

**INLAND WETLANDS AND WATERCOURSES REGULATIONS**

**TOWN OF MONTVILLE**

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## TABLE OF CONTENTS

TITLE AND AUTHORITY .....	3
DEFINITIONS .....	5
REGULATED AREAS .....	9
PERMITTED USES AS OF RIGHT AND NON-REGULATED USES .....	10
ACTIVITIES REGULATED BY THE STATE .....	12
REGULATED ACTIVITIES TO BE LICENSED .....	13
APPLICATION REQUIREMENTS .....	14
APPLICATION PROCEDURES .....	17
PUBLIC HEARINGS .....	19
CONSIDERATIONS FOR DECISION .....	20
DECISION AND PERMIT .....	22
BOND AND INSURANCE .....	24
ENFORCEMENT .....	25
AMENDMENTS .....	27
APPEALS .....	29
CONFLICT AND SEVERANCE .....	30
OTHER PERMITS .....	31
EFFECTIVE DATE OF REGULATIONS .....	32
RECORDS RETENTION AND DISPOSITION .....	33
APPLICATION FEE SCHEDULE .....	35

## **TITLE AND AUTHORITY**

**1.1 The inland wetlands and watercourses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of ground water; 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 water courses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.**

**1.2 These Regulations shall be known as the "Inland Wetlands and Watercourses Regulations of the Town of Montville."**

**1.3 The Inland Wetlands Commission of the Town of Montville was established in accordance with an ordinance adopted April 8, 1974, and shall implement the purposes and provisions of the Inland Wetlands and Watercourses Act in the Town of Montville.**

**1.4 These Regulations have been adopted and may be amended, from time-to-time, in accordance with the provisions of the Inland Wetlands and Watercourses Act and these Regulations.**

**1.5 The Commission shall enforce all provisions of the Inland Wetlands and Watercourses Act and shall issue, issue with modifications, or deny permits for all regulated activities on inland wetlands and watercourses in the Town of Montville, pursuant to Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.**

## SECTION 2

### DEFINITIONS

#### 2.1 As used in these Regulations:

- a. **"Act"** means the Inland Wetlands and Watercourses Act, Sections 22a-36 through 22a-45 of the General Statutes, as amended.
- b. **"Bogs"** are usually distinguished by evergreen trees and shrubs underlain by peat deposits, poor drainage, and highly acidic conditions.
- c. **"Clear-cutting"** means the harvest of timber in a fashion which removes all trees down to a two-inch (2") diameter at breast height.
- d. **"Commission"** means the Inland Wetlands Commission of the Town of Montville.
- e. **"Commission Member"** means a member of the Inland Wetlands Commission of the Town of Montville.
- f. **"Commissioner of Environmental Protection"** means the Commissioner of the State of Connecticut Department of Environmental Protection.
- g. **"Continual Flow"** means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low flow period of the annual hydrological cycle, June through September, but it recurs in prolonged succession.
- h. **"Deposit"** includes, but shall not be limited to, fill, grade, dump, place, discharge or emit.
- i. **"Designated Agent"** means an individual designated by the Commission to carry out its functions and purposes.
- j. **"Discharge"** means emission of any water, substance, or material into wetlands or watercourses whether or not such substance causes pollution.
- k. **"Disturbing the natural and indigenous character of the land"** means that the activity will significantly alter the inland wetlands and watercourses by reason of removal or deposition of material, clear-cutting, alteration or obstruction of water flow, or will result in the pollution of the wetland or watercourse.
- l. **"Essential to the farming operation"** means that the activity proposed is necessary and indispensable to sustain farming activities on an existing farm.
- m. **"Farming"** means use of land for the growing of crops, raising of livestock or other agricultural use.
- n. **"License"** means the whole or any part of any permit, certificate of approval or similar form of permission which may be required of any person by the provisions of these regulations under the authority of the Inland Wetlands Commission.
- o. **"Marshes"** are areas with soils that exhibit aquatic moisture regimes that are distinguished by the absence of trees and shrubs and are dominated by soft-stemmed herbaceous plants. The

water table in marshes is at or above the surface throughout the year, but seasonal fluctuations are encountered and areas of open water six inches (6") or more in depth are common.

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

q. **"Municipality"** means the Town of Montville, New London County, Connecticut.

r. **"Nurseries"** means land used for propagating trees, shrubs, or other plants for transplanting, sale, or for use as stock for grafting.

s. **"Permit"** means the whole or any part of any license, certificate or approval or similar form of permission which may be required of any person by the provisions of these Regulations under the authority of the Inland Wetlands Commission.

t. **"Permittee"** means the person to whom such permit has been issued.

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

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

w. **"Regulated Activity"** means any operation within or use of a wetland or watercourse involving removal or deposition of material; or any obstruction, construction, alteration, or pollution of such wetlands or watercourses, or any disturbance of land or location of any subsurface sewage disposal system within fifty (50) feet of a wetland or watercourse, but shall not include the specified activities in Section 4 of these Regulations.

x. **"Regulated Area"** means any inland wetland or watercourse as defined in these Regulations or within a zone 50 feet from the wetland or watercourse.

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

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

bb. **"Significant Activity"** means any activity, including, but not limited to, the following activities which may have a major effect or significant impact on the area for which the application has been filed or on another part of the inland wetland or watercourse system:

1. Any activity involving a deposition or removal of material which will or may have a major effect or significant impact on the regulated area or on another part of the inland wetland or watercourse system; or

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

3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to support desirable fisheries, wildlife, or other biological life, prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space or other functions; or

4. Any activity which causes substantial turbidity, siltation or sedimentation in a wetland or watercourse; or

5. Any activity which causes a substantial diminution of flow of a natural watercourse, or ground water levels of the regulated area; or

6. Any activity which causes or has the potential to cause pollution of a wetland or watercourse; or

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

cc. **"Soil Scientist"** means an individual duly qualified in accordance with standards set by the Office of Personnel Management (formerly the U. S. Civil Service Commission).

dd. **"Swamps"** are areas with soils that exhibit aquic moisture regimes and are dominated by wetland trees and shrubs.

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

ff. **"Town"** means the Town of Montville, New London County in the State of Connecticut.

gg. **"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.

hh. **"Watercourses"** means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town or any portion thereof not regulated pursuant to Section 22a-28 through 22a-35, inclusive. Intermittent watercourse shall be delineated by a defined permanent channel and bank and the occurrence of one or more of the following characteristics: (A) evidence of scour or deposits of recent alluvium or detritus, (B) the presence of standing or flowing water for a duration longer than a particular storm incident, and (C) the presence of hydrophytic vegetation.

ii. **"Wetlands"** means land, including submerged land as not regulated pursuant to Sections 22a-28 through 22a-35, inclusive, 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 may be amended from time to time, of the Natural Resources Conservation Service of the U. S. Department of Agriculture

## SECTION 3

### **REGULATED AREAS**

3.1 The map of regulated areas, entitled "Inland Wetlands and Watercourses Map, Montville, Connecticut," delineates the general location and boundaries of inland wetlands and the general location of watercourses. A copy of this map is available for inspection in the office of the Town Clerk. In all cases, the precise location of regulated areas shall be determined by the actual character of the land, the distribution of wetland soil types, and 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.

## SECTION 4

### **PERMITTED USES AS OF RIGHT AND NON-REGULATED USES**

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

**a. Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three (3) acres or less essential to the farming operation. The provisions of this section shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, or the mining of topsoil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale;**

**b. A residential home for which a building permit has been obtained on or before July 1, 1987. The individual claiming a use of wetlands permitted as a right under this subsection shall document the validity of said right by providing a certified copy of the building permit and a site plan showing proposed and existing topographic contours, house and well locations, septic system, driveway, approval dates or other necessary information to document his entitlement;**

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

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

**e. Construction and operation, by water companies as defined in by Section 16-1 of the General Statutes or by municipal water supply systems as provided for in Chapter 102, of the Connecticut General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in Sections 22a-401 and 22a-410 of the General Statutes.**

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

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

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

**4.3 All activities in wetlands or watercourses involving filling, excavation, dredging, clear cutting, grading and excavation or any other alteration or use of a wetland or watercourse not specifically**

permitted by this section shall require a permit from the Commission in accordance with Section 6 of these Regulations.

**4.4 To carry out the purposes of this section, any person proposing to carry out a permitted or non regulated operation or use of a wetland or watercourse, which may disturb the natural and indigenous character of the land, shall, prior to commencement of such operation or use, notify the Commission on a form provided by it, and provide the Commission with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or non-regulated use of the wetland or watercourse. The Commission or its designated agent shall rule that the proposed operation or use is a permitted or a non- regulated use or operation or that a permit is required. Such ruling shall be in writing and shall be made no later than the next regularly scheduled meeting of the Commission following the meeting at which the request is received. The designated agent for the commission may make such ruling on behalf of the Commission at any time.**

## SECTION 5

### **ACTIVITIES REGULATED BY THE STATE**

5.1 In addition to any permit or approval required by the Commission, the Commissioner of Environmental Protection shall regulate activities in or affecting wetlands or watercourses subject to the following jurisdiction:

- a. Construction or modification of any dam pursuant to Sections 22a-401 through 22a-410 of the General Statutes, as amended;
- b. Construction or placement of any obstruction within stream channel encroachment lines pursuant to Sections 22a-342 through 22a-349 of the General Statutes, as amended
- c. Construction or placement of any structure or obstruction within the tidal, coastal or navigable waters of the state pursuant to Sections 22a-359 through 22a-363 or in designated tidal wetlands pursuant to Section 22a-28 through 22a-35 of the General Statutes, as amended;
- d. Diversion of water in excess of 50,000 gallons per day or any surface waters of the state where the tributary watershed area above the point of diversion is 100 acres or larger pursuant to Section 22a-365 through 22a-378 of the General Statutes, as amended;
- e. Discharges into the waters of the state pursuant to Section 22a-430 of the General Statutes, as amended;
- f. Discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to Section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U. S. Army Corps of Engineers under Section 404 of the Federal Clean Water Act.

5.2 The Commissioner of Environmental Protection shall have exclusive jurisdiction over regulated activities and other activities, in or affecting wetlands or watercourses, undertaken by any department, agency, or instrumentality of the State of Connecticut, except by any local or regional board of education,

(1) after an advisory decision on such license or permit has been rendered to the Commissioner by the wetland commission of the municipality within which such wetland is located, or (2) thirty-five (35) days after receipt by the Commissioner of such application, whichever occurs first.

5.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to Sections 22a-28 through 22a-35 of the General Statutes.

## 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 from the Commission.**

**6.1.1 No disturbance of the area within 50 feet of a wetland or watercourse, except for operations and uses permitted or non-regulated pursuant to Section 4 of these Regulations, shall be allowed without obtaining a permit from the Commission. Disturbance refers to the Section 2, definition of "deposit," "discharge", "remove" and "clear cutting".**

**6.2 The Commission shall regulate any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration, or pollution, of such wetlands or watercourses and any other regulated activity, unless such operation or use is permitted or non regulated pursuant to Section 4 of these Regulations.**

**6.2.1 No subsurface sewage disposal system shall be located closer than 50 feet to a wetland or watercourse unless a permit is issued by the Commission.**

**6.3 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Commission, or violating any other provision of these Regulations, shall be subject to the enforcement proceedings and penalties prescribed in Section 13 of these Regulations and any other remedies as provided by law.**

## SECTION 7

### **APPLICATION REQUIREMENTS**

**7.1 Any person wishing to undertake a regulated activity shall apply for a permit on a form provided by the Commission and available in the Planning and Zoning Office. An application shall include an application form and such information as prescribed by Section 7.4 and, in the case of a significant activity, by Section 7.5 of these Regulations.**

**7.2 All applications shall contain such information that is necessary for a fair and informed determination of the issues.**

**7.3 The Commission and the applicant may hold a pre-application meeting to determine whether or not the proposed application involves a significant activity. Whenever possible, the determination relative to significant activities should be made at the pre-application meeting. The Commission should state the reasons why the activity was deemed significant in writing.**

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

- a. The applicant's name, home and business address and telephone numbers;**
- b. The owner's name, address and telephone number and written consent if the applicant is not the owner of the property involved in the application;**
- c. Applicant's interest in the land;**
- d. The geographical location of the property which is to be affected by the proposed activity, including, but not limited to, a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, a computation of the area(s) (in acres or square feet) of wetland or watercourse disturbance, soil type(s) and vegetation;**
- e. The purpose and a description of the proposed activity and proposed erosion and sedimentation controls;**
- f. Alternatives considered by the applicant and why the proposal to alter wetlands as set forth in the application and detailed on site plans or drawings was chosen;**
- g. A site plan showing existing and proposed conditions in relation to wetlands and watercourses;**
- h. Names and addresses of adjacent property owners;**
- i. Certification that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information;**
- j. Authorization for the commissioners and agents of the Commission to inspect the property, at reasonable times, both before and after a final decision has been issued;**
- k. Any other information the Commission deems necessary to the understanding of what the applicant is proposing;**
- l. Submission of the appropriate filing fee as prescribed by these Regulations;**

- m. A reporting form shall be completed during the application process which provides the Commissioner of the Department of Environmental Protection with information necessary to properly monitor the inventory of State wetlands. The reporting form shall be part of the application and specified sections shall be completed by the applicant. The agency shall be responsible for the remaining information and any corrections on the form prior to filing it with the State.

**7.5** If the proposed activity involves a significant activity as determined by the Commission and defined in Section 2.1 bb of these Regulations, additional information based on the nature and anticipated effects of the activity, including, but not limited to, the following is required:

- a. Site plans for the proposed use or operation and the property which will be affected, which show existing and proposed conditions, wetland and watercourse boundaries, land contours, boundaries of land ownership, proposed alterations and use of wetlands and watercourses, and other pertinent features of the development drawn by a licensed surveyor, professional engineer or landscape architect registered in the State of Connecticut or by such other qualified person;
- b. Engineering reports and analyses and additional drawing to fully describe the proposed project and 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. Soil Conservation Service (the Commission may require the applicant to have the wetlands delineated in the field by a soil scientist and that the field delineation be incorporated onto the site plan);
- d. Description of how the ecological communities and functions of the wetlands or watercourses involved with the application and the effects of the proposed regulated activities on these communities and wetlands functions;
- e. Description of how the applicant will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application, and with each alternative, and a description of why each alternative considered was deemed neither feasible nor prudent;
- f. Analysis of chemical or physical characteristics of any fill material;
- g. Measures which mitigate the impact of the proposed activity. Such measures include, but are not limited to, plans or actions which avoid destruction or diminution of wetland or watercourse functions, recreational uses and natural habitats, which prevent flooding, degradation of water quality,

**7.6** Three (3) copies of all application materials shall be submitted to comprise a complete application or as is otherwise directed, in writing, by the Commission.

**7.7** Any application to extend the expiration date of a previously issued permit or amend an existing permit shall be filed with the Commission at least sixty-five (65) days prior to the expiration date for the permit in accordance with subsections 8.4 through 8.7 of these Regulations. Any application for amendment, renewal or extension shall be made in accordance with this section provided:

- a. The application may incorporate by reference the documentation and record of the original application;

**b. The application shall state the reason why the authorized activities were not initiated or completed within the time specified in the permit;**

**c. The application shall describe any changes in facts or circumstances involved or affecting wetlands or watercourses or the property for which the permit was issued;**

**d. The Commission may accept an untimely application to extend the expiration date of a permit if the authorized activity is ongoing and allow the continuation of work beyond the expiration date if, in its judgment, the permit is likely to be extended and the public interest or environment will be best served by not interrupting the activity. The application shall describe the extent of work completed at the time of filing and the schedule for completing the activities authorized in the permit.**

**e. The Commission shall evaluate the application pursuant to Section 10 of these Regulations and grant the application as filed, grant it with any terms or limitations, or deny it.**

## SECTION 8

### APPLICATION PROCEDURES

8.1 All applications shall be filed in the Planning and Zoning Office.

8.2 In the case of any application where any portion of the wetland or watercourse on which the regulated activity is proposed is located within 500 feet of the boundary of a neighboring municipality, the applicant shall give written notice, certified mail, return receipt requested, to the neighboring municipal wetlands agency on the same day of filing the application with the Commission. Documentation of such notice shall be provided to the Commission.

8.3 The Commission shall notify the clerk of any adjoining municipality of the pendency of any application to conduct a regulated activity when:

- a. Any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of an adjoining municipality;
- b. A significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
- c. A significant portion of the sewer or water drainage from the project site will flow through and significantly impact the sewage or drainage system within the adjoining municipality; or
- d. Water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality;
- e. Notice of the pendency of such application shall be made by registered mail and shall be mailed within seven (7) days of the date of receipt of the application.

8.4 The date of receipt of any application shall be the day of the next regularly scheduled meeting of the Commission immediately following the day of submission to the Commission provided such meeting is no earlier than three (3) business days after receipt, or thirty-five (35) days after such submission, whichever is sooner.

8.5 At any time during the review period, the Commission may require the applicant to provide additional information about the regulated area or regulated activity which is the subject of the application, or wetlands and watercourses affected by the regulated activity. (The Commission shall not exceed the required sixty-five (65) day time limit in taking action on an application pending the receipt of additional information as stated in Section 11.2 of these Regulations.)

8.6 All applications shall be open for public inspection.

8.7 Incomplete applications may be denied.

8.8 When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in Section 16-1 of the General Statutes, the applicant shall provide written notice of the application to the water company provided such water company has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the inland wetlands agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the

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

## SECTION 9

### PUBLIC HEARINGS

9.1 A public hearing shall be held on all applications involving a significant activity. A public hearing may be held on applications which do not involve significant activities if the Agency determines it is in the public interest. All applications and maps and documents relating thereto shall be open for public inspection. Any person may appear and be heard at any public hearing.

9.2 Notice of a public hearing shall be published in a newspaper having a general circulation in each town where the affected wetland and watercourse is located 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.

9.3. In the case of any application which is the subject to the notification provisions of Section 8.3 of these Regulations, a public hearing shall not be conducted until the clerk of the adjoining municipality has received notice of the pendency of the application.

## SECTION 10

### **CONSIDERATIONS FOR DECISION**

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

- a. The application and its supporting documentation;
- b. Public comments, evidence and testimony from any public hearing;
- c. Reports from other local and non-local boards, commissions, and officials, if any.

**10.2 Standards and Criteria for Decision.**

The Commission shall consider all relevant facts and circumstances in making its decision on any application for a permit, including, but not limited to, the following:

- a. The environmental impact of the proposed action, including the effects on the inland wetland's and watercourse's capacity to support fish and wildlife, to prevent flooding, to supply and protect surface and groundwaters, to control sediment, to facilitate drainage, to control pollution, to support recreational activities, and to promote public health and safety;
- b. The alternatives to the proposed action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity proposed in the application. This consideration should include, but is not limited to, the alternative of requiring actions of a different nature which would provide similar benefits with different environmental impacts, such as using a different location for the activity.
- c. The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity, including consideration of the extent to which the proposed activity involves trade-offs between short-term environmental gains at the expense of long-term losses, or vice versa, and consideration of the extent to which the proposed action forecloses or predetermines future options.
- d. Irreversible and irretrievable commitments of resources which would be involved in the proposed activity. This requires recognition that the inland wetlands and watercourses of the State of Connecticut are an indispensable, irreplaceable and fragile natural resource, and that these areas may be irreversibly destroyed by deposition, filling, and removal of material, by the diversion, diminution or obstruction of water flow including low flows, and by the erection of structures and other uses.
- e. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property, including abutting or downstream property, which would be caused or threatened by the proposed activity, or the creation of conditions which may do so. This includes recognition of potential damage from erosion, turbidity, or siltation, loss of fish and wildlife and their habitat, loss of unique habitat have demonstrable natural, scientific or education value, loss or diminution of beneficial aquatic organisms and wetland plants, the dangers of flooding and pollution, and the destruction of the economic, aesthetic, recreational and other public and private uses and values of wetlands and watercourses to the community.

f. The suitability of the activity to the area for which it is proposed. This requires a balancing of the need for the economic growth of the state and the use of its land, with the need to protect its environment and ecology for the people of the state and the benefit of generations yet unborn.

g. Measures which would mitigate the impact of any aspect of the proposed regulated activity. Such measures include, but are not limited to, actions which would avoid adverse impacts or lessen impacts to wetlands and watercourses and which could be feasibly carried out by the applicant and would protect the wetland's or watercourse's natural capacity to support fish and wildlife, prevent flooding, supply water, control sedimentation, prevent erosion, assimilate wastes, facilitate drainage, to control pollution, to support recreational activities and open space, and to promote public health and safety.

10.3 In the case of any application which received a public hearing, a permit shall not be issued unless the agency finds that the proposed alteration or destruction of wetlands or watercourses is unavoidable and that a feasible and prudent alternative does not exist. In making this finding, the Agency shall consider the facts and circumstances set forth in Section 10 of these Regulations. This finding and the reasons therefore shall be stated in the record of the decision by the Agency.

10.2 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. The Commission is not precluded from seeking advice from its own experts on information already in the record of the public hearing. However, if the Commission seeks technical advice of its experts, this is to be done after providing notice to the applicant (and any other named parties to the proceeding) and providing an opportunity to rebut the comments or opinions of the agency's experts.

## SECTION 11

### DECISION AND PERMIT

11.1 The Commission may grant the application as filed; grant it upon such terms, conditions, limitations or modifications necessary to carry out the purposes of the Act; or deny it.

11.2 No later than sixty-five (65) days after receipt of an application, the Agency may hold a public hearing on such application. The hearing shall be completed within forty-five (45) days of its commencement. Action shall be taken on applications within thirty-five (35) days after completion of a public hearing. In the absence of a public hearing, action shall be taken on applications within sixty-five (65) days from the date of receipt of the application. The applicant may consent to one or more extensions of the periods specified in this subsection for the holding of the hearing and for action on such application, provided the total extension of any such period shall not be for longer than the original period as specified in this subsection, or may withdraw such application. The failure of the inland wetlands agency to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the application. An application deemed incomplete by the agency must either be withdrawn by the applicant or denied by the Agency.

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

11.4 The Agency shall notify the applicant and any named parties to the proceeding of its decision within fifteen (15) days of the date of the decision by certified mail, return receipt requested, and the Agency shall cause notice of its order in the issuance or denial of the permit, to be published in a newspaper having general circulation in the town wherein the inland wetland or watercourse lies. In any case in which such notice is not published within such fifteen day period, the applicant may provide for the publication of such notice within ten days thereafter.

11.5 If an activity authorized by the inland wetlands permit also involves an activity or project which requires zoning or subdivision approval, a special zoning permit, variance or special exception, a copy of the decision shall be filed with the Montville Planning and Zoning Commission within fifteen (15) days of the date of decision.

11.6 If the Commission denies the permit, or if it grants a permit with terms, conditions, limitations or modifications, the applicant may attempt to modify the proposal to the Commission's satisfaction. The Commission shall determine whether the proposed modification requires the filing of a new application. The rejection of a modified or corrected application by the Commission shall be equivalent to the denial of an application for the purposes of appeal.

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

11.8 The duration of any permit shall be valid for five years. Any regulated activity approved by the commission shall be completed within one year from the time such activity is commenced provided the commission may establish a specific time period within which any regulated activity shall be conducted and may require that an activity once commenced, be completed within a time period of less than one year and further provided the commission may extend (1) the time period of the original permit provided such period shall not extend beyond ten years from the

date such permit was granted, or (2) the time period within which an activity, once commenced, is required to be completed under this section. The permit shall expire if the activity authorized therein is not initiated within the specified duration. The commission may suspend or revoke a permit if it finds after giving notice to the permittee 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 applicant shall be notified of the commission's decision by certified mail within fifteen days of the date of the decision and the agency shall cause notice of their order in issuance, denial, revocation or suspension of a permit to be published in a newspaper having a general circulation in the town wherein the wetland and 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. \*\*\* Amended Effective 12/15/93

11.9 No permit shall be assigned or transferred without the written permission of the Commission.

11.10 If a bond or insurance is required in accordance with Section 12 of these Regulations, no permit shall be issued until such bond or insurance is provided.

11.11 General provisions in the issuance of all permits:

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

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

c. If the activity authorized by the inland wetlands permit also involves an activity or a project which requires zoning or subdivision approval, special permit, variance or special exception, no work pursuant to the wetlands permit may begin until such approval is obtained.

d. The permittee shall take such necessary steps consistent with the terms and conditions of the permit, to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.

e. Permits are not transferable without the prior written consent of the Commission.

## SECTION 12

### **BOND AND INSURANCE**

**12.1** Upon approval of the application and prior to issuance of a permit, the applicant may, at the discretion of the Commission, be required to file a bond with such surety in such amount and in a form approved by the Commission.

**12.2** The bond or surety shall be conditioned on compliance with all provisions of these Regulations and the terms, conditions and limitations established in the permit.

**12.3** The Commission may require the applicant to certify that it has public liability insurance against liability which might result from the proposed operation or use of the wetlands or watercourses covering any and all damage which might occur within two (2) years of completion of such operations, in an amount to be determined by the Commission commensurate with the regulated activity.

## SECTION 13

### **ENFORCEMENT**

**13.1** The Commission may appoint an agent or agents to act in its behalf with the authority to inspect property except a private residence, or fenced or posted property, and to issue notices of violation or cease and desist orders and to carry out other actions or investigations necessary for the enforcement of these Regulations.

**13.2** As a condition of a permit, the Commission or its agent may make regular inspections, at reasonable hours, of all regulated activities for which permits have been issued under these Regulations.

**13.3** 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 the Act or these Regulations, the Commission or its duly authorized agent may:

a. Issue a written order by certified mail, return receipt requested, to such person conducting such activity or maintaining such facility or condition to immediately cease such activity or to correct such facility or condition. Within ten (10) calendar days of the issuance of such order, the Commission shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Commission shall consider the facts presented at the hearing and within ten (10) days of the completion of the hearing notify the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The Commission shall publish notice of its decision in a newspaper having general circulation in the municipality. The original order shall be effective upon issuance and shall remain in effect until the Commission affirms, revises or withdraws the order. The issuance of an order pursuant to this section shall not delay or bar an action pursuant to Sections 22a-44(b) of the General Statutes, as amended.

b. Suspend or revoke a permit if it finds that the applicant has not complied with the terms, conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application including application plans. Prior to revoking or suspending any permit, the Commission shall issue notice to the permittee, personally or by certified mail, setting forth the facts or conduct which warrants the intended action. At the public hearing, the permittee shall be given an opportunity to show that it is in compliance with its permit and any and all requirements for the retention of the permit. The permittee shall be notified of the Commission's decision to suspend, revoke or maintain a permit by personal service or certified mail within fifteen (15) days of the date of its decision and shall publish notice of its decision in a newspaper having general circulation in the municipality;

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

## SECTION 14

### AMENDMENTS

**14.1.a** These Regulations and the Inland Wetlands and Watercourses Map for the Town of Montville may be amended, from time-to-time, by the Commission in accordance with changes in the Connecticut General Statutes or regulations of the State Department of Environmental Protection or as new information regarding soils and inland wetlands and watercourses becomes available.

**14.1.b** An application filed with an inland wetlands agency which is in conformance with the applicable inland wetlands regulations as of the date of the decision of such agency with respect to such application shall not be required thereafter to comply with any change in inland wetlands regulation, (or boundaries) including changes to setbacks and buffers, taking effect on or after the date of such decision. Any appeal from the decision of such agency with respect to such application shall not be dismissed by the Superior Court on the grounds that such a change has taken effect on or after the date of such decision. The provisions of this subdivision shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses or (2) to any change in regulations necessary to make such regulations consistent with the provisions of Chapter 440 of the General Statutes as of the date of such decision.

**14.2** These regulations and the Town of Montville Inland Wetlands and Watercourses Map shall be amended in the manner specified in Section 22a-42a of the Connecticut General Statutes as amended. The agency shall provide the Commissioner of Environmental Protection with a copy of any proposed regulations and notice of the public hearing to consider any proposed regulations or amendments thereto, except map amendments pursuant to subsection 14.3 of this section, at least 35 days before the public hearing on their adoption.

**14.3** Petitions requesting changes or amendments to the "Inland Wetlands and Watercourses Map, Montville, Connecticut," shall contain at least the following information:

- a. The petitioner's name, address and telephone number;
- b. The address of the land affected by the petition.
- c. The petitioner's interest in the land affected by the petition;
- d. Maps showing the geographic location of the land affected by the petition and the existing and proposed wetland(s) and watercourse(s) boundaries on such land in accurate detail together with the documentation supporting such proposed boundary locations; and
- e. The reasons for the requested action;

**14.4** Any person who submits a petition to amend the Inland Wetlands and Watercourses Map, Montville, 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 remote sensing imagery, resource mapping, soils mapping, or other information acceptable to the agency. If such person is the owner, developer or contract purchaser of the land which is the subject of the petition, or if such person is representing the interests of such an owner, developer or purchaser, in addition to the information required in Subsection 4.3, the petition shall include:

1. The name, address and telephone number of the owner(s) of such land and owner(s) agent or other representative;
2. The names and addresses of the owners of abutting land.
3. Documentation by a soil scientist of the distribution of wetland soils on said land. Such documentation shall at 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
4. Map(s) showing any proposed development of the land in relation to existing and proposed wetland and watercourse boundaries.

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

14.6 A public hearing shall be held on petitions to amend the Inland Wetlands and Watercourses Map. Notice of the hearing shall be published in a newspaper having substantial circulation in the municipality at least twice at intervals of not less than two (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 proposed boundary change shall be filed in the office of the Town Clerk, for public inspections at least ten (10) days before such hearing.\* Amended 9/23/92

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

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

**SECTION 15**

**APPEALS**

**15.1 Appeals on actions of the Commission shall be made in accordance with the provisions of Section 22a-43 of the General Statutes, as amended.**

**15.2 Notice of such appeal shall be served upon the Commission and the Commissioner of Environmental Protection.**

SECTION 16

**CONFLICT AND SEVERANCE**

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

## SECTION 17

### OTHER PERMITS

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

SECTION 18

**EFFECTIVE DATE OF REGULATIONS**

18.1 These Regulations amend and supersede regulations previously adopted by the Montville Inland Wetlands Commission and effective on August 28, 1974. These revised regulations are effective February 28, 1990.