Connecticut
Department of Energy &
Environmental Protection

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| IN THE MATTER OF | : | |
| LAKE WARAMAUG ORDINANCES PASSED | : | |
| BY THE TOWNS OF KENT, WASHINGTON, AND WARREN | | |
| AND APPROVED BY DEEP | : | January 20, 2026 |

**DECISION NOT TO ISSUE DECLARATORY RULING**

Pursuant to Connecticut General Statutes ("CGS") subsection 4-176(e) and Regulations of Connecticut State Agencies ("RCSA") 22a-3a-4(c)(3), I have decided to decline to issue a declaratory ruling and explain my reasons in response to the Petition for Declaratory Ruling submitted by the Lake Waramaug Friends for Common-Sense Regulation, Inc. ("Petitioner," or "LWF").

A. Background.

On June 11, 2025, the Department of Energy and Environmental Protection ("DEEP" or "Department") received an 80-person signed petition from a predecessor group to LWF requesting "that the Department prohibit a ban on wake surfing on Lake Waramaug and instead adopt reasonable regulations,"[1] referring to the ordinances that three towns were considering adopting (but had not yet adopted) on Lake Waramaug. The petition asked DEEP to "draft reasonable regulations to ensure that wake surfing is appropriately regulated so that it can be undertaken safely while having minimal impacts on other recreational and environmental uses at Lake Waramaug." Subsection (b) of Section 15-136, on which petitioner relied, allows individuals to petition for state-level regulations, if the relevant municipalities have not already adopted regulations or if state-level regulation is necessary to establish uniformity on a shared water body (either one is sufficient, but at least one is needed to require the agency to proceed with rulemaking under this provision). CGS subsection 15-136(b) does not impose a timeframe within which the Department must respond to such a petition. But LWF also asked that DEEP should wait to do a hearing after disapproval until attempts for local compromise failed—implying a lack of urgency.

On August 7, 2025, DEEP received the three identical ordinances that the towns of Kent, Warren, and Washington had adopted on July 31, 2025 regulating wakesurfing on Lake Waramaug. Pursuant to CGS Section 15-136, subsection (a), DEEP may approve or disapprove municipal boating ordinances; the ordinances are only effective if approved under this provision. The pathway provided in subsection (a) (approval of passed municipal regulations) is separate from the pathway provided in subsection (b) (state-level regulation).

Once the Department approved the ordinances on October 5, 2025, subsection (b) of CGS section 15-136 no longer provided an avenue for state-level regulation, because both prerequisites were removed—local ordinances now existed, and there was no need for uniformity since the three ordinances were identical.

The Petitioner filed a Petition for Declaratory Ruling on November 18, 2025, asking that the agency find "a hearing was

[1] See Petition, p. 5, Exhibit J, p.7.

required in LWF's prior request pursuant to Conn. Gen. Stat [Section] 15-136(b)." The Petition also asked the Department to find that the ordinances passed by Kent, Warren, and Washington and approved by the Department on October 6, 2025 were arbitrary, unreasonable, unnecessarily restrictive and inimical to uniformity and to rescind our approval. Additionally, LWF requested a finding that the ordinances are preempted by federal law and a finding that it constituted a taking without just compensation.

The Department received a request for intervenor status from Protect Lake Waramaug: Coalition to Ban Wake Surfing Association ("PLW") pursuant to RCSA subsections 22a-3a-6(h) and (k) on November 26, 2025. The Commissioner granted it on January 6, 2026. The intervenors filed an opposition to the petition for declaratory ruling on January 9, 2026. On January 14, 2026, the Department received a request for a hearing and establishment of an evidentiary and briefing schedule from the Petitioners on the Petition for a Declaratory Ruling. On January 18, 2026, the Intervenors filed an opposition to Petitioner's request for hearing and further briefing.

DEEP provided notice of the Petition for a Declaratory Ruling on December 18, 2025, pursuant to CGS Section 4-176(c), by publishing the Petition on DEEP's website and by notifying known persons, including leadership of the affected towns, of the Department's receipt of the Petition. Additionally, DEEP received comments from members of the public on the Petition.

B. The Decision Not to Issue a Declaratory Ruling

CGS subsection 4-176(e) requires that "[w]ithin sixty days after receipt of a petition for a declaratory ruling" an agency must take one of five specified actions.[2] I am declining to issue a declaratory ruling and will briefly state the reasons for that decision.

Specifically, the law is clear 1) that a hearing was not required on the timeline that the Petitioner urges under subsection 15-136(b); 2) that the ordinances from Warren, Kent, and Washington were not arbitrary, unreasonable, overly restrictive, or inimical to uniformity (and in any event, even if they were, that the Department has discretion on whether or not to disapprove local ordinances under subsection (a); and 3) that that the federal preemption and 4) takings claims are meritless.

**Hearing requirement**

To begin, Petitioner alleges that DEEP should have held a hearing after DEEP received the petition in the summer of 2025, and before deciding to approve on the ordinances, pursuant to CGS subsection 15-136(b). LWF states:

> Given that, as of June 11, 2025, there was no local regulation on wake surfing on Lake Waramaug, the Department had the ability to adopt such regulation as requested. . . . Regardless of whether the Department wished to issue such regulations, its duty to conduct the hearing was not similarly discretionary. . . . [T]he correct procedural step for the Department to have taken was to have the hearing as outlined in subsection (b) of the statute, and then, if the Department found it appropriate, regulate wake surfing as the Department deemed appropriate.[3]

[2] CGS subsection 4-176(e) provides that: "Within sixty days after receipt of a petition for a declaratory ruling, an agency in writing shall: (1) Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified circumstances, (2) order the matter set for specified proceedings, (3) agree to issue a declaratory ruling by a specified date, (4) decide not to issue a declaratory ruling and initiate regulation-making proceedings, under section 4-168, on the subject, or (5) *decide not to issue a declaratory ruling, stating the reasons for its action*." (Emphasis added.) See also RCSA subdivision 22a-3a-4(c)(3).

[3] See Petition, p. 3.

As noted above, CGS subsection 15-136(b) does not impose any timeframe within which the Department must respond to a petition. A reasonable time period should be read into this silence, and agencies typically take many months or more to respond to petitions. Once the towns submitted their ordinances, and DEEP approved them, DEEP could no longer act under that subsection. (And, as noted, the Petitioner's summertime request was at least inconsistent on the timeline it was requesting for the hearing.) Therefore, this argument is not persuasive.

**Section 15-136 Criteria**

***Arbitrary***

LWF alleges that DEEP failed to consider that the ordinances were arbitrary because, for example, the Towns relied on "problematic evidence" and waterskiing is not a comparable activity to wake surfing.[4] LWF also argues that "the Towns have acted arbitrarily in passing the Ordinance despite receiving contradictory evidence as to the use, risks, and alleged harms regarding wake surfing."[5]

As the Department stated in approving the ordinance: "[t]he ordinance is not arbitrary because, for example, the preamble to the ordinance indicates that the ordinance responds to concerns about increased use, safety risks, and environmental harms. The approach taken by the town is consistent with restrictions placed on a similar activity—waterskiing."

The term "arbitrary" is not defined in the statute. But under any plain meaning, the local ordinances on their face are not arbitrary (the ordinance preambles, e.g., refer to "serious safety risks," "destructive erosion," and concerns about impaired water quality and invasive species related to wake surfing), and the process leading up to their passage also was not arbitrary but instead showed that the towns deliberated the decision.

***Overly Restrictive***

DEEP addressed the "overly restrictive" prong in its letters approving the ordinances, finding that, for example: "Lake Waramaug lacks robust statewide public access, and so the ordinance is not as restrictive to statewide recreational users as it would be if employed at a water body with statewide motorized/trailered public access and use." DEEP determined that the ordinance language was sufficient to achieve the desired goal of the municipalities without banning the activity of wake surfing or prohibiting the vessels themselves. To bolster its argument, LWF cites cases and examples that are not analogous.

***Inimical to Uniformity***

LWF alleges that the appropriate analysis for the "inimical to uniformity" prong is "not whether multiple towns passed the same ordinance, but rather, whether such regulation can be uniform with respect to its application.[6]" The statute does not define inimical to uniformity.

When approving the ordinances, DEEP stated: "[a]ll three towns submitted uniform ordinances to DEEP, thus the ordinance is not inimical to uniformity."

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[4] *Id.*, p. 6.
[5] *Id*., p. 7.
[6] *Id.*, p. 6.

DEEP also noted in its approval "Connecticut has not adopted any statutes or regulations specific to wakesurfing or wake enhancing devices in public waterbodies," meaning that it did not "conflict with or duplicate state policy," and also that it did not create any inconsistency within the boating safety laws in in the General Statutes. LWF alleges that the ordinances treat "similarly situated individuals differently without a rational basis for difference," and says that the approved ordinance language is essentially a total ban on wake-enhancing devices but allows similar devices generating similar wakes.[7] The Department disagrees on the degree of relevant similarity.

Ranging across the three criteria, LMF alleges that the ordinances adopted by the towns are arbitrary, unreasonable, and unnecessarily restrictive because "the TV report is insufficient to justify the ban on wake surfing"[8] and argues that "[t]he Ordinance is . . . arbitrary, unreasonable, and unnecessarily restrictive because the Towns have provided no evidence whatsoever of any environmental harm due to wake surfing."[9] CGS subsection 15-136(a) does not require that Towns take any of those actions or that DEEP base its decision on such evidence. And again, DEEP's authority to disapprove ordinances is itself a broad one—it "may" disapprove them but need not, even if (unlike here) criteria for disapproval are met.

***Federal Preemption***

LWF also claims that the ordinances are preempted by federal law, and ties this argument to DEEP's past position on banning certain types of vessels. LWF quotes various cases intended to show that federal boating safety standards preempt those of states.[10] However, 46 U.S.C. § 4306 only prohibits certain kinds of state/local regulations on "recreational vessel or associated equipment performance or other safety standard or . . . a requirement for associated equipment." The ordinance here does not appear to establish any equipment performance or safety standard, much less to impose an equipment requirement (e.g., rules on personal floatation devices, visual distress signals, and fire extinguishers). It restricts the use of a type of equipment during boating on the specific lake that creates a wake. The Federal Boat Safety Act does not "occupy the field," and these ordinances do not create a conflict.[11]

***Regulatory Taking***

The LWF also alleges that the ordinance language constitutes a regulatory taking under the 5th Amendment of the U.S. Constitution and article first, section 11 of the State Constitution. However, its argument that "[b]anning the use [of] [*sic*] ballasts on a wake boat to be used for the boat's intended purpose is akin to banning the use of sails on a sailboat"[12] is not persuasive. Boats with ballasts can still be used on Lake Waramaug, just not to artificially enhance or create wakes.

C. Conclusion

For the reasons set out herein, and pursuant to CGS Section 4-176(e), I hereby decline to issue a declaratory ruling in response to the above-captioned petition.

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[7] *Id.*, pp. 7-8.
[8] *Id.*, p. 8.
[9] *Id.*, p. 16.
[10] *Id.*, p. 17.
[11] *Sprietsma v. Mercury Marine*, 537 U.S. 51 (2002).
[12] Petition, p. 18.

Katherine S. Dykes
Commissioner of the Department of Energy and Environmental Protection