

THE HABITAT

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



Fall 2012

volume 24 number 3

CACIWC's 35th Annual Meeting & Environmental Conference
Saturday, November 17, 2012
9:00am to 3:30pm

Four Points by Sheraton
275 Research Parkway
Meriden, CT 06450

In response to your requests, a broad selection of administrative, legal, procedural, and scientific workshops in a series of reformatted tracks are offered this year for both new and experienced inland wetlands and conservation commissioners and their agents.

- **Open Space & Conservation Biology**
- **Land Use Law & Legal Updates**
- **Wetlands Science & Engineering Track**
- **Commission Administration & Planning Track**

See pages 8 & 9 for the complete list of workshops.

A lunchtime discussion on Connecticut environmental and land use legislation will be provided by **Martin Mador, Legislative Chair of The Connecticut Chapter of the Sierra Club.**

There is still time to submit your nominations for a CACIWC annual award! See page 9 or www.CACIWC.org for more information.

Dr. Michael Klemens Will Highlight CACIWC's 35th Annual Meeting & Environmental Conference

“Ecological Stewardship and Economic Development: Do We Have to Choose?”

Too often the choice between environmental health and economic prosperity is positioned as a choosing between one and the other. This keynote address will examine the roots of this perceived dichotomy which is at the basis of so much of the conflict and confrontation that surrounds land use decision-making. Dr. Klemens will explore options that are available to local leaders and communities to better resolve conflicts, understand the strengths and limitations of science and their practitioners, and plan for more ecologically and economically resilient communities, drawing on his own thirty plus years of experience in the field.



Educated in the United States and Europe, Dr. Michael W. Klemens is a conservation biologist and land-use planner who seeks to achieve a balance between ecosystem requirements and human needs. He has conducted field work in East Africa and throughout the United States and has written several books including the definitive study of Connecticut's amphibians and reptiles and authored over 100 scientific papers. He

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is the co-author (with Aram Calhoun) of the Best Development Practices manual for vernal pool resources which is incorporated by reference into Connecticut's 2004 Stormwater Manual as well as the guidance document promulgated by the Army Corps of Engineers for the New England Region in 2011. He is on the scientific staff of the

Klemens, continued on page 12

CACIWC

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www.caciwc.org

CACIWC News Briefings

The many challenges of national efforts to preserve open space and the severe drought affecting many regions of the country reminds us of the value of intact wetlands systems and other important habitats here in Connecticut and emphasizes the importance of the ongoing work by CACIWC member commissions and staff. As we approach our 35th annual meeting, the CACIWC Board of Directors extends our thanks to all Connecticut conservation and wetlands commissioners, agents, directors.

1. Based on suggestions from last year's meeting, the CACIWC Board of Directors and its Annual Meeting Committee have assembled another new series of workshops designed to bring useful information to attendees of this year's **35th Annual Meeting and Environmental Conference**. After many years of service as the host to our annual meetings, MountainRidge in Wallingford was sold and closed to the public requiring us to search for a new venue. We are excited to return to our original location, now known as Four Points by Sheraton (275 Research Parkway Meriden, CT 06450). Additional details of our meeting, scheduled for Saturday, November 17, 2012 at Four Points by Sheraton in Meriden, can be found in this issue of *The Habitat*.

2. Our keynote speaker, *Dr. Michael Klemens*, will help us celebrate this special 35th anniversary event. We are looking for **photographs documenting the activities of Connecticut's conservation and wetlands commissions through the years**. 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. Don't forget to **register early for 2012 Meeting**. While increasing costs have required us to raise our general admission fees, the Committee has again decided not to increase the registration fee for members from town commissions *who register early and are current with their membership dues*. Although our conference registration form was mailed to each commission, you can also print one from our website: www.caciwc.org.

4. The Board has been pleased by the number of commissions who have already sent in their **2012-13 membership dues** in response to the reminder and renewal form mailed earlier in 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

CACIWC news, continued on page 13



Journey to The Legal Horizon

by Attorney Janet Brooks

The Agricultural Exemption: The Year in Review

The agricultural exemption continues to be a topic which yields lots of legal fruit. Since December 2011 there have been one Appellate Court decision and three Superior court (trial court) decisions. While only Supreme Court and Appellate Court decisions are binding precedent for everyone, we can get an idea of the troublesome portions of the exemption by examining what’s going on at the Superior Court level.

Attorney’s fees were awarded to a downstream property owner which intervened in support of a town’s wetland enforcement in court. In *Conservation Commission v. Red 11, LLC*, the town and intervenor prevailed in having earlier wetlands appeals brought by the LLC conducting farming activities, some of which were determined not to fall within the ag exemption. Then the town and intervenor prevailed in their enforcement action that the LLC had filled some wetlands and drained other wetlands without a permit. In that decision the Appellate Court upheld the Superior Court order requiring substantial restoration efforts. *In this cycle of the litigation, the Appellate Court upheld the Superior Court’s award of an eye-popping \$391,967.80 for attorney’s fees.*¹ The threat of attorney’s fees usually serves as a deterrent and encourages parties to settle. Red 11, LLC is liable for the town’s attorney’s fee and costs of \$69,569.80 (which Red 11, LLC did not contest), the intervenor’s attorney’s fee and costs, which totaled \$426,437.79 (only the attorney’s fee portion was contested) and its own legal fees.

This is not the usual course of litigation for cases involving the agricultural exemption. Most cases involve individuals, as the following Superior Court cases exemplify. Many exemption cases aren’t pursued because of the cost of litigation. As a result there has been a slow development of the case law in this area which has hampered uniform application of the exemption. Often we are looking to Superior

Court decisions because there is no applicable Appellate Court or Supreme Court decision. However, as one of the judges in the case below pointed out, Superior Court decisions do not bind other Superior Court judges in their work. That can result in a “variety” of Superior Court decisions which are inconsistent with each other, which await resolution by a higher court.

The farming exemption decisions in the past year do not involve whether or not there is truly an agricultural activity being undertaken, but rather whether that activity falls within the exemption or not. The exemption in Connecticut General Statutes § 22a-40(a)(1) is, shall we say, inelegantly written, utilizing a double negative:

“...if the statute would be amended to include a list of explicitly included and explicitly excluded activities within the exemption, we would have better compliance.”

“(a) The following operations and uses shall be permitted in wetlands and watercourses, as of right: (1) Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming

operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. 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, clear cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale.”

I remain convinced that if the statute would be amended to include a list of explicitly included and explicitly excluded activities within the exemption, we would have better compliance.

legal horizon, continued on page 4

legal horizon, continued from page 3

In *Yorgenson v. Chapdelaine*,² the Eastford wetlands commission was granted a temporary injunction against Chapdelaine's digging, removing of soil or stumps and use of heavy equipment in wetlands and adjacent to a watercourse. A temporary injunction is granted to preserve the status quo (or sometimes to return to the status quo before the violation occurred) at the outset of a lawsuit. The agency has a heavy burden to satisfy the court. In this case a cease and desist order was issued since Chapdelaine did not appear to defend her activities of clearing and filling near a stream. Nor did she appeal the final order that the commission issued. Months later she asserted that she could undertake farming activities without local oversight, trying to establish that the activities were exempt. Appearing pro se before the commission, she tried to rely on case law, but did not respond to the agency's request for more information. The agency determined that some of her activities fell within the exemption, but not all. She ended up in court, the defendant in an enforcement action. Chapdelaine pointed to a 2006 Superior Court decision that concluded the preparatory activities (stumping and grading the land) were encompassed within the agricultural exemption. This Superior Court judge disagreed -- as he was entitled to, as Superior Court decisions are not binding on anyone, except the parties involved. Now, there is non-binding case law for each side of the controversy for future cases.

In *Inland Wetlands and Watercourses Commission v. Andrews*,³ the Superior Court followed established precedent in granting the Wallingford wetlands agency relief against a property owner engaged in agricultural activities that the agency determined did not fall within the farming exemption. When the agency issued its initial cease and desist order, Andrews filed

a determination for exemption. The agency denied that the activities were exempt. Andrews did not appeal the final order. The agency subsequently issued another order. Andrews did not appear at the agency hearing, nor did he appeal the second order when it became final. The agency brought an enforcement action to the Superior Court. Following established Supreme Court precedent, the Superior Court ordered the land owner to refrain from conducting regulated activities without a permit and to engage in restoration with specified kinds of professional expertise within a defined timeframe. In the Wallingford and Eastford cases the people subject to enforcement actions do not have latitude to contest the orders in court, if they did not pursue appeals of the underlying orders.

The final wetlands decision turns out differently for the Fairfield wetlands agency. In *Taylor v. Conservation Commission*,⁴ the Superior Court admonishes that Taylor should be permitted to engage in his farming activities "unencumbered by the micromanagement of Fairfield officials, or 'gotcha' surveillance by residents of an upscale neighborhood." A neighbor took a video of Taylor removing material

legal horizon, continued on page 14



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2012 Environmental Legislation Recap

Open Space and Conservation

A NEW OPEN SPACE LAW

In June Governor Malloy signed into law Public Act No. 12-152, An Act Concerning the State's Open Space Plan. The new Act requires Connecticut to devise a formal strategy for protecting open space, and to update it every five years. For a direct link to PA 12-152 go to caciwc.org Home Page.

The bill requires the state Department of Energy and Environmental Protection (DEEP) to prepare the strategy for achieving the 21 percent goal in consultation with the state Department of Agriculture, the state Council on Environmental Quality, municipalities, regional planning agencies, and private land conservation organizations such as Connecticut Audubon Society. For example, many of the bill's provisions started as recommendations in Connecticut Audubon's *Connecticut State of the Birds* reports.

The strategy must include an estimate of the number of acres preserved statewide, as well as timetables for land acquisition by the state, plans for managing the state's preserved lands, and an assessment of the resources the state will need to acquire and manage open space. It has to identify the highest priorities for land acquisition, including wildlife habitat and ecological resources that are in greatest need of immediate preservation, and the general location of each priority. This is particularly important because many of the state's

highest quality conservation lands are at risk of being lost partly because few people know where they are.

The bill also requires the DEEP to work with other state agencies to identify lands they own that might have conservation value, and to devise a plan for preserving the tracts with the highest conservation value. This provision could lead to the preservation of important acreage without having to spend state funds. CACIWC supported this legislation and appreciates the work of the Connecticut Council on Environmental Quality, which beginning in early January worked to draft the bill and guided it through the General Assembly; and Audubon Connecticut, the state office of the National Audubon Society, for its leadership in getting the bill passed.

COMMUNITY INVESTMENT ACT SURVIVES

Community Investment Act (CIA) funds made it through the session intact and is safe until 2014. This is a priority for CACIWC and other environmental partners. Enacted with tremendous bipartisan support in 2005, the CIA provides increased funding for state programs for open space, farmland/dairy production, historic preservation and affordable housing.

In previous years, funds from the CIA account were siphoned into the general fund to help offset budget deficits. This year, the Appropriations Bill gave the Governor authority to recommend the movement of money from certain non-appropriated accounts to cover any deficit, **except from the CIA** and certain other accounts. Your representatives in the General Assembly deserve a thank you for their strong support.

FUNDING FOR INVASIVE PLANT COORDINATOR

Passage of H.B. 5413, An Act Concerning Invasive Plants, will enable the Invasive Plants Council to maintain the services of an invasive plants coordinator.

open space legislation, continued on page 14



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2012 Environmental Legislation Recap

Inland Wetlands Regulation and Watercourses Act

In 2012 the Connecticut General Assembly amended the Inland Wetlands and Watercourses Act (IWWA) with the passage of Public Act No. 12-151.

Public Act No. 12-151 amends section 22a-42a(d)(1) and section 22a-42a(d)(2) of the General Statutes of Connecticut. Specifically, the Public Act amends (d)(1) by stating that permit conditions can include seasonal restrictions provided the inland wetlands agency or its agent determines that such restrictions are necessary to carry out the policy of the IWWA; and amends (d)(2) by specifying that for regulated activities involving development projects also requiring approval under Connecticut General Statutes Chapter 124 (Zoning), Chapter 124b (Incentive Housing Zones), Chapter 126 (Municipal Planning Commissions) or Chapter 126a (Affordable Housing Land Use Appeals), the wetlands permit approval is valid until the companion planning and/or zoning permit approval expires, or for ten years from the date of issuance of the wetlands permit, whichever is earlier.

The following changes to the Inland Wetlands and Watercourses Model Municipal Regulations (IWW-MMR) Fourth Edition, dated May 1, 2006, as amended by the Department of Energy and Environmental Protection's Legislation and Regulation Advisories dated February 1, 2007; December 10, 2007; October 14, 2008; March 3, 2010; November 17, 2010; and September 8, 2011 are made in order to conform to Public Act No. 12-151:

Section 11: Decision Process and Permit

The underlined language noted below is new and should be added to your regulations. The bracketed language noted below should be deleted from your regulations.


11.1 The Agency, or its duly authorized agent acting pursuant to Section 12 of these regulations, may, in accordance with Section 10 of these regulations, grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity designed to carry out the purposes and policies of the Act, or deny the application. Such terms may include any reasonable measures which

would mitigate the impacts of the regulated activity and which would (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources. Such terms may include restrictions as to the time of year in which a regulated activity may be conducted, provided the Agency, or its agent, determines that such restrictions are necessary to carry out the policy of sections 22a-36 to 22a-45r inclusive, of the Connecticut General Statutes.

11.2 ... 11.5

11.6 Any permit issued by the Agency for the development of land for which an approval is required under [section 8-3, 8-25 or 8-26] chapter 124, 124b, 126 or *IW legislation, continued on page 15*

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BYLAWS ~ Adopted 1977; amended 1984, 1993, 2000, 2005

Proposed Amendments

2012 Proposed Amendments (deletions in brackets, additions are underlined)

ARTICLE I - NAME, PURPOSE, and OFFICES

1.4 The principal office of the association is located in the Town of [Vernon] Middletown, County of [Tolland] Middlesex, State of Connecticut.

- eight Alternate County Representatives, one from each Connecticut county;

- up to three Alternate at Large Representatives from any Connecticut County; and

- past presidents of the association (ex officio, without voting power).

ARTICLE IV - BOARD OF DIRECTORS

4.1 The Board of Directors shall consist of:
- the four officers of the association;
- eight County Representatives, one from each Connecticut county;

ARTICLE VII - ELECTION AND TERMS OF OFFICE

7.1 Officers and directors of the Board of Directors shall be elected at the Annual Meeting and shall serve for a term of two years, or until his/her successor has been elected and has taken office. Any past or present member or designated agent / enforcement officer of a Connecticut Conservation or Inland Wetlands Commission / Agency may be elected to the Board of Directors as an Officer, County, or Alternate County Representative. Any Connecticut resident with experience working on conservation issues may be elected to the Board of Directors as an Alternate at Large Representative.

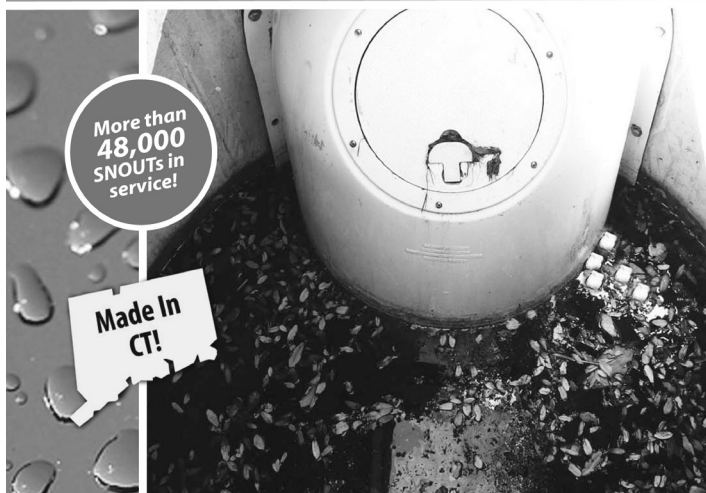
ARTICLE X - MEETINGS

10.3.5 An Alternate County Representative or Alternate at Large Representative shall be entitled to vote at meetings of the Board of Directors if he/she is substituting for [the] a County Representative or is seated by the President. No more than 12 voting members may be seated at any Board of Directors meeting.



Editor's Note: Proposed Amendments will be voted on at 35th Annual Meeting. For present Bylaws go to caciwc.org, click on About CACIWC.

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CACIWC's Environmental Conference Workshops

SESSION 1 (9:30 - 10:30 AM)

(* Denotes Advanced Workshop)

A1. "New Approaches to Natural Resource Inventories"

Dr. Benjamin Oko, Ridgefield Conservation Commission

Ridgefield's Conservation Commission has received recognition for its comprehensive and innovative approach to a natural resource inventory. The inventory was conducted using a combination of professional and volunteer efforts. Dr. Oko, who served as the Commission's chair for ten years, guided the project. He will discuss the process of setting goals, developing methodology and outline the initial findings of the inventory. The benefits of the Ridgefield approach will be discussed and compared to other methodologies.

*B1. "Working with Expert Consultants"

Janet Brooks, Attorney at Law, LLC

Confused about the use of expert evidence? Attorney Brooks will review the current state of law and highlight a recent court case where both experts were disregarded by the trial judge. Come learn why.

*C1. "Vernal Pools: Road Effects on Biochemical Cycling & Amphibian Performance"

Steven P. Brady, School of Forestry, Yale University
Joseph T. Bushey, Civil & Environmental Engineering, University of Connecticut

Roads are distributed pervasively throughout much of North America, posing a suite of negative effects on native habitats. Contaminants and nutrients are deposited onto roads, and carried into adjacent habitats; road salt is chief among these in certain areas. In temporary aquatic habitats, which are typically small and shallow, such contaminants can become highly concentrated. Studies suggest that even in relatively undeveloped settings, roads can dramatically reshape wetlands environments. The workshop will outline the results of these studies.

*D1. "The State Plan of Conservation and Development (POCD): Next Steps"

Daniel Morley, Policy Development Coordinator
State of Connecticut, Office of Policy and Management (OPM)

Communities across the state have reviewed the *Draft Conservation & Development Policies: A Plan for Connecticut*, including the Plan's new Locational Guide Maps identifying Priority Conservation, Priority Development and Balanced Growth Areas. In this workshop, Daniel Morley, OPM Policy Development Coordinator, will discuss the record of local involvement during preparation of the Plan, the process by which comments have been addressed in the proposed final documents, and the opportunity for further municipal and public input through the upcoming legislative hearing.

SESSION 2 (10:45 AM - 12:00 PM)

(* Denotes Advanced Workshop)

*A2. "CT Wildlife Update: Declining Birds, Declining Dollars: Cause and Effect"

Min T. Huang, Migratory Game Bird Program Leader
CT Department of Energy and Environmental Protection (DEEP)
In tighter financial times, many aspects of our society are impacted in a variety of ways. The environment is no exception. Dr. Huang will focus on the decline of many of our state's non-harvested birds and the possible causes for those declines. He will review the current lack of dedicated funding for non-harvested wildlife and discuss ways in which such a stream of revenue, if available, could benefit them. Dr. Huang will also review his current projects including ruffed grouse survival and dispersal, chimney swift survival rate estimates, purple martin dispersal, along with shrub land and forest interior bird productivity and distribution.

*B2. "2012 Wetlands Law Update with Question & Answers Session"

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. 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. "How Sanitarians & Wetlands Agents Can Work Together to Protect Wetlands"

Amanda Clark, State of Connecticut, Department of Public Health (DPH) & others

Does receipt of a local Health District approval mean that proposed septic system work won't have an impact on a wetland or watercourse? This workshop is intended to explain the basics of how a septic system works, how sanitarians evaluate different soil types and what analysis is done to ensure proper treatment of effluent and guard against failures, what are possible impacts to a wetland or watercourse from septic effluent and what types of septic design or mitigation methods might be used to lessen the impact.

D2. "Can Open Space Be Permanently Protected?"

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

Effective stewardship of open space is a challenging task. This workshop will review issues and obstacles to efforts to protect state, municipal and private open space in perpetuity. The panel will cover existing administrative policies and statutory provisions and review the use and effectiveness of deed restrictions and conservation easements; the role and authority of the Natural Heritage, Open Space and Watershed Land Acquisition Review Board; the role of the Conveyance Act in conservation land transfers, and an overview of PA 12-152, An Act Concerning the State's Open Space Plan, as well as a search for new and creative ways to provide better protection.

Open Space &
Conservation Biology Track

Land Use Law &
Legal Updates Track

Wetlands Science &
Engineering Track

Commission Administration &
Planning Track

Saturday, November 17, 2012

SESSION 3 (2:00 - 3:15 PM)
(* Denotes Advanced Workshop)

A3. "Invasive Species, Climate Change & Other Factors"

Dr. Kirby Stafford, Connecticut Agricultural Experiment Station (CAES), Vice Director, Chief Scientist/State Entomologist;
Dr. John Silander, UCONN Dept. of Ecology and Evolutionary Biology; **Gregory Bugbee, CAES Department of Soil and Water.**

New Englanders are confronted with increasing occurrences of non-native invasive species, with new or changing impacts on existing habitats and wildlife. Many of these circumstances are related to our changing climate and other factors. This workshop will highlight specific examples, including Emerald ash borer, as well as broader trends, and will discuss how we can address these evolving issues.

***B3. "Working Within Your Town to Manage Complex Applications"**

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

This workshop will discuss how municipal wetlands agencies can enhance their ability to respond to complex applications. The importance of forming and managing a municipal review team, including both in-house expertise and consultants, will be discussed. Attorney Branse will also cover motions, conditions, and modifications of approval, keeping the record straight in the digital age, ensuring that the parties to play fair, and even how to maintain crowd control.

***C3. "Defining a 'Likely' Impact to the Physical Characteristics of Wetlands"**

Marjorie Shansky, Esq.;
Lisa Krall, Natural Resources Conservation Service (NRCS);
Michael Klemens, PhD

Previous workshops have made it clear that a wetlands commission cannot consider impacts to aquatic, plant or animal life in the upland review area or beyond unless the proposed activity will likely impact or affect the physical characteristics of a wetland or watercourse. This workshop is intended to provide guidance to correctly define the physical characteristics that are needed for a commission to qualify what a likely impact is to a wetland to build a record that supports a decision.

D3. "Strengthening Conservation Commissions, a Panel Discussion"

Martin Mador, Legislative Chair, The Connecticut Chapter of the Sierra Club;
Tom Ouellette, Vice-Chair, Vernon Conservation Commission;
Rod Parlee, Chair, Bolton Conservation Commission;
Elaine Sych, Coordinator, Connecticut Environmental Review Teams (ERT)

What can your conservation commission do to be more effective? This panel discussion will review successful approaches taken by a variety of conservation commissions during the past decade and review new tools developed to enhance local efforts such as the Environmental 911 brochure. The many contributions of Connecticut's Environmental Review Teams (ERT) will be discussed.

CACIWC 2012 Annual Recognition Awards

There is still time to submit your nominations for a CACIWC annual award. Nominations will be accepted until **October 31, 2012** 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.

DEEP's 2012 Municipal Inland Wetland Commissioners Training

Segment 3 of the DEEP's 2012 Municipal Inland Wetland Commissioners Training Program will be conducted in late October through mid-November. This year participants will be able to choose one of two workshop topics – Vernal Pool Ecology or Monitoring for Benthic Macro invertebrates: What These Organisms Can Tell Us About the Health of a Stream.

Participants choosing to attend the vernal pool workshop will have a choice of two dates- Friday October 26th and Saturday November 3rd. Both workshops will be held in Middletown. Participants choosing to attend the macro invertebrate workshop will also have a choice of two dates – Thursday November 8th and Wednesday November 14th. Both workshops will be held in Burlington. Program brochures containing registration information will be mailed to every municipal inland wetlands agency in early October.

Finally, the DEEP is still accepting registrations for the new online Segment 1 course. Registrations will be accepted up to December 1st and all coursework needs to be completed by December 15th. The course will be shut down at that time for edits and maintenance. If you have any new members on your commission please recommend that they take this course. For more information please contact Darcy Winther of the Wetlands Management Section at (860) 424-3019. 



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CT Inland Wetlands & Watercourses Act Section 22a-42a

Application Received

Permit Expirations

Refer to the CT Inland Wetlands and Watercourses Act for specific statutory language and permit timeframes

For Regulated Activities Associated with Projects Requiring Approval Under Any of the Following Chapters ("Planning and/or Zoning Approval"):

- CGS Chapter 124 (Zoning)
- CGS Chapter 124b (Incentive Housing Zones)
- CGS Chapter 126 (Municipal Planning Commissions)
- CGS Chapter 126a (Affordable Housing Land Use Appeals)

For All Other Regulated Activities

Permit Issued Prior to July 1, 2011

Permit Issued July 1, 2011 or Later

Permit Issued Prior to July 1, 2011

Permit Issued July 1, 2011 or Later

Permit Expired Prior to May 9, 2011

Permit Valid as of May 9, 2011 (had not expired)

Permit Expiration is the Same As Planning and/or Zoning Approval or 10 Years From the Date of Issuance of the Wetlands Permit, Whichever is Earlier

Permit Expired Prior to May 9, 2011

Permit Valid as of May 9, 2011 (had not expired)

Permit Expiration is Between 2-5 Years From Date of Issuance, as Determined by the Inland Wetlands Agency

Permit is Expired

Permit Valid for not less than 9 Years from Date of Issuance

Permit Valid for not less than 9 Years from Date of Issuance

Permit Can Be Renewed So Long As Total Permit Duration is Not More Than 14 Years From Date of Original Permit Issuance

Permit Can Be Renewed So Long As Total Permit Duration is Not More Than 10 Years From Date of Original Permit Issuance

Permit Can Be Renewed So Long As Total Permit Duration is Not More Than 14 Years From Date of Original Permit Issuance

Permit Can Be Renewed So Long As Total Permit Duration is Not More Than 10 Years From Date of Original Permit Issuance

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Klemens, continued from page 1

American Museum of Natural History, serves as a consultant to various Federal agencies, and is adjunct faculty at several universities.

Locally, Michael has served over six years on the Salisbury Planning and Zoning Commission, most recently and currently as its Chairman. Under his leadership the P and Z has assumed authority over critical natural resources such as vernal pools, complementing the authority of the local Inland Wetland Commission to afford seamless protection of both the pools and the critical upland habitat. He states that “recognizing the distinct regulatory authorities of these agencies, and creating regulations that dovetail with one another, is the best legal fix that can fill the void created by the regressive Avalon Bay decision.” He was recently re-elected on a platform that “brings an independent perspective to planning issues, mindful of the need to balance the stewardship of community interests with rights of land-owners to use their properties productively. Increased public participation in municipal government is essential, and that all points of view have merit and require the serious attention of local government.”



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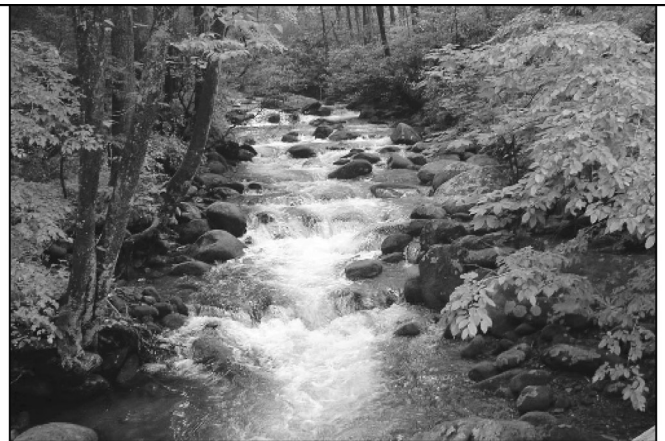
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website also provides a description of additional individual and business membership categories. Please consider making an additional contribution to support CACIWC education and outreach efforts!


5. Although the Board and its Annual Meeting Committee have already received several excellent nominations for our **2012 Annual CACIWC Awards**, there is still time to submit yours! The 2012 nomination form has been placed on our website. Just print it out, scan it and email it to us at: AnnualMtg@caciwc.org.

6. While we continue to hear from individuals who are interested in filling one of our current **board vacancies** many positions still remain. 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.

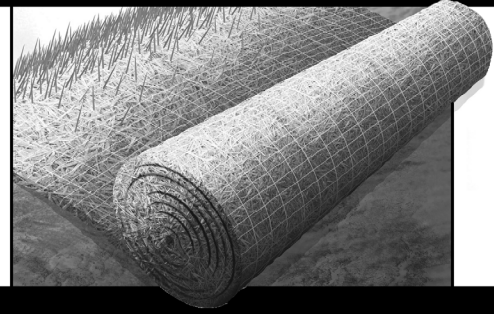
7. To provide us with additional opportunities to recruit new members, our board of directors has proposed several **bylaws amendments**, copies which were mailed to each commission. These amendments include the creation of several *alternate at large* positions that can represent more than one county. These positions will also allow us to retain well qualified directors from areas whose county and alternate county positions are already filled. We hope that you will vote to support these amendments during the business meeting of our annual conference.

8. During the last several months the board has been reviewing priority goals established for the 2008 **strategic plan** and evaluating the board's progress in attaining these goals. Board members will be selecting new goals and objectives for the next three to five years. You will be hearing more about these efforts during the coming year.

We thank you for your efforts to protect wetlands and conserve natural resources in your town!

~ Alan J. Siniscalchi, President 

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from a trench on his property in which he conducts farming, although the Superior Court points out that the area is more conducive to “McMansions.” The agency issued a cease and desist order and required him to restore the “watercourse.” Taylor had removed 5 cubic yards of material from the ditch, such as debris, leaves, grass clippings and sediment. A soil scientist (it is not stated for whom he worked) believed the activity was not affecting drainage. In upholding the order, the agency did not require restoration, it gave Taylor 60 days to file for a permit to maintain the ditch. Taylor appealed. On appeal the Superior Court sought a definition of “reclamation” and found only a footnote mentioning the dictionary definition of reclamation in an Appellate Court decision. Applying the most restrictive definition of reclamation, the Superior Court found that it did not include Taylor’s activity which maintained the ditch in its present location and its current dimensions. Maintaining the ditch was just part of “prudent farming.”

There continues to be a broad spectrum in which the Superior Court cases appear. One unifying theme is that where the recipient of a cease and desist order does not appeal a final order, there is virtually no opportunity to contest that the activities complained of were actually exempt. On the other hand, if the person brings an appeal, the Superior Court can examine the basis of agency decision. In this Fairfield case, that worked to the advantage of the property owner.

The lack of Appellate Court and Supreme Court precedents continue to thwart uniform application of the farming exemption statewide.

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

(Endnotes)

¹ You can read the case on the Judicial Website at: <http://www.jud.ct.gov/external/supapp/Cases/AROap/AP135/135AP344.pdf>. Or go to: www.jud.ct.gov, click on Opinions, click on Appellate Court Archives, click on 2012, scroll down to “published in the Connecticut Law Journal of 5/29/12, click on the case.

² Superior Court, judicial district of Windham, Docket No. WWM CV 11 6003791 S (December 12, 2011).

³ Superior Court, judicial district of New Haven, Docket No. CV 10 5033404 S (January 23, 2012).

⁴ Superior Court, judicial district of Fairfield, Docket No. CV 11 6017217 S (August 30, 2012).



Funding for the position will be provided to DEEP via the Department of Agriculture (DoAg) budget.

BAD BILLS DEFEATED

S.B. 445, An Act Concerning Liability for the Recreational Use of Land, which would have rolled-back protections from liability extended to municipalities for the recreational use of land, died during the session.

S.B. 447, An Act Modernizing the State’s Telecommunications Laws, also died during the session. There was strong opposition to a section of the bill which would have allowed the construction of public or private telecommunications towers to be considered as compatible uses of state park and forest conservation lands.

S.B. 343, An Act Concerning Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971. This bill proposed amendments that would have severely weakened the CT Environmental Protection Act of 1971 (also known as CEPA). CEPA provides citizens with the ability to challenge land use proposals that would unreasonably pollute, impair or destroy Connecticut’s natural resources.




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126a of the Connecticut General Statutes shall be valid [for five years provided the Agency may establish a specific time period within which any regulated activity shall be conducted] until the approval granted under such chapter expires or for ten years, whichever is earlier. Any permit issued by the Agency for any [other] activity for which an approval is not required under chapter 124, 124b, 126 or 126a shall be valid for not less than two years and not more than five years. [Any permit issued by the Agency prior to July 1, 2011 that was in effect and did not expire prior to May 9, 2011 shall be valid for a period not less than nine years after the date of such approval.]

11.6.1 Notwithstanding the provisions of Section 11.6 of these regulations, any permit issued by the Agency prior to July 1, 2011 that was in effect and did not expire prior to May 9, 2011 shall be valid for a period not less than nine years after the date of such approval.


The flow chart on page 11 includes the new relevant statutory permit approval time frames to assist the commission in revising commission regulations to reflect these new amendments. Also note, that in your wetland commission’s regulations all references to the “Department of Environmental Protection” and “DEP” should be changed to the “Department of Energy and Environmental Protection” and “DEEP.”

Should you have any further questions regarding the above changes, please feel free to contact Darcy Winther of the Wetlands Management Section at (860) 424-3019. 

conservation initiatives and investments, or not.

- How much the conveyance fee should be up to 1% of the sale amount over \$150,000
- What conservation purpose(s) the fund will be used for.

Commission and municipal support will be critical to the passage of this local funding opportunity.

For more information on CRCA and how your commission can help support the legislation please contact Tom ODell by email at todell@snet.net and Amy Paterson, CLCC Executive Director, at abpaterson@ctconservation.org. 

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Editor's Note: Please pass this article on to your Town Planner. Often projects identified in the town's Plan of Conservation and Development would benefit from establishment of a local CRCA matching fund.

Matching Funds for Municipal Conservation & Redevelopment Grants

Most State, Federal and private granting agencies require municipalities to have at least a 50% match for grants requesting funding for conservation-related projects such as open space protection, farm land acquisition, restoration of degraded land, historic preservation, and implementation of storm water management plans. The Community Redevelopment and Conservation Act (CRCA) will provide municipalities with a local match fund to increase the town's success in competing for grants that enhance local economies, public health and the environment.

CRCA will enable a municipality to establish a conveyance fee (up to 1%) on buyers of real property on the sale amount over \$150,000. The proposed

legislation will specify that the fee be retained by the municipality, kept in a separate account and be used for the planning and implementation of a broad range of local preservation, conservation, restoration and development projects.

Provided there is support for the legislation from municipalities, the Connecticut Land Conservation Council and its partners are planning to introduce the Community Redevelopment and Conservation Act in the 2013 session of the Connecticut Legislature, next January. The legislation would give the town the right but not the obligation to establish the program. It would be up to the voters in each town to decide:

- To establish the conveyance fee as a reliable source of funds for leveraging resources for

CRCA, continued on page 15