



HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.
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February 23, 2009

To: Senator Ed Meyer, Co-Chairman
Representative Richard Roy, Co-Chairman
Members of the Environment Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **Proposed Bill 5820, AAC Conserving Natural Vegetation Near
Wetlands and Watercourses**

The HBA of Connecticut is a professional trade association with almost one thousand, three hundred (1,300) member firms statewide, employing tens of thousands of Connecticut citizens. Our members are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to this diverse industry. We also created and administer the Connecticut Developers Council, a professional forum for the land development industry in the state.

I also have a thirty (30) year history of working on wetlands issues, starting my professional career as a wildlife biologist focusing on wetlands wildlife, and, among other things, worked for the Conservation Foundation, participated in the Army Corps of Engineers' rulemaking on its wetlands delineation manual, served on the state legislature's Blue Ribbon Comm'n on Inland Wetlands and Watercourses in the mid-1990s (which led to a substantial rewrite and clarification of state law), served as the founding Chairman of ASTM's international committee on Wetlands Mitigation Standards, and have been in private law practice working on land use, environmental and wetland issues.

The HBA of CT strongly opposes Proposed Bill 5820, which would greatly expand the jurisdiction of municipal inland wetland and watercourses agencies (IWWA).

Unlike previous years when fully drafted bills on this issue were presented for public hearings, this bill is only a proposed bill, and as such it presents enormous danger and uncertainty to the regulated community (i.e., all property owners). Therefore, our comments address arguments we have heard in prior years.

This bill is MORE expansive than prior year bills that dealt with only riverfront areas. Prior year bills expanded local IWWA jurisdiction to upland areas next to watercourses only (e.g., 100' on both sides). That unwarranted expansion was reason enough to defeat the bill, but bill 5820 suggests expanding jurisdiction next to all watercourses and wetlands. A huge amount of economic activity could become off limits under this new authority.

This bill is NOT necessary to protect inland wetlands or watercourses. Please understand current law, which clearly states that any activity anywhere in a municipality can be regulated and prevented by a local IWWA if there is any likely adverse impact on a wetland or watercourse. To the extent IWWAs have lost recent cases in the courts, it's because they tried to regulate activities that did not have any adverse impact to a wetland or watercourse, or they failed to understand the law, their own regulations or rules of evidence

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for making decisions. So, this bill is not about protecting wetlands or watercourses; it's about protecting only the upland areas "near" already protected wetlands and watercourses.

This bill is NOT the same as "upland review areas" under current law. Again, local IWWAs have jurisdiction to review almost any activity anywhere in a municipality if the activity is suspected of producing a likely adverse impact on a wetland or watercourse. Since it would be impractical for a local IWWA to review every activity in an entire municipality, the concept of "upland review areas" was created (called "buffer areas" prior to 1996). These areas are nothing more than an administrative tool that says local IWWAs will review everything within the "upland review area" yet may review activities outside the upland review area on an ad hoc basis. The legal standards of review for activities within or outside upland review areas are identical. The same six statutory factors for decision-making must be followed, the same feasible and prudent alternatives test must be followed, and the same rules of evidence apply on appeal. Under current law, an activity can be conducted anywhere in a municipality, including within an upland review area (and even within a wetland or watercourse) if the activity will have no likely adverse impact to a wetland or watercourse. **Bill 5820 is an expansion of jurisdiction, not a mere codification of "upland review areas." It would allow a local IWWA to prevent or regulate an activity anywhere if there is likely to be an adverse impact to natural upland vegetation EVEN IF THERE IS NO ADVERSE IMPACT TO THE WETLAND OR WATERCOURSE ITSELF.**

Under current law, most activities in (or very close to) wetlands and watercourses are as a practical matter virtually off limits because it is often difficult to prove no adverse impact to the wetland or watercourse. **Under bill 5820's new authority, local IWWAs would apply the same "off-limits" review to most activities to protect natural upland vegetation.**

This bill is wholly unnecessary. In our experience, most local IWWA already protect areas next to wetlands and watercourses under existing law; they do not need expanded authority to push regulated activities further away – and toward forest lands, farm land or other places.

Proponents hold out Massachusetts as doing something similar to this, at least with respect to watercourses (MA has a buffer area of 200' on both sides of rivers; it's reduced to 25' in urban areas). A 200' buffer next to the Conn. River, as shown in a widely distributed photo to promote last year's bill, would have a far different perspective if the buffer was shown next to only a 5' wide stream, or any number of the tens of thousands of wetland areas in CT. Moreover, Massachusetts may not be a state to follow: CT is 48th in the nation for housing production per capita, due in large part to our extremely burdensome regulatory environment. Massachusetts is one of the 2 states behind us.

Finally, this bill will have tremendous adverse fiscal impacts on both the state and municipalities, not only from the abundant litigation that will occur but also from the tremendous reduction in property values and tax revenues that will be the result.

Please do not support this potentially huge expansion of jurisdiction for municipal inland wetland and watercourses agencies. It is unwarranted and unnecessary to protect wetlands and watercourses. Thank you for considering our comments on this legislation.