

✓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”.

“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 (NDDDB) 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

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 usefu;, 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.