

POSITION STATEMENT

A Statement on Upland Review Areas for Connecticut Municipal Inland Wetlands and Watercourse Commissions

BACKGROUND

Under the Inland Wetlands and Watercourses Act, Connecticut's municipalities regulate proposed development activities in or affecting wetlands and watercourses. CACIWC has received numerous inquiries from wetland commissioners and their staff for guidance in establishing upland review area provisions in their municipal wetland regulations.

The term Upland Review Area was developed and put forth by Connecticut DEP in a 1997 guidance document (*Guidelines - Upland Review Area Regulations – Connecticut's Inland Wetlands & Watercourses Act*) which encourages inland wetland agencies to review activities proposed in upland areas surrounding wetlands and watercourses wherever such activity is likely to impact or affect wetlands and watercourses. Activities that can adversely affect adjacent wetlands and watercourses include, but are not limited to the following: land clearing, soil compaction, excavation, fill, changes in run-off volume and pollutant discharges.

It is important to note that the extension of the upland review area through text amendments to the municipal regulations does not prohibit construction and development within these areas and, therefore, is **not** an unconstitutional "taking" of property. The expanded area simply enables the IWWA to review and evaluate potential impacts of development proposals within this area.

POSITION

CACIWC supports inclusion of a 100 foot Upland Review Area in the municipal inland wetlands regulations as a minimum area of review to properly assess the potential impacts of a proposed activity on inland wetlands and watercourses. Further, CACIWC supports the existing regulations that authorize wetland agencies to regulate activities in other upland areas that are "likely to impact or affect a wetland or watercourse."

Establishing an Upland Review Area in the municipal regulations in which the agency regularly evaluates proposed activities and their likely impact on adjacent wetlands and watercourses provides a consistent framework for regulating and permitting activities. Inclusion of an Upland Review Area in the municipal regulations also serves to notify the public and potential applicant as to what activities adjacent to inland wetlands and watercourses require an application for permit

RATIONALE

Enabling Legislation

The preamble to the Inland Wetlands and Watercourses Act (Chapter 440, Sec 22a-36 to 22a-45) states the rationale and authority for wetlands and watercourses protection in Connecticut.

“The wetlands and watercourses are essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life.”

The preamble also enables local inland wetlands and watercourses commissions to “...protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by

- minimizing their disturbance and pollution;
- maintaining and improving water quality...;
- preventing damage from erosion, turbidity or siltation;
- preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof;
- deterring and inhibiting the danger of flood and pollution;
- protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and
- protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement...”

Connecticut Department of Environmental Protection

The 1997 guidance document published by the Connecticut Department of Environmental Protection *Guidelines Upland Review Area Regulations - Connecticut's Inland Wetlands & Watercourses Act* provides the rationale for a 100-ft. upland review area. It states that “the DEP believes that a 100 foot-wide upland review area is sufficient for reviewing construction activities in areas surrounding wetlands or watercourses because most of the activities which are likely to impact or affect these resources will be located in that area.”

Court Decisions

In *Queach Corporation v. Town of Branford Inland Wetlands Commission* (2001) the Connecticut Supreme Court upheld the 100 foot upland review area with this language in the decision: “Thus, we conclude that the 100 foot upland review area imposed by the regulation is a valid administrative devise reasonably designed to enable the commission to protect and preserve the wetlands located within [Branford], in fulfillment of its duty under the [act].” And “We note that the department Guidelines for Upland Review Area

Regulations under Connecticut's Inland Wetland and Watercourses Act, the testimony before the commission, and the broad purpose of the act, provided ample evidence for the commission to approve the 100 foot setback."

Scientific Support

Over the last 20 years, a large body of scientific evidence has determined that protection of the riparian area adjacent to rivers and streams is critical to controlling flooding, erosion, excess sedimentation, and maintaining the hydrologic balance of those rivers and streams. Based upon these studies, the CT DEP Inland Fisheries Division published a position statement "Utilization of 100 Foot Buffer Zones to Protect Riparian Areas in Connecticut" by Brian D. Murphy that sets policy for the Division that a 100 foot protective buffer is a minimum setback along perennial streams. Similar scientific evidence supports the establishment and maintenance of a minimum 100 foot vegetated buffer to protect inland wetlands from non point source pollution impacts. Please visit our website (www.caciwc.org) for links to additional documents detailing the importance and function of riparian areas.

Municipal Decisions

Many communities in Connecticut have extended the upland review area to 100 feet, Middletown, Bristol, Cromwell, Middlefield, Glastonbury and Rocky Hill. Other municipalities have adopted larger regulatory areas around specific water bodies. New Milford and Sherman established a 200 foot regulatory area around Candlewood Lake. Killingworth developed a 500 foot regulatory review area around vernal pools, and Vernon set a 200 ft upland review area along two rivers, the Tankerhoosen and the Hockanum, and five stream tributaries. Also of note is the Town of Burlington that established an upland review area of greater than 600 feet due to the preponderance of steep slopes and the significant sources of groundwater within the community. The quantity and quality of local water resources vary from town to town. Local communities need to evaluate the wetlands and watercourse resources within their own communities, and based upon that evaluation, establish appropriate distances for review of potential regulated activities.

CACIWC's mission is "To promote the statutory responsibilities of Connecticut Conservation Commissions and Inland Wetlands Commissions and to foster environmental quality through education and through the conservation and protection of wetlands and other natural resources."

Approved by the Board of Directors July 2006.