

# THE HABITAT

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



Summer 2012

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## Landscape Level Forest Planning:

*Why We Need To Be Thinking Large* by Min T. Huang

Connecticut is one of the most heavily forested states in the United States, with about 60% of the state forested. Healthy forests clean our air and water, shelter our wildlife, sequester carbon, contribute tens of millions of dollars to our economy, and add immeasurably to the quality of our everyday lives. Yet every day, our forests are under threat. Invasive insects and diseases and our dense and growing human population continue to stress our forests in unprecedented ways. Conserving a healthy forest for future generations will require creating public awareness, identifying solutions to our problems and taking action.

### **Thinking Large: Engage All Stakeholders**

The Department of Energy and Environmental Protection (DEEP) Division of Forestry manages Connecticut's State Forests, the largest single landholding in the state, to ensure that a viable and productive forest ecosystem provides clean air, water, carbon sequestration and climate moderation while unique, fragile, and threatened habitats are protected. This management model uses an ecological approach to resource sustainability. A goal for management of state forest lands is to perpetuate a forest ecosystem that graduates native and natural regeneration to the over-story and in doing so, creates a mosaic of different aged stands that acknowledges the habitat needs of native wildlife populations and

protects core old forest land. However, DEEP is just one landowner in the state, over 73% of our forests are privately owned. Another 8% are owned by Municipalities. Thus, if we are to provide, on a landscape scale, the ecological benefits of a healthy forest, we need to engage all stakeholders.

*"The long-term ecological benefits of a healthy forested landscape will only be realized if we work together to meet shared objectives."*

The Connecticut DEEP and the University of Connecticut are collaborating on a project to develop a Decision Support Tool (DST) to better inform long-term stewardship and management of Connecticut's forestlands. As a stakeholder and land owner in Connecticut, we

are asking for your input into this process (contact information - end of article).

### **Thinking Large: Manage Competing Interests**

Connecticut's forests are under increasing pressure not only from development but to competing management interests. The long-term ecological benefits of a healthy forested landscape will only be realized if we work together to meet shared objectives. In order to most efficiently utilize limited financial and human resources, stakeholders' objectives must be considered so that optimal conservation and management decisions can be made that don't jeopardize other important activities or ecosystem functions.

For example, there is a new regional initiative to restore habitat for the New England cottontail, a candidate species for listing under the Endangered Species Act. Though once common throughout New England, this species' historic range has been reduced by over 80%. Connecticut may play a unique role in this restoration effort because, of all the New England states, Connecticut continues to support the most globally significant proportion of the remaining New England cottontail population, and efforts at restoring habitat may

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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](mailto:todell@snet.net).

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## ◆◆◆◆◆ CACIWC News Briefings ◆◆◆◆◆

A large assembly of environmental agencies and organizations was excited to welcome U.S. Interior Secretary Ken Salazar to Connecticut on May 24th to formally designate the Connecticut River watershed as the **First National Blueway**. In addition to preserving important river and watershed areas, the blueway designations are designed to improve recreational access and appreciation of the outdoors and our important natural resources by all members of our society including our youth. The CACIWC Board of Directors will be working closely with commissions throughout the Connecticut River watershed to help inform residents of this important initiative.

1. The CACIWC Board of Directors has begun the process of developing an **updated strategic plan**. During the next several months the Board will review priority goals established for the 2008 plan, evaluate the board's progress in attaining these goals, and select new goals and objectives for the next three to five years. Board members have already expressed a commitment to give our education and outreach activities the highest priority. Initial discussions have also emphasized the need to assign both fiscal and human resources necessary to accomplish these goals including a proposal to hire a part-time Executive Director.
2. **Membership dues** are an essential part of our operating budget. They support various CACIWC programs including our Annual Meeting, educational materials, and *The Habitat*. During its May meeting, the Board voted to support a slight increase in its membership fees for the first time in many years. You will be receiving a reminder and renewal form for the 2012-13 membership year, which begins on July 1, 2012. A copy of this form and additional information can also be found on our website: [www.caciwc.org](http://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!
3. The CACIWC Board of Directors will also be conducting a major review of our **bylaws** during 2012 to determine if any amendments are needed. This review will focus on the composition of board to determine whether the existing eight county-based representative structure should be modified. The Board will also be considering mechanisms that could permit use of virtual meetings and electronic voting for approval of urgent actions between regularly scheduled meetings or during inclement weather. The Board will seek early member feedback on any proposed changes, which must be approved by a majority vote of members at the Annual Meeting or a special meeting of the membership.
4. The Board of Directors is reviewing the many comments and suggestions that were submitted in 2011 annual meeting

*CACIWC news, continued on page 12*



# Journey to The Legal Horizon

by Attorney Janet Brooks

## Expert Opinion - Too Narrow or Too Broad? Fort Trumbull Conservancy, LLC v. New London, 135 Conn. App. 167 (2012)

The role of the expert and expert opinion occupies a central role in the consideration of a wetlands application. Experts weigh in for applicants, environmental intervenors and in third party reviews for the agency. While some may argue that the process now requires everyone to “lawyer-up,” I believe the case law is leading most parties to “expert-up.” A recent case from the Appellate Court articulates the weakness of expert opinion when the scope of the expert’s review is either too narrow or too broad. The Appellate Court ruled in *Fort Trumbull Conservancy, LLC v. New London*<sup>1</sup>, held that neither opinion of two experts met the burden of proof which the environmental organization had to satisfy under the Connecticut Environmental Protection Act.

In this column we are examining a case that does not arise out of a wetlands agency proceeding, or any other land use proceeding. We will not focus on the legal proceeding and certain procedures only available to a judge in a court action, but on the pivotal role of expert opinion -- as the Conservancy ultimately lost its case based on the lack of satisfactory expert opinion.

I will take at face value, and I suggest that you do, too, how the Appellate Court characterizes the expert testimony and opinion. That is, it will not be useful for you to delve into what either of these experts actually did testify to, to determine if the Appellate Court was accurate. From this point forward the only characterization of the experts’ opinion that matters is the court’s.<sup>2</sup> It can’t be known from reading the case whether the scope of the experts (1) was limited by each of the expert’s belief that the narrowness or broadness was appropriate, (2) was limited by what the lawyer asked for, or (3) a combination of the two. We will only focus on why the Appellate Court upheld the trial court judge’s decision, which dismissed the organization’s lawsuit based on the lack of expert

opinion to support the allegation reasonable likelihood of unreasonable pollution to the Thames River.

### *What the Trial Court Did*

The Fort Trumbull Conservancy, LLC (“Conservancy”) brought a lawsuit based on the same law which allows environmental intervenors to participate in wetlands agency proceedings. Without discussing the differences in bringing a direct court action, in the lawsuit the Conservancy alleged that the New London Development Corporation was implementing a storm water management plan on a 45-acre parcel that was reasonably likely to unreasonably pollute the Thames River. At trial the Conservancy offered two experts to substantiate this claim, one a retired biology professor, the other an environmental consultant.

*“Identifying the limitations of an expert’s background, methodology or scope of review -- and doing so on the record -- are ways to bolster the (Wetlands) agency’s decision-making process.”*

Although the Conservancy argued it wasn’t required to present expert opinion to prove its case, the trial court and Appellate Court quickly dismissed that notion, relegating it to a footnote. The specific allegations in the Conservancy’s

complaint included: the “deposition on the property and in the Thames River and waterbodies of at least eighteen contaminants and/or pollutants including but not limited to heavy metals and [polycyclic aromatic hydrocarbons that would] enter the soil, groundwater and surface water . . . and will be transported via storm water from the property to other sensitive receptors away from the property ... *As the [trial] court rightly concluded, those claims involved issues beyond the field of ordinary knowledge and experience of the trier of fact, necessitating expert testimony thereon.*”<sup>3</sup>

Here’s what the biology professor testified to. He examined the life forms in the river and a creek near the storm water system outfalls. He sampled and had

*legal, continued on page 4*

legal, continued from page 3

analyzed a few sediment samples. His objective was to describe the existing conditions and overall health of the river. He testified that it wasn't his job to determine the source of the pollution. He concluded that the river and two related water bodies were degraded.

The environmental consultant's objective was to determine the level of contaminants in the storm water of the 45-acre property in question. He studied the storm water in an area of 312 acres which flowed through the subject property's 45 acres. He acknowledged that the total storm water which flowed through the storm water management system was even larger than the 312 acres. He extrapolated from a 1970s traffic report making certain assumptions to predict contamination leaving the 45-acre site. It came out that he didn't test the storm water entering or exiting the system. He didn't consider the contribution of sources, such as other untreated outfalls, marinas and that the river was an impaired waterbody under federal law. He criticized the Vortechnic system used, although conceding that it was better than nothing. The traffic report and his extrapolations did not account for the improvements in car technology. He said that no other scientist had used his methodology. Further, he testified that he didn't care about jurisdictional boundaries under the law, that the natural system was blind to such limits.

The trial court dismissed the Conservancy's case finding that the opinions of the experts were not sufficient to establish that the Development Corporation caused pollution, let alone unreasonable pollution to the river. To begin, neither expert testified to or was asked whether their opinions were based "on reasonable probability, reasonable certainty or

any other standard which resembled a probability."<sup>4</sup> Next, there was no testimony that linked actual or potential pollution, such as the contamination in the sediment samples, to the Development Corporation's activities. It's what I call "connecting the dots." It's what the court calls "proximate cause." The Conservancy argued that it was "under no obligation to show what is going into the . . . system or even that actual pollution is coming out. . . . it is irrelevant . . . that the pollution is also caused in part . . . by storm water flowing from areas outside the [area]." The trial court and Appellate Court disagreed. Proof of pollution in the general area is not sufficient. If it was beyond the scope of the biology professor's review, it was incumbent upon the Conservancy to present another expert to make that connection. Finally, the trial judge dismissed the environmental consultant's methodology, stating that "in the testing, the selection of testing methods, the selection of testing sites, the decision not to test the water on the way in or out of the Vortechnic systems all make the court conclude that his testimony has no reasonable scientific basis."<sup>5</sup>

### ***What Your Wetlands Agency Can Do***

There are lessons from this case that can be applied to expert testimony before wetlands agencies. This is not limited to environmental intervenors who will be making allegations similar to those made by the Conservancy in its lawsuit. It holds equally for an applicant claiming to cause no harm or the expert conducting a third-party review for the agency. Like the trial judge, the agency is the finder of fact. The agency is not obligated to accept the reports and test results of an expert.<sup>6</sup> Yet the agency can't "capriciously" ignore an expert<sup>7</sup> and certainly not the sole expert on a topic. How can you not act capriciously? By routinely and methodically

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questioning experts who appear before the agency:

- Ask the expert to articulate how certain or how probable his/her opinion is.
- If Expert A states that a pollutant will end up in the water body, can Expert A also connect that pollutant to the applicant's activities? If not, is there an Expert B? If the pollutant ends up in the water body, is there an Expert C who can state that the pollutant in that amount constitutes an adverse impact?
- Is the expert testifying within the area of his/her expertise? You will only know by asking the expert's field of study and work in that field. Is the engineer testifying about a topic that requires a biologist ("the construction of this impoundment won't harm the aquatic life") or is the biologist testifying about a topic that requires an engineer ("this system can be reconfigured to allow the passage of aquatic life")
- If Expert X says s/he draws conclusions from a unique testing methodology, ask for explanations of how the methodology was arrived at, what other experts agree with the chosen methodology, why standard methods weren't employed.

As the "trier of fact," the agency has latitude to reject expert testimony, if not done capriciously. The consideration of expert opinion continues to be a major reason for agency denials to be reversed on appeal. Identifying the limitations of an expert's background, methodology or scope of review -- *and doing so on the record* -- are ways to bolster the agency's decision-making process.

Janet P. Brooks practices law in East Berlin. You can read her blog at: [www.ctwetlandslaw.com](http://www.ctwetlandslaw.com).



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(Endnotes)

<sup>1</sup> You can read the case on the Judicial Website at: <http://www.jud.ct.gov/external/supapp/Cases/AROap/AP135/135AP321.pdf>. Or go to: [www.jud.ct.gov](http://www.jud.ct.gov), click on Opinions, click on Supreme Court Archives, click on 2012, scroll down to "published in the Connecticut Law Journal of 5/1/12, click on the case.


<sup>2</sup> I write this digression because at one of the legal workshops at the 2011 CACIWC annual meeting, an environmental consultant made an impassioned plea and persuasive pitch that the Appellate Court had taken a portion of his report out of context and had mischaracterized his opinion. I was conducting that workshop with Assistant Attorney General David Wrinn and Attorney Mark Branse. Each of us responded that we "felt his pain," adding our examples of how the Supreme Court or Appellate Court had overlooked written arguments that we had made. Regardless of how foolish or inadequate (or worse) such a court opinion might make us feel, we are no longer free to argue "but that's not the way it was, I did make that argument."

<sup>3</sup> (Emphasis added.) Fort Trumbull Conservancy, LLC v. New London, 135 Conn. App. 167, 183 n.11 (2012).

<sup>4</sup> Fort Trumbull Conservancy, LLC v. New London, 135 Conn. App. 167, 174 (2012).

<sup>5</sup> Fort Trumbull Conservancy, LLC v. New London, 135 Conn. App. 167, 189 n.14 (2012).

<sup>6</sup> AvalonBay Communities, Inc. v. Inland Wetlands and Watercourses Agency, 130 Conn. App. 69, 80 n.17, cert. denied, 303 Conn. 908 (2011).

<sup>7</sup> AvalonBay Communities, Inc. v. Inland Wetlands and Watercourses Agency, 130 Conn. App. 69, 81 n.18, cert. denied, 303 Conn. 908 (2011). 

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# Windham County Conservation Consortium

The Windham County Conservation Consortium (WCCC) had their first meeting in October 2008. This new regional conservation consortium was encouraged and supported by the Green Valley Institute (GVI) and CACIWC. CACIWC reported on the initial efforts of the WCCC in *The Habitat* 2009 spring issue. The initial goal of the WCCC was to provide a regional conservation forum for cooperation between the (15) towns in Windham County. Three WCCC meetings are scheduled each year and members generally consist of conservation commission members from the individual towns. Since 2008 four additional towns located in New London and Tolland Counties now attend WCCC Meetings bringing our membership to (19) towns. In addition, the WCCC representing an entire county and beyond has been able to yield much more political clout in responding to environmental issues of concern in eastern Connecticut.

The following areas have been worked at WCCC Meetings over the past four (4) years:

## SHARED KNOWLEDGE

Prior to the WCCC there was very limited communication between conservation commissions in Windham County. Improved communication has resulted in a better understanding of the efforts, successes and strengths of each town's conservation commissions. Sharing information and experiences not only benefits the individual towns but the region as a whole.

## WCCC EDUCATION

The WCCC as a large regional group has been able to draw many well known speakers from the State, towns, corporations and ranks within our conservation commissions.



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The following are some of the presentations and subjects covered at WCCC Meeting:


Franklin Ash Dump  
SMART Recycling, DEEP  
Forest Ecosystem  
Geographic Information Systems (GIS)  
Green energy  
Invasive plants  
Archaeology  
State forestry, DEEP  
Solar, wind  
Borderlands Project  
Natchaug River Basin Project  
Cell Tower Communication Technology

## PUBLIC EDUCATION

The education programs presented at WCCC Meetings are shared with town conservation commissions and citizens. At a 2009 WCCC Meeting, Loretta Wrobel, Ashford, CT, volunteered to organize a five (5) town education workshop, Protecting Family Farms & Forests. The goal was to help educate the public on

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protecting farms and open space in eastern CT. The event included speakers from Joshua's Land Trust, legal, Nature Conservancy/GVI and land owners with conservation easements. The program was a success with (60) people attending the event.

#### FRANKLIN ASH DUMP

WCCC provided support, along with other conservation organizations and elected officials in opposition to the proposed incinerated ash dump in the town of Franklin, CT. This proposal was finally withdrawn by the CRRA in 2009 based on strong objections from conservations groups, citizens and elected officials across the spectrum.

#### RECYCLING

In 2009 the recycling rate in Connecticut was in range of 31% and below the national average. WCCC expressed concern regarding the low recycling rates in the State by writing letters to the DEEP Commissioner/staff and elected officials. WCCC is of the opinion that the State's low recycling rates and high waste stream is both costly and a negative for the environment in the State. WCCC is concerned that the continued low recycling rates in the State has the

potential to increase future needs for incinerated ash dumps in pristine areas, like the one proposed for the town of Franklin, CT.

In January 2012 DEEP personnel gave the WCCC a presentation on their efforts to improve recycling and reduce the waste stream in the State. WCCC continues to follow this situation based on both economics and conservation.

#### FORESTRY - STATE LANDS

In 2010 it was brought to the attention of the WCCC that none of five (5) State forests in Windham and New London Counties (over 41,000 acres) had foresters responsible for management of these State lands. Letters were sent to the DEEP Commissioner, DEEP staff and elected officials expressing concern regarding the expired State forest management plans and the reduction of State land foresters over the past decade or more. WCCC expressed the opinion that our State forests in eastern Connecticut are an environmental asset that needs to be managed and worked for both financial and environmental reasons.

Over the past year DEEP has been made progress by developing a forest management plan at the Goodwin Forest located in the towns of Hampton and Chaplin. The (10) year management plan at Goodwin Forest has been completed and is now in the approval stage at the DEEP in Hartford. In 2011 (3) foresters were hired by the DEEP for a two year period to update forest management plans in the State. WCCC has written a letter to the State legislators and the DEEP staff recommending that the three (2) year forestry positions be made permanent. Making these three positions permanent will allow for continued progress in updating and implementing State forest lands management plans across Connecticut.

#### SUMMARY

Over the past four (4) years the WCCC has become better connected with other external conservation organizations, elected officials, State conservation personnel and individuals on conservation issues in the State. This has allowed the WCCC to be become more aware of issues that can potentially have either positive or negative effects on our environment in eastern CT. Going forward the WCCC will continue to pursue new ideas to improve communication and cooperation between the towns in eastern Connecticut and other external conservation organizations.

Wayne Kilpatrick, Windham County Conservation Consortium (WCCC) 

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## Inland Wetlands and Watercourses Act Connecticut General Statutes Section 22a-40: Permitted Operations and Uses Subsection (a)(1): Farming

**“Sec. 22a-40. Permitted operations and uses.** (a) The following operations and uses shall be permitted in wetlands and watercourses, as of right:

(1) Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale [.]”

1. This statutory subsection pertains to agricultural activities which are permitted in wetlands and watercourses as of right.

1.1. Often referred to as the “exemption” section.

2. This statutory subsection does not apply just to existing operations and uses; it also applies to new or proposed operations and uses.

2.1. The operation and use has no income requirement; it may be a hobby.

3. Court interpretation (case law) states that the Inland Wetlands Agency has the right to determine if a farming activity is exempt pursuant to this statutory subsection. The existence of an exemption (the application of the statutory language to the facts of a particular situation) is not determined by the applicant but rather by the Inland Wetlands Agency. The agency always has the authority to determine the reach of its jurisdiction over inland wetlands and watercourses.

3.1. Person claiming the benefit of the exemption has the burden of proving to the agency that the activity falls within the exemption.

3.1.1. If evidence in the agency’s record equally supports that the activity is exempt and is not exempt, then the applicant has failed to meet the burden of proof and needs to apply for a permit to conduct a regulated activity.

3.2. Exemptions are “narrowly construed,” which means that the agency is precluded from interpreting the exemption more generously, in favor of the person claiming the benefit of it, than the words of the statute allow.

3.3. Exemptions cannot be expanded upon by the agency, even if the agency thinks good policy reasons exist to do so; conversely, exemptions cannot be more narrowly read by the agency than the language of the exemption provision dictates, even if the agency thinks good policy reasons exist to do so.

4. The word “farming” is not defined within the Inland Wetlands and Watercourses Act. Therefore, use the definition found in Connecticut General Statutes Section 1-1(q).

4.1. **“Sec. 1-1. Words and phrases.** (a) In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly.

(q) Except as otherwise specifically defined, the words “agriculture” and “farming” shall include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, poultry, fur-bearing animals and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish; the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by a storm, as an incident to such farming operations; the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or,



in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale. The term “farm” includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoopouses and other temporary structures or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities. The term “aquaculture” means the farming of the waters of the state and tidal wetlands and the production of protein food, including fish, oysters, clams, mussels and other molluscan shellfish, on leased, franchised and public underwater farm lands. Nothing herein shall restrict the power of a local zoning authority under chapter 124.”

5. What is permitted as of right:

- 5.1. Grazing;
- 5.2. Farming;
- 5.2.1 Remember, CGS Section 1-1(q) includes the word “forestry”. According to Webster’s II New Riverside University Dictionary the term forestry means: the art and science of cultivating, maintaining, and developing forests; management of forestland. This can include various silvicultural practices including the harvesting of trees for firewood. Further, CGS Section 1-1(q) also allows for the salvaging of timber left by a storm.
- 5.3. Nurseries;
- 5.4. Gardening;
- 5.5. Harvesting of crops;
- 5.6. Farm Ponds of three acres or less essential to the farming operation;
- 5.7. Clearcutting of timber for the expansion of agricultural crop land;
- 5.8. Activities conducted by or under the authority of the DEP for the purposes of wetland or watercourse restoration or enhancement or mosquito control.

6. What is not permitted as of right and therefore requires an application for a permit:

- 6.1. Farm ponds greater than 3 acres;
- 6.2. Farm ponds of 3 acres or less not essential to the farming operation;
- 6.3. Road construction not directly related to the farming operation (remember, farming includes forestry. Therefore road construction not directly related to the forestry operation is not permitted as of right);
- 6.4. Road construction involving filling of wetlands or watercourses with continual flow;
- 6.5. The erection of buildings not directly related to the farming operation;
- 6.6. The erection of buildings involving filling of wetlands or watercourses with continual flow;
- 6.7. Relocation of watercourses with continual flow;
- 6.8. Filling of wetlands;
- 6.9. Reclamation\* of wetlands;
- 6.10. Filling of watercourses with continual flow;

- 6.11. Reclamation\* of watercourses with continual flow;
- 6.12. Clear cutting of timber for reasons other than the expansion of agricultural crop land;
- 6.13. Mining of top soil, peat, sand, gravel or similar material for the purposes of sale.
- 7. How to proceed with determination of exemption:
  - 7.1. Agency or agent becomes aware of current activity or proposed activity for which no permit has been issued;
  - 7.2. Agency or agent contacts actor requesting explanation;
  - 7.3. Agency or agent requests presence of actor at next regular meeting to establish whether such activity is a regulated activity or a permitted as of right activity -OR-  
Actor files request for declaratory ruling regarding the agency’s jurisdiction (if municipal regulations permit such a filing).
  - 7.4. Agency finds facts which determine whether activity falls within the exemption;
    - 7.4.1. Agency issues a jurisdictional ruling that activity is exempt; or
    - 7.4.2. Agency issues a jurisdictional ruling that a permit be required; or
    - 7.4.3. Agency issues a jurisdictional ruling that portions of the activity are exempt but other portions require a permit.
  - 7.5. If actor is unwilling to cooperate with the agent or agency, and the agency finds the activity is not permitted as of right and therefore needs a permit, the agent or agency may issue, pursuant to Section 22a-44(a) of the General Statutes, an order to cease and correct such activities on the site until the actor has obtained such permit:
    - 7.5.1. Agency must hold a hearing within 10 days of issuance of the order;
    - 7.5.2. Duly authorized agent must offer evidence that the activity is “regulated”;
    - 7.5.3. Burden is on the agency to establish the activity is a regulated activity;
    - 7.5.4. Agency must vote to affirm, revoke or amend the original order within 10 days of the completion of the hearing.
  - 7.6. Agency may proceed directly to court to prevent actor from conducting activity without a permit, -OR- to enforce a final cease and correct order.
- 8. Appeals of municipal inland wetlands agency decisions
  - 8.1. An appeal of an agency decision regarding the application of subsection 22a-40(a)(1) goes to the Superior Court as provided for in section 22a-43 of the General Statutes just like other appeals of agency decisions.

\* *Reclamation*: The term is not defined in the CT Inland Wetlands and Watercourses Act. Webster’s Ninth New Collegiate Dictionary “to make available for human use by changing natural conditions (~swampland).”



forest, continued from page 1

preclude the need for this species to be federally listed. Increased habitat restoration for this species, and other young forest dependent species will likely come at the cost of existing forest, as one of the most effective tools will be to cut existing forest to create early successional habitat. Current focus areas for cottontail restoration overlap some of the best contiguous forestlands in the state.

Another example of a current and future threat to healthy, functioning forestlands is the increasing parcelization of our existing forest lands. Continued development is fragmenting our forests, degrading many of the ecological functions and benefits these forests provide. How do we best maintain contiguous forest while catering to demands for development and continued urbanization? From a conservation standpoint, we all have some vision of what our forests and landscape should look like and the functions those forested landscapes should provide. To realize these visions will require an examination of our objectives and an explicit understanding of the tradeoffs that will be involved in getting to those endpoints. An integral part in the development of this DST will be the spatial component-where on the landscape should we conduct management activities and to what extent.

### **Thinking Large: Agree on Objectives**

The first step in this process is to identify our objectives up front. That is critical. We need to collectively agree upon the objectives that will get us to our goal. Once those objectives are set, we can then start developing optimal policies that get us to that end. In the grand scheme of things, we think that our overall Fundamental Objective (bottom line) for forestland management is to have healthy, fully functioning forests. There are many components, however, that make up a healthy forest and the functions that such a condition provide and to get to this fundamental objective we will need to decide how to weigh the many different things that go into making a healthy, diverse forested landscape. To do this, we need to identify the specific things that will help us achieve our overall objective of a healthy, fully functional forest. For instance, we might feel that part of a healthy forest is to have a mosaic of different aged stands across the landscape, while at the same time, maintaining as much core forest (unfragmented) as possible. These two goals cannot be achieved in the same place, so we need to identify their relative importance to help us balance the two goals across the landscape. On the other hand, we may be more concerned with rare plants and animals, at the expense of all else. Achieving that goal may be at odds with the previous ones. Indeed, conflicts can even

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arise when different rare species have opposing needs. Clearly, balancing the many different things we want from our forests rapidly becomes a highly complex problem.

Our setting of objectives must also take into account scale. The desires of a small landowner (e.g. 20 acres) might be vastly different from those of someone who manages 200 acres or 20,000 acres. However, how one manages one parcel, will, in many instances have an effect on the ecosystem function as a whole. This is particularly the case with regards to fragmentation and parcelization. These potential differences in how the issue of scale affects our attitudes towards management are very important. For example, as a smaller landowner, would you be willing to conduct certain management if doing so was beneficial in the larger landscape context, even though it is not exactly what you would like to see happen on your land? If we are able to do a good enough job of planning at the landscape scale, we may be able to better elucidate the consequences of these types of decisions at the smaller scale. This would then make these types of decisions easier to make and hopefully more efficient.

### ***Thinking Large: Measure Attributes***

It is not enough to just develop a list of objectives. We need to understand what those objectives really mean, how they are related with each other and the consequences of each relative to the others and the overall fundamental objective. That is why we need to define each objective by means of measureable attributes. For instance, it might come to pass that collectively we may want to have a forest composition with appropriate levels of young forest. But, what

does that really mean? From a forest health standpoint this might be 20%. From a shrubland bird perspective maybe it should be 30%. Should there be consideration to the size of young forest patches, or their distribution across the landscape? This may depend on whether we want that young forest to benefit cottontails or birds, or something else entirely. What about the extent of core forest or reducing fragmentation? What are attributes of those objectives that we can use as measuring sticks? These attributes need to be defined so that when we start examining the tradeoffs between alternative management activities we have something to measure.

Key in this entire process is the recognition of wildlife and the effects that forest management activities will have on wildlife. These factors, as well as the impacts of forest management practices on things such as carbon sequestration and water quality, will have to be explicitly modeled and included into our decision making process.

Fortunately, formal methods have been developed to help guide the kinds of complex decisions we are facing. These tools do not actually make decisions – ultimately that is the role of actual landowners – but they can help to make clear the larger consequences of particular actions. In particular, they can help determine whether management aimed at achieving one specific goal, may have unintended consequences that hamper achieving other goals. If you would be interested in assisting us in the development of this Decision Support Tool and in working together to reach shared objectives, please contact us and we will include you in this process.

*Min T. Huang, Migratory Game Bird Program Leader,  
CT Department of Energy and Environmental Protection  
391 RT 32, N. Franklin CT 06254, 860-642-6528,  
Min.huang@ct.gov*



## ANNOUNCEMENTS

### **CEQ**

The Council on Environmental Quality's 2012 Annual Report on the condition of Connecticut's environment is available. For the full report, go to the CEQ website: <http://www.ct.gov/ceq/cwp/view.asp?a=986&Q=477460>.

### **Dues are Due**

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*CACIWC news, continued from page 2*

survey. If you missed the meeting or neglected to complete the survey you can still submit your suggestions for workshop topics and speakers to recruit for our upcoming **35th Annual Meeting and Environmental Conference**, scheduled for Saturday, November 17, 2012. Please send your ideas to us at [AnnualMtg@caciwc.org](mailto:AnnualMtg@caciwc.org) along with any other general suggestions. Watch for additional conference news in upcoming issues of *The Habitat* and on our website: [www.caciwc.org](http://www.caciwc.org).

5. Although the board is continuing to review suggested candidates, many **CACIWC Board vacancies** remain (please see the list in this issue of *The Habitat* and on [www.caciwc.org](http://www.caciwc.org)). The CACIWC bylaws specify that any past or present member of Connecticut conservation or inland wetlands commissions or their agent are eligible to serve. Would you be interested in filling one of these vacancies? Please submit your name to us for consideration at: [board@caciwc.org](mailto:board@caciwc.org).

6. The Board is also continuing its efforts to organize a number of **CACIWC advisory committees** to participate in the review of legislative initiatives and help us with our education and outreach efforts, strategic plan and bylaws revisions. Let us know your interest by sending your name to us at: [board@caciwc.org](mailto:board@caciwc.org).

Thank you again for your ongoing support of CACIWC. Please do not hesitate to contact us via email at [board@caciwc.org](mailto:board@caciwc.org) if you have any questions or comments on the above items or if you have other questions of your Board of Directors.

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

~ Alan J. Siniscalchi, President



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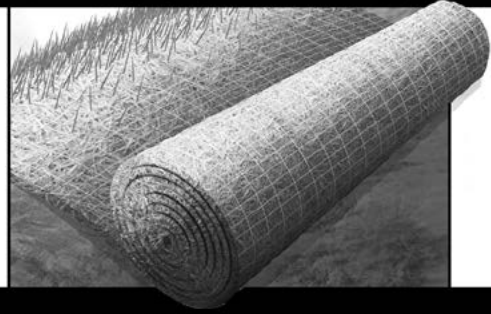
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# The Need for Dedicated Conservation Funding in Connecticut

by Min T. Huang, Migratory Game Bird Program Leader,  
CT Department of Energy and Environmental Protection

Connecticut's woods, wildlife, and rivers are part of our heritage, and it is our duty to take care of them for future generations to enjoy. This is becoming an increasingly difficult task. The continued erosion of financial resources for conservation efforts and an increasing public disconnect with nature are putting great strain on our cherished environment. There is no greater barometer to measure for the health of our environment than the wildlife that inhabits it. As you may know, in our great country, wildlife is public trust, collectively owned by all of us. The rose breasted grosbeak singing in your backyard belongs to society. That red-tailed hawk hunting over your neighborhood belongs to all of us. The white-tailed deer eating your ornamentals is not just your problem, it is our problem. We all have a stake in wildlife and many of our wildlife species are declining. Wildlife in Connecticut is at a crossroads and needs your help.

Given the committee you are a part of, it is likely you are the type of individual or group who does what you can to help conserve the environment. But there are some problems that need a larger, more coordinated conservation effort. Small scale wildlife conservation and habitat stewardship can and does start at home, but because wildlife knows no boundaries, long-term, effective wildlife conservation must be supported by a larger framework. We need your commitment to create that framework, through a dedicated source of money for sustained wildlife conservation.

Where does money for coordinated wildlife conservation come from? By and large, not from tax payer dollars. Currently, on a per capita basis, Connecticut is in the lowest 10% of the country in General Fund dollars spent on conservation. Yet, per capita we are the wealthiest state. Currently, fees from hunting and fishing licenses and a dedicated excise tax on hunting and fishing equipment pay for approximately 80% of the wildlife directed conservation in Connecticut. These monies are primarily directed at game species. However, the work being done to benefit game species has also benefitted many non-game wildlife species. As the numbers of hunters and anglers in Connecticut decreases each year, what effect does it have on our wildlife and their habitats? Given that the vast majority of mon-

ey devoted to wildlife conservation comes from sportsmen, decreasing sportsmen will result in decreased conservation funding and decreased conservation.

What good does a dedicated source of money do for wildlife? You need to look no farther than the game species that have benefited from a stable source of funding. A recent report published by the United States Fish and Wildlife Service on the conservation status of birds throughout North America concluded that the majority of hunted species (e.g. waterfowl) and those species associated with wetlands as a group (about a ¼ of all birds), have increased over the past 40 years. This increase was due largely to the flow of dollars from hunting revenue that is subsequently directed towards wetlands conservation. The North American Wetlands Conservation Act and the Federal Duck Stamp Program have generated billions of dollars for wetland conservation and conserved over 30 million acres of habitat throughout North America. Money dedicated and spent specifically on wildlife conservation has resulted in the protection and enhancement of the natural world that we can all enjoy.

Perhaps you don't hunt, and maybe you do not feel the need to pay for wildlife because you are not a consumer of wildlife. Unfortunately, simply inhabiting the environment and living our daily lives negatively affects wildlife. Predators associated with human housing kill over 1 billion small mammals including rabbits and squirrels as well as over 1 billion birds each year. Windows from each of our homes are estimated to kill at least 1 bird per year, and communication towers and

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*funding, continued from page 14*

powerlines kill over 50 million birds per year across North America. Whether we hunt, harvest, and eat wildlife or are non-hunters and merely going through the daily rigors of life, we are all consumers of wildlife.

But, why should we care about wildlife? Why should wildlife rank high on your environmental priority list? Wildlife serves as a barometer for the overall health of the world we live in. Connecticut's natural environment is increasingly under siege and being destroyed by a wide number of forces, including intensified residential development, fragmentation, pollution, and changing land use patterns. We may be able to continue to enjoy a hike or a bike ride in our fragmented forest lands, but for wildlife, this fragmentation often means the difference between life and death. We are protected by our homes, but for wildlife, the environment is their home. If wildlife can't survive here, is it really healthy for us? Wildlife is our best barometer of environmental health. Remember the canary in the coal mine? What about all the eagles, hawks, and falcons who cracked their eggs as they incubated them because of the effects of DDT pesticides? The health of the canary and the raptors were indicators of the health of the environment for humans.

Although DDT is history now, we see new problems in our own backyards too big to solve as individuals. A new infectious disease has wiped out our local bat populations, and another insidious disease has begun to kill off our frogs. Our parents never had to be concerned about West Nile Virus or Lyme Disease. We do. What will our children and grandchildren have to worry about? A whole suite of new diseases has emerged in the Northeast and pose a significant threat for humans and wildlife. Additionally, pollinators and insect eating birds are disappearing from the landscape

for unknown reasons. If we ignore these distress signals from wildlife, what kind of environment will we leave for our children?

Connecticut's wildlife needs your help. Wildlife and the natural world are in decline due to human activity or inactivity, as it may be. We are responsible for the state of our environment, and it is time we put forth our coordinated monetary resources to insure that we pass along a healthy environment to future generations. Collectively, if we are to stem the current trend in loss of habitat and species, dedicated funding for conservation is sorely needed. These funds are not only necessary for those agencies that are charged with the management of our natural resources, but for all of the local land trusts and conservation commissions that contribute so greatly to the fabric of conservation across our landscape. It is imperative that this funding mechanism be equitable, transparent, and accountable. Above all, it must be immune to the peaks and valleys of changing economic times.

We need your feedback on what sources of funding you would support and what aspects of wildlife conservation you feel needs the most support. How much would you pay to preserve something you love? How much is a healthy environment worth to you? Would you support a tax on bird seed, for instance, that would specifically support wildlife and habitat conservation? How about a tax on all outdoor equipment (binoculars, camping equipment, mountain bikes, etc)? Maybe part of the current sales tax should go towards wildlife/habitat conservation. These are all tools that have been implemented in other states. In fact, there are 10 states in the U.S. that have a dedicated source of funding for non-harvested wildlife conservation and habitat protection. Connecticut must become the 11<sup>th</sup>. Only through a concerted grassroots effort will this be possible. If the citizens of Connecticut feel wildlife conservation is important and critical enough, we need to come together. We need to develop a package that is palatable to legislators, equitable, immune to the whims of politics and provides a dedicated, sustained source of funding for wildlife.

Contact us. We will come to your organization to discuss the issues and your solution ideas. It's our wildlife, and you need to decide what it is worth to you.

*Min T. Huang, Migratory Game Bird Program Leader  
CT Department of Energy and Environmental Protection  
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### Community-Based Funding for Open Space and Farmland

**C**onservation Commissions—Your support is needed to establish a reliable community-based fund to support open space preservation and stewardship, and other local initiatives that enhance the environment, public health, and economic considerations.

This summer the Connecticut Land Conservation Council (CLCC) will be meeting with municipal leaders to introduce and discuss enabling legislation to allow municipalities to establish a conveyance tax (up to 1%) on buyers of real property on the sale amount over \$150,000.

The proposed legislation, the Community Redevelopment and Conservation Act (CRCA), will specify that the tax be retained by the municipality, kept in a separate account and be used for the planning and implementation of any of the following purposes: (1) Purchase of development rights to, acquisition of, or stewardship of open space land, forest land, farm land or waterfront property by the municipality or by the municipality in cooperation with the state or federal government or with a private organization such as a land trust; (2) historic preservation; (3) green building retrofits; (4) water treatment and storm sewers;

(5) energy conservation; (6) brownfield remediation, (7) clean air projects, or (8) alternative transportation infrastructure.

When CRCA is passed your municipality will be able to decide:

- To establish the conveyance tax as a reliable source of funds for conservation initiatives and investments, or not.
- How much the conveyance tax should be up to 1% of the sale amount over \$150,000.
- What conservation purpose(s) the fund will be used for.

The Community Redevelopment and Conservation Act will be introduced in the 2013 session of the Connecticut Legislature, next January. Your support is crucial. Please discuss the proposed legislation in your meetings. Review the towns Plan of Conservation and Development. CRCA funds will support many of the Plans conservation initiatives. Prepare to provide your town officials with community-based reasons the municipality should support CRCA. We will help you prepare.

CRCA needs your support. Your comments and questions are encouraged. Contact Tom ODell, [todell@snet.net](mailto:todell@snet.net) and Amy Paterson, CLCC Executive Director, [abpaterson@ctconservation.org](mailto:abpaterson@ctconservation.org).



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