



To: IWWA
Re: Application IW-23-011
Date: June 20, 2023

The purpose of this memo is to address the question of whether road construction within a wetland when it is related to an agricultural activity falls under the jurisdiction of the IWWA.

CT General Statutes 22a-40(a)(1) specifies certain activities within wetlands that are considered as of right and exceptions therefrom, including “road construction or the erection of buildings not directly related to the farming operation.” On its face, this section seems to imply that road construction not directly related to a farming operation is under the jurisdiction of the local wetland agency, but road construction that is directly related to a farming operation is not.

A CT Supreme Court decision from 2016 *Indian Spring Land Company v Inland Wetlands* has clarified this portion of the statute. The plaintiff had applied for a wetland permit to construct a road and a bridge over a stream in order to access a portion of land which was held in conservation as forest. The land owner had prepared a forest management plan which required certain activities to cut trees, clear undergrowth, and generally manage the forest. The access road and bridge were needed to reach the area of the property which was subject to the management plan. The wetland agency, as condition to the permit issued, included a requirement that a temporary steel bridge be installed rather than a permanent crossing as proposed, and that the temporary bridge be removed each year after the management activities were completed. The landowner appealed because of the requirement to remove the temporary bridge each year.

Prior to 2016, there had been disagreement as to the exact meaning of the statutory language. A 2011 Supreme Court decision in *Taylor v Conservation Commission* implied that filling of any wetland was a regulated activity. Although the Court did not answer the question directly, there was broad agreement that because road construction would inherently involve fill, it was not exempt from wetland agency jurisdiction.

However, in *Indian Spring*, the court clarified that although filling of a wetland is a regulated activity, because the Statute includes “construction of a road” when related to an agricultural use as an exempt activity on its own, it is therefor not under wetland agency jurisdiction.

In fact, in *Indian Springs*, the court specifically states “we conclude that road construction directly related to farming operations is permitted as of right under the Inland Wetlands and Watercourses Act”

In the case of the application before the Agency, I would encourage the Agency to consider the use of the property along with the use of the proposed access road and culvert crossing. If the agency can determine that it is specifically tied to an agricultural use, the Agency should rule that the activity is as of right and can proceed without a wetland permit.