

*TOWN OF
ESSEX, CONNECTICUT
INLAND WETLANDS AND
WATERCOURSES COMMISSION*



***INLAND WETLANDS AND
WATERCOURSES
REGULATIONS***

EFFECTIVE MARCH 1, 2010

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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.

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.

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 all trees down to a two inch diameter at breast height.

Commission means the Essex Inland and Watercourses Commission.

Commissioner of Environmental Protection means the Commissioner of the State of Connecticut Department of 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 five (5) business days after receipt 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.

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 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.

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 any use of an inland wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such inland wetland or watercourse, and any activity occurring within **one hundred (100)** feet of an inland wetland or watercourse including intermittent watercourses involving:

- a. Installation or enlargement of a subsurface sewage disposal system (or part thereof);
- b. Sewage discharge or overflow;
- c. Removal or deposition of any material;
- d. Placement, construction, enlargement, or moving of any structure or building;
- e. Clear-cutting of trees; or
- f. Any other activity or change deemed by the Commission to be detrimental to wetlands or watercourses, except as otherwise indicated in Section 3 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 waters of the Town of Essex, including but not limited to change in color, odor, turbidity or taste;

Significant impact or major effect means:

- 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 around wetlands or watercourses within which 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 Agency 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.

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 – PERMITTED USES AND AS OF RIGHT & NONREGULATED USES

- 3.1 The following operations and uses shall be permitted in inland wetlands and watercourses as of right:
- a. Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less, essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this 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, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purpose of sale;
 - 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 for 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 and landscaping 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;
 - e. Construction and operation, by water companies as defined in Section 16-1, 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.
- 3.2 The following operations and uses shall be permitted, as nonregulated uses in inland 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 trials, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated.
- 3.3 Any dredging or any erection, placement, retention or maintenance of any structure, fill, obstruction or encroachment, or any work incidental to such activities, conducted by a state agency, which activity is regulated under Connecticut General Statutes Sections 22a-28 to 22a-35, inclusive, as amended, or Sections 22a-39b to 22a-363f, inclusive, as amended, shall not require any permit or approval under these Regulations as amended.
- 3.4 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 Agency in accordance with Section 10 of these Regulations, or for certain regulated activities located outside of wetlands and watercourses from the duly authorized agent in accordance with Section 11 of these regulations.
- 3.5 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 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 nonregulated use of a wetland or watercourse. The Agency 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 4 – ACTIVITIES REGULATED EXCLUSIVELY BY THE COMMISSIONER OF ENVIRONMENTAL PROTECTION

- 4.1 The Commissioner of 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.
- 4.2 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to Sections 22a-28 through 22a-35 of the Connecticut General Statutes, as amended.
- 4.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Environmental Protection under Section 22a-402 of the Connecticut General Statutes or a permit issued by the Commissioner of Environmental Protection under 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.
- 4.4 The Commissioner of Environmental Protection shall have exclusive jurisdiction over the discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to Section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under Section 404 of the Federal Clean Water Act.

SECTION 5 - INLAND WETLANDS AND WATERCOURSES MAP AMENDMENTS

- 5.1 The Commission shall establish or amend the inland wetlands and watercourses area boundary maps only in accordance with the procedures of Section 22a-42a of the Connecticut General Statutes, as amended. Said maps shall be on file in the office of the Essex Town Clerk and shall be titled "Town of Essex, Connecticut Official Inland Wetlands and Watercourses Map" with adopted revisions.
- 5.2 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, 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 owner's name (if not the applicant), address, telephone number and a written consent to the proposed action set forth in the application;
 - c. Applicant's interest in the land;
 - d. The 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);
 - e. The reasons for the requested action;
 - f. The names and addresses of abutting property owners including the Assessor's Map and Lot Number(s); and
 - g. A site plan showing proposed development of the property.
- 5.3 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.
- 5.4 Wetlands and watercourses may need to be delineated by a competent 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.

- 5.5 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.
- 5.6 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.
- 5.7 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 6 - APPLICATION REQUIREMENTS

- 6.1 No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the Commission. Subject to the provisions of Sections 3 and 4 hereof, regulated activities affecting inland wetlands and watercourses within the Town are prohibited except as they may be permitted by the Commission. Any regulated activity legally existing as of July 1, 1974 and continuously existing from that date to the present time, shall be exempt from the requirements set forth in these Regulations and permitted to continue provided that no expansion or new or additional regulated activity requiring a permit under these Regulations is conducted without a permit.
- 6.2 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Agency, 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.
- 6.3 The following application procedure shall be adhered to in applying for permission to conduct regulated activities in designated inland wetlands and watercourses, the upland review area, or any portion thereof:
- a. **One (1) original and eleven (11) copies** of the application together with the information required by these Regulations or by the Commission shall be furnished at the time of submission of the application in order to permit the Commission to carry out its duties under these Regulations, provided that only four (4) copies of the site development plan and/or plans showing the proposed activity need be submitted at such time. However, the Commission reserves the right to request additional copies of any information submitted with the application.
 - b. 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.
- 6.4 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 Agency. The application shall contain the information described in this section and any other information the Agency may reasonably require. Application forms may be obtained in the zoning 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 determination of the issues. The Commission shall inform all applicants of such necessary information without delay.
- 6.5 If an application to the Town of Essex Planning 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 Agency in accordance with this section, no later than the day the application is filed with such Planning Commission.

- 6.6 The application shall contain such information as is necessary for a fair and informed determination thereon by the Agency.
- 6.7 A prospective applicant may request the Agency to determine whether or not a proposed activity involves a significant impact activity.
- 6.8 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 or enhance existing environmental quality, 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 agency to inspect the subject land, at reasonable times, during the pendency of an application and for the life of the permit;
- k. A completed Connecticut Department of Environmental Protection Statewide Inland Wetlands and Watercourses Activity Reporting Form. The Agency shall revise or correct the information provided by the applicant and submit the form to the Commissioner of Environmental Protection in accordance with Section 22a-39-14 of the Regulations of Connecticut State Agencies;
- l. Any other information the Agency 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 Appendix B of these regulations;
- n. Each applicant shall submit, together with the application, a completed Connecticut Department of Environmental Protection Statewide Inland Wetland and Watercourse Activity Reporting Form, together with an 8 ½ inch by 11 inch photocopy of that portion of the “United States Geological Survey (USGS) Quadrangle Map” covering the project site, with the bounds of the project site outlined (where possible) or pinpointed with an arrow.

6.9 At the discretion of the Agency 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;
- e. 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; and
- f. Management practices and other measures designed to mitigate the impact of the proposed activity.

6.10 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.

6.11 If a proposal is scheduled for a Public Hearing, the Commission shall request information which may include, but is not limited to, the following:

- a. Site Plan – A map of the proposed use and the property which will be affected shall be submitted. The map shall be at a scale to be determined by the Commission. Detailed information to be included on this site plan shall be requested by the Commission according to its evaluation requirements;
- b. Soil Sample Data - If the parcel lies within an area believed to contain poorly drained, very poorly drained, alluvial, and/or flood plain soils, the data shall show precisely where each specific soil type is found. Soil types identified must be consistent with the categories established by the National Cooperative Soils Survey of the U. S. Soil Conservation Service;
- c. Ecological-Biological Evaluation - If the affected property is believed to include any portion of a swamp, bog, marsh, the applicant may be required to submit an evaluation of the extent of the presence of a plant species or animal species commonly associated with swamps, bogs and marshes. The applicant may also be requested to submit an evaluation of the probable effect of his proposed activity upon the ecological function of the affected property;
- d. Analysis of Material to be Deposited - The applicant may be required to describe any materials to be deposited or discharged on or in the affected property in terms of volume, composition and the possibility of erosion or leaching from such deposited materials;
- e. Proposed Construction Description - The applicant may be required to describe the proposed construction or the erection of structures on the affected property, including blueprints, engineering and architectural plans or designs, where

available or reasonably attainable. Such description should include the purposes of such construction activity;

- f. 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;
 - g. 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.
- 6.12 Any application to renew or amend an existing permit shall be filed with the Agency 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 6 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 Agency 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.
- 6.13. 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 no permit may be valid for more than ten (10) years.
- 6.14 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 Appendix B.

SECTION 7 – APPLICATION PROCEDURES

- 7.1 All petitions, applications, requests or appeals shall be submitted to the Commission c/o the Inland Wetlands Enforcement Officer in the Zoning/Land Use Office.
- 7.2 The Agency 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 agency 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.

In the case of any application where any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of neighboring municipalities, the applicant shall give written notice of the proposed activity, certified mail return receipt requested, to the adjacent municipal wetland agency on the same day of filing an inland wetland permit application with the Commission. Documentation of such notice shall be provided to the Commission.

- 7.3 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 Section 16-1 of the Connecticut General Statutes, the applicant shall provide written notice of the application to the water company provided such water company has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the inland wetlands agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven (7) days of the date of the application. The water company, through a representative may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the Agency.
- 7.4 At any time during the review period, the applicant shall provide such additional information as the Agency may reasonably require. Requests for such additional information shall not stay the time limitations as set forth in Subsection 10.4 of these regulations.

- 7.5 All applications shall be open for public inspection. Copies of all applications, maps and documents relating to the application shall be open for public inspection in the office of the Commission's Enforcement Officer.
- 7.6 Incomplete applications may be denied.
- 7.7 Each applicant shall submit, together with the application, a completed Connecticut Department of Environmental Protection Statewide Inland Wetlands and Watercourse Activity Reporting Form, together with an 8 ½ inch by 11 inch photocopy of the portion of the United States Geological Survey (USGS) Quadrangle Map covering the project site, with the bounds of the project site outlined (where possible) or pinpointed with an arrow.
- 7.8 In the case of any application where any portion of the property on which the regulated activity is proposed is located within 500 feet of neighboring municipalities, the applicant shall give written notice of the proposed activity, certified mail return receipt requested, to the adjacent municipal wetland agency on the same day of filing an inland wetland permit application with the Commission. Documentation of such notice shall be provided to the Commission.
- 7.9 **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 2 of the Regulations or involves only a permitted use as defined in Section 3, 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.
- 7.10 **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 2, 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 9 (d) 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 9.1 through 9.1 (g). Such opinion shall be included by the Commission in its records.
- 7.11 **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.
- 7.12 **Plenary Ruling:**
- If the Commission finds that the requirements of a public hearing are met, the criteria set forth in Section 6.11 shall apply.

SECTION 8 – PUBLIC HEARINGS

8.1 The inland wetlands agency shall not hold a public hearing on an application unless the inland wetlands agency determines that:

- a. The proposed activity may have a significant impact on wetlands or watercourses; or
- 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 inland wetlands agency not later than fourteen (14) days after the date of receipt of such application; or
- c. The inland wetlands agency finds that a public hearing regarding such application would be in the public interest.

The inland wetlands agency may issue a permit without a public hearing provided no petition provided for in this section is filed with the inland wetlands agency 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.

8.2 **Public Hearings:** All public hearings concerning applications shall be held in accordance with the provisions of Section 22a-42a of the Connecticut General Statutes, as amended. Said hearing shall commence no later than sixty-five (65) days after the day of receipt (as defined in Section 2 of these Regulations) of a completed application.

- a. Notice of 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 forth in the hearing in a newspaper having a general circulation in the Town;
- b. The Commission shall send notices of public hearings by certified mail to the applicant and abutting property owners;
- c. 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 9 - CONSIDERATIONS FOR DECISION

- 9.1 The Commission shall consider the following in making its final decision on permit application:
- a. All evidence offered at any public hearing including the application and all supporting documents;
 - b. Any reports from other individuals, regional or local agencies, commissions and Federal or State agencies, including the Soil and Water Conservation District, and the Connecticut Department of Environmental Protection;
 - c. Such additional information as may be required by the Commission;
 - d. The availability of further technical improvements or safeguards which could feasibly be added to the plan or action;
 - e. 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;
 - f. 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.
- 9.2 The Commission shall consider 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 the proposed regulated activity, and any feasible and prudent alternatives which 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

- e. 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.

9.3 **Commission Decisions:**

- a. 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;
- b. In the case of any application which received a public hearing, a permit shall not be issued unless the Commission finds that a feasible and prudent alternative does not exist with a lesser adverse impact. In making this finding, the Commission may consider the facts and circumstances set forth herein including the application and supporting documents. The finding and reasons therefore shall be stated on the record in the decision of the Commission;
- c. 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 may 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;
- d. 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;
- e. 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;
- f. In reaching its decision on any application after a public hearing, the Commission shall base its decision on the record of that hearing. Documentary evidence or other material not in the hearing record shall not be considered by the Commission in its decision.

SECTION 10 – PERMITS

- 10.1 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 7 and 9.
- 10.2 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 9. 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.
- 10.3 The Agency, or its duly authorized agent acting pursuant to Section 11 of these Regulations, may in accordance with Section 9 of these Regulations, and 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 may (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.
- 10.4 No later than sixty-five (65) days after receipt of an application, the Agency 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 Agency 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 shall be withdrawn by the applicant or denied by the Agency.
- 10.5 The Agency shall state upon its record the reasons and basis for its decision.
- 10.6 In granting any permit for a regulated activity with or without conditions or in denying any permit for a regulated activity, the Commission shall:
- a. Inform the applicant of its decision in granting with or without conditions or in denying a permit by certified mail within fifteen (15) days of the date of such

decision (return receipt requested) and that, in the event the Commission fails to do so and in accordance with the provisions of the Connecticut General Statutes Section 229-429(d)(1), the applicant may send such notice;

- b. If any activity authorized by the inland wetlands permit also involves an activity or project which requires zoning or subdivision approval, a special zoning permit, variance, and/or a special exception, a copy of the decision and report on the application shall be filed with the Town of Essex Planning or Zoning Commission within fifteen (15) days of the date of the decision;
 - c. Publish a Notice of its decision once within fifteen (15) days of the date of such decision in a newspaper having a general circulation in the Town.
- 10.7 The Commission, through its Enforcement Agent, shall be notified in writing upon initiation and completion of the permitted activity.
- 10.8 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. (See also Sections 6.11 & 6.12.)
- 10.9 If a bond or insurance is required in accordance with Section 15 of these Regulations, no permit shall be issued until such bond or insurance is provided.
- 10.10 The duration of any permit issued for the development of property for which an approval is required under the Zoning Regulations or Subdivision Regulations of the Town of Essex shall be for a period of five (5) years. The duration of a permit for any activity for which no approval is required under said Zoning Regulations or Subdivision Regulations shall be valid for a period of two (2) years, provided that the Commission may provide for a duration of up to five (5) years.

Any regulated activity approved by the Commission shall be completed within one (1) year from the time such activity is commenced, provided that the Commission may establish a specific time period within which any such regulated activity shall be conducted and may require that an activity, once commenced, be completed within a time period of less than one (1) year, and further provided that 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.

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

10.12 General provisions in the issuance of all permits:

- a. The Agency 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 Agency are subject to and do not derogate any present or future rights or powers of the Agency 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 Agency'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 11 – ACTION BY DULY AUTHORIZED AGENT

- 11.1 The Agency 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 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 Agency and shall contain the information listed under Section 7.4 of these regulations and any other information the Agency 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.

- 11.2 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 Agency within fifteen (15) 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 (3) business days after receipt by such Agency or its agent of such appeal. Any person may appear and be heard at the meeting held by the Agency to consider the subject 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.

SECTION 12 - APPEALS

- 12.1 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.
- 12.2 Notice of such appeal shall be served upon the Agency and the Commissioner of Environmental Protection pursuant to Connecticut General Statutes.

SECTION 13 - OTHER PERMITS AND LICENSES

- 13.1 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 agency (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.
- 13.2 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.
- 13.3 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.
- 13.4 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 14 - ENFORCEMENT

- 14.1 Application for a permit shall constitute permission for, and consent to inspections of the site of proposed activity by the Commission or its designated agents at any reasonable time before or after the granting of a permit to ascertain conformance and/or possible violations of these Regulations and the permit or license.
- 14.2 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.
- 14.3 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 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.
- 14.4 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 fifteen (15) 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.
 - 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 (a), above, of this section 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 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.
- 14.7 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 15 - BOND AND INSURANCE

- 15.1 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.
- 15.2 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.
- 15.3 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 16 - INVENTORY OF INLAND WETLANDS AND WATERCOURSES AND
INLAND WETLANDS AND WATER COURSES MAP AMENDMENTS**

- 16.1 The map of wetlands and watercourses entitled “Town of Essex, Connecticut Official Wetlands and Watercourses Map” delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of this map are available for inspection at the office of the Town Clerk or the Agency. 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 Agency 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.
- 16.2 Any person may petition the Agency 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 Agency may require such person to provide an accurate delineation of regulated areas in accordance with Section 5 of these Regulations.
- 16.3 The Agency shall maintain a current inventory of regulated areas within the town. The Agency may amend its map as more accurate information becomes available.
- 16.4 All map amendments are subject to the public hearing a process outlined in Section 5.2-5.8 of these Regulations.

SECTION 17 - AMENDMENTS AND CONFORMITY WITH STATE REGULATIONS

- 17.1 These Regulations, including the map entitled, "Town of Essex, Connecticut Official Inland Wetlands and Watercourses Map" with adopted revisions, may be amended, changed, or repealed by the Commission on its own initiative or upon petition of any person in the manner specified in Section 22a - 42a of the Connecticut General Statutes, as amended. Such amendment, change or deletion shall be made by a majority vote of the Commission only after a public hearing thereon which shall be conducted in accordance with the State Statute.
- a. Notice of the time and place of such hearing shall be published in the form of a legal advertisement appearing in a newspaper having substantial circulation in the Town 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, the last not less than two (2) days, before such hearing. A copy of such proposed regulation or boundary shall be filed with the Town Clerk for public inspection at least ten (10) days before such hearing;
 - b. In accordance with the provisions of 22a-42 of the Connecticut General Statutes, a copy of the legal notice and the proposed regulations or amendments thereto, except determinations of boundaries, shall be provided to the Commissioner of the Department of Environmental Protection at least thirty five (35) days before such hearing. Regulations, boundaries or changes therein shall become effective at such time as fixed by the Commission, provided a copy of such change or amendment is filed with the Town Clerk;
 - c. At such hearing, any person or persons may appear and be heard and may be represented by agent or attorney. The Commission shall act upon the changes requested within sixty-five (65) days after the hearing. The petitioner may consent to the extension of the periods provided for in the hearing, provided the total extension of all such period shall not be for longer than sixty-five (65) days, or may withdraw such petition. Failure of the 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;
 - d. The Commission may require a filing fee;
 - e. Whenever the Commission makes a change in its Regulations or boundaries, it shall state upon its records the reason for the change.
- 17.2 All amendments or corrections of these regulations or boundaries shall be submitted to the Commissioner of Environmental Protection no later than ten (10) days after its adoption, provided failure to submit such Regulation, boundary or change shall not impair the validity of such Regulations, boundary or change.
- 17.3 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 petitioner's name, mailing address and telephone number;
 - b. The address, or location, of the land affected by the petition;

- c. The petitioner's interest in the land affected by the petition;
 - d. Map(s) showing the geographic location of the land affected by the petition and the existing and the proposed wetland(s) and watercourse(s) boundaries on such land in accurate detail together with the documentation supporting such proposed boundary locations; and
 - e. The reasons for the requested action.
- 17.4 Any person who submits a petition to amend the "Town of Essex, Connecticut Official Inland Wetlands and Watercourses Map" shall bear the burden of proof for all requested map amendments. Such proof may include, but is not limited to, professional interpretation of aerial photography and remote sensing imagery, resource mapping, soils mapping, or other information acceptable to the 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 interest of such an owner, developer or purchase, in addition to the information required in Subsection 17.4, the petition shall include:
- a. The name, mailing address, and telephone number of the owner(s) of such land and owner(s) agent or other representative;
 - b. The names and mailing address of the owners of abutting land including the Assessor's Map and Lot number(s) for the properties;
 - c. Documentation by a soil scientist of the distribution of wetland soils on such 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 the proposed development of the land in relation to existing and proposed wetland and watercourse boundaries;
 - e. The reasons for the requested action.
- 17.5 The enforcement of these Regulations, or any part thereof, including maps and amendments, shall be suspended upon receipt of notice from the Connecticut Department of Environmental Protection that such regulations are not in conformity with the regulations promulgated by the State of Connecticut Commissioner of Environmental Protection pursuant to Section 22a-39 of the Connecticut General Statutes as amended. Only the operation or activities of such nonconforming section or sections shall be suspended.
- 17.6 The Commission shall initiate proceedings to amend such nonconforming regulations within twenty (20) days of the receipt of a notice of nonconformance, pursuant to the amendment procedures of Section 22a-42a of the Connecticut General Statutes as amended.
- 17.7 Watercourses, including intermittent watercourses, shall be delineated by a soil scientist, geologist, ecologist or other qualified individual.

- 17.8 An application filed with the 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 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 the Commission with respect to such application shall not be dismissed by the Superior Court on the grounds that such a change has taken effect on or after the date of such receipt. The provisions of this section shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses (2) to any change in regulations necessary to make such regulations consistent with the provisions of the Act as of the date of such receipt.

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.

APPENDIX B – FEE SCHEDULE

All checks for fees are payable to the Town of Essex

ACTIVITY CATEGORY	FEE
All activities except declaratory rulings have a separate surcharge to CT DEP\$ 60.00 – <i>*The Town has no control over the CT DEP fee – <u>Make check payable to the “Town of Essex”</u></i>	\$ 60*
Declaratory ruling/"uses as of right" or Preliminary reviews: No charge	0
Single family residential construction in regulated upland review area: Includes Wetlands Enforcement Officer Permit involving excavation or re-grading (only in the regulated upland area)	\$ 60
Single family residential construction within inland wetlands or stream crossing, maintenance or replacement of culvert	\$ 60
Subdivision/zoning review: No activities in regulated upland area or wetlands	\$100
Subdivision activities: Minor (landscaping or limited grading within regulated upland area)	\$250
Subdivision activities: Drainage and/or road in either regulated upland area or wetlands Plus \$250 per lot with activities in a regulated area and Technical Review Fee	\$250+
Commercial/Industrial/Institutional applications: Minor grading within upland area only with limited or no Town Engineer review	\$200
Commercial/Industrial/Institutional applications: Involving site and/or stormwater review by Town Engineer plus Technical Review Fee	\$400+
Other: Pond dredging, forestry review (other than “as-of-right”)	\$75
Public Hearing Charge	\$300
Technical Review Fee: 150% of the cost of engineering or other professional review as determined by the Town Engineer and/or professional. This includes the cost of inspections. The applicant will receive a refund on any fee in excess of the Town’s cost. <i>Note: This is also allowed per Section 3.3 of the Town’s Fee Ordinance.</i>	
Amendments to Wetlands Map or Regulations proposed by applicant other than Commission	\$300

