



**CACIWC'S 32ND ANNUAL MEETING & ENVIRONMENTAL CONFERENCE OFFERS ADVANCED ADMINISTRATIVE, LEGAL, AND SCIENTIFIC SESSIONS FOR CONSERVATION & WETLANDS COMMISSIONERS AND AGENTS**

In response to your requests, several advanced administrative, legal, and scientific workshops are offered for experienced inland wetlands and conservation commissioners. See workshops B1, A2, D2, & D3.

**PLUS!**

A municipal grant information and discussion session for conservation, inland wetlands commissioners and agents has been organized by the DEP NonPoint Source Project and Wetlands Management Section. See workshop D3. See pages 8 & 9 for the complete list of workshops.

There is still time to submit your nominations for a CACIWC annual award! See page 16 or [www.CACIWC.org](http://www.CACIWC.org) for more information.

## Patrick M. Comins, Director of Bird Conservation, Audubon Connecticut, to Address CACIWC'S Annual Conference



Patrick M. Comins will be the keynote speaker at CACIWC's 32nd Annual Meeting and Environmental Conference on Saturday, November 14, 2009, at MountainRidge in Wallingford. Mr. Comins will emphasize the conference theme of "Working Together to Preserve Connecticut's Key Habitats."

The role of municipalities in protecting key wildlife habitats is growing ever more important in today's uncertain fiscal climate. Current state and federal laws designed for protecting wildlife may not always be successful in preserving important habitats. In his keynote address, "*The Role of Municipalities in*

*Preserving Threatened Bird Habitats in Connecticut*", Patrick Comins will discuss ways that municipalities can safeguard key habitats while preserving Connecticut's scenic heritage that helps make your city or town an attractive place to live. He will emphasize the value of a proactive approach, using state and regional partners to help maintain conservation efforts in this era of diminishing resources.

Mr. Comins is a graduate of Trinity College in Hartford, and has worked in the bird conservation arena for the last 15 years. He began his career with the Connecticut Audubon Society doing bird surveys at the McKinney National Wildlife Refuge, and then worked for the U.S. Fish and Wildlife Service as a biological technician at the Refuge. He has been with Audubon Connecticut as the Director of Bird Conservation for Connecticut since 2000, overseeing Connecticut's Important Bird Areas program.

Patrick is the principal author of *Protecting Connecticut's Grassland Heritage*, and Vice President of the Connecticut Ornithological Association. He was the 2007 recipient of their Mabel Osgood Wright Award. He was also formerly on the board of directors for the Hartford Audubon Society and continues to work closely with them. He has written several articles on bird conservation and identification for the *Connecticut Warbler* and is a founding member of the Connecticut Forestlands

Council and current chair of the Connecticut Forest Ecosystem Health Committee, as well as a member of the Executive Committee of the Friends of the Silvio O. Conte National Fish and Wildlife Refuge.

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**Editor's Note:** Conservation Commissions across the state have utilized the inspirational draw of forests, fields and wetlands to engage their community in preserving open space for walking, hiking and discovery. The motivating message has been to protect lands that are high in natural resource value, high in recreational potential and linked with other protected lands to create greenways that connect people to open spaces. WalkCT expands that theme to promote the public health aspects of walking and hiking in natural as well as urban settings. WalkCT is an opportunity to link with a new program that has the expertise to assist commissions who would like to include the health benefits of open space in their local program.



*by Leslie Lewis, WalkCT Coordinator*

**A**cross the nation, there is troubling evidence of public health issues created by the sedentary lifestyle of too many Americans. This is coupled with a growing disconnect between our society and the land. We at the Connecticut Forest & Park Association believe we have a singular opportunity to address these concerns.

With an exceptional trail system, remarkable natural resources and a high density population, Connecticut is in a unique position to take a leadership role nationwide in reclaiming the public health. The Connecticut Forest & Park Association is introducing WalkCT, an initiative that will bring the outdoors to the feet of every household in the state.

Our vision is of a state where urban, suburban and rural populations take to sidewalks, parks, trails and greenways in a sweeping community venture to take charge of individual health and happiness. We envision a place where every citizen, regardless of means, can experience a sense of ownership and connection with the land. We hope that WalkCT will serve as a model health program that will spark the beginning of a sea change in the national health. A start-up grant from the Connecticut Department of Public Health is helping us to put these plans into action.

There are over 1000 miles of trails around the state, with many brochures and websites describing them. There are numerous organizations and sites promoting the programs of the specific organization. However, there is no central, dedicated "clearinghouse" where the average citizen can go to find information on the

types of trails (and other walking routes) available to the public, their locations, allowable uses, and points of special interest. WalkCT will gather this information into one place, providing people with a comprehensive, easy to use website listing walking (and cycling, riding, blading, etc) opportunities. Links to other organizations and lists of resources will be included. The site will include tips on safety and getting started for the "wary walker." A link to Facebook will be available for people to post thoughts about their favorite walking places, and to share their challenges and successes in making walking a part of their lives.

If all of this sounds positive to you, you might ask where Conservation Commissions fit into the picture. If your commission develops/manages trails in your town, or if you are interested in getting other walking opportunities in your community listed on WalkCT, you can register them on-line. You can go to the WalkCT website, [www.walkct.org](http://www.walkct.org), then click on register your location or event at the bottom of the page. If you are not the actual trail sponsor (maybe it's the Park and Recreation or Land Trust folks), encourage them to sign up. In addition we will be looking for unique projects, great trails, and interesting individuals to profile in our articles.

WalkCT staff have unique experience in trail advocacy, development, and maintenance that can be shared with communities around Connecticut through technical assistance and other education/outreach efforts. Our goal is to locate a trail or walking opportunity within 15 minutes of every home in the state and to link these trails to every city.

*Walk, continued on page 12*

**Editor's Note:** This article describes some key steps in developing an EPA-approved watershed-based plan, using the recently completed Tankerhoosen River Watershed Management Plan. See Part I in the Spring 2009 issue of "The Habitat." The approved Plan is now posted on the DEP website. The direct link is: [http://www.ct.gov/dep/lib/dep/water/watershed\\_management/wm\\_plans/tankerhoosen/tankwp\\_final.pdf](http://www.ct.gov/dep/lib/dep/water/watershed_management/wm_plans/tankerhoosen/tankwp_final.pdf)

## Watershed Management Planning

### Part II: The Tankerhoosen River Watershed Management Plan

by Erik Mas, Kristine Baker, and Philip Moreschi, Fuss & O'Neill, Inc.

The Tankerhoosen River, in Vernon Connecticut, has long been recognized as an important natural resource and a key inland watershed critical to the health of Long Island Sound. The high water quality in the upper regions of the Tankerhoosen River sustains a significant natural resource of the State of Connecticut – the Belding Wild Trout Management Area, one of only two Class I wild trout areas east of the Connecticut River. Development pressure in the upper reaches and declining water quality in the lower reaches of the Tankerhoosen River underscored the need for a comprehensive, scientifically-based watershed management plan to address these issues.

#### Assessing Baseline Watershed Conditions

The first step in developing a comprehensive watershed management plan is to identify the current characteristics of the watershed and inventory the watershed's natural and physical resources. This basic watershed assessment establishes a baseline of watershed conditions to begin identifying problems and potential improvements to address these problems.

The basic steps in performing a baseline watershed assessment include:

- Delineate and map the watershed and subwatershed boundaries;
- Review existing watershed data, studies, and reports;
- Contact the watershed municipalities, and the regional planning organizations regarding available land use information, mapping, and land use planning regulations;
- Inventory and map the natural resources in the watershed including hydrology, water quality, wetlands and watercourses, fish and wildlife resources and habitat;
- Inventory and map the drainage systems in the watershed;

- Inventory and map land use and land cover;
- Inventory and map soils;
- Describe the geological and historical perspective of the watershed;
- Inventory and map watershed modifications including dams, water supply, wastewater discharges, and regulated sites.

This type of information may already be available in paper or GIS format from the DEP, the Natural Resources Conservation Service, regional planning organizations, and municipal offices such as planning and zoning, inland wetlands, and public works.

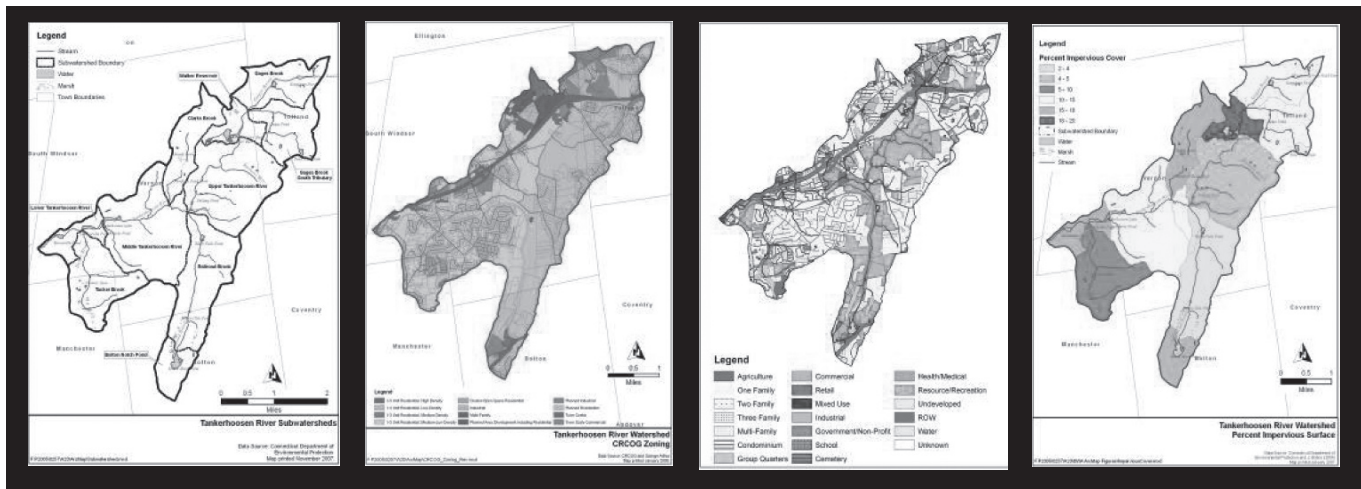
The Tankerhoosen River watershed baseline assessment also included an evaluation of existing and future pollutant loads, impervious cover, and vegetative cover along stream corridors using a watershed buildout scenario to evaluate areas in the watershed that are most at-risk from future development. The results of these analyses confirmed that several of the key headwater streams are predicted to experience a significant decline in stream health under a worst-case future development scenario.

A comparative subwatershed analysis was also performed to identify the Tankerhoosen River subwatersheds that 1) are more sensitive to future development and should be the focus of watershed conservation efforts to maintain existing high-quality resources and conditions and 2) are likely to have been impacted and have greater potential for restoration to improve or enhance existing conditions. The results of the comparative subwatershed analysis were used to target individual subwatersheds for field inventories.

#### Conducting Watershed Field Inventories

Detailed field inventories of the stream corridors and upland areas of a watershed are essential for

*Watershed, continued on page 4*



Tankerhoosen River watershed existing hydrology, land use, zoning, and impervious cover data.

developing a comprehensive, detailed watershed-based plan. Field inventories are screening level tools for locating potential pollutant sources and environmental problems in a watershed along with possible locations where restoration opportunities and mitigation measures can be implemented. For the Tankerhoosen River watershed, field inventories were performed in selected stream corridors and upland areas within priority subwatersheds, which were identified during the baseline watershed assessment.



Stream bank erosion identified and documented as part of the stream corridor assessments.

Using screening-level assessment procedures developed by the Center for Watershed Protection and EPA, field crews assessed approximately 8.7 miles of stream corridors, potential hotspot land uses, and representative residential neighborhoods, streets, and storm drainage systems. The field inventories identified a number of common issues and problems, as well as potential candidate sites for stormwater retrofits, stream restoration, and other targeted projects.

The watershed field assessments are also an ideal opportunity for watershed stakeholder groups, local residents, and other volunteers to assist in walking the stream corridors and upland areas, which can enhance

public understanding and support for future watershed implementation projects.

### Reviewing Land Use Regulations

Municipal land use regulations control patterns of new development and redevelopment and can play an important role in protecting water quality and other natural resources in a watershed. These commonly include local plans of conservation and development, zoning regulations, subdivision regulations, inland wetland regulations, and stormwater regulations, all of which influence the type and density of development that can occur within a watershed. Local land use regulations vary by town within a watershed, and regulations are periodically revised in response to development pressure, shifts in attitude toward natural resource protection, and political and socioeconomic factors.

A key element in the development of a watershed-based plan is to identify potential land use regulatory mechanisms (i.e., new or modified land use regulations) that can be implemented by the watershed towns to strengthen existing land use controls and better protect natural resources within the watershed. Many Connecticut communities are in the process of developing new or modified land use regulations that incorporate Low Impact Development (LID) and related stormwater management approaches such as green infrastructure to address stormwater quantity and quality objectives. Communities in urbanized areas are also faced with a mandate to meet State and Federal Phase II stormwater permit requirements under the National Pollutant Discharge Elimination System (NPDES) program, as well as addressing local

Watershed, continued from page 4

concerns about the damaging effects of increased impervious cover and uncontrolled stormwater runoff from land development and suburban sprawl.

The land-use regulatory review for the Tankerhoosen River watershed identified a number of recommendations relative to new or modified land use regulations in the watershed towns, including:

- Develop a stormwater design manual, new stormwater management standards, and new or revised stormwater regulations to promote the use of LID and green infrastructure practices in the Town of Vernon.
- Pending passage of enabling legislation by the Connecticut State legislature, adopt riparian buffer protection regulations.
- Amend zoning and subdivision regulations to enable and encourage the use of green infrastructure practices and reductions in impervious cover.

**Developing Management Goals, Objectives and Recommendations**

Once you have documented baseline conditions, identified the problems in the watershed, and identified and quantified the sources that need to be managed, the next step is to develop management goals, objectives, and recommendations. Management goals are typically refined based upon preliminary goals identified by the watershed stakeholders and data analysis from the previous steps. Overall watershed goals are then translated into management objectives, focusing on specific processes that can be managed.

Finally, management objectives are translated into specific plan recommendations that are tailored to issues within specific subwatersheds or areas, and site-specific recommendations to address issues at sites that are identified during the watershed field inventories.

For the Tankerhoosen River watershed, plan recommendations were classified according to their implementation priority:

- **Short-Term Recommendations** are initial actions

to be accomplished within the first one to two years of plan implementation. These actions establish the framework for implementing subsequent plan recommendations. Such actions include development of local regulations and stormwater design guidance, discharge investigations, education program planning, and field inventories within previously unassessed subwatersheds. Small demonstration restoration projects could be completed during this phase, however construction of larger retrofit practices and stream restoration projects requiring extensive design, engineering, and permitting should be

planned for later implementation.

- **Mid-Term Recommendations** involve continued programmatic and operational measures, delivery of educational and outreach materials, and construction of one or two larger retrofit and/or stream restoration projects over the next two to four years. Progress on land conservation, LID implementation, and discharge investigation follow-up activities should

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**Tankerhoosen River Watershed Plan Recommendations**

Watershed-Wide Recommendations

- Build a Foundation for Implementing the Plan
- Municipal Regulations and Design Guidance
- Illicit Discharge Detection and Elimination
- Residential Practices
- Municipal and Business Practices
- Education and Outreach
- Water Quality Monitoring Program

Targeted Recommendations

- Priority Parcels for Open Space Protection
- Invasive Plant Species Management
- Targeted Stormwater Outfall Retrofits
- Watershed Fish Passage Assessments
- Targeted Illicit Discharge Investigations
- Additional Subwatershed Field Assessments

Site-Specific Recommendations

- Stormwater Retrofit Opportunities
- Riparian Buffer Restoration Opportunities
- Stream Restoration Opportunities
- Dams and Impoundments
- Aquatic Invasive Species Study
- Priority Stream Cleanups



## Lack of Wildlife Information Valid Basis for Wetlands Agency Denial

In my last column we took a five-year retrospective look at the change in wetlands law regarding consideration of wildlife. Since that newsletter was published, the Connecticut Supreme Court has issued a decision in Unistar Properties, LLC v. Conservation & Inland Wetlands Commission, 293 Conn. 93 (2009). The Supreme Court upheld the agency’s action. The decision is helpful in instructing agencies how to go forward in the consideration of wildlife.

In Unistar Properties, LLC the Supreme Court uses the term “wildlife” to encompass only animal life. In numerous dictionaries and among the scientific community “wildlife” is deemed to encompass plant and animal life, the flora and fauna. Among lay people it is somewhat more common to limit “wildlife” to animals. I use the term “wildlife” to include both plants and animals. However, to avoid confusion in this article I will specify animals or plants and animals. Where I am quoting directly from the court decision I will use the court’s wording, i.e., wildlife, meaning only animal life.

Unistar Properties, LLC, the applicant, appealed the decision of the Putnam inland wetlands agency for denying its application for a 34-lot subdivision. The agency denied the application as incomplete based on the applicant’s failure to provide both a sufficiently detailed wildlife<sup>1</sup> inventory and an analysis of alternatives. The applicant claimed that it had provided expert testimony that there would be no adverse impacts to wetlands or watercourses. Hence, according to the applicant, the agency had no authority to seek information about plants and animals or to require the applicant to consider alternatives. The trial court dismissed the appeal, affirming the agency action. The trial court found there was substantial

evidence to support the agency’s denial based on the application being incomplete.

On appeal to the Supreme Court, the applicant argued that because no one established that there would be an adverse impact to wetlands or watercourses, the agency wasn’t authorized to deny an application as incomplete for the lack of information about animals. Secondly the applicant claimed that because no one had established that an impact on plants and animals would

have a physical effect on the wetlands or watercourses on the property, no plant or animal inventory could be required of the applicant.

Refer back to this column in that last issue (or pull out *your* town’s wetlands regulations). After the Supreme Court’s decision in Avalon Bay in 2003, the legislature responded in 2004 by amending § 22a-41. Subsection (d)

was added. It limits the authority of an agency to *deny* or *place conditions on a permit* when the proposed activity occurs outside of a wetlands or watercourse “unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.”

The agency countered that it did not deny the application because there was evidence that animal life would be adversely impacted, but because *the agency lacked sufficient information to determine whether the proposed subdivision would adversely impact the wetlands*. An environmental intervenor supported the agency’s position arguing that the applicant cannot refuse to supply information to the agency simply because the *applicant* has determined there will not be an adverse impact.

*The Supreme Court holds that § 22a-41 (c) “make[s] clear. . . the wetlands resources that a commission is charged with preserving and protection . . . are not limited simply to the wetlands and watercourses as containers of soil and water but encompass the aquatic, plant or animal life and habitats that exist therein.”*

*Wildlife, continued on page 7*

The Supreme Court agreed with the agency and the intervenor. The court interpreted the new provisions of the General Statutes § 22a-41. The first amendment in § 22a-41 (c) “contains a more expansive definition of wetlands and watercourses for purposes of the commission’s considerations of the factors set forth in that statute for permit approval.”<sup>2</sup> The definition of wetlands or watercourses is enlarged to include “aquatic, plant or animal life and habitats in wetlands or watercourses.” General Statutes § 22a-41 (c). The Supreme Court holds that § 22a-41 (c) “make[s] clear . . . the wetlands resources that a commission is charged with preserving and protecting . . . are not limited simply to the wetlands and watercourses as containers of soil

and water but encompass the aquatic, plant or animal life and habitats that exist therein.”<sup>3</sup>

Thus, the Supreme Court rules it is proper for an agency to deliberate on the factors for consideration with respect to not only the physical characteristics of the wetlands resources but also with respect to “the aquatic, plant and animal life and habitats that are part of those wetlands and watercourses.”<sup>4</sup> Most important: “[A] commission necessarily must be able to request, and is entitled to, information on the aquatic, plant or animal life and habitats that are part of the wetlands and watercourses, pursuant to § 22a-41 (c), as well as an assessment of impacts to those resources, *Wildlife, continued on page 10*

***“[A] commission necessarily must be able to request, and is entitled to, information on the aquatic, plant or animal life and habitats that are part of the wetlands and watercourses, pursuant to § 22a-41 (c), as well as an assessment of impacts to those resources, along with information on any impact to plant or animal life outside the wetlands that might, in turn, impact the wetlands.”***



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# CACIWC's Environmental Conference Workshops

## — SESSION 1 —

(\* Denotes Advanced Workshop)

### A1. "Advancing Land Conservation through Collaboration"

**Kevin Case, Northeast Director, Land Trust Alliance**

Connecticut has the third most land trusts of any state, as well as a unique and dense mosaic of municipal and non-governmental conservation interests at the local level. As land conservation becomes more costly and complex, the opportunities to explore partnering with neighboring land trusts or local conservation commissions become more compelling. Join a discussion on how acting collaboratively might help transform your land conservation work.

### \*B1. "Wetlands Law in 2009: Case Law, Legislative & Regulatory Update"

**Janet Brooks, Attorney at Law, LLC;  
David Wrinn, CT Attorney General's Office;  
Mark Branse, Branse, Willis & Knapp, LLC**

This trio of wetlands attorneys will keep you current with the latest state Supreme Court and Appellate Court cases. You'll hear about an enforcement case involving the farming exemption, an agency's success story denying an application for insufficient wildlife information, and a failed attempt by an historic district commission to rely on a commission member who recused himself and testified at a public hearing.

### C1. "Deer Ecology & CT's Growing Populations" **Andrew LaBonte, Wildlife Biologist CT DEP Wildlife Division**

White-tailed deer are a wildlife management success story. Connecticut populations have increased from 12 deer in 1896 to more than 65,000 in 2008. This increase can have detrimental effects on the ecological integrity of landscapes, affect populations of birds and mammals, and can cause health and safety issues for humans. This workshop will help municipal commissions and staff respond to public concerns and offer local habitat management initiatives to discourage population growth.

### D1. "Connecticut Freedom of Information Update" **Thomas Hennick, Public Education Officer CT Freedom of Information Commission**

The Freedom of Information Act guarantees all citizens the right to have access to public records and public documents. The workshop will help municipal officials understand their rights and their obligations under the FOI Act. Some of the topics that are explored include: conducting executive sessions, how to manage requests for public records, and Connecticut rules regarding electronic documents, email, and the agenda.

## — SESSION 2 —

(\* Denotes Advanced Workshop)

### \*A2. "The Tankerhoosen River – New Approaches for Watershed-Based Planning"

**Erik V. Mas, PE, Sr. Project Manager, Fuss & O'Neill, Inc.**

The Tankerhoosen River plan is one of the few approved watershed plans in Connecticut that meets the EPA guidelines (i.e., Nine Elements) to qualify for funding under Section 319 of the Clean Water Act and other federal funding programs. This presentation will describe the key steps for conservation and inland wetlands commissioners and staff, including new approaches, for developing an EPA-approved watershed-based plan, using the Tankerhoosen River watershed management plan as an example.

### B2. "Wetlands Law, Q&A"

**Janet Brooks, Attorney at Law, LLC;  
David Wrinn, CT Attorney General's Office;  
Mark Branse, Branse, Willis & Knapp, LLC**

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### C2. "Connecticut Beaver Ecology: Impact on Wetlands & Watercourses"

**Carrie Pomfrey, CT DEP Wildlife Division  
Habitat Management Program**

Although beavers can create and enhance wetlands habitats, their activities are increasingly attracting the attention of municipal leaders as their populations expand in Connecticut. This workshop will review their ecology along with permit requirements associated with their control.

### \*D2. "Connecticut Siting Council, Opportunities for Municipal Input"

**S. Derek Phelps, Executive Director  
Connecticut Siting Council**

A review of the composition, jurisdiction, and review process of the Connecticut Siting Council. Opportunities for inland wetlands and other municipal land-use agencies to review and comment upon proposed projects being evaluated by the Siting Council will be discussed, as well as ways in which conservation commissions and other agencies may formally participate in the Council's adjudicatory process, including the important "pre-file" process.

Open Space/  
Resource Conservation

Wetlands Law Update

Conservation Biology

Commission  
Administration



Saturday, November 14, 2009

— SESSION 3 —  
(\* Denotes Advanced Workshop)

**A3. "Harvesting Success in Farm-Friendly Towns"**

**Jiff Martin, Connecticut State Director, American Farmland Trust & Joan Nichols, Government Relations Specialist, Connecticut Farm Bureau Association**

A review of the latest crop of farm-friendly municipalities, examining steps these communities have taken in the past year toward farmland preservation and farm-friendly zoning. Examples include towns that have adopted right-to-farm ordinances, tax abatement programs, agriculture commissions, and more. Featured towns to be discussed include: Durham, North Stonington, Coventry, Guilford, Lebanon, and Woodstock as well updates from towns in the AgVocate Project in Northeast Connecticut.

**B3. "Wetlands Commission Procedures, an Update"**

**Mark Branse, Branse, Willis & Knapp, LLC**

This workshop will focus on the procedural aspects of permit applications, such as drafting of the legal notices, conduct of the public hearing, conflict of interest/ predetermination claims, environmental interventions, site walks, the role of experts, and jurisdictional issues. This program is recommended if you haven't taken the DEP Wetlands Training Segment II course or if you would like an update.

**C3. "Re-Moving a Mile-a-Minute in Connecticut"**

**Logan Senack, CT Invasive Plant Coordinator, University of Connecticut**

Mile-a-minute vine (*Persicaria perfoliata*), a highly invasive annual plant listed on the CT Invasive Plant List, was first reported in Connecticut in Greenwich in 2000. Since then, it has spread to 17 Connecticut towns and to other New England states. This workshop will focus on the biology and spread of mile-a-minute vine in CT and will cover proper identification, reporting and control of the vine.

**\*D3. "DEP Nonpoint Source Project Grant Opportunities, Low Impact Development Initiatives & Wetlands Agent Forum"**

**MaryAnn Nuscom-Haverstock, DEP Nonpoint Source Project & DEP Wetlands Management Section staff**

The workshop will describe the CT DEP Nonpoint Source Project, outline opportunities for municipal grants, review recent advances in low impact development initiatives, and discuss the role of conservation commissions, inland wetlands agencies and other municipal commissions in these programs. It will also provide a forum for wetlands agents and commissioners to raise issues that can be addressed by DEP Wetlands Management Section staff.

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*Wildlife, continued from page 7*

along with information on any impact to plant or animal life outside the wetlands that might, in turn, impact the wetlands.”<sup>5</sup>

The applicant held the position that § 22a-41 (d) prohibited the agency from requesting information on plants and animals when there is no evidence of a change in the physical characteristics of a wetland. Not so, said the Supreme Court. “Nothing in § 22a-41 (d) prohibits a commission from requesting information on wildlife in order to determine *whether* the proposed activity either will ‘affect the physical characteristics of such wetlands’ or will impact wildlife outside the wetlands that in turn will ‘affect the physical characteristics of such wetlands.’”<sup>6</sup> The decision of whether a project will impact wetlands resources is a factual determination “that only the commission is empowered to make and what cannot be reached in the absence of such [wildlife] information.”<sup>7</sup>

This court holding is tremendous support for agencies in carrying out their duties. An agency doesn’t need to make a preliminary finding of impact to request a inventory of plant and animal life. It is the inventory

itself that is needed to make the determination of impact to wetlands resources. The court also authorized the submission of information on plant and animal life *in the upland review area* to determine if such an impact in the upland review area might impact wetlands.

Are there limits to how far from wetlands an agency may properly seek information about plant and animal life? Of course. The court warns that if the area for which an inventory of animal life is sought “is so remote and makes it so unlikely that the activity could have any effect on the wetlands that it would be arbitrary and capricious for the commission to impose such a demand on the applicant.”<sup>8</sup>

Finally, the Supreme Court settles the score on who has the burden of proof regarding a permit application. It is the applicant. The applicant argued that no inventory of plant and animal life could be required until someone had first offered evidence that an impact on plant and animal life could cause a change to the physical characteristics of wetlands. The court said no. The applicant impermissibly shifted the burden from the applicant to the commission and placed “the commission in the role of disproving the [applicant’s]

*Wildlife, continued on page 11*



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assertion rather than evaluating information presented to [the commission] . . .”<sup>9</sup>

The Supreme Court went painstakingly through the transcripts of four nights of public hearings and what evidence was offered by the applicant, intervenor and the agency. During the hearings an agency member specifically asked for alternatives to the proposal which would limit water flowing to a vernal pool. The applicant rejected the request for alternatives stating since there was no impact to the wetlands, the applicant was not required to submit alternatives. The agency’s expert identified deficiencies in the application, namely lack of identification of animal species in the wetlands and drainage information. When the applicant responded the inventory was general and not keyed to specific wetlands on the property.

The Supreme Court found it significant that the agency’s regulations authorized the agency to require a wildlife inventory. Moreover, the regulations do not require the agency to find an adverse impact to the wetlands, before requesting an inventory.

The applicant’s last hope was to argue that it was entitled to be remanded, sent back, to the agency to allow the applicant another opportunity in this application proceeding to offer the requested information on animal life. The applicant clung to the argument that it wasn’t on notice what the agency wanted. The court made short shrift of that claim, referring to the numerous opportunities that it was given to respond to agency concerns during the public hearing process.

Why does this case support the agency when in the recent past the Supreme and Appellate Courts have thrown out numerous wetlands agency denials? The big distinction: this denial was based on lack of information from the applicant. Previous denials have involved the agency making findings of adverse impact or voting down applications without making a finding of adverse impact. The similarity in all of these cases is that the Supreme Court is continuing to look for “substantial evidence” to support the agency denial. The court hasn’t found substantial evidence where an agency relied on vague, general or speculative evidence of an adverse impact. The court in Unistar found substantial evidence for the agency to require more

information that in turn allows the agency to make the factual determination of adverse impact.

The Supreme Court has ruled that the 2004 revisions to the wetlands act are a source of authority for agencies to rely on in gathering information on plant and animal life. The court has thwarted any attempt by the applicant to shift the burden of proof away from the applicant and onto the agency. The next challenge is for agencies who receive the information they have sought to base denials on substantial evidence. The Supreme Court has solidly affirmed the right to gather the information, which is a valuable tool in protecting Connecticut’s wetlands and watercourses.

*Janet Brooks, Attorney at Law, LLC*

(Endnotes)

1 Sorry, we don’t know from the court decision whether the agency was referring to “animals” or “plants and animals,” so I am using the word the Supreme Court used in its decision. It is clear from reading the decision that the applicant understood the word “wildlife” to encompass plants and animals. From the information given in the court ruling, it is not clear what the agency was referring to.

2 Unistar Properties, LLC v. Conservation & Inland Wetlands Commission, 293 Conn. 93, 109 (2009).

3 Unistar Properties, LLC v. Conservation & Inland Wetlands Commission, 293 Conn. 93, 109 (2009).

4 Unistar Properties, LLC v. Conservation & Inland Wetlands Commission, 293 Conn. 93, 110 (2009).

5 Unistar Properties, LLC v. Conservation & Inland Wetlands Commission, 293 Conn. 93, 110 (2009).

6 Unistar Properties, LLC v. Conservation & Inland Wetlands Commission, 293 Conn. 93, 111 (2009).


7 Unistar Properties, LLC v. Conservation & Inland Wetlands Commission, 293 Conn. 93, 111 (2009).

8 Unistar Properties, LLC v. Conservation & Inland Wetlands Commission, 293 Conn. 93, 111 n. 15 (2009).

9 Unistar Properties, LLC v. Conservation & Inland Wetlands Commission, 293 Conn. 93, 112 (2009).



## Fall 2009 - DEP Inland Wetlands Commissioners Training Program

The Department of Environmental Protection's 2009 Segment 3 Municipal Inland Wetlands Commissioners Training Program will be offered at the end of October through the beginning of November. This year's Segment 3 theme is agriculture, including forestry. Segment 3 will begin with morning classroom presentations followed by an afternoon field visit to further discuss the topic. It is expected that two forestry workshops will be offered, one in Norfolk and one in Marlborough. In addition, DEP hopes to offer two other agriculture related workshops, a dairy operation in Lebanon and an equestrian facility in Redding. Due to workshop size limitations participants will be asked to sign up for one workshop of their choosing. Details, including dates, are currently being planned. As information becomes available it will be posted on the following website: <http://continuingstudies.uconn.edu/professional/dep/wetlands.html>. 



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*Walk, continued from page 2*

CFPA has a long history of providing individuals and organizations with support to meet their objectives and continues to be a central meeting place for Connecticut's conservation and hiking organizations. We will help to coordinate the efforts of the various groups working to improve and promote trails and health in the same cooperative spirit exhibited when the Association helped create the parks and trails in the first place.

Another important target group will be families with children. Connecticut's child obesity rate is at 15 percent and climbing every year. Through our Family Rambles, we introduce adults and kids to the joys of outdoor activity in a safe and fun way. Volunteer guides are given training in outdoor education, interpretation, and first aid. They choose the locations and types of walks they prefer to do. If you are interested in becoming a family guide, information is available on-line at [www.ctwoodlands.org/volunteer](http://www.ctwoodlands.org/volunteer); look under the "Mentor" section for more information. Even if you are only looking for help with organizing events for your commission, you can take advantage of a free training workshop to be in October. More information will be forthcoming on the CFPA website in the fall.

WalkCT will bring to people from all backgrounds the experience of connecting with the land, fostering lifelong interest and responsibility for its wellbeing. WalkCT will provide people with an outdoor experience within their comfort zone. Working with our many partners, we will promote Connecticut as a tourist destination where visitors come to hike and walk, to stay in our hotels and inns, to dine at our restaurants, and to visit our cultural and historic sites. WalkCT will encourage walking and biking as real transportation alternatives around our communities and our schools.

If your commission is interested in WalkCT and would like to hear more about it, staff are available for presentations. We ask that you invite other potentially interested parties in your town (planners, health department, economic development/chambers of commerce, park and rec), and particularly your mayors and selectmen to attend. For more information contact me at [llewis@ctwoodlands.org](mailto:llewis@ctwoodlands.org), or call CFPA at 860-346-2372. We can help you get started on the path to healthier, happier communities. 

be completed during this period, as well as project monitoring and tracking.

- **Long-Term Recommendations** consist of continued implementation of any additional projects necessary to meet watershed objectives, as well as an evaluation of progress, accounting of successes and lessons learned, and an update of the watershed management plan. Long-term recommendations are intended to be completed during the next 5- to 10-year timeframe and beyond.

The watershed-based plan also includes cost estimates for the recommendations, anticipated pollutant load reductions, an implementation schedule with milestones, and available funding sources for implementing the watershed plan.

### Where to Get Additional Help


With the prospect of additional federal stimulus funding on the horizon and a continued movement toward sustainability and green infrastructure, developing a comprehensive watershed-based plan is more important than ever for obtaining funding to restore and protect water resources in Connecticut.

If you are interested in learning more about developing watershed-based plans, please contact us at 860-646-2469 x4433 or [emas@fando.com](mailto:emas@fando.com). Additional information is also available from the following sources:

Connecticut Department of Environmental Protection Watershed Management and Coordination Program (860-424-3020), [http://www.ct.gov/dep/cwp/view.asp?a=2719&q=325628&depNav\\_GID=1654&depNav](http://www.ct.gov/dep/cwp/view.asp?a=2719&q=325628&depNav_GID=1654&depNav).

U.S. Environmental Protection Agency “Handbook for Developing Watershed Plans to Restore and Protect Our Waters”, [http://www.epa.gov/owow/nps/watershed\\_handbook/pdf/handbook.pdf](http://www.epa.gov/owow/nps/watershed_handbook/pdf/handbook.pdf).

Center for Watershed Protection, Urban Subwatershed Restoration Manual Series, <http://www.cwp.org/Store/usrm.htm>.

**Plan Contributors:** Fuss & O’Neill and the Friends of the Hockanum River Linear Park, in conjunction with the Town of Vernon, the North Central Conservation District, Rivers Alliance of Connecticut, the Hockanum River Watershed Association, and the Belding Wildlife Trust. 

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# Remembering Allan Noam Williams

by Tom Odell


Allan died June 26, 2009 of pancreatic cancer. He was a true and dedicated environmentalist who is missed by the many people that his generosity and friendship touched.

Allan was a good friend and big supporter of CACIWC, always willing to help if he could. It was, “If I can, I do.” He first met CACIWC when he worked in DEP’s Natural Resource Center. We tapped into his editing and publishing skills, first for ideas to enhance CACIWC’s newsletter, *The Habitat*, then later with his encouragement to update the conservation commission handbook, which was originally written and produced by DEP. Allan’s persistence and publishing skills were significant contributions to the 1998 3<sup>rd</sup> Edition of *The Handbook for Conservation Commissions*.

It was always a learning experience to chat with him in his DEP cubicle surrounded by environmental publications he was working on. He was generous with his time and thoughtful in replies to my countless questions. And the puns? They were pun-ishing but always kept the smile on my face.

Allan founded the DEP Book Store and brought the “best of Connecticut” publications to CACIWC’s annual environmental conference for display and purchase—he wanted everyone to have an opportunity to explore and get to know Connecticut’s beautiful wild and scenic landscapes and the critters that lived there.

In the fall of 2007 CACIWC contracted with Allan to guide the Board of Directors in development of a Strategic Plan. Some may remember being collared by Allan at the 2007 Environmental Conference to fill out a questionnaire to assist in development of the Plan. The Plan was completed in May 2008. It seems like only yesterday, but it was a life time ago.

Allan’s passion for environmental causes, his generosity, his leadership and creativity will stand the test of time. Allan will be remembered. 

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## Watch Your Step: Tread Carefully on Regulating Agriculture

By John Guskowski, AICP, LEED-AP  
Director of Planning, CME

Like many places in the country, Connecticut is seeing a resurgence of interest in local agriculture. The popularity of locally grown food and fiber products has also created more and more questions about regulating farms at a local level. Inland wetlands and watercourse commissions are legally entitled to review any activity that may affect a wetland or watercourse but are not legally entitled to require the review of ongoing, “as of right” farming operations such as the

tilling of soil and planting or harvesting on croplands within wetlands or an established upland review zone.

Local commissioners should check the following sources to answer the question on whether or not local agricultural land use practices are exempt: a) Connecticut General Statutes Section 22a-40(a)(1); b) the 2006 DEP Regulations concerning wetlands exemptions; c) Definitions of “agriculture” or “farming” in local Wetlands and Zoning regulations.

Beyond regulation, it is an excellent idea to encourage input and participation from the local agriculture and forestry community.

**WEBarchive**  
For more information related to this article, visit [www.cmeengineering.com/services\\_plan.html](http://www.cmeengineering.com/services_plan.html)

An active dialogue with farmers on environmental challenges and best practices will not only help to maintain a healthy ecosystem but will also go a long way toward ensuring an active agricultural community in your town.

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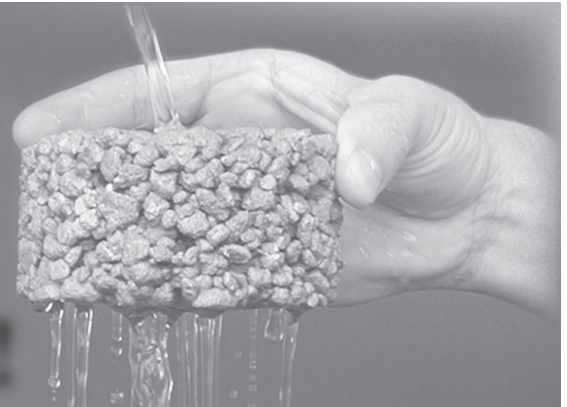
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*See page 1.*

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## ★ CACIWC 2009 Annual Recognition Awards

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2. Conservation Commission of the Year
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4. Conservation Commissioner of the Year
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