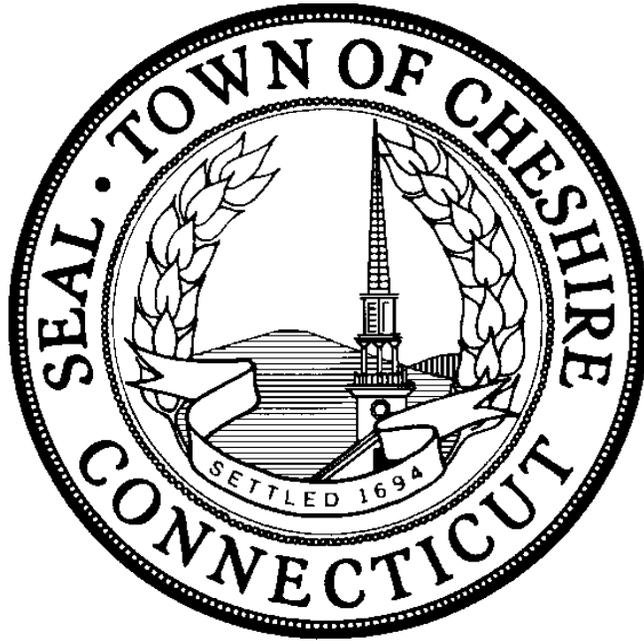


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**All potential applicants should contact the Planning Office for a complete application packet.**



**INLAND WETLANDS AND WATERCOURSES  
REGULATIONS**

**CHESHIRE, CONNECTICUT**

# INLAND WETLANDS AND WATERCOURSES REGULATIONS

TOWN OF CHESHIRE, CONNECTICUT



Adopted June 24, 1974

Amended May 21, 1991; Effective May 31, 1991

Amended March 20, 2004; Effective April 1, 2004

Amended May 17, 2005; Effective June 1, 2005

Amended June 1, 2010; Effective June 22, 2010

Amended October 5, 2010; Effective October 19, 2010

## AMENDMENTS

Amended May 17, 2005; Effective June 1, 2005 at 12:01 a.m.

(Section 2.1 NN – definitions - “Essential to farming operations” and “Watercourses”)

(Section 4.1B2 – Deleted) (Section 9.1B - Amended)

(Section 10.4 and 10.5 – Replaced) (Section 10.6 Adopted)

(Section 12.7 Deleted)

Amended June 1, 2010; Effective June 22, 2010 at 12:01 a.m.

(Section 11.3A - Amended)

(Section 11.3 D – Adopted to add Extended expiration dates of various land use approvals/permits issued between July 1, 2006 and July 1, 2009 to coincide with the amended Connecticut General Statutes, 22a-42a)

Amended October 5, 2010; Effective October 19, 2010 at 12:01 a.m.

(Section 7.1D – Amended)

(Section 7.1F2 – Amended)

# CHESHIRE INLAND WETLANDS AND WATERCOURSES REGULATIONS

## SECTION 1 -- TITLE AND AUTHORITY

### 1.1 Legislative Findings.

- A. The inland wetlands and watercourses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the State have been endowed. The wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic, and plant life.
- B. 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; and 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 the ecology of the State of Connecticut and has imperiled 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 forevermore. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable, and unregulated uses, disturbance, or destruction is in the public interest and is essential to the health, welfare, and safety of the citizens of the State.
- C. It is, therefore, the purpose of these Regulations to protect the citizens of the State and particularly the Town of Cheshire by making provisions for the protection, preservation, maintenance, and use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state, or local authority; preventing damage from erosion, turbidity, or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife, and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational, and other public and private uses and values; and protecting the State's potable fresh water supplies from the dangers of drought, overdraft pollution, misuse, and mismanagement by providing an orderly process to balance the need for the economic growth of the State and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the State, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.

- 1.2 These Regulations shall be known as the "Inland Wetlands and Watercourses Regulations of the Town of Cheshire".

- 1.3 The Cheshire Inland Wetlands and Watercourses Commission was established in accordance with an ordinance adopted by the Cheshire Town Council on January 3, 1974.
- 1.4 These Regulations have been adopted by the Cheshire Inland Wetlands and Watercourses Commission in accordance with, and for the purpose of implementing, the purposes and provisions of Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended, known as "The Inland Wetlands and Watercourses Act".
- 1.5 These Regulations may be amended, from time to time, in accordance with the provisions of the Inland Wetlands and Watercourses Act and these Regulations.
- 1.6 Pursuant to Sections 22a-36 to 22a-45, inclusive, of the *Connecticut General Statutes*, as amended, the Cheshire Inland Wetlands and Watercourses Commission is authorized to grant; deny; limit; or grant with terms, conditions, limitations, or modifications permits for any and all regulated activities conducted or to be conducted in any inland wetland or watercourse and any activity which is likely to impact or affect any inland wetland or watercourse within the Town of Cheshire.
- 1.7 Pursuant to Sections 22a-36 to 22a-45, inclusive, of the *Connecticut General Statutes*, as amended, the Cheshire Inland Wetlands and Watercourses Commission is authorized to enforce all provisions of the Act and these Regulations.

## SECTION 2 -- DEFINITIONS

- 2.1 The following definitions apply to these Regulations:
- A. **"Act"** means the Inland Wetlands and Watercourses Act, Sections 22a-36 through 22a-45, inclusive, of the *Connecticut General Statutes*, as amended.
  - B. **"Bogs"** means wetland and/or watercourse areas usually distinguished by evergreen trees and shrubs underlain by peat deposits, poor drainage, and highly acidic conditions.
  - C. **"Buffer"** means an area of land adjacent to inland wetlands and watercourses that is undisturbed by any construction, excavation, or other alteration to avoid any adverse impact to inland wetlands or watercourses.
  - D. **"Clear-cutting"** means the harvest of timber in a fashion which removes all trees down to a two-inch diameter at breast height.
  - E. **"Commission"** means the Inland Wetlands and Watercourses Commission of the Town of Cheshire.
  - F. **"Commission member"** means a member of the Inland Wetlands and Watercourses Commission of the Town of Cheshire.
  - G. **"Commissioner of Environmental Protection"** means the Commissioner of the State of Connecticut Department of Environmental Protection.
  - H. **"Continual flow"** means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low flow period of the annual hydrological cycle (June through September) but recurs in prolonged succession.
  - I. **"Date of receipt"** of any application means the date of the next regularly scheduled meeting of the Commission immediately following the day of submission of said application to the Commission, or thirty-five days after such submission, whichever is sooner.
  - J. **"Deposit"** means, but is not limited to fill, grade, dump, place, discharge, or emit.
  - K. **"Designated agent"** means an individual(s) designated by the Commission to carry out its functions and purposes.
  - L. **"Discharge"** means the emission, directly or indirectly, of any water, substance, or material into wetlands or watercourses of the Town whether or not such substance causes pollution.
  - M. **"Disturb the natural and indigenous character of the land"** means that the activity will significantly alter the inland wetlands and watercourses by reason of removal or deposition of material, clear-cutting, or the alteration or obstruction of water flow, or that the activity will result in the pollution of the wetland or watercourse.

- N. **"Essential to the farming operation"** means that the activity proposed is necessary and indispensable to sustain farming activities on a farm.<sup>1</sup>
- O. **"Farming"** means the use of land for the growing of crops, the raising of livestock, or for other agricultural use.
- P. **"Feasible"** means able to be constructed or implemented consistent with sound engineering principles.
- Q. **"Inland wetland and watercourse system"** means the inland wetland and watercourse system of the Town of Cheshire.
- R. **"Intermittent watercourse"** means those waterways which are characterized by non-persistent flow. For purposes of these Regulations, intermittent watercourses are delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics:
1. Evidence of scour or deposits of recent alluvium or detritus.
  2. The presence of standing or flowing water for a duration longer than a particular storm incident. Ordinarily, the presence of water is supported by a component, however small, of groundwater outflow or exfiltration.
  3. The presence of hydrophytic vegetation.
- S. **"License"** means the whole or any part of any permit, certificate of approval, or similar form of permission which may be required of any person by the provisions of these Regulations under the authority of the Inland Wetlands and Watercourses Commission.
- T. **"Management practice"** means a practice, procedure, activity, structure, or facility designed to prevent or minimize pollution or other environmental damage or to maintain or enhance existing environmental quality. Such management practices include, but are not limited to, erosion and sedimentation controls, restrictions on land use or development, construction setbacks from wetlands or watercourses, proper disposal of waste materials, procedures for equipment maintenance to prevent fuel spillage, construction methods to prevent flooding or disturbance of wetlands and watercourses, procedures for maintaining continuous stream flows, and confining construction that must take place in watercourses to times when water flows are low and fish and wildlife will not be adversely affected.
- U. **"Marshes"** means wetland and/or watercourse areas with soils that exhibit aquatic moisture regimes that are distinguished by the absence of trees and shrubs and are dominated by soft-stemmed herbaceous plants. The water table in marshes is at or above the surface throughout the year, but seasonal fluctuations are encountered, and areas of open water six inches or more in depth are common.

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<sup>1</sup> Amended May 17, 2005; effective June 1, 2005 at 12:01 a.m.

- V. **"Material"** means any substance, solid or liquid, organic or inorganic, including, but not limited to, soil, sediment, aggregate, land, gravel, clay, bog, peat, mud, debris, sand, refuse, or waste.
- W. **"Municipality"** or "Town" means the Town of Cheshire.
- X. **"Nurseries"** means land used for propagating trees, shrubs, or other plants for transplanting, sale, or for use as stock for grafting.
- Y. **"Permit"** means the whole or any part of any license, certificate of approval, or similar form of permission which may be required of any person by the provisions of these Regulations and the Act under the authority of the Inland Wetlands and Watercourses Commission.
- Z. **"Permittee"** means the person to whom a permit, as defined in this Section 2.1, has been issued.
- AA. **"Person"** means any person, firm, partnership, association, corporation, company, organization, or legal entity of any kind including municipal corporations, governmental agencies, or subdivisions thereof.
- BB. **"Pollution"** means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the Town 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. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing, or excavation activity.
- CC. **"Prudent"** means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity. Cost may be considered in deciding what is prudent; however, a mere showing of expense will not necessarily mean an alternative is imprudent.
- DD. **"Regulated activity"** means any operation within or the use of a wetland or watercourse involving, but not limited to, the removal or deposition of material and any obstruction, construction, alteration, or pollution of such wetlands and watercourses including any pond (permanent or seasonal) and including construction of any road or driveway over a watercourse, any rechanneling of a perennial or intermittent stream or intermittent watercourse, any discharge which has potential for significant erosion and/or deposition, or any earthmoving, filling, construction, or clear-cutting of trees within fifty (50) feet of wetlands and/or watercourses which earthmoving, etc. is likely to impact or affect wetlands or watercourses. Those activities specified in Section 4 of these Regulations, however, are determined to be nonregulated activities or activities permitted as of right.

- EE. **"Regulated area"** means the area where a "regulated activity", as defined in this Section 2.1, occurs and includes all inland wetlands and/or watercourses, as defined in these Regulations and all areas within the fifty-foot review area, as defined in Section 2.1(DD).
- FF. **"Remove"** means, but is not limited to, drain, excavate, mine, dig, dredge, suck, grub, clear-cut timber, bulldoze, dragline, or blast.
- GG. **"Rendering unclean or impure"** means any alteration of the physical, chemical, or biological properties of any waters of the Town including, but not limited to, change in odor, color, turbidity, or taste.
- HH. **"Significant activity"** means any activity which will or may have a major effect or significant impact on the area for which an application has been filed or another part of the inland wetland or watercourse system, including, but not limited to, the following activities:
1. Any activity which involves 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
  2. Any activity which substantially changes the natural channel, or may inhibit the natural dynamics, of a an inland wetland or watercourse system; or
  3. Any activity which causes substantial turbidity, siltation, or sedimentation in a wetland or watercourse; or
  4. Any activity which causes the destruction or substantial impairment of an identified aquifer or recharge area; or
  5. Any activity which causes a substantial reduction in the flood storage capacity of an inland wetland or watercourse; or
  6. Any activity which causes the constriction or alteration of a watercourse channel which might result in altering the volume or velocity of water leading to upstream or downstream flooding; or
  7. Any activity which causes a substantial diminution of flow of a natural watercourse or a diminution of groundwater levels of the regulated area; or
  8. Any activity which causes a decrease in the minimum low flow of a watercourse during periods of drought; or
  9. Any activity which causes, or has the potential to cause, pollution of an aquifer, a wetland, or a watercourse; or

10. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to support desirable fisheries, wildlife, or other biological life and/or to function effectively as a part of the total wetland ecosystem including loss of productivity of an economic resource; or
  11. Any activity which directly or indirectly causes or is reasonably likely to cause destruction or substantial deterioration of unique wetlands, watercourses, or wetland or watercourse areas which have demonstrable scientific or educational value; or
  12. A conflict with the Town Plan of Conservation and Development or open space plan, which may result from incompatible uses, loss of amenities, etc.; or
  13. The creation of conditions which may adversely affect the health, welfare, and safety of the individual or the general public, which may be incurred when unsuitable development occurs in swamps or marshes, along watercourses, or in areas subject to flooding.
- II. **"Soil scientist"** means an individual duly qualified in accordance with standards set by the Federal Office of Personnel Management (formerly the U. S. Civil Service Commission).
- JJ. **"Swamps"** means wetland and/or watercourse areas with soils that exhibit aquatic moisture regimes and are dominated by wetland trees and shrubs, such as red maple, black gum, and black ash. There is often a conspicuous understory of high bush shrubs and a rich diversity of wild flowers. Shrub swamps are another swamp type with a higher water table. The underlying deposits are relatively shallow and usually highly organic.
- KK. **"Submerged lands"** means those lands which are inundated by water on a seasonal or more frequent basis.
- LL. **"Town"** means the Town of Cheshire.
- MM. **"Waste"** means sewage or any substance, liquid, gaseous, solid, or radioactive, which may pollute or tend to pollute any of the inland wetlands or watercourses of the Town.

- NN. **“Watercourses”**<sup>1</sup> means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through, or border upon the Town or any portion thereof not regulated pursuant to the *Connecticut General Statutes*, Section 22a-28 through 22a-35, inclusive. 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 of 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.
- OO. **"Wetlands"** means land, including submerged lands as defined in this Section 2.1, not regulated pursuant to *Connecticut General Statutes*, Sections 22a-28 to 22a-35, inclusive (Tidal Wetlands and Watercourses), as amended, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, or floodplain by the National Cooperative Soils Survey, as may be amended from time to time, of the Natural Resources Conservation Service (formerly the Soil Conservation Service) of the United States 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.

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<sup>1</sup> Amended May 17, 2005; effective June 1, 2005 at 12:01 a.m.

### **SECTION 3 – INVENTORY OF REGULATED AREAS**

- 3.1 The map of regulated areas entitled "Official Inland Wetlands and Watercourses Map, Town of Cheshire, New Haven County, Connecticut", Scale 1"=1000', prepared June, 1974 by C. Dimmick and R. Graham, Cheshire Inland Wetlands Commission and on file in the Cheshire Town Clerk's Office as Map #1890, delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of this map are available for inspection in the offices of the Cheshire Town Clerk and Cheshire Town Planner. Said map shall be considered to be a part of these Regulations.
- 3.2 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 the locations of watercourses. Such determinations shall be made by field inspection and testing conducted by a soil scientist where soil classifications are required, or by any qualified individual where watercourse determinations are required. The Commission may use aerial photography, remote sensing imagery, resource mapping, soils map, site inspections, observations, or other information in determining the exact location of the boundaries of wetlands and watercourses.
- 3.3 Wetlands, as defined in Section 2.1(OO) of these Regulations, that may not appear on the Official Map, are still subject to these Regulations.
- 3.4 Watercourses, as defined in Section 2.1(NN) of these Regulations, that may not appear on the Official Map, are still subject to these Regulations.
- 3.5 The Commission or its designated agent(s) shall regularly inventory and maintain current records of all regulated areas within the Town. The Commission may amend its map from time to time as information becomes available relative to more accurate delineation of wetlands and watercourses within the Town. Such map amendments are subject to the public hearing process outlined in Section 14 of these Regulations.
- 3.6 Any property owner who disputes the designation of any part of his or her land as a regulated area on the Official Inland Wetlands and Watercourses Map, may petition the Commission to change the designation in accordance with Section 14 of these Regulations.
- 3.7 The Commission and/or its designated agent shall monitor and maintain general surveillance of the regulated areas within the Town to ensure that no unauthorized, regulated activities occur.

## **SECTION 4 -- USES PERMITTED AS OF RIGHT AND NONREGULATED USES**

### 4.1 As Of Right And Nonregulated Uses.

- A. As Of Right Uses. Subject to Section 4.2 of these Regulations, the following operations and uses shall be permitted in inland wetlands and watercourses as of right:
1. Grazing, farming, fish farming, nurseries, gardening, harvesting of crops, farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this Subsection shall not be construed to include road construction or the erection of buildings not directly related to the farming operation; relocation of watercourses with continual flow; filling or reclamation of wetlands or watercourses with continual flow; clear-cutting of timber, except for the expansion of agricultural crop land; or the mining of top soil, peat, sand, gravel, or similar material from wetlands or watercourses for the purposes of sale;
  2. A residential home for which a building permit has been issued or which is on a subdivision lot; provided, the building permit has been issued by the Town, or the subdivision has been approved by the Cheshire Planning and Zoning Commission, as of June 27, 1974, and further provided, no residential home shall be permitted as of right pursuant to this Section 4 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 a site plan showing proposed and existing topographic contours, house and well locations, septic system, driveway, approval dates, or other necessary information to document his entitlement;
  3. Boat anchorage or mooring, not to include dredging, dock construction, or boat launches;
  4. Uses incidental to the enjoyment and maintenance of residential property. Such property is defined as equal to or smaller than 80,000 square feet, i.e., the largest minimum residential lot permitted anywhere within the Town and which contains a residence. Such incidental uses shall include maintenance of existing structures and landscaping but shall not include removal or deposition of significant amounts of material from or into a wetland or watercourse or diversion or alteration of a watercourse;

5. Construction and operation by water companies as defined in Section 25-32a of the *Connecticut General Statutes*, as amended, or by municipal water supply systems as provided for in Section 7-234 of the *Connecticut General Statutes*, 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 and 22a-403 of the *Connecticut General Statutes*, as amended.
6. Maintenance relating to any drainage pipe which existed before June 27, 1974, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this Subsection, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place.

B. Nonregulated Uses.

1. The following operations and uses shall be permitted as nonregulated uses in wetlands and watercourses, provided they do not adversely disturb the natural and indigenous character of the wetlands or watercourses by removal or deposition of material, alteration or obstruction of water flow, or pollution of the wetlands or watercourses:
  - a. Conservation of soil, vegetation, water, fish, shellfish, and wildlife. Such operation or use may include, but is not limited to, minor work to control erosion or to encourage proper fish, wildlife, and silviculture management practices;
  - b. Outdoor recreation including, but not limited to, the use of existing play and sporting areas, golf courses, field trails, nature study, hiking, horseback riding, bicycle riding, swimming, skin and scuba diving, camping, boating, water skiing, trapping, hunting, fishing, shellfishing, and cross-country skiing where otherwise legally permitted and regulated; and
  - c. Testing and monitoring associated with and related to water quality and subsurface drainage and/or sewage disposal systems.

- C. All activities in wetlands or watercourses involving filling, excavation, dredging, clear-cutting, grading and excavation, or any other alteration or use of a wetland or watercourse which is not specifically permitted by this Section 4 shall require a permit from the Commission in accordance with Section 6 of these Regulations.

4.2 Determination That Use Is Permitted Or Nonregulated.

- A. To carry out the purposes of these Regulations, any person proposing to carry out a permitted or nonregulated operation or use in a wetland or watercourse, which may disturb the natural and indigenous character of the wetland or watercourse, shall, prior to commencement of such operation or use, notify the Commission of such proposed operation or use.
- B. Such notice shall be made by filing with the Commission a copy of the form found at APPENDIX A of these Regulations. The Commission shall be provided with sufficient information to enable it to properly determine that the proposed operation or use is a permitted or nonregulated use of the wetland or watercourse.
- C. The Commission shall determine that the proposed operation or use is a permitted or a nonregulated use or operation or that a permit is required. Such determination shall be in writing and shall be made not later than the next regularly scheduled meeting of the Commission following the meeting at which the request was received.
- D. The designated agent for the Commission may make such a determination on behalf of the Commission at any time with the concurrence of the Commission Chairman.

4.3 Initiation of a permitted or nonregulated use or operations shall be within one (1) year of the determination made pursuant to Section 4.2 of these Regulations. Any such determination shall expire one (1) year from date of issuance unless otherwise extended by the Commission, upon request of the person seeking such determination.

## **SECTION 5 -- ACTIVITIES REGULATED BY THE STATE**

- 5.1 In addition to any permit or approval required by the Commission the Commissioner of Environmental Protection shall regulate activities in or affecting wetlands or watercourses subject to the following jurisdiction:
- A. Construction or modification of any dam pursuant to Sections 22a-401 through 22a-411 of the *Connecticut General Statutes*, as amended;
  - B. Construction, encroachment, or placement of any obstruction within stream channel encroachment lines pursuant to Sections 22a-342 through 22a-350 of the *Connecticut General Statutes*, as amended;
  - C. Construction or placement of any structure or obstruction within the tidal, coastal, or navigable waters of the State pursuant to Sections 22a-359 through 22a-363(f) of the *Connecticut General Statutes*, as amended, or in designated tidal wetlands pursuant to Sections 22a-28 through 22a-35 of the *Connecticut General Statutes*, as amended;
  - D. Diversion of water, including withdrawals of surface or groundwater in excess of fifty thousand (50,000) gallons per day, or any piping, culverting, channelization, relocation, damming, or other alteration of the location of flow of any surface waters of the State where the tributary watershed area above the point of diversion is 100 acres or larger pursuant to Sections 22a-365 through 22a-378 a of the *Connecticut General Statutes*, as amended;
  - E. Discharges into the waters of the State pursuant to Section 22a-430 of the *Connecticut General Statutes*, as amended;
  - F. 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.
- 5.2 The Commissioner of Environmental Protection, pursuant to Sections 22a-39 or 22a-45a of the *Connecticut General Statutes*, as amended, 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.
- 5.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to Sections 22a-28 through 22a-35 of the *Connecticut General Statutes*.

- 5.4 The Commissioner of Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Environmental Protection pursuant to Section 22a-402 of the *Connecticut General Statutes*, as amended, or a dam construction permit issued by the Commissioner of Environmental Protection pursuant to Sections 22a-403 or 22a-411 of the *Connecticut General Statutes*, as amended. Any person receiving such a dam repair or removal order or a dam construction permit shall not be required to obtain a permit from the Commission for any action necessary to comply with said dam order or to carry out the activities authorized by said dam permit.

## **SECTION 6 -- REGULATED ACTIVITIES TO BE LICENSED**

- 6.1 Any person proposing to conduct or maintain, or causing to be conducted or maintained, a regulated activity within a regulated area shall apply for a permit for such activity from the Commission.
- 6.2 The Commission shall regulate any operation within, or use of, a wetland or watercourse which involves removal or deposition of material; any obstruction, construction, alteration, or pollution of such wetlands or watercourses; and any other regulated activity, unless such operation or use is permitted or nonregulated pursuant to Section 4 of these Regulations.
- 6.3 Any person found to be conducting or maintaining a regulated activity without the prior permit of the Commission or found to be violating any other provision of these Regulations, shall be subject to the enforcement proceedings and penalties prescribed in Section 13 of these Regulations and any other remedies as provided by law.

## **SECTION 7 – APPLICATION REQUIREMENTS**

### 7.1 Applications For A Permit To Conduct Regulated Activities.

- A. It is recommended, in the interest of expediting review of the application, that the applicant consult with the designated agent of the Commission prior to presentation of the formal application to the Commission. The applicant may present a preliminary plan of the proposed activity to the agent for review. No application fee will be charged until a formal application is filed for submittal to the Commission at its regularly scheduled meeting. All comments of the agent will be advisory only and not binding on the Commission.
- B. Any person wishing to undertake a regulated activity shall apply for a permit on a form entitled "Town of Cheshire Inland Wetlands and Watercourses Commission – Application for Permit". An application shall consist of a completed application form and such additional information as prescribed by this Section 7. Application forms may be obtained in the office of the Cheshire Town Planner. A copy of that application form is found in APPENDIX B of these Regulations.
- C. All applications shall contain such information as is necessary for a fair and informed determination of the issues by the Commission.
- D.<sup>1</sup> Application must be made by the property owner (or owners) of record, by a person duly authorized by such owner to make application, or by the Town, as provided below:
  - 1. In the event the person making the application is not the owner, he or she must submit an "Owners' Affidavit of Consent" with the application. The form of such affidavit is found in APPENDIX C.
  - 2. In the event the application is made by the Town in connection with a public project that has been approved by the Town Council and for which the Town is unable to obtain the owner's consent after reasonable attempts, the following, additional provisions apply:
    - a. Not fewer than twenty-one (21) days before the day that the Town files the application with the Commission, it shall transmit to the property owner(s) a copy of the application (with all supporting documentation) and a cover letter advising him or her that the application has been filed and the date when the Town will present the application to the Commission. It shall also include a copy of the Commission's meeting schedule in the transmittal.
    - b. The transmittal shall be by U. S. certified mail with return receipt requested or by a nationally recognized delivery service that provides proof of delivery or delivery attempt, and it shall be addressed to the owner(s) of the property as listed in the Assessor records or to the actual owner(s) if otherwise known to the Town.

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<sup>1</sup> Amended October 5, 2010; Effective October 19, 2010 at 12:01 a.m.

- c. At the first meeting or hearing of the Commission at which the application is heard, the Town's representative shall state on the record that the notice requirements of this section have been met, and, if requested by the Commission, shall provide the Commission with a copy of the return or delivery receipt.
  - d. No error in the transmittal of the notice and no failure of owners to receive the notice shall invalidate any action taken by the Commission; however, the Town's failure to comply with these notice requirements may constitute, in the sole discretion of the Commission, good and sufficient reason to deny the application without prejudice to its resubmission.
  - e. If the Commission grants the Town's application, the following stipulation shall be made a part of the permit: "A copy of the fully executed easement (or other documentation of permission to perform work on the property) shall be submitted to, and approved by, the Commission's agent prior to the commencement of the regulated activities."
- E. Three copies of all application materials shall be submitted with the original application to comprise a complete application or as is otherwise directed, in writing, by the Commission.
- F. A complete application shall include such information as is detailed in APPENDIX D of these Regulations, and in addition, the applicant shall provide the following information to the Commission if not already provided pursuant to APPENDIX D:
- 1. The applicant's name, home and business addresses, and telephone numbers;
  - 2.<sup>1</sup> The owner's name, address, telephone number, and written consent of, or notice to, the owner (as provided in Section 7.1(D) above) if the applicant is not the owner of the property involved in the application;
  - 3. The applicant's interest in the land (owner, tenant, lessee, partner, etc.);
  - 4. The geographical location of the property which is to be affected by the proposed activity and a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, the area(s) (in acres or square feet) of wetlands or watercourses to be disturbed, soil type(s), and wetland vegetation;

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<sup>1</sup> Amended October 5, 2010; Effective October 19, 2010 at 12:01 a.m.

5. The purpose and description of the proposed activity and the proposed erosion and sedimentation controls, including other management practices and mitigation measures which may be considered by the Commission as a condition of issuing a permit for the proposed regulated activity. These practices and measures shall include, but shall not be limited to, practices and measures designed to prevent or minimize pollution or other environmental damage; maintain or enhance existing environmental quality; or, in the following order of priority, restore, enhance, and create productive wetland or watercourse resources;
6. Alternatives considered by the applicant and why the proposal to alter wetlands set forth in the application was chosen;
7. A site plan showing existing and proposed conditions in relation to wetlands and watercourses and identifying any further activities associated with, or reasonably related to, the proposed regulated activity which associated activities are made inevitable by the proposed regulated activity and which may have an impact or effect on wetlands or watercourses;
8. Names and addresses of adjacent property owners;
9. Certification that the applicant is familiar with all the information provided in the application and that it is true to the best of the applicant's information and belief and that the applicant is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information;
10. Authorization for the Commissioners and agents of the Commission to enter upon and inspect the property, at reasonable times, both before and after a final decision has been issued;
11. A map at a suitable scale showing wetlands and/or watercourses and general topography of adjacent wetlands and/or watercourses within five hundred (500) feet of the site;
12. Any other information the commission deems necessary to understand what the applicant is proposing.
13. The appropriate filing fee as set forth in Section 12.7(c) of the Cheshire Code of Ordinances.
14. A Department of Environmental Protection reporting form which provides the Commissioner of the Department of Environmental Protection with information necessary to properly monitor the inventory of State wetlands. The reporting form shall include the following information: Name of applicant, location and name of the project, project and site description, town(s) in which action is occurring, activity purpose and type, upland area altered, and area of wetlands and/or linear feet of watercourse proposed to be altered and/or restored/enhanced/created.

The Commission shall be responsible for the remaining information and any corrections of the form and for filing it in accordance with Section 22a-39-14 of the Inland Wetlands and Watercourses Regulations of the Department of Environmental Protection.

7.2 Applications For A Permit To Conduct A Regulated Activity Which Involves A Significant Activity

- A. If the proposed activity involves a significant activity as determined by the Commission and as defined in Section 2 of these Regulations, additional information, based on the nature and anticipated effects of the activity is required to be filed by the applicant with the Commission.
- B. Such additional information shall include, but is not limited to, the following:
1. Site plans for the proposed use or operation and for the property which will be affected. Such plans shall show existing and proposed conditions, wetland and watercourse boundaries, land contours, boundaries of land ownership, proposed alterations and uses of wetlands and watercourses, and other pertinent features of the development. The site plan(s) shall be drawn by a licensed surveyor, professional engineer, landscape architect registered in the State of Connecticut, or by such other qualified person;
  2. Engineering reports and analyses and additional drawings to fully describe the proposed project and any filling, excavation, drainage, or hydraulic modifications to watercourses and the proposed erosion and sedimentation control plan;
  3. Mapping of soil types consistent with the categories established by the National Cooperative Soil Survey of the U.S. Natural Resources Conservation Service; said mapping shall be signed by a certified soil scientist certifying that the boundary of the wetlands soil types mapped thereon is substantially correct; however, in such cases where the wetland soil boundary is obvious to the non-expert, such certification may be waived by the Commission;
  4. Description of the ecological communities and functions of the wetlands or watercourses involved with the application and the effects of the proposed regulated activities on these communities and wetland functions;
  5. Description of how the applicant will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application and each alternative thereto including a description of why each alternative considered was deemed neither feasible nor prudent;
  6. Analysis of chemical or physical characteristics of any fill material;

7. Management practices and other measures which mitigate the impact of the proposed activity. Such measures shall include, but are not limited to, plans or actions which avoid destruction or diminution of wetland or watercourse functions, recreational uses, and natural habitats; which prevent flooding, degradation of water quality, erosion and sedimentation and obstruction of drainage; or which otherwise safeguard water resources.

7.3 Intermunicipal And Interagency Notice. Pursuant to, and to implement the notice provisions of, Section 8.2 of these Regulations, the applicant shall provide the following to the Commission prior to the close of the public hearing, if one is held; otherwise, prior to the Commission's decision-making on the application:

A. Certification concerning the following information:

1. Whether any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of an adjoining municipality; or
2. Whether, regardless of the 500 feet limitation of Section 7.3(A)(1) above, 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; or
3. Whether, regardless of the 500 feet limitation of Section 7.3(A)(1) above, a significant portion of the sewer or water drainage from the project site will flow through and impact the sewage or drainage system within the adjoining municipality; or
4. Whether, regardless of the 500 feet limitation of Section 7.3(A)(1) above, water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality; or
5. Whether, regardless of the 500 feet limitation of Section 7.3(A)(1) above, any portion of the wetland or watercourse involved is within the watershed of a water company as defined in Section 25-32a of the *Connecticut General Statutes*, as amended, and as discussed in Section 8.2(A)(2) of these Regulations.

B. Documentation that the notice required in Section 8.2(A) of these Regulations has been given.

7.4 Applications To Amend Or Extend The Expiration Date Of An Existing Permit.

A. General Provisions.

1. Any application to extend the expiration date of a previously issued permit or to amend an existing permit shall be filed in accordance with Section 8 of these Regulations at least sixty-five (65) days prior to the expiration date for the permit

2. Any application for such amendment or extension shall include the information required by this Section 7; however, the application may incorporate by reference the documentation and records of the original application.
3. Any application for such amendment or extension shall also include the following information as applies to the application:
  - a. A description of the extent of the work completed at the time of filing and the schedule for completing the activities authorized by the permit.

The reason why the authorized activities were not initiated or completed within the time, and in accordance with the methods, specified in the permit;

A description of any changes in facts or circumstances involved with or affecting wetlands or watercourses or the property for which the permit was issued;

**B. Specific Provisions For Permit Extension Applications.**

1. The Commission may, prior to the expiration of a permit, accept an untimely application to extend the expiration date of a permit if the authorized activity is ongoing and may 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.
2. The Commission shall evaluate an application to extend the expiration date of an existing permit pursuant to Section 10 of these Regulations.
3. The Commission shall decide such an application pursuant to Section 11.3 of these Regulations.

**C. Specific Provisions For Permit Amendment Applications.**

1. The Commission shall evaluate an application to amend an existing permit pursuant to Section 10 of these Regulations.
2. The Commission shall decide such an application pursuant to Section 11.2 of these Regulations.

## SECTION 8 -- APPLICATION PROCEDURES

8.1 All applications for permits, for amendments or extensions of existing permits, and for amendments to these Regulations or to the Official Inland Wetlands and Watercourses Map shall be submitted to the Commission by submitting same to the office of the Cheshire Town Planner.

### 8.2 Notice Requirements.

#### A. Applicant To Give Notice.

1. When an application to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse is filed and when any portion of such wetland or watercourse is within 500 feet of the boundary of the Cities of Meriden or Waterbury or the Towns of Southington, Wolcott, Prospect, Hamden, Bethany, or Wallingford, then the applicant shall give written notice of the application and the proposed activity to the adjacent municipality by mailing notice of such application and a copy of the application and map, by certified mail, return receipt requested, to the adjacent municipality's wetlands agency on the same day of filing an inland wetland permit application with the Commission. Documentation of such notice shall be provided to the Commission in accordance with Section 22a-42c of the *Connecticut General Statutes*, as amended.
2. When an application to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse is filed and when any portion of such wetland or watercourse is within the watershed of a water company (as defined in Section 25-32a of the *Connecticut General Statutes*, as amended), and when such water company has filed a map showing the boundaries of the watershed on the Land Records of the Town of Cheshire and with the Commission, then the applicant shall give notice of the application and the proposed activity to the water company by mailing notice of such application and a copy of such application and map, by certified mail, return receipt requested, to the water company. Such mailing shall be made within seven (7) days of the date of the application. Documentation of such notice shall be provided to the Commission. The water company, through a representative, may appear and be heard at any hearing on the application.

#### B. Commission To Give Notice.

1. The Commission shall, in accordance with Section 8-7d(f) of the *Connecticut General Statutes*, as amended, notify the clerk of any adjoining municipality of the pendency of any application to conduct a regulated activity in which:
  - a. Any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of the adjoining municipality; or

- b. Regardless of the 500 feet limitation of Section 8.2(B)(1)(a) above, 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; or
      - c. Regardless of the 500 feet limitation of Section 8.2(B)(1)(a) above, 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. Regardless of the 500 feet limitation of Section 8.2(B)(1)(a) above, water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality.
    2. Such notice shall be given by mailing notice of such application and a copy of the application and map, by certified mail, return receipt requested, within seven (7) days of the date of receipt of the application.
    3. Such adjoining municipality may, through a representative, appear and be heard at any hearing on any such application.
  - C. Notice Is A Precondition To Holding The Public Hearing. No hearing may be conducted on any application unless the adjoining municipality, the inland wetlands and watercourses commission of the adjoining municipality, and the water company has received the notice required under this Section.
- 8.3 Prior to the close of a public hearing, if one is held, the Commission may require the applicant to provide additional information regarding the regulated area or regulated activity which is the subject of the application or regarding the wetlands or watercourses affected by the regulated activity. Requests for additional information shall not stay the time limitations set forth in Section 11 of these Regulations. If no public hearing is held, the Commission may receive such additional information at any time during the review period but prior to its decision-making on the application.
- 8.4 All applications, maps, and documents relating to the permit shall be open for public inspection.
- 8.5 Incomplete applications may be denied.

## SECTION 9 –PUBLIC HEARINGS

- 9.1 The Commission shall not hold a public hearing on any permit application unless any one or more of the following occurs:
- A. The Commission determines that the proposed activity may have a significant impact on wetlands or watercourses;
  - B. A petition signed by at least twenty-five (25) persons who are eighteen years of age or older requesting a hearing is filed with the Commission not later than fifteen (15) days after the date of receipt of such application; or<sup>1</sup>
  - C. The Commission finds that a public hearing regarding such application would be in the public interest.
- 9.2 Public hearings shall be scheduled to commence no more than sixty-five (65) days after the date of receipt of the application, as defined in Section 2.1 of these Regulations.
- 9.3 Notice of the time and place of the public hearing shall be published in a newspaper having a general circulation in the Town of Cheshire and in each town where the affected wetland and watercourse, or any part thereof, is located. Such notice shall be published at least twice, at intervals of not fewer than two (2) days, the first not more than fifteen (15) days and not fewer than ten (10) days before the date set for the hearing and the last not fewer than two (2) days before the date set for the hearing.
- 9.4 The hearing shall be completed within thirty-five (35) days of its commencement.
- 9.5 The applicant may consent to one or more extensions of the periods specified in this Section for the commencement, holding, and completion of the hearing on such application, provided the total extension of any such period is in conformance with Section 11.1 of these Regulations, or the applicant may withdraw such application.
- 9.6 In the case of any application which is subject to the notification provisions of Section 8.2 of these Regulations, a public hearing shall not be conducted until the relevant notice has been received by the clerk of the adjoining municipality or by the inland wetlands commission of the adjoining municipality or by the water company, as the case may be. Proof of such notification shall be entered into the hearing record.

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<sup>1</sup> Amended May 17, 2005; effective June 1, 2005 at 12:01 a.m.

## **SECTION 10 – CONSIDERATIONS FOR DECISION**

- 10.1 The Commission shall consider the following information in making its decision on an application:
- A. The application and its supporting documentation.
  - B. Public comments, evidence, and testimony offered at the public hearing, if one was held.
  - C. Reports and/or comment made by the following departments, agencies, or commissions whether or not made pursuant to a request by the Commission; however, non-receipt of comments from these agencies shall not delay or prejudice the decision of the Commission:
    - 1. Town of Cheshire Environment Commission.
    - 2. Town of Cheshire Planning and Zoning Commission.
    - 3. Town of Cheshire Department of Public Works.
    - 4. Town of Cheshire Department of Building Inspection.
    - 5. Town of Cheshire Department of Engineering.
    - 6. Town of Cheshire Water Pollution Control Authority.
    - 7. Town of Cheshire Health Officer or State Department of Health.
    - 8. New Haven County Soil and Water Conservation District.
    - 9. Central Naugatuck Valley Regional Planning Agency or other regional organization.
    - 10. Appropriate agencies and departments in adjacent municipalities which may be affected by the proposed activity.
    - 11. Other agencies or organizations which may undertake additional studies or investigations.
  - D. Each Commission member's own personal, ordinary knowledge and experience concerning the area involved, including that knowledge acquired by a site visit and review. Any information used by Commission members which is not commonly known and all information acquired by members at site visits shall be disclosed on the record by the Commission members.
  - E. Professional, technical assistance furnished to the Commission by staff and other technical advisors retained or utilized by the Commission which assistance enables the Commission to carry out its responsibilities as set forth in these Regulations.

- 10.2 The Commission shall consider all relevant facts and circumstances in making its decision on any application for a permit, including but not limited to the following:
- A. The environmental impact of the proposed, regulated activity on wetlands or watercourses, including the effects on the capacity of the inland wetlands and watercourses to support fish and wildlife, to prevent flooding, to supply and protect surface and ground waters, to control sediment, to facilitate drainage, to control pollution, to support recreational activities, and to promote public health and safety.
  - B. The applicant's purpose for, and any feasible and prudent alternatives to, the proposed, regulated activity, which alternatives would cause less or no environmental impact to wetlands or watercourses. The consideration of alternatives shall include consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity proposed in the application. This consideration should also include, but is not limited to, the alternative of requiring actions of a different nature which would provide similar benefits with different environmental impacts, such as using a different location for the activity.
  - 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, including consideration of the extent to which the proposed activity involves trade-offs between short-term environmental gains at the expense of long-term losses, or vice versa, and consideration of the extent to which the proposed action forecloses or predetermines future options.
  - D. Irreversible and irretrievable 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. This requires recognition that the inland wetlands and watercourses of the State of Connecticut are an indispensable, irreplaceable, and fragile natural resource and that these areas may be irreversibly destroyed by deposition, filling, and removal of material; by the diversion, diminution, or obstruction of water flow, including low flows; and by the erection of structures and other uses.
  - E. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property (including abutting or downstream property) which would be caused or threatened by the proposed, regulated activity, or the creation of conditions which may do so. This includes recognition of potential damage from erosion, turbidity, or siltation; loss of fish and wildlife and their habitat; loss of unique habitat having demonstrable natural, scientific or educational value; loss or diminution of beneficial aquatic organisms and 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.

- F. Impacts of the proposed, regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed, regulated activity which are made inevitable by the proposed, regulated activity and which may have an impact on wetlands or watercourses. This requires a balancing of the need for the economic growth of the state and the use of its land, with the need to protect its environment and ecology for the people of the state and the benefit of generations yet unborn.
- G. Any management practices or mitigation measures which may be considered by the Commission as a condition of issuing a permit for the proposed, regulated activity. These practices and measures shall include, but shall not be limited to, practices and measures designed to prevent or minimize pollution or other environmental damage; maintain or enhance existing environmental quality; or, in the following order of priority, restore, enhance, and create productive wetland or watercourse resources. Such measures also include, but are not limited to, actions which would avoid adverse impacts or lessen impacts to wetlands and watercourses and which would protect the natural capacity of the wetlands and watercourses to support fish and wildlife, prevent flooding, supply water, control sedimentation, prevent erosion, assimilate wastes, facilitate drainage, and to provide recreation and open space.

### 10.3 Findings Concerning Feasible And Prudent Alternatives.

- A. If a public hearing has been held on an application which proposes an activity which the Commission has found will cause a significant impact on wetlands and watercourses, then the Commission shall not issue a permit to authorize the activity unless the Commission first finds, on the basis of the record, that no feasible and prudent alternative exists to conducting the proposed activity.
- B. The Commission shall consider the information, facts, and circumstances discussed in this Section 10 in making its finding concerning the existence of a feasible and prudent alternative.
- C. The Commission's finding and reasons concerning the existence of a feasible and prudent alternative shall be stated on the record, in writing, in the Commission's decision on the permit application.
- D. If the Commission denies an application for the reason that a feasible and prudent alternative may exist, which alternative has less adverse impact on wetlands and watercourses, the Commission shall indicate, on the record and in writing, the types of alternatives which the applicant may investigate.
- E. The Commission's obligations concerning feasible and prudent alternatives, as set forth in Section 10.3, shall not be construed to shift from the applicant to the Commission the burden of proving entitlement to a permit or the burden of presenting the Commission with alternatives to the proposed, regulated activity.
- F. A conclusion that a feasible and prudent alternative does not exist does not create a presumption that a permit should be issued.

- 10.4 In reaching its decision on any application after a public hearing, the Commission 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 Commission in its decision. 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 his application is consistent with the purposes and policies of these regulations and sections 22a-36 to 22a-45, inclusive, of the General Statutes, as amended.<sup>1</sup>
- 10.5 For the purposes of this section,
- (1) “wetlands or watercourses” include aquatic, plant or animal life and habitats in wetlands or watercourses, and
  - (2) “habitats” means areas or environments in which an organism or biological population normally lives or occurs.<sup>2</sup>
- 10.6 A municipal inland wetlands agency shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.<sup>3</sup>

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<sup>1</sup> Amended May 17, 2005; effective June 1, 2005

<sup>2</sup> Amended May 17, 2005; effective June 1, 2005

<sup>3</sup> Adopted May 17, 2005; effective June 1, 2005

## **SECTION 11 -- DECISION PROCESS AND PERMIT**

### **11.1 Time Frame For Action On Applications.**

- A. Action shall be taken on applications within sixty-five (65) days after completion of a public hearing. In the absence of a public hearing, action shall be taken on applications no fewer than fourteen (14) days and no more than sixty-five (65) days from the date of receipt of the application.
- B. The applicant may consent to one or more extensions of the periods specified in this Section for action on such application, provided the total of all extensions together does not exceed 65 days; or the applicant may withdraw such application.
- C. The failure of the Commission or its agent to act on any application within any time period specified in this Section, or any extension thereof, shall not be deemed to constitute approval of the application.

### **11.2 Action On Permit Applications.**

- A. The Commission may grant the application as filed; grant it upon such terms, conditions, limitations, or modifications of the regulated activity which are necessary to carry out the purposes of the Act; or deny it. Such terms, etc. may include any management practices or measures which would mitigate the impacts of the regulated activity; prevent or minimize pollution or other environmental damage; maintain or enhance existing environmental quality; or, in the following order of priority, restore, enhance, and create productive wetland or watercourse resources.
- B. An application deemed incomplete by the Commission or its agent may be withdrawn by the applicant or, if not withdrawn, may be denied by the Commission.
- C. The Commission or its agent shall state in its record the reasons and bases for the decision. Such decisions shall be based fully on the record; shall be in writing; and shall, in accordance with Section 10.3 of these Regulations, incorporate a statement relative to the consideration and existence of feasible and prudent alternatives.
- D. All actions affecting land use and a permit as discussed herein require an affirmative vote of two-thirds (2/3) of those Commission members present and voting, but in no event fewer than four (4) votes.
- E. The Commission shall notify the applicant and any named parties to the proceeding of its decision by certified mail, return receipt requested within fifteen (15) days of the date of the decision. The Commission shall cause notice of its decision in the issuance, denial, amendment, or extension of a permit to be published in a newspaper having a general circulation in the Town of Cheshire.

In any case in which such notice is not published within such fifteen (15) day period, the applicant may provide for the publication of such notice within ten (10) days thereafter.

- F. The Commission shall file notice of its decision with the Cheshire Town Clerk. The administrative officer designated by the Commission shall maintain a record of all applications and the Commission's decisions thereon.
- G. After a permit has been granted, the applicant shall pay to the Commission a fee for the purpose of covering the reasonable cost of monitoring compliance with permit conditions or orders of the Commission. The fee shall be determined by the Commission and shall be dependent upon the scope of the project, but in no event less than \$50.00.
- H. If a bond or insurance is required in accordance with Section 12 of these Regulations, no permit shall be effective until such bond or insurance is provided.
- I. If the Commission or its agent relied 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.
- J. All permits issued by the Commission are subject to and do not derogate any present or future rights or powers of the Commission or the Town of Cheshire. Permits do not convey any rights in real estate or material nor any exclusive privileges and are further subject to any and all applicable public and private rights and to applicable federal, state, and municipal laws or regulations pertinent to the property or activity.
- K. The permittee shall take such necessary steps consistent with the terms and conditions of the permit, to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.

### 11.3 Duration Of Permit And Extension Of Expiration Date.

- A. Except as set forth in Section D, below,<sup>1</sup> any permit issued pursuant to this Section 11 for the development of property for which an approval is required under Sections 8-3, 8-25, or 8-26 of the *Connecticut General Statutes*, as amended, shall be valid for five (5) years; however, the Commission 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 no fewer than two (2) years and no more than five (5) years in the discretion of the Commission.
- B. All permits shall expire upon the completion of the acts specified therein. Within thirty (30) days of the completion of the work, the applicant shall certify, in writing, to the Commission that the work has been completed.

(11-2)

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<sup>1</sup> Amended June 1, 2010; effective June 22, 2010 at 12:01 a.m.

- C. The permittee may apply for extension of the expiration date of an existing permit subject to the following requirements:
1. Application shall be made pursuant to Section 7.4 of these Regulations.
  2. Permits may be extended in the sole discretion of the Commission.
  3. Permit extensions may be subject to the calling of an additional public hearing and any necessary increases in bonding.
  4. The Commission shall grant an application to extend the expiration date of a previously issued permit unless the Commission finds that there has been a substantial change in circumstances which requires a new permit application or if an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued.
  5. The expiration date of any permit shall not be extended to make the permit valid for more than ten (10) years.
- D.<sup>1</sup> Notwithstanding the foregoing, any permit issued pursuant to these regulations during the period from July 1, 2006 to July 1, 2009, inclusive, shall expire not less than six years after the date of such approval. Any such permits shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances that requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no such permit shall be valid for more than eleven years.

#### 11.4 Proposals To Modify Applications After Decision By The Commission.

- A. If the Commission denies the permit or if it grants a permit with terms, conditions, limitations or modifications, the applicant may, within the period for filing an appeal of such decision, submit to the Commission a proposed modification of the application which responds to some of all of the Commission's concerns in denying, limiting, conditioning, or modifying the permit.
- B. The Commission shall determine whether the proposed modification requires the filing of a new application. Any substantial revision of the proposal shall require the filing of a new application, and the new application shall be subject to the public hearing and other requirements as set forth in these Regulations.

#### 11.5 Other Agency Approvals.

- A. If an activity authorized by the inland wetland permit also involves an activity or project which requires zoning or subdivision approval, a site plan, variance, or special permit, the applicant shall, within fifteen (15) days of the date of the Commission's or its agent's decision, file with the Planning and Zoning Commission a copy of the decision of the Commission and the Commission's report on the application.

(11-3)

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<sup>1</sup> Adopted June 1, 2010; effective June 22, 2010.

- B. Nothing in these Regulations shall obviate any requirement for the applicant to obtain any other assent, permit, or license required by law or regulation by the government of the United States or of the State of Connecticut or any other political subdivision thereof. The obtaining of such assents, permits, or licenses is solely the responsibility of the applicant.
- C. No person shall conduct any regulated activity within an inland wetland or watercourse if the project of which the activity is a part requires zoning or subdivision approval without first having obtained a valid certificate of zoning or subdivision approval, a site plan, special permit, variance, or other documentation which establishes that the proposal complies with the zoning or subdivision requirements adopted by the Town of Cheshire.

#### 11.6 Action By Duly Authorized Agent.

- A. Prerequisites To Action By Duly Authorized Agent. The Commission may delegate to its duly authorized agent the authority to act on an application if each of the following requirements is met:
  - 1. The application seeks to approve or extend an activity that is not located in a wetland or watercourse.
  - 2. The agent finds that the conduct of such activity would result in no greater than a minimal impact on any wetlands or watercourses, taking into account the considerations for decision set forth in Section 10 of these Regulations.
  - 3. The agent has completed the comprehensive training program developed by the Commissioner pursuant to Section 22a-39 of the *Connecticut General Statutes*, as amended.
- B. Application Requirements.
  - 1. Application for such approval by the Commission's agent shall be made by filing an application in the Office of the Cheshire Town Planner. A copy of the application is found in Appendix E of these Regulations.
  - 2. The application shall contain the information, including the filing fee, listed under Section 7.1 of these Regulations and any other information the Commission or its agent may reasonably require.
- C. Decision And Publication Of Decision.
  - 1. 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.
  - 2. Any person receiving an approval from such agent shall, within ten (10) days of the date of such approval, publish, at the applicant's expense, notice of the approval in a newspaper having a general circulation in the town wherein the activity is located or will have an effect.

D. Appeal Of Decision.

1. Any person may appeal the decision of such agent to the Commission within fifteen (15) days after the publication date of the notice.
2. The Commission shall consider such appeal at its next regularly scheduled meeting provided such meeting is no earlier than three (3) business days after receipt by the Commission or its agent of such appeal.
3. The Commission shall, in 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 12 -- BOND AND INSURANCE

12.1 Methods Of Securing Compliance. The Commission shall require any one of the following methods or any reasonable combination of them for securing compliance with an approved permit and these Regulations:

- A. Provision of a Bond with Surety.
- B. Approval without Bond.

12.2 Bond With Surety.

A. Form Of Surety. For the purposes of these Regulations, the form of Surety for a Bond which may be provided and accepted by the Commission is as follows:

1. The pledge of a passbook savings account which shall be accompanied by the following:
  - a. A savings account passbook;
  - b. A withdrawal slip in the amount of the bond properly endorsed and made payable to the Town of Cheshire; and
  - c. A letter from the bank acknowledging that the account has been assigned to the Town for a period established for the completion of the project plus six (6) months.
2. An irrevocable letter of credit which shall be provided by a Connecticut bank subject to the approval of the Commission. The letter of credit shall be in such form and accompanied by such documents as may be prescribed by the Commission. The letter of credit shall contain an expiration date of at least six (6) months longer than the period established for the completion of the project.
3. A cash deposit with the Town of Cheshire which shall be in the form of a certified check, cashier's check, or cash, delivered to the Director of Finance of the Town of Cheshire for the full amount of the bond. The Town shall deposit said sum in a specific and separate bank account, earmarked by the name of the surety to the bond, in the name of the Town of Cheshire. The deposit shall be in a savings account drawing standard short-term interest. The surety shall use his, her, or its Taxpayer Identification Number or Social Security number as the interest creditor for IRS and bank purposes. Within thirty (30) days of the release of the bond by the Commission, the Town shall cause the account to be closed and the proceeds, plus interest and less IRS deductions, to be paid to the surety.

B. Computation Of Costs.

1. Following the approval of any permit application, the permittee shall review the scope of the project with the Commission or its duly authorized agent(s) who will review the permittee's estimate of costs and will determine the amount of the bond to be furnished by the permittee to guarantee compliance with the permit and with these Regulations.
2. In computing the estimated cost of the work, the Commission or its agent(s) will give due consideration to possible escalation of costs during the surety period.

C. Clean-up.

1. It shall be a condition of the Bond that the permittee shall, at least every ninety (90) days, clean up construction debris and remove from the site or adjoining areas, all construction materials or equipment no longer needed for the work. Tree stumps, other vegetation debris, and any other material that is unstable or which may deteriorate or disintegrate may only be buried at locations and under conditions approved by the Town Engineer or public health officials, as may be applicable.
2. Any and all material falling on public highways from vehicles or construction equipment and in connection with the permittee's operations shall be cleaned up at the end of each working day, or more frequently, depending upon the nature of the work and the nuisance created.
3. Failure of the permittee to comply with any of the above clean-up requirements shall be sufficient reason for the Commission to take action under the Bond.

D. Failure to Complete Improvements.

1. Where a bond with surety has been posted and the required work has not been completed within the time required, the Commission may declare the permittee to be in default and may determine to withdraw the total amount of surety from the pledged bank account or letter of credit in order to fund the work to ensure compliance with the permit.
2. In the event of such apparent default, the Commission shall notify the permittee and conduct a hearing as set forth in Section 13.4 of these Regulations.
3. All costs the Town may accrue in completing the work, including the value of the time of its public officials and employees and attorney fees, shall be debited against the funds so withdrawn. If for some reason the security is insufficient to pay for all costs to the Town, the applicant and owner shall remain liable for such costs in excess of the security.

E. Release of Surety. The surety shall not be released until the following conditions have been met:

1. All work and conditions of approval of the project have been approved and/or accepted by the Commission or its duly authorized agent.
2. The permittee's engineer, surveyor, or other qualified person has certified to the Commission through submission of detailed "as-built" plans, that the completion of the project is in accordance with the permit. Such plans shall show any modifications or changes made, including those made during construction.
3. The Commission or its agent(s) has received a written notice from the permittee stating that all required work is certified to the Town as satisfactorily completed.
4. If required, a maintenance bond has been filed with the Commission as required by Section 12.4(B) of these Regulations.
5. All other documents, transfers, or conditions required by the approval of the permit shall have been provided and all conditions have been performed to the satisfaction of the appropriate Town official with copies of said documents provided to the Commission.

12.3 Procedure Without Bonding. The permittee shall follow the following procedure if the Commission has authorized him to undertake the project without securing his performance with a bond with surety:

- A. The permittee shall notify the Commission in writing of his intention to proceed without bonding.
- B. All work shall be subject to required inspections during construction.
- C. A Maintenance Bond as provided in Section 12.4(B) shall be posted before the Commission accepts the work as being complete.

12.4 Maintenance of Improvements.

- A. The permittee shall be required to maintain all improvements.
- B. The permittee shall file a Maintenance Bond with the Commission in order to assure the satisfactory condition of the completed project for one (1) year. The Maintenance Bond shall be in an amount not less than 10 percent (10%) of the costs of completion of the bonded activities.

12.5 Attorney Approval. Any and all bonds with surety, agreements, or such other documents required by these Regulations shall be in such form as may be approved by the Town Attorney.

12.6 Right of Entry for Correction of Violations.

- A. The permittee shall file a written agreement executed by the owner of the premises and the permittee, in such form as contained in APPENDIX F and as approved by the Town Attorney, which permits the Town of Cheshire or its officials, employees, or independent contractors to enter upon the premises and to perform all work necessary to correct and abate any violations of these Regulations and any violations of the terms of the permit.
- B. Such right of entry shall arise upon a finding of such violations by the Commission or its agent(s) pursuant to Section 13.3 of these Regulations and shall continue for such time thereafter as is required for the Town to remedy such default.

## SECTION 13 – ENFORCEMENT

- 13.1 The Commission may appoint an agent or agents to act in its behalf with the authority to inspect property, except private residential property, and issue notices of violation or cease and desist orders and carry out other actions or investigations necessary to the enforcement of these Regulations.
- 13.2 The Commission and/or its appointed agent(s) may make regular inspections of all activities for which permits have been issued under these Regulations. Such activities shall be open to inspection at all reasonable times. The owner or applicant, by filing an application for a permit from the Commission, consents to such inspections. The owner, permittee, or their agent shall have such permit readily available and shall produce the same for inspection by such agent or the Commission upon request.
- 13.3 If the Commission 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 or the conditions imposed by the Commission upon a permit, the Commission or its duly authorized agent may take any or all of the following actions:
- A. Issue a written order by certified mail, return receipt requested, to such person conducting such activity or maintaining such facility or condition ordering him to immediately cease such activity and/or to correct such facility or condition. A certificate of the cease and desist order shall be filed by the Commission or its agent with the Cheshire Town Clerk for recordation on the Cheshire Land Records. Within ten (10) calendar days of the issuance of such order, the Commission shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Commission shall consider the facts presented at the hearing, and, within ten (10) days of the completion of the hearing, the Commission shall 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. If the order is complied with, the Commission shall release the recorded certificate of the cease and desist order. The Commission shall publish notice of its decision in a newspaper having general circulation within the Town of Cheshire. The original order shall be effective upon issuance and shall remain in effect until the Commission affirms, revises, or withdraws the order. The issuance of an order pursuant to this Subsection shall not delay or bar an action pursuant to Section 22a-44(b) of the *Connecticut General Statutes*, as amended.
- B. Issue a notice of violation to such person conducting or maintaining such activity, facility, or condition, stating the nature of the violation, the jurisdiction of the Commission, and prescribing the necessary action and steps to correct the violation including, without limitation, halting work in wetlands or watercourses. The Commission may request that the individual appear at the next regularly scheduled meeting of the Commission to discuss the unauthorized activity, provide a written reply to the notice, and/or file an application for the necessary permit. Failure to carry out the action(s) directed in a notice of violation may result in issuance of the order provided in Section 13.3(A) or other enforcement proceedings as provided by law.

- C. Proceed pursuant to Section 22a-44(b) of the *Connecticut General Statutes*, as amended, to, among other things, seek assessment of a civil penalty of not more than \$1,000.00 for each offense against each violator. Each violation shall be a separate and distinct offense, and, in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The Superior Court, in an action brought by the Commission, shall have jurisdiction to restrain a continuing violation of said Sections, to issue orders directing that the violation be corrected or removed, and to assess civil penalties pursuant to Section 22a-44(b) of the *Connecticut General Statutes*, as amended. All costs, fees, and expenses in connection with such action shall be assessed as damages against the violator together with reasonable attorney's fees which may be allowed, all of which shall be awarded to the Commission. The moneys collected pursuant to this Section shall be used to restore the affected wetlands or watercourses to their condition prior to the violation, wherever possible.
- D. Proceed pursuant to Section 22a-44(c) of the *Connecticut General Statutes*, as amended, which provides for criminal prosecution as follows: Any person who willfully or knowingly violates any provision of Sections 22a-36 to 22a-45, inclusive, shall be fined not more than \$1,000.00 for each day during which such violation continues or be imprisoned for not more than six (6) months, or both. For a subsequent violation, such person shall be fined not more than \$2,000.00 for each day during which such violation continues, or such person shall be imprisoned not more than one (1) year, or both. For the purposes of this Section 22a-44(c) of the *Connecticut General Statutes*, as amended, "person" shall be construed to include any responsible corporate officer.
- 13.4 If the Commission finds that a permittee has not complied with the terms, conditions, limitations, or modifications set forth in the permit or has exceeded the scope of the work as set forth in the application, including application plans, the Commission may suspend or revoke the permit. 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 Commission shall hold a hearing to provide the permittee an opportunity to show that it is in compliance with its permit and any and all requirements for retention of the permit. The permittee shall be notified of the Commission's decision to suspend, revoke, or maintain a permit by certified mail, return receipt requested within fifteen (15) days of the date of its decision. The Commission shall publish notice of the suspension, revocation, or maintenance of the permit in a newspaper having a general circulation in the Town of Cheshire.
- 13.5 In cases where fill has been deposited into an inland wetland or watercourse, corrective orders may include removal of the material deposited and whatever other measures may be deemed necessary by the Commission to restore the wetland or watercourse to its natural state and function. All remedial actions ordered shall be taken at the expense of the person conducting the illegal activity or the person maintaining the illegal facility or condition.
- 13.6 Nothing in these Regulations shall be interpreted as limiting or excluding other remedies as are available to the Commission for the protection of the inland wetlands and watercourses.

## SECTION 14 – AMENDMENTS

- 14.1 In accordance with this Section, these Regulations and the Official Inland Wetlands and Watercourses Map may from time to time be amended, changed, or repealed by affirmative vote of two-thirds (2/3) of the members of the Commission present and voting, but in no event fewer than four (4) votes, as new information regarding inland wetlands and watercourses, soils, hydrology, botanical species, etc. peculiar to inland wetlands and watercourses in the Town of Cheshire becomes available or as required to comply with changes in the *Connecticut General Statutes* or regulations of the State Department of Environmental Protection.
- 14.2 An application filed with the Commission which is in conformance with the applicable Inlands 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. Any appeal from the decision of the Commission 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 to the establishment, amendment, or change of boundaries of inland wetlands or watercourses or to any change in regulations necessary to make such regulations consistent with the provisions of the Act as of the date of such receipt.
- 14.3 These Regulations and the Official Inland Wetlands and Watercourses Map shall be amended in the manner specified in Section 22a-42a(a) of the *Connecticut General Statutes*, as amended. The Commission shall provide the Commissioner of Environmental Protection with a copy of any proposed regulations and a copy of any notice of the public hearing to enable the Commissioner to consider any proposed regulations or amendments thereto, except map amendments pursuant to this Section. Such copy shall be provided to the Commissioner at least thirty-five (35) days before the public hearing concerning their adoption.
- 14.4 All petitions requesting a change in the regulations or boundaries of regulated areas shall be submitted in writing on a form provided by the Commission. A copy of that form is attached hereto and incorporated into these Regulations at APPENDIX F.
- 14.5 Petitions requesting changes or amendments to the Official Inland Wetlands and Watercourses Map shall include all relevant facts and circumstances and shall 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. Applicant's interest in the land;
  - D. The address and geographic location of the land affected by the petition;

- E. A map showing the geographic location of the land affected by the petition and existing and proposed wetland and watercourse boundaries on such land in accurate detail together with the documentation supporting such proposed boundary locations.
  - F. The reasons for the requested action;
  - G. The names and addresses of adjacent property owners; and
  - H. A map showing proposed development of the property.
- 14.6 The petitioner has the burden of proving that the designation contained on the Official Inland Wetlands and Watercourses Map is inapplicable and shall provide evidence establishing same. The Commission may require the petitioner to present documentation by a soil scientist (as defined herein) that the land in question does or does not have a soil type classified by the National Cooperative Soils Survey as poorly drained, very poorly drained, alluvial, or flood plain. Such documentation shall include a map of the land in question signed by a soil scientist on which the flag locations defining the boundaries of the regulated soil types are depicted.
- 14.7 Watercourses shall be delineated by a soil scientist, hydrologist, geologist, ecologist, or other qualified individual.
- 14.8 The petition processing fee shall be that as set forth in Section 12.7© of the Cheshire Code of Ordinances.
- 14.9 In accordance with Section 22a-42a(b) of the *Connecticut General Statutes*, as amended, amendments to these Regulations, including changes in boundaries of inland wetlands and watercourses, shall not become effective until after a public hearing in relation thereto is held by the Commission, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in the form of a legal advertisement, appearing in a newspaper having a substantial circulation in the Town of Cheshire at least twice at intervals of not fewer than two (2) days, the first not more than fifteen (15) days nor fewer than ten (10) days, and the last not fewer than two (2) days, before such hearing. A copy of such proposed regulation or boundary change shall be filed in the office of the Town Clerk for public inspection at least ten (10) days before such hearing, and may be published in full in such newspaper.
- 14.10 In accordance with Section 22a-42a(b) of the *Connecticut General Statutes*, as amended, within ninety (90) days after receipt of a petition for a change in any regulation or in the mapped boundaries of any wetland or watercourse area, the Commission shall hold a public hearing to consider the petition. The petitioner shall be notified of the time and place of the scheduled hearing by certified mail, return receipt requested no fewer than ten (10) days prior to the hearing. The Commission shall act upon the changes requested within sixty (60) days after the close of the hearing. The petitioner may consent to one or more extensions of the periods specified in this Section for the holding of a hearing and for action on such petition provided the total extension of any such period shall not be for longer than the original period as specified in this section, or the applicant may withdraw the petition. The failure of the Commission to act within any time period specified in this Section, or any extensions thereof, shall not be deemed to constitute approval of the petition.

- 14.11 The Commission shall make its decision and state in writing, the reasons why the change was made and shall provide a copy of such regulation, boundary, or change to the State Commissioner of Environmental Protection no later than ten (10) days after its adoption; however, failure to submit such regulation, boundary, or change to the Commissioner shall not impair the validity of such regulation, boundary, or change.
- 14.12 These Regulations or boundaries or changes therein shall become effective at such time as is fixed by the Commission provided a copy of same shall be filed in the office of the Town Clerk of Cheshire, Connecticut and a notice of decision is published in a newspaper having general circulation in the Town of Cheshire.

## **SECTION 15 -- APPEALS**

- 15.1 Appeals of actions of the Commission shall be made in accordance with the provisions of Section 22a-43 of the *Connecticut General Statutes*, as amended.
- 15.2 Notice of such appeal shall be served upon the Commission and the State Commissioner of Environmental Protection by the person instituting the appeal.

## **SECTION 16 -- CONFLICT AND SEVERANCE**

- 16.1 If there is a conflict between or among the provisions of these Regulations and those of any other applicable statute, ordinance, or regulation, the provisions of that statute, ordinance, or regulation which imposes the most stringent standards for the use of wetlands and watercourses shall govern.
- 16.2 The invalidity of any word, clause, sentence, section, part, subsection, or provisions of these regulations shall not affect the validity of any other part which can be given effect without such invalid part or parts.

**SECTION 17 -- RECORDS RETENTION AND DISPOSITION**

17.1 The Commission and the Town Clerk for the Town of Cheshire shall retain complete administrative records of commission actions and dispose of such records in accordance with the retention/disposition schedule set forth in Subsection 17.2.

17.2 The Public Records Administrator of the Connecticut State Library has established the following new records retention/disposition schedules for municipal inland wetlands agencies effective April 24, 1989:

<u>Minimum Retention</u> <u>Record Title</u> <u>Town Clerk</u>	<u>Required in Agency</u>
Applications (Including Supporting Materials) -	10 Years
Decision Letters Permanent	10 Years
Approved Site Plans -	10 Years
Legal Notices Permanent	10 Years
Staff & Public Written Testimony (Hearing Records) -	10 Years
Minutes of Meeting & Public Hearings Permanent	15 Years
Tapes, Audio - Inland Wetland Matters -	4 Years
Notices of Violation & Orders -	10 Years
Text of Changes Adopted in Regulations -	Continuous Update/Permanent
General Correspondence Issued or Received -	5 Years

**SECTION 18 -- EFFECTIVE DATE OF REGULATIONS**

- 18.1 These Regulations, including the Official Inland Wetlands and Watercourses Map, application forms, 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 Cheshire.



**INLAND WETLANDS COMMISSION - CHESHIRE, CONNECTICUT**  
**APPLICATION FOR INLAND WETLANDS AND WATERCOURSES PERMIT**

Pursuant to the General Statutes of the State of Connecticut, and all subsequent amendments thereto, the undersigned hereby makes application for approval of permit (Inland Wetlands and Watercourses) for a parcel of land having approximately \_\_\_\_\_ wetland acres, which is part of a tract of land having \_\_\_\_\_ acres, located on (street name) \_\_\_\_\_. Said parcel is generally shown on the current Assessor's Map Plate No(s). \_\_\_\_\_, Lot No(s). \_\_\_\_\_ and is located in a(n) \_\_\_\_\_ zone district.

This permit application is part of a: ( ) Subdivision, ( ) Resubdivision, ( ) Site Plan, ( ) Special Permit, ( ) Zone Change, ( ) Earth Removal, Filling or Regrading, ( ) Other \_\_\_\_\_

The undersigned warrants the truth of all statements contained herein and in all supporting documents according to the best of his knowledge and belief.

By signing this application, the applicant permits Commissioners and agents of the Commission to enter upon and inspect the property, at reasonable times, both before and after a final decision has been issued.

Applicant's Name \_\_\_\_\_ Date \_\_\_\_\_  
(Print of Type)

Applicant's Address (Home) \_\_\_\_\_  
(Office) \_\_\_\_\_

Applicant's Signature \_\_\_\_\_

Telephone Number (Home) \_\_\_\_\_ (Office) \_\_\_\_\_

E-mail \_\_\_\_\_ Fax No. \_\_\_\_\_

Owner's Name (Print or Type) \_\_\_\_\_

Owner's Address \_\_\_\_\_

Owner's Signature \_\_\_\_\_

Engineer's Name (Print or Type) \_\_\_\_\_

Engineer's Address \_\_\_\_\_

Engineer's Signature \_\_\_\_\_

.....  
Agent, if other than applicant, to be contacted with regard to this application:

Name \_\_\_\_\_ Address \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

E-mail \_\_\_\_\_  
.....

**APPLICATION FOR INLAND WETLANDS AND WATERCOURSES PERMIT**

Purpose and description of the proposed activity (including the area of wetlands or watercourses to be disturbed); alternatives considered and why the proposal to alter wetlands set forth in this application was chosen: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applicant's interest in the land: ( ) Owner, ( ) Tenant, ( ) Lessee, ( ) Partner,  
( ) Other \_\_\_\_\_

*Please attach a list of adjacent property owners.*

Check in full payment of minimum application fee – see attached fee schedule - (payable to Collector – Town of Cheshire). An additional fee shall be required if significant wetland activity is determined upon acceptance of the application. The Commission may, at its option, refund this application fee for a non-regulated activity.

NOTE: In order to expedite the review of this application, and avoid unnecessary delay, it is important that the applicant and the land surveyor and/or professional engineer who shall prepare the maps and other plans shall carefully review the Inland Wetlands Regulations to be certain that the plans comply with all requirements contained therein. Submission to the Town Planner's Office must be not less than three (3) working days prior to the regular meeting of the Inland Wetlands Commission in order for the application to be included on the agenda and taken up by the Commission for discussion, action or otherwise.

Per Section 7.1E. of the Inland Wetland and Watercourses Regulations, three copies of all application materials (including maps) shall be submitted with the original application to comprise a complete application or as is otherwise directed, in writing, by the Commission.

**OFFICE USE ONLY**

Date Filed \_\_\_\_\_

Date Presented to Inland Wetlands Commission \_\_\_\_\_

Mandatory Action Date \_\_\_\_\_

Public Hearing Date \_\_\_\_\_

Final Action and Date \_\_\_\_\_

## **APPLICATION FOR INLAND WETLANDS AND WATERCOURSES PERMIT**

### **SITE PLAN AND ENVIRONMENTAL INFORMATION**

The applicant shall submit a map or maps with the following information concerning the proposed regulated activity. The Commission may by regulation waive the submission of all or part of the information required if it finds the datum is not necessary in order to decide on the application.

#### **1. Sheet Size and Graphic Scale**

- \*a. Sheet size shall be limited to a size not greater than 25 inches by 37 inches.
- \*b. Maps shall be drawn to a scale not smaller than 100 feet to an inch.
- c. Additional enlargements and detail may be required as necessary.

#### **2. Orientation and Topography**

- \*a. North Arrow
- b. Locality sketch which shall be drawn (preferably in the upper right corner) to show the relation of the proposed development to nearby streets and physical markings. The locality sketch shall generally be drawn to a scale of 1,000 feet to an inch and shall not exceed 4" x 4" in area.
- c. Existing and proposed grade contours at 2-foot intervals. All elevations shall be referenced to U.S.G.S. datum and so noted on the map.
- \*d. Certification that the accuracy of the information on the map meets the standards for Class A-2 Transit Survey established by the Connecticut Technical Council

#### **3. Title Block (To be shown in Lower Right Corner of Sheet)**

- \*a. Name of Project.
- \*b. Name of owner/applicant, and/or developer.
- \*c. Date and subsequent date of revisions.
- \*d. Legible signature of person responsible for drawing plan.
- \*e. Legible signature of person responsible for drawing plan. Professionals certifying plan shall be appropriate to nature of activities proposed. Such site information about the proposed uses or effects of the regulated area must be certified by a licensed land surveyor, professional engineer or professional architect. Such professional must be registered in the State of Connecticut.

**APPLICATION FOR INLAND WETLANDS AND WATERCOURSES PERMIT**

4. Location of any watercourses or inland wetlands covered by the site plan as defined in Section 2 of these regulations and in Section 22A – 42A of the General Statutes of Connecticut as amended. Boundaries must be verified by and site plan signed by a certified soil scientist.
  - \*a. Existing and proposed conditions in relation to wetlands and watercourses.
  - \*b. Proposed erosion and sedimentation controls.
5. Map at a suitable scale showing wetlands and/or watercourses and general topography of adjacent wetlands and/or watercourses within five hundred (500) feet of the site.
6. Site areas of permit and designation of each activity.
7. Existing and proposed buildings and other structures.
  - a. Location
  - b. Floor Elevation
8. In the development of anything other than single family residences, the following shall be required:

Location, size and composition of sidewalks, off street parking and loading, including driveway entrances and exits, parking and loading spaces, and traffic islands and barriers.

  - a. Percent of regulated area to be covered with impermeable surface.
9. Location of existing and proposed tree stands, shrubs and other significant vegetation which is to be disturbed within or immediately adjacent to the wetland area.
10. Source of water supply.
11. Proposed method of sewage disposal
  - a. Proposed design and specifications of on-site sewage disposal certified by a licensed engineer and approved by the Health District.
12. Location of all percolation pits, test pits and observation holes.
13. Design of existing and proposed storm drainage system, including elevations by contour at not less than two-foot intervals. Additional detail may be required.

**APPLICATION FOR INLAND WETLANDS AND WATERCOURSES PERMIT**

14. **PHYSICAL DATA**
  - a. Material to be deposited and/or excavated
    - (1) Area
    - (2) Volume
    - (3) Physical composition (texture, components) of material to be deposited.
    - (4) Final height of filled area above seasonal high water table.
    - (5) Texture and composition of soil left after excavation.
    - (6) Slope of excavation.
    - (7) Depth to water table or water level if inundated after excavation.
  
15. **WATERCOURSE DATA**
  - a. Open Water Characteristics
    - (1) Size of ponds or lakes
    - (2) Maximum depth and, if possible, volume of water.
  - b. Stream Characteristics
    - (1) Intermittent or permanent
  - c. Known flood levels to be indicated on map.
  - d. Discharge if any
    - (1) Type
    - (2) Frequency and Volume
    - (3) Chemical composition
  - e. Creation of new water bodies
    - (1) Area
    - (2) Volume
    - (3) Surface water elevation with regard to ground water level.

**APPLICATION FOR INLAND WETLANDS AND WATERCOURSES PERMIT**

- | <b>16. <u>BIOLOGICAL DATA</u></b> | <b><u>Percent of<br/>Regulated Area</u></b> | <b><u>Dominant<br/>Species</u></b> |
|-----------------------------------|---|------------------------------------|
| a. Tree                           |   |                                    |
| b. Shrub                          |   |                                    |
| c. Grasses, Weeds, etc.           |   |                                    |
| d. Aquatic                        |   |                                    |
| e. Pasture                        |   |                                    |
| f. Cultivated Area                |   |                                    |
- 17. PROBABLE EFFECTS OF CHANGE ON:**
- a. Vegetation
  - b. Wildlife
- 18. MEASURES TO PROTECT REGULATED AREA FROM:**
- a. Erosion and Sedimentation
  - b. Leaching of pollutants
  - c. Direct discharge of pollutants
  - d. Increased flooding and surface runoff hazards
19. Other site information as the Commission deems necessary to meet the objectives of these regulations, Section 22a – 36 to 22a – 45, inclusive, of the Connecticut General Statutes, as amended.

**\*BASIC INFORMATION REQUIRED ON ALL APPLICATIONS.**

**APPENDIX C**

**This form is to be completed *ONLY* when applicant is *NOT* the owner.**

I, \_\_\_\_\_ hereby acknowledge the application to the Inland  
(Name of Owner)

Wetlands Commission of the Town of Cheshire by \_\_\_\_\_ .  
(Name of Applicant)

I consent and agree to its being filed with said Commission.

\_\_\_\_\_  
(Signature of Owner)

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ .

\_\_\_\_\_  
(Name typed or printed)

Commissioner of the Superior Court  
Notary Public  
My commission Expires: \_\_\_\_\_

## APPENDIX D

### Information Necessary For a Complete Application

- \_\_\_\_\_1. Sheet size shall be limited to a size not greater than 25 inches by 37 inches.
- \_\_\_\_\_2. Maps shall be drawn to scale not smaller than 100 feet to an inch.
- \_\_\_\_\_3. North Arrow.
- \_\_\_\_\_4. Existing and proposed grade contours at 2-foot intervals. All elevations shall be referenced to U.S.G.S. datum and so noted on map.
- \_\_\_\_\_5. Title Block containing: project name, name of owner/applicant, and or developer, date and subsequent date of revisions.
- \_\_\_\_\_6. Signature of person responsible for drawing plan  
  
or  
  
Legible signature of person responsible for drawing plan. Professionals certifying plan shall be appropriate to the nature of activities proposed. Such site information about the proposed uses or effects of the regulated area must be certified by a licensed land surveyor, professional engineer or professional architect. Such professional must be registered in the State of Connecticut.
- \_\_\_\_\_7. Location of any watercourse or inland wetlands covered by the site plan as defined in Section 2 of these regulations and in Section 22a – 42a of the Connecticut General Statutes, as amended.
- \_\_\_\_\_8. Wetland boundary must be certified via signature of a Certified Soil Scientists or other qualified professional.
- \_\_\_\_\_9. Map at a suitable scale showing wetlands and/or watercourses and general topography of adjacent wetlands and/or watercourses within five hundred (500) feet of the site.

**APPENDIX E**

**RIGHT OF ENTRY FOR CORRECTION OF VIOLATION**

I, \_\_\_\_\_ (Applicant), and I, \_\_\_\_\_(Owner), hereby authorize and permit the Town of Cheshire, its officials, employees, and/or independent contractors to enter upon the premises for which an Inland Wetlands and Watercourses Permit was issued on \_\_\_\_\_ (Date), for property located at \_\_\_\_\_ (Road), as shown on Assessor's Map No(s). \_\_\_\_\_, Lot No(s). \_\_\_\_\_ to perform all work necessary to correct and abate any violations of the Inland Wetlands and Watercourses Regulations of the Town of Cheshire and/or to comply with the stipulations of the permit cited herein, if said permit stipulations have not been satisfied within the time required by the permit.

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date

**APPENDIX F**  
**PETITION FOR IWW REGULATION OR**  
**IWW MAP BOUNDARY AMENDMENT**  
**APPLICATION FORM**

Applicant: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: (H) \_\_\_\_\_ (W) \_\_\_\_\_

Owners Name: \_\_\_\_\_

Applicant's interest in the land: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reason for the requested action: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Application must be accompanied by the following items:

1. A description of the land in sufficient detail to allow identification of the disputed wetland or watercourse areas.
2. A map showing proposed development of the property.
3. Names and addresses of adjacent property owners.
4. A map showing the geographic location of the property involved in the petition.
5. Map at a suitable scale showing wetlands and/or watercourses and general topography of adjacent wetlands and/or watercourses within five hundred (500) feet of the site.
6. Check in full payment of minimum application fee, see attached fee schedule, (payable the Collector – Town of Cheshire). An additional fee will be required if a public hearing is deemed necessary.

## **INLAND WETLANDS & WATERCOURSES COMMISSION**

**Cheshire Town Hall  
84 South Main Street  
Cheshire, CT 06410**

**Phone (203) 271-6670 Fax: (203) 271-6688**

### **MEETING DATES:**

**THE FIRST AND THIRD TUESDAY OF EACH MONTH, EXCEPT AUGUST AND DECEMBER (FIRST TUESDAY ONLY).**

### **DEADLINES FOR APPLICATIONS:**

**FILING DEADLINE IS 4 P.M. THE WEDNESDAY PRIOR TO THE NEXT REGULARLY SCHEDULED MEETING.**

**MEETING TIME – 7:30 P.M.**

**Suzanne Simone, Environmental Planner**

Revised: 10/01/09

**CHESHIRE INLAND WETLANDS & WATERCOURSES  
LAND USE PERMIT FEES**

<b>Residential Uses</b>	
Single lot (base fee)	\$100.00
Subdivision/resubdivision (base fee)	\$250.00
Site plan as required by a commission subdivision approval	\$60.00 per lot
<b>Commercial / Industrial Uses</b>	
Site five (5) acres or less (base fee)	\$200.00
Site greater than five (5) acres (base fee)	\$350.00
Subdivision/resubdivision (base fee)	\$350.00
Site plan as required by a commission subdivision approval	\$100.00 per lot
<b>Other Regulated Activities</b>	<b>\$100.00</b>
<b>Other Fees</b>	
Impact review fee (added to the base fee) per subdivision/resubdivision lot, each road or driveway wetland crossing, each directly affected acre of wetland or part thereof, and each 100 feet of watercourse or part thereof directly affected by the application	\$30.00
Permit modification, extension, or transfer	\$100.00
Petition to amend the inland wetlands and watercourses map	\$140.00
Petition to amend the inland wetlands and watercourses regulations	\$140.00
Inspection of erosion control (silt fence, hay bales, etc.)	\$50.00 per lot
Public hearing	\$175.00
Public hearing continuance	\$50.00
Additional expenses, including but not limited to outside consultants, experts, or legal advisors, incurred in processing the application.	Actual amount paid by the town
<b>Town collection of state fee (CGS Section 22a-27j) REQUIRED WITH EVERY APPLICATION</b>	<b>\$60.00</b>

All fees shall be paid by certified check, bank or cashier's check, or money order payable to the "Collector, Town of Cheshire" at the time the application is filed.