


MEMORANDUM

DATE: May 13, 2013

TO: Litchfield Town Clerk

FROM: Dennis Paul Tobin, Phd., Land Use Administrator 

RE: Public Hearing on proposed amendments to the Town of Litchfield Inland Wetlands and Watercourses Regulations and Map.

Attached are proposed amendment to the Town of Litchfield Inland Wetlands and Watercourses Regulations and adoption of the 2007 POCAD "Litchfield Water Resources" map as the designated Town of Litchfield Inland Wetlands and Watercourses map, replacing the "Litchfield Connecticut Inland Wetlands and Watercourses Map, Effective 12/14/1994". The public hearing will be held on June 12, 2013 at the Town Hall Annex, 80 Doyle Road, Bantam, CT at 7:00 p.m.

The entire file is available for review in the Litchfield Land Use Office located at the Town Hall Annex, 80 Doyle Road, Bantam, CT.

**Amendments to Town of Litchfield
Inland Wetlands and Watercourses Regulations
June 2013**

The Inland Wetlands and watercourses Act, Section 22a-36 through 22a-45 of the Connecticut General Statutes has been revised several times since 1997. The attached changes to the Litchfield Inland Wetlands and Watercourses Regulations have been revised to reflect all legislative changes to the Act to date, which include text changes to more fully follow Connecticut Department of Energy and Environmental Protection Inland Wetlands and Watercourses Model Municipal Regulations, Fourth Edition dated May 1, 2006, including:

Incorporation of Public Act 05-124 Sections 1 and 2 (effective 10/1/05)

Intent

In 2005, the Connecticut Legislature passed Public Act 05-124. Sections 1 and 2 of such Public Act affect municipal inland wetlands agencies when acting on certain permit application relating to property subject to conservation or preservation restrictions.

Add a new section 7.11 as follows:

- 7.11 For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply:
- a. for purposes of this section, "conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space.
 - b. for purposes of this section, "preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed will or other instrument executed by or on behalf of the owner of the land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.
 - c. no person shall file a permit application, other than for interior work in an existing building or for exterior work that does not expand or alter the footprint of an existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction not later than sixty days prior to the filling of the permit application.
 - d. in lieu of such notice pursuant to subsection 7.11c, the applicant may submit a letter from the holder of such restriction or from the holder's authorized agent, verifying that the application is in compliance with the terms of the restriction.

Re-number existing section 7.11 to section 7.12

Add new section 10.8 as follows:

10.8 In the case of an application where the applicant has provided written notice pursuant to subsection 7.11c of these regulations, the holder of the restriction may provide proof to the inland wetlands agency that granting of the permit application will violate the terms of the restriction. Upon a finding that the requested land use violates the term of such restriction, the inland wetlands agency shall not grant the permit approval.

Add new section 10.9 as follows:

10.9 In the case of an application where the applicant fails to comply with the provisions of subsections 7.11c or 7.11d of these regulations, the party holding the conservation or preservation restriction may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulation of such agency relating to appeals. The inland wetlands agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction.

Re-number existing section 10.8 to section 10.10

Incorporation of Public Act 09-181 Section 3 (effective 7/2/09)

Intent

Public Act 09-181 added a new subsection which allows permits issued from July 1, 2006 to July 1, 2009 to be valid for not less than six years and any such permit may be renewed upon certain circumstances, provided no such permit be valid for more than eleven years. Permits issued prior to 7/1/2006 or after 7/1/2009 are not subject to this amendment.

Renumber existing Section 7-9 to become Section 7.10 and existing Section 7.11 to become Section 7.9

Add underlined language to section 7.10.

7.10 Any application to renew or extend the expiration date of a previously issued permit or amend an existing permit shall be filed with the Agency prior to the expiration date for the permit in accordance with Section 8 of these regulations. Any application to renew a permit shall be granted upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances, which requires a new permit application, or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided a) no permit issued during the time period from July 1, 2006 to July 1, 2009, inclusive shall be valid for more than eleven years; and b) no permit issued prior to July 1, 2006 or after July 1, 2009 may be valid for more than ten years. Any application for amendment, renewal or extension shall be made in accordance with this subsection provided:

- a. The application may incorporate by reference the documentation and record of the original application;
- b. The application shall state the reason why the authorized activities were not initiated or completed within the time specified in the permit;

- c. The application shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses or the property for which the permit was issued;
- d. The Agency may accept an untimely application to extend the expiration date of a permit if the authorized activity is ongoing and allow the continuation of work beyond the expiration if in its judgment, the permit is likely to be extended and the public interest or environment will be best served by not interrupting the activity; the application shall describe the extent of work completed at the time of filing and the schedule for completing the activities authorized in the permit;
- e. The Agency shall evaluate the application pursuant to Section 10 of these regulations and grant the application as filed, grant is with any terms or limitations, or deny it.

Section 11: Decision and Permit

Move existing section 11.8 and renumber to become section 11.6 add underlined language:

11.6 The duration of any permit issued by the Agency prior to July 1, 2006 or after July 1, 2009 under this section for the development of property for which an approval is required such as subdivision or site plan shall be valid for five (5) years, provided the agency may establish a specific time period within which any regulated activity shall be conducted. Any permit issued by the agency prior to July 1, 2006 or after July 1, 2009 under this section for any other activity shall be valid for not less than two (2) years and not more than five (5) years. Any permit issued by the agency during the time period from July 1, 2006 to July 1, 2009, inclusive, shall expire not less than six years after the date of such approval. Any such permit shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no permit may be valid for more than ten (10) years.

Move existing section 11.6 and renumber to become section 11.8

Incorporation of Public Act 10-85 (effective 10/1/2010)

Intent

Public Act 10-85 affects municipal inland wetlands agencies when acting on certain permit applications relating to property subject to conservation or preservation restrictions. Specifically, the new language clarifies that when a regulated activity takes place on a portion of property that is not restricted under the terms of a conservation or a preservation restriction, the filing of a permit application for such regulated activity may not be prohibited, and the applicant does not need to provide written notice to the holder of the restriction. In addition, the new language describes the process an inland wetlands agency is to undertake if a regulated activity will occur on property for which a restriction is held by a state agency.

Underlined language noted below is new to be added to regulations.

Bracketed [] language should be deleted from regulations.

Section 7 Application Requirements

- 7.11 For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply:
- a. for purposes of this section, "conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space.
 - b. for purposes of this section, "preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed will or other instrument executed by or on behalf of the owner of the land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.
 - c. no person shall file a permit application, other than for interior work in an existing building or for exterior work on an existing building that does not expand or alter the footprint of [an] such existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction including, but not limited to, any state agency that holds such restriction not later than sixty days prior to the filling of the permit application.
 - d. in lieu of such notice pursuant to subsection 7.11c, the applicant may submit a letter from the holder of such restriction or from the holder's authorized agent, verifying that the application is in compliance with the terms of the restriction.

Section 10: Considerations for Decisions

Add new Sections 10.8, 10.9 and 10.10 (as follows) and renumber existing 10.8 to 10.11

- 10.8 In the case of an application where the applicant has provided written notice pursuant to subsection 7.11c of these regulations, the holder of the restriction may provide proof to the inland wetlands agency that granting of the permit application will violate the terms of the restriction. Upon a finding that he requested land use violates the terms of such restriction, the inland wetlands agency shall not grant the permit approval.
- 10.9 In the case of an application where the applicant fails to comply with the provisions of subsections 7.11c or 7.11d of these regulations, (1) the party holding the conservation or preservation restriction, other than a state agency that holds such restriction, may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulation of such agency relating to appeals. The inland wetlands agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction[.] ;or (2) the state agency that holds such restriction may, not later than thirty days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall immediately reverse such permit approval if the commission of the state agency that holds such restriction

certifies that the land use authorized in such permit violates the terms of such conservation or preservation restriction.

- 10.10 Nothing in subsections 7.11c or 7.11d of these regulations shall be construed to prohibit the filing of a permit application or to require such written notice when the activity that is the subject of such permit application will occur on a portion of property that is not restricted under terms of such conservation or preservation restriction.

Incorporation of Public Act 11-5 and 11-184(effective 5/9/11)

Intent

In 2011, the Connecticut Legislature passed Public Act 11-5 and Public Act 11-184. Such Public Act extends the deadlines that apply to certain inland wetlands agency permits. Public Act 11-184 adds the withdrawal of water for fire emergency purpose as an as of right operation and use in wetlands and watercourses.

Underlined language noted below is new to be added to regulations.
Bracketed [] language should be deleted from regulations.

Section 4: Permitted Use as of Right & Nonregulated Uses

- 4.1 The following operations and uses shall be permitted in inland wetlands and watercourses, as of right:
- a.
 - b. A residential home [(i)] (A) for which a building permit has been issued for [(ii)] (B) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a, or as of July 1, 1974, which ever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the building permit was obtained on or before July 1, 1987. The individual claiming a use of wetlands permitted as a right under this subdivision shall document the validity of said right by providing a certified copy of the building permit and a site plan showing proposed and existing topographic contours, house and well locations, septic system, driveway, approval dates or other necessary information to document his entitlement;
 - c.
 - d.
 - 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 221-410 of the General Statutes.
 - f. Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to section 22-42a or July 1, 1974, whichever is earlier,

provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this subdivision, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place[.]; and

g. Withdrawals of water for fire emergency purposes.

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

- a. Conservation of soil, vegetation, water, fish, shellfish, and wildlife. Such operation or use may include, but is not limited to, minor work to control erosion, or to encourage proper fish, wildlife and silviculture management practices.
- b. Outdoor recreation including play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin and scuba diving, camping, boating, water skiing, trapping, hunting, fishing and shell-fishing and cross-country skiing where otherwise legally permitted and regulated[.]; and
- 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 not alternative access to a public water supply. For purposes of this section "dry hydrant" means a non-pressurized pipe system that; (a) is readily accessible to fire department apparatus from a proximate public road, (b) provides for the withdrawal of water by suction to such fire department apparatus, and (c) is permanently installed into an existing lake, pond or stream that is a dependable source of water.

Section 7: Application Requirements

7.10[Any application to renew or extend the expiration date of a previously issued permit or amend an existing permit shall be filed with the Agency prior to the expiration date for the permit in accordance with Section 8 of these regulations.] Any application to renew a permit shall be granted upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances, which requires a new permit application, or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided [a)] no permit [issued during the time period from July 1, 2006 to July 1, 2009, inclusive] shall be valid for more than [eleven] ten years[; and b) no permit issued prior to July 1, 2006 or after July 1, 2009 may be valid for more than ten years.] and further provided that any permit issued prior to July 1, 2011 that did not expire prior to May 9, 2011 shall be valid for no more than fourteen years. Any application for amendment, renewal or extension shall be make in accordance with this subsection provided:

- [a.]
- [b.]
- [c.]
- [d.]

[f].....

Section 11: Decision Process and Permit

11.6 Any permit issued by the Agency [prior to July 1, 2006 or after July 1, 2009] for the development of land for which an approval is required under Section 8-3, 8-25 or 8-26 of the Connecticut General Statutes shall be valid for five (5) years, provided the agency may establish a specific time period within which any regulated activity shall be conducted. Any permit issued by the agency [prior to July 1, 2006 or after July 1, 2009] for any other activity shall be valid for not less than two (2) years and not more than five (5) years. Any permit issued by the agency [during the time period from July 1, 2006 to July 1, 2009, inclusive, shall expire not less than six years] prior to July 1, 2011 that was in effect and did not expire prior to May 9, 2011 shall be valid for a period not less than nine years after the date of such approval. Any such permit shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued.

Incorporation of Public Act 12-151 (effective 10/1/12)

Intent

Public Act 12-151 amends section 22a(d)(1) and section 22a-42a(d)(2) by stating, in (d)(1) that permit conditions can include seasonal restrictions provided the inland wetlands agency or its agent determine that such restrictions are necessary to carry out the policy of the IWWA. Section (d)(2) specifies that for regulated activities involving development projects also requiring approval under Chapter 124 (Zoning) 124b (Incentive Housing zone), Chapter 126 (Municipal Planning Commission) or Chapter 126a Affordable Housing Land Use Appeals, the wetlands permit approval is valid until the companion planning and/or zoning permit approval expires, or for ten years from the date of the issuance of the wetlands permit, whichever is earlier.

Underlined language noted below is new to be added to regulations.

Bracketed [] language should be deleted from regulations.

Section 11 – Decision Process and Permit

11.1 The Agency, or its duly authorized agent, acting pursuant to Section 12 of these regulations, may in accordance with Section 10 of these regulations, grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity designed to carry out the purposes and policies of the Act or deny the application. Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources. Such terms 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 sections 22a-36 to 22a-45, inclusive of the Connecticut General Statutes.

11.6 Any permit issued by the Agency for the development of land for which an approval is required under [Section 8-3, 8-25 or 8-26] Chapter 124, 124b, 126 or 126a of the Connecticut General

Statutes shall be valid [for five (5) years, provided the agency may establish a specific time period within which any regulated activity shall be conducted] until the approval granted under such chapter expires or for ten years, whichever is earlier. Any permit issued by the agency for any [other] activity for which an approval is not required under chapter 124, 124b, 126 or 126a shall be valid for not less than two (2) years and not more than five (5) years. [Any permit issued by the agency [during the time period from July 1, 2006 to July 1, 2009, inclusive, shall expire not less than six years] prior to July 1, 2011 that was in effect and did not expire prior to May 9, 2011 shall be valid for a period not less than nine years after the date of such approval. Any such permit shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued.]

11.6.1 Notwithstanding the provisions of Section 11.6 of these regulations, any permit issued by the agency prior to July 1, 2011, that was in effect and did not expire prior to May 9, 2011, shall be valid for a period not less than nine years after the date of such approval.

NOTE: All references to the “Department of Environmental Protection” and “DEP” will be changed to the “Department of Energy and Environmental Protection” and “DEEP” in the Town of Litchfield Inland Wetlands and Watercourses Regulations. .

Add new Section – 19.6 – Complex Application Fee –

The Inland Wetlands Agency may charge an addition fee sufficient to cover the cost of reviewing and acting on complex applications. Such fee may include, but not be limited to, the cost of retaining experts to analyze, review and report on issues requiring such experts. The Agency or the duly authorized agent shall estimate the complex application fee which shall be paid pursuant to Section 19.1 of these regulations within 10 days of the applicant’s receipt or notice of such estimate. Any portion of the complex application fee in excess of the actual cost shall be refunded to the applicant no later than 30 days after publication of the agency’s decision.

Renumber Sections 19.6 and 19.7

Delete Section 20 – Records Retention & Disposal and renumber Section 21 to become Section 20 – Effective Date of Regulations.

Adopt 2007 POCAD “Litchfield Water Resources” map as the designated Town of Litchfield Inland Wetlands and Watercourses Map, replacing “Litchfield Connecticut Inland Wetlands and Watercourses Map, Effective 12/14/1994

Delete Appendix D