

MEMORANDUM

**FORMAL ACTION: AGENDA ITEMS #1 AND #2
MEETING OF MARCH 16, 2023**

To: Conservation Commission/**Inland Wetlands and Watercourses Agency**

From: Suzanne Simone, Environmental Planner 

Date: March 7, 2023

**Re: Declaratory Ruling-Farm Pond Maintenance: 470 Chestnut Hill Road
IWWA application for removal of pesticide laden soil and replacement soil in a
wetlands area.**

Review Documents:

Applicant's Narrative and Attachments, March 6, 2023

Health Department Comments, March 8, 2023

Health Department Policy Regarding Pesticides in Soil, September 15, 2017

Glastonbury IWWA Fee Schedule

IWW Regulation: Section 4

Proposal

The applicant seeks a declaratory ruling for farm pond maintenance and approval of an IWWA permit for the removal and replacement of soil within a wetland area.

Review

Site Description

The 18.46 acre property is located in a Rural Residence Zone and previously operated as the Carini Berry Farm. The applicant recently purchased the property and is planning to remediate the pesticide residue in the soil. The proposed direct wetland impacts include farm pond maintenance (declaratory ruling) and soil excavation and fill within a field delineated wetland (IWWA application for permit).

The property is not encumbered by a conservation easement.

State-Listed Species

The property is *not* identified as an area of interest in the December 2022 Natural Diversity Database map edition. No further action is required.

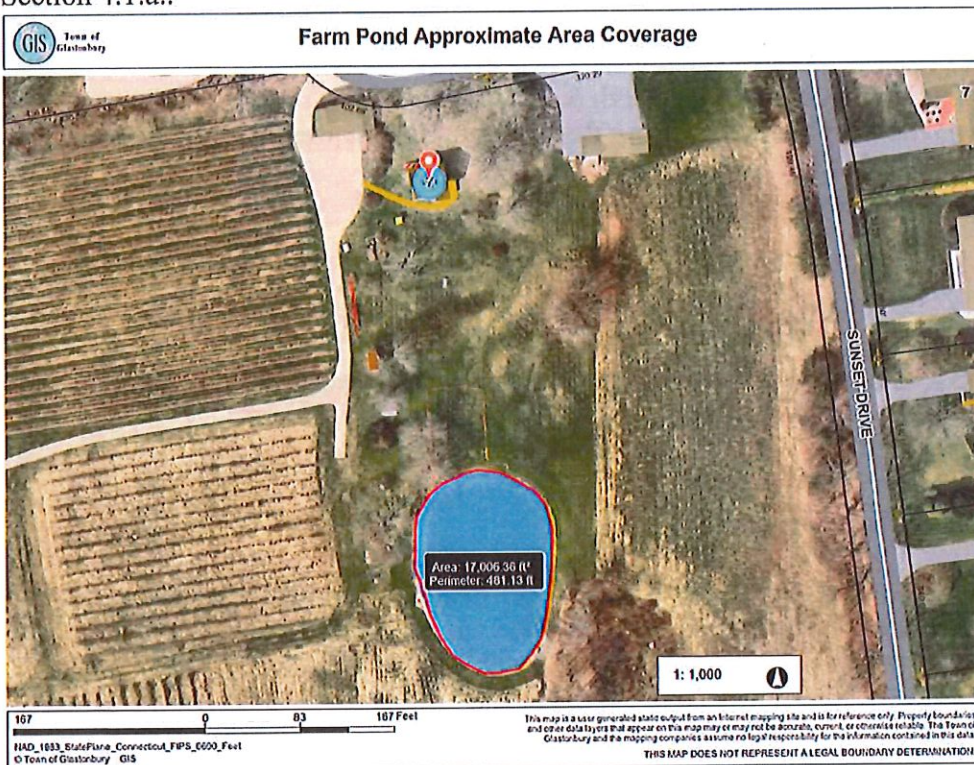
Wetlands and Watercourses

The applicant submitted a map locating the extent of field delineated wetlands (Figures A1 and A2) which is consistent with the general wetland soil location shown on the town GIS soils layer. The application indicates the work is proposed to be conducted entirely within the wetland area.

Request for Declaratory Ruling: Farm Pond

The applicant informs the Agency the scope of work will include the removal of plants from the pond edge and cleaning the overflow outlet. Thomas Coughlin, landscape architect, identified the plants species around the margin of the pond as cattails (native). Disposal of native plants does not require adherence to the CT DEEP non-native invasive plant disposal protocol. The applicant summarizes in page 3 of their narrative that the cattail plants (rhizomes and leaves) will be left to dry before being disposed of either on site, off-site or burned (with valid burn permit). The potential installation of a dry hydrant is not included in this request, and will be required to come before the Agency for a separate declaratory ruling, governed by different standards of the regulations. The outlet is proposed to be cleaned out, it is currently compacted with soil.

The pond is approximately .39 acres (17,006.36 square feet), according to calculations from the aerial view in the town GIS, meeting the standard of less than the 3 acre maximum defined in Section 4.1.a..



The Inland Wetlands and Watercourses Regulations Section 4.1.a states that “farm ponds of three acres or less essential to the farming operation” are permitted as of right and are non-regulated. The applicant indicates the farm pond is integral to the berry farm operation, used for irrigation. Section 4.4 of the Inland Wetlands and Watercourses Regulations authorizes the Agency to affirm whether the pond is used for farming purposes and is less than 3 acres.

The regulations do not require the Agency evaluate the proposed activities for impacts and does not allow for the issuance of stipulations. Under state statute the Agency is permitted to make a declaratory ruling the same meeting the item is first listed on the agenda; a draft motion is provided for Agency consideration.

IWWA Application: Removal and Replacement of Soil within a Wetland

The applicant seeks permission to remove soil within a delineated wetland area, documented in Figures A1 and A2. Exhibit A identifies the proposed soil removal and fill area as Area B in the narrative packet. The proposed removal area within the upland review area, referenced as Area A, is also included in this application, providing that one permit will cover these activities as opposed to the applicant obtaining one permit from the IWWA for activities within a wetland and one permit from staff for administrative approval for activities within the upland review area.

The applicant identifies that approximately 100-125 cubic yards of pesticide contaminated soil will be removed from the site. The application does not expressly calculate the volume of fill, it is assumed that since the application does not include changing the elevation that the same volume of soil will be imported into the site.

The Date of Receipt on this application is March 16, 2023. The Agency is required by state statute to wait a minimum of 14 days from the Date of Receipt before acting on this application. The earliest the Agency may consider a motion is at the April 13, 2023 meeting.

Waiver of Fees

The applicant requests the Agency waive the Town of Glastonbury fees associated with the application to remove pesticide laden soil. Following the application Fee Schedule, the application fee would be \$83.00. Section H of the Fee Schedule identifies the factors the Agency may consider for an application fee waiver.

The State of CT land use application fee of \$60.00 is required with every land use application, this fee is not eligible for waiver from the Agency.

**DECLARATORY RULING
PERMITTED USES AS OF RIGHT/NONREGULATED USES**

MOVED, that the Conservation Commission reviewed the farm pond maintenance proposal for 470 Chestnut Hill Road and finds the following:

1. The pond is integral to farm operations, as irrigation for the berry shrubs.
2. The pond is under 3 acres in size.
3. The Inland Wetlands and Watercourses Regulation Section 4.1.a applies to this declaratory ruling.
4. The project will incorporate best management practices.

Based on these findings, the information provided, the assumed use of best management practices and interpretation of Section 4.1 of the Glastonbury Inland Wetlands and Watercourses Regulations, the Conservation Commission/Inland Wetland and Watercourses Agency declares that the pond as a farm pond less than 3 acres in size and is a permitted use as of right/nonregulated and therefore does not require a permit.




Town of Glastonbury

Health Department

Memo

March 8, 2023

To: Inland Wetlands and Watercourses Agency
Bradford Wainman

Fr: Wendy S. Mis, MPH, RS 
Director of Health

Re: 470 Chestnut Hill Road

This office has received and reviewed a memo dated March 6, 2023 from Bradford Wainman, the owner of the above-referenced property.

The applicant seeks to construct outbuildings, retain and improve the existing barn and farmhouse, remove some of the previously identified contaminated soils in the area around the barn as well as near the farm pond. Maintenance and repairs to be performed around the farm pond include repairing the high water overflow structure and cleaning out plant matter from the pond. Future work includes construction of a new primary residence.

This property, with its long history of agriculture, has been identified through a February 1, 2019 Phase I Assessment and March 26, 2019 Initial and Supplemental Soils Investigations Report to have surface soil pesticide contamination, which poses a direct exposure risk. Both reports are from Martin Brogie, Inc. Applicant's memo references water samples collected August 30, 2022. While not required, the applicant is encouraged to share results of additional testing conducted at the site with this Department to enable a common understanding of site conditions.

The Phase I Environmental Site Assessment states lead based paint is likely present on the house, barn and other buildings due to the age of the structures. Paint remediation is not to occur on the buildings without a workplan approved through this Department.

In order to prevent inadvertent further contamination at the site, the applicant should have their engineering firm contact this Department in accordance with the Policy Regarding Pesticides in Soil on Development Proposals prior to the start of any site work. (*policy attached*) Additionally, the applicant is strongly encouraged to contact CT DEEP to determine notification protocol and next steps.

This Department looks forward to working with the applicant to ensure proper handling and mitigation of the contaminants on the property.



Town of Glastonbury
Health Department

Memo

September 15, 2017

To: All Community Development Staff
Survey Firms and Professional Engineers
Land Developers

Fr: Wendy S. Mis, MPH, RS
Director of Health

Re: Policy Regarding Pesticides in Soil on Development Proposals

For more than two decades, site development investigations involving the Glastonbury Health Department have revealed that agricultural pesticide residues often persist at levels that exceed safe standards. The primary problem frequently involves metal-containing and chlorinated compounds that are non-biodegradable and not readily water soluble. As these compounds become accessible during site development, exposure pathways of inhalation and ingestion are the routes most likely to affect residents.

To continue to protect the health of persons residing on or utilizing lands where chemical use may have occurred, the Policy Regarding Pesticides in Soil on Development Proposals developed in 1997 has been updated to incorporate adjusted responsibilities for testing prior to land development. The updated policy will be instituted at sites proposed for development where agricultural activity is known to have occurred since the beginning of the 20th century, i.e. 1900s, as well as reuse of commercial/industrial property where hazardous chemicals are known or were suspected to have been used.

1. The applicant's Engineering Firm shall contact the Glastonbury Health Department to discuss and submit their soil sampling plan. Surficial drainage patterns are to be considered when developing a sampling plan.
2. Appropriate analytical methodology will be selected in consultation with Glastonbury Health Department and conducted by an approved Connecticut laboratory.
3. The Engineering Firm shall collect shallow soil samples from representative areas of the subject site in accordance with the approved plan.
4. The results will be submitted to the Glastonbury Health Department for review. The findings will be compared to the State of Connecticut Direct Exposure Criteria for soil, as listed in the Remediation Standard Regulations.
5. If a direct exposure criteria is exceeded, the Engineering Firm will submit a written proposal to remediate the contaminated area prior to remediation. Remediation must be completed before moving forward with the subdivision/land development process. Remediation will be confirmed through Glastonbury Health Department review and confirmation of a written report by the Engineering Firm.

This policy is effective on all applications received by the Office of Community Development after September, 5, 2017.

FEE SCHEDULE
for Applications pursuant to the Inland Wetlands and
Watercourses Regulations

Fee Schedule. Application fees shall be based on the following:

- a. Permitted Uses as of Right and Nonregulated Uses (Section 4 of the Regulations) shall be at NO CHARGE.
- b. Regulated Uses and Activities (Section 6 of the Regulations). The total fee shall be the cumulative amount of the following factors, when applicable:
 1. the total wetlands and/or watercourses area (in square feet) on the subject property multiplied by the rate of \$1.00 per 1,000 square feet; plus
 2. the total regulated area (in square feet) to be disturbed by regulated activities multiplied by the rate of \$10.00 per 1,000 square feet; plus
 3. \$400.00 if the proposed activity is declared a significant activity by the Agency.
- c. Map Amendment Petitions (Section 14.3 of the Regulations) shall be \$200.00.
- d. Renewals or Extensions of the Expiration Date to a previously issued permit (Sections 7.10 and 11.7 of the Regulations) shall be \$100.00.
- e. Amendment of a Previous Approval (Section 7.10 of the Regulations) that is not deemed a significant activity shall be the prescribed amount as determined in b.2 above.
- f. Transfer or assignment of a previously issued permit (Section 11.8 of the Regulations) shall be \$25.00.
- g. Exemption. Boards, commissions, councils and departments of the Town of Glastonbury are exempt from all fee requirements.
- h. Waiver. The applicant may petition the Agency to waiver, reduce or allow delayed payment of the fee required. Such petitions shall be in writing and shall state fully the facts and circumstances the Agency should consider in its determination under this section. The Agency may waive all or part of the application fee if the Agency determines that:
 1. 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
 2. the amount of the application fee is clearly excessive in relation to the cost to the Town for reviewing and processing the application.The Agency shall state upon its record the basis for all actions pertaining to a request for a waiver.
- i. Connecticut Department of Energy & Environmental Protection Statewide Inland and Watercourses Activity Fee shall be \$60.00, required for each application.

SECTION 4

Permitted Uses as of Right & Nonregulated Uses

- 4.1 The following operations and uses shall be permitted in inland wetlands and watercourses, as of right:
- a. grazing, farming, nurseries, gardening and harvesting of crops, and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, the mining of

top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale; clear cutting of timber except for the expansion of agricultural crop land;

- b. a residential home 1.) for which a building permit has been issued or 2.) on a subdivision lot, provided the building permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of Section 22a-42a of the Connecticut General Statutes, or as of July 1, 1974, whichever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the building permit was obtained on or before July 1, 1987;
- c. boat anchorage or mooring not to include dredging or dock construction;
- d. uses incidental to the enjoyment and maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the municipality. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of significant amounts of material from or onto a wetland or watercourse, or diversion or alteration of a watercourse;
- e. construction and operation, by water companies as defined by Section 16-1 of the Connecticut General Statutes or by municipal water supply systems as provided for in Chapter 102 of the Connecticut General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in Sections 22a-401 and 22a-403 of the Connecticut General Statutes; and
- f. maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to Section 22a-42a of the Connecticut General Statutes or July 1, 1974, whichever is earlier, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this subsection, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place.

4.2 The following operations and uses shall be permitted, as nonregulated uses in regulated areas, provided they do not disturb the natural and indigenous character of the wetland or watercourse by removal or deposition of material, by alteration or obstruction of water flow, by pollution of the wetland or watercourse, or by adverse alteration of the indigenous plant community or wildlife habitat:

- a. conservation of soil, vegetation, water, fish, shellfish and wildlife; and
- b. outdoor recreation including play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, cross-country skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated.

4.3 A license or permit shall be required from the Agency prior to all activities in wetlands or watercourses involving filling, excavating, dredging, clear cutting, clearing, grading or other earthen disturbance or any other alteration or use of a wetland or watercourse not specifically permitted by this section and otherwise defined as a regulated activity by these regulations in accordance with Section 6 of these regulations, or for certain regulated activities located outside of wetlands and watercourses from the duly authorized agent in accordance with Section 12 of these regulations.

4.4 To carry out the purposes of this section, any person proposing a permitted operation and use or a nonregulated operation and use shall, prior to commencement of such operation and use, notify the Agency on a form provided by it, and provide the Agency with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or nonregulated use of a wetland or watercourse. The Agency shall affirm that the proposed operation and use is a permitted or a nonregulated operation and use or that a license or permit is required.