

Town of

P.O. Drawer 519

**Department of Planning &
Inland Wetlands**

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



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MEMORANDUM

To: East Lyme Inland Wetlands & Watercourses Agency

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

Date: February 26, 2025

Re: 23 Calkins Road, Boston Post Road, & Quarry Dock Road; Oswegatchie Hills, Landmark Development, LLC and Jarvis of Cheshire, LLC - Farming Operation

At the Agency's January 7, 2025 meeting, the Agency directed me to issue Landmark Development and Jarvis of Cheshire, LLC a Cease & Desist Order (C&D), primarily based on the presentation of information by Mr. Don Danilla during Public Delegations, for the clearing of vegetation of an area greater than 5-acres within 300-feet of an inland wetland or watercourse and thereby violating an issued Exemption. In addition, Mr. Danilla requested a You Tube video be played for the Agency which may be viewed by visiting: <https://youtu.be/cFN5vXEfdU8>. In addition, at a previous meeting in 2024, I believe the Agency also viewed the subject properties on the Town's GIS using Google Satellite Areal imagery which also shows the cleared area.

As part of standard operating procedures, I conduct due diligence before issuing any C&D Order, Agency directed or not. In performing my due diligence for this particular matter, I've reviewed the file, the Application for Determination of Permitted/Non Regulated Activity, the applicant's supporting documentation, and the meeting minutes (all attached). Upon my review of these documents, it is my opinion that Landmark Development, LLC and Jarvis of Cheshire, LLC are not in violation of the Inland Wetlands and Watercourses Regulations, or the Exemption issued by the Agency for the following reasons:

1. The minutes are clear the Attorney Dubicki, stated they "never intended to limit the acreage." He stated they would start with "5-acres and go from there depending on how it goes."
2. The plans submitted indicate that the proposed area of clearing was occurring over large swaths of land (virtually the length of the property).
3. The Agency does not have substantive proof stumping has or is occurring on the site.

4. In regards to evidence for the clearing cutting for its initially stated purpose, a tree farm, there was no discussion in the minutes or conditions placed on the exemption by the Agency that required the activity be conducted within a specified amount of time being agricultural is an “As-for-Right” use in the zone and the Agency found the proposed activities to be directly related to the proposed farming operation and thus, rendered an Exemption. I believe the very clear-cutting activity that is being conducted is the very evidence by the land owner they are conducting a farming operation as they have not applied to change the use and they have applied for and were issued building and zoning permits to construct two barns on the property for the farming operation. As such, it appears the clearcutting is the beginning of the farming operation they intend to undertake on the property. Therefore, without any time restrictions or limitations to the Exemption, it is my opinion the clearing could continue indefinitely or until there are no more trees to clear.
5. The applicant’s narrative states that the tree farm is approximately 230-acres and they are proposing to “selectively harvest the native hardwoods on various sections of the property and plant in their place.” As noted at the Sept. 11, 2017 IWA meeting, the minutes record the applicant addressing a possible phasing of the cutting operation “we are looking at about 5 acres and depending on how it goes they will expand to more areas. . . . never any intention of limiting it to a specific amount of acres.” Together, it appears that the applicant proposed selective harvesting and replanting on the entire farm area, about 230 acres. The IWA determined that this was an as of right farming operation and exempt from wetlands permitting requirements. It also appears that the applicant then acted in reliance on this determination by seeking permits from other Town departments to build barns etc. to support the operation. While the barns may not have been constructed yet, the additional permitting efforts would have incurred some costs for the applicant which, they have additionally acted in reliance on the exemption determination by beginning the cutting.
6. The IWA did not attempt to place an expiration date or limited time period on the exemption determination. It would not make sense that the Agency could do so because in making that determination the IWA is determining that the activity is a nonregulated activity or, put another way, outside its jurisdiction.

Therefore, based on the above, I have no basis to issue a C&D as directed by the IWA for “clearing of vegetation of an area greater than 5-acres within 300-feet of an inland wetland or watercourse.” If the Town did so, I would expect and anticipate the property owner to file an appeal and raise a municipal estoppel defense to the C&D. In brief, municipal estoppel prevents situations where a Town might tell a property owner they can do X, the property owner starts doing X or otherwise acts in reliance on that ruling, and then the Town turns around and claims that X is a violation.

If through inspection and additional investigation, I discover additional information about the ongoing activities at the property, it may change the situation. For example, it is very difficult to distinguish between rocks and stumps in the video but, there do not appear to be piles of stumps on the property in the same way that there are visible piles of logs. That said, without a site inspection it is difficult to obtain such information given the relative seclusion of the property. As

such, I have reached out to the land owner to request an inspection of the site to verify compliance with the issued determination. In the interim, I have been performing the necessary due diligence and consultation with the Town Attorney's Office to ensure everything is in order, review the facts, and determine whether the issuance of a Cease and Desist order is appropriate and defensible under these circumstance.