

Proposed Amendments to Wetlands Regulations - Letter from Shipman & Goodwin

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To: Larry Burcroff <lburcroff@salisburyct.us>

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📎 1 attachments (64 KB)

Shipman & Goodwin Letter Regarding Salisbury Proposed Wetlands Amendments (July 16, 2021).pdf;

Dear Mr. Burcroff,

Please see attached for a letter, on behalf of Joseph P. Williams, Esq., and Shipman & Goodwin LLP, as counsel to certain lakefront property owners involved with the leadership of Salisbury Lakes Homeowners, pertaining to the proposed amendments to the Wetlands Regulations.

One additional note for some of those included on this message: we have sent this message to multiple email addresses for certain intended recipients because our clients have indicated that they received unsuccessful delivery replies when previously sending only to your official email addresses. To the extent you receive this message twice and would like future correspondence to be sent only to one address, please reply and indicate your preferred email address.

Thank you,

Pat Naples



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July 16, 2021

VIA E-MAIL ONLY

Larry Burcroff
Chairman, Salisbury Inland Wetlands and
Watercourses Commission

Re: Proposed Discretionary Amendments to Wetlands Regulations

Dear Mr. Burcroff:

We represent a number of lakefront property owners, who are members of the leadership of Salisbury Lakes Homeowners and are deeply concerned about the proposed discretionary amendments (“Amendments”) to the Salisbury Inland Wetlands and Watercourses Commission (“IWWC”) regulations. Our clients have effectively articulated their concerns and many of the problems with the Amendments. In this letter, we will address three issues: (1) where Salisbury currently stands, among Connecticut municipalities, with its current regulations; (2) where Salisbury would stand, were it to adopt the Amendments; and (3) in what way state statutes limit the IWWC’s authority and how those limits apply to the Amendments.

I. Salisbury’s Lakes are already among the most regulated in Connecticut.

Currently, Salisbury regulates activity surrounding its major lakes through two means. First, the IWWC regulations require permits for “regulated activities” within 75 feet of the high water mark and, in some cases, for activities within an upland review area (“URA”) of 100 feet. Second, the Zoning Regulations create a Lake Protection Overlay Zone, which requires permits for certain activities within 300 feet of the lakes.

Taken together, these existing regulations already place Salisbury’s lakes among the most regulated in the State. More than 85% of Connecticut’s municipalities (145 of 169) apply URAs of 100 feet or less. In addition, Salisbury is one of only 18 of 169 municipalities in the State with a lake protection overlay zone, placing Salisbury in the top 10% of the State on this measure.

The existing regulations are also consistent with guidance from the Connecticut Department of Energy and Environmental Protection (“DEEP”). [DEEP guidance](#) states that the existing URA distance of 100 feet “is sufficient for reviewing construction activities in areas surrounding wetlands or watercourses because most of the activities which are likely to impact or affect these resources will be located in that area.”

II. The Amendments would make Salisbury’s Lakes the most regulated in the State, without justification.

The Amendments would, among other things, expand the URA distance to 200 feet and define the URA to include areas with highly erodible soils. The Amendments would exist independent of, and in addition to, the 300-foot lake overlay zone.

Only 39 of 169 municipalities in Connecticut have URA distances of 200 feet or more, many of which are applied to one or more specific watercourses named in the regulation. In those 39 municipalities, only 52 of the 154 specifically named watercourses are surrounded by properties that are developed or somewhat developed. In other words, about two-thirds of the named watercourses in the most restrictive municipalities are surrounded by undeveloped land, unlike the lake communities in Salisbury.

Separately, of the 39 municipalities with URAs of 200 feet or more, only seven (7) have lake protection overlay zones. This means, when considering both distance and the extant lake overlay zones, the Amendments would place Salisbury in the top 5% of the most restrictive permitting regulations on watercourses in Connecticut.

Furthermore, the proposed restrictions on “highly erodible soils” are unusual, not authorized by state statute, and have not been approved by DEEP or tested in Connecticut’s courts. Indeed, only one of the 39 municipalities with URAs of 200 feet or more (Simsbury, which does not have a lake overlay zone) imposes restrictions on highly erodible soils. Thus, when combined with the proposed URA distance of 200 feet and the lake overlay zone, the inclusion of highly erodible soils would likely make Salisbury’s lakes *the most regulated in the entire State of Connecticut*.

At the same time, the water quality data indicate that the existing regulations are working. Annual testing of Salisbury’s major lakes shows that their water quality is generally good and improving in recent years. By contrast, the IWWC has not presented any scientific justification for *doubling* the size of the URA and implementing a nearly unprecedented regulation of highly erodible soils. DEEP has advised Connecticut towns that URA distances of more than 100 feet are “neither practical nor desirable.”

