

SECTION 9: CONSIDERATIONS FOR DECISION

9.1 The Commission may consider the following in making its decision on an application:

- A. The application and its supporting documentation;
- B. Public comments, evidence and testimony from a public hearing or meeting;
- C. Reports from other agencies and commissions including but not limited to those in the Town of New Milford such as: Conservation, Planning, Department of Public Works, Health Director, Solid Waste, Sanitation, Zoning, Town Planner, and Fire Marshal;
- D. The Commission may also consider comments on any application from the Litchfield County Natural Resource Conservation Service, Housatonic Valley Association, Candlewood Lake Authority, regional planning agencies 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;
- E. Non-receipt of comments from agencies and commissions listed in 9.1 C and D above within the prescribed time shall neither delay nor prejudice the decision of the Commission.

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

- A. The environmental impact of the proposed action, including the effect on the inland wetland's and watercourse's capacity to support fish and wildlife, to prevent flooding, to supply and protect surface and ground waters, to control sediment, to facilitate drainage, to control pollution, to support recreational activities, and to promote the health, welfare and safety of the public.
- B. The alternatives to the proposed action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity proposed in the application. This consideration should include, but is not limited to, the alternative of requiring actions of a different nature, such as different configurations or location of the proposed activity on the applicant's property, which would provide similar benefits with different environmental impacts.
- C. The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity, including consideration of the extent to which the proposed activity involves trade-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.

- D. Irreversible and irretrievable commitments of resources which would be involved in the proposed activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources. This requires recognition that the inland wetlands and watercourses of the State of Connecticut are indispensable, irreplaceable and fragile natural resource, and that these areas may be irreversibly damaged by deposition, filling, and removal of material, by the diversion, diminution or obstruction of water flow including low flows, and by the erection of structures and other uses.
- E. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property, including abutting or downstream property, which would be caused or threatened by the proposed activity, or the creation of conditions which may do so. This includes recognition of potential damage from erosion, turbidity, or siltation, loss of fish and wildlife and their habitat, loss of unique habitat having demonstrable natural, scientific or educational value, loss or diminution of beneficial aquatic organisms and wetlands plants, the dangers of flooding and pollution, and the destruction of the economic, aesthetic, recreational and other public and private uses and values of wetlands and watercourses to the community.
- F. The suitability or unsuitability of the regulated activity to the area for which it is proposed. This requires a balancing of the need for the economic benefit of the state and the use of its land, with the need to protect its environment and ecology for the people of the state and the benefit of generations yet unborn.
- G. Impacts of the proposed regulated activity on regulated areas outside the area for which the activity is proposed and future 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 impact on wetlands and watercourses.
- H. Measures which would avoid, minimize and mitigate, in that order, the impact of any aspect of the proposed regulated activity(ies). Such measures include, but are not limited to, actions which would avoid adverse impacts or lessen impacts to wetlands and watercourses and which could be feasibly carried out by the applicant and would protect the wetland's or watercourse's natural capacity to support fish and wildlife, prevent flooding, supply water, control sedimentation, prevent erosion, assimilate wastes, facilitate drainage, and to provide recreation and open space.

9.3 For purposes of this section, (1) “wetlands or watercourses” includes aquatic, plant or animal life and habitats in wetlands or watercourses, and (2) “habitats” means areas or environments in which an organism or biological population normally lives or occurs.

9.4 The Commission shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses 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.

9.5 In the case of an application where the applicant has provided written notice pursuant to Subsection 7.14c of these regulations, the holder of the restriction may provide proof to the

Commission 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 Commission shall not grant the permit approval.

- 9.6 In the case of an application where the applicant fails to comply with the provisions of Subsections 7.14c or 7.14d 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 Commission, subject to the rules and regulations of the Commission relating to appeals. The Commission shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction.
- 9.7 In reaching its decision on any application after a public hearing, the Commission shall base its decision on the application and on the record of that hearing. Documentary evidence or other material not in the hearing record or which is submitted after the hearing is completed, shall not be accepted or considered by the Commission in its decision.
- 9.8 The Commission is not precluded from seeking advice, opinions and technical support from its own experts after the close of the public hearing on information already in the record of the public hearing.
- 9.9 In the case of an application which received a public hearing pursuant to a finding by the Commission that the proposed activity may have a significant impact on wetlands or watercourses, a permit shall not be issued unless the Commission finds on the basis of the record that a feasible and prudent alternative that has less impact on wetlands, watercourses and upland review area does not exist. In making this finding the Commission shall consider the facts and circumstances set forth in Section 9.2 of these regulations. The finding and the reasons therefore shall be stated on the record in writing. A conclusion that a prudent and feasible alternative does not exist does not create a presumption that a permit should be issued. The applicant has the burden of demonstrating that his application is consistent with the purposes and policies of these regulations and Sections 22a-36 to 22a-45, inclusive of the Connecticut General Statutes.
- 9.10 In the case of an application which is denied on the basis of a finding that there may be a feasible and prudent alternative to the proposed regulated activity which has less adverse impact on wetlands or watercourses, the Commission shall propose on the record in writing the types of alternatives which the applicant may investigate. This subsection shall not be construed to shift the burden from the applicant to prove that he is entitled to the permit or to present specific alternatives to the proposed regulated activity.