



STATE OF CONNECTICUT  
DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
79 Elm Street  
Hartford, CT 06106

Amey Marrella, Commissioner

# WELCOME

## Segment 3

### 2009 Municipal Inland Wetland Commissioners Training Program

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# Connecticut's Inland Wetlands and Watercourses Act: *Agricultural Practices*

Municipal Inland Wetland Commissioners Training Program  
2009 - Segment 3

# WHY AGRICULTURE?



SPECIFIC EXEMPTION UNDER THE  
CONNECTICUT INLAND WETLANDS &  
WATERCOURSES ACT

Section 22a-40:  
Permitted operations and uses



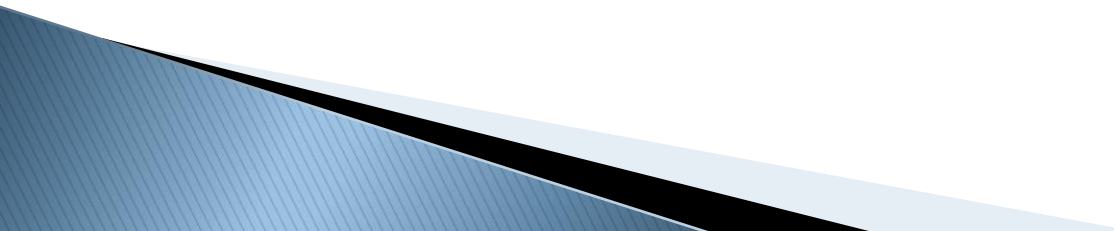
# SECTION 22A-40: PERMITTED OPERATIONS AND USES

Two subsections exist:

- Subsection (a): Permitted as of right
  - Not obvious what is involved
- Subsection (b): Nonregulated
  - Obvious what is involved

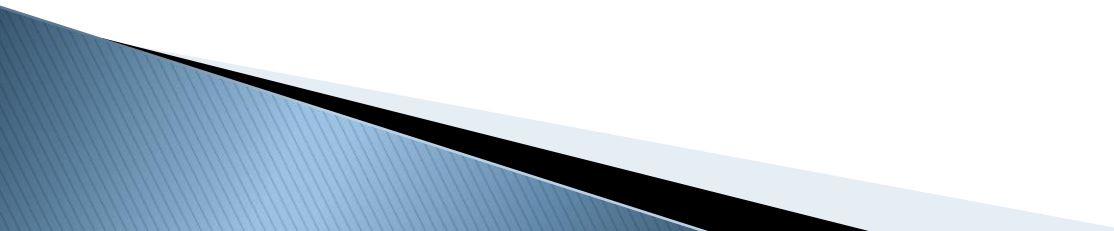


# REMEMBER:

- Courts have stated an Inland Wetlands Agency has the authority to determine the boundaries of it's jurisdiction
  - Operations and uses the CT legislature has deemed can occur, regardless of whether they affect wetlands or watercourses
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# INLAND WETLANDS AGENCY

## DETERMINATION OF JURISDICTION:

- Can not interpret exemptions more generously
  - Can not interpret exemptions more conservatively
  - Must apply statutory language as is
- 

# WHAT IS THE STATUTORY LANGUAGE?

**“Sec. 22a–40. Permitted operations and uses.** (a) The following operations and uses shall be permitted in wetlands and watercourses, as of right:

(1) Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control

The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale [.]”



# WHAT IS FARMING?

And with that thought...

What is grazing?

What are nurseries?

What is the harvesting of crops?



# REMEMBER, RULE OF THUMB IS TO LOOK FOR DEFINITION IN:

## 1. Section 22a-38 of the IWWA

- Defines wetlands and watercourses

## 2. Section 1-1 (Words and Phrases) of the CGS

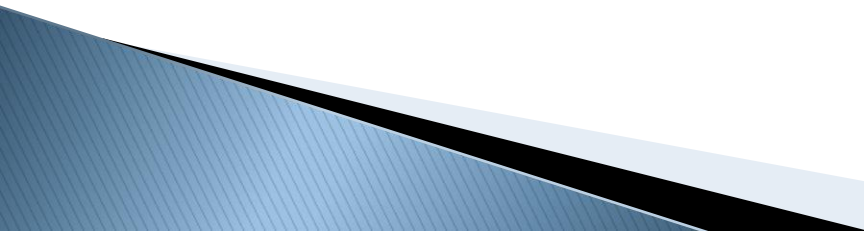
- Defines agriculture and farming (and farm)
- Note last sentence, “Nothing herein shall restrict the power of a local zoning authority under chapter 124.”

## 3. A dictionary

- Defines other terms

According to Webster’s II *grazing* means to feed on growing grasses and herbage, to feed in a field or on pasture land; *harvesting* means the act or process of gathering a crop

# DEFINITION OF 1-1(q):

- ▶ ...forestry, ...
  - ▶ ... raising or harvesting any agricultural or horticultural commodity...
  - ▶ ... salvaging timber or cleared land of brush or other debris left by a storm ...
  - ▶ ... the production or harvesting of maple syrup or maple sugar, ...
  - ▶ ... the production or harvesting of any agricultural commodity, including lumber, ...
- 

REMEMBER...



**In Connecticut Forestry  
is  
Agriculture**

# INLAND WETLANDS AGENCY DETERMINATION OF JURISDICTION:

- ▶ Provide a consistent process by:
  - Updating regulations - recommend implementing DEP Model Regulations
  - Adding 1-1(q) definition
  - Adding other reasonable definitions

# INLAND WETLANDS AGENCY

## DETERMINATION OF JURISDICTION:

- ▶ Provide a fact sheet and/or jurisdictional ruling form explaining reason for process and requesting standard information
  - Use DEP brochure
- ▶ Ask additional questions as necessary to determine jurisdiction – create your record
  - Never can ask too many questions

# SCENARIO

Applicant, who grows nursery stock, proposes to clearcut a Red maple swamp and dredge material to build a 2.5 acre pond, proposes to use the dredge spoils in the Upland Review Area to create a level tractor road, and proposes to build a storage shed within 25 feet of a perennial watercourse

Applicant, who grows nursery stock, proposes to clearcut a Red maple swamp and dredge material to build a 2.5 acre pond, proposes to use the dredge spoils in the Upland Review Area to create a level tractor road, and proposes to build a storage shed within 25 feet of a perennial watercourse

## Information obtained through questioning:

- Currently uses well water for irrigation, but well frequently dries up during the summer
- A drainage swale flows through the Upland Review Area, no wetland soils and no defined permanent channel and bank
- 10' x 10' shed will be placed on concrete blocks, no excavation necessary, ground is flat, no trees need to be removed, shed will store pruning equipment



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## Are activities permitted as of right???

- The pond is essential to farming operation and less than 3 acres – **YES** building pond is permitted as of right
- The clearcut of the red maple swamp is NOT for the expansion of agricultural crop land – **NO** this is not permitted as of right, a permit is needed
- The Upland Review Area does not contain an intermittent watercourse – **YES** placement of dredge material is permitted as of right
- The erection of the building IS directly related to the farming operation and does not involve fill/reclamation of wetlands or fill/reclamation of watercourses with continual flow – **YES** permitted as of right



# QUESTIONS?

