

**From:** Harry Heller <hheller@hellermccoy.com>  
**Sent:** Wednesday, April 17, 2024 1:38 PM  
**To:** Robert Avena <RAvena@sswbgg.com>  
**Cc:** Peter Gardner <dieter.gardner@yahoo.com>; Mark K. Branse <branse@halloransage.com>  
**Subject:** Avery Brook Homes, LLC

EXHIBIT #10  
Received  
from  
Attorney  
Avena,  
4/18/24  
via email

Good Afternoon Rob:

I am writing this memorandum as a follow-up to our conversation of Wednesday, April 10, 2024 concerning the affordable housing resubdivision application of Avery Brook Homes, LLC that has been submitted to the Town of Ledyard Planning and Zoning Commission for consideration. As discussed, no contemporaneous application was filed with the Town of Ledyard Inland Wetlands and Watercourses Commission; and, for the reasons hereinafter set forth, it is my opinion that there is no jurisdictional basis for the municipal Inland Wetlands and Watercourses Commission to review and/or evaluate this application.

For context, I am forwarding herewith a print of Sheet 2 of 8 of the resubdivision plan entitled "Plan Showing Resubdivision Property Of Avery Brook Homes LLC 96, 98 & 100 Stoddards Wharf Road A.K.A. Connecticut Route 214 Ledyard, Connecticut Scales As Shown March 2024" prepared by Dieter & Gardner. The resubdivision application proposes the resubdivision of three existing approved building lots into eighteen proposed lots which will be accessed by a proposed municipal street designated as "Avery Court" on the resubdivision plan. In reviewing the attached plan, please note that Avery Brook Homes, LLC also owns property abutting the property proposed for resubdivision to both the east and the north (the "Abutting Property"). There are regulated inland wetlands located both on the Abutting Property as well as other property owned by the City of Groton Utilities located easterly and northerly of the Abutting Property. No portion of the property proposed for resubdivision is located within one hundred (100') feet from any wetland or watercourse located either on the Abutting Property or on the City of Groton property. There are no wetlands located on the property which is the subject of the resubdivision application.

Connecticut General Statutes §8-26(e) provides, in pertinent part, "If an application involves land regulated as an inland wetland or watercourse under the provisions of Chapter 440, the applicant shall submit an application to the agency responsible for the administration of the inland wetland regulations no later than the date the application is filed for the subdivision or resubdivision." The subject application does not involve land regulated as an inland wetland or watercourse. There is no regulated resource located on the property being subdivided. Therefore, no subdivision review pursuant to the provisions of §8-26(e) is required in conjunction with this application.

Therefore, any regulatory authority that the municipal Inland Wetlands and Watercourses Commission may have with respect to this application must be derived from the Wetland Regulations themselves. The municipal Wetland Regulations require a permit to conduct a regulated activity occurring on any property within the jurisdictional limits of the Town of Ledyard.

It is a fundamental tenet of Connecticut administrative law that an administrative agency cannot regulate activities without first legislatively enacting regulations that define the parameters of both the activities to be regulated and the manner in which those activities can be regulated. Originally, by judicial interpretation (*Aaron v. Conservation Commission*) and thereafter, by statute, municipal wetland agencies have been granted authority to regulate activities occurring exterior to the boundaries of inland wetlands and watercourses; provided, however, that they enact a regulatory framework authorizing and defining

such regulation. This scope of regulation differs from the regulation of activities occurring within wetland and watercourses proper since municipal wetland agencies are required by the enabling legislation (Chapter 440 of the Connecticut General Statutes) to regulate all activities occurring within inland wetlands and watercourses other than activities permitted by right pursuant to the provisions of C.G.S. §22a-40.

Our review of the Inland Wetlands and Watercourses Regulations (the “Regulations”) of the Town of Ledyard evidences the fact that the Wetland Agency, in its legislative capacity, has adopted regulations enabling it to regulate activities occurring both in inland wetlands and watercourses and in upland review areas located within one hundred (100’) feet of the boundaries of a wetland or watercourse, but nothing further.

In conducting our analysis, we look first to the definition of “regulated activity” as defined in Section 2.1 of the Regulations which provides:

“‘Regulated Activity’ means any operation within or use of a wetland or water course involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or water courses, or any other activity which may impact or effect the wetlands, but shall not include the specified activities in Section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within one hundred feet, measured horizontally from the boundary of any wetland or water course, is a regulated activity.”

The definition of a Regulated Activity is silent as to activities occurring beyond the limits of the one hundred (100’) foot upland review area. In dealing with the regulatory authority of a wetland agency to regulate activities occurring exterior to the wetland or watercourse itself, the Connecticut Appellate Court, in *Prestige Builders, LLC v. Inland Wetlands Commission of the City of Ansonia et al* 79 Conn. App. 710 (2003), framed the issue under consideration as follows:

“The dispositive issue in this appeal is whether the commission can exercise jurisdiction over activities that do not occur within or make use of an inland wetland or watercourse and where the commission has not promulgated regulations granting it authority to regulate upland review areas. We conclude that the commission cannot do so, and, accordingly, reverse the judgment of the trial court.” The Appellate Court, notationally, stated “The fact that the legislature did not include in its definition of “regulated activity”, “wetland” or “watercourses” any reference to upland review area demonstrates that the regulation of such areas is not mandatory, but left to the discretion of local commissions if they determine that such regulations are necessary to protect and to preserve inland wetlands and watercourses ... The conclusion that a commission, under Section 22a-42a(f), must first enact a formal regulation to exercise its authority over upland review areas is consistent with our case law.” Finally the Appellate Court stated “We therefore conclude that neither §22a-42a(f) nor our case law allows a commission to exercise its authority over activities in upland review areas without first having enacted a regulation governing such areas. Municipal land use agencies have occasionally attempted to regulate land use before passing regulations. Such action has consistently been overturned by the Courts.”

As stated previously, Avery Brook Homes, LLC is proposing no activity in an upland review area as defined in the Ledyard Wetland Regulations in conjunction with its resubdivision initiative. As per our discussion, activities of the Planner’s concern in conjunction with this resubdivision application are occurring exterior

to the boundary of the upland review area. While *Prestige Builders* specifically adjudicated interests in the City of Ansonia in which the municipal wetland agency had not enacted regulations to regulate activities occurring in upland review areas, the principles enunciated therein are the same under the present factual situation. A similar factual situation was adjudicated in the matter of *Diamond 67, LLC et al v. Vernon Inland Wetlands Commission* 2007 WL 2035137 (2007). In *Diamond 67*, the Court stated:

“Thus, in the present case, it is undisputed that the commission’s jurisdiction was triggered by the proposed regrading of the 6150 square feet of the site falling within the seventy-five-foot upland review area. To the extent that this activity could adversely impact watercourses, the commission acted within its statutory and regulatory authority when it considered the potential impacts of the stormwater management system as the record reveals that this 6150 square feet of land was to be graded to direct runoff into the system. ... This system, along with the surface flow and infiltration measures, was designed to ameliorate the impact of potential contaminants associated with runoff from the creation of impervious surfaces on the site, and was properly within the scope of the commission’s review. The regulations, however, do not contain an express provision that would have enabled the commission to regulate upland activities occurring entirely outside of a wetland, watercourse or its seventy-five-foot upland review area. Thus, as the record discloses that neither the septic system nor its leaching field are within a wetland, watercourse or its seventy-five-foot upland review area, the commission lacked authority under both §22a-42a(f) and its own regulations to consider the potential impacts associated with the site’s septic system. ... Moreover, as the commission’s authority to consider whether a proposed activity would adversely impact a wetland or watercourse is derived from a statutory provision, even if the statements made by the plaintiffs’ counsel during the administrative hearings could be construed as a concession, a party cannot consent to the regulation of activity that is not within the commission’s jurisdiction.”

Therefore, a review of the definition of a “Regulated Activity” as contained in the Ledyard Wetland Regulations, is warranted in order to determine whether or not the scope of the definition authorizes the regulation of activities occurring both exterior to the wetland or watercourse boundary and to the defined upland review area surrounding the regulated resource.

A wetland regulation is a local legislative enactment, and in its interpretation the question is the intent of the legislative body as found from the words employed in the regulation itself. *Fox v. Zoning Board of Appeals* 146 Conn. 70, 73 (1958) The words employed are to be interpreted in their natural and usual meaning. *Lawrence v. Zoning Board of Appeals* 158 Conn. 509, 511 (1969). Utilizing these principles, we analyzed the definition of “Regulated Activity” as adopted by the Ledyard Inland Wetlands and Watercourses Commission in its legislative capacity.

The definition itself incorporates two concepts of regulatory authority, segregated between the first and second sentences of the definition. The first sentence defines any activity within or use of a wetland or watercourse as an activity invoking the regulatory jurisdiction of the wetland agency. The language contained therein, specifically “... involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or water courses or any other activity which may impact or effect the wetlands ...” is illustrative of the types of activities which may be occurring within a wetland or watercourse and which are subject to the regulatory authority of the municipal wetlands agency. However, that descriptive language does not broaden the regulatory predicate of the first sentence of the definition that provides that the operation or use must be occurring within a wetland or

watercourse. The second sentence of the definition grants regulatory authority to the municipal wetlands agency over certain enumerated activities occurring within one hundred feet, measured horizontally, from the boundary of a wetland or watercourse in the Town of Ledyard (i.e. the defined upland review area). There is no language either in the definition of a “Regulated Activity” or in any other provision of the Ledyard Wetland Regulations which creates a regulatory framework for the consideration or regulation of activities or uses occurring exterior to the upland review area whether or not those activities may impact wetlands or watercourses.

As enunciated in *Queach Corporation et al v. Inland Wetlands Commission of the Town of Branford et al* 258 Conn. 178 (2001) and other appellate level decisions in the State of Connecticut, the scope of the enabling legislation for the regulation of activities or uses affecting inland wetlands or watercourses is broad enough to enable municipal wetland agencies to promulgate regulations regulating activities or uses affecting wetlands and watercourses wherever they may occur. However, with respect to activities and uses or land exterior to the upland review area, the Ledyard Wetland Agency, in its legislative capacity, has failed to do so.

To highlight the regulatory framework required to authorize wetland agency regulation of activities occurring exterior to an upland review area, I am forwarding herewith copies of the applicable provisions of the Ledyard, North Stonington, Preston, Montville, Stonington, Waterford and East Lyme Inland Wetlands and Watercourses Regulations. In reviewing the same, it becomes obvious that the Town of Ledyard, North Stonington and Preston Inland Wetlands and Watercourses Commissions, acting in their legislative authority, have made a legislative decision not to regulate activities occurring exterior to the upland review areas around wetlands and watercourses.

To the contrary, while utilizing different language, it is also clear that the Montville, Stonington, Waterford and East Lyme Inland Wetlands and Watercourses Commissions have adopted regulations which create a regulatory framework allowing the municipal wetland agency in those towns to regulate activities occurring exterior to the upland review area if they are likely to have an adverse impact on inland wetlands and watercourses. In particular, I call your attention to the following language:

#### **Montville**

“Regulated activities also include any activity ... regardless of how far away from the wetland or watercourse the activity occurs, or whether or not the wetland or watercourse is on the applicant’s property.”

#### **Stonington**

“At its discretion, the agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area may have an adverse impact on wetland or watercourse and is a regulated activity.”

#### **Waterford**

“The Commission may rule that any other activity located in such upland review areas or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.”

## East Lyme

“The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.”

For the reasons stated herein, Avery Brook Homes, LLC will not file an application with the Ledyard Inland Wetlands and Watercourses Commission in conjunction with its proposed activities to develop the Avery Brook Affordable Housing Development. This decision has been made to the fact that (i) no subdivision review pursuant to the provisions of §8-26 of the Connecticut General Statutes is required with respect to this application and (ii) the Ledyard Inland Wetlands and Watercourses Commission has not adopted regulations authorizing it to regulate any activities or uses occurring in conjunction with the development of this project.

Finally, it is my understanding that the municipal planner has, of her own accord, made a determination to forward the application of Avery Brook Homes, LLC to the Town of Ledyard Inland Wetlands and Watercourses Agency for a determination of jurisdiction without its consent or participation. As stated above, the application submitted by Avery Brook Homes, LLC to the Town of Ledyard Planning and Zoning Commission contains no factual predicate for the invocation of wetland agency jurisdiction either under Chapter 126 or Chapter 440 of the Connecticut General Statutes (or, for that matter, under the Inland Wetlands and Watercourses Regulations adopted by the Inland Wetlands and Watercourses Commission). Avery Brook Homes, LLC asserts that neither the municipal planner nor the Planning and Zoning Commission has authority to make such referral or file such request. The case of *Richards v. Planning and Zoning Commission of the Town of Wilton* 170 Conn 318 (1976) adjudicated the standing of a party to file a land use application. In that case, the Wilton Board of Education applied to build a storage area for school buses, a bus maintenance facility and equipment storage facility, even though it did not own the land which was the subject of the land use application. In that matter, the land was owned by the Town of Wilton and designated for municipal use. The issue presented to the Supreme Court for adjudication was framed as follows:

“The issue, then, is whether the Wilton board of education, although not the title-holder to the property, possesses a sufficient interest in it and in the granting of the special permit to constitute the legal interest required to make the present application... Whether the applicant is in control of the property, whether he is in possession or has a present or future right to possession, whether the use applied for is consistent with the applicant's interest in the property, and the extent of the interest of other persons in the same property, are all relevant considerations in making that determination.”

In the instant situation, neither the municipal planner nor the Planning and Zoning Commission has any control of the property, nor is it in possession of it either presently or in the future, and their interests in the property are not consistent with the interest of Avery Brook Homes, LLC. Neither the municipal planner nor the Planning and Zoning Commission has standing to initiate any administrative proceedings before the municipal Inland Wetlands and Watercourses Commission or any other public agency. See, also, *Gladysz v. The Planning and Zoning Commission of the Town of Plainville* 256 Conn 249 (2001).

Should you wish to discuss our opinion, please feel free to call me.

Harry

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APPROVED BY THE LANDOWNERS: ALL SIGNATURES ARE TO BE COMPLETED BY THE LANDOWNERS. THE SIGNATURES OF THE LANDOWNERS ARE TO BE COMPLETED BY THE LANDOWNERS. THE SIGNATURES OF THE LANDOWNERS ARE TO BE COMPLETED BY THE LANDOWNERS.

APPROVED BY THE CITY OF NEWTON: ALL SIGNATURES ARE TO BE COMPLETED BY THE CITY OF NEWTON. THE SIGNATURES OF THE CITY OF NEWTON ARE TO BE COMPLETED BY THE CITY OF NEWTON. THE SIGNATURES OF THE CITY OF NEWTON ARE TO BE COMPLETED BY THE CITY OF NEWTON.

APPROVED BY THE BOARD OF SUPERVISORS: ALL SIGNATURES ARE TO BE COMPLETED BY THE BOARD OF SUPERVISORS. THE SIGNATURES OF THE BOARD OF SUPERVISORS ARE TO BE COMPLETED BY THE BOARD OF SUPERVISORS. THE SIGNATURES OF THE BOARD OF SUPERVISORS ARE TO BE COMPLETED BY THE BOARD OF SUPERVISORS.

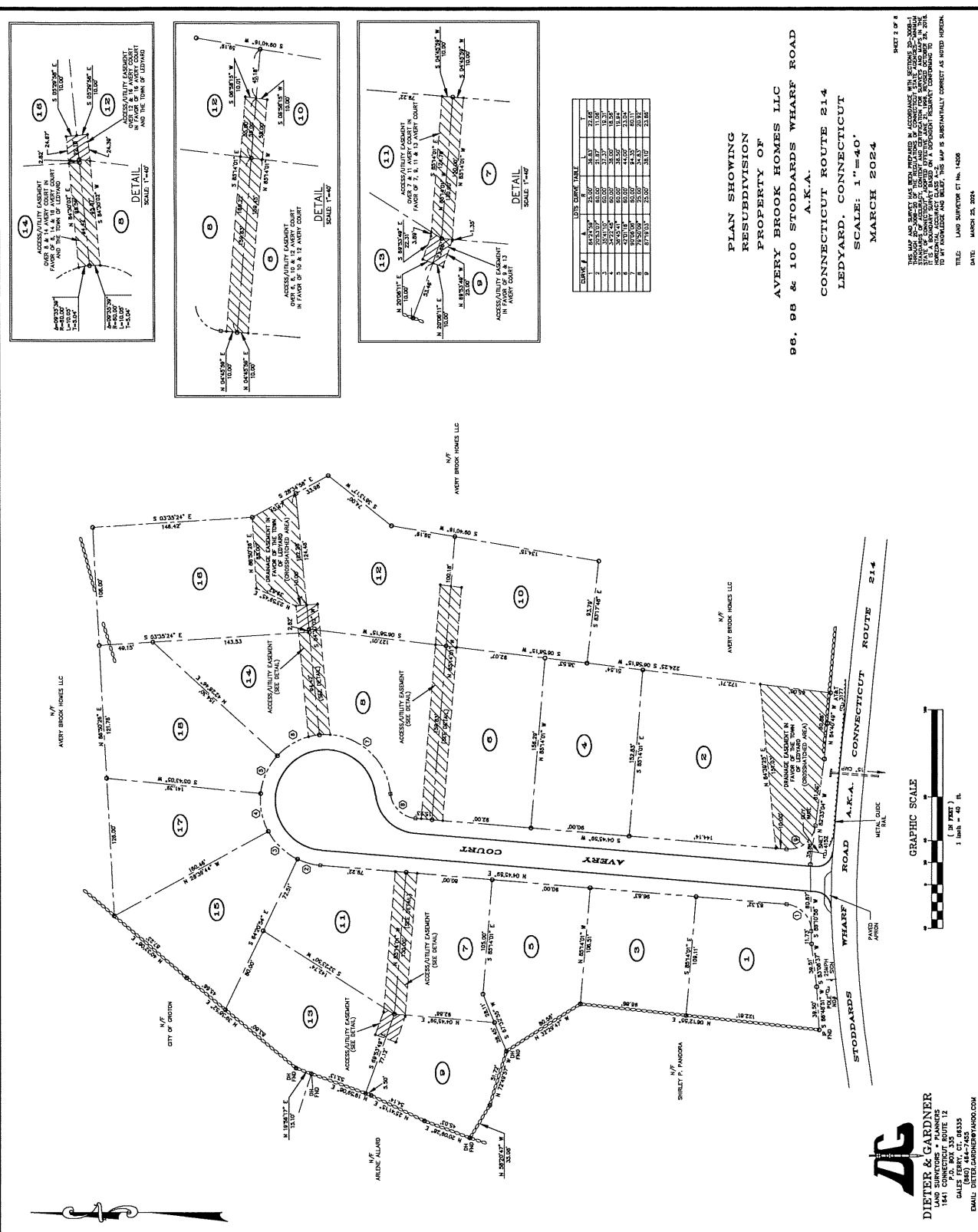
STREET ADDRESS	TOTAL AREA
1	15.21 ACRES
2	15.21 ACRES
3	15.21 ACRES
4	15.21 ACRES
5	15.21 ACRES
6	15.21 ACRES
7	15.21 ACRES
8	15.21 ACRES
9	15.21 ACRES
10	15.21 ACRES
11	15.21 ACRES
12	15.21 ACRES
13	15.21 ACRES
14	15.21 ACRES
15	15.21 ACRES
16	15.21 ACRES
17	15.21 ACRES
18	15.21 ACRES

LEGEND

- STONE WALL
- PROPERTY LINE
- STREET LANE
- DRILL HOLE FOUND
- IRON PIPE FOUND
- DRILL HOLE LEFT
- WARRANT FOR DRILL
- HOLE TO BE SET
- CURVE TABLE NUMBER
- UTILITY POLE
- ACCESS/UTILITY EASEMENT
- STREET ADDRESS

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THIS MAP AND SPECIFICATIONS ARE PREPARED BY THE ENGINEER AND ARCHITECT FOR THE LANDOWNERS. THE LANDOWNERS ARE TO BE COMPLETED BY THE LANDOWNERS. THE LANDOWNERS ARE TO BE COMPLETED BY THE LANDOWNERS.

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Montville YES

- t. **"Nurseries"** means places where plants are grown for sale, transplanting, or experimentation.
- u. **"Permit"** See License
- v. **"Permittee"** means the person to whom a permit has been issued.
- w. **"Person"** means any person, firm, partnership, association, corporation, company, limited liability company, organization or legal entity of any kind, including municipal corporations, governmental agencies, or subdivisions thereof.
- x. **"Pollution"** means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with the waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing, or excavation activity.
- y. **"Prudent"** means economically and otherwise reasonable in light of social benefits to be derived from the proposed Regulated Activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.
- z. **"Regulated Activity"** A regulated activity is any action that can impact a wetland or watercourse, that is not permitted by right. This includes any activity that occurs in or within 50 feet of the wetland or watercourse. Regulated activities also include any activity that causes or may cause an impact to the wetland or watercourse including, but not limited to, drainage, discharges that may include oil, silt, or sewage, or which direct or limit water flow into the wetland or watercourse - regardless of how far away from the wetland or watercourse the activity occurs, or whether or not the wetland or watercourse is on the applicants property.
- aa. **"Regulated Area"** means any inland wetland or watercourse, upland review area, and/or non-wetland or non-watercourse area which proposed activities are likely to impact or effect wetlands or watercourses as defined in these Regulations, including without limitation in Subsection 2.1(z)
- bb. **"Remove"** includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, clear-cut timber, bulldoze, dragline or blast.
- cc. **"Rendering unclean or impure"** means any alteration of the physical, chemical, or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.



STONINGTON - YES

INLAND WETLANDS AND WATERCOURSE REGULATIONS  
OF THE TOWN OF STONINGTON

Disturb the Natural and Indigenous Character of the Wetland or Watercourse. To alter the inland wetlands and watercourses by reason of removal or deposition of material, clearing the land, altering or obstructing water flow, or pollution.

Essential to the Farming Operation. That the proposed activity is necessary and indispensable to sustain farming activities on an existing farm.

Farming. Use of land for the growing of crops, raising of livestock or other agricultural use.

Feasible. The ability to be constructed or implemented consistent with sound engineering principles.

Marshes. Areas with soils that exhibit aquic (saturated) moisture regimes and are distinguished by the absence of trees and shrubs and the dominance of soft-stemmed herbaceous plants. The water table in marshes is at or above the ground surface throughout the year and areas of open water six inches or more in depth are common, but seasonal water table fluctuations are encountered.

Material. Any substance, solid or liquid, organic or inorganic, including but not limited to: soil, sediment, aggregate, land, gravel, clay, bog, peat, mud, debris, sand, refuse or waste.

Municipality. The Town of Stonington.

Nurseries. Land used for propagating trees, shrubs or other plants for transplanting, sale, or for use as stock for grafting.

Permit. The whole or any part of any license, certificate or approval or similar form of permission which may be required of any person by the provisions of these Regulations and the Act or other municipal, state and federal law.

Permittee. The person to whom a permit has been issued.

Person. Any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

Pollution. Harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer, or otherwise, so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.

Prudent. Economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

Regulated Activity. Any operation within or use of a wetland or watercourse involving

INLAND WETLANDS AND WATERCOURSE REGULATIONS  
OF THE TOWN OF STONINGTON

removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, or within 100 feet of any wetland or watercourse, but shall not include the specified activities in Section 4 of these Regulations. Furthermore, any excavating or deposition of material, construction or clear cutting of trees or other activity which may alter, impact, or pollute a wetland or watercourse is a regulated activity. At its discretion, the agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area may have an adverse impact on wetland or watercourse and is a regulated activity.

Regulated Area. Any wetlands or watercourses as defined in these Regulations, and a horizontal distance of 100 feet from the edge of any wetland or watercourse.

Remove. Includes, but shall not be limited to: drain, excavate, mine, dig, dredge, suck, grub, clear cut timber, bulldoze, dragline or blast.

Rendering Unclean or Impure. Any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to: change in odor, color, turbidity or taste.

Significant Impact Activity. Any activity, including, but not limited to, the following activities which may have a major effect or significant impact on the area for which an application has been filed or on another part of the inland wetland or watercourse system:

1. Any activity involving deposition or removal of material, which will or may have a major effect or significant impact on the regulated area or on another part of the inland wetland or watercourse system.
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 desirable fisheries, wildlife, or other biological life; 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 a substantial diminution of flow of a natural watercourse or groundwater levels of the regulated area.
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. An individual duly qualified in accordance with standards set by the Federal Office of Personnel Management.

Swamps. Areas with soils that exhibit aquic (saturated) moisture regimes and are distinguished by the dominance of wetland trees and shrubs.

Submerged lands. Lands which are inundated by water on a seasonal or more frequent

WATERFORD YES

## SECTION VI - 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 Waterford Conservation Commission.
- 6.2 The Commission shall regulate any operation within, or use of, a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration, discharge, pollution, or clearing of such wetlands or watercourse, or any other activity outside of a wetland or watercourse which is likely to impact the wetlands or watercourse, except as otherwise indicated in Section 4 of these Regulations.
- 6.3 Upland Review Areas
- Any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of stormwater on land within 100 feet measured horizontally from the boundary of any wetland or watercourse is subject to review by the Conservation Commission or its designated agent for determination of regulated activities.
- The Commission may rule that any other activity located in such upland review areas or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.
- 6.4 Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Waterford Conservation Commission, 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.

EAST LYME

YES

**"Material"** means any substance, solid or liquid, organic or inorganic, including but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse or waste.

**"Municipality"** means the Town of East Lyme.

**"Nurseries"** means places where plants are grown for sale, transplanting, or experimentation.

**"Permit"** see license

**"Permittee"** means the person to whom a license has been issued.

**"Person"** means any person, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

**"Pollution"** means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.

**"Prudent"** means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

**"Regulated activity"** means any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in Section 4 of these regulations. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging storm water on the land within 300-feet measured horizontally from the boundary of any wetland or watercourse is a regulated activity. The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

**"Remove"** includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.

**"Rendering unclean or impure"** means any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

**"Significant impact"** means any activity, including, but not limited to, the following activities which may have a major effect:

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.

## 2.0 DEFINITIONS

- 2.1 Certain words, terms and phases used in these Regulations shall have the meanings presented in this section. All words used in the present tense include the future tense, and the word "used" shall be deemed to include "designed, intended, or arranged to be used." Words not defined in this section shall have commonly accepted meanings.
- 2.1.1 "**Commission**" means the Inland Wetlands and Watercourses Commission of the Town of Preston, Connecticut.
- 2.1.2 "**Deposit**" includes, but shall not be limited to fill, grade, dump, place, discharge or emit.
- 2.1.3 "**Discharge**" means the emission of any water, substance or material into the waters of the Town of Preston, whether or not such substance causes pollution.
- 2.1.4 "**Intervenor**" shall have the same meaning and shall satisfy the same requirements as set forth in the Connecticut General Statutes 22a-19. Such person must file verified pleading containing specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction of the public trust of a wetland or watercourse resource within the jurisdiction of this Commission. (App. 07/21/15; Eff. 08/15/15)
- 2.1.5 "**Material**" means any substance, solid or liquid, organic or inorganic, including, but not limited to, soil sediment, aggregate, land gravel, clay, bog, mud, debris, sand, refuse or waste.
- 2.1.6 "**Person**" means any person, firm, partnership, association, corporation, limited liability company, organization or legal entity of any kind including municipal corporations, governmental agencies or subdivision thereof. (Rev. 08/17/10; Eff. 09/01/10)
- 2.1.7 "**Pollution**" means harmful thermal effect or the contamination or rendering unclean or impure any waters of the Town of Preston by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters.
- 2.1.8 "**Regulated Activity**" means any operation within or use of a wetland or watercourse or regulated area, (05/18/04) involving removal or deposition of material or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, or regulated area (05/18/04) but shall not include the specified activities in Section 3 of these Regulations.

- 2.1.9 **"Regulated Area"** means any wetland or watercourse, or any area within one hundred feet (100') of a wetland or watercourse as defined in these Regulations wherein a regulated activity is proposed and such activity is likely to impact or affect the wetlands or watercourses. (Rev. 08/17/10; Eff. 09/01/10) (Rev. 08/16/11; Eff. 09/06/11) (Rev. 10/15/13; 11/05/13)
- 2.1.10 **"Remove"** includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.
- 2.1.11 **"Render Unclean or Impure"** means any alteration of the physical, chemical, or biological properties of any of the waters of the Town of Preston including, but not limited to, change in odor, color, turbidity or taste.
- 2.1.12 **"Significant Impact"**, as referred to in Section 6.6 of these Regulations means:
- a. Any activity involving a deposition or removal of material which will or may have a substantial effect on the regulated area or on another part of the inland wetlands or watercourses system, or any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system, or;
  - b. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to support desirable biological life, prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space or perform other functions, or;
  - c. Any activity which causes, is likely to cause, or has the potential to cause substantial turbidity, siltation or sedimentation in a wetlands or watercourse, or; (10/21/97)
  - d. Any activity which causes, or likely to cause, or has the potential to cause substantial turbidity, siltation, or sedimentation in a wetlands or watercourse or; (04/22/2020)
  - e. Any activity which causes or has the potential to cause pollution of a wetland or watercourse, or;
  - f. Any activity which creates conditions which may adversely affect the health, welfare, and safety of any individual or the community, or;
  - g. Any activity which destroys unique wetland or watercourse areas, or such areas having demonstrable, scientific or educational value, or;
  - h. Any activity in the regulated area which is likely to have an impact or affect upon the physical characteristics of the wetlands or watercourses. (Rev. 08/17/10; Eff. 09/01/10)



- z. **"MATERIAL"** means any substance, solid or liquid, organic or inorganic, including but not limited to: soil, sediment, aggregate, land, gravel, clay, bog, mud, peat, debris, sand, refuse, or waste.
- aa. **"MUNICIPALITY"** means the Town of North Stonington, New London County, Connecticut.
- bb. **"NURSERIES"** means places where plants are grown for sale, transplanting or experimentation.
- cc. **"PERMIT"** means the whole or any part of any license, certificate of approval or similar form of permission that may be required of any person under the provisions of these Regulations.
- dd. **"PERMITTEE"** means the person to whom a permit has been issued.
- ee. **"PERSON"** means any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.
- ff. **"POLLUTION"** means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the State by reason of erosion, or by any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.
- gg. **"PRUDENT"** means economically and otherwise reasonable in the light of the social benefits to be derived from the proposed Regulated Activity, provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.
- hh. **"REGULATED ACTIVITY"** means any operation within or use affecting a wetland or watercourse by removal or deposition of material, or any obstruction, construction, alteration, or pollution of such wetlands or watercourses, whether or not they appear on the official Inland Wetlands and Watercourses Map of the Town of North Stonington, except as may be provided by State law or by Section 4 of these Regulations.
- ii. **"REGULATED AREA"** means any inland wetland or watercourse as defined in these Regulations, whether or not they appear on the official Inland Wetlands and Watercourses Map of the Town of North Stonington, as well as land within 100 feet in a horizontal direction of any wetland or watercourse.
- jj. **"REMOVE"** includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, grub, clear cut timber, bulldoze, dragline or blast.
- kk. **"RENDERING UNCLEAN OR IMPURE"** means any alteration of the physical, chemical or biological properties of any waters of the State, including, but not limited to, change in odor, color, turbidity or taste.

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"Preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the land, including, but not limited to, the state or any other political subdivision of the state, or in any order of taking such land whose purpose is to preserve historically significant structures or sites.

"Prudent" means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided a mere showing of expense will not necessarily mean an alternative is imprudent.

"Regulated activity" means any operation within or use of a wetland or water course involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or water courses, or any other activity which may impact or effect the wetlands, but shall not include the specified activities in Section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within 100 feet, measured horizontally from the boundary of any wetland or water course, is a regulated activity.

"Remove" includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.

"Rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

"Significant impact" means any activity, including, but not limited to, the following activities which may have a major effect as determined by the IWWC.

1. Any activity involving deposition or removal of material which will or may have a substantial effect on the wetland or water course or on wetlands or water courses 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 water course system.
3. Any activity which substantially diminishes the natural capacity of an inland wetland or water course 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 water course.
5. Any activity which causes substantial diminution of flow of a natural water course or groundwater levels of the wetland or water course.
6. Any activity which is likely to cause or has the potential to cause pollution of a wetland or water course.
7. Any activity which damages or destroys unique wetland or water course areas or