



General Assembly

**Amendment**

January Session, 2009

LCO No. 9229

\*SB0056909229HRO\*

Offered by:

REP. CHAPIN, 67<sup>th</sup> Dist.

REP. MINER, 66<sup>th</sup> Dist.

REP. CANDELORA, 86<sup>th</sup> Dist.

To: Subst. Senate Bill No. 569

File No. 997

Cal. No. 709

**"AN ACT CONCERNING ENHANCEMENTS TO THE INLAND WETLANDS AND WATERCOURSES ACT."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 22a-38 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective October 1, 2009*):

5 As used in sections 22a-36 to 22a-45a, inclusive, as amended by this  
6 act and sections 4 and 5 of this act:

7 (1) "Commissioner" means the Commissioner of Environmental  
8 Protection;

9 (2) "Person" means any person, firm, partnership, association,  
10 corporation, limited liability company, company, organization or legal  
11 entity of any kind, including municipal corporations, governmental  
12 agencies or subdivisions thereof;

- 13 (3) "Municipality" means any town, consolidated town and city,  
14 consolidated town and borough, city and borough;
- 15 (4) "Inland wetlands agency" means a municipal board or  
16 commission established pursuant to and acting under section 22a-42;
- 17 (5) "Soil scientist" means an individual duly qualified in accordance  
18 with standards set by the federal Office of Personnel Management;
- 19 (6) "Material" means any substance, solid or liquid, organic or  
20 inorganic, including, but not limited to soil, sediment, aggregate, land,  
21 gravel, clay, bog, mud, debris, sand, refuse or waste;
- 22 (7) "Waste" means sewage or any substance, liquid, gaseous, solid or  
23 radioactive, which may pollute or tend to pollute any of the waters of  
24 the state;
- 25 (8) "Pollution" means harmful thermal effect or the contamination or  
26 rendering unclean or impure of any waters of the state by reason of  
27 any waste or other materials discharged or deposited therein by any  
28 public or private sewer or otherwise so as directly or indirectly to  
29 come in contact with any waters;
- 30 (9) "Rendering unclean or impure" means any alteration of the  
31 physical, chemical or biological properties of any of the waters of the  
32 state, including, but not limited to change in odor, color, turbidity or  
33 taste;
- 34 (10) "Discharge" means the emission of any water, substance or  
35 material into waters of the state whether or not such substance causes  
36 pollution;
- 37 (11) "Remove" includes, but shall not be limited to drain, excavate,  
38 mine, dig, dredge, suck, bulldoze, dragline or blast;
- 39 (12) "Deposit" includes, but shall not be limited to, fill, grade, dump,  
40 place, discharge or emit;

41 (13) "Regulated activity" means any operation within or use of a  
42 wetland or watercourse involving removal or deposition of material,  
43 or any obstruction, construction, alteration or pollution, of such  
44 wetlands or watercourses, but shall not include the specified activities  
45 in section 22a-40, as amended by this act;

46 (14) "License" means the whole or any part of any permit, certificate  
47 of approval or similar form of permission which may be required of  
48 any person by the provisions of sections 22a-36 to 22a-45a, inclusive, as  
49 amended by this act;

50 (15) "Wetlands" means land, including submerged land, not  
51 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which  
52 consists of any of the soil types designated as poorly drained, very  
53 poorly drained, alluvial, and floodplain by the National Cooperative  
54 Soils Survey, as may be amended from time to time, of the Natural  
55 Resources Conservation Service of the United States Department of  
56 Agriculture;

57 (16) "Watercourses" means rivers, streams, brooks, waterways,  
58 lakes, ponds, marshes, swamps, bogs and all other bodies of water,  
59 natural or artificial, vernal or intermittent, public or private, which are  
60 contained within, flow through or border upon this state or any  
61 portion thereof, not regulated pursuant to sections 22a-28 to 22a-35,  
62 inclusive. Intermittent watercourses shall be delineated by a defined  
63 permanent channel and bank and the occurrence of two or more of the  
64 following characteristics: (A) Evidence of scour or deposits of recent  
65 alluvium or detritus, (B) the presence of standing or flowing water for  
66 a duration longer than a particular storm incident, and (C) the  
67 presence of hydrophytic vegetation;

68 (17) "Natural vegetation" means naturally occurring shrubs, trees or  
69 other plants growing around wetlands or watercourses, but does not  
70 include lawns or manicured grass areas;

71 (18) "Cultivated vegetation" means plants growing around wetlands  
72 or watercourses or on the grounds of the State Capitol that are grown

73 for the purpose of human consumption, including, but not limited to,  
74 plants in community gardens;

75 [(17)] (19) "Feasible" means able to be constructed or implemented  
76 consistent with sound engineering principles; and

77 [(18)] (20) "Prudent" means economically and otherwise reasonable  
78 in light of the social benefits to be derived from the proposed regulated  
79 activity provided cost may be considered in deciding what is prudent  
80 and further provided a mere showing of expense will not necessarily  
81 mean an alternative is imprudent.

82 Sec. 2. Section 22a-40 of the general statutes is repealed and the  
83 following is substituted in lieu thereof (*Effective October 1, 2009*):

84 (a) The following operations and uses shall be permitted in  
85 wetlands and watercourses, as of right:

86 (1) Grazing, farming, as described in section 1-1, nurseries,  
87 gardening and harvesting of crops and farm ponds of three acres or  
88 less essential to the farming operation, and activities conducted by, or  
89 under the authority of, the Department of Environmental Protection  
90 for the purposes of wetland or watercourse restoration or  
91 enhancement or mosquito control. The provisions of this subdivision  
92 shall not be construed to include road construction or the erection of  
93 buildings not directly related to the farming operation, relocation of  
94 watercourses with continual flow, filling or reclamation of wetlands or  
95 watercourses with continual flow, clear cutting of timber except for the  
96 expansion of agricultural crop land, the mining of top soil, peat, sand,  
97 gravel or similar material from wetlands or watercourses for the  
98 purposes of sale;

99 (2) A residential home [(i)] (A) for which a building permit has been  
100 issued, or [(ii)] (B) on a subdivision lot, provided the permit has been  
101 issued or the subdivision has been approved by a municipal planning,  
102 zoning or planning and zoning commission as of the effective date of  
103 promulgation of the municipal regulations pursuant to subsection (b)

104 of section 22a-42a, as amended by this act, or as of July 1, 1974,  
105 whichever is earlier, and further provided no residential home shall be  
106 permitted as of right pursuant to this subdivision unless the permit  
107 was obtained on or before July 1, 1987;

108 (3) Boat anchorage or mooring;

109 (4) Uses incidental to the enjoyment and maintenance of residential  
110 property, such property defined as equal to or smaller than the largest  
111 minimum residential lot site permitted anywhere in the municipality,  
112 provided in any town, where there are no zoning regulations  
113 establishing minimum residential lot sites, the largest minimum lot site  
114 shall be two acres. Such incidental uses shall include maintenance of  
115 existing structures and landscaping but shall not include removal or  
116 deposition of significant amounts of material from or onto a wetland  
117 or watercourse or diversion or alteration of a watercourse;

118 (5) Construction and operation, by water companies as defined in  
119 section 16-1 or by municipal water supply systems as provided for in  
120 chapter 102, of dams, reservoirs and other facilities necessary to the  
121 impounding, storage and withdrawal of water in connection with  
122 public water supplies except as provided in sections 22a-401 and 22a-  
123 403; [and]

124 (6) Maintenance relating to any drainage pipe which existed before  
125 the effective date of any municipal regulations adopted pursuant to  
126 section 22a-42a, as amended by this act, or July 1, 1974, whichever is  
127 earlier, provided such pipe is on property which is zoned as residential  
128 but which does not contain hydrophytic vegetation. For purposes of  
129 this subdivision, "maintenance" means the removal of accumulated  
130 leaves, soil, and other debris whether by hand or machine, while the  
131 pipe remains in place; and

132 (7) Activities conducted by, or under the authority of, the  
133 Department of Environmental Protection for the purposes of wetlands  
134 restoration and protection.

135 (b) The following operations and uses shall be permitted, as  
136 nonregulated uses in wetlands and watercourses, provided they do not  
137 disturb the natural and indigenous character of the wetland or  
138 watercourse by removal or deposition of material, alteration or  
139 obstruction of water flow or pollution of the wetland or watercourse:

140 (1) Conservation of soil, vegetation, water, fish, shellfish and  
141 wildlife; and

142 (2) Outdoor recreation including play and sporting areas, golf  
143 courses, field trials, nature study, hiking, horseback riding, swimming,  
144 skin diving, camping, boating, water skiing, trapping, hunting, fishing  
145 and shellfishing where otherwise legally permitted and regulated.

146 (c) Any dredging or any erection, placement, retention or  
147 maintenance of any structure, fill, obstruction or encroachment, or any  
148 work incidental to such activities, conducted by a state agency, which  
149 activity is regulated under sections 22a-28 to 22a-35, inclusive, or  
150 sections 22a-359b to 22a-363f, inclusive, shall not require any permit or  
151 approval under sections 22a-36 to 22a-45, inclusive, as amended by this  
152 act.

153 Sec. 3. Section 22a-41 of the general statutes is repealed and the  
154 following is substituted in lieu thereof (*Effective October 1, 2009*):

155 (a) For purposes of this section, "wetlands or watercourses" includes  
156 aquatic, plant or animal life and habitats in wetlands or watercourses,  
157 and "habitats" means areas or environments in which an organism or  
158 biological population normally lives or occurs.

159 (b) In carrying out the purposes and policies of sections 22a-36 to  
160 22a-45a, inclusive, as amended by this act, including matters relating to  
161 regulating, licensing and enforcing of the provisions thereof, the  
162 commissioner shall take into consideration all relevant facts and  
163 circumstances, including, but not limited to:

164 (1) The environmental impact of the proposed regulated activity on

165 wetlands or watercourses;

166 (2) The applicant's purpose for, and any feasible and prudent  
167 alternatives to, the proposed regulated activity which alternatives  
168 would cause less or no environmental impact to wetlands or  
169 watercourses;

170 (3) The relationship between the short-term and long-term impacts  
171 of the proposed regulated activity on wetlands or watercourses and  
172 the maintenance and enhancement of long-term productivity of such  
173 wetlands or watercourses;

174 (4) Irreversible and irretrievable loss of wetland or watercourse  
175 resources which would be caused by the proposed regulated activity,  
176 including the extent to which such activity would foreclose a future  
177 ability to protect, enhance or restore such resources, and any  
178 mitigation measures which may be considered as a condition of  
179 issuing a permit for such activity including, but not limited to,  
180 measures to (A) prevent or minimize pollution or other environmental  
181 damage, (B) maintain or enhance existing environmental quality, or  
182 (C) in the following order of priority: Restore, enhance and create  
183 productive wetland or watercourse resources;

184 (5) The character and degree of injury to, or interference with,  
185 safety, health or the reasonable use of property which is caused or  
186 threatened by the proposed regulated activity; [and]

187 (6) Impacts of the proposed regulated activity on wetlands or  
188 watercourses outside the area for which the activity is proposed and  
189 future activities associated with, or reasonably related to, the proposed  
190 regulated activity which are made inevitable by the proposed  
191 regulated activity and which may have an impact on wetlands or  
192 watercourses; and

193 (7) The significance of the wetlands or watercourses, and the  
194 existing or expected future development in the area around the  
195 wetlands or watercourses.

196 [(b)] (c) (1) In the case of an application which received a public  
197 hearing pursuant to (A) subsection (k) of section 22a-39, or (B) a  
198 finding by the inland wetlands agency that the proposed activity may  
199 have a significant impact on wetlands or watercourses, a permit shall  
200 not be issued unless the commissioner finds on the basis of the record  
201 that a feasible and prudent alternative does not exist. In making his  
202 finding, the commissioner shall consider the facts and circumstances  
203 set forth in subsection (a) of this section. The finding and the reasons  
204 therefor shall be stated on the record in writing.

205 (2) In the case of an application which is denied on the basis of a  
206 finding that there may be feasible and prudent alternatives to the  
207 proposed regulated activity which have less adverse impact on  
208 wetlands or watercourses, the commissioner or the inland wetlands  
209 agency, as the case may be, shall propose on the record in writing the  
210 types of alternatives which the applicant may investigate provided this  
211 subdivision shall not be construed to shift the burden from the  
212 applicant to prove that he is entitled to the permit or to present  
213 alternatives to the proposed regulated activity.

214 [(c) For purposes of this section, (1) "wetlands or watercourses"  
215 includes aquatic, plant or animal life and habitats in wetlands or  
216 watercourses, and (2) "habitats" means areas or environments in which  
217 an organism or biological population normally lives or occurs.]

218 (d) A municipal inland wetlands agency shall not deny or condition  
219 an application for a regulated activity in an area outside wetlands or  
220 watercourses on the basis of an impact or effect on aquatic, plant, or  
221 animal life unless such activity will likely impact or affect the physical  
222 characteristics of such wetlands or watercourses.

223 Sec. 4. (NEW) (*Effective October 1, 2009*) (a) Except as provided in  
224 subsection (b) of this section, when considering an application for a  
225 proposed regulated activity, a municipal inland wetlands agency shall  
226 not allow the destruction of natural vegetation within (1) one hundred  
227 feet of a wetlands or watercourse, or (2) the distance around the

228 wetlands or watercourse regulated by the municipality pursuant to  
229 subsection (f) of section 22a-42a of the general statutes if such distance  
230 is less than one hundred feet from such wetlands or watercourse.

231 (b) A municipal inland wetlands agency shall allow the removal of  
232 natural vegetation in connection with a proposed regulated activity if  
233 (1) the applicant can demonstrate that the removal will have no likely  
234 impact or effect on the physical characteristics of such wetlands or  
235 watercourse, or (2) there is no feasible or prudent alternative to the  
236 removal, provided such proposed activity meets all other permitting  
237 requirements and applicable provisions of chapter 440 of the general  
238 statutes.

239 (c) The provisions of this section shall not apply to construction  
240 activities that are ancillary to existing residential uses, including, but  
241 not limited to, the construction of structures such as decks,  
242 outbuildings, fences or walkways, provided any natural vegetation in  
243 proximity to the activity is protected or restored to the maximum  
244 extent practicable. Any such construction activities shall be subject to  
245 all other permitting requirements and applicable provisions of chapter  
246 440 of the general statutes.

247 (d) The as of right uses specified in section 22a-40 of the general  
248 statutes, as amended by this act, shall be permitted in areas of natural  
249 vegetation located within the distance around the wetlands or  
250 watercourse regulated by the municipality in accordance with  
251 subsection (a) of this section.

252 Sec. 5. (NEW) (*Effective from passage*) (a) There is established a  
253 community garden program to be known as the Capitol Grounds  
254 Community Garden Program. Any parcel of land on the grounds of  
255 the State Capitol that, as of the effective date of this section, contains  
256 plants belonging to the family Liliaceae or any bulbs of such plants  
257 shall be converted to use as a parcel for cultivated vegetation as part of  
258 the program.

259 (b) Any Hartford resident who has an income level equal to or less

260 than one hundred eighty-five per cent of the federal poverty level shall  
261 be eligible to apply to use an area not to exceed one hundred fifty  
262 square feet to grow cultivated vegetation. If the number of applicants  
263 exceeds the number of parcels available for such use, the Executive  
264 Director of the Office of Legislative Management shall establish a  
265 lottery system to allocate such parcels.

266 (c) Permitted bird and wildlife repellents on any such parcel shall  
267 include scare eye and holographic balloons, rotating head and motion  
268 sensor owls and scarecrows. Bird and wildlife repellents that make  
269 noise, including, but not limited to, bird bangers, screamers, rockets,  
270 and pyrotechnics shall be prohibited. No person using any such parcel  
271 for the purpose of cultivated vegetation may use any pesticide,  
272 herbicide or chemical fertilizer on the grounds of the State Capitol.  
273 Nothing in this section shall be construed to prohibit the use of  
274 manure fertilizers, including, but not limited to, manure produced by  
275 cattle, sheep, horses, pigs or chickens.

276 (d) The Executive Director of the Office of Legislative Management  
277 shall, within available appropriations, administer the Capitol Grounds  
278 Community Garden Program. The executive director's responsibilities  
279 under said program shall include, but not be limited to, (1) the  
280 development and processing of applications; (2) the creation of a  
281 lottery system, if necessary; (3) the resolution of any disputes between  
282 participants; (4) soil testing; (5) monitoring of fertilizer use; and (6)  
283 monitoring of bird and wildlife repellents.

284 (e) On or before December 31, 2009, and annually thereafter, the  
285 executive director shall report to the General Assembly, in accordance  
286 with the provisions of section 11-4a of the general statutes, concerning  
287 the Capitol Grounds Community Garden Program, including, but not  
288 limited to, the number of applicants, participants and parcels used,  
289 fertilizer types used and recommendations for additional areas to be  
290 converted from grass to areas of cultivated vegetation."

|   |                        |             |
|---|------------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                        |             |
| Section 1   | <i>October 1, 2009</i> | 22a-38      |
| Sec. 2  | <i>October 1, 2009</i> | 22a-40      |
| Sec. 3  | <i>October 1, 2009</i> | 22a-41      |
| Sec. 4  | <i>October 1, 2009</i> | New section |
| Sec. 5  | <i>from passage</i>    | New section |