



THE HABITAT

THE 'FACE OF CONNECTICUT' CAMPAIGN: A GREEN AND GROWING VISION FOR CONNECTICUT

Editor's Note: The 'Face of Connecticut' campaign is an aggressive, visionary initiative to significantly increase the state's commitment over the next ten years to plan for responsible growth - protect farmland, preserve critical open space, restore historic structures, and rehabilitate urban spaces and village centers.

After nine months of research and collaboration, CACIWC, with fourteen other land conservation, historic preservation and urban advocates, has launched the 'Face of Connecticut' campaign. Education material and legislation, (Raised Bill No. 7275) can be accessed on CACIWC's home page - CACIWC.ORG.

NOW, the Face of Connecticut Campaign NEEDS YOUR HELP!

Please read the following summary and review the education material and proposed legislation. Then contact your legislator: Go to "Find My Legislator" link on CACIWC.ORG. Ask your legislators to support R.B. No. 7275 An Act Concerning the Face of Connecticut.

To receive alerts or for more information, please contact Tom Odell: email—todell@snet.net, phone 860.399.1807.

Summary

The Face of Connecticut is a diverse landscape of rolling hills, forests, rivers, farms, buildings and streetscapes that reflects our state's rich and diverse history. The Face of Connecticut defines the character of our communities and our quality of life.

The Face of Connecticut Campaign is calling for an urgent \$1 billion state investment over the next ten years to help communities plan for responsible growth, and increase the pace of land conservation, historic preservation and urban restoration to prevent sprawl from degrading our natural resources and destroying the heritage of our communities. The Campaign identifies the following objectives:

Planning – Enhance our Tools for Responsible Growth

- Create incentives for multi-town responsible growth planning by establishing a State OPM-Office of Responsible Growth (OPM-ORG) Planning Grant program to be administered by regional planning organizations.
- Strengthen state, regional and municipal mapping and data collection capacities; institute a statewide layered and coordinated GIS mapping system coordinated by OPM-ORG.

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ENFORCEMENT OF WETLANDS REGULATIONS A Critical Problem in Connecticut

In many cases a better understanding of the legal enforcement methods that are available - and under what circumstances they can and should be used - can help address the problem. To clarify the 'what, where and when' of wetlands enforcement, CACIWC asked Attorney Janet Brooks to provide guidelines for enforcing wetlands laws. Please see "The ABCs of Enforcement by Wetlands Agencies," on page 7.

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Conservation – Protect Natural Resources and Farms

- Increase our investment in preserving prime working farmland.
- Increase funding of DEP’s Watershed & Open Space Matching Grants Program to help communities acquire key natural lands.
- Increase DEP’s capacity to make carefully selected additions to our State Parks and Forest system.

Preservation and Restoration - Invest in Historic Cities And Village Centers

- Establish a grants program that provides incentives for investment in our historic cities and village centers.
- Provide funding for preservation of historic rural landscapes
- Establish a small grants program to assist in identification and registration of properties on the State or National Register of Historic Places.

Stewardship - Protect Our Investments

- Fund Cost Sharing to enable farmers to enhance environmentally sustainable best management practices.
- Increase State Parks and Forests staff to early 1990’s levels by 2012.
- Establish a Stewardship Grants program for Municipalities and Land Trusts.
- Establish a Long Island Sound Stewardship Fund to provide matching funds for new federal program.
- Create a grants program to provide small matching grants for land trusts to strengthen their capacity to acquire and manage critical lands. 

*** The Face of Connecticut coalition organizations:**

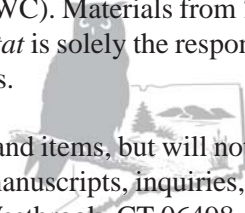
- ♣ American Farmland Trust
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- ♣ CT Assoc of Conservation and Inland Wetland Commissions
- ♣ CT Community Development Financial Institutions Alliance
- ♣ CT Farm Bureau
- ♣ CT Forest and Parks
- ♣ CT Fund for the Environment
- ♣ CT Land Conservation Council
- ♣ CT League of Conservation Voters
- ♣ CT Main Street Center
- ♣ CT Trust for Historic Preservation
- ♣ Sierra Club
- ♣ South Central CT Regional Water Authority
- ♣ The Nature Conservancy
- ♣ The Trust for Public Land
- ♣ Working Lands Alliance

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CONSERVING THE 'FACE OF CONNECTICUT': *CACIWC'S 2007 LEGISLATIVE AGENDA*

CACIWC's efforts in 2007 will focus on legislation that best supports Conservation Commission and Inland Wetlands and Watercourse Commission responsibilities and the conservation and protection of our natural resources. Priorities and legislative actions are described below. Updates on the legislation will be made available, as appropriate, on CACIWC.ORG and CACIWC Listserv. To follow the progress of legislation, log onto the legislature's website, www.cga.ct.gov. At top of home page, type in bill number and click on search.

PRESERVING OPEN SPACE & FARM LAND

Current development patterns threaten the Face of Connecticut and our economic well being. Sprawl is overtaking our working farms at the rate of 6-8,000 acres per year. Our rivers and Long Island Sound are being polluted as fields and forests—our natural storm water filters—are consumed by sprawl's impervious surfaces. We must act now to increase the pace in preserving natural lands and farm lands before it is too late.

The Face of Connecticut Campaign

After nine months of collaborating, CACIWC has joined together with land conservation, historic preservation and urban advocates to launch the 'Face of Connecticut' campaign – an aggressive, visionary initiative to significantly increase the state's commitment over the next ten years to protect farmland, preserve critical open space, restore historic structures, and rehabilitate urban spaces and village centers. This effort has grown out of frustration with the state's declining investment in natural, farm land and historic resources, leading to application backlogs from land owners and municipalities.

The Face of Connecticut campaign is calling for an urgent \$1 billion state investment over the next ten years to help communities plan for responsible growth, and increase the pace of land conservation, historic preservation and urban restoration to prevent sprawl from degrading our natural resources and destroying the heritage of our communities. Please see more detailed description on page 1.

CACIWC PRIORITY - ACTION: *Provide testimony and grass roots leadership to support the Face of Connecticut legislation.*

Funding for the Department of Environmental Protection (DEP) The DEP's scope of responsibility covers all facets of environmental protection and management and reaches

every Connecticut citizen on a daily basis. Yet despite its effectiveness the DEP continues to suffer from staffing restrictions and budget shortages. Program support comes mainly (approximately 70%) from decreasing federal funds. CACIWC is primarily concerned about inadequate staffing in the Bureaus of Water Management, Natural Resources and Outdoor Recreation.

CACIWC PRIORITY - ACTION: *Support legislation that will increase staffing for assisting: Municipal Inland Wetlands Commissions in carrying out their responsibilities (Water Management); for managing state forests (Natural Resources); and for managing and supervising state parks (Outdoor Recreation).*

The Municipal Green Fund Bill, Proposed HB 6560 An Act Concerning a Local Option Municipal Green Fund.

The legislation establishes enabling legislation to permit a conveyance fee of 1.5%. The fee would provide municipalities with approximately \$300 million per year towards a restricted "Green Fund" for projects that meet the regionally important test of improving water and air quality, energy conservation, and transportation efficiency. Green Funds can leverage private, state and federal matching grants. The conveyance fee, a regular local income source, can help secure lower interest rates on municipal borrowing. Over time, those municipalities that choose to enact this fee can chip away at their conservation priorities. Eventually, such a fund will provide huge benefits not only to the local community, but to neighboring towns downstream and to the State as a whole. *CACIWC will provide grass roots support for Green Fund legislation.*

An Act Requiring Environmental Impact Statements Prior to the Conveyance of State Land to a Municipality: Proposed HB 5249

To assure that environmental safeguards are in place prior to conveying parcels of state land to a municipality. The CEPA Working Group, of which CACIWC is a member, is promoting legislation to change certain parts of the Connecticut Environmental Protection Act (CEPA) to require environmental review of state land transfers. Every year state land is transferred to municipalities or other entities without appropriate environmental review. Once the land is transferred environmental review is at the discretion of the party receiving the land. The State would like to ensure that there is an environmental review to guide the proposed transfer and land use following transfer. *CACIWC will support*

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legislation that requires environmental review prior to transfer.

Lump Sum Bonding for Preserving Farmland: Proposed RB No. 6410

Working Lands Alliance's top legislative priority would create lump sum bonding authority for the state's Purchase of Development Rights (PDR) program to preserve working farms. This will help streamline the processing of farm applications by providing lump sums of funding to the Dept of Agriculture (DOA) for the purpose of farmland preservation, as opposed to the current process that requires a specific request for funds one farm project at a time. As we go to press several bills have been introduced to create "lump sum" bonding for the PDR program. *CACIWC will support lump sum bonding for DOA-PDR programs.*

OPEN SPACE MANAGEMENT

All-Terrain Vehicles (ATVs):

CACIWC continues to support the need for legislation requiring that all ATVs must be registered, all must bear identification markers, and that registration fees should be used to purchase lands specifically designated for ATV use.

CACIWC will oppose legislation that will allows ATVs on State Forest land. (It is possible that progress can be made with legislation for enforcing ATV encroachment with vehicle registration in 2007. As we go to press several ATV bills have been submitted).

Invasive Plants: An act concerning an appropriation to control invasive plants. Proposed SB 282

This bill proposes to appropriate the sum of five hundred thousand dollars for the Department of Environmental Protection, from the General Fund, for the fiscal year ending June 30, 2008, for use in invasive plant remediation and control and to implement the recommendations of the Invasive Plants Council. One of the greatest threats to municipal and land trust open space (forests, fields, wetlands and waterways) is invasive plants. *CACIWC will support this legislation.*

Expansion of the Bottle Bill: Proposed H.B. No. 6853

This bill will reduce litter, increase consumer recycling and update the handling fee to better reflect retailer and redemption center costs. *CACIWC will support expansion of*

redemption fees for beverage containers to include PET plastic bottles to help keep municipal and state parks, commuter parking lots, and town and state open space trails litter free.

WATERSHED MANAGEMENT


Clean Water Fund Support: Proposed HB 5010.

This bill proposes to allocate one hundred million dollars to be deposited into the Clean Water Fund for the fiscal years ending June 30, 2008 and June 30, 2009. The Clean Water Fund has had substantial cuts in funding over the last five years halting clean water projects such as eliminating combined sewers and upgrading municipal sewers, thus threatening restoration efforts of major rivers and Long Island Sound. *CACIWC will support legislation that will increase the Clean Water Fund bond allocation, including proposed bill No. 5010.*

Pesticide Use: Use of pesticides on lawns, school athletic fields and town parks contributes to non point source pollution and threatens public health. *CACIWC will supports legislation that reduces pesticide use.*

INLAND WETLANDS AND WATERCOURSE PROTECTION

CACIWC will support legislation that protects inland wetlands and watercourses including legislation that enhances the enforcement of state and municipal wetland regulations. Conversely, CACIWC will oppose legislation that is likely to negatively affect the intent of Connecticut's Inland Wetlands & Watercourses Act.

CACIWC's mission statement includes, "...to promote the legislative mandate of Connecticut Conservation Commissions and Inland Wetland Commissions / Agencies, and to foster environmental quality through education, and through conservation and protection of wetlands and other natural resources." Methods for accomplishing this purpose include providing advice and appropriate action on legislation and governmental affairs. 

PROJECT GREEN LAWN: *HEALTHY LAWNS FOR HEALTHY COMMUNITIES*

The Connecticut River Coastal Conservation District collaborated with the City of Middletown on **Project Green Lawn**, a public awareness campaign to encourage residents and businesses to maintain healthy lawns free of synthetic pesticides and fertilizers. Below is a summarized version of the educational brochure that was published for the campaign, which is available on the District website: www.conservect.org/ctrivercoastal. Please contact us at 860.346.3282 if you have questions or would like additional information, or if you are interested in initiating a similar campaign in your town.

Everybody wants a lush green lawn—but at what cost? Many people don't realize that lawns maintained with synthetic fertilizers and pesticides pose a serious health threat to people, pets and the environment. Lawns also decrease natural habitat vital to wildlife.

Why Chem-Free?

Lawn care chemicals—applied by homeowners or lawn care companies—contain potent toxins that kill organisms considered pests, such as dandelions and grubs. Scientific evidence shows that these chemicals also affect people, especially children, and pets. Exposure to certain lawn care pesticides has been associated with increased risks of a variety of health problems, including asthma, several types of child and adult cancers, and cancers in dogs.

The effects of harmful lawn care chemicals reach far beyond your family and yard. These chemicals can make their way into the environment through rain runoff, polluting streams and groundwater, and move through the food chain, becoming more concentrated.

Using herbicides and pesticides to tackle weeds and insects can actually be counter-productive to your lawn's health. These poisons also kill good organisms in the soil that help produce nutrients plants need to grow. This weakens the grass, fosters thatch and encourages disease.

How to Have a Healthy Lawn and Yard


Fortunately, you can have an attractive and healthy lawn without using harmful synthetic chemicals. You can make simple changes, like mowing higher (3"), leaving your grass clippings on the lawn, using organic fertilizers, aerating to reduce soil compaction, and de-thatching, to make your lawn healthier and more vigorous naturally.



You can also reduce the size of your lawn by growing a variety of other plants to promote a healthy, diverse ecosystem in your yard. Grass, which requires lots of sun, water and good soil, is one of the highest maintenance plants we can grow. Instead, plant groupings of trees, shrubs, grasses and flowers that are compatible with existing environmental conditions; use ground covers that require less maintenance than grass; and, choose native plants adapted to our climate and conditions.

Finally, use safe alternatives to get rid of common pests. You can pull out dandelions at their weakest—when blooming; eliminate crabgrass by mowing high and using organic fertilizers; treat weeds in driveway or sidewalk cracks with white vinegar; and control grubs with alternatives like beneficial nematodes or Neem.

What More Can You Do?

Are you concerned about others who use lawn care chemicals in your neighborhood or community? You can register with the state for advance warning of nearby spraying on the DEP website at www.dep.state.ct.us/wst/pesticides. You can also talk to neighbors and friends about the harmful effects of using pesticides—both on private property and in public areas like playing fields. Together, by simply changing our behavior, we can make our yards, streams, and local environment better. 

Project Green Lawn is a project of the City of Middletown Public Works Department, Recycling Advisory Committee and Conservation Commission, with support and assistance from the Connecticut River Coastal Conservation District and the Jonah Center. Project Green Lawn was supported by a generous grant from The Rockfall Foundation, Middletown, CT.

NEW WEBSITE TO PROVIDE EXPANDED RESOURCES FOR LAND-USE DECISION MAKERS

Website Permits Easy Mapping of Natural and Cultural Resources

The University of Connecticut (UConn) and the Connecticut Department of Environmental Protection (DEP) unveiled a new website that will allow local land use decision makers to practice better landscape stewardship and protect important natural resources in their communities.

The site, the *Community Resource Inventory (CRI) Online* (<http://nemo.uconn.edu/tools/cri>) enables visitors to create a series of key natural and cultural resource maps for any of the state's 169 municipalities, without any specialized knowledge of mapping or computer mapping technology. These maps provide essential information for land use planning at the local level. The maps are based on CT DEP and UConn statewide data. They include water resources, land cover, protected open space, and wetland and farmland soils, in addition to such cultural information as roads and utility service areas.

DEP Commissioner Gina McCarthy said, "Governor Rell this fall announced a 'Responsible Growth' program that is designed, in part, to provide local land use planners with the information and tools they need to make more informed decisions. This new web site is one important first step in fulfilling that vision and as a result, DEP was pleased to provide financial support for it."

"This site will help local officials and concerned citizens better identify natural resources in their community that should be protected and assist them in determining what steps are necessary to protect them," Commissioner McCarthy said. "This site provides more information to more people and it will improve the local land use planning process all across our state."

The web site was developed at the Nonpoint Education for Municipal Officials (NEMO) Program, which is part of UConn's Center for Land Use Education and Research (CLEAR). NEMO has been working with towns on land use planning since 1991. Officials there say they have wanted to provide mapping services for those involved in local planning for a long time, but had to wait for the technology to catch up.

John Rozum, the Director of the NEMO Program, noted that, "Having a town resource inventory is a critical first step to planning community growth so that it's protective of

natural resources. We've been giving workshops on resource inventories for years, but have found that getting access to mapping data is a real stumbling block. With the new website, local land use planners don't need any technical know-how to get started."

Once a user chooses the town of his or her interest, the website searches databases of statewide resource information to create a series of 14 key resource maps for the town. The user can page through the maps over the web and print them out. In addition, the system allows interactive mapping so users can create, view and print customized maps of their own geographic area and combine two or more of the data layers together.

Emily Wilson, a Geospatial Educator with the NEMO Program and the chief architect of the site, notes that while the site is specifically designed to give access to non-technical types, it can also be a resource for the computer-mapping crowd who use GIS (geographic information system) technology. "GIS users can connect their local projects with the interactive map, so that they can use our data in combination with local zoning, property, or other information."

UConn faculty and DEP officials believe these maps will stimulate and boost local planning discussions and capabilities. "For instance, a conservation commissioner or land trust member might want to combine the open space, wetlands, and stream data to get a better handle on priority areas for conservation," says Rozum. He notes that the UConn team plans to post both theoretical examples and real world Connecticut case studies of how towns can use their resource inventory.

Both DEP and UConn officials point out while the Community Resource Inventory website fills an important gap, technological solutions can only go so far to address the sprawl and smart growth issues so prevalent in public debate over recent years.

"Ultimately, land use in Connecticut heavily involves local people making local decisions," said Commissioner McCarthy. "But with the use of the new CRI website, they will be able to make these decisions with a little more information at their fingertips."

Mapping, continued on page 10



THE ABCs OF ENFORCEMENT BY WETLANDS AGENCIES *by Janet Brooks*

In the last issue I reintroduced the Q & A format that was featured a number of years ago to spark a dialogue between readers and the writers of *The Habitat*. A number of readers pointed out that if I begin by focusing on what a wetlands agency shouldn't be doing (requiring conservation easements as permit conditions), then I should spend a column encouraging a wetlands agency to act. In conjunction with that sentiment and a specific request from CACIWC, this column will explore enforcement actions.

The ABCs could refer literally to the enforcement provisions of the state wetlands law:

- General Statutes § 22a-44 (a): actions conducted at the agency level;
- General Statutes § 22a-44 (b): civil actions by the agency or others in court;
- General Statutes § 22a-44 (c): criminal actions by the state's attorney's office in court.

Or the ABCs could refer to the primary challenges in undertaking enforcement:

- Access to site: can you view the alleged violation?
- Burden of proof: do you have to prove the violation?
- Costs: can you afford to enforce the law?

We'll explore both sets of basics in the course of the column. This article is intended to summarize the existing laws. Be sure to consult your regulations and the statute to adhere to mandatory deadlines or timeframes.

Which Enforcement Action to Choose?

There are different enforcement tools for different problems. Sometimes more than one tool may be appropriate. In addition to the remedies provided in Section 22a-44 of the Connecticut General Statutes, I will add two others for your consideration: **suspension or revocation of a permit**, § 22a-42a (d) (1), and **issuance of a citation**, "ticket" if your Agency has enacted an ordinance (by the town legislative body, not a regulation by the Agency) setting up the citation procedure and mandatory hearing process. (You can access the detailed explanation of the citation process written by Attorney Michael Zizka in the summer 2002 issue of *The Habitat*, available on the CACIWC website.)

1. Are you seeking restoration? The Agency will have to issue an order and/or initiate a court action.

2. Do you want someone to stop violating a wetlands permit, such as not providing specified sedimentation and erosion controls? *If the party is actively engaged in construction activities*, then suspension or revocation of the permit is probably the best means to get the party's attention to stop. But if the construction is dormant due to the weather or because of financing or other reasons, issuing an order will probably be the better alternative.

3. Do you want to deter wrongful conduct by charging for violations? If your town has enacted an ordinance to issue citations, the citation process is efficient, but only if the price is not so low that it's just the "cost of doing business." Caveat: a citation can not require corrective action. If you need restoration, you need another tool as well.

In general, it is better for the Agency to undertake action at its meetings, either by the issuance of an order or the suspension/revocation of a permit than proceeding directly to court. The Agency, which has the burden of proof (see below), has a relaxed standard for the introduction of evidence at an agency hearing in comparison with a court hearing, which works to the Agency's advantage. Also, once the Agency has determined the existence of facts, and there is a basis in the Agency's record for those facts, those facts most likely will be deferred to by the court.

The extraordinary case which may warrant going to court short of completed Agency action is catastrophic run-off or sedimentation that is severely damaging a waterbody, for instance. If the Agency has issued a cease and desist order but the party persists in the damaging activities, immediate court action may be warranted.

Informal vs. Formal Action

Informal action includes a telephone call or a letter requesting answers to questions or appearance at a meeting to discuss a situation. Formal action is action established by statute, such as the issuance of a cease and desist order or the suspension or revocation of a permit. The Agency can

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tailor the formality of its action to the facts in a given case. If informal action yields the results sought, voluntary cooperation or ceasing of an activity until a permit has been issued, nothing further need be done. But failure to comply with an informal act, such as not returning a telephone call or not attending a meeting to discuss a situation, does not rise to a violation of law. If the Agency wants to undertake enforceable action, it must take formal action.

Agency Order vs. Permit Condition

If the Agency wants corrective action undertaken, the only way the Agency can enforce the corrective action is by issuance of an order. It may seem easier to include the corrective actions as a permit condition if the party is currently before the Agency for a permit application. However, a permit is “permission” to undertake specific acts, it is not a requirement to do so. If the permittee loses financing or interest in going forward, the Agency will not be able to enforce the permit condition requiring corrective action, if the permittee isn’t conducting activities approved by the permit.

Access to Site

Can you enter onto private property to investigate possible or known wetlands violations?

Without the consent of the property owner neither the Agency nor the town staff has legal authority to enter private property to investigate violations of the wetlands law. Wetlands agencies are not protected from claims of trespass when carrying out their duties. In contrast, the Department of Environmental Protection does have explicit protection from trespass claims, because the legislature included protective language in the DEP statutes. See General Statutes § 22a-6 (a) (5) (“(a) The commissioner may: . . . (5) in accordance with constitutional limitations, enter at all reasonable times, without liability, upon any public or private property, except a private residence, for the purpose of inspection and investigation to ascertain possible violations of any statute, regulation, order or permit administered, adopted or issued by him and the owner . . . shall permit such entry, and no action for trespass shall lie against the commissioner for such entry . . .”).

The 2006 DEP Model Regulations now reflect this correct legal position. All references to entering property without consent have been deleted. Your agency should review its regulations and amend them, as needed. The troublesome sections were in Sections 14.1 and 14.2. The 2006 version of the Model Regulations addresses this by revising Sections 14.1, 14.2, and creating a new 14.3.

How can you do your job? View the property from the street. Ask permission of an abutter to observe the neighboring property. Did you try asking the property owner? In some instances DEP can provide the investigatory legwork for your agency. DEP’s authority to enter onto private property, however, does not include your agency accompanying DEP at the site.

Burden of Proof

Whenever the Agency takes any enforcement action, the Agency has the burden of proof. That means the Agency must go first and establish the violation, both factually and within its regulations. The Agency can not pass this duty off on the alleged violator. Even if the Agency writes in its cease and desist order that the party must “show cause” why the cease and desist order should not be upheld, in fact, it is the Agency *and only the Agency* that must establish that a violation has occurred.

This is a reversal of the roles for the Agency. In processing permit applications, the burden of proof is on the applicant to establish it meets the criteria for issuing a permit. Similarly, a person seeking acknowledgement from the Agency that an activity is exempt bears the burden of establishing his/her entitlement to the exemption. All of the expectations that you have of applicants or those seeking to prove their activities are exempt are on your shoulders when undertaking enforcement.

1. Gather and retain evidence

Reduce all observations to paper – whether handwritten, computer-generated or photographic. No specific format is required. What is clear on the 1st site visit after a rainstorm may become blurred or totally lost after the 4th or 14th visit. At the very least, include the date, weather, time of day of the observations and who was present. If there was dialogue with anyone, including the potential wrongdoer, provide a written summary.

For photographs, the back of the photo should be marked with the date and approximate location or angle of the photo. The person who took the photo need not be available to authenticate the photo, but someone will have to be able to testify that the photo is accurate.

How do you apply this? The Agency must have evidence in hand before issuing a cease and desist order. The Agency must be able to prove the person or entity receiving the order has violated the wetlands law by undertaking a regulated activity without a permit or has violated a permit. The Agency may NOT use the mandatory hearing on the order to

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gather evidence from the orderee to support issuance of the original cease and desist order. If the potential violation involves wetlands, the Agency will have to be able to establish that the land involved is one of the soil types defined as inland wetlands. That duty cannot be shifted to the orderee. The gathering of photos, reports, field notes and other similar evidence should predate the issuance of a cease and desist order, though it may continue through the hearing and beyond.

2. Present the evidence

At the mandatory hearing on the order the Agency must present evidence first.

The Agency is allowed to accept written and photographic documentation of the violations alleged in a cease and desist order. However, if the orderee appears and disputes the accuracy of the information and there is no live witness for the Agency to inquire, the Agency's documentation may become less credible. Note the brief period to hold and conclude a hearing on a cease and desist order.

3. Consider the rebuttal evidence

The person who received the order must be allowed to rebut the Agency's presentation of the evidence, but is not required to do so. For instance, if the Agency issues a cease and desist order and then fails to enter any evidence into the record of the hearing to substantiate the alleged violations, the Agency can not uphold the order. The orderee is under no obligation to prove the Agency's case. The orderee's silence can not legally be interpreted as a sufficient basis to uphold the original order.

Within ten days after the hearing the Agency is required to determine whether the original order shall remain in effect, be revised or be revoked. That determination must be based on evidence submitted into the record. The evidence will be primarily from the Agency. If the evidence is of a technical nature, the witness must have expertise in that area. (For instance, a certified soil scientist is necessary to establish the existence of wetlands soils.)

These same concepts apply to the Agency when suspending or revoking a permit.

If through the hearing process the Agency determines there

are different reasons from those cited in the notice to the permittee, which could form a basis to suspend or revoke the permit, the Agency must begin again by formally providing written notice of the specific facts which give rise to the Agency considering suspension or revocation and holding a hearing based on the new notice.

Your Agency also needs to prepare the background for the issuance of a citation. A hearing can be invoked by the "ticketed" party. Your Agency will have to substantiate the charges with proof.

The same burden of proof applies when in court. If your Agency is enforcing an order, you will need proof that order was properly issued; that the hearing was properly held; that notice of the final order was sent by certified mail. You will

also need proof that the orderee did not comply with order. Did the order have specific enough requirements (acts, deadlines) so that compliance/non-compliance is clear? Do you have evidence, probably expert evidence, that the orderee did not comply? Do you have a witness, probably an expert, to characterize the nature of the harm from the violation of the order?

Why go to court? If the person or entity does not stop the actions or

does not initiate the restoration, that relief can be provided by a court, after trial. The court can impose penalties, for each day of violation and can award all costs, fees and expenses, such as for experts as well as attorney's fees.

There may be extraordinary instances when it will be advisable to go directly to court prior to the Agency undertaking or completing a cease and desist order process or a suspension/revocation of a permit. That will have to be determined on a case-by-case basis with your town counsel. Most often going to court is the least desirable option. There will be no underlying agency action that can be deferred to and everything will have to be proved in accordance with the formal rules of evidence. It will require a very substantial commitment of time and resources. Moreover, none of it will occur in the evening hours or on days scheduled around the Agency's convenience.


Cost of Enforcement

Your Agency has a duty to enforce the wetlands laws. Do you hear the following? "But we don't have a budget to hire experts." Or: "The town won't let us consult with the town

"Your Agency has a duty to enforce the wetlands laws. Do you hear the following? 'But we don't have a budget to hire experts.' Or: 'The town won't let us consult with the town attorney, it's too expensive.' I urge you to undertake everything within your limits to enforce the law until you have exhausted your resources."


ABCs, continued from page 9

attorney, it's too expensive." I urge you to undertake everything within your limits to enforce the law until you have exhausted your resources. Maybe your Agency can establish permit or other violations with the expertise of commission members. Take steps to suspend or revoke the permit or issue an order. Create a strong administrative record, even if you are not given access to legal counsel to continue enforcing the permit suspension in court. Express your willingness to work with individuals or groups who would take up enforcement in court. "Any person," states Section 22a-44 (b) of the General Statutes, not just the Agency can bring a court action to enforce violations of the wetlands laws. The political winds may change in your town. The residents may eventually decide funding enforcement makes sense for the wise growth of the town.

And what if others go to court before you have started enforcement? Investigate and determine whether you want to join them or assist them. The courts are very interested in hearing from government agencies charged with enforcing the law. Enforcement is not an all-or-nothing proposition. Along the spectrum are informal and formal actions where your Agency can be the lead player as often as it chooses or work in concert with others to enforce the laws. 

Janet P. Brooks practices law at D'Aquila & Brooks, LLC in Middletown

Mapping, continued from page 6

DEP provided a \$35,000 grant to assist with development of the web site. The funds were made available through the Section 319 program of the U.S. Environmental Protection Agency (EPA). The EPA program is designed to assist local governments with managing storm water and other effects of polluted runoff. 

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Center for Land Use Education and Research
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RESOURCES FOR COMMISSIONERS

DEP Training

The DEP's 2007 Municipal Inland Wetland Commissioners Training Program will begin in late March. Brochures for the training program and a voucher allowing one member of the town's commission or staff to attend for free will be mailed to all municipal inland wetlands agencies by mid-February. In addition, you can currently obtain the 2007 program dates and subject matter information by accessing: <http://www.continuingstudies.uconn.edu/professional/dep/wetlands.html>. For further questions contact Darcy Winther, DEP Inland Water Resources Division, 860.424.3019.

Connecticut Bar Association Land-Use Training

March 17, 2007, 8:30-4:00 p.m., Planning & Zoning Section Education and Training, Connecticut Land-Use Law for Municipal Land-Use Agencies, Boards and Commissions, Wesleyan University Exley Science Center Room 550, Middletown, CT

To register, send a check for \$40 to the Connecticut Bar Association, 30 Bank Street, PO Box 350, New Britain, CT

06050-0350. The training is open only to local land use agency members and staff, including consulting engineers, soils scientists, etc. If you have questions, please see www.ctbar.org or contact dgrillo@ctbar.org.

The Green Valley Institute's New & Improved Website!

GVI's new website is easy to navigate and provides a lot more information for those addressing natural resource and community growth issues in the Quinebaug-Shetucket Heritage Corridor and other areas of the state.

Information is organized by topic for municipal leaders, conservation commissioners, landowners and land trusts. There is a new planning and design section that focuses on plans of conservation and development and master plans, land use regulations, community design, smart growth and sustainable development. The conservation commission page has a great new example of a local natural resource inventory and a subdivision review checklist - just to name a few. There is also a publications page with downloadable fact sheets and brochures. Visit thelastgreenvalley.org/gvi.

Resources, continued on page 12

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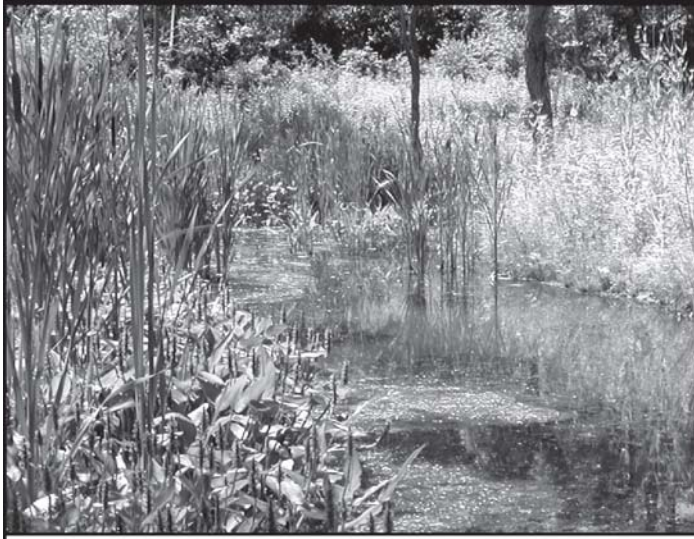
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Resources, continued from page 11

Farmlink

Helping land owners, towns and land trusts to find farmers that want to sell their farms and farmers that wish to sell their land with potential buyers. Go to farmlink.uconn.edu/, or contact Jane Slupecki for more info: 860.713.2588.

Farmlink is another success due to PA 228, the Community Investment Act.

'Our Better Nature'

A new educational website with articles about conservation, open space, pollution prevention, wildlife and general environmental protection topics - ourbetternature.org. The site also has a comprehensive list of acronyms and a glossary of environmental terms. Organizations are welcome to link to the site, and to reprint articles from it for their hard copy newsletters. Suggestions for future articles, comments or corrections: Bet Zimmerman at ebird@charter.net. 

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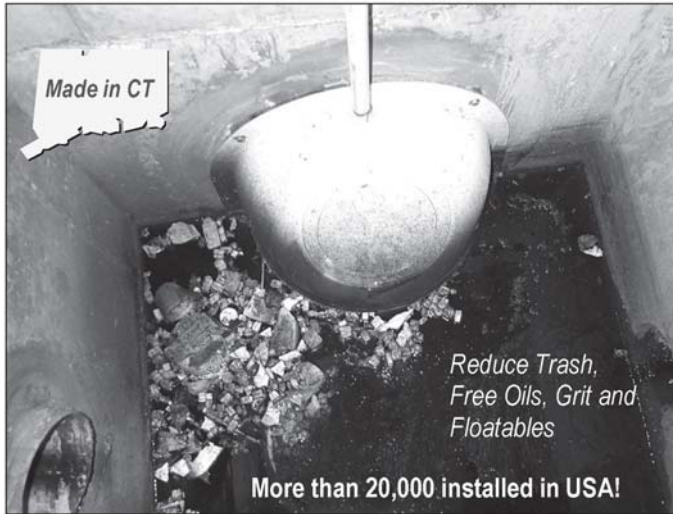
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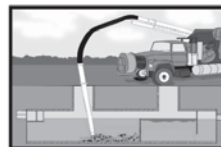
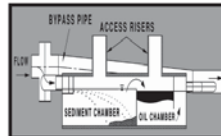
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As of Feb 14, 2007, the following Town commissions have supported CACIWC through membership dues for the 2006-2007 fiscal year (July 1, 2006 – June 30, 2007). THANK YOU! If you do not see your Commission on the list, please encourage your commission to join. (If we are in error we apologize and would appreciate knowing). Member dues are listed on page 2; visit www.caciwc.org for a membership form. Member Commissions receive a copy of *The Habitat* for each commissioner if dues have been paid.

| | | | | | | |
|--------------|-------|---------------|-------|-------|---------------|-------------|
| ANSONIA IW | (SUS) | GREENWICH | CC | (SUS) | POMFRET | CC |
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| BETHANY | CC | HADDAM | CC | (SUS) | ROXBURY | IW |
| BETHANY | IW | HADDAM | IW | (SUS) | ROXBURY | CC |
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| BRANFORD | IW | KENT | IW | | SHELTON | CC |
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| BROOKLYN | CC | KILLINGWORTH | CC | (SUS) | SHERMAN | CC |
| BROOKLYN | IW | LEBANON | IW | (SUS) | SIMSBURY | CC+IW |
| CANAAN | CC+IW | LEDYARD | IW | | SOMERS | CC |
| CANTERBURY | IW | LISBON | CC | | SOUTH WINDSOR | CC+IW (SUS) |
| CANTON | IW | LITCHFIELD | IW | | SOUTHBURY | IW |
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| CHAPLIN | IW | MADISON | IW | | STAMFORD | CC+IW |
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| CHESHIRE | IW | MANCHESTER | Z+IW | | STONINGTON | CC |
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| CLINTON | CC+IW | MANSFIELD | CC | | STRATFORD | CC |
| COLCHESTER | CC | MARLBOROUGH | CC | | SUFFIELD | CC |
| COLUMBIA | CC | MERIDEN | IW | | THOMASTON | IW |
| COLUMBIA | IW | MERIDEN | CC | | THOMPSON | IW |
| CORNWALL | IW | MIDDLEBURY | CC | | THOMPSON | CC |
| COVENTRY | CC | MIDDLEFIELD | IW | (SUS) | TOLLAND | IW |
| COVENTRY | IW | MIDDLETOWN | IW | | TOLLAND | CC |
| CROMWELL | CC | MIDDLETOWN | CC | | TORRINGTON | IW (SUS) |
| CROMWELL | IW | MILFORD | IW | (SUS) | TORRINGTON | CC (SUS) |
| DANBURY | CC+IW | MILFORD | CC | | TRUMBULL | IW |
| DARIEN | CC+IW | MONTVILLE | IW | (SUS) | WALLINGFORD | CC |
| DEEP RIVER | CC+IW | NEW CANAAN | CC | (SUS) | WALLINGFORD | IW |
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| EAST HAMPTON | IW | NEWINGTON | CC+IW | | WEST HARTFORD | Z+IW |
| EAST LYME | CC | NORFOLK | CC+IW | (SUS) | WESTON | CC |
| EAST WINDSOR | CC+IW | NORWALK | CC | (SUS) | WESTPORT | CC (SUS) |
| EASTFORD | CC | NORWICH | CC+IW | | WETHERSFIELD | IW |
| EASTFORD | IW | OLD LYME | IW | | WILLINGTON | CC |
| EASTON | CC | OLD LYME | CC | | WILLINGTON | IW |
| ELLINGTON | IW | OLD SAYBROOK | IW | (SUS) | WINDSOR | CC |
| ELLINGTON | CC | OLD SAYBROOK | CC | (SUS) | WINDSOR | IW |
| ENFIELD | CC | ORANGE | IW | (SUS) | WINDSOR LOCKS | CC |
| ENFIELD | IW | ORANGE | CC | (SUS) | WOODBIDGE | IW |
| ESSEX | IW | OXFORD | CC+IW | | WOODBIDGE | CC |
| FAIRFIELD | CC | PLAINFIELD | IW | | WOODBURY | CC (SUS) |
| FARMINGTON | CC | PLAINFIELD | CC | | WOODBURY | IW (SUS) |
| GLASTONBURY | CC+IW | PLAINVILLE | CC | (SUS) | WOODSTOCK | IW |
| GOSHEN | IW | PLAINVILLE | IW | (SUS) | WOODSTOCK | CC |
| GOSHEN | CC | PLYMOUTH | CC+IW | (SUS) | | |
| GREENWICH | IW | POMFRET | IW | | | |

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In response to a request from the Office of Legislative Research, CACIWC is documenting how many towns have taken this action. Legislation was passed in 2003 and 2004 that enabled Connecticut communities to adopt an ordinance regarding the retail sale or purchase of any invasive plant. The legislation provided a list of 81 plants that have been defined as invasive plants. It also stated that an ordinance could be adopted any time after October 1, 2005. For reference, the legislation is codified in the Connecticut General Statutes under Public Acts 03-136 and 04-203.

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Woodrow Wilson

Winter 2007

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