

TOWN OF KILLINGLY, CONNECTICUT

REGULATIONS FOR THE PROTECTION AND PRESERVATION
OF INLAND WETLANDS AND WATERCOURSES

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SECTION 1.0 - TITLE, PURPOSE, AND AUTHORITY

- 1.1 These regulations shall be known as the "Inland Wetlands and Watercourses Regulations of the Town of Killingly, Connecticut" and herein referred to as "these Regulations."
- 1.2 The Killingly Inland Wetlands and Watercourses Commission of the Town of Killingly was established in accordance with an ordinance adopted March 27, 1974 and shall implement the purposes and provisions of the Inland Wetlands and Watercourses Act in the Town of Killingly.
- 1.3 These regulations have been prepared and adopted and may be amended, from time to time, in accordance with the provisions of Public Act 155 - An Act Concerning Inland Wetlands and Watercourses (Sections 22a-36 through 22a-45, Connecticut General Statutes, as amended) and these regulations.
- 1.4 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 Town of Killingly and the State of Connecticut 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 the existence of many forms of animal, aquatic and plant life.

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

It is, therefore, the purpose of these Regulations to protect the citizens of the Town of Killingly and the State of Connecticut 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 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 Town of Killingly, 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 Town of Killingly and the State of Connecticut, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.

- 1.5 Pursuant to sections 22a-36 through 22a-45 of the Connecticut General Statutes, as amended, the Killingly Inland Wetlands and Watercourses Commission (herein referred to as the "Commission" or "Agency") shall enforce all provisions of the Inland Wetlands and Watercourses Act and these regulations and shall issue, issue with modifications, limit requests or deny permits for all regulated activities on inland wetlands and watercourses in the Town of Killingly. The Agency may also comment and make recommendations on applications for regulated activities which have been referred in accordance with the inter-municipal notification requirement.

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 of the General Statutes, as amended.
- b. "Agency" means the Inland Wetlands and Watercourses Commission of the Town of Killingly, CT.
- c. "Bog" means a poorly drained area containing an accumulation of organic material and characterized by an association of plants recognized as bog species. Typical examples of bog species are listed in the booklet titled Inland Wetland Plants of Connecticut by Wm. A. Niering and R.H. Goodwin, Connecticut Arboretum for the Connecticut Department of Environmental Protection, May, 1973.
- d. "Buffer" means an area of land adjacent to inland wetlands and watercourses that is undisturbed by any construction, excavation, or other alteration to avoid any adverse impact to inland wetlands or watercourses. (see also: "Upland Review Area")
- e. "Clear-Cutting" means the harvest of timber in a fashion which removes all trees down to a two inch diameter at breast height. (DBH or diameter at breast height is measured 4.5' above ground level.)
- f. "Commission" means the Inland Wetlands and Watercourses Commission of the Town of Killingly, Connecticut.
- g. "Commissioner of Environmental Protection" means the commissioner of the State of Connecticut Department of Environmental Protection.
- h. "Continual Flow" means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low flow period of the annual hydrological cycle, June through September, but it recurs in prolonged succession.
- i. "Declaratory Finding" means a determination made by the Agency, as to whether a proposed activity or area of a proposed activity falls within the jurisdiction of the Agency. This may include requests from the Planning and Zoning or any other regulatory agency in Town.
- j. "Deposit" includes, but shall not be limited to fill, grade, dump, place, discharge or emit.

- k. "Designated Agent" means an individual(s) designated by the agency to carry out its functions and purposes.
- l. "Discharge" means the emission of any water, substance, or material into wetlands or watercourses whether or not such substance causes pollution.
- m. "Disturb the Natural and Indigenous Character of the Land" means that the activity will significantly alter the inland wetlands and watercourses by reason of removal or deposition of material, clear cutting, alteration or obstruction of water flow, or will result in the pollution of the wetland or watercourse.
- n. "Essential to the Farming Operation" means that the activity proposed is necessary and indispensable to sustain farming activities on an existing farm.
- o. "Farming" means any agricultural activity involving the use of land, for the purposes of planting, growing, and harvesting of crops, or grazing of livestock, or other agricultural uses.
- p. "Feasible" means able to be constructed or implemented consistent with sound engineering principles; (Amend. Effective Date June 1, 1997)
- q. "Gardening" means the tilling of soil, planting, cultivating, and harvesting of vegetable matter.
- r. "Grazing" means using any tract of land to feed or supply farm animals with grass or pasture, to tend farm animals, or feeding or growing silage and herbage.
- s. "Harvesting of Crops" means gathering plants or animals or plant or animal products which have been grown to be harvested.
- t. "Marshes" are areas with soils that exhibit aquatic moisture regimes that are distinguished by the absence of trees and shrubs and are dominated by soft-stemmed herbaceous plants. The water table in marshes is at or above the surface throughout the year, but seasonal fluctuations are encountered and areas of open water six inches or more in depth are common. Typical examples of marsh species are listed in the booklet titled "Inland Wetland Plants of Connecticut," Wm. A Niering and R. H. Goodwin, Connecticut Arboretum for the Connecticut Department of Environmental Protection, May, 1973.

- u. "Material" means any substance, solid or liquid, organic or inorganic, including but not limited to: soil, sediment, aggregate, land, gravel, clay, bog, peat, mud, debris, sand, refuse or waste.
- v. "Municipality" means the Town of Killingly, CT.
- w. "Nurseries" means land used for propagating trees, shrubs or other plants for transplanting, sale, or for use as stock for grafting.
- x. "Ordinary High Water Mark" means a mark on the land caused by the presence and action of water, which presence and action is so common and usual and so long continued in all ordinary years so as to mark upon the land a character which distinguishes the abutting upland from the watercourse. Such line or mark may be found by examining the bed and bank of any watercourse and ascertaining thereon an abrupt change in the characteristics of soil or vegetation or slope of the land.
- y. "Perennial Stream" means a stream that maintains a continual perceptible flow of water within its channel throughout the year.
- z. "Permit" means the whole or any part of any license, certificate or approval or similar form of permission which may be required of any person by the provisions of these regulations under the authority of the Inland Wetlands Agency.
- aa. "Permittee" means the person to whom such permit has been issued.
- bb. "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.
- cc. "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.
- dd. "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; (Amend. Effective Date June 1, 1997)

- ee. "Regulated Activity" means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or watercourses, but shall not include the specific activities in Section 4 of these regulations. Furthermore any clearing, grubbing, grading, paving, excavation, filling, constructing, depositing or removal of material and discharging of stormwater on the land within 200 feet measured horizontally from the boundary of any wetland or watercourse is a regulated activity. Proposed activities that involve less than the minimum separating distances from wetlands or watercourses as listed in Section 6.3, pages 13-14, are regulated activities.
- ff. "Regulated Area" means any wetlands or watercourse as defined in these regulations.
- gg. "Remove" includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, grub, clear cut timber, bulldoze, dragline or blast.
- hh. "Rendering Unclean or Impure" means any alteration of the physical, chemical or biological properties of any waters of the town, including, but not limited to, change in odor, color, turbidity or taste.
- ii. "Riparian Corridor" means a land area contiguous with and parallel to an intermittent or perennial stream and/or river.
- jj. "Significant" means important, of consequence; 2. Having meaning; 3. Statistics - of or pertaining to observations unlikely to occur by chance and therefore indicate a systematic cause; having or likely to have influence or effect; 4. Other than normal; accelerated.
- kk. "Significant Activity" means any activity, including, but not limited to, the following activities which may have a major effect or significant impact on the area for which an application has been filed or on another part of the inland wetland or watercourse system:
 - 1. Any activity involving a deposition or removal of material which will or may have a major effect or significant impact on the regulated area or on another part of the inland wetland or watercourse system; or
 - 2. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system; or

3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to support desirable fisheries, wildlife, or other biological life; or to prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space; or to perform other functions; or
 4. Any activity which causes substantial turbidity, siltation or sedimentation in a wetland or watercourse; or
 5. Any activity which causes a substantial diminution of flow of a natural watercourse or groundwater levels of the regulated area; or
 6. Any activity which causes or has the potential to cause pollution of a wetland or watercourse; or
 7. Any activity which creates conditions which may adversely affect the health, welfare and safety of any individual or the community; or
 8. Any activity which destroys unique wetland or watercourse areas having demonstrable scientific or educational value.
- ll. "Soil Scientist" means an individual duly qualified in accordance with standards set by the Federal Office of Personnel Management (formerly the U.S. Civil Service Commission.) (Amend. Effective Date June 1, 1997)
- mm. "Swamp" means an area with a water table at or near the surface of the ground throughout most of the year and containing vegetation dominated by an association of trees and/or shrubs recognized as swamp species. Typical examples of swamp species are listed in the booklet titled "Inland Wetland Plants of Connecticut," Wm. A. Niering and R. H. Goodwin, Connecticut Arboretum for the Connecticut Department of Environmental Protection, May, 1973.
- nn. "Submerged Lands" means those lands which are inundated by water on a seasonal or more frequent basis.
- oo. "Town" means the Town of Killingly, CT.
- pp. "Upland Review Area" means non-wetland or non-watercourse areas where activities are likely to impact or affect wetlands or continuous watercourses.
- qq. "Vernal Pool(s)" means a watercourse consisting of a confined basin depression which contains a small body of standing water usually drying out for part of the year during warm weather. It can be natural or man-made. and usually lacks a permanent outlet or any fish population. Further. the occurrence of one or more of the obligate species which include the fairy shrimp, spotted salamander, Jefferson salamander, marbled salamander,

wood frog and eastern spadefoot toad are necessary to conclusively define the vernal pool.

- rr. "Waste" means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the wetlands or watercourses of the Town.
- ss. "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 of the General Statutes, inclusive. Intermittent watercourse shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (A) Evidence of scour or deposits of recent alluvium or detritus, (B) the presence of standing or flowing water for a duration longer than a particular storm incident, and (C) the presence of hydrophytic vegetation. (Amend. Effective Date: Feb. 12, 1996; Amend. Effective Date June 1, 1997)
- tt. "Wetlands, Inland" 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 floodplain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Natural Resources Conservation Service of the U.S. Department of Agriculture (USDA). 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. (Amend. Effective Date: Feb. 12, 1996)

SECTION 3 - INVENTORY OF REGULATED AREAS

- 3.1 The map of regulated areas entitled "Inland Wetlands and Watercourses Map, Killingly, Connecticut" (the U. S. Department of Agriculture, Natural Resources Conservation Service, Soil Survey-Map for Killingly in Windham County, CT) delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of this map are available for inspection in the office of the Town Clerk or the Inland Wetlands Agency. The Inland Wetlands Map shall be for informational purposes only. References should also be made to the Killingly Streambelt Map (1972, U.S. Dept. of Agriculture, Natural Resources Conservation Service); U.S. Geological Survey, Killingly Quadrangle Series Maps; and the National Wetlands Inventory Killingly Maps (U.S. Dept. of the Interior, 1974) for additional aid in determining the general location of watercourses and/or inland wetlands. In all cases, the precise location of regulated areas shall be determined by the actual character of the land, the distribution of wetland soil types, and locations of watercourses. The Agency may use aerial photography, remote sensing imagery, resource mapping, soil maps, site inspection observations or other information in determining the location of the boundaries of wetlands and watercourses. (Amend. Effective Date: Feb. 12, 1996)
- 3.2 Any property owner who disputes the designation of any part of his or her land as a regulated area on the Inland Wetlands and Watercourses Map, may petition the Agency to change the designation in accordance with section 14 of these regulations. All petitions for a map change shall be submitted in writing and shall include all relevant facts and circumstances which support the change. The petitioner shall provide proof that the designation is inapplicable.
- 3.3 If dispute exists as to the designation of the whole or any part of a property as a wetlands regulated area, the property owner or applicant may be required by the agency to present soil documentation by a soil scientist that the land in question, or a portion of it, does or does not have a soil type classified by the National Cooperative Soil Survey as: poorly drained, very poorly drained, alluvial, or floodplain.
- 3.4 To challenge the designation of any portion or all of a regulated swamp, bog, or marsh, or other watercourse, the property owner or applicant must present expert testimony in the form of documentation by a professional biologist, botanist, or ecologist competent in plant identification and wetland ecology and classification systems that the area in question is not defined by botanical association as a swamp, bog, or marsh, or other watercourse.
- 3.5 The Commission shall amend these regulations and establish or amend area boundary maps in accordance with Section 22a-39 and 22a-42a of the

Connecticut General Statutes, as amended and section 14 of these regulations.

- 3.6 The Commission or its designated Agent(s) shall monitor and maintain general surveillance of all regulated areas within the Town to ensure that no unauthorized regulated activities occur.
- 3.7 The Town of Killingly may acquire wetlands and watercourses within its territorial limits by gift or purchase, in fee or lesser interest including, but not limited to, lease, easement, or covenant, subject to such reservations and exceptions as it deems advisable.

SECTION 4 - PERMITTED USES AS OF RIGHT & NONREGULATED USES

- 4.1 Permitted Operations and Uses - 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 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. Activities conducted by, or under the authority of the Department of Environmental Protection for the purposes of wetland and/or watercourse restoration, enhancement or mosquito control (Amend. Effective Date June 22,1999);
 - c. A residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a, or as of July 1, 1974, which ever 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. The individual 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, house and well locations, septic system, driveway, approval dates or other necessary information to document his entitlement;
 - d. Boat anchorage or mooring, not to include dredging or permanent dock construction;
 - e. 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 municipality and containing a residence. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of

substantial amounts of material from or into a wetland or watercourse, or diversion or alteration of a watercourse;

- f. Construction and operation, by water companies as defined by Section 16-1 of the General Statutes or by municipal water supply systems as provided for in Chapter 102, of the Connecticut General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in Sections 22a-401 and 22a-410 of the General Statutes;
- g. Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to Section 22a-42a or July 1, 1974, whichever is earlier, provide such pipe is on property which is zoned 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. (Amend. Effective Date: Feb. 12, 1996)
- h. Any dredging or any erection, placement, retention or maintenance of any structure, fill, obstruction or encroachment, or any work incidental to such activities, conducted by a state agency, which activity is regulated under sections 22a-28 to 22a-35, inclusive, as amended, or sections 22a-359b to 22a-363f, inclusive, as amended, shall not require any permit approval under sections 22a-36 to 22a-35, inclusive, as amended. (Amend. Effective Date: June 22, 1999).
- i. A residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a, of the CGS, or as of July 1, 1974, which ever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the permit was obtained on or before July 1, 1987. (Amend. Effective Date: May 15, 2011)

4.2 Conditional Permitted Uses - The following operations and uses shall be permitted as non-regulated uses in wetlands and watercourses, provided they do not disturb the natural and indigenous character of the wetlands or watercourses by removal or deposition of material, alteration or obstruction of water flow or pollution of the 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 shellfishing and cross-country skiing where otherwise legally permitted and regulated.

4.3 All activities in wetlands or watercourses involving filling, excavation, dredging, clear cutting and/or grading or any other alteration or use of a wetland or watercourse not specifically permitted by this section 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 non-regulated operation or use of 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 Agency on a form provided by it, and provide the Agency with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or non-regulated use of the wetland or watercourse. The Agency or its designated agent shall rule that the proposed operation or use is a permitted or a non-regulated use or operation or that a permit is required. Such ruling shall be in writing and shall be made no later than the next regularly scheduled meeting of the Agency following the meeting at which the request was received. The designated agent for the Agency may make such ruling on behalf of the Agency at any time.

4.5 The "*Forestry Practices Act*" passed by the Connecticut General Assembly, under CT General Statutes Section 23-65(a) through (o), provides for the municipal regulation of forest practices, provided that such regulations are found to be consistent with state regulations under the Forest Practices Act (Amend. Effective Date: June 22, 1999).

- a. Although selective cutting, timber stand improvements and other forest practices may be exempt from municipal permit requirements, this exemption must be established by the Municipal Agency or its duly authorized agent prior to the commencement of any forestry operations. A written request from the property owner must be submitted to the Agency or agent requesting it to rule whether a proposed operation is exempt and does not require a permit (Amend. Effective Date: June 22, 1999).
- b. The following information is also required to be submitted in order for the agency or agent to rule in an effective manner:
 - 1. A location map of the property;
 - 2. A plan drawing showing the location of wetlands, watercourses logging roads, skidder trails and staging area locations and a description of the cutting activities proposed. In planning the project, structural improvements and other work in wetlands and watercourses should be limited to that which is

essential for the particular forest practice. Adherence to best management practices for forest practices (bmp's) is required for all projects, regardless of wetlands involvement (Amend. Effective Date: June 22, 1999).

- c. If exemption under the non-regulated uses section of these regulations is claimed, appropriate documentation in support of the claim to exemption should be submitted. Connecticut's Wetland laws envision that the person claiming exemption has the burden of demonstrating that he/she is entitled to it. (Amend. Effective Date: June 22, 1999).
- d. Any temporary or permanent structural improvements such as bridges for crossing streams, culvert installations and roadway construction within wetlands and watercourses are regulated activities and require a permit (amend. effective date: , 1999).
- e. If the agency or agent determines that the project, or a portion of it is not exempt from these regulations, a permit application must be filed. All regular application procedures and requirements shall apply. No work shall proceed prior to issuance of a permit or declaration of exemption by the Agency or Agent (Amend. Effective Date: June 22, 1999).
- f. In any case, obstruction of water flow, creating slash piles within wetlands or watercourses, skidder trails which cause significant alteration of wetlands and/or watercourses, or erosion of soils from logging roads or skidder trails, into wetlands, may result in a forestry practice being found in violation of these regulations (Amend. Effective Date: June 22, 1999).

SECTION 5 - ACTIVITIES REGULATED BY THE STATE

- 5.1 In addition to any permit or approval required by the Agency, the Commissioner of Environmental Protection shall regulate activities in or affecting wetlands or watercourses subject to the following jurisdiction:
- a. Construction or modification of any dam pursuant to Sections 22a-401 through 22a-410 of the General Statutes, as amended;
 - b. Construction, encroachment or placement of any obstruction within stream channel encroachment lines pursuant to Sections 22a-342 through 22a-349 of the General Statutes, as amended;
 - c. Construction or placement of any structure or obstruction within the tidal, coastal or navigable waters of the state pursuant to Sections 22a-359 through 22a-363 or in designated tidal wetlands pursuant to Sections 22a-28 through 22a-35 of the General Statutes, as amended;
 - d. Diversion of water including withdrawals of surface or groundwater in excess of fifty thousand (50,000) gallons per day, or any change in the instantaneous flow of any surface waters of the state where the tributary watershed area above the point of diversion is 100 acres or larger pursuant to Sections 22a-365 through 22a-378 of the General Statutes, as amended;
 - e. Discharges into the waters of the state pursuant to Section 22a-430 of the General Statutes, as amended;
 - f. Discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to Section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under Section 404 of the Federal Clean Water Act.
- 5.2 The Commissioner of Environmental Protection 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 through 22a-45a of the Connecticut General Statutes as amended. (Amend. Effective Date: May 15, 2011)
- 5.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to Sections 22a-28 through 22a-35 of the General Statutes, as amended.

5.4 The Commissioner of Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner under section 22a-402 or a dam construction permit issued by the Commissioner under sections 22a-403 or 22a-41 of the Connecticut General Statutes as amended. Any person receiving such dam repair or removal order or dam construction permit shall not be required to obtain a permit from a municipal wetlands agency for any action necessary to comply with said dam order or to carry out the activities authorized by said dam permit. (Amend. Effective Date: May 15, 2011)

SECTION 6 - REGULATED ACTIVITIES TO BE LICENSED

- 6.1 Notwithstanding the ownership of the subject land, no person shall conduct or permit to be conducted or maintain a regulated activity in and/or within 200' of inland wetlands and/or watercourses without first obtaining a permit for such activity from the Killingly Inland Wetlands and Watercourses Commission.
- 6.2 The Agency shall regulate any operation in or within 200' of a wetland and/or watercourse or use of a wetland or watercourse involving removal or deposition or discharge of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, any activity outside the limits of the wetlands or watercourses, which may have an effect on the wetlands or watercourses, and any other regulated activity, unless such operation or use is permitted or non-regulated pursuant to Section 4 of these regulations.
- 6.3 Unless an applicant can demonstrate to the Commission, on a case-by-case basis that no significant impact will result from such proposed activities, minimum separating distances from wetlands and/or watercourses are hereby established to protect the wetlands and watercourses of the town from disturbing uses and discharges; and for preservation of the natural and indigenous character of the wetlands or watercourses systems and riparian corridors.

Unless otherwise demonstrated by the applicant on a case-by-case basis that no significant impact will result from such proposed activities, minimum separating distances, as measured from the nearest edge of the ordinary high water mark of an inland wetland or watercourse or the edge of the stream bank based on bank full flow conditions in the absence of a riparian wetland, are:

Subsurface sewage disposal system, tank, leach field, dry well, chemical waste disposal system, manure storage area, or any other pollution source (all hereinafter referred to as "system") ms	100 feet - inland wetlands, watercourses, rivers and perennial streams;
	50 feet - wetland pockets and intermittent streams

No system, at any distance from such watercourse or inland wetland, shall be constructed or maintained in such a manner so as to allow untreated surface drainage into any such watercourse or inland wetlands. Guidelines are available in the 2004 Storm Water Quality Manual, available from the Inland Wetlands Agency, the Department of Environmental Protection (DEP), or from the DEP website: <http://dep.state.ct.us/wtr/stormwater/stormwtrindex.htm>. (Effective date: May 15, 2011)

Single and two-family residential structures - 50 feet
Other main-use buildings or structures - 75 feet
Accessory structures housing animals - 100 feet
Other accessory structures - 50 feet
Other accessory structures less than 150 square feet in size - 25 feet
No disturbance wetland buffer – 25 feet

Separation distances listed above may be increased by the Commission if deemed necessary for the protection and preservation of the natural and indigenous character of the wetlands and/or watercourses system and riparian corridors due to site specific factors such as topography, slope, soil type, presence of rare, endangered and/or species of concern, unique or uncommon habitats, etc.

- 6.4 In the event that the regulations contained above in Section 6.3 conflict with either the State of Connecticut Public Health Code or Building Code, the stricter standard shall apply.
- 6.5 The Commission may authorize an emergency activity if the Commission finds such activity is necessary to prevent, abate or mitigate an imminent threat to human health or the environment or substantial loss of or damage to property.
- 6.6 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Killingly Inland Wetlands and Watercourses 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 Application for a permit for a regulated activity shall be made on a form, such form being the most recent form for this purpose or revision thereof, prescribed and approved by the Commission, and shall be accompanied by such supporting information and documents as prescribed in Section 7 of these regulations. Application forms shall be available at the Planning & Development office at Killingly Town Hall.

All applications shall include the following information:

- a. Applicant's name, address, day and evening phone 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. Owner of record's name, address and phone number;
- c. Applicant's interest in the land;
- d. References to all prior Killingly Planning and Zoning, Zoning Board of Appeals and Inland Wetlands and Watercourses Commission applications submitted for the property;
- e. Location of the property including house # (pole #) and street, assessor's Tax Map, Block, Lot #; zoning district; lot size; lot frontage;
- f. Easements and/or deed restrictions;
- g. Purpose and detailed description of the proposed activity, including a list of all proposed regulated activities;
- h. Windham County wetland soil types and areas of each located on the property and/or within 200' of the proposed activity;
- i. Proposed erosion and sedimentation controls narrative;
- j. Certification that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information;
- k. Authorization for the Commissioners and authorized agent(s) of the Commission to inspect the property, at reasonable times, both before and after a final decision has been issued;
- l. Any other information the Commission deems necessary to the understanding of what the applicant is proposing;
- m. Signatures of the applicant and the property owner of record;
- n. A site plan or drawing showing the proposed activity (refer to Section 7.5);
- o. Alternatives considered by the applicant and why selection of the submitted alternative was made (refer to Section 7.6E). These alternatives shall be diagrammed on a site plan or drawing and submitted to the Commission as part of the application;
- p. Northeast District Department of Health approval where applicable (refer to Section 7.4);
- q. Submission of the appropriate fee in accordance with the Town of Killingly "Ordinance of Land Use Application Processing Fees" Effective August 15, 1989 or as amended.
- r. Submission of a soil scientist report including functions and values, potential wetlands disturbance, and potential habitat disturbance.
- s. Pre and post development drainage calculations.

- 7.2 No application shall be deemed complete unless it shall be in such form and contain such information as the Agency deems necessary for a fair and informed determination of the issues.
- 7.3 The Commission's authorized agent and the applicant may hold a pre-application meeting to determine whether or not the proposed application involves a significant activity.
- 7.4 Northeast District Department of Health (NDDH) Septic Evaluation and Percolation Test results must accompany all applications when appropriate. All subdivision plans submitted must be accompanied by NDDH reports verifying that the proposed subdivision lots are acceptable for on-site septic systems and water systems. The test locations shall be identified and numbered on site for each proposed lot to correspond with the subdivision plans.
- 7.5 In addition to the completed application form, the applicant shall provide 3 copies of maps or drawings containing the following minimum information:
- a. 1" = 40' scale or other appropriate scale to 1" = 100'
 - b. North arrow
 - c. Names and addresses of adjacent property owners, including across any street
 - d. Locations of existing and proposed land uses
 - e. Locations of existing and proposed buildings
 - f. Locations of existing and proposed subsurface sewage disposal systems, and test hole descriptions
 - g. Existing and proposed man-made features including roads and driveways, on and adjacent to the site
 - h. Location and diagrams of proposed erosion control structures
 - i. Assessor lot identification number
 - j. Location key or inset map 1" = 1000'
 - k. Soil types classification and wetlands boundary delineation (flagged and numbered boundary), Soil Scientist's signature or certification on plans
 - l. Watercourse channel location and flow direction, where appropriate; watercourse boundary
 - m. Flood Zone classification and delineation, where appropriate
 - n. A caveat printed on the plan stating any changes on these plans within 200' of wetlands or watercourses must be resubmitted to the Killingly Inland Wetlands and Watercourses Commission for its approval
 - o. A note stating that the applicant will contact the Killingly Inland Wetlands and Watercourses Commission's agent after all erosion and sediment control measures are installed prior to any construction or excavation on the property
 - p. Wetland and watercourse boundary buffer; minimum separation distances
 - q. Limits of clearing
 - r. Existing and proposed contours
 - s. Any other information the Agency deems necessary to the understanding of what the applicant is proposing
 - t. Location of any on-site storage of fill or excavated materials
 - u. Include GIS map showing surrounding wetlands and/or watersheds. GIS Maps are available from the Planning and Zoning office.

Maps should be folded so the name of the applicant (usually the lower right of the map), and the locus map are visible. (Effective Date: May 15, 2011)

- 7.6 If the proposed activity involves a significant activity as determined by the Agency and defined in section 2 of these regulations, additional information, based on the nature and anticipated effects of the activity, including but not limited to the following is required:
- a. Site plans for the proposed use or operation and the property which will be affected which show existing and proposed conditions, wetland and watercourse boundaries, wetland and watercourse boundary buffers, land contours, boundaries of land ownership, proposed alterations and uses of wetlands and watercourses, and other pertinent features of the development including an A-3 survey prepared by a licensed land surveyor registered in the State of Connecticut;
 - 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 the proposed erosion and sedimentation control plan in accordance with the requirements set forth in Guidelines for Soil and Sediment Control including:
 - i. Location of areas to be stripped of vegetation and other unprotected areas;
 - ii. Schedule of operations including starting and completion dates for major development phases;
 - iii. Seeding, sodding, or revegetation plans for all unprotected or unvegetated areas;
 - iv. Location and design of structural sediment control measures;
 - v. Timing of planned sediment control measures;
 - vi. General information as required
 - c. Mapping of soil types consistent with the categories established by the National Cooperative Soil Survey of the U.S. Soil Conservation Service (the Agency may require the applicant to have the wetlands delineated in the field by a soil scientist and that the field delineation be incorporated onto the site plans);
 - d. Description of the ecological communities and functions of the wetlands or watercourses involved with the application and the effects of the proposed regulated activities on these communities and wetland functions;
 - e. Description of how the applicant will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application and each alternative, and a description of why each alternative considered was deemed neither feasible nor prudent;
 - f. Analysis of chemical or physical characteristics of any fill material in addition to:
 - i. Area to be filled;
 - ii. Volume of requested fill;
 - iii. Finished slopes of filled areas;
 - iv. Containment and stabilization measures
 - v. Proposed finished contours;

- vi. Evaluation of the effect of filling the wetlands or watercourses with respect to storage volume and its impact downstream showing before and after development flows, and the evaluation of stormwater detention including the existing need for flood control downstream.
 - g. 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; which prevent flooding, degradation of water quality, erosion and sedimentation and obstruction of drainage, or which otherwise safeguard water resources;
 - h. The Commission may require an Environmental Impact Statement or reports from Environmental Review Teams or other independent environmental services approved by this Commission.
- 7.7 The application form, appropriate maps or drawings, supplementary information and the necessary filing fee as established by the Town of Killingly "Ordinance Concerning Land Use Application Processing Fees," Effective August 15, 1989 or as amended, shall be submitted before an application is deemed complete.
- 7.8 A certificate of notification of adjoining town(s) must be submitted where required by state statute section 8.7d; as amended.
- 7.9 The Commission may, upon written request by the applicant, waive one or more of the application requirements if the applicant can show, to the satisfaction of the Commission, that the information is not necessary to insure the protection of the wetland or watercourse.
- 7.10 The applicant shall certify whether:
- a. Any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of an adjoining municipality;
 - b. Traffic attributable to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
 - c. Sewer or water drainage from the project site will flow through and impact the sewage or drainage system within the adjoining municipality; or
 - d. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.
- 7.11 Any application to extend the expiration date of a previously issued permit or amend an existing permit shall be filed with the Agency at least sixty-five (65) days prior to the expiration date for the permit in accordance with section 8 of these regulations. Any application for amendment, renewal or extension shall be made in accordance with this subsection provided:
- a. The application may incorporate by reference the documentation and record of the original application;
 - b. The application shall state the reason why the authorized activities were not initiated or completed within the time specified in the permit;

- c. The application shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses or the property for which the permit was issued;
- d. The Agency may accept an untimely application to extend the expiration date of a permit if the authorized activity is ongoing and allow the continuation of work beyond the expiration date if in its judgement, the permit is likely to be extended and the public interest or environment will be best served by not interrupting the activity; the application shall describe the extent of work completed at the time of filing and the schedule for completing the activities authorized in the permit;
- e. The Agency shall evaluate the application for amendment pursuant to section 10 of these regulations and grant the application as filed, grant it with any terms or limitations, or deny it. (Amend. Effective Date June 1, 1997)
- f. Any application to renew a permit shall be granted upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued provided a) no permit issued during the time period from July 1, 2006, to July 1, 2009, inclusive, shall be valid for more than eleven years; and b) no permit issued prior to July 1, 2006 or after July 1, 2009 may be valid for more than ten years. (Amend. Effective Date: May 15, 2011)

7.12 A reporting form shall be completed during the application process which provides the Commissioner of the Department of Environmental Protection with information necessary to properly monitor the inventory of State wetlands. The reporting form shall be part of the application and the following information shall be provided by the applicant: name of applicant; location and name of the project; project and site description; area of wetlands and/or linear feet of watercourse proposed to be altered. The Agency shall be responsible for the remaining information and any corrections on the form and for filing it in accordance with section 22a-39-14 of the Inland Wetlands and Watercourses Regulations of the Department of Environmental Protection.

7.13 In addition to all application requirements listed in this section, wetland creation/pond construction projects under 5000 square feet* in area will also require to following (Amend. Effective Date: June 22, 1999):

- a. Existing surface and ground water condition evaluation (to ensure a continual source of water) (Amend. Effective Date: June 22, 1999) ;
- b. Native species planting plan – to ensure proper stabilization of the disturbed area and to prevent the introduction of foreign and/or invasive plant species. Because of changing hydrologic conditions, planting plans should note the possibility of changing the location of certain plantings to meet the unexpected hydrologic conditions. (Amend. Effective Date: June 22, 1999);
- c. Detailed cross-section and profile of the proposed area (length and width); (Amend. Effective Date: June 22, 1999);
- d. A professional wetland consultant is required, unless waived by agent or commission, to work through any wetland creation project to ensure its success (Amend. Effective Date: June 22, 1999).

***Pond/wetland creation project over 5000 square feet in area will require review and approval from the U.S. Army Corps Of Engineers (Amend. Effective Date: June 22, 1999).**

SECTION 8 - APPLICATION PROCEDURES

- 8.1 All applications shall be submitted to the Inland Wetlands and Watercourses Commission of the Town of Killingly. Application must be made by the property owner of record or the duly authorized agent of such owner, such authorization to be in writing.
- 8.2 When an application to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourses is filed and any portion of such wetland or watercourse is within five hundred feet of the boundary of another municipality, the applicant shall give written notice of the application by certified mail, return receipt requested, on the same day to the inland wetlands agency of such other municipality. Documentation of such notice shall be provided to the Killingly Inland Wetlands and Watercourses Commission. (Amend. Effective Date June 1, 1997)
- 8.3 Should the Zoning Regulations of the Town of Killingly require a site plan application or if an application for a special permit, subdivision, or variance is submitted to the applicable Town agency or agencies, and, in any such instance, it involves an activity regulated by these regulations or the general statutes Sections 22a-36 through 22a-45, as amended, the applicant shall submit an application for a permit pursuant to these regulations no later than the same day an application is filed with any other such agency.
- 8.4 The Agency shall, in accordance with Connecticut General Statutes Section 8.7d (as amended), notify the clerk of any adjoining municipality of the pendency of any application to conduct a regulated activity when:
- a. Any portion of the property on which the regulated activity is proposed is located within 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 run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.
- Notice of the pendency of such application shall be made by certified mail, return receipt requested, and shall be mailed within seven (7) days of the date of receipt of the application.
- 8.5 When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in Section 16-1 of the general statutes, the applicant shall provide written notice of the application to the water company provided such water company has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the Inland Wetlands Agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of the application. The water

company, through a representative, may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the agency.

- 8.6 The date of receipt of any application shall be the day of the next regularly scheduled meeting of the Agency immediately following the day of submission to the Agency, provided such meeting is no earlier than three business days after receipt, or thirty-five days after such submission, whichever is sooner.
- 8.7 At any time during the review period, the Agency may require the applicant to provide additional information about the regulated area or regulated activity which is the subject of the application, or the wetlands or watercourses affected by the regulated activity. Requests for additional information shall not stay the time limitations as set forth in Subsection 11.2 of these regulations.
- 8.8 All applications shall be open for public inspection.
- 8.9 Incomplete applications may be denied.

SECTION 9 - PUBLIC HEARINGS

- 9.1 The Inland Wetlands Agency shall not hold a public hearing on such application unless the Agency determines that the proposed activity may have a significant impact on wetlands or watercourses or a petition signed by at least twenty-five persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed, requesting a hearing is filed with the Agency not later than fifteen days after the date of receipt of such application or the Agency finds that a public hearing regarding such application would be in the public interest. The 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 fifteenth day after the receipt of the application. Such hearing shall be held no later than sixty-five days after the receipt of such application. All applications and maps and documents relating thereto shall be open for public inspection. Any person may appear and be heard at any public hearing. (Amend. Effective Date: May 15, 2011).
- 9.2 Notice of the public hearing shall be published at least twice at intervals of not less than two days, the first not more than fifteen days and not fewer than ten days, and the last not less than two days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetland or watercourse is located. (Amend. Effective Date June 1, 1997)
- 9.3 One public hearing notice sign per road frontage will be supplied by the Commission and posted by the applicant in a manner clearly visible to the general public for a minimum of ten (10) consecutive days prior to the public hearing date.
- 9.4 In the case of any application which is subject to the notification provisions of Subsection 8.4 of these regulations, a public hearing shall not be conducted until the clerk of the adjoining municipalit(ies) has received notice of the pendency of the application. Proof of such notification shall be entered into the hearing record.

SECTION 10 - CONSIDERATIONS FOR DECISION

10.1 The Agency may consider the following in making its decision on an application:

- a. The application and its supporting documentation;
- b. Public comments, evidence and testimony;
- c. Reports from other agencies and commissions including but not limited to the Town of Killingly:
 1. Conservation Commission
 2. Planning & Zoning Commission
 3. Building Official
 4. Health Officer (Northeast District Department of Health)
 5. Town Engineer/Director of Public Works
 6. Town Planner
 7. Environmental Planner
 8. Water Pollution Control Authority
- d. The Agency may also consider comments on any application from the Windham County Soil and Water Conservation District, the Northeast Connecticut Council of Governments Regional Planning Agency or other regional organizations (i.e. 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 above within the prescribed time shall neither delay nor prejudice the decision of the Agency.

10.2 Standards and Criteria for Decision.

In carrying out the purposes and policies of Sections 22a-36 to 22a-45 of the General Statutes and these regulations, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:

- a. The environmental impact of the proposed regulated activity on wetlands or watercourses; (Amend. Effective Date June 1, 1997)
- 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; (Amend. Effective Date June 1, 1997)
- 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; (Amend. Effective Date June 1, 1997)
- 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 (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; (Amend. Effective Date June 1, 1997)

- e. The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; (Amend. Effective Date June 1, 1997) and
- f. Impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses. (Amend. Effective Date June 1, 1997)

10.3 a. In the case of an application which received a public hearing pursuant to a finding by the Inland Wetlands Agency that the proposed activity may have a significant impact on wetlands or watercourses, a permit shall not be issued unless the Agency finds on the basis of the record that a feasible and prudent alternative does not exist. In making this finding the Agency shall consider the facts and circumstances set forth in subsections 10.1 a-e and 10.2 a-f. The finding and the reasons therefor shall be stated on the record in writing. (Amend. Effective Date June 1, 1997)

10.3 b. 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 Agency shall propose on the record in writing the types of alternatives which the applicant may investigate provided this subsection shall not be construed to shift the burden from the applicant to prove that he is entitled to the permit or to present alternatives to the proposed regulated activity. (Amend. Effective Date June 1, 1997)

10.3 c. For purposes of this section (CGS 22a-41, (1) "wetlands or watercourses" includes aquatic, plant or animal life and habitats in wetlands or watercourses, and (2) "habitats" means areas or environments in which an organism or biological population normally lives or occurs.

10.3 d. A municipal inland wetlands agency shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses. (Effective date, May 15, 2011)

10.4

In reaching its decision on any application after a public hearing, the Agency shall base its decision on the record of that hearing. Documentary evidence or other material not in the hearing record shall not be considered by the agency in its decision.

SECTION 11A - DECISION PROCESS AND PERMIT

- 11A.1 In granting a permit the Inland Wetlands Agency, or its duly authorized agent, may grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity which are designed to carry out the policy of sections 22a-36 to 22a-45, inclusive, of the General Statutes, and these regulations. Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources. (Amend. Effective Date June 1, 1997)
- 11A.2 Application timelines may be found in Connecticut General Statutes Section 22-42a(c). The failure of the inland wetlands agency or its, agent, 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 Agency must either be withdrawn by the applicant or denied by the Agency. (Effective Date May 15, 2011)
- 11A.3 The Agency shall state upon its record the reasons and bases for its decision and, in the case of any public hearing, such decision shall be based fully on the record of such hearing and shall be in writing and shall incorporate a statement relative to the consideration of feasible and prudent alternatives.
- 11A.4 The Agency shall notify the applicant and any named parties to the proceeding of its decision within fifteen (15) days of the date of the decision by certified mail, return receipt requested, and the Agency shall cause notice of its order in the issuance or denial of the permit, to be published in a newspaper having general circulation in the town wherein the inland wetland or watercourse lies. In any case in which such notice is not published within such fifteen day period, the applicant may provide for the publication of such notice within ten days thereafter.
- 11A.5 If an activity authorized by the inland wetland permit also involves an activity or project which requires zoning or subdivision approval, a variance or special permit, a copy of the decision and report on the application shall be filed with the Town of Killingly Planning and Zoning Commission and/or Killingly Zoning Board of Appeals within fifteen days of the date of the decision.
- 11A.6 If the Agency denies the permit, or if it grants a permit with terms, conditions, limitations or modifications, the applicant may attempt to modify the proposal to the Agency's satisfaction. The Agency shall determine whether the proposed modification requires the filing of a new application. The rejection of a modified or corrected application by the Agency shall be equivalent to the denial of an application for the purpose of appeal.
- 11A.7 Any permit issued under this section prior to July 1, 2006 or after July 1, 2009 for the development of property for which an approval is required under section 8-3, 8-25 or 8-26 of the general statutes shall be valid for five years provided the agency may establish a specific time period within which any regulated activity shall be conducted. Any permit

issued under this section prior to July 1, 2006 or after July 1, 2009 for any other activity shall be valid for not less than two years and not more than five years. Any permit issued under this section during the time period from July 1, 2006, to July 1, 2009, inclusive, shall expire not less than six years after the date of such approval. (Amend. Effective Date May 15, 2011)

- 11A.8 No permit shall be assigned or transferred without the prior written permission of the Commission and without a written statement from the transferee indicating that he/she is fully familiar with all conditions of the permit.
- 11A.9 If a bond or insurance is required in accordance with section 12 of these regulations, no permit shall be issued until such bond or insurance is provided.
- 11A.10 General provisions in the issuance of all permits:
- a. If the Agency relied in whole or in part on information provided by the applicant and if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked;
 - b. All permits issued by the Agency are subject to and do not derogate any present or future rights or powers of the Agency or the Town of Killingly, and convey no rights in real estate or material nor any exclusive privileges, and are further subject to any and all public and private rights and to any federal, state, and municipal laws or regulations pertinent to the property or activity;
 - c. If the activity authorized by the inland wetland permit also involves an activity or a project which requires zoning or subdivision approval, special permit, variance or special exception, no work pursuant to the wetland permit may begin until such approval is obtained;
 - d. The permittee shall employ construction management practices and other necessary steps, consistent with the terms and conditions of the permit, to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.

SECTION 11B - ACTION BY DULY AUTHORIZED AGENT

- 11B.1 The Agency may delegate to its duly authorized agent the authority to approve or extend an activity that is not located in a wetland or watercourse when such agent finds that the conduct of such activity would result in no greater than a minimal impact on any wetlands or watercourses provided such agent has completed the comprehensive training program developed by the commissioner pursuant to section 22a-39 of the General Statutes. (Amend. Effective Date June 1, 1997)
- 11B.2 Notwithstanding the provisions for receipt and processing applications as prescribed in section 8 of these regulations, such agent may approve or extend an activity at any time. Any person receiving such approval from such agent shall, within ten days of the date of such approval, publish, at the applicant's expense, notice of the approval in a newspaper having a general circulation in the town wherein the activity is located or will have an effect. Any person may appeal such decision of such agent to the Agency within fifteen days after the publication date of the notice and the Agency shall consider such appeal at

its next regularly scheduled meeting provided such meeting is no earlier than three business days after receipt by such Agency or its agent of such appeal. The Agency shall, at its discretion, sustain, alter, or reject the decision of its agent or require an application for a permit in accordance with section 7 of these regulations (Amend. Effective Date: June 22, 1999).

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 Agency, be required to file a bond with such surety in such amount and in a form approved by the Agency.
- 12.2 The bond or surety shall be conditioned on compliance with all provisions of these regulations and the terms, conditions and limitations established in the permit.
- 12.3 The Agency may require the applicant to certify that it has public liability insurance against 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 Agency may appoint an agent or agents to act in its behalf with the authority to inspect property except within 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.
- 13.2 As a condition of a permit, the Agency or its agent may make regular inspections, at reasonable hours, of all regulated activities for which permits have been issued under these regulations with the consent of the property owner or the authorized agent of the owner during the life of the permit.
- 13.3 If the Agency or its designated agent finds that any person is conducting or maintaining any activity facility or condition which is in violation of the Act or these regulations, the agency or its duly authorized agent may:
- a. issue a written 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 agency shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Agency shall consider the facts presented at the hearing and within ten (10) days of the completion of the hearing notify the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The Agency 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 agency affirms, revises or withdraws the order. The issuance of an order pursuant to this subsection shall not delay or bar an action pursuant to section 22a-44(b) of the Connecticut General Statutes, as amended;
 - b. 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 Agency shall issue notice to the permittee, by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action. The Agency shall hold a hearing to provide the permittee an opportunity to show that it is in compliance with its permit and any and all requirements for retention of the permit. The permittee shall be notified of the Agency's decision to suspend, revoke, or maintain a permit by certified mail within fifteen (15) days of the date of its decision. The agency shall

- publish notice of the suspension or revocation in a newspaper having general circulation in the municipality;
- 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 Agency and prescribing the necessary action and steps to correct the violation including, without limitation, halting work in wetlands or watercourses. The Agency may request that the individual appear at the next regularly scheduled meeting of the Agency to discuss the unauthorized activity, and/or provide a written reply to the notice or file 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 subdivision 13.3.a or other enforcement proceedings as provided by law;
 - d. The Inland Wetlands Agency may record a certificate, or notice, of a cease and desist order or order to correct an inland wetland violation with the Killingly Town Clerk, which the Clerk will file on the Killingly Land Records. The certificate will be released upon compliance with the order. (Amend. Effective Date: Feb. 12, 1996)

13.4 Any person who commits, takes part in, or assists in any violation of any provisions of these Regulations shall be fined not more than one thousand dollars (\$1000) for each offense. Each violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The Superior Court, in any action brought by the Commission, the Town of Killingly or any person, shall have jurisdiction to restrain a continuing violation of these regulations and/or to issue orders directing that said violation be corrected or removed. All costs, fees and expenses in connection with such action shall be assessed as damages against the violator. The moneys collected pursuant to this section shall be used to restore the affected wetland or watercourse to its condition prior to the violation, wherever possible.

13.5 Any person who willfully or knowingly violates any provision of these regulations, inclusive, shall be fined not more than one thousand dollars for each day during which such violation continues or be imprisoned not more than six months or both. For a subsequent violation, such person shall be fined not more than two thousand dollars for each day during which such violation continues or be imprisoned not more than one year or both. For the purposes of this subsection, "person" shall be construed to include any responsible corporate officer. (Amend. Effective date, May 15, 2011)

SECTION 14 - AMENDMENTS

- 14.1. a. These regulations and the Inland Wetlands and Watercourses Map for the Town of Killingly may be from time to time amended, changed or repealed by majority vote of the Agency in accordance with changes in the Connecticut General Statutes or regulations of the State Department of Environmental Protection, or as new information regarding soils and inland wetlands and watercourses becomes available;
- b. An application filed with an inland wetlands agency which is in conformance with the applicable inland wetlands regulations as of the date of the receipt of such application shall not be required thereafter to comply with any change in inland wetlands regulations, including changes to setbacks and buffers, taking effect on or after the date of such receipt and any appeal from the decision of such agency with respect to such application shall not be dismissed by the Superior Court on the grounds that such a change has taken effect on or after the date of such receipt. The provisions of this subdivision 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 chapter 440 of the General Statutes as of the date of such receipt. (Amend. Effective Date June 1, 1997)
- 14.2. These regulations and the Town of Killingly Inland Wetlands and Watercourses Map shall be amended in the manner specified in section 22a-42a of the Connecticut General Statutes, as amended. The Agency shall provide the Commissioner of Environmental Protection with a copy of any proposed regulations and notice of the public hearing to consider any proposed regulations or amendments thereto, except map amendments pursuant to subsection 14.3 of this section, at least thirty-five (35) days before the public hearing on their adoption. Fee schedules shall be adopted as provided by municipal ordinance.
- 14.3. Petitions requesting changes or amendments to the "Inland Wetlands and Watercourses Map, Killingly, Connecticut" shall contain at least the following information:
- a. The petitioner's name, address and telephone number;
 - b. The address 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. (Amend. Effective Date: Feb. 12, 1996)

14.4 Any person who submits a petition to amend the “Inland Wetlands and Watercourses Map, Killingly CT” 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 Agency. 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 14.3, the petition shall include:

- a. The name, address and telephone number of the owner(s) of such land and owner(s) agent or other representative;
- b. The names and 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, 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. (Amend. Effective Date: Feb. 12, 1996)

14.5 Watercourses shall be delineated by a certified soil scientist, geologist, ecologist, biologist, botanist or other qualified individual.

14.6 A public hearing shall be held on petitions to amend the Inland Wetlands and Watercourses 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 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. A copy of such proposed boundary change shall be filed in the office of the town clerk for public inspection at least ten days before such hearing.

14.7 Within ninety (90) days after receipt of a petition for a change in the mapped boundaries of any wetland or watercourse, the Agency shall hold a public hearing to consider the petition. The Agency shall act upon the changes requested in such petition within sixty (60) days after the close of the hearing. The petitioner may consent to one or more extensions of the periods specified in this subsection for the holding of the hearing and for action on such petition, provided the total extension of any such period shall not be for longer than the original period as specified in this subsection, or may withdraw such petition. The failure of the Inland Wetlands Agency to act within any time period specified in this

subsection, or any extension thereof, shall not be deemed to constitute approval of the petition.

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

SECTION 15 - APPEALS

- 15.1 Appeal on actions of the Agency shall be made in accordance with the provisions of section 22a-43 of the General Statutes, as amended.
- 15.2 Notice of such appeal shall be served upon the Agency and the Commissioner of Environmental Protection

SECTION 16 - CONFLICT AND SEVERANCE

- 16.1 If there is a conflict between the provisions of these regulations, the provision which imposes the most stringent standards for the use of wetlands and watercourses shall govern. The invalidity of any word, clause, sentence, section, part, subsection, subdivision or provision of these regulations shall not affect the validity of any other part which can be given effect without such valid part or parts.
- 16.2 If there is a conflict between any provision of these regulations and the provisions of the act, the provisions of the act shall govern.

SECTION 18 - ASSESSMENT RELIEF

- 18.1 Any owner of wetlands and watercourses who may be denied a permit in connection with a regulated activity affecting such wetlands and watercourses, shall, upon written application to the assessor of the Town of Killingly, be entitled to a revaluation of such property to reflect the fair market value thereof in light of the restriction placed upon it by the denial of such permit, effective with respect to the next succeeding assessment list, provided no such revaluation shall be effective retroactively and the Town of Killingly may require as a condition therefor the conveyance of a less than fee interest to it of such land pursuant to the provisions of Sections 7-131b to 7-131k inclusive of the general statutes, as amended.

SECTION 19 - RECORDS RETENTION AND DISPOSITION

19.1 The agency and the Town Clerk for the Town of Killingly shall retain complete administrative records of agency actions and dispose of such records in accordance with the retention/disposition scheduled set forth in Subsection 19.2.

19.2 The Public Records Administrator of the Connecticut State Library established the following new records retention/disposition schedules for Municipal Inland Wetlands Agencies effective September 1998:

MINIMUM RETENTION REQUIRED

<u>RECORD TITLE</u>	<u>IN AGENCY</u>	<u>TOWN CLERK</u>
Approved applications (incl. supporting materials)	10 Years	--
Denied applications	2 Years	--
Decision letters	10 Years	Permanent
Approved site plans	10 Years	--
Legal Notices	1 Year	Permanent
Staff and Public written testimony (hearing records)	10 Years	--
Minutes of meeting & public hearings	Permanent	Permanent
Tapes, audio-inland wetland matters	1 year after minutes are approved unless pending an appeal	--
Notices of violation & orders	10 years	--
Text of changes adopted in regulations	Continuous update/ Permanent	
General correspondence issued or received	5 Years	--

SECTION 20 - EFFECTIVE DATE

20.1 These regulations including the Inland Wetlands and Watercourses Map, amend and supersede previous regulations for the protection and preservation of inland wetlands and watercourses in the Town of Killingly and shall become effective upon filing with the Town Clerk, after notice of such action has been published in a daily newspaper having a general circulation in the Town.

Date of Public Hearing - May 3, 1993

Date of Adoption - May 3, 1993

Date Effective - May 6, 1993

Original Regulations - Effective Date - June 3, 1974

Amended Regulations - Effective Date - November 3, 1975

Amended Regulations - Effective Date - April 29, 1988

Amended Regulations - Section 11.7 - Effective Date - January 4, 1994

Amended Regulations - Sections 2.1, 3.1, 4.1, 13.3, 14.3 and 14.4 - Effective Date February 12, 1996

Amended Regulations - Sections 2.1p, 2.1cc, 2.1kk, 2.1pp, 7.11e, 7.11f, 8.2, 9.1, 9.2, 10.2a-f, 10.3a, 10.3b, 11A.1, 11A.2, 11A.7, 11B.1, 11B.2, and 14.1.b - Effective Date June 1, 1997

Amended Regulations – Sections 4.1b, 4.1h, 4.5, 4.5a, 4.5b, 4.5c, 4.5d, 4.5e, 4.5f, 7.13, 7.13a, 7.13b, 7.13c, 7.13d 9.1, 11b.2, 19.2 – Effective Date: June 22, 1999.

Amended Regulations – Sections 2, 4.1, 5.2, 5.4, 6.3, 7.1, 7.5, 7.8, 8.4, 9.1, 10.3, 11A.2, 11 A.7, 13.2, 13.5, 20.1 – Effective Date: May 15, 2011