

# ROXBURY INLAND WETLANDS AND WATERCOURSES REGULATIONS

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ADOPTED: September 26, 2006

EFFECTIVE: October 15, 2006

AMENDED: November 22, 2011

EFFECTIVE: December 4, 2011

# **Roxbury Inland Wetlands and Watercourses Regulations**

## **Section 1 Title and Authority**

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

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

The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction are in the public interest and are 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 provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.

- 1.2 These regulations shall be known as the “Inland Wetlands and Watercourses Regulations of the Town of Roxbury.”
- 1.3 The Inland Wetlands and Watercourses Commission of the Town of Roxbury was established in accordance with an ordinance adopted August 23, 1973, and shall implement the purposes and provisions of these regulations and the Inland Wetlands and Watercourses Act in the Town of Roxbury.

- 1.4 These regulations have been adopted and may be amended, from time to time, in accordance with the provisions of the Inland Wetlands and Watercourses Act and these regulations.
- 1.5 The commission shall enforce the Inland Wetlands and Watercourses Act and shall issue with terms, conditions, limitations or modifications, or deny permits for all regulated activities in the Town of Roxbury pursuant to sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.

## **Section 2 Definitions**

- 2.1 As used in these regulations:
- a. "Act" means the Inland Wetlands and Watercourses Act, sections 22a-36 through 22a-45, inclusive, of the Connecticut General Statutes, as amended.
  - b. "Bogs" are watercourses distinguished by evergreen trees and shrubs underlain by peat deposits, poor or very poor drainage, and highly acidic conditions.
  - c. "Clear-cutting," means the harvest of timber in a fashion, which removes all trees down to a two-inch diameter at breast height.
  - d. "Commission" means the Inland Wetlands and Watercourses Commission of the Town of Roxbury.
  - e. "Commission member" means a member of the Inland Wetlands and Watercourses Commission of the Town of Roxbury.
  - f. "Commissioner of Environmental Protection" means the Commissioner of the State of Connecticut Department of Environmental Protection.
  - g. "Continual flow" means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low flow period of the annual hydrological cycle, June through September, but it recurs in prolonged succession.
  - h. "Deposit" includes, but shall not be limited to fill, grade, dump, place, discharge or emit.
  - i. "Designated agent," means an individual(s) designated by the Commission to carry out its functions and purposes.
  - j. "Discharge" means emission of any water, substance, or material into wetlands or watercourses, whether or not such substance causes pollution.
  - k. "Disturbing the natural and indigenous character of the land" means that the activity will significantly alter the inland wetlands and watercourses by reason of removal or deposition of material, clearing of land including clear-cutting, altering or obstructing water flow, or will result in the pollution of wetlands or watercourses.

- l. "Essential to the farming operation" means that the proposed activity is necessary and indispensable to sustain farming activities on the farm.
- m. "Estimated cost," means cost for design, labor, work, materials, construction and development of a Regulated activity or an operation or use that may be a Regulated activity.
- n. "Farming" shall be consistent with the definition as noted in section 1-1(q) of the Connecticut General Statutes. (See Appendix A.)
- o. "Feasible" means able to be constructed or implemented consistent with sound engineering principles.
- p. "Inventory map" means the map entitled "Inland Wetlands and Watercourses Map of the Town of Roxbury, Connecticut." It is a map of soil types and it is available for inspection in the Office of the Town Clerk.
- q. "License" means the whole or any part of any permit, certificate of approval or similar form of permission, which may be required of any person by the provisions of these regulations under the authority of the Commission.
- r. "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 wetlands and watercourses to times when water flows are low and fish and wildlife will not be adversely affected.
- s. "Marshes" are watercourses 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.
- t. "Material" means any substance, solid or liquid, organic or inorganic, including but not limited to: soil, sediment, aggregate, land, gravel, clay, bog, peat, mud, debris, sand, refuse, manure or waste, including, without limitation, animal waste.
- u. "Municipality" means the Town of Roxbury.
- v. "Nurseries" means places where plants are grown for sale, transplanting, or experimentation.
- w. "Permit," means the whole or any part of any license, certificate of approval or similar form of permission, which may be required of any person by the provisions of these regulations and the Act or other municipal, state or federal law.
- x. "Permittee" means the person to whom a permit has been issued.

y. "Person" means any person, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

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

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

bb. "Regulated activity" means any operation within or use of a wetland or watercourse whether or not such wetland or watercourse is shown on the Inventory map 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 4 of these regulations. Further, any clearing, grubbing, filling, grading, paving, storage, excavating, constructing, installing, repairing, depositing or removal of material and discharging of water on land or any of the activities listed in subparagraphs (1) through (6) of this paragraph shall be deemed to be a Regulated activity when conducted in the following setback areas: (i) two hundred (200) feet of the ordinary high waterline of the Shepaug River and one hundred (100) feet of the ordinary high waterline of any other watercourse measured from the closest edge of the ordinary high water; (ii) one hundred (100) feet from all wetlands as defined in these regulations.

Furthermore, "Regulated activity" includes any activity in an area adjacent to a wetland or watercourse, including without limitation those activities specified in subparagraphs (1) through (6) of this subparagraph, but not including the specified activities in Section 4 of these regulations.

- (1) The location of any portion of any subsurface sewage disposal system;
- (2) clear-cutting or grubbing of land, except as permitted in Section 4 of these regulations;
- (3) excavating, mining, filling (including hydraulic fill) or stockpiling of earth materials or any combination thereof, including the land in its excavated or filled condition, when the area of the ground cover destroyed, removed, or disturbed by such activity can potentially impact a wetland or watercourse as determined by the Commission or its Designated agent;
- (4) permanent outdoor or underground storage or storage capacity of (i) in excess of fifty (50) gallons of any petroleum-based product for residential uses, and (ii) in excess of fifty (50) but not more than twenty-one hundred (2,100) gallons of any petroleum-based product for industrial or commercial purposes;
- (5) disposal, treatment, storage or management of hazardous wastes, as defined in Connecticut General Statutes section 22a-115, as amended;
- (6) except as regulated pursuant to Section 5 of these regulations, diversion of surface water of fifty thousand (50,000) gallons or less per day.

Furthermore, certain activities, operations and uses of land occurring outside the boundaries of wetlands and watercourses may have a detrimental effect on those wetlands and watercourses. If the Commission determines that any such activity, operation or use will cause or has a reasonable likelihood of causing such an adverse impact, in the absence of regulation, the Commission may deem such activity, operation or use to be a Regulated activity requiring a permit pursuant to these regulations regardless of the location of the activity, operation or use in relation to the wetland or watercourse. The Commission has determined that the application of herbicides, pesticides and fertilizers within fifty (50) feet of any wetland or watercourse will cause or has a reasonable likelihood of causing an adverse impact and therefore such applications shall not be permitted without a permit pursuant to these regulations. A Regulated activity also includes any operation or use in upland (non-wetlands and non-watercourses) area that has the potential to or is likely to detrimentally impact a Regulated area.

cc. "Regulated area" means any inland wetlands or watercourses as defined in these regulations, small or large, natural or manmade, existing seasonally or year-round, and which need not appear as a wetland or watercourse on the Inventory map and within (i) two hundred (200) feet of the ordinary high waterline of the Shepaug River and one hundred (100) feet of the ordinary high waterline of any other watercourse measured from the closest edge of the ordinary high water; (ii) one hundred (100) feet from all wetlands as defined in these regulations.

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

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

ff. "Setback area" means that geographical area within a specified distance from a wetlands or watercourse that is subject to these regulations.

gg. "Significant activity" means any activity, including, but not limited to, the following activities, which may have a major effect or significant impact on wetlands or watercourses:

1. Any activity involving deposition or removal of material, which will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed.

2. Any activity which substantially changes or diminishes the natural channel or may inhibit the natural dynamics of a watercourse system.

3. Any activity which substantially changes or 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; or perform other functions.

4. Any activity, which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse.

5. Any activity which causes a substantial diminution of flow of a natural watercourse or groundwater levels of the Regulated area.

6. Any activity, which is likely to cause or has the potential to cause pollution of a wetland or watercourse.

7. Any activity, which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.

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

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

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

kk. "Town" means the Town of Roxbury.

ll. "Waste" means sewage or any substance, liquid, gaseous, solid, toxic or radioactive, which may pollute or tend to pollute any of the wetlands or watercourses.

mm. "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 sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (1) evidence of scour or deposits of recent alluvium or detritus, (2) the presence of standing or flowing water for a duration longer than a particular storm incident, and (3) the presence of hydrophytic vegetation.

nn. "Wetlands" means land, including submerged land as defined in this Section, not regulated pursuant to sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial and flood plain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Natural Resources Conservation Service of the United States Department of Agriculture (USDA). Such areas may include filled, graded, or excavated sites which possess an aquic (saturated) soil moisture regime as defined by the USDA Cooperative Soil Survey.

### **Section 3 Inventory of Regulated Areas**

- 3.1 The Inventory map delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of this map are available for inspection at the office of the Town Clerk or the Commission. In all cases, the precise location of Regulated areas shall be determined by a combination of the following: aerial photography, remote sensing imagery, resource mapping, soils maps, site inspection

observations, the actual character of the land, the distribution of wetland soil types and locations of watercourses and/or other information. Such determinations may be made by field inspection and testing conducted by a soil scientist where soil classifications are required or where watercourse determinations are required, by other qualified individuals.

- 3.2 Any property owner who disputes the designation of any part of his or her land as a Regulated area on the Inventory map, may petition the Commission for an amendment to the Inventory map. All petitions for such a map change shall be submitted in writing and shall include all relevant facts and circumstances, which support the change. The petitioner shall provide proof that the designation is inapplicable. The Commission may require such person to provide an accurate delineation of Regulated areas in accordance with Section 14 of these regulations.
- 3.3 The Commission or its Designated agent(s) shall maintain a current inventory of Regulated areas within the Town. The Commission may amend its Inventory map as more accurate information becomes available relative to more accurate delineation of wetlands and watercourses within the Town. Such map amendments are subject to the public hearing process outlined in Section 14 of these regulations. Further, any person may petition for an amendment to the map. Petitioners shall bear the burden of proof for all requested map amendments. Such proof may include, but not be limited to, field testing, aerial photography, remote sensing imagery, resource mapping or other available information. Such map amendments are subject to the public hearing process outlined in Section 14 of these regulations.

#### **Section 4** **Permitted Uses as of Right and Nonregulated Uses**

- 4.1 The following operations and uses shall be permitted in inland wetlands and watercourses, as of right:
  - a. Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three (3) acres or less essential to the farming operation. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear-cutting of timber except for the expansion of agricultural crop land, or the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale.
  - b. A residential home (1) for which a building permit has been issued or (2) 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 building permit was obtained on or before July 1, 1987. Any person claiming a use of wetlands permitted as a right under this subdivision shall document the validity of said right by providing a certified copy of the building permit and a site plan showing proposed and existing topographic contours, wetlands boundaries, house and well locations, septic system, driveway, approval dates or other necessary information to document his or her right hereunder.

c. Boat anchorage or mooring, not to include dredging or dock construction.

d. Uses incidental to the enjoyment or maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the Town and containing a residence. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of significant amounts of material from or into a wetland or watercourse, or diversion or alteration of a watercourse.

e. 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 Connecticut General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in sections 22a-401 through 22a-403 of the Connecticut General Statutes.

f. Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to Connecticut General Statutes section 22a-42a or July 1, 1974, whichever is earlier, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this subdivision, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place.

g. Activities conducted by, or under the authority of the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control.

**h. Withdrawals of water for fire emergency purposes. (Amended 11.22.11)<sup>1</sup>**

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

a. Conservation of soil, vegetation, water, fish, shellfish, and wildlife. Such operation or use may include, but is not limited to, minor work to control erosion, or to encourage proper fish, wildlife and silviculture management practices.

b. Outdoor recreation including the use of play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin and scuba diving, camping, boating, water skiing, trapping, hunting, fishing and shell fishing and cross-country skiing where otherwise legally permitted and regulated.

c. The installation of a dry hydrant by or under the authority of a municipal fire department, provided such dry hydrant is used only 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 (1) is readily accessible to fire department apparatus from a proximate public road, (2) provides for the withdrawal of water by suction to such fire department apparatus, and (3) is permanently installed into an

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<sup>1</sup> Added Nov. 22, 2011 – Effective Dec. 4, 2011

existing lake, pond, or stream that is a dependable source of water. (Amended 11.22.11)<sup>2</sup>

- 4.3 All activities in wetlands or watercourses involving filling, excavating, dredging, clear-cutting, clearing, or grading or any other alteration or use of a wetland or watercourse including diversions of surface water, watercourses, groundwater or stormwater and 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 6 of these regulations.
- 4.4 To carry out the purposes of this Section, any person proposing to carry out a permitted or nonregulated operation or use within a wetland or watercourse that may disturb the natural and indigenous character of the wetland or watercourse shall, prior to commencement of such operation or use, notify the Commission on a form provided by it, and provide the Commission with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or nonregulated use of the wetland or watercourse. The Commission or its Designated agent shall rule that the proposed operation or use is a permitted or a nonregulated use or operation, or that a permit is required. Such ruling shall be in writing and shall be made no later than the next regularly scheduled meeting of the Commission following the meeting at which the request was received. The Designated agent for the Commission may make such ruling on behalf of the Commission at any time or may refer the decision to the Commission as a whole.

## **Section 5**

### **Activities Regulated by the State**

- 5.1 The Commissioner of 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 sections 22a-39 or 22a-45a of the Connecticut General Statutes.
- 5.2 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to sections 22a-28 through 22a-35 of the Connecticut General Statutes, as amended.
- 5.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Environmental Protection under section 22a-402 of the Connecticut General Statutes or a permit issued by the Commissioner of 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.
- 5.4 The Commissioner of 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

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<sup>2</sup> Added Nov. 22, 2011, Effective Dec. 4, 2011

Water Act.

- 5.5 The Commissioner of Environmental Protection shall have exclusive jurisdiction over the diversion of water, including withdrawals of surface or groundwater in excess of fifty thousand (50,000) gallons per day or any piping, culverting, channelization, relocation, damming or other alteration of the location of flow of any surface waters of the state where the tributary watershed area above the point of such alteration is 100 acres or larger, pursuant to sections 22a-365 through 22a-378a of the Connecticut General Statutes, as amended.

**Section 6**  
**Regulated Activities to be Licensed**

- 6.1 Subject to the provisions of Section 4 hereof, no person shall conduct or maintain a Regulated activity without first obtaining a permit for such activity from the Inland Wetlands and Watercourses Commission of the Town of Roxbury.
- 6.2 The Commission shall regulate 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 wetland or watercourse, and any other Regulated activity, unless such operation or use is permitted or nonregulated pursuant to Sections 4 and 5 of these regulations.
- 6.3 Any person found to be conducting or maintaining a Regulated activity without the prior authorization of the Commission, or violating any other provision of these regulations, shall be subject to the enforcement proceedings and penalties prescribed in Section 13 of these regulations and any other remedies as provided by law.

**Section 7**  
**Application Requirements**

- 7.1 Any person intending to conduct a Regulated activity or to renew or amend a permit to conduct such activity shall, prior to the commencement of such activity, operation or use, submit an application to the Commission. An application shall include an application form and such information as prescribed by Subsection 7.5 and in case of a significant activity by Subsection 7.6 of these regulations. Application forms may be obtained in the offices of the Roxbury Town Clerk or through the Commission.
- 7.2 If an application to the Roxbury Planning Commission or Zoning Commission for special permit, site plan subdivision or resubdivision of land involves land containing a wetland or watercourse, the applicant shall, in accordance with sections 8-3(g), 8-3c, or 8-26, as applicable, of the Connecticut General Statutes, submit an application for a permit to the Commission in accordance with this Section 7, no later than the day the application is filed with such Planning or Zoning Commission.
- 7.3 All applications shall contain such information as is necessary for a fair and informed determination of the issues.
- 7.4 The Commission and the applicant may hold a preliminary review to determine whether or not the proposed activity involves a Significant activity. Whenever possible the determination relative to significant activities should be made at the preliminary review.

- 7.5 All applications shall include the following information in writing:
- a. The applicant's name, home and business mailing addresses and telephone numbers; if the applicant is a Limited Liability Corporation or a Corporation, the managing member's or responsible corporate officer's name, address, and telephone number.
  - b. The 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.
  - c. The applicant's interest in the land.
  - d. The geographical location of the property which is affected by the proposed activity including, but not limited to, a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, a computation of the area(s) (in acres or square feet) of wetlands or watercourses disturbance, soil type(s), and wetland vegetation.
  - e. The purpose and a 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 (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources. If the proposed activity involves the construction or the erection of structures on the affected property, the description shall include blueprints or engineering or architectural plans or designs to the extent necessary to permit the Commission to determine the impact of such construction on any Regulated area.
  - f. Alternatives which would cause less or no environmental impact to wetlands and watercourses, and why the alternative as set forth in the application was chosen; the Commission may require that all such alternatives be diagrammed on a site plan or drawing.
  - g. Names and mailing addresses of adjacent landowners.
  - h. Certification by the applicant that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information.
  - i. Authorization for the commissioners and any agents of the Commission to inspect the property, at reasonable times, both before and after a final decision has been issued and for the life of the permit.
  - j. The applicant shall certify whether any of the following circumstances apply:
    1. any portion of the property on which the Regulated activity is proposed is located within 500 feet of the boundary of an adjoining municipality;
    2. traffic attributable to the completed project on the site will use streets within

the adjoining municipality to enter or exit the site;

3. sewer or water drainage from the project site will flow through and impact the sewage or drainage system within the adjoining municipality;

4. water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality; or

5. 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, the applicant shall submit information relative to the present character and the projected impact of the proposed activity upon the watercourse.

k. A site plan, if required, prepared by a land surveyor, professional engineer or landscape architect registered in Connecticut with the minimum information and requirements listed below:

1. A scale of at least 1"= 40' or such other scale as the Commission may deem appropriate for the size of the site.

2. Existing contours at two-foot (2') intervals (U.S.G.S. topographical datum is not sufficient).

3. Wetland delineation flag locations (numbered) defining boundaries of the regulated soil types shall be located on the plan by a land surveyor or engineer licensed in Connecticut, and the Soil scientist doing the flagging shall certify the soil types depicted on the plan.

4. Proposed contours at two-foot (2') intervals.

5. Existing and proposed drainage.

6. Live seal of land surveyor, professional engineer or landscape architect as appropriate.

7. Relationship of work to the property line.

8. Other information normally provided for site plans, including, but not limited to, north arrow, scale, legend, vicinity map and names of adjoining owners.

9. Proposed construction or other activity including, but not limited to, septic systems, wells, buildings, driveways, roads, parking areas, ponds and cut-and-fill areas.

10. Provision utilizing best management practices for sedimentation and erosion control consistent with the Best Management Practices in the CT DEP 2002 Soil Erosion and Sedimentation Control Guidelines; the plans shall include driveway drainage plans and, where technically feasible, roof drainage infiltration systems that are engineered to be protective of Regulated areas.

11. Watercourses within 100 feet, wetlands within 100 feet, Shepaug River if

within 200 feet of the proposed work.

12. The map elevation shall be based on U.S.G.S. datum.

13. Flood hazard zones.

14. Soil types within Regulated areas.

15. Additional information deemed relevant by the applicant or Commission.

16. The site plan shall show existing and proposed conditions in relation to wetlands and watercourses and shall identify any further activities associated with, or reasonably related to, the proposed Regulated activity which are made inevitable by the proposed Regulated activity and which may have an impact on wetlands or watercourses.

17. The lot and property boundaries, wetlands boundaries and setbacks shall be separately delineated in different colors.

18. Where feasible, all wetlands and watercourses that are within 100 feet of the property line shall be identified on the map.

19. The site plan shall show the entire property.

20. The property shall be clearly marked in the field before the application is filed with the Commission. This includes staking the wetland area boundaries, the proposed locations of proposed roads and driveways and/or structure areas including septic systems.

l. Whether the proposed Regulated activity will require subdivision or resubdivision approval, a zoning permit, special permit or exception, or a variance, from the Town of Roxbury Zoning Commission, Planning Commission, or Zoning Board of Appeals as the case may be. Where applicable, the applicant shall provide a copy of the subdivision or resubdivision map for the subject property;

m. Any other information the Commission deems necessary to the understanding of what the applicant is proposing.

n. Submission of the appropriate filing fee based on the fee schedule established in section 20 of these regulations.

o. A completed DEP reporting form as described at Subsection 8.9 of these regulations.

7.6 At the discretion of the Commission based on the nature and anticipated effects of the activity or if the proposed activity involves a Significant activity as determined by the Commission and as defined by these regulations, the applicant shall provide additional information, including, but not limited to, the following:

a. Site plans shall show applicant's property and any adjacent property which will be affected and shall show existing and proposed conditions and activities, wetland and watercourse boundaries, land contours, boundaries of land ownership, proposed

alterations and uses of wetlands and watercourses, and other pertinent features of the land and proposed activities drawn by a licensed surveyor, professional engineer, or landscape architect licensed by the state, or by such other person deemed qualified by the Commission.

b. Engineering reports and analyses and additional drawings to fully describe the proposed project and any filling, excavation, drainage or hydraulic modifications to watercourses, and a proposed erosion and sedimentation control plan consistent with Best Management Practices of the CTDEP 2002 Soil Erosion and Sedimentation Control Guidelines.

c. Mapping of soil types consistent with the categories established by the National Cooperative Soil Survey of the U.S. Natural Resources Conservation Service; the applicant shall have the wetlands delineated in the field by a Soil scientist and that field delineation shall be depicted on all site plans.

d. Description of the ecological communities and functions of the wetlands or watercourses involved with the application and the effects of the proposed activity on these communities and wetland functions.

e. Description of how the applicant will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved with the application and with each alternative, and a description of why each alternative considered was deemed neither feasible nor prudent.

f. Description and analysis by a qualified person of any fill material or materials to be deposited on the affected property in terms of volume, chemical or physical characteristics, composition, and the possibility of erosion or leaching from the deposited material.

g. Management practices and other 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, recreational uses and natural habitats, or which prevent flooding, degradation of water quality, erosion and sedimentation and obstruction of drainage, or which otherwise safeguard water resources.

7.7 If the application property involves a conservation restriction or preservation restriction as defined by section 47-42a through 47-42c of the Connecticut General Statutes, as same may be amended, the applicant shall comply with any notice and other requirements of said statutes requiring that no person shall file a permit application with the Commission relating to property that is subject to a conservation restriction or a preservation restriction as those terms are defined the said statute, as amended (collectively referred to as "restriction"), unless applicant provides proof to the Commission that applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction not later than sixty (60) days prior to the filing of the permit application or, in lieu of such notice, a letter from the holder of such restriction or holder's authorized agent, verifying that the application is in compliance with the terms of the restriction. A holder of the restriction that receives such notice may provide proof to the Commission that granting of the permit application will violate the terms of the restriction and in such case the Commission shall not grant the permit. If the applicant fails to comply with this requirement, the holder of the restriction may, not later than

fifteen (15) days after receipt of actual notice of permit approval, file an appeal with the Commission subject to any rules or regulations of the Commission relating to appeals. The Commission shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction. (See Appendix B.)

7.8 Two copies of all application materials meeting the requirements of these regulations shall be submitted to comprise a complete application unless an applicant is otherwise directed, in writing, by the Commission or its agent.

7.9 Any application to renew or amend an existing permit shall be filed with the Commission in accordance with section 8 of these regulations at least sixty-five (65) days prior to the expiration date of the permit. Any application to renew or amend such an existing permit shall contain the information required under section 7 of these regulations provided:

a. The application may incorporate the documentation and record of the original application.

b. The application shall describe the extent of work completed at the time of filing and the schedule for completing the activities authorized in the permit.

c. The application shall state the reason why the authorized activity was not initiated or completed within the time specified in the permit.

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

e. The Commission may, before the expiration of a permit, accept an untimely application to renew such permit if the authorized activity is ongoing and allow the continuation of work beyond the expiration date if, in its judgment, the permit is likely to be extended and the public interest or environment will be best served by not interrupting the activity.

~~e. Any application to renew a permit shall be granted upon request of the permit holder unless the Commission finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the Regulated activity for which the permit was issued provided no permit may be valid for more than ten (10) years.~~

f. Any application to renew a permit shall be granted upon request of the permit holder unless the Commission finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the Regulated activity for which the permit was issued, provided no permit shall be valid for more than ten (10) years, and further provided that any permit issued prior to July 1, 2011, that did not expire prior to May 9, 2011, shall be valid for no more than fourteen (14) years. (Amended 11.22.11)<sup>3</sup>

g.<sup>4</sup> The time period for renewals shall be in accordance with Subsection 11.8 of these regulations.

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<sup>3</sup> Change e. to f., add last sentence – Effective Dec. 4, 2011

<sup>4</sup> Change f. to g. – Effective Dec. 4, 2011

h<sup>5</sup>. The applicant shall certify whether: Any portion of the property on which the regulated activity is proposed is within five hundred (500) feet of the boundary of an adjoining municipality; traffic attributable to the completed project on the site will use streets within the adjoining municipality to enter or exit the site; sewer or water drainage from the project site will flow through and impact the sewage or drainage system within the adjoining municipality; or water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality.

- 7.10 If the Commission finds that a proposed activity is a Regulated activity, but not a Significant activity, it may allow the activity with or without conditions. In order to grant a permit for such activities, the Commission, after full review of the considerations set forth in Section 10 and other pertinent factors, shall state upon the record reasons for granting the permit with or without conditions.
- 7.11 The Commission may determine that a site visit may be required in order for the Commission to have sufficient information to make a decision. If the landowner or applicant refuses to allow the public onto the site when the Commission wishes to visit, the Commission will be precluded by the Connecticut Freedom of Information Act from conducting the meeting and the Commission may reasonably deem that the applicant has refused to provide the necessary information under the regulations.

### **Section 8 Application Procedures**

- 8.1 All petitions, applications, requests or appeals shall be submitted with the Commission by submission to the clerk of the Commission during land use office hours, or otherwise to the Roxbury Town Clerk, who shall act as agent for the Commission for purposes of such receipt.
- 8.2 The Commission shall, in accordance with Connecticut General Statutes section 8-7d(f), notify the clerk of Bridgewater, New Milford, Southbury, Washington and/or Woodbury of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which:
- a. any portion of the property affected by a decision of the Commission is within five hundred (500) feet of the boundary of an adjoining municipality;
  - b. a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
  - c. a significant portion of the sewer or water drainage from the project site will flow through and significantly impact the sewage or drainage system within the adjoining municipality; or
  - d. water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Such notice shall be made by certified mail, return receipt requested, and shall be mailed

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<sup>5</sup> Change g. to h. – Effective Dec. 4, 2011

- within seven (7) days of the date of receipt of the application, petition, appeal, request or plan.
- 8.3 The date of receipt of any application, petition, request or appeal shall be the day of the next regularly scheduled meeting of the Commission, immediately following the day of submission to such Commission of such application, petition, request or appeal, or thirty-five (35) days after such submission, whichever is sooner.
- 8.4 At any time during the review period, the applicant shall provide such additional information as the Commission may reasonably require. Requests for such additional information shall not stay the time limitations as set forth in Subsection 11.4 of these regulations.
- 8.5 All applications shall be open for public inspection.
- 8.6 Incomplete applications may be denied.
- 8.7 All applications to extend the expiration date of an issued permit shall be in accordance with Subsection 7.9 of these regulations.
- 8.8. A DEP reporting form shall be completed during the application process, which provides the Commissioner of Environmental Protection with information necessary to properly monitor the inventory of state wetlands. The reporting form shall be part of the application and specified sections shall be completed by the applicant. These sections shall include the following: name of applicant; name of project; project description; area of wetlands and/or linear feet of watercourses proposed to be altered. The Commission shall be permitted to revise or correct the information provided by the applicant and shall submit the form to the Commissioner of Environmental Protection in accordance with section 22a-39-14 of the Regulations of Connecticut State Agencies.
- 8.9 When an application is filed to conduct or cause to be conducted a Regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in section 16-1 of the Connecticut General Statutes, the applicant shall provide written notice of the application to the water company provided such water company has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the inland wetlands agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven (7) days of the date of the application. The water company, through a representative, may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the Commission.

## **Section 9 Public Hearings**

- 9.1 The Commission shall not hold a public hearing on an application unless: a) the Commission determines that the proposed activity may have a significant impact on wetlands or watercourses; b) a petition signed by at least twenty-five (25) persons who are eighteen (18) years of age or older and who reside in the municipality in which the Regulated activity is proposed, requesting a hearing, is filed with the Commission not

later than fourteen (14) days after the date of receipt of such application; or c) the Commission finds that a public hearing regarding such application would be in the public interest. The Commission may issue a permit without a public hearing provided no petition provided for in this Section is filed with the Commission on or before the fourteenth (14<sup>th</sup>) day after the date of receipt of the application. Such hearing shall be held no later than sixty-five (65) days after the receipt of such application. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing, any person may appear and be heard and may be represented by agent or by attorney.

- 9.2 Notice of the public hearing shall be published at least twice at intervals of not less than two (2) days, the first not more than fifteen (15) days and not fewer than ten (10) days, and the last not less than two (2) days, before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetland and watercourse is located.
- 9.3 Notice of the public hearing shall be mailed certified mail, return receipt requested, by the applicant to the owner(s) of record of abutting land no less than fifteen (15) days prior to the day of the hearing. A list of abutters to be notified shall be provided with the application. A certificate of mailing shall be provided to the Commission prior to the public hearing. The owner(s) of record shall be the owner indicated on the property tax map or on the last-completed grand list as of the date of mailing of notice by the applicant.
- 9.4 In the case of any application, which is subject to the notification provisions of Subsection 8.2 of these regulations, proof of such notification shall be entered into the hearing record. Such adjoining municipalities may, through their representatives, appear and be heard at any hearing on such an application.

## **Section 10 Considerations for Decision**

- 10.1 The Commission may consider the following in making its decision on an application:
- a. The application and its supporting documentation.
  - b. For an application for which a public hearing is held, public comments, evidence and testimony.
  - c. Reports from other agencies and commissions, including but not limited to the Town of Roxbury
    - 1. Board of Selectmen;
    - 2. Planning and Zoning Commission;
    - 3. Building Official;
    - 4. Health Officer;
    - 5. Conservation Commission.
  - d. The Commission may also consider comments on any application from the Litchfield County Soil and Water Conservation District, Shepaug Bantam River Board or other regional organizations (e.g., Council of Elected Officials), agencies in adjacent

municipalities which may be affected by the proposed activity, or other technical agencies or organizations which may undertake additional studies or investigations.

e. Non-receipt of comments from agencies and commissions listed in subdivisions 10.1.c and d above within the prescribed time shall neither delay nor prejudice the decision of the Commission.

f. Information obtained by the Commission at site visits.

g. Reports of Consultants for the Commission.

10.2 **Standards and criteria for decision.** 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 both on-site and off-site impacts on wetlands and watercourses which result from the project as a whole, future activities necessary to maintain a proposed or existing development, and all relevant facts and circumstances, including but not limited to:

a. The environmental impact of the proposed Regulated activity on wetlands or watercourses, including but not limited to, consistent with Subsections 10.5 and 10.6 below, the effects on the inland wetland's and watercourse's capacity to support fish and wildlife, to prevent flooding, to supply and to protect surface and ground waters, to control sediment, to facilitate drainage, to control pollution, to support recreational activities, and to promote public health and safety.

b. The applicant's purpose for, and any feasible and prudent alternatives to, the proposed Regulated activity, which alternatives would cause less or no environmental impact to wetlands or watercourses, including, but not limited to, a consideration of alternatives which might enhance environmental quality or have a less detrimental effect and which could feasibly attain the basic objectives of the activity proposed in the application. This consideration should include, but is not limited to, the alternative of requiring actions of a different nature, which would provide similar benefits with different environmental impacts, such as using a different location for the activity.

c. The relationship between the short-term and long-term impacts of the proposed Regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses, including, but not limited to, consideration of the extent to which the proposed activity involves trade-offs between short-term environmental gains at the expense of long-term losses, or vice versa, and consideration of the extent to which the proposed action forecloses or predetermines future options.

d. Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed Regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity, including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources. This requires recognition that the inland wetlands and

watercourses of the state of Connecticut are an indispensable, irreplaceable and fragile natural resource, and that these areas may be irreversibly destroyed by deposition, filling, or removal of material, by the diversion, diminution or obstruction of water flow including low flows, and by the erection of structures and other uses.

e. The character and degree of injury to, or interference with, the safety, health or the reasonable use of property which is caused or threatened by the proposed Regulated activity. This includes, without limitation, the recognition of potential damage from erosion, turbidity, or siltation; consistent with Subsections 10.5 and 10.6 below: loss of fish and wildlife and their habitat; loss of unique habitat having demonstrable natural, scientific, or educational value; loss or diminution of beneficial aquatic organisms and wetland plants; the dangers of flooding and pollution; and the destruction of the economic, aesthetic, recreational and other public and private uses and values of wetlands and watercourses to the community.

f. Impacts of the proposed Regulated activity on wetlands or watercourses outside the area for which the activity is proposed, and future activities associated with or reasonably related to the proposed Regulated activity which are made inevitable by the proposed Regulated activity and which may have an impact on wetlands or watercourses.

- 10.3 In the case of an application, which receives 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 Subsection 10.2 of this Section 10. The finding and the reasons therefore shall be stated on the record. 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.
- 10.4 In the case of an application which is denied on the basis of a finding that there may be feasible and prudent alternatives to the proposed Regulated activity which have less adverse impact on wetlands or watercourses, the Commission shall propose on the record in writing the types of alternatives which the applicant may investigate provided this Subsection shall not be construed to shift the burden from the applicant to prove that he is entitled to the permit or to present alternatives to the proposed Regulated activity.
- 10.5 For the purpose of this Section 10, (1) "wetlands or watercourses" include aquatic, plant or animal life and habitats in wetlands or watercourses, and (2) "habitats" means areas or environments in which an organism or biological population normally lives or occurs.
- 10.6 The Commission shall not deny or condition an application for a Regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant or animal life unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.
- 10.7 In reaching its decision on any application after a public hearing, the Commission shall base its decision on the record of that hearing. Documentary evidence or other material not in the hearing record shall not be considered by the Commission in its decision.

**Section 11**  
**Decision Process, Procedure, Action by Designated Agent, and Permits**

- 11.1 The Commission, or its duly authorized and Designated agent, may (a) approve an application as filed, or (b) approve it upon other terms, conditions, limitations or modifications of the Regulated activity which are designed to carry out the purpose and policies of the Act and these regulations, or (c) deny the application. Such terms and conditions may include any reasonable measures, which would mitigate the impacts, of the Regulated activity and which would (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources.
- 11.2 The Commission may delegate to its duly authorized and Designated agent the authority to issue an approval or extension for an activity that is not located in a wetland or watercourse when such agent finds that the conduct of such activity would result in no greater than a minimal impact on any wetlands or watercourses, provided such agent has completed the comprehensive training program developed by the Commissioner of Environmental Protection pursuant to section 22a-39 of the Connecticut General Statutes. Requests for such approval shall be made on a form provided by the Commission and shall contain the information listed under Subsection 7.5 of these regulations and any other information the Commission may reasonably require. Such certificate of compliance is not final until fifteen (15) days after the date the notice of the certificate of compliance is published as set forth in Subsection 11.3 below, and no appeal is received by the Commission during said fifteen (15) -day periods. If the Commission delegates such responsibility to its Designated agent, notwithstanding the procedural provisions for receipt and processing applications prescribed by Sections 8, 9 and this Section 11 of these regulations such agent may approve or extend such activity. .
- 11.3 Any person receiving such an approval or extension from such Designated agent shall, within ten (10) days of the date of such approval, publish, at the applicant's expense, notice of the approval in a newspaper having a general circulation in the town wherein the activity is located or will have an effect. Such notice shall identify the property by street address and assessor's map, block and lot, the owner, the applicant, the activity approved and any conditions of approval. Within ten (10) days of such publication, the applicant shall provide to the Commission a certification by the newspaper of the publication of such notice. Any person may appeal such decision of such Designated agent to the Commission within fifteen (15) days after the publication date of the notice and the Commission shall consider such appeal at its next regularly scheduled meeting, provided such meeting is no earlier than three (3) business days after receipt by such 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 7 of these regulations.
- 11.4. No later than sixty-five (65) days after receipt of an application for a permit to conduct Regulated activities, the Commission may hold a public hearing on such application. The hearing shall be completed within thirty-five (35) days of its commencement. Action shall be taken on applications within thirty-five (35) days after completion of a public hearing. In the absence of a public hearing, action shall be taken on applications within

sixty-five (65) days from the date of receipt of the application. The applicant may consent to one or more extensions of the periods specified in this Subsection, provided the total period of any such extension or extensions shall not exceed sixty-five (65) days, or the applicant may withdraw such 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 shall be withdrawn by the applicant or denied by the Commission.

- 11.5 The Commission or its agent shall state upon its record the reasons and bases for its decision and, in the case of any public hearing, such shall be in writing and shall incorporate a statement relative to the feasible and prudent alternatives. .
- 11.6 The Commission shall notify the applicant and any person entitled to such notice of its decision within fifteen (15) days of the date of the decision by certified mail, return receipt requested, and the Commission shall cause notice of its order in the issuance or denial of the permit to be published in a newspaper having general circulation in the town wherein the inland wetland or watercourse lies. In any case in which such notice is not published within such fifteen (15)-day period, the applicant may provide for the publication of such notice within ten (10) days thereafter.
- 11.7 If an activity authorized by an inland wetlands permit also involves an activity which requires a zoning or subdivision approval, special zoning permit, or variance or special exception, under sections 8-3(g), 8-3c, or 8-26 of the Connecticut General Statutes, the Commission shall file a copy of the decision and report on the application with the Town of Roxbury Planning Commission, Zoning Commission, or Zoning Board of Appeals, as the case may be, within fifteen (15) days of the date of the decision thereon.
- 11.8 ~~The duration of any permit issued under these regulations for the development of property for which an approval is required under sections 8-3, 8-25, or 8-26 of the Connecticut General Statutes shall be valid for five (5) years. Any permit issued by the Commission for any other activity shall be valid for not less than two (2) years, unless the Commission, at its discretion, issues such permits for longer periods up to a maximum of five (5) years. Any Regulated activity shall be completed within one (1) year from the time such activity is commenced, provided the Commission may establish a specific time period within which any Regulated activity shall be conducted and may require that an activity, once commenced, be completed within a time period of less than one (1) year and further provided the Commission may extend (a) the time period of the original permit provided such period shall not extend beyond ten (10) years from the date such permit was granted, or (b) the time period within which an activity, once commenced, is required to be completed.~~

11.8 Any permit issued under these regulations for the development of property for which an approval is required under sections 8-3, 8-25, or 8-26 of the Connecticut General Statutes shall be valid for five (5) years. Any permit issued by the Commission for any other activity shall be valid for not less than two (2) years, unless the Commission, at its discretion, issues such permits for longer periods up to a maximum of five (5) years. Any permit issued by the Commission prior to July 1, 2011, that was in effect and did not expire prior to May 9, 2011, shall be valid for a period of not less than nine (9) years after the date of such approval.<sup>6</sup> Any Regulated activity shall be completed within one (1) year from the time such activity is commenced, provided the Commission may establish a specific time period within which any Regulated activity shall be

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<sup>6</sup> Replace Section 11.8, new language underlined – Effective Dec. 4, 2011

conducted and may require that an activity, once commenced, be completed within a time period of less than one (1) year, and further provided the Commission may extend (a) the time period of the original permit provided such period shall not extend beyond ten (10) years from the date such permit was granted, or (b) the time period within which an activity, once commenced, is required to be completed. *(Amended 11.22.11)*

11.9 No permit issued by the Commission shall be assigned or transferred without the written permission of the Commission. Such permission shall be granted upon receipt and review by the Commission of a written statement, on a form provided by the Commission, signed by the transferee, stating that the transferee has reviewed the applicable regulations and the terms and conditions of the permit and agrees to be bound thereby. If a bond or other security obligation is in place, the transferee shall also submit proof acceptable to the Commission that the transferee has assumed such obligation, or shall provide such substitute security as may be acceptable to the Commission. If no such bond or security obligation is in place, the Commission may require the transferee to file a bond or other security acceptable to the Commission.

11.10 If a bond or other security satisfactory to the Commission is required in accordance with Section 12 of these regulations, no permit shall be issued until such bond or other security satisfactory to the Commission is provided.

**11.11 General provisions in the issuance of all permits:**

a. In evaluating an application in which the Commission or its Designated agent relied in whole or in part on information provided by the applicant, if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked.

b. All permits issued by the Commission or approvals by its Designated agent are subject to and do not derogate any present or future rights or powers of the Commission or the Town of Roxbury, and convey no rights in real estate or material nor any exclusive privileges, and are further subject to any and all public and private rights and to any federal, state, and municipal laws or regulations pertinent to the subject land or activity.

c. If the activity authorized by the Commission's permit also involves an activity which requires zoning or subdivision approval, special permit, variance or special exception under sections 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit may begin until such approval is obtained.

d. In carrying out the permitted activities, the permittee shall implement such management practices consistent with the terms and conditions of the permit as needed to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.

**Section 12  
Bond and Insurance**

12.1 Upon approval of the application and prior to issuance of a permit, the applicant may, at

the discretion of the Commission, be required to file a bond or other security satisfactory to the Commission, with such surety in such amount and in a form approved by the Commission.

- 12.2. The bond or other security shall be conditioned on compliance with all provisions of these regulations and the terms, conditions and limitations established in the permit.
- 12.3 The Commission may require the applicant to certify that the applicant has public liability insurance against any liability which might result from the proposed operation or use of the wetlands or watercourses covering any and all damage which might occur within two (2) years of completion of such operations, in an amount commensurate with the Regulated activity.

### **Section 13 Enforcement**

- 13.1 The Commission may appoint an agent or agents to act in its behalf with the authority to inspect property, except the interior of a private residence, and issue notices of violation or cease-and-desist orders and carry out other actions or investigations necessary for the enforcement of these regulations. In carrying out the purposes of this Section 13, the Commission or its duly authorized agent shall take into consideration the criteria for decision under Subsection 10.2 of these regulations.
- 13.2 The Commission or its agent may make regular inspections, at reasonable hours, of all Regulated activities for which permits have been issued under these regulations. If a permit has not been issued or if a permit has expired, the Commission or its agent may make regular inspections at reasonable hours with the consent of the property owner or the authorized agent of the property owner.
- 13.3 If the Commission or its Designated agent finds that any person is conducting or maintaining any activity, facility or condition, which is in violation of the Act or these regulations, the Commission or its duly authorized agent may:
  - a. issue a written order by certified mail, return receipt requested, to such person conducting such activity or maintaining such facility or condition to immediately cease such activity or to correct such facility or condition. Within ten (10) calendar days of the issuance of such order, the Commission shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Commission shall consider the facts presented at the hearing and within ten (10) days of the completion of the hearing notify the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The Commission shall publish notice of its decision in a newspaper having general circulation in the municipality. The original order shall be effective upon issuance and shall remain in effect until the Commission affirms, revises or withdraws the order. The issuance of an order pursuant to this Subsection shall not delay or bar an action pursuant to section 22a-44(b) of the Connecticut General Statutes, as amended. The Commission may file a certificate of such order in the office of the Town Clerk where the land is located and such Town Clerk shall record such certificate on the land records of the Town. Such certificate shall be released upon compliance with the order;
  - b. suspend or revoke a permit if it finds that the permittee has not complied with the

terms, conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application, including application plans. Prior to revoking or suspending any permit, the Commission shall issue notice to the permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct warranting 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 fifteen (15) days of the date of its decision. The Commission shall publish notice of the suspension or revocation in a newspaper having general circulation in the Town;

- c. 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 issuance of the order provided in Subsection 13.3a of these regulations or other enforcement proceedings as provided by law.
- 13.4 Any person who commits, takes part in, or assists in any violation of any provision of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes or of these regulations or regulations adopted by the Commissioner of Environmental Protection pursuant to the grant of authority contained in said statutes, shall be assessed a civil penalty of not more than one thousand dollars (\$1,000.00) for each offense. Each violation of said sections shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The superior court, in an action brought by the Commissioner of Environmental Protection, the Town or any person shall have jurisdiction to restrain a continuing violation of said sections, to issue orders directing that the violation be corrected or removed and to assess civil penalties pursuant to said sections of 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 Commissioner of Environmental Protection, the Town or person bringing the action.
- 13.5 Any person who willfully or knowingly violates any provision of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, or of these regulations or regulations adopted by the Commissioner of Environmental Protection, shall be fined not more than one thousand dollars (\$1,000.00) for each day during which such violation continues or be imprisoned for not more than six (6) months, or both. For a subsequent violation, such person shall be fined not more than two thousand dollars (\$2,000.00) for each day during which such violation continues or be imprisoned for not more than one year, or both. For the purposes of this Subsection, "person" shall be construed to include any responsible corporate officer.
- 13.6 Pursuant to and consistent with the Roxbury Inland Wetlands and Watercourses Fine Ordinance, the Commission may issue citations and fines for violations of these regulations

in an amount up to one thousand dollars (\$1,000) per citation for activities in wetlands or watercourses and up to five hundred dollars (\$500) per citation for activities within Regulated areas or setbacks and other upland areas that otherwise detrimentally impact the wetlands or watercourses. (See Appendix C.)

#### **Section 14 Amendments**

- 14.1 In the manner specified in section 22a-42a of the Connecticut General Statutes, as amended, these regulations and the Inventory map, shall be amended from time to time by the Commission in accordance with changes in the Connecticut General Statutes or regulations of the Connecticut Department of Environmental Protection, or as new information regarding soils and inland wetlands and watercourses becomes available. The Commission shall provide the Commissioner of Environmental Protection with a copy of any proposed regulations and notice of the public hearing to consider any proposed regulations or amendments thereto (except as to determinations of boundaries), at least thirty-five (35) days before the public hearing on their adoption. Application forms and fee schedules shall be considered as part of the Commission regulations. The Commission shall provide a copy of any amended regulation or boundary changes to the Commissioner of Environmental Protection no later than ten (10) days after its adoption provided failure to submit such regulation, boundary or change shall not impair the validity of such regulation, boundary or change
- 14.2 An application filed with the Commission 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 these regulations (or boundaries), including changes to setbacks and buffers, 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 Subsection shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses or (2) to any change in regulations necessary to make such regulations consistent with the provisions of the Act as of the date of such receipt.
- 14.3 Petitions requesting changes or amendments to the Inventory map, shall contain at least the following information:
- a. the petitioner's name, mailing address and telephone number;
  - b. the address, or location, of the land affected by the petition;
  - c. the petitioner's interest in the land affected by the petition;
  - d. map(s) showing the geographic 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 together with the documentation supporting such proposed boundary locations; and

- e. the reasons for the requested action.
- 14.4 Any person who submits a petition to amend the Inventory map shall bear the burden of proof for all requested map amendments. Such proof may include, but is not limited to, professional interpretation of aerial photography and remote sensing imagery, resource mapping, soils mapping, or other information acceptable to the Commission. If such person is the owner, developer or contract purchaser of the land, which is the subject of the petition, or if such person is representing the interests of such an owner, developer or purchaser, in addition to the information required in Subsection 14.2, the petition shall include:
- a. the name, mailing address and telephone number of the owner(s) of such land, and those of the agent or other representative of the owner(s);
  - b. the names and mailing addresses of the owners of abutting land;
  - c. 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 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; and
  - d. map(s) showing any proposed development of the land in relation to existing and proposed wetland and watercourse boundaries.
- 14.6 Watercourses shall be delineated by a Soil scientist, geologist, ecologist or other qualified individual.
- 14.7 A public hearing shall be held on petitions to amend the Inventory map. Notice of the hearing shall be published in a newspaper having substantial circulation in the municipality at least twice at intervals of not less than two (2) days, the first not more than fifteen (15) days nor less than ten (10) days, and the last not less than two (2) days, before such hearing. All materials including maps and documents relating to the petition shall be open for public inspection.
- 14.8 Within sixty-five (65) days after receipt of a petition for a change in the mapped boundaries of any wetland or watercourse or to amend these regulations, the Commission shall hold a public hearing to consider such petition. The hearing shall be completed within thirty-five (35) days after its commencement. The Commission shall act upon the changes requested in such petition within sixty-five (65) days after the close of the hearing. The petitioner may consent to one or more extensions of the periods specified in this Subsection, provided the total extensions of all such periods shall not be for longer than sixty-five (65) days, or may withdraw such petition. 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 petition.
- 14.9 The Commission shall make its decision and state, in writing, the reasons why the change in the Inventory map was made.

## **Section 15**

### **Appeals**

- 15.1 Appeals on actions of the Commission shall be made in accordance with the provisions of section 22a-43 of the Connecticut General Statutes, as amended.
- 15.2 Notice of such appeal shall be served upon the Commission and the Commissioner of Environmental Protection.
- 15.3 Appeals of fines imposed by the Commission shall be made in accordance with the citation and hearing procedures pursuant to the Roxbury Inland Wetlands and Watercourses Fine Ordinance, adopted pursuant to the Connecticut General Statutes, section 22a-42g, which authorizes fines of up to \$1,000 per citation imposed by the Commission or its agents for violations of these regulations. (See Appendix C.)

**Section 16  
Conflict and Severance**

- 16.1 If there is a conflict among the provisions of these regulations, the provision, which imposes the most stringent standards for the use of wetlands and watercourses, shall govern. The invalidity of any word, clause, sentence, section, part, Subsection, subdivision 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.
- 16.2 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 17  
Other Permits**

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

**Section 18  
Effective Date of Regulations**

- 18.1 These regulations, including the Inventory map, application forms, fee schedule, and amendments thereto, shall become effective upon filing in the office of the Town Clerk and publication of a notice of such action in a newspaper having general circulation in the Town.

**Section 19  
Application Form**

- 19.1 Application forms are available in the office of the Town Clerk.

**Section 20**  
**Application Fees**

- 20.1 **Method of payment.** All fees required by these regulations shall be submitted to the Commission by certified check or money order payable to the Town of Roxbury at the time the application is filed with the Commission.
- 20.2 No application shall be granted or approved by the Commission unless the correct application fee is paid in full or unless a waiver has been granted by the Commission pursuant to these regulations. The applicant may petition the Commission to waive, reduce or allow delayed payment of the fee. Such petitions shall be in writing and shall state fully the facts and circumstances the Commission should consider in its determination under this Subsection. The Commission may waive all or part of the application fee if the Commission determines that:
- a. the activity applied for would clearly result in a substantial public benefit to the environment or to the public health and safety and the applicant would reasonably be deterred from initiating the activity solely or primarily as a result of the amount of the application fee; or
  - b. based on the facts of the particular application, the application fee is clearly excessive in relation to the cost to the Town for reviewing and processing the application.
- The Commission shall state upon its record the basis for all actions under this Subsection.
- 20.3 The application fee is not refundable.
- 20.4 **Exemption.** Boards, commissions, councils and departments of the Town are exempt from all fee requirements.
- 20.5 **Complex application fee: outside consultants.** The fees set forth in this Section are the minimum application fees required. When the actual costs of processing an application exceeds the minimum application fee, including fees due to the need to hire outside consulting services, the Commission shall charge the applicant a reasonable fee to fund the approximate actual cost of processing the application. The Commission may retain the services of professionals, including, but not limited to professional engineers, Soil scientists, and wetland ecologists, that are not Commission members or enforcement agents of the Commission, to perform inspections, wetland delineations, and engineering reviews of the application and the related property. The applicant shall pay the expected costs of the fees for this review, in compliance with the Town's Supplemental Land Use Fee Ordinance. If the applicant does not wish to pay for these services, the application must be withdrawn before the costs are incurred; fees will not be refunded once costs are incurred. Once the Commission has indicated to the applicant that outside consultants will be retained, continued prosecution of, or failure to withdraw, the application constitutes the applicant's agreement to pay the costs of the outside consultants.

**INLAND WETLANDS COMMISSION FEES**

**Effective: July 1, 2004**

**Amended: October 15, 2005**

**20.5 The following fees shall be levied on applications filed and activities before the Commission**

|   |                                  |                        |
|---|----------------------------------|------------------------|
| <b>Copy of Inland Wetlands and Watercourses Regulations</b>   |                                  | <b>\$ 5.00</b>         |
| <b>Review of Exemption Application (non-regulated activity)</b>   |                                  | <b>No charge</b>       |
| <b>Review of Regulated Activity Application</b>   |                                  | <b>\$ 90.00</b>        |
| <b>    Surcharge for State Fee</b>  | <b>(DEP fee increase 7.1.04)</b> | <b><u>\$ 30.00</u></b> |
|   |                                  | <b><u>\$120.00</u></b> |
| <b>Review of Subdivision Application (Per lot)</b>  |                                  | <b>\$150.00</b>        |
| <b>    Surcharge for State Fee</b>  | <b>(DEP fee increase 7.1.04)</b> | <b><u>\$ 30.00</u></b> |
|   |                                  | <b><u>\$180.00</u></b> |
| <b>Review of Unauthorized or Previously Unpermitted Regulated Activity Application (per lot)</b>  |                                  | <b>\$350.00</b>        |
| <p>(This fee is not an authorization of any unauthorized activity and shall apply whenever the work or activity in a regulated area has been conducted by a property owner or an agent of the owner without prior authorization or a permit.)</p> |                                  |                        |
| <b>Extensions or Minor Revisions of Permits</b>   |                                  | <b>\$ 25.00</b>        |
| <b>Repair of Septic System (an application must be filed)</b>   |                                  | <b>no charge</b>       |
| <b>Public Hearing Fee</b>   |                                  | <b>\$350.00</b>        |

Pursuant to the provisions of the Section 8-1c of the Connecticut General Statutes, the fees set forth above are the Minimum Application Fee required. When the actual cost of processing an application exceeds the Minimum Application Fee, due to the need to hire outside consulting services, the Inland Wetlands Commission shall charge the applicant a reasonable fee to fund the approximate actual cost of processing the application.

Section 2. This Regulation shall take effect following passage and publication, as provided by law.

**Amended 10/15/06 – Eliminated Public Hearing Continuation fee**

**Section 21**  
**Records Retention and Disposition**

21.1 The Commission and the Town Clerk for the Town of Roxbury shall retain complete administrative records of the Commission's actions and dispose of such records in accordance with the retention/disposition schedules set forth in Subsection 21.2.

21.2 The public records administrator of the Connecticut State Library established the following new records retention/disposition schedules for municipal Inland Wetlands Agencies effective April 24, 1989:

| <u>RECORD<br/>TITLE</u>                              | <u>MINIMUM RETENTION<br/>BY COMMISSION</u> | <u>MINIMUM RETENTION<br/>BY TOWN CLERK</u> |
|--|--|--|
| Applications (inc. supporting materials)             | 10 years                                   | ---  |
| Decision Letters                                     | 10 years                                   | Permanent                                  |
| Approved Site Plans                                  | 10 years                                   | ---  |
| Legal Notices  | 10 years                                   | Permanent                                  |
| Staff and Public Written Testimony (hearing records) | 10 years                                   | ---  |
| Minutes of Meetings & Public Hearings                | 15 years                                   | Permanent                                  |
| Tapes, Audio--Inland Wetland Matters                 | 4 years                                    | ---  |
| Notices of Violation & Orders                        | 10 years                                   | ---  |
| Text of Changes Adopted In Regulations               | Continuous Update/<br>Permanent            | ---  |
| General Correspondence Issued or Received            | 5 years                                    | ---  |

## APPENDIX A

### Connecticut General Statutes, Sec. 1-1 (q)

Except as otherwise specifically defined, the words “agriculture” and “farming” shall include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, poultry, fur-bearing animals and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish; the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by a storm, as an incident to such farming operations; the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale. The term “farm” includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoop houses and other temporary structures or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities. The term “aquaculture” means the farming of the waters of the state and tidal wetlands and the production of protein food, including fish, oysters, clams, mussels and other molluscan shellfish, on leased, franchised and public underwater farm lands. Nothing herein shall restrict the power of a local zoning authority under chapter 124.

## Appendix B

### P.A. No. 05-124: Conservation Easements—Preservation.

Section 1. Section 47-42a of the General Statutes is repealed and the following is substituted in lieu thereof (effective October 1, 2005): **Connecticut General Statutes, sec. 47-42a**

For the purposes of sections 47-42b, 47-42c and section 2 of this act, the following definitions shall apply:

(a) “Conservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.

(b) “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.

Sec. 2. (NEW) (Effective October 1, 2005) (a) For purposes of this section, “state or local land use agency” includes, but is not limited to, a municipal planning commission, municipal zoning commission, combined municipal planning and zoning commission, a municipal zoning board of appeals, municipal inland wetlands and watercourses agency, a municipal historic district commission and any state agency that issues permits for the construction or improvement of real property.

(b) No person shall file a permit application with a state or local land use agency or a local building official or director of health, other than for interior work in an existing building or for exterior work that does not expand or alter the footprint of an 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 not later than sixty days prior to the filing of the permit application. In lieu of such notice, 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. If the applicant has provided written notice pursuant to this Subsection, the holder of the restriction may provide proof to the state or local land use agency or local building official or director of health that granting of the permit application will violate the terms of the restriction, and such agency, official or director shall not grant the permit.

(c) If the applicant fails to comply with the provisions of Subsection (b) of this section, the party holding the conservation or preservation restriction may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the state or local land use agency or local building official or director of health, subject to any rules of such agency, official or director relating to appeals. The agency, official or director shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction.

## **Appendix C**

### **Sec. 10-17. Roxbury Inland Wetlands and Watercourses Fine Ordinance**

**10.17.1. Purpose.** The purpose of this ordinance is to establish an additional means by which the Town of Roxbury may effectively enforce its Inland Wetlands and Watercourses Regulations by the implementation of a citation procedure for the imposition of fines for violations and continued noncompliance with the regulations.

**10.17.2. Authority.** This ordinance is authorized pursuant to Connecticut General Statutes, section 22a-42g.

**10.17.3. Definitions.** The following words, terms, and phrases used in this ordinance shall have the following meanings:

“Commission” means the Roxbury Inland Wetlands and Watercourses Commission, acting as the local wetland agency under section 22a-36 et seq. of the Connecticut General Statutes.

“Agent” means any designated representative or agent of the Town of Roxbury responsible for the supervision of the Inland Wetlands and Watercourses Regulations and who implements the policies and regulations of the Commission.

“Regulations” means the Inland Wetlands and Watercourses Regulations of the Town of Roxbury, as the same may be amended from time to time.

“Person” means any individual, persons, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

**10.17.4. Issuance of citation.** The Commission or its agent is hereby authorized to issue citations to any person who commits a violation of the regulations. In such instances, each citation will apply jointly and severally to the owner of the subject property and his or her agents, tenants, occupants, licensees, lessees, sub lessees, contractors and subcontractors. Each day that any violation continues shall be deemed a separate offense, for which a separate citation may be issued

**10.17.5. Delivery of citation.** Any such citation may be delivered either by hand delivery or by certified mail to the person named in such citation. The Commission or 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.

**10.17.6. Content of citation.** The citation shall inform such person: (1) of the allegations against such person and the amount of the fines; (2) that the person has a period of thirty (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 Town of Roxbury, at the Roxbury Town Hall.

**10.17.7. Failure to pay.** If the person cited does not pay the fine within thirty (30) days from the date of the citation, then at any time within twelve (12) months from the expiration of the thirty (30)-day period, the agent shall send a notice to the person cited, by hand delivery or certified mail, informing such person: (1) of the allegations against him or her and the amount of the fines; (2) that the person cited may contest liability before a hearing officer appointed pursuant to the Wetland Citation Hearing Procedure (“Hearing Procedure”) set forth below, by delivering, in person or by mail, within thirty (30) days from the date of the notice, a written demand for a hearing, pursuant to the Hearing Procedure Ordinance; (3) that if the person cited does not demand such a hearing, the person shall be deemed to have admitted liability and an assessment of the fine may be issued without further notice.

**10.17.8. Amount of fine.** The fine shall be up to one thousand dollars (\$1,000.00) per citation for activities in the wetlands or watercourses and up to five hundred dollars (\$500.00) per citation for activities within Regulated areas or setbacks and other upland 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 or her employment.

**10.17.9. Additional penalties and remedies.** At its discretion, the Commission may seek additional penalties and remedies in accordance with the regulations.

**10.17.10. No limitation on authority.** The provision of this ordinance shall not be construed to limit or alter the authority, duty and responsibility of the Commission as granted and established under Connecticut's Inland Wetlands and Watercourses Act, sections 22a-36 through 22a-45 of the Connecticut General Statutes, the regulations, and other legislation that may apply.

**10.17.11. Existing violations.** Violations of the regulations in existence at the effective date of this ordinance shall be deemed violations under this ordinance, and fines may be issued accordingly.

**10.17.12. Special land acquisition fund.** Any fine collected by the Town of Roxbury pursuant to this ordinance shall be deposited into the Town's land acquisition fund.

**10.17.13. Wetland Citation Hearing Procedure.**

(a) **Establishment.** There is hereby established, in accordance with Connecticut General Statutes, section 7-152c, a Wetland Citation Hearing Procedure for the Town of Roxbury for purposes of providing a hearing procedure under this ordinance. The superior court has the authority to enforce the assessments and judgments provided for under this article.

(b) **Appointment of hearing officer.** The First Selectman, acting within his or her capacity as chief executive officer, shall appoint one (1) or more citation hearing officer(s), other than a member of the Commission, an employee of the Town, a policeman serving the Town of Roxbury or persons who issue citations, to conduct the hearings authorized by this ordinance.

(c) Any person who timely requests a hearing shall be given written notice of the date, time and place for the hearing. Such hearing shall be held not less than fifteen (15) days nor more than thirty (30) days from the date of the mailing of notice of hearing, provided the hearing officer shall grant upon good cause shown any reasonable request by any interested party for postponement or continuance. An original or certified copy of the initial notice of violation issued by the agent or the Commission shall be filed and retained by the municipality, 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. The presence of the issuing official or police officer shall be required at the hearing if such person so requests. A person cited wishing to contest his liability shall appear at the hearing and may present evidence in his behalf. The agent or other designated municipal official or officials may present evidence to the hearing officer on behalf of the Commission. If such person cited fails to appear, the hearing officer may enter an assessment by default against him upon a finding of proper notice and liability under this ordinance. The hearing officer may accept copies of investigatory and citation reports and other official documents by mail, and may determine thereby that the appearance of the person supplying said reports and documents is unnecessary. The hearing officer shall conduct the hearing in the order and form and with such methods of proof, as he 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. The hearing officer shall announce his decision at the end of the hearing. If he determines that the person is not liable, he shall dismiss the matter and enter his determination in writing accordingly. If he determines that the person cited is liable for the violation, he shall forthwith enter and assess the fines against such person as provided by this ordinance.