

§ 315-2 **Definitions.**

CUMULATIVE NEGATIVE EFFECT

Any effect that, when considered together with any likely current or future activity potentially subject to the Eightmile River Overlay District zoning regulations, would have a significant adverse effect on the purpose of the Eightmile River Overlay District.

INDIVIDUAL NEGATIVE EFFECT

Any effect that when taken into consideration on an individual site basis within the Eightmile River Overlay District would have an adverse effect on the purpose of the Eightmile River Overlay District.

FALLOW

Land that is left unsown in grasses, forbs or other non-woody herbaceous plants or sown with cover crops for a period in order to restore its fertility as part of a crop rotation or to avoid surplus production. A cover crop is a planting that is used primarily to slow erosion, enhance water availability, smother weeds, help control pests and diseases, increase biodiversity and otherwise improve soil health.

LAND DISTURBING ACTIVITY

Any use or activity that causes significant changes in vegetation or soil structure. These activities may include, but are not limited to, any activity which involves the alteration of the surface of the earth as it existed on the effective date of these regulations, including but not limited to filling, removal, or re-grading of earth; placement, construction, removal, or alteration of buildings or structures; establishment, removal, or alteration of uses of land; removal of vegetation; or planting of invasive plants, but not including those activities listed as exceptions in § 315-19.3C.

Article 19
Eightmile Watershed Overlay District

§ 315-19.1 **Purpose and intent.**

- A. The purpose of the Eightmile Watershed Overlay District, hereinafter referred to as the "Overlay District", is to protect and enhance the functions and values of the riparian and wetlands features of the Eightmile River Watershed, as identified in the Eightmile River Wild and Scenic River Management Study, completed in December 2005. These features are a key component of the largely intact watersheds and natural character of Lyme. In order to preserve a fully functioning aquatic system in the Eightmile River Watershed and to prevent damage to the critical buffer area around its water bodies, the Eightmile Watershed Overlay District is hereby

established.

- B. Within the Eightmile Watershed Overlay District, it is intended that there shall be a continuous buffer consisting of a predominately forested condition that is native to the region and appropriate to the environment in which it is to be planted or retained. Protection of a vegetated buffer around watercourses is crucial for public health, safety, and welfare because the buffer regulates water flow, preserves diversity and abundance of wildlife species and habitat, protects water quality, and maintains important cultural and historical features of the Town.
- C. Specifically, the required buffer functions to regulate water flow by promoting water infiltration and groundwater recharge and by reducing streambed scour. The buffer preserves wildlife by providing a unique habitat such as coarse woody debris that supports a diverse species assemblage and provides an effective travel corridor for terrestrial wildlife. The buffer filters and moderates stream flow and keeps temperatures low, improving habitat for fish and other aquatic organisms. The buffer protects water quality by reducing sedimentation and by filtering out pesticides, heavy metals, and biological contaminants. The buffer removes excess nutrients that lead to eutrophication, including nitrogen and phosphorus. It prevents erosion through bank stabilization by vegetation. Further the buffer provides a screen that protects privacy of riverfront landowners and enhances landscape diversity resulting in improved aesthetics.
- D. The regulations in Article §315-19 do not affect the types of primary and accessory uses that are permitted in the underlying zoning districts. Rather, they are intended solely to limit and regulate the intensity and locations in which some of the structures and activities associated with those permitted uses may occur. No structures, land disturbing activity, vegetation removal or other activities shall be allowed within the Overlay District unless they comply with all applicable Zoning Regulations, including this Chapter 19.

§ 315-19.2 **Boundaries.**

The Eightmile River Watershed is the land surface from which water ultimately drains into the Eightmile River. The Overlay District is shown on the official Eightmile Watershed Overlay District Map which is on file in the office of the Lyme Town Clerk and a copy of which comprises Appendix G. The Map is intended to illustrate the boundaries of the Overlay District based on the dimensions stated by this section. In the event a claim(s) is made that the Map does not accurately depict the dimensions called for by this section, or that land claimed by the Commission and/or its enforcement officer to be within the Overlay District is not within the District, the dimensions stated herein as confirmed on the ground by survey shall prevail over the Map. The Overlay District includes all perennial rivers, streams and brooks in the Eightmile River

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watershed that are identified on the Eightmile Watershed Overlay District Map (hereinafter referred to a "watercourse") and the area landward, measured horizontally from the watercourse edge, for a distance of 100 feet from major watercourses and 50 feet for smaller, headwater watercourses as identified on said Map. A watercourse edge is defined as the ordinary high-water mark, typically identified by vegetation or soil types that are distinct from the upland area. The landward areas of the Overlay District shall be measured only from the stream edge of watercourses defined herein and illustrated on the Map, and shall not be measured, for example, from wetlands, ponds, and/or vernal pools wherever located, including those that are within the 100 foot and 50 foot areas landward of the highwater mark of watercourses defined herein and illustrated on the Eightmile Watershed Overlay District Map. Neither does the Overlay District include Hamburg Cove or any landward areas therefrom, as defined by the Eightmile River main stem from the Connecticut River to the south edge of the Joshuatown Road bridge. However, the Overlay District shall apply to Falls Brook or other mapped watercourses that enter Hamburg Cove south of the Joshuatown Road Bridge.

§ 315-19.3 **Activities within Overlay District.**

- A. No land disturbing activity not specifically permitted by § **315-19.3C** below may be conducted within the Overlay District except as provided in §§ **315-19. 4 and 5.**
- B. Vegetation coverage. Within the Overlay District, wherever possible, not less than 90% of the total surface area shall be covered with live vegetation. Diversity of vegetation and forest stages is encouraged, including a mix of trees, shrubs and herbaceous vegetation not having invasive characteristics (as defined by the most recent version of the Connecticut Invasive Plant List, as authorized by Connecticut Public Act 03-136). The list can be obtained from the Land Use Office. A variety of plant types is more effective at capturing a wide range of pollutants than a single vegetation type. In general, where suitable vegetation existed within the Overlay District before the effective date of this regulation, vegetation is to be left in a natural state.
- C. As of right permitted activities. The following activities and/or uses are permitted as of right within the Overlay District:
 - (1) Existing activities. Existing structures or continuing activities that were legally in existence within the Overlay District, before the effective date of this regulation before it became effective on **XXXXXXXXXX** (insert original Effective Date).
 - (2) Granted permits. The building of new structures, modification of existing structures, or commencement of activities that have been granted all applicable permits before the effective date of this regulation.

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- (3) Agriculture and vegetation management. In general, vegetation is to be left in a natural state wherever it existed within the Overlay District before the effective date of this amendment. The exceptions to this requirement are as follows:
 - (a) Mowing and maintenance, but not expansion, of lawns, gardens, meadows, fields and pastures and wildlife habitat within the Overlay District that legally preexisted this regulation; periodic maintenance of such meadows and wildlife habitat. It is recommended that vegetation be left to grow naturally within a twenty-five-foot buffer of the watercourse for these meadows.
 - (b) Continuation, but not expansion, of preexisting, active farming activities within the Overlay District. A field that is left fallow is considered to be a preexisting, active farming activity.
 - (c) Removal or pruning of dead, dying, diseased, or invasive plants. Leaving some downed and standing woody debris is also preferable in order to provide a greater variety of wildlife habitat unless the spread of plant diseases is a concern.
 - (d) Firewood cutting under one cord per acre that does not alter the overall composition and character of vegetation coverage with the Overlay District on the Lot and that does not disturb or interfere with the tree coverage providing shade to the watercourse.
- (4) Construction of one new and/or maintenance of pre-existing or permitted unpaved footpaths associated with a residential use not more than five feet in width for the purposes of non-motorized access, excluding use for horseback riding [see § **315-19.4A(6)**]. In order to prevent erosion and the creation of a channel of surface runoff, the path should not create a straight line of sight from the outer boundary of the Overlay District to the watercourse. The property owner must use suitable erosion control measures to prevent erosion on slopes. Additional footpaths associated with agricultural or recreational use outside the residential area (as defined by the minimum lot size for the applicable District) are permitted if the aforementioned conditions are followed.
- (5) Maintenance, but not the expansion or relocation, of pre-existing fords, watercourse crossings and preexisting woods or farm roads in the same manner as conducted before the effective date of §315-19 and maintenance, but not expansion or relocation, of new fords, watercourse crossings and woods or farm roads for which a permit has been obtained. The maintenance permitted by this §315-19.3.C(5) shall not result in a change in the character of

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the vegetation or natural buffer function of the Overlay District at that site.

- (6) Land disturbing activities not requiring excavation, physical improvements or structures occurring outside of a twenty-five-foot buffer of a watercourse that involve less than 100 square feet of land disturbing activity in total and have no individual or cumulative negative impact on the purposes of the Overlay District.
- (7) Emergency operations necessary for public safety or protection of property.
- (8) State and municipal utility improvements and operations within the Overlay District that is unavoidable and necessary. This includes activities such as the replacement, rehabilitation, or creation of infrastructure such as sewer, water, and power lines, bridges, highway maintenance, and drainage facilities. Any such activity within the Overlay District over which the Commission has jurisdiction may be undertaken only if there is no practical and feasible alternative for provision of these services, and only if all measures will be taken to minimize any adverse impacts to natural features and the functions of the watershed. These activities are subject to all other applicable legal requirements.
- (9) Surveying and boundary posting for the purpose of marking boundary lines, subject to any other applicable regulation.
- (10) Septic system maintenance or replacement such as pumping and inspections or repair as directed by the local health official/Public Health Department. See § 315-19.5A(7) for expansion of systems for new structures or additions to structures.
- (11) Fish and wildlife conservation activities that do not require removal of native vegetation or the alteration of watercourse beds or banks.
- (12) Restorative activities in areas where a diverse natural buffer does not exist. Landowners may (and are encouraged to) create, enhance, or restore native vegetation appropriate to the watercourse being buffered. Replanting with native trees or shrubs is encouraged if natural regeneration is not sufficient to restore vegetative cover. A list of suggested native plants for riparian buffers can be found in Appendix H.
- (13) Removal of non-native invasive species and replacement by native vegetation. Invasive plants are those listed on the most recent version of the Connecticut Invasive Plant List (as authorized by Connecticut Public Act 03-136) or any amended or successor publication. A list of invasive species is maintained on

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the Connecticut Invasive Plants Council's "Connecticut Invasive Plants List" available at the Connecticut Department of Energy and Environmental Conservation.

§ 315-19.4 Activities requiring zoning permit.

- A. The following activities may be conducted in the Overlay District only after the issuance of a zoning permit by the Planning and Zoning Commission pursuant to procedures set out in § 315-10 of these Regulations.
- (1) New or expansion of existing agricultural activities excluding forestry practices [see § **315-19.4A(2)**] under the following conditions: following current best management practices for erosion control, fertilizer and pesticide application and runoff prevention; disturbance which does not exceed in size 10% of the total area of the portion of the lot that falls within the Overlay District; providing not less than 25 feet of natural and/or undisturbed vegetative buffer between the agricultural activity and the watercourse edge. Permits for this activity must be granted by the Planning and Zoning Commission, not its agent.
 - (2) Conservation and wildlife habitat activities not previously exempted and noncommercial and commercial forestry practices with the following conditions, which shall:
 - (a) provide for and enhance regeneration of a predominately wooded state and for restoration and enhancement of natural ecosystems and wildlife habitat;
 - (b) leave full and natural tree canopy over the watercourse;
 - (c) not remove more than 25% tree canopy within the Overlay District at any given time and shall not remove more than 25% of standing trees within any given size category within any one-acre area, with the exception of wildlife clearings described below;
 - (d) not create clearings within the Overlay District for any purpose other than conservation and wildlife habitat activities. Such clearings may not be wider than 80 feet in diameter;
 - (e) not occur within a twenty-five-foot buffer of the watercourse and shall maintain at a minimum 75% canopy cover for the Overlay District at all times;
 - (f) follow current Department of Energy and Environmental Protection best management practices forestry practices for all forestry practices,

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including watershed protections and watercourse crossings;

- (g) follow a written plan approved by the Commission or its appointed representative; and
 - (h) not have an individual or cumulative negative effect. Commercial activities shall be carried out under the supervision of a licensed professional forester, forest ecologist, or wildlife biologist in accordance with a written forest and/or wildlife management plan that addresses such issues as the location and construction of logging roads, wetland crossings, equipment use, forest regeneration and wildlife habitat. The forest management plan should provide for maintaining a healthy forest understory and succession to a natural wooded or other permitted state in the Overlay District.
- (3) Clearing of new or abandoned woods or farm roads for the purposes of habitat management, agricultural or timber access or other access needs under the following conditions: follow current best management practices for erosion control.
 - (4) Building of fences outside a twenty-five-foot buffer of a watercourse. Fences must not block or adversely impact the movement of wildlife or water within the Overlay District.
 - (5) Other land disturbing activities not requiring excavation, physical improvements or structures occurring outside of a twenty-five-foot buffer of a watercourse and resulting in more than 100 square feet of land disturbing activity in total and have no individual or cumulative negative impact on the purposes of the Overlay District.
 - (6) Construction of unpaved paths and trails for the purposes of horseback riding, or other non-motorized access not permitted in § 315-19.3C(4). Paths must not be more than five feet in width. In order to prevent erosion and the creation of a channel of surface runoff, the path cannot create a straight line of sight from the outer boundary of the Overlay District to the watercourse. The property owner must use suitable erosion control measures to prevent erosion on slopes. See § 315-19.4A(7) for stream crossing guidelines.
 - (7) Creation of new watercourse crossings not requiring structures or land disturbing activities of any kind, for the purposes of equestrian trails, recreation and non-motorized property access or for infrequent and/or intermittent motorized access for the purposes of property maintenance or other noncommercial activities. Watercourse crossings at grade are discouraged.

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Within reason, crossings should be implemented at a point in the watercourse with relatively narrow streambed and flat approach from the bank. Reinforcement of the bank and streamside areas is encouraged and may be required if conditions warrant. Loose stone or other materials may not be placed in a watercourse without a plan from an engineer, hydrologist, or other approved expert. Watercourse crossings may not block natural connectivity of aquatic or terrestrial life, including but not limited to fish passage, and may not alter or cause to be altered the watercourse width or flow type. Temporary watercourse crossings requiring structures and or/mechanized crossing for commercial forestry practices may be permitted by the Planning and Zoning Commission or its designee under the following condition: temporary crossings must follow the Connecticut Department of Energy and Environmental Protection publication "Best Management Practices for Water Quality While Harvesting Forest Products" 2012 Connecticut Field Guide Chapter 5, Stream Crossings or any amended or successor publication. All materials used for watercourse crossings must be removed and the watercourse bank restored after forestry operations are complete.

Notwithstanding the foregoing provisions, no activity described in §**315-19.4A**, that proposes excavation, the building of structures or the installation of any impervious surface may be conducted pursuant to a zoning permit, and may only be conducted pursuant to a special permit issued by the Planning and Zoning Commission.

In addition, the Commission may require a special permit instead of a zoning permit for any of the activities listed above in § **315-19.4A**, if the Commission finds that the circumstances of the application (such as soil type or slope, past disturbance in the area, other recent permits or activities within the same area of the Overlay District or any other circumstance) has a reasonable likelihood of resulting in an Individual Negative Effect or a Cumulative Negative Effect.

B. Planning and Zoning Commission zoning permit process.

- (1) Application for zoning permits. The applicant shall include at a minimum a written description of the site including slope, current vegetation coverage, current use, and proposed activity as well as any other relevant features and such additional documentation as deemed necessary by the Zoning Enforcement Officer or the Commission.
- (2) Application fee. Each application for a zoning permit shall be accompanied by a fee payable to the Town of Lyme in accordance with the schedule adopted by the Commission.

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- (3) Approval of permits. Zoning permits under § **315-19.4** shall be granted by the Planning and Zoning Commission or its agent unless otherwise expressly defined.

C. Specific standards for a zoning permit in the Overlay District. The Commission shall issue a zoning permit only for activities as described above in § **315-19.4A** which have no individual or cumulative negative impacts on the purposes of the Overlay District. (See § **315-19.1**.)

§ 315-19.5 **Activities permitted by special permit.**

A. Activities listed below are allowed only by special permit. When the special permit results in land disturbing activities, the Commission may require an expansion of the buffer in an alternate location to compensate for the loss of buffered area within the Overlay District due to the disruption.

- (1) Lot size or configuration. If the size of a lot is such that adherence to the buffer requirement prevents the placement, expansion, or alteration of a structure in compliance with all other zoning regulations, owners may request a special permit to encroach in the Overlay District. Every reasonable effort must be made to minimize impacts on the natural functions of the buffer and the Overlay District. A permit will be granted only for the minimum encroachment necessary. Where a lot is located entirely within the Overlay District, the Commission may permit activities within the buffer when the applicant has demonstrated that the proposed work has been designed to minimize impacts on the purposes of this regulation. Additional land disturbing activities for lawns or other landscaping shall not be allowed unless they are consistent with the purposes of this regulation.
- (2) Construction of accessory structures and accessory uses associated with lawfully existing single-family houses where the Planning and Zoning Commission finds that alternatives outside the Overlay District do not better serve the purposes of this regulation, that the size and impacts of the proposed structure or use have been minimized, and that the structure/use is located as far from the watercourse as possible. The Commission reserves the right to deny a permit if the activity does not meet the standards outlined in § **315-19.5C**. As mitigation, the Commission may require that the applicant plant or maintain a naturally vegetated buffer of the maximum feasible width given the size, topography and configuration of the lot.
- (3) Structures used for shoreline access (docks, stairs, etc.) may be built after granting of a special permit. The permit application must demonstrate that the construction and installation of the proposed structure does not contribute to

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flow alteration or channel modification or create any other deleterious effects on the watercourse within the Overlay District.

- (4) Construction of new utility lines where the proposed route is the best feasible alternative when considered against the purposes of this regulation.
- (5) Alteration of an existing activity located within an Overlay District that is already altered such that the setback area cannot be provided without removal of preexisting structures and/or pavement, provided that the proposed alteration will not increase adverse impacts on the specific portion of the Overlay District and the applicant can demonstrate to the satisfaction of the Commission that there exists no feasible construction alternative.
- (6) Construction of new watercourse crossings requiring excavation, physical improvements or structures or other land disturbing activities or for crossing of vehicles or equipment of any kind for the purposes of recreation, property access, agriculture or other uses with the exception of commercial forestry operations following Connecticut Department of Energy and Environmental Protection guidelines or any [see § 315-19.4A(7)]. Permanent crossings must follow the "Massachusetts River and Stream Crossing Standards: Technical Guidelines" or such replacement standards as may be adopted by this Commission. Temporary crossings must follow the Connecticut Department of Environmental Protection publication "Best Management Practices for Water Quality While Harvesting Forest Products" 2012 Connecticut Field Guide Chapter 5, Stream Crossings or any amended or successor publication. The Commission may use its discretion as to the requirement of "general" versus "optimum" standards as defined by the Massachusetts River and Stream Crossing Standards document using the application guidelines within said document as a general guide. Watercourse crossings may not block natural connectivity of aquatic or terrestrial life, including but not limited to fish passage.
- (7) Septic system expansion or replacement as a result of new structures or additions to existing structures.

B. Special permit process.

- (1) Application for permits. Each application for special permit shall be subject to all substantive and procedural requirements of these Zoning Regulations, including Chapters 12 and 19, for the review, issuance, and recording of a special permit. The applicant shall submit a site plan as defined in Article 2 of these Zoning Regulations and, in addition to the requirements of Article 12 of

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these regulations, provide documentation demonstrating the need for a special permit, the efforts made to minimize disturbance to the natural buffering function of the Overlay District, and other documentation that may be reasonably requested by the Zoning Enforcement Officer or the Commission. Applicants should look at the criteria for consideration of waiver of site plan requirements (§ **315-11.2C**) if they believe the impacts will be insignificant when measured by the standards of this regulation. Such waiver shall only be granted if the Commission determines the impacts are insignificant when measured by the standards of this regulation **§315-19**.

- (2) Application fee. Each application for a special permit to be considered by the Commission shall be accompanied by a fee payable to the Town of Lyme in accordance with the schedule adopted by the Commission.

C. Additional specific standards for a special permit in the Overlay District. The Commission shall consider the following standards when reviewing an application for a special permit within the Overlay District:

- (1) That the permitted activity is compatible with the purposes of the Overlay District.
- (2) That the activity shall have no individual or cumulative negative effect on the purpose of the Overlay District (see § **315-19.1**).
- (3) Whether strict application of the Overlay District regulations would deny the applicant reasonable use of the property, or whether the regulations would render the property unusable or unsuitable for development.
- (4) Whether there is a feasible or prudent alternative through plan modification that will lessen the impacts and protect the buffer as intended in these regulations.
- (5) That the relief granted is the minimum necessary and does not conflict with other municipal, state, or federal regulations.

D. Special approval for conservation purposes.

- (1) The Commission may waive the requirements of § **315-19.5A(1)** and **(2)** within the Overlay District where an application meets the requirements set forth below and where, in the judgment of the Commission in looking at the context of present and potential development of a property as a whole (including the application before the Commission), the overall protection afforded to the Eightmile River watershed and other important conservation resources significantly exceeds protections provided by strict application of § **315-19.5**.

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(a) Standards for waiver of the requirements of § **315-19.5A(1)** and **(2)**:

- [1] The minimum contiguous acreage required for an applicant to utilize this § **315-19.5D** shall be 50 acres. The acreage shall be considered contiguous even if it is separated by a public road.
- [2] The minimum area dedicated for open space purposes shall equal or exceed 66% of the entire parcel in question.
- [3] There shall be at least 300 feet of undisturbed area between land disturbing activities within the Eightmile River Overlay District.
- [4] The land disturbing activity within the Eightmile River Overlay District shall not cause any measurable increase in storm water runoff into a watercourse or a perennial stream within the Eightmile River watershed.
- [5] Additional land disturbing activities for lawns or other landscaping associated with the structures or improvements shall be limited to the minimum area reasonably necessary for the approved structures and improvements and the remaining area within the Eightmile River Overlay District shall remain in a natural state consistent with the purpose of this Article 19.
- [6] The area dedicated for open space and the subdivision design as a whole provide substantial additional protection of and benefit to:
 - [a] The ecological integrity of watersheds, wetlands, and watercourses in the Eightmile River watershed, including without limitation Subsection **D(1)(a)[1]** to **[4]** above; and
 - [b] One or more other important natural resources outside of the Eightmile River Overlay District, such as agricultural and forest resources, prominent geological features, scenic views from public spaces, the ecological integrity of other watersheds, wetlands and watercourses, and wildlife habitat.
- [7] The area dedicated for open space purposes provides a significant ecological connection between or buffer to existing protected open space properties or property identified for open space protection in the future in the current Town Plan of Conservation and Development.

(b) Notwithstanding the foregoing, land disturbing activities approved

under this § **315-19.5D** shall not:

- [1] Encroach on any slope above the Eightmile River or any perennial streams in the Eightmile River Watershed defined by the official Eightmile Watershed Overlay District Map in excess of 5%; and
 - [2] Encroach within 50 feet of the Eightmile River or any perennial streams in the Eightmile River Watershed defined by the official Eightmile Watershed Overlay District Map.
- (c) All other related land disturbing activities shall conform to the standards and requirements of Article 19.
- (2) For the purposes of this § **315-19.5D**, "open space" means: land protected in a relatively natural state by conveyance of land or grant of a perpetual conservation restriction to a land trust or other conservation organization qualified as a charitable organization under § 501(c)(3) of the Internal Revenue Code, or governmental entity, or land conveyed outright to one of the foregoing entities for conservation purposes. Land voluntarily dedicated as perpetually protected open space by gift or bargain sale of the applicant or its family prior to the filing of the application may be counted toward the 66% minimum, provided that no portion of the proposed open space has been previously counted as open space for another development approval.

§ 315-19.6 Overlapping regulations.

The requirements of Eightmile Watershed Overlay District regulations are in addition to the requirements of underlying and overlapping zoning districts and of federal, state, or municipally regulated areas. In all cases the more restrictive regulation will take precedence. Compliance with Article 19 does not replace any obligation of the applicant to have a determination made by the Lyme Inland Wetlands and Watercourses Agency or any other regulatory agency as to whether additional review and permits are necessary.

§ 315-19.7 Severability.

Should any section, subsection, or provision of this amendment be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the amendment in whole or any part thereof other than the part so declared to be invalid.