



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



To: Connecticut's Municipal Inland Wetlands Agencies

From: Betsey Wingfield, Bureau Chief *BW*  
Bureau of Water Protection and Land Reuse

Dated: November 17, 2010

Re: 2010 Legislation and Regulations Advisory

The 2010 Legislature amended section 47-42d of the General Statutes of Connecticut with the passage of Public Act No. 10-85. Section 1 of such Public Act 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 conservation or preservation 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 conservation or preservation restriction is held by a state agency.

A complete copy of Public Act No. 10-85 is attached for your use with the amended language underlined in Section 1 of such Public Act. You should plan to revise your inland wetlands agency regulations to reflect the amendments. Please note that only the revised language in section 1 of Public Act No. 10-85 is relevant to inland wetlands agencies. The provisions of section 47-42d of the General Statutes of Connecticut as amended by Public Act No. 10-85 govern until such time that your municipal regulations are amended. Section 1 of Public Act No. 10-85 goes into effect October 1, 2010.

In order to conform to Public Act No. 10-85, the following changes to the Inland Wetlands and Watercourses Model Municipal Regulations (IWWMMR) Fourth Edition dated May 1, 2006, as amended by the 2008 Legislation and Regulations Advisory dated October 14, 2008, are made:

*Section 7: Application Requirements*

The underlined language noted below is new and should be added to your regulations.  
The bracketed ([ ]) language is deleted and should be removed from your regulations.

- 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 use.

- b. for purposes of this section, "preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.
- c. no person shall file a permit application, other than for interior work in an existing building or for exterior work on an existing building that does not expand or alter the footprint of [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*

The underlined language noted below is new and should be added to your regulations.  
The bracketed ([ ]) language is deleted and should be removed from your regulations.

- 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 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 regulations of such agency relating to appeals. The inland wetlands agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction[.]; or (2) the state agency that holds such restriction may, not later than thirty days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall immediately reverse such permit approval if the commissioner of the state agency that holds such restriction certifies that the land use authorized in such permit violates the terms of such conservation or preservation restriction.
- 10.10 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 the terms of such conservation or preservation restriction.

Should you have any further questions regarding the above changes, please feel free to contact Darcy Winther of the Wetlands Management Section at (860) 424-3019.