

**EAST LYME INLAND WETLANDS AGENCY  
REGULAR MEETING MINUTES  
SEPTEMBER 5, 2023  
7:00 p.m.**

**EAST LYME TOWN HALL, MAIN MEETING ROOM**

**Present:** Kristen Chantrell, Don Phimister, Gregory McIntire, Sam Sims, Nancy Kalal Alt., Diane Garner, Alt.

**Absent:** Doreen Rhein, Phyllis Berger, Leonard Salter,

**Also Present:** Gary Goeschel, Wetlands Officer,

D. Garner and N. Kalal was seated.

**CALL TO ORDER:**

The meeting started at 7:00

RECEIVED FOR RECORD  
EAST LYME, CT  
2023 SEP - 6 P 1:57  
Cecilia M. McEntire  
TOWN CLERK

**I. PLEDGE OF ALLGIANCE:**

Recited

**II. PUBLIC DELEGATIONS:**

Michael McCormack, 10 Brookfield Dr., informed the Agency that the property located at 8 Brookfield Dr. has clear cut trees and some of them are in the brook. He said approximately 20-30 trees have been cut down. He is worried about his house and property due to possible erosion caused by the clear cutting.

G. Goeschel said he is aware of the situation and the ZEO has issued a verbal Cease and Desist. The property is a vacant lot with a stream running through the middle of it. The property owner has met with town officials to discuss building on the site.

**III. PUBLIC HEARINGS: none**

**IV. ACCEPTANCE OF MINUTES**

**A. Show Cause Hearing Special Meeting Minutes of August 1, 2023**

**MOTION:** (Phimister/McIntire) to approve the Show Cause Hearing, Special Meeting as presented.

**VOTE:** APPROVED. In favor-Chantrell, Phimister, McIntire, Garner. Opposed-none. Abstaining-Sims, Kalal.

**B. Regular Meeting Minutes of August 1, 2023**

**MOTION:** (Phimister/McIntire) To approve the Regular Meeting Minutes of August 1, 2023, as submitted. In favor-Chantrell, Phimister, McIntire, Garner. Opposed-none. Abstaining-Sims, Kalal. **Vote:** APPROVED.

**V. EX-OFFICIO REPORT-no report**

**VI. NEW BUSINESS:**

**A. Application for Determination of permitted Non-Regulated Activities, Austin Harmon c/o Jull Forest Products: Proposed Timber Harvest at 130 & 132Grassy Hill Road, East Lyme, CT; Assessor's Map #51, Lot # 19 & 20.**

G. Goeschel said the application is straightforward; there are two crossings which will be corduroy crossings.

**MOTION:** (McIntire/Phimister) the Agency determines the activities are non-regulated as of right. **Vote:** APPROVED.

**VII. PENDING APPLICATIONS-none**

**VIII. OLD BUSINESS**

**A. Inland Wetlands and Watercourse Regulations**

Donald Danila, East Lyme Commission for the Conservation of Natural Resources (ELCCNR) addressed the Agency concerning the comments submitted by the ELCCNR (see copy).

The Agency discussed the comments submitted by ELCCNR and will incorporate the following into the proposed regulation update:

- Change/consistency, “East Lyme Inland Wetlands Agency”
- Definition of, “vegetative buffer”
- Add language describing, native plants requirements, possibly putting a percentage.
- Add impervious surface language.
- Add NDDDB language.

G. Goeschel will add any additional verbiage discussed by the Agency. A public hearing will be scheduled for October.

**IX. REPORTS**

**A. Chairman’s Report-no report**

**B. Inland Wetlands Agent Report-**

**i. Administrative Permits & Commission Issued Permits**

There have been no permits issued but G. Goeschel will be signing several in the next week.

**ii. Enforcement:**

**Cease and Desist order-Monaco Ford, Respondent: 218,222, 226 Flanders Road, Assessor’s Map #26.1, Lot # 23, 224 and 26 Niantic, Connecticut**

G. Goeschel said the vegetative cover has come in well and they can remove the silt fence. He advised that the order could be lifted after the growing season.

**Cease and Desist Order-Andrezej Kowalksi, Respondent, 14 Park Lane, Assessor’s Map #4.7, Lot #23, Niantic, Connecticut.**

G. Goeschel has not been able to contact the owner.

**iii. Correspondence: none**

**X. ADJOURNMENT**

**MOTION (Phimister/Sims) to adjourn at 8:30. Vote: APPROVED unanimously.**


**Respectfully Submitted**

**Sue Spang**

**Recording Secretary**

✓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](mailto: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 (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

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.



## **September 5, 2023 Presentation to ELIWA Regarding ELCCNR Comments on IWA Regulations Review**

I am Donald Danila and I reside at 24 Pattagansett Drive, East Lyme. I am secretary of the East Lyme Commission for the Conservation of Natural Resources and will be speaking on behalf of the Commission regarding comments we made with respect to the ongoing review and revision of the town's Inland Wetlands and Watercourses Regulations. We welcome the opportunity to speak before the Agency tonight. All the comments I make tonight are based on our review and submission of written comments to this Agency on June 22, 2023.

- Our comments range from the mundane to the more substantive. The former includes such things as updating the name of CT DEEP wherever it appears, standardizing the capitalization of your agency name wherever it appears, simple corrections to perhaps old or outdated uses and information, moving away from only printed newspaper notices to include more modern forms of electronic communications, not including references to two of the regulation appendices within the text, etc.
- Incidentally, the very name of your Agency appears in two forms, both within the regulations and on the East Lyme Town website – “Inland Wetland Agency” or “Inland Wetlands Agency”. We believe it should be “Wetlands” in all instances, not “Wetland”, in accordance with how this term appears in Connecticut General Statutes. The current regulations review is a good opportunity to standardize the usage and appearance of your Agency’s name.
- Comments of more importance include our requests to add or modify several definitions so that any person applying for the Agency’s approval knows exactly what is being referred to or required. Improved definitions could also guide any actions that may be undertaken by an applicant or required by this Agency.
- One substantive comment we have regards Application Requirements noted in section 7.6(e). We believe a description of “ecological communities and functions” with proposed alternatives is a very broad and perhaps vague requirement, even for more substantive detailed applications from informed applicants. This might require the Agency to provide a guidance document or at least examples of submissions properly dealing with these subjects.
- We suggest that applicants subject to more rigorous reviews and standards be required to obtain a Natural Diversity Database review by CT DEEP. Often referred to as an NDDB assessment, this review includes the likely presence of federally- or state-listed endangered, threatened, or species of concern on the property in question or in the water bodies likely to be affected by the

development. However, if a substantial project is not contained within an existing CT DEEP NDDDB area having requisite information and/or no letter is received from CT DEEP in regards to a requested NDDDB determination, we believe that an applicant should be required to perform a study to ensure listed species are not found on the proposed development site.

- We believe that within the regulations all permittees should be required to avoid clear-cutting their development site to the extent possible, plant or maintain a vegetative buffer of appropriate native species adjacent to the affected water body or water course, and use state-of-the-art storm and sanitary water technologies to the extent possible as can be required through existing town, regional, and state regulations.
- Besides threats to wildlife, we urge this Agency to consider what other types of environmental impacts should be evaluated by an applicant. These may include the consideration of hydrological, chemical, or other biological effects. This needs to be decided and specified by the Agency.
- We believe the updated regulations should refer to the most current editions of the CT DEEP publications "Connecticut Stormwater Quality Manual" and "Connecticut Erosion and Sediment Control Guidelines", which are under revision. I recently checked the CT DEEP website, and both these references are available, albeit still in draft form. However, I presume both publications will be promulgated in final form sooner rather than later. Incorporation of these updated references to the regulations could help strengthen them and give applicants additional considerations and information for their proposed developments and projects.
- The reason that my commission was asked to perform a review and provide comments on the Agency's regulations was my appearance at the May 2, 2023 Agency meeting under Public Delegations. At the time, I wanted to emphasize what I concluded were the failures of some larger commercial and housing projects in East Lyme to properly control stormwater runoff and erosion on their sites. To avoid this occurring in the future, we believe that more rigorous inspection requirements should be considered by the Agency to avoid such calamities. In addition, we believe a schedule of fines and penalties for entities violating Agency terms and conditions should be considered as a deterrent. No work should continue until violations have been addressed and any fines paid. We assume this concept would need careful thought and certainly to go before the Board of Selectman for their review and approval.
- Finally, the Conservation Commission would like to make it known to the Agency that we are a town body that can be of assistance if so needed, which we recognize has been already codified

in Section 10.1(b)(1) of the regulations. The CCNR was formed some years ago when the Conservation Commission was split off from the Agency. 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 Agency determinations, including many aspects of natural resources, biology, agriculture, and landscape planning. We would welcome the Agency putting our commission on its meeting agenda whenever it is deemed appropriate to include our participation. Similarly, we would also like to have the opportunity to request placement on the Agency's agenda to provide comments whenever it is appropriate. For us to be helpful, we need to enhance the cooperation and communication between our groups so that any issues for which we could provide cogent comments can be examined in a timely manner and before the Agency's monthly agenda has been finalized and posted.

- Thank you for giving our commission the opportunity to speak to you tonight.