

WOODBRIDGE INLAND WETLANDS **APPLICANT POSITION STATEMENT**

A. Jurisdiction

A municipality has no inherent powers unless delegated by the State. The State allows the municipality to regulate inland wetlands by statute. C.G.S. §22a-42a(f) allows the municipal agency to regulate activities within and around wetlands or watercourses but applies only to those activities which are likely to affect wetlands or watercourses.

The upland review process does not forbid activity based solely on the proximity to wetlands but rather merely provide a basis for determining whether activities have an adverse impact on the adjacent wetlands and if necessary, regulating them. Queach Corp., . v. Inland Wetlands Com'n Branford, 258 Conn. 128 (2008).

In this application there is no activity in the wetlands or in the upland review area. Therefore, for this application to be a “regulated activity” requires a determination by the Woodbridge Wetlands Commission that the applicant’s activity would have a likely adverse impact on the wetlands. Absent that finding, this Commission has no jurisdiction to issue a permit.

B. Significant Impact

In River Bend Assoc. Inc. v. Conservation & Inland Wetlands Com'n, 269 Conn. 57, 70 (2004) the court stated that the Commission must find based on substantial evidence of facts that an adverse impact to the wetlands will result from the proposed activities and the agency decision must be supported by more than a possibility of that adverse impact. Evidence of general environmental impacts, mere speculation or general concerns do not qualify as

substantial evidence. Id. at 71. Moreover, conservation of vegetation is a non-regulated activity under C.G.S. §22a-40(b)(1).

The significant impacts are set forth in the Woodbridge regulations definition. See Page 7 attached.

C. Expert Testimony

A general statement that some type of adverse impact is likely to result from a regulated activity even when uttered by an expert is not sufficient to deny the requested permit. Three Levels Corp. v. Conservation Com'n, 148 Conn. App. 91, 111-112; Estate of Machowski v. Inland Wetlands Com'n, 137 Conn. App. 830, 838 (2012).

In this application, there is expert testimony that there will be no adverse impact on the wetlands. Thus, stormwater discharge outside of the wetlands requires a permit only if likely to cause harm. Cornacchia v. Environmental Protection Com'n Darien, 109 Conn. App. 346 (2008).

Absent specific evidence of a likely adverse impact on the physical characteristics of the wetlands themselves, this Commission does not have jurisdiction and no permit is required.

wetlands or watercourses, but shall not include the specified activities in section 4 of these regulations. Furthermore, any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removing of material and discharging of storm water on the land within 100 feet measured horizontally from the boundary of any wetland or watercourse is a regulated activity. The agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.

"Remove" includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, dragline or blast.

"Rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

"Significant impact" means any activity, including, but not limited to, the following activities which may have a major effect:

1. Any activity involving deposition or removal of material which will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed.
2. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system.
3. Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to: support aquatic, plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or perform other functions.
4. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse.
5. Any activity which causes substantial diminution of flow of a natural watercourse or groundwater levels of the wetland or watercourse.
6. Any activity which is likely to cause or has the potential to cause pollution of a wetland or watercourse.
7. Any activity which damages or destroys unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.

"Soil scientist" means an individual duly qualified in accordance with standards set by the federal Office of Personnel Management.

"Stream Channel" means the part of a water course either naturally or artificially created which contains an intermittent watercourse.

"Stream Management" are a set of guidelines to help manage the protection of water quality – reference Appendix D (Guidelines for Protection of Stream Water Quality), Appendix E (Stream Order) and Appendix F (Stream Management Areas)

"Stream Order" means a classification system for streams based on stream hierarchy. The smaller the stream, the lower its numerical classification. For example, a first order stream does not have tributaries and normally originates from springs and/or seeps. At the confluence of two first order streams, a second order stream begins, at the confluence of two second order streams, a third