



CANDLEWOOD LAKE AUTHORITY

Member Municipalities: Brookfield • Danbury • New Fairfield • New Milford • Sherman

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To: John Howard
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Shoreline Management Plan Draft v.1.0 Candlewood Lake Authority Comments for FirstLight Power Resources

1/31/2019

- I. P. 3, IV. TERM:** This section states: “FirstLight shall review and. As necessary, revise the SMP every 10 years following approval of the 2019 SMP.”
- a.** The License (article 407, p. 38-40) states: “Further, the SMP shall include... (m) a schedule and process for periodically reviewing and updating the plan every six years.”¹
 - i.** We are requesting this 6-year review process in the 2019 SMP to allow for the most effective evaluation of progress and implementation.
 - b.** The last sentence of this section reads “The goal of the consultation process is to achieve consensus amongst the parties to the extent possible and may include at least one noticed public hearing prior to any SMP update being submitted to the FERC for approval.”
 - i.** We are requesting that this “may” be changed to “will” or “shall” as we feel a noticed public hearing is integral to informing the public of SMP changes during the review and consultation process.
- II. P. 3, V. REVIEW AND FERC APPROVAL**
- a.** (a) states: “The FERC’s approval of this 2019 SMP will allow FirstLight to continue to update the Exhibits, Guidelines and Appendices referenced herein.”
 - i.** We request that all of the appendices, save the maps contained in appendix A, be moved instead to the body of the document. These describe critical components of permitting, fee structure, guidance, and more for how to

¹ Federal Energy Regulatory Commission (FERC), *FERC License for Housatonic Hydro*, P-2576, June 2004. P 40

comply with the SMP and any changes to these must be subject to FERC approval.

- ii. The appendices shall be reserved for citation of specific supporting documentation and information, such as: the “Feasibility Report, Plan, and Schedule for Conservation Easements and Restrictions” (referenced on p.7), License articles 407 and 413, important shoreline management manual excerpts, shoreline buffer report excerpts, seawall report excerpts, etc.

III. P. 4, VII. MUNICIPAL AND STATE JURISDICTION

- a. (a) States: “FirstLight does not have, as part of its authority under the Federal Power Act, jurisdiction over public health and water quality. Therefore, the State of Connecticut Department of Public Health (CTDPH), local health departments, State of Connecticut Department of Energy and Environmental Protection (CTDEEP) and any other jurisdictional bodies are primarily responsible for public health and water quality, consistent with their regulatory authority on and in both Project lands and Project waters.”
 - i. While all of these entities have a responsibility to protect public health and/or water quality, however, as noted in the FERC Guidance for Shoreline Management Planning at Hydropower Projects: “Licensees have an ongoing responsibility to supervise and control such shoreline developments to ensure that they are not inconsistent with project purposes, including protection and enhancement of project’s scenic, recreational, and environmental values.”²
 - ii. We request that this passage be edited to reflect this shared responsibility for protecting water quality and public safety.
- b. (f) On p. 5 states that “FirstLight may request inspection, condemnation and other services from these entities as part of its compliance with the terms of this SMP.”
 - i. It is our understanding that New Fairfield, Danbury, and a few other Municipalities bordering other impoundments never signed the land use agreement saying that they have any jurisdiction within the project boundary, and thus FirstLight might be able to request these services, but the municipalities have no responsibility to provide these services. This should be clarified.

² Federal Energy Regulatory Commission, *Guidance for Shoreline Management Planning at Hydropower Projects*, July 2012, p. 9

IV. P. 7-9, SHORELINE LAND DESIGNATION CHARTS

- a. The 2013 SMP contains a “Land Conservation Program” on P. 7, XII.³ This has been eliminated from the 2019 draft SMP.
 - i. Subsection (a) states: “undeveloped shoreline lands owned by FirstLight within the project boundary shall be managed for environmental protection and Conservation.” This is now the first sentence of the description of the Conservation Lands designation.
 - 1. We request this sentence also be added to the undeveloped residential lands designation.
 - ii. Under the Undeveloped Residential Lands designation in the 2019 SMP, it states: “land use development may be restricted to protect and preserve existing natural resources.”
 - 1. We request this “may” be replaced with “will” as we would like these lands, should they ever be developed, to retain the requirement for a 200ft buffer, as well as other existing restrictions compared to the developed residential lands designation.
 - 2. The last sentence under this designation, referring to voluntary conservation restrictions should be clarified to include where these restrictions can be found, and why developed residential lands are not candidates for voluntary conservation restrictions.

V. P. 11. X. VEGETATED RIPARIAN BUFFERS AND STORMWATER MANAGEMENT

- a. **Vegetated Riparian Buffers:** This section should likely contain more specifics regarding: “existing buffer areas cannot be altered without authorization from FirstLight and the enhancement of such buffer areas may be required as a condition of approval of other shoreline and land uses.”
 - i. We request that this “may” be changed to “shall” as enhancement or creation of a vegetated buffer is a requirement of permitting shoreline and land uses, and that requirement should be reflected here.
- b. We request the detail and information in Appendix C p.12-15 regarding vegetated buffer installation be included here, in the body of the document, to ensure that buffer installation remains a FERC mandated requirement. See above comment **II** for more detail about this request.
- c. **Stormwater Management:** We want to confirm that homeowners will not be required to fund stormwater retrofitting projects for municipal or community stormwater conveyances within the project boundary.

³ FirstLight Power Resources, *Shoreline Management Plan Housatonic River Project No. 2576*, 2009. P. 7

VI. P. 13, XIV. DIGITAL AND HARD COPY DATA POLICY

- a.** This passage states: “FirstLight does not have any obligation to release any... company information to the public. Any data that FirstLight has determined is accessible to the public may be posted on the FirstLight’s website.”
 - i.** Under article 407 in the FERC License for Housatonic Hydro⁴, subsection (f) clearly states the SMP shall include: “a provision to share existing digital mapping data upon request.”
 - ii.** We request this passage be rewritten as: “FirstLight does not have any obligation to release any permit, license, lease, agreement, or any company information to the public inconsistent with past or future FERC requirements and rulings for project number p-2576. FirstLight will abide by article 407, subsection (f), of the project license stating that they will share existing digital mapping data upon request.”

VII. Appendix C. P.4, V. LIMITED ACTIVITY USE GUIDELINES, Derelict Docks

- a.** This passage states: “FirstLight or its agents, the respective police, boating authority, or any others shall endeavor to secure, remove, and/or dispose of any derelict docks that break loose and could cause a hazard to boating navigation.”
 - i.** We request this passage be re-written to say: “FirstLight or its agents shall secure, remove, and dispose of any derelict docks that break loose and could cause a hazard to boating navigation. The respective police, boating authority, or any others may assist with the location, securing, and notification to FirstLight of said derelict docks.”
 - ii.** This original passage also states instead of “securing, removing, and disposing of the derelict docks”, that FirstLight can “secure, remove, and/or dispose of any derelict docks.”
 - 1.** If read as “secure, remove, or dispose of any derelict docks” this requirement would allow FirstLight to only Secure the dock, meaning the issue does not get taken care of. We have removed the “or” in our suggested language.
 - iii.** It is also worth noting that “shall endeavor to” has a distinctly different meaning than just “shall” and the latter is the language that should be used for this to be a policy that is actually enforced.
 - iv.** There is no discussion of a timeframe of when derelict docks would be removed from the lake following reporting. A timeline should be explicitly stated in this passage.

⁴ Federal Energy Regulatory Commission (FERC), *FERC License for Housatonic Hydro, P-2576*, June 2004. P. 39

VIII. Appendix C. P. 5, V. LIMITED ACTIVITY USE GUIDELINES, Design and Construction Guidelines for Residential Docks

- a. “Tagging” states that “All docks shall be marked with their FirstLight activity number.”
 - i. Clarification of whether this tag is solely for in-progress, permitted projects, or if every dock will have a permanent tag for inventory keeping, is needed here.

IX. Appendix C. P. 6, V. LIMITED ACTIVITY USE GUIDELINES, Vessel Moorings and Navigational or Regulatory Buoys

- a. The third paragraph states “If found, [unauthorized vessel moorings] are subject to removal by FirstLight or the respective authority.”
 - i. We suggest a rewrite of this passage, stating “If found, unauthorized vessel moorings and other unpermitted buoys will be removed by FirstLight. Prior notice before removal is not required.”
 - ii. We suggest FirstLight create a system whereas licensed moorings are tagged. This would allow more easy identification of licensed vs. unlicensed moorings that could be more easily removed.
 - iii. We request a timeline for unauthorized mooring removal (i.e. following notification to FirstLight that an unauthorized mooring has been found, how quickly will unauthorized moorings be removed/permitted).
 - iv. Unlicensed Swim Areas are also not specifically called out as requiring DEEP permitting in the new SMP and should also be included in this section as not being approved without the proper approval first from DEEP.
 - 1. This had been included in the SMP approved in 2013, where it fell under XI (p. 6)⁵.
 - 2. We request that this section (XI) from the 2013 SMP be re-included here in the 2019 SMP.

X. Appendix C. P. 7, V. LIMITED ACTIVITY USE GUIDELINES, Seawalls

- a. Design and Construction Guidelines for Seawalls states: “Environmentally benign alternatives shall be considered” as opposed to seawalls.
 - i. We request the language here be changed to: “Environmentally benign alternatives, such as vegetation and rip-rap shall be utilized unless impossible based on a scheduled site inspection with FirstLight. Any new or significantly modified shoreline stabilization projects, including

⁵ FirstLight Power Resources, *Shoreline Management Plan Housatonic River Project No. 2576*, 2009. P. 7

seawalls, rip-rap, and other environmentally benign alternatives will be included in an annual ‘seawall report.’”

- b. We note that the requirement for an annual seawall report is omitted from the 2019 SMP draft.
 - i. We request that this annual reporting requirement be included in the new draft, but only requiring: “a site description, photographs, and any other pertinent information (e.g., the existence of deeded rights to a seawall) that demonstrates that the licensee considered alternatives to a seawall, but that other alternatives were not feasible” for new projects as laid out by FERC in the Order Modifying and Approving the SMP in 2013.⁶

XI. Appendix C. P. 8, V. LIMITED ACTIVITY USE GUIDELINES, Alternative Shoreline Stabilization Techniques

- a. This passage states: “These uses may be authorized subject to Article 413 of the License, the SMP, and in compliance with these Guidelines and other applicable requirements.”
 - i. We request that this passage be rewritten as: “These alternative Shoreline Stabilization techniques will be implemented subject to Article 413 of the License, the SMP, and in compliance with these guidelines and other applicable requirements unless impossible based on site specific criteria discussed during a site inspection with FirstLight.”
- b. This section, and the Seawalls section discussed above, could be combined into one section titled “Seawalls and Alternative Shoreline Stabilization Techniques” to illustrate that the two are related, and that environmentally benign alternatives are prioritized, based on site specific criteria.

XII. Appendix C. P. 10, V. LIMITED ACTIVITY USE GUIDELINES, Upslope Uses

- a. Under Steps, Paths, and Walkways it is stated that “The width of such [pedestrian] paths shall be limited.”
 - i. We would like to see this width limit stated specifically in this passage for easy reference for residents. Notably, there is a width limit mentioned in Appendix D of 4ft.

XIII. Appendix C. P. 12-15, V. LIMITED ACTIVITY USE GUIDELINES, Vegetated Riparian Buffers

- a. Vegetated Riparian Buffer Area describes a buffer as requiring “native trees, shrubs, and herbaceous or ground covers which must occupy between five and

⁶ Federal Energy Regulatory Commission (FERC), *Order Modifying and Approving Shoreline Management Plan Pursuant to Article 407*, March 27, 2013. P. 17

fifty percent of the vegetated buffer zone.” In a normal 50ft buffer zone, this would mean that only 2.5ft need to be covered by plants. This could be accomplished by planting one shrub, a small tree, bush, etc.

- i. We suggest an increase to the bottom boundary of this requirement to 20%. 10ft of plants in a 50ft buffer is a reasonable bottom boundary and will still accomplish the goal of a vegetated buffer; 5% coverage will not be able to effectively mitigate runoff pollution into the lake.
 - ii. This 20% bottom boundary can be changed for exceptional cases where 20% is not achievable based on site specific criteria and will be noted in the annual buffer report.
- b. Vegetated Buffers as a required Use starts by saying “Property Owners may be required to install or re-establish a Vegetated Riparian Buffer composed of native vegetation when an application is made to modify... an existing use.”
 - i. We request that “May” be replaced by “will” to enforce that this is indeed a requirement.
 - 1. If there are exceptions, a sentence can be included that states: “Homeowners can apply for an exemption if installation of a vegetated buffer is impossible based on site specific criteria discussed during a site inspection by FirstLight.”
 - ii. There is no mention of a change of ownership requirement for buffer installation. This is one of the most important and effective triggers for buffer implementation.
 - 1. The 2013 SMP states on p. 5: “Landowners abutting the project boundary shall be required to install a vegetated buffer... within (5) years of change of ownership of property, a change in its size, location or configuration of an existing structure, or installation of a new structure.”⁷
 - a. We request that this change of ownership requirement be added to the 2019 draft SMP.
 - b. We appreciate the new tightened time frame of 3 years (for limited activity use permitting), but all triggers for buffer zone implementation should be conserved.
 - iii. The one-year time frame of buffer installation should be included for clarity in the sentence: “For applications that include a request for Significant Activity Uses, the installation of vegetated buffer plantings will be required as part of the implementation.”
 - iv. There is no mention of the required annual buffer zone implementation reports, as laid out in the order modifying and approving the 2013 SMP.

⁷ FirstLight Power Resources, *Shoreline Management Plan Housatonic River Project No. 2576*, 2009. P. 5

1. As stated in the Order Modifying and Approving Shoreline Management Plan Pursuant to Article 407 (p 15, 29): The Licensee should be required to file with the Commission an annual report that details its progress implementing its shoreline buffer rules.”⁸
 2. As this was added to the original SMP by FERC and gives valuable insight into the success of buffer zone implementation, it should be incorporated into this, and all future SMP iterations.
- c. Shoreline Vegetation Removal states: “Removal of trees, shrubs, and other vegetation located within the project boundary is prohibited without prior written authorization by FirstLight.”
- i. This should specifically discuss the process if a fallen tree presents a safety or navigation hazard to property owners or boaters or prevents a homeowner from exercising their deeded rights (i.e. to pass and re-pass and access their dock).
 - ii. The following passage states: “Such prohibition does not apply to pruning, mowing, or weeding. Notwithstanding the foregoing, pruning, mowing or weeding of a permitted Vegetated Riparian Buffer shall not be permitted unless it is authorized by FirstLight.”
 1. We suggest a rewrite of the above, as it is very confusing: “The vegetation removal prohibition does not apply to mowing, pruning, or weeding within the project boundary. General maintenance of a permitted vegetated buffer, including light weeding and pruning, is allowed provided it is not prohibited by FirstLight, and there is no significant removal of vegetation within said buffer.”
- d. On p. 15, Irrigation and Application of Fertilizers, Pesticides, and Herbicides could be improved by stating specifically that fertilizers with phosphorous shall not be used in vegetated buffers unless expressly allowed under State of CT Senate Bill-254 which prohibits the application of fertilizer containing phosphorus in buffer zones.
- e. Under the Vegetated Riparian Buffer Education Program, it discusses FirstLight’s Shoreline Management Manual, which is an extensive and informative document.
- i. However, this document is so long (over 140 pages) as to be unapproachable for average homeowners.
 - ii. We would like to collaborate with FirstLight on the creation of a shorter, approachable, guidelines document that can be distributed to homeowners who trigger the buffer requirement.

⁸ Federal Energy Regulatory Commission (FERC), *Order Modifying and Approving Shoreline Management Plan Pursuant to Article 407*, March 27, 2013. P. 15

XIV. Appendix D. P. 1 ADMINISTRATIVE APPLICATION FEE SCHEDULE

- a. Application Submittal Fee (7th row) should be clarified.
 - i. This fee should not apply to uses that are listed in the table as being free, like permitted tree removal and deeded rights.
- b. What is the definition of an “Existing Use Permit.”
 - i. Why are residential existing Use Permits free, while community permits cost \$500? (Rows 9 and 10) We request that these community existing use permits be free, the same as residential existing use permits.
- c. What is the definition of a “New Boat Landing” (2nd from last row)?
- d. We request the addition of a “Deeded Right Maintenance and Repair” row, with a \$0 (Free) fee, just for clarity and ease of reference for property owners.
- e. We request that you add a footnote to the FERC Application Fee row (Final Row) citing p. 19 in what is currently Appendix C so homeowners can easily reference what this fee applies to.

XV. Appendix F. P. 1 STAKEHOLDERS AND THEIR RESPONSIBILITIES

- a. It is unclear how often the Stakeholders will meet, how meetings are called, and whether stakeholders can request meetings. We request clarification on these points.
- b. It is stated: “The Stakeholders will meet prior to the ten-year review and update to the SMP.”
 - i. See comment above labeled **I** for concerns regarding the ten-year review period.
 - ii. We suggest annual meetings of the stakeholders for the first 3 years following approval of the new SMP, to discuss what is and isn’t working, and strategies for effective implementation.
 - 1. This was done following approval of the original SMP in 2013 (Exhibit I), where it says: “The LAC and RAC will meet, at a minimum, on an annual basis for the first three years after approval of the SMP”⁹ and has been omitted from this SMP.
- c. This passage states “FirstLight will entertain suggestions of additional issues to be addressed if received fifteen days prior to the date of the meeting.”
 - i. We request this timeframe be increased to 5 business days prior to the meeting.
- d. This passage states “FirstLight will, at its sole discretion, make any final decision regarding the SMP and its revision, subject to any necessary FERC approvals.”

⁹ FirstLight Power Resources, *Shoreline Management Plan Housatonic River Project No. 2576*, 2009. Exhibit I “Responsibilities of the LAC and RAC.”

- i. We suggest rewriting this sentence to say: “FirstLight will, following stakeholder meetings and consultation, make any final decision regarding the SMP and its revision...”
- e. This section contains very little detail about the stakeholders and their responsibilities and should contain more specific information of Lake Stakeholder Group and River Stakeholder Group responsibilities, similar to the bulleted list found in the SMP approved in 2013.¹²
- f. We request that the representatives in the SMP Lake Stakeholder group for Lakefront property owners remain the same as it is in the SMP approved in 2013 (i.e. 2 from Candlewood, one from Squantz, one from Lillinonah, and one from Zoar) and as appointed by the CEOs of the surrounding municipalities.
 - i. We also request that Municipal representatives also states that each representative will be appointed by that town’s CEO; the same as it stands in the SMP approved in 2013.

XVI. General Comments

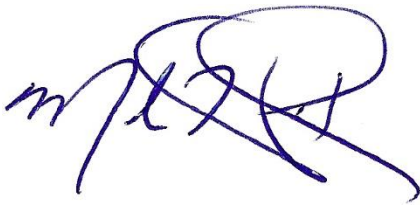
- a. We would like to see, when referencing specific other documents, or even other pages within the SMP, that a page number or footnote be included. This would allow more easy research and reference for residents when going through the SMP. For example, the requirements in the Shoreline Management Manual referenced on p. 13 of the SMP under section X. Or referencing page numbers on p. 10 with the specific Limited and Significant Activity use guidelines.
- b. We suggest that the page numbers in the 2019 SMP increase by 1 every page, and don’t reset in appendices, for ease of reference in the future.
- c. There is insufficient explanation of how floating debris that poses a navigational hazard (such as trees coming up from the bottom, or blowing in after a storm, etc.) on Candlewood Lake would be dealt with. We suggest a similar arrangement to the rewritten derelict dock arrangement mentioned above in comment VIII.
- d. On page 4, under municipal and state jurisdiction, section (e) should say that FirstLight “will” require applicants who are proposing a significant activity seek local wetland and watercourse permits. This process, of projects requiring both FirstLight and Wetlands permitting should be outlined explicitly both in this section, and in the application processes section on p. 22 of Appendix C.
- e. Please clarify within the SMP FirstLight’s responsibility for tree/limb removal, shoreline damage, etc. as a result of significant storm events.
- f. Stakeholder and public consultation is described briefly in three sections in this SMP: Under “IV. Term”, “VI. Stakeholder Consultation and Support”, and “Appendix F. Stakeholders and Their Responsibilities.” None of these sections are very descriptive of what stakeholder and public consultation will actually look

like, and what responsibilities and timeline of this consultation process will look like.

- i. We request the stakeholder and public consultation period be expanded upon on p.4 (VI. Stakeholder Consultation and support) to include how stakeholders will be consulted when a change is proposed to the SMP, a timeline for that consultation, and how stakeholders will be notified. This will help ensure that everyone knows they are both permitted and encouraged to consult with FirstLight regarding concerns and suggestions during SMP updates and reviews.

Respectfully Submitted,

CANDLEWOOD LAKE AUTHORITY

A handwritten signature in blue ink, appearing to read 'm. howarth', with a large, stylized flourish at the end.

Mark Howarth
Executive Director

JNS