

INLAND WETLANDS AND WATERCOURSES REGULATIONS
TOWN OF SIMSBURY, CONNECTICUT

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SECTION 1 – TITLE AND AUTHORITY

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

Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has 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 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, inhibiting, and minimizing the effects of flood and pollution;
- protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and
- protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement.

by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.

- 1.2 These regulations shall be known as the "Inland Wetlands and Watercourses Regulations of the Town of Simsbury."
- 1.3 These regulations including all appendices have been prepared by the Simsbury Conservation Commission, designated as the Inland Wetlands and Watercourses Commission of the Town of Simsbury in accordance with the provisions of Section 22a- 36 to 22a-45 inclusive of the Connecticut General Statutes, as amended, and in accordance with an ordinance adopted on October 1, 1973.

- 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 Pursuant to Sections 22a-36 to 22a-45 inclusive of the Connecticut General Statutes, as amended, the Simsbury Conservation Commission shall have the authority to issue, issue with conditions, or deny permits for all regulated activities concerning inland wetlands and watercourses within the Town of Simsbury.

SECTION 2 – DEFINITIONS

- 2.1 Certain words, terms, and phrases used in these regulations shall have the meanings presented in this section. All words used in the present tense include the future tense, and the word “used” shall be deemed to include “designed, intended, or arranged to be used.”

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

“Activity” means an operation or use within or affecting a wetland or watercourse.

“Agency” means the Inland Wetlands & Watercourses Agency/Conservation Commission of the Town of Simsbury.

“Agriculture” means farming, including but not limited to plowing, tillage cropping, seeding, cultivating, harvesting or installation of best management practices for the production of food and fiber products, and keeping of livestock.

“Anchorage” means an area or structure sufficient for securing boats for recreation or uses incidental to the enjoyment or maintenance of private or public water bodies.

“Applicant” means any person, company, corporation, business, or other entity that has filed an application with the Commission.

“Application” means an application for a permit to conduct an activity within a regulated area before the Commission.

“Aquic Moisture Regime” means soil type that is high in organic matter, typically mottled or gleyed at the surface and subsoil with a seasonally saturated subsoil.

“Aquifer” means a water bearing stratum of permeable or fractured rock, sand, or gravel.

“Benthic Community” means organisms which live in streams or lake bottoms, typically used as indicators of water quality.

“Bog” means a poorly drained area distinguished by evergreen trees and shrubs, underlain by an accumulation of organic material and characterized by an association of plants recognized as bog species. These deposits are often referred to as peat deposits, and have highly acidic soil conditions. Typical examples of bog species are listed in the Connecticut Department of Environmental Protection booklet titled “Inland Wetlands Plants of Connecticut” (May 1973).

“Chairman” means the Chairman of the Conservation Commission / Inland Wetlands and Watercourses Agency of the Town of Simsbury, Connecticut.

“Clear Cutting” means the harvest of timber in a fashion that removes all trees substantially greater than a 2-inch diameter measured at four (4) feet from the ground.

“Commission” means the Conservation Commission / Inland Wetlands & Watercourses Agency of the Town of Simsbury, Connecticut.

“Commissioner of Environmental Protection” means the commissioner of the State of Connecticut Department of Environmental Protection.

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

“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 recurs in prolonged succession.

“Department” means the Connecticut Department of Environmental Protection.

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

“Designated Agent” means an individual(s) designated by the Conservation Commission Inland Wetlands & Watercourses Agency to carry out its functions and purposes.

“Discharge” means emission of any water, substance, or material into wetlands or watercourses whether or not such substance causes pollution.

“Disturbing the Natural and Indigenous Character of the Land” means that the activity will disturb the inland wetland or watercourse by reason of removal, deposition or mixing of material, will cause the alteration or obstruction of water flow, or will result in the pollution of the wetland or watercourse.

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

“Farm” means a tract of land containing five (5) acres or more, used in part or wholly for agricultural purposes, excluding fur ranches, pig farms, slaughterhouses, and fertilizer manufacture. A farm may include premises used for the keeping of livestock and other domestic animals when permitted by the Zoning Regulations of the Town of Simsbury.

“Farming” means use of land for the growing of crops, raising and/or boarding of livestock (especially domestic livestock), or other agricultural use [as noted in section 1-1(q) of the Connecticut General Statutes].

“Feasible” means able to be constructed or implemented consistent with sound engineering and economic principles.

“Flora and Fauna” means regional and native plants, animals and organisms.

“Gardening” means an activity devoted to the raising of herbs, fruits, flowers, or vegetables and is distinguished from farming in that the land area involved does not exceed five (5) acres.

“Grazing” means cropping and feeding on growing herbage in the field.

“Grubbing Land” means removal of all vegetation including but not limited to stumps.

“Habitat” means areas or environments in which an organism or biological population normally lives or occurs.

“Hazardous Material” means any material which may pose a present or potential hazard to human health or the environment, as is specified in OSHA Regulations, when improperly treated, stored, transported, disposed of, or otherwise managed and any material defined as hazardous within the meaning of any federal, state, or local law, regulation or ordinance including but not limited to chemicals and/or substances subject to reporting requirements under Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

“Hydrophytic Plant” means a plant that grows partly or wholly in water whether rooted in the mud, as a lotus, or floating without anchorage, as the water hyacinth.

“Integrated Pest Management” (IPM) means a sustainable approach to managing pests by combining biological, cultural, physical and chemical tools in a way that minimizes economic, health, and environmental risks.

“Intermittent Watercourses” means watercourses delineated by a defined channel and bank and the occurrence of two or more of the following characteristics:

- a. evidence of scour or deposits of recent alluvium or detritus,
- b. the presence of standing or flowing water for a duration longer than a particular storm incident, and
- c. the presence of hydrophytic vegetation.

“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 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; appropriate selection of project materials; 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 areas with soils that exhibit aquatic moisture regimes and 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. Typical examples of marsh species are listed in the Connecticut Department of Environmental Protection booklet titled "Inland Wetlands Plants of Connecticut" (May 1973).

"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.

"Municipality" means the Town of Simsbury.

"Native Plant" means a plant species "that occurs naturally in a particular region, state, ecosystem, and habitat without direct or indirect human actions" (Federal Native Plant Conservation Committee, 1994). A native plant is usually defined as one that was growing naturally in a specific area before white or European settlement.

"Non-Native Invasive Plants" includes those plants that meet the criteria for including a species as a non-native invasive species or a potentially invasive species as determined by the Connecticut Invasive Plants Working Group (<http://www.hort.uconn.edu/cipwg/>).

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

"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 and the Act or other municipal, state and federal law.

"Permittee" means the person to whom a permit has been issued.

"Person" means any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including but not limited to municipal corporations, governmental agencies or subdivisions thereof.

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

"Pond" means a natural or artificially confined body of water, usually smaller than a lake, having sustained water depth.

"Preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.

"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.

“Recharge Area” means an area, which contributes to the restoration of supply to water bodies, including, but not limited to, aquifers, streams, ponds, lakes or springs.

“Regulated Activity” means any operation within or use of a Regulated Area involving, but not limited to the removal or deposition of material, or any obstruction, construction, alteration or pollution, of such Regulated Area and any earth moving, filling, construction, clear-cutting timber, grubbing land, stormwater drainage discharge, septic system leachate, use or storage of hazardous materials or other pollutants within the Regulated Area, but shall not include the activities specified in Section 4.1 of these regulations.

Furthermore, any clearing, grubbing, filling, grading, paving, excavating, construction, deposition or removing of material and discharging of storm water in the following areas is a regulated activity:

- 1) if the slope of the Regulated Area land exceeds 15%, within the distance measured horizontally from the boundary of the wetland or watercourse equal to 100 feet plus an additional (five) 5 feet for each 1% increase in slope gradient more than 15%, but not more than 200 feet or top of slope; and
- 2) on land designated on the Inland Wetlands and Watercourses Maps of the Town of Simsbury as containing highly erodible soils.

The Commission may rule that any other activity located inside or outside the standard 100-foot “upland review area” that is likely to affect the land which comprises the wetlands, the body of water that comprises the watercourse, or the channel and bank of an intermittent watercourse is a regulated activity. This includes, but is not limited to, thermal or chemical impacts, changes in velocity, volume or direction of flow that may have negative impacts on the site under consideration or any downstream property.

Regulated Area means:

- a. Any wetland as defined in these regulations and as shown on the “Official Inland Wetlands and Watercourses Map for the Town of Simsbury, CT,” it should be noted that some wetland boundaries may vary from the official map or may not have been depicted. In such cases, the actual character of the soils determines whether the area is subject to the regulations. See Section 11 for boundary disputes.
- b. Any watercourse as defined in these regulations;
- c. Any wetland and watercourse as otherwise established as such by the Commission in accordance with these regulations;
- d. The “Upland Review Area,” which means all areas located within one hundred (100) feet of the boundary of such wetlands or watercourse; and
- e. Any upland area that if disturbed is likely to impact or affect wetlands and watercourses.

“Remove” means, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, grub, clear cut timber, bulldoze, drag line, or blast.

“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.

“Review Period” means the time between receipt by the Commission of an application for a permit and the decision by the Commission whether to grant such a permit.

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

1. Any activity involving deposition or removal of material which will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed.
2. Any activity which may substantially change the natural channel or may inhibit the natural dynamics of a watercourse system; cause a reduction of an inland wetland or watercourse’s natural flood storage capacity; result in increasing the volume or velocity of water leading to upstream or downstream flooding; cause an erosion, sedimentation, or an impairment of the natural flushing of stream sediment during normal flooding.
3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support desirable fisheries, wildlife, or other biological life, such as benthic communities, and/or to function effectively as a part of the total wetlands habitat; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other beneficial functions.
4. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse, or the degradation of water quality of surface or groundwater.
5. Any activity which causes a substantial diminution of flow of a natural watercourse or groundwater levels of the regulated area.
6. Any activity which has caused or is likely to cause, or has the potential to cause pollution of a wetland or watercourse, or aquifer.
7. Any activity which damages or destroys unique wetland or watercourse areas or unique wetland habitats having demonstrable scientific or educational value.
8. Any activity that has the potential to increase the mobility of soil contaminants.
9. Any condition that may adversely affect the health, welfare and safety of any individual or the community.

“Soil Remediation” means any efforts required to meet Remediation Standard Regulations (RSRs) as defined per the State Department of Environmental Protection.

“Soil Scientist” means an individual duly qualified as set forth in the regulations of the Connecticut society of soil scientists.

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

“Swamp” means areas with soils that exhibit aquic moisture regimes and are distinguished by the dominance of wetland trees and shrubs. Typical examples of swamp species are listed in the Connecticut Department of Environmental Protection booklet titled “Inland Wetlands Plants of Connecticut” (May 1973).

“Town” means the Town of Simsbury.

“Vernal Pool” means a seasonal or permanent body of water temporary in nature, possessing some or all of the following characteristics:

1. Occurs within a confined basin or depression that lacks a permanent inlet, outlet or stream.
2. Contains water typically for at least two months during the growing season, and dries out usually by late summer.
3. Typically lacks a permanent fish population.
4. Supports or has the capability of supporting breeding populations of amphibians such as wood frogs and spotted salamanders and/or invertebrates such as fairy shrimp that can only reproduce successfully in such habitats.

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

“Watercourses” means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town or any portion thereof not regulated pursuant to Sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (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.

“Wetlands” means land, including submerged land as defined in this section, not regulated pursuant to sections 22a-38 through 22a-35, inclusive, of the Connecticut General Statutes, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial and flood plain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Natural Resources Conservation Service of the U.S. Department of Agriculture (USDA). Such areas may include filled, graded, or excavated sites which possess an aquic (saturated) soil moisture regime as defined by the USDA Cooperative Soil Survey.

SECTION 3 – INVENTORY OF REGULATED AREAS

- 3.1 The series of maps of regulated areas entitled “Inland Wetlands and Watercourses Map, town of Simsbury, Connecticut” delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of these maps are available for inspection at the office of the Commission. 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 Commission may use aerial photography, remote sensing imagery, resource mapping, soils maps, site inspection observations or other information in determining the location of the boundaries of wetlands and watercourses.
- 3.2 Any person may petition the 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 15 of these regulations.
- 3.3 The Commission or its designated agent(s) shall maintain a current inventory of regulated areas within the town. The Commission may amend its map as more accurate information becomes available. Any person may petition for an amendment to the map. Petitioners shall bear the burden of proof for all requested map amendments. Such proof may include, but not be limited to, aerial photography, remote sensing imagery, resource mapping, soils maps, site inspection observations, or other available information. Such map amendments are subject to the public hearing process outlined in section 15 of these regulations.

SECTION 4 – PERMITTED USES AS OF RIGHT & NONREGULATED USES

- 4.1 The following operations, activities 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 purpose 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 purposes of sale;
 - b. a residential home (A) for which a building permit has been issued and is still active or (B) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a, or as of July 1, 1974, whichever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the building permit was obtained on or before July 1, 1987. Any person claiming a use of wetlands permitted as a right under this subdivision shall document the validity of said

right by providing a certified copy of the building permit and a site plan showing proposed and existing topographic contours, house and well locations, septic system, driveway, approval dates or other necessary information to document his or her right hereunder;

- c. boat anchorage or mooring, not to include dredging or dock construction;
- d. uses incidental to the enjoyment or maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the municipality (i.e., residential lot sizes of four (4) acres or less) and containing a residence. Such incidental uses shall include maintenance of existing structures and landscaping by hand, but shall not include removal or deposition of significant amounts of material from or into a wetland or watercourse, or diversion or alteration of a watercourse;
- e. construction and operation, by water companies as defined by section 16-1 of the Connecticut General Statutes or by municipal water supply systems as provided for in Chapter 102, of the Connecticut General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in sections 22a-401 and 22a-403 of the Connecticut General Statutes;
- f. maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to section 22a-42a of the Connecticut General Statutes or July 1, 1974, whichever is earlier, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this section, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place.
- g. withdrawal of water for fire emergency purposes.

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

- a. conservation of soil, vegetation, water, fish, shellfish, and wildlife. Such operation or use may include, but is not limited to, minor work to control erosion, or to encourage proper fish, wildlife and silviculture management practices.
- b. Outdoor recreation including but not limited to the use of play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin and scuba diving, camping, boating, water skiing, trapping, hunting, fishing and shell fishing and cross-country skiing where otherwise legally permitted and regulated.
- c. The installation of a dry hydrant by or under the authority of a municipal fire department, provided such dry hydrant is only used for firefighting purposes and there is no alternative access to a public water supply. For purposes of this section, "dry hydrant" means a non-pressurized pipe system that: (A) is readily accessible to fire department apparatus from a proximate public road, (B) provides for the withdrawal of water by

suction to such fire department apparatus, and (C) is permanently installed into an existing lake, pond or stream that is a dependable source of water.

The determination of exemption from the wetlands permit process is a responsibility that rests solely with the Commission and not with the applicant.

- 4.2.1 The following uses shall be allowed as non-regulated uses in wetlands and watercourses provided the planning commission concurs. A wetland or watercourse may be:
- a. included in the overall calculation of lot requirements for the zone in which the lot or subdivision is situated but shall not be included in the buildable area of the lot as defined by the subdivision regulations;
 - b. dedicated as open space in fulfillment of the subdivision regulations; or
 - c. granted to the town as permanent scenic or conservation restriction to run with the land. Such restriction shall not necessarily include public access but shall give to the town all developments and management rights upon the land subject to the restriction.
- 4.3 All activities in wetlands or watercourses involving filling, excavating, dredging, clear cutting, clearing, or grading or any other alteration or use of a wetland or watercourse not specifically permitted by this section and otherwise defined as a regulated activity by these regulations shall require a permit from the Commission in accordance with section 6 of these regulations or for certain regulated activities located outside of wetlands and watercourses from the duly authorized agent in accordance with section 12 of these regulations.
- 4.4 To carry out the purposes of this section, any person proposing to carry out a permitted or nonregulated operation or use of a wetland or watercourse that may disturb the natural and indigenous character of the wetland or watercourse shall, prior to commencement of such operation or use, notify the Commission on a form provided by it, and provide the Commission with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or nonregulated use of the wetland or watercourse. The Commission or its designated agent shall rule that the proposed operation or use is a permitted or a nonregulated use or operation or that a permit is required. Such ruling shall be in writing and shall be made no later than the next regularly scheduled meeting of the Commission following the meeting at which the request was received. The designated agent for the Commission may make such ruling on behalf of the Commission at any time.

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-411 of the Connecticut General Statutes, as amended.
 - b. Construction, encroachment or placement of any obstruction within stream channel encroachment lines pursuant to Sections 22a-342 through 22a-349a of the Connecticut General Statutes, as amended.

- c. Construction or placement of any structure or obstruction within the tidal, coastal or navigable waters of the state pursuant to Sections 22a-359 through 22a-363 or in designated tidal wetlands pursuant to Sections 22a-28 through 22a-35 of the Connecticut general Statutes, as amended.
 - d. Diversion of water, including withdrawals of surface or groundwater in excess of fifty thousand (50,000) gallons per day or any piping, culverting, channelization, relocation, damming or other alteration of the location of flow of any surface waters of the state where the tributary watershed area above the point of such alteration is 100 acres or larger, pursuant to Sections 22a-365 through 22a-378a of the Connecticut General Statutes, as amended.
 - e. Discharges into the waters of the state pursuant to Section 22a-430 of the Connecticut General Statutes, as amended.
 - f. Discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to Section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under Section 404 of the Federal Clean Water Act.
- 5.2 The Commissioner of Environmental Protection shall have exclusive jurisdiction over regulated activities in or affecting wetlands or watercourses, undertaken by any department, commission or instrumentality of the State of Connecticut, except any local or regional board of education, pursuant to Sections 22a-39 or 22a-45a of the Connecticut General Statutes.
- 5.3 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 Connecticut General Statutes, as amended.
- 5.4 The Commissioner of Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Environmental Protection under Section 22a-402 or a dam construction permit issued by the Commissioner of Environmental Protection under Sections 22a-403 or 22a-41 of the Connecticut General Statutes. Any person receiving such dam repair or removal order or dam construction permit shall not be required to obtain a permit from a municipal wetlands Commission for any action necessary to comply with said dam order or to carry out the activities authorized by said dam permit.

SECTION 6 – REGULATED ACTIVITIES TO BE LICENSED

- 6.1 The Commission regulates those regulated activities that are not permitted as of right or non-regulated pursuant to section 3 of these regulations. No person shall henceforth conduct a regulated activity in a regulated area of the Town of Simsbury without first obtaining a permit from the Commission.
- 6.2 Uses and operations occurring in upland review areas around a wetland or watercourse may have an adverse effect on a wetland or watercourse. Therefore, it is the policy of the Commission to strictly control the following activities, which shall be regulated as regulated activities if occurring or proposed within any one-hundred foot uniform upland review area, as defined in these regulations:

- a. clearing
- b. grading
- c. paving
- d. excavating
- e. depositing or removing of material
- f. earth moving
- g. filling
- h. construction
- i. clear-cutting timber
- j. grubbing land
- k. stormwater drainage discharge
- l. septic system leachate
- m. the use or storage of hazardous material or other pollutants
- n. soil mixing or blending

6.3 The Commission may also determine, on a case-by-case basis in accordance with this subsection, that any other activity is likely to impact or affect a wetland or watercourse, and is therefore designated a regulated activity and is subject to regulation by the Commission, even if the designated location of such activity occurs or is proposed outside of the uniform upland review area. The Commission shall state any such ruling in writing, describing the designated regulated activity, the designated upland review area, and the Commission's determination of impacts and effects supporting the Commission's case-by-case designations. In making such case-by-case designations, the Commission shall consider the factors set forth in section 6.1 through 6.2 and in section 22a-41 of the Connecticut General Statutes, as well as the following physical characteristics of wetlands and watercourses:

- a. the land which comprises a wetland;
- b. the body of water that comprises a watercourse; and
- c. the channel and bank of an intermittent watercourse.

The Commission shall promptly notify any applicant(s) affected by such a ruling.

6.4 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Commission, or violating any other provision of these regulations, shall be subject to the enforcement proceedings and penalties prescribed in section 14 of these regulations and any other remedies as provided by law.

SECTION 7 – APPLICATION REQUIREMENTS

7.1 Any person intending to conduct a regulated activity or to renew or amend a permit to conduct such activity, shall apply for a permit on a form provided by the Commission. The application shall contain the information described in this section and any other information the Commission may reasonably require. Application forms may be obtained in the offices of the Simsbury department of community planning and development, Town Clerk or the Commission.

7.2 If an application to the Town of Simsbury Planning, Zoning, or Planning and Zoning Commission for subdivision or resubdivision of land involves, or has the potential to impact, land containing a regulated area, the applicant shall, in accordance with Section 8-3(g), 8-3c, or 8-26,

as applicable, of the Connecticut General Statutes, submit an application for a permit to the Commission in accordance with this section, no later than the day the application is filed with such planning, zoning, or planning and zoning commission.

- 7.3 The application shall contain such information as is necessary for a fair and informed determination thereon by the Commission. The information that must be included in an application is determined, in part, by the potential effects of the proposed use on the wetland, watercourse, or regulated area. In the event the application does not contain such information as the Commission deems necessary for a determination under sections 6.1-6.2, the Commission shall so inform the applicant. An incomplete application may be grounds for denial. The Commission does not have the authority to table an application for incompleteness. An application deemed incomplete by the Commission must be either withdrawn by the applicant or denied by the Commission.
- 7.4 A prospective applicant may request the Commission to determine whether or not a proposed activity involves a significant impact activity. If the proposed activity involves a significant impact activity as determined by the Commission and defined in these regulations, additional information, based on the nature and anticipated effects of the activity, may be required.
- 7.4.1 If the Commission finds that a proposed use or activity does not involve any regulated activity as defined in these regulations, no permit for such activities shall be required. Any such ruling may be subject to limitation or revocation if it is later shown that such use or activity affects nearby wetlands or watercourses. The Commission's decision shall be stated in writing, and payment of the application fee may be waived.
- 7.5 All applicants shall include the following information in writing or on maps or drawings:
- a. the applicant's name, home and business mailing addresses and telephone numbers; if the applicant is a Limited Liability Corporation or a Corporation the managing member's or responsible corporate officer's name, address, and telephone number;
 - b. the owner's name, mailing address and telephone number and written consent of the land owner if the applicant is not the owner of the land upon which the subject activity is proposed;
 - c. the applicant's interest in the land (i.e., owner, buyer, contractor, agent, etc.);
 - d. the 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, the area(s) (in acres or square feet) of wetlands or watercourses to be disturbed, soil type(s), and wetland vegetation;
 - e. the purpose and a description of the proposed activity and proposed erosion and sedimentation controls and other management practices and mitigation measures which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, such as managing non-native invasive plants, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;

- f. alternatives considered and subsequently rejected by the applicant 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 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 DEP reporting form; the Commission 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 Commission deems necessary to the understanding of what the applicant is proposing; and
- m. submission of the appropriate filing fee based on the fee schedule established in section 19 of these regulations.
- n. whether the property is subject to a conservation restriction or preservation restriction, and, if so, what party or parties are holders thereof or intended to be benefitted thereby.

7.6 At the discretion of the Agency or its agent, or when the proposed activity involves a significant impact activity, 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 activity and the land which will be affected thereby which show existing and proposed conditions, wetland and watercourse boundaries, upland review 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, soil mixing, 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 (i.e., biological assessment);
 - e. description of how the applicant will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application and each alternative 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;
 - f. analysis of chemical or physical characteristics of any fill material; and
 - g. management practices and other measures designed to mitigate the impact of the proposed activity.
- 7.6.1 On sites identified as potentially containing one or more vernal pools or unique, diverse, or otherwise desirable wildlife habitat, the Commission may require a complete environmental assessment of the site.
- 7.6.2 The Commission may require an analysis of the property's former use and history, including, but not limited to a Phase I, Phase II and Phase III Environmental Site Assessment (ESA) in conformance with the scope and limitations of the American Society for Testing Materials (ASTM).
- 7.7 The applicant shall certify whether:
- a. any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of an adjoining municipality;
 - b. traffic attributable to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
 - c. sewer or water drainage from the project site will flow through and impact the sewage or drainage system within the adjoining municipality; or,
 - d. water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.
- 7.8 Twelve copies of all application materials shall be submitted to comprise a complete application unless an applicant is otherwise directed, in writing, by the Commission. At least six copies of plans sized 18" x 24" or 24" x 36" must be submitted, folded to the size of 8.5" x 11". Plans sized 8.5" x 11", 8.5" x 14", or 11" x 17" should be included in the sets of twelve copies.
- 7.9 Any application to renew or amend an existing permit shall be filed with the Commission in accordance with Section 8 of these regulations at least sixty-five (65) days prior to the expiration date of the permit. Any application to renew or amend such an existing permit shall contain the information required under section 7 of these regulations provided:
- a. the application may incorporate the documentation and record of the prior application;

- b. the application shall describe the extent of work completed at the time of filing and the schedule for completing the activities authorized in the permit;
 - c. the application shall state the reason why the authorized activity was not initiated or completed within the time specified in the permit;
 - d. the application shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses or use of the land for which the permit was issued; and
 - e. the Commission may, prior to the expiration of a permit, accept an untimely application to renew such permit if the authorized activity is ongoing and allow the continuation of work beyond the expiration date if, in its judgment, the permit is likely to be renewed and the public interest or environment will be best served by not interrupting the activity.
- 7.10 Any application to renew a permit shall be granted upon request of the permit holder unless the Commission finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no permit shall be valid for more than ten years, and further provided that any permit issued prior to July 1, 2011 that did not expire prior to May 9, 2011 shall be valid for no more than fourteen years.
- 7.11 For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply:
- a. for purposes of this section, “conservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described there, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.
 - b. for purposes of this section, “preservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.
 - c. no person shall file a permit application, other than for interior work in an existing building or for exterior work on an existing building that does not expand or alter the footprint of such existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party or parties holding such restriction or intended to be benefitted thereby, including, but not limited to, any state agency that holds such restriction, not later than sixty days prior to the filing of the permit application.
 - d. in lieu of such notice pursuant to subsection 7.11c, the applicant may submit a letter from the holder of such restriction or from the holder’s authorized agent, verifying that the application is in compliance with the terms of the restriction.

SECTION 8 – APPLICATION PROCEDURES

- 8.0 Prior to the submission of an Application, the Applicant is encouraged to discuss the application on a preliminary basis with town staff.
- 8.1 Applications must be submitted to the Planning Department staff on behalf of the Commission at least fourteen (14) business days prior to the day of the Commission's regular meeting, or a special meeting where deemed appropriate, in order to be included on the agenda.
- 8.2 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 five hundred 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 days of the date of receipt of the application, petition, appeal, request or plan.

- 8.3 The Commission shall, in accordance with Section 22a-42b of the Connecticut General Statutes, 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 five hundred (500) feet of the boundary of any adjoining municipality;
 - b. a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
 - c. a significant portion of the sewer or water drainage from the project site will flow through and significantly impact the sewage or drainage system within the adjoining municipality; or,
 - d. water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Notice of the pendency of such application shall be made by certified mail, return receipt requested and shall be mailed within seven (7) days of the date of receipt of the application.

- 8.4 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 25-32a of the Connecticut General Statutes, the applicant shall provide written notice of the application to the water company and the Commissioner of Public Health in a format prescribed by said commissioner, provided such water company or said commissioner 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 not later than seven days after the date of the application. The water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the application.
- 8.5 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 seven (7) business days after receipt, or thirty-five (35) days after such submission, whichever is sooner.
- 8.6 At any time during the review period, the applicant shall provide such additional information as the Commission may reasonably require. Requests for such additional information shall not stay the time limitations as set forth in subsection 11.2 of these regulations.
- 8.7 Unless otherwise proscribed by law, applications, maps and documents relating to the application shall be open for public inspection. Any person may appear and be heard at any public hearing.
- 8.8 All information submitted as part of the application and application review process shall be considered factual and binding. The failure of the applicant or any of his/her agents to provide necessary and correct information shall be sufficient grounds for the denial of a permit under these regulations. The Commission does not have the authority to table an application for incompleteness. An application deemed incomplete by the Commission must be either withdrawn by the applicant or denied by the Commission.
- 8.9 Each application shall be accompanied by a nonrefundable fee as set forth in the Chapter 85, Fees, of the code of the Town of Simsbury.

SECTION 9 – PUBLIC HEARINGS

- 9.1 The Commission shall not hold a public hearing on an application unless:
- a. the Commission determines that the proposed activity may have a significant impact on wetlands or watercourses, or
 - b. a petition signed by at least twenty-five (25) persons who are eighteen (18) years of age or older and who reside in the municipality in which the regulated activity is proposed, requesting a hearing is filed with the Commission not later than fourteen (14) days after the date of receipt of such application, or
 - c. the Commission finds that a public hearing regarding such application would be in the public interest.
- 9.1.1 No later than sixty-five (65) days after receipt of an application, the Commission may hold a public hearing on such application. The hearing shall be completed within thirty-five (35) days of its commencement. Action shall be taken on applications within sixty-five (65) 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 shall not be for longer than sixty-five (65) days or may withdraw such application. Unless required by law, the failure of the Commission to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the application.

9.2 Notice of any required public hearing shall be published at least twice at intervals of not fewer than two (2) days, the first not more than fifteen (15) days and not fewer than ten (10) days, and the last not fewer than two (2) days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetland and watercourse is located.

9.3 Within five (5) days after the date of receipt of the application, the applicant shall submit, as part of the application record, the name(s) and address(es) of the owner(s) of record of all lands abutting or within one hundred (100) feet of the subject property, as listed on the last-completed grand list of the Town of Simsbury or other applicable municipality. This application requirement shall be waived upon the Commission's ruling that it will not hold a hearing on the application or upon its rendering of a decision without holding a hearing.

9.3.1 Notice of the public hearing shall be mailed by the Town to the owner(s) of record of all lands within one hundred (100) feet of the subject property not fewer than ten (10) days prior to the day of the hearing.

9.4 In the case of any application which is subject to the notification provisions of subsection 8.3 of these regulations, a public hearing shall not be conducted until the clerk of the adjoining municipality(ies) has received notice of the pendency of the application. Proof of such notification shall be entered into the hearing record.

SECTION 10 – CONSIDERATIONS FOR DECISION

- 10.1 The 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.
 - c. Reports from other agencies, staff, and commissions including, but not limited to the Town of Simsbury.
 1. Planning Commission
 2. Zoning Commission
 3. Building Official
 4. Health Official (FVHD)
 5. Town Engineer

- d. The availability of further technical improvements or safeguards which could feasibly be added to the plan or action.
 - e. Any additional requested information.
 - f. The Commission may also consider comments on any application from the Hartford County Soil and Water Conservation District, the Central Regional Planning Commission or other regional organizations (i.e. Council of Elected Officials); agencies in adjacent municipalities which may be affected by the proposed activity, or other technical agencies or organizations which may undertake additional studies or investigations.
 - g. Non-receipt of comments from agencies and commissions listed subsection 10.1(c) within the prescribed time shall neither delay nor prejudice the decision of the Commission.
 - h. For an application for which a public hearing is held, public comments, evidence and testimony.
- 10.2 Criteria for Decision. In carrying out the purposes and policies of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Commission shall take into consideration all relevant facts and circumstances, including but not limited to:
- a. the environmental impact of the proposed regulated activity on wetlands or watercourses which may include:
 - 1. the amount and nature of material to be removed or deposited and the projected effect on the water table, drainage patterns; flood control, water supply and quality, and aquatic or benthic organisms;
 - 2. potential for erosion and/or siltation;
 - 3. likelihood of siltation and leaching, and any resulting adverse effects on water quality and aquatic life;
 - 4. projected changes in velocity, volume, course of water flow or in the water table, and their effects;
 - 5. changes to the physical, chemical, or biological properties of the water or soil, and their impact;
 - 6. change in the suitability of the area for recreational or aesthetic enjoyment;
 - 7. importance of the area to the region with respect to water supply, water purification, flood control, natural habitat, recreation, open space, and size;
 - 8. consistency with the Connecticut Department of Environmental Protection water quality classifications and goals;

9. the effects on the inland wetland's or watercourse's natural capacity to support desirable biological life, prevent flooding, supply water, control sediment, facilitate drainage, and promote public health and safety;
 10. topography, including but not limited to slopes in excess of 20%; and
 11. negative impacts or degradation of habitats.
- b. the applicant's purpose for the proposed 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 and long term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses, including the potential for preservation and/or management of local ecosystems;
 - d. irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including but not limited to the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
 - 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;
 - f. impacts of the proposed regulated activity on wetlands, watercourses, or habitat for wetland-dependent species 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; and
 - g. the suitability or unsuitability of such activity to the area for which it is proposed.
- 10.3 In the case of an application which received a public hearing pursuant to a finding by the Commission that the proposed activity may have a significant impact on wetlands or watercourses, a permit shall not be issued unless the Commission finds on the basis of the record that a feasible and prudent alternative does not exist. If the Commission finds that an activity for which it has granted a permit has had a more severe impact or effect on the inland wetland or watercourse than was projected or involves a use not authorized by the permit, the Commission may revoke such permit and/or require the permittee to submit a new application for review after giving due notice to the permittee by personal service or certified mail of the facts or conduct that warrant the intended action.
- 10.3.1 The permittee will be given an opportunity to show compliance with the requirements for retention of the permit within a time period to be determined by the Commission.

- 10.3.2 The permittee shall be notified of the Commission's decision to revoke or suspend the permit 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 of a permit to be published in a newspaper having general circulation in the Town of Simsbury.
- 10.4 In the case of an application which is denied on the basis of a finding that there may be feasible and prudent alternatives to the proposed regulated activity which have less adverse impact on wetlands or watercourses, the Commission shall propose on the record in writing the types of alternatives which the applicant may investigate provided this subsection shall not be construed to shift the burden from the applicant to prove that the Applicant is entitled to the permit or to present alternatives to the proposed regulated activity. For purposes of this subsection, (1) "wetlands or watercourses" includes aquatic, plant, or animal life and habitats in wetlands or watercourses, and (2) "habitats" means areas or environments in which an organism or biological population normally lives or occurs.
- 10.5 The Commission shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.
- 10.6 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. A conclusion that a feasible and prudent alternative does not exist does not create a presumption that a permit should be issued. The applicant has the burden of demonstrating that the application is consistent with the purposes and policies of these regulations and Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes.
- 10.7 In the case of an application where the applicant has provided written notice pursuant to subsection 7.11c of these regulations, the holder of the restriction may provide proof to the inland wetlands agency that granting of the permit application will violate the terms of the restriction. Upon a finding that the requested land use violates the terms of such restriction, the inland wetlands agency shall not grant the permit approval.
- 10.8 In the case of an application where the applicant fails to comply with the provisions of subsections 7.11c or 7.11d of these regulations, (1) the party holding the conservation or preservation restriction, other than a state agency that holds such restriction, may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction; or (2) the state agency that holds such restriction may, not later than thirty days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall immediately reverse such permit approval if the commissioner of the state agency that holds such restriction certifies that the land use authorized in such permit violates the terms of such conservation or preservation restriction.
- 10.9 Nothing in subsections 7.11c or 7.11d of these regulations shall be construed to prohibit the filing of a permit application or to require such written notice when the activity that is the subject of such permit application will occur on a portion of property that is not restricted under the terms of such conservation or preservation restriction.

SECTION 11 – DECISION PROCESS AND PERMIT

- 11.1 The Commission, or its duly authorized agent acting pursuant to Section 12 of these regulations, may, in accordance with Section 10 of these regulations, grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity designed to carry out the purposes and policies of the Act, or deny the application. Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources.
- 11.2 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. 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.
- 11.3 The Commission shall state upon its record the reasons and basis for its decision and, in the case of any public hearing, such decision shall be based fully on the record of such hearing and shall be in writing and shall, as applicable and in accordance with section 10 of these regulations, incorporate a statement relative to the consideration of feasible and prudent alternatives.
- 11.3.1 An application deemed incomplete by the Commission shall be withdrawn by the applicant or denied by the Commission.
- 11.4 The Commission shall notify the applicant and any person entitled to such notice of its decision within fifteen (15) days of the date of the decision by certified mail, return receipt requested, and the Commission shall cause notice of its order in the issuance or denial of the permit, to be published in a newspaper having general circulation in the Town of Simsbury. 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. The Commission shall also file its decision with the Town Clerk and require that the Administrative Officer designated by the Commission maintain a record of all applications.
- 11.5 If an activity authorized by an inland wetland permit also involves an activity which requires a zoning or subdivision approval, special zoning permit, or variance or special exception, under Sections 8-3(g), 8-3c, or 8-26 of the Connecticut General Statutes, the Commission shall file a copy of the decision and report on the application with the Town of Simsbury Planning, or Zoning Commission within fifteen days of the date of the decision thereon.
- 11.6 Any permit issued by the Agency for the development of land for which an approval is required under section 8-3, 8-25 or 8-26 of the Connecticut General Statutes shall be valid for five years provided the Agency may establish a specific time period in which any regulated activity shall be

conducted. Any permit issued by the Agency for any other activity shall be valid for not less than two years and not more than five years. Any permit issued by the Agency prior to July 1, 2011 that was in effect and did not expire prior to May 9, 2011 shall be valid for a period not less than nine years after the date of such approval.

- 11.7 No permit issued by the Commission shall be assigned or transferred without the written permission of the Commission.
- 11.8 If a bond or insurance is required in accordance with section 13 of these regulations, the Commission may withhold issuing the permit until such bond or insurance is provided.
- 11.9 General provisions in the issuance of all permits:
 - a. The Commission has relied in whole or in part on information provided by the applicant and if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked.
 - b. All permits issued by the Commission are subject to and do not derogate any present or future rights or powers of the Commission or the Town of Simsbury, and convey no rights in real estate or material nor any exclusive privileges, and are further subject to any and all public and private rights and to any federal, state, and municipal laws or regulations pertinent to the subject land or activity.
 - c. If the activity authorized by the Commission's permit also involves an activity which requires zoning or subdivision approval, special permit, variance or special exception under sections 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit may begin until such approval is obtained.
 - d. In constructing the authorized activities, the permittee shall implement best 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.
 - e. If a permit is denied or granted with conditions or limitations and the applicant disputes such decision or conditions or limitations, the applicant may modify, amend, or correct the proposal and submit such as a new application
 - f. If the Commission denies a permit, the application shall not be resubmitted for a period of six months unless the proposal is modified in a fashion that substantially changes the impacts which resulted in the denial or as otherwise required by law. Such submittal shall take the form of a new application.
 - g. Where changes are being made to the as-built conditions, or wherever changes have to be made in the permit because of field conditions or other necessary unforeseen conditions, the applicant shall return with the appropriate information for the Commission to review.
 - h. Undertaking of regulated activities exceeding that described in the application shall be grounds for revocation of any permit issued under these regulations and/or for penalties to be imposed pursuant to section 14 of these regulations. Permit renewal and extension shall be at the discretion of the Commission and may be subject to the calling of an additional public hearing.

- i. Any letter requesting to renew or amend a permit shall state the reason why the authorized activities were not initiated or completed within the time specified in the permit, and, if applicable, the letter shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses or the property for which the permit was issued.

SECTION 12 – ACTION BY DULY AUTHORIZED AGENT

- 12.1 The Commission may delegate to its duly authorized agent the authority to approve, approve with conditions, or extend the time to complete an activity as authorized under this section that is not located in a wetland or watercourse when such agent finds that the conduct of such activity would result in no or minimal impact on any wetlands or watercourses provided such agent has completed the comprehensive training program developed by the Commissioner of Environment Protection pursuant to section 22a-39 of the Connecticut General Statutes. Requests for such approval shall be made on a form provided by the Commission and shall contain the information listed under Section 7.5 of these regulations and any other information the Commission may reasonably require. Notwithstanding the provisions for receipt and processing applications prescribed in Sections 8, 9 and 11 of these regulations, such agent may approve, approve with conditions, or extend the time to complete such an activity as authorized under this section.
 - 12.1.1 Prior to the action of the Commission's duly authorized agent pursuant to this section, the agent shall inform the Commission chairman as to the nature of the application, and the agents' reasons for approval, approval with conditions, or extension as authorized in section 12.1. At such time, the Commission chairman or, in his or her absence, the vice chairman may allow the duly authorized agent to proceed as set forth in section 12.1 or may require Commission review of the application pursuant to these regulations.
- 12.2 Any person receiving such approval, approval with conditions, or extension from the duly authorized agent shall, within ten days of the date of such approval, approval with conditions, or extension, publish, at the applicant's expense, notice of the approval, approval with conditions, or extension in a newspaper having a general circulation in the Town of Simsbury. Any person may appeal such decision of such agent to the Commission within fifteen days after the publication date of the notice and the Commission shall consider such appeal at its next regularly scheduled meeting provided such meeting is no earlier than three business days after receipt by such Commission or its agent of such appeal. Any person may appear and be heard at the meeting held by the Commission to consider the subject appeal. The Commission shall, at its discretion, sustain, alter, or reject the decision of its agent or require an application for a permit in accordance with Section 7 of these regulations.

SECTION 13 – BOND AND INSURANCE

- 13.1 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 maintenance or performance bond covering any and all damage that might result from the proposed operation or use of the wetlands and watercourses, or that 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.

- 13.2 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.

SECTION 14 - ENFORCEMENT

- 14.1 The Commission may appoint an agent or agents to act in its behalf with the authority to inspect property, except a private residence, and issue notices of violation or cease and desist orders and carry out other actions or investigations necessary for the enforcement of these regulations. In carrying out the purposes of this section, the Commission or its duly authorized agent shall take into consideration the criteria for decision under section 10.2 of these regulations.
- 14.2 With the consent of the property owner or the authorized agent of the owner having been given in the permit application or thereafter, [t]he Agency or its agent may, during the life of the permit, make regular inspections upon reasonable notice and at reasonable hours of all regulated activities for which permits have been issued.
- 14.3 In the case in which a permit has not been issued or a permit has expired, the Agency or its agent may make regular inspections at reasonable hours with the consent of the property owner or the authorized agent of the property owner.

If the Agency 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 Agency or its duly authorized agent may:

- a. Issue a written order by certified mail, return receipt requested, to such person conducting such activity or maintaining such facility or condition to immediately cease such activity or to correct such facility or condition. Within ten (10) calendar days of the issuance of such order the Agency shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Agency shall consider the facts presented at the hearing and within ten (10) days of the completion of the hearing notify the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The Commission shall publish notice of its decision in a newspaper having general circulation in the municipality. The original order shall be effective upon issuance and shall remain in effect until the Commission affirms, revises or withdraws the order. The issuance of an order pursuant to this subsection shall not delay or bar an action pursuant to Section 22a-44(b) of the Connecticut General Statutes, as amended.
- b. Suspend or revoke a permit if it finds that the permittee has not complied with the terms, conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application including site plans. Prior to revoking or suspending any permit, the Commission shall issue notice to the permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action. The Commission shall hold a hearing to provide the permittee an opportunity to show that it is in compliance with its permit and any and all requirements for retention of the permit. The permittee shall be notified of the Commission's decision to suspend, revoke, or maintain a permit by certified mail within fifteen (15 days) of the date of its decision. The Commission shall publish notice of the suspension or revocation in a newspaper having general circulation in the 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 or watercourses. The Commission may request that the individual appear at the next regularly scheduled meeting of the Commission to discuss the unauthorized activity, and/or provide a written reply to the notice or file an application for the necessary permit. Failure to carry out the action(s) directed in a notice of violation may result in issuance of the order provided in subdivision 14.3.a or other enforcement proceedings as provided by law.
- d. Any person who commits, takes part in, or assists in any violation of any provision of these regulations shall be fined not more than one thousand dollars (\$1,000.00) and/or be imprisoned for not more than six (6) months for each offense. Each violation, each day's continuance thereof shall be deemed to be a separate and distinct offense.
- e. The Commission may petition the Superior Court to restrain a continuing violation, to correct or remove a violation, and to assess damages in an amount necessary to effect restoration of the affected wetlands and watercourses.

SECTION 15 - AMENDMENTS

- 15.1 These regulations and the Inland Wetlands and Watercourses Maps for the Town of Simsbury may be amended, from time to time, by the Commission in accordance with changes in the Connecticut General Statutes or regulations of the Connecticut Department of Environmental Protection, or as new information regarding soils and inland wetlands and watercourses becomes available.
- 15.2 An application filed with the Commission which is in conformance with the applicable inland wetlands regulations as of the date of the receipt of such application shall not be required thereafter to comply with any change in inland wetland regulations, including changes to setbacks and upland review areas, taking effect on or after the date of such receipt and any appeal from the decision of such Commission with respect to such application shall not be dismissed by the Superior Court on the grounds that such a change has taken effect on or after the date of such receipt. The provisions of this section shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses or (2) to any change in regulations necessary to make such regulations consistent with the provisions of the Act as of the date of such receipt.
- 15.3 These regulations and the Town of Simsbury Inland Wetlands and Watercourses Maps shall be amended in the manner specified in section 22a-42a of the Connecticut General Statutes, as amended. The Commission shall provide the Commissioner of Environmental Protection with a copy of any proposed regulations and notice of the public hearing to consider any proposed regulations or amendments thereto, except map amendments, at least thirty-five days before the public hearing on their adoption. (Note: Application fee scheduled shall be adopted as Commission regulations or as otherwise provided by town ordinance.)
- 15.4 Petitions requesting changes or amendments to the Inland Wetlands and Watercourses Map of the Town of Simsbury 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.
- 15.5 Any person who submits a petition to amend the Inland Wetlands and Watercourses Map, Simsbury, 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, report from a registered and/or certified soil scientist, or other information acceptable to the Commission. If such person is the owner, developer or contract purchaser of the land which is the subject of the petition, or if such person is representing the interests of such an owner, developer or purchaser, in addition to the information required in subsection 15.4, the petition shall include:
- a. the name, mailing address and telephone number of the owner(s) of such land and owner(s) or other representative;
 - b. the names and mailing addresses of the owners of abutting land; and
 - c. documentation by a soil scientist of the distribution of wetland soils on said land. Such documentation shall at a minimum include the report of the soil scientist documenting the location of wetland soils on the land and a map of the said land indicating the flag locations set by the soil scientist and defining the boundaries of wetland soil types.
 - d. map(s) showing any proposed development of the land in relation to existing and proposed wetland and watercourse boundaries.
- 15.6 Watercourses and wetlands soils shall be delineated by a registered and/or certified soil scientist and mapped in accordance with accepted industry standards.
- 15.7 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 fewer than two (2) days, the first not more than fifteen (15) days nor fewer than ten (10) days, and the last not fewer than two (2) days, before such hearing. All materials including maps and documents relating to the petition shall be open for public inspection.
- 15.8 The agency shall hold a public hearing on a petition to amend the regulations and the Inland Wetlands and Watercourses Map within sixty-five days after receipt of such petition. The hearing shall be completed within thirty-five days after commencement. The agency shall act upon the changes requested in such petition within sixty-five days after completion of such hearing. At such hearing, any person or persons may appear and be heard and may be represented by agent or

attorney. The petitioner may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five 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.

- 15.9 The Commission shall make its decision and state, in writing, the reasons why the change in the Inland Wetlands and Watercourses Map was made.
- 15.10 The amended wetland map information shall be submitted on a computer CD or Diskette and on a print drawn to a scale of 1-inch = 100-feet. Maps shall be based on NAD 27 Horizontal Datum. Computer information shall be compatible with Auto Cad Map 2004 or the latest comparable software used by the Town of Simsbury.

SECTION 16 - APPEALS

- 16.1 Appeal of actions of the Commission shall be made in accordance with the provisions of Section 22a-43 of the Connecticut General Statutes, as amended.
- 16.2 Notice of such appeal shall be served upon the Commission and the Commissioner of Environmental Protection.

SECTION 17 – CONFLICT AND SEVERANCE

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

SECTION 18 – OTHER PERMITS

- 18.1 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 Simsbury, the State of Connecticut or the Government of the United States including, but not limited to 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 19 – APPLICATION FEES

- 19.1 Method of Payment. All fees required by these regulations shall be submitted to the Commission by certified check or money order payable to the Town of Simsbury at the time the application is filed with the Commission.

- 19.2 No application shall be granted or approved by the Commission unless the correct application fee is paid in full or unless a waiver has been granted by the Commission pursuant to subsection 19.7 of these regulations.
- 19.3 The application fee is not refundable.
- 19.4 Definitions. As used in the section:
- “Residential Uses” means activities carried out on property developed for permanent housing or being developed to be occupied by permanent housing.
- “Commercial Uses” means activities carried out on property developed for industry, commerce, trade, recreation, or business or being developed to be occupied for such purposes, for profit or nonprofit.
- “Other Uses” means activities other than residential uses or commercial uses.
- 19.5 The fees set forth in this Article shall supersede any and all specific fees heretofore established pursuant to the General Statutes by any of the aforementioned Agencies of the Town of Simsbury. The Town of Simsbury and the Commission reserve the right to assess and collect any reasonable charges incurred by the Town of Simsbury in reviewing and acting on any application before it. This includes, but is not limited to, the cost of independent review of data submitted by the applicant and transcription costs associated with public hearings and any record.
- 19.5.1 The Commission shall charge the following fees for processing applications in connection with matters administered by said Commission:
- a. Private residential lot: \$130; residential short form upland review area: \$130.
 - b. Private residential lot with public hearing: \$180.
 - c. Agricultural uses: \$230.
 - d. Industrial / Commercial / Business uses: \$370; industrial / commercial / business maintenance \$95.
 - e. Subdivisions: base rate \$320 plus \$60 per lot (total site), if the proposed subdivision is three lots or more.
 - f. Other: \$95.
 - g. Map amendment application: \$170.
 - h. Inland Wetland & Watercourses Regulations: \$15 per copy
 - i. Inland Wetlands & Watercourses map \$5 per copy.
 - j. Annual subscription service for Conservation Commission / Inland Wetlands & Watercourses Commission: \$15 per year or part thereof for agendas and \$15 per year or part thereof for minutes.

- 19.6 Exemption. Boards, commissions, councils and departments of the Town of Simsbury are exempt from all fee requirements.
- 19.7 Waiver. The applicant may petition the Commission to waive, reduce or allow delayed payment of the fee. Such petitions shall be in writing and shall state fully the facts and circumstances the Commission should consider in its determination under this subsection. The Commission may waive all or part of the application fee if the Commission determines that:
- a. The activity applied for would clearly result in a substantial public benefit to the environment or to the public health and safety and the applicant would reasonably be deterred from initiating the activity solely or primarily as a result of the amount of the application fee, or
 - b. The amount of the application fee is clearly excessive in relation to the cost to the Town for reviewing and processing the application.
 - c. The applicant is a non-profit Environmental organization and the proposed project will benefit the environment.

The Commission shall state upon its record the basis for all actions under this subsection.

SECTION 20 – RECORDS RETENTION AND DISPOSITION

- 20.1 The Commission and Town Clerk for the Town of Simsbury shall retain complete administrative records of Commission actions and dispose of such records in accordance with the retention/disposition schedules set for in subsection 20.2.
- 20.2 The public records administrator of the Connecticut State Library established the following new records retention/disposition schedules for municipal Inland Wetlands Agencies effective April 24, 1989:

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

SECTION 21 – EFFECTIVE DATE OF REGULATIONS

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