

SLH Letter to Salisbury Inlands Wetlands & Watercourses Commission

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 2 attachments (636 KB)

SLA Initial Review of Proposed Mandatory Amendments.pdf; SLH IWWC Questions 4.6.21.pdf;

Town of Salisbury
Salisbury Inland Wetlands & Watercourses Commission
Larry Burcroff, Chairman
Steve Belter, Vice Chair
John Landon, Regular Member
Cary Ullman, Regular Member
Peter Neely, Regular Member
Sally Spillane, Regular Member
Maria Grace, Regular Member
Vivian Garfein, Alternate
Georgia Petry, Recording Secretary

May 19, 2021

Dear Inland Wetlands & Watercourses Commission Members:

I write to you on behalf of Salisbury Lakes Homeowners (“SLH”), a large group of homeowners with homes and real estate located on and around the regulated lakes in the Town of Salisbury, including the Twin Lakes. This is the third letter written on behalf of SLH and we have opted to include all Inland Wetlands & Watercourses Members in this correspondence to ensure that our questions, concerns and desire for productive dialogue are fully understood by all involved. Our prior two letters and attachments to the Chairman of the Inland Wetlands & Watercourses Commission (“IWWC”) and the First Selectman can be found [here](#) or at <https://bit.ly/SalisburyLakesHomeowners>. We thank you for the work you do on behalf of our Town, the environment and as volunteers. With this letter, we seek to ensure transparent and balanced communication so that everyone on the IWWC is in receipt of the same information.

By way of background, SLH was formed in response to the March 1 IWWC information session on Zoom showcasing the proposed regulatory amendments. Abby Conroy's presentation was informative, but it spawned many questions. Ms. Conroy assured those on the Zoom call that she and IWWC Members would field questions at another information session, and she requested that all questions be organized and consolidated. SLH was duly organized, we hosted a Zoom call and outreach to community members as we endeavored to educate the community about the proposed regulatory amendments, and we got to work consolidating the many questions arising from the community to present to Ms. Conroy and the IWWC.

A list of 40+ questions was submitted a week in advance of the April 26th IWWC meeting. There were over 90 attendees at the meeting. Unfortunately, the two IWWC Members who worked to revise the proposed regulations were not present, so the meeting turned into a purely internal discussion about the proposed regulations between other IWWC Members. At the next IWWC meeting on Monday (May 10th) there was again no information session and no clear decision regarding a future meeting with sufficient time for a **full airing** of questions previously submitted as well as spontaneous questions from the community.

We remain at a loss to understand why the IWWC offered to host an informational Q&A session, request that all questions be collected, combined, and submitted in advance, and then subsequently ignored our submission at the April 26th meeting. Our questions not only raise legitimate practical concerns, but also query the unintended consequences of the impact of the proposed regulatory amendments. Those impacts are worth considering, and the IWWC must give deep thought to such considerations. We are also not certain that all Members have seen our questions or the extent to which all Members have considered the practical consequences and burdens on homeowners and the Town that the proposed regulations will entail. We ask that you review our questions as they may prompt deeper thinking. The questions are attached to this correspondence and can be found [here](#) or at <https://bit.ly/SalisburyLakesHomeowners>.

Members of SLH include the vast majority of homeowners on the Twin Lakes. We are also supported by homeowners on the other regulated lakes of Salisbury, including Lake Wononscopomuc. Over 540 individuals signed a petition circulated by SLH asking the IWWC to slow the approval process and to engage the community, especially those impacted by the proposed regulations, in robust and inclusive fashion. The SLH petition can be found [here](#) or at https://www.change.org/Salisbury_Lakes_Homeowners_Petition. Based on the discussion regarding the proposed regulations at the last two IWWC meetings, many of those 540 individuals now question: a) whether all members of the IWWC have thoroughly considered the proposed amendments and their potential impact on property owners and the Town, and b) whether all members of the IWWC have been

informed of our concerns and considered them as they deliberate on next steps. As IWWC Members, you have the sole authority to adopt, implement and enforce these proposed regulations. It is our view that every Member of the IWWC has an obligation to listen to sincere concerns of the citizens you regulate and be well-informed about the practical administration and unintended impacts of the amendments before taking any further action on the proposed regulations. The last few meetings of the IWWC did not inspire confidence in this regard.

One of our overriding concerns is the lack of transparency and unbalanced input underpinning the process around the development of the proposed amendments to the regulations. According to the minutes of the IWWC, this process began in late 2018 with a submission by the Lake Wononscopomuc Association (“LWA”) Board of Directors to amend the regulations. This submission led to a series of discussions among the IWWC Members at several meetings and ultimately led the town attorney to recommend updating all IWWC regulations to be consistent with Connecticut state law. At the November 4, 2019 IWWC meeting, the IWWC appointed a subcommittee of the Members to “read, interpret and summarize the proposed amendments and the comments by Attorney Janet Brooks”. At this same meeting, a member of the Board of LWA, Mary Silks, “asked to be on the subcommittee to study the proposed amendments to the regulations regarding the protection of the lakes”, which resulted in the appointment of Ms. Silks to this subcommittee. We note that with the addition of Ms. Silks to the subcommittee, two of the four subcommittee members were Lake Wononscopomuc homeowners and that no other lakefront homeowners on any of the other regulated lakes in town were included in this process. A review of the recording of the January 21, 2021 IWWC meeting reflects concern from the town attorney, in paraphrase, that *there is a problem with due process with one lake directly participating in the re-write of the regulations to the exclusion of the other three lakes*. It is our understanding that the subsequent public information sessions were offered as an attempt to “balance or equalize” input from community members on all the regulated lakes at the suggestion of the town attorney. To be clear, we have no issue with the early and well-intentioned involvement of board members from the LWA or those with properties on Lake Wononscopomuc. But we remain deeply concerned that those with strong affiliations to the LWA or ownership on Lake Wononscopomuc (including the counsel that LWA retained in the process) played such a significant role for over two years when no one from any of the other regulated lakes was invited to participate during the formative stages of amending the regulations. We believe that had representatives from Twin Lakes and the other regulated lakes been included in the evaluation of the issues the IWWC is attempting to solve for and the development of the discretionary aspects and definitions of the proposed regulations, most (if not all) of our current concerns would have been addressed through an iterative, transparent, and manageable process.

Regarding the Twin Lakes specifically, the two lakes comprising the Twin Lakes comprise roughly 820 acres. Lake Wononscopomuc covers 274 acres or roughly 33% of the Twin

Lakes. The number of homeowners on the Twin Lakes is substantially greater than those on Lake Wononscopomuc and the corresponding assessed taxable values of the Twin Lakes properties vastly exceed those on Lake Wononscopomuc. In addition, as we have pointed out previously, many of the lots on the Twin Lakes are less than an acre and most of the homes are positioned within 75 feet of the water. Thus, any changes to the regulations extending the URA beyond 75 feet has substantial implications for current and future homeowners on the Twin Lakes, in unique ways that differ from those for homeowners on Lake Wononscopomuc. Given these facts, it is imperative that representatives from the Twin Lakes Association or private citizens on the Twin Lakes and any of the other regulated lakes be included in the drafting process, as regulatory changes that may be acceptable for one lake may be disastrous for another lake.

On that score, we have serious concerns regarding the substance of the proposed discretionary changes as you will note from our questions. While we share the strong desire to protect our lakes and the environment, we remain concerned that the proposed discretionary regulations do not actually solve many of the problems we believe 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 the impetus for the proposed regulations, yet regulating such clear cutting remains beyond the scope of the proposed regulations. The solution to this issue will not be solved with the proposed discretionary regulations. Many of our questions also query the rationale behind the proposed changes. For example, what scientific evidence and experience supports the need for expanding the URA to 200 feet *on our particular lakes*? We have seen the table listing URAs in other towns, but that does not scientifically justify changing the regulations for the Twin Lakes and other regulated lakes, especially when none of those jurisdictions, to our knowledge, also have a 300-foot lake overlay zone. Furthermore, the lake monitoring studies conducted on the Twin Lakes and Lake Wononscopomuc indicate that water quality has been stable to improving compared to studies done in the 1990s. This is a testament to the careful lake management policies implemented by the town and each of the lake associations, along with the significant investment of time and resources of the community to ensure our lakes remain healthy and enjoyable for all.

So, what do we propose? Consistent with our commitment to work cooperatively and constructively with the IWWC as articulated in our prior correspondence:

1) We support any decision that you may make to move ahead and adopt the mandatory regulations. With the assistance of our legal counsel, we have undertaken a detailed and comprehensive review of the mandatory vs discretionary proposed regulations. Attached is a summary of the mandatory regulations which we support and which we ask you to review and consider. That summary can also be found [here](#) or at <https://bit.ly/SalisburyLakesHomeowners>.

2) We respectfully request that you *pause the process around adoption of ALL other discretionary IWWC regulatory changes*. Once again, we suggest you form a balanced

and representative working group to revisit all discretionary changes. That group or subcommittee should include property owner representation from all the regulated lakes, not just representatives from Lake Wononscopomuc. A more inclusive, transparent, and collaborative process which engages all lake communities will undoubtedly lead to better outcomes around environmental education, community support and willingness to comply with regulatory requirements. It also affords all of us the opportunity to better educate lakefront homeowners about best practices regarding the protection of our lakes and the surrounding environment.

Regarding our communications to you, we understood from Town representatives that there was concern over whether individual Members may be contacted directly by the public regarding the proposed regulations without jeopardizing the work of the IWWC. Recognizing that it is in no one's interest to compromise the integrity of the IWWC, we opted to retain legal counsel to help us answer this and other questions relating to the proposed amendments, their impact on property owners, the drafting process and composition of the drafting subcommittee. Mark Capecelatro is our local counsel and Joseph Williams of the Shipman & Goodwin firm, is our regulatory counsel. The upshot is that because the proposed regulatory amendments are being advanced on the IWWC's own initiative, the IWWC is acting as a legislative body, not an adjudicative body that is deciding the property rights of an applicant. The ex parte rules are substantially relaxed in this context, so neither this letter nor any prior correspondence contravenes either the law or common practice as it pertains to our SLH communications with each one of you.

We thank you for your dedication and the endless hours you volunteer on behalf of the Town and as guardians of our environment. We remain keen to support the work of the IWWC provided any new regulations are fair and balanced against homeowner rights and concerns. We welcome an in-person or a Zoom meeting with some or all of you, Mr. Rand, and Ms. Conroy to determine the best way to move forward to achieve consensus around our common goals.

Sincerely,

Grant Bogle
On Behalf of Salisbury Lakes Homeowners

salisburylakeshomeowners@gmail.com
<https://bit.ly/salisburyLakesHomeowners>

Copy to
Curtis Rand, First Selectman
Christian Williams, Selectman
Donald Mayland, Selectman
Abby Conroy, Administrator

Salisbury Lakes Homeowners Initial Assessment of Proposed Mandatory Amendments to Regulations & Related Issues

This brief memorandum summarizes our initial review of the proposed mandatory Amendments to the Regulations of the Salisbury Inland Wetlands and Watercourses Commission (“SIWWC”) (collectively, “Proposal”).

I. Mandatory Amendments

- Name-change amendments (Sections 1.2, 1.4, 2.1 (definition of agency), 6.1, 8.1, 10.1, 11.5, 12.1, 15.1, 15.3, 18.1): These changes all reflect the Commission’s name change from the Salisbury Conservation Commission to the Salisbury Inland Wetlands Commission and name changes of other commissions and government agencies.
 - **Model Regulations:**
 - Not in model regulations¹
 - **Technical Effect:**
 - Clarifies names of pertinent agencies.
 - **Practical Effect:**
 - None

- Section 2.1’s definition of “Clearcutting” to impose “two-inch” diameter restriction at breast height.
 - **Model Regulations:**
 - This is consistent with model regulations
 - **Technical Effect:**
 - None, this is in red text, but it is actually what is in the current regulations.
 - **Practical Effect:**
 - None

¹ The invocation of “model regulations” in this memorandum refers to the Fourth Edition (which is the most recent) of the Inland Wetlands and Watercourses Model Municipal Regulations, which was published by the State of Connecticut’s Department of Environmental Protection (DEP) on May 1, 2006. See <https://portal.ct.gov/-/media/DEEP/water/wetlands/modelregsfinalof4theditionpdf.pdf>. The model regulations are not binding, but they are “designed so that [they] can be adopted with minimal changes or [they] can be customized to reflect the uniqueness of [the] municipality.” *Id.* at 1. According to DEP, “the model is a success; the majority of our municipalities now use the model to help navigate through the increasingly complex regulatory landscape in Connecticut.” *Id.*

- Section 4.1: Addition of “withdrawals of water for fire emergency purposes” as a use permitted as of right.
 - **Model Regulations:**
 - Not in model regulations
 - **Technical Effect:**
 - Clarifies that withdrawal of water from a watercourse for fire emergencies is permitted as of right.
 - **Practical Effect:**
 - None

- Section 4.2: Addition of “fire hydrants” as a use permitted as of right provided no disturbance of natural and indigenous character of wetland.
 - **Model Regulations:**
 - Not in model regulations.
 - **Technical Effect:**
 - Clarifies that installation of fire hydrant in a wetland is generally permitted as of right absent disturbance to natural and indigenous character of wetland.
 - **Practical Effect:**
 - None

- Section 7.1: Application forms now available from Land Use Office, not offices of the Selectmen.
 - **Model Regulations:**
 - Model Regulations reflect offices of the Town Clerk or Agency.
 - **Technical Effect:**
 - Clarifies that place to obtain application forms is land use office.
 - **Practical Effect:**
 - None

- Section 11.1: The Proposal would explicitly provide for “terms” of approval to “include restrictions as to the time of year in which a regulated activity may be conducted, provided the Agency or its agent, determines that such restrictions are necessary to carry out the policy of sections 22a-36 to 22a-45r inclusive of the Connecticut General Statutes.”
 - **Model Regulations:**

- The Proposal lists this as a “procedural/required” fix; however, it is not included in the Model Regulations.
 - Furthermore, nothing in the General Statutes or Connecticut Regulations *requires* that an IWWC explicitly state its authority to include “time of year” restrictions in its Regulations.
 - **Technical Effect:**
 - Clarifies that SIWWC has authority to restrict activities to certain times of the year.
 - **Practical Effect:**
 - None--SIWWC already has this authority by law.
- Section 2.1: Definition of Ordinary High Water Mark
 - **Model Regulations:**
 - Term not defined or used.
 - **Technical Effect:**
 - Formally defines place at which wetland ends and upland review area begins.
 - **Practical Effect:**
 - On its own, little, as definition is largely consistent with commonsense understanding of high water mark.
- Section 2.1: Definition of Regulated Activity to Include Activities Outside of URAs that are having or are likely to have a “detrimental impact” on a wetland or watercourse.
 - **Model Regulations:**
 - Consistent with 1997 URA Guidance, which is noted in the Model Regulations.
 - **Technical Effect:**
 - Activities outside URAs or wetlands/watercourses that have or are likely to have “detrimental impact” on wetlands/watercourses may be treated as regulated activities.
 - **Practical Effect:**
 - Actually, this arguably *restricts* the authority of SIWWC because the existing Regulations do not include the “detrimental” modifier.
 - In other words, *any* impact currently qualifies for treatment as regulated activity; whereas now, SIWWC must first find a “detrimental impact” or the likelihood of the same.
 - Suggest that language should be consistent. Perhaps “adverse” impact.

- Section 2.1: Definition of Slope
 - **Model Regulations:**
 - Term not defined or used.
 - **Technical Effect:**
 - Codifies definition of slope.
 - **Practical Effect:**
 - On its own, little, as definition is largely consistent with commonsense understanding of slope.
 - **Challenge?**
 - No. Definition is consistent with that of other municipalities and comports with common sense.

- Section 2.1: Definition of Upland Review Area
 - **Model Regulations:**
 - Term not defined or used.
 - **Technical Effect:**
 - Codifies definition of URA.
 - **Practical Effect:**
 - On its own, little, as definition is largely derivative of definition of regulated activity.
 - Suggest that language should be consistent. Query: Why use “deleterious impact” here, “detrimental impact” in definition of regulated activity? Propose “Adverse” impact, as consistent with caselaw. Otherwise, creates a lack of certainty and differing standards.

- Section 3.1: Provision specifying right of SIWWC to determine precise location of wetlands and watercourses by field inspection and testing.
 - **Model Regulations:**
 - Section matches Model Regulations almost verbatim *except that addition is not contained in Model Regulations.*
 - **Technical Effect:**
 - Allows for field inspection and testing by soil scientist or other qualified individual to determine wetland locations.
 - **Practical Effect:**
 - Unclear--arguably provides a broader basis for testing than available under current regulations.

- Revision to Fee Schedule
 - **Model Regulations**
 - Current fee schedule actually matches the Model Regulations
 - **Technical Effects:**
 - See Table on Page 23 of Proposal
 - **Practical Effect:**
 - For homeowners, residential permit applications will generally be cheaper, *unless* SIWWC determines that a public hearing is necessary *or* the application requires a regulation amendment or map amendment.

- Revision to Appendix B: Updated version of 8-7d
 - **Model Regulations**
 - Consistent with model regulations
 - **Technical Effects:**
 - None
 - **Practical Effect:**
 - None.