



Agricultural Exemptions, Farming, and the Inland Wetlands and Watercourses Act
Connecticut General Statutes Section 22a-40:
Permitted Operations and Uses
Subsection (a)(1): Farming

“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 [.]”

1. This statutory subsection pertains to agricultural activities which are permitted in wetlands and watercourses as of right.
 - 1.1. Often referred to as the "exemption" section.
2. This statutory subsection does not apply just to existing operations and uses, it also applies to new or proposed operations and uses.
 - 2.1. The operation and use has no income requirement; it may be a hobby.
3. Court interpretation (case law) states that the Inland Wetlands Agency has the right to determine if a farming activity is exempt pursuant to this statutory subsection. The existence of an exemption (the application of the statutory language to the facts of a particular situation) is not determined by the applicant but rather by the Inland Wetlands Agency. This is so, because the agency always has the authority to determine the reach of its jurisdiction over inland wetlands and watercourses.
 - 3.1. Person claiming the benefit of the exemption has the burden of proving to the agency that the activity falls within the exemption.
 - 3.1.1. If evidence in the agency’s record equally supports that the activity is exempt and is not exempt, then the applicant has failed to meet the burden of proof and needs to apply for a permit to conduct a regulated activity.

- 3.2. Exemptions are "narrowly construed," which means that the agency is precluded from interpreting the exemption more generously, in favor of the person claiming the benefit of it, than the words of the statute allow.
 - 3.3. Exemptions cannot be expanded upon by the agency, even if the agency thinks good policy reasons exist to do so; conversely, exemptions cannot be more narrowly read by the agency than the language of the exemption provision dictates, even if the agency thinks good policy reasons exist to do so.
4. The word "farming" is not defined within the Inland Wetlands and Watercourses Act. Therefore, use the definition found in Connecticut General Statutes Section 1-1(q).

4.1. **Sec. 1-1. Words and phrases.** *(a) In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly.*

(q) Except as otherwise specifically defined, the words "agriculture" and "farming" shall include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, poultry, fur-bearing animals and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish; the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by a storm, as an incident to such farming operations; the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale. The term "farm" includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoopouses and other temporary structures or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities. The term "aquaculture" means the farming of the waters of the state and tidal wetlands and the production of protein food, including fish, oysters, clams, mussels and other molluscan shellfish, on leased, franchised and public underwater farm lands. Nothing herein shall restrict the power of a local zoning authority under chapter 124.

5. What is **permitted** as of right:

- 5.1. Grazing;
- 5.2. Farming;
- 5.3. Nurseries;
- 5.4. Gardening;
- 5.5. Harvesting of crops;
- 5.6. Farm Ponds of three acres or less essential to the farming operation;

- 5.7. Clearcutting of timber for the expansion of agricultural crop land;
 - 5.8. Activities conducted by or under the authority of the DEP for the purposes of wetland or watercourse restoration or enhancement or mosquito control.
6. What is **not permitted** as of right and therefore requires an application for a permit:
- 6.1. Farm ponds greater than 3 acres;
 - 6.2. Farm ponds of 3 acres or less not essential to the farming operation;
 - 6.3. Road construction not directly related to the farming operation;
 - 6.4. Road construction involving filling of wetlands or watercourses with continual flow;
 - 6.5. The erection of buildings not directly related to the farming operation;
 - 6.6. The erection of buildings involving filling of wetlands or watercourses with continual flow;
 - 6.7. Relocation of watercourses with continual flow;
 - 6.8. Filling of wetlands;
 - 6.9. Reclamation* of wetlands;
 - 6.10. Filling of watercourses with continual flow;
 - 6.11. Reclamation* of watercourses with continual flow;
 - 6.12. Clear cutting of timber for reasons other than the expansion of agricultural crop land;
 - 6.13. Mining of top soil, peat, sand, gravel or similar material for the purposes of sale.
7. How to proceed with **determination of exemption**:
- 7.1. Agency or agent becomes aware of current activity or proposed activity for which no permit has been issued;
 - 7.2. Agency or agent contacts actor requesting explanation;
 - 7.3. Agency or agent requests presence of actor at next regular meeting to establish whether such activity is a regulated activity or a permitted as of right activity
-OR-
Actor files request for declaratory ruling on the agency's jurisdiction (if municipal regulations permit such a filing).
 - 7.4. Agency finds facts which determine whether activity falls within the exemption;
 - 7.4.1. Agency issues a jurisdictional ruling that activity is exempt; or

7.4.2. Agency issues a jurisdictional ruling that a permit be required; or

7.4.3. Agency issues a jurisdictional ruling that portions of the activity are exempt but other portions require a permit.

7.5. If actor is **unwilling to cooperate** with the agent or agency, and the agency finds the activity is not permitted as of right and therefore needs a permit, the agent or agency may issue, pursuant to Section 22a-44(a) of the General Statutes, **an order to cease and correct** such activities on the site until the actor has obtained such permit:

7.5.1. Agency must hold a hearing within 10 days of issuance of the order;

7.5.2. Duly authorized agent must offer evidence that the activity is "regulated";

7.5.3. Burden is on the agency to establish the activity is a regulated activity;

7.5.4. Agency must vote to affirm, revoke or amend the original order within 10 days of the completion of the hearing.

7.6. Agency may proceed directly to court to prevent actor from conducting activity without a permit,

-OR-

to enforce a final cease and correct order.

8. Appeals of municipal inland wetlands agency decisions

8.1. An appeal of an agency decision regarding the application of subsection 22a-40(a)(1) goes to the Superior Court as provided for in section 22a-43 of the General Statutes just like other appeals of agency decisions.

* **Reclamation:** The term is not defined in the CT Inland Wetlands and Watercourses Act. Webster's Ninth New Collegiate Dictionary "to make available for human use by changing natural conditions (~swampland)."