



THE HABITAT

LEGISLATIVE UPDATE: FUNDS FOR OPEN SPACE AND FARM LAND PRESERVATION

*Editor's Note: Congratulations! Your letters, emails, phone calls and attendance at the state capital rallies worked. Now it is time to say **THANK YOU** to the legislative leaders of the Finance, Revenue and Bonding Committee who sought to, and did, sustain funding for open space and farm land preservation. Maintaining some state bonding for these initiatives took environmental foresight and political courage. Names of the legislative leaders to thank are at the bottom of this report. CACIWC's submitted legislative testimony on open space and farm land preservation funding can be found on CACIWC.org.*

On May 1st, the legislature's Finance, Revenue and Bonding Committee presented their proposed bonding budget for the state's fiscal years 2003-04 and 2004-05. The Finance Committee's recommendations for the remaining fiscal year 2002-03 for open space and farm land preservation included open space bond funds and funding for the next two years. If the recommendations are ultimately enacted:

- \$11 million would remain in the current year's (2002-03) budget for the Recreation and Natural heritage Trust Fund (RNHT), all of which is targeted for specific pending projects by the DEP. No funds were recommended for this program for the next two years.
- \$6 million would remain in the current year's budget for the Open Space Competitive Grants program.
- \$2 million would be available in each of the next two years for Open Space Competitive Grants.

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INLAND WETLANDS COMMISSION JURISDICTION TO REGULATE "ISOLATED WETLANDS"

Editor's Note: Recently a municipal inland wetland commission in Connecticut was "threatened" with legal action if they regulated "isolated wetlands", for example—vernal pools. The implied threat was given using the rationale that the US Supreme Court's recent decision limiting the US Army Corp jurisdiction over these wetlands also limited municipal jurisdiction. Curt Johnson, Senior Staff Attorney, Connecticut Fund for the Environment, submitted the following legal guidance for commissions faced with this situation.

The Question Presented:

Do Connecticut Inland Wetland Agencies have jurisdiction over "isolated wetlands" pursuant to our state Inland Wetlands and Watercourses Act (the "IWWA") in light of the recent U.S. Supreme Court decision and EPA guidance document limiting federal Army Corps's Clean Water Act jurisdiction over "isolated wetlands?"

The Answer:

The law is crystal clear on this one. Local Inland Wetland Agencies have primary and

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MAKING A DIFFERENCE!

Celebrating Barbara's Environmental Stewardship



Barbara Obeda receives CACIWC's Lifetime Achievement Award from Alan Siniscalchi, Vice President, at the November 2002 annual meeting.

On March 17, 2003 Barbara Obeda lost a battle with cancer and Connecticut lost a dedicated teacher of natural resource management and a leader in environmental public service. Barbara was one of those unique individuals able to use her knowledge of natural resources, passion for the arts and dedication to social responsibility to teach all ages and persuasions about the benefits and responsibilities of environmental stewardship.

I met Barbara when she asked CACIWC to join with the Connecticut Fund for the Environment to fight for reinstatement to the Brookfield Inland Wetlands Commission. In this case the Connecticut Supreme Court gave a unanimous, precedent-setting decision barring removal of any commissioner by local authorities simply because he/she does not agree with them. Barbara shouted, "WE WON!" — the "WE" meaning all of us that serve as volunteers in public service and strive to carry out our responsibilities as environmental stewards.

In November 2003, Barbara Obeda received CACIWC's Lifetime Achievement and Leadership Excellence Award. It was truly an honor to be able to give her the award. Barbara's dedication to environmental stewardship will be remembered and will continue to make a difference.

~ Tom ODell 

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- \$2 million would be available in each of the next two years for farm land preservation through the Department of Agriculture's Purchase of Development Rights (PDR) program.

This is, in effect, a \$10 million increase over the Governor's proposal, which is very significant in light of the budget climate this year. Your letters and calls worked! But do not stop now.

The full House and Senate approved the appropriations and revenue packages, the Governor vetoed them, and negotiations have started. **The bonding package, which is not part of appropriations, will probably not be voted on by the full legislature until late in the legislative process, and probably will not be altered as much as the appropriations and revenue proposals, BUT IT WILL BE ALTERED.**

Most conservationists have recognized for months that many state programs would need to be significantly reduced, but it is poor policy on a number of levels to **completely eliminate** all new open space bond funding. We know that the state will not be able to acquire as many parcels, or assist as many towns in saving land, as it has the past few years. It is critical, however, that some funding remains to enable the most important tracts that come on the market to be preserved. Unlike delays in highway, building or other bonded state projects, delays in open space projects often mean the project will **never** happen - critical parcels will be sold instead for permanent private use.



Let your legislative representative know that you appreciate the support of the Finance Committee's recommendations. Call them now. Help keep the funding partnership for open space, natural resource protection, and farmland preservation alive and thriving!

Finance, Revenue and Bonding Committee Leadership

Senator Eileen Daily, Chairman (103 Cold Spring Drive, Westbrook, CT 06498)

Representing 33rd District; Chester, Clinton, Colchester, Deep River, East Hampton, Essex, Haddam, East Haddam, Lyme, Old Saybrook, Portland, Westbrook

Representative Andrea Stillman, Chairman

Representing 38th District; Montville, Waterford

Senator Donald DeFronzo, General Bonding Chairman

Representing 6th District; Berlin, Farmington, New Britain

Representative Betty Boukus, General Bonding Chairman

Representing 22nd District; Bristol, New Britain, Plainville

OTHER CACIWC-SUPPORTED ENVIRONMENTAL LEGISLATION

Endangered Lands Coalition: The Protection of Watershed Lands

The Watershed lands Protection Bill, #6681, which would have required conservation easements to be placed on watershed lands owned by water companies before reservoirs could be abandoned or before water

utilities were acquired by, or merged with, other utilities, died in committee when differences between the environment community and the water companies could not be resolved. CACIWC joined the Endangered Lands Coalition to support the concept of this bill. The CONNECTICUT FUND FOR THE ENVIRONMENT will continue to work on this issue. For more information on the program contact Dan Lorimer at 205 Whitney Ave. 1st Floor, New Haven, CT 06511; Telephone 203-787-0646, www.cfenv.org.

Council on Environmental Quality (CEQ) and Department of Agriculture

The Governor's budget eliminated funding for CEQ and proposed to merge the Dept. of Agriculture with the Dept. of Consumer Protection. The legislature's Government, Administration and Elections Committee did not support this action by the Governor. As we go to press the budget has not been passed and the status of CEQ and the Dept. of Agriculture remains uncertain. CACIWC's legislative testimony on these state budget issues can be found on caciwc.org. CEQ and the Dept. of Agriculture are valuable independent agencies that serve the best interests of Connecticut's environment. If you agree, tell your legislators—NOW!

Department of Environmental Protection (DEP)

CACIWC submitted testimony to the Appropriations Committee supporting funding for DEP staff and programs. (Go to www.CACIWC.org, Environmental Legislation).

Invasive Plants

The conservation community and the nursery and agricultural industries have negotiated an agreement resulting in the Invasive Plants Bill, SB# 1046. The bill has been passed by the Senate and House and awaits the Governor's signature.

The bill bans some aquatic plants, requires boaters to clean their keels, stops the state from buying invasives, and creates a Council to study and make recommendations about controlling invasive plants including education, removal and banning sales. The Council is expected to come back to the General Assembly next year with a list of recommendations

MANAGEMENT OF INVASIVE PLANTS

Protecting Open Space and Wetlands: Tools for Land-Use Boards and Town Staff

Editor's Note: This is the second installment to Open Space Management of Invasive Plants (see the Winter 2003 issue of The Habitat). In this article the role of commissions and town staff is highlighted.

Municipal land use boards and town staff now have access to the necessary tools to take the lead in local campaigns against invasive plants, preventing spread from off-site infestations into open space preserves and wetlands and water-courses. Excellent technical resources and outreach materials have been developed by the Connecticut Invasive Plant Working Group (CIPWG), the Natural Resources Conservation Service (NRCS) and others, downloadable or linked to the CIPWG web site at www.hort.uconn.edu/cipwg. Commissioners or other community volunteers with a particular interest in plants can develop the expertise to screen landscaping plant lists for non-native invasive plant species¹ such as Norway maple and burning bush (winged Euonymus); and check applicants' and municipal invasive species management plans for consistency with published guidelines. They can also provide further guidance to their town: printing or ordering the most relevant fact sheets, setting up an in-house slide-show/training field trip, or even hosting a larger forum, perhaps planned jointly with a local conservation group. Posters, display boards, and a slide show may be borrowed from CIPWG. The NRCS (860-871-4066) state office in Tolland can provide an expert speaker. Local perspective is also available from resident experts such as master gardeners and staff in University of Connecticut Cooperative Extension System offices (<http://www.canr.uconn.edu>), and training workshops are held on a regular basis by The Nature Conservancy (860-344-0716) and others.

Town Staff Procedures

The 1998 Connecticut Department of Environmental Protection's (DEP) Policy Statement on Invasive Plant Species underscores the double danger of exposed bare soil - the close link between sedimentation and erosion and colonization by invasive plant species. Strict enforcement by town staff or third party inspectors of the 2002 *Connecticut Guidelines For Erosion and Sediment Control*² will in itself minimize availability of preferred seedbeds for invasive species. A knowledgeable town staff person or knowledgeable commissioner can also direct and train public works and parks department crews to eliminate beginning infestations of certain key species, as a low-cost extension of routine maintenance and inspection procedures.

Major Infestations

Additional funds will be needed to control an entrenched infestation outside a preserve (e.g. a roadside), in order to eliminate a major

seed source and thereby reduce future costs for open space management. Knowledgeable commissioners and/or staff need to present a funding proposal to the town council or board of selectmen or prepare grant applications. Grants for vegetation management projects - and for outreach forums - are available from various sources listed in on-line directories. Grantors look favorably on joint projects with citizen conservation groups, which often provide a "match" of volunteer labor.

Planning and Wetland Permitting

Because invasive plants often significantly impair wetland functions, wetlands permitting in itself is a powerful, appropriate tool for invasive plant management on privately owned land. An open space subdivision or commercial development can be *designed* so that concentrated development - or an unavoidable wetlands crossing - occupies the portion of the site with a severe infestation, *not* a more pristine portion that is to become protected open space. However, the applicant's baseline environmental survey work must include a vegetation *survey* showing invasive plant distribution.

Project applications may include *enhancement of wetland setback areas* by removal of an infestation of invasive plant species and replacement with native species. Wetlands commissions can and often do ask for buffer enhancement as mitigation for the *indirect impacts* of a development project on wetland functions (e.g. loss of complementary upland habitat and disturbance screening). Invasive removal in buffer areas was part of permit applications recently considered in Milford, Westport, and Cromwell, to name just a few. Sites should be monitored for three to five years, including screening/removal of any invasive plant seedlings by a qualified professional.

Another useful permit stipulation is *preventive plantings, prompt soil stabilization, and weeding* invasive seedlings along newly

created forest edges, to minimize colonization by invasive plants, many of which (e.g. facultative wetland species like multiflora rose) are likely to spread further into wetlands on the site. Bare soil or thin new grass (e.g. along a recently widened road) is an ideal seedbed for invasive species. However, few seeds germinate and few seedlings survive along an established forest edge with dense established vegetation, thick litter, and lower light levels. Occasional all-native hedgerows are encountered, but review of historic aerial photos has shown they were established *prior* to the burgeoning of the seed rain of invasive species in the latter half of the twentieth century. Species effective at “armoring” forest edges include clonal shrubs such as gray dogwood, arrowwood, maleberry, bayberry, and sumac, and dense, clonal perennial wildflowers like goldenrod, ironweed, and Joe-Pye weed. Use of bare root woody stock and a meadow seed mix with shrub seeds will keep costs down, but more follow-up weeding will be needed until shrubs and perennials are well-established. Town & citizen comment letters to DEP may also request preventive edge treatment by the Connecticut Department of Transportation (DOT), whenever work along state highways will require edge disturbance near wetlands. In Middlefield, DOT’s wetlands permit from DEP to widen Route 66 stipulates preventive edge plantings. They were also required along all fairway edges in a recently permitted golf course in South Windsor.

Removal of invasive plant species *within wetlands* seems like an obvious mitigation

choice, consistent with regulatory guidance principles for planning mitigation: “avoid, minimize, restore, replace - in that order.” For example, a plan to remove a severe, spreading infestation of barberry (relatively easy to control), with five years of follow-up weeding along the stream corridor, may be functionally preferable to excavating a new mitigation wetland in intact forested habitat. Unfortunately, applicants are usually *reluctant to propose any additional regulated activity within a regulated wetland area, to minimize the total area of project disturbance*, especially to keep below some real or pre-conceived threshold for regulatory review by wetlands commissions and by the US Army Corps of Engineers. In fact proposed restorative activities in wetlands should certainly not be weighed negatively as commissioners evaluate a wetlands permit application. Proposed wetland restoration activities do need careful review, for example to make sure heavy equipment is used only when the ground is dry or frozen to avoid compacting saturated soil. An additional routine permit from DEP Pesticide Division is needed if herbicides are to be used. But restorative activities *enhance* wetland functions, and should fall in a separate category, provided the area is not to be otherwise disturbed. Connecticut needs an official DEP policy statement supplement clarifying that wetland mitigation involving vegetation restoration is entirely consistent with the 1998 DEP Invasive Plant Policy. 🍁

Sigrun Gadwa, MS, Consulting Ecologist
Carya Ecological Services LLC, Cheshire, CT caryaova@juno.com
with Rema Ecological Services, LLC, Manchester and Newtown, CT

Footnotes

¹ Species on the January 2003 Connecticut List of Non-native Invasive and Potentially Invasive Vascular Plant Species, (L. Mehrhoff, K. Metzler, and E. Corrigan, Center for Conservation and Biodiversity, University of Connecticut, Storrs).

²2002 Connecticut Guidelines For Erosion and Sediment Control; Bulletin 34 (The Connecticut Council on Soil and Water Conservation in cooperation with the Connecticut Department of Environmental Protection)

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A Guide to the Principles and Practices of Local Environmental Administration in Connecticut (3rd Ed.)

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\$6.00 per copy



Order on-line at caciwc.org or send check and mailing information to: CACIWC, PO Box 2373, Vernon CT 06066

NEW RESOURCES FOR COMMISSIONERS!

Best Development Practices

Conserving Pool-Breeding Amphibians in Residential and Commercial Developments in the Northeastern United States

by Michael W. Klemens, Ph.D. and Aram J.K. Calhoun, Ph.D.

This new publication presents ways of dealing with the complexities of protecting vernal pools. Because they are small, vernal pool habitats (both aquatic and terrestrial) are disproportionately impacted by development trends associated with regional, urban and economic growth. As a result, vernal pools - and the species that depend on them - are disappearing and/or being negatively impacted at a rapid rate.

Best Development Practices offers recommendations for protective area requirements around the vernal pool. A key strength of the publication, particularly relevant to commissioners, is the eight page section that describes specific developmental issues and recommends a management approach for each issue that will maintain the integrity of the resource. Drs. Klemens and Calhoun collaborated to produce this highly informative, well-illustrated volume - 57 pages, spiral bound. The cost is **\$10.00** plus tax and shipping; available from the DEP Store online at: <http://www.wherereverythingis.com/depstore>. Or call the store at (860)424-3555 for ordering instructions.

GIS System and CT Data Now Available (and affordable!)

The Connecticut DEP now offers a set of CD-ROMs containing Geographic Information System (GIS) for the entire state. PC users are able to create, view and print their own digital map of any location in Connecticut. Users may zoom in for computer mapped close-ups, systematically pan along an area of interest with ESRI, Inc.'s free ArcExplorer™ viewer, and print the compiled maps.

The 46 data layers, or map features, include: lake location and bathymetry, rivers, streams, roads, town boundaries, dams, aquifer protection areas, water quality classifications, drainage basin divides, DEP property, municipal open space, detailed soil types, wetland soils, bedrock geology, glacial geology, NDDDB Endangered Species information, land use / landcover, leachate and wastewater, water quality, the USGS topographic maps, 1990 aerial photographs, 2000 TIGER/Line Census data and FEMA Flood Zone maps.

The seven CD set includes easy-to-understand instructions on loading the software and viewing the data. It includes tutorial links to get the most out of this exhaustive collection of data. Documentation of each data layer provides a full informational background. An excellent choice for municipal commissions, students, teachers, environmental professionals and all those interested in digital mapping and Geographic Information Systems. The 7 CD set is **\$29.95** and can be ordered from the DEP Store online at: <http://www.wherereverythingis.com/depstore/> click on GIS - or call the Store at (860) 424-3555 for ordering instructions.

Frog Watch

FROGWATCH.org is a great web site for both wetlands and conservation commissions to use to encourage citizens to get involved with the uniqueness of the natural areas we are trying to protect through regulation, open space protection and acquisition. Involving the community in activities like FROG WATCH is an excellent first step in managing open space. Check it out!

The Sprawl Busters Work Book

Connecticut Chapter Sierra Club: Go to <http://connecticut.sierraclub.org>. A link can be found on www.CACIWC.org. 

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regarding which invasive plants should be banned from sale.

In the interim, a one year pre-emption on municipalities instituting individual bans will be in place. Here, compromise was needed - the industry wanted a permanent pre-emption against local bans; Audubon did not want to agree to any pre-emption until a statewide ban was put into place. Rep. Mary Mushinsky suggested a one year pre-emption to sunset at the end of next year's legislative session, (when the Council will have had time to make its recommendations for banning) and Sen. Don Williams agreed.

All Terrain Vehicles (ATV's). Bill 851 originally required all All-Terrain Vehicles to be registered with the State. Also, it would increase the registration fee for ATVs and snowmobiles; create an ATV account within the Conservation Fund to fund ATV-related uses; restrict ATV and snowmobile use on state-owned and-managed lands; and require written consent to operate ATVs on private property. Most important were the provisions for registration and identification so those operating ATVs illegally could be caught. **There have been a number of amendments added that dilute the requirements of this bill - particularly the requirements that protect the environment. Call your legislative representative about your ATV concerns. They need to know.**

Contact Your Legislative Representatives

To identify your local State Senator and Representative and find their address - look on the [General Assembly's web site](#), click on "House" or "Senate" and then on "Find your legislator." You'll then see a list of towns. If your town contains more than one legislative district, you can click on the districts listed for your town, and you'll see a map which will show you exactly which district you're in. OR - look in the blue pages of your phone book under Connecticut - State of, under State Legislators.

Governor John G. Rowland, 210 Capitol Avenue, Hartford, CT 06106, Governor.Rowland@po.state.ct.us

Lt. Governor Rell has been very involved with the Matching Grants Program. Please contact her to express your dismay that this program has been cancelled in the Governor's next two-year budget. Lieutenant Governor M. Jodi Rell, State Capitol, Room 304, Hartford CT 06106, ltgovernor.rell@po.state.ct.us 

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potentially sole jurisdiction over these "isolated wetlands" pursuant to the state IWWA. The U.S. Supreme Court's recent decision limiting Corps jurisdiction over these "isolated wetlands" did so fully recognizing that in passing the Clean Water Act, Congress chose to "recognize, preserve, and protect the primary jurisdiction and rights of States... to plan the development and use...of land and water resources...", such as these "isolated wetlands". *Solid Waste Agency of Northern Cook County v. Corps of Engineers*, 531 U.S. 159 (2001), citing the Clean Water Act, 33 U.S.C. Section 1251(b). The Court reasoned that allowing the Corps to assert federal jurisdiction over these isolated ponds and mudflats, "would result in a significant impingement of the States' traditional and primary power over land and water use." *Supra, Solid Waste Agency of Northern Cook County*.

Local Inland Wetland Agencies are granted clear state authority to regulate isolated wetlands pursuant to the IWWA, Conn. Gen. Stat. Section 22a-36, et.seq. Specifically, the IWWA uses soil type to define wetland boundaries for jurisdictional purposes. See Conn. Gem. Stat. Section 22a-38(15). Thus, local agencies have clear jurisdiction over vernal pools and all other hydrologically "isolated wetlands", so long as these wetlands are composed of the proper soil type.

In limiting federal jurisdiction over these "isolated wetlands", the U.S. Supreme Court expressly recognizes that the power to regulate these wetlands is reserved to the States by both the plain language of the Clean Water Act and constitutional reservations of power. Connecticut has expressly granted valid authority to local Inland Wetland Agencies to regulate these wetlands. Our local wetland agencies may now be the sole protectors of these important water resources.

Addendum: David Wrinn, Assistant Attorney General, CT Office of the Attorney General, concurred with Attorney Johnson, adding, "The state's Inland Wetlands and Watercourses Act is not affected. All inland wetlands—and I mean all—are subject to the regulatory jurisdiction of the municipal commissions organized within the various towns. 'Isolated' has no meaning under our statute." 



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THE HABITAT

*Dedicated to constant vigilance, judicious management and
conservation of our precious natural resources.*



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SAVE THE DATE!

CACIWC IS PLEASED TO ANNOUNCE
THE DATE FOR ITS
26TH ANNUAL MEETING:

Saturday November 15, 2003
8:30 AM – 3:45 PM
The Mountainside
Wallingford, CT

Back by popular demand, CACIWC presents its second daylong annual meeting with speakers and a series of expanded workshops! The workshops will cover topics of current interest and relevance to commissioners. Opportunities to view many informational displays on conservation issues, and the presentation of CACIWC Annual Recognition Awards will complete the scheduled activities. Watch www.CACIWC.org for further updates!

ANNUAL RECOGNITION AWARDS NOMINATIONS

CACIWC is seeking nominations for its Annual Recognition Awards. These awards honor those individuals and commissions who have made outstanding contributions toward resource protection and environmental awareness in meeting the responsibilities provided for in state and local legislation. This year CACIWC will be giving five statewide awards:

- Conservation Commissioner of the Year
- Inland Wetland Commissioner of the Year
- Commission of the Year
- Commission Staff (agent or director)
- Lifetime Achievement Award

Awards will be presented at CACIWC's 26th Annual Meeting on November 15, 2003. **Nominations are due September 22, 2003.** Nomination forms will be accepted by email. If you would like a form, please contact Tom ODell at (860) 399-1807 or email: todell@snet.net. The nomination form can also be downloaded from www.CACIWC.org.