

**INLAND WETLANDS AND  
WATERCOURSES REGULATIONS**

**THE INLAND WETLANDS COMMISSION  
OF THE TOWN OF  
NEW CANAAN**

**This edition includes  
all amendments and revisions  
through January 1, 2013**

**\$25.00**

## **PREAMBLE<sup>1</sup>**

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 the adequate supply of surface and underground water, to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life.

Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the State of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more.

The preservation and protection of the wetlands and watercourses from random, unnecessary and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state.

It is, therefore, the purpose of these regulations to protect the citizens of the state by making provision 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 the 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 danger of drought, overdraft, pollution, misuse and mismanagement by providing 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.

---

<sup>1</sup> Connecticut General Statutes section 22a-36

## TABLE OF CONTENTS

SECTION	SUBJECT	PAGE
<b>1</b>	<b>TITLE, PURPOSE &amp; AUTHORITY</b>	<b>1</b>
	1.1 Title	
	1.2 Purpose	
	1.3 Authority	
	1.4 Repeal	
	1.5 Effective Date of These Regulations	
<b>2</b>	<b>DEFINITIONS</b>	<b>2</b>
	2.1 Definitions	
<b>3</b>	<b>ADMINISTRATION</b>	<b>8</b>
	3.1 Administration	
	3.2 Administrative Agent	
	3.3 Fees	
	3.4 Forms	
	3.5 Conflicts of Interest	
	3.6 Copies of the Regulations	
<b>4</b>	<b>BOUNDARIES</b>	<b>10</b>
	4.1 Boundaries of Wetlands	
	4.2 Boundaries of Watercourses	
	4.3 Area Boundary Maps	
	4.4 Disputes Over Boundaries & Area Designation	
	4.5 Rulings on Petitions for Change	
	4.6 Revisions of Area Boundary Maps	
<b>5</b>	<b>PERMITTED USES AS OF RIGHT &amp; NONREGULATED USES</b>	<b>12</b>
	5.1 Review by Commission or Agent	
	5.2 Uses Permitted as of Right	
	5.3 Other Uses Permitted	
	5.4 Regulated Activity	
	5.5 Pre-existing Activities and Uses Exempted	
<b>6</b>	<b>STATE REGULATED ACTIVITIES</b>	<b>15</b>
	6.1 Activities Regulated Exclusively by the Commissioner of Energy and Environmental Protection	
<b>7</b>	<b>REGULATED &amp; PERMITTED ACTIVITIES WITHIN REGULATED AREAS</b>	<b>16</b>
	7.1 Permit Required	
	7.2 Regulated Activities	
	7.3 Regulated Areas	
	7.4 Upland Review Areas	
	7.5 Non-permitted Activities	
<b>8</b>	<b>APPLICATION REQUIREMENTS</b>	<b>18</b>
	8.1 Pre-application Meeting	
	8.2 Where Applications are to be Submitted	
	8.3 Form & Content of Applications for Activities Regulated by the Commission	
	8.4 Additional Information Required for Significant Impact	
	8.5 Certification	

	8.6	Pond Maintenance	
	8.7	Incomplete Applications	
	8.8	Factual and Binding Information	
<b>9</b>		<b>APPLICATION PROCEDURE</b>	<b>24</b>
	9.1	Submission and Acceptance	
	9.2	Statutory Date of Receipt	
	9.3	First Consideration	
	9.4	Coordination with Zoning	
	9.5	Notice to Adjacent Municipalities	
	9.6	Notice to Water Companies	
	9.7	Additional Information	
	9.8	No Activity While Application is Pending	
	9.9	Similar Applications	
	9.10	Withdrawal of Application	
<b>10</b>		<b>ACTION BY DULY AUTHORIZED AGENT</b>	<b>27</b>
	10.1	The Permit	
<b>11</b>		<b>PUBLIC MEETINGS AND HEARINGS</b>	<b>28</b>
	11.1	Public Meetings	
	11.2	Public Hearings	
	11.3	Notices of Public Hearing	
	11.4	Public Information	
	11.5	Adjoining Municipalities	
	11.6	Public Hearing Procedure	
<b>12</b>		<b>CONSIDERATIONS FOR DECISION</b>	<b>30</b>
	12.1	Rendering a Decision After Final Review	
	12.2	Standards and Criteria for Decision	
	12.3	Feasible and Prudent Alternative	
	12.4	Conservation or Preservation Restrictions	
<b>13</b>		<b>DECISION PROCESS AND PERMIT</b>	<b>34</b>
	13.1	The Decision	
	13.2	When Commission Must Render Decision	
	13.3	Notification of Decision	
	13.4	Modification of Application Granted with Conditions	
	13.5	Recourse after Denial of Permit	
	13.6	Filing and Recording	
	13.7	Zoning or Subdivision Approval	
	13.8	Declaratory Ruling – Exemptions	
	13.9	Permit Validity	
	13.10	Bond and Insurance	
	13.11	Statement of Compliance	
	13.12	Other Provisions	
<b>14</b>		<b>MODIFICATION, EXTENSION, AND TRANSFER OF PERMITS</b>	<b>38</b>
	14.1	Modification of Previously Issued Permits	
	14.2	Extension of Previously Issued Permits	
	14.3	Exception to Permit Extension	
	14.4	Transfer of Permit	
<b>15</b>		<b>ENFORCEMENT</b>	<b>40</b>
	15.1	Entrance onto Private Property	
	15.2	Methods of Enforcement	
	15.3	Suspension or Revocation of Permit	
	15.4	Civil Penalties and Fines	

	15.5	Superior Court Action	
	15.6	Other Remedies not Excluded	
<b>16</b>		<b>AMENDMENTS TO REGULATIONS AND BOUNDARIES</b>	<b>43</b>
	16.1	Amendments and Changes	
	16.2	Permits – No Retroactive Regulations	
	16.3	Notice to State Commissioner	
	16.4	Notice of Amendments Hearing on Regulations	
	16.5	Petitions on Boundaries	
	16.6	Additional Information	
	16.7	Hearings on Boundaries	
	16.8	Time for Boundary Hearings	
	16.9	The Decision	
	16.10	Effective Date of Changes	
<b>17</b>		<b>APPEALS TO THE SUPERIOR COURT</b>	<b>46</b>
	17.1	Appeals	
	17.2	Notice, Reasons and Process	
<b>18</b>		<b>CONFLICTS AND SEVERANCE</b>	<b>47</b>
	18.1	Conflicts	
	18.2	Invalidity of Certain Parts of the Regulations	
<b>19</b>		<b>OTHER PERMITS</b>	<b>48</b>
<b>20</b>		<b>RECORDS RETENTION AND DISPOSAL</b>	<b>49</b>
<b>21</b>		<b>APPENDIX</b>	<b>50</b>
		Appendix A – Fee Schedule	
		Appendix B – Standard Conditions of the Permit, includes Contractor Compliance Agreement	
		Appendix C – Plant List	
		Appendix D – Fines	
		Appendix E – Citation Hearing Procedure	

**SECTION 1**

**TITLE, PURPOSE & AUTHORITY**

**SECTION 1.1            TITLE**

These regulations shall be known and may be cited as the “Inland Wetlands and Watercourses Regulations of the Town of New Canaan.”

**SECTION 1.2            PURPOSE**

The purpose of these regulations is to invoke and make effective in and for the Town of New Canaan the provisions of the “Inland Wetlands and Watercourses Act,” Sections 22a-36 through 22a-45, inclusive, Chapter 440 of the Connecticut General Statutes, as now or hereafter amended.

**SECTION 1.3            AUTHORITY**

These regulations, originally adopted by the Town of New Canaan on June 12, 1974 and effective June 29, 1974 and subsequently amended and modified, have been prepared by the Inland Wetlands Commission of the Town of New Canaan pursuant to the authority granted to the Town by the Connecticut General Statutes.

**SECTION 1.4            REPEAL**

Upon approval and adoption of these regulations by the Town of New Canaan in accordance with the terms of the Connecticut General Statutes, as amended, all prior regulations adopted by this Commission, and any predecessor thereto, shall be repealed and the within shall be substituted in lieu thereof.

**SECTION 1.5            EFFECTIVE DATE OF THESE REGULATIONS**

The effective date of this bound set of regulations (includes cover and contents pages and pages 1 through 64) is January 1, 2013.

## SECTION 2

### DEFINITIONS

#### **SECTION 2.1      DEFINITIONS**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations their most reasonable application.

1. **“ACT”** means the Inland Wetlands and Watercourses Act, Section 22a-36 through 22a-45 inclusive, of the Connecticut General Statutes, as amended.
2. **“AGENCY”** or **“Inland Wetlands Commission”** means the Inland Wetlands Commission of the Town of New Canaan, which administers the Inland Wetlands and Watercourses Regulations of the Town of New Canaan.
3. **“AGENT”** with respect to the Commission, means a professional staff member of the Commission (also known as the Wetlands Agent, formerly known as the Environmental Agent), and with respect to the applicant, means any person authorized in writing to act on the applicant’s behalf.
4. **“APPLICANT”** means any “person” who has submitted an application to the Commission for a permit to conduct regulated activities pursuant to these regulations.
5. **“BOGS”** are watercourses distinguished by coniferous trees and shrubs underlain by peat deposits, poor or very poor drainage, and highly acidic conditions. (See Appendix C)
6. **“CLEAR CUTTING”** means the harvest or removal of timber in a fashion which removes substantially all trees two inches or greater in diameter three feet above grade in the area in question.
7. **“COMMISSION”** means the Inland Wetlands Commission of the Town of New Canaan (formerly known as the Environmental Commission).
8. **“COMMISSIONER OF ENERGY AND ENVIRONMENTAL PROTECTION”** means the Commissioner of the State of Connecticut Department of Energy and Environmental Protection (DEEP).
9. **“CONTINUAL FLOW”** means a flow of water that persists for an extended period of time. This flow may be interrupted during periods of drought or during low flow periods of the annual hydrological cycle, June through September, but it recurs in prolonged succession.
10. **“DAYS”** means consecutive calendar days, unless otherwise defined.
11. **“DEPOSIT”** includes, but shall not be limited to, fill, grade, dump, place, discharge, or emit.

12. **“DISCHARGE”** means emission of any water, substance, or material into waters of the state whether or not such substance causes pollution.
13. **“DISTURBED AREA”** means a land area wherein the ground cover is removed or destroyed leaving the land subject to accelerated erosion.
14. **“DISTURBING THE NATURAL AND INDIGENOUS CHARACTER OF THE LAND”** means an activity that will disturb the inland wetland or watercourse by reason of removal or deposition of material, or will cause the alteration or obstruction of water flow, or will result in the pollution of the inland wetland or watercourse.
15. **“DRAINAGE DITCH”** that has all the characteristics and meets the criteria for a watercourse or an intermittent watercourse shall be construed to be, as appropriate, a watercourse or an intermittent watercourse for the purpose of these regulations.
16. **“EROSION”** means the process of wearing away and removal of the earth’s surface by natural agents including weather, running water, waves, currents, ice or wind.
17. **“ESSENTIAL TO THE FARMING OPERATION”** means that the proposed activity is necessary and indispensable to sustain farming activities on the farm.
18. **“FARMING”** shall be consistent with the definition as noted in Section 1-1(q) of the Connecticut General Statutes, as amended.
19. **“FEASIBLE”** means able to be constructed or implemented consistent with sound engineering principles.
20. **“FLOODPLAIN”** means land adjacent to a river, stream, or other body of water that is subject to flooding, as further defined and regulated in the Floodplain Management Regulations of the Town of New Canaan. The floodplain includes the floodway and the flood fringe.
21. **“INTERMITTENT WATERCOURSE”** see Number 48 **“WATERCOURSES.”**
22. **“LANDSCAPING”** means the modification of the land surface by grading or by altering the ground cover or plant cover; the development and decorative planting of gardens and grounds; shaping and altering the surface of the land by removing or installing organic materials such as grass, flowers, herbs, plants, shrubs, trees, wood chips, mulch, etc., or by removing or installing hard features such as patterned walkways, walls, stone, gravel, etc. Any proposed landscaping within a regulated area shall be reviewed pursuant to Section 5.1.
23. **“LICENSE”** see Number 28 **“PERMIT.”**
24. **“MANAGEMENT PRACTICE”** means a practice, procedure, activity, structure or facility designed to prevent or minimize pollution or other environmental damage or to maintain or enhance existing environmental quality. Such management practices include, but are not limited to: erosion and sedimentation controls; restrictions on land use or development; construction setbacks from wetlands or watercourses; proper disposal of

waste materials; procedures for equipment maintenance to prevent fuel spillage; construction methods to prevent flooding or disturbance of wetlands and watercourses; procedures for maintaining continuous stream flows; confining construction that must take place in watercourses to times when water flows are low and fish and wildlife will not be adversely affected.

25. **“MARSHEs”** are watercourses that are distinguished by the absence of trees and shrubs and the dominance of soft-stemmed herbaceous plants. The water table in marshes is at or above the ground surface throughout the year and areas of open water six inches or more in depth are common, but seasonal water table fluctuations are encountered. (See Appendix C)
26. **“MATERIAL”** means any substance, solid or liquid, organic or inorganic, including, but not limited to soil, sediment, aggregate, earth, land, gravel, clay, bog, mud, debris, sand, refuse or waste.
27. **“NURSERIES”** means places where plants are grown for sale, transplanting, or experimentation.
28. **“PERMIT”** means the whole or part of any document of approval or similar form of permission, which may be granted to or required of any person by these regulations. Permits were formerly known as Licenses.
29. **“PERMITTEE”** means the person to whom a permit has been issued.
30. **“PERSON”** means any person, firm, partnership, association, corporation, limited liability company, company, organization, or legal entity of any kind, including municipal corporations, government agencies, or subdivisions thereof.
31. **“POLLUTION”** means any 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 wetlands or watercourse. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.
32. **“PRUDENT”** means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and provided a mere showing of expense will not necessarily mean an alternative is imprudent.
33. **“REGULATED ACTIVITY”** means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in Section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of stormwater on the land within the following upland review areas is a regulated activity:

- a) Areas where any part of the regulated activity is within 50 feet of a designated wetland or within 50 feet of a designated watercourse; or
- b) Areas where any part of the regulated activity is within 100 feet of a public drinking water supply or nature preserve; or
- c) Areas where any part of the regulated activity is within 100 feet upgrade from a river or stream tributary to a public drinking water supply less than one half mile downstream; or
- d) Areas where any part of the regulated activity is within 100 feet (horizontal distance) upgrade from a river or stream, and located within a sloped embankment that is poorly drained, ledge rock, or steeper than 1:1 and slopes down to within 50 feet of the watercourse; or
- e) Areas where any part of the regulated activity is within 100 feet upgrade from a river or stream, a major aquifer or nature preserve, and located in fast draining soils with a percolation rate faster than one inch per minute; or
- f) Areas where the total area to be disturbed by any activity is cumulatively more than one half acre, and any disturbed area is upgrade from a wetland or watercourse larger than 5000 square feet situated at least in part on the same property and/or properties immediately adjacent thereto; or
- g) Areas where an animal shelter or animal run are located within 125 feet of a non-drinking water wetland or watercourse or within 250 feet of a surface drinking water wetland or watercourse; or
- h) Areas where any part of a septic system is located within 100 feet of a wetland or watercourse.

The Commission or its Agent may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or adversely affect wetlands or watercourses and is a regulated activity.

- 34. **“REGULATED AREA”** means any wetland or watercourse as defined in these regulations.
- 35. **“REGULATIONS”** means the Inland Wetlands and Watercourses Regulations of the Town of New Canaan, as from time to time amended.
- 36. **“REMOVE”** includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.
- 37. **“RENDERING UNCLEAN OR IMPURE”** means any alteration of the physical, chemical or biological properties of any of the waters of the Town of New Canaan, including but not limited to change in composition, color, odor, turbidity, temperature or taste.

38. **“SETBACK”** is that area, also known as an upland review area, adjoining wetlands and watercourses that may be necessary to provide protection from the adverse impacts of various land uses. Guidelines for minimum setbacks without special analysis are specified in Section 7.4.
39. **“SIGNIFICANT IMPACT”** means any activity, including, but not limited to, the following activities which may have a major effect:
- a) Any activity involving a deposition or removal of material which will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed; or
  - b) Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system; or
  - c) Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support aquatic, plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; perform other functions; or
  - d) Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse; or
  - e) Any activity which causes a substantial diminution of flow of a natural watercourse or groundwater levels of the regulated area; or
  - f) Any activity which is likely to cause or has the potential to cause pollution of a wetland or watercourse; or
  - g) Any activity which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.
40. **“SOIL SCIENTIST”** means an individual duly qualified in accordance with standards set by the Federal Office of Personnel Management.
41. **“SURVEYOR”** means a person holding a certified land surveyor’s license from the State of Connecticut.
42. **“SUBMERGED LANDS”** means those lands which are inundated by water on a seasonal or more frequent basis.
43. **“SWAMPS”** are watercourses that are distinguished by the dominance of wetland trees and shrubs. (See Appendix C)
44. **“TOWN”** means the Town of New Canaan, Connecticut.
45. **“UPLAND REVIEW AREA”** is that area also known as the setback, adjoining wetlands and watercourses that may be necessary to provide protection from the adverse impacts of

various land uses. Guidelines for minimum upland review areas without special analysis are specified in Section 7.4.

46. **“VERNAL POOL”** means a small, shallow depression in the landscape that tends to fill with water during spring and late fall and become drier during the summer months. It shall be natural and lack a permanent outlet or any fish population. Further, the occurrence of one or more of the obligatory species which include the fairy shrimp, spotted salamander, Jefferson salamander, marbled salamander, wood frog, and eastern spadefoot toad is necessary to conclusively define the vernal pool.
47. **“WASTE”** means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any wetlands or watercourses of the Town.
48. **“WATERCOURSES”** means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town or any portion thereof not regulated pursuant to 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 or detritus;
- b) The presence of standing or flowing water for a duration longer than a particular storm incident;
- c) The presence of hydrophytic vegetation.

49. **“WETLANDS”** means land, including submerged land as defined in this section, not regulated pursuant to Sections 22a-28 through 22a-35 of the Connecticut General Statutes, as amended, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial and floodplain by the National Cooperative Soils Survey of the United States Department of Agriculture Natural Resources Conservation Service, as may be amended from time to time. Known wetlands are generally shown, for information purposes only, on an area boundary map on file in the office of the Inland Wetlands Department. In each instance, however, the actual character of the soil type or types, tested in the field, shall determine whether the land in question is subject to regulation. Such areas may include filled, graded, or excavated sites which possess an aquic (saturated) soil moisture regime as defined by the USDA Cooperative Soil Survey.

## SECTION 3

### ADMINISTRATION

#### **SECTION 3.1           ADMINISTRATION**

These regulations shall be administered and enforced by the Commission under such rules and procedure as it may from time to time adopt, such rules to be filed for public record in the office of the Town Clerk of the Town of New Canaan within 10 days after their adoption or amendment by the Commission.

#### **SECTION 3.2           ADMINISTRATIVE AGENT**

The Commission's Wetlands Agent shall have the full power to administer and enforce these regulations on behalf of the Commission.

#### **SECTION 3.3           FEES**

The Board of Selectmen of the Town of New Canaan may from time to time determine and fix the amount of fees to be charged and paid to the Wetlands Agent for use of the Town, upon the filing of applications and petitions, and upon the issuance of such permit under these regulations. Such fees shall be sufficient to cover reasonable cost of reviewing and acting on applications and petitions, including, but not limited to, the cost of certified mailings, publications of notices and decisions, and monitoring compliance with permit conditions or Commission orders. The Commission may charge an additional fee sufficient to cover the cost of reviewing and acting on complex applications. Such fee may include, but is not limited to, the cost of retaining experts to analyze, review, and report on issues requiring such experts. The Commission or its Agent shall estimate the complex application fee which shall be paid within ten days of applicant's receipt or notice of such estimate. Any portion of the complex application fee in excess of the actual cost shall be refunded to the applicant no later than thirty days after publication of the Commission's decision. Upon discovery of permit violations, the Commission may also require an additional application fee to cover monitoring inspections. The schedule of fees shall be filed for public record in the office of the Town Clerk of the Town within 10 days after adoption by the Board of Selectmen of the Town of New Canaan. (Appendix A)

#### **SECTION 3.4           FORMS**

The Commission will adopt, and from time to time may revise or amend, forms for the permit application, the permit, administrative permit, certificate of compliance, and other forms and documents that may be required. Such action may be taken at any Commission meeting. Copies of such forms may be obtained at the office of the Inland Wetlands Department.

### **SECTION 3.5            CONFLICTS OF INTEREST**

No member or alternate member of the Commission shall participate in a hearing or decision of the Commission upon any matter upon which he or she is directly interested in a personal or financial sense. In the event of such disqualification, such fact shall be entered in the records of the Commission and replacement shall be made from alternate members to act as a member of the Commission in the hearing and determination of the particular matter or matters in which the disqualification arose. (See Connecticut General Statutes Section 22a-42(c) and New Canaan Town Code Section 17-5.)

### **SECTION 3.6            COPIES OF THE REGULATIONS**

Copies of these regulations shall be available at the office of the Inland Wetlands Department in the Town Hall of New Canaan (or at the temporary office at Irwin Park) or on the Town of New Canaan official website [www.newcanaan.info](http://www.newcanaan.info). The price of such copies shall be determined by the Commission.

## **SECTION 4**

### **BOUNDARIES**

#### **SECTION 4.1 BOUNDARIES OF WETLANDS**

Boundaries of wetlands shall conform with actual wetland soil conditions of the land as determined and located by soil scientists and mapped by licensed surveyors.

#### **SECTION 4.2 BOUNDARIES OF WATERCOURSES**

Boundaries of watercourses shall include all water surface areas within their shores and banks and all shoreline land areas to their annual high water marks.

#### **SECTION 4.3 AREA BOUNDARY MAPS**

The map of wetlands and watercourses entitled “Inland Wetlands and Watercourses Map, New Canaan, Connecticut” delineates the general location and boundaries of known inland wetlands and the general location of known watercourses. Copies of this map are available for inspection in the office of the Inland Wetlands Department or the office of the Town Clerk. Unmapped wetlands and watercourses that meet the definitions in Section 2 are within the Commission’s jurisdiction. In all cases, the precise location of wetlands and watercourses shall be determined by the actual character of the land, the distribution of wetland soil types, and location of watercourses. Such determination shall be made by field inspection and testing conducted by a soil scientist. The Commission may use aerial photography, remote sensing imagery, resource mapping, soil maps, site inspection observations or other information in determining the location of the boundaries of wetlands and watercourses.

#### **SECTION 4.4 DISPUTES OVER BOUNDARIES & AREA DESIGNATION**

Any person may petition the Commission for an amendment to the map. All petitions for a map change shall be submitted in writing and shall include all relevant facts and circumstances which support the change. The petitioner shall bear the burden of proof regarding the proposed map amendment. Such proof may include, but not be limited to aerial photography, remote sensing imagery, resource mapping or other available information. The Commission may require such person to provide an accurate delineation of regulated areas in accordance with Section 16.5 of these regulations.

The Commission shall maintain a current inventory of regulated areas within the town. The Commission may amend its map as more accurate information becomes available.

All map amendments are subject to the public hearing process outlined in Section 16.7 of these regulations.

#### **SECTION 4.5            RULINGS ON PETITIONS FOR CHANGE**

In conformance with time constraints set forth in Section 16 the Commission shall grant or deny said petition for map amendment and shall notify the petitioner of its action in the same manner as provided in Section 13.3 of these regulations.

#### **SECTION 4.6            REVISIONS OF AREA BOUNDARY MAPS**

When a map amendment is granted, the Commission shall forthwith amend and reflect the boundary change on the map in Section 4.3. Such revised boundaries shall be valid only for so long as the soil types on the subject property and the site plan locations of all affected watercourses remain the same as indicated in all reports and technical data submitted with the exemption request.

## SECTION 5

### PERMITTED USES AS OF RIGHT & NONREGULATED USES

#### **SECTION 5.1            REVIEW BY COMMISSION OR AGENT**

The Commission or its Agent shall have the responsibility and power to determine if any proposed activity and/or use is permitted as of right pursuant to Section 5.2 or permitted as non-regulated pursuant to Section 5.3. Any person wishing to carry out uses permitted as of right (Section 5.2) or nonregulated uses (Section 5.3) must submit, prior to the commencement of such activity, a request to the Commission or its Agent to determine if the proposed activity does fall within the provisions of these subsections. Even where the Commission or its Agent determines that the proposed activity is within these provisions it may nevertheless set conditions to assure that the activity will not have a significant impact or major effect on a wetland or watercourse. When the Commission or its Agent makes such a determination it shall be submitted in writing to the person requesting such determination.

If the Commission or its Agent should determine that a proposed activity and/or use is not permitted as of right, or not permitted as non-regulated, the person proposing such regulated activity and/or use will be required to submit an application pursuant to these regulations.

#### **SECTION 5.2            USES PERMITTED AS OF RIGHT**

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

1. Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Energy and Environmental Protection (DEEP) for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this section shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, or the mining of topsoil, peat, sand, gravel or similar materials from wetlands or watercourses for the purpose of sale;
2. A residential home (A) for which a building permit has been issued or (B) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of Section 22a-42a, or as of July 1, 1974, whichever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the permit was obtained on or before July 1, 1987;
3. Boat anchorage or mooring not to include dredging or dock construction;

4. Uses incidental to the enjoyment and maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the municipality. 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 onto a wetland or watercourse, or diversion or alteration of a watercourse;
5. Construction and operation, by water companies as defined in Section 16-1 of the Connecticut General Statutes or by municipal water supply systems as provided for in Chapter 102 of the General Statutes, of dams, reservoirs and other facilities necessary for the impounding, storage, and withdrawal of water in connection with public water supplies except as provided in Section 22a-401 through 22a-410 of the Connecticut General Statutes;
6. Maintenance relating to any drainage pipe which existed before June 29, 1974, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For the purposes of this paragraph, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place. Notwithstanding the provisions of Section 5.1, maintenance as described in this paragraph shall not require prior review by the Commission or Wetlands Agent;
7. Withdrawals of water for fire emergency purposes.

### **SECTION 5.3            OTHER USES PERMITTED**

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

1. 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;
2. Outdoor recreation, including play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, and fishing where otherwise legally permitted and regulated; and
3. The installation of a dry hydrant by or under the authority of a municipal fire department, provided such dry hydrant is only used for firefighting purposes and there is no alternative access to a public water supply. For purposes of this section, "dry hydrant" means a non-pressurized pipe system that: (A) is readily accessible to fire department apparatus from a proximate public road, (B) provides for the withdrawal of water by suction to such fire department apparatus, and (C) is permanently installed into an existing lake, pond or stream that is a dependable source of water.

#### **SECTION 5.4            REGULATED ACTIVITY**

All activities in wetlands and watercourses involving filling, excavation, dredging, clear cutting, grading, or any other alteration or use of a wetland or watercourse not specifically permitted by this section and otherwise defined as a regulated activity by these regulations shall require a permit from the Commission in accordance with Section 7 of these regulations, or for certain regulated activities located outside of wetlands and watercourses from the duly authorized Agent in accordance with Section 10.1 of these regulations.

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

#### **SECTION 5.5            PRE-EXISTING ACTIVITIES AND USES EXEMPTED**

Any regulated activity or use defined in Section 7 of these regulations which was legally existing as of June 29, 1974, the original effective date of these regulations, shall be exempt therefrom and permitted to continue provided that no new or additional regulated activity, requiring a permit under these regulations, is conducted after said original effective date without such permit.

## **SECTION 6**

### **STATE REGULATED ACTIVITIES**

#### **SECTION 6.1      ACTIVITIES REGULATED EXCLUSIVELY BY THE COMMISSIONER OF ENERGY AND ENVIRONMENTAL PROTECTION**

The following activities shall be regulated by the State of Connecticut, Commissioner of Energy and Environmental Protection:

1. The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over regulated activities in or affecting wetlands or watercourses, undertaken by any department, agency or instrumentality of the State of Connecticut, except any local or regional board of education, pursuant to Section 22a-39 or 22a-45a of the Connecticut General Statutes;
2. The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to Sections 22a-28 through 22a-35 of the Connecticut General Statutes, as amended;
3. The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Energy and Environmental Protection under Section 22a-402 of the Connecticut General Statutes or a permit issued by the Commissioner of Energy and Environmental Protection under Section 22a-403 of the Connecticut General Statutes. Any person receiving such dam repair or removal order or permit shall not be required to obtain a permit from a municipal wetlands agency for any action necessary to comply with said dam order or to carry out the activities authorized by said permit;
4. The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over the discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to Section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under section 404 of the Federal Clean Water Act.

## **SECTION 7**

### **REGULATED & PERMITTED ACTIVITIES** **WITHIN REGULATED AREAS**

#### **SECTION 7.1 PERMIT REQUIRED**

Except for permitted operations and uses (see Section 5), regulated activities affecting inland wetlands or watercourses in the Town of New Canaan are prohibited except as they may be permitted by the Commission or by the Commissioner of Energy and Environmental Protection. No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the Commission or its duly authorized Agent.

#### **SECTION 7.2 REGULATED ACTIVITIES**

“**REGULATED ACTIVITY**” as further described in Section 7.4, includes activities within regulated areas and activities outside the wetlands and watercourses wherever such activities are likely to impact or affect wetlands or watercourses. (See Upland Review Areas – Section 7.4)

#### **SECTION 7.3 REGULATED AREAS**

Regulated areas include all wetlands or watercourses as defined in Section 2 or within boundaries as located and defined in Section 4.1 and 4.2 of these regulations. Approximate location of said boundaries are shown on Area Boundary Maps as defined in Section 4.3 of these regulations and maintained in the office of the Inland Wetlands Department and filed in the office of the Town Clerk of the Town of New Canaan, however these maps are to be considered only for reference purposes and actual wetlands boundaries shall be confirmed by a soil scientist at the applicant’s expense.

#### **SECTION 7.4 UPLAND REVIEW AREAS**

The Commission may set conditions under which a regulated activity may be conducted in upland review areas to assure that the activity will have no significant impact or major effect on inland wetlands or watercourses. “Regulated activity” means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in Section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of stormwater on the land within the following upland review areas is a regulated activity:

1. Areas where any part of the regulated activity is within 50 feet of a designated wetland or within 50 feet of a designated watercourse; or
2. Areas where any part of the regulated activity is within 100 feet of a public drinking water supply or nature preserve; or

3. Areas where any part of the regulated activity is within 100 feet upgrade from a river or stream tributary to a public drinking water supply less than one half mile downstream; or
4. Areas where any part of the regulated activity is within 100 feet (horizontal distance) upgrade from a river or stream, and located within a sloped embankment that is poorly drained, ledge rock, or steeper than 1:1 and slopes down to within 50 feet of the watercourse; or
5. Areas where any part of the regulated activity is within 100 feet upgrade from a river or stream, a major aquifer or nature preserve, and located in fast draining soils with a percolation rate faster than one inch per minute; or
6. Areas where the total area to be disturbed by any activity is cumulatively more than one half acre, and any disturbed area is upgrade from a wetland or watercourse larger than 5000 square feet situated at least in part on the same property and/or properties immediately adjacent thereto; or
7. Areas where an animal shelter or animal run are located within 125 feet of a non-drinking water wetland or watercourse or within 250 feet of a surface drinking water wetland or watercourse; or
8. Areas where any part of a septic system is located within 100 feet of a wetland or watercourse.

The Commission or its Agent may rule that any other activity located within such upland review areas or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses adversely and is a regulated activity.

## **SECTION 7.5           NON-PERMITTED ACTIVITIES**

Any person found to be conducting or maintaining a regulated activity without a permit or prior authorization from the Commission, or violating any other provision of these regulations, shall be subject to enforcement proceedings and penalties prescribed in Section 15 of these regulations and any other remedies provided by law. (See Appendix D)

## **SECTION 8**

### **APPLICATION REQUIREMENTS**

#### **SECTION 8.1 PRE-APPLICATION MEETING**

The Commission strongly recommends that the applicant hold a pre-application meeting with the Wetlands Agent to determine whether the proposed regulated activity involves a significant impact activity. It is also at such a pre-application meeting that an applicant and the Wetlands Agent can determine whether the application falls under Section 5 – Permitted Operations and Uses, or under Section 6 – State Regulated Activities.

#### **SECTION 8.2 WHERE APPLICATIONS ARE TO BE SUBMITTED**

Any person intending to conduct a regulated activity, or an activity which may involve a regulated activity, shall submit an application for a permit to the office of the Inland Wetlands Department at its office in the Town Hall (or at the temporary office at Irwin Park). Application forms may be obtained in the Inland Wetlands Department or on the town website. All applications shall contain the information described in this section and any other information the Commission may reasonably require for a fair and informed determination of the issues. The Commission or its Wetlands Agent may waive certain application requirements.

No application shall be deemed complete unless it shall be in such form and contain such information as the Commission deems necessary for a fair and informed determination of the issues. In addition no application shall be deemed complete until payment of all fees, including complex application fees are received. The Commission may ask for additional information and/or drawings at any time during a public meeting or public hearing prior to rendering a decision as set forth in Section 9.7 of these regulations.

#### **SECTION 8.3 FORM & CONTENT OF APPLICATIONS FOR ACTIVITIES REGULATED BY THE COMMISSION**

All applications for permits for uses or activities regulated by the Commission shall include the following information in writing or on maps or drawings, and 14 copies shall be submitted.

1. Applicant's name, home and business mailing addresses, telephone numbers, email addresses, and the applicant's legal interest in the land. If the applicant is a limited liability company or a corporation, the managing member's or responsible corporate officer's name, address, telephone number, and email address;
2. The land owner's name, mailing address and telephone number, and written consent of the land owner if the applicant is not the owner of the land upon which the subject activity is proposed;
3. Photocopy of the deed description from the recorded deed and an A-2 survey of the premises as filed on the land records;

4. The geographical location of the land which is the subject of the proposed activity and a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, the area(s) (in acres or square feet) of wetlands and watercourses to be disturbed, soil type(s), and wetland vegetation;
5. The purpose and description of the proposed activity and proposed erosion and sedimentation controls and other management practices and mitigation measures which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to:
  - a) prevent or minimize pollution or other environmental damage,
  - b) maintain or enhance existing environmental quality,
  - c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
6. Alternatives that would cause less or no environmental impact to wetlands or watercourses and why the alternative as set forth in the application was chosen. All such alternatives shall be described in written form by the applicant, and at the Commission's request any alternatives shall be diagramed on a site plan or drawing;
7. A site plan showing existing and proposed conditions in relation to wetlands and watercourses and identify further activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses. Vicinity sketch to scale showing geographical location of the property affected by the proposed activity;
8. Names and addresses of adjacent property owners and those within 100 feet of the subject property. In applications where all of the regulated activity is outside of wetlands and a request for administrative approval is submitted to and approved by the Agent of the Commission under Section 10.1 of these regulations, mailed notices to such property owners shall not be required, but the list shall still be submitted. In all other applications, the applicant shall, by certified mail, advise adjacent property owners and those within 100 feet of the property line of the subject property that an application has been filed for the proposed activity. When a condominium is an adjacent property or is within 100 feet of the property line of the subject property, notification may be sent to the condominium association in lieu of the individual unit owners. The applicant shall obtain proof of mailing in the form of stamped receipts for certified mail from the United States Postal Service and submit copies of such letters and stamped receipts for certified mail with the application;
9. Any other information that the Agent may deem necessary to understand what the applicant is proposing;
10. Authorization for the Commissioners and Agents of the Inland Wetlands Commission to inspect the property, at reasonable times, during the pendency of the application and for the life of the permit.

11. Submission of the appropriate filing fee based on fee schedule established in Appendix A of these regulations;
12. Submit a completed Department of Energy and Environmental Protection (DEEP) “Statewide Inland Wetland Activity Report Form”. The Agent shall revise or correct the information provided by the applicant and submit the form to the State of Connecticut Commission of Environmental Protection in accordance with Section 22a-39-14 of the Regulations of Connecticut State Agencies.
13. For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply:
  - a) For purposes of this section, “conservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.
  - b) For purposes of this section, “preservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.
  - c) No person shall file a permit application, other than for interior work in an existing building or for exterior work on an existing building that does not expand or alter the footprint of such existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction, including, but not limited to, any state agency that holds such restriction, not later than 60 days prior to the filing of the permit application.
  - d) In lieu of such notice pursuant to Subsection 8.3.13.c, the applicant may submit a letter from the holder of such restriction or from the holder’s authorized agent, verifying that the application is in compliance with the terms of the restriction.

**SECTION 8.4            ADDITIONAL INFORMATION REQUIRED FOR SIGNIFICANT IMPACT**

At the discretion of the Commission or its Agent, or when the proposed activity involves a significant impact, additional information, based on the nature and anticipated effects of the activity, including but not limited to the following, may be required:

1. Existing conditions site plan of the property(ies) on which the proposed activity is to be located, drawn by a licensed surveyor, professional engineer or landscape architect

registered in the State of Connecticut or other qualified professional acceptable to the Commission, showing existing conditions, boundaries of land ownership, the location of all wetlands and watercourses occurring on the premises, and wooded and open spaces. Such map shall be drawn to a scale not less than 10 feet to the inch or more than 100 feet to the inch on a drawing size not to exceed 36 inches long by 24 inches wide (D size). Such plan shall show the location of all existing structures, driveways and other significant man-made features on and immediately adjacent to the property;

2. Proposed conditions site plan of the property(ies), drawn by a licensed surveyor, professional engineer or landscape architect registered in the State of Connecticut or by such other qualified professional acceptable to the Commission, to the same scale or a scale acceptable to the Commission where greater detail is needed to fairly consider the application and to the same drawing size as the existing conditions site plan showing existing conditions unchanged and the proposed work on the property including clear identification of the ponds, watercourses and/or wetlands to be altered or affected by the proposed construction. The wetlands shall be delineated in the field by a soil scientist and the soil scientist's field delineation shall be depicted on the site plans. Information to be shown on the proposed site plan drawing shall include proposed contour lines (2 foot contours within 50 feet of wetlands and watercourses and 10 foot contours for the rest of the area. This requirement for contour information may be waived or modified by the Commission if it is determined such information is not necessary to properly evaluate the impact of the proposed activity), proposed final elevation of pond surfaces and watercourses, changes to existing structures and the location of proposed structures, driveways and other significant man-made features;
3. Where the total disturbed area is significant or otherwise meets the half acre requirement set forth in Section 7.4.6 of these regulations, the applicant shall provide plan drawings, to suitable scale, showing an outline of all proposed structures, cut and fill areas, retaining walls and man made embankments exceeding 30 degrees from the horizontal, drainage structures, and all soil erosion and sedimentation control measures to be taken during the term of the project;
4. Engineering reports and analyses and additional drawings to fully describe the proposed activity including any filling, excavation, drainage or hydraulic modifications to watercourses and the proposed erosion and sedimentation control plan;
5. Mapping of soil types consistent with the categories established by the National Cooperative Soil Survey of the U.S. Natural Resources Conservation Service. The Agent or Commission shall require the applicant to have the wetlands delineated in the field by a soil scientist and that the field delineation be incorporated onto the site plans. Field delineation shall be flagged and numbered for inspection by the Agent and Commission members;
6. Description of the ecological communities and the functions of the wetlands and watercourses involved with the application and the effects of the proposed regulated activities on these communities and wetland functions;
7. 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 that would cause less or no environmental impact to wetlands or

watercourses, and a description of why each alternative considered was deemed neither feasible nor prudent;

8. The type and volume of materials to be deposited, removed or relocated on the property including potential contaminants, and the names, locations and numbers of various trees over 10" in diameter measured 36" above grade and **any** shrubs to be removed within the regulated area;
9. If the proposed activity upon the applicant's property may affect a watercourse lying within, partly within, or flowing through or adjacent to the applicant's property due to runoff, the applicant may be required to submit information relative to the present character including the comparison of existing and proposed discharges during a two, five, ten, twenty-five, and fifty year storm where downstream flooding is a consideration;
10. Measures which mitigate the impact of the proposed activity. Such measures include, but are not limited to, plans or actions which avoid destruction or diminution of wetland or watercourse functions, which prevent flooding, which prevent or reduce erosion and sedimentation and obstruction of drainage, which contribute to the addition of open spaces such as Land Conservancies, or which contribute to fire and safety protection;
11. Such other information as may be necessary and useful to the understanding of what the applicant proposes.

## **SECTION 8.5            CERTIFICATION**

The applicant shall certify whether:

1. Any portion of the property affected by a decision of the Commission or its Agent is located within 500 feet of the boundary of an adjoining municipality;
2. A significant portion of the traffic attributable to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
3. A significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; and/or
4. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

## **SECTION 8.6 POND MAINTENANCE**

The form and content of applications for pond maintenance where no significant change in the outline of the pond is anticipated but rather where cleaning or dredging is the sole purpose of the activity shall be as follows:

1. The applicant shall provide the information requested under Section 8.3;
2. The Wetlands Agent shall review with the applicant the extent of topographical information required on the drawings;
3. Information accompanying the application shall include existing pond depth and proposed pond depth, plans if any to control sediment build-up in the pond, method of dredging, the name of the contractor, the sequence and timing of steps in carrying out the dredging activities and other information deemed necessary by the Wetlands Agent.

## **SECTION 8.7 INCOMPLETE APPLICATIONS**

An application deemed incomplete by the Commission or its Agent shall either be withdrawn by the applicant, or denied by the Commission or its Agent for reasons specified in writing in said denial.

## **SECTION 8.8 FACTUAL AND BINDING INFORMATION**

All information submitted in the application shall be considered factual and binding. A knowing failure by the applicant or applicant's agent to provide full, complete and correct information shall be sufficient grounds for revocation of any permit granted under these regulations and the imposition of penalties.

## **SECTION 9**

### **APPLICATION PROCEDURE**

#### **SECTION 9.1 SUBMISSION AND ACCEPTANCE**

An application shall be submitted in such form and contain such information as prescribed in Section 8.3, and must be accompanied by all fees as required under Section 3.3 (see Appendix A). An application shall be accepted, and considered properly submitted, and dated when it complies with the provisions of this section.

All applications shall be open for public inspection in the office of the Inland Wetlands Department during regular business hours.

#### **SECTION 9.2 STATUTORY DATE OF RECEIPT**

The Date of Receipt of an application shall be the day of the next regularly scheduled meeting of the Commission following the day of submission or 35 days after submission, whichever is sooner.

#### **SECTION 9.3 FIRST CONSIDERATION**

An application shall be considered at the next regularly scheduled meeting of the Commission after the statutory Date of Receipt.

#### **SECTION 9.4 COORDINATION WITH ZONING**

If a zoning or subdivision application involves a regulated activity as defined in these regulations, the zoning applicant shall submit the wetlands application to the office of the Inland Wetlands Department no later than the day the zoning or subdivision application is filed.

#### **SECTION 9.5 NOTICE TO ADJACENT MUNICIPALITIES**

The applicant shall, on the same day of submission, give written notice of the application by certified mail, return receipt requested, to the inland wetlands agency of another municipality when any portion of a regulated activity is located within 500 feet of the boundary of such municipality, and provide the Commission with documentation of said notification.

The Commission shall in accordance with Connecticut General Statutes Sections 8-7d(f), and 22a-42b, notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which:

1. Any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of said adjoining municipality;

2. A significant portion of traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
3. A significant portion of the sewer or water drainage from the project will flow through and significantly impact the sewage or drainage system within the adjoining municipality; or,
4. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, appeal, request or plan. No hearing may be conducted on any application, petition, request or plan unless the adjoining municipality has received the notice required under this section.

#### **SECTION 9.6 NOTICE TO WATER COMPANIES**

When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in Section 25-32a of the Connecticut General Statutes, the applicant shall provide written notice of the application to the water company and the Commissioner of Public Health of the State of Connecticut in a format provided by said commissioner, provided such water company or said commissioner has filed a map showing the boundaries of the watershed on the land records of the Town of New Canaan and with the Commission. Such notice shall be made by certified mail, return receipt requested, and shall be mailed not later than seven days after the date the application is filed. The water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the Commission or the Commission's Agent.

#### **SECTION 9.7 ADDITIONAL INFORMATION**

At any time during the review period, the applicant shall provide such additional information as the Commission or the Wetlands Agent may reasonably require. Requests for such additional information shall not stay the time limitations as set forth in Section 13.2 of these regulations.

#### **SECTION 9.8 NO ACTIVITY WHILE APPLICATION IS PENDING**

Prior to the granting of a permit by the Commission and the filing of any required bond, no use or regulated activity of any kind, for which the application has been made, is authorized or permitted.

#### **SECTION 9.9 SIMILAR APPLICATIONS**

The Commission shall have the discretion not to accept any subsequent application for a regulated activity in a regulated area while an application for the same or similar regulated activity in the same regulated area is still pending.

**SECTION 9.10      WITHDRAWAL OF APPLICATION**

At any time prior to the final action by the Commission the applicant may withdraw the application by filing with the Commission a formal written notice to that effect.

## **SECTION 10**

### **ACTION BY DULY AUTHORIZED AGENT**

#### **SECTION 10.1 THE PERMIT**

The Commission may delegate to its duly authorized Agent the authority to approve, modify, transfer, or extend a permit for an activity that is not located in a wetland or watercourse when such Agent finds that the conduct of such activity would result in no greater than minimal impact on any wetlands or watercourses provided such agent has completed the comprehensive training program developed by the Commissioner of Energy and Environmental Protection pursuant to Section 22a-39 of the Connecticut General Statutes.

Requests for such administrative approval shall be made to the Agent and shall contain the information listed under Section 8.3 of these regulations and any other information the Agent may reasonably require. Notwithstanding the provisions for receipt and processing applications prescribed in Sections 9, 11.2, and 13 of these regulations, such Agent may approve or extend such activity at any time. The Agent may, within the guidelines established, issue an Administrative permit for the activity or work, and shall at the next regular meeting of the Commission file a report on the issuance of said permit.

Any person receiving such approval from the Agent shall have published by the Agency within ten days of the date of such approval, at the applicant's expense, notice of the approval in a newspaper having a general circulation in the town in which the activity is located or will have an effect. Any person may appeal such decision of the Agent to the Commission within fifteen days after the publication date of the notice and the Commission shall consider such appeal at its next regularly scheduled meeting provided such meeting is not earlier than three business days after receipt by the Commission or its Agent of such appeal. Any person may appear and be heard at the meeting held by the Commission to consider the subject appeal. The Commission shall, at its discretion, sustain, alter, or reject the decision of its Agent or require an application for a permit in accordance with Section 8 of these regulations.

## **SECTION 11**

### **PUBLIC MEETINGS AND HEARINGS**

#### **SECTION 11.1 PUBLIC MEETINGS**

Regularly scheduled meetings shall be those meetings that have been noticed annually to the Town Clerk, as may be amended from time to time. The Commission's regular meeting is usually on the third Monday of each month.

#### **SECTION 11.2 PUBLIC HEARINGS**

The Commission shall not hold a public hearing on an application unless the Commission determines that (A) the proposed activity may have a significant impact on wetlands or watercourses, or (B) receives, within 14 days of the Commission's receipt of an application, a petition signed by at least 25 persons who reside in the Town of New Canaan each of whom are eighteen years of age or older, or (C) the Commission finds that a public hearing regarding the application would be in the public interest. If the Commission determines that none of these criteria for a public hearing are met, it may issue a permit for the application. Any person may appear and be heard during a Commission public hearing.

#### **SECTION 11.3 NOTICES OF PUBLIC HEARING**

Notice of a public hearing shall be published by the Commission, at the applicant's expense, at least twice at intervals no less than two days apart, the first no more than 15 days nor fewer than 10 days, and the last not less than two days before the date set for the hearing in a newspaper having a general circulation in New Canaan.

#### **SECTION 11.4 PUBLIC INFORMATION**

All applications, maps and documents relating to a public hearing shall be open for public inspection at the Office of the Inland Wetlands Department.

#### **SECTION 11.5 ADJOINING MUNICIPALITIES**

In the case of any application, which is subject to the notification provisions of Section 9.5 of these regulations, a public hearing shall not be conducted until the clerk of the adjoining municipality (ies) has received notice of the pendency of the application. Proof of such notification shall be entered into the hearing record.

## **SECTION 11.6 PUBLIC HEARING PROCEDURE**

All public hearings shall commence not later than 65 days after the date of receipt of an application. The hearing shall be completed within 35 days of commencement. Action shall be taken on applications within 35 days after completion of the public hearing. The applicant may consent to one or more extensions of the periods specified in this section, provided the total extension of all such periods shall not be for longer than 65 days, or the applicant may withdraw the application. Where possible, public hearings shall be completed in a single session. However, the hearing may be continued (to a date certain) where necessary for the full development of the information or for the full and adequate participation of all parties concerned.

## SECTION 12

### CONSIDERATIONS FOR DECISION

#### **SECTION 12.1      RENDERING A DECISION AFTER FINAL REVIEW**

The Commission, in making a final decision on an application for a permit, shall consider at least the following factors:

1. The application and its supporting documentation;
2. For an application for which a public hearing is held, public comments, evidence and testimony;
3. Any relevant reports from other commissions and/or state or local agencies, including the Soil and Water Conservation District and the Connecticut Department of Energy and Environmental Protection (DEEP);
4. Additional requested information;
5. All evidence offered at any public hearing. Other material not in the record shall not be considered by the Commission when making its decision;
6. Non-receipt of comments from other agencies or commissions within the prescribed period shall neither delay nor prejudice the decision of the Commission.

#### **SECTION 12.2      STANDARDS AND CRITERIA FOR DECISION**

For purposes of this section, (1) “wetlands or watercourses” includes aquatic, plant or animal life and habitats in wetlands or watercourses, and (2) “habitats” means areas or environments in which an organism or biological population normally lives or occurs. In carrying out the purposes and policies of Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Commission shall take into consideration all relevant facts and circumstances, including but not limited to:

1. 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 impact or effect on aquatic, plant, or animal life characteristics unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourse;
2. The environmental impact of the proposed regulated activity on wetlands or watercourses;
3. 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;

4. The relationship between the short-term and long term impacts of the proposed regulated activity on wetlands and watercourses and the maintenance and enhancement of long term productivity of such wetlands or watercourses;
5. Irreversible and irretrievable loss of wetland or watercourses which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to:
  - a) prevent or minimize pollution or other environmental damage,
  - b) maintain or enhance existing environmental quality, or
  - c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
6. The character and degree of injury to, or interference with, safety, health or reasonable use of property which is caused or threatened by the proposed regulated activity;
7. Impacts of the proposed 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 and watercourses;
8. Measures which would mitigate the impact of any aspect of the proposed regulated activity. Such measures include, but are not limited to, actions which would avoid adverse impacts or lessen impacts to wetlands or watercourses and which could be feasibly carried out by the applicant and would protect the wetland's or watercourse's natural capacity to support fish and wildlife, to prevent flooding, to supply and protect surface and ground waters, to control sedimentation, to prevent erosion, to assimilate wastes, to facilitate drainage, to control pollution, to support recreational activities and open space, and to promote public health and safety;
9. The availability of preferable alternate locations on the parcel involved and the possibility of the availability of other reasonable locations not on the parcel involved;
10. The availability of technical improvements or safeguards which could feasibly be required;
11. The interference with the exercise of property rights of the applicant or others if the permit is or is not granted;
12. The possible impairment of public health, safety and welfare which may outweigh individual property rights or public benefit if the permit is granted, and including the balance between the need of the economic well-being of the Town and the use of land in the Town required or needed to protect the environment and ecology of the Town.

### **SECTION 12.3      FEASIBLE AND PRUDENT ALTERNATIVE**

In the case of an application which received a public hearing pursuant to a finding by the Commission that the proposed activity may have a significant impact on wetlands or watercourses, a permit shall not be issued unless the Commission finds on the basis of the record that a feasible and prudent alternative does not exist. In making this finding the Commission shall consider the facts and circumstances set forth in Section 12.1 and 12.2 above. The findings and the reasons therefore shall be stated in the record in writing.

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

In reaching its decision on 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 Connecticut General Statutes.

### **SECTION 12.4      CONSERVATION OR PRESERVATION RESTRICTIONS**

In the case of an application where the applicant has provided written notice pursuant to Subsection 8.3.13.c of these regulations, the holder of the restriction may provide proof to the Commission that granting the permit application will violate the terms of the restriction. Upon a finding that the requested land use violates the terms of such restriction, the Commission shall not grant the permit approval.

In the case of an application where the applicant fails to comply with the provisions of Subsections 8.3.13.c or 8.3.13.d of these regulations, (1) the party holding the conservation or preservation restriction, other than a state agency that holds such restriction, may, not later than 15 days after receipt of actual notice of permit approval, file an appeal with the Commission, subject to the rules and regulations of such agency relating to appeals. The Commission shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction; or (2) the state agency that holds such restriction may, not later than 30 days after receipt of actual notice of permit approval, file an appeal with the Commission, subject to the rules and regulations of such agency relating to appeals. The Commission shall immediately reverse such permit approval if the commissioner of the state agency that holds such restriction certifies that the land use authorized in such permit violates the terms of such conservation or preservation restriction.

Nothing in Subsections 8.3.13.c or 8.3.13.d of these regulations shall be construed to prohibit the filing of a permit application or to require such written notice when the activity that is the subject of such permit application will occur on a portion of property that is not restricted under the terms of such conservation or preservation restriction.

## SECTION 13

### DECISION PROCESS AND PERMIT

#### **SECTION 13.1 THE DECISION**

At the time of granting or denying a permit the Commission, or its duly authorized agent acting pursuant to Section 10 of these regulations, may in accordance with the factors set forth in Section 12 state upon the record its reasons for its decision. In the case of a public hearing, such decision shall be based fully on the record of such hearing and shall be in writing and shall, as applicable and in accordance with Section 12 of these regulations, incorporate a statement relative to the consideration of feasible and prudent alternatives. In granting a permit the Commission, or its duly authorized Agent, may grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity which are designed to carry out the policy of Sections 22a-36 to 22a-45, inclusive, of the General Statutes. Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would:

1. Prevent or minimize pollution or other environmental damage;
2. Maintain or enhance existing environmental quality; or
3. In the following order of priority: restore, enhance, and create productive wetland and watercourse resources.

Such terms may include restrictions as to the time of year in which a regulated activity may be conducted, provided the Commission or its Agent determines that such restrictions are necessary to carry out the policy of the Inland Wetlands and Watercourses Act.

#### **SECTION 13.2 WHEN COMMISSION MUST RENDER DECISION**

No later than 65 days after the receipt of the application, the Commission may hold a public hearing on such application. The hearing shall be completed within 35 days of its commencement. Action shall be taken on applications within 35 days after completion of the public hearing.

In the absence of a public hearing, action shall be taken on applications within 65 days from the receipt of the application. (Section 9.2) The applicant may consent to one or more extensions of the periods specified in this subsection provided the total extension of all such periods shall not be for longer than 65 days or may withdraw the application.

The failure of the Commission to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the application. An application deemed incomplete by the Commission must either be withdrawn by the applicant or denied by the Commission.

#### **SECTION 13.3 NOTIFICATION OF DECISION**

The Commission shall notify the applicant of its decision within 15 days of the date of the decision by certified mail, and cause notice of said decision to be published in a newspaper having a general circulation in the town(s) wherein the inland wetland or watercourse lies. Should such notice not

be published within said 15 day period, the applicant may provide for the publication of such notice within 10 days thereafter.

**SECTION 13.4      MODIFICATION OF APPLICATION GRANTED WITH CONDITIONS**

If a permit is granted with conditions and limitations, and the applicant disputes such conditions and limitations, he or she may modify, amend or correct the proposal. Rejection of a modified, amended or corrected proposal shall be equivalent to denial of the application for purposes of appeal.

**SECTION 13.5      RECOURSE AFTER DENIAL OF PERMIT**

In the event of denial with or without permission to modify, amend or correct, the applicant may submit a new application or may seek judicial review pursuant to Section 17 of these regulations.

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

**SECTION 13.6      FILING AND RECORDING**

Before any permit shall be valid and any use or activity is carried on thereunder, the permit shall be recorded by the Wetlands Agent on the Land Records of the Town of New Canaan, at the applicant's expense. The date on which the permit is filed on the Land Records shall be considered to be the official date of the granting of the permit.

**SECTION 13.7      ZONING OR SUBDIVISION APPROVAL**

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

**SECTION 13.8      DECLARATORY RULING – EXEMPTIONS**

If the Commission or its Agent finds, on the basis of the evidence before it, that the proposed activity or use does not involve any regulated activity as defined in Sections 4 or 7, or involves only a permitted use as defined in Section 5, a letter of permission to proceed shall be granted forthwith. The Commission or its Agent shall state in writing its reasons for its findings. This permission shall be subject to limitations or revocation if it is later shown that a regulated activity or non-permitted use is a consequence of that proposed activity.

## **SECTION 13.9 PERMIT VALIDITY**

Any permit issued under this section for the development of property for which an approval is required under Connecticut General Statutes chapter 124, 124b, 126 or 126a shall be valid until the approval granted under such chapter expires or for ten years, whichever is earlier. Any permit issued under these regulations for any activity for which an approval is not required under chapter 124, 124b, 126 or 126a shall be valid for not less than two years and not more than five years, and may be extended under Section 14 provided no such permit may be valid for more than ten years. Any permit issued prior to July 1, 2011, that has not expired prior to May 9, 2011, shall expire not less than nine years after the date of such approval, and may be extended under Section 14 provided no such permit shall be valid for more than fourteen years.

If work under the permit is not completed within the period that the permit is valid and an extension as described under Section 14.2 has not been sought the permit shall terminate and be null and void. When a permit is terminated, the Commission or its Agent may review any partially completed activity and determine whether completion of the approved work is necessary to avoid adverse impact to a wetland or watercourse. Enforcement procedures (Section 15) may be initiated.

## **SECTION 13.10 BOND AND INSURANCE**

The applicant, upon approval of the permit, and at the discretion of the Commission or its Agent, may be required to file a performance bond or the equivalent thereof in an amount and with sureties and in a form approved by the Commission. The bond and sureties shall be conditioned on compliance with all provisions of these regulations and the term, conditions and limitations specified in the permit. The bond shall run to the Town of New Canaan and shall be in a form satisfactory to the Town's Attorney. Such bond shall:

1. Specify the time within which the terms and conditions of the permit shall be complied with;
2. Provide that the cash or its equivalent and the amount covered by the guarantee of the surety company securing the bond shall all become available immediately to the Town if the terms and conditions of the permit have not been fully met on the date set for completion thereof;
3. Provide that the bond shall remain in full force and effect until such time as the Commission shall make a formal finding that the work to be accomplished as required by the permit has been satisfactorily completed and shall so notify the applicant;
4. Provide that if the Commission shall make a finding that the work has not been accomplished within the time limit the bond shall be forfeited in its entirety and the funds shall be paid over to the Town of New Canaan.

## **SECTION 13.11 STATEMENT OF COMPLIANCE**

Upon completion of the activity for which the permit has been issued the applicant shall file with the Wetlands Agent a statement that the work has been completed and is in compliance with the conditions and limitations of the permit. Upon verification by the Wetlands Agent that all requirements set forth in permit have been fully complied with, a certificate shall be filed (at the Applicant's expense) by the Wetlands Agent on the Land Records of the Town of New Canaan to that effect.

## **SECTION 13.12 OTHER PROVISIONS**

The Commission shall state upon its record the reasons and basis for its decision and, in the case of any public hearing, such decision shall be based fully on the record of such hearing and shall be in writing and shall incorporate a statement relative to the consideration of feasible and prudent alternatives.

If the Commission 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.

All permits issued by the Commission are subject to the standard conditions set forth in Appendix B and do not derogate any present or future rights or powers of the Commission or the Town of New Canaan, and convey no rights in real estate or material nor any exclusive privileges, and are further subject to any and all public and private rights and to any federal, state, and municipal laws or regulations pertinent to the property or activity.

## **SECTION 14**

### **MODIFICATION, EXTENSION, AND TRANSFER OF PERMITS**

#### **SECTION 14.1 MODIFICATION OF PREVIOUSLY ISSUED PERMITS**

Any request to modify an existing permit shall be filed in writing with the Commission's Agent, together with the required fee. Modifications may be granted by the Commission's Agent without action by the Commission provided the purpose and activity remain the same as originally approved and the activity is modified in such a way that the impact to the wetlands and watercourses is no greater than under the original approval. In addition, the Agent may approve any modifications that qualify for approval under Section 10 of these regulations. The Agent may refer any request to the Commission. All requests to modify an existing permit shall contain the following information:

1. The request may incorporate by reference the documentation and record of the original application. The applicant may be required to submit modified plans or drawings;
2. The applicant shall state the reason why a modification is requested. The applicant shall describe any change in facts or circumstances, including any unforeseen natural or technical difficulties, involved with or affecting wetlands or watercourses or the property for which the permit was issued.

The Commission may on its own motion hold a Public Hearing upon any request for a modification of an existing permit if there has been a material change in the facts or circumstances affecting the wetlands or watercourses for which the permit was originally issued, and such hearing shall follow procedures established under Section 11 of these regulations. Alternatively, the Commission may require that a new application be filed under Section 8.3.

#### **SECTION 14.2 EXTENSION OF PREVIOUSLY ISSUED PERMITS**

Any request to extend the time for completion of permitted activities shall be filed in writing with the Commission's Agent, together with the required fee, prior to the expiration date of the permit. Any request shall state the reasons why the authorized activities were not initiated or completed within the time specified in the permit. The Commission, or its Agent for permits approved under Section 10 of these regulations, may accept an untimely request to extend the expiration date of a permit if the authorized activity is ongoing, and allow the continuation of work beyond the expiration date if, in the judgment of the Commission or its Agent, the permit is likely to be extended and the public interest or environment will be best served by not interrupting the activity.

#### **SECTION 14.3 EXCEPTION TO PERMIT EXTENSION**

Any request to extend a permit shall be granted upon request of the permittee unless the Commission or its Agent finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the

regulated activity for which the permit was issued. Extensions are limited to the time periods set forth in Section 13.9.

#### **SECTION 14.4      TRANSFER OF PERMIT**

Any request to transfer a permit shall be filed in writing with the Commission's Agent, together with the required fee. Any such request shall include a copy of the permit as issued, together with the information required under Section 8.3.1 for the person to whom the permit is to be transferred. No permit may be transferred without written consent of the Commission or the Wetlands Agent. If the title to the premises shall change while construction work is not completed the Commission shall be notified.

## **SECTION 15**

### **ENFORCEMENT**

#### **SECTION 15.1 ENTRANCE ONTO PRIVATE PROPERTY**

In the performance of its duties under the Inland Wetlands and Watercourses Act, the Commission may, by itself, its members or its designated Agent, enter at all reasonable times upon any public or private property where regulated activity is occurring or proposed, or where consent is otherwise given, except within a private residence, for the purpose of inspection and investigation to ascertain possible violations of these regulations. The Wetlands Agent is authorized to obtain a search warrant if necessary.

#### **SECTION 15.2 METHODS OF ENFORCEMENT**

If the Commission or its duly authorized agent determines that any person is engaging in any regulated activity without a permit, or is exceeding the conditions and limitations as set forth in the application, or has obtained a permit through deception or through inaccurate information as to either the activity or its environmental impact, or has engaged or is engaging in any other violation of these regulations or of Sections 22a-36 through 22a-45 of the Connecticut General Statutes, as amended, it may take any one or more of the following actions:

1. Issue a written order from the Commission or its Agent by certified mail, return receipt requested, to such person to cease immediately such activity and/or correct such condition(s). Such order shall be effective upon issuance, and shall remain in effect until the Commission revises or withdraws it. Within 10 days of the issuance of such order the Commission shall hold an Enforcement Hearing to provide the person an opportunity to be heard and show cause why the order shall not remain in effect. The Commission shall consider the facts presented at the hearing and within 10 days of the completion of the hearing notify the person by certified mail, return receipt requested, that the original order remains in effect, has been revised, or has been withdrawn. The issuance of such written order shall not delay or bar an action pursuant to Section 22a-44(b) of the Connecticut General Statutes, as amended (Section 15.4).
2. Suspend or revoke a permit if it finds that the permittee has not complied with the terms, conditions or limitations set forth in the permit or has exceeded the scope of work as set forth in the application including the application plans. Prior to revoking or suspending any permit, the Commission shall issue notice to the permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action. The 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 within 15 days of the date of the decision. The Commission shall publish notice of the suspension or revocation in a newspaper having general circulation in the Town of New Canaan.
3. Issue a notice of violation to such person conducting such activity or maintaining such facility or condition, stating the nature of the violation, the jurisdiction of the 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, and/or provide a written reply to the notice or file an application for the necessary permit. Failure to carry out the action(s) directed in a notice of violation may result in the issuance of the order provided in Subsection 15.2.1 above or other enforcement proceedings as provided by law.

4. In accordance with Section 22a-42g of the Connecticut General Statutes and the Town Ordinance from the Code of the Town of New Canaan Chapter 33A, (See Appendix D) as may be amended from time to time, the Wetlands Agent or the Assistant Wetlands Agent are authorized to issue citations to any person who commits a violation of these Regulations. The fine shall be \$1,000.00 per citation for activities in the wetlands or watercourses and \$500.00 per citation for activities within regulated areas or within other regulated areas near wetlands as defined in subsection 7.4 of these regulations. Appeals under this paragraph, may be taken to a hearing officer in accordance with the Citation Hearing Procedure (See Appendix E).
5. Bring an action in the Superior Court pursuant to Section 22a-44 of the Connecticut General Statutes, as may be amended from time to time.

### **SECTION 15.3      SUSPENSION OR REVOCATION OF PERMIT**

In the event that the Commission shall suspend or revoke a permit pursuant to Section 15.2 above, the permittee shall be notified of the Commission's action by certified mail, return receipt requested, within 15 days of the date of the action and the Commission shall cause notice of its suspension or revocation order to be published within 15 days of the date of the order in a newspaper having general circulation in the Town of New Canaan.

### **SECTION 15.4      CIVIL PENALTIES AND FINES**

Any person who commits, takes part in, or assists in any violation of these regulations may, as provided in Section 22a-44 of the Connecticut General Statutes, as may be amended from time to time, be subject to civil penalties and fines set and assessed by the court. Each violation of these regulations shall be a separate and distinct offense, and, in the case of a continuing violation, each day's continuance thereof shall be a separate and distinct offense.

### **SECTION 15.5      SUPERIOR COURT ACTION**

The Superior Court in an action brought by the State Commissioner, the Town of New Canaan, or any person shall have jurisdiction to restrain a continuing violation, to issue orders directing that the violation be corrected or removed and assess civil penalties pursuant to the Connecticut General Statutes. 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 State Commissioner, the Town of New Canaan, or person which

brought such action. The money collected pursuant to this section shall be used to restore the affected wetlands or watercourses to their condition prior to the violation, wherever possible.

**SECTION 15.6      OTHER REMEDIES NOT EXCLUDED**

Nothing in these regulations shall be taken as limiting or excluding such other remedies as are available to the Commission for the protection of inland wetlands or watercourses, including, but not limited to, suits under Section 22a-14 through 22a-20 of the Connecticut General Statutes, as amended, for the protection of natural resources, and any legal equitable powers or remedies which may be granted by a court of competent jurisdiction.

## **SECTION 16**

### **AMENDMENTS TO REGULATIONS AND BOUNDARIES**

#### **SECTION 16.1 AMENDMENTS AND CHANGES**

These regulations and the Inland Wetlands and Watercourses Map for the Town of New Canaan may be amended, from time to time, by action of the Commission or in accordance with changes in the Connecticut General Statutes or regulations of the State Department of Energy and Environmental Protection (DEEP), or as new information regarding soils and inland wetlands and watercourses becomes available.

#### **SECTION 16.2 PERMITS – NO RETROACTIVE REGULATIONS**

An application filed with the Inland Wetlands Commission of New Canaan which is in conformance with the applicable inland wetlands regulations as of the date of the receipt of such application shall not be required thereafter to comply with any change in inland wetland regulations, including changes to upland review areas, taking effect on or after the date of such receipt and any appeal from the decision of such 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 (a) to the establishment, amendment or change of inland boundaries of inland wetlands or watercourses or (b) to any change in regulations necessary to make such regulations consistent with the provisions of Chapter 440 of the General Statutes as of the date of such receipt.

#### **SECTION 16.3 NOTICE TO STATE COMMISSIONER**

Copies of all proposed changes in these regulations, amendments thereto, except determinations of boundaries, and public notices thereof, shall be submitted to the State Commissioner at least 35 days prior to any public hearing thereon.

#### **SECTION 16.4 NOTICE OF AMENDMENTS HEARING ON REGULATIONS**

Notice of a time and the place of a public hearing held pursuant to Section 16.1 above shall be published in the form of a legal advertisement, appearing in a newspaper having a general circulation in New Canaan at least twice at intervals no less than two days apart; the first not more than 15 days nor less than 10 days, and the last not less than two days before such hearing. A copy of such proposed new regulations, amendments or changes shall be filed in the office of the Town Clerk for public inspection at least 10 days before such hearing, and may be published in full in said newspaper.

#### **SECTION 16.5 PETITIONS ON BOUNDARIES**

Petitions requesting changes or amendments to the “Inland Wetlands and Watercourses Map, New Canaan, Connecticut” shall contain at least the following information:

1. The applicant's name, address and telephone number;
2. The owner's name (if not the applicant, address, telephone number, and a written consent to the proposed action as set forth in the application;
3. Applicant's interest in the land;
4. Map(s) showing the geographical location of the land affected by the petition and the existing and the proposed wetland(s) and watercourse(s) boundaries on such land in accurate detail;
5. The reason for the requested action;
6. The names and addresses of adjacent property owners;
7. Documentation by a soil scientist of the distribution of wetland soils on said land. Such documentation shall at a minimum include the report of the soil scientist documenting the location of the wetland soils on the land and a map of the said land indicating the flag locations set by the soil scientist and defining the boundaries of wetland soil types;
8. Watercourses shall be delineated by a soil scientist, geologist, ecologist or other qualified individual.

#### **SECTION 16.6      ADDITIONAL INFORMATION**

The Commission may require the petitioner to present documentation by a soil scientist that the land in question 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 includes 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. Watercourses shall be delineated by a soil scientist, geologist, ecologist or other qualified individual.

#### **SECTION 16.7      HEARINGS ON BOUNDARIES**

A public hearing shall be held on petitions to amend the Inland Wetlands and Watercourses Map. Notice of the hearing shall be published in the form of a legal advertisement, appearing in a newspaper having a general circulation in New Canaan at least twice at intervals of not less than two days, the first not more than 15 days nor less than 10 days, and the last not less than two days, before such hearing. A copy of such proposed boundary changes shall be filed in the office of the Inland Wetlands Department for public inspection at least 10 days before such hearing.

#### **SECTION 16.8      TIME FOR BOUNDARY HEARINGS**

The Commission shall hold a public hearing on a petition to amend the Inland Wetlands and Watercourses Map within 65 days after the receipt of such petition. The hearing shall be

completed within 35 days after commencement. The Commission shall act upon the changes requested in such petition within 65 days after completion of such hearing. The petitioner may consent to one or more extensions of the periods specified in this section provided the total extension of all such periods shall not be longer than 65 days, or may withdraw such petition. The failure of the Commission to act within the time period specified, or any extension thereof shall not be deemed to constitute approval of the petition.

#### **SECTION 16.9 THE DECISION**

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

#### **SECTION 16.10 EFFECTIVE DATE OF CHANGES**

Amendments and changes shall become effective 10 days after their adoption by the Commission. A copy of such amended regulation or boundary change shall be filed in the office of the Town Clerk of New Canaan.

## **SECTION 17**

### **APPEALS TO THE SUPERIOR COURT**

#### **SECTION 17.1 APPEALS**

The Commissioner of Energy and Environmental Protection, or any person owning or occupying land which abuts or lies within 90 feet of the wetland or watercourse involved or any person otherwise aggrieved by any regulation, order, or decision or action by the Commission pursuant to these regulations may, within 15 days after the publication of such regulation, order, decision or action appeal to the Superior Court in accordance with procedures set forth in Section 22a-43 of the General Statutes of the State of Connecticut, as amended. The Commissioner of Energy and Environmental Protection may appear as a party to any action brought by any other person within 30 days from the date such appeal is returned to the court.

#### **SECTION 17.2 NOTICE, REASONS AND PROCESS**

Notice of such appeal shall be served upon the New Canaan Inland Wetlands Commission and the Commissioner of Energy and Environmental Protection in the manner required by the Connecticut General Statutes, and shall state the reasons upon which it is predicated, and shall not stay proceedings on the regulation, order, decision or action. The court may on application and after notice grant a restraining order. Such appeal shall have precedence in the order of trial.

## **SECTION 18**

### **CONFLICTS AND SEVERANCE**

#### **SECTION 18.1 CONFLICTS**

Where there is a conflict between the provisions of these regulations and those of any other applicable statute, ordinance or regulation, the provision of the statute, ordinance or regulation which imposes the most stringent standards for the use of the wetland or watercourse shall govern. If there is a conflict between the provisions of these regulations and the provisions of the Act, the provisions of the Act shall govern.

#### **SECTION 18.2 INVALIDITY OF CERTAIN PARTS OF THE REGULATION**

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

## **SECTION 19**

### **OTHER PERMITS**

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

**SECTION 20**

**RECORDS RETENTION AND DISPOSAL**

The Commission and the Town Clerk for the Town of New Canaan shall retain complete administrative records of Commission actions and dispose of such records in accordance with the retention/disposition schedules set forth by the public records administrator of the Connecticut State Library.

**SECTION 21**

**APPENDIX A**

**TOWN OF NEW CANAAN  
INLAND WETLANDS COMMISSION  
FEE SCHEDULE**

Please note that the Inland Wetlands Commission fees listed below do not include Town Clerk Filing Fees. See "Other Fees" listed below. One check for all fees will be collected at the time of your application submittal. Make checks payable to the Town of New Canaan.

**REGULATED ACTIVITY APPLICATIONS**

**SINGLE-FAMILY RESIDENCE:**

- FILING FEE ----- \$ 800.00**
- Includes: preliminary review of plans with Wetlands Agent, site evaluation inspection and final compliance inspection. (Includes \$60.00 DEEP State Permit Fees).
  - Additional site inspections that require corrective measures by the applicant. ----- **Per visit \$ 500.00**
  - Modification, Transfer, Extension, Renewal of Permit. ----- **\$ 500.00**
  - Public Hearing Fee as may apply.

**SUBDIVISIONS: CONDOMINIUMS, MULTI-FAMILY UNITS:**

- BASE FILING FEE ----- \$1000.00**
- Plus \$500.00 per lot or unit that encroaches on wetlands, watercourses, and/or setbacks from wetlands and watercourses. (Includes \$60.00 DEEP State Permit Fees).
  - Additional site inspections that require corrective measures by the applicant. **Per visit/Per lot \$ 500.00**
  - Modification, Transfer, Extension, Renewal of Permit. ----- **\$ 500.00**
  - Public Hearing Fee as may apply.

**POND CLEANING AND/OR DREDGING:** (Includes \$60.00 DEEP State Permit Fees).

- Dredging <half acre. ----- **\$ 600.00**
- Dredging between half acre and one acre. ----- **\$ 800.00**
- Dredging >one acre. ----- **\$1000.00**
- Stream channel/embankment work. ----- **\$ 600.00**
- Public Hearing Fee as may apply.

**OTHER ACTIVITIES:** (Includes \$60.00 DEEP State Permit Fees)

- Tennis courts and swimming pools.
- Accessory buildings, decks, building additions and land alteration.
  - < half acre of disturbance. ----- **\$ 600.00**
  - Between half acre and one acre of disturbance. ----- **\$ 800.00**
  - > one acre of disturbance. ----- **\$1000.00**
- Public Hearing Fee as may apply.

**PUBLIC HEARING FEE: 50% OF INITIAL APPLICATION FEE - TBD PER APPLICATION.**

**Section 5.1 Review**

- Office review and site visit. ----- \$ 200.00

**OTHER:**

**Regulations.** ----- \$ 25.00

**Reproduction costs (copies \$.50/page; maps \$4.00/page).**

**Statement of Compliance - FINAL SITE INSPECTION.** ----- \$100.00

**SITE PLAN PREVIEW FOR SEPTIC PROPOSALS (from Health Department).** ----- \$100.00  
(Site visit included).

**FLOODPLAIN PERMIT APPLICATION.** ----- \$1000.00

**CORRECTIVE ACTION PERMITS:**

This covers work performed without a permit or work exceeding the original permit that in either case would require a permit:

- Triple the fees required for a Regulated Activity permit.
- No Certificate of Compliance will be issued until all fees are paid.
- Federal, State and local Government Agencies are exempt from permit fees.

**Note: These fees were approved by the Board of Selectman at the September 18, 2012 meeting and are effective January 1, 2013. The fees may be amended from time to time. In the event that the State fees (including the Town Clerk Fees) are increased, these fees shall be increased by the same amount.**

**COMPLEX APPLICATION FEE:**

The Commission may charge an additional fee sufficient to cover the cost of reviewing and acting on complex applications. Such fee may include, but not be limited to, the cost of retaining experts to analyze, review and report on issues requiring such experts. The Commission or its Agent shall estimate the complex application fee which shall be paid pursuant to Section 3.3 of these regulations within 10 days of the applicant's receipt or notice of such estimate. Any portion of the complex application fee in excess of the actual cost shall be refunded to the applicant no later than 30 days after the publication of the Commission's decision.

**OTHER FEES:**

**TOWN CLERK FILING FEES: \$53.00 for first page and \$5.00 for each additional page. (Wetland Permits are generally two pages. All other requests are generally one page.)**



S:\Wetland Forms\FEE SCHEDULE\FEE SCHEDULE effective 010113.doc

## APPENDIX B

### STANDARD CONDITIONS OF THE PERMIT

1. The permit shall be recorded on the Land Records of the Town of New Canaan, and is effective as of the filing date.
2. The permit shall be valid for five years unless otherwise specified by the Commission at the time of approval. If such work is not completed within said time period the permit shall terminate and be null and void. The Commission may grant an extension of time for a period not to exceed five years provided the permittee requests such extension in writing no less than 30 days prior to the expiration of the approved period; or if the work has commenced 30 days prior to the expiration of the approved completion period.
3. If an approval or permit is granted by another Agency and contains conditions affecting wetlands and/or watercourses, the applicant must resubmit the application for further consideration by the Commission for a decision before work on the activity is to take place.
4. Prior to the commencement of any work on the site the Contractor Compliance Agreement (Attached) must be signed and returned to the Commission's Office by the contractor who will perform the permitted activity.
5. The wetland boundaries shall be clearly marked for easy identification prior to the commencement of the permitted activity and the markings shall remain in place throughout the duration of the activity.
6. All activities for the prevention of soil erosion, such as silt fences and hay bales shall be under the direct supervision of a certified engineer, who shall employ the best management practices, consistent with the terms and conditions of this permit, to control stormwater discharges and to prevent erosion and sedimentation to otherwise prevent pollution, impairment, or destruction of wetlands or watercourses. Erosion controls are to be inspected by the permittee weekly and after rains and all deficiencies must be remediated within twenty-four hours of finding them.
7. The permittee shall take all necessary steps to control storm water discharges to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and watercourses.
8. The Commission's Agent shall be notified at least 48 hours in advance of the initiation of the permitted activity and completion of any part of the activity.
9. The permittee shall immediately inform the Wetlands Agent of problems involving sedimentation, erosion, downstream siltation or any unexpected adverse impacts, which develop in the course of or are caused by the work.
10. Any material, man-made or natural which is in any way disturbed and/or utilized during the work shall not be deposited in any wetlands or watercourse, either on or off the site, unless so specifically authorized by this permit.
11. The removal of any earth, loam, topsoil, humus, sand, gravel, clay, stone or quarry stone from the property shall be subject to Article 6 – Sections 6.4, 6.6, and 6.7 of the Zoning Regulations of the Town of New Canaan.
12. This permit shall not be assigned or transferred by the permittee or any party without the written consent of the Commission.

13. This permit does not obviate the permittee's obligation to obey all appropriate federal, state and local laws, or to obtain any federal, state or local permits.
14. This permit may be revoked or suspended if the permittee exceeds the conditions or limitations of this permit, or has secured this permit through deception or inaccurate information.
15. Upon completion of the permitted activity, the permittee shall file the attached Statement of Compliance with the Wetlands Agent along with the appropriate recording fee. A final field inspection will be conducted by the Agent to check for compliance. If all conditions of the permit have been satisfied, the Agent will file the Statement of Compliance on the Land Records of the Town of New Canaan.

**TOWN OF NEW CANAAN**

**CONNECTICUT 06840**

**INLAND WETLANDS COMMISSION**

**203-594-3036**

**CONTRACTOR COMPLIANCE AGREEMENT**

**Wetlands Permit Number \_\_\_\_\_**

(Please type or print in ink)

LOCATION OF ACTIVITY: \_\_\_\_\_

CONTRACTOR'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE #: \_\_\_\_\_

EMAIL: \_\_\_\_\_

Work will commence on or about \_\_\_\_\_ (Date) and be completed within \_\_\_\_\_ months.

As the contractor engaged by \_\_\_\_\_, the owner of record, I will perform the regulated activities described in the Subject Permit and I will cause all subcontractors to abide by the terms and conditions of the Permit.

I have read the Permit and will comply with all required conditions.

\_\_\_\_\_  
Signature (Date)

**Note:** Completed forms shall be hand-delivered to: Wetlands Agent,  
Inland Wetlands Department  
848 Weed Street  
New Canaan, CT 06840

or, mailed to: Wetlands Agent  
Inland Wetlands Department  
Town Hall  
77 Main Street  
New Canaan, CT 06840

This form must be on file in the Wetlands Agent's office prior to the commencement of any work.

## APPENDIX C

### PLANT LIST

Taken from a publication titled "Inland Wetlands Plants of Connecticut" The Connecticut Arboretum Bulletin No. 19, Connecticut College, New London, Connecticut, May 1973.

#### TYPICAL PLANTS OF BOGS

Larch (*Larix Laricina*), southern white cedar (*Chamaecyparis thyoides*), black spruce (*Picea mariana*), water-willow (*Decodon verticillatus*), sundew (*Drosera rotundifolia*), pitcher-plant (*Sarracenia purpurea*), leather-leaf (*Chamaedaphne calyculata*), sweet gale (*Myrica gale*), bog laurel (*Kalmia polifolia*), bog rosemary (*Andromeda glaucophylla*), cranberry (*Vaccinium oxycoccos*)

#### TYPICAL PLANTS OF MARSHES

Bur-reed (*Sparganium americanum*), cat-tails (*Typha latifolia*), arrowhead (*Sagittaria latifolia*), pickerelweed (*Pontederia cordata*), arrow-arum (*Pellandra virginica*), wool grass (*Scripus cyperinus*), bulrushes (*Scirpus atrovirens*, *S. validus*, and *S. americanus*), umbrella-sedge (*Cyperus strigosus*), tussock sedge (*Carex stricta*), spike-rush (*Eleocharis*), purple loosestrife (*Lythrum salicaria*), soft rush (*Juncus effusus*), rush (*Juncus acuminatus*), yellow pond-lily (*Najas advena*), water-lily (*Nymphaea odorata*), reed (*Phragmites communis*), wild rice (*Zizania aquatica*).

#### TYPICAL PLANTS OF SWAMPS

Red or swamp maple (*Acer rubrum*), silver maple (*Acer saccharinum*), poison sumac (*Rhus vernix*), black ash (*Traxinus nigra*), large pussy-willow (*Salix discolor*), silky willow (*Salix sericea*), black willow (*Salix nigra*), black gum (*Nyssa sylvatica*), alders (*Alnus rugosa* and *A. serrulata*), highbush blueberry (*Vaccinium corymbosum*), maleberry (*Lyonia ligustrina*), sweet pepperbush (*Clethra alafolia*), clammy azalia (*Rhododendron viscosum*), black alder (*Ilex verticillata*), spice bush (*Lindera benzoin*), buttonbush (*Cephalanthus occidentalis*), marsh-marigold (*Caltha palustris*), skunk-cabbage (*Symplocarpus foetidus*).

#### **OTHER REFERENCES**

"Freshwater Wetlands, A Guide to Common Indicator Plants of the Northeast" Dennis W. Magee, University of Massachusetts Press, 1981

**APPENDIX D**

INLAND WETLANDS & WATERCOURSES

Chapter 33A

**INLAND WETLANDS AND WATERCOURSES**

ARTICLE 1

**Fines**

**§33A-1. Purpose.**

**§33A-2 Statutory authority.**

**§33A-3. Definitions.**

**§33A-4. Issuance of citation.**

**§33A-5. Failure to pay fine.**

**§33A-6. Establishment of fine.**

**§33A-7. Construal of provisions.**

**§33A-8. Current violations.**

**§33A-9. Disbursement of fines.**

**[HISTORY: Adopted by the New Canaan Town Council  
as indicated in article histories. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Citation hearing procedure—See Ch. 11.**

**Environmental commission—See Ch. 16.**

33A01

5-25-2001

## ARTICLE 1

## Fines

[Adopted 12-13-2000, effective 4-1-2001]

**§33A-1. Purpose.**

The purpose of this chapter is to establish a means by which the Town of New Canaan may more effectively enforce the Inland Wetlands and Watercourses Regulations of the Town of New Canaan, with the implementation of fines for violations and continued nonconformances.

**§33A-2. Statutory authority.**

This chapter, pursuant to Connecticut General Statutes, Section 22a-42g, was adopted by the New Canaan Town Council on December 13, 2000, to be effective April 1, 2001.

**§33A-3. Definitions.**

The following words, terms and phrases used in this chapter shall have the following meanings:

AGENT—The employee of the Town of New Canaan responsible for the supervision of the Inland Wetlands and Watercourses Regulations and who implements the policies of the Environmental Commission.

COMMISSION—The New Canaan Environmental Commission, acting as the inland wetlands agency under Section 22a-42 of the Connecticut General Statutes.

PERSON—Any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

REGULATIONS—The Inland Wetlands and Watercourses Regulations of the Town of New Canaan.

33A02

5-25-2001

**§33A-4. Issuance of citation.**

- A. The Environmental Agent and the Assistant Environmental Agent are hereby authorized to issue citations to any person who commits a violation of the town's Inland Wetlands and Watercourses Regulations. In such

instances, each citation will apply jointly and severally to the owner of the property in question and his/her agents, contractors and subcontractors. Each day that any violation continues shall be deemed a separate offense, for which a separate citation may be issued.

- B. Any such citation may be delivered either by hand delivery or by certified mail to the person named in such citation. The Environmental Agent or Assistant Environmental Agent issuing a citation shall retain a copy of the citation. In addition, a copy of the initial citation shall be reported to The Connecticut Department of Environmental Protection, pursuant to Sections 22a-39-14 of the Connecticut State Regulations.
- C. The citation shall inform such person:
  - (1) Of the allegations against him or her and the amount of the fines;
  - (2) That the person has a period of 30 days from the date of the citation (i.e., the date of hand delivery or the date the citation was mailed) to make an uncontested payment of the fines;
  - (3) That payments shall be made payable to the Treasurer of the Town of New Canaan at Town Hall.

**§33A-5. Failure to pay fine.**

If the person cited does not pay the fine within 30 days from the date of the citation, then at any time within 12 months from the expiration of the thirty-day period, the Environmental Agent or Assistant Environmental Agent shall send a notice to the person cited, by hand delivery or certified mail, informing such person:

33A03

5-25-2001

§33A-5

NEW CANAAN CODE

§33A-7

- A. Of the allegations against him or her and the amount of the fines;
- B. That the person cited may contest liability before a hearing officer by delivering, in person or by mail, within 30 days from the date of the notice, a written demand for a hearing, pursuant to Chapter 11, Citation Hearing Procedure;
- C. That if the person cited does not demand such a hearing, an assessment and judgment shall be rendered against him or her; and
- D. That such judgment may issue without further notice.

**§33A-6. Establishment of fine.**

- A. The fine shall be \$1,000 per citation for activities in the wetlands or watercourses and \$500 per citation for activities within regulated areas or buffer/setback areas that otherwise impact the wetlands or watercourses. No such fine may be levied against the State of Connecticut or any employee of the state acting within the scope of his/her employment.
- B. At its discretion, the Environmental Commission may seek additional penalties and remedies in accordance with Section 15 of the Inland Wetlands and Watercourses Regulations (as the same may be amended from time to time).

**§33A-7. Construal of provisions.**

The provision of this chapter shall not be construed to limit or alter the authority, duty and responsibility of the New Canaan Environmental Commission as granted and established under Connecticut's Inland Wetlands and Watercourses Act, Sections 22a-36 through 22a-45 of the Connecticut General Statutes, New Canaan's Inland Wetlands and Watercourses Regulations, and other legislation that may apply.

33A04

5-25-2001

§33A-8 INLAND WETLANDS & WATERCOURSES §33A-9

**§33A-8. Current violations.**

Violations or nonconformance to the Inland Wetlands and Watercourses Regulations in existence at the effective date of this chapter shall be deemed violations under this chapter, and may be issued fine(s) accordingly.

**§33A-9. Disbursement of fines.**

Any fine collected by the Town of New Canaan pursuant to this chapter shall be deposited into the General Fund of New Canaan.

33A05

5-25-2001

**APPENDIX E**

§11-1 CITATION HEARING PROCEDURE §11-1

**Chapter 11**

**Chapter Hearing Procedure**

- §11-1. Statutory authority; purpose.
- §11-2. Appointment of hearing officers.
- §11-3. Admission of liability by payment of fine.
- §11-4. Failure to request hearing.
- §11-5. Notice of hearing.
- §11-6. Filing of initial citation.
- §11-7. Conduct of hearing.
- §11-8. Notice of assessment.
- §11-9. Appeals.

**[HISTORY: Adopted by the New Canaan Town Council 12-13-200, effective 4-1-2001.<sup>1</sup> Amendments noted where applicable.]**

**GENERAL REFERENCES**

Numbering of buildings-See Ch.8.  
Inland wetlands and watercourses-See Ch. 33A.

- §11-1. Statutory authority; purpose.

In accordance with Section 7-152c of the Connecticut General Statutes, as the same may be amended from time to time, there is hereby established a citation hearing procedure, for use in contesting citations issued in accordance with town ordinances where such hearing procedures apply.

---

<sup>1</sup>Editor's Note: Former Ch. 11, Conservation Commission, adopted 9-13-1966, effective 10-4-1966, was repealed 5-14-1980. See now Ch. 16, Environmental Commission.

**§11-2. Appointment of hearing officers.**

The First Selectman shall appoint one or more citation hearing officers, other than police officers or Town of New Canaan employees or persons who issue citations, to conduct the hearings authorized by this chapter.

**§11-3. Admission of liability by payment of fine.**

- A. If any person who is sent notice pursuant to a town ordinance wishes to admit liability for any alleged violation, he/she may, without requesting a hearing, pay the full amount of the fine admitted to, in person or by mail to the Town of New Canaan. Checks should be payable to the Treasurer of the Town of New Canaan.
- B. Such payment shall be inadmissible in any proceeding, civil or criminal, to establish the conduct of such person or other person making the payment.

**§11-4. Failure to request hearing.**

Any person who does not deliver or mail written demand for a hearing within 30 days of the notice provided for in the subject town ordinance shall be deemed to have admitted liability, and the person issuing the citation shall certify such person's failure to respond to the hearing officer. The hearing officer shall thereupon enter and assess the fine provided for by the subject ordinance, and shall follow the procedures set forth in §11-8 of this chapter.

**§11-5. Notice of hearing.**

Any person who requests a hearing shall be given written notice by certified mail of the date, time and place for the hearing. Such hearing shall be held not less than 15 days nor more than 30 days from the date of the mailing of notice, provided that the hearing officer shall grant postponement or

continuance for any reasonable request by any interested party for good cause shown.

**§11-6.Filing of initial citation.**

An original or certified copy of the initial citation issued by the issuing official shall be filed and retained by the Town of New Canaan and shall be deemed to be a business record within the scope of Section 52-180 of the Connecticut General Statutes and evidence of the facts contained therein.

**§11-7.Conduct of hearing.**

- A. The presence of the issuing official shall be required at the hearing. A person wishing to contest his/her liability shall appear at the hearing and may present evidence in his/her behalf.
- B. A designated municipal official, other than the hearing officer, may present evidence on behalf of the municipality.
- C. If the person that demanded a hearing fails to appear, the hearing officer may enter an assessment by default against him/her upon finding of proper notice and liability under this chapter.
- D. The hearing officer may accept from such person copies of investigatory and citation reports and other official documents by mail and may determine thereby that the appearance of such person is not necessary.
- E. The hearing officer shall conduct the hearing in the order and form and with such methods of proof as he/she deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation.
- F. The hearing officer shall announce his/her decision at the end of the hearing. If the hearing officer determines that the person is not liable, he/she shall dismiss the

matter and enter his/her determination in writing accordingly. If the hearing officer determines that the person is liable for the violation, the hearing officer shall forthwith enter and assess the fines, penalties, costs or fees against such person as provided by this chapter.

**§11-8. Notice of assessment.**

If such assessment is not paid on the date of entry, the hearing officer shall send, by first class mail, a notice of the assessment to the person found liable and shall file, not less than 30 days nor more than 12 months after such mailing, a certified copy of the notice of assessment with the clerk of the Superior Court facility designated by the Chief Court Administrator, together with the statutory entry fee. Within such twelve-month period, assessments against the same person may be accrued and filed as one record of assessment. Notwithstanding any other provisions of the Connecticut General Statutes, the hearing officer's assessment, when so entered as a judgment, shall have the effect of a civil money judgment and a levy of execution on such judgment may be issued without further notice to such person.

**§11-9. Appeals.**

A person against whom an assessment has been entered pursuant to this chapter is entitled to judicial review by way of appeal. An appeal shall be instituted within 30 days of the mailing of notice of such assessment by filing a petition to reopen assessment, together with an entry fee in an amount equal to the entry fee for a small claims case pursuant to Connecticut General Statutes Section 52-259, in the Superior Court, which shall entitle such person to a hearing in accordance with the rules of the judges of the Superior Court.