

THE HABITAT

A newsletter of the Connecticut Association of Conservation and Inland Wetlands Commissions, Inc.



fall 2011

volume 23 number 3

CACIWC's 34th Annual Meeting & Environmental Conference

November 12, 2011

New Tracks and Workshop Sessions for Conservation & Wetlands Commissioners and Agents

In response to your requests, a broad selection of workshops is offered for new as well as experienced commissioners these four areas:

- Open Space & Conservation Biology
- Land Use Law & Legal Updates
- Best Management Practices & Procedures
- Low Impact Development & Sustainability

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 9 or www.CACIWC.org for more information.

Daniel C. Esty, Commissioner of the Connecticut Department of Energy and Environmental Protection (DEEP), to address CACIWC's Annual Conference

Conference Theme is "Celebrating Five Decades of Environmental Conservation and Habitat Protection"

Daniel C. Esty will be the keynote speaker at CACIWC's 34th Annual Meeting and Environmental Conference on Saturday, November 12, 2011 at MountainRidge in Wallingford. He will help us celebrate the 50th anniversary of the law establishing conservation commissions in Connecticut and the following decades of habitat protection efforts made by conservation and inland wetlands commissioners and their staff.



Almost ten years before the original Earth Day, a small coalition of local conservation groups and clubs led by Hartford Times editor Ward E. Duffy, convinced members of the 1961 Connecticut General Assembly to introduce House Bill No. 3470, which was passed as Public Act No. 310.

By this act, Connecticut municipalities were first authorized to form conservation commissions. Subsequent legislative sessions clarified and added to their duties and responsibilities and eventually led to the added responsibility of regulating inland wetlands and the formation of local wetlands agencies.

Commissioner Esty will discuss the progress that has been made in both preserving critical habitats and improving environmental quality throughout Connecticut during the fifty years since the passage of the 1961 Public Act. He will emphasize the value of dedicated local conservation and wetlands commissioners and staff in continuing their local habitat preservation efforts in partnership with the DEEP and other agencies.

other agencies.

Commissioner Esty was appointed by Governor Dannel P. Malloy in March, 2011 to serve as Commissioner of what was then the Connecticut Department of Environmental Protection

keynote, continued on page 14

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www.caciwc.org

CACIWC News

The CACIWC Board of Directors has continued to receive feedback in response to our new column, designed to provide conservation and wetlands commissioners, agents, directors and other readers with highlights of recent decisions and other news from our board and committee meetings. Please do not hesitate to contact us via email at board@caciwc.org if you have any questions or comments on these items or if you have other questions of your board of directors.

Thank you ~ Alan J. Siniscalchi, President

1. Based on suggestions from last year's meeting and many of you, the CACIWC Board of Directors and its Annual Meeting Committee have assembled a new series of workshops organized within revised session tracks that were designed to bring useful information to attendees of this year's meeting. Additional details of our **34th Annual Meeting and Environmental Conference**, scheduled for Saturday, November 12, 2011 at MountainRidge in Wallingford, can be found in this issue of *The Habitat*.

2. This year marks a special milestone for CACIWC with the 50th anniversary of the enabling legislation authorizing the establishment of municipal conservation commissions in Connecticut. Our keynote speaker, *Connecticut DEEP Commissioner Daniel C. Esty* will help us celebrate this anniversary. We are looking for **photographs documenting the activities of these early commissions**. Please scan or digitize the photographs and send them to us at AnnualMtg@caciwc.org along with suggested captions and information on whom to credit. Watch for additional conference news on our website: www.caciwc.org.

3. Although the Board and its Annual Meeting Committee have already received several excellent nominations for our **2011 Annual CACIWC Awards**, there is still time to submit yours! The 2011 nomination form has been placed on our website. Just print it out, scan it and email it to us at: AnnualMtg@caciwc.org.

4. Don't forget to **register early for 2011 Meeting**. While the general admission fee will be increased for 2011 meeting, the Committee had decided not to increase the registration fee for members from town commissions *who register early and are current with their membership dues*. You can print out our new conference registration form from our website: www.caciwc.org.

5. The Board has been pleased by the number of commissions who have already sent in their **2011-12 membership dues** in response to the reminder and renewal form mailed earlier in

news, continued on page 15



by Attorney Janet Brooks

State Supreme Court Rules: Farm Roads Constructed with Fill in Wetlands Not Exempt From Wetlands Permit Requirement

In a unanimous decision (6-0) released in August, the state Supreme Court ruled in *Taylor v. Conservation Commission*¹, 302 Conn. 60 (2011), that roads constructed with fill in wetlands are not exempt from the state wetlands law -- thus, a wetlands permit is required. The Supreme Court believed it was addressing only those roads involving fill. I represented the plaintiff, Jim Taylor, in his appeal to the Superior Court after the Fairfield Conservation Commission denied his request for a determination of farming exemption. In that original agency decision, in the spring of 2006, the commission denied that his plan fell within the farming exemption. The trial court ruled in 2007 that the agency failed to make a determination on each of the proposed activities. The agency was required to rule activity-by-activity whether the farming exemption applied.

At that point, February 2008, the agency determined that everything he proposed fell within the farming exemption (removal of stones, construction of stone walls, a fence, a dug well, an addition to an existing barn, the planting of a nursery, fruit trees and flower, herb and vegetable beds and the maintenance of a grass swale, the construction of a one farm road in the upland) *except* two roads in the wetlands. I represented Jim Taylor in his second appeal to the Superior Court, this time narrowly focusing on the meaning of the farm road provision in the farming exemption. The trial court upheld the agency action. On appeal to the Supreme Court, I represented the Connecticut Farm Bureau Association, Inc., amicus curiae in the appeal.

To those of you who have not had to think much about the farming exemption or any exemption under the wetlands law, you might think that construction of any road involving fill in a wetland requires a wetlands permit. But consider this -- regulated activities, the

ones which require a permit, are defined by *excluding* the activities in the statutory exemption. So, the discussion of an exemption must begin by examining the statute. The language for the farming exemption in Conn. Gen. Stat. § 22a-40 (a) (1) is not what I would call straightforward. The first sentence is clear: a number of activities are listed. Farming is one of them. (Other case law² requires us to apply the definition of farming found in Conn. Gen. Stat. § 1-1(q), if the enabling legislation [the wetlands act] does not include a specific definition of farming. [It does not.]) But then you start to wonder, what about

the farm road to get the equipment to the fields or the harvest out of the fields to the market? Is that road included? So, you proceed to the second sentence:

"We conclude that, even if road construction directly related to the farming operation is permitted as of right, such road construction is not permitted as of right if it involves the filling of wetlands, because the filling of wetlands is not permitted as of right."

"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 . . ."

The second sentence tells you what's *not* in the exemption, in other words, what needs a permit. It does so with a double negative. *Could the legislature have drafted this second more clearly? Absolutely.*

Here is the conflict: "road construction directly related to the farming operation" vs. "filling of wetlands."

The Supreme Court resolves that tension with this one-sentence conclusion: "We conclude that, even if road construction directly related to the farming operation is permitted as of right, such road construction is not permitted as of right if it involves the filling of wetlands, because the filling of wetlands

legal, continued on page 4

legal, continued from page 3
is not permitted as of right.”³ With the “even if” phrase, the Supreme Court informs us it hasn’t decided that the road construction is permitted as of right. The Supreme Court focused on the “filling of wetlands” exclusion to the exemption. That is clear. The Supreme Court states: “It [the statutory exemption] plainly and unambiguously does not permit the filling of wetlands as of right.”

But what is left of the “road construction” exemption? Hard to know. The Supreme Court stated in the text of the decision (quoted above) that it hasn’t decided whether there is a road construction exemption. The Supreme Court restates that in footnote 10: “We emphasize that, because we conclude that filling in wetlands is not permitted as of right, we do not address the questions of whether road construction directly related to the farming operation is permitted as of right . . .”

The word “construct” means, according to the Random House Webster’s College Dictionary, “to build or form by putting together parts.” Those parts would constitute some kind of material, which in turn, would mean, that the construction of all roads involves “fill” of some sort. I’m hard-pressed to fathom what is left of the exemption for road construction directly related to the farming operation. Yet, the Supreme Court was unwilling to express any opinion on the meaning of or breadth of the construction of farm roads.

The Supreme Court notes that the wetlands staff memo mentions that floodplain soils can be sturdy enough to drive on. The genesis of this position is from Steve Tessitore, former DEP employee in the wetlands program. Such use of land, however, isn’t the same as road construction. In that case, no road construction is necessary. But what about when road construction *is* necessary?

Back to the definition, how do you build a road without putting together parts . . . composed of materials . . . which constitute fill? The Supreme Court did not believe it needed to consider that possibility, thinking it only necessary to do so if Jim Taylor established that all roads require fill.⁴

When I read a case, I want to understand, looking back, what the court did, and looking forward, what the court will do. The Supreme Court reduced to black-and-white that Jim Taylor’s farm roads involving fill in the wetlands are not exempt and require a permit; and looking forward, no fill of a farm road will fall within the exemption. But also looking forward, what farm roads can be constructed as an exempt activity remains gray. In my view, the Supreme Court missed an opportunity to *definitely* interpret “construction of roads directly related to the farming operation.”

Looking back, I note that Jim Taylor initially filed his request for a determination of exemption in February 2006. Five-and-a-half years later he knows he needs to file for a permit without any guidance from the Supreme Court as to whether an exemption for constructing a farm road even exists.

Whenever I write about the farming exemption I end up with the same thought: don’t the wetlands agency members and those seeking to farm deserve a straightforward statute that spells out what is exempt and what is not?

Janet P. Brooks practices law in East Berlin. You can read her blog at: www.ctwetlandslaw.com.

(Endnotes)

¹ This case can be read on the judicial website at: <http://www.jud.ct.gov/external/supapp/Cases/AROCr/cr302/302CR105.pdf>. You may search for it yourself on the judicial website (www.jud.ct.gov) by going to the archives of the Supreme Court, clicking on 2011, then scrolling down to “published in the Connecticut Law Journal - 8/16/11 and clicking on the *Taylor* case.

² See *Johnson v. Board of Tax Review*, 160 Conn. 71, 75 (1970) (“To search for a definition beyond that in § 1-1 would require us to ignore the specific direction that ‘agriculture’ and ‘farming’ shall be defined as stated therein. To do so would be improper. Thus, we must apply the definitions prescribed by the legislature in § 1-1.”)

³ *Taylor v. Conservation Commission*, 302 Conn. 60, 67 (2011).

⁴ “(B)ecause the plaintiff has not demonstrated that all road construction on wetlands requires the use of fill, the plaintiff has not demonstrated that our interpretation of the statute renders the subject clause meaningless.” *Taylor v. Conservation Commission*, 302 Conn. 60, 67 n.8 (2011).



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Old Dog, New Trick: CEPA at 40

by Karl Wagener, Executive Director, Council on Environmental Quality

Editor's Note: Conservation Commissions should understand and have a working knowledge of the Connecticut Environmental Policy Act (CEPA). The CT Council on Environmental Quality, recently saved from budget cuts, is an excellent source for CEPA information.

The Connecticut Environmental Policy Act (CEPA) is one of our bedrock environmental laws. In 2011, CEPA turned forty years old and also underwent an important change in the way it is implemented by state agencies. Municipal commissions should be aware of the change to avoid being taken by surprise when the bulldozers show up. Fortunately, I can suggest a way to avoid any such calamities.

CEPA is the state law that requires state agencies to prepare Environmental Impact Evaluations (EIEs) for state-sponsored or state-funded projects. Prior to preparing an EIE, the agency is required to publish a "scoping notice", which is a solicitation of public comments during the early stages of project development. Such notices are posted in the Environmental Monitor (www.ct.gov/ceq/monitor), which is published online twice a month by the Council on Environmental Quality.

In the past, a scoping notice was almost always followed in a few months by an EIE unless the project was abandoned. This is no longer true. If an agency posts a scoping notice and receives no comments that suggest the impacts might be significant (and perhaps even if such comments ARE received), then the agency may publish a "post-scoping notice" in the Environmental Monitor. There is no public comment on post-scoping notices; after publication, the project is good to go.

Here is my suggestion: If you have an interest in a state-sponsored or state-funded project and are concerned about its potential impacts, be sure to submit com-

ments during the scoping period. Many people who are interested in a state project do not comment during the scoping period, figuring that they will get a chance later to submit detailed comments on the EIE. That used to be a valid conclusion, but no longer. For some projects, the scoping period might be the only opportunity for public comment.

This change was made without any amendment to the CEPA statute or regulations. It is a process spelled out in the new Environmental Classification Documents that guide agencies' decisions to prepare (or not) an EIE. More information is available by clicking the "What is CEPA?" link on the Environmental Monitor page and following the relevant links on the CEPA pages of the Office of Policy and Management website. (Note that if you read the agencies' Environmental Classification Documents you will not actually find the term "post-scoping notice"; that is a term invented by the editors of the Environmental Monitor to improve public understanding of what officially is termed a "written memorandum".)

If you want to be sure you don't miss anything, I encourage you to sign up for e-alerts on the CEQ website to receive an email each time the Monitor is published. Please feel free to contact me at any time if you have questions or if you encounter any problems signing up for e-alerts.

Karl Wagener can be reached at 860-424-4000; karl.wagener@ct.gov; www.ct.gov/ceq



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Municipal Inland Wetlands Commissioners Training Program

State of Connecticut, Department of Energy and Environmental Protection

Segment 3 of the 2011 Municipal Inland Wetlands Commissioners Training Program will be held in October and November. This year's workshop is titled "Connecticut's Inland Wetlands and Watercourses Act: *Connecticut's Soils*". The workshop consists of morning classroom presentations followed by an afternoon field visit to examine three exposed soil profiles. Brochures were mailed to every municipal inland wetlands agency during the week of September 12, 2011.

Dates and locations are:

- October 22, 2011 - Sessions Woods Wildlife Mgmt 341 Milford Rd, Burlington, CT
- October 25, 2011 - Session Woods Wildlife Mgmt 341 Milford Rd, Burlington, CT
- November 3, 2011 - Tolland County Agricultural Center, 24 Hyde Ave, Vernon, CT
- November 7, 2011 - Tolland County Agricultural Center, 24 Hyde Ave, Vernon, CT

The time is 9:00 a.m. to 4:00 p.m. for all workshops. Plan to arrive between 8:30 a.m. and 9:00 a.m. to sign in and receive course materials. The workshops will be held rain or shine. Please dress appropriately for the weather; water resistant footwear suitable for hiking is strongly recommended. In the case of severe weather the afternoon field portion may be canceled.

In Burlington the field component will involve walking on a dirt/gravel road to access the soil pits. The gravel road is fairly smooth, but the terrain is hilly. The soil pits are located in the woods off of the gravel road and will involve walking on uneven forest ground.

In Vernon the field component will involve walking on grass and a dirt/gravel road. The terrain is flat. One soil pit is located in the woods off of the gravel road and will involve walking on uneven forest ground.

On-line registration is available at: <http://continuingstudies.uconn.edu/professional/dep/wetlands.html>.

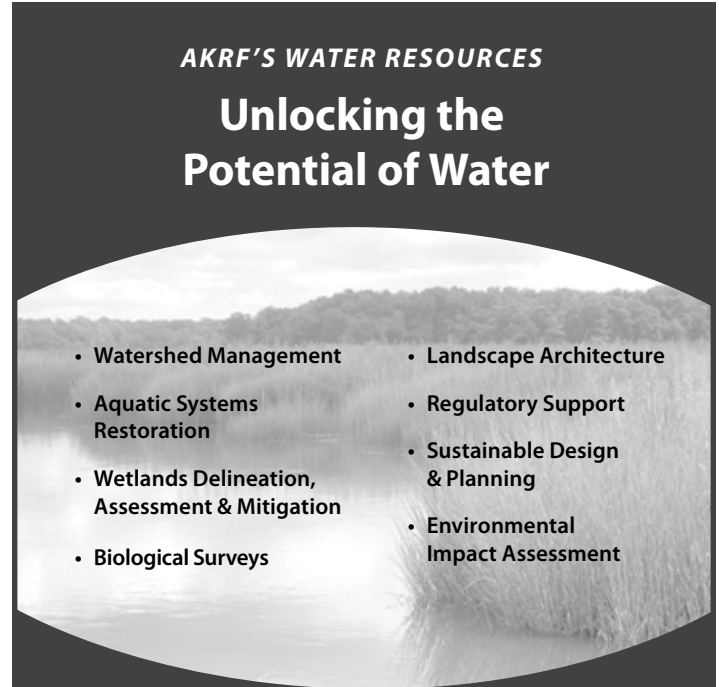


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Greenway Planning, Development and Stewardship - A Survey for Municipal Land Use Commissions and Land Trusts

Your answers to this simple survey will assist in answering the following questions and help us determine how we can best design our program to support your community greenway planning, construction, and stewardship efforts:

- How and why Connecticut municipalities are planning for greenways;
- To what extent planned greenway areas are protected;
- Do those planning for greenways look beyond town and regional boundaries during the planning process;
- Where do those planning for municipal greenways look for information concerning other greenway locations; and
- What resources are needed to help plan, construct, and steward Connecticut's community greenways

The Eastern CT Resource, Conservation & Development Program (RC&D) is partnering with CACIWC to increase the focus on the development and the stewardship of greenways as a method of connecting rural, suburban, and urban communities with particular attention to natural resource protection, riparian and wildlife corridor connectivity, economic development, preservation of scenic resources and community character, and connection of environmental justice populations to public services.

This first step, the survey, is to investigate potential open space and greenway linkages across municipal and regional boundaries, with a special focus on river corridors and watersheds.

Please use this link, <http://www.surveymonkey.com/s/LRC23V7>, to participate in this survey. If you have questions please contact Tom ODell at todell@snet.net. Thank you. 🍁



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CACIWC's Environmental Conference Workshops

— SESSION 1 —

(* Denotes Advanced Workshop)

A1. "Invasive Species: Diatoms: The Good, the Bad, and the Ugly!"

Professor Diba Khan-Bureau, Three Rivers Community College (TRCC)

Because diatoms are microscopic, many people do not know about their ecology or importance. Diatoms convert light, water and carbon dioxide into carbohydrates during photosynthesis. They are the base of the food chain in aquatic habitats and make up 40% of earth's primary productivity in regards to CO₂ fixation. They are essential for the cycling of nutrients in surface waters and other water bodies. As important as diatoms are, they can be problematic as well. The presentation will focus on the ecology and control of this nuisance diatom, *Didymosphenia geminata*, fondly called "rock snot."

***B1. "Emergency Authorization Procedures for Wetlands Agencies"**

Janet Brooks, Attorney at Law, LLC

The wetlands act sets out very specific procedure to be followed for applications for regulated activities. But the law is silent when emergencies occur. Has your agency faced immediate septic system failures, road or bridge repair work that can't wait for the agency to receive an application and wait another month for action? This workshop will focus on practical solutions. Attorney Brooks will offer the various approaches employed by a number of agencies. Come add to the discussion your agency's problems and ways of resolving them.

***C1. "The Importance of Maintaining Your BMP"**

Lawrence H. Galkowski, PE; Rinker Materials
The use of Best Management Practices (BMP) is an essential component of the design and maintenance of systems designed to treat stormwater run-off before it is discharged to the wetlands, brooks, and rivers of our state. The 2004 Connecticut Stormwater Quality Manual, developed by the Connecticut DEEP, has been considered an important guide for designing effective stormwater systems. Of equal importance is the guidance it provides on maintaining more than 25 various types of BMP. This presentation will review important methods for correctly designing and maintaining various BMP systems.

D1. "Low Impact Development in Planning & Permitting"

MaryAnn Nusom Haverstock, Connecticut DEEP Watershed Management Program

Low Impact Development (LID)-style best management practices (BMP), such as vegetative filter strips, pocket sand filters, and infiltration systems, have been available for the control of stormwater for several decades. The LID approach to site design is a significant change in site planning and stormwater management philosophy. LID emphasizes working within the constraints of landscapes to prevent stormwater generation, rather than shunting away stormwater and treating it. This workshop will review current guidance as an appendix for both the DEEP Erosion & Sediment Control guidelines and the CT Stormwater Quality Manual.

— SESSION 2 —

(* Denotes Advanced Workshop)

***A2. "Land Trust & Conservation Commission Collaboration: Partnerships for Land Preservation & Stewardship"**

Amy B. Paterson, Esq., Executive Director, Connecticut Land Conservation Council (CLCC)

The preservation and stewardship of open space is a challenging task, particularly in this economic climate. In Connecticut, while land trusts and conservation commissions work independently to carry out this responsibility, most accomplishments in conservation are a result of forging ongoing, positive relationships amongst landowners, land trusts, governmental entities, and elected officials. This workshop will discuss the importance of collaboration; explore opportunities for collaboration; evaluate ways to overcome potential roadblocks and hear collaboration success stories.

***B2. "Wetlands Law Update and Q&A for 2011"**

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

This trio of wetlands attorneys has been brought back by popular demand to keep you current with the latest state Supreme Court and Appellate Court cases and legislative amendments to the wetlands act. You'll hear about the August decision of the Supreme Court on whether farm roads are exempt, as well as be brought up to date on the new exemption to the wetlands act and the automatic extended permit length for certain wetlands permits. This work shop will also include a 30-min question-and-answer session that you have asked that we bring back again each year!

***C2. "BMP in Stormwater Management: Rain Gardens & Other Advanced Techniques"**

Michael Dietz, CT NEMO Program Director, UCONN, Center for Land Use Education and Research (CLEAR)

A rain garden is a depressed area in the landscape designed to collect and infiltrate stormwater runoff. Rain gardens also can be beautiful additions to the home landscape. This workshop will provide an overview of the functions and features of rain gardens and other best management practice (BMP) approaches to stormwater treatment. Information on the use of other advanced BMP systems will be presented including bioretentive systems, pervious pavements that can be recommended as an alternative to more traditional systems. Performance data, advantages/disadvantages for different applications, and some cost information will be discussed.

***D2. "Low Impact Development, A More Sustainable Approach to Creating Workplaces and Homes"**

Scott W. Horsley, President, Horsley Witten Group, Inc.

Low-impact development (LID) is an alternative approach to site planning, design and building that minimizes impacts to the land landscape and preserves the natural hydrologic cycle. This approach results in reduced impervious surfaces, smaller lawns and more natural landscaping, lower construction costs, lower maintenance, and a more attractive landscape. Other LID design techniques include green roofs, rain barrels, rain gardens, grassed swales, and stormwater infiltration systems. This workshop will emphasize how, through the use of these techniques, natural drainage pathways are conserved, open space is preserved, and the overall impact from development is reduced.

Open Space &
Conservation Biology Track

Land Use Law &
Legal Updates Track

Best Management Practices
& Procedures Track

Low Impact Development
& Sustainability Track

Saturday, November 12, 2011

—SESSION 3—
(* Denotes Advanced Workshop)

A3. “Stalking Foxes and Wandering Cats: Current Trends among Connecticut Mammalian Predator Populations”

Andrew LaBonte, Wildlife Biologist, CT DEEP Wildlife Division

Connecticut’s diverse mammalian predators range in size from the diminutive Least and Short-tailed Shrews, to the little known Short- and Long-tailed Weasels, to our increasingly-seen Black Bear. This workshop will differentiate between Gray and Red Fox species; review the latest information on our elusive population of Bobcat; present current theories on the evolution of the Eastern Coyote population, as well as the amazing story of how a mountain lion from South Dakota found his way to Connecticut! This workshop will also provide information to assist commissions and staff in responding to public inquiries and offer suggestions on supporting state and regional efforts to track and study these species.

***B3. “Development of Low Impact Development Regulations with Your Local P&Z”**

Attorney Mark K. Branse, Branse, Willis & Knapp, LLC

This workshop will discuss how municipal wetlands agencies can enhance their ability to minimize the environmental impact made by new development in their towns through the adoption of low impact development (LID) regulations in conjunction with their town’s planning & zoning commissions. Other joint wetlands, conservation, and P&Z commission efforts to promote the long-term protection of important habitats within their town will also be discussed.

***C3. “Sustainable Site Design”**

Jane Didona, Didona Associates; Stuart Sachs, PRE/view Landscape Architects; & Thomas Tavella, Fuss & O’Neill, Inc.

The mission of landscape architecture has always been to balance the human experience with the health of our natural systems. This panel will explore sustainable site design concepts, and the American Society of Landscape Architects “Sustainable Sites Initiative”, a new system of standards to guide builders to reduce impacts on the landscape component of their developments. This panel will explore how sustainable design is applicable to site and regional planning programs. The principals of the US Green Building Council and the Leadership in Energy and Environmental Design process will be explored; as well as stormwater management techniques that create preferred landscapes benefiting the community.

***D3. “Sustainability in Town Planning: Long-term vs. Short-term thinking”**

John D. Calandrelli, CT Sierra Club Program Director

What constitutes a “sustainable community?” What is sustainability? The factors that go into a sustainable community and examples of these factors will be discussed in this workshop and Q/A session. If municipal staff and commissioners began to use a definition of sustainability as meeting our needs while allowing the opportunity for future generations to meet theirs, could this alter the endless cycle of expanding growth and diminishing open space? What are the environmental and economic factors involved? What would sustainability mean for our parks, forests, farms, wetlands, town centers, jobs, and budgets? Join the discussion and consider a new approach for Connecticut cities and towns.

**Nominations for CACIWC’s
2011 Annual Recognition Awards**

**Presentations will be made at Annual
Meeting & Environmental Conference**

Saturday, November 12, 2011

There is still time to submit your nominations for a CACIWC annual award. Nominations will be accepted until **October 17, 2011** in six award categories:

- 1. Wetlands Commission of the Year**
- 2. Conservation Commission of the Year**
- 3. Wetlands Commissioner of the Year**
- 4. Conservation Commissioner of the Year**
- 5. Commission Agent or Staff of the Year**
- 6. Lifetime Achievement Award**

Please see www.CACIWC.org for the nomination form and additional information. Completed nomination forms should be emailed to the CACIWC Annual Award Nominations Committee at: AnnualMtg@CACIWC.org.

SCHEDULE FOR THE DAY

| | |
|-------------------------------------|----------------------------|
| Registration & Breakfast | 8:30 – 9:00 am |
| Welcome & Business Mtg. | 9:00 – 9:30 am |
| Session 1 Workshops | 9:30 – 10:30 am |
| Break 1 | 10:30 – 10:45 am |
| Session 2 Workshops | 10:45 am – 12:00 pm |
| Lunch & Keynote speaker | 12:00 – 1:30 pm |
| Awards | 1:30 – 1:45 pm |
| Break 2 | 1:45 – 2:00 pm |
| Session 3 Workshops | 2:00 – 3:15 pm |
| Final display viewing | 3:15 – 4:00 pm |

**Displays will be on view
from 8:30 am – 4:00 pm.**

2011 Re-issuance of the Department of the Army Programmatic General Permit for the State of Connecticut — Inland Wetlands Activities

by Cori Rose, Senior Project Manager, U.S. Army Corps of Engineers
New England District Regulatory Division

On July 15, 2011 the U.S. Army Corps of Engineers (Corps) reissued the General Permit (GP) for the State of Connecticut. The intent of the GP is to streamline reviews and reduce the duplication of regulation between State and Federal entities.

In general, a GP is an umbrella permit for categories of activities, or for a particular state program which normally includes an abbreviated review process, and/or conditional authorization for a range of activities that are similar in nature and anticipated to cause no more than minimal environmental impact, individually and cumulatively.

How does it work?

Although the Corps in New England revoked the national form of Nationwide Permits and has used GPs for implementation of the Clean Water Act and the Rivers and Harbors Act since the 1980's, many people are still confused by how the process works. There is no *exemption* from obtaining a Clean Water Act permit for work less than 5,000 square feet. ALL activities in wetlands and waters, regardless of their acreage of impact, are required to receive a permit from the Corps.

The GP that is issued every five years is the permit, or vehicle if you will, that authorizes a particular activity. A submittal to the Corps is evaluated for its eligibility, based on a permit's specific criteria and general terms and conditions.

Following evaluation of a particular project proposal, the Corps does not issue the applicant a permit. Rather, it issues a letter of authorization stating that the proposed work complies with the previously-issued five year permit.

Since the issuance of the GP is a federal action, the Corps must document compliance with the National

Environmental Policy Act (NEPA). The Corps is therefore required to assess:

- the reasonably foreseeable effects of the individual activities approved within each five year permit,
- the anticipated cumulative effects of those activities,
- and the potential future losses of waters of the United States that are estimated to occur until the date of the permit's expiration.

"...authorization by the Corps does NOT supersede any other agencies' jurisdiction and does not take the place of all other permits required by law."

The authorizations will expire for activities that have not started before the end date of the particular permit under which they were originally verified. Consequently, extensions cannot be granted for any work that has not commenced before expiration of the permit.

Changes to the CT General Permit

In many ways changes to the GP for 2011 have been minimal, but they exist nonetheless. First, the permit summary and Appendix 1, (which defines the categories of work and their related criteria for inland activities in the State of Connecticut (Section 1/1A)) has received a facelift. It has been separated physically from the coastal activities and work regulated by the CT Department of Energy & Environmental Protection's (CT DEEP) Office of Long Island Sound Program.

The purpose of this change is to more succinctly explain the eligibility requirements for inland activities under Category 1 and Category 2. Activities that are not eligible for consideration under either Category 1 or 2 have been given their own pages (3 of 10 and 6 of 10 respectively) within the activity matrix. The inland matrix itself has been simplified for viewing but

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it still continues to break down the work types for both Category 1 and 2 as such:

- Category 1A or 2A – New fill and/or fill associated with excavation
- Category 1B or 2B – Streambank Stabilization
- Category 1C or 2C – Repair and maintenance of existing authorized or grandfathered fill

Also, similar to the 2006 GP, some activities continue to have very specific eligibility criteria in order to be covered under the GP, such as utility right-of-ways, stream crossings, and streambank stabilization.

By far the greatest change to the 2011 re-issuance is the requirement for all applicants to fill out and return a Certification Form for ALL Category 1 activities. This form is designed to allow the Corps to better meet the National Environmental Policy Act environmental assessment requirements discussed above.

The form also does double duty as a permittee self-certification statement that the work that is to be undertaken will meet the terms and conditions of

the GP. As part of this process Corps staff will be inspecting a subset of the projects as part of our 5-year cumulative impact analysis to confirm that the work complied with the requirements of the permit.

Another format change includes separation of the main body of the GP, which contains the General Conditions (GC) for the permit, from the inland matrix. The General Conditions, in addition to the matrix criteria, have been updated in the discussion that follows:

- 1) Floodways and Floodplains - Work that otherwise meets the criteria of the GP within a Federal Emergency Management Act (FEMA) designated floodway may now be eligible under Category 1 provided a Flood Management Certification is obtained from the State of Connecticut (if one is required) or CT DEEP has reviewed and issued other permits such as those under the Dam Safety, Stream Channel Encroachment or Diversion statutes. Similarly, projects with fill within a floodplain may also be eligible under Category 1 upon receipt of one of the above

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- * Low Impact Development Analyses, Designs & Regulations
- * Design of Stormwater systems for water quality improvement and volumetric reductions
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Steven Trinkaus, PE, CPESC, CPSWQ

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permits and demonstration that there will be no adverse effect to hydraulic characteristics.

2) Vernal Pools – If discharge of fill in wetlands or waters will occur for a project (regardless of the acreage of fill impact) and any part of the development will be located within 100 feet of a known or suspected vernal pool, the work must be reviewed by the Corps and coordinated with the state and federal agencies. In addition, the secondary impacts to vernal pools are called out under GC 3 such that site clearing, grading or construction activities in upland habitat within the 750 foot circumference of a vernal pool must be calculated as secondary impact for the purposes of determining which GP category a project may be considered for. Of course, this requirement is only applicable if any portion of a project is within Corps jurisdiction with filling, of any amount, in wetlands or waters.

Example: Construction of a road crossing with 430 square feet of fill in wetlands for access to an upland subdivision, and approximately 4 acres of tree clearing for construction within a 750-foot radius of a vernal pool will have 430 feet of direct impact and 4 acres of secondary impact and consequently will need to be submitted to the Corps for review under Category 2 of the GP.

3) Swamp Mats – Swamp mats no longer count towards total impact calculation for a project that will be reviewed under Category 2. What this means is if the permanent impact of a project is below the one acre threshold of Category 2 and temporary mats are to be used with resulting additional impact, the footprint of swamp mats

will not put an otherwise GP eligible project into Individual Permit review. However, it is important to note that this is not the case for work under Category 1. Under Category 1 the footprint of temporary mats will still count towards total project impact acreage for determining which GP category to use.

Example: Discharge within 1400 square feet of wetlands for repair of a water main and placement of 4100 square feet of swamp mats (temporary fill) over wetland for access to the site for a total of 5500 square feet will need to be reviewed for eligibility under Category 2 of the GP.

4) Dam Repair – This activity is now included under Category 1 provided there is no change in the permanent water surface elevation of the impoundment and no dredging in the impoundment other than that needed to access the repair site. In this case the secondary impact of dewatering to undertake the repair will not count towards the 5,000 square foot limit.

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Example: Excavation and discharge below ordinary high water over 3400 square feet for replacement of a wing wall and low-level outlet with associated dewatering of a 1.2 acre pond would be eligible under Category 1 of the GP provided it meets all other GP terms and conditions.

5) Wetland and Stream Restoration – These activities are potentially eligible for Category 2 of the GP, regardless of acreage, provided that the Corps, in concurrence with the state and other federal agencies determines that the impact of the work will be minimal.

6) GC 5 Single & Complete Projects – This condition has been updated to provide additional clarification as to what a single and complete project is. To be applicable for the GP, all phases of a planned multi-phase project must be considered together. Phases that are dependent upon other or prior phases do not have independent utility and must be considered in unison.

7) GC 6 Permit on Site – This condition clarifies that the authorization letter and a copy of the entire GP

(permit vehicle including all General Conditions) must be included in bid documents/project specification or added as an addendum to such if the authorization is issued following receipt of bids.

8) GC 15 Avoidance, Minimization & Mitigation – This condition has been updated to reflect New England District mitigation ratios, compliance with the April 10, 2008 National Compensatory Wetland Mitigation Rule and consideration of Low Impact Development practices to manage stormwater runoff at development sites.

9) GC 22 Waterway Crossings – Projects using slip lining, plastic pipes and High Density Polyethylene Pipes are not authorized under Category 1, either as new work or maintenance activities.

10) GC 26 Protection of Vernal Pools – All Category 2 projects will be required to conduct a VP survey of the entire site (not just the disturbance area) and the survey must be submitted to the Corps along with the party that conducted the survey and the survey date.

11) GC 27 Invasive Species – All Category 2 projects will be required to provide an Invasive Species Control Plan.

12) GC 28 Inspections – As discussed above submittals are now required for Category 1 inland activities. For Category 1 activities the REQUIRED submittals include the Category 1 Certification Form (Appendix 1A) and the Compliance Certification Form (Appendix 5). For Category 2 activities both the Compliance Certification Form and a Work-Start Notification Form will be REQUIRED. Failure to submit these forms is considered non-compliance of the permit.

Corps Permit, Local Permit or Both?

Finally, one of the more common questions we are asked about a Corps Permit is if it takes the place of the need to obtain a local permit. Not a change to the GP but worth pointing out nonetheless, GC 1 of the GP addresses this question. It states that an authorization by the Corps does NOT supersede any other agencies' jurisdiction and does not take the place of all other permits required by law. Consequently, don't ever let anyone tell you otherwise.



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(DEP). He became Commissioner of DEEP when that agency came into being in July of that year. This new agency is focused on better integrating energy and environmental policies and helping Connecticut to build a sustainable and prosperous 21st century economy.

Prior to becoming Commissioner, Esty was the Hillhouse Professor of Environmental Law and Policy at Yale University. He also served as the Director of the Yale Center for Environmental Law and Policy and the Center for Business & Environment at Yale.

Commissioner Esty, who holds a BA from Harvard, an MA from Oxford, and a law degree from Yale, is the author or editor of numerous books and articles on environmental policy issues and the relationships between environment and corporate strategy.

Commissioner Esty is a native of Connecticut. His career included serving in a variety of senior positions for the US Environmental Protection Agency as well as practicing law in Washington, DC. and serving as an advisor on the 2008 Obama Presidential campaign and transition team. 

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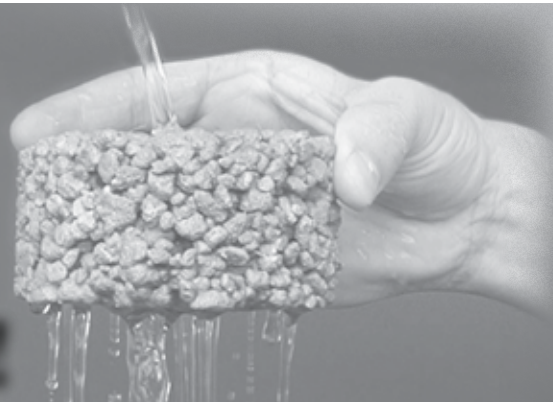
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June. A copy of this form and additional information can also be found on our website: www.caciwc.org. Would you or your company like to provide additional support to CACIWC? The website also provides a description of additional individual and business membership categories. Please consider making an additional contribution to support CACIWC education and outreach efforts!

6. We continue to hear from individuals who are interested in filling one of our current **board vacancies** following our announcement in the last two issues of *The Habitat*. We very much appreciate the response. However, several vacancies still remain. A full board strengthens our ability to represent the needs and concerns of our member towns and commissions. The CACIWC bylaws specify that any past or present member of Connecticut conservation or inland wetlands commissions or their agent is eligible to serve. Please submit your name to be considered for nomination at: board@caciwc.org Let us know if you currently do not have time to serve on the board, but wish to volunteer in support of our many administrative, education, and outreach activities.

Thank you again for your ongoing interest in CACIWC!



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Report Sightings of Invasive Mile-A-Minute Vine


Mile-a-minute vine is a highly invasive annual plant from eastern Asia that can quickly cover, outcompete and replace native vegetation, damaging habitat for native plants and animals. Early detection and rapid response are essential for control.

Mile-a-minute was first found in Connecticut in Fairfield County in 1997. Since then, it has spread to 20 Connecticut towns, as far east as Stonington and as far north as Simsbury. Mile-a-minute spreads by seed and quickly grows into dense stands. Seeds are spread by wind and water.

Visit www.hort.uconn.edu/mam for additional identification tips, photographs and control information. You can also contact Logan Senack (logan.senack@uconn.edu) or Donna Ellis (860-486-6448; donna.ellis@uconn.edu) for additional information. To report a suspected mile-a-minute invasion, visit the above website or contact Donna Ellis at UConn at 860-486-6448.

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Help Needed To Continue State Investment In Open Space

If your town has received state grant monies for an open space project within the last 10 years or so, chances are that the funding is from the CT Department of Energy and Environmental Protection's (DEEP) Open Space and Watershed Land Acquisition Program (OSWLA). Supported by state bonding and the 2005 Community Investment Act (CIA), the OSWLA program is the state's main source of funding for towns seeking to conserve land. However, due to budget constraints, the state did not offer a grant round in 2011 which has made it difficult, if not impossible, for towns to pursue open space acquisition projects.

This year's state bond package included authorization to provide \$5 million in each of the next two fiscal years for open space funding, coupled with CIA funds available for the open space program. The Connecticut Land Conservation Council (CLCC) is making a concerted effort to enlist the support of municipal officials in advocating for continued state investment in open space by offering a DEEP OSWLA grant round **this year**. **If you want to help with this effort, or you know an official in your town who would be interested in talking with us, please contact Amy B. Paterson, CLCC Executive Director at (860) 685-0785 or abpaterson@ctconservation.org.**

Editor's Note: CACIWC is a founding member of the Connecticut Land Conservation Council (CLCC) and continues to support CLCC activities, including advocacy and education programs. CACIWC provides support as a member of the organization and through representation on its Steering Committee.