

10/10/80

R E G U L A T I O N S

INLAND WETLANDS AND WATER COURSES AGENCY

MIDDLETOWN, CONNECTICUT

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## SECTION 1 - TITLE AND AUTHORITY

1.1 These regulations shall be known as the "Inland Wetlands and Water Courses Regulations of the City of Middletown".

1.2 These regulations have been prepared by the Inland Wetlands and Water Courses Agency in accordance with the provisions of Sections 22a-36 through 22a-45 of the Connecticut General Statutes, as amended, authorized by the Common Council of the City of Middletown in accordance with Ordinance #17 adopted May 18, 1973, as amended, by Ordinance #6 adopted February 3, 1975.

1.3 Pursuant to Sections 22a-36 through 22a-45 of the Connecticut General Statutes, as amended, the Inland Wetlands and Water Courses Agency shall issue, issue with modifications, and deny permits for all regulated activities on inland wetlands and water courses within the city.

## SECTION 2 - DEFINITIONS AS USED IN THESE REGULATIONS

2.1 "Agency" means the Inland Wetlands and Water Courses Agency of the City.

2.2 "City" means the City of Middletown in the County of Middlesex in the State of Connecticut.

2.3 "Contamination or rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any of the waters of the City including, but not limited to, change in odor, color, turbidity, taste or temperature.

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

2.5 "Discharge" means the emission of any water, substance or material into water of the City whether or not such substance causes pollution.

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

2.7 "Permit" means an approval to conduct a regulated activity under the authority of the Agency and includes the whole or any part of, any document, certificate or approval or similar form of permission which may be required of any persons by the provision of these regulations.

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

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

2.10 "Pollution" means harmful thermal effect or the contamination or

rendering unclean or impure of any waters of the City 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.

2.11 "Regulated activity" means any operation within or use of a wetland or water course involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or water courses but shall not include the specified activities in Section 4.1 of these regulations.

2.12 "Regulated area" means inland wetlands and water courses.

2.13 "Remove" includes but shall not be limited to, drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.

2.14 "Significant impact or major effect" means any activity which will or may cause:

Substantial turbidity, erosion, siltation or sedimentation in a regulated area, the destruction or impairment of an identified aquifer or recharge area, a substantial reduction of an inland wetland or water course's natural flood storage capacity, the construction or alteration of a water course channel which might result in increasing the volume or velocity of water leading to upstream or downstream flooding.

A decrease in the minimum low flow of a water course during periods of drought.

The actual or potential pollution of an aquifer or water course.

A reduction of the natural capacity of a regulated area to support desirable biological life, prevent flooding, supply water, assimilate waste, facilitate drainage and/or function effectively as a component of the total wetland ecosystem.

A loss of unique areas and/or undisturbed areas valuable for scientific or educational purposes.

A reduction of the area's suitability for recreation which may result from destruction of wildlife habitat, scenic values, archeological and/or historic features.

A conflict with the community plan of development or open space plan which may result from incompatible uses, loss of amenities.

The creation of conditions which may adversely affect the health, welfare and safety of the individual or the community which may be incurred when unsuitable development occurs in swamps, marshes, along water courses or in areas subject to flooding.

2.15 "Soil scientist" means an individual duly qualified in accordance with standards set by the U.S. Civil Service Commission.

2.16 "Waste" means sewage or any substance, liquid, gaseous, solid or radioactive which may pollute or tend to pollute any of the waters of the City of Middletown.

2.17 "Water courses" means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps and all other bodies of water, natural or artificial, public or private, vernal or intermittent, which are contained within, flow through, or border upon the City or any portion thereof, now regulated pursuant to Sections 22a-28 to 22a-35 inclusive of the Connecticut General Statutes.

"Swamp" means an area with a water table at or near the surface of the ground throughout most of the year and containing vegetation dominated by an association of trees and/or shrubs recognized as swamp species.\*

"Marsh" means an area normally covered with shallow water, subject to seasonal variations, that contains an association of herbaceous, soft-stemmed plants recognized as marsh vegetation.\*

"Bog" means a poorly drained area containing an accumulation of organic material and characterized by an association of plants recognized as bog species.\*

2.18 "Wetlands" means land, including submerged land, as defined in Sections 22a-36 through 22a-45 of the Connecticut General Statutes, as amended, 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 Soil Conservation Service of the U.S. Department of Agriculture.

### SECTION 3 - INVENTORY OF REGULATED AREAS

3.1 Areas of regulated soil types are shown on the official Inland Wetlands and Water Courses Map. Where an applicant seeks to remove the designation from a regulated area, the presumption shall be that the regulated area designation is correct unless the applicant shall prove said designation to be incorrect.

All inland wetlands due to map scale, cannot be represented on the Official Map. The existence of wetlands, when there is a dispute, will be determined by the Soil Conservation Service, U.S.D.A., at the direction of the Agency or its staff.

3.2 To prove himself exempt from these regulations, the applicant must present documentation by a soil scientist that the land in question, or a portion of it, does not have a soil type classified by the National Cooperative Soils Survey as poorly drained, very poorly drained, alluvial or floodplain.

\* "Inland Wetland Plants" prepared by The Connecticut Arboretum Connecticut College, New London, Connecticut, for Connecticut DEP, May, 1973

3.3 The Agency and/or its designated agent shall monitor and maintain general surveillance of the regulated areas within the City to ensure that no unauthorized regulated activities occur.

3.4 The Agency shall continually inventory inland wetlands and water courses and update the Official Inland Wetlands and Water Courses Map delineating said wetlands and water courses to be regulated.

#### SECTION 4 - PERMITTED USES

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

- a. Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less.
- 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 the Planning and Zoning Commission as of the original effective date of promulgation of these regulations pursuant to Section 22a-42a of the Connecticut General Statutes.
- c. Boat anchorage or mooring.
- d. Uses incidental for the enjoyment and maintenance of residential property, such property defined as equal to or smaller than, the largest minimum residential lot site permitted anywhere in the city. Such incidental uses shall include maintenance of existing structures and landscaping but shall not include removal or deposition of significant amounts of material from or onto, a wetland or water course or diversion or alteration of a water course.
- e. Construction and operation by water companies as defined in Section 16-1 of the Connecticut General Statutes or by municipal water supply systems as provided for in Chapter 102 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 25-110 and 25-112 of the Connecticut General Statutes.

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

- a. Conservation of soil, vegetation, water, fish, shellfish and wildlife.

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

## SECTION 5 - GENERAL REQUIREMENTS

5.1 No person shall henceforth conduct a regulated activity in the City of Middletown without first obtaining a permit for such activity from the Agency.

5.2 The map of regulated areas, entitled "Official Inland Wetlands and Water Courses Map, Middletown, Connecticut", shall serve as boundaries and shall be considered a part of these regulations and copies of said map shall be available for inspection in the offices of the City and Town Clerk and planning and Zoning Department of the City of Middletown.

5.3 Changes in regulations including boundaries, shall be made pursuant to Section 22a-42 of the Connecticut General Statutes. Any petition to change the boundaries or regulations shall be accompanied by a \$35.00 filing fee to defray the cost of publication of the notice required for a hearing.

## SECTION 6 - APPLICATION PROCEDURE

6.1 Any person wishing to undertake a regulated activity in the City of Middletown shall apply to the Agency for a permit.

- a. The Agency requires submission of the complete application to its staff five (5) days prior to its regular meeting in order for the application to be included on the agenda.
- b. The application form entitled "Application For the Inland Wetlands and Water Courses Act", hereinafter called the application, shall be made available in the manner specified under Section 13 of these regulations.
- c. The date of receipt of such application shall be the date of the next regularly scheduled meeting of the Agency, immediately following the date of said application, at which such application is officially received by the Agency, or thirty-five (35) days from the date of the application, whichever is sooner.
- d. Application must be made by the property owner of record or the duly authorized agent of such owner, such authorization to be in writing.

6.2 There shall be a minimum \$5.00 application fee plus \$5.00 per acre of designated inland wetlands or water courses.

6.3 At any time during the review period, the Agency may require the applicant to provide more information about the wetlands and/or water courses in question and/or the proposed activity.

6.4 If the Agency finds, based on the information before it, that the proposal will involve a significant activity or major effect, the applicant shall be required to submit such pertinent information designated on the application form as the administrative officer signing the form deems necessary for the Agency to make a decision in the case.

6.5 A public hearing is required and shall be conducted by the Agency on all applications involving a significant activity or major effect. A public hearing is optional on applications which do not involve significant activities. Public hearings shall be conducted in accordance with Section 22a-42a(c) of the Connecticut General Statutes. In addition to the fee schedule under Section 6.2, there shall be a \$25.00 fee for legal advertising.

#### SECTION 7 - RENDERING DECISION

7.1 The Agency shall consider the following in making its decision on the application pursuant to Section 1.3 of these regulations.

- a. Written or oral testimony offered up to and including, the public hearing date.
- b. Any reports from other agencies and commissions.
  - 1) The Agency shall submit all applications involving significant activities to the Middlesex County Soil and Water Conservation District.
  - 2) The Agency may submit and request comments on all applications from the following:
    - a) City of Middletown Conservation Commission
    - b) City of Middletown Planning and Zoning Department
    - c) City of Middletown Public Works, including the Building Division
    - d) City of Middletown Water and Sewer Department
    - e) City of Middletown and/or State Department of Health
    - f) Middlesex County Soil and Water Conservation District
    - g) Midstate Regional Planning Agency or other regional organization
    - h) Appropriate agencies in adjacent municipalities which may be affected by the proposed activity
    - i) Other technical agencies or organizations which may undertake additional studies or investigations such as but not limited to, the following: Department of Environmental Protection; U.S. Army Corps of Engineers; Environmental Protection Agency; Department of Interior; Department of Agriculture, Agricultural Extension Service.



- c. Information submitted with the application.
- d. All relevant facts and circumstances as they affect inland wetlands and water courses.

7.2 All action on the application shall be in conformance with Section 8. of these regulations and shall be in writing.

Action shall be take on the application within sixty-five (65) days after the completion of a public hearing or, in the absence of a public hearing, within sixty-five (65) days from the date of the receipt of the application.

7.3 The Agency shall notify the applicant and the Department of Environmental Protection of its decision by certified mail within fifteen (15) days of the date of the decision and the Agency shall cause notice of its order in issuance, denial, revocation or suspension of a permit to be published in a daily newspaper having general circulation in the town wherein the inland wetland or water course lies.

7.4 The Agency shall file its decision with the City and Town Clerk and shall also cause the staff designated by the Agency to maintain a record of all applications.

#### SECTION 8 - GRANTING A PERMIT

8.1 Pursuant to Section 22a-42a of the Connecticut General Statutes, the Agency may grant the application as filed or grant it upon such terms, conditions, limitations or modifications of the regulated activity. In so doing, the Agency shall take into consideration all relevant facts and circumstances including, but not limited to:

- a. The environmental impact of the proposed action including the effects of the inland wetlands and water courses natural capacity: to support biological life; to prevent flooding; to supply water; to control sediment; to facilitate drainage; and to promote public health and safety.
- b. The alternatives to the proposed action: that no preferable location on the affected property or in the case of an activity of sufficient magnitude, that no other available location could reasonably be required.
- c. The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity.
- d. Irreversible and irretrievable commitments of resources which would be involved in the proposed activity.
- e. The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened: that no further technical improvements in the plan or safeguards for its implementation are feasible.

- f. The suitability or unsuitability of such activity to the area for which it is proposed.

8.2 If the Agency denies the permit, no application will be heard by the Agency concerning the property and the uses requested in the permit unless the Agency shall determine that the applicant has significantly modified his or her proposal pursuant to these regulations so that a new hearing is warranted. Such a significantly modified application shall be deemed a new application and the review process set forth in these regulations should be so followed.

8.3 In granting, denying or limiting any permit for a regulated activity, the Agency shall state upon the record the reason for its decision.

8.4 The permit shall be valid for a period of two years from approval by the Agency. The expiration date shall be clearly stated on the permit. The two-year period may be extended by the Agency for an additional period not to exceed two years. No such extension shall be granted by the Agency except upon a written request stating the specific reasons for the extension of time. Any application for extension of time shall be made to the Agency before the expiration of the original two-year period or any extension previously granted. The Agency shall conduct a public hearing if such was required for the original permit. Upon the expiration of two years after approval, or expiration of any period of extension, such permit shall be null and void. All permits shall expire upon completion of the act specified therein. No permit shall be assigned, transferred, sublet or sold to any other person without the prior written permission of the Agency.

#### SECTION 9- OTHER PERMITS AND LICENSES

Nothing in these regulations shall obviate any requirement for the applicant to obtain any other assent, permit or license required by law or regulation by the Government of the United States or of the State of Connecticut or any other political subdivisions thereof.

The obtaining of such assents, permits or licenses is solely the responsibility of the applicant.

#### SECTION 10 - BOND AND INSURANCE

10.1 The applicant, upon approval of the application and prior issuance of a permit, at the discretion of the Agency, may be required to file a performance bond and/or a maintenance bond in an amount and with sureties and in a form approved by the Agency.

10.2 The bond and sureties shall be conditioned on compliance with all provisions of these regulations and conditions imposed on application approval.

10.3 The applicant may be directed to certify that he has public insurance against liability which might result from the proposed operation or use covering any and all damages which might occur within three (3) years of

completion of such operations in an amount equal to the project cost and the full market value of the land at 100% value.

#### SECTION 11 - ENFORCEMENT

11.1 If the Agency finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the regulations or of conditions imposed by the Agency, the Agency may issue a written order by certified mail to such person conducting such activity or maintaining such facility or condition to cease immediately such activity or to correct such facility or condition. Within ten (10) 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 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 the penalties provided by Section 22a-36 through 22a-45, as amended, for such violations.

11.2 The Agency and/or its appointed agent, shall make regular inspections of all activities for which permits have been issued under these regulations. Such activities shall be open to inspection at all reasonable times. The owner, applicant or their agent, shall have such permit readily available and shall produce the same for inspection by such agent of the Agency upon request.

11.3 The Agency may suspend or revoke a permit if it finds, after giving due notice to the permittee of the facts or conduct which warrant the intended action and after a hearing at which the permittee is given an opportunity to show compliance with the requirements for retention of the permit, that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application.

11.4 The applicant shall be notified of the Agency's decision to suspend, revoke or maintain by certified mail within five (5) days of the date of the decision and the Agency shall cause notice of its order in revocation or suspension of a permit to be published in a daily newspaper having general circulation in the municipality wherein the wetland or water course lies. A copy of such permit and order shall be sent to the Commissioner of Environmental Protection no later than ten (10) days after the issuance of the permit and order provided failure to submit such permit and order shall not impair the validity of such permit and order.

#### SECTION 12 - CONFLICT AND SEVERANCE

12.1 Where there is a conflict between the provisions of these regulations

and those of any other applicable statute, ordinance or regulation, the provisions of that statute, ordinance or regulation which imposes the greatest restrictions on the use of wetlands and water courses shall govern. The invalidity of any word, clause, sentence, section, part or provision of these regulations shall not affect the validity of any other part which can be given effect without such valid part or parts.

#### SECTION 13 - EFFECTIVITY

13.1 These regulations, including boundaries of inland wetlands and water courses shall not become effective or be established until after a public hearing in relation thereto is held by the Agency, at which parties in interest and citizens shall have an opportunity to be heard. 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 twenty-five (25) days, nor less than fifteen (15) days, and the last, not less than two (2) days, before such hearing and a copy of such proposed regulation or boundary shall be filed in the office of the City and Town Clerk for public inspection at least ten (10) days before such hearing and may be published in full in such paper.

13.2 These regulations shall become effective upon filing in the office of the City and Town Clerk of the City of Middletown, Connecticut, after approval thereof by the Commissioner of Environmental Protection and publication of notice of promulgation in a newspaper having general circulation in the City.

#### SECTION 14 - AMENDMENTS

14.1 These regulations and the Official Inland Wetlands and Water Courses Map may, from time to time, be amended by the Agency in accordance with changes in the General Statutes or regulations of the State Department of Environmental Protection and as new information regarding soils, hydrology or botanical species peculiar to inland wetlands and water courses in the City of Middletown becomes available.

14.2 Any application submitted to the Agency shall be judged according to the regulations in force on the date of its submission.

14.3 All amendments, changes and repeal measures involving these regulations and the Official Map shall be heard at a public hearing held by the Agency prior to their effective date. The hearing shall be held in the same manner outlined for the initial adoption of these regulations.