

EAST LYME COMMISSION FOR THE CONSERVATION OF NATURAL RESOURCES
REGULAR MEETING MINUTES
July 12, 2023

Present: Penny Heller
Don Danila
Laura Ashburn
Harvey Beeman

Absent: Mark Christensen
Marjorie Meekhoff, Alternate

Also Present: Rose Ann Hardy, Ex officio
Steve Dinsmore
Wendy Toole

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EAST LYME, CT
2023 JUL 18 P 3:09
Caulfield
TOWN CLERK

I. CALL TO ORDER. Ms. Heller, Commission Chair, called the East Lyme Commission for the Conservation of Natural Resources of July 12, 2023 to order at 7:01 p.m.

II. SEATING ALTERNATES (IF NECESSARY) A quorum was established.

III. CALL FOR ADDITIONS TO THE AGENDA. There were no additions to the Agenda.

IV. CALL FOR PUBLIC DELEGATIONS. Mr. Dinsmore expressed interest in serving as an alternate of this Commission. He has been on the East Lyme Harbor Management/Shellfish Commission for over twenty years. He is an engineer and works at Electric Boat. He has a Master's degree in environmental science. He is a beekeeper and has worked with Mark Christensen on the Agribusiness Subcommittee.

Ms. Hardy reported she has served with Mr. Dinsmore as Ex-officio and feels he would be a great addition to this Commission. She asked Mr. Dinsmore to write a letter to the Board of Selectmen expressing his interest in being an alternate on this Commission. She asked Ms. Heller to write a letter to the Board of Selectmen expressing interest in having Mr. Dinsmore as an alternate on this Commission.

V. REVIEW OF MINUTES OF JUNE 14, 2023. Ms. Heller asked for additions, deletions or corrections to the June 14, 2023 Minutes.

MOTION (1): Mr. Danila moved to approve the June 14, 2023 Commission for the Conservation of Natural Resources Regular Meeting Minutes, as presented. Seconded by Mr. Beeman. (4-0) Unanimous.

VI. NEW BUSINESS

a. Presentation on using CT DEEP NATURAL DIVERSITY DATA BASE (NDDDB) prior to development—invited speaker Lindsay Rush. Ms. Rush was unable to be present.

Mr. Danila reported DEEP's NDDDB is available to the public. There is information for those who want to develop in or near sensitive areas. He added not all the state is covered by the NDDDB. Right now, Pattagansett Lake Association was denied a permit to use a specific herbicide in the lake for aquatic weed control because several rare plants could be present. To use that herbicide, the Association was asked to do a plant survey but declined because of the cost and will instead use another approved chemical.

Regarding the Waterford Solar Development, Mr. Danila reported that during an inspection someone saw a ribbon snake, which was added to the NDDDB, so the developers were required to protect this species and also survey for several rare plants.

Ms. Heller commented that the NDDDB process is a trigger for further review not permit denial. The CCNR should use this tool as a guide to where further survey work would be most effective in protecting sensitive species and their habitat. Ms. Rush will be invited to share her expertise on this subject at the August meeting.

b. Need to Fill Vacant Alternate Position. Mr. Dinsmore is interested in filling the alternate position on this Commission. Ms. Hardy provided guidance on the required process.

c. Report on Bride Brook & Lake Alewife Run—can the EL Water & Sewer Department modify the lake outflow regime? – Don Danila. Mr. Danila reported yesterday morning he met at Bride Lake with Ben North and a co-worker of EL Water & Sewer and Drs. Eric Schultz and James Knighton of UConn, who have been conducting studies of Bride Lake alewives. After extreme summer droughts many juvenile alewives die when out-migrating because of low water in Bride Brook. A Yale student and UConn received flow data from Mr. North. UConn students copied and digitized the data. Eric Schultz gave a presentation regarding discharge flow. Mr. North was interested in modifying the Bride Lake dam as James Knighton is a hydraulics expert. Mr. North discussed many issues the town has to deal with and recorded what they have to do.

Mr. Danila reported the state regulates drinking water and wanted the town to measure flow in Bride Brook. Mr. Danila discussed run-off from the North Bride Brook Road development. Bride Lake has the largest population of alewife in Connecticut and it needs to be protected. DEEP saw a sediment discharge from this development in spring of 2022. Mr. Beeman asked if Mr. Danila will meet with them again? Mr. Danila felt Mr. North will meet again with Drs. Schultz and Knighton. Mr. North needs to follow up on what is allowed in that area.

Ms. Heller reported the state has a policy that sets a minimum water level for free-flowing streams that support anadromous fish runs. However, the minimum level in this case may not be sufficient to allow out-migration. Mr. Danila stated the town and UConn are interested in having more water flow in summer. Mr. North needs to continue discussions with Mr. Knighton. Mr. Danila agreed to follow up on their future plans. Ms. Heller stated as a commission we should monitor what is happening there.

Mr. Danila also discussed salt in our drinking water with Mr. North and will send him references he found showing increased salts in U.S. waters. Ms. Heller stated Joe Bragaw is aware of the issue and has directed Public Works in taking actions to reduce road salt use in town.

VII. OLD BUSINESS

a. Subcommittee review of Inland Wetland Agency Regulations—Mr. Danila. Mr. Danila did not see any items on the July IWA Agenda regarding comments received from this Commission on their regulation modifications. He plans to have a discussion with Mr. Goeschel about them. (See the attached).

VIII.REPORTS AND COMMUNICATIONS

a. Communications. Mr. Danila reported that Save the Sound recently issued a Long Island Beach Report. Hole in the Wall received an A+. Rocky Neck received a C. Mr. Danila said that Save the Sound was not sure what the source of bacteria was at Rocky Neck.

b. Agribusiness Subcommittee. Mr. Christensen was unable to be present and there was no report.

c. SustainableCT Subcommittee. Ms. Heller reported the SustainableCT Subcommittee met prior to this meeting and discussed possible projects that will contribute to recertification in 2025, including community composting, an energy audit of town-owned buildings, and additional bike racks and road markings to improve bicycle safety in town. This subcommittee has a new member, Ms. Wendy Toole.

Ms. Ashburn reported “smart street” program.

Mr. Beeman will also be looking into updating the inventory of historical properties in town which he developed for the last SustainableCT certification process.

c.Pollinator Pathway East Lyme (PPEL). Ms. Meekhoff was unable to be present.

Ms. Heller reported Ms. Meekhoff went to a Zoning meeting and gave a presentation that was very well received. She will also present to the Board of Selectmen.

d.Chairman’s Report. Ms. Heller received a call from Annah Perch, the new Curator of the Brookside Farm Museum. She was interested in what the Commission was doing to support agriculture that the Museum could partner with. She had already talked with Mark Christensen and Ms. Meekhoff on similar topics. Ms. Heller told her the Commission would support any activities at the Museum that promoted careers in agriculture and aquaculture, especially for high school and middle school students.

e. Ex-Officio Report. Ms. Hardy reported the Zoning Commission will be considering affordable housing in the proposed development on Holmes Road which will have a large impact on natural habitats in that area. Comments can be made at the beginning of the meeting regarding any information pertinent to the topic. She suggested that members of this Commission visit the Holmes Road property so they can assess the impact this proposed project will have on this undeveloped land.

She added the Charter Revision Commission’s final report in on-line. There are 16 proposals that will be on the November ballot.

The Commission was informed that subdivision regulations have proposed changes to environmental review that sensitive land be subject to the Planning Commission for consideration of natural resources.

TO: East Lyme Inland Wetlands Agency
FROM: East Lyme Commission for the Conservation of Natural Resources
DATE: June 22, 2023
RE: ELCCNR Comments on the IWA Regulations Now Under Revision

The East Lyme Commission for the Conservation of Natural Resources appreciates the opportunity to provide comments to the East Lyme Inland Wetlands Agency on its revision of The Town of East Lyme, Connecticut Inland Wetlands and Watercourses Regulations (draft effective October 1, 2021). If the agency has any questions or concerns regarding our attached comments, please direct them to our secretary at abcfish@atlanticbb.net. Thank you very much.

Penny Heller, Chairman
Donald Danila, Secretary
Laura Ashburn
Harvey Beeman
Mark Christensen
Marjorie Meekhoff (alternate)

cc: Mr. Gary Goeschel, Inland Wetlands Agent
Rose Ann Hardy, Board of Selectmen ex officio to the ELCCNR

**EAST LYME COMMISSION FOR THE CONSERVATION OF NATURAL RESOURCES (ELCCNR) COMMENTS ON
TOWN OF EAST LYME, CONNECTICUT INLAND WETLANDS AND WATERCOURSES REGULATIONS
(draft effective October 1, 2021)**

Specific Section Comments

Section 1 – Title and Authority

1.3 – This subsection states “The East Lyme Inland Wetland Agency...was established...”. We note that although this was the name given to this Town agency, it is not the only form used, both within these regulations and on the Town of East Lyme website. “Wetlands Agency” is found under the definition of “agency” in Section 2 and is also cited this way in Sections 6.1, 8.1, 9.1, 10.8, 10.9, and Appendix D – 1.6. Appendix A, which cites Connecticut General Statutes, suggests that “wetlands” might be the proper usage. We believe a decision should be made on the proper name of the East Lyme Agency and make that usage consistent in every place it is found.

Section 2 - Definitions:

Change “Commissioner of Environmental Protection” to “Commissioner of the Department of Energy and Environmental Protection” and “Department of Environmental Protection” to “Department of Energy and Environmental Protection” to reflect the current name of this state governmental agency. This correction also needs to be made elsewhere in this document (e.g., 4.1(a); throughout Section 5; 12.1).

Under “Feasible” we suggest changing “sound engineering principles” to “sound engineering or scientific principles and practices”.

We suggest adding to these specific definitions by creating a new definition related to “Forestry” as forestry operations or activities may come under the purview of the ELIWA under its permitting process. Appendix A appears to define such practices more narrowly to timber salvage, brush clearing, maple syrup or sugar production, and lumber production incident to ordinary farming operations.

Under “License” we suggest adding the phrase “of the Connecticut General Statutes, as amended” at the end, as is found under “Act”.

We suggest adding under “Management Practice” the use of vegetative riparian buffers adjacent to wetlands and watercourses.

We suggest changing within the definition of “Person” the words “any person” to “any individual” (or “citizen”, etc.) as we believe using the same exact word within the definition of itself is inappropriate.

Under “Pollution” we note that “harmful thermal effect” requires a definition within these regulations to provide some specificity. Also, the term “pollution” refers to a myriad of other effects including, but not limited to, various toxic substances, sediments, and many other materials and thus, this should be made clearer. In addition, “rendering unclean or impure” is defined as “any alteration”. We believe this usage is too broad and should be clarified by adding “degradation of water quality”.

We believe the definition of “Prudent” is overly wordy as given in one sentence. The definition needs both modification and clarification as to the intent and reasoning. This concept may require the calculation of a cost-benefit analysis by an applicant, if so warranted.

Under “Regulated Activity” we suggest modifying “The Agency may rule that any other activity located within such upland review area or in any other non-wetland or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity” to “The Agency may rule that any other activity located within the defined upland review area or in any other non-wetland or non-watercourse area that is likely to impact or affect wetlands or watercourses is an activity subject to these regulations”.

Under “Rendering unclean or impure” we suggest changing the end of this definition to “...turbidity, taste, or producing toxic effects to resident aquatic organisms”.

Under “Significant impact”, number 7 – although we believe the intent of this section is laudable, we also believe the terms “unique” and “having demonstrable scientific or educational value” are vague and subject to considerable interpretation. A highly polluted waterway also has educational value, even if only used as a bad example. We suggest changing the wording of this section to “Any activity that significantly alters any wetlands, watercourses, or defined regulated areas providing aquatic habitat for fish and wildlife or degrades their normal hydrological functions”.

Under “Soil scientist” is the FOPM the only certifying body for these professionals? We also suggest adding to these definitions “wetland scientist” as someone who is also a scientist having specific knowledge and training applicable to these regulations and also subject to professional certification requirements. If a certified wetland scientist can perform the same functions as a soil scientist, then this term should be added elsewhere soil scientist is used in these regulations (e.g., Section 7).

Under “Watercourses” the use of highly specific scientific terms such as “alluvium” and “hydrophytic vegetation” suggest that these terms should also be included in these Definitions so that the meanings are clear to anyone from the general public who might need to refer to these regulations.

Section 4 – Permitted Uses as of Right & Nonregulated Uses:

4.1.(b) – the last part of this subsection: “c. boat anchorage or mooring” seems to be out of place here. Should it be a separate permitted use subsection or deleted altogether?

4.1(e) – if drainage pipes that were previously in existence before July 1, 1974 and still in use can continue to be maintained, can they also be replaced if needed? Or not? Should this be clarified?

4.4 – should it be noted here that the form is available on the Town of East Lyme website?

Section 5 – Activities Regulated by the Commissioner of Environmental Protection:

Change all occurrence of “Environmental Protection” to “Energy and Environmental Protection”.

Section 6 – Regulated Activities to be Licensed:

Should the title of this section more properly state “...to be Permitted” rather than “Licensed”? Should just one or both terms be used in this document? Are they equivalent (e.g., the Section 2 definition of

“permit” says “see license”)? We found in these regulations that the words permit(s)(d)/permittee are used 107 times and license(s)(d) are used 9 times. These usages should be precise in any regulations.

Section 7 – Application Requirements:

7.2 – the text states that when a permit is submitted to Planning or Zoning includes a wetland or wetland impacts, an application must be submitted to IWA at the same time. We note that this doesn’t always occur! Who decides when simultaneous applications are necessary – is it the East Lyme Planning Commission? There needs to be a provision to clarify when this must occur AND add some penalty for failure to include IWA in Planning or Zoning decisions.

Should the phrase “or Planning and Zoning Commission” be deleted as East Lyme has these functions performed by separate commissions?

7.5(k) – change to “Commissioner of the Department of Energy and Environmental Protection”.

7.5(m) – capitalize “agency”.

7.6(e) - the text states that application should have a description of “ecological communities and functions” with proposed alternatives. We believe this is a very broad and vague requirement, especially for anyone without a sufficient background in the subject. Does the Agency have examples of what kind of details have been submitted in previous applications? Is there a guidance document or can IWA or CCNR create one as an appendix to these regulations or elsewhere available to the public? Furthermore, we suggest the Agency require that all applicants subject to more rigorous requirements under these regulations obtain a Natural Diversity Database (NDDB) assessment from CT DEEP. If not included in this report, the applicant should additionally assess the likelihood of the presence of federal- or state-listed endangered, threatened, or species of concern on the property in question or water bodies likely to be affected. Permittees should be required to avoid clear-cutting to the extent possible and plant or maintain a vegetative buffer of appropriate native species adjacent to the affected water body or water course. [Note: if the latter is added to these regulations, then “vegetative buffer” should be defined and added to Section 2 – Definitions].

7.6(g) – Threats to wildlife should be addressed by the permittee as a matter of course. What other types of impacts are to be evaluated for a submission to the Agency? Hydrological? Chemical? Biological? Others? We believe there needs to be a call for more specificity in this section.

Section 8 – Application Procedures:

8.2(a) – capitalize “agency”.

8.3 – capitalize the first letters of “inland wetland agency”.

Section 9 - Public Hearings:

9.1 – capitalize the first letters of “agency” and “inland wetland agency” throughout this paragraph.

9.2 – this section states that notices are to be published in a newspaper. Given the present state of printed news, should there be additional means of communication required as well, particularly electronic media (e. g. town website, town Facebook page, etc.) that will alert the public for their

participation in a Public Hearing? This comment also applies to other sections, such as 11.4, 12.2, 15.7, and 20.1.

Section 10 – Consideration for Decision:

10.6, 10.8, and 10.9 – capitalize the first letters of “inland wetland agency”.

Section 11 – Decision Process and Permit:

11.9(d) – We believe this subsection should include references to the most current editions of the CT DEEP publications “Connecticut Stormwater Quality Manual” and “Connecticut Erosion and Sediment Control Guidelines”. This will ensure that applicants are considering the most relevant management practices endorsed by the State.

Section 15 –Amendments:

15.8 and 15.9 - capitalize “agency”.

Section 18 – Other Permits:

18.1 – the final sentence is incomplete. Should words such as “of the applicant [or use the word permittee]” be added here?

Appendices:

References to Appendix A and D were both found cited within the text, but neither Appendix B nor C were. These two appendices should be referenced in the appropriate sections of these regulations.

General Comments

We believe two publications available from CT DEEP (see this agency’s website for access) should be considered and referenced in the appropriate sections of these regulations, as we previously noted for Section 11.9(d). They are the “Connecticut Stormwater Quality Manual” and “Connecticut Erosion and Sediment Control Guidelines”. At this date, these publications have not yet been finalized by CT DEEP, although the public comment period for each closed on March 31. Town professional staff should review these publications to determine if there are additional requirements or information that can be added to these regulations undergoing revision, thereby strengthening protection of our environment, and giving applicants additional considerations for their proposed developments or projects. There may be other references known to the Agency that could be added to assist applicants during the permitting process.

We believe consideration should be given to additional oversight and inspections by the IWA Agent, as stated in Section 14. In recent years, there have been too many developments failing to use best management practices in their construction activities, which subsequently resulted in erosion of sediments and the probable input of other substances into our town’s waterways. More rigorous inspection requirements as part of these revised regulations should be considered by the Agency. In concert with this, a schedule of fines and penalties for entities violating IWA terms and conditions should be assessed for use as a deterrent and placed in Appendix D, if this is permitted by state or local law. We assume that increased enforcement would need to be accomplished through suggestions made by the Agency to the East Lyme Board of Selectmen, who would review and approve any fines or penalties to be imposed. Site work should not continue until violations have been addressed and any fines paid.

Finally, the CCNR would like the IWA to be cognizant that we are a town body that can be of assistance if so needed, which we recognize was noted in Section 10.1(b)(1) of these regulations. We believe the issue is a matter of establishing better communications between the Agency and our Commission. The CCNR was formed some years ago when the Conservation Commission was split off from the IWA. The IWA maintained regulatory authority, whereas the CCNR remained as a purely advisory body that can supply pertinent information or guidance as needed. Our members have expertise in many areas that can be beneficial in IWA determinations, including all aspects of natural resources, biology, agriculture, and landscape planning. We suggest that the IWA place the ELCCNR on its meeting agenda whenever it is deemed appropriate for our participation and that we also have an opportunity to request placement on the agenda to provide comments whenever needed. For us to be useful, however, we need to enhance communication between our groups so that any issues for which we could be helpful can be examined in a timely manner.