

FW: SLH Letter to Salisbury Inlands Wetlands & Watercourses Commission

salisburylakeshomeowners@gmail.com <salisburylakeshomeowners@gmail.com>

Mon 6/7/2021 12:42 PM

To: Abby Conroy <aconroy@salisburyct.us>

Cc: Grant Bogle <grantbogle80@gmail.com>; salisburylakeshomeowners@gmail.com
<salisburylakeshomeowners@gmail.com>

Dear Abby:

On behalf of SLH, we have sent you three letters. The email you sent back to me below is the third letter. Each letter stands on its own and to date, we have not received any written response from the IWWC or the Town. I have attached a copy of each of our three letters.

At your request, we also combined all our questions and sent those to you in early April which accompanied the second letter. To date, we have not received answers to any of our questions. A copy of our questions is attached.

We also sent you a pdf of a legal analysis of the proposed new regulations. At this point in time, we do not support the adoption of any of the proposed regulations other than the state-mandated changes identified in our legal analysis. Attached is a pdf of our analysis, SLH Initial Review of Proposed Mandatory Amendments. This analysis was prepared for us by our regulatory counsel at Shipman and Goodwin.

Last week, we sent you a legal analysis of the proposed new regulations and how they might affect certain common activities by lake front homeowners. This legal analysis was prepared by our local counsel, Mark Capecelatro. A copy of his analysis is attached.

To reiterate what we have outlined in all our correspondence to date, we are supportive if the IWWC moves to adopt the mandatory regulations, but we request a pause on the adoption of any of the others proposed regulations as we believe that substantially more time and public discussion is needed.

Importantly, we have consistently observed in all our communications that the process to develop the regulations has not been transparent nor has it been balanced or fair. We continue to urge the IWWC to form a new committee to review the proposed regulations and strongly support the notion that that committee should include balanced representation from the Twin Lakes, and other regulated lakes, not solely Lakeville Lake representatives.

We anticipate that the IWWC zoom meeting tonight will be well attended by members of SLH who are growing increasingly concerned about the lack of communication from IWWC and the Town.

Please let me know if you need any more information or clarification. I am happy to talk with you directly if that would help.

Grant

Salisbury Lakes Homeowners

salisburylakeshomeowners@gmail.com

<https://bit.ly/SalisburyLakesHomeowners>

From: Abby Conroy <aconroy@salisburyct.us>

Sent: Monday, June 7, 2021 9:23 AM

To: salisburylakeshomeowners@gmail.com

Subject: Re: SLH Letter to Salisbury Inlands Wetlands & Watercourses Commission

Grant, is this intended to supercede the earlier submission?

Abby Conroy
Land Use Administrator
Town of Salisbury
PO Box 548
27 Main Street
Salisbury, CT 06068
(860)435-5190

From: salisburylakeshomeowners@gmail.com <salisburylakeshomeowners@gmail.com>

Sent: Wednesday, May 19, 2021 2:12 PM

To: Larry Burcroff <lburcroff@salisburyct.us>; larryburcroff@gmail.com <larryburcroff@gmail.com>;

Steve Belter <sbelter@salisburyct.us>; belterbuilders@yahoo.com <belterbuilders@yahoo.com>;

Sally Spillane <sspillane@salisburyct.us>; Cary Ullman <cullman@salisburyct.us>; John Landon

<jlandon@salisburyct.us>; mgrace@salisburyct.us <mgrace@salisburyct.us>; pneely@salisburyct.us

<pneely@salisburyct.us>; peterneely02169@gmail.com <peterneely02169@gmail.com>; vgarfein@salisburyct.us

<vgarfein@salisburyct.us>; Chris Williams <cwilliams@salisburyct.us>; Donald

Mayland <dmayland@salisburyct.us>; maycopres@gmail.com <maycopres@gmail.com>; Curtis

Rand <crand@salisburyct.us>; Abby Conroy <aconroy@salisburyct.us>

Cc: Grant Bogle

<grantbogle80@gmail.com>; salisburylakesHomeowners@gmail.com <salisburylakesHomeowners@gmail.com>

Subject: SLH Letter to Salisbury Inlands Wetlands & Watercourses Commission

Town of Salisbury
Salisbury Inland Wetlands & Watercourses Commission
Larry Burcroff, Chairman
Steve Belter, Vice Chair
John Landon, Regular Member
Cary Ullman, Regular Member

MARK J. CAPECELATRO, LLC

ATTORNEY & COUNSELOR AT LAW

117 MAIN STREET

P.O. BOX 1045

CANAAN, CONNECTICUT 06018-1045

TELEPHONE: 860-824-5146

FACSIMILE: 860-824-9869

EMAIL: mark@capecelatro.com

June 2, 2021

Lawrence Burcroff, Chairman
Town of Salisbury Inland Wetlands
And Watercourses Commission
Town Hall
27 Main Street
Salisbury, Connecticut 06068

RE: PROPOSED INLAND WETLANDS AND WATERCOURSES REGULATION CHANGES

Dear Larry,

I represent Salisbury Lakes Homeowners (SLH), a group of concerned citizens who own properties on both of the Twin Lakes and Lake Wononscopomuc and have been asked to review the proposed changes to the Inland Wetlands and Watercourses Commission Regulations (hereinafter the "Regulations").

At issue here are not the suggested changes that will make the Regulations consistent with the most current version of the Connecticut General Statutes, but rather the proposed discretionary changes which, I believe, would benefit from a full benefit/burden analysis and a discussion of the Commission's concerns which the Commission believes are not adequately addressed by the language of the current Regulations and the way they are interpreted and applied by the Commission. Once the concerns are clearly identified, it would then be most helpful for the Commission and the impacted property owners to have the opportunity to engage in a dialogue to discuss potential changes which adequately address the Commission's concerns while respecting the property rights of those property owners. I see a collaborative effort by the Commission and SLH and other interested parties to have the greatest opportunity of successfully reaching a consensus on changes to the Regulations to adequately address the Commission's concerns.

Attached to this letter is a Comparative Administrative Approval Chart (the Chart) comparing the requisite approvals for various activities under the current Inland Wetlands and Watercourses Commission

Regulations (the Regulations) and the approvals that would be required under the currently proposed Regulation changes.

The list of 13 Homeowner Desired Activities is not intended to be a complete list but merely a representative sampling of activities that lakefront homeowners may wish to conduct on their property. The Chart shows what approvals are needed to conduct each activity within the following areas as measured from the shore of the lake: 0 to 75 feet from the shore; 75 to 100 feet from the shore (the current Upland Review Area "URA") and 100 to 200 feet from the shore (the proposed expanded Upland Review Area).

There is an Approval Code Legend beneath the Chart which briefly describes what each code means.

Many of the Homeowner Desired Activities would appear to be permitted uses as of right under the provisions of Section 4 of the Regulations which states in part "The following operations and uses shall be permitted in inland wetlands and watercourses, as of right: d. uses incidental to the enjoyment and maintenance of residential property.. Such residential uses shall include maintenance of existing structures and landscaping...". However, Section 4.4 of the Regulations states that "any person proposing a permitted operation or use or nonregulated operation shall notify the Inland Wetlands and Watercourses Commission of the proposed activity and provide the Commission with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or non-regulated use." The Commission needs to rule that the proposed activity is a permitted or nonregulated activity. The Regulations thus require the Commission to make a determination that the basic residential uses, such as those enumerated in the chart, are permitted.

Under Section 12 of the regulations, the Commission can delegate to the Land Use Administrator the authority to approve an activity if the Administrator finds that the conduct of that activity would not result in any more than a minimal impact on any wetlands or watercourses. Under the language of section 12.1, all such requests must contain the information listed under section 7.5 of the Regulations. This would include, but not be limited to the following:

1. Having a soil scientist examine the property and field locate and flag the boundaries of all wetlands soils, watercourses and the mean high water mark of the lake.
2. Having an engineer design an erosion and sediment control plan.
3. Having an engineer design a storm water management plan.
4. A surveyor or engineer would have to prepare a site plan showing the location of the proposed activity relative to the lake.

5. An existing and proposed conditions map must also be prepared by either an engineer or a surveyor.
6. Depending on the proposed work, a Landscape Plan prepared by a Landscape Architect or landscape designer may have to be submitted.
7. All of these plans are prepared at the expense of the homeowner.

The current Regulations would require all of the above plans for activities within 75 feet of the lake shore and would require them for any proposed activity between 75 and 100 feet of the lake shore, *if* the Commission rules that such activity is likely to impact or affect wetlands or watercourses and is therefore a regulated activity. No such plans are required by the Inland Wetlands and Watercourses Commission under the current Regulations for any of the activities (except for the installation of a septic system within 150 feet of the lake shore) taking place more than 100 feet from the shore.

The proposed Regulations, by virtue of extending the jurisdiction of the Commission, would essentially make all of the activities noted in the Chart "regulated activities" and the production of some or all of the plans noted above would be mandatory for any projects located within 200 feet of the shore. The creation of the plans is frequently a long and expensive process, given the need to provide the information as stipulated in Section 7.5 of the Regulations as outlined above. For the text of Section 7.5, please see the attached copy of that section of the IWWC Regulations. The creation of an Erosion and Sediment Control Plan or a Storm Water Management plan will require the property owner to retain the services of a civil engineer to prepare the plans. Currently, the timetable for an engineer to produce such plans runs between one and three months depending upon the scope of the work comprising the proposed "regulated activity". Once the plans are completed and an Application submitted, the Commission usually accepts the Application at its next regularly scheduled meeting but must wait until the following meeting to consider the Application and its supporting documentation and potentially make a ruling. This process may take between 4-8 weeks or longer, depending upon the frequency of IWWC meetings and whether the Commission requires the plans to be reviewed by outside experts such as engineers, surveyors or if the Commission requests additional information from the applicant. Additionally, the Commission may choose to examine issues that it perceives to be potentially relevant or problematic which are beyond the bounds of the activities proposed in the Application itself and the investigation of those issues can delay the approval process and/or lead to increased costs as well.

The proposed expansion of the Commission's jurisdiction would add significant expense for the property owners and will create delays in

the use and maintenance of lake front properties. I hope that the Commission members are willing to engage in a discussion with lakefront property owners and will create an inclusive process of evaluation of the concerns of the Commission and those of the lakefront property owners so that, in the end, all parties will feel that the process was full and fair and that the resulting new Regulations adequately address the concerns of both the Commission and those whose properties will be affected by such Regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark J. Capecelatro". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Mark J. Capecelatro

7.4 A prospective applicant may request the Agency to determine whether or not a proposed activity involves a significant impact activity.

7.5 All applications shall include the following information in writing or on maps or drawings:

- a. the applicant's name, home and business mailing addresses and telephone numbers; if the applicant is a Limited Liability Corporation or a Corporation the managing member's or responsible corporate officer's name, address, and telephone number;
- b. the owner's name, mailing address and telephone number and written consent of the land owner if the applicant is not the owner of the land upon which the subject activity is proposed;
- c. the applicant's interest in the land;
- d. the geographical location of the land which is the subject of the proposed activity and a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, the area(s) (in acres or square feet) of wetlands or watercourses to be disturbed, soil type(s), and wetland vegetation;
- e. the purpose and a description of the proposed activity and proposed erosion and sedimentation controls and other management practices and mitigation measures which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
- f. alternative which would cause less or no environmental impact to wetlands or watercourses and why the alternative as set forth in the application was chosen; all such alternatives shall be diagrammed on a site plan or drawing;
- g. a site plan showing the proposed activity and existing and proposed conditions in relation to wetlands and watercourses and identifying any further activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses;
- h. names and mailing addresses of adjacent land owners;
- i. statement by the applicant that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information;
- j. authorization for the members and agents of the Agency to inspect the subject land, at reasonable times, during the pendency of an application and for the life of the permit;
- k. a completed DEP reporting form; the Agency shall revise or correct the information provided by the applicant and submit the form to the Commissioner of Environmental Protection in accordance with section 22a-39-14 of the Regulations of Connecticut State Agencies;
- l. any other information the Agency deems necessary to the understanding of what the applicant is proposing; and
- m. submission of the appropriate filing fee based on the fee schedule established in section 19 of these regulations.

7.6 At the discretion of the Agency or its agent, or when the proposed activity involves a significant impact, additional information, based on the nature and anticipated effects of the activity, including but not limited to the following, is required:

- a. site plans for the proposed activity and the land which will be affected thereby which show existing and proposed conditions, wetland and watercourse boundaries, land contours,

CURRENT/PROPOSED IWWC REGULATIONS COMPARATIVE ADMINISTRATIVE APPROVAL CHART		APPROVALS NEEDED UNDER CURRENT REGULATIONS			APPROVALS NEEDED UNDER PROPOSED IWWC REGULATIONS	
HOMEOWNER DESIRED ACTIVITY		Distance from lake 0' - 75'	Distance from lake 75' - 100'	Distance from lake 100' - 200'	Approvals Apply to all distances noted under current Regulations	
1	Installing, paving, repaving or resurfacing a driveway, access road, walkway or path	RA	D	A	RA	
2	Installing a garden or depositing a load of topsoil or mulch to an existing garden	RA	D	A	RA	
3	Installing gutters on an existing home	RA	D	A	RA	
4	Repairing or replacing an existing septic system or sewer lateral	RA, T	RA, T	RA, T	RA, T	
5	Repairing or replacing a water line between the house and the well or public water main	RA	D	A	RA	
6	Drilling a new or replacement well	RA, T	D, T	A, T	RA, T	
7	Repairing or replacing curtain drains or footing drains	RA	D	A	RA	
8	Installing or repairing rain gardens, bio-retention basins or storm water management measures	RA	D	A	RA	
9	Planting or replacing trees or shrubs, moving or depositing soil or other materials	RA	D	A	RA	
10	Removing stumps of fallen or diseased trees	RA	D	A	RA	
11	Installing, repairing or replacing a dry-laid stone or brick patio	RA, X	D	A	RA	
12	Constructing a home or adding a room, porch or other addition to a home or building a garage or other structure	RA, X, T	D, SP, T	A, SP, T	RA, T	
13	Clearing overgrowth (not clearcutting trees)	A	A	A	RA	

APPROVAL CODE LEGEND	
RA	Regulated Activity Permit Application required
D	Upland Review Area-Commission review recommended. Regulated Activity Permit required if IWWC makes determination that proposed activity will impact wetlands or watercourses and is thus a Regulated Activity.
A	Activity allowed as of right-no Application needed
X	Prohibited by Planning and Zoning Regulations
SP	Site Plan or Special Permit required from Planning and Zoning Commission
T	Torrington Area Health District Approval Required