

**TOWN OF SOUTHBURY
INLAND WETLANDS AND WATERCOURSES REGULATIONS**

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Effective Date	Reference
November 14, 1989	7.1.1, 8.2, 8.3.1, 10
March 12, 1991	Add 8.7.6
March 12, 1991	7.2
September 1, 1993	2, 7.1.3.e, 7.1.4.f, 7.2, 8.5.1, 8.7 8.7.6, 8.8.1, 8.8.1.d
February 15, 1994	7.2
April 11, 1995	7.3, 8.5.1
December 12, 1995	2.n, ee, ff
January 1, 1997	2, 7.2.1, 7.4, 7.5, 7.5.1, 7.5.2, 7.5.3, 7.5.4, 7.5.5, 7.5.6, 7.7, 7.7.1, 8.1, 8.2, 8.5.1, 8.8.1, 9.1.1
February 12, 1997	2 d.d, 3.1, 7.1.4(g), 8.2, 7.6, 11
August 13, 1997	2.1, 8.6
May 13, 1998	2.1, 4.1.1, 7.6
June 9, 1999	2.1, 7.6
March 15, 2000	7.2, 7.6
May 11, 2005	4.1.6, 7.1.1, 7.1.7, 7.2, 7.5.1, 7.6, 8.2

Section 1. TITLE, AUTHORITY AND PURPOSE.

- 1.1 **Title:** These regulations shall be known as the “Inland Wetlands and Water Courses Regulations of the Town of Southbury, Connecticut.”
- 1.2 **Authority:** These regulations are adopted by the Southbury Inland Wetlands Agency in accordance with Sections 22a-36 through 22a-45 of the Connecticut General Statutes, as amended, and as authorized by an ordinance of the Town of Southbury adopted effective August 25, 1973.
- 1.3 **Purpose:** The inland wetlands and watercourses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and water courses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life. Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the State of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens forever more.

The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable, and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the Town of Southbury. It is, therefore, the purpose of this Agency to protect the citizens of the Town of Southbury by making provisions for the protection, preservation, maintenance and the use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority, preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the Town of Southbury’s potable fresh water

supplies from the danger of drought, overdraft, pollution, misuse and mismanagement, by providing an orderly process to balance the need for the economic growth of the Town of Southbury and the use of its land with the need to protect its environment and ecology.

- 1.4 **Regulation:** The Agency shall enforce all provisions of Inland Wetlands and Watercourses Act and shall issue, issue with modifications, and deny permits for all regulated activities on inland wetlands and watercourses in the Town of Southbury pursuant to Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.

Section 2. DEFINITIONS.

- 2.1 **Definitions:** Certain words used in these regulations have the following meaning as described in alphabetic sequence:

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

Agency means the Inland Wetlands and Watercourses Agency (or Commission) of the Town of Southbury.

Applicant means any person as defined under section 2.1 wishing to undertake an activity regulated by the Inland Wetlands Agency of the Town of Southbury.

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

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

Commissioner means the Commissioner of Environmental Protection.

Continual flow means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low-flow period of the annual hydrological cycle, June through September, but it recurs in prolonged succession.

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

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

Disturbing the natural and indigenous character of the land means that the activity will significantly alter the inland wetland and watercourses by reason of removal or deposition of material, clear-cutting, alteration or obstruction of water flow, or will result in the pollution of wetland or watercourses.

Designated agent means an individual designated by the Agency to carry out its functions and purposes.

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

Farming means use of land for the growing of crops, raising of livestock or other agricultural use.

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

License means the whole or any part of any permit, certificate or approval or similar form of permission which may be required of any person by the provisions of the Inland Wetlands and Watercourses Act.

Marsh means an area normally covered with shallow water, subject to seasonal variations that are distinguished by the absence of trees and shrubs and are dominated by soft-stemmed herbaceous plants.

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

Nurseries means land used for propagating trees, shrubs, or other plants for transplanting, sale or for use as stock for grafting.

Permit means the whole or any part of any license, certificate or approval or similar form of permission which may be required of any person by the provisions of these regulations under the authority of the Inland Wetlands Agency.

Permittee means the person to whom such permit has been issued.

Person means any person, firm, partnership, association, corporation, company, organization, or legal entity of any kind, including municipal corporation, government agencies or subdivisions thereof.

Pollution means harmful thermal effect or the contamination or rendering unclean or impure any waters within the Town of Southbury by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion resulting from any filling or excavation activity.

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

Regulated activity means any operation within or use of a wetland or water

course involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in Section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, storage, excavating, constructing, depositing or removal of material and discharging of water on land within fifty (50) feet measured horizontally from the boundary of any wetland or watercourse or within one hundred (100) feet of: Bullet Hill Brook, Eight Mile Brook, Transylvania Brook, Pomperaug River, Shepaug River, Lake Lillinonah, Housatonic River, Lake Zoar is a regulated activity. The Agency may rule that any activity in any non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and therefore is a regulated activity.

Regulated area means any wetlands or watercourses as defined in these regulations.

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

Rendering unclean or impure means any alteration of the physical, chemical, or biological properties of any the waters within the Town of Southbury, including but not limited to change in color, odor, turbidity or taste.

Significant activity as defined in section 6.

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

Swamp means an area with a water table at or near the surface of the ground throughout most of the year and containing vegetation dominated by an association of trees and/or shrubs recognized as swamp species.

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

Waste means sewage or any substance, liquid or gaseous, solid or radioactive, which may pollute or tend to pollute any of the waters within the Town of Southbury.

Watercourses means river, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the town or any portion thereof not regulated pursuant to sections 22a-28 through 22a-35 of the General Statutes, as amended. Intermittent watercourse 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 or recent alluvium or detritus (b) the presence of standing or flowing water for a duration longer than particular storm incident, and (c) the presence of hydrophytic vegetation.

Wetlands means land, including submerged land as defined in section 2.1 of these regulations, not regulated pursuant to sections 22a-28 through 22a-35, inclusive, of the Connecticut General statutes, which consists of any of the soil types designated as poorly drained, very poorly drained alluvial and floodplain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Natural Resources Conservation Service of the U.S. Department of Agriculture (USDA).

Section 3. IDENTIFICATION OF WETLANDS AND WATERCOURSES.

- 3.1 ***Map of regulated area:*** The map of regulated areas, entitled “Inland Wetlands and Watercourses Map, Southbury Connecticut,” delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of this are available for inspection in the office of the Inland Wetlands Agency. In all cases, the precise location of regulated areas shall be determined by the actual character of the land, the distribution of wetland soil types, and locations of watercourses. Such determinations shall be made by use of aerial photograph, remote sensing imagery, resource mapping, soils maps, field inspection and testing conducted by a soil scientist where soil classification are required, or where watercourse determinations are required, by other qualified individuals and other information in determining the location of the boundaries of wetlands and watercourses.

Wetlands and watercourses in the Town of Southbury are identified by conditions of land, water and vegetation as they exist in the field. To assist in the

identification of wetlands and watercourses, the following are hereby made a part of these regulations and are on file in the Agency office:

3.2 **Soil types:** List of map units that qualify as wetland soils, New Haven County, Connecticut:

AA	Adrain and Palms mucks
Ce	Carlisle muck
Lc	Leicester fine sandy loam
Ps	Podunk fine sandy loam
Pv	Podunk variant silt loam
Ra	Raynham silt loam
Rb	Raypol silt loam
Rd	Ridgebury fine sandy loam
RN	Ridgebury, Leicester, and Whitman extremely stony fine sandy loam
Ru	Rumney fine sandy loam
Rv	Rumney variant silt loam
Sc	Saco silt loam
Sr	Scarboro muck
Wa	Walpole sandy loam
We	Westbrook mucky peat
Wh	Westbrook mucky peat, low salt

Wr	Wilbraham silt loam
Ws	Wilbraham very stony silt loam
WT	Wilbraham and Menlo extremely silt loams

3.3 **Amendments:** After due notice and public hearing as required by law for adoption of these regulations, the Agency may amend the map of soil types, wetlands and watercourses, or adopt supplements thereto, so as to detail, update or correct regulated areas. (See Appendix A)

3.4 **Petitions:** Any person may submit a petition in writing, and in form prescribed by the Agency, requesting a change in the boundaries of wetlands and watercourses shown on the map of soil types, wetlands and watercourses. The Agency shall consider such petition at a public hearing in the same manner as required by law for adoption of these regulations within ninety (90) days after receipt and shall act on the changes requested in such petition within sixty (60) days after the hearing. The petitioner may consent to extension of the periods provided for hearing and action, or may withdraw such petition. It is the responsibility of the petitioner to provide reasonable proof, such as by field investigations done by a soil scientist or competent biologist, or ecologist, as to the boundaries of wetland and watercourses. The Agency may require a filing fee to be deposited with the Agency to defray the cost of publication of the notice required for a hearing. (See Appendix A)

Section 4. PERMITTED USES AS OF RIGHT AND NONREGULATED USES.

4.1 **Permitted operations:** The following operations and uses shall be permitted in inland wetlands and watercourses, as of right:

4.1.1 Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three (3) acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this section shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear-cutting of timber except for the expansion of agricultural crop land, or the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purpose of sale;

4.1.2 A residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, provided the permit has been issued or the

subdivision has been approved by a municipal planning, zoning or Planning and Zoning Commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a, or as of July 1, 1974, whichever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subsection unless the building permit was obtained on or before July 1, 1987. The individual claiming a use of wetlands permitted as a right under this subsection shall document the validity of said right by providing a certified copy of the building permit and site plan showing proposed and existing topographic contours, house and well locations, septic system, driveway, approval dates or other necessary information to document his entitlement;

4.1.3 Boat anchorage or mooring, not to include dredging or dock construction;

4.1.4 Uses incidental for the enjoyment and maintenance of residential property, as follows:

a. Such residential is defined as equal to or smaller than eighty thousand (80,000) square feet; and

b. Such uses include maintenance of existing structures and landscaping but do not include removal or deposition or significant amounts of material from or onto a wetland or watercourse, dredging of a pond or the diversion or alteration of a watercourse.

4.1.5 Construction and operation, by water companies as defined by section 16-1 of the General Statutes or by municipal water supply systems as provided for in Chapter 102, of the Connecticut General Statutes, of dams, reservoirs and other facilities necessary to impounding, storage and withdrawal of water in connection with public water supplies except as provided in sections 22a-401 and 22a-410 of the General Statutes.

4.1.6 Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to 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 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.

4.2 ***Additional permitted operations and nonregulated activities.*** The following additional operations and uses are permitted in wetlands and watercourses as unregulated activities, provided that they do not disturb the natural and indigenous character of the wetland or watercourse by removal or deposition of material, by alteration or obstruction of water flow or by pollution thereof:

4.2.1 Conservation of soil, vegetation, water, fish, shellfish and wildlife; and

1 4.2.2 Outdoor recreation including play and sporting areas, golf courses, field trails, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise equally permitted and regulated.

4.3 **Notification of permitted activity:** To carry out the purposes of this section, any person proposing to carry out a permitted or nonregulated operation or use of a wetland or watercourse, which may disturb the natural and indigenous character of the land, shall, prior to commencement of such operation or use, notify the Agency on a form provided by it, and provide the Agency with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or nonregulated use of the wetland or watercourse. The Agency or its designated agent shall rule that the proposed operation or use is a permitted or a nonregulated use or operation or that a permit is required. Such ruling shall be in writing and shall be made no later than the next regularly scheduled meeting of the Agency following the meeting at which the request was received. The designated agent for the Agency may make such ruling on behalf of the Agency at any time.

Section 5. ACTIVITIES REGULATED BY THE STATE.

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

5.1.1 Construction or modification of any dam pursuant to sections 22a-401 through 22a-410 of the General Statutes, as amended;

5.1.2 Construction or placement of any obstruction within stream channel encroachment lines pursuant to sections 22a-342 through 22a-349 of the General Statutes as amended;

5.1.3 Construction or placement of any structure or obstruction with the tidal, coastal or navigable waters of the state pursuant to sections 22a-359 through 22a-363 or in designated tidal wetlands pursuant to sections 22a-28 through 22a-35 of the General Statutes, as amended;

5.1.4 Diversion of water in excess of fifty thousand (50,000) gallons per day or any surface waters of the state where the tributary watershed area above the point of diversion is one hundred (100) acres or larger pursuant to sections 22a-365 through 22a-378 of the General Statutes, as amended;

- 5.1.5 Discharges into the waters of the state pursuant to section 22a-40 of the General Statutes, as amended;
 - 5.1.6 Discharge of fill or dredged materials into the wetlands and water courses 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.
- 5.2 ***Exclusive jurisdiction:*** The Commissioner of Environmental Protection shall have jurisdiction over regulated activities and other 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, (1) after an advisory decision on such license or permit has been rendered to the Commissioner by the Wetland Agency of the municipality within which the wetland is located or (2) thirty-five (35) days after receipt by the Commissioner of such application, which ever occurs first.

Section 6. REGULATED ACTIVITIES.

- 6.1 ***Standards:*** The Agency shall regulate any operation within or use of a wetland or watercourse involving removal or deposition of materials, or any obstruction, construction, alteration or pollution, of such wetlands or water courses and any other regulated activity, unless such operation or use is permitted or nonregulated pursuant to section 4 of these regulations.
- 6.1.1 No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the Inland Wetland Agency of the Town of Southbury.
- 6.2 ***Significant activity:*** For the purpose of these regulations, all the following regulated activities including, but not limited to, are deemed to have a major effect or significant impact on the regulated area or another part of the wetland or watercourse system:
- 6.2.1 Any activity involving a deposition or removal of material which will or may have a major effect or significant impact on the regulated area or on another part of the inland wetland or watercourse system, or
 - 6.2.2 Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system, or
 - 6.2.3 Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to support desirable fisheries, wildlife,

or other biological life, prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space or other functions or

- 6.2.4 Any activity which causes substantial turbidity, siltation or sedimentation in a wetland or watercourse, or
- 6.2.5 Any activity which causes a substantial diminution of flow of a natural watercourse, or groundwater levels of the regulated area, or
- 6.2.6 Any activity which causes or has the potential to cause pollution of a wetland or watercourse, or
- 6.2.7 Any activity which destroys unique wetland or watercourse areas having demonstrable scientific or education value.

Section 7. APPLICATION REQUIREMENTS AND REVIEW PROCEDURE.

- 7.1 **Application:** Any person wishing to carry out a regulated activity, or an activity permitted as of right or nonregulated shall submit an application for permit to the Agency as follows:
 - 7.1.1 **Submission:** The application shall be accompanied by the appropriate fee [see Section 7.2] and shall be submitted to the Agency at the office of the Agency in Southbury Town Hall. The date of receipt of any application shall be the day of the next regularly scheduled meeting of such commission, board or agency, immediately following the day of submission to such commission, board or agency or its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner.

When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in section 16-1 of the General Statutes, the applicant shall provide written notice of the application to the water company provided such water company has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the Inland Wetlands Agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of the application. The water company, through a representative, may appear and be heard at any hearing on the application.

- 7.1.2 **Forms:**

- a. Application form “A,” which may be used for activities involving maintenance, restoration, and permitted uses or unregulated activities as defined in section 4.
- b. Application form “B,” which shall be used for all regulated activities including, but not limited to: subdivisions, dam construction and excavation of ponds.

7.1.3 **Contents.** The following information shall be provided on application form “A” and accompanying maps and drawings:

- a. The applicant’s name, home and business addresses and telephone numbers.
- b. The owner’s name (if applicant is not the owner of the property), home and business address, telephone numbers, and written consent to the proposed activity set forth in the application.
- c. Applicant’s interest in the land.
- d. The geographical location and acreage of the property which is to be affected by the proposed activity, including a description of the land in sufficient detail to allow identification of the properties on the map of soil types, wetland and watercourses.
- e. Identification of wetlands, watercourses and boundaries of wetlands, watercourses and regulated areas. Said areas must be delineated by coloration.
- f. Location of existing contours, buildings, wells, driveways, septic systems and drainage systems (culverts, footing and curtain drains).
- g. Purpose and description of proposed activity shall include:
 - 1. Relocation of watercourses;
 - 2. Proposed drainage systems;
 - 3. Contours;
 - 4. Buildings, wells, driveways, septic systems;

5. Erosion and sedimentation controls;
6. Estimated amount and type of material to be excavated from, or deposited in, a regulated area; and
7. Listing of maps, plans, and additional information accompanying application.

Any person who makes an application to the Agency pertaining to real property, the record title to which is held by a trustee of an undisclosed trust, shall file with said application a sworn statement disclosing the name of the equitable owner of such real property or the beneficiary of the trust.

7.1.4 ***Additional information for application form “B.”*** In addition to the information required on application form “A” as stated above, the following additional information shall be provided on application form “B” and/or accompanying maps and drawings:

- a. ***Site development plan:*** A map of the proposed use and the property which will be affected, drawn by a licensed surveyor, professional engineer, or professional architect, who must be registered in the State of Connecticut. The map shall be at a scale of not less than 1” = 100’ and shall include an inset parcel location map and north arrow. Contours, both existing and proposed, shall be shown at five-foot intervals or less. The map shall show the relevant information required under par. 7.1.3 e, f and g, the names and mailing addresses of all adjoining owners and the approximate acreage of continuous wetland on the lot affected by the proposed activity.
- b. ***Soils report:*** Report prepared by a qualified soil scientist providing an analysis of the tested soils within an area believed to be a wetland soil. The data shall show precisely where specific soil types are found. Soil boundaries shall be indicated by flag numbers (in field as well as on site development plan). Soil types must be consistent with categories established by the National Cooperative Soils Survey of the Soil Conservation Service of the United States Department of Agriculture.
- c. ***Hydrology study:*** The applicant shall submit in full the following:

1. Pre and post development hydraulic calculations based on maximum storm frequencies of ten, twenty-five and fifty-year intervals and all stream channels, ponds and detention basins with a watershed above fifty (50) acres should be designed on a fifty and one-hundred-year storm frequency.
 2. Map of drainage areas utilized in the design.
 3. End treatment of storm sewer outlets if discharged velocities exceed 3 cfs, including construction details, cross sections and profiles of affected areas including road layout profile.
 4. Projected effect of activity upon entire watershed.
- d. **Alternatives:** Alternatives considered by the applicant and why the proposal to alter wetlands set forth in the application was chosen;
- e. **Description of material to be deposited and/or excavated:**
The applicant shall be required to describe any materials to be deposited on and/or excavated from the affected property in terms of volume, composition and the possibility of erosion or leaching from deposited materials.
- f. **Erosion and sedimentation control plan.** Erosion and sedimentation control plan in accordance with Public Act 83-388 as amended and the Town of Southbury Soil Erosion Control Ordinance adopted December 11, 1985. All regulated areas shown on the soil erosion and sedimentation control plan must be delineated by coloration.
- g. **Management Practices and Mitigation:** Other management practices and mitigation measures which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to a) prevent or minimize pollution or other environmental damage, b) maintain or enhance existing environmental quality, or c) in the following order of priority: restore, enhance and create productive wetland watercourse resources.
- 7.1.5 **Additional information:** The Agency may request the applicant to provide such additional information that it deems necessary in order

to decide on the application, including, but not limited to, the following:

- a. **Biological evaluation:** If the affected property is believed to include any portion of a wetlands or watercourse, or may affect a wetlands or watercourse, an evaluation of the extent or the presence of the indigenous species of flora and fauna, including, but not limited to, endangered species, the habitat value of the affected area for wildlife, and the probable effect of the proposed activity upon the ecology of the affected property.
- b. **Affected owners:** Written identification of downstream property owners or other property owners whose rights or interests may or will be affected by the proposed activity.

7.1.6 **Written notice:** In the case of any application where any portion of the property on which the regulated activity is proposed is located within five hundred (500) feet of the boundary of the Town of Southbury, the applicant shall file written notice, in accordance with Public Act 87-533, of the proposed activity, certified mail return receipt requested, to the adjacent municipal wetland Agency on the same day of filing an inland wetland permit application with the Southbury Inland Wetlands Agency.

7.1.7 **Notice of pendency of application:** The Agency shall, in accordance with Connecticut General Statutes Sections 8-7b(f) and 22a-42b, notify the clerk of any adjoining municipality of the pendency of any application to conduct a regulated activity when:

- a. Any portion of the property on which the regulated activity is proposed is located within five hundred (500) feet of the boundary of an adjoining municipality;
- b. Traffic attributable to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
- c. Sewer or water drainage from the project site will flow through and impact the sewage or drainage system within the adjoining municipality; or,
- d. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Notice of pendency of such application shall be made by registered mail and shall be mailed within seven (7) days of the date of receipt of the application.

7.2 **Fees:** An application fee must accompany each application. Issuance of a permit is subject to payment of the application fee and all other fees noted below. All fees are non-refundable unless otherwise noted.

The following shall be payable to the Town of Southbury:

Application Form “A” (refundable if found to be a nonregulated activity)
Maintenance & Restoration Activities. . . \$ 50.00

Application Form “B” . . . \$250.00

Construction of one, single-family residence

Addition/alteration to single family residence \$100.00
or property; activities, other than construction
of buildings, on public lands or conservation/
preservation properties, including properties
held by not-for-profit entities, for the purpose
of maintaining those properties or facilitating
public use/access

“Residence” means property developed for permanent housing. This does not include property developed for industry, commerce, trade, recreation or business being developed to be occupied for such purposes, for profit or non-profit.

Application Form “B” . . . \$750.00

(non-residential uses or more than one
residential unit)

Renewal application fee . . . \$150.00

Permit modification fee . . . \$ 50.00
(minor modification; major modification
may require new application)

Additional Fees, applicable to any application in addition to the Application Fee:

Public Hearing . . . \$200.00

Subdivision and Resubdivision, per lot \$150.00

Outside consultants at cost up to
\$1,000.00 per lot

(Commission may require bonding and/or pre-payment for outside services-estimate of all consultant fees shall be paid in advance in order to proceed with the consultant review procedures.)

Review of Unauthorized or Previously Unpermitted Regulated Activity Application (per lot) \$350.00
(This fee is not an authorization activity and shall apply whenever the work or activity in a regulated area has been conducted by a property owner or an agent of the owner without prior authorization or a permit.)

Waivers and Refunds: The Agency may waive or refund the application fee for: a) a re-submission of an application withdrawn by the applicant before the next Commission meeting; b) the submission of a revision of an approved application when the revision is not of such magnitude as to require a new application; c) an application submitted by the Town of Southbury or the school district; d) activities for the purpose of maintaining for the preservation of natural resources.

“Outside consultants” means all services by anyone other than the Enforcement Officer or the Agency itself to perform periodic inspections, wetland delineations/inspections, engineers, attorneys, and any other consultants the Agency deems appropriate. The Agency may require bonding or pre-payment of expected costs. If the applicant does not wish to pay for these services, the application must be withdrawn prior to the costs being incurred; fees will not be refunded once costs are incurred. Once the Agency has indicated outside consultants will be retained, continued prosecution of, or failure to withdraw, the application constitutes the Applicant’s agreement to pay the costs of the outside consultants.

7.2.1 In accordance with Section 9.1.1 of the regulations, any person requesting such approval shall file the appropriate Minimal Activity Form provided by the Inland Wetlands office with sufficient information to enable a proper review and determination of the proposed activity. If approval is granted, a fee in the amount of \$25.00 shall be submitted to cover the necessary review process.

7.3 **Copies:** One (1) copy of the application and four (4) copies of any maps and plans shall be submitted.

7.4 **Review procedure:** Upon receipt of a complete application the Agency and/or its consultants shall review it. No application submitted to the Agency shall be deemed complete unless it shall be signed by record owner or trustee, be accompanied by the appropriate fee, and unless it shall be in such form and contain such information as the Agency deems necessary for a fair determination of the issues (as set forth in section 7.1).

The Agency shall at its regular meeting inform any applicant whose application is deemed incomplete what information to submit (per section 7) before the Agency shall formally begin a review. Any and all subsequent information shall be submitted at the office of the Agency and shall be considered received at the next regular meeting of the Agency.

Failure to submit a complete application or failure to submit information in time for the Agency to make a fair determination of the issues within the time periods required by law shall be cause for denial of a permit.

The Agency shall take action on any application within the time periods and shall give notice thereof as required by law. [See Appendix A]. The applicant may withdraw the application at any time prior to a decision by the Agency.

An application filed with an Inland Wetlands Agency which is in conformance with the applicable inland wetlands regulations as of the date of the receipt of such application shall not be required thereafter to comply with any change in inland wetlands regulations, including changes to setbacks and buffers, taking effect on or after the date of such receipt and any appeal from the decision of such Agency with respect to such application shall not be dismissed by the Superior Court on the grounds that such a change has taken effect on or after the date of such receipt. The provisions of this section shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses or (2) to any change in regulations necessary to make such regulations consistent with the provisions of this chapter as of the date of such receipt.

7.5 ***Required consideration for decision:*** In carrying out the purposes and policies of these regulations, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:

7.5.1 The environmental impact of the proposed regulated activity on wetlands or watercourses, including factors such as the following:

- a. Amount of material to be removed or deposited and the projected effect on the water table and drainage patterns;
- b. Danger of erosion;
- c. Likelihood of siltation and leaching and any resulting adverse effects on water quality and aquatic life;
- d. The nature of any material to be removed or deposited, and its effect on flood control, water supply and quality, and on aquatic organisms;
- e. Projected changes in velocity, volume or course of water flow, or in the water table and their effects;
- f. Existing flood or channel encroachment lines, flood hazard areas and flood plain zones;
- g. Changes to the physical, chemical and biological properties of the water or soil, and their impact;

- h. Change in the suitability of the area for recreational or aesthetic enjoyment; and
 - i. Importance of the area to the region with regard to water supply, water purification, flood control, natural habitat, recreation and open space.
 - j. “Wetlands or watercourses” includes aquatic, plant or animal life and habitats in wetlands or watercourses, and “habitats” means areas or environments in which an organism or biological population normally lives or occurs.
- 7.5.2 The applicant’s purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses.
- 7.5.3 The relationship between the short-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.
- 7.5.4 Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition or issuing a permit for such activity including, but not limited to, measures to:
 - a. prevent or minimize pollution or other environmental damage,
 - b. maintain or enhance existing environmental quality, or

- c. in the following order of priority: restore enhance and create productive wetland or watercourse resources.

7.5.5 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. This includes recognition of potential damage from erosion, turbidity, or siltation, loss of fish and wildlife and their habitat, loss of unique habitat having demonstrable natural, scientific or educational value, loss or diminution of beneficial aquatic organisms and wetland plants, the dangers of flooding and pollution, and the destruction of the economic, aesthetic, recreational and other public and private uses and values of wetlands and watercourses to the community.

7.5.6 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 reasonable 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.

7.6 **Public Hearing:** Upon due notice as required by law, the Agency may hold a public hearing on any application involving a significant activity. [See Appendix A]

The Inland Wetlands Commission shall not hold a public hearing on such application unless the Inland Wetlands Commission determines that the proposed activity may have a significant impact on wetlands, watercourses or 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 Commission not later than fourteen days after the day of receipt of 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 subsection is filed with the Agency not later than fourteen days after the date of receipt of the application. No later than sixty-five (65) days after receipt of an application, the Agency may hold a public hearing on such application. At such hearing any person or persons may appear and be heard and may be represented by an agent or attorney. The hearing shall be completed within thirty-five (35) days of its commencement. Action shall be taken on applications within sixty-five (65) days after completion of a public hearing. The applicant may consent to one or more extensions of the periods 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 the application. The failure of the inland wetlands agency or the commissioner to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the application.

7.7 **Alternatives:** In the case of any application which received a public hearing or in the case of a finding by the Inland Wetlands Commission that the proposed activity may have a significant impact on wetlands or water courses, a permit shall not be issued unless the Agency finds on the basis of the record that a feasible and prudent alternative does not exist. In making this finding, the Agency shall consider the facts and circumstances as set forth in Section 7.5 of these regulations. The finding and the reason therefore shall be stated on the record in the decision of the Agency in writing.

7.7.1 In the case of an application which is denied on the basis of a finding that there may be feasible and prudent alternatives to the proposed regulated activity which have less adverse impact on wetlands or watercourses, the Commissioner or the Inland Wetlands Agency, as the case may be, shall propose on the record in writing the types of alternatives which the applicant may investigate provided this subdivision 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.

Section 8. DECISION PROCESS AND PERMIT.

8.1 **Decision:** In granting, denying or limiting any permit for a regulated activity the Inland Wetlands Commission, or its agent, shall consider the factors set forth in Section 7.5 of these regulations, and such Commission, or its agent shall state upon the record the reason for its decision. In granting a permit the Inland Wetlands Commission or its agent may grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity which are designed to carry out the policy of Sections 22a-36 to 22a-45, inclusive, of the General Statutes and these regulations. Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would a) prevent or minimize pollution or other environmental damage, b) maintain or enhance existing environmental quality, or c) in the following order of priority: Restore, enhance and create productive wetland or watercourse resources. In the case of any public hearing, such decision shall be based fully on the records of such hearing, and other materials not part of the hearing record shall not be considered by the Commission in its decision. The decision shall be in writing and shall incorporate a statement relative to the consideration of feasible and prudent alternatives.

8.2 A municipal inland wetlands agency shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will have a likely impact or effect on the physical characteristics of such wetlands or watercourses.

8.3 **Notification to applicant; appeal; revaluation:** The Agency shall give notice of its decision as required by law. [See Appendix A] Any person aggrieved by any decision of the Agency may, within fifteen (15) days after publication of notice of such decision, appeal to the Superior Court as provided by law.

[See Appendix B] Any person denied a permit in connection with a regulated activity may make application to the assessor of the Town of Southbury concerning revaluation of the property. [See Appendix D]

In any case in which such notice is not published within such fifteen-day period, the applicant may provide for the publication of such notice within ten (10) days thereafter.

8.4 **Conditions:** If the Agency denies the permit, or if it grants a permit with terms, conditions, limitations or modifications, the applicant may attempt to modify the proposal to the Agency's satisfaction. The Agency shall determine whether the proposed modification requires the filing of a new application. The rejection of a modified or corrected application by the Agency shall be equivalent to the denial of an application for the purposes of appeal.

8.4.1 If the Agency denies a permit, the application shall not be resubmitted unless the proposal is modified in a fashion that substantially changes the impacts which resulted in the denial. Such submittal shall take the form of a new application.

8.5 **Permits:** Permits issued by the Inland Wetlands Agency may carry the following list of conditions:

8.5.1 Any permit issued under this section for the development of property for which an approval is required under section Connecticut General Statutes 8-3, Connecticut General Statutes 8-25 or Connecticut General Statutes 8-26 shall be valid for five years provided the Agency may establish a specific time period within which any regulated activity shall be conducted. Any permit issued under this section for any other activity 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.

8.5.2 If a bond or issuance is required in accordance with section 8.7 of these regulations, no permit shall be issued until such bond or insurance is provided.

8.5.3 If the activity authorized by the inland wetland permit also involves an activity or project which requires zoning or subdivision approval,

special permit, variance or special exception, no work pursuant to the wetland permit may begin until such approval is obtained.

8.6 Construction notification: The permittee or contractor for the development shall notify the office of the Agency forty-eight (48) hours prior to the start date of the project. Should the permittee or contractor wish to stop construction activities for one (1) week or more, notification must be given forty-eight (48) hours prior to resuming the project. Inspections shall be requested by the applicant for the following stages of work:

8.6.1 Prior to commencing site clearance and after construction work has been staked out.

8.6.2 Prior to commencing excavation and grading of streets embankments or ponds and any drainage in or emptying in a wetland or water course.

8.6.3 Prior to the removal of any erosion control structures and before acceptance of any road by the town or certificate of occupancy from Building/Zoning. No work shall be commenced on succeeding stages of construction in regulated areas until required inspection has been made and approved by the Agency or its designated agent. The Agency or its designated agent may issue orders pursuant to section 9.6 of these regulations for work not complete or in accordance with these regulations or the terms of permit.

Prior to commencing site work activity, the contractor shall sign-off for the receipt and understanding of all terms and conditions of the permit. Said written acknowledgment shall be on file in the office of the Commission.

8.7 Permit extensions and/or renewals: Any application to extend the expiration date of a previously issued permit or amend an existing permit shall be filed with the Agency at least sixty-five (65) days prior to the expiration date for the permit in accordance with section 7 and 8 of these regulations. Any application for amendment, renewal or extension shall be made in accordance with this section provided:

8.7.1 The application may incorporate by reference the documentation and record of the original application;

8.7.2 The application shall state the reason why the authorized activities were not initiated or completed within the time specified in the permit;

8.7.3 The application shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses of the property for which the permit was issued;

- 8.7.4 The Agency may accept an untimely application to extend the expiration date of a permit if the authorized activity is ongoing and allow the continuation of work beyond the expiration date if in its judgment, the permit is likely to be extended and the public interest or environment will be best served by not interrupting the activity. The application shall describe the extent of work completed at the time of filing and the schedule for completing the activities authorized in the permit.
- 8.7.5 The Agency shall evaluate the application pursuant to section 7 of these regulations and grant the application as filed, grant it with any terms or limitations, or deny it.
- 8.7.6 A fee for each permit renewal shall be \$25.00.
- 8.8 **Bond and insurance:** Upon approval of a proposed regulated activity or use and prior to issuance of a wetlands permit the applicant, at the discretion of the Agency, may be required to file the following with the Agency:
- 8.8.1 A cash performance bond, in form and amount acceptable to the Agency and town counsel to guaranty: a) compliance with all provisions of these regulations and conditions imposed by the Agency in connection with approval of the activity, b) conduct of the activity and completion of work in accordance with representations and plans submitted by the applicant, c) restoration and maintenance of the regulated area in the event of noncompliance, and d) setting of permanent 4" x 4" wooden posts delineating the wetland setback boundary as shown on final plans.
- 8.8.2 A certification by the applicant that public liability insurance is in effect covering any and all changes which might occur within three (3) years of completion of the regulated activity; such insurance shall be in an amount acceptable to the Agency and commensurate with the scope of the activity.

Section 9 ADMINISTRATION AND ENFORCEMENT

- 9.1 **Enforcement officer:** The wetlands agency enforcement officer of the Town of Southbury shall have responsibility for inspection of regulated areas and activities therein, for making periodic reports to the Agency as to the status of authorized activities in regulated areas and for other enforcement activities as directed by the Agency.
- 9.1.1 The enforcement officer has the authority to approve or extend 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 wetland or watercourse. Any person receiving such approval from the enforcement officer 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 of Southbury. Any person may appeal such decision of such agent to the Inland Wetlands Commission within fifteen days after the publication date of the notice and the Inland Wetlands Commission shall consider such appeal at its next regularly scheduled meeting provided such meeting is no earlier than three business days after receipt by such Commission, or the enforcement officer of such appeal. The Inland Wetlands Commission shall, at its discretion, sustain, alter or reject the decision of the enforcement officer or require an application for a permit in accordance with these regulations.

- 9.2 ***Inspections:*** Application for a permit shall constitute permission for, and consent to, inspections of the site of proposed activity by the Agency or its agents at all reasonable times before or after the granting of permit. The owner or applicant, or their agent shall have the wetlands permit readily available and shall produce it for inspection by the Agency's representative upon request. The Agency shall be authorized to seek such court orders as shall permit it to inspect land whereon the Agency has probable cause to believe that a regulated activity is in progress, and for which no application has been filed.
- 9.3 ***Content of application:*** All information in applications for conduct of activities in regulated areas shall be considered factual and to constitute stipulations, made by the applicant, as to the nature, scope and effect of the activity. A knowing failure of the applicant or the applicant's agent to provide correct information, or a finding by the Agency that the activity for which a wetlands permit has been granted has a more severe impact or effect on a regulated area than was projected by the applicant, shall be grounds for action by the Agency under section 9.4.
- 9.4 ***Suspension and revocation:*** The Agency may suspend or revoke a wetlands permit if it finds after giving notice to the permittee of the facts or conduct which warrant the intended action, and after a hearing at which the permittee is given an opportunity to show compliance with requirements for retention of the permit, that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The applicant shall be notified of the Agency's decision by certified mail within fifteen (15) days of the date of the decision, and the Agency shall cause notice of their order in issuance, denial, revocation or suspension of a permit to be published in a newspaper having a general circulation in the Town of Southbury.
- 9.5 ***Reporting to DEP:*** A reporting form shall be completed during the application process which provides the Commissioner of the DEP with information necessary to properly monitor the inventory of the states wetlands. The Agency shall be responsible for filling out and submitting all information on forms provided by DEP. All forms should be filed by the fifteenth day of the month following the regular meeting of the Inland Wetlands Agency.

- 9.6 **Orders:** If the Agency finds that any person is conducting or maintaining any activity, facility or condition which is in violation of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended, or of these regulations, the Agency, or the wetlands enforcement officer acting on behalf of the Agency, may issue a written order by certified mail to such person conducting such activity or maintaining such facility or condition to cease immediately such activity or to correct such facility or condition. Within ten (10) days of the issuance of such order, the Agency shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Agency shall consider the facts presented at the hearing and, within ten (10) days of the completion of the hearing, notify the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The original order shall be effective upon issuance and shall remain in effect at least 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 9.7 of these regulations.
- 9.7 **Penalties and remedies:** Any person who commits, takes part in or assists in any violation of any of these regulations is subject to penalties and remedies as specified in the Connecticut General Statutes or by ordinances adopted by the board of selectmen.
- 9.8 **Administrative provisions:** The Agency may, from time to time by resolution, adopt forms, specifications for applications and petitions, procedures and interpretations for the administration of these regulations. [See Appendix C]

Section 10. AMENDMENTS.

These regulations and the inland wetlands and watercourses map for the Town of Southbury may be amended, from time to time, by the Agency in accordance with changes in the Connecticut General Statutes or regulations of the State Department of Environmental Protection, or as new information regarding soils and inland wetlands and watercourses becomes available. An application filed with an Inland Wetlands Agency which is in conformance with the applicable inland wetlands regulations as of the date of the decision of such Agency with respect to such application shall not be required thereafter to comply with any change in inland wetlands regulations, (or boundaries) including changes to setbacks and buffers, taking effect on or after the date of such decision. The provisions of this subsection shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses or (2) to any change in regulations, necessary to make such regulations or boundaries consistent with the provisions of Chapter 440 of the General Statutes as of the date of such decision. These regulations and the Town of Southbury Inland Wetlands and Watercourses map shall be amended in the manner specified in section 22a-42a of the Connecticut General Statutes, as amended. The Agency shall provide the Commissioner of Environmental

Protection with a copy of any proposed regulations and notice of the public hearing to consider any proposed regulations or amendments thereto, except determinations of boundaries, at least thirty-five (35) days before the public hearing on their adoption. Application forms and fee schedule shall be considered as part of the Agency regulations.

Section 11. CONFLICT AND SEVERANCE.

If there is a conflict between any provision of these regulations and the provisions of the Act, the provisions of the Act shall govern. The invalidity of any clause, sentence, section, part, subsection or provision of these regulations shall not affect the validity of any other part which can be given effect without such valid part or parts.

Section 12. OTHER PERMITS.

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

Section 13. EFFECTIVE DATE.

These regulations, and any amendments hereto, shall be in full force and effect from the date established by the Southbury Inland Wetlands Agency in accordance with the Connecticut General Statutes.