22a-42c of the Connecticut General Statutes and were adopted by the Westport Conservation Commission and became effective on April 27, 1973.

1.3 The 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 inland wetlands and watercourses constitute an interrelated web of nature that is essential to maintaining an adequate supply of surface and underground water, to hydrological stability and flooding and erosion control, to the recharging and purification of groundwater and to ensuring 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 due to 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 which have despoiled, polluted, and eliminated wetlands and watercourses. This unregulated activity has, and will continue to have, a significant adverse impact on the environment and ecology of the Town of Westport. Furthermore, it will, if unchecked, imperil the quality of the environment and adversely affect the ecological, scenic, historic and recreational value and benefits of Westport for its citizens now and in perpetuity.

1.4 The preservation and protection of 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 Westport and the State. It is therefore the purpose of these Regulations to protect the citizens of Westport by making provisions for the care, preservation, maintenance, and use of local wetlands and watercourses of Westport. They provide an orderly process through which to balance the need for economic growth and land use in Westport with the need to protect its environment and ecology for the benefit and enjoyment of the people of Westport and generations yet unborn.

This purpose can be met by:

- (a) Minimizing the disturbance and pollution of wetlands and watercourses;
- (b) Maintaining or improving water quality in accordance with the standards set by Federal, State or Local authority;

- (c) Preventing damage from erosion, turbidity or siltation;
- (d) Preventing loss of fish and other beneficial organisms, wildlife and vegetation;
- (e) Preventing the destruction of natural habitats;
- (f) Controlling discharges and runoff to deter and inhibit pollution and flooding;
- (g) Protecting the conservation, economic, recreational and aesthetic quality of wetlands and watercourses to maintain their public and private uses and values; and
- (h) Protecting potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement.

## **2.0 COMMISSION DUTIES**

The Commission shall have the following specific duties and such other duties as may be reasonably implied from those enumerated.

It shall:

- 2.1 Carry out and effectuate the purposes and policies of Sections 22a-36 through 22a-45a, inclusive, of the Connecticut General Statutes, as amended, as specifically authorized by Section 22a-42.
- 2.2 Develop comprehensive programs in furtherance of the purposes of said sections.
- 2.3 Advise, consult and cooperate with other agencies of the Town, state and federal government, and other states, and with persons and municipalities in furtherance of the purposes of said sections.
- 2.4 Encourage, participate in or conduct studies, investigations, research and demonstrations, and collect and disseminate information relating to the purposes of said sections.
- 2.5 Retain and employ consultants and assistants on a contract or other basis for rendering legal, financial, technical or other assistance, and advice in furtherance of any of its purposes including but not limited to, soil scientists.
- 2.6 Inventory or index local wetlands and watercourses in such form, which may include pictorial representations, as the Commission deems best suited to effectuate the purposes and policies of Sections 22a-36 through 22a-45a inclusive of the Connecticut General Statutes, as amended.
- 2.7 Grant, deny, limit or modify, in accordance with the applicable provisions of these Regulations, an application for a license, as defined in Section 3.10 of these Regulations for any proposed regulated activity. Administer requests for a Declaratory Ruling and any amendment to the Wetlands and Watercourses Map of Westport.
- 2.8 Exercise all incidental powers necessary to enforce rules and regulations and to carry out the purposes of Sections 22a-36 to 22a-45a, inclusive, of the Connecticut General Statutes.

2.9 The Commission may delegate duties and authority to its agent, assistant, consultant or Conservation Department Staff to act as its representative in carrying out the provisions contained herein.

### 3.0 DEFINITIONS

3.1 Certain words, terms and phrases used in these Regulations shall have the meanings presented in this section. All words used in the present tense include the future tense, and the word "used" shall be deemed to include "designed, intended or arranged to be used."

3.2 "Bogs" means a poorly drained usually acidic area containing an accumulation of organic material and characterized by an association of plants recognized as bog species including, but not limited to, black spruce, bog rosemary, bog laurel, cranberry, Labrador tea, leather leaf, pitcher plant, swamp loosestrife and sweet gale.

3.3 "Commission" means the Westport Conservation Commission or its successor acting as the local inland wetland agency under Section 22a-42a of the Connecticut General Statutes.

3.4 "Conservation Director" means the employee of the Town of Westport responsible for the supervision of the Conservation Department who administers the regulations and acts as agent for the Commission.

3.5 "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 recurs in prolonged succession.

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

3.7 "Discharge" means the emission of any water, substance, or material into waters of the Town of Westport whether or not such substance causes pollution.

3.8 "Dwelling" means a building used as living quarters.

- a) Single-family means a detached dwelling on a single building lot containing one kitchen only.
- b) Two-family means an attached dwelling containing two (2) dwelling units and only one kitchen for each dwelling unit.
- c) Multi-family means any building designed, constructed and used as a residential building for three (3) or more dwelling units and includes but is not limited to, cooperatives, condominiums, town-houses and apartments.

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

3.10 "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; restriction 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; and confining construction that must take place in watercourses to times when water flows are low and fish and wildlife will not be adversely affected.

3.11 "Marsh" means an area normally covered with shallow water subject to seasonal variations which contains an association of herbaceous, soft-stemmed plants recognized as marsh vegetation. Typical examples of marsh species include, but are not limited to bulrush, cattails, marsh fern, royal fern, sensitive fern, soft rush, tussock sedge, wool-grass and yellow loosestrife.

3.12 "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, and refuse or waste.

3.13 "Permit" means the whole or any part of a license, certificate or approval or exemption, or similar form of permission which may be required of any person by the provisions of these Regulations or Sections 22a-36 through 22a-45a, inclusive, of the Connecticut General Statutes.

3.14 "Permitted Use" means those uses enumerated in Section 4.0.

3.15 "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.

3.16 "Pollution" means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the Town of Westport 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.

3.17 "Prudent" means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided that the cost may be considered in deciding what is prudent and further provided a mere showing of expenses will not necessarily mean an alternative is imprudent.

3.18 "Regulated Activity" means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands and watercourses, but shall not include the specified activities in Section 4.0 of these Regulations. Furthermore:

1. Any clearing, grubbing, filling, grading, paving, excavating, constructing, polluting,

depositing or removing of material, or discharging of stormwater on land within the review area setback as set forth in Section 7.3 is a regulated activity.

2. The Commission may rule that any activity that alters the existing rate, or quality of any stormwater discharge conveyed to a regulated area or review area setback as set forth in Section 7.3 is likely to impact or affect wetlands or watercourses and is a regulated activity.

3. The Commission may rule that any activity located within the review area setbacks or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

3.19 "Regulated Area" shall include wetlands and watercourses, existing and future, not all of which may be specifically delineated at present on the maps entitled "Wetlands and Watercourses Maps; Conservation Commission, Town of Westport, Connecticut" due to the constraints of printing and mapping scale.

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

3.21 "Rendering Unclean or Impure" means any alteration of the physical chemical or biological properties of any of the waters of the Town of Westport including, but not limited to, change in odor, color, turbidity, or taste.

3.22 "Significant Impact or Major Effect" means:

- (a) Any activity involving a deposition of material which will or may have a substantial adverse effect on the regulated area or on another part of the wetland and watercourse system; or
- (b) Any activity involving a removal of material which will or may have a substantial adverse effect on the regulated area or on another part of the wetland and watercourse system; or
- (c) Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system; or
- (d) Any activity which substantially diminishes the natural capacity of a wetland or watercourse to support desirable biological life, prevent flooding, supply water, assimilate waste, facilitate drainage and/or provide recreation and open space; or
- (e) Any activity which would result in the degrading of a watercourse of the surface and/or ground water of a wetland which would be consistent with the goals and purposes of these Regulations.

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

3.24 "Substantially Improved" means any combination of repairs, reconstruction, alteration or improvements of a structure in which the costs equal or exceed 50% of the market value of the existing structure before the start of construction of the improvement.

Substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not include any project for improvement of a structure to correct an existing violation of state or local health, sanitary, building, fire or safety code specification which has been previously identified by the local code enforcement official. Market Value is determined by dividing the market value of the building as shown on the latest Tax Assessor's records by the current assessment sales ratio established by the State Office of Policy and Management (OPM).

3.25 "Swamp" means an area with a water table at or near the surface of the ground throughout most of the year which contains vegetation dominated by an association of trees and/or shrubs recognized as swamp species. Typical examples of swamp species include, but are not limited to alders, cinnamon fern, meadowsweet, poison sumac, red maple, silky dogwood, silver maple, skunk cabbage, steeplebush, swamp rose and willows.

3.26 "Waste" means sewage or any substance, liquid, gaseous, solid, or radioactive, which may pollute any of the water of the Town of Westport.

3.27 "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 on the Town of Westport, or any portion thereof, not regulated as tidal wetlands pursuant to Section 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, as amended. "Intermittent Watercourses" shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics:

1. Evidence of scour or deposits of recent alluvium or detritus;
2. The presence of standing or flowing water for a duration longer than a particular storm incident.
3. The presence of hydrophytic vegetation.

3.28 "Wetlands" means land, including submerged land, not regulated as tidal wetlands pursuant to Section 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, as amended, 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 may be amended from time to time, for the Natural Resources Conservation Service of the United States Department of Agriculture. 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.

#### **4.0 PERMITTED USES**

4.1 The following operations and uses shall be permitted in wetlands and watercourses,

as of right when verified in writing by the Commission or Conservation Director:

- (a) Grazing, farming, nurseries, gardening, and harvesting of crops and farm ponds of three acres or less essential to the farming operations, 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, 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 purpose of sale;
- (b) A residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by the Planning and Zoning Commission as of April 27, 1973, and further provided no residential home shall be permitted as of right unless the building permit was obtained on or before July 1, 1987. Any person claiming a use of wetlands permitted as a right under Section 4.1 (b) shall document the validity of said right by providing 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 or other necessary information to document his or her right hereunder;
- (c) Boat anchorage or mooring;
- (d) Uses incidental to the enjoyment and maintenance of a residential property, such property defined as equal to, or smaller than two (2) acres and containing a house. Such incidental uses shall include maintenance of existing structures and landscaping, including leaf removal, 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 in Section 16-1 of the General Statutes or by municipal water supply systems as provided for in Chapter 102 of the General Statutes of dams, reservoirs and other facilities necessary for the impounding, storage and withdrawal of water in connection with public water supplies, except as provided in Section 22a-401 and 22a-403 of the Connecticut General Statutes, as amended;
- (f) Maintenance relating to any drainage pipe which existed before the effective date of April 27, 1973 for these Regulations adopted pursuant to section 22a-42a, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this paragraph (f), "maintenance" means the removal of accumulated leaves, soil, and other debris, whether by hand or machine, while the pipe remains in place.

4.2 The following operations and uses shall be permitted as non-regulated uses in wetlands and watercourses, when verified by the Commission or Conservation Director, provided they do not disturb the natural and indigenous character of the wetlands or watercourses by the 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;
- (b) Outdoor recreation, including use of play and sporting areas, golf courses, field trials, nature study, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where these activities are otherwise legally permitted and regulated.

4.2.1 An operation or use shall be considered a disturbance of the natural and indigenous character of wetlands and watercourses when it involves one or more of the following activities:

- (a) Alteration of the surface, soils or topography of, in and adjacent to;
- (b) Alteration of water level or water table in or adjacent to;
- (c) Alteration or removal of vegetation in;
- (d) Alteration of the light source or penetration into;
- (e) Placement of structures, dredging or filling within; and/or
- (f) Alteration of the chemical properties of;  
wetlands and watercourses.

4.3 Any regulated activity or use legally existing as of April 27, 1973, shall be permitted to continue provided that no new additional regulated activity requiring a permit under these Regulations is conducted.

## **5.0 CRITERIA CONSIDERED BY COMMISSION**

5.1 In carrying out the purposes and policies of these Regulations and Sections 22a-36 to 22a-45 (a,) inclusive, of the Connecticut General Statutes, including matters relating to regulating, permitting and enforcing of the provisions thereof, the Commission 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 wetland 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 resource, 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 reasonable use of property which is caused or threatened by the proposed regulated activity;
- (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; and
- (g) The degree to which the proposed activity is consistent with all applicable goals and policies set forth in Section 1.3 and 1.4 of these Regulations and Section 22a-36 of the Connecticut General Statutes, as amended.

5.2 For the purposes of this section 5.0, (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.

## **6.0 STANDARDS OF REVIEW**

In accordance with the purposes of these Regulations, as set forth in Section 1.3, the Commission shall apply relevant standards including, but not limited to, the following:

### **6.1 GENERAL STANDARDS:**

In order to determine that an activity will not have significant impact or major effect on the general character of wetlands and watercourses the Commission shall, as applicable, find that:

- (a) The disturbance and pollution of wetlands and watercourses will be minimized;
- (b) The height, width and length of structures will be limited to the minimum dimension necessary to accomplish the intended function;
- (c) Loss of fish and other beneficial organisms, wildlife and vegetation will be prevented;
- (d) Potable fresh water supplies will be protected from the dangers of drought, overdraft, pollution, misuse and/or mismanagement;
- (e) The conservation, economic, recreational and aesthetic qualities of wetlands and watercourse will be maintained.

### **6.2 WATER QUALITY:**

In order to determine that an activity will not have significant impact or major effect on water quality in wetlands and watercourses, the Commission shall, as applicable, find that:

- (a) Flushing rates, freshwater sources, existing basin characteristics and channel

- contours will not be adversely altered;
- (b) Water stagnation will neither be contributed to nor caused;
- (c) Water pollution which will unduly affect the fauna, flora, physical or chemical nature of the regulated area, or the propagation and habitats of fish and wildlife, will not result;
- (d) Pollution of the groundwater or of a significant aquifer will not result;
- (e) All applicable state and local health codes shall be met;
- (f) Water quality will be maintained or improved in accordance with the standards set by federal, state, and local authority including but not limited to, Section 22a-426 of the Connecticut General Statutes.

### 6.3 EROSION AND SEDIMENT:

In order to determine that an activity causing erosion and/or sedimentation will not have significant impact or major effect on wetlands and watercourses, the Commission shall, as applicable, find that:

- (a) Temporary erosion control measures shall be utilized during construction and for the stabilization period following construction;
- (b) Permanent erosion control measures shall be utilized using nonstructural alternatives whenever possible and structural alternatives when unavoidable;
- (c) Spillover of material into and siltation of wetlands and watercourses shall be prevented;
- (d) Existing circulation patterns, water velocity, or exposure to storm and flood conditions shall not be adversely altered;
- (e) Formation of deposits harmful to aquatic life and/or wetlands habitat will not occur;
- (f) Applicable state, federal and local guidelines shall be met.

### 6.4 NATURAL HABITATS:

In order to determine that an activity will not have significant impact or major effect on the habitats of wetlands and watercourses, the Commission shall, as applicable, find that:

- (a) Critical habitat areas, such as habitats of rare and endangered floral and faunal species, shall be preserved;
- (b) The existing biological productivity of any wetland and watercourse shall be maintained or improved;
- (c) Breeding, nesting and/or feeding habitats of wildlife will not be significantly altered;
- (d) Movements and lifestyles of fish and wildlife will not be significantly affected;
- (e) Periods of seasonal fish runs and bird migrations shall not be impeded;

### 6.5 DISCHARGE AND RUNOFF:

In order to determine that an activity will not have significant impact or major effect on the flooding habits of wetlands and watercourses, the Commission shall, as applicable, find that:

- (a) The potential for flood damage on adjacent or adjoining properties will not be increased;
- (b) The velocity or volume of flood waters both into and out of wetlands and watercourses will not be adversely altered;
- (c) The capacity of any wetland or watercourse to transmit or absorb flood waters will not be significantly reduced;
- (d) Flooding upstream or downstream of the location site will not be significantly increased;
- (e) The activity is acceptable to the Flood and Erosion Control Board and/or the Town Engineer of the municipality of Westport;
- (f) Concentrated discharge flow will be filtered and dissipated, or spread before entering wetlands and watercourses;
- (g) Runoff increases will be retained or detained on-site whenever possible.

#### 6.6 RECREATIONAL AND PUBLIC USES:

In order to determine that an activity will not have significant impact or major effect on existing or potential recreational or public uses in wetlands and watercourses, the Commission shall, as applicable, find that:

- (a) Access to and use of public recreational and open space facilities, both existing and planned, will not be prevented;
- (b) Navigable channels and/or small craft navigation will not be obstructed;
- (c) Wetlands and Watercourses held in public trust will not be adversely affected.

### **7.0 ACTIVITIES AND AREAS REQUIRING PERMIT APPROVAL**

7.1 Subject to the provisions of Section 4.0 hereof, regulated activities shall require a permit from the Commission.

7.2 Areas of regulated wetlands and watercourses are shown on the official map at such a scale that some margin of error is possible. If an applicant disputes the designation of any part of his land as a regulated area, the applicant may be required to apply for an amendment to the Wetlands and Watercourses Map by the following procedures set forth in Sections 8.3 and 8.4 of these Regulations.

7.3 To ensure protection of wetlands and watercourses as authorized in Sections 2.1 of these Regulations, review area setbacks from wetlands and watercourses are established as follows and are measured horizontally from the wetland or watercourse boundary or the top of bank, whichever is greater:

	WETLANDS and/or WATERCOURSE
(a) new or expansion of existing subsurface sewage disposal systems.	50'
(b) verified repair of existing septic system.	25'
(c) single-family residence on an individual lot; substantially improved single family residence; outbuilding with bathroom; and any additions to the foregoing structures; air-conditioning units and power generators.	50'
(d) non-residential structures; two or more single family residences on one lot; two family residences on one or more lots; multi-family residences on one or more lots; and any additions to the foregoing structures; air-conditioning units and power generators.	75'
(e) commercial structures, industrial uses and any additions to the foregoing structures.	75'
(f) outbuildings without a bathroom; decks; patios; and walls with or without footings; dumpsters and trash compactors.	30'
(g) tennis courts and swimming pools.	35'
(h) parking lots and shoulder of driveway edge.	30'
(h) limit of fill, cut, grading and other alteration	20'
(i) fences, pool filtration units.	25'

7.4 If the wetlands or watercourses are located in an Aquifer Protection Overlay Zone, or have the presence of steep slopes of 25% or greater, vernal pool(s), or endangered species, a review area setback of up to 100' may be required.

7.5 New subsurface sewage disposal systems meeting the aforementioned review area setback requirements in Section 7.3(a) shall, upon consideration and review by the Conservation Director, be eligible for a Declaratory Ruling subject to the provisions of Section 9.3 and 9.4. Replacement, repair or modification of an existing but failing system, as determined by the proper Health and Sanitary Authority, shall also be eligible for such approval as determined by the Conservation Director on a site-by-site basis, in accordance with permitting criteria herein stated. New subsurface sewage disposal

systems not meeting the aforementioned review area setback requirements shall be subject to Summary or Plenary Commission review, as provided in Section 9.0 of these Regulations.

7.6 Any activity involving the boring of a "test pit" on any property containing a wetland, watercourse or other regulated area must, prior to activity commencement, first be accompanied by written notification to the Conservation Director, not less than five (5) days before such activity begins. Any test borings, or other similar investigative activity, to occur directly within a wetland, watercourse or other regulated area may, upon the discretion of the Conservation Director, require the on-site presence of a Conservation Staff member for monitoring purposes during the pendency of the activity and/or approval pursuant to Section 9.0 of these Regulations.

### **8.0 AMENDMENT PROCEDURES**

8.1 Regulations and wetland and watercourse boundaries may occasionally be amended, changed or repealed by a majority vote of the Commission or its successor.

Such changes shall take place after a public hearing is held by the Commission, at which parties in interest and citizens shall have the opportunity to be heard. Notice for the hearing shall be published in the form of a legal advertisement appearing in a newspaper having a substantial circulation in the municipality at least twice at intervals of not less than two days. The first publication date shall not be more than fifteen (15) days nor less than ten (10) days before such hearing and the second date shall not be less than two (2) days before the hearing.

A copy of such proposed regulations or boundary shall be filed in the office of the Westport Town Clerk for public inspection at least ten (10) days before such hearing. Regulations or boundaries or changes therein shall become effective at such time as is fixed by the Commission upon their adoption at such hearing. A copy of such regulation, boundary or change shall be filed in the office of the Westport Town Clerk.

8.1.1 An application filed with the Commission which is in conformance with the applicable Inland Wetlands and Watercourses Regulations as of the date of the receipt of such application shall not be required thereafter to comply with any change in the Inland Wetlands Regulations, including changes to setbacks and buffers, taking effect on or after the date of such receipt and any appeal from the decision of the Commission with respect to the 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 Section 8.1.1 shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands and watercourses, or (2) to any changes in regulations necessary to make such regulations consistent with the provisions of Chapter 440 of the General Statutes as of the date of such receipt.

8.2 Whenever the Commission, or its successor, makes a change in regulations, except determinations of boundary map amendments, it shall state upon its record the reason why the change was made and shall provide a copy of such regulations and change to the

Commissioner of Environmental Protection no later than ten (10) days after its adoption.

8.2.1 The Commission shall provide the Commissioner of Environmental Protection with a copy of any proposed regulations or amendments thereto, except determinations of boundary map amendments, at least thirty-five (35) days before the public hearing on their adoption.

8.3 All written petitions submitted in the form prescribed by the Commission, requesting a change in the Regulations or any boundaries of wetlands and watercourses or setbacks shall be considered at a public hearing. All petitions shall be heard in the manner provided for the establishment of wetlands and watercourses regulations and boundaries within sixty-five (65) days after receipt of such petition. The hearing shall be completed within thirty-five (35) days after commencement. The Commission shall act upon the changes requested in such petition within sixty-five (65) days after completion of the hearing. 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.

8.4 If an applicant disputes the designation of any part of his/her land as a regulated area, the applicant may be required to present documentation by:

- (a) a soil scientist that the land in question, or a portion of it, does not have a soil type classified as poorly drained, very poorly drained, alluvial, or flood plain, and does not conform to the definition of "wetlands" pursuant to Section 3.27 of these Regulations;
- (b) a botanist, biologist, or other professional person competent in plant identification and ecosystem classification, that the area in question does not contain typical examples of swamp, bog, marsh vegetation or water conditions including, but not limited to, those described in the booklet entitled *Inland Wetland Plants of Connecticut* (May, 1973); does not conform to the definition of "watercourses" pursuant to Section 3.26, inclusive, of these Regulations.

## **9.0 APPLICATION PROCEDURE**

9.1 Any person wishing to carry out a regulated activity or a permitted use which may involve a regulated activity shall file an application on the form prescribed by the Commission in the Conservation Department at least thirty-four (34) days prior to the regular meeting at which it is to be considered in order to be placed on the agenda of that meeting.

If an application to the Town of Westport Planning and Zoning Commission for subdivision or resubdivision of land involves land containing a wetland or watercourse, the applicant shall, in accordance with Sections 8.3(g), 8.3c or 8-26 of the Connecticut General Statutes, submit an application for a permit to the Conservation Commission in accordance with this section, no later than the day the application is filed with the Planning and Zoning Commission.

9.1.1 The information required by the Commission shall be furnished in conformance with current application guidelines in sufficient copies to permit it to carry out its duties under these Regulations. In no case will fewer than twelve (12) copies be accepted for a final review of an application for a regulated activity.

A reporting form shall be completed during the application process, which provides the Commissioner of the Department of Environmental Protection with information necessary to properly monitor the inventory of State wetlands. The reporting form shall be part of the application and specified sections shall be completed by the applicant. The Commission shall be responsible for the remaining information and any corrections on the form prior to filing it with the State.

9.1.2 All information submitted in the application for review shall be considered factual and binding.

A knowing failure on the part of the applicant or any of his/her agents to provide correct or complete information during the application procedure shall be grounds for denial of the license.

9.1.3 The date of application receipt shall be deemed the date of the next regularly scheduled meeting of the Conservation Commission, immediately following the day of submission, or thirty-five (35) days after submission, whichever is sooner, provided the information has been submitted thirty-four (34) days before such regularly scheduled meeting.

9.1.4 All applications shall include in addition to such other information as may from time to time be required by the Commission, the following information, in writing, and on a form provided by the Commission:

- (a) The applicant's name, home and business addresses, and home and business telephone numbers;
- (b) The owner's name (if applicant is not the owner of the property), home and business addresses, telephone numbers and written consent to the proposed activity set forth in the application;
- (c) Applicant's interest in the land (if not ownership);
- (d) The geographical location of the property which is to be affected by the proposed activity, including a description of the land in sufficient detail to allow identification of the properties on the wetland and watercourses map;
- (e) Purpose and description of the proposed activity and whether it is located within 500 ft of another municipality;
- (f) Description of 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.
- (g) Plan(s) or map(s) of the property containing sufficient detail to enable the Commission to carry out its duties under these Regulations and showing: regulated area(s) including setbacks, proposed activity(ies), including any further activities associated with, or reasonably related to, and made inevitable by the proposed regulated activity and which may have an impact on wetlands and watercourses;
- (h) Names and addresses of all adjacent property owners;
- (i) Stamped envelopes addressed to adjacent property owners.

9.1.5 Payment of application fee. An application will not be deemed complete nor placed on an agenda until the application fee, assessed pursuant to Section 46-1E of the Code of the Town of Westport, as may be amended from time to time, has been paid in full.

9.1.6 Fee for Technical Assistance. Upon the filing of an application, the Conservation Director, or his/her designee, shall make a determination whether an outside expert is needed to analyze, review and report on areas requiring technical review in order to assist the Commission. Such experts may include, but shall not be limited to, engineers, surveyors, soil scientists, wetland biologists, wildlife biologists, and hydrogeologists. If such determination is made, the Director may assess the reasonable cost for such expert to the applicant based upon a preliminary estimate from the expert. The Director may collect 150% of the estimate from the applicant, which amount shall be held in escrow until the technical review is completed. The amount will be the outside limit of the applicant's responsibility. Any excess amount collected over the actual cost shall be refunded to the applicant. This payment shall be considered as an integral component of the application. The failure by the applicant to make this payment shall render the application incomplete.

In the event the Director does not make a determination that an outside expert is needed, the Commission may make such a determination up to two (2) weeks after the commencement of the public hearing on the application. However, prior to making such a determination, the Commission shall determine: 1) that evidence in the record of the proceedings has been produced or is likely to be produced which requires the hiring of such an expert; 2) that the department staff will be unable to perform the technical review; and 3) that adequate time exists for the applicant to review and respond to such expert's report. The Conservation Commission shall then make such a reasonable assessment and collect 150% of the estimate from the applicant. Any excess amount collected over the actual cost shall be refunded to the applicant. This payment shall be considered as an integral component of the application. The failure by the applicant to make this payment shall render the application incomplete.

If adequate time is not possible for the outside expert to perform the analysis



and the application has to be temporarily withdrawn, the applicant must refile but does not have to pay a new application fee.

9.2 Within thirty-five (35) days following the receipt of the application, it shall be classified by either the Commission or the Conservation Director as requiring a declaratory ruling, a summary ruling or a plenary ruling pursuant to Sections 9.3, 9.4 and 9.5 of these Regulations.

9.3 Declaratory Ruling: - Any person wishing to carry out a proposed activity or use on property containing regulated areas, who believes that the proposed activity or use is not an activity requiring a permit shall seek a Declaratory Ruling from the Commission. Any such request for a Declaratory Ruling shall be submitted in writing on a form supplied by the Department, and signed by the person wishing to carry out the proposed activity or use, and accompanied by a plan showing the proposal. This permission shall be subject to conditions or revocation if the proposed activity has the potential for significant impact on a wetland or watercourse. The Commission or Department shall state in writing its reasons for finding that a proposed use or other activity does not involve a regulated activity as defined in Section 3.18 of these Regulations.

9.3.1 The Commission may delegate to the Conservation Department the authority to approve or extend an activity or use that is not located in a wetland or watercourse when the Department finds that the conduct of such activity would result in no greater than a minimal impact on any wetlands or watercourse, provided that the Conservation Department staff member has completed the Comprehensive Training Program developed by the Commissioner of Environmental Protection pursuant to Section 22a-39 of the Connecticut General Statutes.

9.3.2 Failure to have a member of the Conservation Department Staff with training by the Commissioner's Program shall not affect the validity of any action of the Department or Commission.

9.3.3 Any person receiving such approval from the Conservation Department shall, within ten (10) days of the date of such Declaratory Ruling, publish, at the applicant's expense, notice of the approval in the newspaper having general circulation in the town wherein the activity is located or will have an effect. Any person may appeal such decision of the Conservation Department to the Commission within fifteen (15) days after the publication date of the notice and the Commission shall consider such appeal at its next regularly scheduled meeting provided such meeting is no earlier than three (3) business days after receipt of the appeal. The Commission shall, at its discretion, sustain, alter or reject the decision of the Department or require an application for a permit in accordance with Section 9.4 inclusive of these Regulations.

9.4 Summary Ruling: If the Commission or the Director finds after initial review that a proposed activity is a regulated activity not involving significant impact or major effect on wetlands and watercourses, it 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 Sections 9.5.1 through 9.5.7 inclusive, shall issue an opinion

presenting its reasons for granting the permit with or without conditions.

9.5 Plenary Ruling: If the Commission finds that the regulated activity applied for does or may involve a significant impact or major effect on the wetlands or watercourses, the Commission shall conduct a public hearing and request information which may include, but is not limited to the following:

9.5.1 Site Plan and/or A-2 Survey - A map of the proposed use and the property which will be affected, drawn and signed by a licensed surveyor, professional engineer or professional architect, who must be registered with the State of Connecticut. The map shall be on a scale to be determined by the Commission. Detailed information to be included on this site plan may include, but not be limited to, the following information, both existing and proposed, as applicable to the particular application:

- (a) Contour intervals of no more than two (2) feet or as specified by the Commission;
- (b) Property boundaries and lines delineating the land to be used under the application, including construction limit lines, flood elevation lines, channel lines and lines delineating regulated area and applicable setbacks;
- (c) A north arrow indicating true north, date(s) of survey, certification and revision(s), and a labeled place for Commission approval;
- (d) All buildings, structures, streets, stone walls, fences, parking areas, loading areas and right-of-ways;
- (e) Location(s) of all regulated areas and existing conditions adjacent to the project site to allow identification of 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;
- (f) Location(s), documented by a soil scientist, of all boring and soil sample data presented by the applicant;
- (g) All drainage including curtain and footing drains, storm drainage, sanitary sewage disposal, water supply facilities and all other utilities, including applicable drainage easements;
- (h) Areas where material is intended to be deposited, removed or displaced;
- (i) All construction within the regulated or setback area(s);
- (j) Significant vegetation which has one or more of the following functions: erosion control, terrestrial and aquatic wildlife habitat, recreational or educational significance;
- (k) Landscaping, including trees and/or shrubs, lawn, other landscape features and natural terrain not to be disturbed;
- (l) A vicinity sketch or location map showing the general location of the area in which the regulated activity is proposed in sufficient detail to allow identification of the property in the field and on the official Wetlands and Watercourses Map of the Town of Westport;
- (m) All soil erosion and sediment control practices necessary to stabilize the site during construction and for the stabilization period following the proposed activity;
- (n) Any other management practices and mitigation measures to prevent or minimize pollution or other environmental damage, to maintain or enhance existing environmental quality, or to restore and enhance existing environmental quality, or

to restore, enhance and create productive wetland or watercourse resources.

9.5.2 Soil Sample Data - If the parcel lies within or partly within an area believed to contain poorly drained, very poorly drained, alluvial and/or flood plain soils, the applicant may be required to show where each specific soil type is found. Soil types identified must be consistent with the categories established by the Natural Resource Conservation Service of the U. S. Soil and Water Conservation Service.

- (a) Based on Soil Taxonomy, the soils of Connecticut with aquic moisture regimes are considered to be poorly drained and very poorly drained by the Natural Resource Conservation Service.
- (b) Graded, smoothed, cut, burrowed or filled land which is wet enough to exhibit an aquic moisture regime could be classified Aquic Udorthents.
- (c) Disturbed soils with aquic moisture regimes qualify as wetland soils.

9.5.3 Biological Evaluations - If the affected property is believed to include any portion of a wetland, swamp, bog or marsh, the applicant may be required to submit an evaluation of the probable effect of his/her proposed activity upon those plant species and upon indigenous animal life. This evaluation may include, but shall not be limited to, the following:

- (a) The dominant terrestrial and aquatic botanical species, rare or endangered species, and the height, age and density of this vegetation;
- (b) The terrestrial and aquatic animal life;
- (c) The habitat value of the wetlands and/or watercourses for indigenous and/or migratory, terrestrial and/or aquatic wildlife species;
- (d) Depth of water table or level of water if inundated;
- (e) Data of field determination of this data;

9.5.4 Analysis of Material to be Deposited - The applicant may be required to describe any material to be deposited on the affected property in terms of volume, composition and the possibility of erosion or leaching from deposited materials.

9.5.5 A description of the proposed construction or the erection of structures on the affected property, including blueprints, engineering and architectural plans or designs, where available or reasonably attainable. These descriptions should include the purposes of the proposed construction activity.

9.5.6 A list of adjacent and other property owners whose rights or interests may or will be affected by the proposed activity.

9.5.7 Watercourse Characteristics - If the proposed activity may affect a watercourse lying within, partly within, or flowing through or adjacent to the affected property, the applicant may be required to submit information relative to the present character and the projected impact of the proposed activity upon the watercourse. Such information may include, but shall not be limited to, the following specific characteristics or seasonal variations thereof:

- (a) pH (i.e. alkalinity/acidity level);
- (b) Turbidity or solids in parts per million;
- (c) Nitrate and phosphate levels in parts per million;
- (d) Temperatures;
- (e) Dissolved oxygen and carbon dioxide;
- (f) Bacteria count in total fecal coliform per milliliter;
- (g) Tests for other biochemical constituents as specified by the Commission;
- (h) Flow, if any, in cubic feet per second;
- (i) Date of field determination of data.

9.6 All information requested by the Commission for review shall be submitted to the Conservation Department Office, Town Hall, Westport, at least twenty-one (21) days before the Commission meeting at which the information is scheduled to be reviewed. Failure to submit such information may result in postponement or denial of the application.

9.7 The Commission shall not hold a public hearing on an application unless:

- (a) The Commission determines that the proposed regulated activity may have a significant impact on wetlands or watercourses; or
- (b) A petition requesting a hearing signed by a 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, is filed with the Conservation Department not later than fourteen (14) days after the receipt of such application; or
- (c) The Commission or Department finds that a public hearing regarding such application would be in the public interest.

The agency may issue a permit without a public hearing provided no petition provided for in this section is filed with the Department 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 the receipt of such application. All applications and maps and documents relating thereto shall be open for public inspection. Any person may appear and be heard at any such public hearing.

9.7.1 In the event the Commission does not schedule a public hearing, the Commission shall render a final decision within sixty-five (65) days from the receipt of an application. The Commission shall notify the applicant by certified mail of its decision within fifteen (15) days of the date of the decision, and shall publish notice of its order of issuance or denial of a license in a newspaper having a general circulation in Westport.

9.8 Public Hearings - All public hearings shall commence no later than sixty-five (65) days after receipt of an application.

9.8.1 Notice of the 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 days (10) days, and the last not less than two (2) days before the date set for the hearing. Notice

publication shall be in the newspaper with a general circulation in Westport.

At such hearings any person or persons may appear and be heard. Notices of hearing shall be sent to the applicant, adjacent and other known affected property owners, all known interested parties and groups and to the Department of Environmental Protection. All applications, maps and documents relating to such hearing shall be open for public inspection in the Conservation Office during regular business hours.

9.8.1(a) In the case of the filing of any application where any portion of the wetland or watercourse on which the regulated activity is proposed is located within 500 feet of the boundary of Norwalk, Fairfield, Wilton or Weston, the applicant shall give written notice of the proposed activity by certified mail, return receipt requested, to the adjacent municipal wetland agency on the same day of filing an Inland Wetland Permit application with the Commission in accordance with Section 22a-42c of the General Statutes.

9.8.1(b) The Commission shall, in accordance with the Connecticut General Statutes Section 22a-42b, notify the Clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan to conduct a regulated activity when:

- (1) Any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of the adjoining municipality;
- (2) 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;
- (3) 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; or,
- (4) 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 the receipt of the application.

9.8.2 When possible, public hearings shall be completed in a single session. However, the hearing may be continued to a date certain when necessary for a full development of the evidence, for the full and adequate participation of the parties or for other substantial purposes.

In no case shall continuance be used as a device for delay. No public hearing shall be continued to a date certain which is more than thirty (30) days after the date of the originally scheduled hearing.

9.8.3 Action shall be taken on applications for which a public hearing has been held within thirty-five (35) days after the completion of the hearing or, in the absence of a public hearing, within sixty-five (65) days from the date of receipt of the application. Public hearings shall be completed within thirty-five (35) days of their commencement. The applicant may consent to one or more extensions of the periods specified in this

section provided the total extension of all such periods shall not be longer than sixty-five(65) days, or may withdraw the application.

9.8.4 The Commission shall inform the applicant of its decision granting with or without conditions or denying a permit by certified mail within fifteen (15) days of the date of such decision. The Commission shall cause notice of the issuance or denial of a permit to be published in a newspaper having a general circulation in the Town of Westport.

9.9 The failure of the Commission or the Conservation Department to act upon any application within the time prescribed by these Regulations shall not be considered an approval. An application deemed incomplete by the Commission must either be withdrawn by the applicant or denied by the Commission.

9.10 Once the Commission has taken action on an application, any further consideration of the same area or activity shall be permitted only upon showing either that a change of conditions has occurred since the decision or the prior application, or that other considerations materially affecting the merits of the subject matter have intervened.

9.11 If the Commission or Department finds that an activity for which it has granted a permit has had a more severe impact or effect on wetlands or watercourses than was projected by the applicant, or does not, in fact, involve a permitted use, the Commission may revoke such permit and require the permit holder to submit a new application for review.

#### **10.0 RENDERING DECISION AFTER REVIEW**

10.1 The Commission shall consider the following in making its final decision on a permit application:

- (a) All evidence offered at or before any public hearing;
- (b) Any reports from the Commission's agents, other Commissions and/or Federal or State agencies, including the Soil and Water Conservation Districts and the Connecticut Department of Environmental Protection;
- (c) Additional requested information;
- (d) All relevant facts and circumstances, including but not limited to criteria in furtherance of the purposes and policies of these Regulations as set forth in Sections 5.0 and 6.0 inclusive;
- (e) The availability of preferable alternative locations on the subject parcel or, in the case of activity of sufficient magnitude, the availability of other reasonable locations;
- (f) The availability of further technical improvements or safeguards which would feasibly be added to the plan or action;
- (g) The possibility of avoiding further reduction of the wetlands or watercourse's natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation and/or prevent erosion, assimilate wastes, facilitate drainage, and provide recreation and open space;
- (h) The extent to which the exercises of property rights and the public benefit derived

from such use may or may not outweigh or justify the possible degradation of the wetland or watercourse, the interference with the exercise of other property rights and the impairment or endangerment of public health, safety or welfare.

10.2 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 as defined in Section 5.2.

### **11.0 GRANTING A PERMIT**

11.1 In the case of an application which has received a public hearing pursuant to a finding by the Conservation 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 record that a feasible and prudent alternative does not exist. In the making of this finding, the Commission shall consider the facts and circumstances set forth in Section 10.1. The finding and the reasons thereof shall be stated in the meeting record in writing.

11.2 In granting a permit or granting a permit with conditions following a public hearing, the Conservation Commission shall issue a written opinion presenting the reasons for granting such permit. The opinion may include discussion of applicable factors listed in Section 10.1. The Commission may grant the application as filed, or upon such terms, conditions, limitations or modifications as are designed to carry out the policy expressed in the Regulations or Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes. Such terms may include any reasonable measures, including but not limited to, recreational, open space and conservation easements, which would mitigate the impacts of the regulated activity, by:

- (a) Preventing or minimizing pollution or other environmental damage;
- (b) Maintaining or enhancing existing environmental quality; or
- (c) In the following order of priority: restoring, enhancing and creating productive wetland or watercourse resources.

11.3 Any permit issued under this section for the development of property for which an approval is required under Section 8-3, 8-25, or 8-26 of the Connecticut General Statutes, and Sections 4.0 and 7.0, inclusive, of these Regulations shall be valid for five (5) years provided that the Commission may establish a specific time period within which any regulated activity shall be conducted. Any permits issued under this section for any other activity shall be valid for not less than two (2) years and not more than five (5) years.

11.3.1 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 the permit was issued provided no permit may be valid for more than ten (10) years.

11.3.2 Permits are not transferable without the prior written consent of the Conservation Department.

## **12.0 DENYING A PERMIT**

12.1 In denying a permit following a public hearing or denying a permit in part, the Commission shall issue a written opinion presenting its reasons. The opinion may include discussion of the applicable factors listed in Section 10.1.

12.2 In the case of an application which is denied on the basis of a finding that there may be feasible or prudent alternatives to the proposed regulated activity which have 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 provided this Regulation shall not be construed to shift the burden from the applicant to prove that he/she is entitled to the permit or to present alternatives to the proposed regulated activity.

12.3 The Commission's opinion in denying a permit without prejudice, may include permission for the applicant to modify, amend or correct the proposal.

12.4 The rejection of a modified proposal shall be equivalent to a denial with prejudice for the purpose of Section 13.0 of these Regulations.

## **13.0 APPEALS**

13.1 Any person aggrieved by any regulation, order, decision or action made pursuant to these Regulations by the Westport Conservation Commission or any person owning or occupying land which abuts any portion of land within or is within a radius of ninety feet of the wetland or watercourse involved in any regulation, order, decision or action, may, within fifteen (15) days after publication of such regulation, order, decision or action, appeal to the Superior Court for the judicial district where the land affected is located.

13.2 All appeals shall follow the procedures outlined in the Inland Wetland and Watercourses Act, 22a-36 through 22a-45a of the Connecticut General Statutes. Notice of appeal shall be served upon the Westport Conservation Commission.

## **14.0 OTHER PERMITS AND LICENSES**

14.1 Nothing in these Regulations shall obviate any requirement for the applicant to obtain any other assent, permit or license required by law or regulation of the Government of the United States, of the State of Connecticut, or of any political subdivision thereof. The obtaining of such assents, permits, or licenses is solely the responsibility of the applicant.

14.2 If the activity authorized by the Conservation Commission or Department 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.

### **15.0 ENFORCEMENT**

15.1 Application or request for a permit, or watercourse and wetland boundary change, shall constitute permission for and consent to inspections of the site described in the application on request by the Commission, Department and its representatives. Inspections will occur at any reasonable time before and after the granting of a permit or the adoption of wetland and watercourse boundaries.

15.1.1 The owner, applicant, or their agent shall have the permit readily available and shall produce it for inspection by the Commission's representative upon request.

15.1.2 The Commission shall be authorized to seek such necessary court orders as will permit it to inspect land whereupon it has probable cause to believe that regulated activity is in progress and for which no application has been filed.

15.2 The Commission may suspend or revoke a permit if it finds that the applicant:

- (a) Has not complied with conditions or limitations set forth in the permit;
- (b) Has exceeded the scope of the work set forth in the permit;
- (c) Has performed an activity that is not a permitted use.

15.2.1 Such suspension or revocation shall occur only after giving notice to the permit holder of the facts or conduct which warrant such action, and after a hearing at which he/she is given the opportunity to show compliance with the requirements for the retention of the permit.

15.2.2 The applicant shall be notified of the Commission's decision by certified mail within fifteen (15) days of the date of the decision and the Commission shall cause notice of its order of revocation or suspension of a permit to be published in a newspaper having general circulation in Westport.

15.3 The Commission may issue such Cease and Desist Orders as necessary to preserve the issue for hearing.

15.4 If the Commission or Conservation Department finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the Inland Wetlands and Watercourses Act, as amended, or of the Regulations set forth here, the Commission may issue a written order sent by certified mail to the property owner or to each person conducting such activity or maintaining such facility or condition, ordering him to immediately cease such activity or to correct such facility or condition. Within ten (10) days of the issuance of such order, the Commission shall hold a hearing to provide the person an opportunity to speak and to show cause why the order would 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 that the original order remains 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 a legal action brought by the Commission, the Town or any person to restrain a continuing violation of the Act or these Regulations.

## **16.0 PENALTIES**

16.1 Any person who commits, takes part in, or assists in any violation of any provision of these Regulations or the Inland Wetlands and Watercourses Act shall be subject to the penalties and remedies provided in such Regulations and Act. Such person shall be subject to fines up to \$1,000 per day for each offense and to such other penalties and remedies as the law may provide, including but not limited to, the penalties imposed by Article II of Chapter 69 of the Code of the Town of Westport.

16.1.1 Sufficient grounds for penalties and remedies to be imposed, and where applicable, revocation of any permit or other form of approval granted under the provisions of these Regulations, shall include but not be limited to:

- (a) A knowing failure of the person or any of his/her/its agents to provide correct information;
- (b) A finding of performance without permit, or other form of approval, by the Commission;
- (c) A finding of performance exceeding the levels of activity licensed or approved by the Commission.
- (d) The environmental impact of the unauthorized action, facility or condition;
- (e) The irreversibility and irretrievability of the unauthorized action, facility or condition;
- (f) The character and degree of injury to, or interference with public health, safety and welfare that the unauthorized action, facility or condition has caused;
- (g) The continuance of violation after notification by the Commission or service of any order or notice within the powers of the Commission.

16.2 Each violation of any section of the Inland Wetlands and Watercourses Act or any section of these Regulations shall be a separate and distinct offense and, in the case of a continuing violation, each day's continuance thereafter shall be deemed to be a separate and distinct offense.

## **17.0 BOND AND INSURANCE**

17.1 The applicant, upon approval of the permit and at the discretion of the Commission and/or the Conservation Department, may be required to file a performance bond in an amount and with sureties and in a form approved by the Commission and/or the Department.

17.2 A performance bond for mitigation of a violation may be required at the discretion of the Commission or the Conservation Director in an amount and with sureties in a form

approved by the Commission.

17.3 The bond and sureties shall be conditioned on compliance with all provisions of these Regulations and conditions imposed on permit approval.

17.4 No Certificate of Conservation Compliance shall be issued when conditions of approval are incomplete unless a performance bond in the form satisfactory to the Conservation Commission has been received.

17.5 Bonds held to cover the cost of plantings will be held for one full growing season from time of planting.

### **18.0 CONFLICT AND SEVERANCE**

18.1 Where there is a conflict of interest between the provision of these Regulations and those of any other applicable statute, ordinance or regulation, the provisions of the statute, ordinance or regulation which imposes the greatest restriction on the use of the wetland or watercourses shall govern.

18.2 The invalidity of any word, clause, sentence, section, part or provision of these Regulations shall not affect the validity of any part which can be given effect without such invalid part or parts.

18.3 If there is a conflict between any provisions of these Regulations and the provisions of the Inland Wetlands and Watercourses Act, Sections 22a-36 through 22a-45a of the Connecticut General Statutes, inclusive, the provisions of such Act shall govern.

### **19.0 CONFORMITY WITH STATE REGULATIONS**

19.1 The enforcement of these Regulations or any part thereof, including maps and amendments, shall be suspended upon receipt of notice from the Department of Environmental Protection that such Regulations are not in conformity with the Regulations promulgated by the Commissioner pursuant to the Inland Wetlands and Watercourses Act. Only the operation of such nonconforming section or sections shall be suspended.

19.2 The Commission shall initiate proceedings to amend such nonconforming regulations within twenty (20) days of the receipt of the notice of nonconformance.

### **20.0 EFFECTIVE DATE**

20.1 These Regulations, as previously amended, are effective as of August 9, 2004.

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While every attempt is made to keep this version current, it should be used for reference only. To determine the most current amendment to the Regulations for the Protection and Preservation of Wetlands and Watercourses, Westport, Connecticut please contact the Westport Conservation Department.

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