

The Habitat

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



Winter 2014

volume 26 number 1

Are You Prepared?

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Also see Open Space Guidelines, Page 15.

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Journey to The Legal Horizon

by Attorney Janet Brooks

Results of 2013 Statewide Survey of Municipal Wetlands Regulations:

Upland Review Areas, Vernal Pools & Vegetated Buffers

Attorney Janet P. Brooks

Vanessa Castello, Wesleyan University, class of 2015

For the past decade I have offered a variety of workshops at CACIWC's annual meetings. Usually I choose a topic – or it chooses me, based on a court case or an issue that reflects the pulse of wetlands regulations at the municipal level. This year a different project came begging to be covered. I received an email in the early summer asking if I had heard of a specific town's wetland regulation restricting activities in the vegetated buffer of watercourses. In my opinion it was an "extreme" or "over-the-top" regulation. I sent off inquiries to an attorney who might have assisted the commission in crafting the regulation and to another who, from the state's perspective at the Attorney General's Office, might be aware of it. No and no. Between ten and fifteen years ago, while I was working at the Attorney General's Office, the Department of Environmental Protection put in writing that, due to staff constraints, it was no longer going to review proposed amendments of municipal wetlands regulations. In the second decade of the 21st century I began to wonder what the mosaic of municipal wetlands regulations looked like without an artist controlling the colors and size of pieces. Were there other towns regulating vegetated buffers? What about vernal pools? And, is it true that 100 feet is the most common size of an upland review area?

What started as a vague inquiry developed into a methodical project to survey the definition of "regulated activity" in all municipal wetlands regulations. I began by gathering the verbatim wording of municipal regulations by accessing them from municipal websites. In September 2013 approximately ¾ of all wetlands regulations could be viewed online. With the need to contact 40+ towns by telephone to request definitions of "regulated activity" I expanded the project to work with a Wesleyan University student intern, Vanessa Castello, who assisted in the collection and crunching of data. She is solely responsible for the splendid color charts in a power point presentation available on the CACIWC website. (In this article I will refer to those charts by page number.)

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Editor: Tom ODell

Associate Editor: Ann Letendre

Correspondence to the editor, manuscripts, inquiries, etc. should be addressed to *The Habitat*, c/o Tom ODell, 9 Cherry St., Westbrook, CT 06498. Phone & fax 860.399.1807 or e-mail todell@snet.net.

www.caciwc.org

CACIWC News Briefings

The summer of 2013 marked the start of a special anniversary for our state as we celebrated the beginning of the year-long schedule of **Connecticut State Parks Centennial** events. To honor this historic event, we were very pleased to welcome State Parks Centennial Committee Chair Pamela Adams as the keynote speaker for our **36th Annual Meeting and Environmental Conference** that took place on Saturday, November 16, 2013. Ms. Adams outlined the fascinating history of our state park system, inspiring us to support these important state resources while preserving open space within our own towns. A wide variety of workshops and exhibitors were also recruited for this year's conference, which was hosted at a new location, the Courtyard by Marriott Cromwell. Preparing for our annual conference remains a challenge for our all-volunteer Board of Directors and its Annual Meeting Committee so we were especially pleased with the large number of attendees and other support from our members.

1. The CACIWC Annual Meeting Committee has been reviewing the various comments and suggestions submitted on the survey distributed at our 2013 annual meeting. If you did not have an opportunity to complete the 2013 meeting survey, please contact us with your comments and suggestions at AnnualMtg@caciwc.org. We also welcome early suggestions for workshop topics and speakers that you would like us to recruit for our **37th Annual Meeting and Environmental Conference**, tentatively scheduled for Saturday, November 15, 2014. Please send your ideas to us at AnnualMtg@caciwc.org along with any other suggestions. Watch for additional conference news in upcoming issues of *The Habitat* and on our www.caciwc.org website.

2. The CACIWC Board of Directors has also been reviewing comments on the initial **conservation commission and inland wetlands membership surveys** received to date. Unfortunately, many commissions have not yet completed and submitted their surveys. Your responses to this survey will make valuable contributions to the development our new **strategic plan** and help us develop new educational programs. If you have not yet done so *please complete and mail in your survey* that can be located and downloaded from the home page of our website: www.caciwc.org.

CACIWC news, continued on page 14

Errata: In the last issue of *The Habitat*, Fall 2013 Volume 25, Number 3, in the article, "Running Bamboo—A Management Problem for Natural Areas?", the bamboo species of most concern in Connecticut should have been identified as *Phyllostachys aureosulcata*, yellow groove bamboo, not *Phyllostachys aurea*, golden bamboo.

CACIWC's 36th Annual Meeting & Environmental Conference: Connecticut Commissioners and Staff Celebrate the Connecticut State Parks Centennial and Local Habitat Preservation Efforts

The CACIWC Board of Directors and its Annual Meeting Committee extends their appreciation to the many members and guests who were able to attend our 36th Annual Meeting and Environmental Conference. The conference was held on Saturday, November 16, 2013 at our new location, the Courtyard by Marriott Cromwell. This location was especially appreciated by our many exhibitors, who enjoyed informing visitors near the facility's sunny glass-lined landscaped courtyard. The CACIWC Board of Directors and its Annual Meeting Committee worked for months to bring attendees a wide variety of informative workshops and exhibitors, while working closely with our new venue to recharge you with an improved lunch menu. The initial responses from our conference survey suggested that most attendees welcomed the changes!

❖ Keynote Speaker

CACIWC was pleased to host State Parks Centennial Committee Chair Pamela Adams who spoke on "Celebrating 100 Years of State Parks in Connecticut" as this year's keynote address.

During 2013, the Connecticut Department of Energy & Environmental Protection (DEEP) State Parks Division along with the Friends of Connecticut State Parks (FCSP) and the Connecticut Forest and Park Association (CFPA) organized a Connecticut State Parks Centennial Celebration to recognize the century of park land preservation efforts in Connecticut. CACIWC helped promote this year-long celebration of Connecticut State Parks along with recognition of local parks and open spaces with various presentations scheduled throughout this annual meeting.

Pamela Adams worked for the Connecticut Department of Environmental Protection (DEP) starting in 1976 as an Environmental Analyst. In 1997 she



Attorney Janet Brooks and Wesleyan University student Vanessa Castello present workshop on "CEPA, Upland Review Areas, and Vernal Pools: A Legal Perspective." Photo Courtesy of Rod Parlee.

became the Director of Connecticut State Parks (the first female director), a position she held until her retirement in June 2009. Before joining the DEP, she earned a BA with a double major in biology and geology at Ohio's Wittenberg University and a MS in environmental geology at the University of Connecticut.

Following her retirement, Ms. Adams extended her service in support of Connecticut parks with her appointment on the Board of Directors of the Friends of Harkness Memorial State park, the Friends of Connecticut State Parks, and the Eastern Connecticut Regional Tourism District.

Pamela is very familiar with CACIWC, having served on the Colchester Conservation & Inland Wetlands Commission, including three years as its Chairman.

❖ Elections

In accordance with CACIWC By-laws elections are held every other year at the Annual Meeting. A Nominating Committee, appointed by the President, submits a list candidates who have committed to serving two

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Pamela Adams, CACIWC Key Note Speaker, receiving CACIWC 2013 Lifetime Achievement Award from President Alan Siniscalchi. Photo Courtesy of Rod Parlee.

annual meeting, continued from page 3

years on the Board of Directors as an Officer or County Representative or Alternate. Incumbent members are eligible for renomination.

This year two new County Representatives were elected to the Board of Directors, **Steve Wadelton**, Litchfield County Representative and **Steve Sadlowski**, Windham County Representative. Welcome!

Congratulations to the elected officers, **Alan Siniscalchi**, President; **Laura Magaraci**, Vice President; **Charles Dimmick**, Treasurer; and **Maureen Fitzgerald**, Secretary; and other Board members, **Alicia Mozian**, Representative, Fairfield County; **Ann Beaudin**, Representative, Hartford County; **Marianne Corona**, Representative, and **Heidi Wallace**, Alternate, Middlesex County; **Peter Basserman**, Representative, and **Maria Kayne**, Alternate, New Haven County; **Rod Parlee**, Representative, and **Tom Ouellette**, Alternate, Tolland County.

The Board of Directors extends its deep appreciation and thanks on behalf of the CACIWC membership to **Mary Ann Chinatti**, Representative, New London County and **Dr. Benjamin Oko**, Representative, Litchfield County, for their dedication and contributions to the CACIWC Board. Their talents will be missed but we know where you are.

❖ Awards

Two annual CACIWC awards were given at the Saturday, November 16, 2013 ceremony.

The first was a surprise to the conference attendees. The Annual Meeting Committee decided to recognize the long-term efforts of our keynote speaker, **State Parks Centennial Committee Chair Pamela Adams** with its **2013 Lifetime Achievement Award** for her long-term commitment to the preservation of Connecticut's many

state parks and open spaces. The CACIWC Board of Directors greatly appreciates her many efforts to preserve these important components of Connecticut's natural heritage. The Board is confident that Ms. Adams will continue to endeavor to improve access to these beautiful sites for all our residents, including our youth.

The second annual CACIWC award was presented to the Sharon Inland Wetlands and Watercourse Commission. The Annual Meeting Committee honored them with the CACIWC 2013 "Commission of the Year Award" In presenting this award, CACIWC was pleased recognize the Sharon Inland Wetlands and Watercourse Commission for their fair and objective regulatory work and their education and outreach efforts. The award was graciously accepted by Commissioner Lynn Kearcher.

Workshops & Displays

Four workshop tracks were maintained at the 2013 annual conference: Open Space & Conservation Biology, Land Use Law & Legal Updates, Wetlands Science & Engineering, and Commission Administration & Planning. These four tracks included a total of twelve workshops lead by experts in various interest fields for Connecticut conservation and wetlands commissioners and their staff. The workshops covered a variety of topics relevant to Connecticut commissioners including planning for the future of open space parcels in your community, vernal pool studies, new approaches to use of rain gardens, lake monitoring & management, issues surrounding the debates over dam maintenance or removal, invasive plant & wetlands law updates, and the roles of conservation and inland wetland commissions in the



Emily Wilson and Cary Chadwick present workshop on, "Use of GIS & GPS in Trail and Land Management." Rod Parlee also in picture. Photo Courtesy of Lena Torres.



CT Department of Energy and Environmental Protection's Book Store. Photo Courtesy of Lena Torres.

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planning & zoning application process. Other new topics for this conference were managing streams in urban & suburban environments, the use of GIS & GPS in trail and land management, initial reports on a survey of municipal wetlands regulations, and planning for climate change and extreme weather events...which, fortunately did not impact this year's conference! We thank all the workshop leaders for their time spent preparing and presenting these well received forums. Twenty commercial entities and non-profit groups also provided a variety of displays to further inform visitors of current issues relevant to their work and volunteer efforts.

We again thank the conference attendees and all those responsible for organizing our 36th Annual Meet-

ing and Environmental Conference. The CACIWC Board of Directors has begun a detailed review of the evaluations forms submitted by participants of this conference. In addition to informing us of their opinions of the educational sessions, the participants also provided valuable suggestions for workshop topics for next year's conference. To allow all of our members the opportunity to submit ideas for workshop topics and other suggestions, the CACIWC Annual Meeting Committee has decided to again maintain the AnnualMtg@caciwc.org email throughout the year. Please keep those suggestions coming! We extend our sincere appreciation to our 2013 conference sponsors and look forward to seeing all of you at our 2014 Annual Meeting and Environmental Conference, tentatively scheduled for Saturday, November 15, 2014! 🍂

CONGRATULATIONS

Sharon Inland Wetlands and Watercourse Commission receives CACIWC's 2013 Commission of the Year Award

In presenting the 2013 Commission of the Award at the 2013 Annual Meeting CACIWC was pleased to recognize the Sharon Inland Wetlands and Watercourse Commission for the commission's thoughtful and objective approach to regulation of activity that may impact wetlands and for their unique approach to educating town residents on the importance of these habitats.

The Sharon Inland Wetlands and Watercourse Commission are comprised of a diverse and knowledgeable group of residents. Edward Kirby, Chairman for eighteen years, is a geologist and historian and brings an extraordinary depth to each Wetlands site visit often commenting on the historical nature and geological composition of the land. Mike Dudek is land manager for Sharon Audubon. His knowledge of plant life, invasive species, and potential impacts upon aquatic communities assist in making intelligent decisions as well as advising land owners as to environmentally sound landscape practices.

Sharon Tingley is a landscape designer, advising on native plantings and invasive problems. Harvey

Hayden, a veterinarian by profession, understands the community from a deeply personal perspective and can interface with applicants in a unique way.



Lynn Kearcher, Commissioner, receiving CACIWC's 2013 "Commission of the Year Award" for the Sharon Inland Wetlands Commission from CACIWC President Alan Siniscalchi. Photo Courtesy of Rod Parlee.

Jim Krissel, a farmer and member of both the River Commission and Conservation Committee brings a wide range of knowledge to the committee. Lynn Kearcher, trained as a writer, accomplished much work on Mudge Pond, raising funds, working with the Connecticut Department of Energy and Environmental Protection (DEEP) to reverse eutrophication, and published the Mudge Pond primer. William Trowbridge and Larry Rand are both

educators, deeply invested in the town, and serve on several other committees where they share information about wetlands.

The entire Committee with the guidance of Land Commissioner Jamie Casey worked tirelessly on The Sharon Inland Wetlands Brochure, just published in August 2013. The brochure is a thoughtful and thorough explanation of the importance of Inland Wetlands,

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how ecosystems work, and what landowners can do to protect wetlands. The all-color brochure is used at local grade schools to teach young science students about wetlands and is available for free from the Land Commissioner's office in Sharon as well as available on line on the Sharon website.

While the far-reaching impact of the brochure has yet to be witnessed, Sharon wetlands commission members have already seen the value of its educational impact in regard to applicants' commenting on the content. One applicant said, "The list of native plantings was so helpful I copied it and have given it to every garden club member." Another, a resident of neighboring town Salisbury, requested 20 copies to be given to her conservation committee. A teacher from Kildonan School, who teaches dyslexic children, said she uses the brochure to teach her fourth grade students about wetlands, and that "the students responded well to the color illustrations and pictures."

Editor's Note: *The Sharon Inland Wetland Brochure is excellent. If your commission has education materials for inland wetland public education please let us know so we can share your ideas with others. Contact Editor: todell@snet.net.* 🍀



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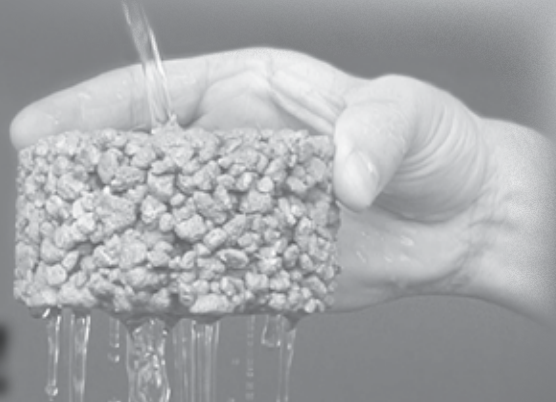
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Native Trees to Plant Now

by Kathy Connolly, MA Landscape Planning and Design, Principal, Speaking of Landscapes, LLC, Old Saybrook, CT

In this second installment to The Habitat's native plant series, we look at native tree selections for streets, parks and plans of development. See the end of the article for a list of trees.

If I were in charge of the country's bumper stickers, I would revise the popular "Plant a Tree" to say "Plant a Native Tree." Why? Native trees are potential ecological powerhouses--much more than attractive additions to a streetscape or park. We should also consider that any newly planted tree, native or not, is a potentially long-term tenant in its place. When we plant natives, we not only support the continuation of those species but many other local life forms—and not just for one season, but potentially a great many.

Traditional public tree selections place a lot of emphasis on height and flowering characteristics, as well as the absence of fruits that can pose hazards to pedestrians. Today, however, there is another important criteria—storm-worthiness. Indeed, unhealthy trees or species that are naturally inclined to drop branches in

wind, such as the Bradford Pear or Tulip Poplar, pose real risks.

It would seem that species that evolved while enduring the weather extremes of a place over millennia should be more storm-worthy than many non-natives. While this is not universally true, some researchers have noted that natives are sturdier in a storm. The tree list at the end of this article is a compilation from several sources, as explained in the footnotes.

Note for future reference: UConn now has a "Storm-wise" program for the study of resilient trees. As of this writing, the program is relatively new and the web site still under construction. Nonetheless, this is an important resource to watch in the coming months. See <http://www.stormwise.info>.

Acquiring Native Trees

Many wholesale nurseries and retail garden centers now identify and promote native plants.

At the same time, the Internet offers authoritative *native trees, continued on page 8*

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sources of information. My personal favorite for plant identification is New England Wildflower Society's "Go Botany" database: <http://gobotany.newenglandwild.org>. It provides a county-by-county view of a plant's origins. For more detailed planting information, I also use the Lady Bird Johnson's Native Plant Information Center: <http://www.wildflower.org>.

There are a few things to ask before shopping for native trees:

1. Will they be planted in an ornamental or restorative setting? Ornamental plantings are usually located in a built environment with a managed landscape. Nursery-bred plants and trees (hopefully sourced within 100 or so miles) dominate this category. Many natives in the nursery trade are "nativars" – cultivars of the species that have been selected for specific characteristics. Ecological restoration, on the other hand, ideally uses true-to-species native plants grown from locally sourced seeds. Restorations usually take place in uninhabited spaces—parks, forest edges, wetlands, and other places where nature can be allowed to do its work with less interference from humans. Ecological restoration is often planned, planted and maintained by someone who specializes in this type of planting.



2. Where can they be purchased? It is true that some selections are easier to find than others. Don't be discouraged--keep asking wholesale and retail nursery stock providers until you get what you're looking for. Municipal buyers can work directly with the state's large wholesale nurseries, such as Pride's in Lebanon and Planter's Choice in Newtown. In addition, there are now two native plant retail nurseries in the state: Earth-tones in Woodbury and Woodland Trails in Eastford.

For a list of natives and their relative availability, UConn's Dr. Jessica Lubell teamed with Bryan Connolly, Massachusetts State Botanist, to create a native tree and shrub list: <http://www.canr.uconn.edu/plsc/plsc/documents/CTNativetreelist.pdf>.

In truth, many wholesalers and retailers now offer natives. But don't assume that everyone in the nursery trade will understand your quest. Some salespeople may think you're primarily looking for something that is not invasive and offer noninvasive non-natives. "After all," the pitch may go, "It's not invasive, it's the same size, it has great flowers, it is easy to grow, and we have many in stock." Others may assume that if you request a native flowering dogwood, *Cornus*

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florida, you're open to all dogwoods—and then suggest the non-native *Cornus kousa*.

In other cases, the salesperson may suggest a “U.S. native.” Unfortunately, trees do not understand our political boundaries. Just because it's native to the southeast does not mean it has as much ecological value in the northeast.

The list below was derived from several reports and studies that note the sturdiness of these trees under storm conditions, as outlined in the footnotes.

TWENTY NATIVE TREES

Less than 20'

- Chickasaw Plum, *Prunus angustifolia* 1, 2
- Flowering Dogwood, *Cornus florida* ‘Appalachian Spring’ or ‘Appalachian Blush’, 1, 3
- Redbud, *Cercis canadensis* 1, 2
- River Birch, dwarf, *Betula nigra* ‘Little King’
- Serviceberry, *Amelanchier canadensis* 1, 3
- CNLA recommends ‘Rainbow Pillar’
- Serviceberry, *Amerlanchier laevis* 1, 3
- Sweetbay magnolia, *Magnolia virginiana* 1

20' – 40'

- American Holly, *Ilex opaca* 1
- American Hophornbeam, *Ostrya virginiana* 1, 3
- American Hornbeam, *Carpinus caroliniana* 1, 3
- Arborvitae, *Thuja occidentalis* 2
- Chokecherry *Prunus virginiana* ‘Canada Red’ 2, 3
- Eastern Redcedar, *Juniperus virginiana* 2
- Hackberry, *Celtis occidentalis* 2, 3
- Hawthorn, *Crataegus viridis* ‘Winter King’ 1, 2, 3
- Hawthorn, Thornless Cockspur, ‘Cruzam’, *Crataegus crus-galli* var. *inermis* 1, 2, 3

Over 40'

- American sycamore, *Platanus occidentalis* 2
- Black Gum, Tupelo, *Nyssa sylvatica* ‘Wildfire’ 1, 3
- Burr Oak, *Quercus macrocarpa* 2
- Pin Oak, *Quercus palustris*, 4
- River Birch, standard *Betula nigra* 1, 4

(Footnotes)

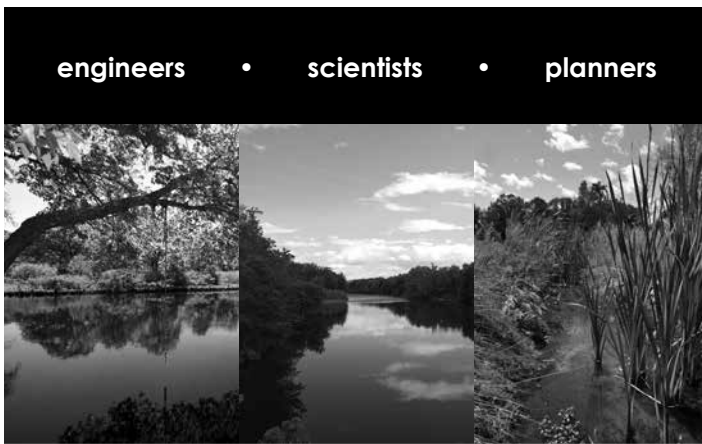
1) *University of Florida Extension System: “Wind and Trees: Lesson Learned From Hurricanes,” Mary Duryea and Eliana Kampf (FOR 118, 2007, 2011). Summarizes the fate of 150 urban tree species during 10 hurricanes and offers a number of lessons, one of which is that native trees perform better in severe storms.* <http://edis.ifas.ufl.edu/pdf/FR/FR17300.pdf>

2) *Natural Resources Conservation Service in “Windbreaks: Their Use,” Morris Houck. Names trees selected for their performance in very dry, windy and unprotected places.* http://www.nrcs.usda.gov/Internet/FSE_PLANTMATERIALS/publications/txpmcot5584.pdf

3) *The Connecticut Nursery and Landscape Association (CNLA) offers a list called “Right Tree, Right Place” to help guide tree planters towards genus, species and cultivar that will perform well in the state. Not exclusively native. Find it at <http://www.flowersplantsinct.com/RightTree.htm>*

4) *Recommendations from Connecticut College Arboretum*

Kathy Connolly has a master's degree in sustainable landscape planning and design from the Conway School. She is an advanced master gardener and an Accredited Organic Land Care Professional. She writes a column for The Day in New London and is a frequent speaker on topics related to landscape sustainability. Call her at 860-388-0710, visit her web site at www.SpeakingofLandscapes.com, or email: Kathy@SpeakingofLandscapes.com. 🍂



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The survey includes the review of the “regulated activity” definition of 95% of all municipal wetlands regulations. We found municipal staff helpful in faxing and/or emailing requested regulations. In 5% of towns contacted, staff even added a link to the regulations on the official website or made them easier to access!¹

We’ll begin by looking at some numbers.

Upland Review Areas

The overwhelming majority (80%) of towns (135) have established a one-size-fits-all upland review area (URA). That is, the size of the URA is the same for a wetland or a watercourse. In contrast, 22 towns (13%) have established a two-tier URA, one for wetlands and another for watercourses. Two towns have set no URA. They share this status with the DEEP, which has also not established upland review areas for state agency activities. *See slide 2 of the power point entitled “Overview of Types of Upland Review Areas (URAs).”*

One-size Upland Review Areas

Of the 135 towns with a one-size-fits-all URA the most common size for that area is 100 feet: 105 towns have a 100-foot upland review area. *See green-coded data points on slide 3 of the power point.* This is an instance where a picture speaks 1,000 words. The green column at the 100 feet data point towers over the minority of towns that are either under or over 100 feet (approximately twice as many “green” towns below 100 feet [19] as above [11]). These one-size-fits-all upland review areas range from 50 feet to 200 feet.

Variable Size Upland Review Areas

Of the 22 towns with one size for wetlands and another for watercourses, 100 feet again is the predominant size, whether it is the size for one town’s wetlands or another town’s watercourses. *See purple-coded points on slide 3 of the power point.* These upland review areas range from 25 feet to 250 feet.

Variable Size Upland Review Areas for Named Resources

A small number of towns set a specific upland review area greater than the generally applicable URA for named streams, ponds, rivers, etc. Because these URAs are protecting special resources they are larger than the previously-mentioned categories, ranging

from 100 feet to 500 feet, with most at 200 feet. *See red-coded points on slide 3 of the power point.*

Vernal Pools

All towns are authorized to regulate vernal pools, because the state wetlands statute defines watercourses to include “vernal” watercourses. I was curious to see if towns were incorporating technical definitions of “vernal pool.” I excluded those definitions which merely indicated that “vernal” means “occurring in the spring.” I looked for a definition with four components: (1) existence of a basin (2) that is wet two months / or dries out (3) that lacks fish and (4) reference to obligate species, whether enumerated or not. Approximately ¼ of all towns (38) have adopted a technical definition of a vernal pool. Eleven (11) towns have adopted an upland review area specific to vernal pools. Those areas range from 100 feet to 500 feet.

Referring to vernal pools; “...even if towns have adopted technical definitions in their regulations, an expert is going to be critical in the town’s review of vernal pool assessments.”

Once we get past the numbers, some interesting differences in wording emerge. The East Windsor upland review area, although the smallest

within the range, 100 feet, is not an upland review area, it is a non-disturbance area. Monroe’s upland review area for vernal pools, the largest in the state (shared also by Killingworth, Redding and Woodbury) at 500 feet is applied if the land exhibits “some characteristics” of a vernal pool. Will landowners know if they fall into the vernal pool category?

Towns without a technical definition in their regulations will need an expert if they wish to dispute the expert opinion of an applicant that a watercourse is or isn’t a vernal pool. That said, even if towns have adopted technical definitions in their regulations, an expert is going to be critical in the town’s review of vernal pool assessments. Another area that would be useful to examine is how many towns have adopted fee regulations that allow the commissions to assess the costs of a town’s expert to the applicant. There are many issues that can be “harvested” from a detailed review of the municipal wetlands regulations.

East Haddam’s vernal pool regulations establish that “all potential vernal pools” which cannot be evaluated to determine their status “are to be considered to be vernal pools for regulatory purposes, until such time as a proper determination can be made.” I understand the commission’s intent, but I struggle to

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find the statutory authority that allows a commission to make a determination before having an evidentiary basis to make it.

Vegetated Buffers or Riparian Corridors

The thinking behind this topic is that protection of the vegetation in areas adjacent to wetlands and/or watercourses yields protections to the wetlands/watercourses. Most often this area is already within an established upland review area. This was a semi-hot topic for legislative amendment in at least three previous sessions of the General Assembly in the past five years. I say semi-hot, because the bills were not successful. At the time I was part of a loose consortium of individuals and interest groups developing language to be proposed to amend the wetlands statute. I was not aware that any of us knew that a handful of towns were already regulating vegetated buffers. This issue was the most interesting topic I examined for the diverse approaches employed by the towns.

Three towns have established definitions of riparian corridor, buffer or non-disturbance area without specific regulation of such area. Those towns include Canterbury, New Milford and Weston. The size of the

corridor, buffer or non-disturbance area would reflect the evidence put forth by the applicant, the public or the commission through its experts.

Five towns have adopted regulatory programs which prohibit activities in a buffer zone with the possibility of agency flexibility: Bloomfield, Killingly, Old Lyme, Pomfret and Windsor. I use the word “buffer” because these commissions intend a no-activity zone, at least as to certain specified activities. The towns vary widely how they accomplish this. One town regulates the area from watercourses: Old Lyme. One town imposes the same width for vegetated buffers from wetland and watercourses: Windsor. Three towns vary the buffer width for wetlands, watercourses, “pocket wetlands,” intermittent vs. perennial streams and specifically named resources: Bloomfield, Killingly and Pomfret. Exactly what is prohibited varies by town. There are various procedures provided to present exceptions or vary the requirements. Some are based on site conditions or minor disturbances (Bloomfield). Others reduce/eliminate the requirements if there is no significant impact (Killingly, Pomfret). One town allows activity in the buffer in exchange for “mitigation,” such as allowing previously disturbed buffer

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area to revert to natural conditions or removing a building or structure in the buffer (Old Lyme).


This is an issue which would benefit from DEEP review. The wetlands act envisions a supervisory role being played by the DEEP. Some of the towns which regulate vegetated buffers articulate that they are doing so to protect wetlands and watercourses. So far, so good. Others express an interest in protecting the buffer itself, i.e., adding another resource to their scope of review. That most likely wouldn't withstand legal scrutiny. The question to keep in mind: as a creature of statute, can the wetlands agency find authorization in the statute to support its action? A number of these towns use wording that would put back into their jurisdiction agricultural and other exempt activities which the legislature has removed from them. It may be that these vegetated buffer regulations are not being implemented contrary to the state wetlands law – but they have used wording which would allow new or less experienced commission members to wander outside of the agency's jurisdiction.

Another reason for DEEP to review the regulations periodically and analyze what agencies have done is to uncover success stories. While gathering all of the definitions of “regulated activity,” I decided to examine how many commissions have adopted language from the DEP 1997 Upland Review Area Guidance Document: **“The Agency may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity.”** Do you recall the advice given to you by the Attorney General's Office at DEP wetlands training to protect your agency's authority to regulate activities that occur outside of wetlands and watercourses and even outside of established upland review areas?

In 2003 the Appellate Court issued its ruling in *Prestige Builders, LLC v. Inland Wetlands Commission*², that a wetlands agency was not authorized to exert jurisdiction over activities unless the agency had adopted a regulation to regulate where the activity occurred. DEP had already recommended, in its 1997 Upland Review Area Guidance Document, that agencies promulgate a regulation to regulate those activities outside of established upland review areas that are likely to impact wetlands or watercourses.

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The results from my survey? You listened and you acted! Seventy per cent of towns (118 towns) have adopted language similar to the sentence in the previous paragraph. It remains unknown whether the Supreme Court will affirm or overrule the *Prestige Builders* holding, but for 118 towns it won't matter, since they have adopted protective language. Again the DEEP is without a regulation authorizing it to act outside of an established upland review area. (DEEP has adopted no upland review area, which distinguishes it from 41 of the 43 towns who also have no *Prestige Builders* protection but have adopted upland review areas.)

My conclusion from undertaking this project is that the municipal agencies are deprived of a valuable resource when DEEP does not perform any supervisory role whatsoever in reviewing the municipal adoption of wetlands regulations. I learned about topics which should be common knowledge and easy to access. Agencies should easily be able to contact other agencies to ask their experience in rolling out a new regulatory program. I gathered notes on other topics as I was methodically reviewing upland review areas, vernal pools and vegetated buffers. I intend to offer

a workshop at the next annual meeting to cover those issues. But that seems too far away to be the sole repository of such information until then. I will be rolling the information out in my blog in small chunks.


As I write this, the last few days of 2013 are expiring. You will be reading it shortly in the New Year. My wish for 2014 -- that DEEP return to "exerc[ising] general supervision of the administration and enforcement" of the wetlands act, as intended by the General Assembly in General Statutes § 22a-39(a), and that all municipal regulations be provided online and easily accessible, for the benefit of agencies, applicants and the public.

For more details on the 2013 Statewide Survey of Municipal Wetlands Regulations, go to www.caciwc.org/pages/annualMtg/index.html#B1.

Janet P. Brooks practices law in East Berlin. You can read her blog at: www.ctwetlandslaw.com and access prior training materials and articles at: www.attorneyjanet-brooks.com.

(Endnotes)

¹ Despite three phone calls to each municipality without online wetlands regulations, eight remained unresponsive. In alphabetical order they include: Bozrah, Canaan, Colebrook, Hartland, Marlborough, Norfolk, Stratford and Wolcott. Members of those commissions are invited to contact me with a copy of the definition of "regulated activity" and also the following, if they exist: "vernal pool," "upland review area" or "vegetated buffer." The survey will be periodically updated.

² *Prestige Builders, LLC v. Inland Wetlands Commission*, 79 Conn. App. 710 (2003), cert. denied, 269 Conn. 909 (2004). 



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3. The Board of Directors appreciated the large number of commissions who renewed their CACIWC membership prior to our annual meeting. For those who have not yet done so, it is not too late to send in your **2013-14 membership dues**. A copy of the renewal form and additional information can still be found on our website: www.caciwc.org. Would you or your company like to provide additional support to CACIWC? The website also provides a description of additional individual and business membership categories. Please consider making an additional contribution to support CACIWC education and outreach efforts!


4. The officers and members the Board of Directors have begun the first year of their two-year term following the elections that took place at our recent annual meeting. Although we were able to fill several vacancies, the New London County director and a number of other **CACIWC board vacancies** remain unfilled (please see the list in this issue of *The Habitat* and on www.caciwc.org). Please submit your name to us at board@caciwc.org if you are interested in serving as the New London County representative, one of

the vacant alternate county representatives, or as one of the alternate at large representative positions.

5. Are you too busy to join the board at this time but would still like to work with CACIWC? We are organizing several additional **CACIWC advisory committees** to help us with our education and outreach efforts, help us select new goals in objectives for our updated **strategic plan**, or participate in the review of legislative initiatives. Let us know by sending your name and interest area to us at board@caciwc.org.

All of us who are beginning our new term on the board are honored to continue to support you, the dedicated members and staff of Connecticut's conservation and inland wetlands commissions. Please do not hesitate to contact us at board@caciwc.org if you have any questions or comments on any of the above items or suggestions for your board of directors.

We thank all of our members throughout Connecticut for your efforts and wish you a safe, healthy, and happy new year.

~ Alan J. Siniscalchi, President 

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Connecticut Department of Energy and Environmental Protection Open Space & Watershed Land Acquisition Grant Program

2013 Grant Round

Application Deadline is March 31, 2014

The Department of Energy and Environmental Protection (DEEP) will be accepting applications from municipalities, non-profit land conservation organizations, and water companies for the competitive Open Space and Watershed Land Acquisition (OSWA) Grant Program. The Grant Program provides financial assistance to municipalities and nonprofit land conservation organizations to acquire land for open space and to water companies to acquire land to be classified as Class I or Class II water supply property.

Grant Evaluation

- DEEP will award grants to projects that offer the highest conservation and recreational value - and that leverage the greatest percentage of private and municipal funding.
- DEEP will seek input from Recreational and Natural Heritage, Open Space & Watershed Land Acquisition Review Board on funding recommendations for responsive grant applications.
- DEEP will not review any applications that are incomplete.

Important Dates

- The deadline for submitting applications to DEEP is **March 31, 2014**.
- DEEP will not review any applications that do not contain all the requisite appraisals by March 31, 2014.
- For your planning purposes, please be aware that grant awards will be announced in early Fall 2014.
- No extensions past the March 31, 2014 deadline will be approved.

Other Important Information

- Please review the application and associated materials carefully.
- Preference will be given to those lands currently available for acquisition within a twelve-month period.
- Funding for this grant round will be made available from Community Investment Act funds held by DEEP, and may be augmented by state bond funds.
- Plan Ahead! DEEP is committed to offering this grant program on a yearly basis with the same schedule.
- For more information or to download the grant application, please visit DEEP's website at www.ct.gov/deep/openspace.
- Questions, contact David Stygar at 860-424-3081, or Allyson Clarke at 860-424-3774; visit the webpage above to find answers to frequently asked questions. ↴

A MUST READ!

“Preserved But Maybe Not” - A Council on Environmental Quality Special Report

The special report analyzes several recent proposals to swap or transfer state conservation lands and finds that three common threads run through the proposals to use conservation lands for other purposes:

- The state land is viewed by those proposing its transfer as being unused, underutilized or vacant, as opposed to serving a specific conservation purpose.
- To the proponents, the door to an exchange appears to be wide open because the conservation lands are not in fact preserved forever in legally binding ways.
- Complete and accurate knowledge needed to make a good decision arrives late in the decision-making process.

The Special Report can be found on the Council's website, www.ct.gov/ceq.



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- **Use of Geospatial Technologies for Management & Mapping**
- **For more information or to register go to: <http://ctconservation.org/>**