

RE: Upland Review Area recommendations

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To: Peter Neely <peterneely02169@gmail.com>

Cc: Abby Conroy <aconroy@salisburyct.us>

Good morning, Peter:

Pursuant to the Inland Wetlands and Watercourses Act (IWWA) the municipal inland wetlands agency has the broad authority to issue permits not only for activities directly in wetlands and watercourses, but for activities located elsewhere when such activities are likely to impact or affect wetlands or watercourses (sec. 22a-42a(f)). The department developed the concept of an Upland Review Area (URA) in response to CGS sec. 22a-42(d) which requires the department to prepare materials that provide guidance to municipalities in carrying out the provisions of sec. 22a-42a(f). The URA guidelines provide consistency in municipal regulation and permitting of activities. Further, URA regulations provide notice to the public as to what activities require review and likely permitting by the agency.

When determining an URA boundary, an inland wetlands agency should consider several factors including, but not limited to, the kind of development activities that may occur on uplands which are likely to impact or affect wetlands or watercourses, areas of special concern such as a unique habitat or degraded resource which the town wants to protect, and landscape conditions such as slope and soils. Recognizing that there are several approaches to determining an URA boundary, the department suggested three models for establishing an URA. The first is a set distance that can be established town-wide. This is the easiest to implement but may not address specific wetland or watercourse resources, or landscape conditions, that may be of concern to the agency. As you note in your email below, the DEEP believes that a 100-foot URA is sufficient for reviewing construction activities in areas surrounding wetlands or watercourses because most of the activities that are likely to impact or affect wetlands or watercourses will be located in that area. Generally speaking, the likely impact or affect will decrease with increasing distance from the wetland or watercourse. Remember, by establishing the URA, the agency is identifying that an activity in that upland area is likely to impact or affect a wetland or watercourse and is therefore a regulated activity. Regulated activities will require a permit from the inland wetlands agency (but there may be circumstances where the activity does not require a permit, for example, those activities that can be ruled as of right or nonregulated pursuant to sec. 22a-40). It may not be practical to establish a larger set distance for a range of reasons. For example, a 400-foot town-wide URA, versus a 100-foot town-wide URA, may increase the number of applications that go before the agency/staff. If town resources are limited (e.g. part-time staff) this may be difficult to manage. In determining a set distance to be applied town-wide, the agency should balance the various factors (e.g. kinds of activities that may occur, special concerns, landscape conditions and agency/staff resources) and establish the set distance.

That being said, the department recognizes that there are different wetland and watercourse resources, and different landscapes and development zones within a town. A greater or lesser distance may be appropriate for a particular wetland or watercourse. As a result, the department provided two models based on resource or landscape factors as options for establishing an URA. An inland wetlands agency may combine these models, for example, establish a set distance town-wide but separate out a particular wetland or watercourse of concern and establish a greater or lesser distance around that specific resource. Remember, the department's URA guidance document is just that, guidance. Some municipal inland wetlands agencies choose to modify the recommended URA regulation language and specify the types of activities that are regulated activities within the URA. Regardless of the approach taken to establish the URA, the department recommends that the agency include regulation language that will allow the agency to maintain their authority to regulate proposed activities located in more distant upland areas if they find that the activities are likely to impact or affect a wetland or watercourse.

It is the department's policy to encourage municipal inland wetlands agencies to review proposed activities located in upland areas surrounding wetlands and watercourses wherever such activities are likely to impact or affect such resources. If the inland wetlands agency is struggling with establishing a town-wide set distance for the URA, the agency may want to establish a specific distance around certain resources to address resource specific concerns. Further, as mentioned previously, there may be other municipal authorities (such as planning and zoning) that can play a role in addressing broader watershed issues.

I hope this is of assistance.

Best regards,

Darcy

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