

**EAST LYME INLAND WETLANDS AGENCY  
REGULAR MEETING  
Monday, DECEMBER 8th, 2014  
MINUTES**

**PRESENT:** Cheryl Lozanov, Chairperson, Chuck Reluga, Vice-Chair, Keith Hall, Secretary, Norm Bender, Phyllis Berger, Harry Clarke, Joe Mingo

**ALSO PRESENT:** Jim Bernardo, LS representing Mr. Bialowans  
Don Fortunato, Soil Scientist representing Mr. Bialowans  
Kim Barber Bradley, Alternate  
Gary Goeschel, Inland Wetlands Agent  
Karen Zmitruk, Recording Secretary

**ABSENT:** No One

**Call to Order**

Ms. Lozanov called the December 8, 2014 Regular Meeting of the East Lyme Inland Wetlands Agency to order at 7:21 PM after the previously scheduled Public Hearing.

**Pledge of Allegiance**

The Pledge was previously observed.

**I. Additions to the Agenda**

Ms. Lozanov asked if there were any additions to the agenda.  
There were no additions to the agenda.

FILED IN EAST LYME  
CONNECTICUT  
Dec 15 2014 AT 2:30 AM/PM  
*Karen Galbreath*  
EAST LYME TOWN CLERK

**II. Acceptance of Minutes**

▪ **Site Walk Minutes of October 4, 2014**

Ms. Lozanov called for any discussion or corrections to the Site Walk Minutes of October 4, 2014.

**\*\*MOTION (1)**

Mr. Mingo moved to accept the Site Walk Minutes of October 4, 2014 as presented.

Mr. Reluga seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

▪ **Site Walk Minutes of November 8, 2014**

Ms. Lozanov called for any discussion or corrections to the Site Walk Minutes of November 8, 2014.

**\*\*MOTION (2)**

Ms. Berger moved to accept the Site Walk Minutes of November 8, 2014 as presented.

Mr. Reluga seconded the motion.

Vote: 6 – 0 – 1. Motion passed.

Abstained: Mr. Mingo

▪ **Regular Meeting Minutes of November 10, 2014**

Ms. Lozanov called for any discussion or corrections to the Regular Meeting Minutes of November 10, 2014.

**\*\*MOTION (3)**

Mr. Mingo moved to accept the Inland Wetlands Agency Regular Meeting Minutes of November 10, 2014 as presented.

Mr. Reluga seconded the motion.

**Vote: 7 – 0 – 0. Motion passed.**

### **III. Public Delegations**

Ms. Lozanov called for Public Delegations. She noted that any items on the agenda could not be discussed during Public Delegations.

John Bialowans, 61 Walnut Hill Road said that he wanted to read a letter into the record written to this Commission that he had read at the Board of Selectmen meeting of November 19, 2014. The letter was with regard to the Solar Farm and the Cease & Desist Order. (Copy attached in its entirety)

Mr. Mingo said that he wanted the Solar Farm item added to the agenda so that they could keep track of it. Ms. Lozanov said that they had taken it off of the agenda as no one could comment on it with it on the agenda.

Mr. Goeschel said that it was still an active item and that he is monitoring it and they agreed to re-visit the site as a Commission in the spring. With regard to Mr. Bialowans issue concerning the abutting properties he suggested that they ask the Town Attorney to take a look at the information that Mr. Bialowans is submitting before they put the item on the agenda and involve themselves in things that they perhaps should not be in.

#### **\*\*MOTION (4)**

Mr. Mingo moved that the Town Attorney be given a copy of the materials that Mr. Bialowans has submitted this evening and that once he has reviewed it and provided them with his comments and guidance they can make a decision on the matter of having this item on the agenda or not.

Mr. Clark seconded the motion.

**Vote: 7 – 0 – 0. Motion passed.**

### **IV. Ex-Officio Report**

Mr. Seery reported the following: The board of Selectmen approved the new Mostoway Road entrance and it is in use. This Saturday December 13, 2014 from 1 PM to 3 PM at the Police Station they will be doing a 'Stuff a Cruiser' event for toys for Care & Share. There is also a 5K run for Brian Daigle. Lastly, the Holiday Stroll, Tree Lighting on the Green and Light Parade were held this past weekend.

### **V. Pending Applications**

- **57 Walnut Hill Road – John Bialowans, Jr., Owner – Application for construction of an access driveway from Walnut Hill Road to gain access to the rear acreage of the property at 61 Walnut Hill Road, Assessor's Map 9.4, Lot 11, East Lyme, CT**

Ms. Lozanov called for the applicant or their representative to present this.

Jim Bernardo, LS explained that there is an intermittent watercourse here and also an application pending with zoning to modify the existing property line. They are looking for ways to access the back of the property and create a driveway from Walnut Hill Road across the intermittent watercourse to the back property. While they had previously mentioned a 30" pipe; the storm drainage calculation calls for a 24" pipe for the 10 year storm model. The two ponds act like detention basins. 1000 sq. ft. of area would have to be filled in.

Mr. Bender asked Mr. Bernardo if he has a background in Civil Engineering.

Mr. Bernardo said that he works with David King who is an Engineer.

Don Fortunato, Certified Soil Scientist said that they did mark the area in the field and that it is a marginal intermittent watercourse with upland soils.

Ms. Lozanov asked how wide the driveway would be.

Mr. Bernardo said that it would be 19 feet in width with an 18 foot travel area.

Ms. Lozanov asked what the purpose of the driveway was as it is coming off of Walnut Hill Road.

Mr. Bernardo said that at this point there are no plans for development of the area – it is only to gain access to it.

Ms. Lozanov asked how Mr. Bialowans has been getting access to the area up to now.

Mr. Fortunato said that it was probably in the same way that they went into it for the site walk.

Ms. Berger asked how long the proposed driveway would be.

Mr. Bernardo said that it would be 500 feet from the intersection of Walnut Hill Road to the woods road and that he wants to be able to get in there and cut trees this winter. There would not be any earth moving until next year. There will be some cut and fill-ins and the pipe to do the driveway.

Ms. Lozanov asked how much clearing of trees in the watercourse area there would be.

Mr. Fortunato and Mr. Bernardo said that there is a lot of scrubby brush and not really large trees. Also – it is not dense; it is slightly wooded and the rest similar to pasture land. There is around 1000 sq. ft. of disturbance.

Mr. Hall asked if they had switched from 30" pipes to 24" pipes for the driveway.

Mr. Bernardo said yes.

Mr. Hall asked with regard to the excavation that they provide a sectional view on the plan – and if they would do so.

Mr. Bernardo said that he would do it.

Ms. Lozanov asked if it would be a gravel driveway.

Mr. Bernardo said yes, it was not going to be paved.

Mr. Bialowans, Owner/Applicant said that he is doing this now as he is changing the lot line for his kids and the hardest part is the driveway access. He is making the piece bigger and keeping the two (2) ponds. He explained that he did have the property up for sale but had the realtor take the sign down. He said that he will put fir trees across the front as he is not going to be involved in building anymore. This is for the kids.

Ms. Lozanov said that they would need to also discuss the timing of this as it is an intermittent watercourse.

Mr. Fortunato said that the spring would probably be the best time to do this.

Mr. Bialowans said that he would do it when they say that he should.

Ms. Lozanov asked if the ledge requires any blasting.

Mr. Bialowans said that is not something that he knows at this time. He will not know until he gets in there to do the work.

Mr. Goeschel said that his concern is the ledge removal and also clearing during the winter and the tree canopy.

Ms. Lozanov said that this would be on their next meeting agenda – for January 12, 2015 and that they can do a site walk in January prior to the meeting to determine these items. Tonight they are only to determine if this requires a public hearing or not.

Mr. Hall said that he would like to see the map/plan updated to reflect the items they have discussed.

Ms. Lozanov polled the members and the consensus was that no public hearing was required. This would be on their January 2015 agenda.

- **5 Liberty Way – Wave Construction Group, Applicant; Fairway Developers, LLC Owner – Application to conduct regulated activities within the 100-foot upland review area associated with the construction of a 9,500 sq. ft. building for light industrial use, together with 14 parking spaces and a loading area on an approved lot within an existing industrial park on property located at 5 Liberty Way, Assessor's Map #9.4, Lot 11, East Lyme, CT**

Ms. Lozanov said that they had closed the public hearing on this application earlier this evening and called for discussion.

Mr. Mingo said that he was ready to make a motion on this application.

**\*\*MOTION (5)**

Mr. Mingo moved to accept the application of Wave Construction Group/Fairway Developers LLC to conduct regulated activities within the 100-foot upland review area associated with the construction of a 9,500 sq. ft. building for light industrial use, together with 14 parking spaces and a loading area on an approved lot within an existing industrial park on property located at 5 Liberty Way, Niantic, CT as complete.

Mr. Reluga seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

**\*\*MOTION (6)**

Mr. Clarke moved to approve the Application of Wave Construction Group/Fairway Developers, LLC to conduct regulated activities within the 100-foot upland review area associated with the construction of a 9,500 sq. ft. building for light industrial use, together with 14 parking spaces and a loading area on an approved lot within an existing industrial park on property located at 5 Liberty Way, Niantic, CT with the following conditions:

- Notify the Wetlands Enforcement Officer at least two (2) days prior to construction to inspect erosion controls.
- Notify Wetlands Enforcement Officer at completion of permit for final inspection and sign off.
- Additional work beyond this permit in the wetlands or watercourse or its 100' regulated area will require approval from the inland wetlands agency or its certified agent.
- Changes to the plan listed on this permit require notification to the wetlands enforcement officer and may require agency approval. A new plan will be given to agent before work begins.
- See the Town Engineer's memo dated 12/5/2014 (attached) for the 10 other listed/outlined conditions of approval which the applicant has agreed to do.

Mr. Reluga seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

**VI. New Business**

There was no new business.

**VII. Old Business**

There was no old business.

**VIII. Chairman's Report**

Ms. Lozanov said that the Solar Field does have a Cease & Desist on it and that the item will stay open until further review. She said that she would like it put back on the agenda as/under Old Business.

Discussion followed regarding having it on the agenda which would not allow the public to comment on it.

Ms. Lozanov said that if anyone wanted to present anything that they could submit it to Mr. Goeschel just as they have done in the past.

Ms. Lozanov also noted that they used to have the application date of receipt and other pertinent dates on the agenda and that they are now missing. She asked that they be placed back on the agenda as they are necessary for tracking purposes and help them with their review and time frame.

**IX. Wetland Enforcement Officer Report**

▪ **Administrative Permits Issued**

Mr. Goeschel said that he had provided them with his report:

From 10/1/2014 – 12/4/2014 he has issued one permit – to 21 Darrows Ridge Rd. for construction and installation of a 30 ft. x 40 ft. patio with a fire pit within the 100-ft. upland review area.

▪ **Enforcements**

Mr. Goeschel reported that he had received a complaint about an area of a pond being filled in at 81 Walnut Hill Road with the intent being to get a tractor over it to be able to hay on the other side of the pond. He said that he would look into what is going on there and get back to them on it.

Ms. Berger noted that the property at the corner of Roxbury Road is now vacant and asked if the violations were ever corrected.

Mr. Goeschel said that he would review it and get back to them on it.

Mr. Reluga asked about the work that the Town was going to do at Little Indian Pond and how that was going as he had not seen anything done.

Mr. Goeschel said that it is still being considered.

▪ **Correspondence**

Mr. Goeschel said that he did not have any correspondence other than the current newsletter received in the mail for all of them and which he had provided everyone with a copy of.

**ADJOURNMENT**

**\*\*MOTION (7)**

Mr. Mingo moved to adjourn this Regular Meeting of the East Lyme Inland Wetland Agency at 8:55 PM.

Mr. Reluga seconded the motion.

Vote: 7 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

# Town of East Lyme


P.O. DRAWER 519

NIANTIC, CONNECTICUT 06357



Town Engineer  
Victor A. Benni, P.E.

860-691-4112  
FAX 860-739-6930

To: Gary Goeschel, Director of Planning  
From: Victor Benni, P.E., Town Engineer   
Date: December 5, 2014  
Re: 5 Liberty Way – Wetlands Review / Site Plan Review

Information submitted by the Applicant which was considered in this review:

- Site Development Plan (the Plan), Prepared for Wave Construction Group, 5 Liberty Way, East Lyme, Connecticut, Sheet: 1 of 1, Date: November 3, 2014, by: Angus McDonald Gary Sharpe & Associates, Inc.
- Stormwater Infiltration Basin Design, 5 Liberty Way, East Lyme, Connecticut, Prepared for Wave Construction Group, Date: November 3, 2014, by: Angus McDonald Gary Sharpe & Associates, Inc.

The Engineering Department has reviewed the above referenced information and, at the discretion of the Commission, believes that the following comments are minor in nature and may be considered conditions of approval: 10 items!

1. Provide an identification of a designated on-site individual responsible for installation, monitoring and correction of sediment control plan requirements and authorized to take corrective actions, as required, to ensure compliance with certified plans.
2. The following note shall be added to the *Maintenance Schedule Short Term (During Construction)* notes, "There shall be no equipment storage or equipment refueling in the 100' Upland Review Area; appropriate spill response measures shall be maintained on-site during construction."
3. Label and provide detail(s) for haybale and/or geotextile inlet protection at proposed catch basins; including the two (2) existing catch basins on the east side of Liberty Way.
4. Provide label and location of the *Anti-Tracking Apron* at the main construction entrance; include the following note in the *Maintenance Schedule Short Term (During Construction)* notes, "The Anti-Tracking Apron (Construction Entrance) shall remain and be maintained in place until all construction areas are stabilized and driveway area paved."
5. Add the following notes to the Long Term Stormwater Maintenance schedule:
  - (Item 2.C.) Remove sediment, litter & debris that may have collected in the Riprap/Level Spreader.
  - (Item 3.) The property owner(s) shall be responsible for overseeing and implementing the Long Term Stormwater Maintenance schedule. In case of transfer of property ownership, future property owners shall be notified of the presence of the stormwater management system and requirements for proper implementation of the Long Term Stormwater Maintenance schedule.
6. The Plan and Stormwater Infiltration Basin Design report demonstrate that the proposed stormwater measures that will be constructed as part of the proposed project will collect and infiltrate the runoff from the proposed on-site impervious surfaces for the 25 year frequency, 24 hour duration design storm event.

Attachment — IWA 12/8/14 — 5 Liberty Way  
Conditions of approval —

7. The Engineering Department requests the right to work with the developer to modify the design, or location of the Level Spreader and subsurface Infiltration Basins, to accommodate final lot configuration and existing conditions at the time of construction.
8. An Erosion and Sedimentation bond in the amount of \$5,000 is recommended by this Department for the installation of the Level Spreader and Sedimentation & Erosion controls to secure the site.

9. Wetland tags - conservation

10. oil/water separator in dock area catch basin  
to satisfaction of Town Engineer

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November 23, 2014

Good Evening Madame Chairwoman and other Wetlands Members,

My name is John Bialowans, Jr. of 61 Walnut Hill Road, East Lyme, CT.

First I would like to read the letter, to the Wetlands Commission, that I read to the Board of Selectmen's Meeting on November 19, 2014.

I would also like to add that this Cease, Desist & Restore order was given by the Town of East Lyme on April 7, 2014 – not by the CT Siting Counsel that was always being used to defend Landino/Centerplan or another enterprise of the solar farm on Walnut Hill Road.

Public Delegations  
Attachment - Submitted - 12/8/14 IWA Reg. mtg.



Wednesday, November 19, 2014

Good Evening Mr. Formica & other Board Members,

Congratulations on your election to the Senate, Mr. Formica....

My name is John Bialowans, Jr. of 61 Walnut Hill Road, East Lyme, CT. I had some interesting reading this past weekend. I would like to have the reasoning behind or why no action was taken against Landino/Centerplan or another company involved with the solar farm on Walnut Hill Road. If you read the Cease & Desist Order, that was given to the solar farm on April 7, 2014, there are a lot of items that have not been addressed, and everyone with the solar farm wish it would go away.

Some of the points or questions I would like to know:

1. Why didn't the solar farm get a wetlands permit in accordance with Section 6.1 of the East Lyme Wetlands Regulations?
2. Why didn't the solar farm not be subject to enforcement and penalties under Section 14 of the East Lyme Wetlands Regulations?

Cease, Desist & Restore Order, East Lyme Inland Wetlands Agency dated April 7, 2014.

1. Under the title of Corrective Action Procedure, Section B. as quoted "a plan for restoring the disturbed area adjacent to and including the watercourse and wetlands at the site".
2. Under the title Corrective Action Procedure, Section G. as quoted "full compliance with this Cease & Desist order, all actions of this Cease & Desist order have been completed and approved".

3. Under the title Corrective Action Procedure, Section M. as quoted “the agency’s authority to institute any proceedings or take any other actions to prevent or abate violations of the law, pollution, recover costs and natural resource damage and to impose penalties for past, present or future violations of the law”.
4. Under the title Corrective Action Procedure, Section N. as quoted “respondents obligations under law. Nothing in this Cease, Desist & Restore Order shall relieve respondents on other obligations under applicable Federal, State and local law”.
5. Under the title Corrective Action Procedure, Section Q, as quoted “no effect on rights of other persons. This Cease, Desist & Restore Order neither creates nor affects any rights of persons that are not parties to this Cease, Desist & Restore Order plan”.
6. It looks strongly that this Cease, Desist & Restore plan (dated April 7, 2014) is not being executed to the fullest extent, being mentioned, looked at or there’s no enforcement of this order completely.

There are so many promises, remarks and meetings about this solar farm. Here are just a few of the comments I’m going to make tonight which I am quoting for you now:

July 14, 2014 Inland Wetlands Meeting

1. Gary discussed fines on the solar farm
2. A letter from Attorney O’Connell stating the Wetlands Commission can request an injunction on the solar farm

October 23, 2014 Letter to the Board of Selectman

1. Gary stated that the sediment and erosion issues to abutting property owners is a civil matter, not the Towns.

It's very interesting that they are not going to enforce their own wetlands, watercourses regulations, the States Policy (that all Towns follow and use) Chapter 440, Section 22a-36 to Section 22a-45a, their own Cease, Desist & Restore plan, and also the Federal guidelines not being followed. It seems amazing that all of these regulations and guidelines don't apply to the solar farm. It seems like there's only a handful of people that work for the Town that have everything to say about the solar farm compliance with this Cease, Desist & Restore plan.

The abutting property owners are Joan Bengsten, John Bialowans, Jr. and John's niece, Karen. The last 2 names belong to the Prokop's homestead that has been in the family for over 100 years. We are all taxpayers of East Lyme, and still paying taxes or are we exempt from taxes because our watercourses have been damaged (from the twice failed erosion control measures at the solar farm) that they think they can get away with anything or everything they ask for, and who they know to help them.

We have retained Attorney Janet Brooks of East Berlin, CT to help us resolve this matter. She was working in the Attorney General's Office for 16 years in the environment department. She organized the wetlands program of practice in the Attorney General's Office. She has met with Gary G. and made many suggestions to us about who, what, and how to proceed with our action. We feel very comfortable with her.

Thank you for listening to me and you'll see me at the next meeting....

Sincerely,

John Bialowans, Jr.

Section 10  
Considerations for Decision

10.1 The Agency may consider the following in making its decision on an application:

- ✓ a. The application and its supporting documentation
- ✓ b. Reports from other agencies and commissions including but not limited to the Town of East Lyme:
  - 1. Commission for the Conservation of Natural Resources
  - 2. Planning, Zoning, or Planning and Zoning Commissions
  - 3. Building Official
  - 4. Director of Public Works or Town Engineer
  - 5. Ledge Light Health District
- ✓ c. The Agency may also consider comments on any application from the New London County Soil and Water Conservation District, the Southeastern Regional Planning Agency or other regional organizations (i.e. Council of Elected Officials); agencies in adjacent municipalities which may be affected by the proposed activity, or other technical agencies or organizations which may undertake additional studies or investigations.

15.4 Petitions requesting changes or amendments to the "Inland Wetlands and Watercourses Map, East Lyme, Connecticut, shall contain at least the following information:

- a. the petitioner's name, mailing address and telephone number;
- b. the address, or location, of the land affected by the petition;
- c. the petitioner's interest in the land affected by the petition
- d. map(s) showing the geographic location of the land affected by the petition and the existing and the proposed wetland(s) and watercourse(s) boundaries on such land in accurate detail together with the documentation supporting such proposed boundary locations; and
- e. the reasons for the requested action.

✓ 15.5 Any person who submits a petition to amend the Inland Wetlands and Watercourses Map, East Lyme, Connecticut, shall bear the burden of proof for all requested map amendments. Such proof may include, but is not limited to, professional interpretation of aerial photography and remote sensing imagery, resource mapping, soils mapping, or other information acceptable to the Agency. If such person is the owner, developer or contract purchaser of the land which is the subject of the petition, or if such person is representing the interests of such an owner, developer or purchaser, in addition to the information required in subsection 15.4, the petition shall include:

- a. the name, mailing address and telephone number of the owner(s) of such land and owner(s) agent or other representative;
- b. the names and mailing addresses of the owners of abutting land;
- ✓ c. documentation by a soil scientist of the distribution of wetland soils on said land. Such documentation shall at a minimum include the report of the soil scientist documenting the location of wetland soils on the land and a map of the said land indicating the flag locations set by the soil scientist and defining the boundaries of wetland soil types; and
- ✓ d. map(s) showing any proposed development of the land in relation to existing and proposed wetland and watercourse boundaries.

✓ 15.6 Watercourses shall be delineated by a soil scientist, geologist, ecologist or other qualified individual.

✓ 19.7 Waiver The applicant may petition the Agency to waive, reduce or allow delayed payment of the fee. Such petitions shall be in writing and shall state fully the facts and circumstances the Agency should consider in its determination under this subsection. The Agency may waive all or part of the application fee if the Agency determines that:

- a. The activity applied for would clearly result in a substantial public benefit to the environment or to the public health and safety and the applicant would reasonably be deterred from initiating the activity solely or primarily as a result of the amount of the application fee, or
- b. The amount of the application fee is clearly excessive in relation to the cost to the Town for reviewing and processing the application.
- ✓ c. The applicant has shown good cause.

The Agency shall state upon its record the basis for all

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# INLAND WETLANDS AND WATERCOURSES

## REGULATIONS

### TOWN OF EAST LYME CONNECTICUT

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Approved October 6, 2008  
Revised through April 11, 2011

Town of East Lyme, CT (<http://eltownhall.com>)

MENU

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## INLAND WETLANDS AGENCY PURPOSE AND JURISDICTION

Posted in Inland Wetland Agency (<http://eltownhall.com/?cat=54>), Inland Wetlands and Watercourses (<http://eltownhall.com/?cat=77>)



Pursuant to Sec. 22a-42 of the Connecticut General Statutes the public policy of the state is to require municipal regulation of wetlands and watercourses and the activities affecting the wetlands and watercourses within the territorial limits of the various municipalities or districts.

As such, the East Lyme Inland Wetland Agency is a regulatory body, appointed by the Board of Selectmen. The Wetlands Agency is responsible for the enforcement of East Lyme's Inland Wetlands and Watercourse Regulations as set forth by the State of Connecticut's Inland Wetlands and Watercourse Act.

The East Lyme Inland Wetland Agency regulates all activities that may have an impact on a wetland or watercourse. Their jurisdiction is 100-feet from a wetland or watercourse boundary, but can extend further if there is a potential for impact.

The 100-foot area is called the Upland Review Area. Any person proposing to conduct any work (including cutting of trees, stumping, grubbing, grading etc) within this area is required to obtain a permit. The Agency usually meets once a month to review permit applications.

**November 5, 2014** – Board of Selectmen Regular Meeting (Immed. following Executive Session)  
7:30 pm, Meetings

**November 6, 2014** – Niantic River Watershed  
6:00 pm, Meetings

**November 6, 2014** – Zoning Commission  
7:30 pm, Meetings

### LAND USE DEPARTMENTS

Building Office (<http://eltownhall.com/?cat=39>)

Planning (<http://eltownhall.com/?cat=75>)

Zoning (<http://eltownhall.com/?cat=72>)

Inland Wetlands and Watercourses (<http://eltownhall.com/?cat=77>)

Conservation of Natural Resources Comm (<http://eltownhall.com/?cat=57>)

Section 1  
Title and Authority

- 1.1 The inland wetlands and watercourses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life. Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. It is, therefore, the purpose of these regulations 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; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.
- 1.2 These regulations shall be known as the "Inland Wetlands and Watercourses Regulations of the Town of East Lyme."
- 1.3 The East Lyme Inland Wetland Agency (name changed from Conservation Commission effective July 1, 2008) of the Town of East Lyme was established in accordance with an ordinance adopted June 20, 1966, and shall implement the purposes and provisions of these regulations and the Ordinance Concerning Inland Wetlands and Watercourses in the Town of East Lyme.
- 1.4 These regulations have been adopted and may be amended, from time to time, in accordance with the provisions of the Inland Wetlands and Watercourses Act and these regulations.
- 1.5 The Agency shall enforce the Inland Wetlands and Watercourses Act and shall issue, issue with terms, conditions, limitations or modifications, or deny permits for all regulated activities in the Town of East Lyme pursuant to sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.

## Section 2 Definitions

### 2.1 As used in these regulations

"Act" means the Inland Wetlands and Watercourses Act, sections 22a-36 through 22a-45, inclusive, of the Connecticut General Statutes, as amended.

"Agency" means the Inland Wetlands Agency of the Town of East Lyme.

"Bogs" are watercourses distinguished by evergreen trees and shrubs underlain by peat deposits, poor or very poor drainage, and highly acidic conditions.

"Clear-cutting" means the harvest of timber in a fashion which removes all trees down to a two inch diameter at breast height.

"Commissioner of Environmental Protection" means the commissioner of the State of Connecticut Department of Environmental Protection.

"Continual flow" means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low flow period of the annual hydrological cycle, June through September, but it recurs in prolonged succession.

"Deposit" includes, but shall not be limited to fill, grade, dump, place, discharge or ermit.

"Discharge" means emission of any water, substance, or material into waters of the state whether or not such substance causes pollution.

"Essential to the farming operation" means that the proposed activity is necessary and indispensable to sustain farming activities on the farm.

"Farming" shall be consistent with the definition as noted in section 1-1(q) of the Connecticut General Statutes. (see Appendix A)

"Feasible" means able to be constructed or implemented consistent with sound engineering principles.

"License" means the whole or any part of any permit, certificate of approval or similar form of permission which may be required of any person by the provisions of sections 22a-36 to 22a-45, inclusive.

"Management practice" means a practice, procedure, activity, structure or facility designed to prevent or minimize pollution or other environmental damage or to maintain or enhance existing environmental quality. Such management practices include, but are not limited to: erosion and sedimentation controls; restrictions on land use or development; construction setbacks from wetlands or watercourses; proper disposal of waste materials; procedures for equipment maintenance to prevent fuel spillage; construction methods to prevent flooding or disturbance of wetlands and watercourses; procedures for maintaining continuous stream flows; confining construction that must take place in watercourses to times when water flows are low and fish and wildlife will not be adversely affected.



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.
7. Any activity which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.

"Soil scientist" means an individual duly qualified in accordance with standards set by the federal Office of Personnel Management.

"Swamps" are watercourses that are distinguished by the dominance of wetland trees and shrubs.

"Submerged lands" means those lands which are inundated by water on a seasonal or more frequent basis.

"Town" means the Town of East Lyme.

"Waste" means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the wetlands and watercourses of the Town.

"Watercourses" means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town or any portion thereof not regulated pursuant to sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (a) evidence of scour or deposits of recent alluvium or detritus, (b) the presence of standing or flowing water for a duration longer than a particular storm incident, and (c) the presence of hydrophytic vegetation.

"Wetlands" means land, including submerged land as defined in this section, not regulated pursuant to sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial and floodplain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Natural Resources Conservation Service of the U.S. Department of Agriculture (USDA). Such areas may include filled, graded, or excavated sites which possess an aquic (saturated) soil moisture regime as defined by the USDA Cooperative Soil Survey.

instrumentality of the State of Connecticut, except any local or regional board of education, pursuant to sections 22a-39 or 22a-45a of the Connecticut General Statutes.

- 5.2 The Commissioner of Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to sections 22a-28 through 22a-35 of the Connecticut General Statutes, as amended.
- 5.3 The Commissioner of Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Environmental Protection under section 22a-402 of the Connecticut General Statutes or a permit issued by the Commissioner of Environmental Protection under sections 22a-403 of the Connecticut General Statutes. Any person receiving such dam repair or removal order or permit shall not be required to obtain a permit from a municipal wetlands agency for any action necessary to comply with said dam order or to carry out the activities authorized by said permit.
- 5.4 The Commissioner of Environmental Protection shall have exclusive jurisdiction over the discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under section 404 of the Federal Clean Water Act.

#### Section 6

##### Regulated Activities to be Licensed

- 6.1 No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the East Lyme Inland Wetlands Agency of the Town of East Lyme.
- 6.2 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Agency, or violating any other provision of these regulations, shall be subject to the enforcement proceedings and penalties prescribed in section 14 of these regulations and any other remedies as provided by law.

#### Section 7

##### Application Requirements

- 7.1 Any person intending to conduct a regulated activity or to renew or amend a permit to conduct such activity, shall apply for a permit on a form provided by the Agency. The application shall contain the information described in this section and any other information the Agency may reasonably require. Application forms may be obtained in the offices of the East Lyme Town Clerk or the Agency.
- 7.2 If an application to the Town of East Lyme Planning, Zoning, or Planning and Zoning Commission for subdivision or resubdivision of land involves land containing a wetland or watercourse, the applicant shall, in accordance with Section 8-3(g), 8-3c, or 8-26, as applicable, of the Connecticut General Statutes, submit an application for a permit to the Agency in accordance with this section, no later than the day the application is filed with such planning, zoning, or planning and zoning commission.
- 7.3 The application shall contain such information as is necessary for a fair and informed determination thereon by the Agency.



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CEASE, DESIST AND RESTORE ORDER 798  
EAST LYME  
INLAND WETLANDS AGENCY

1411

<p><b>Owner (Respondent):</b> GRE 314 East Lyme, L.L.C. 10 Main Street Suite E Middletown, CT 06457</p> <p>Ryan C. McNamara, Project Manager Centerplan Construction Company 10 Main Street, Suite D Middletown, CT 06457</p>	<p><b>Property:</b> 20 Farm Meadow Road East Lyme, CT 06333 Assessor's Map# 52.0, Lot# 126</p>
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RESPONDENT IS HEREBY ORDERED TO CEASE & CORRECT THE VIOLATION OF THE EAST LYME INLAND WETLANDS AND WATERCOURSE REGULATIONS ON THE ABOVE REFERENCED PROPERTY.

**AUTHORITY:** The East Lyme Inland Wetlands Agency is duly authorized to carry out and effectuate the purposes and policies of Sections 22a-36 TO 22a-45a, inclusive and has adopted regulations pursuant to 22a-42a of the CT General Statutes.

**COMPLAINT:** The pollution of an onsite inland wetlands and watercourse. More specifically, the deposition of sedimentation within an onsite wetlands and watercourse as a result of stormwater management system failures and failures of erosion and sedimentation controls associated with the construction of a solar field/array on property located at the above referenced address.

Said activity is hereby determined to be a regulated activity as defined by Section 2.1 of the Town of East Lyme Inland Wetland and Watercourses Regulations under the jurisdiction of the East Lyme Inland Wetlands Agency.

**VIOLATION:** In accordance with Sect. 6.1 of the Inland Wetland and Watercourse Regulations of the Town of East Lyme "No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the East Lyme Inland Wetlands Agency of the Town of East Lyme. Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Agency, or violating any other provision of these regulations, shall be subject to the enforcement proceedings and penalties prescribed in section 14 of these regulations and any other remedies as provided by law." Respondent did not obtain any permit under the East Lyme Inland Wetlands and Watercourses Regulations authorizing the regulated activities.

**CORRECTIVE ACTION:** Respondent shall restore wetlands and upland review area to original condition or better following schedule A Corrective Action Procedure.

**HEARINGS:** A hearing shall be held on April 7, 2014 whereby the Respondent will be given the opportunity to be heard and show cause why this order should not remain in effect.

Signed:   
Gary A. Gieschel II, Director of Planning /  
Inland Wetlands Agent

Date: 4/7/2014

\* SIGNED A COUNSEL.



The date of the issuance of this Consent, Desist and Restore Order is April 6, 2014. The date of submission to the Agency of any document required by this Consent must be the date of such document as received by the Agency or its authorized agent of the Agency. The date of any notice by the Agency under this Consent, Desist and Restore Order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or personally delivered, whichever is earlier. Except as otherwise specified in this Consent, Desist and Restore Order, the word "day" as used in this Consent, Desist and Restore Order means calendar day. Any document or action which is required by this Consent, Desist and Restore Order to be submitted or performed by a date which falls on a Friday, Saturday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or a Connecticut or federal holiday.

- i. **Certification of documents.** Any document, including but not limited to any notice, which is required to be submitted to the Agency under this Consent, Desist and Restore Order shall be signed by Respondent and by the individual(s) responsible for actually preparing such document, and Respondent and each such individual shall certify in writing as follows: "I have personally reviewed and am familiar with the information submitted in this document and all attachments hereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information is punishable as a criminal offense under section 53a-127b of the Connecticut General Statutes and any other applicable law."
- j. **Noncompliance.** Failure to comply with this Consent, Desist and Restore Order may subject Respondent to an injunction and penalties.
- k. **False Statement.** Any false statement or any information submitted pursuant to this Consent, Desist and Restore Order is punishable as a criminal offense under section 53a-127b of the Connecticut General Statutes.
- l. **Notice of Transferability of Remedies and others.** This order is being filed on the land records for this property as described herein. Respondent's obligations under this Consent, Desist and Restore Order shall not be affected by the passage of title to any property to any other person or municipality.
- m. **Agency's non-enforcement.** Except as provided hereinabove with respect to payment of civil penalties, nothing in this Consent, Desist and Restore Order shall affect the Agency's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, or cause noise and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Agency determines that the actions taken by Respondent pursuant to this Consent, Desist and Restore Order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or adequately abated or prevented pollution, the Agency may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violation or pollution.
- n. **Respondent's obligations under law.** Nothing in this Consent, Desist and Restore Order shall release Respondent of other obligations under applicable regulatory, state, and local law.

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to the City, any representative of the Town of East Windsor, or any other person, for any purpose of research and statistical purposes, as authorized by the Commission and Board of Health.

**g. Release of information.** This Commission and Board of Health shall not release any information that would identify any person to this Commission and Board of Health.

**f. Notice to Agency of changes.** Within 15 days of the date Respondent becomes aware of a change in any information submitted to the Agency under this Commission and Board of Health, or that such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Agency.

**g. Notification of non-compliance.** In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this Commission and Board of Health or of any document required hereunder, Respondent shall immediately notify by telephone the local Welfare Officer and shall take reasonable steps to ensure that any non-compliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within 5 days of the initial notice, Respondent shall submit in writing the date, time, and duration of the non-compliance and the reasons for the non-compliance or delay and propose, for the review and written approval of the Agency, steps by which compliance will be achieved, and Respondent shall submit a copy of such steps to the Agency. Notification by Respondent shall not excuse non-compliance or delay, and the Agency's approval of any compliance steps proposed shall not excuse non-compliance or delay.

**h. Submission of documents.** Any document required to be submitted to the Agency under this Commission and Board of Health shall be submitted to the Agency by the Respondent.

Christy L. Korman, Chairwoman  
East Windsor Regional Welfare Agency  
Room of East Lyme  
P.O. Box 519, 100 Pennsylvania Avenue  
East Lyme, Connecticut 06331  
(860) 439-6931 ext. 4114

## CHAPTER 440\*

# WETLANDS AND WATERCOURSES

\*Cited. 183 C. 532. Inland Wetlands and Watercourses Act cited. 211 C. 416; 227 C. 71.

Inland Wetlands and Watercourses Act cited. 21 CA 122; 25 CA 401; 26 CA 564. Cited. 29 CA 469; 37 CA 348. Inland Wetlands and Watercourses Act cited. 43 CA 227.

Cited. 41 CS 184.

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Sec. 22a-28. (Formerly Sec. 22-7h). Preservation of tidal wetlands. Declaration of policy. It is declared that much of the wetlands of this state has been lost or despoiled by unregulated dredging, dumping, filling and like activities and that the remaining wetlands of this state are all in jeopardy of being lost or despoiled by these and other activities, that such loss or despoliation will adversely affect, if not entirely eliminate, the value of such wetlands as sources of nutrients to finfish, crustacea and shellfish of significant economic value; that such loss or despoliation will destroy such wetlands as habitats for plants and animals of significant economic value and will eliminate or substantially reduce marine commerce, recreation and aesthetic enjoyment; and that such loss or despoliation will, in most cases, disturb the natural ability of tidal wetlands to reduce flood damage and adversely affect the public health and welfare; that such loss or despoliation will substantially reduce the capacity of such wetlands to absorb silt and will thus result in the increased silting of channels and harbor areas to the detriment of free navigation. Therefore, it is declared to be the public policy of this state to preserve the wetlands and to prevent the despoliation and destruction thereof.

(1969, P.A. 695, S. 2.)

History: Sec. 22-7h transferred to Sec. 22a-28 in 1972.