



## SOME LEGAL CONSIDERATIONS REGARDING THE USE OF CONSERVATION EASEMENTS

by Richard P. Roberts and Kenneth R. Slater, Jr.

Conservation easements are an increasingly common land preservation tool for both towns and property owners. Generally, they are voluntarily placed on the land, often in conjunction with a subdivision, for the purpose of preserving open space, important environmental resources, or significant architectural, scenic, or historical features. As with other types of easements, they are an interest in land and are an encumbrance which runs with the land on which the restrictions have been granted.

This article will identify the basic elements of conservation easements as well as their use by municipalities as methods of preserving open space. Although conservation easements are also frequently granted to non-profit organizations outside of the context of the development or subdivision of land, the primary focus of this article is on the latter. Some common provisions contained in conservation easements will also be discussed, together with the issues and considerations frequently encountered in enforcing them.

### Conservation Easements Generally

Conservation easements are granted for a variety of reasons. Outside of the municipal land use approval process, they are granted for benevolent or charitable purposes or to obtain a tax deduction or a reduction in the assessment of the property. They are also granted as part of the municipal land use approval process to satisfy specific requirements of zoning or subdivision regulations or as a condition for approval of wetland permits or certain zoning or subdivision applications.

The conservation easement, as an interest in land, must be in writing and be recorded on the land records of the town

where the property is located. Unless specifically stated otherwise, it runs with the land and is binding on the heirs, successors, and assigns of the parties. It must identify the grantor as well as the grantee. As a matter of property law, the easement need only be executed by the party granting the interest in land and delivered to and accepted by the party acquiring the easement interest. However, conservation easements often impose obligations upon the party acquiring the easement, in which case it is prudent, and possibly legally required, for both parties to execute the instrument.

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*“Municipalities and their commissions should have a consistent procedure for accepting and policing conservation easements.....”*

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The grantee may be any one of a number of entities as will be discussed below. The document must also identify with specificity the land on which the restriction has been granted by way of a metes-and-bounds description or a reference to a survey or plan that is recorded in the town clerk's office. Frequently, the document recites that the grantor owns the property and has the right to execute and deliver the agreement. Finally, and most importantly, the instrument must contain a detailed recital of the restrictions which have been placed on the land and the mechanism and process for verification of compliance and, ultimately, enforcement of those restrictions.

### Statutory Provisions Expressly Related to Conservation Easements

As a creature of statute, all of the powers of a municipality, including the power to acquire conservation easements, must be granted by the state. Two specific statutes permit municipalities or their boards and commissions to acquire conservation easements. The first is Conn. Gen. Stat. § 7-131b,

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## Resources for Commissioners

### Connecticut Department of Environmental Protection's 2005 Annual Report – Protecting and Restoring Our Environment

The report focuses on the progress made in addressing the State's strategic environmental priorities. It is posted on the DEP website at [www.dep.state.ct.us/enf/rpt/2005rpt.pdf](http://www.dep.state.ct.us/enf/rpt/2005rpt.pdf).

### Vulnerable Wetlands Forum: A Research & Policy Update Examining Federal Jurisdiction Over Vernal Pools and Headwater Wetlands ~ Thursday, November 9, 2006

In June 2006, the United States Supreme Court issued an opinion that may change the way wetlands are regulated under the Clean Water Act. The cases *Rapanos v. United States* and *Carabell v. U.S. Army Corps of Engineers* split the court, leaving the future of wetlands protection uncertain at best. New England Interstate Water Pollution Control Commission presents this one-day conference, in Westford, MA, which will cover the latest science and policy regarding vulnerable wetlands. See [www.neiwpcc.org](http://www.neiwpcc.org) or call 978.323.7929 for more information.

### 2006 DEP Municipal Inland Wetlands Commissioners Training Program

Segment III, *Plant Science and Identification*, will be offered in late October, early November. The morning session discusses general plant identification, plant morphology and adaptations to the wetlands condition and wetlands plant communities, also a discussion by the Army Corps of Engineers on mitigation including species selection and design. The afternoon will continue with a field visit; considerable walking will be involved. Segment III will be offered on four different dates, two in Burlington and two in Mansfield. For information and on-line registration, see [www.dep.state.ct.us/educ/index.htm](http://www.dep.state.ct.us/educ/index.htm).

### “Riparian Setbacks: Technical Information for Decision Makers”

A review of the recent scientific literature organized to provide the scientific basis upon which a township or municipality could begin the task of defending a riparian setback ordinance. The “technical” content is largely in the first 30 pages - [www.crowp.org/pdf\\_files/riparian\\_setback\\_paper\\_jan\\_2006.pdf](http://www.crowp.org/pdf_files/riparian_setback_paper_jan_2006.pdf).

### “Riparian Buffer Width, Vegetative Cover and Nitrogen Removal Effectiveness: A Review of Current Science and Regulations”

A synthesis of existing scientific literature on the effectiveness of riparian buffers to improve water quality through their inherent ability to process and remove excess anthropogenic nitrogen from surface and ground waters. Go to [www.epa.gov/ada/download/reports/600R05118/600R05118.pdf](http://www.epa.gov/ada/download/reports/600R05118/600R05118.pdf) or contact the report author, Paul Mayer at 580.436.8647, Ground Water and Ecosystems Restoration Division, EPA.

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adopted in 1963 as part of that year's landmark Public Act 490 which provides property tax relief to persons that designate and maintain property as undeveloped forest or agricultural land.

The second series of statutes pertaining to conservation easements are found in the land title chapter of the Connecticut General Statutes. Those statutes, Conn. Gen. Stat. §§ 47-42a–47-42c, provide general authority and the requirements for the placement of development restrictions on real property. Those statutes are not limited to conservation easements involving municipalities, but include guidelines applicable to municipal acquisition and maintenance of conservation easements.

**Mechanisms for Municipal Acquisition of Conservation Easements**

A municipality should carefully consider the mechanism it employs to acquire conservation easements. Conn. Gen. Stat. § 7-131b requires the property to first be designated as proposed open space in the municipal plan of conservation and development. Once designated, the actual acquisition of the easement must be approved by a vote of the legislative body of the municipality. In contrast, Conn. Gen. Stat. § 47-42c provides that a municipality can acquire a conservation easement “in the same manner as it may acquire other interests in land.”

Regardless of the mechanism towns employ to acquire real property interests, few have established a coordinated system to consider and accept conservation easements. Many towns permit these matters to be governed entirely by their municipal land use agencies with no substantive oversight or consent by the legislative body or the administration of the town. Furthermore, municipal land use agencies do not necessarily have any express authority to accept conservation easements and have limited or no rights to condition approvals upon the grant of a conservation easement. Each town should establish its own protocol for the acceptance and management of conservation easements with clearly delineated standards and procedures.

**Authority for Land Use Agencies Regarding Acquisition of Conservation Easements**

Although planning, zoning, and inland wetland and watercourses agencies often require open space areas and conservation easements as part of approvals of subdivisions, site plans, special permits, and wetland permits, there are no specific provisions of the various land use statutes regarding conservation easements.

The municipal agency most closely linked with open space areas is a conservation commission, which is authorized and empowered to inventory natural resources and open space areas, whether public or privately owned, and to advise land use commissions and, in some cases, the chief executive or legislative body of the municipality regarding land use changes. Since the Inland Wetlands and Watercourses Act requires each municipality to designate a wetlands and watercourses agency for the town, conservation commissions sometimes serve those dual roles.

**Common Provisions in Conservation Easements**

Conservation easements may contain a wide variety of provisions intended to preserve open space, important environmental resources, or significant architectural, scenic, or historical features. In addition to the restrictions on activities enumerated in the document, a clear and unambiguous identification of the property subject to the easement is essential.

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*“The conservation easement, as an interest in land, must be in writing and be recorded on the land records of the town where the property is located.”*

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There are several activities that are typically prohibited within a conservation area. Generally, these include: (i) construction or placing of buildings, roads, signs, billboards, or other structures on or above the ground; (ii) dumping or placing of soil or other material as landfill, or the dumping or placement of trash, ashes, waste, rubbish, garbage, junk, or other similar materials; (iii) excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other mineral substance; (iv) removal or destruction of trees, shrubs, natural vegetation, killing of wildlife, spraying of pesticides, sometimes excluding the use of pesticides to control mosquitoes and the like; or (v) any other activities or uses detrimental to drainage, flood control, water conservation, erosion control, soil conservation, wildlife, and the maintenance of the affected property in its natural, scenic, and open condition.

In addition to the items listed above, particular situations or grantees might require further controls. Examples of these may include prohibition of the use of the property for septic systems serving buildings outside of the conservation easement area; placement of mobile homes or equipment in the conservation area; prohibitions against making any topographic changes within the easement area; prohibition of the operation of vehicles, snowmobiles, ATVs, motorcycles, and similar motorized vehicles within the easement area; and prohibition of the construction and/or installation of roads or driveways within the area. The document may include restrictions or prohibitions on the use of pesticides and require a formal plan for an alternative integrated pest

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management system. The easement may also include affirmative obligations, such as the requirement that new plantings be limited to native plantings characteristic of the region; the requirement that management of the area be performed in accordance with a specific plan prepared by an expert, such as an arborist or wetlands scientist; or the creation of wetlands or specialized wildlife habitat to mitigate impacts on portions of the unrestricted property.

Conversely, there generally are some activities that may be expressly permitted in the easement area either as of right or upon prior approval of the regulating entity. These could include such things as removal of dead trees or brush, pruning or thinning of live trees or brush, installation of sanitary sewers and/or water lines, or the installation, maintenance, and repair of other public or private utilities. Others may be applicable to particular uses of the property, such as forestry or agriculture, and could allow such activities as farming, the grazing of farm animals, gardening, creation of farm ponds, and the like. As noted above, those activities are sometimes regulated by a specific management plan required by the easement.

Depending on the nature and location of the property relative to other open space, roads or town-owned property, there may be a condition that the property must be made available to the public for passive recreation. In addition, in instances where certain types of state grants are used for the acquisition of open space, there must be a provision for public access.

Most conservation easements include restoration obligations in addition to provisions authorizing monetary relief. The grantor or successor is obligated to restore the property to its natural state or otherwise bring it into compliance with the provisions of the agreement. The actions necessary to do

so may be enumerated in the easement document and could include such things as replanting trees and shrubs, removal of trash or debris, removal of any unauthorized structures, replacement of any boundary markers that have been damaged or removed, and the implementation of appropriate soil erosion and sediment controls. The document may provide that the restoration is at the expense of the grantor and in accordance with standards developed by the town or, at a minimum, subject to the town's satisfaction and that all necessary permits and approvals be obtained for such work.

Because the conservation easement is an instrument creating an interest in land which will continue to exist in perpetuity (unless provided otherwise in the document), careful attention should be given to the lists of activities that are to be included or excluded. Equally importantly, the parties should make every effort to ensure that the instrument reflects their understanding of those activities. Courts are generally reluctant to deviate from the definitive language of the contract in order to impose restrictions in addition to those specifically contained in the document.

#### **Entities Holding the Conservation Easement**

One of the essential elements of a conservation easement is the identification of the grantee of the easement. That party holds the easement and has the right to enforce its terms. In situations where a conservation easement is being granted for purposes other than compliance with municipal land use regulations, the holder of the easement will often be a non-profit entity, such as a land trust, which is "in the business" of managing conservation easements and conservation lands.

More sophisticated zoning or subdivision regulations will provide a list of entities which would be acceptable grantees, often with a reservation of the right to approve, in the

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agency's sole discretion, any other holder not so listed. The most commonly named entities are the town; a non-profit agency, land trust, or similar organization; or a homeowners' association.

Frequently, the easement will run in favor of the town and either its planning and zoning commission, conservation commission, or its inland wetlands and watercourses commission as the agent of the town authorized to hold and police the easement on behalf of the town. In addition, there may be an actual conveyance of the land to the town as contemplated by Conn. Gen. Stat. § 8-25(a) if the town is willing to accept such land. Many towns are reluctant to do so for liability reasons as well as the associated maintenance and stewardship responsibilities.

If the easement is granted to the town and managed by one or another of its commissions, there should be both a procedure for determining whether the proposed easement is one which is both appropriate with respect to the characteristics of the land it encumbers and properly crafted for managing the enforcement of the easement after it has been granted. The allocation of responsibilities among various boards and commissions and the determination of which entity is responsible for each of these elements should be clearly defined.

In the event the grantee of the easement is a non-profit corporation, a land trust, or some similar organization, it is much clearer who bears the responsibility for enforcing the easement. The document should provide some plan of succession in the event the entity which is the initial grantee ceases to exist or otherwise is unwilling or unable to fulfill its obligations in the future. Some towns also require written evidence that the proposed grantee is willing to accept the obligations and responsibility for the enforcement of the easement.

Many towns have also provided the option of having a homeowners' association be the holder of the easement. The use of a homeowners' association may be useful in situations where fee title to the open space is conveyed. Unless it is qualified as a tax exempt entity under IRS Section 501(c)(3), a homeowners' association may not be a qualified holder of a conservation easement under Conn. Gen. Stat. § 47-42a. Easements which run in favor of a homeowners' association frequently also provide the town with the right to enforce the easement in the event the association fails to do so and permit the town to hold the association and the homeowners financially responsible for the expenses incurred in conjunction with such enforcement.

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### **Rights and Responsibilities of the Holders of Conservation Easements**

Once the conservation easement has been granted, the holder of the easement has the benefit of the restrictions but also bears the responsibility of enforcing its terms. The right to enforce the easement is generally limited to the named grantee or its successor in interest. A recent act, P.A. 05-124 affords certain enforcement powers to the attorney general. Otherwise, third parties do not usually have the right to enforce the terms of a conservation easement granted to another. Unless a conservation easement granted to a town expressly provides otherwise, an individual citizen of the town would not have standing to enforce the easement.

In order to make meaningful enforcement of a conservation easement possible, there should be some form of baseline documentation to establish the conditions of the property at the time the easement is granted. This will eliminate the possibility of claims that undesirable conditions existed prior to the granting of the easement. The presence or absence of structures, trails, roads, wetlands, vistas, ledge or other outcroppings, stone walls, and other natural or man-made features should be noted.


One of the fundamental rights of the holder of a conservation easement is the right to inspect the encumbered property to verify compliance with the restrictions. The right of access and the right to make such inspections, following proper notice, should be specified in the easement. If the grantee is a municipality or an agency of a municipality, the document typically provides that a cease-and-desist order may be issued to prevent any activity which the agency believes is in violation of the document. The document may also specify the process following an asserted violation, including hearings before the agency and the imposition of fines and penalties.

Many easements explicitly provide that the town may initiate enforcement proceedings to restrain the violations or to order the restoration of the property to a condition which satisfies the terms of the agreement and that the grantor is obligated to pay reasonable attorneys' fees and costs incurred by the grantee to remedy a violation of the agreement.

### **Common Problems and Suggestions**

Conservation easements undoubtedly serve a valuable purpose. The challenges raised by maintaining and enforcing existing conservation easements provide lessons for using that tool in the future.

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One of the more common problems, noted above, is the failure of the instrument to cover all of the possible activities on the encumbered parcel that may be impede the preservation goals. Having the instrument broadly worded but also tailored to the particular situation may reduce these problems.

Another common issue could be solved by adequately educating both the municipality and the property owner as to the nature of the obligations being created. Unrealistic expectations on the part of a town commission may be in conflict with the property owner's expectations as to his or her ability to use the property to its fullest extent.


Another problem arises when open space is shown on a plan of subdivision but no formal easement is granted and recorded. Often there are no effective follow-up mechanisms to ensure that documents are actually approved and recorded to transfer the interests in the land shown on the subdivision map as "lands to be conveyed as open space" or "conservation easement." "Open space" may also have been created or granted to the town in documents many years ago where rights to enforce the obligations are vested in homeowners' associations that are long since defunct or in the collective property owners in the subdivision. Having

multiple commissions accept or require conservation restrictions on properties may be problematic if requirements between the different agencies are inconsistent.

**Conclusion**

Conservation easements are an increasingly common method of preserving the remaining open spaces in Connecticut. While they serve as an important and effective means of preserving valuable environmental resources, they should be tailored to reflect the particular situation applicable to a piece of property and a coordinated plan. Municipalities and their commissions should have a consistent procedure for accepting and policing conservation easements that adheres to statutory authority and incorporates a policy of whether such open space areas are granted to the town or to private conservation organizations or land trusts.

*Richard P. Roberts is a member of the firm of Halloran & Sage LLP in Hartford. He is also a member of the firm's Municipal Law Practice Area, assisting municipal clients in a wide variety of matters, including real estate acquisitions and sales, land use, charter revision, and drafting and review of ordinances.*

*Kenneth R. Slater, Jr., is a member of the firm of Halloran & Sage in Hartford. He is also a member of the firm's Environmental and Land Use Practice Group. He represents businesses, property owners, municipalities, and individuals in both transactions and litigation involving environmental and land use regulation, permitting, and enforcement.* 

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# INLAND WETLANDS UPLAND REVIEW AREAS: *CACIWC's Position on Minimum Width and Areas of Impact*

*Editor's Note: In the last two years, CACIWC has received numerous requests for information and guidance on Upland Review Areas in local inland wetlands regulations. The following Position Statement was developed by CACIWC's Inland Wetlands Education Committee to provide such information.*

## POSITION STATEMENT

### *Upland Review Areas in Connecticut's Municipal Inland Wetlands Regulations*

#### BACKGROUND

Under the Inland Wetlands and Watercourses Act, Connecticut's municipalities regulate proposed development activities in or affecting wetlands and watercourses. CACIWC has received numerous inquiries from wetlands commissioners and their staff for guidance in establishing upland review area provisions in their municipal wetlands regulations.

The term Upland Review Area was developed and put forth by Connecticut DEP in a 1997 guidance document (*Guidelines - Upland Review Area Regulations - Connecticut's Inland Wetlands & Watercourses Act*) which encourages inland wetlands agencies to review activities proposed in upland areas surrounding wetlands and watercourses wherever such activity is likely to impact or affect wetlands and watercourses. Activities that can adversely affect adjacent wetlands and watercourses include, but are not limited to the following: land clearing, soil compaction, excavation, fill, changes in run-off volume and pollutant discharges.

It is important to note that the extension of the upland review area through text amendments to the municipal regulations does not prohibit construction and development within these areas and, therefore, is **not** an unconstitutional "taking" of property. The expanded area simply enables the IWWA to review and evaluate potential impacts of development proposals within this area.

#### POSITION

*CACIWC supports inclusion of a 100-foot Upland Review Area in the municipal inland wetlands regulations as a minimum area of review to properly assess the potential impacts of a proposed activity on inland wetlands and watercourses. Further, CACIWC supports the existing regulations that authorize wetlands agencies to regulate activities in other upland areas that are "likely to impact or affect a wetland or watercourse."*

Establishing an Upland Review Area in the municipal regulations in which the agency regularly evaluates proposed activities and their likely impact on adjacent wetlands and watercourses provides a consistent framework for regulating and permitting activities. Inclusion of an Upland Review Area in the municipal regulations also serves to notify the public and potential applicant as to what activities adjacent to inland wetlands and watercourses require an application for permit.

#### RATIONALE

##### Enabling Legislation

The preamble to the Inland Wetlands and Watercourses Act (Chapter 440, Sec 22a-36 to 22a-45) states the rationale and authority for wetlands and watercourses protection in Connecticut.

"The wetlands and watercourses are . . . essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life."

The preamble also enables local inland wetlands and watercourses commissions to "...protect the citizens of the state by making provisions for the protection, preservation,

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maintenance and use of the inland wetlands and water-courses by:

- minimizing their disturbance and pollution;
- maintaining and improving water quality...;
- preventing damage from erosion, turbidity or siltation;
- preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof;
- deterring and inhibiting the danger of flood and pollution;
- protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and
- protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement..."

### Connecticut Department of Environmental Protection

The 1997 guidance document published by the Connecticut Department of Environmental Protection *Guidelines Upland Review Area Regulations - Connecticut's Inland Wetlands & Watercourses Act* provides the rationale for a 100-foot upland review area. It states that "the DEP believes that a 100-foot wide upland review area is sufficient for reviewing construction activities in areas surrounding wetlands or watercourses because most of the activities which are likely to impact or affect these resources will be located in that area."

### Court Decisions

In *Queach Corporation v. Town of Branford Inland Wetlands Commission* (2001) the Connecticut Supreme Court upheld the 100-foot upland review area with this language in the decision: "Thus, we conclude that the 100-foot upland review area imposed by the regulation is a valid administrative devise reasonably designed to enable the commission to protect and preserve the wetlands located

within [Branford], in fulfillment of its duty under the [act]." And "We note that the department Guidelines for Upland Review Area Regulations under Connecticut's Inland Wetlands and Watercourses Act, the testimony before the commission, and the broad purpose of the act, provided ample evidence for the commission to approve the 100-foot setback."

### Scientific Support

Over the last 20 years, a large body of scientific evidence has determined that protection of the riparian area adjacent to rivers and streams is critical to controlling flooding, erosion, excess sedimentation, and maintaining the hydro-logic balance of those rivers and streams. Based upon these studies, the CT DEP Inland Fisheries Division published a position statement "Utilization of 100-Foot Buffer Zones to Protect Riparian Areas in Connecticut" by Brian D. Murphy that sets policy for the Division that a 100-foot protective buffer is a minimum setback along perennial streams. Similar scientific evidence supports the establishment and maintenance of a minimum 100-foot vegetated buffer to protect inland wetlands from non-point source pollution impacts. Please visit our website [www.caciwc.org](http://www.caciwc.org) for links to additional documents detailing the importance and function of riparian areas.

### Municipal Decisions

Many communities in Connecticut have extended the upland review area to 100 feet, including Middletown, Bristol, Cromwell, Middlefield, Glastonbury and Rocky Hill. Other municipalities have adopted larger regulatory areas around specific water bodies. New Milford and Sherman established a 200-foot regulatory area around Candlewood Lake. Killingworth developed a 500-foot regulatory review area around vernal pools, and Vernon set a 200-foot upland review area along two rivers, the Tankerhoosen and the Hockanum, and five stream tributaries. Also of note is the Town of Burlington that established an upland review area of greater than 600 feet due to the preponderance of steep slopes and the significant sources of groundwater within the community. The quantity and quality of local water resources vary from town to town. Local communities need to evaluate the wetlands and watercourse resources within their own communities, and based upon that evaluation, establish appropriate distances for review of potential regulated activities.

CACIWC's mission is "To promote the statutory responsibilities of Connecticut Conservation Commissions and Inland Wetlands Commissions and to foster environmental quality through education and through the conservation and protection of wetlands and other natural resources."



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# 29<sup>th</sup> ANNUAL MEETING & ENVIRONMENTAL CONFERENCE

## November 4, 2006 in Wallingford, CT

### Keynote Address

#### “Thinking Big & Implementing Big Conservation in New England”



by Whitney Hatch  
Vice President & New  
England Regional Director  
The Trust for Public Land  
Boston, Massachusetts

“Given the municipal and independent character of New England, how can we leverage the vision, the funding and the hard work taking place in most

New England towns to protect our priority lands?”

Whitney Hatch oversees all of the land conservation work and program development undertaken by TPL in the six-state region, and manages TPL’s relationships with all public agencies, donors, and nonprofit partners. In Connecticut TPL’s programs are helping communities achieve their top conservation goals.

### Workshops

#### SESSION 1 9:30 a.m. – 10:30 a.m.

##### **A1. Community Resource Inventory (CRI) On-Line: A Web-Based Resource for Towns**

Overview of the new CRI website that enables access to geographic information. This workshop covers inventories and their role in the planning process. Part II follows (see B2 and C3 hands-on workshops).

*Workshop Leader: John Rozum, The UConn Nonpoint Education for Municipal Officials (NEMO)*

##### **B1. Case Law, Legislative and Regulations Update**

The annual review of new wetlands case law, legislative and regulatory changes. The new DEP model wetlands regulations will be discussed.

*Workshop Leaders: Janet Brooks, D’Aquila & Brooks, LLC, David Wrinn, Office of the Connecticut Attorney General, Mark Branse, Branse & Willis, LLC*

##### **C1. Obtaining & Interpreting Soils Maps with USDA Natural Resource Conservation Service’s New Web- Based County Soils Maps**

An introduction to the new *Soil Survey of the State of Connecticut (2005)*, and how to access the maps and interpret data from the USDA Web Soil Survey and other NRCS websites.

*Workshop Leader: Margie Faber, Assistant State Soil Scientist, USDA NRCS*

##### **D1. Protection of Sensitive Drinking Water Source Areas: A New Critical Role for CCs and IWCs**

PA 06-53 requires notice to DPH when a development is planned in a public water supply drainage area. Learn how CCs and IWCs can help protect critical drinking water source areas in land use decisions.

*Workshop Leader: Lori Mathieu, State of CT Department of Public Health (DPH) Drinking Water Section*

#### SESSION 2 10:45 a.m. – 11:45 a.m.

##### **A2. Protecting State & Municipal Open Space Lands from Encroachments**

Implementing Public Act 06-89 “An Act Concerning Encroachment on Open Space,” a valuable tool for state and municipal landowners.

*Workshop Leader: Janet Brooks, D’Aquila & Brooks, LLC*

##### **B2. Using GIS & Mapping Tools to Create a Customized CRI**

This hands-on workshop is Part II of the CRI Online Workshop (A1). Also see (C3). Using freely available software and the CRI online website, participants will begin to create a customized community resource inventory (CRI) for their towns. The workshop is limited to 20 people.

*Workshop Leaders: Sandy Prisloe, UConn Center for Landuse Education and Research (CLEAR) & John Rozum, The UConn Nonpoint Education for Municipal Officials (NEMO)*

##### **C2. Getting the Most Out of Site Development Plans**

A hands-on workshop to sharpen site plan review skills. Learn how to identify features on development plans, measure distances and calculate slopes, and assess potential impacts to on-site natural resources. Also, a quick review of the two major guidance documents, and how to use them.

*Workshop Leader: Wendy L. Goodfriend, Natural Resource Specialist, Connecticut River Coastal Conservation District*

## D2. Ensuring Citizen Access: CT Freedom of Information Act

This workshop will review commission requirements to ensure compliance with the Connecticut FOI Act and how to conduct open and ethical proceedings.

*Workshop Leaders: Staff, Connecticut State Freedom of Information Commission*

**SESSION 3**      **2:15 p.m. – 3:30 p.m.**

## A3. Connecticut's 2005 Wildlife Conservation Strategy: The Role of Municipal Land Use Commissions

The Connecticut 2005 Comprehensive Wildlife Conservation Strategy identifies species of greatest conservation need, key habitats, problems, etc. Land use considerations implemented at the municipal or regional levels can help reverse wildlife population decline.

*Workshop Leader: Gregory Chasko, Assistant Director, CT DEP Wildlife Division*

## B3. Storm Water Management Solutions That Protect Watersheds

A brief review of storm water issues and the LID approach. Current research on bioretention, green roofs and porous pavements. Alternative storm water techniques, including advantages/disadvantages of different systems. Determination of appropriate treatment system for specific sites. Maintenance issues.

*Workshop Leaders : Michael Dietz, The UConn Nonpoint Education for Municipal Officials (NEMO) & Philip Moreschi, P.E., Fuss & O'Neill, Inc.*

## C3. Using GIS & Mapping Tools to Create Customized a Customized CRI

This hands-on workshop is intended as Part II of the CRI Online Workshop (A1). Also see (B2). Using freely available software and the CRI Online website, participants will begin to create a customized community resource inventory (CRI) for their towns. This workshop is limited to 20 people.

*Workshop Leaders: Sandy Prisloe, UConn Center for Landuse Education and Research (CLEAR) & John Rozum, The UConn Nonpoint Education for Municipal Officials (NEMO)*

## D3. Mapping and Planning Greenways & Blueways

Making successful connections at the local level and planning for recreation and resource greenways. Includes hands on mapping exercises and information about the new GIS "trail attributes" developed by CT DEP.

*Workshop Leaders: Leslie Lewis, CT Department of Environmental Protection, Liz Rogers, USDA Natural Resource Conservation Service, and Paula Stahl & Holly Drinkuth, Green Valley Institute*

## Plan to register early!

Some workshops have limited space. Registrations will be accepted on a first-come, first-serve basis. Conference brochures have been mailed to commissions, but registration materials are also available on our website, [www.caciwc.org](http://www.caciwc.org).

Consider being a sponsor for the annual conference. We need and value your support. See registration form for details.

For conference information call 860.875.4623 or email [todell@snet.net](mailto:todell@snet.net)

### ERT Interactive Map is Complete!

Environmental Review Team reports done over the years are now mapped by town and location of the project reviewed. Visit [www.ctert.org](http://www.ctert.org), click on interactive map, then on any town.

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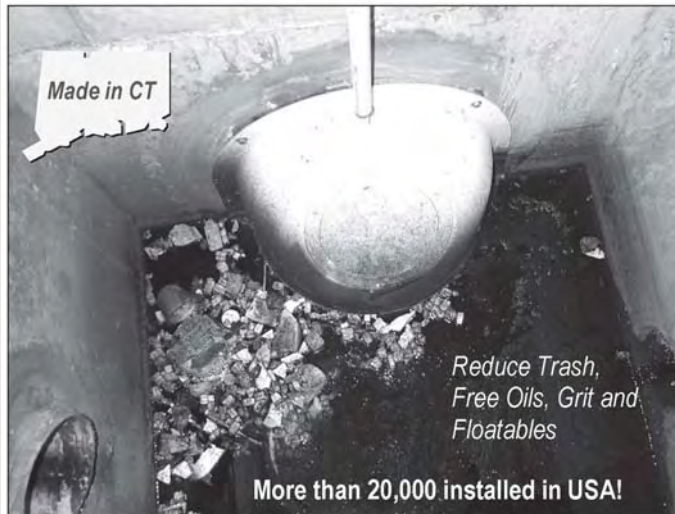


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# THE COMMUNITY INVESTMENT ACT:

## *Investing in Our Home, Heritage and Land*

In 2005 Governor Rell signed into law Public Act 228, also known as *The Community Investment Act*. This landmark piece of legislation will serve to protect and preserve Connecticut for future generations by providing increased funding for municipal capital improvements, open space matching grants, farm viability grants and farmland preservation projects, historic preservation activities, and new and existing affordable housing programs.

**PA 228 FUNDING:** Since October 1, 2005 a \$30 fee has been collected by town/city clerks for the recording of all documents into municipal land records. Documents subject to this fee include, among other things, deeds, mortgages, mechanics' liens, judgment liens, notices of lease, releases of mortgages and liens, name change certificates, notices of variances, and condominium declarations. PA 228 is expected to generate approximately \$27 million per year.

The CT General Statutes specifies how this fee is to be spent. The Town Clerk shall retain \$1 of this fee for record management and related costs. Another \$3 of this fee remains with the municipality to help fund local capital

improvement projects. The remaining \$26 of this fee is then remitted to the State Treasurer's office to be distributed evenly among four state agencies: CT Dept. of Agriculture, CT Dept. of Environmental Protection, CT Commission on Culture & Tourism (Historic Division), and CT Housing Finance Authority.

**PA 228 FUNDS COLLECTED as of JULY 21, 2006:**  
Total for State (to date) = \$14,593,582; \$3.6 m per agency  
Total for Towns (to date) = \$2,245,166

### HOW PA 228 FUNDS ARE BEING USED

#### Funding for Open Space

The Community Investment Act will provide up to \$5 million annually to the CT Department of Environmental Protection for the Open Space and Watershed Land Acquisition Grant Program

This program provides financial assistance to municipalities, nonprofit land conservation organizations and water companies to acquire land for open space.

*Community, continued on page 14*



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**Community, continued from page 13**

Grants may be for the purchase of land that is 1) valuable for recreation, forestry, fishing, conservation of wildlife or natural resources; 2) a prime natural feature of the state's landscape; 3) habitat for native plant or animal species listed as threatened, endangered or of special concern; 4) a relatively undisturbed outstanding example of a native ecological community which is uncommon; 5) important for enhancing and conserving water quality; 6) valuable for preserving local agricultural heritage; or 7) eligible to be classified as Class I or Class II watershed land.

\$1 million of PA 228 funds were added to the June 2006 grant round. Awards to be announced in fall of 2006 with possibility of another grant round in 2006.

For more information on PA 228 funding for open space go to: [www.dep.state.ct.us](http://www.dep.state.ct.us) or call 860.424.3081.

**Funding for Agriculture**

The Community Investment Act will provide up to \$5 million annually to the CT Department of Agriculture for:

*Farmland Preservation Program* – Up to \$4 million will be available to preserve farmland by acquiring development rights to agricultural properties.

*Agriculture Viability Grants [NEW] Grant Awards Totaling \$842,000* have been awarded to farmers, non-profits, municipalities, and regional planning agencies/council of governments for activities that will promote agriculture sustainability, farmland protection, and increase the viability of farm businesses. Another grant round is expected in the fall 2006.

*CT Grown Program* – \$100,000 will be added to the Connecticut Grown Program, an ongoing initiative to increase demand for Connecticut products from within and from outside the region, as well as increase visibility of Connecticut products via the “CT-Grown Logo.”

*CT Farm Link Program [NEW]* \$75,000 will go toward a new program that will match farmland seekers with available farmland. This program will be launched in the fall 2006.

For more information on PA 228 funding for agriculture go to: [www.ct.gov/doag](http://www.ct.gov/doag) or call 860.713.2511 (Farmland Preservation), or call 860.713.2544 (CT Grown and other).

**Funding for Historic Preservation**

The Community Investment Act will provide up to \$5 million annually to the CT Commission on Culture & Tourism for:

*Community, continued on page 15*

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Landscape Architecture  
and Environmental Science



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*Community, continued from page 14*

*Historic Restoration Fund Grants* for the restoration, rehabilitation or acquisition of historic buildings, structures, and objects as well as the investigation of archaeological sites, if the properties are listed on the State Register of Historic Places and owned by non-profit organizations and municipalities; for specifics on grant program go to <http://www.cultureandtourism.org/cct/lib/cct/CapitalImpGrantApp.pdf>

*Supplemental Certified Local Government Program Grants [NEW]* to augment municipal preservation programs and activities eligible for federal funding pursuant to the National Historic Preservation Act of 1966;

*Basic Operational Support Grants [NEW]* to advance the mission of historic preservation organizations;

*Endangered Properties Fund Grants [NEW]* to provide financial assistance for the preservation of historic properties in Connecticut threatened by immediate loss or destruction.

For more information on PA 228 funding for Historic Preservation go to [www.cultureandtourism.org](http://www.cultureandtourism.org); or call 860.566.3005 (Historic Division).

## Funding for Affordable Housing


The Community Investment Act will provide up to \$5 million annually to the CT Housing Finance Authority for:

A new program for developing single family mortgage programs that will increase home ownership opportunities in the federal/state targeted urban areas where the rate is less than 50% through the use of predevelopment funding, construction, and appraisal gap financing.

A new program creating a predevelopment loan program to assist non-profit developers to pay for the costs associated with the preliminary planning and design of affordable housing including architectural, engineering, environmental, market study and appraisal costs.

Development of a new pilot program to provide technical assistance to help suburban and rural communities with the development of appropriate affordable housing. [Request for Proposals - for tech assistance to municipalities to develop affordable housing details](#) go to:

[www.chfa.org/MainPages/finalSuburban-RuralRFP.pdf](http://www.chfa.org/MainPages/finalSuburban-RuralRFP.pdf).

For more information on PA 228 funding for Affordable Housing go to: [www.chfa.org](http://www.chfa.org) or call 860.721.9501. 

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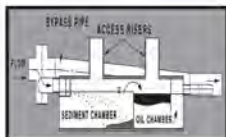
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CONNECTICUT INVASIVE PLANT WORKING GROUP SYMPOSIUM

**Working Together for the Landscape of Tomorrow**

THURSDAY, OCTOBER 12, 2006, 8:00 AM – 4:30 PM

**The Mountainside Resort, Wallingford, CT**

All those interested in invasive plant issues are invited to attend this one-day symposium seeking to draw together members of nursery and landscape professions, conservation organizations, town commissions, gardeners, and the public into a discussion of the challenges presented by invasive plants.

Featured speakers include Connecticut Department of Environmental Protection Commissioner **Gina McCarthy** and **Les Mehrhoff**, Director of the Invasive Plant Atlas of New England. The Plenary Speaker, **Dr. Peter White**, Director of the North Carolina Botanical Garden will address “Linking Ecology and Horticulture to Prevent Plant Invasions.” In the afternoon, concurrent sessions will include alternatives to invasive plants, native landscape restoration, and invasive plant management. A panel of experts will address invasive plant issues raised by the audience. Invasive plants are non-native plants harmful to the environment, such as Oriental bittersweet, autumn olive, multiflora rose, and Japanese knotweed. Non-native invaders displace native plants, reduce biological diversity, and degrade wildlife habitat.

The registration fee of \$35 (postmarked by September 15) includes lunch, educational materials, and free parking. After September 15, the late registration fee is \$45. Check-in begins at 8:00 AM. Sessions will run until 4:30 PM, followed by a social hour. The registration form and agenda are posted on the Connecticut Invasive Plant Working Group website [www.hort.uconn.edu/cipwg](http://www.hort.uconn.edu/cipwg). For additional information, contact Charlotte Pyle, 2006 Symposium Chair at 860.871.4066 or Donna Ellis at 860.486.6448. Associated field trips are also available.

\*Co-sponsored with CACIWC

**Summer 2006**

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