

Town of

P.O. Drawer 519

Department of Planning &
Inland Wetlands

*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*



East Lyme

108 Pennsylvania Ave

Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

MEMORANDUM

To: East Lyme Inland Wetlands Agency

From: Gary A. Goeschel II, Director of Planning/ Inland Wetlands Agent

Date: July 13, 2020

RE: Wetland Referral – Town of East Lyme Wetlands Agency, Applicant; Wetlands Agency text amendment to amend Section 2.1 of the East Lyme Inland Wetlands Regulations to change the Definition of a “Regulated Activity” by enlarging the distance of the boundary for a regulated activity from 100’ from an inland wetlands and/or watercourse to 500’.

Attached please find the minutes of the East Lyme Planning Commission meeting of July 7, 2020. The Commission has suggested that the Inland Wetlands Agency watch the recording of their discussion and read the minutes of the meeting in response to this referral and invitation to comment.

EAST LYME PLANNING COMMISSION

Regular Meeting, July 7, 2020. 7:00 PM

East Lyme Town Hall, Upper Meeting Room
108 Pennsylvania Avenue, East Lyme, Connecticut

CHAIRMAN: Kirk Scott
SECRETARY:

PLANNING DIRECTOR: Gary Goeschel II
RECORDING SECRETARY: Sue Spang

CALL TO ORDER 7:02

I. ROLL CALL + PLEDGE OF ALLEGIANCE

Present: Kirk Scott, Michelle Williams, Nichole Davison, Richard Gordon, Elizabeth Allen, Alt.

Absent: Thomas Fitting, Mary Salvatore, Brian Bohmbach, Alt. Vacancy, Alt.

Also Present: G. Goeschel, M. Salerno,

II. CALL FOR ADDITIONS TO THE AGENDA-no additions

III. CALL FOR PUBLIC DELEGATIONS-No public delegations

IV. REPORTS

- A. Communications-no report
- B. Zoning Representative-no report
- C. Ex-Officio

Selectman Salerno informed the commission:

- town hall has fully opened this week
- there are no plans to have in person board and commission meetings at this time
- the BOS has approved additional funding for the Public Safety Building which will go to the BOF and referendum

D. Planning Director: Gary A. Goeschel II-no report

E. Sub-Committees

- **Walkability-** G. Goeschel suggested the walkability study compiled by a previous member D. Phimister be rolled into the POCD.
- **Plan of Conservation and Development (POCD) Steering Committee-**M. Williams stated they have not met since January due to COVID 19. She reported the public forum went well and they received good feedback. The draft POCD will go to the BOS in August and the Planning Commission will receive it at the same time. G. Goeschel stated the Governors 90-day extension does not apply to the POCD.
- **East Lyme Subdivision Regulations-**G. Goeschel suggested waiting until after the POCD is complete
- **Chairman-**K. Scott thanked the members of the POCD subcommittee for all their hard work. G. Goeschel read the rules for participating in a ZOOM meeting and informed the public and members that all information pertinent to tonight's meeting is on the town's website.

V. APPROVAL OF MINUTES

A. January 7, 2020 Regular Meeting Minutes

MSC (Williams/Gordon) to approve the January 7, 2020, Regular Meeting minutes as presented. **Vote: Approved Unanimously.**

FILED

July 10 2020 AT 3:25 AM/PM

(Signature)
EAST LYME TOWN CLERK

- VI. PUBLIC HEARINGS-None
- VII. SUBDIVISIONS / RE-SUBDIVISIONS - (PENDING)- None
- VIII. ZONING REFERRALS [Connecticut General Statute (CGS) 8-3a] no zoning referrals
- IX. MUNICIPAL REFERRALS [Connecticut General Statutes (CGS) 8-24] -none
- X. OLD BUSINESS – None
- XI. NEW BUSINESS:
 - A. Application of Kristen T. Clarke, P.E., for English Harbour Asset Management LLC, Owner; Application for a 4-lot re-subdivision of approximately 3.8 acres of land zoned RU-40, located at 22 and 2 Upper Kensington Dr., East Lyme, Assessor’s Map 40.0, Lot 22 and 23.
 - C. Application of Jason Pazzaglia, for Pazz and Construction LLC, Owner; Application and waiver request from Section 23.5 B of the East Lyme Zoning Regulations for a 1-lot re-subdivision of 5.29 acres of land within the R-40 zoning district located at 24 Darrows Ridge Rd., East Lyme, Assessor’s map 44.0, Lot 8-31.

The commission scheduled a Public Hearing for items A. and C. for July 27, 2020 at 7:00

- B. Request of Paul M. Geraghty, Esq., Attorney for English Harbour Asset Management LLC, for release of Open Space Covenant, Recording of Conservation Easement in favor of East Lyme Land Trust, Inc., and Release of the Conservation Easement in conjunction with the Nottingham Hills Subdivision Phase IV.

P. Geraghty gave background on the subdivision and the approximately 36 acres proposed to be donated to the East Lyme Land Trust. He stated that the applicant has to submit the title insurance policy to DEEP. DEEP has seen the covenant and they will not accept the title policy that has the covenant in it. He then spoke to the insurance company and they would like it removed due to DEEP’s request. The applicant believes the covenant has been satisfied and therefore requests the commission release the open space covenant.

P. Geraghty stated they have donated 41.35 acres of open space to the East Lyme Land Trust. G. Goeschel stated the applicant has satisfied the open space requirements.

The two conservation easements were given to the town by the previous developer and they are asking that they be assigned to the East Lyme Land Trust. He informed the members that the transaction will be held in escrow; if the agreement fails to go forward then the town will not lose the conservation easements.

G. Goeschel stated the town attorney is declining to comment on this application due to a conflict of interest.

P. Geraghty informed the members that because DEEP is awarding a grant they will apply their own requirements/easements to assure the East Lyme Land Trust will abide by the grant award.

MOTION: (Williams/Gordon) Move to FIND the terms of the open space covenant record on the East Lyme land record book 653, page 355 as the terms of of the covenant have been met with the dedication open space as part of the Phase II of the Nottingham Hills Subdivision and herby authorize the Planning Commission Chairman to execute the release of covenant. Vote: Approved Unanimously.

MOTION: (Gordon/ Davison) move to assign the Conservation Easement in favor of the Town of East Lyme recorded in book 742, page 502 and book 870, page 689 to the East Lyme Land Trust and to authorize the Planning Commission Chairman to execute said agreement and the Town of East Lyme shall hold in escrow the release of the covenant and assignment of the conservation easement pending recording. Vote: Approved Unanimously.

D. Application of the Town of East Lyme Inland Wetlands Agency for a text amendment to amend section 2.1 of the East Lyme Inland Wetland Regulations to change the Definition of a “Regulated Activity” by enlarging the distance of the boundary for a regulated activity from 100’ from an inland wetlands and/or watercourse to 500’.

G. Goeschel gave background on the text amendment of the East Lyme Inland Wetlands Regulations. He created a map for the public hearing comparing the current regulated area and the proposed regulated area. If the proposed changes are enacted the regulated area would cover most of the town. If adopted, then any proposed activity would require an application which would necessitate hiring more staff. DEEP suggests that 100’ is sufficient for the Upland Review Area.

After a lengthy discussion on the role of the IWA jurisdiction and authority and if the Planning Commission should issue a comment on a regulation change by another commission, the members did not want to approve or disapprove the proposed regulation change as they did not have the expertise to comment. K. Scott understood increasing the regulated area but did not know the reasoning for increasing the regulated area by 400 feet. G. Goeschel informed the members that it is not clear why the 500’ as compared to a lesser amount. It was the consensus of the Planning Commission that they want to support empowering the IWA to enact their regulations. The Commission suggested the IWA watch the recording of their discussion and read the minutes.

E. Bylaws-tabled

F. Subdivision Regulations and Fees-tabled

XII. ADJOURNMENT MOTION: (Gordon/Davison) to adjourn at 9:08 Vote: Approved Unanimously.

Respectfully Submitted,
Sue Spang,
Recording Secretary

2020 Meeting dates: February 4, March 3, April 7, May 5, June 2, July 7, August 4, September 1, October 6, November 10*, December 1.

***Second Tuesday of the month**

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 12:14 PM
To: Jennifer Lindo
Subject: Fwd: Inland wetland Agency & Chairman Gary Upton

Sent from my iPhone

Begin forwarded message:

From: Bud Picazio <bpicazio@aol.com>
Date: July 12, 2020 at 7:50:12 PM EDT
To: Gary Goeschel <ggoeschel@eltnhall.com>
Subject: Inland wetland Agency & Chairman Gary Upton

I believe the upland review area should be increased to 400 Feet. This will help to keep our streams, rivers, reservoirs and Long Island sound healthy for us and all land and water creatures.

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 12:14 PM
To: Jennifer Lindo
Subject: Fwd: To the Inland Wetland Agency and Chairman Gary Upton

Sent from my iPhone

Begin forwarded message:

From: Justin Daubar <juddaubar@hotmail.com>
Date: July 12, 2020 at 4:59:58 PM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: To the Inland Wetland Agency and Chairman Gary Upton

TWIMC:

I live in the North end of town and there is a stream (and bordering wetlands) on my property. When I built in 1980, I had to adhere to the 100 foot restriction with respect to my house and septic and well. My question now is: "Since my house and septic field are both within 500 feet of the stream, what happens if my septic field fails? Will I have to abide by the new 500 foot restriction when I replace the septic field? Or, hopefully, will I be "grandfathered" and still be restricted by the 100 foot requirement?".

Thanks,
Justin Daubar

Sent from Outlook

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 12:15 PM
To: Jennifer Lindo
Subject: Fwd: Public hearing Wetland buffer

Sent from my iPhone

Begin forwarded message:

From: Joseph Mingo <jojo2102@sbcglobal.net>
Date: July 12, 2020 at 12:32:02 PM EDT
To: Gary Goeschel <ggoeschel@eltnhall.com>
Subject: **Public hearing Wetland buffer**
Reply-To: Joseph Mingo <lif6342@gmail.com>

Please enter my comments on the wetland buffer. ONE hundred feet should not be changed Where a vernal pool exist A reasonable increase could be discussed.

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 12:15 PM
To: Jennifer Lindo
Subject: Fwd: To the Inland Wetland Agency and Chairman Gary Upton

Sent from my iPhone

Begin forwarded message:

From: JOHN VILCHECK <jrvilcheck@snet.net>
Date: July 12, 2020 at 11:19:01 AM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: To the Inland Wetland Agency and Chairman Gary Upton

I support increasing the upland review area to protect our watershed and drinking water.

Why is the Inland Wetlands Agent also the town planner; a conflict of interest in protecting the environment and encouraging construction. I recommend separating the functions.

Sent from my iPhone

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 12:16 PM
To: Jennifer Lindo
Subject: Fwd: Wetlands

Sent from my iPhone

Begin forwarded message:

From: "1234shore@atlanticbb.net" <1234shore@atlanticbb.net>
Date: July 12, 2020 at 10:43:45 AM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: **Wetlands**

Dear Chairman Upton,

I am writing to say I do not support your proposal to increase the wetlands jurisdiction to 500 feet from 100 feet especially in the Niantic part of town. The vast majority lots in the beach areas are approximately one tenth of an acre and the building restrictions on them are tight enough. If the zoning officers in charge of the areas feel that residents can add an addition then that should suffice.

I would not be opposed to increasing the wetlands provision for commercial properties only, but am adamantly opposed to applying it to residential areas.

The residential building restrictions in this town are far more rigid than in most of our surrounding sister towns. Our taxes, which support the town, are in the beach areas the highest per acre and yet these properties would be the most compromised.

We are making it very difficult for younger people to afford a home that they can modify and grow into. Increasing restrictions and hoops to jump through are only making things worse.

Your proposal would greatly devalue most of the lots in the beach areas. We are talking about thousands of homes. This is not serving the general public. A balance needs to be achieved. I hope you reconsider your proposal.

Please read my letter into the minutes of the meeting for the general comments section. Thank you for your service and that of your committee to our community.

Sincerely,
Jane Pronskey-Brothers

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 12:21 PM
To: Jennifer Lindo
Subject: Fwd: To the Inland Wetland Agency and Chairman Gary Upton

Sent from my iPhone

Begin forwarded message:

From: Norman Peck <nbpeck29@gmail.com>
Date: July 13, 2020 at 12:19:29 PM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Cc: Norman Peck <nbpeck29@gmail.com>
Subject: To the Inland Wetland Agency and Chairman Gary Upton

To the Inland Wetland Agency and Chairman Gary Upton:

It's TIME!

For many years we, the citizens of Niantic (East Lyme), have been telling the world that Niantic is the place to come and live and be happy. We are now facing overuse of land, water, police, beaches, sewers etal. It's time to protect what we have left so that those who have accepted that Niantic is great can continue to live here and enjoy. Let's do all we can to protect what we have.

Norm Peck Jr.
Retired
Home: 860-739-7202
Cell: 860-460-7011

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 12:21 PM
To: Jennifer Lindo
Subject: Fwd: To the inland wetlands agency and chairman Gary Upton

Sent from my iPhone

Begin forwarded message:

From: Patricia Butterfield <mpbutterfield@att.net>
Date: July 13, 2020 at 12:06:04 PM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: To the inland wetlands agency and chairman Gary Upton

Dear Gary and commission members, I writing this to highlight my dissatisfaction with the increase in the upland review area by 500%. In addition many people in town do not know how to use zoom, and unless this is an emergency issue, which it is not, should be tabled so members of the entire town can be heard. This seems like a power grab when not everyone is represented due to the covid 19 virus.

Myself and my family own greater than 80 acres in town, and while we have no plans for subdividing, we want to retain the opportunity to do so. While the upland review does not in itself restrict subdivision or other activities within the upland review area it certainly has caused a great deal of pain and cost to the land owner/developer and cost to the town in legal fees, often without great technical rationale.

I would equate this to the East Lyme Police department deciding lower the speed limit to 5mph everywhere because its safer, while that is hard to argue from a safety perspective, its clearly has a negative effect on the townspeople.

Three of the properties that border my families property have greater than 80 acres also, and when questioned about their thoughts, they were not in favor of this change, and asked when the hearing was.....when I said it was on zoom it might as well be on the moon.

In conclusion I think the current 100 foot upland review area provides adequate wetland protection and this effort should not move forward.

Respectfully

Mark Butterfield
Staff Engineer Electric Boat Ret.

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 12:22 PM
To: Jennifer Lindo
Subject: Fwd: Extension Proposal

Sent from my iPhone

Begin forwarded message:

From: Gayle Booth <gaylebooth@gmail.com>
Date: July 13, 2020 at 12:19:55 PM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: Extension Proposal

The previous message was sent before editing. Please substitute this corrected email.

I believe the extension of the wetland upland review area from 100 feet to 500 feet is ill-advised and not in the best interest of the citizens of East Lyme. I understand that the Commission can regulate activities in the upland area only if they have an adverse effect within the wetland itself. If the homeowner's proposed activity is to be disallowed, the town must have substantial evidence that the proposed activity will have an adverse effect within the wetlands area. Proving that activities outside of the wetlands will reach an adverse effect on the wetlands can be a very complicated process. It often will result in conflicting testimony from experts on each side of the request. This is likely to be a time-consuming and expensive process. I further believe that making it more difficult for town residents to use their properties by adding an additional bureaucratic requirement sends a message that East Lyme is overly anxious to make it more difficult for residents to use their property.

Kevin Booth
16 Sleepy Hollow Road
Niantic

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 2:46 PM
To: Jennifer Lindo
Subject: Fwd: Inland Wetland Agency and Chairman Gary Upton

Sent from my iPhone

Begin forwarded message:

From: Laura Higgins <rnmom105@gmail.com>
Date: July 13, 2020 at 1:03:22 PM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: Inland Wetland Agency and Chairman Gary Upton

Mr. Upton,

My name is Laura Higgins, I live at 83 Spring Rock Rd. East Lyme

I am in support of expanding the upland review area from 100 ft to 500 ft.

Thank You

Sent from my iPhone

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 2:46 PM
To: Jennifer Lindo
Subject: Fwd: Attention: Gary Upton, East Lyme Inland Wetlands chairman

Sent from my iPhone

Begin forwarded message:

From: Diane Lepkowski <dianestaron@gmail.com>
Date: July 13, 2020 at 1:06:10 PM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: Attention: Gary Upton, East Lyme Inland Wetlands chairman

Attention: Gary Upton, East Lyme Inland Wetlands Chairman

My name is Diane Lepkowski, I live at 27 Green Valley Lakes Road in East Lyme and I am in support of expanding the upland review area from 100 ft to 500 ft. This would be a great change for our town!

Thank you.
Diane Lepkowski

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 2:46 PM
To: Jennifer Lindo
Subject: Fwd: Attention: Gary Upton, East Lyme Inland Wetlands chairman

Sent from my iPhone

Begin forwarded message:

From: Michael Goss <remgoss@yahoo.com>
Date: July 13, 2020 at 1:36:47 PM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: Attention: Gary Upton, East Lyme Inland Wetlands chairman

We support expanding the upland review area from 100 ft to 500 ft

Michael & Rosemarie Goss
40 Riverview Road
Niantic

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 2:46 PM
To: Jennifer Lindo
Subject: Fwd: Wetland Agency Chairman Gary Upton

Sent from my iPhone

Begin forwarded message:

From: Ann Lepkowski <aml52982@gmail.com>
Date: July 13, 2020 at 2:02:30 PM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: **Wetland Agency Chairman Gary Upton**

I am in support of expanding the upland review area from 100 feet to 500 feet.

Town of

P.O. Drawer 519

Zoning Department

William Mulholland,
Zoning Official



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

(860) 691-4114

Fax (860) 691-0351

July 13, 2020

Gary Upton, Chairman
East Lyme Inland Wetlands Agency
Town of East Lyme
PO Box 519
Niantic CT 06357

RE: Wetland Referral – Town of East Lyme Wetlands Agency, Applicant; Wetlands Agency text amendment to amend Section 2.1 of the East Lyme Inland Wetlands Regulations to change the Definition of a “Regulated Activity” by enlarging the distance of the boundary for a regulated activity from 100’ from an inland wetlands and/or watercourse to 500’

Dear Chairman Upton,

I am writing in response to your June 8, 2020 referral to the Zoning Commission regarding the above referenced text amendment.

As you are aware there is no statutory requirement for your Agency to refer this proposal to our Commission. However, we appreciate the opportunity to review and comment on your initiative.

Due to the current pandemic and the closure of the Town Hall to the public, the Zoning Commission has not been conducting meetings either live or via Zoom. This condition has required that we send out your referral package to our members electronically. As a result, we offer the following view for inclusion in the public hearing record.

A careful review of the referral and the information contained within did not provide enough documentation to properly evaluate the proposal. While the proposed language is clear, there was no substantial evidence in the referral to determine your intention or to support the proposed change.

As you are aware, as a Municipal Commission we have a responsibility to ensure when we work in our legislative capacity we do so in the greater public interest. As a Land Use Commission, Zoning often has to evaluate text changes to ensure they do not have any adverse impacts both in the short term and the long term.

The lack of supporting documentation in the referral raises the question of why the change is necessary. It is our understanding that many years ago your Agency increased the subject boundary from 50' to 100'. The present proposal of 500' seems excessive.

While not an Inland Wetlands Agency, we understand that the Connecticut Department of Energy and Environmental Protection recommends a boundary of one hundred feet. Given this position any increase beyond this dimension should have appropriate justification.

I note here that regulating development is the purview of Land Use Commissions, such as Planning and Zoning. Both the Plan of Development and the Comprehensive Plan perform those functions and have been in place for many years and are updated frequently.

As a result of our review it is our recommendation that you table or withdraw this initiative and re-evaluate it both for purpose and effect. We all support responsible environmental regulations however in this endeavor the lack of supporting evidence does not allow us to support this change.

In addition, we are also uncomfortable with conducting a public hearing via Zoom for such a far-reaching proposal. An initiative of this magnitude should be vetted at a time when the public can attend an in-person hearing. This would ensure a thorough evaluation by all.

In conclusion I again want to thank you for the opportunity to comment on this proposal. Our commission can appreciate the difficult task before you.

Should you have any questions please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Walker" followed by a stylized monogram "M.W.".

Matthew Walker, Chairman
East Lyme Zoning Commission

Robert Allen Blatt

1890 PALMER AVENUE - SUITE 303
LARCHMONT, NEW YORK 10538
TELEPHONE (914) 834-0291
FAX (914) 834-0566

July 13, 2020

Via Email to:

Gary Upton, Chairman
Inland Wetlands Agency
108 Pennsylvania Avenue
Niantic, CT 06357

Re: Public Hearing July 13, 2020
Proposed Text Amendment to Section 2.1 of the East Lyme Inland Wetland
Regulatory Changing Regulated Area from 100' to 500'

Dear Chairman Upton:

I write on behalf of my company Niantic Real Estate LLC and myself personally to provide notice, for the reasons set forth herein, of my opposition to the proposed text amendment to Section 2.1 of the East Lyme Inland Wetland regulations changing the regulated area from 100' to 500'.

Please enter this correspondence and all its exhibits, including but not limited to the Freedom of Information Act Request and the answers, correspondence, communications and documents produced relative thereto into the record of this public hearing.

As initial matters, I am the sole member of Niantic Real Estate LLC which owns real property known as Assessor Map 35.0 Lot 31-6 and Map 40.0 Lot 18 each of which would be affected the proposed text amendment.

We have reviewed the Tape of the May 18, 2020 Inland Wetland meeting, the correspondence between Mr. Upton and Mr. Nickerson, Ex. 1, as well as other posted submissions located in the Inland Wetlands Agency "Materials" Section of town of East Lyme website as of July 10, 2020, and the article in the New London Day dated July 11, 2020, Ex. 2.

We are opposed to the text amendment as drafted as it will require the vast majority of property owners in East Lyme to be unnecessarily and unreasonably subjected to a time consuming, and potentially expensive process that is not supported

by any scientific fact whatsoever. In fact, the Connecticut Department of Energy and Environmental Protection Guidelines, Ex. 3-page 4/5, states in pertinent part as follow's;

"The Dep believes that a 100-foot-wide upland review area is sufficient for reviewing construction activities surrounding wetlands or water courses because most of the activities are likely to impact or affect these resources will be located in that area.... However, beyond 100' it is neither practical or desirable, from a wetlands and watercourses management perspective to automatically require a inland wetlands permit for all construction activities. It must be emphasized that other municipal authorities and mechanisms involving planning, zoning and subdivision decisions and plans of conservation and development play a role in addressing the broader watershed issues."

At best this contemplated, proposed text amendment represents an unlawful attempt by members of the East Lyme Inland Wetlands Agency to seize control over all, or the vast majority, of any land uses matters in the Town. Such conduct under the circumstances and record is a deliberate abuse of power and authority.

In addition we submit that the proposed text amendment is inappropriate for the following additional reasons;

1. A "zoom" meeting is an inappropriate forum to address this matter given the consequences to a vast majority of property owners in the Town of East Lyme.
2. At a minimum Chairman Upton clearly has a bias against, amongst other things, Town Staff, the First Selectman and Real Estate Development. In fact upon information and belief Mr. Upton recently expressed his opposition to any further real estate development in East Lyme to a member or members of the East Lyme Board of Finance. In addition Mr. Upton's statements and actions during the May 18, 2020 Inland Wetland Agency Zoom meeting demonstrated he has predetermined his vote on this matter. For these, and other reasons to be addressed herein, that will not allow him to be objective Mr. Upton must recuse himself from the matter referenced herein.
3. The Vice Chairman, Mrs. Chantrell, also has a bias and has predetermined her vote on the matter based upon, at a minimum, her comments on the record on the May 18, 2020 Inland Wetlands Agency Zoom meeting. The tape of said meeting is incorporated herein by reference. In addition the Vice Chairman is an open vocal opponent of the subdivision of land by Robert Fusari, near her personal residence, that would be affected by this text amendment. In addition Mrs. Chantrell was cited by this very agency and subjected to a Cease, Desist and Restore Order for clearing, grading and building a dock without a permit from this Agency. Ex. 4. For any and all of these reasons Kristen Chantrell cannot be objective and therefore must recuse herself from participating in this matter referenced herein.

4. Members of the East Lyme Inland Wetlands Agency held unlawful, unnoticed, Ex Parte meeting(s) during the period beginning on or about February 25, 2020 and continuing, at a minimum, until May 18, 2020. Such meeting or meetings violate Connecticut law. See Connecticut General Statutes 4-181, see now General Statutes (Rev to 1989) 4-183(j)(3) and *Mattabasset Grp., Inc. v. Inland Wetlands & Watercourses Agency v. City of Middletown*, No. 60372, 1992 WL 83535, at *4 (Conn Superior Ct. Apr.21,1992)
5. At its bare minimum the proposed text amendment represents a Regulatory Temporary Taking and is subject to the 5th Amendment Taking Clause “{N}or shall private property be taken for public use, without just compensation”.
6. The proposed Text Amendment fails to contain a clear and concise standard of what activity is covered by the regulation. This matter is demonstrated by Chairman Upton’s comments in the *New London Day* wherein he allegedly stated “the last thing we are trying to do is keep Harry the Homeowner from the enjoyment of his property” To be clear the proposed text amendment clearly requires “Harry the Homeowner” in the first instance to determine if there is an inland wetland or watercourse within 500’ of his property and then requires “Harry” to obtain a permit or finding from this Agency before quietly enjoying his/her property.
7. The East Lyme Inland Wetlands Agency has failed to provide online 24 hours before the scheduled Zoom Public Hearing a single document that supports the scientific or other need to increase the Upland Review area from 100’ to 500’. In fact the record in “online materials” demonstrates rather conclusively there is no need for the increase.
8. In support of its claims of necessitating a blanket increase in the Upland Review area from 100’ to 500’ members of the East Lyme Inland Wetlands Agency made false statements regarding the Upland Review Areas in Greenwich, CT (Ex. 5), Burlington, CT (Ex. 6), Glastonbury, CT (Ex. 7), Rocky Hill, CT (Ex. 8) wherein they indicated 500’ buffers existed. The Inland Wetlands Regulations in these Towns are incorporated herein by reference as the statements made regarding these Towns are false.

I have enclosed as Ex. 9 a Freedom of Information Act Request which is served upon the Town of East Lyme Inland Wetlands Agency, its regular and alternate members and Town Staff who are the most likely to have access or possession of the requested documents.

Sincerely,

Niantic Real Estate LLC



By Robert A. Blatt, Managing Member

Cc Anthony Novak, Esq.

EXHIBIT 1

Town of



East Lyme

Mark C. Nickerson
First Selectman
MNickerson@eltownhall.com

108 Pennsylvania Ave.
P.O. Box 519
Niantic, Connecticut 06357
Phone (860) 691-4110
Fax (860) 739-2851

June 4, 2020

To Inland Wetlands Commission Members:

For over two weeks, I have asked the Chair of your commission to meet with me, Mr. Goeschel, and the town attorney prior to your next meeting. I was compelled to ask for this meeting after reading a string of emails from your Chair to the town staff where the tone was quite negative, disrespectful and hostile. No matter how frustrated we might be with a person, the "system", or an applicant, we should always remain professional and respectful. I feel that the line has been crossed.

The purpose for the requested meeting was quite clear; to reset communications between the Chair, Staff and Counsel. I also wanted to layout my expectations of following established protocols and the long-standing precedent of scheduling meetings, publicizing public hearings, and the partnership that must be observed between the commission and the town hall staff. This was not a meeting to discuss substance or agenda items...just procedure.

The Chair refused to meet and then became hostile with me.

I would be quite concerned with any commission that displays a renegade/rogue attitude. This is the first time I have witnessed this behavior in the 21 years I have volunteered and worked for the town. There exists an expectation and precedent for the Chair of a commission and the staff to work together. Sadly, this is not happening with your commission.

As commissioners, no one will ever tell you how to vote, but you are expected to listen and consider the advice of town counsel, our professional staff, and state agencies. They have an obligation to guide commissioners on legal matters, on what is required when rendering a decision, and the ramifications of decisions on a broader scale. Disregarding and even resisting this guidance could potentially cost the taxpayers of our town significant damage. That is not what you were appointed to do.

You took an oath to serve our town and make decisions based on what was best for our citizens. I am asking each commission member to keep this in mind when sitting as an Inland Wetland Commissioner.

In closing, I sincerely thank you for your service to our beloved town. I am available anytime for a discussion.

Most Sincerely,

Mark C. Nickerson
First Selectman

Gary Upton
Chairman – East Lyme Inland Wetlands

June 5th 2020

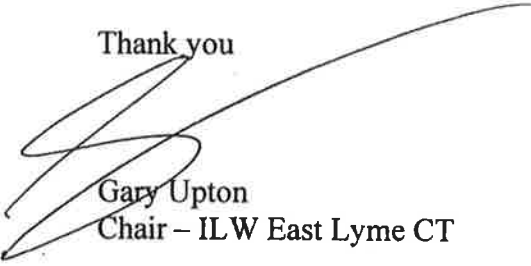
Dear Fellow Commission Members,

Regretfully in response to the letter from our first selectman dated June 4 2020 in which the selectman makes a variety of accusations regarding his interactions with me. I must unfortunately enter into the record the chain of communication that came before that letter. Also be it clear that I have not met with Mr Nickerson or spoken to him on the phone. All correspondence has been in writing. As for meeting with him and/or staff I asked to do so by zoom.

Please find attached to this letter our email chain. I thank every one for your service and apologize in advance for having to deal with issues like this.

I will let the record speak for itself.

Thank you



Gary Upton
Chair – ILW East Lyme CT

From: Gary Upton gary@uptonbass.com
Subject: Re: Your meeting request
Date: Jun 3, 2020 at 9:26:49 AM
To: Mark Nickerson MNickerson@eltownhall.com
Cc: Gary Goeschel GGoeschel@eltownhall.com, Marc Salerno marcsalerno@sbcglobal.net, Kevin Seery kseery@sbcglobal.net, Roseann Hardy rannhardy@yahoo.com, Dan Cunningham drclawllc@aol.com, Paul Dagle ptd33@aol.com, Mark S. Zamarka mszamarka@wallersmithpalmer.com, Kristen Chantrell kristenkeenan@hotmail.com, M.biekert@theday.com

Mark, that's more than extreme and sadly what I expected. You have spent more time conjuring these emails than needed to have a zoom meeting.

I hope as you make these accusations others will review all of the emails back and forth from the start, and our meeting records. Including records with you not allowing our agency to meet against the direct order from the governor. Hopefully I don't have to show your massively rude and condescending text messages. Hopefully they will learn about the history of the commission prior to me and the last chair of the commission.

It's sad to see people pushed around this way. But it aligns with what I have experienced from the start. Your way or the highway.

I'm sorry you see non-compliance with your agenda as "rouge" "disrespect" and "hostility". Certainly flashy words to get others attention. No Mark, I'm just not a yes man. Maybe you didn't know that when you appointed me, and asked me to register as an R to do so. I did say yes to that, my mistake. I got involved for my interest to help people and help the town, just like my work on non profits and both my

business.

Please feel free to outline the comments on the record that were problematic. As for disregard for legal counsel; we are a voting commission and I always weigh the legal advice, always. Please do clarify when legal advice was given to me that I disregarded? I certainly vote with my own mind if that's what you're referring to? Other than recent email comments from the town's attorney that align with the continued stalling of updating our regulations, I have had no contact with attorney Zamarka since the twin valley lakes application much more than a year ago. No phone calls, emails, meetings etc.

As for the town being sued...yes that's what developers do as they re-apply, I myself have done the same in my commercial work. It's 101 operations to use a little money to apply pressure to get the desired outcome.

Again I'll remind you our agency has been working very cohesively with healthy discourse. We continue to learn and understand the regulations and CGS in more and more detail. Your internal resistance is creating this very situation and it's unfortunate to put it back on me. I hope those

you cc to build your case will watch our full meeting. **I'd be happy to meet with the full board of selectmen.**

Mark, as I have said, I have no agenda other than transparency and I feel uncomfortable with back room discussions and badgering commission members in private. I'm a volunteer on a simple commission in town.

I have not copied my attorneys at Robinson & Cole and I hope this matter can die out. But please know, I am not the guy who will roll over and be pushed around. I'd hate to have to use my own resources to stand up for what's right, but know I will.

And as for me "personally" I think it's best for all that our personal private matters are not mixed into things like this...don't you?

I'm sorry mark you're going too far with this one.

CC Mark Beikert The Day Newspaper

Regretfully,
Gary Upton

Chair - East Lyme Inland Wetlands

www.uptonbass.com

On Jun 3, 2020, at 6:26 AM, Mark Nickerson
<MNickerson@eltownhall.com> wrote:

Gary,

There are no "restrictions" that would prohibit us to meet. We've been meeting with people at the town hall "by appointment" for 2 weeks.

I am extremely concerned with the direction your commission has taken. I am more concern with your disregard of the advice staff and our legal counsel has given the commission. You have put the town in a position of being sued for actions by your commission that are not defensible.

I'm not sure what is going on with you personally. In my 21 years serving the town, I have never witnessed this disrespect, rogue attitude, and

hostility with anyone. We take an oath to serve our town. Recent actions by you, comments on the record, disregard of the town's legal counsel, and your refusal to meet with me suggests that You are not putting the town's interests ahead of your own agenda.

You are making EVERYTHING difficult. With all that is going on in this world and it's effects on the citizens and businesses of our town, you continue to be my biggest problem. I have been asking you for a meeting for two weeks and you have refused. In addition, I am requesting that you meet with the town attorney before any public meeting is scheduled. This can happen at the same time as our meeting.

I have copied members of the Board of Selectmen and our town attorney.

Lastly, when would you like to meet?

Mark C. Nickerson
First Selectman
Town of East Lyme, CT

On Jun 2, 2020, at 4:07 PM, Gary Upton <gary@uptonbass.com> wrote:

Mark, due to the current restrictions I think it's best if we have a zoom meeting or even easier communicate as we have been, here by email. Sorry but I don't want to meet in person as we are in a pandemic. Keeping in mind our town meetings are on zoom.

Also you could attend the agency zoom meeting on the 8th and I can call executive session where we can meet just with the commission, you and Gary.

Stopping our meeting and creating a quid-pro-quo situation seems just wrong. I hope you'll consider the alternate suggestions.

Again I am unclear to the exact purpose of our meeting that seems it cannot be discussed by email.

Thank you,

Gary Upton

<http://www.uptonbass.com>

On Jun 2, 2020, at 1:06 PM, Mark Nickerson
<MNickerson@eltownhall.com> wrote:

Gary Upton,
Again, when would you like to meet. I have instructed staff and IT to not schedule your next Zoom meeting until we sit down and talk.

Mark C. Nickerson
First Selectman
Town of East Lyme, CT

On Jun 2, 2020, at 12:13 PM, Gary Upton <gary@uptonbass.com>
wrote:

Mark,

This message is in response to your texts requesting that you and I meet with Gary Goeschel.

Your message; *"Please work with the staff. I'm watching emails fly back and forth. You are a commission of the town monitored and advised by the staff. He/they cannot be positioned as "the enemy" or an agent for a developer. "*

Mark,

Respectfully, I think you need to talk to your staff and I am not comfortable with the back room discussions that continue to go on. Please watch the meeting, I think you'll see for yourself. Further I would request that the next zoom meeting; staff, with the exception of the recording secretary are muted like our commission. So they are not speaking out of order, interrupting members and railroading conversation.

If you watch our videos and come to a meeting you'll see that our commission is very cohesive, with healthy discourse. Any strange

disagreement and upset on staffs end is created entirely unto their own and quite apparent. "The enemy" or "agent for the developer" is clearly not the commissions doing. I'm not putting words in Gary's mouth. It's upsetting to both the public and fellow commission members and has been a theme since I came on board and certainly echos the sentiments of the Twin Valley Lakes application...as to your comments on lawsuits; *"Dangerous positions being played out here. Definitely headed for lawsuit. Time for me and the two Gary's to sit down. Citizens are not being well served if we wind up in court. Avail next week?"*

Twin valley has cost what \$100,000 in legal etc at this point? Another application I know many people felt Gary Goeschel was working with the developer. With my new study and understanding of the regs and law, I'm sorry to say I do see exactly what people are talking about. Lots of fancy footwork...

It got so bad from Gary Goeschel in our past meeting I had to say something about it. even just for the fact that as his friend I was embarrassed for him.

As the chair and per our bylaws I have called a special meeting for the 24th, more than a week ago. We meet all the statutory requirements to a T, all the commission members have confirmed. I have spoken with DEEP and confirmed. This seems on repeat; like the meetings I asked to have in April (in adherence with the governors order) which you would not allow. Once again myself, and our commission have been completely ignored by Gary and Jenn in that request. And I can only assume at your direction.... This stalling must end Mark.

Please work with your staff regarding their own personal bias so that we can do our (volunteer) job.

If the special meeting for the public hearing on our regs for June 24th is not posted on or before EOB Friday June 5th 2020 I will have no choice other than to go public with this matter. Please allow our agency to act with its own anonymity.

For further understanding of the matter please listen to Gary Goeschel's comments about financial impacts to his own property on the 500 upland review area. I think an understanding of the CGS Chapter 10 sec 1-85 is in order. Clearly just like his own friends

application (Pazzaglia) the regulation changes are a direct conflict of interest.

I don't feel it's appropriate for me to come and meet in private about these sensitive public matters and if you do wish to speak to our commission, you can do so at our public hearing. Further I feel the back channel discussion and asking members of the commission to recuse themselves etc. when they are working to the letter of the law is unethical.

Clearly as you can see from the link below the 500 foot matter is an important topic to many residents and as such we demand our public hearing.

<https://www.change.org/p/east-lyme-inland-wetlands-agency-support-the-preservation-of-east-lyme-s-wetlands>

Gary Upton

Chair - East Lyme Inland Wetlands Agency

June 8, 2020

Mr. Nickerson,

I am writing in response to your June 4, 2020 letter written to the Inland Wetland Commission. I would like to assure you that our commission is by no means displaying a “renegade/rogue” attitude as you suggest.

Your letter further states that as commissioners we “are expected to listen and consider the advice of town council, our professional staff, and state agencies...Disregarding and even resisting this guidance could potentially cost the taxpayers of our town significant damage.” I believe I speak on behalf of the rest of the commission, that we are not resisting guidance or ignoring advice. We are considering each application and rendering our decisions in accordance with our Inland Wetlands and Watercourses Regulations.

Our purpose, as stated formally in town regulations, is “[...] to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority [...]”. And I sincerely believe that my fellow commission members are dedicated to this mission.

Every member of the commission has listened, researched and fairly debated each application, as the record shows. Each member brings a unique skill set that I am proud to be witness to as I feel our discussions during meetings have been well-rounded, productive and represent all sides. We are volunteers of the town who are dedicating our time and expertise to the town we love.

In regards to the emails between our Chair, Gary Upton, and yourself, I have read them a number of times, and I haven’t seen a “refusal to meet” in the emails. We are in the midst of a global pandemic and I would hope that as First Selectman of this town you would be empathetic towards people’s different circumstances and comfort levels and adjust your meeting flexibility accordingly. Chair Gary Upton did suggest a zoom meeting and, therefore, I do not agree that he refused to meet with you.

I am proud to be serving on the Inland Wetlands Commission alongside some of the brightest, genuine and dedicated volunteers, whom are serving in accordance with our town Inland Wetlands and Watercourse Regulations.

Best regards,

Kristen Chantrell

Kristen Chantrell
Vice Chair
Inland Wetlands Commission

EXHIBIT 2

Support journalism that matters to you

Since COVID-19 impacts us all and we want everyone in our community to have the important information they need, we have decided to make all coronavirus related stories free to read on [theday.com/coronavirus](https://www.theday.com/coronavirus) (/coronavirus). While we are providing free access to articles, they are not free to produce. The newsroom is working long hours to provide you the news and information you need during this health emergency. Please consider supporting our work by subscribing or donating.


Subscribe (<https://home.theday.com/subscribe/M201&CSReferrer=web>)

Donate (<https://givebutter.com/theday>)

East Lyme wetland agency seeks public input on proposal to extend upland review area

Published July 11, 2020 8:33PM | Updated July 11, 2020 8:42PM

By **Mary Biekert** (/apps/pbcs.dll/personalia?ID=m.biekert) Day staff writer

✉ m.biekert@theday.com (mailto:m.biekert@theday.com)  [_marybiekert](https://www.twitter.com/_marybiekert)
(http://www.twitter.com/_marybiekert)

East Lyme — Members of the Inland Wetland Agency are urging members of the public to attend a hearing Monday on a proposal to extend the agency's upland review area from **100 feet to 500 feet** (<https://www.theday.com/local-news/20200521/east-lyme-wetlands-agency-proposes-extending-review-area-to-protect-town-waters>).

They argue the measure will help further protect the town's various bodies of water and drinking water aquifers, which they believe have been threatened by development over the years.

If approved, the extended review area could place 80% to 90% of the approximately 9,000 residential and commercial properties in town within the upland review area, Inland Wetlands Agent Gary Goeschel estimated Wednesday. He said he used waterbodies, wetlands and streams maps digitally provided by the state Department of Energy and Environmental Protection to compute how much of the town would lie within the upland review area if it were to be extended. He added that DEEP's survey does not identify all wetlands in town.

Goeschel, who is also the town's planner, has openly opposed the extension, arguing there are other ways to regulate development and preserve the environment.

The Inland Wetland Agency regulates, but does not prohibit, activity within upland review areas — currently 100 feet surrounding any water body. Homeowners and developers proposing to build anything from a shed or a porch to a home or septic system within such an area must submit an application for a permit from the town to complete the work.

The extent of activity proposed in the area determines whether the applicant can simply receive an administrative permit from Goeschel, who is also the wetlands enforcement officer, or if they must go before the Inland Wetland Agency for further review.

"If I put my (town planner) cap on, there will be an economic impact," Goeschel said. "It will certainly create a perception in town. If you were a developer, it's a negative perception. It's 'Oh boy, this is going to be a cumbersome process.'"

"This certainly will have an impact on growth and, in my professional opinion, I don't think it will necessarily be positive," Goeschel said.

Increasing the area from 100 to 500 feet, agency members have argued, will allow Goeschel and the agency to review and regulate a greater number of activities near town waterbodies and watercourses, thereby protecting them, and would place East Lyme in line with more “progressive towns” throughout the state which have extended their upland review areas, agency member Rosemary Ostfeld has said.

“This is not to prohibit the use of land within 500 feet of an upland. It is simply a review area, which we see builders and developers trying to avoid (review from) left and right,” agency Chairman Gary Upton said by phone this past week. “We are not trying to stop Harry the homeowner from building a garden or a deck. The last thing we are trying to do is keep Harry the homeowners from the free enjoyment of his property. If anything, we are looking to protect current property owners to keep their properties the way they are and their neighboring properties the way they are.”

Upton added that revising the upland review area is “just the beginning” of revising agency regulations. He said some next steps may include ensuring “new regulations are not too burdensome (on property owners).” Agency members also have clarified that their proposal to extend the upland review area may be increased by 100 or 200 feet, instead of 400, depending on the feedback they receive at Monday’s public hearing.

“I don’t believe that 100 feet for an upland review is even coming close to protecting an iota of the wetlands. And (our charge as the wetland agency) ... is to protect them,” Upton said. “We want to increase the boundary line to make sure things are getting checked on. ... I believe there are a number of, if not many, applications that have been approved in town that shouldn’t have been.”

Those unable to attend the virtual public hearing can email comments with “To the Inland Wetland Agency and Chairman Gary Upton” in the subject line to ggoeschel@eltownhall.com (<mailto:ggoeschel@eltownhall.com>).

The public hearing will be held virtually at 7 p.m. Monday and will follow a 6 p.m. show cause hearing reviewing a cease and desist order to local developer and home builder Jason Pazzaglia. The town has provided two separate Zoom links to attend each event and both can be found at eltownhall.com (<https://eltownhall.com/>).

m.biekert@theday.com (<mailto:m.biekert@theday.com>)

STORIES THAT MAY INTEREST YOU



Protesters gather at Stonington police headquarters in support of assault victim (/local-news/20200711/protesters-gather-at-stonington-police-headquarters-in-support-of-assault-victim)

Saturday’s gathering was part of the backlash for what critics say is a bungled police investigation into the allegedly racially motivated June 26 assault on Crystal Caldwell, a 59-year-old Black woman.

EXHIBIT 3



**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

79 Elm Street
Hartford, CT 06106-5127

Sidney J. Holbrook
Commissioner

**GUIDELINES
UPLAND REVIEW AREA REGULATIONS
CONNECTICUT'S INLAND WETLANDS &
WATERCOURSES ACT**

June, 1997

Wetlands Management Section
Bureau of Water Management



Preparation of this report was funded in part by a grant from the U.S. Environmental Protection Agency.

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Cover Picture From: Forested Wetlands/Functions, Benefits and the Uses of Best Management Practices, U.S.D.A. Forest Service.

(Printed on Recycled Paper)



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



To: Municipal Inland Wetland Agencies

From: Charles E. Berger, Director
Inland Water Resources Division

A handwritten signature in black ink, appearing to read "Charles E. Berger".

Date: June 30, 1997

Under the Inland Wetlands and Watercourses Act, Connecticut's municipalities regulate proposed development activities in or affecting wetlands and watercourses. In support of the municipal wetland agencies, DEP's Wetlands Management Section provides a comprehensive Wetlands Management Training Program for wetland agency commissioners and *Model Regulations* for local inland wetland programs. *Guidelines for Upland Review Area Regulations* was published in accordance with sections 22a-42(d) and 22a-42a(f) of the General Statutes to assist Connecticut's inland wetland agencies in developing and implementing municipal regulations for activities proposed on uplands around wetlands or watercourses.

The guide was drafted in response to inquiries from wetland agency members, river management groups, the regulated community, and other interest persons, for guidance in implementing what are popularly called buffer or setback provisions in wetland regulations. The guide uses the term upland review area to describe the non-wetland or non-watercourse area in which certain types of activities, as defined in municipal regulations, are regulated activities. Other terms for describing this area are used in municipal regulations. We selected the term upland review area because it best conveys the regulatory scheme under the inland wetlands statutes wherein a wetland agency reviews regulated activities case-by-case and approves or disapproves them on their merits.

For further information about DEP's Inland Wetlands Management Programs, please call (860) 424-3019.

Guidelines for Upland Review Area Regulations Under Connecticut's Inland Wetlands and Watercourses Act

Wetlands and Uplands: an Introduction

The relationship between a wetland or watercourse and its surrounding upland is complex. Upland land clearing, excavating, filling and other construction activities if not properly planned and executed can have significant impacts on adjacent wetlands and watercourses. Under the Inland Wetlands and Watercourses Act, the municipal wetlands agency has broad authority to issue permits not only for activities in wetlands or watercourses themselves, but for activities located elsewhere when such activities are likely to impact or affect wetlands or watercourses. *It is the department's policy to encourage municipal wetland agencies to review proposed activities located in upland areas surrounding wetlands and watercourses wherever such activities are likely to impact or affect wetlands or watercourses.*¹

An understanding of how certain activities in upland areas affect wetlands and watercourses has led most towns to adopt regulations requiring wetland agency review of proposed development adjacent to wetlands and watercourses.² Such regulations are optional under the Act, but serve to inform the public as to the circumstances under which a wetlands permit is required of activities proposed adjacent to a wetland or watercourse.³

While requiring a permit for specified activities within defined upland review area boundaries, these wetland agencies still maintain their authority to regulate proposed activities located in more distant upland areas if they find that the activities are likely to impact or affect a wetland or watercourse.

The purpose of these guidelines is to assist municipal wetlands agencies to review and revise their wetlands and watercourses regulations, if necessary. As such, the guidelines provide a foundation for consistency in municipal regulations and permitting activities. They are not intended to substitute for reasoned evaluation and judgement by municipal wetlands agencies of the local wetland and watercourse resources, the conditions surrounding those resources, and the types of activities which are likely to impact or affect those resources. Nor are they intended to guide wetlands agencies through the decision making process for acting on permits. Both these topics are more appropriately addressed in detail through the department's Inland Wetlands Management Training Program for wetland agency commissioners and their staff. Wetlands agencies are reminded that they should review proposed changes in their inland wetlands and watercourses regulations with their town attorney.

Model Municipal Upland Review Area Regulations

In addition to implementing the law to protect wetlands and watercourses, regulations inform the public on what to expect if one proposes an activity in or affecting a wetland or watercourse in the subject town. Upland review area regulations reduce or eliminate the need for case-by-case rulings by providing notice as to what activities need wetland permits. By specifying where a permit is required, such regulations foster consistency and are convenient for the public. In determining the boundaries for its upland review area regulations, the wetland agency should consider the specific kinds of development activities on uplands which are likely to impact or affect wetlands and watercourses and the nature of that impact or affect.

An upland activity which is likely to impact or affect wetlands or watercourses is a *regulated activity* and should be identified as such in the regulations. In identifying upland review area regulated activities, the wetlands agency must apply the standard established under section 22a-42a(f) of the General Statutes and find that the activity is "... likely to impact or affect wetlands or watercourses."⁴ Examples of upland regulated activities are included in the models below. In implementing its upland review area regulations, the wetland agency must be cognizant that certain proposed activities, which are permitted uses as of right or as nonregulated uses under section 22a-40 of the General Statutes, are not regulated and do not require a permit from the wetlands agency under the Inland Wetlands and Watercourses Act.

There are a number of ways that the boundaries of an upland review area may be defined in regulations. In selecting its approach, the wetland agency should consider the special nature of their town's wetland and watercourse resources, the purposes and intent of the Inland Wetlands and Watercourses Act, and how the regulations will be implemented.

Three models for upland review area regulations are presented below. The first model provides that certain specified activities if conducted within a specified distance measured from *any* wetland or watercourse are regulated activities. As such, the first model is the basic model and easiest to implement. The second model expands upon that basic model by identifying specific wetland and watercourse resources of special concern and providing site specific review area widths for those resources. This model should be used where the wetland agency believes additional protection though a wider review area is needed or to take existing land development or uses into account with a narrower review area. The third model adds to the basic model a slope and soil factor in determining the site specific width or location of the upland review area. The first and second models are easily understood and implemented, while the third is technically complex and not easily implemented without trained staff.

Note that the first sentence of each model definition below is the definition of the term *regulated activity* taken from section 22a-38(13) of the Inland Wetlands and Watercourses Act and, as such, its meaning may not be changed in municipal inland wetlands regulations.

Model Regulation Options⁵

Model I. “Regulated activity” means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within _____ feet measured horizontally from the boundary of any wetland or watercourse is a regulated activity. The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

Model II. “Regulated activity” means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within the following upland review areas is a regulated activity:

- (1) within _____ feet measured horizontally from the ordinary high water mark⁶ of Town Lake, Smith Lake or Pine Meadow Pond;
- (2) within _____ feet measured horizontally from the ordinary high water mark of Ledge Brook and of Big Trout Brook between the Route 51 and Main Street Bridges over Big Trout Brook.
- (3) within _____ feet measured horizontally from the boundary of the wetlands comprising Great Swamp;
- (4) within the area enclosed by the _____ foot contour elevation surrounding Ice Pond Bog; such contour is depicted on the Inland Wetlands and Watercourses Map for the Town of _____;
- (5) within _____ feet measured horizontally from the boundary of any other wetland or watercourse.

The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

Model III. “Regulated activity” means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the

specified activities in section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging in the following areas is a regulated activity:

- (1) on land within ____ feet measured horizontally from any wetland or watercourse, provided
- (2) if the slope of such land exceeds 5%,⁷ within the distance measured horizontally from the boundary of the wetland or watercourse equal to ____ feet plus an additional 5 feet for each 1% increase in slope greater than 5%, but not more than __[e.g., 200]__ feet;
- (3) on land designated on the Inland Wetlands and Watercourses Map of the Town of _____ as containing highly erodible soils.

The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

Considerations in Establishing Upland Review Areas

Regulated Activities

The Inland Wetlands and Watercourses Act (Sections 22a-36 through 22a-45a of the General Statutes) defines *regulated activity* to mean:

*"... any operation within or use of a wetland or watercourse involving the removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or watercourses, but shall not include the specified activities in section 22a-40 of the Connecticut General Statutes."*⁸

In addition to activities located in a wetland or watercourse, any activity located in a non-wetland or non-watercourse area which is likely to impact or affect a wetland or watercourse may be deemed to be a regulated activity (unless the activity is a use permitted as of right or as a nonregulated activity). However, the likelihood of an activity having a substantive impact on a wetland or watercourse will depend on a number of factors, including the nature of the wetland or watercourse, the activity, soils and slope of the land, and would generally decrease with increasing distance of the activity from the wetland or watercourse. At some point, impacts from that activity on wetlands and watercourses would be expected to become de minimis and not measurable.

The DEP believes that a 100 foot-wide upland review area is sufficient for reviewing construction

activities in areas surrounding wetlands or watercourses because most of the activities which are likely to impact or affect these resources will be located in that area. However, based on the special factors of concern to a wetlands agency, e.g., wetland and watercourse values, slope, soils, existing development, etc., a greater or lesser distance may be appropriate for a particular municipality. However, beyond 100 feet it is neither practical nor desirable, from a wetlands and watercourses management perspective, to automatically require an inland wetlands permit for *all* construction activities. It must be emphasized that other municipal authorities and mechanisms involving planning, zoning and subdivision decisions and plans of conservation and development, play a role in addressing the broader watershed issues.

Upland Review Areas, Setbacks and Buffers

In a number of municipal inland wetlands regulations, upland review areas are referred to as setbacks or buffers.⁹ We chose the term *upland review area* to describe the non-wetland or non-watercourse area in which certain activities would be regulated because it best conveys the regulatory scheme under the wetlands statutes wherein a wetland agency reviews regulated activities case-by-case and approves or disapproves them on their merits. The inland wetland statutes do not authorize a blanket prohibition of *all* activities either in the wetlands or in upland review, buffer or setback areas.

Use of Upland Review Area Regulations

Most municipal wetland agencies have already adopted some form of upland review area regulations.¹⁰ Such regulations are based on a presumption that the regulated activity will have an adverse impact on the adjacent wetland or watercourse. A person proposing to conduct a regulated activity has the burden to demonstrate to the wetlands agency that the impacts of his proposal are consistent with the purposes and provisions of the Inland Wetlands and Watercourses Act and, therefore, that he is entitled to the permit. An applicant who successfully documents to the satisfaction of the wetlands agency that his proposed activities are fully consistent with the purposes and provisions of the Inland Wetlands and Watercourses Act is entitled to receive a permit. The factors the wetlands agency must consider in making its decision on the application are prescribed in section 22a-41 of the General Statutes.¹¹

The Role of the Upland Review Area in Protecting Wetlands and Watercourses

Upland areas surrounding wetlands or watercourses function in a number of ways to protect these resources. An understanding of these functions and how they potentially may be impacted by construction activity or development is necessary for the wetlands agency to adopt an upland review area and subsequently regulate activities therein. Since the functions will vary depending on the specific project site, each permit application will be different and must be reviewed on its individual merits.

Control Non-point Source Pollution

- *Vegetation and natural soils foster removal of nutrients, sediments, particulates, and other potential pollutants and pathogens from storm-water runoff thereby protecting water quality
- *Sediments arising from road sanding and construction activities are trapped
- *Flood flows, stream bank erosion, and storm-water discharges to wetlands and watercourses are attenuated
- *Separating distances from wetlands or watercourses allow for treatment of wastewaters

Protect Aquatic Habitat

- *Wind-thrown trees, dropped branches and detritus create important habitat for aquatic organisms within watercourses
- *Stabilize under cutting stream banks, providing shelter for fish and other aquatic organisms
- *Riparian areas are an essential component of habitat and for mammals, birds, amphibians, reptiles, invertebrates and other wetland animals
- *Watercourses are allowed to meander naturally without endangering development

Control Temperature

- *Shrubs and trees shade wetlands and watercourses and help maintain cold water aquatic habitats in summer and insulate them from deep frost in winter
- *Water temperatures suitable for fish spawning and egg and fry development are maintained
- *Cooler water supports higher dissolved oxygen

Provide Food for Aquatic Life

- *Decomposing leaves and detritus contribute to the food chain, especially of aquatic insects
- *Insects falling from branches feed fish and other aquatic life

Insulate Fish and Wildlife From Human Activities

- *Potential for human interference with fish and wetland wildlife is reduced

Provide a Corridor Linking Wetlands and Watercourses

- *Wildlife habitats are continuous, not fragmented or isolated, allowing for migratory habits of wetland wildlife

Examples of Regulated Activities in Upland Review Areas and Their Potential Wetland or Watercourse Impacts

Keep in mind that the substance and significance of an impact will vary from site to site and may decrease with increasing distance from the wetland or watercourse.

Clearing, grubbing and grading

- *Loss of stream shading
- *Increased surface water temperature
- *Loss of food source for aquatic organisms
- *Loss of riparian habitat/diminished in stream habitat value
- *Increased storm-water runoff
- *Reduced capacity to remove nutrients and other impurities from runoff
- *Soil erosion/sedimentation
- *Destabilization of stream banks
- *Increased disturbance of aquatic and wetland animals
- *Release of nutrients bound in the soil
- *Loss of instream habitat diversity from wind-thrown trees and branches

Paving

- *Increased storm-water runoff/discharge
- *Decreased ground-water recharge, reduced stream flow during dry seasons
- *Non-point source of water pollution, including petroleum products from motor vehicles
- *Source of sand and grit from storm water discharges
- *Disruption of fish spawning and fish-egg incubation
- *Periodic disturbance from maintenance of storm-water management system
- *Thermal loading in watercourses

Excavating

- *Soil erosion/sedimentation
- *Altered surface and ground-water discharge patterns and quantity

- *Diversion or dewatering of wetland/watercourse
- *Destabilization of watercourse channels

Filling

- *Diversion of surface water drainage/dewatering
- *Loss of flood-water storage
- *Increased flooding or flood hazards
- *Increased stream erosion
- *Erosion of fill material
- *Sedimentation

Constructing

- *Soil erosion/deposition
- *Disturbance of adjacent fish and wildlife habitats
- *Increased non-point sources of water pollution
- *Fragmentation of wetland/watercourse habitats

Depositing material

- *Erosion/loss of material into regulated area
- *Leaching/pollution potential
- *Disturbance of adjacent aquatic habitats
- *Alteration of riparian habitats
- *Other impacts similar to filling and constructing

Removing material

- *Discharge/loss of material to regulated area
- *Modification of riparian habitats
- *Surface drainage changes
- *Other impacts similar to clearing, grubbing or grading

Discharging storm water

- *Water quality - discharge of road sands/grit; oils; grease
- *Water quantity - flow attenuation; velocity dissipation
- *Erosion/sedimentation
- *Assimilation of potential pollutants
- *Change in receiving stream water temperature
- *Increase velocity of runoff and decrease travel time to the receiving watercourse
- *Nuisance flooding

Determining Upland Review Area Boundaries

Due to the variability of Connecticut's landscape features, even within the same watershed, and the multiplicity of regulated activities which may be involved in site development, it is not practical to establish separate upland review area boundary distances *for each category or type of regulated activity*. Instead, the upland review area should be of sufficient width to ensure that it will encompass the activities that are most likely to impact or affect the adjacent wetlands or watercourses. It is recommended that upland review area boundaries be delineated using a uniform distance measured horizontally and perpendicular from the ordinary high water mark of a lake, pond, river or stream or from a wetland soil boundary.

The upland review area width adopted by the wetlands agency may be wider or narrower than the 100 foot width recommended by DEP. DEP encourages municipal wetlands agencies base their upland review area widths giving due consideration to local landscape factors including the value, or importance, of wetland or watercourse resources, extent of existing land use and, if a wetland agency deems it to be practicable, on the slope and soils of the land to be developed or other factors.

To be enforceable, the upland review areas must be adopted in the town's inland wetlands and watercourses regulations following the procedures described under section 22a-42a of the General Statutes.¹² Importantly, the upland review area regulations must be easy to understand by a property owner and easy to implement by the inland wetlands agency (should it need to take an enforcement action), as well as by any other interested person.

A uniform review area width has the advantage of simplicity over a variable width in that it is easier to delineate, understand and administer. The disadvantage of a variable, non-uniform, width upland review area regulation is that its inherent complexity may make the regulation difficult to establish and subsequently administer. Ordinarily, the agency will need a professional staff person to delineate and enforce variable upland review area regulations. Also, citizens may be confused using a variable approach and disagreements over the actual location on the ground of the outer limit of the upland review area may complicate permit and enforcement proceedings. Verification of the upland review area location is particularly important in an enforcement action where the burden is on the agency to prove that there is a violation of its regulations. For these reasons, the department urges caution in adopting complex upland review area boundaries (e.g., Model Option III, above).

While it is desirable for upland review areas to be depicted on the town's official inland wetlands and watercourses map, depending on the type of review area adopted, actual mapping may not be necessary provided appropriate narrative description is included in the town's inland wetlands and watercourses regulations and such provisions *are clearly referenced on the official map*. Wetlands agency regulations governing wetlands maps and the official wetlands maps themselves should state that such wetlands and watercourses maps were prepared for information purposes only and that the actual character of the land shall govern the agency's jurisdiction thereon. The

official wetlands and watercourses maps should also clearly reference or depict all upland review areas which have been adopted by the agency.

Boundary Factors

There are a number of factors which should be considered in defining upland review area boundaries. For unique situations, such as with an important bog, the boundary of the review area could be set by using an elevation contour encompassing the subject area. In addition, upland review areas may be wider or narrower for specified wetlands or watercourses. For example, an upland review area for a significant wetland or watercourse habitat or for wetlands and watercourses located in a public water supply watershed could be set wider than a review area for wetlands or watercourses located in other less critical areas.

* Significant Wetland and Watercourse Resources

All wetlands have intrinsic value, some wetland areas being more or less ecologically valuable than others. But if a wetland or watercourse is known to be ecologically significant, or to have a critical function or value such as in flood control or as habitat for an endangered species, a wider, more protective, upland review area may be appropriate. Unique wetland and watercourse values such as in research, education or recreation may also warrant a wider upland review area.

DEP encourages all towns to evaluate their wetlands resources. To that end, DEP offers training guidance on a methodology for identifying the relative importance of the wetlands and watercourses in a town or within a watershed. (See: DEP Bulletin # 9 *Method for the Evaluation of Inland Wetlands in Connecticut*, 1989¹³) This methodology uses mathematical and word expressions to assign relative "wetland value units" (WVU) to a number of the common wetland and watercourse functions. The following functions are defined in DEP Bulletin #9:

- Flood Control
- Ecological Integrity
- Wildlife Habitat
- Fish Habitat
- Nutrient Retention and Sediment Trapping
- Education Potential
- Visual/Esthetic Quality
- Agricultural Potential
- Forestry Potential
- Water Based Recreation
- Ground-water Use Potential
- Shoreline Anchoring and Dissipation of Erosive Forces
- Noteworthiness, including public water supply watersheds

In addition, guidance on vernal pools is provided in a recent publication by the Connecticut Forest Stewardship Program and the University of Connecticut Cooperative Extension System titled *Identification and Protection of Vernal Pool Wetlands of Connecticut*. Both of the above referenced publications are available from the DEP Bookstore, 79 Elm Street, Hartford, phone 860-424-3555.

* Slope

By enlarging the width of the upland review area in proportion to its slope upward from the wetland or watercourse, the wetland agency may have a better opportunity to protect wetlands and watercourses from sedimentation originating from upland construction activities. For example, wherever the minimum 100 foot upland review area slope exceeds 5%, regulations could add 5 feet (or other reasonable measure) of review area distance *horizontally* for each 1% increase in slope. Thus, if the basic 100 foot wide review area has a 15% slope upward from the ordinary high water line or wetland soil boundary, an additional 50 feet would be added to the horizontal width of the upland review area ($5\text{ft}/1\% \times 10\% = 50\text{ft}$). Similarly, where the land slopes away (downward) from the regulated area, e.g., as in the case of a hill-side seep wetland, the width of the review area could be reduced.

In general, the greater the slope of the land being developed, the greater the potential threat of damage to adjacent wetlands and watercourses from erosion and sedimentation. However, in practice, unless a town already has good town-wide topographic mapping, calculating a slope parameter for a town-wide map of the upland review area boundary would require considerable professional engineering expertise.

A practical approach to using the slope factor may be for wetland agencies to assert their jurisdiction case-by-case over major construction activities on any steeply sloped areas located outside the upland review area where wetlands and watercourses may be threatened by sedimentation caused by erosion at upland construction sites. Such sedimentation is deemed to be pollution and may be cause for an enforcement action under the inland wetlands statutes (see definition of regulated activity above).

* Soils

Combined with slope, the type of soil found adjacent to wetlands and watercourses is an important factor in how development may affect adjacent wetlands or watercourses. Soil characteristics such as texture, cohesiveness and organic content influence the creation of rill and gully formation as a result of erosion by water. In turn, this creates a potential for sedimentation of adjacent wetlands and watercourses. The United States Department of Agriculture, Natural Resources Conservation Service, has compiled lists of highly erodible soil map units which can be located using their published soil surveys. While these lists were compiled primarily for agricultural applications, they may also be useful in evaluating the erosion potential from construction activity.

Also, the permeability of a particular soil, the rate at which groundwater travels through a soil, is an important consideration when evaluating the potential for an upland review area to renovate wastewater discharges to the ground water that may subsequently discharge to a wetland or watercourse. This may be an important consideration when septic system leaching fields or storm water infiltration trenches are proposed adjacent to wetlands or watercourses.

For more information on highly erodible soils, refer to *Highly Erodible Soil Map Units of Connecticut*, USDA-NRCS (1986). For more information on soil permeability characteristics, contact your local USDA-Natural Resource Conservation Service Center (call 860-487-4011 for the center near you). Information on ground-water as it relates to sewage treatment can be found in *Seepage and Pollutant Renovation* (DEP Bulletin # 7) and *Carrying Capacity of Public Water Supply Watersheds* (DEP Bulletin # 11).

Except when soils are used to define wetlands, regulation of development based on soil characteristics is largely a responsibility of the town sanitarian and the planning and zoning commission(s).¹⁴ However, where highly erodible soils are located adjacent to wetlands and watercourses, erosion and sedimentation control is especially critical and should also be addressed by the wetland agency.

Upland review area boundaries based on soil characteristics should be depicted as such on the official inland wetlands and watercourses map for the subject town.

* Floodplain Limits

The landward boundary of a mapped floodplain, such as delineated by the 100-year flood mapped by the National Flood Insurance Program, has been determined using a theoretical design flood on the subject watercourse. Mapped flood limits have no direct relation to the location of wetlands or smaller watercourses on the floodplain. Also, the floodplain boundaries for most small watercourses have not been mapped. For these reasons, flood insurance floodplain maps may not reflect a reasonable boundary of the upland review area.

*Urban Areas and Existing Development

Existing development of the area surrounding wetlands and watercourses has, more likely than not, already had an impact on the upland area's ability to protect those resources. Degraded conditions should not be used to justify further degradation. The wetlands or watercourses themselves may have been filled or modified for storm water or flood control. For these reasons any remaining fringe of undisturbed area between the wetland or watercourse and existing upland development may be all that there is to buffer adjacent water resources from further degradation from new development. In such urban areas, particular attention should be given to how storm water discharges are managed so as to minimize the opportunity for pollution and alteration of wetland or watercourse habitats.

New development in urban areas that contain degraded wetlands or watercourses, may provide an opportunity to improve these degraded resources while mitigating the impact of the new development. This can be accomplished by habitat restoration or enhancement or by using storm water management system retrofits that are designed to improve the quality of the storm water discharge.

Endnotes

1. This document was prepared in response to inquiries from municipal wetland commissioners, the Rivers Advisory Committee, the regulated community and other interested persons for guidance on implementing setback and buffer provisions in municipal regulations adopted under Connecticut's Inland Wetlands and Watercourses Act. Section 22a-42d of the General Statutes directs the department to provide guidance for the implementation of Section 22a-42a(f) of the General Statutes.
2. Over 80% of Connecticut's municipal wetlands agencies have regulations governing regulated activities in areas surrounding wetlands or watercourses.
3. Section 22a-42a(c)(2) of the General Statutes provides that a wetlands agency may delegate approval authority for non-significant activities proposed in upland review areas to its agent provided such agent has had DEP training.
4. Section 22a-42a(f) provides that the wetlands agency has jurisdiction over those activities proposed in the upland review area which are "... likely to impact or affect wetlands or watercourses." In documenting the necessity for regulating specific activities conducted in upland review areas, it is not sufficient to merely assert that the activity "may" impact or affect wetlands or watercourses.
5. Contact DEP for a copy of *Inland Wetlands and Watercourses Model Regulations*. DEP's *Model Regulations* provide a comprehensive guide for implementing the Inland Wetlands and Watercourses Act through municipal wetland agency regulations. *Model Regulations* is updated as needed to reflect current legislation.
6. "Ordinary high water mark" means a mark on the land caused by the presence and action of water, which presence and action is so common and usual and so long continued in all ordinary years so as to mark upon the land a distinction between the abutting upland and the watercourse. Such mark may be found by examining the bed and bank of any watercourse and ascertaining thereon an abrupt change in the characteristics of soil or vegetation or slope of the land. This term should be defined in municipal wetlands regulations.
7. Percent slope is most simply determined by dividing the difference in elevation between two points by the distance between the points (i.e., rise/run) and multiplying the result by 100. If a slope factor is used in regulations, the regulations must provide guidance as to how the slope should be measured in the field e.g., on shortest straight line transect from any wetland or watercourse boundary to the highest up gradient point on the land to be developed; number and location of transects; and, in recognition that

the actual slope of the land is not uniform, methods for averaging of slope over a site.

8. In implementing upland review area regulations, the wetlands agency must be cognizant of the “uses as of right” provisions of section 22a-40 of the General Statutes. Under section 22a-40, certain activities are uses of wetland and watercourses as of right or as a nonregulated use. Such uses are not regulated and do not require a permit from the wetland agency. For example, subdivision (4) of section 22a-40(a) prescribes that certain “... uses incidental to the enjoyment and maintenance of residential property ...” are permitted as of right: “[s]uch uses shall include maintenance of existing structures and landscaping but shall not include removal or deposition of significant amounts of material from or onto a wetland or watercourse or diversion or alteration of a watercourse.” Other uses permitted as of right include certain agricultural and forestry uses, boat anchorage and mooring, certain water company activities and maintenance of drainage pipes which pre-date the regulations. Nonregulated uses include a number of conservation and recreational activities. Persons proposing such uses should seek confirmation from the municipal wetlands agency that their proposed project does not require a permit.

9. DEP has not adopted an upland review area provision for state agency actions because, unlike municipal wetland agencies which have only one opportunity to review a project, DEP has a number of opportunities during both planning and permitting of state agency projects. DEP reviews state agency projects under the Environmental Policy Act (Findings of No Significant Impact, Environmental Impact Statements) and several permit programs under Title 22a and 25 of the General Statutes. As partners in state government, state agencies generally act cooperatively to address environmental issues. Utilizing its technical resources, the State strives to apply site specific best management practices during the different planing and regulatory reviews.

10. Depending on the wetland agency, upland review area widths range from 25 feet up to 650 feet from wetland or watercourse boundaries.

11. Section 22a-41 of the Inland Wetlands and Watercourses Act established the criteria for decision on permit applications as follows: 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 or watercourses.

Additionally, if the wetlands agency holds a hearing because it found that the subject activity may have a significant impact, the wetlands agency may not grant the permit unless it finds that the activity is acceptable under the criteria listed above and that there is no less environmentally damaging feasible and prudent alternative.

12. Under Section 22a-42a(b) of the General Statutes, the wetlands agency must provide the DEP with a copy of notice of its hearing on proposed regulations and a copy of the proposed regulations no less than 35 days prior to the hearing thereon. DEP must review and approve all proposed wetland agency regulations except proposed map revisions.

13. The methodology described in DEP Bulletin #9 is a resource planning tool intended to be used for town-wide or watershed-wide assessments of wetland resources and is not designed to be used by applicants or wetlands agencies to evaluate the significance of the impact of activities proposed in permit applications.

14. Section 22a-329 of the General Statutes provides that regulations adopted by a municipality pursuant to CGS Secs. 8-2 and 8-25 shall require that proper provisions be made for soil erosion and sediment control.

Agency Mission


The mission of the Department of Environmental Protection (DEP) is to conserve, improve and protect the natural resources and environment of the State of Connecticut and to do this in a way that encourages the social and economic development of Connecticut while preserving the natural environment and the life forms its supports in a delicate, interrelated and complex balance, to the end that the state may fulfill its responsibility as trustee of the environment for present and future generations. The DEP achieves its mission through regulation, inspection, enforcement and licensing procedures which help control air, land and water pollution in order to protect health, safety and welfare. The Department also improves and coordinates the state's environmental plans, functions and educational programs in cooperation with the federal, regional and local governments, other public and private organizations and concerned individuals, while managing and protecting the flora and fauna for compatible uses by the citizens of the state.

EXHIBIT 4

1. Administrative Permits Issued

2. Commission Issued Permits

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).

2. **Notice of Violation; 297 Boston Post Road; Al Smith Owner, Jason Pazzaglia, Other;** Outside storage of equipment, construction materials, and the stockpiling of earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil and other woody debris within 100 feet of a watercourse without or in violation of an Inland Wetlands Permit.

D. Correspondence

X. ADJOURNMENT

****Site Walk****

The Site Walk for July 6, 2019 has been cancelled for lack of Agenda items.

NOTE

Changes to the law allow that anyone wishing to petition for a public hearing on an application may submit a petition with 25 signatures to the Inland Wetlands Agency or its agent within 15 days of the date of receipt. Applications are available for review by the public in the Planning Department during regular business hours.

EXHIBIT 5

As the science of wetland and watercourse protection evolved, so did the knowledge that activities adjacent to these resources could negatively impact them. The language in the state statutes and the town's regulations addresses this potential and provides the agency with the authority to regulate any activity that may impact a wetland or watercourse. Technically, regardless of where an activity is relative to a wetland or watercourse, if the activity may impact the resource, it will be regulated.

How Can I Help?

Scientists have determined on average 100 to 150 feet of naturally vegetated land provides enough protection against an assortment of impacts from a diversity of land uses. In Greenwich, regulations set the Upland Review Area at 100 feet from wetlands and watercourses, unless those resources occur within the public drinking water supply watershed, then the buffer is 150 feet. While protecting the 100 and 150-foot buffer to wetland and watercourses is desirable, it is not always possible and sometimes not needed depending on the resource's value and the nature of the proposed work.

13. What can be done with seasonally wet areas on my property?

- [Inland Wetlands & Watercourses Agency \(IWWA\) - Application Review Process](#)
- [Inland Wetlands & Watercourses Agency \(IWWA\) - Applying for a Permit](#)
- [Inland Wetlands & Watercourses Agency \(IWWA\) - When a Permit is Needed](#)
- [Parking Services](#)
- [Planning & Zoning](#)
- [Police](#)
- [Public Works](#)
- [Public Works - Building Inspection](#)
- [Public Works - Sewer](#)
- [Purchasing & Administrative Services](#)
- [Representative Town Meeting \(RTM\)](#)
- [Retirement](#)
- [Senior Center](#)
- [Tax Collector](#)
- [Town Clerk](#)
- [Voter Registration](#)

Town Hall

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EXHIBIT 6

Burlington CT Inland Wetland Regulations

"Material" means any substance, solid or liquid, organic or inorganic, including but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse or waste.

"Municipality" means the Town of Burlington.

"Nurseries" means places where plants are grown for sale, transplanting, or experimentation.

"Permit" see license

"Permittee" means the person to whom a license has been issued.

"Person" means any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

"Pollution" means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.

"Prudent" means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

"Regulated activity" means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include activities specified in Section 4 of these regulations. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within the following upland review areas is a regulated activity:

1. within 500 feet measured horizontally from the ordinary high water mark of the Covey Road Bog, also known as the Black Spruce Bog, on Covey Road at Foote Road, centered at approximately 41°46'39.8" North Latitude and 72°58'07.3" West Longitude;

2. within 200 feet measured horizontally from the ordinary high water mark of the Lamson's Corner Bog, also known as the Major Curtis Bog, on Route 69 near Scoville Road, centered at approximately 41°44'42." North Latitude x 72°58'13.0" West Longitude;
3. within 200 feet measured horizontally from the ordinary high mark of Rock Road Bog, on Rock Road, centered at approximately 41°45'55.8" North Latitude x 72°58'50.5" West Longitude;
4. within 100 feet measured horizontally from the boundary of any other wetland or watercourse.

The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

"Remove" includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, grub, clear cut timber, bulldoze, dragline or blast.

"Rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

"Significant impact" means any activity, including, but not limited to, the following activities which may have a major effect:

1. Any activity involving deposition or removal of material which will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed.
2. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system.
3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support aquatic, plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions.
4. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse.
5. Any activity which causes substantial diminution of flow of a natural watercourse or groundwater levels of the wetland or watercourse.
6. Any activity which is likely to cause or has the potential to cause pollution of a wetland or watercourse.

EXHIBIT 7

Inland Wetland & Watercourses Regulations Glastonbury, CT

greenhouses that are primarily used for growing plants, trees or shrubs; farm buildings and structures that are essential to the farming operations; and the acreage of such land in actual use for farming operations that consists of tillable cropland, untillable permanent pasture, orchard land and woodland.

- l. "Farming" means use of a farm for the purpose of raising or harvesting any agricultural or horticultural commodity that is subject to and previously documented by the filing of a farm business declaration with the federal Internal Revenue Service.
- m. "Material" means any substance, solid or liquid, organic or inorganic, including but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse or waste.
- n. "Municipality" means the Town of Glastonbury, Hartford County, Connecticut.
- o. "Nurseries" means land used for propagating trees, shrubs or other plants for transplanting, sale, or for use as stock for grafting.
- p. "Permit" means the whole or any part of any certificate of approval or similar form of permission which may be required of any person by the provisions of these regulations under the authority of the Agency.
- q. "Permittee" means the person to whom such permit has been issued.
- r. "Person" means any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporation, governmental agency or subdivision thereof.
- s. "Pollution" means any harmful thermal, chemical, biological, physical or visual effect upon or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials allowed to be discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion or sedimentation resulting from any filling, regrading, or excavation or other earth disturbing activity.
- t. "Regulated activity" means any operation within, or use of, a wetland or watercourse involving removal or deposition of material, clear-cutting, or any obstruction, construction, alteration or pollution, or disturbance of the natural and indigenous character of the land of such wetland or watercourse, and any removal or deposition of material, clear-cutting, obstruction or construction within one hundred (100) feet of any wetland or watercourse,

but shall not include the activities specified in Section 4 of these regulations.

- u. “Regulated area” means an aggregate area comprised of any inland wetland or watercourse and the conservation buffer area as defined and determined pursuant to these regulations.
- v. “Remove” means to drain, excavate, mine, dig, dredge, suck, grub, clear-cut, bulldoze, dragline, blast or any similar activity.
- w. “Rendering unclean or impure” means altering the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.
- x. “Significant activity” means any activity, including but not limited to the following activities, which may have a major effect or significant impact on the wetland or watercourse for which an application has been filed or on any other part of the wetland or watercourse system:
 1. Any activity involving a deposition or removal of material which will or may have a major effect or significant impact on the inland wetland or watercourse or on any other part of the inland wetland or watercourse system, or
 2. Any activity which substantially changes the natural channel or may inhibit the natural channel or may inhibit the natural dynamics of a watercourse system, or
 3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to support desirable fisheries, wildlife, or other biological life, prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space or other functions, or
 4. Any activity which causes or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse, or
 5. Any activity which causes or has the potential to cause a substantial diminution of flow of a natural watercourse, or groundwater levels of the wetland or watercourse, or
 6. Any activity which causes or has the potential to cause pollution of a wetland or watercourse, or
 7. Any activity which destroys unique wetland or watercourse areas having demonstrable scientific or educational value.

EXHIBIT 8

Rocky Hill

INLAND WETLANDS AND WATERCOURSES REGULATIONS

- ff. **"REGULATED ACTIVITY"** means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in Section 22a-40 of the General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing or material and discharging of storm water on the land within 100 feet measured horizontally from the boundary of any wetland or watercourse is a regulated activity. The Agency may rule that if any other activity located within the upland review or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses then it too is a regulated activity.
- gg. **"REGULATED AREA"** means any wetlands or watercourses as defined in these regulations.
- hh. **"REMOVE"** includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, grub, clear cut-timber, bulldoze, dragline or blast.
- ii. **"RENDERING UNCLEAN OR IMPURE"** means any alteration of the physical, chemical, or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity, or taste.
- jj. **"SIGNIFICANT IMPACT ACTIVITY"** means any activity, including, but not limited to, the following activities, which may have a major effect or significant impact:
1. Any activity involving deposition or removal of material, which will or may have a major effect or significant impact on the regulated area or on another part of the inland wetland or watercourse system.
 2. Any activity, which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system.
 3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support desirable fisheries, wildlife, or other biological life; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions.
 4. Any activity, which is likely to cause or has the potential to cause substantial turbidity, siltation, or sedimentation in a wetland or watercourse.
 5. Any activity, which causes a substantial diminution of flow of a natural watercourse or groundwater levels of the regulated area.
 6. Any activity, which is likely to cause or has the potential to cause pollution of a wetland or watercourse.
 7. Any activity, which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.
- kk. **"SOIL SCIENTIST"** means an individual duly qualified in accordance with standards set by the federal Office of Personnel Management.
- ll. **"SPRUCE SWAMP"** means a forested wetland characterized by the presence of Red/Black Spruce.
- mm. **"SWAMPS"** means areas with soils that exhibit aquic (saturated) moisture regimes and are distinguished by the dominance of wetland trees and shrubs.
- nn. **"SUBMERGED LANDS"** means those lands that are inundated by water on a seasonal or more frequent basis.
- oo. **"THREATENED and ENDANGERED SPECIES, SPECIES of SPECIAL CONCERN; SIGNIFICANT NATURAL COMMUNITIES"** means those species listed by CT DEP pursuant to Chapter 495 of the Connecticut General Statutes as threatened or endangered species or species of special concern. Known locations of threatened and endangered species and

EXHIBIT 9

July 13, 2020

FREEDOM OF INFORMATION ACT REQUEST

SUBMITTED TO:

**Town of East Lyme Inland Wetland Agency
Gary Upton
Phyllis Berger
Rosemary Ostfeld
Theodore Koch
Don Phimister
Kristen Chantrell
Dave Schmitt
Sandy Gignac
Doreen Rhein
Jason Deeble
Gary Goeschel
Jen Lindo**

Pursuant to the State of Connecticut Freedom of Information Act, as codified in Chapter 14 of Connecticut General Statutes, I am requesting access to review and copy and any all documents, communications and correspondence that occurred during the period January 1, 2020 through and including the date access to review, in its entirety is provided, that refers or relates to the following subject or matters;

DEFINITIONS: Documents, Communications and Correspondence means and includes writings of any kind or nature, including drafts thereof, which also includes, but is not limited to, emails, text messages, memorandums, motions, notes, letters, research and opinions.

DO NOT DESTROY ANY DOCUMENTS, COMMUNICATIONS OR CORRESPONDANCE. By this letter, you are hereby given notice not to destroy, conceal or alter any paper or electronic files and other data generated by and/or stored on your computers and storage media (e.g. hard disks, floppy disks, backup tapes) or any other electronic data, such as voicemail. Your failure to comply with this notice can result in severe sanctions being imposed by the Court and liability in tort for spoliation of evidence or potential evidence. Through discovery we expect to obtain from you a number of documents and items, including files stored on your computers and your computer storage media. In order to avoid spoliation, you will need to provide the data requested on the original media. Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond that which may be found in printed documents.

1. Any matter identified on the January 6, 2020, January 27, 2020, February 24, 2020, March 9, 2020, March 25, 2020, May 18, 2020, June 8, 2020 July 13, 2020 agendas of the Town of East Lyme Inland Wetland Agency each of which are attached in Ex. A.
2. Any ex parte and or private and or un noticed meeting(s) of any regular members and or alternate members of the Town of East Lyme Inland Wetland Agency.
3. Any and all communications and or correspondence with Town of East Lyme staff including but not limited to Gary Goeschel, Jen Lindo, William Mulholland, and Karen Zmitruk
4. Any and all communications and or correspondence with any member of the Town of East Lyme Board of Selectmen, Board of Finance, Planning Commission or Zoning Commission.
5. Any and all communications and or correspondence and or document(s) sent to or received from any member of the public that has communicated verbally or in writing with any member, regular or alternate, of the Town of East Lyme Inland Wetlands Agency.
6. Any and all communications and or correspondence sent to or received from The State of Connecticut, Connecticut Department of Energy and Environmental Protection.
7. Any and all communications and or correspondence that refer or relate to expert testimony.
8. Any communications, correspondence or documents sent to or received from The law firm of Waller Smith & Palmer and or any attorney or employee thereof including but not limited to Edward O'Connell, Esq. and Mark Zamarka, Esq.

In this regard attached please find the Court Order approving a Compromise and Settlement Agreement between New England National LLC et al and the Town of East Lyme, Ex. B. I would refer you to Paragraphs 5 F. and 8 B. and Exhibit A thereto where Niantic Real Estate and myself personally are identified as DEBTOR-RELATED COVENANT PARTIES.

9. Any correspondence, communication, or documents exchanged between members, regular or alternate, of the Town of East Lyme Inland Wetland Agency.

I thank each of you for your compliance³ with the requested production in the time
line required by the State of Connecticut Freedom of Information Act.

Respectfully submitted,

NIANTIC REAL ESTATE LLC

By 

Robert A. Blatt, Managing Member
1890 Palmer Avenue Suite 300
Larchmount, New York 10538
(914)- 834- 0291

Cc: Mark Nickerson, First Selectman
Camille Alberti, Chair, Board of Finance
Kirk Scott, Chair, Planning Commission
Matthew Walker, Chair, Zoning Commission

EXHIBIT A

EAST LYME INLAND WETLANDS AGENCY

MEETING OF MONDAY, JANUARY 6, 2020
East Lyme Town Hall, 108 Pennsylvania Avenue,
East Lyme, Connecticut
Upper Meeting Room

7:00 p.m.

AGENDA

Gary Upton, Chairman
Vacancy, Vice Chairman
Phyllis Berger, Secretary

CALL TO ORDER

PLEDGE OF ALLEGIANCE

I. ADDITIONS TO THE AGENDA

II. PUBLIC HEARINGS – NONE

III. 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.*

IV. ACCEPTANCE OF MINUTES

A. Meeting Minutes of December 16, 2019 Special Meeting

V. EX-OFFICIO REPORT

VI. PENDING APPLICATIONS

VII. NEW BUSINESS

- A. Application of the Town of East Lyme for the Realignment of Memorial Park Drive; Realignment of the Southern end of Memorial Park Dr where it intersects Pennsylvania Avenue.
- B. Application of Mel Wiese, Agent for Roxbury Road LLC, Owner, for a proposed 6-lot residential conservation subdivision at property identified in the application as Roxbury Road, East Lyme Assessor's Map 16.1, Lot 43

VIII. OLD BUSINESS

IX. REPORTS

- A. Chairman's Report
- B. Inland Wetlands Agent Report
1. Administrative Permits Issued
 2. Commission Issued Permits

FILED

Dec 31 2019 AT 1:32 AM (PM)
Kenneth
EAST LYME TOWN CLERK

C. Enforcement

1. **Notice of Violation; 297 Boston Post Road; Al Smith Owner, Jason Pazzaglia, Other;** Outside storage of equipment, construction materials, and the stockpiling of earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil and other woody debris within 100 feet of a watercourse without or in violation of an Inland Wetlands Permit.

D. Correspondence

X. ADJOURNMENT

****Site Walk****

The Site Walk for January 4, 2020 has been cancelled.

NOTE

Changes to the law allow that anyone wishing to petition for a public hearing on an application may submit a petition with 25 signatures to the Inland Wetlands Agency or its agent within 15 days of the date of receipt. Applications are available for review by the public in the Planning Department during regular business hours.

EAST LYME INLAND WETLANDS AGENCY

SPECIAL MEETING OF MONDAY, JANUARY 27, 2020

East Lyme Town Hall, 108 Pennsylvania Avenue,

East Lyme, Connecticut | Upper Meeting Room

7:00 p.m.

AMENDED AGENDA

Gary Upton, Chairman
Vacancy, Vice Chairman
Phyllis Berger, Secretary

FILED

CALL TO ORDER

PLEDGE OF ALLEGIANCE

Jan 21 2020 AT 2:40 AM/PM
Cauren Mulholland
EAST LYME TOWN CLERK

I. ADDITIONS TO THE AGENDA

II. PUBLIC HEARINGS –

A. **North Bride Brook Multi-Family Development:** Application of Pazz & Construction, LLC; Jason Pazzaglia, Applicant; Pazz & Construction, LLC, Owner; to conduct regulated activities in the upland review area in association with a proposed multi-family residential community on property identified in the application as N Bride Brook Rd, East Lyme Assessor's Map 09.0, Lot 37-2

III. 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.*

IV. ACCEPTANCE OF MINUTES

A. **Meeting Minutes of December 16, 2019 Special Meeting**

V. EX-OFFICIO REPORT

VI. PENDING APPLICATIONS

A. **North Bride Brook Multi-Family Development:** Application of Pazz & Construction, LLC; Jason Pazzaglia, Applicant; Pazz & Construction, LLC, Owner; to conduct regulated activities in the upland review area in association with a proposed multi-family residential community on property identified in the application as N Bride Brook Rd, East Lyme Assessor's Map 09.0, Lot 37-2

B. **Application of the Town of East Lyme for the Realignment of Memorial Park Drive;** Realignment of the Southern end of Memorial Park Dr where it intersects Pennsylvania Avenue.

C. **Application of Mel Wiese, Agent for Roxbury Road LLC, Owner,** for a proposed 6-lot residential conservation subdivision at property identified in the application as Roxbury Road, East Lyme Assessor's Map 16.1, Lot 43

VII. NEW BUSINESS

- A. Request of Gateway Development/East Lyme, LLC** for a release of \$62,500.00 in bonds for Gateway Development/East Lyme, LLC (Resi I) for Gateway Commons Residential Phase I Project at Ancient Highway, 286, 284 and 282 Flanders Road, Flanders Road and portions of East Society Road. Said bond being an erosion and sedimentation control bond.
- B. Request of Gateway Development/East Lyme, LLC** for a release of \$68,000.00 and \$50,000.00 in bonds for Gateway Development/East Lyme LLC for the proposed retail development for Costco Wholesale Corporation (COSTCO) at 0, 282, 284 and 286 Flanders Road, East Lyme. Said bond being for screening vegetation and conservation grass mix to be released upon the planting plan achieving an 80% survival rate after two (2) full growing seasons.
- C. Application of Toby and Glenn Knowles, Owner;** for the proposed construction of a patio, correction of water runoff and wetlands restoration at property identified as 21 Brightwater Road, Niantic, East Lyme Assessor's Map 5.19, Lot 58.
- D. Election of Officers**
 - i. **Chairman**
 - ii. **Vice-Chairman**
 - iii. **Secretary**

VIII. OLD BUSINESS

IX. REPORTS

- A. Chairman's Report**
- B. Inland Wetlands Agent Report**
 - i. **Administrative Permits Issued**
 - ii. **Commission Issued Permits**
- C. Enforcement**
 - 1. Notice of Violation; 297 Boston Post Road; Al Smith Owner, Jason Pazzaglia, Other;** Outside storage of equipment, construction materials, and the stockpiling of earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil and other woody debris within 100 feet of a watercourse without or in violation of an Inland Wetlands Permit.
- D. Correspondence**

X. ADJOURNMENT

****Site Walk****

A Special Site Walk has been scheduled for January 25, 2020 at 9:00 a.m. at the East Lyme Town Hall.

NOTE

Changes to the law allow that anyone wishing to petition for a public hearing on an application may submit a petition with 25 signatures to the Inland Wetlands Agency or its agent within 15 days of the date of receipt. Applications are available for review by the public in the Planning Department during regular business hours.

EAST LYME INLAND WETLANDS AGENCY

SPECIAL MEETING OF MONDAY, FEBRUARY 24, 2020

East Lyme Town Hall, 108 Pennsylvania Avenue,

East Lyme, Connecticut | Upper Meeting Room

7:00 p.m.

AGENDA

Gary Upton, Chairman
Vacancy, Vice Chairman
Phyllis Berger, Secretary

FILED

Feb 20 2020 AT 8:45 (AM/PM)
(Curtis Hulme)
EAST LYME TOWN CLERK

CALL TO ORDER

PLEDGE OF ALLEGIANCE

I. ADDITIONS TO THE AGENDA

II. PUBLIC HEARINGS –

A. **North Bride Brook Multi-Family Development:** Application of Pazz & Construction, LLC; Jason Pazzaglia, Applicant; Pazz & Construction, LLC, Owner; to conduct regulated activities in the upland review area in association with a proposed multi-family residential community on property identified in the application as N Bride Brook Rd, East Lyme Assessor's Map 09.0, Lot 37-2

III. 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.*

IV. ACCEPTANCE OF MINUTES

A. **Meeting Minutes of January 27, 2020 Special Meeting**

V. EX-OFFICIO REPORT

VI. PENDING APPLICATIONS

A. **North Bride Brook Multi-Family Development:** Application of Pazz & Construction, LLC; Jason Pazzaglia, Applicant; Pazz & Construction, LLC, Owner; to conduct regulated activities in the upland review area in association with a proposed multi-family residential community on property identified in the application as N Bride Brook Rd, East Lyme Assessor's Map 09.0, Lot 37-2.

B. **Application of Toby and Glenn Knowles, Owner;** for the proposed construction of a patio, correction of water runoff and wetlands restoration at property identified as 21 Brightwater Road, Niantic, East Lyme Assessor's Map 5.19, Lot 58.

VII. NEW BUSINESS

A. **Request of John Bialowans** for a release of \$5,000.00 bond for 57 Walnut Hill Road, East Lyme. Said bond being an erosion and sedimentation control bond.

VIII. OLD BUSINESS

IX. REPORTS

A. Chairman's Report

B. Inland Wetlands Agent Report

i. Administrative Permits Issued

ii. Commission Issued Permits

C. Enforcement

1. Notice of Violation; 297 Boston Post Road; Al Smith Owner, Jason Pazzaglia, Other; Outside storage of equipment, construction materials, and the stockpiling of earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil and other woody debris within 100 feet of a watercourse without or in violation of an Inland Wetlands Permit.

D. Correspondence

X. ADJOURNMENT

****Site Walk****

A Special Site Walk has been scheduled for February 22, 2020 at 9:00 a.m. at the East Lyme Town Hall.

NOTE

Changes to the law allow that anyone wishing to petition for a public hearing on an application may submit a petition with 25 signatures to the Inland Wetlands Agency or its agent within 15 days of the date of receipt. Applications are available for review by the public in the Planning Department during regular business hours.

EAST LYME INLAND WETLANDS AGENCY
SPECIAL MEETING OF MONDAY, FEBRUARY 24, 2020
East Lyme Town Hall, 108 Pennsylvania Avenue,
East Lyme, Connecticut | Upper Meeting Room
6:30 p.m.

WORKSHOP AGENDA

Gary Upton, Chairman
Vacancy, Vice Chairman
Phyllis Berger, Secretary

CALL TO ORDER

- A. Review with Town Attorney process and procedures for Wetlands Applications and Responsibilities of Wetlands Agency.**

ADJOURNMENT

FILED

Feb 21 2020 AT 3:40 AM (PM)
Karen Gulm
EAST LYME TOWN CLERK

EAST LYME INLAND WETLANDS AGENCY
REGULAR MEETING OF MONDAY, MARCH 9, 2020
East Lyme Town Hall, 108 Pennsylvania Avenue,
East Lyme, Connecticut | Upper Meeting Room
7:00 p.m.

AGENDA

Gary Upton, Chairman
Kristen Chantrell, Vice Chairman
Phyllis Berger, Secretary

FILED

CALL TO ORDER

PLEDGE OF ALLEGIANCE

Mar 3 2020 AT 10:20 AM/PM
Kristen Chantrell
EAST LYME TOWN CLERK

I. ADDITIONS TO THE AGENDA

II. PUBLIC HEARINGS – NONE

III. 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.*

IV. ACCEPTANCE OF MINUTES

A. Meeting Minutes of February 24, 2020 Special Meeting

V. EX-OFFICIO REPORT

VI. PENDING APPLICATIONS

A. North Bride Brook Multi-Family Development: Application of Pazz & Construction, LLC; Jason Pazzaglia, Applicant; Pazz & Construction, LLC, Owner; to conduct regulated activities in the upland review area in association with a proposed multi-family residential community on property identified in the application as N Bride Brook Rd, East Lyme Assessor's Map 09.0, Lot 37-2.

B. Application of Toby and Glenn Knowles, Owner; for the proposed construction of a patio, correction of water runoff and wetlands restoration at property identified as 21 Brightwater Road, Niantic, East Lyme Assessor's Map 5.19, Lot 58.

VII. NEW BUSINESS

A. Inland Wetlands Regulations; Changes to regulations and updates.

VIII. OLD BUSINESS

IX. REPORTS

A. Chairman's Report

B. Inland Wetlands Agent Report

i. Administrative Permits Issued

ii. **Commission Issued Permits**

C. **Enforcement**

1. **Notice of Violation; 297 Boston Post Road; Al Smith Owner, Jason Pazzaglia, Other;** Outside storage of equipment, construction materials, and the stockpiling of earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil and other woody debris within 100 feet of a watercourse without or in violation of an Inland Wetlands Permit.

D. **Correspondence**

X. **ADJOURNMENT**

****Site Walk****

The Site Walk scheduled for March 7, 2020 at 9:00 a.m. at the East Lyme Town Hall has been CANCELLED due to a lack of agenda items.

NOTE

Changes to the law allow that anyone wishing to petition for a public hearing on an application may submit a petition with 25 signatures to the Inland Wetlands Agency or its agent within 15 days of the date of receipt. Applications are available for review by the public in the Planning Department during regular business hours.

EAST LYME INLAND WETLANDS AGENCY

SPECIAL MEETING OF WEDNESDAY, MARCH 25, 2020

**East Lyme Town Hall, 108 Pennsylvania Avenue,
East Lyme, Connecticut | Upper Meeting Room
7:00 p.m.**

AGENDA

**Gary Upton, Chairman
Kristen Chantrell, Vice Chairman
Phyllis Berger, Secretary**

FILED

Mar 13 20 20 AT 1:55 AM (PM)
(Cammie Mullen)
EAST LYME TOWN CLERK

CALL TO ORDER

PLEDGE OF ALLEGIANCE

I. ADDITIONS TO THE AGENDA

II. PUBLIC HEARINGS – NONE

III. 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.*

IV. ACCEPTANCE OF MINUTES

A. Meeting Minutes of February 24, 2020 Special Meeting

V. EX-OFFICIO REPORT

VI. PENDING APPLICATIONS

A. North Bride Brook Multi-Family Development: Application of Pazz & Construction, LLC; Jason Pazzaglia, Applicant; Pazz & Construction, LLC, Owner; to conduct regulated activities in the upland review area in association with a proposed multi-family residential community on property identified in the application as N Bride Brook Rd, East Lyme Assessor's Map 09.0, Lot 37-2.

B. Application of Toby and Glenn Knowles, Owner; for the proposed construction of a patio, correction of water runoff and wetlands restoration at property identified as 21 Brightwater Road, Niantic, East Lyme Assessor's Map 5.19, Lot 58.

VII. NEW BUSINESS

A. Inland Wetlands Regulations; Changes to regulations and updates.

B. Nottingham Hills Re-subdivision; Request of Kristen T. Clarke, P.E., Agent for Owner English Harbor Asset Management, LLC for a Determination of Permitted/Non-Regulated Activity at Upper Kensington Drive, as part of a 4-lot re-subdivision. East Lyme Assessor's Map 40.0, Lot 23 and 22.

- C. **21 Marshfield Rd**, Your Brothers Keeper LLC, Agent for Owner Brandy & Derek Moore, for a Determination of a Permitted/Non-Regulated Activity at 21 Marshfield Road, for the clean out of a culvert entrance and exit to maintain the natural flow of water. East Lyme Assessor's Map 04.7, Lot 19.
- D. **Creek Road, Giants Neck Heights Club House**, Your Brothers Keeper LLC, Agent for Owner Giants Neck Heights Association , for a Determination of a Permitted/Non-Regulated Activity at Creek Road, for the clean out of a culvert entrance and exit to maintain the natural flow of water. East Lyme Assessor's Map 04.7, Lot 18.

VIII. **OLD BUSINESS**

IX. **REPORTS**

A. **Chairman's Report**

B. **Inland Wetlands Agent Report**

- i. **Administrative Permits Issued**
- ii. **Commission Issued Permits**

C. **Enforcement**

- 1. **Notice of Violation; 297 Boston Post Road; Al Smith Owner, Jason Pazzaglia, Other**; Outside storage of equipment, construction materials, and the stockpiling of earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil and other woody debris within 100 feet of a watercourse without or in violation of an Inland Wetlands Permit.

D. **Correspondence**

X. **ADJOURNMENT**

****Site Walk****

The Site Walk scheduled for March 7, 2020 at 9:00 a.m. at the East Lyme Town Hall has been CANCELLED due to a lack of agenda items.

NOTE

Changes to the law allow that anyone wishing to petition for a public hearing on an application may submit a petition with 25 signatures to the Inland Wetlands Agency or its agent within 15 days of the date of receipt. Applications are available for review by the public in the Planning Department during regular business hours.

EAST LYME INLAND WETLANDS AGENCY
SPECIAL MEETING OF MONDAY, MAY 18, 2020
7:00 p.m.

AGENDA

Gary Upton, Chairman
Kristen Chantrell, Vice Chairman
Phyllis Berger, Secretary

**PLEASE NOTE THAT THIS MEETING WILL BE HELD
BY REMOTE PARTICIPATION VIA THE FOLLOWING METHOD:**

Join Zoom Meeting

<https://us02web.zoom.us/j/81503709241?pwd=ajZpOUJmNXBzRG53c29CbTJVb0xnQT09>

Meeting ID: 815 0370 9241

Password: 155664

One tap mobile

+16465588656,,81503709241#,,1#,155664# US (New York)

+13017158592,,81503709241#,,1#,155664# US (Germantown)

Dial by your location

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

Meeting ID: 815 0370 9241

Password: 155664

Find your local number: <https://us02web.zoom.us/j/81503709241?pwd=ajZpOUJmNXBzRG53c29CbTJVb0xnQT09>

CALL TO ORDER

I. ADDITIONS TO THE AGENDA

II. PUBLIC HEARINGS – NONE

III. 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.*

IV. ACCEPTANCE OF MINUTES

A. Meeting Minutes of February 24, 2020 Special Meeting

V. EX-OFFICIO REPORT

VI. PENDING APPLICATIONS

- A. North Bride Brook Multi-Family Development:** Application of Pazz & Construction, LLC; Jason Pazzaglia, Applicant; Pazz & Construction, LLC, Owner; to conduct regulated activities in the upland review area in association with a proposed multi-family residential community on property identified in the application as N Bride Brook Rd, East Lyme Assessor's Map 09.0, Lot 37-2.
- B. Application of Toby and Glenn Knowles, Owner;** for the proposed construction of a patio, correction of water runoff and wetlands restoration at property identified as 21 Brightwater Road, Niantic, East Lyme Assessor's Map 5.19, Lot 58.

VII. NEW BUSINESS

- A. Inland Wetlands Regulations;** Changes to regulations and updates.
- B. Nottingham Hills Re-subdivision;** Request of Kristen T. Clarke, P.E., Agent for Owner English Harbor Asset Management, LLC for a Determination of Permitted/Non-Regulated Activity at Upper Kensington Drive, as part of a 4-lot re-subdivision. East Lyme Assessor's Map 40.0, Lot 23 and 22.
- C. 21 Marshfield Rd,** Your Brothers Keeper LLC, Agent for Owner Brandy & Derek Moore, for a Determination of a Permitted/Non-Regulated Activity at 21 Marshfield Road, for the clean out of a culvert entrance and exit to maintain the natural flow of water. East Lyme Assessor's Map 04.7, Lot 19.
- D. Creek Road, Giants Neck Heights Club House,** Your Brothers Keeper LLC, Agent for Owner Giants Neck Heights Association, for a Determination of a Permitted/Non-Regulated Activity at Creek Road, for the clean out of a culvert entrance and exit to maintain the natural flow of water. East Lyme Assessor's Map 04.7, Lot 18.

VIII. OLD BUSINESS

IX. REPORTS

- A. Chairman's Report**
- B. Inland Wetlands Agent Report**
 - i. Administrative Permits Issued**
 - ii. Commission Issued Permits**
- C. Enforcement**
 - 1. Notice of Violation; 297 Boston Post Road; Al Smith Owner, Jason Pazzaglia, Other;** Outside storage of equipment, construction materials, and the stockpiling of earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil and other woody debris within 100 feet of a watercourse without or in violation of an Inland Wetlands Permit.
- D. Correspondence**

X. ADJOURNMENT

****Site Walk****

There is no Site Walk scheduled at this time.

NOTE

Changes to the law allow that anyone wishing to petition for a public hearing on an application may submit a petition with 25 signatures to the Inland Wetlands Agency or its agent within 15 days of the date of receipt. Applications are available for review by the public in the Planning Department during regular business hours.

EAST LYME INLAND WETLANDS AGENCY
REGULAR MEETING OF MONDAY, JUNE 8, 2020

7:00 p.m.

AGENDA

Gary Upton, Chairman
Kristen Chantrell, Vice Chairman
Phyllis Berger, Secretary

**PLEASE NOTE THAT THIS MEETING WILL BE HELD
BY REMOTE PARTICIPATION VIA THE FOLLOWING METHOD:**

Join Zoom Meeting

<https://us02web.zoom.us/j/88036833760?pwd=dXpSangxWTN2S2NETE1kSjhobEZadz09>

Meeting ID: 880 3683 3760

Password: 780977

One tap mobile

+16465588656,,88036833760#,,1#,780977# US (New York)

+13017158592,,88036833760#,,1#,780977# US (Germantown)

Dial by your location

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

Meeting ID: 880 3683 3760

Password: 780977

Find your local number: <https://us02web.zoom.us/j/88036833760?pwd=dXpSangxWTN2S2NETE1kSjhobEZadz09>

CALL TO ORDER

I. ADDITIONS TO THE AGENDA

II. PUBLIC HEARINGS – NONE

III. 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.*

IV. ACCEPTANCE OF MINUTES

A. Meeting Minutes of May 18, 2020 Special Meeting

V. EX-OFFICIO REPORT

VI. PENDING APPLICATIONS

- A. **Inland Wetlands Regulations;** Changes to regulations and updates.
- B. **Nottingham Hills Re-subdivision;** Request of Kristen T. Clarke, P.E., Agent for Owner English Harbor Asset Management, LLC for a Determination of Permitted/Non-Regulated Activity at Upper Kensington Drive, as part of a 4-lot re-subdivision. East Lyme Assessor's Map 40.0, Lot 23 and 22.
- C. **21 Marshfield Rd,** Your Brothers Keeper LLC, Agent for Owner Brandy & Derek Moore, for a Determination of a Permitted/Non-Regulated Activity at 21 Marshfield Road, for the clean out of a culvert entrance and exit to maintain the natural flow of water. East Lyme Assessor's Map 04.7, Lot 19.
- D. **Creek Road, Giants Neck Heights Club House,** Your Brothers Keeper LLC, Agent for Owner Giants Neck Heights Association, for a Determination of a Permitted/Non-Regulated Activity at Creek Road, for the clean out of a culvert entrance and exit to maintain the natural flow of water. East Lyme Assessor's Map 04.7, Lot 18

VII. NEW BUSINESS - None

VIII. OLD BUSINESS

IX. REPORTS

A. Chairman's Report

B. Inland Wetlands Agent Report

- i. **Administrative Permits Issued**
- ii. **Commission Issued Permits**

C. Enforcement

- 1. **Notice of Violation; 297 Boston Post Road; Al Smith Owner, Jason Pazzaglia, Other;** Outside storage of equipment, construction materials, and the stockpiling of earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil and other woody debris within 100 feet of a watercourse without or in violation of an Inland Wetlands Permit.

D. Correspondence

A. Correspondence from the First Selectman

X. ADJOURNMENT

****Site Walk****

The Site Walk for June 6, 2020 will meet at the East Lyme Town Hall at 9:00 a.m.

NOTE

Changes to the law allow that anyone wishing to petition for a public hearing on an application may submit a petition with 25 signatures to the Inland Wetlands Agency or its agent within 15 days of the date of receipt. Applications are available for review by the public in the Planning Department during regular business hours.

EAST LYME INLAND WETLANDS AGENCY
REGULAR MEETING OF MONDAY, JULY 13, 2020

7:00 p.m.

AMENDED AGENDA

Gary Upton, Chairman
Kristen Chantrell, Vice Chairman
Phyllis Berger, Secretary

**PLEASE NOTE THAT THIS MEETING WILL BE HELD
BY REMOTE PARTICIPATION VIA THE FOLLOWING METHOD:**

Join Zoom Meeting

<https://us02web.zoom.us/j/84027080159?pwd=VFVpUFN6ZXZjaTFiQmp4bHZQNmBJUT09>

Meeting ID: 840 2708 0159

Password: 480220

One tap mobile

+13126266799,,84027080159#,,1#,480220# US (Chicago)

+16465588656,,84027080159#,,1#,480220# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Germantown)

+1 346 248 7799 US (Houston)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 840 2708 0159

Password: 480220

Find your local number: <https://us02web.zoom.us/j/84027080159?pwd=VFVpUFN6ZXZjaTFiQmp4bHZQNmBJUT09>

FILED

July 9 2020 AT 1:12 AM/PM

Cammie Belk
EAST LYME TOWN CLERK

CALL TO ORDER

I. ADDITIONS TO THE AGENDA

II. PUBLIC HEARINGS –

1. Application of the Town of East Lyme Inland Wetland Agency for a text amendment to amend section 2.1 of the East Lyme Inland Wetland Regulations to change the Definition of a “Regulated Activity” by enlarging the distance of the boundary for a regulated activity from 100’ from an inland wetlands and/or watercourse to 500’.

III. 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.*

IV. ACCEPTANCE OF MINUTES

A. Meeting Minutes of June 8, 2020 Regular Meeting

V. EX-OFFICIO REPORT

VI. PENDING APPLICATIONS

A. Application of the Town of East Lyme Inland Wetland Agency for a text amendment to amend section 2.1 of the East Lyme Inland Wetland Regulations to change the Definition of a "Regulated Activity" by enlarging the distance of the boundary for a regulated activity from 100' from an inland wetlands and/or watercourse to 500'.

VII. NEW BUSINESS –

A. Creek Road, Giants Neck Heights Club House, and 21 Marshfield Rd, Your Brothers Keeper LLC, Agent for Owner for a Permit to conduct regulated activity at Creek Road and 21 Marshfield Rd for the clean out of a culvert entrance and exit to maintain the natural flow of water. East Lyme Assessor's Map 04.7, Lot 18 and 19.

VIII. OLD BUSINESS

IX. REPORTS

A. Chairman's Report

B. Inland Wetlands Agent Report

i. Administrative Permits Issued

ii. Commission Issued Permits

C. Enforcement

1. Cease and Desist; 297 Boston Post Road; Al Smith Owner, Jason Pazzaglia, Other; Outside storage of equipment, construction materials, and the stockpiling of earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil and other woody debris within 100 feet of a watercourse without or in violation of an Inland Wetlands Permit.

D. Correspondence

X. ADJOURNMENT

****Site Walk****

The Site Walk for July 11, 2020 is hereby cancelled.

NOTE

Changes to the law allow that anyone wishing to petition for a public hearing on an application may submit a petition with 25 signatures to the Inland Wetlands Agency or its agent within 15 days of the date of receipt. Applications are available for review by the public in the Planning Department during regular business hours.

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	CHAPTER 11
NEW ENGLAND NATIONAL, LLC	Case No. 02-33699 LMW
Debtor	Re: Doc ID # 472

ORDER APPROVING COMPROMISE AND SETTLEMENT

Upon the Debtor's and East Lyme's Joint Motion for Order Approving Partial Compromise (the "Motion"), having heard the parties on the Motion, having reviewed the pleadings filed in this case to date and having found therefrom good and sufficient cause, it is hereby ORDERED, ADJUDGED AND DECREED that:

- A. Except as otherwise defined herein, all words, terms and phrases used in the Motion shall have and be given the same meaning when used herein.
- B. The proposed Compromise Agreement in the form as appended hereto shall be, and hereby is approved.
- C. This Order shall become effective on the date hereof.

Dated: DEC 04 2008

Lorraine Murphy Weil

Lorraine Murphy Weil
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT (New Haven)

In re:

NEW ENGLAND NATIONAL, LLC

Debtor

Chapter 11 Debtor
Case No. BK-02-33699 (LMW)

COMPROMISE AGREEMENT

COMPROMISE AGREEMENT (this "Agreement") made and entered into as of the Effective Date by and between the reorganized Debtor, **New England National, LLC** and **Darrow's Ridge, LLC**, Debtor in Possession (individually, "Debtor NEN" and "Debtor DR" and collectively, "Debtor") and the **Debtor-Related Covenant Parties** named in *Exhibit A* (collectively with the Debtor, the "Debtor Parties") and the **Town of East Lyme, Connecticut** (the "Town" or "East Lyme") and the **East Lyme-Related Covenant Parties** named in *Exhibit B* (collectively with East Lyme, the "East Lyme Parties," whether or not one or more of them signs this Agreement subject to the condition subsequent imposed on the East Lyme-Related Covenant Parties by 2.G. The term "party" or "parties" means and includes only (a) the Debtor, (b) the Debtor-Related Covenant Parties, (c) East Lyme, and (d) the East Lyme Related Covenant Parties to the extent expressly provided for herein. Except for the Debtor and East Lyme Parties, no other person or entity is intended to be, or shall be deemed to be a third party beneficiary hereof or to be entitled to, or have any benefits, privileges, protection, remedies or rights hereunder under any theory or interpretation of this Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and reasonable equivalence of which the parties hereby acknowledge the parties hereby agree and undertake as follows:

1. **Approvals Required.** Whether or not signed by the parties, this Agreement shall not become effective or binding on the parties until such time as: (a) the Bankruptcy Court has entered in *In re New England National, LLC*, Case No. BK-02-33699 (LMW) an order approving this Compromise and authorizing the Debtor to execute, deliver and pay, perform and satisfy its financial liabilities and other obligations hereunder (the "Debtor NEN Compromise Order"); (b) the Bankruptcy Court has entered in *In re Darrow's Ridge, LLC*, Case No. BK-07-30399 (LMW) an order approving this Compromise and authorizing the Debtor to execute, deliver and pay, perform and satisfy its financial liabilities and other obligations hereunder (individually, the "Debtor DR Compromise Order" and, collectively, a "Compromise Order"); and (c) the Board of Selectmen of the Town of East Lyme have approved the Compromise and authorized the First Selectman, or any other official of the Town of East Lyme to execute and deliver or deliver this Agreement to the Debtor and file the same with the Bankruptcy Court. If East Lyme Board of Selectmen shall not have approved this Compromise in a writing delivered to Debtor on or before December 3, 2008, this Agreement shall become null, void and of no further force or effect absent a written agreement to extend such date, which may be withheld by either Debtor or East Lyme for any reason or no reason.

2. **Certain Definitions.** Unless otherwise required by the text of any other paragraph or provision of this Agreement, the term:

A. "Bankruptcy Court" means the United States Bankruptcy Court for the District of Connecticut (New Haven Division).

B. "Bankruptcy Cases" means and includes the cases referred to in Section 1 (a) and (b) of this Agreement.

C. "Cause of action" or "causes of action" means and includes any and all claims, demands, causes of action and equitable and statutory rights of any and every nature whatsoever, including the Debtor NEN's claim for the refund of real estate taxes paid to East Lyme during the NEN case under protest and a reservation of rights (the "Tax Refund Claim") and the other claims made by Debtor NEN and Debtor DR in the Bankruptcy Cases and the State Court Proceedings, whether formally or informally.

D. "Contested Matter" means the contested matter commenced by the Debtor's Motion for determination of Debtor's Tax Liability to the Town of East Lyme, dated April 2, 2007, as amended by Debtor's Motion to Amend Motion for Determination of Tax Liability to East Lyme dated July 31, 2008 and as further amended pursuant to this Agreement, and including Debtor's Objection to Claim No. 13 filed by the Town of East Lyme, (the "Motion").

E. "Debtor-Related Covenant Parties" means and includes each Debtor, the persons and entities named in *Exhibit A* and each of their members, managers, assistant managers, employees, accountants, attorneys, consultants and other agents.

F. "Covenants" means and includes the "Debtor Covenant" and "East Lyme Covenant," as such terms are defined or used in Sections 4 and 8 hereof.

G. "East Lyme-Related Covenant Parties" means and includes only the Town of East Lyme itself and the persons and entities specifically named in *Exhibit B*. If any East Lyme-Related Covenant Party whom or which has not signed this Agreement for any reason or no reasons should initiate any Proceeding against Debtor or any Debtor-Related Covenant Party, such East Lyme-Related Covenant Party shall automatically cease to be a East Lyme-Related Covenant Party and shall have no further benefits, privileges, protections, remedies or rights under this Agreement or the Debtor Covenant with the same effect as if the Debtor-Related Covenant Party had never been named in the Covenant or herein.

H. "Insurer" and "Insurance Policy" means and includes each and every insurance company which issued a policy of insurance that provides or may provide coverage for, or against any damage, loss or harm suffered by the Debtor as a result of the actions alleged in the Contested Matter.

I. "Retained Claims" means and includes any and all causes of action, which the Debtor holds or may hold against any East Lyme, any East Lyme-Related Covenant Party or any Third Party, including the Compromised Claims as limited hereby.

J. "Third Party" or "Third Parties" means and includes any and all persons or entities other than a Debtor, a Debtor-Related Covenant Party, East Lyme or a East Lyme-Related Covenant Party. Without limiting this definition, "Third Parties" includes the persons and entities named in Paragraph 2.K.

K. "Third Party Claims" means and includes any and all causes of action of any and every nature whatsoever which a Debtor holds or may hold against any Third Party, including the following: (a) George Calkins; (b) Margaret Parulis; (c) Edward B. O'Connell, Esq., David P. Condon, Esq. and the firm of Waller, Smith & Palmer, PC and its predecessors and successors and/or any one or more of its other attorneys, paralegals, administrative assistants or agents (collectively, "Waller Smith") (and (d) Ledge Light Health District.

L. "Compromised Claims" means only those causes of action against East Lyme and the East Lyme-Related Covenant Parties expressly compromised pursuant to Section 3A of this Agreement and then only to the extent provided for therein.

M. "Compromise Documents" means and includes each and every document required to be executed and delivered by a party hereto.

N. "Compromise Obligations" means and includes all of the financial liabilities and other obligations evidenced by, or arising from, out of or incidental to this Agreement and the Compromise Documents.

O. "Proceeding" means and includes adversary proceedings, civil actions, contested matters, equity proceedings, suits and other actions of any and every nature whatsoever.

P. "State Court Proceedings" means and includes the following proceedings pending in the New London County Superior Court (the "State Court"): (a) Darrow's Ridge, LLC et als. v. Town of East Lyme Planning Commission, Case No. CV-084007912-S and (b) Town of East Lyme Conservation Commission v. New England National, LLC, Case No. CV-08-4007946-S.

3. **Compromised Claims and Retained Actions.**

A. Subject to the further terms hereof and except as may be expressly provided for herein or limited hereby, the parties hereby compromise by limiting the liability of East Lyme itself and the East Lyme-Related Covenant Parties on account of the following causes of action as provided for herein (collectively the "Compromised Claims"): (a) all of the causes of action asserted against East Lyme itself in the Contested Matter or which could have

been asserted against East Lyme or any East Lyme-Related Covenant Party under the facts alleged therein; (b) all of the causes of action asserted against East Lyme itself in the State Court Proceedings or which could have been asserted against East Lyme or any East Lyme-Related Covenant Party under the facts alleged therein.

B. Without limiting or intending to limit the breadth of the term "Retained Claims," the Plaintiff specifically reserves any and all Retained Actions, subject to the limitations imposed hereby and the terms hereof including, without limitation: (a) any and all causes of action which Debtor holds or may hold against East Lyme or any East Lyme-Related Covenant Party not specifically compromised hereby or any Third Party, arising from, out of or incidental to any of the circumstances, events or facts underlying the Compromised Claims; and (b) any and all cause or causes of action that Debtor holds or may hold against any Third Party arising from, out of or incidental to any matter, cause or thing. Nothing contained herein shall discharge, release, relinquish or impair in any manner any cause or causes of action against Margaret M. Parulis, Waller Smith or any other Third Party arising from, out of or incidental to the filing or prosecution of such State Court Proceedings or the failure or refusal of Waller Smith to withdraw from such Proceedings.

C. Nothing contained herein shall discharge, release or relinquish any cause of action arising under, from, out of or incidental to a breach of, or default under this Compromise Agreement or any Compromise Document.

4. **Debtor Covenant.** In order to effectuate the Compromise with East Lyme and East Lyme Related Parties, the Debtor shall execute and deliver to East Lyme for itself and the benefit of the East Lyme Related Parties a document which contains the following covenants (the "Debtor Covenant"):

A. A covenant not to file any further Proceeding against East Lyme or any East Lyme-Related Party on account of any Compromised Claim or Retained Action, except as a nominal defendant or party to the extent reasonably necessary and then only to such extent as may be reasonably necessary to the prosecution of a Compromised Claim or Retained Action against a Third Party and subject to the further terms and conditions of the Covenant (the "Limited Proceedings Covenant").

B. A covenant that limits the monetary liability of East Lyme in the event that Debtor recovers a judgment against one or more Third Parties on account of a Retained Claim as follows (the "Limited Indemnity Liability Covenant"):

(1) This covenant shall apply only to a final judgment rendered in favor of Debtor or a Debtor-Released Party against a Third Party (a "Liable Third Party") that obtains a judgment against East Lyme for the payment of all or part of such judgment by way of indemnification, contribution or any other basis (an "Indemnified Third Party," "Indemnity Judgment" and an "Indemnity Claim").

(2) In the case of an Indemnity Judgment, Debtor shall not enforce its judgment against the Liable Third Party in any amount in excess of the greater of: (a) the amount of any insurance available to East Lyme with respect to the Indemnity Judgment; or (b) that portion of the Judgment rendered against the Liable Third Party for which such Third Party holds no Indemnity Judgment against East Lyme or an East Lyme-Related Covenant Party.

C. It is the intention of this Paragraph 4 that the Debtor may not enforce a Third Party Judgment for which East Lyme may be financially obligated to reimburse to the Liable Third Party until there has been a determination by a court of competent jurisdiction as to the liability of East Lyme or an East Lyme-Related Covenant Party on account of an Indemnity Claim. East Lyme shall file all pleadings and take all actions necessary to have its indemnity liability determined as part of the proceeding brought against a Third Party by a Debtor to the extent procedurally required or permissible, and shall be deemed and conclusively presumed to have waived its rights hereunder if it fails to do so. If the indemnity liability of East Lyme to a Liable Third Party cannot be determined in the Third Party Proceeding initiated by a Debtor, then East Lyme file promptly file all pleadings and take all actions necessary to have its indemnity liability determined and thereafter continuously and diligently seek a final determination of its indemnity liability as promptly as possible, but in no event later than 18 months from the date of the Third Party Judgment subject to such reasonable extensions as may be necessary as a result of delays caused without the consent, participation or fault of East Lyme in the determination of the indemnity liability; provided that, by objective standards, East Lyme has diligently pursued such determination.

5. **East Lyme's Compromise Consideration.** In consideration of the Compromise, East Lyme shall:

A. Pay to each Debtor the following sums in cash after approval of the Bankruptcy Court (the "Cash Compromise Consideration"): (1) Debtor NEN, \$240,000; and (2) Debtor DR, \$10,000. Payment to be made of not less than \$100,000 from the Town contingency fund if approved by the Board of Selectmen on December 3, 2008, and if approved by the Board of Finance on December 10, 2008 (or such greater amount as may be available in the contingency fund); the balance of the compromise amount subject to approval of the Town Meeting to be held on December 17, 2008. If not approved by the Town Meeting, the Debtor may retain such sums as are paid after the Board of Finance approval. The Agreement becomes null and void and the parties may continue the pending litigation, the payment to be credited against any judgment rendered against the Town.

B. The Cash Compromise Consideration shall be applied in reduction of the Compromised Claims other than the Tax Refund Claim.

C. Pay to the Debtor the first \$100,000 from proceeds of any Insurance Policy, including payments made on account of East Lyme's pending insurance claim pending against A.I.G. Domestic Claims, claim #618-011271, Policy No. 599-61-86 subject only to Paragraph 12A herein in regards to claim Compromise.

D. Execute and deliver to each Debtor and each Debtor-Related Covenant Party a covenant not to file action, proceeding or suit against Debtor or any Debtor-Related Covenant Party (the "East Lyme Covenant").

E. Resolve all permitting issues in accordance with *Exhibit C*.

F. Not retain or permit Waller to participate now or in the future on behalf of the Town in any matter, which directly relates to either Debtor or any Debtor-Related Covenant Party.

G. Notify Ledge Light Health District that George Calkins will not be permitted to participate, do any inspections, make any reports or provide any services directly or indirectly related to any pending or future applications in any pending or future applications filed

by NEN, Darrow's Ridge, Niantic or any of their affiliates or with respect to any development in which any of them have an interest. This provision shall be binding on the LedgeLight Health District.

H. Execute and deliver any other Compromise Documents to be signed by East Lyme to implement this Compromise.

I. Pay, perform and satisfy all of East Lyme's other financial liabilities and obligations hereunder.

6. **Debtor's Compromise Consideration.** In consideration of the Compromise:

A. Debtor NEN shall donate to East Lyme the land, which is the subject of the Approved 2006 Plans and the improvements made to such land pursuant to the Approved 2006 Plans to date.

B. Each Debtor shall execute and deliver those Compromise Documents to be signed by a Debtor to implement this Compromise.

C. Each Debtor shall pay, perform and satisfy all of Debtor's other financial liabilities and obligations hereunder.

7. **Compromise Acts and Documents.**

A. The parties stipulate and agree that:

(1) Debtor's Motion to Amend the Debtor's Motion to Amend Motion for Determination of Debtor's tax Liability to East Lyme or Objection to Claim 13 Filed By the Town of East Lyme may be granted by the Bankruptcy Court in all respects (the "Amendment Motion" and the "Amended Objection").

(2) Debtor may further amend the Objection to name specifically Third Parties, including those acting for and as agents of East Lyme, involved in each claim for relief made by the Debtors and may incorporate the acts, actions, omissions and misconduct alleged, which could have been alleged in the State Court Proceedings insofar as they affect these

Debtors (the "State Court Claims"), and cause any Third Party to be joined in the contested matter or adversary proceeding to the extent necessary.

(3) The Contested Matter, as amended and as further amended pursuant hereto, shall become and be treated as an adversary proceeding governed by the Part VII Rules.

(4) At such time as the State Court Claims have become a part of the Adversary Proceeding, and all motions to dismiss have been resolved in favor of the Debtor and East Lyme shall file a stipulation with the State Court dismissing the State Court Proceeding or Proceedings without prejudice.

(5) East Lyme's continued presence as a Defendant in the foregoing Amended Motion shall be subject to the terms of conditions of this Agreement.

B. With respect to the State Court Proceeding entitled Darrow's Ridge, LLC, et. als. v. Town of East Lyme Planning Commission, it is acknowledged that the named plaintiffs in that action include the Debtor and a related entity known as Niantic Real Estate, LLC. It is further recognized that the Debtor's confirmed Plan of Reorganization (Section 14.5 (B)(3) and (4)) provides for the retention of jurisdiction of the Bankruptcy Court for claims of the nature of the foregoing claims and that the Debtor DR Plan of Reorganization will contain identical provisions, which East Lyme will not oppose. East Lyme agrees that it shall neither make, cause any other party to make or support any motion for dismissal or abstention. Further, for the sake of judicial economy, East Lyme consents and shall consent to the consolidation and adjudication of the Debtor DR claims for relief with those of NEN. Each Debtor and Debtor-Related Covenant Parties shall execute and deliver to East Lyme for the benefit of East Lyme and each East Lyme-Related Covenant Party the Debtor Covenant. The Covenant shall not discharge, release or relinquish or be deemed to discharge, release or relinquish any cause or causes of action against East Lyme or any East Lyme-Related Covenant Party, or any other Third Party or impair, prejudice or adversely affect any such causes of action in any way, except as specifically provided for herein.

C. East Lyme and each of East Lyme-Related Covenant Parties shall execute and deliver to each Debtor and Debtor-Related Covenant Party the East Lyme Covenant.

D. The parties shall execute and deliver such other documents as may be reasonably necessary to implement this Agreement, but such documents shall not broaden the Compromise or impose any financial liabilities or obligations beyond those expressly undertaken pursuant to this Compromise Agreement and the Compromise Documents.

8. **Additional East Lyme Obligations.** To the fullest extent permitted by law, East Lyme:

A. Deliver all of the documents listed by name or type in *Exhibit D* as required by existing discovery orders entered by the Bankruptcy Court. East Lyme shall deliver the tapes and other electronically stored information for copying or reproduction to such qualified persons as Debtor may direct. East Lyme shall supervise the reproduction of such information, but Debtor shall pay the copying and reproduction costs. If Debtor wishes to complete a forensic examination of the East Lyme computer system or systems, Debtor shall pay the cost thereof.

B. Waive all privileges, including the attorney-client and work product privileges with regard to services provided by Waller, Smith & Palmer.

C. The Town will respond candidly, forthrightly and punctually to all properly issued subpoenas for testimony and/or document production prosecution of Retained Claims, including any such claims asserted against Margaret M. Parulls, George Calkins and Waller Smith.

9. **Advice of Counsel.** Each party acknowledges and represents to the other party that: (a) such party has conducted whatever investigation was deemed necessary by to ascertain all facts and matters related to this Agreement; (b) such party has consulted with and received advice from legal counsel concerning this Agreement; (c) such party understands the terms and affect of this Agreement; and (d) such party has not relied and is not relying in any way on any statement or representation made by the other party or any attorney, representative or agent of such party.

10. **No Assignment or Transfer of Compromised Claims.** Debtor represents to East Lyme that as of the date of this Agreement, Debtor has not assigned, transferred, granted any lien on or otherwise encumbered any of the Compromised Claims.

11. **Notice to Insurers; No Admission of Liability; No Prejudice.**

A. East Lyme represents to the Debtor that: It has made a claim as stated above on the policy issued by AIG. In the event that AIG should deny the claim, the Town will so notify the Debtor's counsel, and the parties shall work jointly in the prosecution of and against said insurer for the denied claim, each party paying its own attorneys fees. Debtor agrees that it shall not independently of the Town, and without the Town's consent contact AIG in regards to the Compromise of the claim.

B. It is expressly understood and agreed by the parties that this Agreement is entered into solely for the purpose of terminating the Litigation. Neither this Agreement nor any other communication concerning this Agreement shall be deemed, construed or treated in any respect as an admission of liability or a breach of duty on the part of any party.

C. This Agreement and Compromise shall not be binding on any Insurer or any Third Party.

D. Neither this Agreement nor the parties' negotiations pertaining to this Agreement or the Compromise shall be admissible in any proceeding against any Third Party.

12. **Limited Third party Beneficiaries.** Except for the Debtor, East Lyme and the Related Covenant Parties and then only to the extent provided for herein, no other person or entity is intended to be, or shall under any circumstances be deemed to be a third party beneficiary of this Agreement or to have any benefits, privileges or rights under this Agreement.

13. **Modification.** No provision of this Agreement may be changed, altered, modified or waived except in writing signed by the signatories hereto or their successors-in-interest, which shall specifically reference the Agreement and the provision which the parties seek to change, alter, waive or modify.

14. **Entire Agreement.** The parties hereto acknowledge that this Agreement

constitutes a full, final, and complete Compromise of their differences and supersedes and replaces any and all other written or oral exchanges, agreements, understandings, arrangements, or negotiations between or among them relating to the subject matter hereof and affirmatively state that there are no other prior or contemporaneous agreements, exchanges, representations, arrangements, or understandings, written or oral, between them relating to the subject matter hereof and that this Agreement contains entire agreement between them with respect to the subject matter hereof. It is intended that the covenants to be provided by the parties pursuant to Paragraphs 4 and 5, except as specifically permitted by the terms of this Agreement, shall be deemed to be a Covenant Not To Sue, and is not intended to be a release.

15. **Choice of Law.** This Agreement shall be governed by the law of the State of Connecticut, without regard to its provisions regarding choice of law.

16. **Choice of Jurisdiction and Venue.** Actions to enforce, interpret, apply or construe this Agreement shall be brought in the Bankruptcy Court. The parties consent to the jurisdiction and venue of such Court. Nothing contained herein shall increase or decrease the jurisdiction retained by the Bankruptcy Court in the NEN Bankruptcy Case in any way or that to be retained by the Bankruptcy Court under any Plan of Reorganization filed by Debtor DR, which is confirmed by the Bankruptcy Court.

17. **Covenant of Confidentiality and Non-Disparagement.**

A. It is recognized that this Agreement may be a public record and subject to disclosure under applicable statutes relating to Freedom of Information disclosure. East Lyme reserves the right to request that the Bankruptcy Court approve a placing this Agreement under seal, or the inclusion of a confidentiality agreement in regards to this Agreement, or such portions of it as the East Lyme may determine to require be subject to a confidentiality agreement. The Debtor agrees not to oppose such request. In the event that the Bankruptcy Court shall approve the sealing of this Agreement or the inclusion of a confidentiality agreement, the parties agree to be bound thereby.

B. The parties acknowledge and agree that this Agreement shall not be admitted into evidence in any proceeding, except as may be required to effectuate or enforce the terms of this Agreement. It is further recognized that this Agreement may be a public record

and subject to disclosure under applicable statutes relating to Freedom of Information disclosure.

18. **Execution of Agreement in Counterparts.** This Agreement may be executed in counterparts each of which will constitute an original but all of which constitutes but one Agreement.

19. **Benefit and Binding Effect.** This Agreement shall be binding on, and inure to the benefit of Plaintiff, the Plaintiff Related Released Parties, East Lyme and East Lyme-Related Covenant Parties, but no other persons or entities.

IN WITNESS WHEREOF, the parties have executed under seal this Agreement on the dates shown below.

TOWN OF EAST LYME

Dated

Paul M. Formica
It's Duly Authorized Agent

NEW ENGLAND NATIONAL, LLC

Dated

Robert A. Blatt, Managing Member

DARROW'S RIDGE, LLC

Dated

Robert A. Blatt, Manager

NIANTIC REAL ESTATE, LLC

Dated

Anne K. Torrance, Manager

CLAIMS AGENT, INC.

Dated

Jeffrey A. Torrance, President

ROBERT A. BLATT

Dated

Robert A. Blatt

**MATTHEW A. TORRANCE
IRREVOCABLE TRUST**

Dated

Anne K. Torrance, Trustee

**KRISTEN B. TORRANCE IRREVOCABLE
TRUST**

Dated

Anne K. Torrance, Trustee

**MICHAEL E. TORRANCE IRREVOCABLE
TRUST**

Dated

Anne K. Torrance, Trustee

**NICHOLAS A. TORRANCE
IRREVOCABLE TRUST**

Dated

Anne K. Torrance, Trustee

**TORRANCE FAMILY LIMITED
PARTNERSHIP**

Dated

Anne K. Torrance, General Manager

EXHIBIT A

DEBTOR-RELATED COVENANT PARTIES

The following persons and entities are the Debtor-Related Covenant Parties:

1. New England National, LLC; Darrow's Ridge, LLC, Debtor in Possession; Niantic Real Estate LLC; Claims Agent Inc., which owns the property known as 238 Chesterfield Road, aka the "Mostowy Road triangle;"
2. Robert Blatt and The Matthew A. Torrance Irrevocable Trust, The Kristen B. Torrance Irrevocable Trust, The Michael E. Torrance Irrevocable Trust and The Nicholas A. Torrance Irrevocable Trust (collectively, the "Irrevocable Torrance Trusts").
3. Anne K. Torrance, as the Trustee of the Irrevocable Torrance Trusts.
4. Anne K. Torrance, as the General Partner of The Torrance Family Limited Partnership, and the Torrance Family Limited Partnership owned by the Irrevocable Torrance Trusts.

EXHIBIT B

EAST LYME-RELATED COVENANT PARTIES

The following persons and entities are the **East Lyme-Related Covenant Parties**:

1. All present and former Selectmen of East Lyme in their capacity as Selectmen, but not otherwise.
2. All present and former employees, accountants, attorneys and other agents of East Lyme, except for (a) Margaret Parulis, (b) George Calkins, Ledge Light Health District, Edward O'Connell, Esq., David Condon, Esq. and Waller Smith and its other attorneys, paralegals, staff members and agents (other than Thomas Marrison, Esq., Joseph Wilson, Esq. and Tyler Cooper & Alcorn, LLP and other person and entity identified in Paragraph 2.K of the Agreement.
3. Daniel R. Cunningham, Esq., Mark E. Block, Esq. and the firms of O'Brien, Shafner, Stuart, Kelly & Morris, P.C., and Block, Janney & Pascal, P.C.
4. Attorney Thomas Marrison, Joseph Wilson and the firm of Tyler Cooper & Alcorn, LLP, but not co-counsel that represented East Lyme in conjunction with them, including Edward B. O'Connell and Waller Smith & Palmer.

EXHIBIT C

Resolution of Land Use Issues

In addition to the settled claims the parties stipulate and agree that there are certain land use issues that remain pending before the town and the scope of this settlement agreement shall be deemed to include the following terms and conditions in so far as the pending land use issues are concerned.

- A. Lot Line Revision: Pursuant to the lot line modification plan currently the subject to a request for permit modifications pending before the East Lyme Inland Wetlands Agency the parties agree that upon issuance of the aforesaid permit modification the East Lyme Town Planner shall execute the mylar reflecting the lot line modification of properties known as 238 Chesterfield Road and 70 Mostowoy Road. The Town Planner shall undertake this action under his authority to do so on an administrative basis.
- B. Mostowoy Road/Army Corps of Engineers: The parties acknowledge that in connection with Darrows Ridge Subdivision, Phase I, a certain realignment of Mostowoy Road and land exchange between Darrows Ridge LLC and the Town.

The intended road realignment and land exchange are further reflected in the plans approved by the East Lyme Conservation Commission. Pursuant to a permit issued March 6, 2006, Permit No. 06-05. The parties further acknowledge that as the result of a complaint filed by a third party, the Army Corps of Engineers has caused a halt to the completion of the work contemplated under the plans and permit. The parties agree that the following course of action will be accomplished in order to complete the road realignment, land exchange and work to be performed under the permit: (i) the Town will endeavor to obtain from the Army Corps a decision confirming that the Debtor has complied with the terms of the general permit that has been issued and/or obtain a letter indicating that no further permitting is required; (ii) there will be presented to the Board of Selectmen, a resolution to abandon the section of Mostowoy Road as reflected in the plans; the Debtor will provide a surveyed description of the area of Mostowoy Road to be abandoned together with a survey description of the properties to be exchanged between the Town and the Debtor. Upon the commencement of the work, the Town inspectors for compliance of the previously approved and agreed to plans will be performed by Gary Hyanka of the Town Public Works Department, Bill Sheer, Town Engineer and Keith Hayden, Wetlands Compliance Officer. The Town will be responsible for all legal and engineering fees and other costs and expenses incurred in resolving such permit issues and construction of any additional improvements required by the Army Corps not originally or currently contemplated.

EXHIBIT D

LIST OF DOCUMENTS TO BE PRODUCED

- A. All of the computer disks, back-up files and user files and other electronically stored information required by the discovery orders entered by this Court or submitted to this Court for entry.
- B. All tape recordings of hearings pertaining to the Debtor or Darrow's Ridge, LLC held by the Conservation Commission, Planning Commission or Zoning Commission.
- C. Statements for professional services submitted or given to Edward O'Connell, Esq. and Waller Smith Palmer by Tyler, Cooper & Alcorn for October, 2003, May 2004, September 2004, January, February and March, 2005 and May 2005 through December 2006.
- B. Documents pertaining to the "moratorium litigation," including the "research notes regarding a brief to be filed with the Superior Court" and others in the possession of Waller Smith Palmer.
- C. Documents pertaining to the "Mostowy Road issues," including the minutes of, notes taken and memoranda regarding the Executive Session of the Board of Selectmen held on or about December 6, 2006.
- D. All of the documents pertaining to the Conservation Commission's decision to file a Complaint for injunctive relief against New England National, LLC, the Complaint and the prosecution of the proceeding, including the E-mail from Margaret Parulis to Edward B. O'Connell and Keith Hayden dated October 22, 2007 referred to as "Torrance C&D" in the "Additional Document Production" list prepared by East Lyme counsel dated July 23, 2008.

Jennifer Lindo

From: Gary Goeschel
Sent: Monday, July 13, 2020 12:14 PM
To: Jennifer Lindo
Subject: Fwd: To the Inlands Wetland Agency and Chairman Gary Upton

Sent from my iPhone

Begin forwarded message:

From: "R. Ambrico" <rjarma66@99main.com>
Date: July 13, 2020 at 8:49:18 AM EDT
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: To the Inlands Wetland Agency and Chairman Gary Upton

Re: Extension of inland wetland

1. In general we find this proposal to be classic government overreach. The proposal which will extend Agency oversight to 90% (re New London Day) of the properties in town is ridiculous.
2. To require yet another bureaucratic level of review, and fees, to yard improvements such as a small garden shed almost two football fields away from some wetland/watercourse is definitely government intrusion.
3. This proposal will require almost every property owner in town to added oversight delay and increased cost for any seemingly innocuous property improvement, which, in our view is not warranted.
4. Not having looked into this process before, we now see the truly onerous process has been constructed - having to provide eleven hardcopies of any little project, also provide a PDF file, etc, etc, etc.
5. Further, we also do not see any difference in regulations between a developer building a subdivision, a lot owner building one house, or Harry Homeowner adding a small garden tool shed. These vastly different situations should obviously require different regulations. It should not matter if writing comprehensive regulations is difficult, one size regulations is a huge burden to Harry.
6. The article in The Day did not give sufficient reasons for the Agency's proposal to increase the distance in question fivefold. Simply to say this is for wetland/aquifer protection is not sufficient. We don't believe the Agency has any scientific reason for this massive increase in its power.
7. We are opposed to this proposal.

Rita & Robert Ambrico
8 Mountain View Road
East Lyme 06333

From: [Gary Goeschel](#)
To: [Jennifer Lindo](#)
Subject: Fwd: To the Inland Wetland Agency and Chairman Gary Upton
Date: Monday, July 13, 2020 3:18:44 PM

Sent from my iPhone

Begin forwarded message:

From: Carol Russell <carolfrussell@sbcglobal.net>
Date: July 13, 2020 at 2:55:21 PM EDT
To: Gary Goeschel <ggoeschel@eltonhall.com>
Subject: **To the Inland Wetland Agency and Chairman Gary Upton**

I am writing to express my opinion regarding the proposal under consideration by the Inland Wetland Agency to extend the agency's upland review area from 100 ft to up to 500 ft surrounding any water body. My understanding is that such an extension would not automatically keep a developer or homeowner from building activity in the revised review area, but would require application for (and approval of) a permit from the Agency prior to going forward with a proposed project.

I am a long time resident of a neighborhood served by the East Lyme public water system. And while I am submitting this opinion in my individual capacity, I also happen to be a member of the East Lyme Water & Sewer Commission. Needless to say, the protection of the drinking water sources (for both public and private wells) within our town is a very important topic to me.

An expanded Inland Wetlands Agency review area would require more (perhaps many more) proposed projects to go through an additional permitting process, and that may be considered onerous by some. However, if an expanded Agency review area is necessary to better protect the Town's drinking water supply, such expansion has my full support. First and foremost, this makes sense from a public health standpoint. However, it also makes sense economically as well. Water quality issues can lead to costly filtration and/or other remediation efforts. Reduced drinking water quality can negatively impact property values as well as the desirability or feasibility of future development projects. Severe drinking water quality issues can devolve into emergency crisis situations.

That being said, what is the right land buffer around the Town's various water bodies to comprise the upland review area? Is 500 ft too high? Still not high enough? Is 100 ft too low? My response to these questions is one key question. What does the science say? I urge the Town to follow the science. When other towns opted for the 500 ft standard, what was the scientific basis for their decision? Is their relevant guidance from the State DEEP? from the US EPA? Is their applicable guidance from our State and local public health professionals? The Town should be taking the appropriate steps to follow best practices when it comes to protecting the sources for our drinking water. Protecting the public health is vital to protecting the long term economic health of our town.

Thank you for considering my comments on this important matter.

Sincerely,

Carol F. Russell
4 Bramble Bush Drive
Niantic, CT

From: [Gary Goeschel](#)
To: [Jennifer Lindo](#)
Subject: FW: Inland Wetland Agency and Chairman Gary Upton"
Date: Monday, July 13, 2020 3:35:06 PM

-----Original Message-----

From: Nancy Barwikowski <boz7077@icloud.com>
Sent: Monday, July 13, 2020 12:57 PM
To: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: Inland Wetland Agency and Chairman Gary Upton"

My name is Nancy Barwikowski
22 Green Valley Lakes rd
East Lyme

I am in support of expanding the upland review area from 100 ft to 500 ft

Thank you

Sent from my iPhone

From: [Gary Goeschel](#)
To: [Jennifer Lindo](#)
Subject: FW: Attention: Gary Upton, East Lyme Inland Wetlands Chairman
Date: Monday, July 13, 2020 3:35:13 PM

From: Diane Lepkowski <dianestaron@gmail.com>
Sent: Monday, July 13, 2020 3:30 PM
To: Gary@uptonbass.com; Gary Goeschel <ggoeschel@eltownhall.com>
Subject: Attention: Gary Upton, East Lyme Inland Wetlands Chairman

Attention: Gary Upton, East Lyme Inland Wetlands Chairman

My name is Diane Lepkowski, I live at 27 Green Valley Lakes Road in East Lyme and I am in support of expanding the upland review area from 100 ft to 500 ft. This would be a great POSITIVE change for our town!

Thank you.
Diane Lepkowski

From: [Gary Goeschel](#)
To: [Jennifer Lindo](#)
Subject: FW: Attention: Gary Upton, East Lyme Inland Wetlands Chairman
Date: Monday, July 13, 2020 3:35:22 PM

From: Brian Lepkowski <blepkowski@gmail.com>
Sent: Monday, July 13, 2020 3:34 PM
To: gary@uptonbass.com
Cc: Gary Goeschel <ggoeschel@eltownhall.com>
Subject: Attention: Gary Upton, East Lyme Inland Wetlands Chairman

Gary Upton, East Lyme Inland Wetlands Chairman,

My name is Brian Lepkowski and I live at 27 Green Valley Lakes Rd. in East Lyme.

I am writing to express my full support for expanding the inland wetlands upland review area from 100 to 500ft.

I believe that this change is absolutely necessary in order to ensure our inland wetlands agency has the adequate authority required to protect our town's precious and fragile wetlands against the continued threat of over development on environmentally sensitive parcels.

Sincerely,
Brian Lepkowski

From: [Gary Goeschel](#)
To: [Jennifer Lindo](#)
Subject: FW: Attention: Gary Upton, East Lyme Inland Wetlands Chairman
Date: Monday, July 13, 2020 3:38:53 PM

From: Matt Anderson <maanderson@westerly.k12.ri.us>
Sent: Monday, July 13, 2020 3:38 PM
To: Gary Goeschel <ggoeschel@eltownhall.com>
Cc: Gary@uptonbass.com
Subject: Attention: Gary Upton, East Lyme Inland Wetlands Chairman

Hello,

My name is Matthew Anderson and I live on 29 Green Valley Lakes Rd. in East Lyme CT. I am in support of expanding the upland review area from 100 ft. to 500 ft.

Thank you for your time,

Matthew Anderson

--

This message is sent in confidence for the addressee only. It may contain confidential or sensitive information. The contents are not to be disclosed to anyone other than the addressee. Unauthorized recipients are requested to preserve this confidentiality and to advise us of any errors in transmission.

Please consider the environment before printing this email.

From: [Gary Goeschel](#)
To: [Jennifer Lindo](#)
Subject: FW: Attention: Gary Upton, East Lyme Inland Wetlands Chairman
Date: Monday, July 13, 2020 3:46:34 PM

From: Anderson <sunderland.anderson@gmail.com>
Sent: Monday, July 13, 2020 3:42 PM
To: Gary Goeschel <ggoeschel@eltownhall.com>; Gary@uptonbass.com
Subject: Attention: Gary Upton, East Lyme Inland Wetlands Chairman

Hello,

My name is Nicole Anderson and I live on 29 Green Valley Lakes Rd. in East Lyme CT. I am in support of expanding the upland review area from 100 ft. to 500 ft.

Thank you for your time,

Nicole Anderson

STEVENS, HARRIS & GUERNSEY, P.C.

ATTORNEYS AND COUNSELORS AT LAW

351 MAIN STREET

P. O. DRAWER 660

NIANTIC, CONNECTICUT 06357

RONALD F. STEVENS
THEODORE A. HARRIS
PAUL M. GUERNSEY

TEL (860) 739-6906
FAX (860) 739-2997
E-MAIL shg-realestate@snet.net

July 13, 2020

Gary Upton, Chairman
East Lyme Conservation Commission
PO Box 519
Niantic, CT 06357

Re: Public Hearing - Modification of an Upland Review Area to 500 feet

I would ask that this letter be included in the exhibits for the Public Hearing.

I am writing in opposition to the increase of the upland review area from one hundred (100') to five hundred (500') feet. Such a change, in my opinion, is neither legally or factually supported.

First, Section 10 of the East Lyme Inland Wetland Regulations prohibits the Commission from denying activity within an upland review area "unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses." This provision is a codification of Connecticut Supreme Court case in which our Court expressed the limitations as follows:

"It is apparent that the commission may regulate activities outside of wetlands, watercourses and upland review areas only if those activities are likely to affect the land which comprises a wetland, the body of water that comprises a watercourse or the channel and bank of an intermittent watercourse. The legislature did not adopt broad definitions of wetlands and watercourses that would protect aspects of the wetlands apart from their physical characteristics, such as, for example, the biodiversity of the wetlands or wildlife species that might be wetland dependent. We conclude, therefore, that the act protects the physical characteristics of wetlands and watercourses and not the wildlife, including wetland obligate species, or biodiversity." Avalonbay Communities, Inc. vs. Inland Wetlands Commission of the Town of Wilton, 266 Conn. 150, page 163 (2003).

In addition, a five hundred (500') foot regulated area would increase the area required for inspection by twenty-five (25) fold, encompassing nearly twenty (20) acres of land which would require inspection to determine if proposed activity is within five hundred (500') feet of a wetland

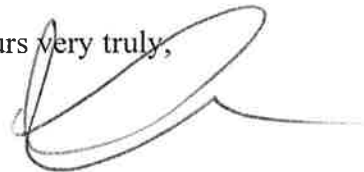
Gary Upton, Chairman
July 13, 2020
Page 2

or watercourse. This is extremely impractical and costly, particularly in largely developed areas. Moreover, inspection of private property may require permission of the property owner before soil scientist could enter the property to make a determination.

The end result of such an increase would be in the development, extraordinarily costly, impacting individual homeowners, and commercial development alike. Moreover, it is five (5) times what is currently being recommended by the Department of Energy and Environmental Protection. Its Guidelines for Upland Review Area Regulations Under Connecticut's Inland Wetlands and Watercourses Act states "At some point, impacts from the activity on wetlands and watercourses would be expected to become de minimis and not measurable... DEP (DEEP) believes that a 100 foot-wide upland review area is sufficient for reviewing construction."

Finally, the enactment of such a wide upland review area is likely to generate litigation as to the authority of the Commission to have such a wide range of review, including Connecticut Supreme Case Law, has limited the authority to regulate upland review area as expressed in Section 10.6 of the Regulations. You should note that Section 10.6 is DEEP's interpretation of the case law which describes the authority of a wetland agency to regulation the upland review area.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Theodore A. Harris', with a long horizontal flourish extending to the right.

Theodore A. Harris

EXHIBIT XX

From: [Mike Schmitt](#)
To: [Jennifer Lindo](#)
Subject: Inland Wetlands 13 July - Public Comment
Date: Monday, July 13, 2020 5:56:08 PM

To Whom it May Concern-

I am writing to voice my opposition to the proposed text amendment to change the upland review area distance to 500 feet.

While I appreciate the efforts to protect our wetlands and watercourses, the proposed distance would make East Lyme one of the most restrictive towns in the state. This distance would place undue cost and time burdens on existing property owners such as myself who may be looking to make simple improvements, as well as overwhelm the town's ability to process reviews in a timely manner.

Furthermore, I'm concerned this will be viewed by landowners seeking new and larger development as a means for town conservationists to exert control over projects that they would otherwise have no ability to regulate. This would not only stifle development options, but instigate an adversarial relationship between the town and developers, likely inviting costly lawsuits at the expense of EL taxpayers with little chance of mutual agreement.

A more reasonable distance increase, and/or a selective distance for certain aquifer-specific sites could gain my support, but not a town wide increase of this magnitude.

Thank you.

-Michael Schmitt
89 Lovers Ln.
76 Corey Ln #5

From: [Michael Shugrue](#)
To: Gary@uptonbass.com; [Gary Goeschel](#)
Cc: [Jennifer Lindo](#); [Karen Zmitruk](#)
Subject: Attention: Gary Upton, East Lyme Inland Wetlands chairman
Date: Monday, July 13, 2020 6:26:28 PM

Good Evening

Unfortunately I cannot attend tonight's zoom meeting @ 7pm (kids bedtime) regarding the upland review area. **I'm 100% in SUPPORT of expanding the area for review from 100 ft to 500 ft.**

Address:
Mike Shugrue
29 Charter Oak Dr.
East Lyme, CT 06333

I worked as an environmental consultant for years and worked on the town water supply project with GeoInsight Inc. in the summer and fall of 2010. As a lifetime resident of the area I'm very familiar with our wetlands and I'm well aware of the dynamics associated with how water infiltrates our aquifers. Wetlands are also biodiverse regions that serve to strengthen multiple other dimensions of the environment that we as towns people universally depend on.

*****I would kindly request that I receive a response to this email to indicate that my opinion on the matter was heard / counted.**

Thank you,
Mike Shugrue

From: [Laurie Engelman](#)
To: Gary@uptonbass.com; [Gary Goeschel](#)
Cc: [Jennifer Lindo](#); [Karen Zmitruk](#)
Subject: Att: Gary Upton, E.L. Inland Wetlands chairman
Date: Monday, July 13, 2020 6:33:47 PM

Good Evening,

Unfortunately I can not attend tonight's zoom meeting @ 7pm (kids bedtime) regarding the upland review area.

I'm 100% in SUPPORT of expanding the area for review from 100 ft to 500 ft.

Address:
Laurie Shugrue
29 Charter Oak Dr.
East Lyme, CT 06333

The enhanced protection of our wetlands and open space is very important to my family and myself. Wetlands are keystone regions vital to the local environment and any added layer of review to see these areas are protected is a positive step.

Thank you,
Laurie Shugrue