

Salisbury Lakes Homeowners

SalisburyLakesHomeowners@gmail.com

<https://bit.ly/SalisburyLakesHomeowners>

Town of Salisbury
Salisbury Inland Wetlands & Watercourses Commission
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July 16, 2021

Dear Commissioners:

Once again, I write to you on behalf of Salisbury Lakes Homeowners (“SLH”) who, as you are aware, are comprised of 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 and Lake Wononscopomuc. We reiterate that SLH represents hundreds of lakefront property owners. We are not funded by the Twin Lakes Association (TLA) nor has the TLA taken a position on the proposed regulations. This is the fifth letter written on behalf of SLH to the Town and Wetlands Commission (IWWC). We have opted to correspond directly with each of you to ensure clarity and transparency.

First, we again thank you for the work you do on behalf of our Town, the environment and as volunteers. We understand this is a huge personal commitment. Likewise, we have been galvanized into investing a great deal of volunteer time to educate and inform ourselves about inland wetlands regulations, their practical and procedural application in our community, and how the proposed discretionary regulations may impact both the health of our lake ecosystem and procedural burdens on lakefront property owners. The July 12th IWWC meeting, when the proposed regulations were discussed, underscored that there is much work to be done to understand the scientific and regulatory justification as well as the impact, both intended and unintended, of the proposed regulations. As lake front homeowners, we are personally and disproportionately invested in maintaining the health of the lakes which are home to us. Hence, our keen interest in engaging with the IWWC to understand the genesis, process, and rationale for greater regulation.

We are not opposed to reasonable regulation of the lakes. However, while the extension of the URA and the other discretionary changes may be well intended, the result will significantly and negatively impact the ability and desire of lakefront property owners to maintain and/or improve their properties. We have not seen a persuasive

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case grounded in; (1) science, (2) regulatory requirement; or (3) comparison to other jurisdictions, that the proposed regulations are necessary given the significant regulatory oversight already granted to both the IWWC and Planning and Zoning (P&Z).

This letter summarizes our concerns in anticipation of the July 20th informational meeting. In a separate email, each of you have been sent a letter from our regulatory legal counsel, Shipman and Goodwin (S&G) containing an analysis of Upland Review Areas (URA) and Lake Protection Overlay Districts in Connecticut municipalities which contextualizes and compares the proposed regulations against other Connecticut municipalities both as they currently exist and if they were to be amended. S&G states that the amendments are not feasible and exceed the legal authority of the IWWC. We will refer to the S&G letter in this correspondence.

Salisbury already has extensive regulatory authority over the regulated lakes and there is no justification for such a substantial increase in regulation.

As S&G discusses in its letter, Salisbury's lakes are already among the most regulated in the State, given the existing wetlands regulations *and* the 300-foot lake overlay protection district. The proposed amendments would elevate Salisbury to the top of the list. To reiterate, we are not opposed to thoughtful regulation of the lakes but, Connecticut law limits the IWWC's authority to ensuring the health and quality of wetlands and watercourses. TLA and LWA regularly conduct rigorous lake monitoring studies. Over the past 20 years, 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 each of the lake associations and support from the Town, along with the significant investment of time and resources of the community to ensure our lakes remain healthy and enjoyable for all. With such improvement, there can be no legal justification, as S&G explains, for doubling the size of the URA, imposing a new and untested restriction on highly erodible soils, and crafting expansive definitions of clearing and grubbing, all atop an existing 300-foot lake overlay protection zone.

The current URA regulations are consistent with Connecticut DEEP Model Municipal Inland Review Area Regulations which state that anything beyond a 100-foot URA is generally unnecessary and regulatory concerns beyond that distance should be addressed elsewhere: *“Beyond 100 feet it is neither practical nor desirable, from a wetlands and watercourses management perspective, to automatically require an inland wetlands permit for all construction activities. It must be emphasized that other municipal authorities and mechanisms . . . play a role in addressing the broader watershed issues”*. Arguably, construction activities generally pose the greatest risk in terms of run-off and other issues. The DEEP recognizes that the sum total of regulatory tools available to a municipality should be applied to support a healthy lake ecosystem and not every concern can be addressed by IWWC regulations. The CT DEEP Model Regulations can be found [here](#).

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Extension of the URA will not adequately address issues raised by proponents of the discretionary regulations.

We have serious concerns regarding the substance of the proposed discretionary changes, and it is not clear they will meaningfully strengthen the protections of our lakes or prevent activities like vegetative clearing or clear cutting. Arguably, recent, and extensive clear cutting provided the impetus for the proposed regulations, yet regulating such clear cutting remains beyond the scope of the proposed regulations:

- Wetland Commission regulatory authority is limited to assessing and limiting the impact on wetlands or water courses and does not permit wholesale regulation of clearing and clear cutting. Wetlands Commissions lack the statutory authority to regulate such activities based on aesthetic impact.
- In any event, the issue is primarily academic as little undeveloped land remains along the shores of the four regulated lakes that is not owned by institutions such as The American School for the Deaf, Salisbury School, Hotchkiss, and Camp Sloan. For the most part, the balance of undeveloped land is tied up in land trusts.
- Recent clear cutting, such as along Taconic Road in Salisbury, would not be affected by these proposed discretionary regulations as the cutting occurred well beyond anything the proposed regulations would reach. Town officials have advised us that this work was in full compliance with local ordinances.

While many of us would agree that clearing old growth trees is a concern, the regulatory solutions contemplated by extending the URA, and creating definitions for clearing, is not the appropriate means of addressing this important issue given state law and the challenges likely to ensue if enacted.

Current lakefront homeowners are most affected by the proposed discretionary changes.

New construction is already heavily regulated by both IWWC and P&Z up to 300 feet from shore (the Lake Protection Overlay District). The extent of construction plan review, expert testimony, and measures required to be taken by homeowners undertaking construction to protect the lakes, is already stringent. As previously noted, undeveloped land not owned by an institution or in a land trust is relatively rare on the regulated lakes. Thus, the main impact of these proposed discretionary regulations is on current homeowners. Further exacerbating things, many of the homes on the regulated lakes are within 75-100 feet from shore and a healthy number of entire lots would be subsumed by a 200-foot URA. For example, 30 out of 33 lots on South Shore Road on East Twin are about 200 feet in depth as measured from the shore to the back of those lots.

Here is why we are concerned:

- State law recognizes that current homeowners can maintain their properties as a matter of right within the URA. However, the statute also stipulates that before any “as of right” work takes place, the IWWC must approve regulated activities before any work commences. This places a disproportionate burden, in the form of lost time and increased expense, on homeowners. Extension of the URA to 200 feet would mean

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that many commonplace activities involved in home maintenance would now become regulated activities and require an application and approval by the IWWC before work could begin. These include activities such as putting mulch on garden beds, replacing shrubs, or adding gravel to a stone driveway. Please refer to the memo from Mark Capecelatro, which was previously submitted to the IWWC and is attached as a pdf here. The memo lays out descriptions of the impact of a 200-foot URA extension on common household maintenance items based upon past administrative practices of the Salisbury IWWC.

- The statutory provisions enable the IWWC to require plans, surveys, maps etc. be supplied by homeowners at their cost for basic maintenance activities. The unintended impact is that homeowners will incur additional expenses and lost time to fulfill the statutory requirements of the regulations, some of which require retention of a professional to produce.
- The current 75-foot URA does not trigger many requests for approval, as most homeowners know that work of any significance undertaken within 75 feet of shore should be reviewed and approved in advance. It is unclear that the Town and the IWWC have the administrative capacity to efficiently administer what would be a significant increase in requests for approval generated from a 200-foot extension of the URA.
- To date, the Town and IWWC have failed to provide clarity in terms of approval processes so as to minimize burdens on current homeowners (cost, delay, and administrative red tape). In fact, the IWWC is implementing new processes as we write this letter, often with difficulty in gaining alignment among IWWC Members as to what is permitted and through which process (agent approval, declaratory ruling, or permit).

Effective governance requires the support of the governed.

Our representative form of government relies on the legitimacy of the governing body to listen to the will of the people. If regulations are viewed as overly burdensome or unfair, they fall short of their intended effect and often backfire. This is evident in terms of compliance and costly conflict leading to litigation. Our community is better served by improving compliance and best practices pertaining to lake ecology, through education and awareness rather than overreaching regulation.

- SLH, along with the Twin Lakes Association, works hard to improve community understanding of important ecological issues and best practices to support lake health. This effort includes updates to the TLA website and the distribution of materials regarding good lake stewardship. SLH, through its communication channels and engagement with lakefront homeowners, is educating the community about current issues and raising awareness of the importance of maintaining the health of our lakes. I am confident that LWA would partner with both the TLA and SLH in sponsoring educational events and reinforcing “good habits” among lake front homeowners.
- If “bad actors” choose to ignore the IWWC regulations, the IWWC does not have the ability to fine homeowners. The Town’s only recourse is to take legal action and history has shown this to be costly, divisive, and ineffective in achieving the status quo. No one wins in these scenarios.

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So, what does SLH support?

Consistent with our commitment to work cooperatively and constructively with the IWWC and as articulated in prior correspondence:

- **Adoption by the IWWC of the mandatory regulations.** We understand there is pressure to align town ordinances with state law and we support bifurcating the mandatory changes from discretionary changes (elective and otherwise). We urge the IWWC to move forward now with the process of adopting the mandatory changes as outlined in the attached pdf here.
- **Formal IWWC endorsement of the attorney working group.** We believe much more work is required before a useful discussion with the public is possible. We have committed to pay for Mark Capecelatro's time to work with Michael Zizka (counsel to LWA) and Abby Conroy., We believe this group will take several months to report back to the IWWC and the community. The scientific and regulatory rationale for the proposed discretionary changes is far from clear. We need an analysis and clear delineation of the impact of the proposed changes as they relate to any new processes that the Town elects to adopt. The IWWC should educate the public by setting forth concrete examples of the processes, timelines, and costs (both direct and indirect) that homeowners would likely encounter when engaging with the IWWC for specific regulated activities.
- **Continued engagement and education of the public:** We will continue to educate the community about the status of the proposed regulations and their potential impact on existing lakefront homeowners. We will work cooperatively with other groups in town such as the TLA and LWA to ensure that the information communicated is accurate and available for all to see. To that end, we encourage all interested parties to go to the SLH website [here](#) for timely information related to the issues raised in this and previous letters.
- **Investment in lake stewardship:** We are all concerned about the health of our lakes. We differ in how best to achieve this objective. We commit to continue our work to support education of the community about appropriate lake stewardship.

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.

On behalf of Salisbury Lakes Homeowners,

Grant Bogle
Salisbury CT

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