

**SPECIAL JOINT MEETING OF THE
SALISBURY INLAND WETLANDS & WATERCOURSES COMMISSION
AND
PLANNING & ZONING COMMISSION
Friday, January 7, 2022 – 8:30 AM**

Members Present:

Vivian Garfein (Chair)
Peter Neely (Vice Chair)
Dr. Michael Klemens (Commissioner)
Cathy Shyer (Commissioner)
Debra Allee (Commissioner)
Maria Grace (Commissioner)

Staff Present:

Abby Conroy, Land Use Administrator (LUA)
Alison Forman, Land Use Assistant

Members Absent:

Brief Items and Announcements

1. Call to Order

Chair Garfein read the special meeting announcement and called the meeting to order at 8:33 am.

2. Attendance

It was acknowledged that all members were in attendance along with land use office staff LUA Abby Conroy and Alison Forman who served as the Recording Secretary.

3. Minutes from 11/19/2021

Line 82 - duplication of the word "this".

Motion: to approve the minutes of 11/19/2021 as amended

Made by Neely, seconded by Klemens.

Vote 6-0-0

4. Minutes from 12/01/2021

Chair Garfein noted a correction was needed on page 2 line 54 "confidence" should be replaced with the word "competent".

Motion: to approve the minutes of 11/19/2021 as amended

Made by Klemens, seconded by Allee

Vote 6-0-0

5. Minutes from 12/10/2021- *pending*

Pending Items

6. Establish Definitions - Jurisdictions: "Setback", "Upland Review Area", "Buffer", "Regulated Area"

Chair Garfein began the discussion with the definition for Upland Review Area (URA). She read the proposed definition: "Upland Review Area means an area of land outside but adjacent to inland wetlands or watercourses within which the Commission may regulate certain activities if it determines

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42 those activities will have a detrimental / adverse impact on an inland wetland or watercourse.
43 Commissioner Klemens suggested replacing “mean” with “is” and adding the term “delineated” before
44 “inland wetlands”. He also mentioned that there are two parts that need to be addressed 1) defining it
45 as a measurable area and 2) within that area the Commission can regulate activities. Commissioner
46 Shyer suggested removing the term “certain”. It was explained that the “regulated activities” will be
47 defined separately, and the objective is to define only the term URA.
48

49 The Commission established the definition should read:

50 ***Upland Review Area*** is an area of land outside but adjacent to delineated inland wetlands or
51 watercourses in which the Commission may regulate activities.
52

53 The Commission continued with buffers. The draft definition: “Wetland and Watercourse Buffer area is
54 an area of undisturbed vegetation bordering a wetland, waterbody or watercourse either naturally
55 occurring or planted as mitigation. The buffer may be comprised of a combination of trees, shrubs,
56 bushes, brush and herbaceous vegetation”. Commissioner Allee advised using the term “composed”
57 instead of “comprised” as it is a grammatical error. It was recommended to eliminate “combination” as
58 it infers that all vegetation types are required to be present and can be interpreted as exclusionary if
59 not all suggested vegetation types are existing. Commissioner Klemens mentioned that shrubs, bushes,
60 and brush are all considered woody vegetation and should be put into parenthesis after the latter. He
61 also specified the importance of dead vegetation and recommended omitting the term “native
62 species” as all vegetation, even invasive is beneficial at providing a wetland/watercourse buffer.
63 Commissioner Neely suggested removing “waterbody” as the regulations define wetlands and
64 watercourse to include all the necessary limnological classifications.
65

66 The Commission agreed on a revised definition:

67 ***Wetland and Watercourse Buffer*** is an area of undisturbed vegetation that borders a delineated
68 wetland or watercourse that is either naturally occurring or planted as mitigation. The buffer may be
69 composed of a combination of trees, woody vegetation (shrubs, bushes, brush), and herbaceous
70 vegetation.
71

72 7. “Declaratory Ruling” / “As-Of-Right Activities” / “*de minimis*”

73 Chair Garfein specified this was a continuation of a previous discussion regarding *de minimis* activities.
74 She read the proposed definition. The Chair described that the definition of “regulated activity” could
75 include a list of exemptions and processes, providing residents with a clear understanding for
76 allowed/permitted activities that do not require an application to the Inland Wetlands & Watercourses
77 Commission (IWWC). Commissioner Klemens noted that with the Planning & Zoning Commission (PZC)
78 if a use is not specified in the regulations, it is considered prohibited. He suggested that the list include
79 activities that are considered routine maintenance. The Commissioners agreed to add routine
80 maintenance of structures within the URA but decided to consider dock maintenance in the water as a
81 regulated activity.
82

83 LUA Conroy identified that the items on the list are both within the URA (not in a wetland) and 2)
84 pertain to existing features and structures. She suggested that corresponding language be included in
85 the introductory statement with the specific activities identified in a bulleted list.

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86 The Commission had a wide-ranging discussion concerning items to include or exclude from the list.
87 LUA Conroy explained that emergency repairs to water supply pipes and failed septic might constitute
88 exempt activities as they are time-sensitive. Staff could issue a friendly correction order or agent
89 approval rather than requiring a request for declaratory ruling prior to conducting the repairs. The
90 Commission discussed the need for both public feedback and legal counsel on this matter but would
91 like to refine it further. They reached a consensus to revisit this topic at a later meeting.
92

93 ***de minimis Activities*** are defined as those routine activities occurring in the upland review area that
94 have NEGLIGIBLE impact on the inland wetlands or watercourse. These activities do not require
95 application to the IWWC.

96 *Examples of de minimis activities are:*

- 97 • *Mowing an existing lawn.*
- 98 • *Leaf raking of an existing lawn so long as the leaves are not blown into or deposited in the*
99 *wetland or watercourse.*
- 100 • *Weeding, planting, or mulching of existing gardens.*
- 101 • *Care and maintenance of existing shrubs and trees including pruning and limbing.*
- 102 • *Removal of dead or dying trees that threaten structures or accessways (not including stump*
103 *grinding or grubbing).*
- 104 • *Maintenance and repair of structures including painting, roofing, cleaning, and septic pump out.*
- 105 • *Temporary storage of personal water dependent structures and equipment, including boats.*

106 *Specifically excluded are: activities that require earth moving and disturbance including driveways and*
107 *septic repairs. If uncertain about whether a proposed activity falls under the De Minimus provision,*
108 *contact the land-use administrator.*
109

110 It was advised that the PZC consider regulations for the temporary storage of water dependent
111 structures and equipment including boats adjacent to wetlands and watercourses.
112

113 At the Chair’s request, the Commission moved on to the topic of “regulated activity.” She explained
114 that the DEEP’s model regulations provided several ways to define these. LUA Conroy recommended
115 adding “except for those activities” referring to the *de minimis* activities. Chair Garfein explained the
116 resource-based approach to defining different types of wetlands. She requested that the Commission
117 hold off on considering the linear measurements to the resources at this time. Instead, she directed
118 the conversation to distinguishing the resources. The first resource type included the four major lakes
119 in Salisbury. She explained that this category overlaps with PZC’s Lake Protection Overlay District
120 (LPOD).
121

122 Commissioner Klemens requested that both Riga lakes be added to this category suggesting that the
123 PZC also consider adding them to the LPOD. The Chair recommended adding the Riga Lakes in after the
124 PZC has established LPOD for them. Commissioner Shyer agreed that the Riga Lakes need to be
125 addressed by the PZC.
126

127 The Chair explained that the second resource type would include any other watercourse and clarified
128 that the 150’ metric is an existing regulatory statement concerning septic systems. She continued to

129 the third resources type, the Housatonic River, the fourth the Salmon Kill, the fifth vernal pools, the
130 sixth calcareous fen and the seventh high gradient cold water streams.

131
132 The Chair asked the Commission if they felt that this approach would be agreeable. LUA Conroy
133 explained that floodplains are typically associated with the Housatonic River and the Salmon Kill but
134 smaller streams can also have them. She identified that the draft language reflects the IWWC's
135 inclination towards a resource-based approach to URAs and asked the Commission if these are the
136 resources that they want to define.

137
138 Commissioner Neely expressed concern that correlating the URA to the LPOD could be interpreted as
139 speculative. LUA Conroy explained that the PZC has identified the four lakes as regulated resources by
140 establishing the LPOD and that the proposal for the IWWC to treat them as a separate category was
141 logical. She also explained that on the lakes, the Ordinary High Watermark and the edge of wetland can
142 be significantly different. Commissioner Klemens suggested adding "or edge of wetland whichever is
143 greater" into the first category.

144
145 The Chair inquired if there were any guidance documents pertaining to the Housatonic River and the
146 Salmon Kill. LUA Conroy would send links to the maps for both floodplains and the Housatonic River
147 Corridors to the Commissioners for consideration. Commissioner Klemens suggested using the inner
148 corridor defined by the Housatonic Reiver Commission as it is a designated area that includes
149 floodplains. Chair Garfein suggested the Commissioners review the CACIWC document guidelines for
150 the URA regulations pages 1-5 for the next discussion. Commissioner Klemens noted the models used
151 in the document show the relationship between gradient and the width of the URA. This is of particular
152 importance for high gradient streams. He advocated avoiding formulaic approaches for delineation as
153 they can be vaguely interpreted. LUA Conroy informed the Commission that it was recommended by
154 consulting attorney Janet Brooks to avoid the term "erodible soils" and calculations associated with
155 slopes. Commissioner Klemens suggested that if high gradient streams are to be regulated, they need
156 to be mapped, so it is not left up to interpretation.

157 The Chair asked the Commissioners to consider how they would like to define "regulated activities"
158 and start to thinking about measurements for the next meeting.

159
160 8. Establish Definitions – "Cumulative Impacts", "Headwaters", "Calcareous Fen", "High Gradient
161 Cold Water Streams"

162 Chair Garfein informed the Commission that she requested that Commissioner Klemens draft
163 definitions for the following terms "Cumulative Impacts", "Headwaters", "Calcareous Fen" and, "High
164 Gradient Cold Water Streams". The Chair read the proposed definition.

165
166 ***Cumulative Impact*** is the impact on the environment that results from incremental impact of the action
167 when added to the other past, present, and reasonably foreseeable future actions.

168 Commissioner Klemens explained this as a standard definition used in ecological literature to examine
169 the many lesser impacts and collective consequences. Commissioner Shyer supported the concept
170 noting the cumulative impact she observes is mostly removal of vegetation and buffers around lakes.
171 Commissioner Klemens expressed that consideration of cumulative impacts must be based on scientific

172 facts and not speculation. It was recognized that this could be a useful method to incentivize buffers as
173 opposed to using them as a regulatory tool.

174
175 The Chair read the next definition.

176
177 **High Gradient Cold Water Streams** are a critical riparian resource in Salisbury. These streams have
178 their source on the Riga Plateau (Taconic Uplift). Originating from perched swamps and other high
179 elevation wetlands, they receive not only surface water, but also large amounts of subterranean
180 seepage that breaks out at various fissures in the bedrock, adding cold water to the streams as they
181 plunge over steep cliffs and boulders, almost 1000 feet to the valley floor. The most familiar of these is
182 Sage's Ravine on the Connecticut-Massachusetts state line. The DEEP (Klemens, et al 2021:174–175)
183 recommended a 300-foot forested buffer on each side of these streams.

184
185 The Chair informed the Commission that including these definitions in the regulations is very
186 informative and instructional providing residents with a better understanding of these resources. She
187 continued to read the subsequent proposed definitions.

188
189 **Calcareous fens** are a very rare type of wetland occurring at the intersection of limestone bedrock
190 glacial till deposits. In Salisbury, the underlying bedrock is metamorphosed limestone (often referred to
191 as marble) which is circum-neutral (=calcareous). Calcareous fens occur on the upper slope's (edges) of
192 larger wetlands, where they are fed by cold ground water breaking out of glacial terraces, which
193 coalesces into rivulets. The steady seepage of clean cold water creates a condition that supports a
194 unique assemble of plants, many of these are quite rare, as well as the Federally-threatened and State-
195 endangered bog turtle (*Glyptemys muhlenbergii*) which occurs in only three towns in Connecticut
196 (including Salisbury). Salisbury has several prime examples of sloping calcareous fens. Another type of
197 calcareous fen occurs on and adjacent to a floating bag mat in West Twin Lake.

198
199 **Classic vernal pools** are seasonal inundated temporary or semi-permanent depressional wetlands.
200 Because they dry up, they do not support breeding populations of fish; therefore they are prime
201 amphibian breeding habitats for a group of amphibians, termed vernal pool indicator/obligate species
202 that have evolved to exploit these habitats.

203
204 **Cryptic vernal pools** are areas of seasonally flooded areas in larger wetlands including riparian
205 floodplains. While more difficult to detect and map, these pools make up the majority of vernal pools.
206 Both classic and cryptic vernal pools are certified by the presence of indicator/obligate species. If either
207 type of vernal pool does not support indicator species, they are treated as wetlands. Therefore,
208 biological data are required to determine a vernal pool versus a wetland.

209 The Chair explained that the IWWC has considered adding a question on their application form which
210 asks the applicant to identify if they have any of these specific resources on their property. She
211 acknowledged that most residents will not know what these resources are and will, as a result need to
212 seek professional consultants to determine if they exist. She restated the importance of including these
213 definitions as they are not only educational but they also enable the IWWC to have the ability to
214 regulate them as specific resources which are critical or unique to this area. LUA Conroy advised
215 speaking to the Town attorney about adding the definitions. She explained that in the authorizing

216 statute there is a legislative finding which identifies the importance of resources. LUA Conroy
217 suggested asking the Town attorney if Salisbury can adopt their own legislative finding which outlines
218 why the specific resources are chosen and regulated the way they are. She suggested the definitions
219 could be summarized but that more detailed explanations could be included in a legislative finding.
220 Commissioner Klemens mentioned that although vernal pools are not unique to Salisbury, high
221 gradient cold water streams and fens are and climate change modeling highlights them as even more
222 critical.

223

224 9. Draft Land Use Complaint Form

225 The Commission reviewed the proposed changes to the complaint form including changing the name
226 to *Land Use Report Of Potential Violation*, eliminating the anonymous option, stating that drone
227 footage will not be excepted as evidence as suggested by consulting attorney Janet Brooks, and
228 including a disclaimer. Commissioner Klemens suggested adding that *"It is at the discretion of the Town
229 and the land use administrator to determine whether or not to pursue action on a complaint."* He also
230 recommended adding the language that *"anonymous complaints will not be accepted."* It was
231 discussed amongst the Commission whether to add drone over-flight footage to the *do not trespass*
232 clause. It was determined not to as courts continue to deliberate the use of drones and trespassing. It
233 was agreed that the use of publicly available overflight resources such as goggle earth imaging can be
234 accepted as evidence. LUA Conroy would like to add a disclaimer to the section of *Authorization To
235 Observe Potential Violations From Personal Property*. Commissioner Klemens advised investigating the
236 Town's liability for observing violations from property on which there is no pending application. It was
237 also suggested to add a priority of enforcement statement which ranks complaints in matter of
238 importance/concern where a 5 would require no further action and a 1 would be considered the
239 highest priority.

240

241 10. Organization of Topics & Tasks

242 The Chair requested tackling "regulated activities" at the next meeting including the measurements.
243 She recommended reviewing the CACIWC document guidelines for the URA regulations pages 1-5. LUA
244 Conroy would send the Commission members maps for both floodplains and the Housatonic River
245 Corridor as well as a link to the CACIWC document for review.

246

247 **Adjournment**

248

249 *Motion:* to adjourn the meeting at 10:36

250 Made by Shyer, seconded by Allee

251 Vote 6-0-0

252 Respectfully Submitted

253

254

255 Alison Forman

256 Land Use Assistant