

# Regulations Protecting the Wetlands and Watercourses of the City of Derby



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**SECTION 1 TITLE AND AUTHORITY**

- 1.1 The inland wetlands and watercourse of the state of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life. Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. It is therefore, the purpose of these regulations to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.

- 1.2 These regulations shall be known as the "Inland Wetlands and Watercourses regulations of the City of Derby."
- 1.3 The Inland Wetlands and Watercourses Agency of the City of Derby was established in accordance with an ordinance adopted April 18, 1974 and shall implement the purposes and provisions of the Inland Wetlands and Watercourses Act in the City of Derby.
- 1.4 These regulations have been adopted and may be amended, from time to time, in accordance with the provisions of the Inland Wetlands and Watercourses Act and these regulations.
- 1.5 The Agency shall enforce all provisions of the Inland Wetlands and Watercourses Act and shall issue, issue with modifications, and deny permits for all regulated activities on inland wetlands and watercourses in the City of Derby pursuant to sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.

## SECTION 2      DEFINITIONS

- 2.1 As used in these regulations:

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

**"Agency"** means the Inland Wetlands and Watercourses Agency of the City of Derby.

**"Bogs"** are areas distinguished by evergreen trees and shrubs underlain by peat deposits, poor drainage, and highly acidic conditions.

**"City"** means the City of Derby.

**"Clear-cutting"** means the harvest of timber in a fashion which removes all trees down to a two inch diameter at breast height.

**"Commission member"** means a member of the Inland Wetlands and Watercourses Agency of the City of Derby.

**"Commissioner of Environmental Protection"** means the commissioner of the State of Connecticut Department of Environmental Protection.

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

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

**"Designated agent"** means an individual(s) designated by the 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 cause pollution.

**"Disturb the natural and indigenous character of the land"** means that the activity will significantly alter the inland wetlands and watercourses by reason of removal or deposition of material, clear cutting, alteration or obstruction of water flow, or will result in the pollution of the wetland or watercourse.

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

**"Farming"** means use of land for the growing of crops, raising of livestock or other agricultural use.

**"Intermittent watercourse"** means those waterways which are characterized by non-persistent flow. For purposes of these regulations, intermittent watercourse are delineated by one or more of the following characteristics:

1. A defined permanent channel with the evidence of scour or deposits of recent alluvium or detritus.
2. The presence of standing or flowing water for a duration longer than a particular storm incident. Ordinarily, the presence of water is supported by a component, however small, of groundwater outflow or exfiltration.
3. The presence of, or ability to support the growth 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 by the provisions of these regulations under the authority of the Inland Wetlands Agency.

**"Marshes"** are areas with soils that exhibit aquatic moisture regimes that are distinguished by the absence of trees and shrubs and are dominated by soft-stemmed herbaceous plants. The water table in marshes is at or above the surface throughout the year, but seasonal fluctuations are encountered and areas of open water six inches or more in depth are common.

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

**"Municipality"** means the City of Derby.

**"Nurseries"** means land used for propagating trees, shrubs or other plants for transplanting, sale of, 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 under the authority of the Inland Wetlands Agency.

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

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

**"Pollution"** means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the 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.

**"Regulated Activity"** means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or watercourses, and any earth moving, filling, construction, or clear-cutting of trees, etc. within fifty (50) feet of wetlands or watercourses, but shall not include the specified activities in section 4 of these regulations.

**"Regulated area"** means any wetlands or watercourses as defined in these regulations.

**"Remove"** includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, grub, clear cut timber, bulldoze, dragline 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.

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

1. Any activity involving a deposition or removal of material which will or may have a major effect or significant impact on the regulated area or on another part of the inland wetland or watercourse system; or
2. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system; or
3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to support desirable fisheries, wildlife, or other biological life; or to prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space; or to perform other functions; or
4. Any activity which causes substantial turbidity, siltation or sedimentation in a wetland or watercourse; or
5. Any activity which causes a substantial diminution of flow of a natural watercourse or groundwater levels of the regulated area; or
6. Any activity which cause or has the potential to cause pollution of a wetland or watercourse; or

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

8. Any activity which involves the construction or destruction of basins for the purposes of retention and/or detention.

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

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

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

**"Town"** means the City of Derby.

**"Waste"** means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the wetlands or watercourse 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 to sections 22a-28 through 22a-35 of the General Statutes, as amended.

**"Wetlands"** means land, including submerged land as defined in this section, not regulated pursuant to section 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial and flood plain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Soil Conservation Service of the U.S. Department of Agriculture (USDA). Such areas may include filled, graded, or excavated sites which possess an aquatic (saturated) soil moisture regime as defined by USDA Cooperative Soil Survey.

### **SECTION 3 INVENTORY OF REGULATED AREAS**

- 3.1 The map of regulated areas entitled "Designated Inland Wetlands and Water Courses of the City of Derby" delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of this map are available for inspection in the office of the City Clerk or the Inland Wetlands Agency. In all cases, the precise location of regulated areas shall be determined by the actual character of the land, the distribution of wetland soil types, and locations of watercourses. Such determinations shall be made by field inspection and testing conducted by a soil scientist where soil classifications are required, or where watercourse determinations are required, by any qualified individual(s).

- 3.2 Any property owner who disputes the designation of any part of his or her land as a regulated area on the Inland Wetlands and Watercourses Map, may petition the Agency to change the designation in accordance with section 14 of these regulations. All petitions for a map change shall be submitted in writing and shall include all relevant facts and circumstances which support the change. The Petitioner shall provide proof that the designation is inapplicable. Documentation in accordance with section 14 of these regulations may be required of the property owner when the agency requires an accurate delineation of regulated areas.
- 3.3 The Agency or its designated agent(s) shall inventory and maintain current records of all regulated areas within the town. the Agency may amend its map from time to time as information becomes available relative to more accurate delineation of wetlands and watercourses within the town. Such map amendments are subject to the public hearing process outlined in section 14 of these regulations.

#### **SECTION 4 PERMITTED USES AS OF RIGHT & NONREGULATED USES**

- 4.1 The following operations and uses shall be permitted in inland wetlands and watercourses, as of right:
- a. Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, or the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale;
  - b. A residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a or as of July 1, 1974, which ever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the building permit was obtained on or before July 1, 1987. The individual claiming a use of wetlands permitted as a right under this subdivision shall document the validity of said right by providing a certified copy of the building permit and a site plan showing proposed and existing topographic contours, house and well locations,

septic system, driveway, approval dates or other necessary information to document his entitlement;

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 (provided that in any town where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres) and containing a residence. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of substantial amounts of material from or into a wetlands or watercourse, or diversion or alteration of a watercourse.

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

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

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

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

4.3 All activities in wetlands or watercourses involving filling, excavation, dredging, clear cutting, grading and excavation or any other alteration or use of a wetland or watercourse not specifically permitted by this section shall require a permit from the Agency in accordance with section 6 of these regulations.

4.4 To carry out the purposes of this section, any person proposing to carry out a permitted or 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 Agency on a form provided by it, and provide the Agency with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or nonregulated use of the wetland or watercourse. The Agency 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 Agency following the meeting at which the request was received. The designated agent for the Agency may make such ruling on behalf of the agency at any time.

## **SECTION 5            ACTIVITIES REGULATED BY THE STATE**

- 5.1 In addition to any permit or approval required by the Agency, the Commissioner of Environmental Protection shall regulate activities in or affecting wetlands or watercourses subject to the following jurisdiction:
- a. Construction or modification of any dam pursuant to sections 22a-401 through 22a-409 of the General Statutes, as amended;
  - b. Construction, encroachment or placement of any obstruction within stream channel encroachment lines pursuant to sections 22a-342 through 22a-349 of the General Statutes, as amended;
  - c. Construction or placement of any structure or obstruction within the tidal, coastal or navigable waters of the state pursuant to sections 22a-359 through 22a-363 or in designated tidal wetlands pursuant to sections 22a-28 through 22a-35 of the General Statutes, as amended;
  - d. Diversion of water including withdrawals of surface or groundwater in excess of fifty thousand (50,000) gallons per day, or any change in the instantaneous flow of any surface waters of the state where the tributary watershed area above the point of diversion is 100 acres or larger pursuant to sections 22a-365 through 22a-378 of the General Statutes, as amended;
  - e. Discharges into the waters of the state pursuant to section 22a-430 of the General Statutes, as amended;
  - f. Discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under section 404 of the Federal Clean Water Act.
- 5.2 The Commissioner of Environmental Protection shall have exclusive jurisdiction over regulated activities in or affecting wetlands or watercourses, undertaken by any department, agency or instrumentality of the state of Connecticut, except any local or regional board of education, (1) after an advisory decision on such license or permit

has been rendered to the commissioner by the wetland agency of the municipality within which such wetland is located or (2) thirty-five days after receipt by the commissioner of such application, whichever occurs first.

- 5.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to sections 22a-28 through 22a-35 of the General Statutes as amended by Public Act 91-308.

## **SECTION 6 REGULATED ACTIVITIES TO BE LICENSED**

- 6.1 No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the Inland Wetlands Agency of the City of Derby.
- 6.2 The Agency shall regulate any operation within or use of a wetland or watercourse or an area fifty (50) feet in width bordering said wetlands or watercourse which is flagged by a registered soil scientist in the state of Connecticut involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses and any other regulated activity, unless such operation or use is permitted or non-regulated pursuant to section 4 of these regulations.
- 6.3 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Agency, or violating any other provision of these regulations, shall be subject to the enforcement proceedings and penalties prescribed in section 13 of these regulations and any other remedies as provided by law.
- 6.4. No person shall conduct or maintain an activity whereby the postdevelopment stormwater flows exiting from their property are above and beyond the predevelopment conditions. Such retentions of water shall meet a standard of one hundred (100) year storm with six (6) hour duration and would be reviewed for competency by the city engineer.

## **SECTION 7 APPLICATION REQUIREMENTS**

- 7.1 Any person wishing to undertake a regulated activity shall apply for a permit on a form entitled "City of Derby Inland Wetland Agency Application for Permission to conduct a regulated activity within an inland wetland or water course area in the City of Derby." An application shall include an application form and such information as prescribed by subsection 7.4 and, in the case of a significant activity, by subsection 7.5 of these regulations. Application forms may be obtained in the offices of the Building Department of the City of Derby or the Inland Wetlands Agency.
- 7.2 All applications shall contain such information that is necessary for a fair and informed determination of the issues.

- 7.3 The Agency and the applicant may hold a pre-application meeting to determine whether or not the proposed application involves a significant activity.
- 7.4 All applications shall include the following information in writing or on maps or drawings:
- a. The applicant's name, home and business address and telephone numbers;
  - b. The owner's name, address and telephone number and written consent if the applicant is not the owner of the property involved in the application;
  - c. Applicant's interest in the land;
  - d. The geographical location of the property which is to be affected by the proposed activity 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;
  - f. Alternatives considered by the applicant and why the proposal to alter wetlands set forth in the application was chosen. These alternatives shall be diagrammed on a site plan or drawing;
  - g. A site plan showing existing and proposed conditions in relation to wetlands and watercourses;
  - h. Names and addresses of adjacent property owners;
  - i. Certification that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information;
  - j. Authorization for the commissioners and agents of the Agency to inspect the property, at reasonable times, both before and after a final decision has been issued;
  - k. Any other information the Agency deem necessary to the understanding of what the applicant is proposing;
  - l. Submission of the appropriate filing be based on the fee schedule established in section 18 of these regulations.
- 7.5 If the proposed activity involves a significant activity as determined by the Agency and defined in section 2 of these regulations, it will be considered as a Plenary ruling and additional information, based on the nature and anticipated effects of the activity, including but not limited to the following is required:
- a. Site plans for the proposed use or operation and the property which will be affected which show existing and proposed conditions, wetland and watercourse boundaries, land contours, boundaries of land ownership, proposed alternations

and uses of wetlands and watercourses, and other pertinent features of the development drawn by a licensed surveyor, professional engineer or landscape architect registered in the State of Connecticut or by such other qualified person;

b. Engineering reports and analyses and additional drawings to fully describe the proposed project and any filling, excavation, drainage or hydraulic modifications to watercourses and the proposed erosion and sedimentation control plan;

c. Mapping of soil types consistent with the categories established by the National Cooperative Soil Survey of the U.S. Soil Conservation Service (the Agency may require the applicant to have the wetlands delineated in the field by a soil scientist and that the field delineation be incorporated onto the site plans);

d. Description of the ecological communities and functions of the wetlands or watercourses involved with the application and the effects of the proposed regulated activities on these communities and wetland functions;

e. Description of how the applicant will change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application and each alternative, and a description of why each alternative considered was deemed neither feasible nor prudent;

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

g. Measures which mitigate the impact of the proposed activity. Such measures include, but are not limited to, plans or actions which avoid destruction or diminution of wetland or watercourse functions, recreational uses and natural habitats, which prevent flooding, degradation of water quality, erosion and sedimentation and obstruction of drainage, or which otherwise safeguard water resources.

7.6 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.

7.7 Four (4) copies of all application materials shall be submitted to comprise a complete application or as is otherwise directed, in writing, by the Agency.

7.8 Any application to extend the expiration date of a previously issued permit or amend an existing permit shall be filed with the Agency at least sixty-five (65) day prior to the

expiration date for the permit in accordance with section 8 of these regulations. Any application for amendment, renewal or extension shall be made in accordance with this subsection provided:

- a. The application may incorporate by reference the documentation and record of the original application;
  - b. The application shall state the reason why the authorized activities were not initiated or completed within the time specified in the permit;
  - c. The application shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses or the property for which the permit was issued;
  - d. The Agency may accept an untimely application to extend the expiration date of a permit if the authorized activity is ongoing and allow the continuation of work beyond the expiration date if in its judgment, the permit is likely to be extended and the public interest or environment will be best served by not interrupting the activity; the application shall describe the extent of work completed at the time of filing and the schedule for completing the activities in the permit;
  - e. The Agency shall evaluate the application pursuant to section 10 of these regulations and grant the application as filed, grant it with any terms or limitations, or deny it.
- 7.9 A reporting form shall be completed during the application process which provides the Commissioner of the Department of Environmental Protection with information necessary to properly monitor the inventory of State wetlands. The reporting form shall be part of the application and the following information shall be provided by the applicant: name of applicant; location and name of the project; project and site description; area of wetlands and/or linear feet of watercourse proposed to be altered. The Agency shall be responsible for the remaining information and any corrections on the form and for filing it in accordance with section 22a-39-14 of the Inland Wetlands and Watercourses Regulations of the Department of Environmental Protection.

## **SECTION 8      APPLICATION PROCEDURES**

- 8.1 All applications shall be submitted to the Agency of the City of Derby.
- 8.2 In the case of any application where any portion of the wetland or watercourse on which the regulated activity is proposed is located within 500 feet of the boundary of Ansonia, Orange, Seymour, Shelton or Woodbridge, the applicant shall give written notice of the proposed activity, certified mail return receipt requested, to the adjacent municipal wetlands agency on the same day of filing an inland wetland permit application with the Derby Inland Wetlands Agency. Documentation of such notice

shall be provided to the Derby Inland Wetlands Agency in accordance with section 22a-42c of the general Statutes.

8.3 The Agency shall, in accordance with Connecticut General Statutes section 22a-42b, notify the clerk of any adjoining municipality of the pendency of any application to conduct a regulated activity when:

- a. Any portion of the property on which the regulated activity is proposed is located within 500 feet of the boundary of an adjoining municipality;
- b. A significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
- c. A significant portion of the sewer or water drainage from the project site will flow through and significantly impact the sewage or drainage system within the adjoining municipality; or,
- d. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Notice of the pendency of such application shall be made by certified mail, return receipt request 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 16-1 of the General Statutes, the applicant shall provide written notice of the application to the water company provided such water company has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the Inland Wetlands Agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of the application. The water company, through a representative, may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the agency.

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

8.6 At any time during the review period, the Agency may require the applicant to provide additional information about the regulated area or regulated activity which is the subject of the application, or the wetlands or watercourses affected by the regulated activity. Requests for additional information shall not stay the time limitations as set forth in subsection 11.2 of these regulations.

8.7 All applications shall be open for public inspection.

8.8 Incomplete applications may be denied.

## **SECTION 9 PUBLIC HEARINGS**

- 9.1 A public hearing shall be held on all applications involving a significant activity. A public hearing may be held on applications which do not involve significant activities if the Agency determines it is in the public interest. All applications and maps and documents relating thereto shall be open for public inspection. Any person may appear and be heard at any public hearing.
- 9.2 Notice of the public hearing shall be published at least twice at intervals of not less than two days, the first not more than fifteen days and not fewer than ten days, and the last not less than two days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetland and watercourse is located.
- 9.3 Notice of the public hearing shall be mailed to the owner(s) of record of abutting land no less than fifteen 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(es) has received notice of the pendency of the application. Proof of such notification shall be entered into the hearing record.

## **SECTION 10 CONSIDERATIONS FOR DECISION**

- 10.1 The Agency may consider the following in making its decision on an application:
  - a. The application and its supporting documentation;
  - b. Public comments, evidence and testimony;
  - c. Reports from other agencies and commissions including but not limited to the City of Derby:
    1. Conservation Commission
    2. Planning, Zoning, or Planning and Zoning Commissions
    3. Building Official
    4. Health Officer.
  - d. The Agency may also consider comments on any application from the New Haven County Soil and Water Conservation District, the Valley Regional Planning Agency or other regional organizations (i.e. Council of Elected Officials); agencies in adjacent municipalities which may be affected by the proposed activity, or other technical agencies or organizations which may undertake additional studies or investigations.
  - e. Non-receipt of comments from agencies and commissions listed in subdivisions 10.1.c and d above within the prescribed time shall neither delay nor prejudice the decision of the Agency.

10.2 Standards and Criteria for Decision.

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

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

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

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

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

10.4 In reaching its decision on any application after a public hearing, the Agency shall base its decision on the record of that hearing. Documentary evidence or other material not in the hearing record shall not be considered by the agency in its decision. 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 his application is consistent with the purposes and policies of the Inland Wetlands and Watercourses Regulations of the City of Derby and of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes.

## **SECTION 11      DECISION PROCESS AND PERMIT**

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

11.2 No later than sixty five (65) days after receipt of an application, the Agency may hold a public hearing on such application. The hearing shall be completed within forty-five (45) days of its commencement. Action shall be taken on applications within thirty-five (35) days after completion of a public hearing. In the absence of a public hearing, action shall be taken on applications within sixty-five (65) days from the date of receipt of the application. The applicant may consent to one or more extensions of the periods

specified in this subsection for the holding of the hearing and for action on such application, provided the total extension of any such period shall not be for longer than the original period as specified in this subsection, or may withdraw such application. The failure of the Inland Wetlands Agency to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the application. An application deemed incomplete by the agency must either be withdrawn by the applicant or denied by the agency.

- 11.3 The Agency shall state upon its record the reasons and bases for its decision and, in the case of any public hearing, such decision shall be based fully on the record of such hearing and shall be in writing and shall incorporate a statement relative to the consideration of feasible and prudent alternatives.
- 11.4 The Agency shall notify the applicant and any named parties to the proceeding of its decision with fifteen (15) days of the date of the decision by certified mail, return receipt requested, and the agency shall cause notice of its order in the issuance or denial of the permit, to be published in a newspaper having general circulation in the town wherein the inland wetland or watercourse lies. In any case in which such notice is not published within such fifteen day period, the applicant may provide for the publication of such notice within ten days thereafter.
- 11.5 If an activity authorized by the inland wetland permit also involves an activity or project which requires zoning or subdivision approval, a special zoning permit, variance or special exception, a copy of the decision and report on the application shall be filed with the City of Derby Planning, Zoning or Planning and Zoning Commission within fifteen days of the date of the decision.
- 11.6 Any permit under this section shall be valid for at least two years and the agency may provide for the permit to be valid for up to five years, provided the permittee may apply for and the agency may, at its discretion, grant a renewal of such permit for successive periods of time not to exceed an additional five years.
- 11.7 No permit shall be assigned or transferred without the written permission of the Agency.
- 11.8 If a bond or insurance is required in accordance with section 12 of these regulations, no permit shall be issued until such bond or insurance is provided.
- 11.9 General provisions in the issuance of all permits:
- a. If the Agency relied in whole or in part on information provided the applicant and if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked.
  - b. All permits issued by the Agency are subject to and do not derogate any present or future rights or powers of the Agency or the City of Derby, and convey no rights in real estate or material nor any exclusive privileges, and are further

subject to any and all public and private rights and to any federal, state, and municipal laws or regulations pertinent to the property or activity.

- c. If the activity authorized by the inland wetland permit also involves an activity or a project which requires zoning or subdivision approval, special permit, variance or special exception, no work pursuant to the wetland permit may begin until such approval is obtained.
- d. The permittee shall take such necessary steps consistent with the terms and conditions of the permit, to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.
- e. Permits are not transferable without the prior written consent of the agency.

11.10 If the Agency finds, on the basis of the evidence before it, that a proposed activity or use does not involve a regulated activity as defined in section 2.1 of these regulations, the application shall be ruled as a Declaratory Ruling. This ruling shall be subject to review by the Agency if it is later shown that a regulated activity is a consequence of that proposed activity.

11.11 If the Agency finds that a proposed activity is a regulated activity not involving significant impact or major effect on the inland wetland or watercourse, as defined in section 2.1 of these regulations, it may allow the activity with or without conditions after initial review and be decided as a Summary Ruling. In order to grant a permit at this stage, the Agency (after full review of the considerations set forth in section 10 of these regulations and other pertinent factors) shall issue an opinion presenting the reason for granting the permit with or without conditions.

11.12 All permits are considered incomplete until payment of fees and consultant and professional fees are paid in full. Per ordinance adopted by the City of Derby on April 9, 1987 it states "that any applicant who proposes any project to any Board, Commission, Authority or Agency of the municipality of Derby shall pay all fees and cost of any consultant or professional who shall be engaged or contacted in order for the Board, commission, Authority or Agency to adequately and appropriately review said project or the effect of said project. These fees and costs must be paid directly to the City Clerk on a monthly basis. No board, commission, authority or agency shall continue review of or approve said project until it receives written verification from the City Clerk that all fees and costs have been timely paid."

11.13 The developer shall submit to the Agency upon completion of any structure or project an as-built map drawn to a scale of one (1) inch equal to forty (40) feet minimum. The as-built drawing(s) shall be ink on mylar, signed and sealed by a land surveyor licensed in the State of Connecticut, depicting the locations and elevations of all structures proposed on the construction plans.

The release of any posted bond or issuance of a housing permit shall be withheld until the as-built map is properly submitted and approved by the Agency during a duly authorized meeting.

After approval of the As-Built plan(s), the Agency can release the performance bond and request a maintenance bond for a period of one year in the amount approved by the Agency at not less than five (5) percent of the current cost of the original construction cost of the facilities.

## **SECTION 12      BOND AND INSURANCE**

- 12.1 Upon approval of the application and prior to issuance of a permit, the applicant may, at the discretion of the Agency, be required to file a bond with such surety in such amount and in a form approved by the Agency and the Corporation Council of the City of Derby.
- 12.2 The bond or surety shall be conditioned on compliance with all provisions of these regulations and the terms, conditions and limitations established in the permit.
- 12.3 The Agency may require the applicant to certify that it has public liability insurance against liability which might result from the proposed operation or use of the wetlands or watercourses covering any and all damage which might occur within two (2) years of completion of such operation, in an amount commensurate with the regulated

## **SECTION 13      ENFORCEMENT**

activity.

- 13.1 The Agency 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.
- 13.2 The Agency or its agent may make regular inspections, at reasonable hours, of all regulated activities for which permits have been issued under these regulations.
- 13.3 If the Agency or its designated agent finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the Act or these regulations, the agency or its duly authorized agent may:
- a. issue a written order by certified mail, return receipt requested, to such person conducting such activity or maintaining such facility or condition to immediately cease such activity or to correct such facility or condition. Within ten (10) calendar days of the issuance of such order the agency shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Agency shall consider the facts presented at the hearing and within ten(10) days of the completion of the

hearing notify the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The Agency shall publish notice of its decision in a newspaper having general circulation in the municipality. The original order shall be effective upon issuance and shall remain in effect until the agency affirms, revises or withdraws the order. The issuance of an order pursuant to this subsection shall not delay or bar an action pursuant to section 22a-44(b) of the General Statutes, as amended.

- b. suspend or revoke a permit if it finds that the permittee has not complied with the terms, conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application including application plans. Prior to revoking or suspending any permit, the Agency shall issue notice to the permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action. The agency shall hold a hearing to provide the permittee an opportunity to show that it is in compliance with its permit and any and all requirements for retention of the permit. The permittee shall be notified of the Agency's decision to suspend, revoke, or maintain a permit by certified mail within fifteen (15) days of the date of its decision. The agency shall publish notice of the suspension or revocation in a newspaper having general circulation in the municipality.
- c. issue a notice of violation to such person conducting such activity or maintaining such facility or condition, stating the nature of the violation, the jurisdiction of the Agency, and prescribing the necessary action and steps to correct the violation including, without limitation, halting work in wetlands or watercourses. The Agency may request that the individual appear at the next regularly scheduled meeting of the Agency to discuss the unauthorized activity, and/or provide a written reply to the notice or file an application for the necessary permit. Failure to carry out the action(s) directed in a notice of violation may result in issuance of the order provided in subdivision 13.3.a or other enforcement proceedings as provided by law.

## **SECTION 14      AMENDMENTS**

14.1.a These regulations and the Inland Wetlands and Watercourses Map for the City of Derby may be amended, from time to time, by the Agency in accordance with changes in the Connecticut General Statutes or regulations of the State Department of Environmental Protection, or as new information regarding soils and inland wetlands and watercourses become available.

- 14.1.b An application filed with an Inland Wetlands Agency which is in conformance with the applicable inland wetlands regulations as of the date of the decision of such agency with respect to such application shall not be required thereafter to comply with any change in inland wetlands regulations, including changes to setbacks and buffers, taking effect on or after the date of such decision and any appeal from the decision of such agency with respect to such application shall not be dismissed by the Superior Court on the grounds that such a change has taken effect on or after the date of such decision. The provisions of this subdivision shall not be construed to apply (1) to the establishment, amendment or change of boundaries of inland wetlands or watercourses or (2) to any change in regulations necessary to make such regulations consistent with the provisions of chapter 440 of the General Statutes as of the date of such decision.
- 14.2 These regulations and the City of Derby Inland Wetlands and Watercourse Map shall be amended in the manner specified in section 22a-42a of the Connecticut General Statutes, as amended. The Agency shall provide the Commissioner of Environmental Protection with a copy of any proposed regulations and notice of the public hearing to consider any proposed regulations or amendments thereto, except map amendments pursuant to subsection 14.3 of this section, at least thirty-five days before the public hearing on their adoption. (Fee schedules shall be adopted as Agency regulations or as otherwise provided by municipal ordinance.)
- 14.3 Petitions requesting changes or amendments to the "Designated Inland Wetlands and Water Courses of the City of Derby" map shall contain at least the following information:
- a. The applicant's name, address and telephone number;
  - b. The owner's name (if not the applicant), address, telephone number, and a written consent to the proposed action set forth in the application;
  - c. Applicant's interest in the land;
  - d. The geographic location of the property involved in the petition including a description of the land in sufficient detail to allow identification of the disputed wetland or watercourse areas;
  - e. The reasons for the request action;
  - f. The names and addresses of adjacent property owners; and
  - g. A map showing proposed development of the property.
- 14.4 The Agency may require the petitioner to present documentation by a soil scientist that the land in question does not have a soil type classified by the National Cooperative soils survey as poorly drained, very poorly drained, alluvial, or flood plain. Such documentation includes a map of the land in question signed by a soil scientist on which the flag locations defining the boundaries of the regulated soil types are depicted.

- 14.5 Watercourses shall be delineated by a soil scientist, geologist, ecologist or other qualified individual.
- 14.6 A public hearing shall be held on petitions to amend the Inland Wetlands and Watercourses Map. Notice of the time and place of such hearing shall be published in the form of a legal advertisement, appearing in a newspaper having a substantial circulation in the municipality at least twice at intervals of not less than two (2) days, the first not more than fifteen (15) days nor less than ten (10) days, and the last not less than two (2) days, before such hearing. A copy of such proposed boundary change shall be filed in the office of the town clerk for public inspection at least ten days before such hearing.
- 14.7 Within ninety (90) days after receipt of a petition for a change in the mapped boundaries of any wetland or watercourse, the Agency shall hold a public hearing to consider the petition. The Agency shall act upon the changes requested in such petition within sixty (60) days after the close of the hearing. The petitioner may consent to one or more extensions of the periods specified in this subsection for the holding of the hearing and for action on such petition, provided the total extension of any such period shall not be for longer than the original period as specified in this subsection, or may withdraw such petition. The failure of the Inland Wetlands Agency to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the petition.
- 14.8 The Agency shall make its decision and state, in writing, the reasons why the change in the Inland Wetlands and Watercourses Map was made.

#### **SECTION 15 APPEALS**

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

#### **SECTION 16 CONFLICT AND SEVERANCE**

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

#### **SECTION 17 OTHER PERMITS**

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

**SECTION 18 APPLICATION FEES**

18.1 Method of Payment. All application fees required by these regulations per section 18.5 shall be submitted to the Agency through the City Clerk by certified check or money order payable to the City of Derby at the time the application is filed with the Agency.

18.2 No application shall be granted, approved or considered final by the Agency unless all fees are paid in full or unless a waiver has been granted by the Agency pursuant to subsection 18.7 of these regulations.

18.3 The application fee is not refundable.

18.4 Definitions. As used in this 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.

18.5 Fee Schedule. Fees shall be based on the following schedule:

	<b>Residential</b>	<b>Residential</b>	<b>Commercial or Other</b>
	one to four units	five or more units	
<b>Application fee</b>	\$ 25.00		\$100.00
<b>Declaratory ruling</b>	\$ 0.00		\$ 0.00
<b>Summary ruling</b>	\$ 100.00	\$ 25.00 per unit*	\$200.00
<b>Plenary ruling</b>	\$ 300.00	\$ 50.00 per unit**	\$500.00

\* maximum permit fee for Residential Summary ruling is \$300.00

\*\* maximum permit fee for Residential Plenary ruling is \$750.00

As per section 11.12 of these regulations all professional and consultant fees incurred by this Agency will be added to the fees listed above.

18.6 Exemption. Boards, commissions, councils and department of the City of Derby are exempt from all fee requirement.

18.7 Waiver. The applicant may petition the Agency to waive, reduce or allow delayed payment of the fee. Such petitions shall be in writing and shall state fully the facts and circumstance the Agency should consider in its determination under this subsection.

The Agency may waive all or part of the permit fee if the Agency 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 permit fee, or
- b. The amount of the permit fee is clearly excessive in relation to the cost to the Town for reviewing and processing the application.

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

### **SECTION 19 RECORDS RETENTION AND DISPOSITION**

19.1 The Agency and the City Clerk for the City of Derby shall retain complete administrative records of Agency actions and dispose of such records in accordance with the retention/disposition schedules set for in subsection 19.2

19.2 The public records administrator of the Connecticut State Library established the following new records retention/disposition schedules for municipal Inland Wetlands Agencies effective April 24, 1989:

RECORD TITLE	MINIMUM RETENTION REQUIRED IN AGENCY	CITY CLERK
Applications (inc. supporting materials)	10 years	-
Decision Letters	10 years	Permanent
Approval 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 Wetlands Matters	4 years	-
Notice of Violation & Orders	10 years	-
Text of Changes Adopted in Regulations	Continuous Update/ Permanent	-
General Correspondence Issued or Received	5 years	-

**SECTION 20      EFFECTIVE DATE OF REGULATIONS**

20.1 These regulations including the Inland Wetlands and Watercourses map, applications forms, fee schedule and amendments thereto, shall become effective upon filing in the Office of the City Clerk and publication of a notice of such action in a newspaper having general circulation in the City of Derby.