

SLH Position Statement 3/18/2021

Abby Conroy <aconroy@salisburyct.us>

Mon 4/12/2021 2:16 PM

To: Grant Bogle <grantbogle80@gmail.com>

Cc: Curtis Rand <crand@salisburyct.us>

 1 attachments (171 KB)

SLH Position Statement 3-18-21 vf-1.pdf;

Good Afternoon Grant,

I think it is important to understand how we got to where we are today and I encourage you to distribute my response freely. I will be sharing it with the IW Commission.

In February it came to the attention of the Land Use Office that there were concerns from the public regarding potential changes to the Inland Wetlands Regulations. As is to be expected there are a diversity of opinions related to the proposed IW regulations. In an effort to provide clarity a brief overview of the regulatory authority of the Inland Wetlands Commission and draft changes was provided at the March 1, 2021 meeting of the Commission. The agenda/position statement (attached to this email) for an informational Zoom call hosted by the Salisbury Lakes Homeowners group hosted on March 23rd subsequently circulated language and mischaracterized positions regarding the regulations and intent of the commission by including statements presented as fact that I genuinely hope were born from misunderstanding and not malice.

FACT (Ascertainable by reviewing the minutes of the then Conservation Commission): In July of 2019, the Lake Wononscopomuc Association came before the IWWC with proposed regulation amendments. Through this process, it was realized that the local regulations had statutory shortcomings and many legal issues. The Commission decided to undertake a rewrite building off of the request originally made by LWA.

FACT (Ascertainable by reviewing the minutes of the then Conservation Commission) The draft as it stands was based on changes suggested by LWA and developed by a subcommittee of members/staff which was formed on 11/4/19. The process was put on hold during COVID as the Commission did not meet for several months. Based on statements by prior staff and members of the subcommittee these members worked independently. I have reason to believe this is the case because...

FACT : No single draft of the regulations existed until at least January of 2021 and was not distributed to the entire commission or the public until at least the January 21, 2021 meeting. I personally (with much assistance from Ruth Mulcahy, prior Agent) incorporated language from several versions and cross referenced the drafts to the effective language to ensure all of the changes were captured.

FACT : CT General Statutes 22a-42a does not require any form of outreach or public involvement in order to establish a draft.

Rather, a hearing is required for the adoption. The Commission has elected to hold public workshops in an effort to engage stakeholders prior to conducting the formal hearing and referral process required by statute. It is not a requirement or common practice for anyone other than the IWWC and associated staff to participate in drafting regulations.

What is being proposed?

The SLH statement that the "proposed rules go beyond state requirements" is inaccurate. There is no distance mandated by the State regarding URAs. Rather, it has been a legally established and DEEP endorsed practice for Wetlands Commissions to review activities occurring in upland review areas. The State legislature elected to authorize local Commissions to regulate Inland Wetlands and Watercourses and consequentially leaves the Upland Review Area (URA) up to a local Commissions to define. [uplandreviewdocumentjune1997PDF.PDF \(ct.gov\)](#).

The Commission has had language in their regulations regarding URAs since as early as 2006 (75+). The Connecticut Association of Inland Wetlands and Conservation Commissions (CACIWC), published a position statement that same year endorsing a MINIMUM of 100' upland review area.

The new rules are proposing an extended URA to 200' around specific named waterbodies - again, common practice see analysis of URAs in CT Municipalities.

[URAs-in-Connecticut-Municipalities.pdf \(secureservercdn.net\)](#)

Further, the introduction of definitions for "clearing" and "grubbing" were legally advisable. It is the goal of any regulations to define terms. There are several terms used throughout the regulations that do not have definitions and it was recommended by Town Counsel that the Commission adopt definitions for these terms. This should be seen as beneficial to users who will have a clearer expectation of what those terms mean.

The new rules do not over reach statutory authority. As explained during the first workshop held March 1 ([recording available here](#)), the statutes specifically exempt the following (included in the regulations):

(4) 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, provided in any town, where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres. 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;

As further explained on March 1, only the Commission can find an activity to be exempt. There is a reality in practice that mowing (maintenance of a residential property) your existing lawn ("existing landscaping"), which does not "result in the removal or deposition of significant amounts of material from or onto a wetland" is clearly not regulated. Likewise, the term "routine property maintenance" implies that an activity is exempt provided it "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." Neither current nor proposed regulations identify removing a few select dead trees and planting new ones in an existing lawn area as regulated.

On the other hand, clearing a contiguous area of 500 sq ft of shrubs and trees and chipping them directly in the lake would be regulated in several ways:

1. Clearing does not typically constitute maintenance.

2. "Clearing" having been defined plainly identifies the activity of vegetation removal (as a property owner, it should be viewed as a relief that the term has been clarified)

3. Chipping 500 sq ft (who knows how many cubic feet) of material into the lake constitutes deposition of material from or onto a wetland that may be significant.

The goal is for regulations to be user friendly, so that a property owner can pick up the regulations and understand when they need a permit or not. One of the objectives of this draft is to provide that clarification. One of my roles as a staff person is to direct people to the language or resources they need to find an answer. Therefore, when in doubt pick up the phone or send an email.

Finally, enforcement mechanisms have been structured (though not always used correctly) to be implemented informally for situations when there has been a mix up in interpretation and formally when there is an egregious violation.

The Inland Wetlands Commission either through the workshop or hearing process would certainly be willing to hear expert testimony and documented proof of diminished property values and depressed tax revenue. As identified in the presentation on March 1st part of the lengthy purpose statement behind their authority is to "provide an orderly process to balance the need to the economic growth of the state and use of its land with the need to protect its environment and ecology"

Sec. 22a-36. Inland wetlands and watercourses. Legislative finding. The inland wetlands and watercourses of the state of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses are an interrelated web of nature 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. Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. It is, therefore, the purpose of sections 22a-36 to 22a-45, inclusive, 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 in accordance with the highest standards set by federal, state or local authority; 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 by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.

On behalf of the Inland Wetlands Commission, I encourage you to get your facts from the source. It is the role of the Commission to provide for due process and their obligation to implement the statutes. The regulation rewrite is intended to address statutory obligations that are currently not represented, provide clarity by defining terms that have caused confusion, and implement regulations that fulfill the above legislative finding. Please familiarize yourself with the resources available through [Inland Wetlands & Watercourses Commission \(salisburyct.us\)](http://inlandwetlands.com) and presentation already made on March 1. If you have questions regarding the authority and logic behind this process, that is a good place to start. As promised, please also stay tuned for another informational workshop to be held April 26th. I will endeavor to facilitate a constructive dialogue in the near future.

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Salisbury Lakes Homeowners

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<https://bit.ly/SalisburyLakesHomeowners>

Invitation to all Salisbury Lakes Homeowners to an informational Zoom meeting about a proposal to expand wetlands authority with new regulations

What is being proposed:

- The Inlands Wetlands Commission is updating Town of Salisbury rules to comply with state rules. In the process, it has proposed rules **that go beyond** state requirements.
- The new rules have been in development for many months **but only now** are being made public. No property owners on Twin Lakes were invited to be part of the process.
- The new rules would extend the regulated activity area to **200 ft from shore**, up from the current state-mandated 75ft.
- The new rules would expand regulated activities by **introducing definitions** for “clearing” and “grubbing.”

Why you should care:

- The new rules might require **approval for routine property** maintenance like removing dead wood and planting trees.
- The new rules might **diminish property values** and thus depress tax revenue to the Town of Salisbury.
- Significant questions remain **about why new rules are needed** and how the Wetlands Commission would apply them. The time that has been allotted for community input is too short and likely sub-optimal in a Zoom environment.

Salisbury Lakes Homeowners

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What we are asking of you:

- **Get educated and get involved.**
- **Join an informational zoom call with your neighbors on Tuesday, March 23 at 7 pm for a discussion.**

The Twin Lakes Association has [greater detail](#) on questions and concerns. You may find additional information on relevant publicly available documents [here](#). The [town website](#) has a [redline](#) of new rules, an [information sheet](#), and [slides](#) from the March 1 meeting.

Here is the information on the Zoom Meeting

Topic: Salisbury Lakes Homeowners Informational Zoom Meeting

Time: Mar 23, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/92003305622>

Meeting ID: 920 0330 5622

One tap mobile

+13126266799,,92003305622# US (Chicago)

+19292056099,,92003305622# US (New York)

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Meeting ID: 920 0330 5622