

SPECIAL JOINT MEETING OF THE  
SALISBURY INLAND WETLANDS & WATERCOURSES COMMISSION  
AND  
PLANNING & ZONING COMMISSION  
THURSDAY, FEBRUARY 10, 2022 – 8:30AM

**Members Present:**

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

**Staff Present:**

Abby Conroy, Land Use Administrator  
Alison Forman, Land Use Assistant

**Brief Items and Announcements**

1. Call to Order. The meeting was called to order at 8:31am.
2. Attendance. Members present: V. Garfein, P. Neely, M. Klemens and M. Grace. (C. Shyer joined at 8:35am and D. Allee at 8:48am)
3. Minutes from 01/14/2022 – pending
4. Minutes from 01/21/2022 – pending
5. Minutes from 02/04/2022 – pending
6. Scheduling: Change from Friday 2/18 to Thursday, 2/17 and Friday 2/25.

**Pending Items**

7. Feedback from IWWC & PZC on Draft Land Use Report of Violation Form.  
V. Garfein reported that PZC Member Danella Schiffer recommended that the first paragraph be changed slightly; the suggested language is similar, but with a little softer introduction. M. Klemens did not like the last line of the introductory paragraph because of a co-mingling of concepts. A lengthy discussion of the exact wording of the draft document followed. V. Garfein read the revised draft language: “The Town of Salisbury and its Commissions have ordinances and regulations in place to protect Salisbury from adverse impact on its environment, public health, safety and general welfare of the community. It is not the intent of the Commissions, or in the interest of the Town, to have enforcement be used, as leverage, escalation or retaliation in unrelated private disputes. Where the Land Use Administrator has reason to suspect that the same may be a primary motivation for, or probable outcome from, any complaint, then the staff

38 shall proceed with extra caution and deliberation, with respect to such complaint as  
39 deemed to be consistent with the intent of the interests of the Town.”

40 **Enforcement is discretionary. The Land Use Administrator, in consultation with the**  
41 **appropriate Commission and town officials/personnel, will consider the following**  
42 **when determining whether enforcement action will be initiated:**

- 43 1. Violations of Town regulations that may pose immediate threat to the public health,  
44 safety, and general welfare of the community.  
45 2. Violations that are related to development projects that are in the construction  
46 phase.  
47 3. Enforcement programs that are initiated by the Town, Commission, and/or Land Use  
48 Administrator.  
49 4. Complaint-based enforcement.  
50 5. Complaints determined to be a private dispute.

51 Chair V. Garfein indicated that the language would be reviewed by the Attorneys. The  
52 rest of the draft form was discussed. The language relating to drone footage was  
53 removed. M. Klemens suggested a change in the language to include:  
54 “Disposition/Resolution.” He also suggested that there should be a signature of a  
55 Chairman on the form; all agreed. Complaint-based enforcement was discussed, as  
56 well. The draft form will be reviewed by Attorney Chuck Andres.

57 8. Definitions – (Review before being sent to the IWWC Attorney.)  
58 “Regulated Activity” and Upland Review Area (URA), discussion of content (not foot  
59 measurements) and making a change to the order of the points, as follows:

- 60 1) Within 150’ measured horizontally from the ordinary high-water mark of any  
61 waterbody, watercourse or the edge of delineated wetlands (including alluvial soils),  
62 whichever is greater, subject to the following exceptions:  
63 2) Within 300’ measured horizontally from the ordinary high-water mark or measured  
64 horizontally from the edge of fringing wetland, whichever is greater of any lake in the  
65 Lake Protection Overlay District as defined by the Salisbury Zoning Regulations (Lake  
66 Wononscopomuc, Lake Wononpakook, Lake Washining and Lake Washinee).  
67 3) Within 300’ measured from the edge of a calcareous fen.  
68 4) Within 300’ measured from either side of a high-gradient, cold water seepage fed  
69 stream originating on the Taconic Plateau.  
70 5) Within 750’ measured from the ordinary high-water mark of a vernal pool.

71  
72 It was noted that the language may need to be changed, if the measurement changes.  
73 There was a lengthy discussion about soil types in wetlands and the importance of  
74 specifically mentioning alluvial soils. Making the draft language user-friendly and using a  
75 resource-based approach was mentioned, as well. There was general agreement on the  
76 content of the 5 points, as listed.  
77

78 The discussion moved on to the list of routine activities occurring in the upland review  
79 area that do not require application to the Commission. There was discussion about  
80 whether to add “disturbance of up to 500 sq. feet for the planting of trees/shrubs” to the  
81 list. M. Klemens suggested that it could either be a Declaratory Ruling or an Agent  
82 Determination. He expressed that P&Z should consider allowing the 500 sq. ft.  
83 disturbance in the LPOD for planting of trees/shrubs, to be consistent. A. Conroy read  
84 the existing Regulation on the matter. C. Shyer commented that many sites have trees  
85 and natural vegetation buffers removed to become lawns. A. Conroy noted that, at this  
86 point, if someone wants to plant trees/shrubs, they are able to disturb up to 500 sq. ft.  
87 within 75’ of the lake. V. Garfein pointed out that this list is to make clear what can be  
88 done in an upland review area, with both IWWC and P&Z. C. Shyer expressed wanting to  
89 have some review and oversight. M. Klemens indicated that this 500 sq. ft. disturbance  
90 can’t be “As-Of-Right”; he questioned the time frame and how often this could be done.  
91 P. Neely suggested that the distance of the disturbance from the wetlands needs to be  
92 considered. V. Garfein added that there would be further discussion of the matter later.  
93 Next, there was a review of all definitions previously reviewed at the prior meeting.

- 94 • **“Cumulative Impact”** is the impact on the environment that results from the  
95 incremental impact of the action when added to the other past, present and  
96 reasonably foreseeable actions. All Commissioners agreed on this language.
- 97 • **Headwaters** are the uppermost reaches of a stream. Headwaters are composed  
98 of numerous small tributaries and seepages which coalesce into larger  
99 tributaries, and are the source of all rivers and streams. All agreed on this.  
100 • *Headwaters are considered among the most sensitive of riparian resources.*  
101 *Damage to headwaters is carried downstream and in certain instances through*  
102 *the entire riparian system.* All agreed on this language.
- 103 • **“Intermittent watercourses”** shall be delineate by a defined permanent channel  
104 and bank and the occurrence of two or more of the following characteristics: (A)  
105 Evidence of scour or deposits of recent alluvium or detritus, (B) the presence of  
106 standing or flowing water for a duration longer than a particular storm incident,  
107 and (C) the presence of hydrophytic vegetation. \*Statutory definition. All  
108 agreed.
- 109 • **“Calcareous Fens”** are a very rare type of wetland occurring at the intersection  
110 of circumneutral (calcareous) bedrock and glacial till deposits. Calcareous fens  
111 are located on the upper slopes (edges) of larger wetlands, where they are fed  
112 by cold groundwater breaking out of glacial terraces coalescing into rivulets. The  
113 steady seepage of clean cold water creates a condition that supports a unique  
114 assemblage of plants and animals.  
115 *Calcareous fens and many of the specialized species that inhabit them are quite*  
116 *rare. Salisbury has several prime examples of sloping calcareous fens and a single*  
117 *example of the much rarer ombrotrophic fen which occurs on or adjacent to a*  
118 *bog mat in West Twin Lake.*  
119 *The Federally-threatened and State-endangered bog turtle (Glyptemys*  
120 *muhlenbergii) occurs in calcareous fens in only three towns in CT (including*  
121 *Salisbury). The USFWS recommends a 300-foot undeveloped buffer surrounding*  
122 *wetlands inhabited by bog turtles. Groundwater withdrawals within 0.5 miles*  
123 *threaten sloping calcareous fens.* All agreed on this language.

124 • **Vernal Pools** are seasonally inundated wetlands that are determined by physical  
125 site characteristics including hydric soils and the presence of indicator/obligate  
126 species that have evolved to exploit this unique type of wetland. If a vernal pool  
127 does not support indicator species, it is treated as a wetland.

128  
129 **Classic vernal pools** are temporary or semi-permanent depressional wetlands;  
130 as they usually lack fish, they are prime breeding habitats for a group of  
131 amphibians, termed indicator/obligate species that have evolved to exploit the  
132 absence of competition in the habitats.

133  
134 **Cryptic vernal pools** are seasonally flooded areas in larger wetlands including  
135 riparian flood plains. While more difficult to detect and map, these pools  
136 make up a majority of vernal pools. Because they may be connected to  
137 riparian systems there may occasionally be fish in these pools.

138  
139 Planning land-uses surrounding vernal pools is a multi-step, data-driven process. First,  
140 *the biological value of a pool must be established. Second, if there is significant*  
141 *biological value, the envelope and critical terrestrial habitat are analyzed. Based on*  
142 *the results of the analysis, the optimal amount of development is determined.*

143  
144 All agreed on this language.

145  
146 • **High gradient cold-water streams** are headwaters usually originating from high  
147 elevation wetlands. They receive not only surface water, but also large amounts  
148 of subterranean seepage that break out at various fissures in the bedrock, adding  
149 cold water to these streams as they plunge over steep cliffs and boulders.

150  
151 *High gradient cold-water streams are a critical riparian resource in Salisbury and*  
152 *have their source on the Riga Plateau (Taconic Uplift). The most familiar of these*  
153 *is Sage’s Ravine on the Connecticut-Massachusetts state line. The DEEP*  
154 *(Klemens, et al. 2021: 174-175) recommend a 300-foot forested buffer on each*  
155 *side of these streams occurring above the 800’ elevation.*

156  
157 All agreed on this language.

158  
159 • “Wetlands”  
160 *Wetlands are defined by soil type in CT.* A. Conroy will suggest language to be  
161 used for this definition for the next meeting.

162  
163 A final review of these definitions by this Committee will be done at the 2/17 meeting  
164 and then sent for review to Attorney Janet Brooks.

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166 9. Discussion of “Declaratory Ruling” / “As-Of-Right Activities”  
167 C. Shyer asked for information on Declaratory Rulings and Agent Determinations from A.  
168 Conroy. A. Conroy explained that an Agent Determination is a permit by the Agent of  
169 activities occurring in the URA that have no greater than minimal impact to the wetlands.

170 Agent Determinations must be reported to the Commission at the next meeting. There is  
171 no obligation on the part of Town to publish the decision; a decision can get appealed  
172 directly to the IWWC. A Declaratory Ruling, synonymous with jurisdictional ruling, is  
173 when the Commission makes a finding that a permit is not required. Whether statutorily  
174 exempt or occurring in the URA, the activity will not have an impact in the wetlands. A.  
175 Conroy pointed out that it is actually better to handle that as an Agent Determination  
176 because a Commission decision of no impact is very difficult to defend; it is easier to  
177 defend a determination of minimal impact. Sometimes the Agent Determination is used  
178 because it is easier. Declaratory Rulings are needed because of exemptions; the  
179 Commission is obligated to uphold statutory exemptions. The public has the right to  
180 argue that there won't be an impact and therefore does not require a permit. A. Conroy  
181 recommended that, in the best interest of everyone, a list of activities eligible for Agent  
182 Determination be developed. For homework, she suggested that, based on the  
183 definition of URA regulated activities, what might be activities that are eligible for Agent  
184 Determination and suggest a list of those items. M. Klemens suggested that there should  
185 be 2 lists: 1) Activities that are minimal/negligible with no impact and 2) List of activities  
186 that may have impact the Agent can determine. The discussion of Agent Determination  
187 will be continued at the next meeting.

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189 **Adjournment. So Moved** by M. Klemens, seconded by P. Neely and unanimously **Approved**.  
190 The meeting adjourned at 10:43am.

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(Minutes drafted by Georgia Petry from the Zoom recording of the meeting)