

Sherman Inland Wetlands and Watercourse Regulations

**TABLE OF CONTENTS**

SECTION 1 - TITLE AND AUTHORITY ..... 1  
SECTION 2 - DEFINITIONS ..... 2  
SECTION 3 - REGULATED AREAS ..... 9  
SECTION 4 - PERMITTED USES AND NONREGULATED USES ..... 10  
SECTION 5 - ACTIVITIES REGULATED BY THE STATE..... 11  
SECTION 6 - REGULATED ACTIVITIES TO BE LICENSED..... 13  
SECTION 7 - APPLICATION REQUIREMENTS ..... 13  
SECTION 8 - APPLICATION PROCEDURES ..... 18  
SECTION 9 - PUBLIC HEARINGS ..... 19  
SECTION 10 - CONSIDERATIONS FOR DECISION ..... 20  
SECTION 11 - DECISION PROCESS AND PERMIT ..... 23  
SECTION 12 - ACTION BY DULY AUTHORIZED AGENT ..... 26  
SECTION 13 - SURETY AND INSURANCE ..... 26  
SECTION 14 - ENFORCEMENT ..... 27  
SECTION 15 - AMENDMENTS ..... 28  
SECTION 16 - APPEALS ..... 30  
SECTION 17 - CONFLICT AND SEVERANCE..... 30  
SECTION 18 - OTHER PERMITS ..... 31  
SECTION 19 - EFFECTIVE DATE OF REGULATIONS ..... 31

SCHEDULE A – PERMITTED AND NONREGULATED ACTIVITES FORM  
SCHEDULE B – LICENSE APPLICATION FORM  
SCHEDULE C – SIGNIFICANT IMPACT ACTIVITY ADDENDA FORM  
SCHEDULE D – LICENSE EXTENSION FORM  
SCHEDULE E – CONTRACTOR COMPLIANCE FORM  
SCHEDULE F – FEE SCHEDULE  
SCHEDULE G – MAP AMENDMENT FORM

APPENDIX A – STATEMENT OF INTENT FORM  
APPENDIX B – DEEP ACTIVITY REPORTING FORM  
APPENDIX C – CONNECTICUT GENERAL STATUTES SECTION 1-1(q)

## Sherman Inland Wetlands and Watercourse Regulations

### SECTION 1 TITLE AND AUTHORITY

- 1.1 Intent: “The inland wetlands and watercourses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the State have been endowed. The wetlands and watercourses are an interrelated web of nature, essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of ground water; and to the existence of many forms of animal, aquatic, and plant life. Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling, or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted, and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant adverse impact on the environment and ecology of the State of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic, and recreational values and benefits of the State for its citizens now and forever more. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to health, welfare, and safety of the citizens of the State. It is, therefore, the purpose of this act 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 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 values and securing fresh water supplies from the danger 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 the benefit and enjoyment of generations yet unborn.” From Section 22a-36 of the General Statutes of the State of Connecticut, as amended.
- 1.2 Title: These regulations shall be known as the "Inland Wetlands and Watercourses Regulations of the Town of Sherman" and are referred to herein as the “Regulations”.
- 1.3 Inland Wetlands Agency: The Inland Wetlands and Watercourses Agency/Commission of the Town of Sherman was established in accordance with an ordinance adopted September 14, 1973, and shall implement the purposes and provisions of the Inland Wetlands and Watercourses Act of the State of Connecticut in the Town of Sherman.
- 1.4 Adoption: These regulations were originally adopted in January 1975 and have since been amended. They may be further amended, from time to time, in accordance with the

## Sherman Inland Wetlands and Watercourse Regulations

provisions of the Inland Wetlands and Watercourses Act and these Regulations.

- 1.5 Authority to Enforce: The Agency shall enforce all provisions of the Inland Wetlands and Watercourses Act and shall issue, with terms, conditions, limitations or modifications as relevant, or deny Licenses for all regulated activities on inland Wetlands and Watercourses in the Town of Sherman pursuant to Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended. The Agency may, by resolution, delegate the Authority to Enforce to a Duly Authorized Agent. See Section 14 of these Regulations.
- 1.6 Upland Review Area Authority: Under the Act the Agency has broad authority to issue Licenses not only for activities in Wetlands or Watercourses themselves, but for activities located elsewhere when such activities are likely to impact or affect Wetlands or Watercourses. Therefore, these Regulations shall also apply to areas surrounding Wetlands and Watercourses known as “Upland Review Areas” as defined herein. The relationship between a Wetland or Watercourse and its surrounding Upland Review Area is complex. Upland land clearing, excavating, filling, and other construction activities if not properly planned and executed, can have significant impacts on adjacent Wetlands and Watercourse. An Upland Review Area activity that is likely to impact or affect Wetlands or Watercourses is a Regulated Activity under these Regulations. In addition to requiring Licenses for activities within the defined Upland Review Area, the Agency has authority to regulate proposed activities located in more distant upland areas if it finds that the activities are likely to impact or affect a Wetland or Watercourse.

## SECTION 2 DEFINITIONS

2.1 As used in these Regulations:

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

“Adjacent property” means property which is contiguous and property which would be contiguous if it were not separated by a road.

“Agency” means the Sherman Inland Wetlands and Watercourses Commission established pursuant to and acting under Section 22a-42 of the General Statutes of the State of Connecticut, as amended. “Commission” may sometimes be interchangeably used in these Regulations with “Agency”.

“Agency Assistant” means the Administrative Assistant appointed by the Town to support the Agency’s activities.

“Agency Member” means a member of the Agency. “Agency Member” may sometimes be interchangeably used in these Regulations with “Commission Member”.

## Sherman Inland Wetlands and Watercourse Regulations

“Applicant” means any Person who has submitted an Application to the Agency.

“Application” means an application for a License to conduct Regulated Activities, including an Application to renew, amend or extend an existing License, that is filed pursuant to Section 7 of these Regulations and is in the form prescribed by the Agency. The License Application Form is attached hereto as Schedule B, and the Permit Extension Form is attached hereto as Schedule C.

“Bogs” means a poorly drained area distinguished by evergreen trees and shrubs underlain by peat deposits, poor drainage, and highly acidic conditions.

“Buffer” means a vegetated area inclusive of trees and shrubs and herbaceous vegetation that exists or is established to protect a Wetland or Watercourse.

“Clear-cutting” means the cutting of timber products in a fashion which removes most trees 2 inches or above in diameter measured at chest height.

“Commission” - See “Agency”.

“Commission Member” - See “Agency Member”.

“Commissioner of Energy and Environmental Protection” means the Commissioner of the DEEP.

“Connecticut Natural Diversity Data Base Map” means a map produced by the DEEP representing approximate locations of endangered, threatened, and special-concern species and significant natural communities in Connecticut, as amended.

“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 thereof, 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 it recurs in prolonged succession.

“DEEP” means the State of Connecticut Department of Energy and Environmental Protection.

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

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

## Sherman Inland Wetlands and Watercourse Regulations

“Duly Authorized Agent” means the Sherman Inland Wetlands and Watercourses Enforcement Officer.

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

“Established Review Area” means the area within:

- a. 100 horizontal feet of any Wetland or OHWM of a Watercourse (unless a greater distance is specified herein);
- b. 200 horizontal feet of the OHWM of Candlewood Lake, including Squantz Pond; and
- c. 150 horizontal feet of the OHWM of the following Watercourses:
  - i. Lake Mauweehoo
  - ii. Timber Lake
  - iii. Valley Lake
  - iv. Deer Pond
  - v. Spring Lake
  - vi. Pepper Pond
  - vii. Green Pond
  - viii. Haviland Mill Pond
  - ix. Quaker Pond North
  - x. Quaker Pond South
  - xi. Ten Mile River
  - xii. Housatonic River
  - xiii. Saw Mill Brook
  - xiv. Tollgate Brook
  - xv. Greenwoods Brook
  - xvi. Naromiyockknowhusunkatankshunk Brook
  - xvii. Quaker Brook
  - xviii. Wimisink Brook
  - xix. Glen Brook.

“Farming” shall be consistent with the definition as noted in Section 1-1(q) of the Connecticut General Statutes. (See Appendix C).

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

“FERC” means the United States of America Federal Energy Regulatory Commission.

“FERC Licensee” means FirstLight CT Housatonic Project LLC, as licensee from FERC for the Housatonic River Hydroelectric Project, and its successors by name change and license transfer.

“Gardening” means the tilling of soil, planting, cultivating and harvesting of produce.

## Sherman Inland Wetlands and Watercourse Regulations

“Grazing” means using any tract of land to feed or supply farm animals with grass or pasture.

“Grubbing” means to clear of roots, stumps, rocks and debris by digging, scraping or other surface and subsurface disturbance.

“Harvesting of crops” means gathering plants or plant or animal products which have been grown to be harvested.

“License” means the whole or any part of any license, permit, certificate of approval or similar form of permission which may be required of any person from the Agency or under the Act, and that is issued to an Applicant by the Agency pursuant to an Application.

“Licensee” means the person to whom a License has been issued.

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

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

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

“Municipality” means any town, consolidated town and city, consolidated town and borough, or city and borough.

“Ordinary High Water Mark” or “OHWM” means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas, as defined in Federal regulations (33 CFR 328.3(e)).

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

## Sherman Inland Wetlands and Watercourse Regulations

“Outside Consultant” means a professional who is not an employee of the Town and who is qualified in the relevant field of expertise, including but not limited to soil scientist, biologist, civil engineer and legal professionals.

“Permit” - See License.

“Person” means any person, firm, partnership, association, corporation, limited liability company, 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.

“Prudent” means economically and otherwise reasonable in light of the social benefits to be derived from the proposed Regulated Activity provided that cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

“Regulated Activity” means any operation within, or use of, a Wetland or Watercourse or activity which involves removal or deposition of material, discharge, clear cutting, obstruction, construction, alteration or pollution, of such Wetlands or Watercourses, but shall not include the specified activities in Section 4 of these Regulations. The Agency may rule that any other activity located within an Upland Review Area or in any other non-Wetland or non-Watercourse area that is likely to impact or affect Wetlands or Watercourses is a Regulated Activity, including any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water within or beyond the Upland Review Area. Without limiting the foregoing, activities within an Established Review Area or a Significant Impact Activity are deemed Regulated Activities.

“Remove” includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, grub, clear-cut, 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 Impact Activity” means any activity 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. Significant Impact Activities include, but are not limited to, the following activities:

- a. Any activity involving deposition or removal of material which will or may have a

## Sherman Inland Wetlands and Watercourse Regulations

- substantial effect on the Wetland or Watercourse or on Wetlands or Watercourses outside the area for which the activity is proposed;
- b. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system;
  - c. Any activity which substantially diminishes the natural capacity of an inland Wetland, Watercourse to support aquatic plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions;
  - d. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a Wetland or Watercourse;
  - e. Any activity which causes a substantial diminution of flow of a natural Watercourse, or groundwater levels of the Wetland or Watercourse.
  - f. Any activity which causes or has the potential to cause pollution of a Wetland or Watercourse;
  - g. Any activity which creates conditions which may adversely affect the health, welfare and safety of any individual or the community;
  - h. Any activity which involves a sewage disposal (septic) system within separating distances as specified by the current regulations of the Connecticut State Department of Health, and/or the Sanitary Code of Sherman as amended whichever is more restrictive; or
  - i. Any activity which destroys unique Wetland or Watercourse areas having demonstrable scientific, educational, recreational or aesthetic value.

“Site Visit” means a visit to a location by the Agency, Agency Member, or Duly Authorized Agent in connection with these Regulations, including for the purposes of viewing existing conditions and indications of proposed future plans pursuant to an Application, or assessment or remediation of a violation or potential violation, or an assessment of the need for a License.

“Soil Scientist” means an individual duly qualified in accordance with standards set by the Federal Office of Personnel Management, as defined in the General Statutes of Connecticut (Revised to January 1, 2007), Title 22a, Chapter 440, Inland Wetlands and Watercourses Act Section 22a-38, as the same may be amended.

“State” means the State of Connecticut.

“Subdivision” means subdivision, re-subdivision, lot line change that creates new building lot(s), redesignation of land from parcel to building lot(s) or any other change that creates new building lot(s).

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

“Town” means the Town of Sherman, Fairfield County in the State of Connecticut.

## Sherman Inland Wetlands and Watercourse Regulations

"Upland Review Area" means any areas beyond the Established Review Area which are likely to impact or affect Wetlands or Watercourses due to special circumstances determined by the Agency on a case-by-case basis, including:

- a. steep slopes, including the potential sedimentation and erosion effect of cuts and fills on steep slopes;
- b. the presence of highly erodible soils;
- c. impervious surfaces;
- d. the management of storm water discharges to minimize the opportunity for adverse impacts of such discharges to Wetlands or Watercourses;
- e. topographical features; or
- f. any other consideration the Agency or Agency's staff may consider appropriate to include for the purpose of conducting its review operations.

In making determinations as to the extent of the Upland Review Area, the Agency or its Duly Authorized Agent may consider the input and publications of the United States Department of Agriculture, Natural Resources Conservation Service and the Connecticut Department of Energy and Environmental Protection. Such resources may include Highly Erodible Soil Map Units of Connecticut, USDA-NCRS (1986) as revised, for the identification of highly erodible soils and evaluation erosion potential for construction activity; Seepage and Pollutant Renovation (DEP Bulletin #7) and Carrying Capacity of Public Water Supply Watersheds (DEP Bulletin #11).

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

"Watercourses" means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town or any portion thereof not regulated pursuant to section 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes. Intermittent Watercourses are 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; or
- c. the presence of hydrophytic vegetation.

"Wetlands" means land, including submerged land as defined in this section, not regulated pursuant to Sections 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 floodplain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Natural Resources Conservation Service of the United States 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.

## Sherman Inland Wetlands and Watercourse Regulations

### SECTION 3 REGULATED AREAS

- 3.1 The "Inland Wetlands and Watercourses Map, Sherman, Connecticut" delineates the general location and boundaries of larger inland Wetland areas and the general location of most Watercourses in the Town. It is based on the Soil Survey of Fairfield County published by the Natural Resources Conservation Service of the United States Department of Agriculture. Those soils described as poorly drained, very poorly drained, and alluvial or floodplain in this survey are designated Wetlands. This map is available for inspection at the office of the Agency. Because of the scale of this map and the fact that it is basically a soils map, it may be difficult or impossible to determine exact soil boundaries in relation to property lines by reference to the map. In addition, watercourse areas, such as intermittent streams, often may not be shown because the map is based on soil types. Because of these limitations the map is advisory only. In all cases, the precise location of regulated areas shall be determined by the actual character of the land, the distribution of regulated soil types, and locations of Watercourses. In determining the location of the boundaries of Wetlands and Watercourses, the Agency may use aerial photography, remote sensing imagery, resource mapping, soils maps, site inspection observations, testing conducted by a Soil Scientist where soil classifications are required, or where Watercourse determinations are required, by other qualified individuals deemed acceptable to the Agency.
- 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 Wetlands and Watercourses in accordance with Section 15 of these Regulations.
- 3.3 When the Agency requires an accurate delineation of Wetlands and Watercourses, the Agency may require an Applicant to first submit a petition for a change in the Sherman Inland Wetlands and Watercourses Map with documentation in accordance with Section 15 of these Regulations.
- 3.4 The Agency shall maintain a current inventory of Wetlands and Watercourses within the Town. The Agency may amend its map as more accurate information becomes available.
- 3.5 All map amendments are subject to the public hearing process outlined in Section 15 of these Regulations.

## Sherman Inland Wetlands and Watercourse Regulations

### SECTION 4 PERMITTED USES AND NONREGULATED USES

- 4.1 Permitted uses as of right: The following operations and uses shall be permitted in 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 DEEP for the purposes of Wetland or Watercourse restoration or enhancement or mosquito control. The provisions of this section shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of Watercourses with continual flow, filling or reclamation of Wetlands or Watercourses with continual flow, clear-cutting of timber except for the expansion of agricultural crop land, or the mining of topsoil, 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 approved by the Planning and Zoning Commission of the Town as of September 14, 1973, provided the building permit was obtained on or before July 1, 1987. Any person claiming a use of Wetlands permitted as of right under this section shall document the validity of said right by providing a certified copy of the building permit and approved site plan showing proposed and existing topographic contours, house and well locations, septic systems, driveways, approval dates or other information to document their 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 Town). Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of significant amounts of material from or 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 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 September 14, 1973, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this subsection “maintenance” means the removal, whether by hand or machine, of accumulated leaves, soil, or other debris, while the pipe remains in place.
  - g. Withdrawals of water for fire emergency purposes.
- 4.2 Nonregulated uses: The following operations and uses shall be permitted as a non-regulated use in Wetlands and Watercourses, provided they do not disturb the natural and

## Sherman Inland Wetlands and Watercourse Regulations

indigenous character of the Wetland or Watercourse by removal or deposition of material, clearing of the land, alteration or obstruction of water flow or pollution of the Wetland or Watercourse:

- a. Conservation of soil, vegetation, water, fish, shellfish, and wildlife.
- b. Outdoor recreation including play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin and scuba diving, camping, boating, waterskiing, 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 a 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.
- d. Routine maintenance of existing beach fronts where no more than twenty-four (24) cubic yards of coarse washed sand are proposed to be used and where the sand is proposed to be deposited to the water's edge.

4.3 All Regulated Activities not specifically permitted by this Section 4 shall require a License from the Agency in accordance with Section 6 of these Regulations or approval from the Duly Authorized Agent in accordance with Section 12 of these Regulations.

4.4 To carry out the purposes of this Section 4, any person proposing a permitted operation and use or a nonregulated operation shall, prior to commencement of such operation or use, notify the Agency on Schedule A (the "Sherman Inland Wetlands and Watercourses Administrative Approval for Permitted and Nonregulated Activities" form) 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 Watercourses. The Agency shall rule that the proposed operation and use (or portion thereof) is either a permitted or nonregulated operation and use, or is a Regulated Activity and a License is required. Such ruling shall be in writing and shall be made promptly after the meeting at which the request was received.

## SECTION 5 ACTIVITIES REGULATED BY THE STATE OR FEDERAL GOVERNMENT

- 5.1 In addition to any License or approval required by the Agency, the Commissioner of Energy and Environmental Protection also regulates activities in or affecting Wetlands or Watercourses, including, but not limited to:
- a. Construction or modification of any dam pursuant to Sections 22a-401 through 22a-410 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

## Sherman Inland Wetlands and Watercourse Regulations

- General Statutes, as amended;
- c. 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 change in the instantaneous flow of any surface waters of the State where the tributary watershed area above the point of such alteration is one hundred (100) acres or larger pursuant to the Act;
  - d. Discharges into the waters of the State pursuant to Section 22a-430 of the General Statutes, as amended; or
  - e. 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 Energy and Environmental Protection shall have exclusive jurisdiction over Regulated Activities and other activities, in or affecting Wetlands or Watercourses, undertaken by any department, agency or instrumentality of the State, except any local or regional board of education, pursuant to Sections 22a-39 and 22a-45a of the Connecticut General Statutes.
- 5.3. The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over the discharge or 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.
- 5.4. The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Environmental Protection under Section 22a-402 of the Connecticut General Statutes or a permit issued by the Commissioner of Energy and Environmental Protection under Section 22-403 of the Connecticut General Statutes. Any person receiving such dam repair or removal order or permit shall be required to obtain a permit from a municipal Wetlands agency for any action necessary to comply with said dam order or to carry out the activities authorized by said permit.
- 5.5 The FERC Licensee has authority to manage activities falling within the “Project Boundary”, which is an area that includes certain Candlewood Lake shoreline within the Town and which is commonly referred to as the area related to Candlewood Lake below the “440 line”. While the FERC Licensee has exclusive authority to approve or deny activities in the Project Boundary, it works cooperatively with the Agency and may seek the Agency’s input on such activities. Beyond providing such input, the Agency does not have jurisdiction over activities within the Project Boundary. Obtaining approval from the FERC Licensee for all proposed activities within the Project Boundary is solely the responsibility of the Applicant.

## Sherman Inland Wetlands and Watercourse Regulations

### SECTION 6 REGULATED ACTIVITIES TO BE LICENSED

- 6.1 Subject to the provisions of Sections 4 and 5 hereof, no person shall conduct or maintain a Regulated Activity without first obtaining a License for such activity from the Agency.
- 6.2 The Agency shall regulate any activity within the Established Review Area and the adjacent Upland Review Area and any 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 the adjacent Upland Review Area and any other Regulated Activity, unless such operation or use is permitted or nonregulated by the Agency pursuant to Sections 4 or 5 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, or operating under a License that has expired or has been revoked, 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 The Statement of Intent Form (Appendix A) is required by the Town for any type of new construction including, but not limited to, construction of a building, road, causeway, driveway, septic system, septic system repairs, culvert, bridge, dike, dam, channeling, ponds, or any activity concerning removal or placement of material in a Wetland or Watercourse. This form is reviewed by all commissions and agencies of the Town to determine if the proposed construction comes under their jurisdiction. The Agency or its Duly Authorized Agent will review the statement and shall inform the Applicant whether an Application for License for the licensing of a Regulated Activity is required.
- 7.2 Any person intending to conduct a Regulated Activity or to renew or amend a License to conduct such activity, shall apply for a License by completing the Application. The Application shall contain the information described in this section and any other information the Agency may reasonably require. Application forms may be obtained in the office of the Agency.
- 7.3 Any person submitting an application to the Town Planning and Zoning Commission for the subdivision or re-subdivision of land or a lot line change that creates a new building lot and involves land containing a Wetland or Watercourses shall, in accordance with Sections 8-3(g), 8-3(c), or 8-26, as applicable, of the Connecticut General Statutes, also submit an Application in accordance with this section. This Application shall be filed no later than the day such Planning and Zoning Commission application is filed.

## Sherman Inland Wetlands and Watercourse Regulations

- 7.4 All Applications shall contain such information as is necessary for a fair and informed determination thereon by the Agency.
- 7.5 The Agency and the Applicant may hold a pre-application meeting to determine whether the proposed Application involves a Regulated Activity.
- 7.6 All Applications shall include the following information in writing or on maps or drawings:
- a. The property owner's name, address, telephone number and email address.
  - b. If the Applicant is not the property owner:
    - i. The Applicant's name, home and business addresses, telephone numbers and e-mail address;
    - ii. 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;
    - iii. Applicant's interest in the land;
    - iv. Written consent from the property owner authorizing the Applicant to file the Application.
  - c. The contractor(s)'s name, address, telephone number and e-mail address, if applicable;
  - 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 Wetlands and Watercourses, the area(s) (in acres and square feet) of Wetlands or Watercourse disturbance, soil type(s) and vegetation, including Wetlands 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 License for the proposed Regulated Activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive Wetland or Watercourse resources;
  - f. If the proposed activity involves the construction or the erection of structures on the affected property, the description shall include blueprints or engineering or architectural plans or designs, or other sketches or drawings, as necessary to allow the Agency or the Duly Authorized Agent to make a decision on the Application;
  - g. Alternatives which would cause less or no environmental impact to Wetlands or Watercourses and why the alternative as set forth in the Application was chosen, with all such alternatives being diagramed on a site plan or drawing;
  - h. 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

## Sherman Inland Wetlands and Watercourse Regulations

- impact on Wetlands or Watercourses;
  - i. Copy of the Health Department's approved plan for a subsurface sewage disposal system, as applicable;
  - j. A project may have a conflict with a species or natural community if any part of the project is within a shaded area as shown on the Connecticut Natural Diversity Data Base Map. In all cases of overlap with a shaded area, the application shall include a copy of the submission of the Connecticut Natural Diversity Data Base Review Form to DEEP and DEEP's response;
  - k. Names and addresses of adjacent property owners;
  - l. 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 License through deception or through inaccurate or misleading information;
  - m. Authorization for the members and agents of the Agency to inspect the property, at reasonable times, both (i) during the pendency of an Application and for the life of the License and (ii) in the case of an Application for a License that has not been issued or an expired License, upon a reasonable basis to believe that an unlicensed Regulated Activity has occurred or is ongoing;
  - n. A completed DEEP Activity Reporting Form (Appendix B), which shall be submitted by the Agency or the Duly Authorized Agent to the Commissioner of Energy and Environmental Protection in accordance with Section 22a-39-14 of the Regulations of Connecticut State Agencies, provided that the Duly Authorized Agent may correct any inaccuracies of which they become aware prior to submission;
  - o. Relevant information from the FERC Licensee, including a FERC Licensee consent letter, if Section 5.5 of these Regulations are applicable;
  - p. Any other information the Agency deems necessary to fully understand the proposed project and the extent of any Regulated Activity; and
  - q. Submission of the appropriate filing fee based on the Fee Schedule attached hereto as Schedule F, as amended.
- 7.7 If the proposed activity involves a Significant Impact Activity, the Applicant shall submit to the Agency a Significant Impact Activity Form (Schedule C hereto) and the information listed thereon or as otherwise requested at the discretion of the Agency based on the nature and anticipated effects of the activity, including, but not limited to:
- a. Site plans for the proposed use or operation of the affected property identifying existing and proposed conditions, Wetland and Watercourse boundaries, Upland Review Area boundaries, land contours, existing stone walls, boundaries of land ownership, proposed alterations and uses of Wetlands and Watercourses, other relevant downstream areas, and other pertinent features of the land and the proposed activity, all as prepared by a professional engineer, land surveyor, architect, or landscape architect licensed by the State, or by other qualified person(s). The scale shall be of such size as to clearly show the proposed use or operation;
  - b. Engineering reports and analyses and additional drawings to fully describe the

## Sherman Inland Wetlands and Watercourse Regulations

- proposed activity including any filling, excavation, drainage or hydraulic modifications to Watercourses and the proposed erosion and sedimentation control plan;
- c. Mapping of soil types consistent with the categories established by the National Cooperative Soil Survey of the U.S. Natural Resources Conservation Service; the Wetlands shall be delineated in the field by a soil scientist and such field delineation along with the Upland Review Area shall be depicted on the site plan. The Agency may require the Applicant to furnish the Agency with a Mylar showing the Wetlands delineation for the purpose of including the Mylar into the Town's Wetland map by amendment;
  - 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, 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;
  - g. Management practices and other measures designed to mitigate the impact of the proposed activity; and
  - h. Additional information deemed relevant by the Applicant or Agency.
- 7.8 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.
- 7.9 An original and three copies of all Application materials shall be submitted to comprise a complete Application unless an Applicant is directed by the Agency or the Agency Assistant that more or less copies are required. Should any person, persons or voluntary associations file a timely notice of intervention pursuant to Section 22a-19 of the Connecticut General Statutes, the Applicant, at the Applicant's expense, shall provide one additional copy of the Application and any submitted materials to the intervening party.
- 7.10 No person shall file an 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

## Sherman Inland Wetlands and Watercourse Regulations

unless the Applicant provides proof that the Applicant has provided written notice of such Application to the party holding such restriction, including, but not limited to, any State agency that holds such restriction. Such notice shall have been provided by certified mail, return receipt requested and not later than sixty days prior to the filing of the Application. Alternatively, 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.

- 7.11 The completed Application with the requested information shall be submitted at the office of the Agency with the appropriate fee as specified in the latest Fee Schedule (See Schedule F). No submittal will be considered complete without the fee. In addition, the Agency shall charge such amounts as it may from time to time determine to be required to defray the expenses incurred in the performance of its duties under the Act and these Regulations or to defray, among other things, the cost of any technical review, including legal review, deemed necessary by the Agency.
- 7.12 Subject to Subsection 7.12(e), any Application to renew, amend or extend an existing License shall be filed with the Agency in accordance with Section 8 of these Regulations at least sixty-five (65) days prior to the expiration date of the License. Any Application to renew or amend an existing License shall contain the information required in 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 License;
  - c. The Application shall state the reason why the authorized activity was not initiated or completed within the time specified in the License;
  - 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 License was issued; or
  - e. The Agency may, prior to the expiration of a License, accept an untimely Application to renew such License if the authorized activity is ongoing and allow the continuation of work beyond the expiration date if, in its judgement, the License is likely to be renewed and the public interest or environment will be best served by not interrupting the activity.
- 7.13 Any Application to renew a License shall be granted upon request of the Licensee unless the Agency finds that there has been a substantial change in circumstances which requires a new Application or an enforcement action has been undertaken with regard to the Regulated Activity for which the License was issued provided the term of any License shall be limited as set forth in Subsections 11.7 and 11.8 of these Regulations.

## Sherman Inland Wetlands and Watercourse Regulations

### SECTION 8 APPLICATION PROCEDURES

- 8.1 All Applications, petitions, request or appeals shall be submitted to the Agency.
- 8.2 The date of receipt of any Application, petition, request or appeal shall be the day of the next regularly scheduled meeting of the Agency, immediately following the day of submission to the Agency, or thirty-five (35) days after such submission, whichever is sooner.
- 8.3 At any time during the review period:
- a. The Agency may require the Applicant to submit additional information about the proposed activities. Depending on the information requested, the Agency will set a deadline for submission of the requested information.
  - b. Requests for additional information shall not stay or extend the time limitations that are set forth in Subsection 11.3 of these Regulations.
- 8.4 All Applications shall be open for public inspection.
- 8.5 Incomplete Applications may be denied.
- 8.6 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 Applications, petitions, request or appeals concerning any project on any site in which:
- a. Any portion of the property affected by a decision of the Agency is located within 500 feet of the boundary of New Fairfield, New Milford, or Kent, Connecticut; Patterson, Pawling, or Dover, New York;
  - b. A significant portion of the traffic to the completed project on the site will use streets or roads 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 drainage or sewerage system within the adjoining municipality; or
  - d. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.
- Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven (7) days of the date of receipt of the Application, petition, request or appeal.
- 8.7 When an Application is filed to conduct or cause to be conducted a Regulated Activity upon a Wetland or Watercourse, any portion of which is within the watershed of a water company as defined in Section 25-32a, 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 Town and with the Agency. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven (7) days of the date of the Application. The

## Sherman Inland Wetlands and Watercourse Regulations

water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the Application. Documentation of such notice shall be provided to the Agency.

### SECTION 9 PUBLIC HEARINGS

- 9.1 The Agency shall not hold a public hearing on an Application unless the Agency determines that the proposed activity may constitute a Significant Impact Activity, or a petition requesting a hearing signed by at least twenty-five (25) persons who are eighteen years of age or older and who reside in the Town is filed with the Agency not later than fifteen (15) days after the date of receipt of such Application, or the Agency finds that a public hearing regarding such Application would be in the public interest. Such hearing shall be held no later than sixty-five (65) days after the receipt of such Application. All Applications and maps and documents relating thereto shall be open for public inspection. At such hearing any person or persons may appear and be heard and may be represented by an agent or attorney. The hearing shall be completed within thirty-five (35) calendar days of its commencement. Action shall be taken on Applications within thirty-five (35) calendar days after completion of a public hearing. The Agency may issue a License without a public hearing provided that is not a Significant Impact Activity and no petition provided for in this section is filed with the Agency within fifteen (15) days after the date of receipt of the Application.
- 9.2 Notice of the public hearing shall be published at least twice at intervals of not less than two (2) calendar days, the first not more than fifteen (15) calendar days and not fewer than ten (10) calendar days, and the last not less than two (2) calendar 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. In computing the time for the notice period, both terminal days are excluded (i.e., the day of the hearing and day of the published notice are not counted as part of the official notice period).
- 9.3 Notice of the public hearing shall be mailed to the owner(s) of record of adjacent properties no less than fifteen (15) calendar days prior to the day of the hearing, as well as posting a sign on the land that is the subject of the hearing. The Applicant shall supply envelopes addressed to each owner of adjacent property with either sufficient postage for certified mail, return receipt requested, or a check or money order to cover the postage made payable to "Postmaster, Sherman, Connecticut."
- 9.4 In the case of any Application which is subject to the notification provisions of Section 8.6 of these Regulations, a public hearing shall not be conducted until the clerk of the adjoining municipality(s) has received notice of the pendency of the Application. Proof of such notification shall be entered into the hearing record.
- 9.5 All documentary evidence provided by the Applicant in support of the Application shall

## Sherman Inland Wetlands and Watercourse Regulations

be filed with the Agency and available for public inspection not less than ten (10) calendar days prior to the day of the hearing or any reconvening thereof.

### 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. Reports from other agencies and commissions including, but not limited to, the Town:
    - i. Conservation Commission
    - ii. Planning and Zoning Commission
    - iii. Building Inspector
    - iv. Health Officer
    - v. Town SanitarianNon-receipt of comments from these agencies and commissions within the prescribed time shall neither delay nor prejudice the decision of the Agency.
  - c. Information obtained by the Agency during Site Visits.
  - d. For any Application for which a public hearing is held, public comments, evidence and testimony.
  - e. Comments on any Application from the Northwest Conservation District, Western Connecticut Council of Governments, New York City Watershed, Candlewood Lake Authority, FERC Licensee, Natural Diversity Database Division of DEEP or other regional organizations, 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.
- 10.2 The Applicant has the burden to establish that the proposed regulated activities are consistent with the following general criteria and detailed parameters, as applicable:
- a. General Standards and Criteria for Decision. In carrying out the purposes and policies of the Act, including matters relating to regulating, licensing and enforcing of the provision thereof, the Agency shall consider all relevant facts and circumstances, including but not limited to, the following:
    - i. The environmental impact of the proposed Regulated Activity, including the effects on the 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;
    - ii. The Applicant's purpose for, and any feasible and prudent alternatives to, the proposed Regulated Activity, which alternatives would cause less or no environmental impact to the Wetlands or Watercourses;
    - iii. 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 Regulated Activity

## Sherman Inland Wetlands and Watercourse Regulations

- involves trade-offs between short-term environmental gains at the expense of long-term losses, or vice versa, and consideration of the extent to which the proposed action forecloses or predetermines future options;
- iv. Irreversible and irretrievable loss of Wetland or Watercourse resources which would be caused by the proposed Regulated Activity, including the extent to which such activity would foreclose future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a License for such activity including, but not limited to, measures to:
    - a. Prevent or minimize pollution or other environmental damage;
    - b. Maintain or enhance existing environmental quality; or
    - c. In the following order of priority: restore, enhance and create productive Wetland or Watercourse resources;
  - v. 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 Regulated 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; and
  - vi. Impacts of the proposed Regulated Activity on Wetlands and watercourses outside the area for which the activity is proposed and future activities associated with or reasonably related to, the proposed Regulated Activity that are made inevitable by the proposed Regulated Activity and that may have an impact on Wetlands or Watercourses.
- b. Detailed Parameters for Decision. In addition, the Commission may consider the following detailed parameters in making a decision:
- i. The ability of the area in which the Regulated Activity is proposed to continue to absorb, store, or purify water or to prevent flooding, and the projected effect on the water table and drainage patterns;
  - ii. The effect any material to be removed or deposited will have on flood control, water supply and quality, and aquatic organism;
  - iii. Increased erosion problems resulting from changes in grade, ground cover, or drainage features;
  - iv. The extent of additional siltation or leaching and its effect on water quality and aquatic life;
  - v. The influence of toxic materials on water supplies, aquatic organisms or wildlife;
  - vi. Changes in the volume, velocity, temperature or course of a waterway and the resulting effects on plants, animals and aquatic life;

## Sherman Inland Wetlands and Watercourse Regulations

- vii. Existing flood or stream channel encroachment lines, flood plain and stream belt zoning;
  - viii. Changes to the physical, chemical and biological properties of the water or soil and their impact;
  - ix. Importance of the area to the region with respect to water supply, water purification, flood control, natural habitat and recreation;
  - x. Natural, historic or economic features that might be damaged, destroyed, rendered inaccessible or otherwise affected by the proposed Regulated Activity;
  - xi. The existing or potential use of the area as a surface or ground water supply;
  - xii. The extent to which the area serves as a recharge area or purifier of surface or ground waters;
  - xiii. The function of the area as part of the natural drainage system for the watershed;
  - xiv. The importance of the area as a natural wildlife feeding or breeding area;
  - xv. The existing and potential use of the area for recreational purposes; and
  - xvi. The existence of rare or unusual communities of flora and fauna.
- 10.3 In the case of an Application that received a public hearing pursuant to a finding by the Agency that the proposed activity may constitute a Significant Impact Activity, a License shall not be issued unless the Agency finds on the basis of the record that a feasible and prudent alternative does not exist. In making this finding, the Agency shall consider the facts and circumstances set forth in Subsection 10.2 of these Regulations. The finding and the reasons therefor shall be stated on the record in writing.
- 10.4 In the case of an Application that 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 Agency 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 they are entitled to the License or to present alternatives to the proposed Regulated Activity.
- 10.5 For the purposes of this section, “Wetlands and Watercourses” includes aquatic, plant or animal life and habitats in Wetlands or Watercourses, and “habitats” means areas or environments in which an organism or biological population normally lives or occurs.
- 10.6 In the case of an Application where the Applicant has provided written notice to the holder of a Conservation Restriction pursuant to Section 7.10 of these Regulations, the holder may provide proof to the Agency that approval of the License will violate the terms of the restriction. Upon a finding that the requested land use violates the terms of such restriction, the Agency shall not grant the License approval.
- 10.7 In the case of an Application where the Applicant fails to comply with the provisions of

## Sherman Inland Wetlands and Watercourse Regulations

Section 7.10 of these Regulations:

- a. The Person holding the Conservation Restriction, other than a State agency that holds such restriction, may file an appeal with the Agency not later than fifteen (15) days after receipt of actual notice of License approval. The Agency shall reverse the License approval upon a finding that the requested land use violates the terms of such restriction or
  - b. The State agency that holds such restriction may, not later than thirty (30) days after receipt of actual notice of License approval, file an appeal with the Agency, subject to the rules and regulations of such agency relating to appeals. The Agency shall immediately reverse such License approval if the commissioner of the State agency that holds such restriction certifies that the land use authorized in such License violates the terms of such Conservation Restriction.
- 10.8 Nothing in Section 7.10 of these Regulations shall be construed to prohibit the filing of an Application or to require such written notice when the activity that is the subject of such Application will occur on a portion of property that is not restricted under the terms of such Conservation Restriction.
- 10.9 The Agency shall not deny or condition an Application for a Regulated Activity in an area outside Wetlands or Watercourse 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.
- 10.10 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 License should be issued. The Applicant has the burden of demonstrating that his Application is consistent with the purposes and policies of these Regulations and the Act.

## SECTION 11 DECISION PROCESS AND PERMIT

- 11.1 The Agency shall take no action on an Application until fifteen (15) days after its receipt in order to allow compliance with the requirements of Section 9.1 of these Regulations.
- 11.2 The Agency or its Duly Authorized Agent 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 buffering resources. Such terms

## Sherman Inland Wetlands and Watercourse Regulations

may include restrictions as to the time of year in which a Regulated Activity may be conducted, provided the Agency, or its agent, determines that such restrictions are necessary to carry out the policy of the Act.

- 11.3 In the absence of a public hearing, action shall be taken on Applications within sixty-five (65) calendar 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 such Application. An Application deemed incomplete by the Agency must either be withdrawn by the Applicant or denied by the Agency.
- 11.4 The Agency may 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 incorporate a statement relative to the consideration of feasible and prudent alternatives.
- 11.5 A conclusion that a feasible and prudent alternative does not exist does not create a presumption that a License should be issued. The Applicant has the burden of demonstrating that his Application is consistent with the purposes and policies of these Regulations and the Act.
- 11.6 The Agency shall notify the Applicant and any person entitled to such notice of its decision within fifteen (15) calendar days of the date of the decision by certified mail, return receipt requested, and the Agency shall cause notice of its issuance or denial of the License to be published in a newspaper having general circulation in the Town. In any case in which such notice is not published within such fifteen (15) day period, the Applicant may provide for the publication of such notice within ten (10) days thereafter.
- 11.7 The term of any License issued by the Agency:
  - a. On or after July 1, 2021 for a Regulated Activity for which approval is required under chapter 124, 124b, 126 or 126a of the Connecticut General Statutes shall not take effect until each such approval, as applicable, granted under such chapter has taken effect, and shall be valid until the approval granted under such chapter expires or for ten years, whichever is earlier.
  - b. On or after July 1, 2021 for a Regulated Activity for which an approval is not required under chapter 124, 124b, 126 or 126a of the Connecticut General Statutes shall be valid for not less than two years and not more than five years. Any License described in this Subsection 11.7(b) shall be renewed upon the request of the Licensee unless the Agency finds that there has been a substantial change in circumstances that 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 such permit shall be valid for more than ten (10) years.
  - c. Prior to July 1, 2011 that was in effect and did not expire prior to July 1, 2021 shall expire not less than fourteen (14) years after the date of such approval.

## Sherman Inland Wetlands and Watercourse Regulations

- d. On or after July 1, 2011, but prior to July 1, 2021, that was in effect and did not expire prior to March 10, 2020, shall expire not less than fourteen (14) years after the date of such approval.
- 11.8 Any License described in Subsections 11.7(c) or (d) shall be renewed upon the request of the Licensee unless the Agency finds that there has been a substantial change in circumstances that require a new permit application or an enforcement action has been undertaken with regard to the Regulated Activity for which the License was issued, provided no such License shall be valid for more than nineteen (19) years.
- 11.10 If an activity authorized by a License also involves an activity or project which requires zoning or subdivision approval, a special zoning permit, variance or special exception, under Chapter 124, 124b, 126 or 126a of the Connecticut General Statutes, then a copy of the decision and report on the Application shall be filed with the Town of Sherman Planning and Zoning Commission within fifteen (15) calendar days of the date of the decision.
- 11.11 No License shall be assigned, transferred, sublet or sold without the written permission of the Agency.
- 11.12 If the filing of cash, letters of credits, passbook assignments or insurance is required as a License condition in accordance with Section 13 of these Regulations, no License shall be issued until such requirement is satisfied.
- 11.13 General provisions in the issuance of all Licenses:
- a. The Agency has relied in whole or in part on information provided by the Applicant, if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the License may be modified, suspended or revoked.
  - b. All Licenses issued by the Agency are subject to and do not derogate any present or future rights or powers of the Agency or the Town, 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 License also involves an activity or a project which requires zoning or subdivision approval, septic permit, road permit, variance or special exception under Chapter 124, 124b, 126 or 126a of the Connecticut General Statutes, then no work pursuant to the License may begin until such approval is obtained.
  - d. The permittee shall employ construction management practices, consistent with the terms and conditions of the License, to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of Wetlands and Watercourses.
  - e. A copy of the License shall be posted and available onsite at all times.
  - f. Work shall not begin until notification is made to the Town of Sherman Land Use

## Sherman Inland Wetlands and Watercourse Regulations

Enforcement Officer seventy-two (72) hours prior to anticipated commencement of work.

- g. If a contractor will be engaged to perform the work, work shall not begin until a completed Contractor Compliance Form (Schedule E hereto) has been submitted to the Agency.

### SECTION 12 ACTION BY DULY AUTHORIZED AGENT

- 12.1 The Agency may delegate to its Duly Authorized Agent the authority to approve an activity that is not located in a Wetland or Watercourse when such agent finds that the conduct of such activity would result in no greater than a minimal impact on any Wetlands or Watercourses provided such agent has completed the comprehensive training program developed by the Commissioner of Energy and Environmental Protection pursuant to Section 22a-39 of the Connecticut General Statutes. Requests for such approval shall be made on a form provided by the Agency and shall contain the information listed under Section 7.6 of these Regulations and any other information the Agency 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 or extend such activity at any time.
- 12.2 Any person receiving such approval from the Duly Authorized Agent shall, within ten (10) days of the date of such approval, publish, at the Applicant's expense, notice of the approval in a newspaper having a general circulation in the Town. Any person may appeal such decision of such agent to the Agency within fifteen (15) days after the publication date of the notice and the Agency shall consider such appeal at its next regularly scheduled meeting provided such meeting is no earlier than three (3) business days after receipt by the Agency or its agent of such appeal. The Agency shall, at its discretion, sustain, alter, or reject the decision of its agent or require an Application for a License in accordance with Section 7 of these Regulations.

### SECTION 13 SURETY AND INSURANCE

- 13.1 The Agency may require as a License condition and to ensure compliance with these Regulations the filing of cash, letters of credits or passbook assignments in an amount and in a form approved by the Agency. Surety bonds shall not be acceptable.
- 13.2 The return of such surety shall be conditioned on compliance with the provisions of these Regulations and any other terms, conditions and limitations established in the License.
- 13.3 The Agency may require the Applicant to certify that it has public liability insurance against liability which might result from the application review process and the proposed operation or use of the Wetlands or Watercourses covering any and all covered claims

## Sherman Inland Wetlands and Watercourse Regulations

which might occur within two (2) years of completion of such operations, in an amount commensurate with the Regulated Activity.

### SECTION 14 ENFORCEMENT

- 14.1 The Agency or the Duly Authorized Agent has the authority to issue notices of violation or cease and desist orders and to carry out other actions or investigations necessary for the enforcement of these Regulations. In carrying out the purposes of this section, the Agency or its Duly Authorized Agent shall take into consideration the criteria for decision under Subsection 10.2 of these Regulations.
- 14.2 The Agency or its Duly Authorized Agent may make regular inspections, at reasonable hours, of all regulated activities for which Licenses have been issued with the consent of the property owner or the authorized agent of the owner during the life of the License as provided in Subsection 7.6(m) of these Regulations.
- 14.3 In the case in which a License has not been issued or a License has expired, the Agency or its Duly Authorized Agent may make regular inspections at reasonable hours with the consent of the property owner or the authorized agent of the property owner, including as provided in Subsection 7.6(m) of these Regulations.
- 14.4 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 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, Watercourses, or the Upland Review Area. The Agency may request that the individual be present 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 a proper Application for the necessary License. Failure to carry out the action(s) directed in a notice of violation may result in issuance of the order provided in Subsection 14.4(b) of these Regulations or other enforcement proceedings as provided by law.
  - b. 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 (for which no published notice is required) 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) calendar days of the completion of the hearing notify the person by certified mail, return receipt requested, 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

## Sherman Inland Wetlands and Watercourse Regulations

decision in a newspaper having general circulation in the Town. 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 section shall not delay or bar an action pursuant to Section 22a-44 (b) of the General Statutes, as amended. The Agency may file a certificate of such order in the office of the Town Clerk who shall record such certificate on the land records of the Town. Such certificate shall be released upon compliance with such order.

- 14.5 The Agency may suspend or revoke a License if it finds that the Applicant has not complied with the terms, conditions or limitations set forth in the License or has exceeded the scope of the work as set forth in the Application including Application plans. Prior to suspending or revoking any License, the Agency shall issue notice to the Licensee, 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 Licensee an opportunity to show that it is in compliance with its License and any and all requirements for retention of the License. The Licensee shall be notified of the Agency's decision to suspend, revoke, or maintain a License 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.
- 14.6 Any person who commits, takes part in, or assists in any violation of any provision of these Regulations shall be subject to the penalties and remedies provided in such Regulation and the Act and to such other penalties and remedies as the law may provide, including but not limited to, the penalties imposed by the Land Use Violation Ordinance of the Town, as amended
- 14.7 The Agency or its agents may, from time to time, monitor adherence to License conditions or stipulations. This monitoring process may include a review showing that the installation and maintenance of markers as stipulated as a condition of License approval has occurred and thereby ensures the intended protection of the Wetlands and any non-disturbance zones. Failure to maintain the markers shall be considered a violation as described above in this Section 14.

## SECTION 15 AMENDMENTS

- 15.1 These Regulations and the Inland Wetlands and Watercourses Map for the Town of Sherman may be amended from time to time by the Agency in accordance with the changes in the Connecticut General Statutes or regulation of the Connecticut Department of Energy and Environmental Protection, or as new information regarding soils and inland Wetlands and Watercourse become available.
- 15.2 These Regulations and the Town of Sherman Inland Wetlands and Watercourses Map shall be amended in the manner specified in Section 22a-42a of the Connecticut General

## Sherman Inland Wetlands and Watercourse Regulations

Statutes, as amended. The Agency shall provide the Commissioner of Energy and Environmental Protection with a copy of any proposed regulations or amendments to existing Regulations and notice of the public hearing to consider any proposed Regulations or amendments thereto, except map amendments, at least thirty-five (35) days before the public hearing on their adoption. Application forms and the Fee Schedule (Schedule F) shall be considered part of the Regulations.

- 15.3 Petitions requesting changes or amendments to the Inland Wetlands and Watercourses Map, Sherman, Connecticut shall be made by submitting a Map Amendment Form (Schedule G hereto) to the Agency, together with at least the following information:
- a. the petitioner's name, address, telephone number and e-mail address;
  - b. the address 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.
- 15.4 Any person who submits a petition to amend the Inland Wetlands and Watercourses Map, Sherman, Connecticut, shall bear the burden of proof for all requested map amendments. Such proof may include, but is not limited to, professional interpretation of aerial photography and remote sensing imagery, resource mapping, soils mapping, or other information acceptable to the Agency. If such person is the owner, developer or contract purchaser of the land which is the subject of the petition, or if such person is representing the interests of such an owner, developer or purchaser, in addition to the information required in Subsection 15.4, the petition shall include:
- a. the name, address, email address and telephone number of the owner(s) of such land and their agent or other representative of the owner(s), if applicable;
  - b. the names and addresses of the owners of adjacent property;
  - c. documentation by a soil scientist, geologist, ecologist or other qualified individual of the location of Watercourses and Wetlands, and the distribution of wetland soils, on said land, including a map of the said land indicating the flag locations set by such person and defining the boundaries of wetland soil types; and
  - d. map(s) showing any proposed development of the land in relation to existing and proposed Wetland and Watercourse boundaries.
- 15.6 The Agency shall hold a public hearing on a petition to amend the Regulations or the Inland Wetlands and Watercourses Map within sixty-five (65) days after receipt of such petition. The hearing shall be completed within thirty-five (35) days after its commencement. Notice of the hearing shall be published in a newspaper having substantial circulation in the Town at least twice at intervals of not less than two (2) days, the first not more than fifteen (15) days nor less than ten (10) days, and the last not less than two (2) days, before such hearing. A copy of the proposed amendment to the

## Sherman Inland Wetlands and Watercourse Regulations

Regulations or the Inland Wetlands and Watercourses Map, as applicable, shall be on file in the office of the Town Clerk for public inspection at least ten (10) days before such hearing. The Agency shall act upon the changes requested in such petition within sixty-five (65) 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 any such periods shall not be for longer than sixty-five (65) days, or may withdraw such petition. Failure of the Agency to act within any time period specified in this subsection or any extension thereof, shall not be deemed to constitute approval of the petition.

- 15.7 The Agency shall make its decision and state, in writing, the reasons why the petitioned amendment to these Regulations or the Inland Wetlands and Watercourses Map was made.
- 15.8 An Application filed with the Agency which is in conformance with these Regulations as of the date of the receipt of such Application shall not be required thereafter to comply with any change in these Regulations, including changes to setbacks and buffers, taking effect on or after the date of such receipt and any appeal from the decision of the 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 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.

## SECTION 16 APPEALS

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

## SECTION 17 CONFLICT AND SEVERANCE

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

## Sherman Inland Wetlands and Watercourse Regulations

- 17.2 If there is a conflict between the provisions of these Regulations and the provisions of the Act, the provision which imposes the most stringent standards for the use of Wetlands and Watercourses 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, the State, the Government of the United States, including any approval required by DEEP, the U.S. Army Corps of Engineers or the FERC Licensee. Obtaining such assents, permits or licenses is the sole responsibility of the Applicant.

### SECTION 19 EFFECTIVE DATE OF REGULATIONS

- 19.1 These Regulations, including the Schedules and Appendices attached hereto and the Sherman Inland Wetlands and Watercourses Map, and amendments thereto, shall become effective upon filing in the Office of the Town Clerk and publication of a notice of such action in a newspaper having general circulation in the Town.

APPENDIX C  
CONNECTICUT GENERAL STATUTES SECTION 1-1(q)

(q) Except as otherwise specifically defined, the words “agriculture” and “farming” shall include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, the production of honey, poultry, fur-bearing animals and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish; the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by a storm, as an incident to such farming operations; the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale. The term “farm” includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoopouses and other temporary structures or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities. The term “aquaculture” means the farming of the waters of the state and tidal wetlands and the production of protein food, including fish, oysters, clams, mussels and other molluscan shellfish, on leased, franchised and public underwater farm lands. Nothing herein shall restrict the power of a local zoning authority under chapter 124.