

**PROPOSED REVISED  
INLAND WETLANDS  
AND  
WATERCOURSES REGULATIONS  
OF THE  
TOWN OF BRANFORD**



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**INLAND WETLANDS AND WATERCOURSES REGULATIONS  
OF THE TOWN OF BRANFORD**

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## SECTION 1

### TITLE AND AUTHORITY

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

Many inland wetlands and watercourses have been destroyed or are in danger of being destroyed 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 significantly 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, and from disturbances or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the State.

In furtherance of the foregoing goals the Town of Branford Inland Wetlands Commission hereby adopts a “no net loss policy for all wetlands and watercourses”.

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 wetlands and watercourses by minimizing their disturbance and pollution; by maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; by preventing damage from erosion, turbidity or siltation; by preventing the loss of fish (and other beneficial aquatic organisms), wildlife, and vegetation and the destruction of the natural habitats thereof; by deterring and inhibiting the danger of flood and pollution; by protecting the quality of wetlands and watercourses for their conservation, and the economic, aesthetic, recreational and other public and private uses and values; and by 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 of generations yet unborn.

- 1.2 These regulations shall be known as the “Inland Wetlands and Watercourses Regulations of the Town of Branford”.
- 1.3 The Branford Inland Wetlands Commission was established in accordance with an ordinance adopted January 16, 1974, and shall implement the purposes and provisions of the Inland Wetlands and Watercourses Act in the Town of Branford.

- 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 all provisions of the Inland Wetlands and Watercourses Act and shall per, Connecticut General Statutes [CGS] Section 22a-42a(d), grant a permit for an application as filed grant with other terms, conditions, limitations or modifications of the regulated activity, or deny a permit for regulated activities proposed with in the Town of Branford to carry out the policies of Sections 22a-36 to 22a-45, inclusive, of the CGS, as amended.

## SECTION 2

### DEFINITIONS

- 2.1 As used in these regulations:
  - a. “**Act**” means the Inland Wetlands and Watercourses Act, CGS Sections 22a-36 through 22a-45, as amended.
  - b. “**Agency**” [Inland Wetlands and Watercourses Agency] means the Branford Inland Wetlands Commission.
  - c. “**Best Management Practices**” [BMPs], or Management Practices 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 of wetlands and watercourses. Such management practices include, but are not limited to; erosion and sedimentation controls; restrictions on land use and development; establishment of vegetated buffer areas, 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 or watercourses; procedures for maintaining continuous stream flows; confining construction that must take place in water courses to times when water flows are low and fish and wildlife will not be adversely affected.
  - d. “**Bogs**” are watercourses distinguished by evergreen trees and shrubs underlain by peat deposits, poor or very poor drainage, and highly acidic conditions.
  - e. “**CGS**” means Connecticut General Statutes.
  - f. “**Clear-cutting**” means the harvest of timber in a fashion which removes all species of trees down to a 2 inch diameter at breast height.
  - g. “**Clearing**” means removal of vegetation including but not limited to woody species less than 2” in diameter.
  - h. “**Commission**” means the Inland Wetlands Commission of the Town of Branford.
  - i. “**Commission Member**” means a member of the Inland Wetlands Commission of the Town of Branford.
  - j. “**Commissioner**” means the Commissioner of the State of Connecticut Department of Energy and Environmental Protection [DEEP].
  - k. “**Compensation**” means the restoration, creation, enhancement, and/or preservation of wetlands and/or other aquatic resources to mitigate for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.
  - l. “**Continual Flow**” means a flow of water which persists for an extended period of time: this flow may be interrupted by periods of drought or during the low flow period of the annual hydrological cycle, June through September, but it recurs in prolonged succession.
  - m. “**Creation**” means the establishment of a wetland or other aquatic resource where one did not formerly exist.

- n. “**DEEP**” means State of Connecticut Department of Energy and Environmental Protection.
- o. “**Deposit**” includes but shall not be limited to, fill, grade, dump, place, discharge or emit.
- p. “**Duly Authorized Agent**” [Agent] means an individual designated by the Commission to carry out certain functions and purposes provided such agent has completed the comprehensive training program developed by the Commissioner pursuant to CGS Section 22a-39(n).
- q. “**Discharge**” means the emission of any water, substance, or material into waters of the Town of Branford, whether or not such substance causes pollution.
- r. “**Disturbing the natural and indigenous character of the wetland or watercourse**” as defined in Section 4.2 of these regulations.
- s. “**Enhancement**” means an activity conducted in an existing wetland and/or other aquatic resource which increases or creates one or more aquatic functions.
- t. “**Environmental Function**” means any function the wetland serves including but not limited to flood storage, wildlife and plant utilization, ability to filter and recharge surface and ground water systems and refuge for migratory and local wildlife populations.
- u. “**Essential to the Farming Operation**” means the activity proposed is necessary and indispensable to sustain farming activities on the farm.
- v. “**Farming**” activities such as agriculture, forestry, and aquaculture consistent with the definition CGS Section 1-1(q) and as affirmed by ruling of the Agency. Refer to Section 4.1 of these regulations.
- w. “**Feasible**” means able to be constructed or implemented consistent with sound engineering principles.
- x. “**Habitats**” means areas or environments in which an organism or biological population normally occurs.
- y. “**Intermittent Watercourse**” see definition under “Watercourses”.
- z. “**Intervenor**” means person or legal entity that intervenes as a party per CGS 22a-19.
- aa. “**License**” means the whole or any part of any permit, certificate of approval or similar form of permission which may be required of any person by the provisions of Sections 22a-36 to 22a-45 inclusive.
- bb. “**Like Habitat**” means a wetland with at least the same environmental functions as the area impacted by regulated activity.
- cc. “**Marshes**” are watercourses that are distinguished by the absence of trees and shrubs, and the dominance of soft-stemmed herbaceous plants. The water table in marshes is typically 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.
- dd. “**Material**” means any substance, solid or liquid, organic or inorganic, including but not limited to vegetation, soil, sediment, aggregate, land, gravel, clay, bog, peat, mud, debris, sand, refuse or waste.
- ee. “**Municipality**” means the Town of Branford, New Haven County, Connecticut.
- ff. “**Nursery**” means place where plants are grown for sale, transplanting, or experimentation.
- gg. “**Permit**” see license.
- hh. “**Permittee**” means the person to whom such permit has been issued.
- ii. “**Person**” means any individual, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.
- jj. “**Pollution**” means the harmful thermal effect or the contamination or rendering unclean or impure wetlands or 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 to directly or indirectly come in contact with any waters. Pollution includes but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.

- kk. “**Preservation**” means the long-term protection of wetlands or other aquatic resource and associated uplands through the implementation of legal and physical mechanisms.
- ll. “**Prudent**” means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.
- mm. “**Re-creation**” means the re-establishment of a wetland and /or other aquatic resource where one formerly existed.
- nn. “**Reclamation**” means conversion of wetland into dryer land suitable for cultivation or other use by means including but not limited to draining, altering of water hydrology that supports the wetland, or filling.
- oo. “**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 a wetland or watercourse, but shall not include the activities specified in section 4 of these regulations. Furthermore:
- 1.) Any, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material; clearing, cutting, alteration, damaging of vegetation (living or dead); placement of decorative structures, electrical or mechanical equipment, including but not limited to fountains, aerators, or geothermal coils; or discharging of storm water on land within 100 feet measured horizontally from the boundary of any wetland or watercourse is a regulated activity.
  - 2.) The Agency may rule that any activity that alters the existing rate, or quality of any storm water discharge conveyed to a regulated area or upland review area is likely to impact or affect wetlands or watercourses and is a regulated activity.
  - 3.) The Agency may extend the upland review to the top of slope, if steep slopes or erodible soils are present.
  - 4.) The Agency may rule that any activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.
- pp. “**Remove**” includes, but is not limited to, drain, excavate, mine, dig, dredge, suck, grub, clear cut timber, bulldoze, dragline or blast.
- qq. “**Rendering Unclean or Impure**” means any alteration of the physical, chemical or biological properties of any waters of the Town of Branford, including but not limited to, change in odor, color, turbidity or taste.
- rr. “**Restoration**” means returning a degraded wetland and/or other aquatic resource closer to its undegraded state.
- ss. “**Significant Impact**” means major effect which may result from the conducting of any activity including, but not limited to, the following:
- 1.) Any activity involving deposition or removal of material which will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed, or
  - 2.) Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system, or
  - 3.) Any activity which substantially diminishes the natural capacity of the inland wetland or watercourse to: support aquatic, plant or animal life and habitats prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation open space; or perform other functions, or
  - 4.) Any activity which is likely to cause, or has the potential to cause, substantial turbidity, siltation, or sedimentation in a wetland or watercourse, or

- 5.) Any activity which causes a substantial diminution of flow of a natural watercourse, or groundwater levels of the wetland or watercourse, or
  - 6.) Any activity which causes or has the potential to cause pollution of a wetland or watercourse, or
  - 7.) Any activity which creates conditions of an inland wetland or watercourse which may adversely affect the health, welfare, and safety of any individual of the community, or
  - 8.) Any activity which destroys unique wetland or watercourse areas having a demonstrable scientific, educational or ecological value.
- tt. “**Soil Scientist**” means an individual duly qualified in accordance with standards set by the Federal Office of Personnel Management.
- uu. “**Submerged Lands**” means those lands which are inundated by water on a seasonal or more frequent basis.
- vv. “**Swamps**” are watercourses that are distinguished by the dominance of wetland trees and shrubs.
- ww. “**Town**” means the Town of Branford, New Haven County in the State of Connecticut.
- xx. “**Upland Review Area**” means any area, outside of wetlands and watercourses, on which activities are likely to impact or affect wetlands or watercourses. Also see Regulated Activity.
- yy. “**Vernal**” means appearing or occurring in the spring.
- zz. “**Waste**” means sewage, or any natural or man-made substance (liquid, gaseous, solid or radioactive) which may pollute or tend to pollute any of the waters or wetlands of the Town of Branford.
- aaa. “**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 of Branford or any portion thereof not regulated pursuant to CGS Section 22a-28 through 22a-35 of the CGS 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: (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 (C) the presence of hydrophytic vegetation.
- bbb. “**Wetlands**” means land, including submerged land not regulated pursuant to sections 22a-28 to 22a-35 of the CGS as amended, which consist of any of the soil types designated as poorly drained, very poorly drained, alluvial and flood plain by the National Cooperative Soils Survey, as may be amended from time to time, of the National Resources 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, entitled “Inland Wetlands and Watercourses Map, Branford, Connecticut,” depicts the general location and boundaries of some inland wetlands and watercourses. Copies of this map are available for inspection in the office of the Town Clerk or the Inland Wetlands Agency. In all cases, the precise location of wetlands and watercourses shall be determined by the actual character of the land, the distribution of regulated soil types, and locations of watercourses. The Agency may use aerial photography, remote sensing imagery, resource mapping, global positioning systems, soils

maps, site inspection observations or other information in determining the boundaries of the 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 person to provide an accurate delineation of wetlands and watercourses in accordance with Section 15 of these regulations.
- 3.3 The Agency 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 & NON-REGULATED USES**

- 4.1 The following operations and uses shall be permitted in inland wetlands and watercourses, as of right per CGS 22a-40(a). The Agency shall make the determination as to whether a proposed activity meets the definition that it is as of right or is a regulated activity.
  - a. Grazing, farming, nurseries, gardening and harvesting of crops and creation of farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under authority of, DEEP for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subsection shall not be construed to include:
    - 1.) road construction or the erection of buildings not directly related to the farming operation,
    - 2.) relocation of watercourses with continual flow,
    - 3.) filling or reclamation of wetlands,
    - 4.) filling or reclamation of watercourses with continual flow,
    - 5.) clear cutting of timber except for the expansion of agricultural crop land, or
    - 6.) the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale;
  - b. Boat anchorage or mooring;
  - c. Uses incidental to the enjoyment or maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot size permitted anywhere in the municipality and containing a residence. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of substantial amounts of material from or into a wetland or watercourse, or diversion or alteration of a watercourse;
  - d. Construction and operation, by water companies as defined by CGS Section 16-1 as amended or by municipal water supply systems as provided for in Chapter 102 of the CGS, as amended, 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 as amended;

- e. Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to CGS, Section 22a-42a 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 the 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; and
  - f. Withdrawals of water for fire emergency purposes.
- 4.2 The following operations and uses shall be permitted as a non-regulated use 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 per CGS 22a-40(b). The Agency shall make the determination as to whether a proposed activity meets the definition that it is a non-regulated use or is a regulated activity:
- a. Conservation of soil, vegetation, water, fish, shellfish, and wildlife;
  - b. Outdoor recreation including the use of play and sporting areas, golf courses, field trials, 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 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 All activities in wetlands or watercourses involving filling, excavation, dredging, clearing of vegetation, clear cutting, grading, excavation or any other alteration or use of a wetland or watercourse not specifically permitted by this section shall require a permit from the Commission, or for certain regulated activities located outside of wetlands and watercourse, from Duly Authorized Agent in accordance with Sections 6 and 12 of these regulations.
- 4.4 To carry out the purposes of this section, any person proposing to conduct a permitted operation or non-regulated operation and use shall, prior to commencement of such operation and 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 non-regulated use of the wetland or watercourse. The Agency shall rule that the proposed operation and use or portion of it is a permitted or non-regulated 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 THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION**

- 5.1 The Commissioner of DEEP 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 CGS Sections 22a-39 or 22a-45a.

- 5.2 The Commissioner of DEEP shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to CGS Sections 22a-28 through 22a-35 as amended.
- 5.3 The Commissioner of DEEP shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of DEEP under CGS Section 22a-402 or a dam construction permit issued by the Commissioner of DEEP under CGS Sections 22a-403 or 22a-411 as amended. Any person receiving such dam repair permit 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 by said dam permit.
- 5.4 The Commissioner of DEEP 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 Agency.
- 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 shall apply for a permit to conduct such activity. The application shall include the application form provided by the Branford Inland Wetlands and Watercourses Agency and such information as prescribed by Section 7. Application forms may be obtained in the office of the Agency and on the Town of Branford website.
- 7.2 If an application to the Town of Branford Planning and Zoning Commission, Pine Orchard Zoning Commission, or Short Beach Zoning Commission for a site plan, subdivision, resubdivision, or special exception requires referral to the Agency in accordance with CGS Section 8-3(g), 8-3c, or 8-26, as applicable, the application for permit to the Agency, in accordance with these sections, must be submitted no later than the day the application is filed with such planning, zoning, or planning and zoning commission.

- 7.3 All applications shall contain such information that is necessary for a fair and informed determination thereon by the Agency.
- 7.4 A prospective applicant may request a pre-application meeting. Oral or written comments, questions or representations made by a commission member or staff during a pre-application meeting does not constitute determination or opinion and may not be relied upon by an applicant as to modify or alter the Commission's decision with respect to an application, which is hereby expressly reserved.
- 7.5 In furtherance of the foregoing goals the Town of Branford Inland Wetlands Commission hereby adopts a "no net loss policy for all wetlands and watercourses". In furtherance of the no net loss policy the Agency may require wetland mitigation which may include the following:
- a. Avoidance, by evaluating alternative development designs and sites.
  - b. Minimization, by implementing special design features and construction practices so that impacts to wetlands can be minimized.
  - c. Compensation by offsetting remaining wetland losses.
- 7.6 All applications shall design to goals or BMPs that will provide protection and, where possible, enhancement of wetland and watercourse qualities and functions consistent with the following:
- a. Demonstration that the project has been designed, at a minimum, in accordance with guidance and recommendations set forth in the 2002 Connecticut DEP Soil Erosion and Sediment Control Manual (as updated) and the 2004 Stormwater Quality Manual (as updated), with particular attention to Chapter 7 applying WQV (Water Quality Volume) and GRV (Groundwater Recharge Volume) recommendations to all sites or demonstrate why this is not feasible or prudent. Treatment of the 1<sup>st</sup> flush (1 inch) is to be by retention and infiltration on site unless it is demonstrated why it is not feasible or prudent to do so. GRV should be maintained to ensure that stream baseflow and wetland moisture levels are not altered. Removal of fine sediments as well as larger sediments is to be considered. Additional BMPs and "primary treatment practices" are to be considered to determine if they would provide more effective protection for or enhancement of the regulated resources. Above ground, low impact storm water management structures are preferred.
  - b. Providing vegetated areas adjacent to or within the vicinity of the wetlands and watercourses that protects and enhances these resources and mitigates effects of land use. Plantings will include only Connecticut native vegetation within wetlands, watercourses, storm water quality structures, and protective vegetated areas. No plants listed as invasive or potentially invasive by the State of Connecticut and the Connecticut Invasive Plant Council may be planted on any site.
  - c. Providing the necessary erosion prevention and sedimentation control plan in accordance with guidance and recommendations set forth in the 2002 Connecticut DEP Soil Erosion and Sediment Control Manual (as updated). Additional erosion measures are to be incorporated where necessary to protect the wetlands and watercourses. BMPs that provide stabilization in order to prevent erosion are of primary importance. BMPs that are intended to remove and capture sediment from storm water flows are to be used to prevent or reduce sedimentation to the greatest extent possible in the event that stabilization measures fail.
  - d. The Commission may consider proposed compensation which mitigates negative impacts of the proposed activity on wetlands and/or watercourses functions and values (as set forth in Section 7.5) which will be reduced, altered, or lost as a result of proposed activities. Such measures may include, but are not limited to, plans or actions which avoid negative impacts, or destruction or diminution of wetlands or watercourses and/or their functions and values, or enhance functions and values. Also refer to Section 7.10 and 7.8.k. of these regulations.

- e. New development is expected to design to pre-development hydrology. Redevelopment of sites is to be designed to maintain existing hydrology or enhance hydrology. Retention of at minimum the 1<sup>st</sup> inch of rainfall is required or demonstrate why this is not prudent or feasible.

7.7 All applications shall include the following information in legible writing, on the application form, maps or drawings:

- a. The applicant's name, home or business mailing address, telephone numbers, email addresses; if the applicant is a Limited Liability Corporation or a Corporation, the managing member's or responsible corporate officer's name, address, telephone number, and email address;
- b. The land owner's name(s), home or mailing address, telephone number(s), email addresses, and written consent from all the landowner(s);
- c. Certification that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information;
- d. Authorization for the commission members and agents of the Commission to inspect the property, at reasonable times, during the pendency of an application and for the life of the permit;
- e. The geographical location of the land which is to be affected by the proposed activity;
- f. Pre and post computation of the areas(s) of wetland and/or watercourse disturbance, upland review area disturbance, total area of disturbance, areas of compensation, percentage of impervious cover; and the general location of wetlands and watercourses offsite which may be affected by the activity proposed;
- g. Submission of the appropriate filing fee based on the fee schedule established in section 19 of these Regulations.
- h. Completed DEEP 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;
- i. The following are also required unless otherwise determined by the Agency or its Duly Authorized Agent:
  - 1.) Original soils report: signed by the soil scientist. Wetlands shall be delineated and flagged in the field by a qualified soil scientist and be located and incorporated onto the plans by a licensed land surveyor. Soils mapped are to be consistent with the categories established by the National Cooperative Soil Survey of the U.S. Natural Resource Conservation Service.
  - 2.) A narrative: describing the applicant's interest in the land and purpose for the proposed activity, any impacts to regulated areas which may occur, are reasonably related to, or are made inevitable by the proposed regulated activity, proposed erosion and sedimentation controls and other management practices (BMPs) which would mitigate impacts from the proposed regulated activity(ies) 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) compensation (Section 7.9 & 7.10) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
  - 3.) Alternatives investigated: which would cause less or no environmental impact to wetlands or watercourses and why the alternatives were rejected in favor of the regulated activities proposed in the application. The applicant shall be prepared to discuss alternatives at the meeting. All such alternatives shall be diagrammed on a separate site plan or drawing, include a written narrative and be submitted with the application;

- 4.) Plan set: drawn, signed, and sealed by a licensed surveyor, meeting the accuracy of an A-2 and T-2 survey, or by a professional engineer, or a landscape architect registered in the State of Connecticut or by such other qualified person acceptable to the Agency, to include an existing and proposed plan and other relevant plans and items listed in section 7.8.c.
- 5.) Phasing plan: with a timeline for clearing, construction and completion which includes specification that within six (6) months of clearing of vegetation site construction will begin. This timeline is required as a condition for all permits unless otherwise approved by the Agency.

7.8 At the discretion of the Agency or its Duly Authorized Agent, or if the proposed activity may have a Significant Impact as defined in Section 2.1ss. of these regulations, additional information based on the nature and anticipated effects of the activity, including but not limited to the following may also be required:

- a. All items listed and described in Section 7.7.
- b. A copy of the tax map showing existing land owners for all parcels included in the application. List of names and mailing addresses of adjacent landowners,
- c. Plan set, drawn, signed, and sealed by a licensed surveyor or professional engineer meeting the accuracy of an A-2 survey and T-2 survey, or by a landscape architect registered in the State of Connecticut or by such other qualified person acceptable to the Agency, to include but not limited to the following:
  1. Title Sheet
  2. Existing conditions: to include site location map (scale of 1" to 100'), complete legend, , all existing features including but not limited to boundaries of land ownership, adjacent property owners, existing topography (2 foot contours), 100 year flood zone, vegetation, structures, utilities, delineated wetlands, watercourses, and upland review area boundaries, and approximate wetlands and watercourses within 100 feet of the existing property boundary which may be affected by the proposed activity. Also include areas where contamination has been identified, public water supply within 500' (per section 8.5), municipal boundary within 500' (per section 8.3), all easements, and conservation and preservation restrictions.
  3. Site plan: to include existing and proposed site conditions including but not limited to identification of proposed regulated activities in relation to wetlands, watercourses, and their watersheds; any impacts to these areas which may occur, proposed wetlands compensation, limits of disturbance, clearing or cutting of vegetation, blasting, excavation, filling, and snow storage areas. Also include pre & post grading, surfacing (paving, stone, vegetation, etc.), buildings, other structures, utilities, lawn/landscaped areas, and easments and deed restrictions.
  4. Drainage and utility plans and detail sheets:, to include locations of proposed structures, test pit and percolation test locations and data, easements and deed restriction, monitoring wells, access for storm structure maintenance, pre and post grading, drainage and utilities structures. Routine short term and long term maintenance requirements of structures are to be included on the plan or detail sheet(s).
  5. Grading plan: to include existing and proposed grading, excavation, filling, staging, sequencing, material stockpiling, wood chipping, rock crushing operations and a detailed soil stabilization sequence.
  6. Soil erosion and sedimentation control plan and detail sheets: to include proposed erosion controls measures, excavation and fill, temporary drainage structures, phasing, staging, and sequencing, material stockpiling, wood chipping and rock crushing operations and a

- detailed soil stabilization sequence Landscape plan: to include genus/species, sizes of proposed planting and other details. The plan should include design that will protect wetlands and watercourses from future impacts, reduce the need for ongoing fertilizing and pesticide use by incorporating low maintenance tree and shrub native planting areas, and limiting lawn and other high maintenance areas. Short and long term landscape maintenance plans are required. IPM plans will be considered but avoidance of needs for fertilizer and pesticide use by appropriate landscape design is preferred.
7. Detail sheets and other plans: if applicable to include but not limited to the following: plan and profiles, lighting, project phasing plans, subdivision, other as required by the Agency. Plans 4 through 7 may be combined with other plans if legible.
  8. Alternatives: which would cause less or no environmental impact to wetlands or watercourses and why the alternative as set forth in the application was chosen: all such alternatives shall be diagramed on a site plan or drawing.
- d. Engineering storm water design and management reports and analyses, graphic hydrographs, and drawings which are necessary to fully describe the drainage or hydraulic modifications to wetlands and/or watercourses. Include at minimum:
- 1.) Calculations: of pre and post stormwater discharges through the 100 year storm, local watershed map identifying all pre and post discharges from the site and the wetlands and watercourse to which discharges are ultimately delivered, summary of pre and post peak flow rates and volume;
  - 2.) Management practices: and other measures designed to mitigate the impact of the proposed development;
  - 3.) Performance data/studies: for structures and BMPs. Such studies should include independent data as well as data collected by the technology developer;
  - 4.) Written documents: that include but are not limited to; plan for short term and long term maintenance of the site drainage system and storm water structure/facility, vegetated areas, paved areas, snow removal practices and storage locations, landscape practices and maintenance plans, IPM plans;
  - 5.) Identification of responsible parties: for short and long term maintenance;
- e. Description of the physical characteristics, ecological communities, and functions of the wetlands and/or watercourses involved with the application, and the effects of the proposed regulated activities on these communities, characteristics and wetland/watercourse functions;
- f. Description of how the project will change, diminish or enhance the ecological communities and functions of the wetland or watercourses involved in the application;
- g. Discuss maintenance, removal, and/or creation of vegetated areas, benefits they provide to the wetlands and watercourses and how those benefits will be maintained, altered, and/or replaced;
- h. Description of the alternatives considered, and why each alternative considered, but rejected, was deemed neither feasible nor prudent;
- i. Any environmental assessments performed on the site including but not limited to Phase I, II, and/or III;
- j. Analysis of chemical or physical characteristics of any fill material and explain how the proposed plan protects the wetland and it's flora and fauna from impacts;
- k. Description of proposed compensation which mitigates impacts of the proposed activity. Such measures may include, but are not limited to, plans or actions which avoid negative impacts, destruction or diminution of wetlands or watercourses including but not limited to their functions, physical characteristics, vegetation, recreational uses, natural drainage patterns, water quality, and natural habitats. Also, which prevents flooding, degradation of water quality, erosion and sedimentation and obstruction of drainage, or which otherwise safeguard water resources.

- l. Demonstration that the release rate of storm water runoff of the developed site shall not exceed the release rate and volume of the undeveloped site for all intensities and durations of rainfall up to a 100 year storm, essentially maintain pre and post development hydrographs or demonstrate why this is not feasible or prudent.
- m. When a plan includes a structure or design which, if it fails, would result in adverse impacts to wetlands or watercourses, describe what adverse impacts may result. Assess the probable risk for such failure and extent of damage that would occur. Submit reliable and relevant data, studies, etc. that support this assessment. Submit an emergency response plan that will reduce as much as is feasible, impacts to the wetlands or watercourses, and extent of restoration which may likely be required if such structure fails;
- n. Any other information the Agency deems necessary to the understanding of the activity proposed;
- o. Identify 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.

7.9 If the proposed activity involves filling or disturbance of a wetland or watercourse then the following will be required:

- a. Filling or disturbance of wetland or watercourse less than 350 square feet may require compensation. Filling or disturbance of wetland or watercourse greater than 350 square feet will require compensation. Since it is not possible to replace a mature functioning wetland or watercourse with a created habitat, wetland or watercourse creation will be at a ratio of at least 3:1 in area. The Commission may reduce the ratio on a case by case basis, but cannot reduce the compensation to a ratio below 1:1 in area. Compensation measures should be considered in the following order of priority:
  - 1.) Restore pre-existing wetland or watercourse;
  - 2.) Enhance degraded wetland or watercourse to improve functions and values they provide;
  - 3.) Create productive wetlands or watercourse resources.
- b. The priorities of location of wetland or watercourse compensation shall be in the following order:
  - 1.) Onsite;
  - 2.) Within the same sub-watershed
- c. The priorities of creation and preservation shall be considered in the following order:
  - 1.) Like habitat and function;
  - 2.) A wetland or watercourse habitat of different environmental function from the impacted area
- d. The compensation activities will require compliance with Section 7.10.

7.10 If compensation or mitigation planting is proposed or required as a condition of approval, a management plan is required that must include, but is not limited to, the following criteria:

- a. Management goals to include but not limited to:
  - 1.) 85% or better planting survival
  - 2.) Monitoring and control of invasive species
  - 3.) Approved erosion and sedimentation control measures
  - 4.) Any other activity as specified in management practices as defined in section 2.1c of these regulations.
- b. No less than five years of monitoring and reporting by a qualified ecologist or wetland specialist, or a Duly Authorized Agent as approved by the Agency, documenting compliance with management goals. The first report is to be submitted within 6 months of completion and at least five more reports are to be submitted at 1, 2, 3, 4 and 5 years post completion.

- c. Monitoring may be extended up to five additional years if management goals have not been achieved.
- d. A bond in accordance with Section 13 shall be posted for the life of the project.

7.11 The applicant shall certify whether:

- a. Any portion of the property on which the regulated activity is proposed is located within 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;
- d. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

7.12 Unless otherwise directed, by the Inland Wetlands Agency, twelve (12) copies of the completed application form, narrative and soil scientist report, 3 full sets of maps/plans, 11 legible reduced size maps/plans and drainage summaries, 2 full drainage reports, and application fee shall be submitted to comprise a complete application. Additionally, digital files of all materials submitted may be required by the Agency.

7.13 Any request to renew (extend the expiration date of) a previously issued permit shall be filed with the Agency prior to a regular meeting which is scheduled prior to the expiration date for the permit in accordance with this subsection Section 11.8 of these regulations and CGS Section 22a-42a(d)(2), provided:

- a. The request shall state the reason why the authorized activities were not initiated or completed within the time specified in the permit;
- b. The request shall describe any changes in facts or circumstances involved with or affecting the wetlands or watercourses on the property for which the permit was issued;
- c. The request shall describe the extent of work completed at the time of filing, and the schedule for completing the activities authorized in the permit;
- d. A permit shall be renewed upon request provided it meets the criteria set forth in Section 11.8 of these regulations and CGS Section 22a-42a(d)(2).

7.14 A copy of the “as built” site conditions may be required to be submitted to the Agency prior to issuance of the Certificate of Occupancy (CO) or upon completion of the project if no CO is required. The “as built” must include, but is not limited to, the following:

- a. The location of the wetlands and watercourses;
- b. Any Conservation Deed Restriction / Easements / Rights of Ways;
- c. All foundations, structures, driveways, and impervious surfaces;
- d. All property boundaries, easements, and deed restrictions;
- e. All storm water utilities;
- f. Limits of regulated activities locations and disturbance approved verses actual activities and disturbance conducted;

As built may be required in the form of a digital file in a format specified by the Agency unless deemed unnecessary by the Agency.

7.15 For any permit application pursuant to CGS Section 47-42d 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 the land, including, but not limited to, the state or any political subdivision 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 on an existing building that does not expand or alter the footprint of such 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, including, but not limited to, any state agency that holds such restriction, not later than sixty days prior to the filing of the permit application.
- d. In lieu of such notice pursuant to subsection 7.15c, 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 of Agent decisions shall be submitted to the Inland Wetlands and Watercourses Agency of the Town of Branford.
- 8.2 The Agency shall, in accordance with CGS Sections 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 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 such Agency or

its agent of such petition, application, request or appeal or thirty five (35) days after such submission, whichever is sooner.

- 8.4 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(a)(6) of the CGS, as amended, the applicant shall provide written notice of the application to the water company and the Commissioner of Public Health in a format prescribed by said commissioner, provided such water company or said commissioner has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the Inland Wetlands Agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed not later than seven days after the date of the application. The water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the Agency.
- 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.
- 8.6 If a public hearing is to be held on any application for a permit, all substantive documentary evidence as determined by the Agency shall be filed with the Agency and be available for public inspection no less than five (5) business days prior to the day of the hearing or any reconvening thereof. If no public hearing is required, the Agency requests that documents be submitted for review three days before the meeting.
- 8.7 All applications shall be open for public inspection.
- 8.8 Incomplete applications may be denied. In the case of an incomplete application, the Agency shall state the information that is needed to complete the application.
- 8.9 The Agency may determine that plan revisions done during the application process have altered the proposed project so that it constitutes a “new application” if the revision(s) have significantly altered the regulated activities proposed or potential impacts to the wetlands/watercourses, such as;
  - a. sufficiently altered the engineering design so that a new peer review must be performed rather than a simple update of the original review, or
  - b. revisions have been submitted at a time so late in the process that insufficient time is available for review by the commissioners and/or public, or
  - c. the quantity of revisions have required repeated peer reviews leaving insufficient funds (submitted per Section 19.5d.) available for additional peer review of the revisions.

If the Agency determines that a new application for permit must be submitted per this section, the original application may be withdrawn or will be denied, and a new application must be submitted.

## **SECTION 9**

### **PUBLIC HEARINGS**

- 9.1 The Agency shall not hold a public hearing on an application unless the 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 Agency not later than fourteen days after the date of receipt of such application, or the Agency 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 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 and may be represented by an authorized agent or by attorney. Also refer to Section 11.2
- 9.2 Notice of the public hearing shall be published at least twice at intervals of not less than two days, the first not more than fifteen days and not fewer than ten days, and the last not less than two days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetland or watercourse is located.
- 9.3 Notice of the public hearing shall be mailed by the applicant to the owner(s) of record of abutting land no less than ten (10) days prior to the day of the hearing. Evidence of such mailing, in the form of United States Post Office certificates of mailing, shall be submitted to the Agency prior to the hearing date.
- 9.4 A sign shall be posted on the subject land which states the date, time, and place of the public hearing. Such sign will be provided by the applicant and shall be visible and legible to passersby on the principle street on which the property is located with minimum dimension of 3 feet by 4 feet and minimum letter size of 6 inches high. Such sign shall indicate the general nature of the proposed activity for which a permit is being sought. The sign shall be posted no less than ten (10) days prior to the public hearing. The sign shall be removed within 2 days of closing of the public hearing.
- 9.5 In the case of any application which is subject to the notification provisions of section 8.3 of these regulations, a public hearing shall not be conducted until the clerk of the adjoining municipality(ies) has received notice of the pending application. Proof of such notification shall be entered into the hearing record.

## **SECTION 10**

### **CONSIDERATIONS FOR DECISION**

- 10.1 The Agency may consider the following in making its decision on an application:
- a. The application and its supporting documentation;
  - b. Reports from other agencies and commissions including, but not limited to, the Town of Branford:
    - 1.) Joint Conservation and Environmental Commission
    - 2.) Planning and Zoning Commission
    - 3.) Town Engineer
    - 4.) Building Official
    - 5.) East Shore District Health Department.

- c. Comments on an application from the New Haven County Soil and Water Conservation District, the South Central Regional Planning Agency or other regional organizations; agencies in adjacent municipalities which may be affected by the proposed activity, or other technical agencies or organizations which may undertake additional studies or investigations.
- d. Non-receipt of comments from agencies and commissions listed in subsection 10.1c and d 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 CGS, as amended, including matters related to regulating, licensing and enforcing the provisions thereof, the Agency shall take into consideration all the 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 impacts 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 the 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 are likely to 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 record that a feasible and prudent alternative to the proposed activity does not exist. In making this finding, the Agency shall consider the facts and circumstances set forth in subsection 10.2 of this section. This 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 the 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 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 and watercourses, and (2) “habitats” means areas or environments in which an organism or biological population normally lives or occurs.
- 10.6 The Agency shall not deny or condition an application for a regulated activity in an area outside of wetlands and 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. However, the Agency is not precluded from seeking advice from its own experts on information already in the record of the public hearing. A conclusion that a feasible and prudent alternative does not exist does not create a presumption that a permit should be issued. The applicant has the burden of demonstrating that the application is consistent with the purposes and policies of these regulations and Sections 22a-36 to 22a-45, inclusive, of the CGS.
- 10.8 In the case of an application where the applicant has provided written notice pursuant to subsection 7.15c of these regulations, the holder of the restriction may provide proof to the 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 Agency shall not grant the permit approval.
- 10.9 In the case of an application where the applicant fails to comply with the provision of subsections 7.15c and/or 7.15d of these regulations, (1) the party holding the conservation or preservation restriction, other than a state agency that holds such restriction, may, not later than fifteen days after receipt of the actual notice of permit approval, file an appeal with the Agency, subject to the rules and regulations of such Agency relating to appeals. The Agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction; or (2) the state agency that holds such restriction may, not later than thirty days after receipt of actual notice of permit approval, file an appeal with the Agency, subject to the rules and regulations of such Agency relating to appeals. The Agency shall immediately reverse such permit approval if the commissioner of the state agency that holds such restriction certifies that the land use authorized in such permit violates the terms of such conservation or preservation restriction.
- 10.10 Nothing in subsections 7.15c or 7.15d of these regulations shall be construed to prohibit the filing of a permit application or to require such written notice when the activity that is the subject of such permit application will occur on a portion of the property that is not restricted under the terms of such conservation or preservation 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, 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/or create productive wetland or watercourse resources. Such terms may include restriction as to the time of year in which a regulated activity may be conducted, provided the Agency or its agent determines that such restrictions are necessary to carry out the policy of CGS Sections 22a-36 to 22a-45, inclusive.

- 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 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 record the reasons and bases for its decision and, in the case of any public hearing, such decision shall be based fully on the record of such hearing and shall be in writing, and shall incorporate a statement relative to the consideration of feasible and prudent alternatives.
- 11.4 No activity, including, but not limited to, blasting, clearing of vegetation, materials processing, storage of rock, soil, and similar materials, installation of temporary sediment basins, and/or altered phasing or construction sequence other than what was expressly presented on the plans and documents submitted as part of the application and approved by the Agency, is permitted without additional review by the Agency. If it is determined that these activities are regulated activities then a new application may be required for such activities.
- 11.5 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 days thereafter.
- 11.6 If an activity authorized by the Inland Wetlands permit also involves an activity or project which requires zoning or subdivision approval, a special zoning permit, variance or special exception, under CGS Sections 8-3(g), 8-3c, or 8-26, the Agency shall file a copy of the decision and report on the application with the Town of Branford Planning and Zoning Commission, Pine Orchard Zoning Commission, or the Short Beach Zoning Commission within fifteen days of the date of the decision of the Agency.
- 11.7 If the Agency denies a permit, the application shall not be resubmitted unless the proposal is modified in such a fashion that substantially changes the impacts which resulted in a denial. Such submittal shall take the form of a new application.

- 11.8 Any permit issued by the Agency for the development of land for which an approval is required under CGS Chapter 124 (Zoning), Chapter 124b (Incentive Housing Zones), Chapter 126 (Municipal Planning Commissions) or Chapter 126a (Affordable Housing Land Use Appeal) as amended, shall be valid until the approval granted under such chapter expires or for ten years, whichever is earlier. Any permit issued by the Agency for any activity for which an approval is not required under Chapter 124, 124b, 126 or 126a shall be valid for not less than two years and not more than five years. Any such permit shall be renewed upon request of the permit holder unless the Agency finds that there has been a substantial change in circumstances 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 years. Request for renewal shall be submitted in writing to the Agency, prior to a regular meeting that is scheduled before expiration of the permit per Section 7.9.
- 11.8.1 Notwithstanding the provisions of section 11.8 of these regulations, any permit issued by the Agency prior to July 1, 2011 that did not expire prior to May 9, 2011 shall be valid for a period not less than nine years after the date of such approval, and can be renewed so long as the total duration is not more than 14 years. Any permit issued July 1, 2011 through September 30, 2012 is valid 5 years from the date of issuance, and can be renewed so long as the total permit duration is not more than 10 years from date of issuance.
- 11.9 Permits transfer with property ownership. Upon property transfer, notification of the transfer is requested by the Agency.
- 11.10 If a bond or insurance is required in accordance with Section 13 of these regulations, no regulated activity may commence until such bond or insurance is provided. If regulated activity begins prior to submission of the required bond, the permit may be suspended or revoked by the Agency.
- 11.11 General provisions in the issuance of all permits:
- a. If the Agency relies in whole or in part on information provided by the applicant, and 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 Branford, 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 property or activity.
  - c. If the activity authorized by the inland wetlands permit also involves an activity or a project which requires zoning or subdivision approval, special permit, variance or special exception, no work pursuant to the wetlands permit is authorized until such approval is obtained.
  - d. The permittee shall take such necessary steps consistent with the terms and conditions of the permit to control storm water discharges, to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and watercourses.
  - e. Per construction phasing in section 7.7 no clear cutting may begin more than 6 (six) months prior to onset of construction unless otherwise authorized by 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 license 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 DEEP pursuant to CGS Section 22a-39. Requests for such approval shall be made on a form provided by the Agency and shall contain the information listed under Section 7.7 and 7.8 of these regulations and any other information the Agency may reasonably require. Notwithstanding the provisions for receipt and processing of 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 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 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 business days after receipt by such Agency or its agent of such appeal. Any person may appear and be heard at the meeting held by the Agency to consider the subject 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 Upon approval of the application and prior to commencement of approved activities, the applicant may, at the discretion of the Agency, be required to file a bond in an amount approved by the Agency or its Duly Authorized Agent. The bond is to be in the form of cash, check, or a certified check payable to the Town of Branford. Such funds will be deposited into an escrow sub account. Unused funds will be returned upon completion of the work for which the bond was submitted. For bonds over \$10,000 the Inland Wetlands and Watercourses Agency may approve a surety bond for no more than 50% of the bond amount. The bond shall specify that it will not be released without written consent of the Agency.
- 13.2 The bond or surety shall be conditioned on compliance with all 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 on its behalf with the authority to issue notices of violation or cease and correct 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 designated 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 designated agent finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the Act or these regulations, the Agency or its Duly Authorized Agent may:
- a. Issue a written Cease and Correct 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. Upon issuance of the order the following applies:
    - 1.) Within 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, return receipt requested, that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn.
    - 2.) The Agency shall publish notice of its decision in a newspaper having general circulation in the municipality if such Cease and Correct Order coincides with actions taken by the Agency under Section 14.4c.. 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 section shall not delay or bar an action pursuant to section 22a-44(b) of the General Statutes of Connecticut, as amended.
    - 3.) If the Agency upholds the order as issued or as revised, the person(s) subject to the Cease and Correct Order may be required to submit an application for permit per Section 6.1 of these regulations, to conduct: the regulated activities necessary to resolve the violation and any additional regulated activities that may be proposed. Section 7.9 will apply to the activities and the application fee will be consistent with Section 19.5.
    - 4.) Per CGS Section 22a-44(a) the Agency may file a Certificate of such order in the office of the Town Clerk and the Town Clerk will record such certificate on the Land Records. Such certificate shall be released only upon determination by the Agency that compliance with the order has been achieved and is lifted.
  - 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 possible violation including, without 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 unauthorized activity, and/or provide a written reply to the notice or file a proper 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 subsection 14.4a of these regulations or other enforcement proceedings as provided by law.

- c. 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 Commission shall issue notice to the Permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action. The Agency shall hold a hearing to provide the Permittee an opportunity to show that he/she is in compliance with their 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 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. 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 days thereafter.
- 14.5 Any person who violates any provision of the Act may be liable for the cost of restoration of the affected wetland or watercourse to its condition, insofar as it is possible, prior to such violation. Anyone who conducts regulated activities without a permit may be subject to enforcement action and/or fines and/or fees per Section 19.5 of these regulations, Section 196 of the Ordinances of the Town of Branford and/or Section 22a-44 of the CGS amended. The Superior Court may, in an action brought by the Town of Branford, restrain a continuing violation, issue orders directing that the violation be corrected or removed, and/or assess civil penalties pursuant to CGS 22a-44(b) of up to \$1,000 per day or for a violation which continues, \$2,000 per day, and/or imprisonment for not more than one year or both pursuant to CGS 22a-44(c)..
- 14.6 The Permittee shall immediately inform the Agency's staff of problems involving sedimentation, erosion, downstream siltation, or any other adverse impacts which develop in the course of or are caused by the work herein authorized.

## **SECTION 15**

### **AMENDMENTS**

- 15.1 These Regulations and the Inland Wetlands and Watercourses Boundary Map of the Town of Branford may be, from time to time, amended, changed, or repealed, by majority vote of the Agency, in the manner specified in section 22a-42a of the CGS as amended, and after a public hearing in relation thereto is held by the Agency in accordance with the provisions of CGS 8-7d. A copy of such proposed regulation or boundary shall be filed in the office of the town clerk for public inspection at least ten days before such hearing. A copy of the notice and the proposed regulations or amendments thereto, except determinations of boundaries, shall be provided to the Commissioner at least thirty-five days before such hearing.
- 15.2 Regulations or boundary changes shall become effective at such time as fixed by the Agency, provided a copy of such regulation or wetland map amendment shall be filed in the office of the Town Clerk.
- 15.3 An application filed with the Agency which is in conformance with the applicable inland wetlands regulations as of the date of receipt of such application shall not be required thereafter to comply with any change in inland wetlands regulations, including changes to setbacks and upland review areas, taking effect after the date of 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 subsection shall not be construed to apply to: (1) the establishment, amendment or change of boundaries of inland wetlands or watercourses, or (2) to any change in regulations necessary to make such regulations consistent with the provisions of Chapter 440 of the CGS, as amended, as of the date of such receipt.

- 15.4 Petitions requesting changes or amendments to the "Inland Wetlands and Watercourses Map, Branford Connecticut" shall be submitted with the application form to the Agency and contain at least the following information:
- a. The applicant's name, address and telephone number;
  - b. The owner's name (if not the applicant), address, telephone number, and a written consent to the proposed action set forth in the application;
  - c. A description of the applicant's interest in the land;
  - d. A description of the geographic location of the property involved in the petition including a description of the land in sufficient detail to allow identification of the disputed wetland or watercourse areas;
  - e. Reason(s) for the requested action;
  - f. The names and addresses of adjacent property owners;
  - g. A signed and dated report from the soil scientist describing the method of investigation, types of wetland and upland soils found and any sketch of approximate flag locations they may include. A survey signed and sealed by a licensed surveyor that shall include location of flags placed by a qualified soil scientist defining the boundaries of the regulated wetland soil types. The numbers assigned to the flags by the soil scientist are to be clearly identified and the survey must be signed by the soil scientist who located the wetland boundaries in the field. The survey must meet the accuracy standard of an A-2 survey as established by the State of Connecticut Board of Registry for professional engineers and land surveyors; and
  - h. If the amended map is adopted, the Agency will require that the applicant file the approved map amendment on the land records and may require submission to the Agency of a digital copy in a format specified by the Agency.
- 15.5 Watercourses shall be delineated by a licensed soil scientist, geologist, ecologist, surveyor or other individual whose qualifications satisfy the Agency.
- 15.6 A public hearing shall be held on petitions to amend Regulations and the Inland Wetlands and Watercourses Map. Notice of the hearing shall be published in a newspaper having 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 15-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.
- 15.7 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 receipt of such petition. The hearing shall be completed within thirty-five days (35) after commencement. The Agency shall act upon the changes requested in such petition within sixty-five (65) days after completion of such hearing. At such hearing, any person or persons may appear and be heard and may be represented by agent or attorney. The petitioner may consent to one or more extensions of any period specified in this subsection provided the total extension of all such periods shall not be for longer than sixty-five (65) days or may withdraw such petition. Failure of the 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.

- 15.8 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 CGS, as amended.
- 16.2 Notice of such appeal shall be served upon the Agency and the Commissioner of DEEP.

## **SECTION 17**

### **CONFLICT AND SEVERANCE**

- 17.1 If there is a conflict between the provisions of these regulations, the provision which imposes the most stringent standards for the use of wetlands and watercourses shall govern. The invalidity of any word, clause, sentence, section, part, subsection or provision of these regulations shall not affect the validity of any other part which can be given effect without such invalid part or parts.
- 17.2 If there is a conflict between any provision of these regulations and a provision of the Inland Wetlands and Watercourses Act, the provision 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 of the Town of Branford, State of Connecticut and the Government of the United States, including any approval required by DEEP and the U.S. Army Corps of Engineers. Obtaining such assents, permits or licenses is the sole responsibility of the applicant.

## **SECTION 19**

### **APPLICATION FEES**

- 19.1 Method of payment. All fees required by these regulations shall be submitted to the Agency by certified check, cash or money order, payable to the Town of Branford at the time the application is filed with the Agency or as otherwise specified in these regulations or by the Agency.

19.2 No application shall be reviewed or approved by the Agency or its Duly Authorized Agent unless the correct application fee is paid in full, or unless a waiver, delayed payment schedule, or reduction has been granted by the Agency pursuant to subsection 19.7 of these regulations.

19.3 The application fee is not refundable.

19.4 Definitions, as used in this section:

- a. "Commercial" means property developed for industry, commerce, trade, recreation, or business or being developed to be occupied for such purposes, for profit or nonprofit.
- b. "Duplex" means a residential structure containing only 2 dwelling units individually sited on its own lot.
- c. "Dwelling Unit" means each single residential unit
- d. "Multi-family residential development" means 3 or more attached or unattached dwelling units sited on property owned in common
- e. "Other uses" means uses other than residential or commercial
- f. "Residential" means property developed for permanent housing or being developed to be occupied by permanent housing.

19.5 Fee schedule. Application fees shall be based on the following schedule:

- a. DEEP fee - All applications and violations require submission of a DEEP reporting form and the current fee as designated by the State of Connecticut.
- b. Applications that involve regulated activities – per Section 6:

1.) A Single or Duplex Residential lot:

<b>Total area of disturbance (Sq.Ft.)</b>	<b>Single family/Duplex</b>
Up to 200	\$75
201 to 500	\$125
501 – 1,000	\$250
1,001 – 5,000	\$400
5,001 – 10,000	\$600
10,001 – 20,000	\$750
20,001 – 30,000	\$875
30,001 – 40,000	\$1,000
Over 40,000	\$1,000 + \$100 per 5,000 Sq.Ft. over 40,000

2.) Commercial Development, Multi- Family, subdivisions, and other Residential uses not included in 1.) above:

<b>Total area of disturbance (Sq.Ft.)</b>	<b>Fee</b>
Up to 500	\$200
501 – 1,000	\$400
1,001 – 5,000	\$600
5,001 – 10,000	\$800
10,001 – 20,000	\$1,200
20,001 – 30,000	\$1,600
30,001 – 40,000	\$2,000
Over 40,000	\$2,000 + \$250 per 10,000 Sq.Ft. over 40,000

3.) Fees to be assessed in addition to fees above as they apply:

- a.) Public Hearing \$300  
 In addition to base fee, assessed if a public hearing is scheduled and is to be paid prior to initial commencement of public hearing



- 19.7 Waiver. The applicant may petition the Agency or Duly Authorized Agent in the case of an administrative approval, to waive or reduce the fee. Such petitions shall be in writing and shall state fully the facts and circumstances the Agency should consider in its determination under this subsection. The Agency may waive all or part of the application fee if the Agency determines that:
- a. The activity applied for would clearly result in a substantial public benefit to the environment, or to the public health and safety, and that the applicant would be reasonably deterred from initiating the activity solely or primarily as a result of the amount of the application fee, or
  - b. The amount of the application fee is clearly excessive in relation to the cost to the Town for reviewing and processing the application. The Agency shall state upon its record the basis for all actions under this subsection.

## **SECTION 20**

### **PUBLIC RECORDS RETENTION**

- 20.1 The Agency and the Town Clerk for the Town of Branford shall retain complete administrative records of the Agency actions and dispose of such records in accordance with the retention/disposition schedules set forth by the Connecticut State Library per CGS Section 11-8.

## **SECTION 21**

### **EFFECTIVE DATE OF REGULATIONS**

- 21.1 These regulations, including the Inland Wetlands and Watercourses Map, application forms, fee schedule, and amendments thereto, shall become effective upon filing in the Office of the Town Clerk and publication of a notice of such action in a newspaper having general circulation in the Town of Branford.