

**EAST LYME INLAND WETLANDS AGENCY  
REGULAR MEETING MINUTES  
September 17, 2018**

**MINUTES**

**Members Present:**

Gary Upton, Chairman  
Ann Cicchiello, Vice Chairman  
Phyllis Berger, Secretary  
Jessie Baldwin  
Peter DeRosa  
Theodore Koch, Alternate (seated)

**Members Absent:**

Harry Clarke  
Jack Chomicz  
Todd Bellucci, Alternate  
Paul Dagle, Board of Selectman

**Also Present:**

Gary Goeschel, Director of Planning/Inland Wetlands Agent  
Mark S. Zamarka, Town Attorney

FILED IN EAST LYME  
CONNECTICUT  
Sept 25 20 18 AT 3:59 AM (PM)  
*brock brown ATC*  
EAST LYME TOWN CLERK

**CALL TO ORDER:**

Chairman Gary Upton called the Inland Wetlands Agency meeting of September 17, 2018 to order at 7:08 p.m.

**PLEDGE OF ALLEGIANCE:** Observed

Chairman Upton welcomed the audience and agency members to the meeting, and thanked them for attending.

Ted Koch, Alternate was seated in place of Harry Clark. Chairman Upton noted he needed to leave by 9 p.m. at which time Ann Cicchiello, Vice Chairman, would take over.

Ann Cicchiello moved to re-prioritize the Agenda with Pending Applications and New Business first. Second by Phyllis Berger. Motion passed 6-0-0.

**I. Additions to the Agenda - None**

**II. Pending Applications**

1. Twin Valley 23-Lot CDD Re-subdivision, Green Valley Lakes Road and Spring Rock Road; Frank & Rajko Maric Owners, Real Estate Services of CT, Inc., c/o Bob Fusari, Jr., Applicant; Application to conduct regulated activities within the 100-foot upland review area from wetlands and watercourses associated with the construction of a road.

Chairman Upton reminded everyone this is not a public hearing. Rather discussion among themselves.

Gary Goeschel, Inland Wetlands Agent, stated the agency asked him to revise the resolution therefore he has a few things to go over. The Agency has both resolutions. Resolution #2 is the initial draft previously provided prepared by Town Attorney Mark Zamarka and Mr. Goeschel with the only change being the shared driveway for lots 11, 12 and 13. Draft resolution #1 was modified per the Agencies request, relocating the

cul-de-sac 150' to the northeast outside of the upland review area. Mr. Goeschel wanted to bring to their attention Exhibit SS, a memorandum from the Applicant, dated July 22, 2018, by Attorney Hollister. It provides a summary of standards for the wetlands agencies actions on a permit application. The Agency may deny an application only if there is substantial evidence in the hearing record of an actual adverse impact from the proposed development on a valuable function of a wetland or watercourse. Mr. Goeschel continued to summarize section 1 of the memorandum, reviewing there cannot be speculation, and that opponents must quantify claimed impacts and explain how, and where they will occur, they cannot claim impacts, but must be specific; what, where, how much, and what is the adverse impact on a valuable wetland function.

In his opinion the basis of this case comes down to Exhibits U, DD, Z, Y and CC.

Exhibit U and DD were prepared by Mr. Danzer; he states that the removal of vegetation with proximity to the cul-de-sac and driveway would be within 20' of the wetlands and would cause evaporation, and changes to the hydrology of the wetland. He states the wetland flow would be diminished, and the wetlands wouldn't be hydrated. He continues to state that this would diminish the wetland function, and would affect edges of the wetlands over time. Exhibits U and DD do not quantify claimed impacts. They do not state what, where or how much or the adverse impact on a valuable wetland function. It should be noted the site is forested. The existing wetland is wooded wetland and will remain such in addition to a 50' buffer to the cul-de-sac. During the breeding season of amphibians using the wetlands, there are no leaves on the trees during that time; therefore thermal impact wouldn't be anticipated. As such Exhibit DD and U contain no specific evidence of an actual adverse impact from the proposed development on a valuable function of a wetland or watercourse.

Further, Exhibit CC, a letter from Robert Russo, Certified Soil Scientist dated July 2, 2018 and Exhibit U from the current application indicates that CLA does not believe the temperature of the water will be elevated as a result the project and will not affect the wetlands ability to support aquatic life. This is not a significant change to the hydrology in question. Further Exhibit CC indicates that the areas of lots 14 and 15 provide key hydrology will continue to provide said hydrology. They state the hydrology and habitat will remain intact.

Mr. Goeschel then reviewed two exhibits from Steven D. Trinkaus, P.E., Exhibit Z dated April 26, 2018, and Exhibit Y, dated June 24, 2018. Mr. Trinkaus indicates in his letter that the following wetland impacts **may** occur, please note the word may. Mr. Goeschel then reviewed Mr. Trinkaus comments regarding the stormwater requirements and the temperature of the runoff being higher than the current condition. In his opinion, Exhibit Z doesn't quantify the relocation of the road, only that the number and extent of activities will be reduced. Exhibit L, a Memo from Victor Benni dated June 25, 2018 indicates the drainage report verifies the proposed drainage features will result in a net balance of volume in stormwater runoff in 2 through 100 year stormwater events. IT goes on to state the drainage design will enhance water quality, and the outlet structures will meet runoff. In Mr. Goeschel's opinion, Exhibits Z and Exhibit Y contain no specific evidence that the impacts on the wetland and watercourse are significant,

adverse and would likely impact or effect the physical characteristics of the wetland or watercourse.

And finally, record Exhibit CC, Robert Russo July 2, 2018 and Exhibit U from the previous application, Robert Russo, April 28, 2017, Mr. Russo states he doesn't believe the temperature of the water will be elevated and he doesn't believe the wetlands will be adversely impacted. He further notes that there is not a vernal pool, and there is no significant change to the hydrology. He provides that lots 14 and 15 provide key hydrology to the alleged vernal pool, and that during storm events the wetlands hydrology remains intact.

After reviewing those documents, in his opinion, Exhibit U and DD by Mr. Danzer, Exhibit CC and Exhibit U from Mr. Russo, Exhibits Z and Y from Mr. Trinkaus, and Exhibit U from the prior application from Mr. Russo, do not specifically identify any impacts to wetlands and watercourses rather they provide generic and unspecified impacts.

Chairman Upton then spoke regarding the differing opinions and said this is the hard part, determining which ones to go with. He stated the members of the Agency appreciate Mr. Goeschel's interpretation and opinion.

Attorney Zamarka spoke as to how the agency would make its decision; reminding them they must look at all of the evidence in the record; there are four or five documents that are determinative of this as pointed out by Mr. Goeschel. You can review all of the record as well. The evidence you may consider accord to the regulations is the application, other agency reports, intervener, comments from regional organizations, public comment, and testimony. Under your regulations in Section 10.2 there are six factors you must consider;

10.2 Criteria for Decision. In carrying out the purposes and policies of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, including matters relating to regulating, licensing and enforcing of the provisions thereof, the Agency shall take into consideration all relevant facts and circumstances, including but not limited to:

- a. the environmental impact of the proposed regulated activity on wetlands or watercourses;
- b. the applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses.
- c. the relationship between the short term and long term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses.
- d. Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage,

- (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
- e. the character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and
- f. impacts of the proposed regulated activity on wetlands or watercourses 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.

Attorney Zamarka noted that in the end this process has to be supported by substantial evidence in the record. Substantial evidence is evidence that affords a substantial basis of fact from which the fact in issue can be reasonably inferred. The reasons for the decision need to be stated in the record and in the resolution. Please remember that general impact or speculation or concerns are not substantial evidence. Substantial evidence is proof it will occur.

Attorney Zamarka stated that the moving of the cul-de-sac is the matter we are all at with the resolution; he asked to hear from Mr. Goeschel if there is substantial evidence to support moving the cul-de-sac; Mr. Goeschel stated that no there is not, he has reviewed the exhibits thoroughly more than once and there are no specific quantifiable impacts. There is speculation that removal of vegetation would create thermal pollution, it would increase the sunlight, but it doesn't quantify the amount, how much, is 1 degree acceptable? We don't know there is no evidence of how much adverse impact. In addition, it is existing wooded wetlands with additional 50' of tree canopy between it and the nearest cul-de-sac, the wetland will remain wooded and shaded and thermal pollution would not be an issue.

Ms. Cicchiello asked you believe there is no specific quantifiable data to explain; what kind of information would pass muster? Mr. Goeschel stated that if Mr. Danzer had said increased sunlight made the water temp increase by X amount and then said this would be the result to the physical characteristic of the wetland. Ms. Cicchiello asked could he figure that? Mr. Goeschel responded he doesn't know, he didn't say but maybe with evidence from other locations.

Chairman Upton asked about Bifurcation of the corridor, he said there were three corridors. Mr. Goeschel stated the result would be an impact to amphibian crossing, but there is no hydrologic connection between the two systems. Connection would be for amphibians.

Mr. Baldwin said the hard thing is talking about indirect impact, easy to quantify direct impacts, such as fill. What we are talking about are indirect impacts. Been consulting for a long time, I've never seen an analysis on removal of tree cover. Left with opinion that generally if remove some would have some impact on wetland. Our responsibility is to make sure there is significant evidence in the record to support our final decision.

That is the hard thing here. Each side has conflicting opinions as to whether there will or won't be.

Chairman Upton a lot of vague, may occur, doesn't believe, etc. Mr. Baldwin on the other hand we have an application that has gone through Army Corp and has direct wetlands impact and made it through that process. Two very different applications, this application has not gone through that process.

Chairman Upton reminded the agency that the prior application was denied by this agency. Mr. DeRosa noted that there have been changes from the recommendations of the denial in this application. His standpoint is yes there is some discretionary ability but we have to work within the regulations presented and can't step outside that. We may not like or want it but must work within the regulations. Mr. Baldwin stated that the applicant did address some concerns; treating the initial stormwater portion, not ideal location in his opinion but they did it and engineered it. Based on deep water quality manual, even though not preferred they are treating it. Conservation easement is in place for a more vegetative buffer.

Chairman Upton in response to Attorney Zamarka, Mr. Goeschel and Mr. Baldwin and Mr. DeRosa said that we keep pushing on what the CGS and Regulations tell us to do, so he would like to read it in:

Section 22a-42a of chapter 440 Wetlands and Watercourses; (d) (1) In granting, denying or limiting any permit for a regulated activity the inland wetlands agency, or its agent, shall consider the factors set forth in section 22a-41, and such agency, or its agent, shall state upon the record the reason for its decision. In granting a permit the inland wetlands agency, or its agent, may grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity which are designed to carry out the policy of sections 22a-36 to 22a-45, inclusive. 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 inland wetlands agency, or its agent, determines that such restrictions are necessary to carry out the policy of sections 22a-36 to 22a-45, inclusive.

Mr. Koch said we have two resolutions; we have to pick one of them. Has a follow up to Attorney Zamarka; looking at the two, please help him understand the difference between the two clauses. Attorney Zamarka wanted to be clear he is not recommending either, he wants to make sure the Agency understands its charge to reach decision. Resolution #1 is with regards to the movement of the cul-de-sac while resolution #2 does not. There is a typo in resolution #2 as they are reading, that would be item #13 which would be removed and renumbered.

Ms. Berger, item #13 doesn't mention driveway and whether or not it would be gravel on the shared driveway; Mr. Goeschel noted that it is in resolution #2, lots 11, 12 and 13

shall share a driveway, if you add in gravel that would be modified rather than as proposed.

Chairman Upton asked if they should make changes or go down the proposed route. Ms. Cicchiello wants shared gravel driveway in the resolution, so we will need to add "gravel".

Mr. Baldwin had a question for Attorney Zamarka; if commission did approve the plan as proposed; what would be other avenues the intervener would have to continue there. Attorney Zamarka would not speculate if the intervener would appeal and what would such appeal would potentially say. Ms. Cicchiello asked Mr. Baldwin are you saying approval of 1 or 2 or either; Mr. Baldwin either – he wants to know will this keep coming back to commission? Attorney Zamarka reminded the Agency not to make a decision based on whether anyone will appeal. You make a decision based on evidence, expert and staff review. He cautioned the agency not to take this into account, any potential litigation.

Mr. Baldwin asked Mr. Koch and Ms. Cicchiello what are your thoughts on whether or not the burden of proof has been met, based on as stated. Ms. Cicchiello stated the expert testimony can go either way. The question is specific quantifiable evidence; is there something quantifiable substantial evidence, not sure there is, but would like there to be, in either direction. Where is the substantial evidence? Mr. Koch agreed. He stated the applicant came with initial application last year which was denied, and they came back with changes, made changes. He doesn't think he heard substantial evidence to justify moving the cul-de-sac, resolution #2 in his opinion is the one we should go with. Mr. Baldwin expressed concern it was not discussed in public hearing and whether or not it was even possible given the road would change, recalculations, came up with that after the fact, we wouldn't know if it was really possible.

Mr. Goeschel pointed out that while Mr. Danzer had personal matters, he wasn't available for cross by anyone, the board, counsel or applicant. His report was submitted and takes into consideration but he wasn't here for discussion or questions but did send a representative.

Ms. Cicchiello stated that moving the cul-de-sac came up almost too late because it wasn't during the public hearing. She is struggling with it because couldn't discuss with the experts so it's not in the record. She would go toward resolution #2. Mr. Koch is leaning to #2. Mr. Baldwin is leaning toward #2. Ms. Berger is looking toward #2, with the gravel driveway modification for those three lots.

Mr. DeRosa would love to not see a development there, but doesn't see how we can do that, he can't vote against it, have to vote for it. Developer did what was asked, when get to details of the speculated impact it seems to get down into opinions of professionals he (Mr. DeRosa) doesn't have the expertise to dissect. He sees I don't like, I don't want, but there is no if x then y. Our scope is to enforce regulations and make sure what is presented is in line with that. Leaning toward resolution #2, it has met the requirements and he is comfortable it has met requirements and that is our role. Whether like requirements or not is an issue for a different organization. Meets

requirements. Mr. Koch agrees he like the woods but – substantial evidence, when have two sides and both have experts and have one side agree with the other that is persuasive; on July 16, he asked Mr. Trinkaus about 11, 12 and 13 he was ok with them and that is the cul-de-sac that is evidence in favor of keeping the cul-de-sac.

**Ms. Cicchiello moved to approve Resolution #2, with the removal of item #13 and change the shared driveway to shared gravel driveway.**

**SEPTEMBER 17, 2018**

**CONDITIONAL APPROVAL OF APPLICATION TO CONDUCT REGULATED ACTIVITIES  
WITHIN 100 FOOT UPLAND REVIEW AREA**

**WHEREAS, on, May 1, 2018, Real Estate Service of CT, Inc. c/o Bob Fusari, Jr. (“Applicant”), filed with the East Lyme Inland Wetlands Agency (“Agency”) an application and plans entitled “Twin Valley 23-Lot CDD Re-Subdivision, Prepared for entitled “Twin Valley 23-Lot CDD Re-Subdivision, Prepared for Real Estate Services of Connecticut, Inc., Green Valley Lakes Road - Map 14.0 Lot 45, East Lyme, Connecticut by Michael J. Bennett, L.S, of Bennett & Smilas Associates of Higganum, Connecticut and Joe Wren, P.E. of Indigo Land Design, LLC of Old Saybrook, Connecticut; dated 3/31/17 revised through 3/26/18 (“Application”); and**

**WHEREAS, the Application refers to its Erosion and Sedimentation narrative for a description of the proposed activity; and**

**WHEREAS, the Erosion and Sedimentation narrative states that the Applicant is seeking a permit for activities limited to the construction of a roadway, utility work and drainage improvements on the Property; and**

**WHEREAS, the Application makes reference to, and shows conceptual plans for a 23 lot Conservation Design Development subdivision to be located on the Property; and**

**WHEREAS, on May 1, 2018, the Applicant filed with the East Lyme Planning Commission an application for a 23 lot Conservation Design Development consistent with this Application; and**

**WHEREAS, on May 7, 2018, the East Lyme Planning Commission requested from the Agency a report on the subdivision application pursuant to General Statutes 8-26(e); and**

**WHEREAS, the Application was filed in response to the Agency’s denial of the Applicant’s 2017 application for a 25 lot CDD Re-Subdivision and related improvements, to be located on the same property (“2017 Application”); and**

**WHEREAS, the proposed application keeps the same road configurations and profile as the 2017 Application but, eliminates 2-building lots and relocates the stormwater detention basins; and**

**WHEREAS, the Application was the subject of a public hearing pursuant to a petition signed by at least 30 persons 18 years of age or older who reside in East Lyme, in accordance with East Lyme Inland Wetlands Regulation 9.1; and**

**WHEREAS, pursuant to General Statutes 22a-19 Brian Lepkowski (“Intervenor”) filed a Petition to Intervene in this Application upon his belief that the Application involves conduct that is reasonably likely to unreasonably pollute, impair or destroy the public trust in air, water and other natural resources of the State of Connecticut; and**

**WHEREAS, the Agency held three public hearings on the Application, and listened to hours of testimony during those hearings. Numerous exhibits were submitted by the Applicant, the Intervenors and individuals for consideration during the hearing process; and**

**WHEREAS, the Agency finds that in accordance with Section 7 of the Regulations, the Applicant has provided the all the information required by Section 7.5 and the necessary additional information required by Section 7.6, including but not limited to proposed alternatives, engineering reports and analyses, a description of ecological communities and the functions of the wetlands and watercourse and the effects of the proposed activity on these communities and wetland functions, an alternative which would cause less or no environmental impact to wetlands or watercourses, as well as an operations and maintenance plan for stormwater structures, stormwater management plan, erosion and sedimentation control plan, and site development plans. As such, the application appears to be complete; and**

**WHEREAS, in accordance with Section 7.6, the Agency required additional information to be submitted including but not limited to site plans which show the land which will be affected thereby which shows existing and proposed conditions, wetland and watercourse boundaries, contours, and other pertinent features of the land and the proposed activity; and**

**WHEREAS, General Statutes 22a-41(a)(6) and East Lyme Inland Wetlands Regulation 10.2.f requires the Agency, to the extent that it is able, to consider any 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; and**

**WHEREAS, the Agency finds that the proposed 23 lot Conservation Design Development is reasonably related to and made inevitable by the proposed regulated activity, and may have an impact on wetlands and watercourses; and**

**WHEREAS, the upland review process does not forbid activity based solely on proximity to wetlands. Rather, the upland review process merely provides a basis for determining whether activities will have an adverse impact on the adjacent wetland or watercourse, and if necessary, regulating them; and**

**WHEREAS, as the finder of fact the Agency has discretion regarding the credibility of witness testimony and evidence in the record; and**



**WHEREAS, pursuant to Section 10.5 of the East Lyme Inland Wetlands and Watercourses Regulations, for the purpose of those Sections (1) “wetlands and 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; and**

**WHEREAS, Pursuant to Section 10.5 of the East Lyme Inland Wetlands and Watercourses Regulations, a municipal inland wetlands agency 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; and**

**WHEREAS, Demonstrated by Exhibit “L”, Memorandum from V. Benni, P.E. Town Engineer to G. Goeschel II, Wetlands Officer, dated June 5, 2018 Re: Twin Valley 23-Lot CDD Resubdivision, the Drainage Report verifies that the proposed drainage features will substantially result in a net balance of volume draining to the wetlands on site for the 2 through 100-year storm events, will enhance stormwater runoff quality and recharge the groundwater. In addition, the proposed water quality basins have been sized to retain, attenuate and infiltrate stormwater runoff. Further, the outlet structures will meter outfall volumes and peak rates of runoff; and will be seeded and planted with the intent of bioremediation thought nutrient uptake thus, enhancing stormwater quality. The E&S Narrative and Construction Details provide construction notes and a long term maintenance plan for the Stormwater Management Basins. Moreover, the Erosion and Sediment Control Plan was prepared according to the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control (CT DEEP), and includes a narrative, construction sequence and vegetative turf establishment procedures; and**

**WHEREAS, as demonstrated by Exhibit “M”, Memorandum from K. White, RS, of the LLHD, dated 6/19/18 indicating Lots 1-25 (except lot#10 and lot#24 which are no longer proposed building lots) are recommended suitable in their current condition; and**

**WHEREAS, as demonstrated by Exhibit “U”, Wetlands report from Robert C. Russo, Soil Scientist dated April 28, 2017, from the 2017 Application indicates the proposal will avoid any direct impacts and the design has been prepared to minimize the potential for secondary and indirect impacts; and**

**WHEREAS, as demonstrated by Exhibit “CC” CLA notes the subject site is not a vernal pool; and**

**WHEREAS, as demonstrated by Exhibit “CC”, there will not be a significant change to the hydrology of the wetland in question as the drainage design uses the drainage divide within the most southern-central wetlands along the property boundary as a division of the site for a determination of pre and post-development of flows leaving the site; and**

**WHEREAS, as demonstrated by Exhibit “CC” The areas of Lots 14 & 15 that provide key hydrology to the wetland containing the alleged vernal pool will continue to provide said hydrology, that surface flow does not feed this wetland during normal storm events, and the hydrology of the wetland will remain intact as will the habitat; and**

**WHEREAS, as demonstrated by Exhibit "CC", the feasible and prudent alternative proposed by the intervenor's consultants places a significant length of paved road in the upland review area which would result in the removal of vegetation and the creation of impervious surfaces in close proximity to the adjacent wooded wetland/swamp which, would present a greater likelihood for wetland impact, both during and after construction verses the applicant's proposal; and**

**WHEREAS, the filing of the Petition to Intervene requires the Agency to make findings, in addition to its decision on the Application, whether or not the activity resulting from the approval of the Application is reasonably likely to unreasonably adversely affect the public trust in air, water or other natural resources of the state, pursuant to General Statutes section 22a-19; and**

**WHEREAS, based on the foregoing, the activity resulting from approval of the Application is not reasonably likely to unreasonably adversely affect the public trust in air, water or other natural resources of the state; and**

**WHEREAS, the Application adequately addresses the reasons for denial of the 2017 Application; and**

**WHEREAS, based on the evidence in the record there is no direct impact on wetlands or watercourses as the all construction activities will be conducted within the 100-foot upland review area from an inland wetland and watercourses. Therefore, there are no irreversible and irretrievable loss of wetlands or watercourse which would be caused by the proposed regulated activity; and**

**WHEREAS, the project has been designed to protect the wetlands and watercourses as the building structures, driveways, subsurface sewage disposal systems, and drainage structures are designed to be situated outside of the wetlands and located in the upland review area as well as the public utilities which are being installed within existing upland areas; and**

**WHEREAS, mitigation measures to minimize and mitigate potential impacts from the creation of new impervious surface on the site and to protect the wetlands and watercourses, such as stormwater management structures (catch basins with snouts installed on the outlet pipes to catch floatables) in addition to two (2) bio-retention ponds, will pre-treat and control runoff, promote groundwater recharge, and reduce thermal pollution; and**

**WHEREAS, potential impacts are mitigated by the implementation of temporary erosion and sedimentation controls as well as stormwater controls throughout all phases of construction; and**

**BE IT THEREFORE RESOLVED that the Agency hereby APPROVES the Application known as Twin Valley 23-Lot CDD Re-subdivision at Green Valley Lakes Road & Spring Rock Road; Frank & Rajko Maric Owners, Real Estate Service of CT, Inc. c/o Bob Fusari Jr. Applicant; Application to conduct regulated activities within the 100-foot upland review area from wetlands and watercourses associated with the construction of a proposed subdivision road and the plans entitled "Twin Valley 23-Lot CDD Re-Subdivision, Prepared for Real Estate Services of Connecticut, Inc., Green Valley Lakes Road - Map 14.0 Lot 45, East Lyme, Connecticut by Michael J. Bennett, L.S, of Bennett & Smilas Associates of Higganum, Connecticut and Joe Wren, P.E. of Indigo Land Design, LLC of Old Saybrook, Connecticut; dated 3/31/17 revised through 3/26/18",**

subject to the following administrative requirements and required modifications to the site plan and other materials submitted in support of this application:

1. The Erosion and Sedimentation Control Plan and recommended Construction Sequence shall be followed.
2. Pursuant to the Erosion and Sedimentation Control Plan and construction sequence, notify conservation officer at least 2 days prior to construction to inspect erosion controls.
3. Silt fence and other erosion controls should including the temporary sediment traps and diversion swales be installed and inspected by the Inland Wetlands Agent and the Town Engineer prior to any site construction, land clearing or other associated construction activities.
4. In areas proposed to be loamed and seeded, a low maintenance lawn such as fescue, which requires minimal application of fertilizers and pesticides, shall be planted.
5. As indicated in Exhibit "L", memorandum from Victor Benni P.E., Town Engineer dated June 5, 2018 an Erosion and Sedimentation Control Bond in the amount of \$30,000.00 dollars in a form satisfactory to the Town of East Lyme and the Inland Wetlands Agency, its Agent, and Town Engineer shall be posted with the Town of East Lyme.
6. A copy of each inspection report for the Stormwater Management Basins shall be furnished to the East Lyme Inland Wetlands Agent with 7-days of conduct said inspection.
7. Any proposed Additional work beyond this permit in the wetlands or watercourse or its 100-foot regulated area will require approval from the Inland Wetlands Agency or its certified agent.
8. Any changes to the site plan listed on this permit require notification to the Inland Wetlands Agent and requires commission approval- a new plan will be given to agent before work begins.
9. Inland Wetlands Conservation Tags provided by the Wetlands Agency, available in the Land Use Office, Department of Planning & Inland Wetlands, shall be posted along the inland wetlands boundary at 40-50-foot intervals satisfactory to the Inland Wetlands Agent.
10. A copy of the proposed Conservation Easement for the area along the Four Mile River, in a form satisfactory to the Inland Wetlands Agency and Town Council, shall be filed on the land record in the office of the East Lyme Town Clerk prior to any construction.
11. No site work shall commence until all applicable conditions are satisfied.
12. Notify Inland Wetlands Agent upon completion of all regulated activities for final inspection.
13. Lots# 11, 12, & 13 shall utilize a shared gravel driveway for the purpose of reducing the level of clearing.
14. Forested cover within the upland review areas shall be maintained to the extent practicable. The propose Limits of Disturbance (LOD) resulting from the proposed modification shall be strictly adhered to though out all phases of lot build out and construction.

This approval is specific to the site development plan submitted as the application of Twin Valley 23-Lot CDD Re-subdivision at Green Valley Lakes Road & Spring Rock Road; Frank & Rajko Maric Owners, Real Estate Service of CT, Inc. c/o Bob Fusari Jr. Applicant; Application to conduct regulated activities within the 100-foot upland review area from wetlands and watercourses associated with the construction of a proposed subdivision road and the plans "Twin Valley 23-Lot CDD Re-Subdivision, Prepared for Real Estate Services of Connecticut, Inc., Green Valley Lakes Road - Map 14.0 Lot 45, East Lyme, Connecticut by Michael J. Bennett, L.S, of Bennett & Smilas Associates of Higganum, Connecticut and Joe Wren, P.E. of Indigo Land Design, LLC of Old Saybrook, Connecticut; dated 3/31/17 revised through 3/26/18".

Any change or modification in the plan or development plan layout other than those identified herein shall constitute a new application unless prior approval from the Agency or its Agent is granted. The applicant/owner shall be bound by the provisions of this Application and Approval.

**Ms. Berger second; No further discussion; Motion passed 5-0-1 Chairman Upton abstained.**

2. **Town of East Lyme;** Application for a Determination of Permitted/Non-Regulated Activity for a proposed pitch pine conservation tree nursery at Oswegatchie Hills Nature Preserve.

Mr. Goeschel noted he had received an email from Mr. Decker with additional information on pitch pine nurseries; he included a layout of what they are looking to do; and a description of location and site plan. This is in addition to the rain garden. Where we have overflow parking for Vets field, the area of the white tarp, will kill vegetation to do this project. This is within 100' of the wetlands. They are looking for a determination of exempt activity or will it require a permit. This is for the planting of trees, which Mr. Goeschel has no objection to and feels it's a non-regulated activity.

**Mr. Koch moved to make a finding of non-regulated activity; Mr. Baldwin second. Motion passed 6-0-0.**

3. **Leonard Brian McPartlin, Owner; 132 N Bridebrook Rd;** Application for Determination of Permitted/Non-Regulated Activity for construction of a stone wall at property located at 132 N Bridebrook Rd, East Lyme Assessor's Map 14.0, Lot 75.

Mr. Goeschel stated that he looked at the site, Ms. Cicchiello attended as well. The stream is washing out a bank, the homeowners driveway will be undermined by the erosion; there is currently a bridge there. Mr. Goeschel showed a photograph on his phone of 132 N Bridebrook Rd. He stated he would recommend to excavate and for erosion and sedimentation controls, with the use of geo-fabric and put in stone, using existing material on site and to re-grade the hill. Ms. Cicchiello stated he should put vegetation back in after work was completed and Mr. Goeschel stated hopefully he would not touch what is there. If he gets into the stream and removes any he will put it back. Mr. Goeschel estimates it would be a day without erosion and sedimentation controls but hopefully done by end of day.

Mr. McPartlin will have a contractor do this. Chairman Upton asked if they could determine Mr. Goeschel does a permit. Mr. Goeschel stated that if he needs an administrative permit the work would have to be outside of the watercourse; Mr. Baldwin did not think that was possible. Chairman Upton felt there was a need for a permit but that it should be administrative. Mr. Goeschel responded that when work is done in the stream, Mr. McPartlin would need a permit from the agency. If they recall, this was done in a similar situation on Gurley Road, we have the cross sections from the Gurley Road property. Mr. Goeschel state if the work is not in the water he can issue the permit administratively, if it is in stream must come before the commission.

### III. New Business

A. Agoritsa & Nickolaos Fokaidis, Owner, 18 Society Rd; Application for conservation subdivision of 1-lot at property located at 18 Society Road, East Lyme Assessor's Map 21.1, Lot 63.

JP Mereen, Gerwick and Mereen. This is a 4 acre parcel with one dwelling at this time, they are requesting a conservation subdivision and create an additional lot which is going to consist of a small impervious parking area, same size house, using the same driveway, sewer connection, looking into a well for the second lot because water is on the other side of the street and the road was just paved.

Chairman Upton so you are applying for an exception of that rule, Brad Kargl, Utilities Engineer and LLHD are on board but has to go to the state. Cross easement for ingress and egress of utilities. Mr. Mereen noted the proposed development is outside of the review line. Mr. Goeschel stated that because of wetlands on the site, it has to come before you; even though there is no activity in the upland review area. Mr. DeRosa asked it's coming here for formality because wetlands on site and being further developed. Chairman Upton asked if there was anything previous on record; Mr. Goeschel said there are no violations, site inspection showed heavily vegetated, Mr. Mereen noted a small raingarden for additional runoff but engineer estimated a calculation of a 9000<sup>th</sup> of an inch for 25 year flood. Mark Sullivan, Soil Scientist delineated the wetlands, and also signed by engineer as well. Ms. Berger asked to clarify where is the house going? Mr. Goeschel noted where we were standing further forward toward the road. The location was further described. Mr. Mereen noted they can't further subdivide after this because usable area is only about 2.5 acres, the rest is vegetated wetlands. Chairman Upton asked about the single family dwelling on the lot in front of it which is .79 acres, and noted the Zone is RU 40/20.

**Ms. Berger moved that in the Application for conservation subdivision of 1-lot at property located at 18 Society Road, East Lyme, no permit is required, Mr. Koch second. Motion passed 6-0-0.**

### IV. Public Hearing –

4. **GDEL Residential B, LLC., and Gateway Development/East Lyme LLC;** Application for construction of 120 residential units, including but not limited to road improvements and construction of parking areas at property located at East Society Road, 286 Flanders Road (26.0/2), Flanders Road (31.0/1).

Before we open the public hearing this evening for the GDEL Residential B, LLC and Gateway Development/East Lyme LLC, I would like to inform the audience and the Commission of the Ground Rules we will be following this evening to conduct the public hearing.

The purpose of a public hearing is an opportunity for the Agency to gather evidence and testimony, including public comment, regarding the pending application. The Wetlands Agency encourages all in attendance to offer comments and ask questions. However, a successful public hearing requires some simple rules be followed. These ground rules will ensure that all in attendance are treated in a respectful and courteous manner, and that all who desire to speak will have the opportunity to be heard. As such, the rules are as follows:

1. The applicant or his representative will make a formal presentation to the Agency stating the proposed regulated activities, the wetland and watercourse impacts, and any alternatives which were considered by the applicant. The Agency may, during the presentation, ask questions of the applicant for clarification.
2. After the applicant's presentation is completed, the Chair will ask for members of the public who wish to speak in favor of or in opposition to the application to address their comments to the Agency from the podium.
3. We ask that no one speak unless recognized by the Chair for that purpose. This is necessary to ensure that only one person at a time speaks on any issue, making it easier for everyone to understand as well as for clearer legal transcription. Upon recognition by the Chair, the individual addressing the Agency must identify themselves by clearly stating their name and address for the record. If necessary, an individual may be asked to spell their name for the record.
4. Anyone choosing to speak must address their remarks to the Wetlands Agency and not to other members of the public or the applicant. Any debate between those in favor and those opposed the proposal must be strictly avoided. Oral comments can generally be delivered in 5-minutes. If there are a large number of individuals who wish to speak, the Chair reserves the right, in its sole discretion, to enforce a 5-minute rule in order that all who wish to speak may have an opportunity to do so. Individuals who wish to be heard multiple times may return to the podium but, only after everyone who wants to speak has spoken. To assist us in reducing lengthy public hearings, please be mindful to avoid repetitive comments. If you are in favor, simply tell us and give us your reasons why; and likewise, if you are opposed.
5. As the Wetlands Agency is here to listen to the public's comments about the subject of the hearing, the Agency is NOT here to express its own views or opinions thereon. The Agency will NOT participate in a debate of the issues. No person has the right to demand an answer to a specific question from a member of the Agency. As noted earlier, questions should seek clarification and information. Questions should not lead to a debate of the issues.
6. All questions are to be directed to the Chair, who may either answer them or refer them to a Commission member, the Town Attorney, Town staff, or the applicant. The answer may be deferred and subject to further review or study and answered at a later date.

7. No member of the public shall engage in any demonstration, booing, handclapping, or otherwise disruptive behavior.
8. The Chair will be responsible for ensuring that these rules are followed. Anyone violating these guidelines will be asked to refrain from doing so, and may, in the sole discretion of the chairperson, be asked to leave the public hearing.
9. The Wetlands Agency has 35-days from the date the public hearing commences to complete the public hearing. During that time, if the commission requires additional information beyond that which has been or will be submitted, the Agency may ask the applicant for an extension of the public hearing period.
10. Upon the close of the public hearing, the Inland Wetlands Agency has 35 days from said date to render its decision. If the Agency requires additional time to render its decision, it may ask the applicant for an extension of the time in which to render a decision.
11. The extensions mentioned above are granted by the applicant and can not to exceed a total of 65 days.

Mr. Goeschel noted Exhibits A through F for the record:

- Exhibit A      Application of GDEL Residential B, LLC
- Exhibit B      Natural Resource Services Inc Report dated August 23, 2018
- Exhibit C      The Day Legal Notice September 5, and September 13, 2018
- Exhibit D      Town Clerk Legal Notice recorded August 29, 2018
- Exhibit E      Stormwater Management Report Gateway Commons Residential Phase II August 20, 2018
- Exhibit F      Gateway Commons II Overall Site Plan and Grading Plan August 20, 2018

Attorney Ted Harris spoke representing the applicant. He noted this is an application for regulated activities for a residential development in the Gateway District. There are activities in the upland review area. There are direct wetlands impact largely in the area of E Society Road with the crossing of a wetland. There are also small areas of wetland impact having to do with construction of a sidewalk.

Attorney Harris submitted the following Exhibits:

- Exhibit G Certificates of Mailing
- Exhibit H Army Corp of Engineers Approval letter of August 2, 2017
- Exhibit I State of Connecticut DEEP 401 Water Quality Certificate May 3, 2017
- Exhibit J Case Law regarding Thomas W Cornacchia et al v Environmental Protection Commission of the Town of Darien, July 29, 2008

He reviewed the history of the project. In the summer of 2008 the Town approved a Master Development Plan for this district. Due to recession it lay dormant, and the project started in 2013 in earnest. The Master Development Plan provided for

residential and commercial uses, the residential uses predominately on the west side of the Pattagansett River and the commercial uses predominantly on the east of the Pattagansett River, with the possibility to have some of each on either side.

In 2013 there was a demand for residential units, so the applicant came before this agency for 280 units of residential development. Most of the agency members have seen it and it is now fully occupied. This application is for the second phase of the residential activity, the final 120 units.

There are a designated 40 acres of conservation area to the north of the residential development, as part of the original residential development, which consists of wooded space and a buffer to the residential houses to the north. In this application the applicants have maintained that with additional conservation area, which you will see in the details of the application.

The main activity that involves direct wetland impact is the East Society Road extension. In addition to the Master Development Plan Zoning identified a need for a connection between Exit 73 and Exit 74, not only for traffic mitigation but more importantly for emergency services access with the level of development; and making a connection to Flanders Road was an important factor.

This application is one phase of that. In the phase one residential development there was a complete rebuild of East Society Road to Dean Road. A small portion was a dirt road, the interface between that road and Dean Road was moved for improved site lines. About  $\frac{3}{4}$  of a mile was reconstructed by applicant and accepted by Town as a town road. This application provides another 1200' of East Society Road through that site looking toward connection with Flanders Road. Ultimately the intent is to connect through to Flanders Road, but they would have to cross the Pattagansett which is to be done further down the road, it is not in this application but it is part of the Master Development Plan.

Ms. Cicchiello asked if the direct impact to wetlands is where we walked through the woods that is the crossing. Mr. Goeschel confirmed that is the crossing they were talking about.

Prior to the presentation to you tonight, the direct wetland activity with respect to the E Society extension was presented to Army Corp, those applications included the Pattagansett crossing where your application does not. That was all presented to the Army Corp and DEEP so they would understand the direct wetland impacts.

There are a number of indirect upland review impacts. Those activities have unique standard in terms of review. He spoke about Section 10.6 of the regulations which states "A municipal inland wetlands agency 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".



He spoke regarding the appellate court case which cites two Supreme Court cases; standards of wetland review are noted.

Provides a nice overview he read a few sections, commission must make a determination that the activity will have a likely adverse impact on wetland and watercourse and that finding must be supported by substantial evidence in the record.

Upland review process doesn't forbid activity based solely on proximity to wetlands, rather the upland review process provides a basis for determining whether activity will have an impact on wetlands and watercourses and whether a regulated impact. In order to deny the application to conduct regulated activity in review area, it must determine the proposed activity will have a likely adverse impact on a wetland or watercourse and must be supported by substantial evidence in the record.

In talking about potential impact, a finding that there is a significant potential for impact is insufficient to deny a permit for regulated activity, the impact on wetlands and watercourses must be adverse and likely. Unless there is substantial evidence in the record of significant and adverse impact to the wetland, the applicant is entitled to use the upland review area, simply because it is an area of higher scrutiny it is only regulated if substantial evidence of impact to wetland.

Mr. Koch asked if in the future they are going to want to cross the Pattagansett River. That would be a separate application. In our earlier determination on a separate application Attorney Zamarka told us that there were six things to consider, one of which was future activities; can we consider that? Attorney Harris noted you have DEEP and Army Corp permits that are considering that activity as well. Chairman Upton felt that speaks to the inevitable crossing and the future activity, and are part of the Master Development Plan. Attorney Harris responded yes but they would still have to come back to this agency.

Matt Pruten, Engineer from BL Companies, presented the application. The location of the development was demonstrated and discussed on a plan shown to the Agency. The existing parcel is 164.5 acres, the topography ranges from 289' to 30' at the culverts under I-95. There are a variety of soils, seventeen different types. There are flood plains on the parcel, but the development is mostly in Zone X. The Pattagansett River dumps into the Long Island Sound that is where all of the water goes. In general the water goes to the Pattagansett and south to the I-95 drainage structure.

We have 14 multifamily buildings including 120 units, from the extension of E Society Road, all accessed through there. Brown color on the plan are the Individual units, club house, communal pool, then there are 4 buildings to the east of the extension of the road, and the roundabout which connects to phase 1, then there are an additional 6 units that dead end. There is a new clubhouse and new pool for phase II. The future crossing was indicated on the map.

Stormwater management is required due to impervious area being added. They ran models for the , 2, 10 and 50 year storm events, and their goal is to comply with 2004 DEEP manual, the Erosion and Sedimentation manual and the Town guidelines.

They have accomplished this with a series of structures and features on site which are best use for this site; catch basins with deep sumps and hoods, sediment forebays, grassy swales, micro pool extended detention basins, and rain gardens that go to the Patagansett River. There are 7 raingardens or micro pool extension detention basins that mitigate peak flow off site; they tried to mimic the existing drainage patterns to divert to and from wetlands to maintain drainage patterns. They have exceeded the water quality per the DEEP stormwater manual, within 80% of that which is required with structures have on property.

The storm piping design plan was shown. It demonstrated the drainage basins around the property. He further showed the utilities which are extension from phase 1, water, electric, telephone, etc. to access the units proposed to be built.

In addition to the actual hardscape with structures, there is landscape around building and streetscapes. Green is area that is disturbed and replanted during construction. Darker green are existing wetland areas. Foundation plantings total 64 trees 1800 shrubs, 1500 varieties of ground cover, there is a lot of landscape and vegetation going back in to area developed.

Erosion and sedimentation control during construction and post construction, features include construction entrance with tracking pad, to protect the roads, and water. There are silt sacks and silt fences, hay bale woodchip berm, soil stockpile areas, temporary sediment traps, etc. will be used and maintained throughout construction to stabilization upon completion.

Ms. Berger asked how long will it take to complete project; Dave Yetton, KGI Properties said probably about a year and a half, it's about getting buildings going, once first one opens about every 45 days open another.

Ms. Cicchiello had a question for Mr. Pruten, during construction you said you would have temporary E&S controls, how long would they be used? Mr. Pruten responded it typically depends on the weather, they would defer to town staff to agree all areas are stabilized, they would leave in place until growing season if had to stop for winter. Maybe a season or two. Better safe than sorry.

Scott P. Rabideau, Professional Wetland Scientist, of Natural Resource Services Inc, provided the review of the environmental aspects and was at the site walk Saturday. He is a soil scientist. He stated that his staff did the wetland delineation, they are qualified, they have masters in soil scientist. His primary training is as a wetland biologist, and he is a Professional Wetland Scientist. He tells them this because all of the evaluations taken into account are about the impact of functions and values of wetlands. Soil scientist may not be a perfect person to give you the functions and values and how the project is going to impacts those functions and values.

He has an undergraduate degree in Natural Resource Science and a Masters in Business. He has been involved in this project since 2008. He wants to provide the agency with the foundation for his testimony. He gave a report to them this evening, and these reports speak to the Army Corp permit and DEEP permit, what they didn't submit and he will put in to record at this time. Two part document, first is the Army Corp function and values statement, and the second part is the Connecticut Addendum Report for

Army Corp function and values statement. Everything they did for this project is outlined in these exhibits.

Exhibit K ACOE Functions and Values Statement for Proposed Wetland and River Crossings Gateway Commons Prepared for KGI Properties Inc, Scott P. Rabideau, PWS, Principal, Edward J. Avizinis, PWS, Carolyn Decker, Wetland Biologist October 28, 2016

Exhibit L ACOE Connecticut Addendum Report Supporting Environmental Documentation Gateway Commons Prepared for KGI Properties, Inc., Scott P. Rabideau, PWS, Principal, Edward J. Avizinis, PWS, Carolyn Decker, Wetland Biologist October 28, 2016

Evaluations his staff performed are in this document and this evidence was provided to the Army Corp and DEEP. It is signed by three people; this is the directions his staff were to follow and their evidence.

Project has both direct wetland impact and impact to upland review area.

Direct wetland impact is both permanent and temporary, for the construction of E Society Road as it goes through the property. The direct wetland impacts are approximately 1,192 sq ft of permanent impacts, 2,945 sq ft of temporary impacts to construct the road, then those impacts will be mitigated.

Chairman Upton asked about what are permanent impacts would be things like canopy removal, heating of vernal pool, what are your definition. Canopy removal is cited in the Army Corp Connecticut addendum, they are cutting 7 trees in the wetland to construct the road, they limited because of your discussion on the previous project. Want to sustain the wetland so reduced the number of trees being cut.

Need to allow for proper construction and maintenance of the road way. They intend to maintain mature trees on both sides, will have adequate cover and shading when trees fill in. Perm impact is what we are altering. Temporary is what we are altering and restoring. We also talk about secondary impact are the tree canopy in the wetland that have to be cut for the overhead power lines, might be 30' but because of trees, have to cut trees outside, we try to go underground so don't have that situation.

He then showed a graphic that was part of Army Corp approval. Purple is the permanent impact, part of road and sidewalk. That impact is the 1,992 square feet. Yellow crosshatch area on north and south is temporary impact necessary to construct the road and will be restored upon completion. Also putting in screening vegetation on both sides of the roadway so traffic lighting is attenuated in the evening, it is a common best management practice, for some type of shrub having leaves through the winter time. At this crossing have a direct alteration of the wetland; culvert itself has a 6' span and a 3' rise above ground level. The reason is so have unrestricted path for wildlife to go beneath roadway, amphibians, large reptiles. Middle of summer, frog crossing so doesn't dry out crossing road. If have a wall on both sides to minimize impacts the animal comes to wall goes through culvert and gets to other side.

Mr. Baldwin asked about the construction of the culvert and the wetlands being disturbed. He was trying to clarify the direct impact, the culvert is 6' but its 38' so there is fill in the wetlands associated with the road, culvert, and more fill in wetlands associated with the road. This is how they approached the crossing.

They used retaining walls on each side to minimize grading on each side, used to minimize the impacts. The Analysis provided demonstrated that the functions and values of wetland are not significantly impacted.

State and Federal permits don't speak to upland review area; however the information collected is still valid for the upland review area. Foundation for testimony is in those documents.

Mr. Baldwin asked is there mitigation associated with the direct impacts. There are mitigation plans, including the 12 acre conservation easement area provided. There is an invasive management plan for invasive species in the Pattagansett River and in the watershed area, they will replant where eradicate invasive species. Some of the invasive, multi-flora rose, phragmites, bittersweet, honeysuckle, shrubs and vines. The invasive are interspersed within the wetland so using a cut stem treatment, which is low impact, using Glyphosate. They cut it, paint it with Glyphosate, gets in to root system, and do again next year if needed. May use a low volume back sprayer depending on what it is. Ms. Berger asked if it was round up. Mr. Rabideau noted there is a specific use of round up used in aquatic environments, it disperses quickly. It has a dye in it so I can see they did what they are supposed to do. It is very effective and works well. This was approved by the Army Corp and DEEP and is in that document.

Chairman Upton recess before he departs. What is the entire sq ft of the entire development vs entire development in the review area? Mr. Rabideau stated this is a 196 acre project; there are 5 acres of activity in the upland review area proposed to be impacted by this project.

Mr. Rabideau showed a site plan with the wetland areas on it and upland review area, showing the total disturbances in the upland review area.

Chairman Upton called for a recess at 9:01 p.m.

Ms. Cicchiello took over for Chairman Upton who left at 9:11 p.m.

Mr. Rabideau continued that in phase one they did a meadow in the upland review area where had temporary impacts and will do the same here. It will be restored as a meadow. The closest structure to a wetland feature is 20' that is the retaining wall. The building is a little over 42' from the wetland location. On the wetland side will maintain natural condition. Up top have over 50' to the wall, everything to the south is disturbed but is done as grading, will be restored as meadow. You will see the grading on the other side of the wall because of the topography of the site. They are closest to a wetland with the detention pond, about 4' which is the grading for the extended detention pond. All stormwater ponds were re-vegetated with cat tail and wool grass in phase I, and that is the intent here. We have created two very nice cattail marshes in the phase I development that are stormwater ponds. Wouldn't know it was created because they are beautiful.

The Wetlands on his graphic for visual clarification are highlighted in green, vernal pools in blue; we know that vernal pools exist and are monitored on site since 2015; they are continuously monitored in 2008 and 2012. There are lots of data at their disposal. Data is included in documents provided. Monitoring reports are in the document as a function and values assessment.

Vernal pools have been reviewed by Army Corp as part of their process. There is no disturbance within 100' of any vernal pool identified and mapped on the site. The Wetlands on site are very linear, go from north to south. Two of them are adjacent to I-95. One of the things noted during the site walk noted is that traffic is loud. We take that into consideration when evaluate wetland. It is a feature needed when evaluating a wetland because species of wildlife are acclimated to humans in this type of wetlands. You can hear I-95 from anywhere on site. Auditory impacts are a limiting factor on this property.

All wetlands are groundwater wetlands; the steep topography causes strong flow and seepage. Significant portions of the wetlands have a saturated hydrology in these wetlands, they are an area that has water in spring, dries during summer and fall, and water comes back. The perimeter of these wetlands have a hydrology that is high ground water and have no visible water present during any time in year. Groundwater within 45 cm during growing season, get hydristic soil conditions, can walk through a wetland and not get feet wet at any time of year. That exists here. It is a limiting factor for wildlife habitat.

Each wetland has been evaluated; all of them have value for wildlife habitation, human recreation, sediment toxicant retention. The value is in the biological wetland, the biggest wetland is the riverine system associated with Pattagansett, extends through the property, with the Pattagansett River flowing through the middle of it. We have a 12 acre conservation easement proposed as part of the mitigation impact on this property, so have almost 40 acres established previously as conservation easement. The Laurelwood Trail subdivision has 20 more acres of conservation easement and want them attached to provide a corridor throughout the Pattagansett. All upland, some non-regulated area, 2 acres of wetland that is restricted.

Mitigation plan happening in relation to invasive species, agreement with the Army Corp to do invasive species management there. It is a shrub type wetland, will replant the area to improve the habitat value.

Ms. Cicchiello asked about the invasive species management; Mr. Rabideau responded it is in the narrative, on page 6, the proposed invasive species targets Bittersweet; Autumn Olive, Privet, multiflora Rose, this is the stuff we are trying to kill, they are all non-native plants to Connecticut. Once they establish they spread, have fewer predators and outcompete native plants. They will go and treat with herbicides with cut stem technique for two seasons, and kill them, then replant with native species. This is a restoration technique. Our mitigation is to preserve and restore as part of this process and request to you.

Mr. Baldwin asked about his thought on the Glyphosate case, sees the permits were issued before that case. Mr. Goeschel asked him to clarify what the issue is. The issue

in Mr. Rabideau's world as a wetland biologist, for the last ten years, studies have shown round up is a carcinogen. Last year the European Union almost voted to ban round up completely. It brought forth more research on the product and that research is showing more and more it is a carcinogenic material. We have been using it, when used judiciously it is effectively. This is not going to be used on a food supply issue or broadcast spray issue. This is the cut stem technique. Mr. Baldwin asked him to explain the technique. Mr. Rabideau, you have an invasive plant, you would cut the plant, remove the slash and dispose of properly. Stem is painted by applicator, paints with Glyphosate; it gets into the root system over the year and kill it. There is no collateral damage. The other technique is a broadcast spray or low volume backpack spray, both of which you know, your treating the plant to cover the leaf of the plant but there is collateral damage especially if windy. To avoid that use the cut stem technique. It is least impacting to any environment.

Ms. Cicchiello asked about paint stem and gets into the root system in time of year, when is the best season? Mr. Rabideau responded the best time is right now, the fall, Labor Day when applicators are doing their work.

Mr. Baldwin noted the goal of getting rid of the invasive is to improve the quality of wetland. Given the Glyphosate case have you looked into an alternative invasive plan for the area, such as mechanical?

Mr. Rabideau explained the alternative is mechanical. Ms. Cicchiello asked what is that? Mr. Rabideau we dig it out, the top two feet, excavate 2' down, have to dig out the root.

Mr. Baldwin have you any other alternatives on other reviews since this case – Mr. Rabideau, have them in Rhode Island, which is regulated by Coastal Resource Management Council is not allowing broadcast spray but allowing stem painting.

Mr. Baldwin wicking would be, Mr. Rabideau hand swiping is effective. Mitigation plan is to improve wetland around Pattagansett River; we can give two or three different treatment options. The Army Corp is not going to have a problem with it. Hand Swipe you just wipe the leave with your hand, herbicide is still being used. Mr. Baldwin move forward with Glyphosate which is less impactful, where not disturb the ground, where otherwise disturb ground. If the agency decided don't want mitigation will just notify Army Corp and DEEP because of the Glyphosate.

Mr. Goeschel asked what is the impact. Does it break down or what is the concern in this case. Why all the questions? Mr. Rabideau stated it does break down. Mr. Baldwin stated the concern is the new owner of Monsanto paid \$290 million to a guy applying Glyphosate for a school district, who developed non-Hodgkin's lymphoma as a result and it was proven in the court. The concern is about now that this court case against them and found to be cancer causing, is round up the proper treatment. Mr. Goeschel noted that this was specific to an individual not a specific piece of land. Is there an adverse impact of the use on the site?

Mr. Rabideau noted the impact to wetland system is negligible, if use cut stem system.

Ed Avizinis; Professional Wetland and Soil Scientist; Certified Invasive Manager, Glyphosate, it doesn't bind to soil, it absorbs to soil, it lasts 7 to 10 days in environment.

It is not issue of getting into ground water; the issue is to the applicator itself. It comes down to did the company provide enough warnings and requirements for personal protective equipment. As long as applicator trained properly and has correct gloves, mask etc., issue lies with applicator not environmental system or threat to people off site.

Mr. Baldwin asked about mechanical. Mr. Avizinis said the mechanical does more damage it is worse, because rhizomes are left in the soil. The chemical treatment is effective because kills of the rhizomes.

Regulatory issues outlined in the report, they speak to the definitions sections of your regulations, you have 7 definitions of the significant impact criteria. There is a written narrative in support of the application (page 7, response to 2.1 significant impacts). He took each of the 7 definitions and outlined how this development is created not to impact those. When go to section 10.2 of the regulations, have considerations for the decision. He has shown that each of these significant impact criteria are not affecting and are not a significant environmental impact. Because he has shown the significant impact criteria we are not effecting, in his opinion, not a significant environmental impact based on upland review alterations being proposed.

Ms. Berger attended the site walk Saturday, nice complex; grass is green which to me indicates fertilizers. How is the fertilizer affecting water, Mr. Rabideau thinks that there was a restriction on that use in phase 1. We should keep in mind that we have had consistent rain fall so that is also a possibility. He will check on that. They could come up with some standards. There is an irrigation system. There is a maintenance contract given out. They don't want to overuse fertilizer want to use just enough.

Mr. Goeschel asked if there was an existing operations and maintenance plan on this phase? Mr. Rabideau stated will have one yes and he will provide it.

5. Ms. Berger moved to continue the public hearing for GDEL Residential B, LLC., and Gateway Development/East Lyme LLC; Application for construction of 120 residential units, including but not limited to road improvements and construction of parking areas at property located at East Society Road, 286 Flanders Road (26.0/2), Flanders Road (31.0/1), to the next monthly meeting. Mr. DeRosa second. Motion passed 5-0-0

- V. **Public Delegations** - *Public Delegations is the time when members of the public are invited to speak to the Commission about certain matters. Issues or concerns related to approved wetland permits and in-house proposals or general topics of discussion are open to comment. Agenda items, referrals, applications subject to a decision by the Commission, a public hearing, or in litigation may not be discussed. The members of the Commission will not directly answer questions or make comment during delegations.*

None

**VI. Acceptance of Minutes**

A. Approval of Minutes of Special Meeting of July 30, 2018.

**Ms. Berger moved to approve the Special Meeting Minutes of July 30, 2018 with the following corrections;**

**Page 4, Paragraph 4, Line 1 remove the “f” between review and exhibit.**

**Page 7, Paragraph 2, Line 2, remove “Mr.” before “Ms.”.**

**Page 8, Paragraph 3, Line 3, change “fridge” to “fringe”.**

**Page 9, Paragraph 3, Line 3, change to “and think it’s going to work, it’s speculation”.**

**Page 10, Paragraph 3, Line 3, change “of” to “on”.**

**Page 12, Paragraph 1, Line 3, change “affect” to “effect”.**

**Page 12, Paragraph 9, Line 8 and line 9, change “affect” to “effect”.**

**Page 12, Paragraph 10, Line 2, Change “affect” to “effect”.**

**Mr. Baldwin Second; motion passed 5-0-0.**

B. Approval of Minutes of August 13, 2018 Regular Meeting.

**Ms. Berger moved to approve the Regular Meeting Minutes of August 13, 2018 with the following corrections:**

**Page 11, Paragraph 10, (Last Paragraph), Line 2, Change “plants” to “plans”.**

**Mr. Koch Second; motion passed 4-0-1 Mr. DeRosa abstained.**

**VII. Ex-Officio Report – None**

- 6. GDEL Residential B, LLC., and Gateway Development/East Lyme LLC; Application for construction of 120 residential units, including but not limited to road improvements and construction of parking areas at property located at East Society Road, 286 Flanders Road (26.0/2), Flanders Road (31.0/1).**

**VIII. Old Business - None**

**IX. Reports**

A. Chairman’s Report – no report.

B. Inland Wetlands Agent Report

1. Administrative Permits Issued – Mr. Goeschel has several, but will update at next meeting; decks, sheds, etc.
2. Commission Issued Permits - None

C. Enforcement

1. **Cease, Desist and Restore Order; 13 Green Valley Lakes Rd; Thomas & Kristen Chantrell, Owner; Installation of a dock which encroaches approximately 20-feet**



into a watercourse located on an abutting property and the clearing, grading, removal and deposition of material on the land within 100 feet of a watercourse without an Inland Wetlands Permit. (Agreement to remove by August 31, 2018).

Mr. Goeschel stated he did visit the site, there are four posts remaining and he is not sure what the plan is, but he believe they have to be removed. They didn't go in with machine, but may need machine to remove it. The Owners have submitted an application for regulated activities for the dock that remains. He has to call regarding the fee to be paid, and application has to come before the commission in the future. Mr. Baldwin asked if the intent is to bring the current structure under permit, Mr. Goeschel said he wants a portion permitted, and there is a bit of boardwalk going over existing stairs. Ms. Cicchiello asked if they want to keep the post? Mr. Goeschel said he is not sure and needs to clarify. He only received an application there were no supporting documents. That will make its way to the next agenda.

2. **Cease, Desist and Restore Order, Roxbury Road;** for the clearing, grading, removal and deposition of material on land within 100-feet of a wetlands and watercourse at the above referenced address without any permit under the East Lyme Inland Wetlands and Watercourses Regulations authorizing the regulated activities on property located on the southwest side of Roxbury Road across from the entrance of the Town's Municipal Transfer Station, Assessor's Map 16.1, Lot 43, Niantic, Connecticut.

Mr. Goeschel noted that Mr. Weisse indicated he had dropped off stamped and signed plans a month ago, however he has a set today, they are stamped and signed, by a licensed surveyor and engineer, however there is no signature from a certified soil scientist. Mr. Baldwin asked is it a plan. Mr. Goeschel stated it shows wetlands flags, according to the plan the stockpile is outside of the upland review area. Mr. Weiss has a permit pending for a single family residence, has a proposed septic system. He is going to let him know needs a signature from a soil scientist, and would anticipate a report with the delineation. They are not finished with the enforcement but are making progress. Ms. Cicchiello asked if we assessed a fine, Mr. Goeschel responded no, we didn't assess one; it still remains at the agencies discretion. Mr. Baldwin stated if he finally got an engineer on board and wetland flags don't need a fine. Let's see if we can get a signature, if can't get one then something wrong.

Ms. Berger asked if this is septic not sewer? Mr. Goeschel mentioned Whiting Farms is on septic; the sewer doesn't go that far down the road.

- D. Correspondence – Mr. Goeschel mentioned an upcoming class at NEMO, about how to run a meeting. Please let Jinn or I know if you are interested in attending.

X. Adjournment

**Ms. Berger moved to adjourn the East Lyme Inland Wetlands Agency meeting at 9:58 p.m. Mr. Baldwin second. Motion passed 5-0-0.**

Respectfully Submitted

Jennifer Lindo Dashnaw  
Recording Secretary

**\*\*These minutes are subject to approval at the next monthly meeting**