Salisbury Lakes Homeowners

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Questions for Inlands Wetlands and Watercourses Commission

I. Questions regarding rationale for proposed regulatory changes:

1) Which regulatory changes are mandated by changes in the Connecticut General Statutes, and which are discretionary?

a) Please confirm that the red-lined version of the proposed regulations is accurate vs the current regulations and mark, on this red-lined version, which are required by changes in the statutes, and which are discretionary.

2) What problems or challenges is the town and IWWC trying to solve?

3) Beyond the statutorily mandated changes, for each discretionary regulation change, please explain how the discretionary changes will significantly improve the health of lakes, watercourses and/or wetlands (hereinafter the "protected resources")?

4) Please cite specific examples where current regulations have been inadequate to protect the protected resources and explain why.

5) The town lists 6 general goals on its website that the new regulations are intended to address. What evidence can be provided that demonstrates that such goals are not being adequately addressed by local ordinances, current IWWC regulations, land use practices and the regulations of the Salisbury Planning and Zoning Commission (P&Z)?

6) Why are the 4 named lakes in question subject to the proposed new regulations but 2 others are not?

7) Beyond the state statutory changes requiring an update to the regulations, the IWWC workshop of March 1 identified about 20% of Connecticut municipalities that have URA rules similar to the proposed regulations but the IWWC has not otherwise provided any scientific or quantifiable data specifically related to Salisbury lakes as a justification for expanding the URA. What scientific or quantifiable data provide a rational basis for the proposed regulations??

8) How many of the municipalities that have established URAs beyond 100 feet have a lake overlay zone extending 300 feet from shore? Why is this proposed change necessary or desirable given the extensive oversight already provided by current P&Z and IWWC regulations?

9) There is general confusion about where the IWWC has sole authority, where P&Z has sole authority and where IWWC and P&Z authorities overlap? Would you please clarify these exclusive and overlapping jurisdictions?

10) The water quality studies performed by Aquatic Ecosystem Research on Twin Lakes and Lake Wononscopomuc show that the water quality is generally "stable to improving". These results may be explained at least partially by enhanced lake management practices undertaken by the town and the lake associations as well as individual property owners as a result of the extensive oversight already provided due to IWWC and P&Z regulatory review of proposed renovation or new construction activities. Please provide the public with quantifiable evidence specific to our lakes that the proposed regulations are necessary to improve water quality or otherwise improve the environment?

11) How do the proposed regulations address the town's stated concern over clear-cutting when recent instances of clear-cutting have occurred where neither the existing nor the proposed regulations would apply?

12) Has the town and/or the IWWC commissioned environmental impact studies which go beyond lakes and related wetlands? What studies specific to Salisbury suggest that the proposed regulations are the right solution to address the broad, general issues suggested in the town overview and environmental impact studies of the new regulations?

II. <u>Questions regarding process for development of the proposed regs, local involvement and timeframe for adoption:</u>

13) This process feels rushed and lacking in transparency; specifically, how long have the proposed regulations been under discussion and why were both the process and proposed changes not made public sooner?

14) Notwithstanding that the proposed regulations have been under discussion for a long time according to the IWWC, why are these changes being driven forward without the IWWC asking for participation of the directly affected landowners and on relatively short notice to the public?

15) Connecticut General Statutes set out an approval process for adoption of any amendments to the regulations. Please provide the public with a thorough understanding of the approval process including timeline and the ability to provide meaningful input. Also, please explain what is within the power of the IWWC commissioners to enact and whether an appeals process exists after regulatory amendments have been approved by the IWWC and to what venue an appeal can be taken.

16) According to a board member of the Lakeville Wononscopomuc Association (LWA), representatives of the LWA played a material role in providing direct input to the proposed regulations over the past two years. If this is the case, why were representatives from other lakes not invited to provide input and participate earlier in the process of developing the proposed regulations?

17) In light of COVID restrictions and the fact that electronic platforms are not optimal for complex communications and meaningful public exchange, does the IWWC and the town believe the process laid out for educating and inviting public input meets the criteria for appropriate public feedback as required by CT law? Has the IWWC considered the de facto exclusion of members of the public who either lack access to or mastery of electronic meeting technology?

18) Have the IWWC and the town considered the benefits of slowing down the approval process to allow for greater participation of lakefront homeowners while at the same time educating the public on appropriate lake management practices, which ultimately may improve homeowner compliance with any new regulations subsequently approved as well as mitigating the likelihood of numerous challenges from individual homeowners?

III. <u>Questions regarding potential adverse burden and impact of the proposed regulations on town finances and operations and on lakefront property owners:</u>

19) Connecticut General Statutes require the impact of inland wetlands regulations to be balanced with the resulting impact on economic growth and property values. Specifically:

a. Have the IWWC and the Town analysed or modelled the financial costs and increased operational burden likely imposed by the proposed regulations to demonstrate that the town currently has the existing financial and administrative capacity to implement expanded IWWC jurisdiction and regulation?

b. Have the IWWC and the Town analysed the higher costs that property owners will likely incur to prepare and file applications for permits and declaratory rulings that will be required under the proposed regulations and the financial impact on property owners of prolonged delays while waiting for such applications to be approved or denied?

c. Do the expanded regulations meet the Connecticut Statutory requirement of balancing Inland Wetland and Watercourse regulations with economic growth and preserving property values?

d. Please provide copies of any such analyses and reports for subsections a-c above.

20) Have the town and IWWC analysed and modelled the implications of such expanded regulations on town finances and property values? Specifically, has the town/IWWC considered the possible loss in assessed property values of lakefront properties, including the town's costs of defending against tax assessment reduction claims and lawsuits, given the increased limitations on the use and enjoyment of those properties? Please provide copies of such analyses and reports.

21) Have the town and IWWC analysed the potential impact of litigation costs and adverse judgments incurred by the town resulting from lawsuits brought by landowners for: (a) the de facto illegal taking or confiscation of property resulting from application of the proposed regulations; and (b) appeals and lawsuits resulting from landowners who disagree with the Land Use Administrator's or IWWC's decisions. Similarly, have the town and IWWC evaluated the additional costs that property owners will incur in contracting, engineering, soil, landscape, legal and other services in order to file the applications for permits that will be needed because of the expansion of the regulated area and regulated activities jurisdiction area, and the additional costs and delays of filing appeals and claims? Please provide copies of such analyses and reports.

22) Given the potential negative impact on property values from more extensive regulation, has the town analysed how it will absorb the financial impact and potential diminution in tax revenue to the town given that approximately 20-25% of the grand list derives from lakefront properties? Will the tax burden on non-lakefront property owners need to be increased? Does IWWC or the Town plan to advise the general public of this potential financial impact of these regulations on the real estate taxes on non-lakefront properties? Please provide copies of such reports and analyses.

23) Have the town and IWWC analysed whether the proposed regulations may have additional unintended consequences due to the increased regulatory compliance burdens? For example, homeowners may opt **not** to invest in making desirable improvements to their properties and the environment if they are required to seek approval for projects which do not currently fall within the existing regulations. In addition, potential buyers may decide not to purchase property on the lakes because of increased regulatory burdens they would face in obtaining the necessary permits to upgrade such property. Please provide copies of such reports and analyses.

24) Have the town and IWWC analysed whether the impact of the proposed regulations may be inequitable from lake to lake and from one property owner to another and that homeowners on some lakes may be affected disproportionately to others? And, that some landowners who have small and/or wooded lots may be more severely impacted than landowners who already have large lawns and views? Please provide copies of such reports and analyses.

In summary, have the town and IWWC undertaken a careful "cost-benefit" analysis of the proposed regulations to evaluate:

a. the quantifiable and substantiated benefits, if any, that the proposed regulations will have on the health and water quality of the lakes balanced against the profound impact of potentially substantial costs and risks to the town and disproportionate impact on landowners? and;

b. the time and cost to the Town of defending appealed rulings and the cost to property owners to pursue litigation due to a wrongful denial of an application, improper taking and confiscation of substantial land value or appeals to reduce tax assessments?

IV. <u>Questions regarding the existing regs, specific definitions and/or updates to the proposed regulations:</u>

25) Connecticut Statutes specify that homeowners may not decide what is a "permitted activity" within a review area as this is solely within the purview of the IWWC. As the proposed regulations extend the review area from 75 to 200 feet and without clear guidance or specific examples of what is permitted, does the IWWC intend for homeowners to seek approval for routine projects such as lawn care, removal of trees or brush, invasive species of plants, etc?

26) Please explain under what conditions lakefront property homeowners may do the following without prior approval of the IWWC within the URA:

a. remove and/or replace existing trees or shrubs
b. repair, resurface or replace a driveway or hardscape
c. Plant or expand a lawn
d. Plant or expand a garden or flower bed
e. Paint a house or outbuilding
f. Other common activities that may be considered a regulated activity by the IWWC

27) Will septic systems which pre-date the new regulations or which do not otherwise conform to current Connecticut Health Code standards be required to be relocated if they fall within the proposed extended URA?

28) While extending IWWC authority, the new regulations do not provide clarity about timelines and accountability of the approval process. Any amendments to the IWWC regulations should include a clear timeline and process for obtaining a permit for a regulated activity, declaratory ruling, public notice period, or any other administrative process. Otherwise, homeowners cannot plan and the IWWC cannot be held accountable.

29) Has the IWWC created detailed maps outlining the proposed URA for each of the affected lakes? If so, please share this publicly and if not, IWWC should undertake this modelling and post this information before the next scheduled meeting.

a. Is the IWWC aware that the majority of homes on the lakes lie within 200 feet of the mean high-water line which, in most cases, includes the entire lot so the impact of extending the distance for permits to conduct a "regulated activity" under the proposed regulations subsumes entire properties?
b. Apart from discussions at IWWC meetings and posting on the IWWC website, what other steps has the IWWC taken or is planning to take to communicate about the proposed regulations to all affected landowners, other lake associations, other interested parties and the general public. Arguably, the existing steps such as posting on the IWWC website are insufficient given that many impacted landowners are not currently in residence and would have no reason to regularly check the website and other property owners in Salisbury whose

tax bills may increase as set forth in Question 22 above may be completely unaware of this possible consequence.

30) One of the many concerns we have is that the proposed regulations as drafted, are either confusing or create further confusion. For example, it appears the intent of the proposed regulations is to extend to the URA "all the exempt by right and unregulated activity" that section 4 applies to activity within wetlands and watercourses. Is that correct? If so, please clarify the wording in the "regulated activity" bullet 4 to clearly express that intent.

31) Another example is a lack of clarity in Section 4.1 where any amendment should include "and upland review areas" so the first sentence reads *"The following operations and uses shall be permitted in inland wetlands, watercourses and upland review areas, as of right"?*

32) What is the application flow and response/decision timeline for an application for a Declaratory Ruling? Where is this documented in the Salisbury Regulations?

33) What are the rules for "Agent Determination on a Declaratory Ruling"? Where is this documented in the IWWC Regulations? Is there a different application form for this purpose?

34) What guidelines and factors does the IWWC use to guide its decisions when considering making a ruling? Are there objective guidelines which guide the ruling process for a "Declaratory Ruling" decision?

35) What is the durability of a Declaratory Ruling? Is it a one off, "one time by right" for recurring activities? The rulings are not licenses, so why would it not be "one and done"?

36) Section 3.1 updates "precise locations" to state "Such determinations shall be made by field inspection and testing conducted by a soil scientist where soil determinations are required." Where does this requirement originate? Is a "precise location" of wetlands and watercourses required other than when invoked by article 7.6 which reads "At the discretion of the Agency after a determination of significant impact"?

37) Most of the legacy lake properties were developed without flagging wetlands, thus the precise location of wetlands is unknown. Since a 'by right" declaratory action is equally applicable in both a wetland and URA, is a "precise location" of wetlands required for a declaratory determination?

38) Section 3.3 states "the Agency *shall* maintain a current inventory of regulated areas" within the town. Where can one find this inventory and in what form does it exist – written text, mapping? Will an updated inventory of these areas be available if these proposed regulation changes are adopted? If so, how long after adoption will the inventory be made available to the public?

39) In section 7.5.f why are alternatives required in the Salisbury application form (item 9) prior to the IWWC determining whether the proposed activity may have a significant impact?

40) In Section 9 Public Hearings: In the new fee schedule, who pays for a Public Hearing requested by petition? How is residency determined for purposes of validating a petition?

41) In Section 10.1.c, how are comments from other technical agencies or *organizations* introduced to the process? In the absence of a public hearing don't these organizations need to establish "intervenor" status in order to participate? The statues recognize the ability of named agencies and adjacent municipalities to comment, but how do technical agencies and organizations get introduced? What types of "organizations" will be allowed to give input? The wording here is dangerously vague.

42) Other Definitions:

a. ***Grubbing:*** excavating in the presence of a stump. This appears to be clear.

b. ***Clearing***: removing 50% or more down to a height of 6" within a contiguous 50 square foot area. How will this work in practice? We don't understand the measurement, and we are perplexed to understand how cutting vegetation in a 50 square feet contiguous area in an URA is likely to have a deleterious effect on a watercourse. Can the IWWC provide some amplification on this measurement? Perhaps a drawing showing the dependencies of 6", 50 square feet, and a sample calculation of 50%.

   Also, we were advised that the 50 square foot area is a misprint and should be 500 square feet. Even if the amendment should read 500 square feet, where did this number come from and what is the justification for it? For example, if a property is totally wooded, would the owner be prevented from having a lawn, sunlight and views comparable to most other properties around the lakes?

c. ***Highly erodible soils***: There is no appendix C in this draft. There are highly erodible soil maps on an ArcGIS mapper on the CT DEEP website and/or the UConn CT ECO website. Can those be used here?