TOWN OF ESSEX, CONNECTICUT

INLAND WETLANDS

AND

WATERCOURSES COMMISSION



INLAND WETLANDS AND WATERCOURSES REGULATIONS

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TABLE OF CONTENTS

Section 1 Title, Authority, Jurisdiction and Effective Date 3

Section 2 Definitions 5

Section 3 Inventory of Inland Wetlands and Watercourses 9

Section 4 Permitted and Nonregulated Uses 10

Section 5 Activities Regulated by the State 13

Section 6 Regulated Activities to be Licensed 14

Section 7 Application Requirements 15

Section 8 Application Procedures 20

Section 9 Public Hearings 22

Section 10 Considerations for Decisions 23

Section 11 Decision Process and Permit 25

Section 12 Action by Duly Authorized Agent 28

Section 13 Bond and Insurance 29

Section 14 Enforcement 30

Section 15 Amendments 32

Section 16 Appeals 34

Section 17 Conflict and Severance 35

Section 18 Other Permits 36

Section 19 Fees 37

Section 1
Title, Authority, Jurisdiction and Effective Date

1.1 These Regulations shall be known and cited as the “Inland Wetlands and Watercourses Regulations of the Town of Essex, Connecticut.”

1.2 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 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 is in the public interest and is essential to the health, welfare and safety of the citizens of the state. It is, therefore, the purpose of these regulations to protect the citizens of the state by making 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.

1.3 Within the Town of Essex, no designated inland wetlands or watercourses shall be polluted, altered, obstructed, constructed upon, have wastes or materials deposited or discharged in or removed from, except in conformance with these Regulations.

1.4 These Regulations have been adopted by the Essex Inland Wetlands and Water Courses Commission, hereinafter referred to as the “Commission,” and in accordance with the provisions of Chapter 440, Sections 22a-36 through 45, inclusive, of the Connecticut General Statutes as amended, the Commission having been established by

municipal vote of the Town of Essex in an ordinance adopted September 6, 1973.

1.5 These Regulations and any amendments, changes or deletions thereto shall become effective upon adoption by the Commission, after a Public Hearing, in the manner specified in Sections 22a-42a of the Connecticut General Statutes as amended.

Effective Date: 1973 as amended, November 23, 1988, March 15, 1992, and March 1, 2010, December 3, 2021.

Section 2
Definitions

2.1 General: The words used in these Regulations shall have the meaning commonly attributed to them. Any doubts concerning their precise meaning shall be determined by the Commission in accordance with the purpose and intent of these Regulations.

2.2 Specific Definitions: Specific terms and phrases employed in these Regulations are defined and explained as follows:

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

Agency or Commission means the Inland Wetlands and Watercourses Commission of the Town of Essex.

Best Management Practices means a practice, procedure or equipment designed to prevent, minimize or control soil and erosion that pose a threat to inland wetlands and watercourses.

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

Clear-cutting means the harvest of timber in a fashion which removes most, or all trees, on a minimum of 1 acre or more of land, down to a two-inch diameter at breast height.

Commission means the Essex Inland and Watercourses Commission.

Commissioner of Energy and Environmental Protection means the Commissioner of the State of Connecticut Department of Energy and Environmental Protection.

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

Day of Receipt of an application shall be the day of the next regularly scheduled meeting of the Essex Inland Wetlands and Watercourses Commission, immediately following the day of submission to the Commission or the Commission's agent of such application, provided such meeting is no earlier than eight (8) days after submission**,** or thirty-five (35) days after such submission, whichever is sooner.

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

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

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

Farming shall be consistent with the definition as noted in Section 1-1(q) of the Connecticut General Statutes. **Also see Appendix A.**

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

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 Sections 22a-36 to 22a-45, inclusive*.*

Management practice means a practice, procedure, activity, structure or facility designed to prevent or minimize pollution or other environmental damage or to maintain or enhance existing environmental quality. Such management practices include, but are not limited to: erosion and sedimentation controls; restrictions on land use or development; construction setbacks from wetlands or watercourses; proper disposal of waste materials; procedures for equipment maintenance to prevent fuel spillage; construction methods to prevent flooding or disturbance of wetlands and watercourses; procedures for maintaining continuous stream flows; confining construction that must take place in watercourses to times when water flows are low and fish and wildlife will not be adversely affected.

Marshes are watercourses that are distinguished by the absence of trees and shrubs and the dominance of soft-stemmed herbaceous plants. The water table in marshes is at or above the ground surface throughout the year and areas of open water six inches or more in depth are common, but seasonal water table fluctuations are encountered.

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

Municipality means the Town of Essex.

Nurseries means places where plants are grown for sale, transplanting, or experimentation.

Permit see license

Permittee means the person to whom a license has been issued.

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

Pollution means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the Town by reason of any waste or other materials deposited or discharged therein by any public or private sewer or other source 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.

Prudent means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in

deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

Regulated Activity means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetland or watercourses, and any activity occurring within one hundred (100) feet of an inland wetland or watercourse, including intermittent watercourses, but shall not include the specific activities in Section 4 of these regulations.

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

Rendering unclean or impure means any alteration of the physical, chemical or biological properties of any of the surface or ground waters of the Town of Essex, including but not limited to change in color, odor, turbidity or taste;

Significant impact or major effect means any activity, including, but not limited to, the following activities which may have a major effect:

a. 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;

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

c. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support aquatic plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions;

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

e. Any activity which causes substantial diminution of flow of a natural watercourse or groundwater levels of the wetland or watercourse;

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

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

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

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

Swamps are watercourses that are distinguished by the dominance of wetland trees and shrubs.

Town and/or Municipality means the Town of Essex.

Upland Review Area means the non-wetland or non-watercourse area within 100 feet of the wetlands or watercourses where certain types of activities, as defined in these Regulations as “regulated activities”, are taking place. While requiring a permit for specified activities within defined upland review area boundaries, the Commission has authority to regulate proposed activities located in more distant upland areas if they are likely to impact or affect a wetland or watercourse or water bodies.

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

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-29 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: (a) evidence of scour or deposits or 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.

Water Company means any individual, partnership, association, corporation, municipality or other entity, or the lessee thereof, who or which owns, maintains, operates, manages, controls or employs any pond, lake, reservoir, well, stream or distributing plant or system that supplies water to two or more consumers or to twenty-five or more persons on a regular basis provided if any individual, partnership, association, corporation, municipality or other entity or lessee owns or controls eighty per cent of the equity value of more than one such system or company, the number of consumers or persons supplied by all such systems so controlled shall be considered as owned by one company for the purposes of this definition.

Wetlands means land, including submerged land as defined in this section not regulated pursuant to Sections 22a-29 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 aquatic (saturated) soil moisture regime as defined by the USDA Cooperative Soil Survey.

Section 3
Inventory of Inland Wetlands and Watercourses

3.1 The map of wetlands and watercourses entitled “Inland Wetlands and Watercourses Map, Essex Connecticut” 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 Commission and in the Land Use Office. In all cases, the precise location of wetlands and watercourses shall be determined by the actual character of the land, the distribution of wetland soil types and location of watercourses. The Commission may use aerial photography, remote sensing imagery, resource mapping, soils maps, site inspection observations or other information in determining the location of the boundaries of wetlands and watercourses.

3.2 Any person may petition the Commission for an amendment to the map. All petitions for a map change shall be submitted in writing and shall include all relevant facts and circumstances which support the change. The petitioner shall bear the burden of proof regarding the proposed map amendment. Such proof may include, but not be limited to aerial photography, remote sensing imagery, resource mapping or other available information. The Commission may require such person to provide an accurate delineation of regulated areas in accordance with section 15 of these regulations.

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

3.4 All map amendments are subject to the public hearing process outlined in section 15 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 provided that best management practices such as erosion and sediment control and other measures consistent with the Town of Essex regulations are properly implemented:

a. Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less, essential to the farming operation. Such activities shall require best management practices to eliminate, or reduce, surface runoff from agricultural areas that potentially could carry contaminants. Also, activities conducted by, or under the authority of, the Department of Energy and Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this section shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear-cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purpose of sale, or activities that would otherwise adversely impact watercourses and wetlands located down gradient from the farming operation;

b. 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 the Section 22a-42a of the Connecticut General Statutes as amended or as of July 1, 1974, whichever is earlier; and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the permit was obtained on or before July 1, 1987;

c. Boat anchorage or mooring;

d. Uses incidental to the enjoyment and maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the Town. Such incidental uses shall include maintenance of existing structures, landscaping and gardening, and removal of trees in the upland review area that threaten the primary residence on the property, but shall not include removal or deposition of significant amounts of material from or onto inland wetlands or watercourses or diversion or alteration of a watercourse;

    1. Removal of trees within the upland review area and taller than the distance from base to any existing primary residence structure, is permitted, provided no stump removal or surface degradation in non-lawn areas occurs. Removal of standing dead trees and invasive vegetation is allowed beyond the height requirement in the upland review area, provided no stump removal or surface degradation occurs.

    2. No as-of-right activity in the upland review area shall result in direct run-off or transport of material into the watercourse or wetlands.

e. Construction and operation, by water companies as defined in Section 2.2, or by municipal water supply systems as provided for "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 the Connecticut General Statutes, Sections 22a-401 through 22a-403 of the Connecticut General Statutes and;

f. Maintenance relating to any drainage pipe which existed before the effective date of any Town regulations adopted pursuant to Section 22a-42a of the Connecticut General Statutes 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. Withdrawals of water for fire emergency purposes. (PA No. 11-184, effective October 1, 2011)

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 inland wetland or watercourse by removal or deposition of material, alteration, or obstruction of water flow or pollution of the inland wetland or watercourse:

a. Conservation of soil, vegetation, water, aquatic life and wildlife;

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

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 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, or for certain regulated activities located outside of wetlands and watercourses from the duly authorized agent in accordance with Section 12 of these regulations.

4.4 To carry out the purposes of this section, any person proposing a permitted operation and use or a nonregulated operation and use shall, prior to commencement of such operation and 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 a wetland or watercourse. The Commission shall rule that the proposed operation and use or portion of it is a permitted or nonregulated operation and use or that the proposed operation and use is a regulated activity and a permit is required.

Section 5
Activities Regulated Exclusively by the Commissioner of Energy and Environmental Protection

5.1 The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over regulated activities in or affecting wetlands or watercourses, conducted 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 Energy and Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to Sections 22a-28 through 22a-35 of the Connecticut General Statutes, as amended.

5.3 The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Energy and Environmental Protection under Section 22a-402 of the Connecticut General Statutes or a permit issued by the Commissioner of Energy and Environmental Protection under Sections 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 the Town 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 Energy and Environmental Protection shall have exclusive jurisdiction over the discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to Section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under Section 404 of the Federal Clean Water Act.

Section 6
Regulated Activities to be Licensed

6.1 No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity form the Inland Wetlands and Watercourses Commission of the Town of Essex.

6.2 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 14 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 apply for a permit on a form provided by the Commission. The application shall contain the information described in this section and any other information the Commission may reasonably require. Application forms may be obtained in the Land Use Office. No application shall be deemed complete unless it is in such form and contains such information as the Commission deems necessary for a fair and informed determination of the issues.

7.2 If an application to the Town of Essex Planning and Zoning Commission for subdivision or re-subdivision of land involves land containing a wetland or watercourse, the applicant shall, in accordance with Section 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, no later than the day the application is filed with such Planning and Zoning Commission.

7.3 The application shall contain such information as is necessary for a fair and informed determination thereon by the Commission.

7.4 A prospective applicant may request the Commission or Land Use Official to determine whether or not a proposed activity involves a regulated and/or significant impact activity. Determination of a regulated activity by the Land Use Official are subject to review and approval by the Commission in accordance with Section 12.1 at the next regular meeting.

7.5 All applications shall include the following information in writing or on maps or drawings:

a. The applicant's name, home and business mailing addresses, email address, and telephone numbers. If the applicant is a Limited Liability Company, the managing member's or authorized 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 Assessor's Map & Lot Number and geographical location of the land which is the subject of the proposed activity and a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, and a site location map;

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, protect or enhance existing environmental quality of the resource, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;

f. Alternative(s) which would cause less or no environmental impact to wetlands or watercourses and why the alternative as set forth in the application was chosen. All such alternatives shall be diagramed on a site plan or drawing;

g. A site plan showing the proposed activity and existing and proposed conditions in relation to wetlands and watercourses and/or regulated upland review area (100 feet) and identifying 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;

h. Names and mailing addresses of adjacent land owners;

i. Statement 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;

j. Authorization for the members and agents of the Commission to inspect the subject land, at reasonable times, during the application process and for the duration of the permit;

k. A completed Connecticut Department of Environmental Protection Statewide Inland Wetlands and Watercourses Activity Reporting Form. The Commission shall revise or correct the information provided by the applicant and submit the form to the Commissioner of Energy and Environmental Protection in accordance with Section 22a-39-14 of the Regulations of Connecticut State Agencies;

l. Any other information the Commission deems necessary to the understanding of what the applicant is proposing; and

m. Submission of the appropriate filing fee based on the fee schedule established in Section 19 of these regulations;

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

a. Site plans for proposed activity and the land which will be affected thereby which show existing and proposed conditions, wetland and watercourse boundaries, land contours, boundaries of land ownership, proposed alterations and uses of wetlands and watercourses, and other pertinent features of the land and the proposed activity, prepared by a Professional Engineer, land surveyor, architect or landscape architect licensed by the state, or by such other qualified person;

b. Engineering reports and analyses and additional drawings to fully describe the proposed activity including any filling, excavation, drainage or hydraulic

modifications to watercourses and the proposed erosion and sedimentation control plan;

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 wetlands shall be delineated in the field by a soil scientist and the soil scientist's field delineation shall be depicted on the site plans;

d. A 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; a 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 which would cause less or no environmental impact to wetlands or watercourses, and a description of why each alternative considered was deemed neither feasible nor prudent;

e. Analysis of chemical or physical characteristics of any fill material;

f. Management practices and other measures designed to mitigate the impact of the proposed activity.

g. List of Affected Property Owners - The applicant may be required to submit a list of other property owners whose rights or interests may or will be affected by the proposed activity, including those owning land which borders affected waterways downstream from the proposed activity;

h. Stream Characteristics - If the proposed activity may affect a watercourse lying within, partly within, or flowing through or adjacent to the affected property, the applicant may be required to submit information relative to the present character and the projected impact of the proposed activity upon the watercourse and its flood plains.

7.7 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.

7.8 **One (1) original and eleven (11) copies** of the application together with the information required by these Regulations shall be submitted at the time of submission of the application to comprise a complete application unless an applicant is otherwise directed,

in writing, by the Commission. The Commission reserves the right to request additional copies of any information submitted with the application.

All information submitted in the application for consideration shall be deemed factual, or in the case of anticipated activity, binding. A knowing failure of the applicant or any of his, her or its agents to provide correct information or performance exceeding the levels of activity anticipated, shall be sufficient grounds for the revocation of any permit under these Regulations and/or for penalties to be imposed. Each day of violation or deception shall be considered as a separate offense.

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 prior 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 land for which the permit was issued;

e. The application shall be accompanied by the applicable fee paid to the Town of Essex;

f. The Commission may, prior to 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 renewed and the public interest or environment will be best served by not interrupting the activity.

7.10. 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.

7.11 There shall be a filing fee sufficient to cover the reasonable cost of reviewing and acting on applications, including, but not limited to, the costs of certified mailings, publications or notices and decisions and monitoring compliance with permit conditions or Commission orders. Such fee shall be established by the Commission and/or Board of Selectmen (as applicable per the Town's Fee Ordinance) and may be revised from time to time to reflect changing costs or experience. Such fee shall be payable upon submission of such application to the Commission and no application shall be complete

unless the required filing fee shall have been paid. All information which the Commission may require to be submitted in connection with applications hereunder shall be provided at the expense of the applicant. See Section 19 Fees.

7.12 The Commission may require the review of an application by a third party if deemed necessary and the applicant would be responsible for any associated fees.

Section 8
Application Procedures

8.1 All petitions, applications, requests or appeals shall be submitted to the Inland Wetlands and Watercourses Commission c/o the Inland Wetlands Enforcement Officer in the Land Use Office.

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

a. Any portion of the property affected by a decision of the Commission is 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 on the site will flow through and significantly impact the drainage or sewerage 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.

Such notice 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, petition, appeal, request or plan.

8.3 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 Section16-1 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 Commission 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.

8.4 The date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of the Commission, provided such meeting is no earlier than eight (8) days after submission**,** or thirty-five (35) days after such submission, whichever is sooner.

8.5 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 10.4 of these regulations.

8.6 All applications shall be open for public inspection.

8.7 Incomplete applications may be denied.

Section 9
Public Hearings

9.1 The Commission shall not hold a public hearing on an application unless the Commission determines that:

a. The proposed activity may have a significant impact on wetlands or watercourses;

b. A petition signed by at least twenty-five (25) persons who are eighteen years of age or older and who reside in the municipality in which the regulated activity is proposed, requesting a hearing is filed with the Commission not later than fourteen (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 inland wetlands 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) 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 or persons may appear and be heard. Exhibits and materials shall be sequentially marked as part of the public hearing.

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 the Town;

The Commission shall send notices of public hearings by certified mail to the applicant and abutting property owners;

The Commission shall render a final decision on the application within thirty-five (35) days after the completion of a public hearing (or in the absence of a public hearing within sixty-five (65) days from the application) or any extension of such period as provided in Section 8-7d of the Connecticut General Statutes, as amended.

Section 10
Considerations for Decisions

10.1 The Commission may consider the following in making its final decision on permit application:

a. The application and its supporting documentation
b. All evidence offered at any public hearing including the application and all supporting documents;
c. Reports from other agencies and commission including but not limited to the Town of Essex:
    1. Conservation Commission
    2. Planning and Zoning Commission
    3. Building Official
    4. Health Official
d. The Commission may also consider comments from other individuals including but not limited to those from the Middlesex County Soil and Water Conservation District, the River Regional Planning Agency, regional or local agencies, commissions and Federal or State agencies, including the Soil and Water Conservation District, and the Connecticut Department of Energy and Environmental Protection;
e. Such additional information as may be required by the Commission;
f. The availability of further technical improvements or safeguards which could feasibly be added to the plan or action;
g. The possibility of further avoiding reduction of the inland wetlands' or watercourses' natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation and/or prevent erosion, assimilate wastes, facilitate drainage and provide recreation and open space;
h. The extent to which the exercise of property rights and the public benefit derived from such use may or may not outweigh or justify the possible degradation of the inland wetlands or watercourses, the interference with the exercise of other property rights and the impairment or endangerment of public health, safety or welfare.
i. Non-receipt of comments from state agencies and commissions listed in subdivision 10.1b and c above within the prescribed time shall neither delay nor prejudice the decision of the Commission.

10.2 Criteria for Decision. In carrying out the purposes and policies of section 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, 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 the following:

a. The environmental impact of the proposed regulated activity on wetlands and/or watercourses;
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;
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;
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;

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; 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.

10.3 When rendering a decision, the Commission shall consider the alternatives to the proposed action including a consideration of alternatives which might enhance environmental quality of the inland wetlands or watercourses 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 taking no action or postponing action pending further study, and the alternative of requiring actions of different nature which would provide similar benefits with different environmental impacts, such as using a different location for the activity;

10.4 In the case of an application which received a public hearing pursuant to a finding by the Commission that the proposed activity may have a significant impact on wetlands or watercourse, 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 with a lesser adverse impact. In making this finding, the Commission shall consider the facts and circumstances set forth in subsection 10.2 of this section. The finding and reasons therefore shall be stated on the record in writing in the decision of the Commission.

10.5 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;

10.6 For purposes of this section, (1) “wetlands and watercourses” includes aquatic, plant or animal life and habitats in wetlands or watercourses, and (2) “habitats” means areas of environments in which an organism or biological population normally lives or occurs.

10.7 A municipal inland wetlands 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.

10.8 In reaching its decision or 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 and Permit

11.1 In granting a permit for a regulated activity or following a public hearing, the Commission shall issue a written decision presenting the reasons for granting such permit. The decision may include discussion of the considerations, information, and criteria listed in Sections 8 and 10.

Declaratory Ruling: **Exemptions**
If the Commission finds, on the basis of the evidence before it, that a proposed activity or use does not involve any regulated activity as defined in Section 6 of the Regulations or involves only a permitted use as defined in Section 4, a ruling to proceed shall be granted forthwith. This ruling shall be subject to limitation or revocation if it is later shown that a regulated activity or non-permitted use is a consequence of that proposed activity. The Commission shall state in writing its reasons for finding that a proposed permitted use or other activity does not involve a regulated activity pursuant to these Regulations and shall include such statement in its records.

Summary Ruling: Permits
If the Commission finds that the proposed activity is a regulated activity not involving significant impact or major effect on the inland wetland or watercourse as defined in Section 6, it may grant a permit with or without conditions, after initial review without a public hearing. In order to grant a permit at this stage, the Commission, after full review of the considerations set forth in Section 10 and other pertinent factors, shall issue an opinion presenting its reasons for granting the permit with or without conditions. Such opinion may include discussion of the considerations and criteria listed in Section 10.2 (a) through 10.2 (f). Such opinion shall be included by the Commission in its records.

Final Decision for Declaratory or Summary Rulings
In the case of a Declaratory or Summary Ruling, the Commission shall render a final decision within sixty-five (65) days of receipt of a complete application.

Plenary Ruling:
If the Commission finds that the requirements of a public hearing are met, the criteria set forth in Section 7.6 shall apply.

11.2 In denying a permit for a regulated activity or denying a permit in part, the Commission shall issue a written decision presenting its reasons. The decision may include a discussion of the considerations listed in Section 10. In denying a permit for a regulated activity on the basis of a finding that a feasible and prudent alternative exists, the Commission's written decision shall include a statement of the types of alternatives which the applicant may investigate.

11.3 The Commission, or its duly authorized agent acting pursuant to Section 12 of these regulations, may, in accordance with Section 10 of these regulations, grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity designed to carry out the purposes and policies of the Act, or deny the application. 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.

11.4 No later than sixty-five (65) days after receipt of an application, the Commission may hold a public hearing on such application. At such hearing any person or persons may appear and be heard and may be represented by agent or attorney. 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 (see also Section 8).

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 extension of all such periods shall not be for longer than sixty-five (65) days, or may withdraw the application.

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

11.5 The Commission shall state upon its record the reasons and basis for its decision.

11.6 The Agency 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 day period, the applicant may provide for the publication of such notice within ten days thereafter.

11.7 If an activity authorized by an inland wetlands permit also involves 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 Essex Planning and Zoning Commission within fifteen days of the date of the decision thereon.

11.8 Any permit issued by the Commission for the development of land for which an approval is required under section 8-3, 8-25, or 8-26 of the Connecticut General Statutes shall be valid for five years provided the Commission may establish a specific time period which any regulated activity shall be conducted. Any permit issued by the Commission for any other activity shall be valid for not less than two years and more than five years.

Any regulated activity approved by the Commission shall be completed within two (2) years from the permit's effective date. Should the applicant determine that the permitted activity will not be completed between March 15th and October 15th of the year of initiation, the applicant agrees to appear before the Commission prior to October 15 and present a plan for the stabilization of the site during the non-permitted months. 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 under this section.

The renewal and extension of any permit shall be at the discretion of the Commission and the Commission may, in its discretion, hold an additional hearing in connection with any request for renewal and extension. No permit holder shall be entitled to a renewal and extension of such permit except in the discretion of the Commission and the granting of a renewal and extension shall not preclude the Commission from denying any further renewals or extensions.

The Commission shall renew or extend any permit 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. No permit, including any extensions or renewals thereof, may be valid for more than ten (10) years from the date the original permit was granted.

11.9 The Commission, through its Enforcement Agent, shall be notified in writing upon initiation and completion of the permitted activity.

11.10 No permit may be assigned or transferred unless authorized by the Commission. The Commission may assign or transfer a permit to another party after receiving a written request from the holder of the original permit. The new permit holder must agree in writing to fulfill the conditions of the permit.

11.11 If a bond or insurance is required in accordance with Section 13 of these Regulations, no permit shall be issued until such bond or insurance is provided.

11.12 All permits expire upon the completion of the activity specified therein.

11.13 General provisions in the issuance of all permits:

a. The Commission has 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 Commission are subject to and do not derogate any present or future rights or powers of the Commission or the Town of Essex, 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 conducting the authorized 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
Action by Duly Authorized Agent

12.1 The Commission may delegate to its duly authorized agent the authority to approve or extend a license 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 Energy and 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 Section 7.4 of these regulations and any other information the Commission may reasonably require. Notwithstanding the provisions for receipt and processing applications prescribed in Sections 7, 8, and 10 of these regulations, such agent may approve or extend such an activity at any time.

12.2 The authorized agent or the person receiving such approval shall, within ten (10) days of the date of such approval, publish notice of the approval in a newspaper having a general circulation in the Town. Any person may appeal such decision of such 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.

Section 13
Bond and Insurance

13.1 The Commission may require the posting of a maintenance bond or performance bond in the form of a cash bond or an irrevocable letter of credit. The bond shall be in a form satisfactory to the counsel for the Commission and shall be in such amount as is established by the Commission to assure completion of the regulated activity. The term of the bond shall be determined by the Commission. In the event that the regulated activity is not completed within the original term of the bond, it shall be the responsibility of the applicant to request an extension of said term.

13.2 The bond and sureties shall be conditioned on substantial compliance with the provisions of these Regulations and conditions imposed by the Commission upon granting of a permit.

13.3 The applicant may be directed to certify that he has insurance in an amount to be determined by the Commission commensurate with the projected operation against liability which might result from the proposed operation or activity covering any and all damages which might occur within three years of completion of such operation.

Section 14
Enforcement

14.1 The Commission may appoint an agent or agents to act in its behalf with the authority to 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 purpose of this section, the Commission or its duly authorized agent shall take into consideration the criteria for decision under section 10.2 of these regulations.

14.2 The Commission or its agent may make regular inspections at reasonable hours of all regulated activities for which permits have been issued, after notifying in advance the property owner or the authorized agent of the owner, during the life of the permit.

14.3 In the case in which a permit has not been issued or 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 owner.

14.4 The Commission may suspend or revoke a permit if it finds that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. Such suspension or revocation shall occur only after giving notice to the permittee, by certified mail, return receipt requested, or by service of a state marshal, of the facts or conduct which warrant the intended action and after a hearing at which the permittee is given an opportunity to show compliance with the requirements for retention of the permit, that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The Commission may issue such cease and desist orders as are necessary to preserve the issues for hearing.

14.5 The applicant shall be notified of the Commission's decision by certified mail within fifteen (15) days of the date of the decision and the Commission shall cause notice of its order of revocation or suspension or a permit to be published once within fifteen (15) days of the date of such decision in a newspaper having general circulation in the Town. A copy of any such order or revocation or suspension shall be sent to the Commissioner of Energy and Environmental Protection no later than ten (10) days after its issuance. However, failure to submit such notice shall not impair the validity of the order.

14.6 If the Commission or its duly authorized agent finds that any person is conducting or maintaining any activity, facility or condition which is in violation of Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended, or of these Regulations, the 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 cease immediately such activity or maintaining such facility or to correct such facility or condition. A hearing shall be held within ten (10) days to provide the person an opportunity to be heard and to show cause why the order should not remain in effect. The Commission shall notify the person by certified mail within ten (10) days of the date of the decision of the Commission 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 using general circulation within the municipality. The original order shall be in effect until the

Commission affirms, revises or withdraws the order. The issuance of an order pursuant to this subsection shall not delay or bar an action pursuant to section 22a-44(b) of the Connecticut General Statutes, as amended.

b. Issue a notice of violation to such person conducting such activity or maintaining such activity, facility or condition, stating the nature of the violation, the jurisdiction of the Commission, and prescribing the necessary action and steps to correct the violation including, without limitation, halting work in wetlands or watercourses, appearing at the next regularly scheduled meeting of the Commission to discuss the unauthorized activity, facility, or condition, providing a written reply to the notice, or filing a proper application for the necessary permit. Failure to carry out the action(s) directed in a notice of violation may result in the issuance of the order provided in subsection 14.6 above or other enforcement proceedings as provided by law.

14.5 In the event any person commits, takes part in, or assists in any violation of any provisions of Sections 22a-36 to 22a-45 inclusive, of the Connecticut General Statutes, as amended, including regulations promulgated by the Commission, the provisions of Section 22a-44 of the Connecticut General Statutes shall apply.

14.6 The applicant may be directed to certify that he/she has insurance in an amount to be determined by the Commission commensurate with the projected operation against liability which might result from the proposed operation or activity covering any and all damages which might occur within three years of completion of such operation.

Section 15
Amendments

15.1 These regulations and the Inland Wetlands and Watercourses Map for the Town of Essex may 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.

15.2 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 inland wetland 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 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 provision of this section shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses or (2) to any change in regulations necessary to make such regulations consistent with the provision of the Act as of the date of such receipt.

15.3 These regulations and the Town of Essex Inland Wetlands and Watercourses Map shall be amended in the manner specified in Section 22a-42a of the Connecticut General Statutes, as amended. The Commission shall provide the Commissioner of Energy and 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, at least thirty-five days before the public hearing on their adoption.

15.4 Petitions requesting changes or amendments to the "Town of Essex, Connecticut Official Inland Wetlands and Watercourses Map" shall contain at least the following information:

a. The applicant's name and signature, home and business mailing addresses, email address, and telephone numbers; if the applicant is a Limited Liability Company or a Corporation, the managing member's or authorized corporate officer's name, address and telephone number;
b. The property owner's name (if not the applicant), address, telephone number and a written consent to the proposed action set forth in the application;
c. The address, or location, of the land affected by the petition;
d. Applicant's interest in the land affected by the petition;
e. Map showing the geographic location of the property involved in the petition including a description of the land in sufficient detail to allow identification of the disputed wetland or watercourses areas including the Assessor's Map and Lot Number(s);
f. The reasons for the requested action;
g. The names and addresses of abutting property owners including the Assessor's Map and Lot Number(s); and
h. A site plan showing proposed development of the property.

15.5 Any person who submits a petition to amend the Inland Wetlands and Watercourse Map, Essex Connecticut, 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 remove 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 15.4, the petition shall include:

a. the name, mailing address and telephone number of the owner(s) of such land and owners(s) agent or other representative;
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

15.6 Watercourses shall be delineated by a soil scientist, geologist, ecologist or other qualified individual.

15.7 A public hearing shall be held on petitions to amend the "Town of Essex, Connecticut Official Inland Wetlands and Watercourses Map." Notice of the Hearing shall be published in a newspaper having a general circulation in the Town of Essex 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. A copy of such proposed boundary change shall be filed in the office of the Town Clerk for public inspection at least ten (10) days before the date set for the Hearing.

15.8 The Commission may require the applicant to present documentation by a certified soil scientist that the land in question does not have a soil type classified by the National Cooperative Soils Survey as poorly drained, very poorly drained, alluvial, or flood plain. Such documentation may include a map of the land in question signed by a certified soil scientist on which the flag locations defining the boundaries of the regulated soil types are depicted, along with their appropriate numerical designations at an accuracy of an A-2 survey standard established by the State of Connecticut Board or Registry for Professional Engineers and Land Surveyors if required by the Commission.

15.9 Wetlands and watercourses may need to be delineated by a competent licensed soil scientist, geologist, ecologist or other individual satisfactory to the Commission. Such documentation may include a map of the wetland and/or watercourse in question signed by a certified soil scientist on which the flag locations defining the boundaries of the regulated soil types and/or watercourse are depicted, along with their appropriate numerical designations as an accuracy of all A-2 survey standard established by the State of Connecticut Board or Registry for Professional Engineers and Land Surveyors if required by the Commission.

15.10 Within sixty-five (65) days after receipt of a complete petition for a change in the mapped boundaries of any wetland or watercourse, the Commission shall hold a Public Hearing to consider the petition. The Commission shall act upon the changes requested in such petition within sixty-five (65) days after the Hearing has been closed.

15.11 If a change is made, the Commission shall make its decision and state the reasons in writing why the change in the "Town of Essex, Connecticut Official Inland Wetlands and Watercourses Map" was made.

Section 16
Appeals

16.1 Any person aggrieved by any regulation, order, decision, or action made pursuant to these Regulations by the Commission may, within the time period specified in subsection (b) of Section 8-8, as amended, appeal to the Superior Court for the Judicial District of Middlesex in the manner set forth in the Section 22a - 43 of the Connecticut General Statutes.

16.2 Notice of such appeal shall be served upon the Commission and the Commissioner of the Department of Energy and Environmental Protection.

Section 17
Conflict and Severance

17.1 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 if 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.

17.2 If there is a conflict between the provisions of these regulations and the provisions of the Act, the provisions of the Act shall govern.

17.3 Where there is a conflict between the provisions of these Regulations and those of any other applicable statute, ordinance or regulation, the provisions of the statute, ordinance or regulation which imposes the greatest restriction on the use of the inland wetland or watercourse shall govern.

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

Section 18
Other Permits

18.1 Nothing in these Regulations shall obviate any requirement for the applicant to obtain any other assent, permit or license required by law or regulation of the Government of the United States, the State of Connecticut, or any Town Commission (including, but not limited to the Essex Zoning Commission and /or the Essex Planning Commission). The obtaining of such assents, permits or licenses is solely the responsibility of the applicant.

18.2 Notwithstanding the granting of any permit by this Commission, no person shall conduct any regulated activity within an inland wetland or watercourse or regulated upland area which requires Town Sanitarian, Zoning and/or Subdivision approval without first having obtained all applicable permits or other approval(s) from the Town Sanitarian, the Zoning Enforcement Agent, the Zoning Commission, the Zoning Board of Appeals, and/or the Planning Commission.

Section 19
Fees

19.1 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 Essex at the time the application is filed with the Commission.

19.2 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 subsection 19.7 of these regulations.

19.3 The application fee is not refundable.

19.4 Definitions. As used in this section:
"Residential Uses" means activies carried out on property developed for permanent housing or being develop to be occupied by permanent housing.

"Commercial Uses" means activities carried out on property developed for industry, commerce, trade, recreation, or business or being developed to be occupied for such purposes, for profit or nonprofit.

"Other Uses" means activities other than residential uses or commercial uses.

19.5 Fee schedule. Application fees shall be based on the following schedule:

All activities except declaratory rulings have a separate surcharge to CT DEEP as designated under CGS Section 22a-27j

Type of Application	App. Fee	DEEP Fee	Legal Notice (if Req'd)	Outside Consultants	Significant Activity Fee	Total Fee
As of right	-		-	-	-	-
Administrative	$25	$60	-	-	-	$85
Single Residence	$160	$60	$25	Cost + 10%	$35/1,000 S.F. of disturbed area	TBD
Commercial, Multi-Family, Subdivision	$260	$60	$25	Cost + 10%	$35/1,000 S.F. of disturbed area	TBD
Permit Renewal	$50	$60	$25	Cost + 10%	$35/1,000 S.F. of disturbed area	TBD
Petition to Amend WL Maps	$500	$60	$25	Cost + 10%	$35/1,000 S.F. of disturbed area	TBD
After the Fact	2X the above		2X the above	2X the above	2X the above	2X the above

19.6 Exemption. Boards, commissions, councils and departments of the Town of Essex are exempt from all fee requirements.

19.7 Waiver. 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 that 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. The amount of the application fee is clearly excessive in relation to the cost to the Town for reviewing and processing the application.
c. The applicant has shown good cause.

Section 20
Effective Date of Regulations

20.1 These regulations are effective upon filing in the Office of the Town Clerk and publication of a notice of such filing in a newspaper having general circulation in the Town of Essex.

APPENDIX A –
DEFINITION OF AGRICULTURE AND FARMING

The Connecticut General Statute Section 1-1(q) (as of January 10, 2009) provides as follows:

> 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 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.