

# THE HABITAT

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



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**Editor's Note:** The Connecticut Forest & Parks Association (CFPA) has been at the forefront of legislative efforts to restore protection against liability for injuries occurring on municipal owned open space land. The liability issue had the potential to reduce community support for open space acquisition and protection. This year, with the passage of Public Act 11-211, "An Act Concerning Liability for the Recreational Use of Lands," municipalities will be better protected against lawsuits stemming from outdoor activities on public recreational lands. **See PA 11-211 text on page 14.** This of course does not diminish the need to make public safety an important part of your open space stewardship activities.

## Recreational Liability Reform: A Significant Win for Towns!

by Eric Hammerling

In the last hour of Connecticut's 2011 legislative session, the Senate approved H.B. 6557 entitled "An Act Concerning Liability for the Recreational Use of Lands". With its action, the General Assembly brought to conclusion a 15-year struggle to restore protection against liability for municipalities under the Recreational Land Use Act (RLUA).

When the RLUA was passed in 1971, its purpose was to encourage landowners to make their lands available for public recreation free of charge by providing landowners with statutory protection against frivolous lawsuits stemming from outdoor activities. As long as a landowner did not exhibit "willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity" (C.G.S. § 52-557(h)), they would be protected. Municipalities, including entities such as the Metropolitan District Commission (MDC), a "nonprofit municipal corporation", were considered to be landowners under RLUA until the State Supreme Court ruled in *Conway v. Wilton* (1996) that the RLUA only included private landowners (individuals, corporate, land trust, etc.).

In Connecticut, municipalities have protected over 75,000 acres for open space/recreation, and over 1,000 miles of recreational trails wind through a mix of state, municipal, and private lands. Since that ruling, municipalities have been more vulnerable to lawsuits from injuries incurring on their recreational lands, and several municipalities either closed or decided not to open or acquire recreational areas in the wake of *Conway*. Recent examples include a jury verdict of \$2.9 million against the MDC from a bicycle accident at the West Hartford Reservoir, which almost triggered the closure of 30,000 acres of recreational lands, and an

\$8 million settlement against the city of Waterbury from a sledding accident that spurred Middlebury to consider closing the sledding hill behind town hall.

H.B. 6557 restores municipalities and related entities (e.g., political subdivisions of the state, municipal corporations, special districts, and water or sewer districts) as landowners protected under RLUA. However, despite strong support in public hearings before the Environment and Planning & Development Committees, compromise was necessary to pass legislation over strident objections from the CT Trial Lawyers Association (which had successfully blocked repeated attempts over the last 15 years to restore municipalities as landowners under RLUA). Under the compromise deftly brokered by Representative David Baram (D-Bloomfield), areas considered to be more intensively managed by municipalities were not given special protection under RLUA. Those recreational areas where municipalities would maintain a higher duty of care are swimming pools, playing fields or courts, playgrounds, buildings with

*liability, continued on page 11*

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# CACWIC News Briefings

The CACIWC Board of Directors was pleased with the initial 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](mailto: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. The CACIWC Board of Directors and its Annual Meeting Committee are excited to announce that *Connecticut Department of Energy and Environmental Protection (DEEP) Commissioner Daniel C. Esty* has agreed to serve as the keynote speaker at our **34<sup>th</sup> Annual Meeting and Environmental Conference**, scheduled for Saturday, November 12, 2011 at MountainRidge in Wallingford, CT. This year marks a special milestone for Connecticut with the 50<sup>th</sup> anniversary of the enabling legislation authorizing the establishment of municipal conservation commissions. CACIWC will be celebrating this anniversary with special events throughout our annual meeting and conference. Using your suggestions, the Annual Meeting Committee is recruiting another series of informative speakers and workshop leaders. Watch for additional conference news in the next issue of *The Habitat* and on our website: [www.caciwc.org](http://www.caciwc.org).

2. Did your Commission have an especially successful year? Do you know of a special commissioner or staff person who deserves recognition for their efforts? The Board and its Annual Meeting Committee are encouraging readers to begin submitting nominations for our **2011 Annual CACIWC Awards** to us at: [AnnualMtg@caciwc.org](mailto:AnnualMtg@caciwc.org). The 2011 nomination form has been placed on our website. Please send us your nominations!

3. The Annual Meeting Committee has completed an evaluation of the **conference registration fees** for our 2011 Meeting. While the general admission fee will be increased for 2011 meeting, the Committee has decided not to increase the registration fee for members from town commissions who are current with their membership dues. Watch for the new conference registration form that will be placed on our website during August, 2011: [www.caciwc.org](http://www.caciwc.org).

4. **Membership dues** are an essential part of our operating budget. They support various CACIWC programs including our Annual Meeting, educational materials, and *The Habitat*. The Board has decided not to increase membership fees this year. You should have received a reminder and renewal form for the 2011-12 membership year, which began on July 1, 2011. A copy of this form and additional information can also be found on our website:

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# Low Impact Development in the Farmington River Watershed

by MaryAnn Nusom Haverstock

The Connecticut Department of Environmental Protection works with towns to manage Connecticut's water resources in an effort to protect and restore the waters across the state. Watershed Management is an integrated approach addressing all aspects of water quality and related natural resource management, including pollution prevention and source control.<sup>1</sup> Working with our watershed partners across Connecticut, DEP assists in the development of watershed based plans that recommend implementation of practical solutions to reduce nonpoint source pollution in stormwater runoff.

Low Impact Development (LID) is one of the solutions we can implement to effectively manage stormwater runoff. LID is a site design strategy intended to maintain or replicate predevelopment hydrology through the use of small-scale controls integrated throughout the site to manage runoff as close to its source as possible.<sup>2</sup> Depending on site characteristics and the type of LID practice used, there is opportunity to sustain ground water discharges of cooler and improved water quality to maintain stream flow during dry periods. Water quality, biodiversity, recreation, cultural landscapes, and land use may also be improved when towns and the state engage in local and state regulatory reviews to encourage low impact development.

When constructed throughout a site, LID practices will limit runoff and can protect and improve water quality, recharge groundwater to maintain base flow of rivers and streams, decrease the need for expensive stormwater systems and help to create distinctive design elements in our development across Connecticut.

Examples of residential LID strategies that homeowners can design and build on their property include:

- Residential rain gardens: go to [www.ct.gov/dep/lib/dep/water/watershed\\_management/wm\\_plans/lid/rain\\_gardens.pdf](http://www.ct.gov/dep/lib/dep/water/watershed_management/wm_plans/lid/rain_gardens.pdf)
- Shared driveways: reduces paved and soil compaction area
- Alternative pavement surfaces for front walks or driveways including porous asphalt, pervious concrete

or permeable pavers. For more information go to [www.ct.gov/dep/lib/dep/watershed\\_management/wm\\_plans/lid/pervious\\_pavement.pdf](http://www.ct.gov/dep/lib/dep/watershed_management/wm_plans/lid/pervious_pavement.pdf)

- Stormwater disconnects from roof gutters to rain barrels instead of storm drains; go to [www.ct.gov/dep/lib/dep/water/watershed\\_management/wm\\_plans/lid/rainwater\\_harvesting.pdf](http://www.ct.gov/dep/lib/dep/water/watershed_management/wm_plans/lid/rainwater_harvesting.pdf)
- Green roof applications; go to [www.ct.gov/dep/lib/dep/water/watershed\\_management/wm\\_plans/lid/green\\_roofs.pdf](http://www.ct.gov/dep/lib/dep/water/watershed_management/wm_plans/lid/green_roofs.pdf)

Examples of municipal LID strategies for more complex projects on municipally owned properties such as roads, town halls or libraries are:

- Reduction in road width/one-way cul-de-sac to reduce paved area
- Elimination of curb and gutter to encourage sheet flow across vegetated surfaces
- Alternative pavement surfaces for sidewalks or parking lots including porous asphalt, pervious concrete or

permeable pavers

- Green Roof applications; roof gardens designed to absorb precipitation and recycle water through evaporation and transpiration
- Depressed island in cul-de-sac for bioretention of storm water
- Grassed swales in road right of way instead of traditional stormwater sumps and piping to the nearest stream
- Reduction of sidewalks in smaller neighborhoods where sidewalks on one side could be used

## Encouraging Incorporation of Low Impact Development (LID) Techniques in Future Development in Farmington River Watershed Towns

On October 1, 2008, DEP announced a Request for Proposals inviting towns in the Farmington River Watershed to apply for funds to conduct a Municipal Land Use Evaluation (MLUE). These grants came

*LID, continued on page 4*

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*"LID is a site design strategy intended to maintain or replicate predevelopment hydrology through the use of small-scale controls integrated throughout the site to manage runoff as close to its source as possible."*

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from a Supplemental Environmental Project (“SEP”) fund generated in lieu of cash penalties by an enforcement action.

These grants to municipalities allowed each town to identify their specific needs for potential revisions to current land use regulations and ordinances. The goal for these towns was to encourage incorporation of Low Impact Development (LID) techniques in future development. Towns formed Local Land Use Committees (Committee) to lead these evaluations and worked with planning and engineering firms to assist with their technical and legal reviews.

Ten towns in the Farmington River Watershed were awarded grants to review and recommend revisions to their municipal land use regulations and ordinances for incorporating LID in future landuse designs. DEP recommended an upper limit of \$50,000 for the project. Towns applied for funds according to their predicted needs. DEP awarded full funding to each town that applied.

Avon - \$50,000	New Hartford - \$47,100
Barkhamsted - \$44,305	Simsbury - \$25,000
Colebrook - \$35,000	Torrington - \$25,000
East Granby - \$37,000	Winchester - \$35,000
Harwinton - \$35,000	Plainville - \$50,000

### Typical DEP/Municipal Scopes of Work had Five Steps

#### 1) Form Local Land Use Committee

The Committee in each town had a slightly different makeup specific to their individual needs. This improved the diversity of the results to better serve all municipal stakeholders. Committees were comprised of municipal government representatives, including but not limited to members of:

- Conservation Commissions
- Inland/Wetlands and Watercourses Commissions
- Zoning Commissions (including Zoning Appeals Commissions)
- Planning Commissions
- Economic Development Commissions
- Engineering Divisions
- Public Works Divisions

Many towns invited external stakeholders to be active participants on the Committee. These additional

stakeholders ensured that local public involvement began early in the process and continued throughout the regulatory revisions and adoption process. External stakeholders included engineers, developers and construction companies who had experience with development in these or similar communities. Area residents, land trusts and watershed associations were also invited to work on town Committees to ensure their knowledge of the town’s natural resources was considered when revising regulations to encourage LID practices.

Throughout the process, DEP provided towns with information and technical support on watershed management issues, land use decisions, and current and proposed state environmental regulations. The CT NEMO program (<http://nemo.uconn.edu>) presented information on land use planning in CT and the University of New Hampshire Stormwater Center presented overviews of LID designs and projects currently being installed or monitored at their site in New Hampshire ([www.erg.unh.edu/stormwater/index.asp](http://www.erg.unh.edu/stormwater/index.asp)).

#### 2) Contract with services as appropriate for town

Municipalities each subcontracted expertise as required, including legal, environmental science, planning consultants and engineering firms. These subcontractors assisted the Committee with the review of their current regulations and proposed changes to remove barriers to incorporating LID into their regulations. Town specific revisions were adopted throughout subdivision, wetland, planning, and zoning regulations as well as local road ordinances. The Committee not DEP, gave final approval on regulation revisions.

#### 3) Review municipal regulations as specified when drafting scope with DEP (Focus on zoning, subdivision and wetlands)

Proposed revisions to regulations and ordinances were drafted to eliminate barriers, and encourage the use of LID techniques in future development projects. Committees made sure that stakeholders and experts thoroughly reviewed all proposed changes to regulations and ordinances.

Town-wide meetings were organized to present findings to residents, including, but not limited to summaries of current local town regulations and ordinances that currently restrict use of LID techniques, as well as proposed revisions to local regulations and ordinances to encourage LID.

The Committees were successful in reviewing regulations that focused on their local zoning, subdivision and wetlands regulations. In addition, many towns reviewed road ordinances and regulations that affected the design and construction of roads at the local level.

**4) Draft regulatory revisions with municipal committee and consultant**

Each municipality’s approach to revising regulations was unique. Because all towns worked hard to include a diverse group of stakeholders within their committees, the draft regulatory results allowed for concurrent local development and protection of water quality, and other natural resources, while providing incentives for land preservation in the Farmington River Watershed

**5) Present findings/vote to adopt regulatory revisions**


The DEP’s goal for this project is to take these diverse lessons learned from this 10-town pilot project in the Farmington River Watershed to assist other communities in Connecticut. It would be ideal for towns to incorporate and improve upon these experiences as they perform their own Municipal Land Use Evaluations,

and consider modifying regulations and ordinances to improve the quality of life in their communities. DEP has created a web page that includes an overview of what low impact development is and the background of this MLUE project. Most importantly, this web page includes the summaries of the project goals directly from the ten towns that participated in this evaluation. The DEP web page links to their individual progress toward successful adoption and implementation of these regulations on their municipal websites. [www.ct.gov/dep/cwp/view.asp?a=2719&q=477274&depNav\\_GID=1654](http://www.ct.gov/dep/cwp/view.asp?a=2719&q=477274&depNav_GID=1654)

DEP was part of an EPA initiative to assist States to encourage Low Impact Development. If you are interested in seeing LID technology in place in Connecticut some examples have been installed throughout the grounds of the State Capitol, including three types of pervious pavement, a rainwater cistern, two types of rain gardens and a green roof. Additional information on the Capitol’s LID installations and a brochure for a walking tour of the project can be found at: [www.ct.gov/dep/lib/dep/water/watershed\\_management/wm\\_plans/lid/green\\_capitols\\_brochure.pdf](http://www.ct.gov/dep/lib/dep/water/watershed_management/wm_plans/lid/green_capitols_brochure.pdf).

<sup>1</sup> 2004 CT-DEP Stormwater Quality Manual, Glossary p. F-11  
<sup>2</sup> 2004 CT-DEP Stormwater Quality Manual, Glossary p. F-5

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The Nonpoint source program focuses on a watershed management approach and includes Watersheds/Lakes/NPS/LID, but is usually called the Nonpoint Source Program. [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=)




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# Journey to the Legal Horizon *by Janet P. Brooks*

## Septic Systems and the Wetlands Act

The editor of *The Habitat*, Tom O'Dell, has asked me to reflect on the following scenario. After I sent in my original column our colloquy continued and is incorporated in the column.

*Editor: When a proposed septic system in the upland review area is approved by the local health department, the wetlands agency can feel pressure to approve the system because the health department approval is included as part of the application. The agency then needs some scientific reason to document the adverse effect a septic system can have when constructed close to a wetland or watercourse. Some conservation commissions react by urging their wetlands agency to deny approval for septic systems in the upland review area because of the future need for repair work.*

The applicant offers proof that the septic system has local health department approval. What's an agency to do? We live in a time of information overload. We do a computer search and within a nanosecond there are more than 200 hits, of varying relevance to the topic searched. We have to actively cull through the links, filtering out the information that doesn't fit our context. That's what a wetlands agency has to do with septic system approval. Compliance with the public health code is very relevant to the applicant. Without it, the project can't go forward. However, it's not relevant at all to the wetlands agency. The local health department uses the public health code to determine if the septic system can be approved. But because it does not include

consideration of impacts to wetlands or watercourses, the health department approval doesn't shed light on the task before the wetlands agency.

The scenario envisions that the wetlands agency *then* needs expert input to document the adverse effect the septic system will have on the wetland or watercourse. Actually, the wetlands agency *always* needs documentation of the adverse effect in order to deny the application. It is not the existence of the local health department approval which sets a higher standard for the wetlands agency review. Perhaps members on the commission feel more highly scrutinized, but the task has always been to (1) identify the impacts, if any, of the proposed project, (2) determine if the impacts at this site are or will be adverse, and then weigh the relevant considerations. The courts often point to the language in the legislative policy of the wetlands act itself, pointing out that the act provides "an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology."<sup>1</sup>

At the same time, the courts have long acknowledged that a project may be subject to numerous regulatory schemes. "It is not unusual for one seeking a permit for a certain use or operation to apply to and be given such permission or license by more than one agency of government."<sup>2</sup> So, the health department approval of the septic system is a fact, but not a relevant fact.

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If an applicant wishing to gain wetlands agency support from a health department approval is one extreme on the continuum then a conservation commission urging that all septic systems in the upland review area be denied based on the need to repair the system in the future is the other extreme. Activity in the upland review area, per se, is not what can be denied. The court has reminded us that “the ‘buffer,’ ‘set back area,’ ‘protected area’ and ‘regulated area,’ is not a protected or regulated area but rather an upland review area where *certain activities may be regulated because of the activities’ likely impact or effect on the nearby wetlands and watercourses.*”<sup>3</sup> Again, the wetlands agency’s job is site-specific: will the septic system proposed at that location in the upland review area likely affect the nearby wetland or watercourse in an unacceptable manner? There are no shortcuts for the wetlands agency to take. Site-specific review and evaluation are the tasks that wetlands agency members face, even if the applicant or other commissions urge them to act otherwise.

*Editor: If the system is approved for an upland review area, would a repair require another application? Another application may take too long--yet it would be important for all controls for reducing erosion and sedimentation be in place to protect wetlands. Can the original approval place conditions on future repairs?*

If a repair is needed for an approved septic system and the activities fall into the definition of “regulated activity,” as far as the wetlands act is concerned, a permit is required. But you bring up valid, practical points: the waiting time for a permit is too long for emergencies, such as repair of a leaking septic system. In fact, the wetlands act is silent as to emergencies, which means, emergencies aren’t acknowledged. Yet, life must go on; *the repairs must occur and often quickly.*



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This is a practical problem and I decided to call on the real-life experiences of some staff and agents. The background information I received reflects some practices in the northeast, northwest and coastal CT towns. It, too, runs the gamut. In some towns, the local health department is in control. An engineer deals directly with the health department and the wetlands agency may never even learn of the situation. In two towns I learned that the local sanitarian approving the repairs is also a certified soil scientist. While the public health code doesn’t require consideration of wetlands and watercourses, the background and sensitivity of such a dually-trained professional certainly will be helpful -- especially in a town where the wetlands agency is not likely to be aware of the emergency.

Sometimes the staff or agent for the wetlands agency learns of the emergency nature of the repairs and verbally authorizes the work. The agent realizes that there isn’t exactly a provision for these authorizations, but stopping the work can also be harmful to wetlands or watercourses. In some of those towns the agent informs the agency at the next monthly meeting. The agency can decide whether to require the owner to file an after-the-fact permit.

Another approach I encountered was the issuance of what I’d like to term a friendly cease and restore order. In that town the staff has been delegated the authority to issue cease and desist orders. In a town where staff is on good terms with (i.e., not hostile to) contractors, the contractors will inform the land use office of what work they need to perform for a septic repair. The staff will issue a cease and restore order which orders that the repairs occur, that sedimentation and erosion control be put in place and that the owner show up at the next wetlands agency meeting to report on the matter.

What I like about issuing the order is that the homeowner is authorized by the order to undertake the work which he wants to do, the staff gets to put in place simultaneously sedimentation and erosion controls. This is a win-win situation. The homeowner gets swift “authorization” by means of the immediate issuance of the order and the agency, through its staff/agent gets the “permit conditions” it would otherwise require through a permit process. And finally, the public, at the next meeting is informed at a public meeting of the nature of the emergency and what occurred.

But the situation requires a lot of trust. Contractors come in to this staff person and ask what they should do

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**Editor's Note:** The Woodbridge Conservation Commission & the Board of Directors of Massaro Community Farm were awarded the 2010 Pathfinder Education Leader Award by Working Alliance for significant contributions in the area of educating the public about the importance of farmland preservation. They are now awaiting solar panels for the barn roof shown in the background of the photo of their 2010 Family Fun Day.

## Rebirth of Massaro Farm in Woodbridge

“Keep farming, feed people, build community”

by Cathy Shufro

I can smell them before I see them: fragrant plump strawberries in green plastic baskets on the produce table at Massaro Farm. The strawberries sit at the end of three tables displaying the first harvest of spring: bok choy, two kinds of lettuce, Chinese cabbage with edible yellow flowers, a bin of parsley, another of dill. “U-pick peas,” says the whiteboard, which lists the vegetables and herbs that each person may take. As one of 150 shareholders at Massaro Farm CSA in Woodbridge, I know that all of it was grown organic-style. I begin to fill my bag.

Two years ago, the four acres of fertile land that grew this food was a thatch of poison ivy, rocks, and grasses. Invasive vines choked the trees along the tumbling stone fences. The Wisconsin barn was falling to pieces, with holes gaping in its roof. The boarded-up farmhouse had been vandalized and the chicken coops had collapsed.

Now the barn exterior is refurbished, painted barn red, and awaiting solar panels. The two-story farmhouse is restored; in the mudroom that leads to the kitchen, the boot rack holds several pairs of boots belonging to full-time farmer Steve Munno. The 57-acre farm is now in its second summer of production, providing food and offering educational programs that this spring have included a bird walk, lunch-time picnics for preschoolers, a composting workshop, and beekeeping demonstrations. Last summer the farm donated 4,700 pounds of food to people in Woodbridge and in neighboring New Haven and Ansonia who could not otherwise afford nutritious local produce. The farm's motto is “Keep farming, feed people, build community.”

This rebirth seems almost miraculous. It came about through citizen activism, a lot of luck, and leadership

from the Woodbridge Conservation Commission. (As I belong to the commission, I hope you won't think this immodest.)

The land came from the Massaro family, which had farmed it for generations. When John Massaro died in 2007, the farm became the town's. In the deed, brothers John and Tony Massaro had stated that the 57 acres must be used for farming or for recreation, and they preferred farming.

Members of the Conservation Commission felt the same way. The town has many hiking trails and playing fields; a community farm would constitute a new use for town-owned open space. It would revitalize farming in a town with a rich agricultural history and make clear where food comes from. We envisioned children and teenagers from Woodbridge and nearby Ansonia helping to grow and harvest food, and perhaps even run a farm stand. Moreover, a working farm

would honor the Massaros' legacy and respect their wishes. And because we understood that we face radical changes in weather patterns, the eventual end of a petroleum-centered economy, and health hazards arising from industrial food production, we wanted to establish a place to grow food sustainably, and close to home.

Others had a different idea. A local group, called the Fathers Baseball League, had been lobbying for two decades to build a 90-foot baseball diamond for teenage boys. The flat, idle field beyond the farmhouse looked perfect. This group seemed to have considerable political power in our town of 9,000. The Conservation Commission knew it would face a fight.

Fortunately, two members of the commission met a helpful farmer at a workshop sponsored by

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*“This rebirth seems almost miraculous. It came about through citizen activism, a lot of luck, and leadership from the Woodbridge Conservation Commission.”*

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*farm, continued from page 8*

Connecticut NOFA (Northeast Organic Farmers Association). Farmer Sam Hammer, who manages the CSA at Holcomb Farm in West Granby, proved to be a generous and invaluable advisor. The Conservation Commission asked Hammer to evaluate the Massaro property, including the quality of its soils, presence of wetlands and sources of water. Hammer found rich soils and enough water, and he made a rough plan for how to use the land.

The challenge was getting the word out. Maybe we were wrong to think that this proposal would find a constituency in town. We had to find out. Beginning

with a painfully short email list, the Conservation Commission began to publicize the potential for a community farm. In April 2007, a group of advocates, including Conservation Commission members, scheduled a public meeting at the local library about the land, advertised by a poster reading: “A community farm in Woodbridge? We can make it happen.” The

poster mentioned that the project had backing from the Conservation Commission. We wondered if anyone would attend. The room was packed, and the crowd of about 70 included town officials. Hammer explained how a farm would work on the site. We got more names for our email list.

We found that many residents of Woodbridge did, indeed, want to buy food locally and valued the vistas that a farm provides. Neighbors told us they preferred a farm to a baseball field and wanted to see the barn and house fixed up (unlikely if the land was to be used for baseball). The Fathers Baseball League didn’t see a problem; the farm could have most of the land, because the league just wanted the large field abutting the farmhouse. This posed two problems. First, the field they sought had the most fertile soils on the property and the best orientation to the sun. And second, we doubted we would attract a farmer to live in-house

literally yards away from a baseball field and parking lot. Hammer had advised us that the farmhouse was a great asset, as farmers want and need to live on the land they manage. Our four-bedroom farmhouse could shelter a whole farm family.

The Conservation Commission managed to attract overflow crowds of farm supporters to Board of Selectmen meetings on the issue. Commission Chair Maria Kayne orchestrated the Commission’s big presentation on the farm proposal. She made sure that each speaker addressed a different issue: nutrition, conservation, the rising cost of oil for transporting food, food safety, the affection of neighbors for the

late Massaro brothers, the boon of having local food, the possibility that the farm would be a model for energy conservation and sustainability, the Massaros’ wishes, the potential for involvement by schoolchildren and retired people. Speakers included college professors, gardeners, parents, an articulate 5<sup>th</sup>-grade girl, a young man who’d had cancer and told everyone that he now

wanted to eat organic food, and a former Massaro farmhand. A local resident told the history of the farm and showed vintage photos. He explained that Massaro Farm had been integral to the economy and culture of Woodbridge.

In short, we persuaded the Board of Selectmen that revival of the farm would benefit the town (and by implication, perhaps, their re-election campaigns) more than another ball field.

Meanwhile, on behalf of the town, Commission member James Urbano won a \$50,000 grant from the Connecticut Trust for Historic Preservation to begin to restore the barn. He donated many hours to overseeing the restoration. (He is a professional contractor. Another contractor, Steve Buda, later volunteered his time to supervise renovation of the house.)



*2010 Family Fun Day*

*Photo Credit: Massaro Community Farm*

*farm, continued on page 10*

*farm, continued from page 9*

Members of the Conservation Commission, from the start, wanted to incorporate an aspect of philanthropy—of sharing the wealth that the farm constitutes. In establishing the Massaro board, we all agreed that we would institutionalize this idea by requiring that the farm donate a portion of its produce to people in need.

All the members of the Conservation Commission but one joined the board of directors of the Massaro Community Farm. Since then, the farm has obtained tax-exempt status, and spun off a separate board (not tax-exempt) to run the CSA. We invited U.S. Rep. Rosa DeLauro to the farm, and she supported our successful application for a \$300,000 federal grant, which has been administered by the USDA Natural Resources Conservation Service (notably the ever-helpful Kip Kolesinskas). The grant, and others, have allowed us to build fences, buy a tractor, install irrigation, and put up two hoop houses. (The USDA grant was among the last of the earmarks, which one may simultaneously oppose in principal and celebrate in particular.) Money from the Community Foundation of Greater New Haven has allowed us to hire a part-time outreach coordinator, Melissa Waldron Lehner.

The CSA hired our farmer, who excels at teaching. He has supervised high school and college students volunteering at the farm (plus a couple of paid assistants). In August 2010 he hosted a group of incoming Yale freshmen who camped on the land and helped with the farm work. The farm has lent space for a large garden to Marrakech, an organization for disabled adults. We now have eight beehives and are preparing to plant berries and establish a small learning garden. Last fall, the farm held its second annual family fun day, which included a culinary contest, planting garlic and a farm scavenger hunt. The Working Lands Alliance gave the Conservation Commission and the Massaro Community Farm, jointly, its 2010 Pathfinder Education Award.

One goal of the Conservation Commission that has fallen by the wayside is the plan to establish an agricultural commission in town. In addition, we have spent considerable effort—and failed—to block the use of three acres of prime historic farmland (adjacent

to a small family farm that wants to expand) for the 90-foot baseball field. The Selectmen have repeatedly refused to provide money for a full study of what the Conservation Commission believes to be a better site (in terms of both conservation and planning). That site is a former gravel pit next to existing ball fields. The baseball league has ignored an offer from the middle school to use its 90-foot field. Attempts to bring the issue to a special town meeting were rebuffed by the town counsel in an opinion that the opponents' lawyer found easy to refute.

We'd be happy to talk to anyone who wants to back formation of a community farm. Massaro Farm has greatly enriched life in Woodbridge.

Our chair is Maria Kayne at [kaynish@aol.com](mailto:kaynish@aol.com).

*Cathy Shufro is a member of the Woodbridge Conservation Commission.*



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*"Members of the Conservation Commission, from the start, wanted to incorporate an aspect of philanthropy – of sharing the wealth that the farm constitutes."*

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liability, continued from page 1

electrical service, or “machinery when attached to the realty, that is also within the possession and control of the municipality”, and also paved public through roads that are “open to the public for the operation of four-wheeled private passenger motor vehicles.”

The RLUA has been incredibly effective for 40 years at providing a sense of comfort and protection for private landowners such as those who host a large portion of the 825-mile long Blue-Blazed Hiking Trail System. This hard-fought update to the RLUA should incentivize municipalities to open existing, potential, and future recreational lands to public recreation with only minimal concerns about liability. We are proud at the Connecticut Forest & Park Association to have played a significant role in making this necessary reform of the RLUA happen.

*Eric Hammerling is the Executive Director of the Connecticut Forest & Park Association (CFPA). CFPA and more than 70 municipal, business, and conservation/recreation organizations (including CACIWC) supported a position paper on restoring liability protection to municipalities. For more information on the topic including the position paper and a link to the legislation, visit <http://ctwoodlands.org/recreational-liability>.*

news, continued from page 2


[www.caciwc.org](http://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!

5. We heard from a number of you who are interested in filling one of our current **board vacancies** following our announcement in the last issue of *The Habitat*. Many vacancies remain. A full board strengthens our ability to represent the needs and concerns of our member towns and commissions. The CACIWC board is comprised of four officers, and both a regular and alternate county representative. Our bylaws specify that any past or present member of Connecticut conservation or inland wetlands commissions or their agent are eligible serve. Please submit your name to be considered for nomination at: [board@caciwc.org](mailto: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 for your interest in CACIWC! 🍁

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legal, continued from page 7

to be acceptable. That means the contractor trusts that the staff person won't require: (fill in the blank) native plantings, a conservation easement on other land, etc., etc when repairs are necessary. (Is this sounding like your town?) The agency also trusts the staff person's judgment. This trust will be earned through the staff's continued training, above and beyond the meager statutory training requirements. The agency will have to trust that the staff/agent is part of the team to implement the wetlands act. In some towns, for a variety of reasons, the agency/staff relationship won't be based on trust. In those towns, less beneficial outcomes in emergency situations may be the norm.

More than one agent I spoke to noted the major problem that failed septic systems around lakes can be. Bringing those emergency septic repairs into the agency's regulatory ambit by a cease and restore order may be a very viable vehicle. Letting the health department be the only regulatory agency weighing in on the repairs might not provide the protection needed to the lake.

And as one agent underscored, septic systems aren't the only emergencies that can arise implicating the wetlands act. Removal of beaver dams by public works departments can rise to an emergency when public roads are flooded.

Lastly, I don't think that the wetlands agency can legally authorize in the original permit how repairs are to be undertaken at an unknown time when the exact nature of the repairs aren't known or even knowable. Even if legal, it is most likely that the repairs will be needed *after* the permit has expired.

Having an opportunity for agencies to share experiences of how they deal with emergencies with an opportunity for legal response may be a good workshop to include at an annual meeting.

Thanks to all of the staff and agents who took time to impart their experiences.


*Janet P. Brooks practices law in East Berlin. You can read her blog at: [www.ctwetlandslaw.com](http://www.ctwetlandslaw.com).*

<sup>1</sup> Aaron v. Conservation Commission, 183 Conn. 532, 538-39 (1981).

<sup>2</sup> Aaron v. Conservation Commission, 183 Conn. 532, 552 (1981).

<sup>3</sup> Cornacchia v. Environmental Protection Commission, 109 Conn. App. 346, 357 (2008). 

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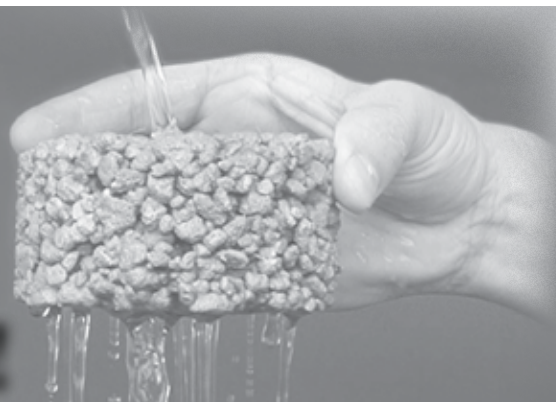
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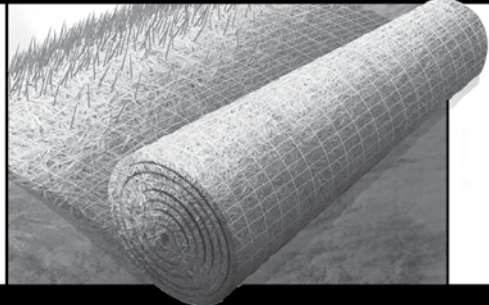
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# Public Act 11-211, An Act Concerning Liability for the Recreational Use of Lands

Be it enacted by the Senate and House of  
Representatives in General Assembly convened:

Section 1. Section 52-557f of the general statutes is  
repealed and the following is substituted (underlined)  
in lieu thereof (Effective October 1, 2011):

As used in sections 52-557f to 52-557i, inclusive:

(1) "Charge" means the admission price or fee asked  
in return for invitation or permission to enter or go  
upon the land;

(2) "Land" means land, roads, water, watercourses,  
private ways and buildings, structures, and machinery  
or equipment when attached to the realty, except that  
if the owner is a municipality, political subdivision  
of the state, municipal corporation, special district or  
water or sewer district: (A) "Land" does not include  
a swimming pool, playing field or court, playground,  
building with electrical service, or machinery when  
attached to the realty, that is also within the possession  
and control of the municipality, political subdivision  
of the state, municipal corporation, special district  
or water or sewer district; and (B) "road" does not  
include a paved public through road that is open to  
the public for the operation of four-wheeled private  
passenger motor vehicles;

(3) "Owner" means the possessor of a fee interest,  
a tenant, lessee, occupant or person in control of  
the premises. "Owner" includes, but is not limited  
to, a municipality, political subdivision of the state,  
municipal corporation, special district or water or  
sewer district;

(4) "Recreational purpose" includes, but is not limited  
to, any of the following, or any combination thereof:  
Hunting, fishing, swimming, boating, camping,  
picnicking, hiking, pleasure driving, nature study,  
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### **CACIWC Annual Meeting Keynote Speaker Announcement**

**Daniel C. Esty, Commissioner**

Connecticut Department of Energy & Environmental Protection (DEEP)

To be **Keynote Speaker** at CACIWC's 34th Annual Meeting  
and Environmental Conference, Saturday, November 12, 2011  
MountainRidge in Wallingford, CT

Commissioner Esty was appointed by Governor Malloy to lead the new Connecticut Department of Energy and Environmental Protection (DEEP). DEEP came to life July 1, 2011, charged with the dual responsibilities of creating a new energy future for the state and protecting Connecticut's environment and natural resources. Its mission is to conserve, improve and protect the air, water and other natural resources and environment of the State of Connecticut while fostering sustainable development.