

Salisbury Lakes Homeowners

SalisburyLakesHomeowners@gmail.com

<https://bit.ly/SalisburyLakesHomeowners>

April 6, 2021

Mr. Larry Burcroff
Chairman of the Inland Wetlands & Watercourses Commission
Town of Salisbury CT

Dear Mr. Chairman:

I write to you again on behalf of Salisbury Lakes Homeowners, a large and growing group of homeowners with homes and real estate located on and around the regulated lakes in the Town of Salisbury, including the Twin Lakes. Members of our group viewed the most recent zoom meeting of the IWWC. We appreciated the courtesy of having our first letter read at the meeting. I also appreciated the opportunity for some modest dialogue with the IWWC during the public comment session.

As you know, we were advised by Mr. Rand to seek a dialogue with the leadership of Lake Wononscopomuc Association (“LWA”). By way of follow-up, I had a pleasant and informative 90-minute phone call with a senior member of the LWA leadership. The call was instructive on several levels. Specifically, we discussed local challenges relating to water quality and the environment, as well as the early participation of LWA members in the development of the proposed regulations. Overall, it was candid and educational. However, the conversation also confirmed and reinforced our key concerns around process, transparency, and inclusion regarding the proposed IWWC regulations. We have no issue with the early and well-intentioned involvement of the LWA, but we remain concerned that the LWA played such a significant role, aided by legal counsel, when no one from the Twin Lakes area was invited to participate during the formative stages of amending the regulations. We believe we should have been included in the evaluation of the issues and the development of the discretionary aspects and definitions of the proposed regulations.

Following the most recent IWWC zoom meeting and the conversation referenced above, we hosted our own informational Zoom meeting with over 75 homeowners on the Salisbury Lakes. A copy of our PowerPoint slide deck can be found here: <https://bit.ly/SalisburyLakesHomeowners>

The zoom meeting and subsequent feedback have confirmed that our group is large and growing as homeowners are learning about the proposed regulations, many for the first time. Presently, there are upwards of 175 homeowners, mostly on the Twin Lakes but also including some Lake Wononscopomuc homeowners, who are concerned about the timing of, and process for, the evaluation, development, and adoption of the proposed regulations. Here is the link to our Zoom meeting: <https://youtu.be/rGpXhvpcteg>

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To best understand the nature of the questions coming out of that zoom call, we thought it useful to share a few examples. Specifically, there is general confusion around the new definitions of regulated activities and their practical application for homeowners evaluating their regulatory obligations for non-construction related landscaping and maintenance work. For example, is IWWC permission required to replace a few bushes within the proposed upland review area given that homeowners are not permitted to decide for themselves what is a “permitted activity”? Or, why does the IWWC want to extend the regulated activities jurisdiction in the upland review area to 200’ when we are the only town with a 300’ lake overlay zone which currently provides broad regulatory authority to both IWWC and P&Z in all construction related projects. As noted previously, the proposed extension of the URA would cover the entire lots of more than 80% of the homes on South Shore Road alone. These are just a few of the many questions and concerns we have.

As requested by Abby Conroy, we have compiled and aggregated questions from dozens of homeowners on the Salisbury Lakes. A copy of those questions is attached and can also be found at this link: <https://bit.ly/SalisburyLakesHomeowners>.

We also wanted to make you aware that we are working with legal counsel to better understand the mandatory vs discretionary aspects of the proposed regulations. Once we have greater clarity, we remain open to moving forward with adopting certain of the regulations which are discretionary but non-controversial. That said, we believe there will remain discretionary changes which will merit a longer timeline for input, evaluation and education before adoption. The need for a longer timeline is especially important in today’s world as we continue to grapple with meeting restrictions due to COVID 19 and the challenges of explaining complicated regulations and facilitating interactive dialogue in a zoom environment. I also note that many affected property owners are not currently resident in the Salisbury area during the winter/spring months and those folks deserve a voice in this process when they are in residence and when some semblance of normality prevails. Many of those on our zoom call were not in residence and were unaware of the proposed regulations.

So, what are we asking? On behalf of Salisbury Lakes Homeowners, we formally request that you pause the current process, provide written answers to our questions and gather input from a representative group of Salisbury Lakes property owners. We are happy to partner with you and assist with this. Specifically, we would like substantially more time for all waterfront property owners to understand the problems IWWC seeks to address. We also request the ability to partner with the IWWC and to participate directly in the development of any discretionary IWWC regulatory changes. By slowing the process, we will gather broader input, build more consensus, and better educate homeowners about best practices regarding the protection of our lakes and the surrounding environment. If the IWWC decides to continue with the current informational meeting scheduled for April 26 despite our request for more time and a process for gathering community input, we request that written answers to our questions be posted on the town website ahead of the meeting so as to

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make the meeting more productive and interactive. As our understanding of the proposed regulations and their potential impact deepens, we expect to have more questions to submit. We will strive to do so with as much lead time as possible.

While we share the strong desire to protect our lakes and the environment, we remain concerned that the proposed regulations do not actually solve many of the problems they are intended to address. The clear cutting of trees is a good example of a concern many of us share. Recent and extensive clear cutting arguably provided impetus for the proposed regulations, yet regulating such clear cutting remains beyond the scope of the proposed regulations. The Town will need to address this concern with separate regulations and enforcement tools.

Once the current process is paused, we suggest that the IWWC work with the Board of Selectmen to appoint an IWWC Advisory Committee comprised of designated representatives of homeowners on all regulated lakes of the Town and members of the IWWC with the specific task of educating, researching, and recommending alternative solutions which balance environmental concerns with those of property owners. This is a more holistic and equitable approach and one we feel may be more beneficial for all in both the short and long term. And, we believe it will create efficiencies at the administrative level and alleviate an avalanche of challenges from individual homeowners opposed to the proposed regulations.

We welcome a zoom meeting with you, Mr. Rand, Ms. Conroy, and the commissioners of the IWWC about the best way to move forward to achieve consensus around our common goals. In the meantime, we think the April 26th meeting should be postponed indefinitely consistent with the concerns and objectives summarized in this letter.

Sincerely,

Grant Bogle
Salisbury CT

Cc: Curtis Rand, First Selectman
Abby Conroy, Administrator

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Questions for Inlands Wetlands and Watercourses Commission

I. Questions regarding rationale for proposed regulatory changes:

- 1) Which regulatory changes are mandated by changes in the Connecticut General Statutes, and which are discretionary?
 - a) Please confirm that the red-lined version of the proposed regulations is accurate vs the current regulations and mark, on this red-lined version, which are required by changes in the statutes, and which are discretionary.
- 2) What problems or challenges is the town and IWWC trying to solve?
- 3) Beyond the statutorily mandated changes, for each discretionary regulation change, please explain how the discretionary changes will significantly improve the health of lakes, watercourses and/or wetlands (hereinafter the “protected resources”)?
- 4) Please cite specific examples where current regulations have been inadequate to protect the protected resources and explain why.
- 5) The town lists 6 general goals on its website that the new regulations are intended to address. What evidence can be provided that demonstrates that such goals are not being adequately addressed by local ordinances, current IWWC regulations, land use practices and the regulations of the Salisbury Planning and Zoning Commission (P&Z)?
- 6) Why are the 4 named lakes in question subject to the proposed new regulations but 2 others are not?
- 7) Beyond the state statutory changes requiring an update to the regulations, the IWWC workshop of March 1 identified about 20% of Connecticut municipalities that have URA rules similar to the proposed regulations but the IWWC has not otherwise provided any scientific or quantifiable data specifically related to Salisbury lakes as a justification for expanding the URA. What scientific or quantifiable data provide a rational basis for the proposed regulations??
- 8) How many of the municipalities that have established URAs beyond 100 feet have a lake overlay zone extending 300 feet from shore? Why is this proposed change necessary or desirable given the extensive oversight already provided by current P&Z and IWWC regulations?
- 9) There is general confusion about where the IWWC has sole authority, where P&Z has sole authority and where IWWC and P&Z authorities overlap? Would you please clarify these exclusive and overlapping jurisdictions?

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10) The water quality studies performed by Aquatic Ecosystem Research on Twin Lakes and Lake Wononscopomuc show that the water quality is generally “stable to improving”. These results may be explained at least partially by enhanced lake management practices undertaken by the town and the lake associations as well as individual property owners as a result of the extensive oversight already provided due to IWWC and P&Z regulatory review of proposed renovation or new construction activities. Please provide the public with quantifiable evidence specific to our lakes that the proposed regulations are necessary to improve water quality or otherwise improve the environment?

11) How do the proposed regulations address the town’s stated concern over clear-cutting when recent instances of clear-cutting have occurred where neither the existing nor the proposed regulations would apply?

12) Has the town and/or the IWWC commissioned environmental impact studies which go beyond lakes and related wetlands? What studies specific to Salisbury suggest that the proposed regulations are the right solution to address the broad, general issues suggested in the town overview and environmental impact studies of the new regulations?

II. Questions regarding process for development of the proposed regs, local involvement and timeframe for adoption:

13) This process feels rushed and lacking in transparency; specifically, how long have the proposed regulations been under discussion and why were both the process and proposed changes not made public sooner?

14) Notwithstanding that the proposed regulations have been under discussion for a long time according to the IWWC, why are these changes being driven forward without the IWWC asking for participation of the directly affected landowners and on relatively short notice to the public?

15) Connecticut General Statutes set out an approval process for adoption of any amendments to the regulations. Please provide the public with a thorough understanding of the approval process including timeline and the ability to provide meaningful input. Also, please explain what is within the power of the IWWC commissioners to enact and whether an appeals process exists after regulatory amendments have been approved by the IWWC and to what venue an appeal can be taken.

16) According to a board member of the Lakeville Wononscopomuc Association (LWA), representatives of the LWA played a material role in providing direct input to the proposed regulations over the past two years. If this is the case, why were representatives from other lakes not invited to provide input and participate earlier in the process of developing the proposed regulations?

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17) In light of COVID restrictions and the fact that electronic platforms are not optimal for complex communications and meaningful public exchange, does the IWWC and the town believe the process laid out for educating and inviting public input meets the criteria for appropriate public feedback as required by CT law? Has the IWWC considered the de facto exclusion of members of the public who either lack access to or mastery of electronic meeting technology?

18) Have the IWWC and the town considered the benefits of slowing down the approval process to allow for greater participation of lakefront homeowners while at the same time educating the public on appropriate lake management practices, which ultimately may improve homeowner compliance with any new regulations subsequently approved as well as mitigating the likelihood of numerous challenges from individual homeowners?

III. Questions regarding potential adverse burden and impact of the proposed regulations on town finances and operations and on lakefront property owners:

19) Connecticut General Statutes require the impact of inland wetlands regulations to be balanced with the resulting impact on economic growth and property values. Specifically:

a. Have the IWWC and the Town analysed or modelled the financial costs and increased operational burden likely imposed by the proposed regulations to demonstrate that the town currently has the existing financial and administrative capacity to implement expanded IWWC jurisdiction and regulation?

b. Have the IWWC and the Town analysed the higher costs that property owners will likely incur to prepare and file applications for permits and declaratory rulings that will be required under the proposed regulations and the financial impact on property owners of prolonged delays while waiting for such applications to be approved or denied?

c. Do the expanded regulations meet the Connecticut Statutory requirement of balancing Inland Wetland and Watercourse regulations with economic growth and preserving property values?

d. Please provide copies of any such analyses and reports for subsections a-c above.

20) Have the town and IWWC analysed and modelled the implications of such expanded regulations on town finances and property values? Specifically, has the town/IWWC considered the possible loss in assessed property values of lakefront properties, including the town's costs of defending against tax assessment reduction claims and lawsuits, given the increased limitations on the use and enjoyment of those properties? Please provide copies of such analyses and reports.

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21) Have the town and IWWC analysed the potential impact of litigation costs and adverse judgments incurred by the town resulting from lawsuits brought by landowners for: (a) the de facto illegal taking or confiscation of property resulting from application of the proposed regulations; and (b) appeals and lawsuits resulting from landowners who disagree with the Land Use Administrator's or IWWC's decisions. Similarly, have the town and IWWC evaluated the additional costs that property owners will incur in contracting, engineering, soil, landscape, legal and other services in order to file the applications for permits that will be needed because of the expansion of the regulated area and regulated activities jurisdiction area, and the additional costs and delays of filing appeals and claims? Please provide copies of such analyses and reports.

22) Given the potential negative impact on property values from more extensive regulation, has the town analysed how it will absorb the financial impact and potential diminution in tax revenue to the town given that approximately 20-25% of the grand list derives from lakefront properties? Will the tax burden on non-lakefront property owners need to be increased? Does IWWC or the Town plan to advise the general public of this potential financial impact of these regulations on the real estate taxes on non-lakefront properties? Please provide copies of such reports and analyses.

23) Have the town and IWWC analysed whether the proposed regulations may have additional unintended consequences due to the increased regulatory compliance burdens? For example, homeowners may opt **not** to invest in making desirable improvements to their properties and the environment if they are required to seek approval for projects which do not currently fall within the existing regulations. In addition, potential buyers may decide not to purchase property on the lakes because of increased regulatory burdens they would face in obtaining the necessary permits to upgrade such property. Please provide copies of such reports and analyses.

24) Have the town and IWWC analysed whether the impact of the proposed regulations may be inequitable from lake to lake and from one property owner to another and that homeowners on some lakes may be affected disproportionately to others? And, that some landowners who have small and/or wooded lots may be more severely impacted than landowners who already have large lawns and views? Please provide copies of such reports and analyses.

In summary, have the town and IWWC undertaken a careful "cost-benefit" analysis of the proposed regulations to evaluate:

- a. the quantifiable and substantiated benefits, if any, that the proposed regulations will have on the health and water quality of the lakes balanced against the profound impact of potentially substantial costs and risks to the town and disproportionate impact on landowners? and;
- b. the time and cost to the Town of defending appealed rulings and the cost to property owners to pursue litigation due to a wrongful denial of an application, improper taking and confiscation of substantial land value or appeals to reduce tax assessments?

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IV. Questions regarding the existing regs, specific definitions and/or updates to the proposed regulations:

25) Connecticut Statutes specify that homeowners may not decide what is a “permitted activity” within a review area as this is solely within the purview of the IWWC. As the proposed regulations extend the review area from 75 to 200 feet and without clear guidance or specific examples of what is permitted, does the IWWC intend for homeowners to seek approval for routine projects such as lawn care, removal of trees or brush, invasive species of plants, etc?

26) Please explain under what conditions lakefront property homeowners may do the following without prior approval of the IWWC within the URA:

- a. remove and/or replace existing trees or shrubs
- b. repair, resurface or replace a driveway or hardscape
- c. Plant or expand a lawn
- d. Plant or expand a garden or flower bed
- e. Paint a house or outbuilding
- f. Other common activities that may be considered a regulated activity by the IWWC

27) Will septic systems which pre-date the new regulations or which do not otherwise conform to current Connecticut Health Code standards be required to be relocated if they fall within the proposed extended URA?

28) While extending IWWC authority, the new regulations do not provide clarity about timelines and accountability of the approval process. Any amendments to the IWWC regulations should include a clear timeline and process for obtaining a permit for a regulated activity, declaratory ruling, public notice period, or any other administrative process. Otherwise, homeowners cannot plan and the IWWC cannot be held accountable.

29) Has the IWWC created detailed maps outlining the proposed URA for each of the affected lakes? If so, please share this publicly and if not, IWWC should undertake this modelling and post this information before the next scheduled meeting.

- a. Is the IWWC aware that the majority of homes on the lakes lie within 200 feet of the mean high-water line which, in most cases, includes the entire lot so the impact of extending the distance for permits to conduct a “regulated activity” under the proposed regulations subsumes entire properties?
- b. Apart from discussions at IWWC meetings and posting on the IWWC website, what other steps has the IWWC taken or is planning to take to communicate about the proposed regulations to all affected landowners, other lake associations, other interested parties and the general public. Arguably, the existing steps such as posting on the IWWC website are insufficient given that many impacted landowners are not currently in residence and would have no reason to regularly check the website and other property owners in Salisbury whose

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tax bills may increase as set forth in Question 22 above may be completely unaware of this possible consequence.

30) One of the many concerns we have is that the proposed regulations as drafted, are either confusing or create further confusion. For example, it appears the intent of the proposed regulations is to extend to the URA “all the exempt by right and unregulated activity” that section 4 applies to activity within wetlands and watercourses. Is that correct? If so, please clarify the wording in the “regulated activity” bullet 4 to clearly express that intent.

31) Another example is a lack of clarity in Section 4.1 where any amendment should include “and upland review areas” so the first sentence reads “*The following operations and uses shall be permitted in inland wetlands, watercourses and upland review areas, as of right*”?

32) What is the application flow and response/decision timeline for an application for a Declaratory Ruling? Where is this documented in the Salisbury Regulations?

33) What are the rules for “Agent Determination on a Declaratory Ruling”? Where is this documented in the IWWC Regulations? Is there a different application form for this purpose?

34) What guidelines and factors does the IWWC use to guide its decisions when considering making a ruling? Are there objective guidelines which guide the ruling process for a “Declaratory Ruling” decision?

35) What is the durability of a Declaratory Ruling? Is it a one off, “one time by right” for recurring activities? The rulings are not licenses, so why would it not be “one and done”?

36) Section 3.1 updates “precise locations” to state “Such determinations shall be made by field inspection and testing conducted by a soil scientist where soil determinations are required.” Where does this requirement originate? Is a “precise location” of wetlands and watercourses required other than when invoked by article 7.6 which reads “At the discretion of the Agency after a determination of significant impact”?

37) Most of the legacy lake properties were developed without flagging wetlands, thus the precise location of wetlands is unknown. Since a ‘by right’ declaratory action is equally applicable in both a wetland and URA, is a “precise location” of wetlands required for a declaratory determination?

38) Section 3.3 states “the Agency *shall* maintain a current inventory of regulated areas” within the town. Where can one find this inventory and in what form does it exist – written text, mapping? Will an updated inventory of these areas be available if these proposed regulation changes are adopted? If so, how long after adoption will the inventory be made available to the public?

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39) In section 7.5.f why are alternatives required in the Salisbury application form (item 9) prior to the IWWC determining whether the proposed activity may have a significant impact?

40) In Section 9 Public Hearings: In the new fee schedule, who pays for a Public Hearing requested by petition? How is residency determined for purposes of validating a petition?

41) In Section 10.1.c, how are comments from other technical agencies or *organizations* introduced to the process? In the absence of a public hearing don't these organizations need to establish "intervenor" status in order to participate? The statues recognize the ability of named agencies and adjacent municipalities to comment, but how do technical agencies and organizations get introduced? What types of "organizations" will be allowed to give input? The wording here is dangerously vague.

42) Other Definitions:

- a. **Grubbing:** excavating in the presence of a stump. This appears to be clear.
- b. **Clearing:** removing 50% or more down to a height of 6" within a contiguous 50 square foot area. How will this work in practice? We don't understand the measurement, and we are perplexed to understand how cutting vegetation in a 50 square feet contiguous area in an URA is likely to have a deleterious effect on a watercourse. Can the IWWC provide some amplification on this measurement? Perhaps a drawing showing the dependencies of 6", 50 square feet, and a sample calculation of 50%.

Also, we were advised that the 50 square foot area is a misprint and should be 500 square feet. Even if the amendment should read 500 square feet, where did this number come from and what is the justification for it? For example, if a property is totally wooded, would the owner be prevented from having a lawn, sunlight and views comparable to most other properties around the lakes?

- c. **Highly erodible soils:** There is no appendix C in this draft. There are highly erodible soil maps on an ArcGIS mapper on the CT DEEP website and/or the UConn CT ECO website. Can those be used here?