

The Habitat

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

Fall 2013

volume 25 number 3



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★ Inside

- CACIWC News 2
- Running Bamboo Problem 3
- New Law on Bamboo 4
- CT Criteria for Invasives 5
- 36th Annual Meeting 8
Workshops
- Remembering Katchen Coley 10
- Case Law - Board Officer Immunity 11
- Book Review ~ Bringing Nature Home” 12
- Wildlife Entrapment in Netting 14
- DEEP Wetlands Mgmt. Section News 16

What to Know About Native Plants Now

As Information and Availability Increase, So Does
Opportunity for Municipalities to Use Them

By Kathy Connolly, MA Landscape Planning and Design,
Principal, Speaking of Landscapes, LLC

This is the first of a two-part series. This article explores the importance of native plants, their emerging presence in the nursery trade, and information sources for the interested homeowner or conservation volunteer. The second article, to appear in the spring Habitat newsletter, will focus on specific native plants for southern New England and sources of plant materials.

It's been a long time since I was first surprised by a large prickly pear cactus in an Old Lyme woodland. To my amazement, a botanist friend told me this spiny succulent, which I associated with dry southwestern scenes, is a southern New England native. More surprises followed. We have native orchids and carnivorous plants, for instance. Those were great bits of trivia for an evolving plant geek.



Prickly Pear

Prickly Pear (Opuntia humifusa) is a New England native. According to information from the Xerxes Society, its flowers are valuable to a variety of native bees. Photo by Kathy Connelly

But the survival of native plants is not a trivial pursuit and, in the days since my own awakening to their ecological value, the discussion of their role and importance has moved beyond academics and regulators to gardeners, landscape designers and the pages of the main stream media.

What is a native plant? According to botanist Elizabeth Farnsworth, Ph.D., a senior scientist and interim education director at the New England Wild Flower Society, native designation is given to plants that were on the New England landscape before colonial settlement. (Colonists imported both plants and animals native to Europe and their imports made swift changes to regional flora.) Botanists, she

native plants, continued on page 6

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www.caciwc.org

— CACIWC News Briefings —

CACIWC was honored to join dozens of other environmental groups, state and local officials, and Connecticut conservationists of all ages on Wednesday, August 1, 2013 for the **Connecticut State Parks Centennial Kick-Off** celebration at Dinosaur State Park in Rocky Hill. Lieutenant Governor Nancy Wyman, Department of Energy and Environmental Protection (DEEP) Commissioner Dan Esty, Centennial Committee Chairman Pam Adams, and others welcomed all those present and outlined events scheduled through 2014. For more information on these events (including opportunities for local commission volunteers), please visit the State Parks Centennial website at: www.ct.gov/deep/cwp/view.asp?a=2716&q=523470&deepNav_GID=2135.

1. To help promote this year-long celebration of Connecticut State Parks, CACIWC is dedicating our **36th Annual Meeting and Environmental Conference**, scheduled for **Saturday, November 16, 2013**, with the theme of *Celebrating Connecticut Parks and Open Spaces*. CACIWC is pleased to inform you of our new conference location at the Courtyard by Marriott Cromwell (4 Sebeth Drive Cromwell, CT 06416). Based on your suggestions, the Annual Meeting Committee has organized a new series of informative workshops on how best to support existing open space parcels and preserve important local habitats. You should have already received a copy of the **annual meeting registration form** in a recent mailing. Additional detailed conference information can be found in this issue of *The Habitat* and on our website: www.caciwc.org. Please complete and mail your registration form to us ASAP if you have not yet done so to reserve a place at our conference. You may direct any questions on our annual meeting to us at: AnnualMtg@caciwc.org.

2. It is not too late to renew your **2013-14 membership dues** and take advantage of the \$15/per person annual meeting registration discount. A copy of the membership dues notice form mailed to you in July can be found on our website: www.caciwc.org. Our website also provides a description of additional individual and business membership categories that you or your company can use to provide additional support to CACIWC. We continue to very much appreciate any additional contributions that you can provide to support various CACIWC programs including our Annual Meeting, educational materials, and *The Habitat*.

3. We have been pleased to receive many informative comments on our **conservation commission and inland**

CACIWC news, continued on page 13

Running Bamboo — A Management Problem for Natural Areas?

Passage this year of Public Act 13-82, An Act Regulating the Planting and Sale of Running Bamboo (see New Law, page 4) has alerted CACIWC to the potential for running bamboo to become a management concern for Conservation and Inland Wetlands Commissions.

Legislative testimony during public hearing for P.A. 13-82 indicates that, while running bamboo does not meet the criteria for inclusion on the Invasive Plant Council's (IPC) invasive plant list (see Criteria, page 5), it may grow aggressively and spread from its original planting site, cross property boundaries, and establish in neighboring yards, managed landscapes and forested sites. Once established, these populations frequently cause property damage and can be difficult and costly to control or remove.

Testimony supporting regulation of planting and sale of running bamboo (P.A. 13-82) indicates that the species of most concern in Connecticut is *Phyllostachys aurea*, golden bamboo, the most common

and aggressive bamboo species. In a July 21, 2011 letter printed in the 2011 Annual Report of the Connecticut Invasive Plant Working Group, www.cipwg.uconn.edu/bamboo, Jeffery S. Ward, Chief Scientist, Forestry and Horticulture, CT Agricultural Experiment Station, warns that golden bamboo can cause localized severe impacts to disturbed forests and riparian habitats and may be able to colonize riparian areas if rhizome fragments are washed out during storms and deposited downstream.

In southern forests of the U.S., bamboo is considered an invasive plant requiring annual monitoring and control. (Letter submitted as testimony from James H. Miller, Emeritus Scientist Research Ecologist and Senior Certified Ecological Ecologist, The Science Society, USDA Forest Service, Southern Research Station, Auburn, AL to Ms. Caryn Rickel.)

The evidence noted above should convince Conservation and Inland Wetlands Commissions to research and become familiar with the behavior and potential impacts to natural areas associated with the spread of running bamboo. Commissions can also develop education tools to engage the community in preventing spread of running bamboo.

The link to CIPWG, noted above, has a wealth of information to start assembling community outreach materials —posting the link on the town's website would be a good start. 🌿

~ Tom Odell

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New Law on Bamboo in Connecticut

by Logan Senack, CT Invasive Plant Coordinator, UConn

Public Act 13-82, An Act Regulating the Planting and Sale of Running Bamboo, was passed by the Connecticut General Assembly and signed into law by the Governor earlier this year.



Golden Bamboo, Phyllostachys aurea
Photo by Chuck Barger, University of Georgia, Bugwood.org

The new law covers all bamboo in the genus *Phyllostachys*, a genus of large, running bamboo that spreads by underground rhizomes, and regulates how those bamboo species can be planted and sold. Species of *Phyllostachys* are sold as privacy screens or ornamental plants, but can grow quickly and spread rapidly

from an initial planting location to nearby areas by underground rhizomes.

As of October 1, 2013, all new bamboo plantings (of any species covered by the law) that are planted within 100 feet of a property line or right-of-way **must be planted either above-ground in a container or planted with a properly constructed and maintained barrier system to ensure that the bamboo does not spread.**

The law specifically assigns liability to property owners who allow bamboo to spread to areas outside the boundaries of their property.

Because this component of the law would be settled via civil proceedings, its precise impact remains to be seen and each case may be unique. Nothing in the law limits the assignment of liability during civil proceedings for events occurring prior to October 1, 2013 or for situations not addressed by this law.

Public Act 13-82 also requires that retailers who sell or install running bamboo provide information to customers who purchase any of the covered bamboo species. The statement must include information about the law and advice on how to contain bamboo.

The Connecticut Invasive Plants Council (IPC) examined whether or not some species of bamboo should be listed as invasive plants under the state's invasive plant laws (see page 5).

After investigating the issue and visiting various locations where bamboo was found in the state, the IPC determined that running bamboo did not meet the criteria for listing as an invasive plant. A major factor in the discussion was that bamboo appears to become established only in areas in the immediate vicinity of intentional plantings, and does not



Infestation, Golden Bamboo, Phyllostachys aurea
Photo by Nancy Fraley, USDI National Park Service, Bugwood.org

appear to establish in new locations on its own. However, recognizing that bamboo does pose a problem for homeowners who are impacted by the local spread of the plants, the IPC provided testimony in support of Public Act 13-82 when it was being considered by the Legislature. The testimony included the following statement: "... although running bamboo may not meet the criteria for inclusion on the invasive plant list, the IPC acknowledges that it may grow aggressively and spread

from its point of origin, sometimes crossing property boundaries and establishing in abutting parcels."

For additional resources relating to bamboo, including information on appropriate identification, control, and recommended containment measures, please visit www.cipwg.uconn.edu/bamboo.



Golden Bamboo, Phyllostachys aurea
Photo by Chuck Barger, University of Georgia, Bugwood.org

Criteria for Listing on Connecticut Invasive Plant List

Defined by Connecticut General Statute 22a-381b

Statute Text - Current as of 2013

(a) In publishing and updating the list of invasive plants required under section 22a-381a, the Invasive Plants Council shall determine that a plant possesses the following characteristics before it is included on such list: (1) The plant is nonindigenous to the state; (2) the plant is naturalized or has the potential to become naturalized or occurring without the aid and benefit of cultivation in an area where the plant is non-indigenous; (3) under average conditions, the plant has the biological potential for rapid and widespread dispersion and establishment in the state or region within the state; (4) under average conditions, the plant has the biological potential for excessive dispersion over habitats of varying sizes that are similar or dissimilar to the site of the plant's introduction into the state; (5) under average conditions, the plant has the biological potential for existing in high numbers outside of habitats that are intensely managed; (6) the plant occurs widely in a region of the state or a particular habitat within the state; (7) the plant has numerous individuals within many populations; (8) the plant is able to out-compete other species in the same natural plant community; and (9) the plant has the potential for rapid growth, high seed production and dissemination and establishment in natural plant communities.

(b) In publishing and updating the list of potentially invasive plants required under section 22a-381a, before including a plant on such list the Invasive Plants Council shall determine that a plant: (1) Possesses each of the characteristics set forth in subdivisions (1) to (5), inclusive, of subsection (a) of this section; and (2) possesses at least one of the characteristics set

forth in subdivisions (6) to (9), inclusive, of subsection (a) of this section.

(c) Upon a finding that a plant meets the criteria for listing as an invasive plant under subsection (a) of this section, or as a potentially invasive plant under subsection (b) of this section, prior to listing such plant as invasive or potentially invasive, as applicable, the majority of the council's membership shall approve of such listing. On the request of two or more members of the council, the council shall hold a meeting, open to the public, not later than thirty days prior to the publication of the initial invasive plant list or the addition of any plant to the invasive plant list, as applicable.

(d) In listing a plant as invasive or potentially invasive, the council may make recommendations on how to discourage the sale and import of such plants in the state and identify alternative plants to the listed plant for growing purposes. 



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native plants, continued from page 1

says, use seven or more criteria to evaluate the historical and botanical evidence - not a task for the casual flower-seeker. Nor does the topic lend itself to black-and-white interpretation, and controversy sometimes ensues.

Ambiguities aside, research shows that plants with an evolutionary history in a place play a critical role in the local cycle of life. In the widely read book "Bringing Nature Home" (Timber Press), University of Delaware professor Douglas Tallamy shows how, plant for plant, natives support many more species of insects than non-natives. (See book review, page 12)

Indeed, highly publicized declines in bee populations and threats to beautiful monarch butterflies have created visibility for native plants. Widespread discussion of invasive nonnative plant species raised their visibility, too.

Elimination of native plants adversely impacts larger wildlife, too. Anthony Irving, a consulting forest ecologist and principal at EECOS in Lyme, says, "Think of the loss of wild rice along the Connecticut River

and the impact on waterfowl. Think how the loss of the American chestnut, which made up about one-third of our upland woodlands at the turn of the 20th century, impacted forest wildlife."

He points out new threats. "Today, we have to worry about the loss of ash to emerald ash borer," he adds. "And the Asian longhorn beetle could be devastating, especially to our native maples and birches."

In the past, conservation commissions have played major roles in promoting the survival of natives through plans of conservation, through habitat preservation, and by ordering restoration programs.

Now, thanks to trends in the nursery industry and the widespread availability of information on the Internet, there is a new opportunity—that of recommending native plants for managed landscapes such as streets, parks, and around municipal buildings.

Academic research on landscape adaptability of specific species, such as that underway at the University of Connecticut by Dr. Jessica Lubell, encourages

native plants, continued on page 7

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native plants, continued from page 6

members of the nursery trade to invest in commercial production. Nursery programs such as the American Beauties series promoted by Pride's Corner in Lebanon, CT, are making it possible.

At the same time, the Internet now offers many authoritative sources of information on native plants, including availability and planting instructions.

According to most experts, the use of these plants is more than an opportunity—it should be an imperative. In "Bringing Nature Home," Douglas Tallamy explains that open spaces, which once lazily hosted the slow co-evolution of local plant and insect communities, have either disappeared or are now also occupied by nonnative invasive species. He shows why the land around our homes, businesses and community spaces may be the last best hope for the natural associations between native plants and native fauna.

There's no time like the present to embrace these developments. Here are some excellent resources to support your efforts:

1) Dr. Jessica Lubell's UConn web page offers four guides to regional native shrubs and trees for landscape applications under the "current projects" section: www.canr.uconn.edu/plsc/plsc/lubellcv.html. She also maintains a colorful Facebook page, "Native Plant Gal."

2) Ready for a great list of Connecticut native wildflowers and perennials? Check out the Connecticut Botanical Society's "Gardening with Native Plants": www.ct-botanical-society.org/.

3) And if you're wondering about which pollinators enjoy that plant, try Lady Bird Johnson Wildflower

Research Center's Wildflower.org. Each plant record details the plant's relationship to specific insects and wildlife, its growing conditions, and how to find it among commercial sources. Visit www.Wildflower.org.



Oxeye Daisy and Ninebark

Native Oxeye daisy (Heliopsis helianthoides 'Summer Nights') is striking in front of Common Ninebark (Physocarpus opulifolius 'Summer Wine'). Oxeye daisy attracts hummingbirds and supports predatory or parasitoid insects that prey upon pest insects, according to the Xerxes Society. Common Ninebark has magnificent white flowers that have special value to both native bees and honeybees. It has come out of the woods in the past 20 years and now has upwards of 10 cultivars in commercial trade.

Photo by Kathy Connelly

4) To learn more about the American Beauties series and obtain a list of available species and cultivars, visit: www.abnativeplants.com.

5) And after a visit to American Beauties, check out the native status of a particular plant in your Connecticut county by visiting the New England Wildflower Society's authoritative "Go Botany" database: <http://gobotany.newenglandwild.org>.

6) For a plant-by-plant discussion of pollinator habitats, read the Xerxes Society's "Attracting Native Pollinators" (Storey Publishing). See www.xerxes.org/books/.

Kathy Connelly specializes in naturalized landscape designs. She writes a column for The Day in New London and is a frequent speaker on topics related to landscape sustainability. Visit her web site at www.SpeakingofLandscapes.com. Email: Kathy@SpeakingofLandscapes.com.

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CACIWC's Environmental Conference Workshops

SESSION 1 (9:30 - 10:30 AM)

(* Denotes Advanced Workshop)

A1. "Planning for the Future of Farms in Your Community"

Kip Kolesinskas, Consulting Conservation Scientist, American Farmland Trust

How to make the case for protecting agricultural land and paying for it! This workshop will highlight ways to support agriculture, protect farmland, and leverage the State and Federal funds to make it happen. The workshop will define: purchasing development rights, how to write farm friendly easements and leases, the role PA 490 and local regulations play in agricultural viability, sources of grants and funding for public and private lands conservation, and will cover: Can agriculture be an economic engine? How can farms increase a town's appeal, safeguard the environment and add to revenue base? How does your town view agriculture?

B1. "CEPA, Upland Review Areas, and Vernal Pools: A Legal Perspective"

Janet Brooks, Attorney at Law, LLC

Attorney Brooks will present the results from her fall 2013 survey of municipal wetlands regulations (that have been made available online) in which she examined the definitions of regulated activities and upland review areas and express consideration of vernal pools. This year's statutory amendments to the CT Environmental Protection Act will also be covered.

C1. "Rain Gardens 101"

Mike Dietz, Director, Connecticut NEMO Program

Rain gardens seem to be all the buzz in stormwater treatment but knowing how to install and maintain them is key to their success. This workshop will explain the mechanics of design and installation so they function as they were truly intended.

D1. "Planning for Climate Change & Extreme Weather Events: Adapting for Community Resiliency"

*Juliana Barrett, PhD, CT Sea Grant College, UConn
Denise Savageau, Conservation Director, Greenwich, CT
George Bradner, Director, CT Insurance Department*

Hurricanes Irene and Sandy revealed the potential threats faced by coastal and inland communities across CT – are we prepared for the future? Ms. Barrett will describe the environmental impacts of severe storms on coastal and inland wetlands, and management options for wetland adaptation to climate change. Ms. Savageau will explain Connecticut's Climate Change Preparedness and Natural Hazard Mitigation Plans, and the role of CCs in helping to prepare for extreme climate events. Mr. Bradner will discuss the State's preparation, response and recovery operations during disasters and long term recovery planning.

SESSION 2 (10:45 AM - 11:45 PM)

(* Denotes Advanced Workshop)

A2. "From Bittersweet to Barberry: An Update on Invasive Plants in Connecticut"

*Logan Senack, Connecticut Invasive Plant Coordinator
UConn Department of Plant Science and Landscape Architecture*

Many Conservation Commissions struggle to prevent invasive plants from altering important habitats within their community. This workshop will update invasive plant management information including potential new plants to watch for, early detection of invasive species, mile-a-minute distribution in the state, and restrictions on the sale and use of invasive plants such as Oriental or Asiatic bittersweet in holiday decorations. The new public act concerning running bamboo, not considered invasive in Connecticut, will also be discussed.

B2. "2013 Wetlands Law Update with Question & Answers Session"

Janet Brooks, Attorney at Law, LLC; David Wrinn, CT Attorney General's Office; Mark Branse, Branse, Willis & Knapp, LLC

This trio of wetlands attorneys has been brought back by popular demand to keep you current with the latest state Supreme Court and Appellate Court cases and legislative amendments to the CT Environmental Protection Act. This work shop will also include a 30-min question-and-answer session that you asked for!

C2. "Dam Removal: To be Dammed or Not to be Dammed"

Laura Wildman, PE, Director, New England Regional Office, Princeton Hydro, LLC

This workshop will explore the reasons why dams were built, pros and cons in removing them, and alternatives to their removal. What is the cost of maintaining a dam versus returning to a natural waterway?

D2. "Lake Monitoring & Management"

Larry Marsicano, President, Connecticut Federation of Lake (CFL) & Executive Director, Candlewood Lake Authority (CLA); Charles Lee, Environmental Analyst, Bureau of Water Protection and Land Reuse, DEEP

Our Lakes are an important part of Connecticut's natural beauty and heritage. They provide recreational opportunities but serve as important habitats for migratory birds, fish and other aquatic animals and plants. Unfortunately, development and recreational uses threaten the quality of these habitats. This workshop discusses the efforts of the DEEP, the Connecticut Federation of Lake, the Candlewood Lake Authority, and other organizations in preserving lakes in Connecticut. The workshop will also discuss the roles of local conservation commissions and other land-use commissions in serving as effective partners in maintaining these important aquatic habitats.

Open Space &
Conservation Biology Track

Land Use Law &
Legal Updates Track

Wetlands Science &
Engineering Track

Commission Administration &
Planning Track

SESSION 3 (2:00 - 3:30 PM)
(* Denotes Advanced Workshop)

A3. "Vernal Pools: A Primer for Protection"

Hank Gruner, Herpetologist, Vice President of the Connecticut Science Center;

Ed Pawlak, Soil Scientist, Connecticut Ecosystems LLC

In order to effectively protect vernal pool inhabitants, Conservation and Inland Wetlands Commissions need to understand their biology and habitat requirements, and to develop comprehensive inventories of vernal pools within their communities. In this workshop, Hank Gruner will discuss vernal pool basics - definition, biota, hydrology and landscape connections. Ed Pawlak will discuss the identification of vernal pools through remote sensing and field verification, as well as vernal pool monitoring programs.

B3. "The Roles of Conservation and Inland Wetlands Commissions in the P&Z Application Process"

Attorney Mark Branse, Branse, Willis & Knapp, LLC

This workshop will discuss how both municipal Conservation Commissions and Inland Wetlands Commissions can work more effectively with their local Planning & Zoning (P&Z) Commission to minimize the environmental impact made by new development. The workshop will elaborate on the suggestion of previous sessions that wetlands agencies should adopt LID regulations in conjunction with their town's P&Z commissions. Joint efforts between Conservation and P&Z Commissions to promote compliance with state and local Plans of Conservation and Development can ensure the long-term protection of important habitats. Other cooperative strategies will also be discussed.

C3. "Managing Streams in the Urban/suburban Environment"

Jim MacBroom, M.S.; Vice-President, Milone & MacBroom;

Learn the connection between the landscape and the dynamics of stream morphology. Do trees that fall during a storm even or other natural occurrence help or hinder a river's ecology? What is the best way to cross a stream to get to the other side and should watercourses be straightened or armored? Learn the basics of stream pattern dynamics and the ecological relationship between trees, streams and wildlife and how hydrology and floodplains may be affected by managing them.

D3. "Use of GIS & GPS in Trail and Land Management"

Emily Wilson and Cary Chadwick, UConn, College of Agriculture and Natural Resources, Center for Land Use Education and Research (CLEAR)

Many Conservation Commissions have become successful in preserving open space parcels in partnership with local land trusts and other groups. These commissions are called upon to do natural resource inventories, develop land management plans, mark boundaries and establish trails. The value of geographic information system (GIS) and Global Positioning System (GPS) tools is well recognized in mapping and documentation. This workshop will outline the latest improvements in these tools and review the various imagery sets available on Connecticut Environmental Conditions Online (CT ECO), a cooperative work of the DEEP and UConn CLEAR. The session is BYOL (bring your own laptop) and time will be provided at the end for hands on exploration of CT ECO and other mapping resources.

CACIWC 2013 Annual Recognition Awards

There is still time to submit your nominations for a CACIWC annual award. Nominations will be accepted until **October 31, 2013** in six award categories:

1. Wetlands Commission of the Year
2. Conservation Commission of the Year
3. Wetlands Commissioner of the Year
4. Conservation Commissioner of the Year
5. Commission Agent or Staff of the Year
6. Lifetime Achievement Award

Please see www.CACIWC.org for the nomination form and additional information. Completed nomination forms should be emailed to the CACIWC Annual Award Nominations Committee at: AnnualMtg@CACIWC.org.

SCHEDULE FOR THE DAY

Registration & Breakfast	8:30 - 9:00 a.m.
Welcome & Business Mtg.	9:00 - 9:30 a.m.
Session 1 Workshops	9:30 - 10:30 a.m.
Break 1	10:30 - 10:45 a.m.
Session 2 Workshops	10:45 - 11:45 a.m.
Break 2	11:45 - 12:00 noon
Lunch & Keynote Speaker & Awards	12:00 - 1:30 p.m.
Break 3	1:45 - 2:00 p.m.
Session 3 Workshops	2:00 - 3:30 p.m.
Final display viewing	3:30 - 3:45 p.m.

Displays will be on view
from 8:30 a.m. - 3:45 p.m.

Remembering Katchen Coley *by Tom ODell*



Katchen Coley, 89, died on August 19, 2013 of pancreatic cancer at her Middletown, Connecticut home. Katchen was a true and dedicated environmental activist and ardent advocate for preserving open space. She will be missed by the many people that her friendship and passionate voice for conservation touched.

Katchen's distinguished career of environmental activism included over 22 years of very active participation on Middletown's Conservation Commission. Her ardent support for open space and habitat protection, emerging lobbying skills, and "never take no for an answer" tactic helped spearhead the preservation of large swaths open space and farmland in Middletown. For her work on the Conservation Commission and extended state-wide efforts to raise awareness of environmental issues, particularly open space preservation, she received CACIWC's "2006 Lifetime Achievement Award".

Over the next seven years Katchen continued active participation on the Conservation Commission, served as conservation chair of the Middletown Garden Club—annually lobbying for them in Washington,

and was an active member of the Connecticut Land Conservation Council's Steering Committee. During this period Katchen also served on the Rockfall Foundation's Environmental Award's Sub Committee; it was here that I was exposed to her extraordinary capacity for remembering people and their achievements—in detail. She recognized emerging conservation activism with ardent support, and friendship!

Now, in 2013 and beyond, Katchen's lifetime achievement will be measured in the people she has encouraged and influenced to follow in her steps to make a difference; now and beyond, friends forever.

Katchen will be remembered.

***Editor's Note:** To honor her and keep her dreams alive Katchen's daughters have established the Katchen Coley Conservation Fund created for the preservation and enhancement of open space in Middletown and adjacent towns. For information on the fund contact the Community Foundation of Middlesex County, 211 South Main Street, Middletown, CT 06457.* ♣

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Editor's Note: The following case law applies only to unpaid volunteers working with nonprofit, 501(c)(3), organizations. It does not apply to municipal commissioners. Municipal commissioners can Google, "CT volunteer immunity statute for municipal commissions" to see how you are covered. You might also wish to forward this case law information to nonprofit organizations such as land trusts that you work with.

Connecticut Case Law: Board Officer Immune From Liability

Re-printed courtesy of Rob Levin, Esquire, from the Maine Land Conservation Law E-Bulletin, May 2013.
To receive MLCL E-Bulletins please send request to rob@roblevin.net

A recent Connecticut court decision demonstrates the value of state volunteer immunity laws in protecting volunteers from tort liability exposure. In *Sweeney v. Friends of Hammonasset, Inc.*, 140 Conn. App. 40, 58 A. 3d 293 (Conn. App. Ct. 2013), a man was injured after slipping on ice during a night time owling outing. The man sued both a nonprofit corporation, as well as its volunteer Board president. The suit claimed that the president was negligent in her supervising, training and oversight duties. The president invoked Connecticut's volunteer immunity statute as a defense.

The appellate court upheld the trial court in ruling for the president on summary judgment, finding that

Connecticut's volunteer immunity statute (which provides complete immunity) applied and was not preempted by the federal volunteer immunity statute (which provides immunity only for economic losses and not non-economic losses such as pain and suffering).

The court pointed to the federal statute's section on preemption, which provides that any state law extending additional protection from liability relating to volunteers would not be preempted by the federal statute. The court also broadly interpreted a director's "policy or decision-making responsibilities" to include supervision, oversight, and training matters, the crux of plaintiff's allegations against the president.

It is comforting to see an appellate court issue a broad interpretation of a state volunteer immunity statute. Note that a typical commercial general liability (CGL) insurance policy would provide defense and liability coverage for both Friends and the president in this kind of litigation, as both the corporation and its officers, directors, and other volunteers are generally named insureds. In contrast, a typical directors and officers (D&O) policy would not be of any use here because that sort of policy generally excludes bodily injury and property damage claims. ✨

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Editor's Note: The following book view by Dr. Burton, edited by Association of New Jersey Environmental Commissions, Inc., appeared in ANJEC's Winter 2013 Newsletter and is re-printed with permission. The appendix of "Bringing Nature Home" has a guide to native plants by region. Dr. Burton has extended his offer of a **free copy** of "Bringing Nature Home" to each municipal CACIWC member. To receive a free copy for your town email request to OBrien.Donnie@gmail.com.

Book Reviews

What we're reading

Bringing Nature Home: How You Can Sustain Wildlife with Native Plants

By Douglas W. Tallamy

Review by Ben Burton, DPT

Note: Dr. Burton of Wayne Orthopedic Physical Therapy is offering a free copy of Bringing Nature Home to each municipality in New Jersey at his own expense in the interest of improving the health of our communities and to reduce municipal expense. To receive a free copy for your town, email OBrien.Donnie@gmail.com.

Municipalities can no longer afford to spend tens of thousands of dollars on gardening, landscaping, and pest control. We can no longer safely relegate nature to our parks and preserves, assured that it will be there for us when we need it. We can no longer continue to lose key plant, tree, and wildlife species which make America, America!

In a review of *Bringing Nature Home* by Douglas W. Tallamy, the *Washington Post* said this book "...provides the rationale behind the use of native plants, a concept that has rapidly been gaining momentum. The text makes a case for native plants and animals in a compelling and complete fashion."

The typical suburban landscape is a highly simplified community consisting of a few species of alien ornamental plants. They have brought a host of alien insects such as the Japanese beetle, cottony cushion scale, viburnum leaf beetle, citrus long-horned beetle, hemlock woolly adelgid, and the balsam wooly adelgid. We have recently been completely overrun with Asian stink bugs.

Invasive pests have had a serious impact on agriculture. The soybean aphid has cost hundreds of millions of dollars in yield reduction since its introduction in 2000. Citrus Greening disease, a deadly infection

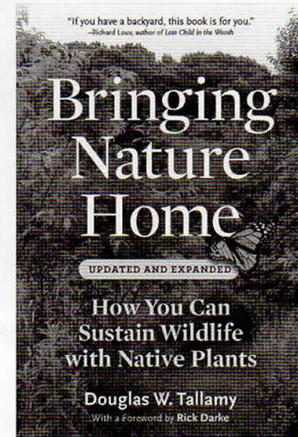
that makes fruit inedible before it kills the tree altogether, is threatening to put an end to the \$9 billion citrus industry in Florida. Close to home, the southern pine beetle is killing trees in our treasured Pine Barrens.

Alien plants such as purple loosestrife, garlic mustard, multiflora rose, autumn olive, kudzu, and oriental bittersweet cost thousands upon thousands of dollars to control in our parks, open space, and recreational areas.

Unless we pay more attention to how we modify the places we live, work, and play to meet not only our own needs but the needs of wildlife, our native species will disappear forever.

I encourage you to assess the plant materials being used in sidewalk plantings, parks, gardens, and open space projects and make a choice to use species native to our country and state.

In the appendix of *Bringing Nature Home*, you will find a guide to which plants, vines, scrubs, and tree material are native to New Jersey. 🍂



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CACIWC news, continued from page 2

wetlands membership surveys received to date. Your responses to this survey will make valuable contributions to the development of our new **strategic plan**. If you have not yet done so *please complete and mail in your survey* that can be located on our website: www.caciwc.org.

4. The board is continuing to receive resumes from commission members and other individuals who are interested in filling our existing **CACIWC board vacancies** (please see the list in this issue of *The Habitat* and on 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 serve as a county representative or alternate. In addition, our 2012 bylaws amendments included the creation of several **alternate at large** positions that are not restricted to a specific county. This amendment will allow us to recruit well qualified directors from areas whose county and alternate county representatives are already filled. We hope that you will submit your name to us at board@caciwc.org if you are interested in serving as one of our vacant county representative, alternate county representatives or in one of the new alternate at large representative positions.

Please do not hesitate to contact us via email at board@caciwc.org if you have questions or comments on any of the above items or if you have other questions of your board of directors. We'll see you at our Annual Meeting and Environmental Conference! 🍁

~ Alan J. Siniscalchi, President

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Issue: Wildlife mortality and entrapment from plastic netting used in Erosion Control Matting (ECM) products has been found to entangle wildlife, including reptiles, amphibians, birds, and small mammals.

Key Points:

- A variety of manufactured ECM products may be used during construction projects to temporarily protect soil from erosion and facilitate establishment of vegetation (“erosion control”), or to trap eroded sediment and retain it onsite (“sediment control”). However, the environmental protection provided by certain erosion control products may have unintended consequences.
- Several of these products commonly contain plastic netting or mesh and have been found to entangle wildlife, including reptiles, amphibians, birds, and small mammals and the mortality of entangled individuals has been documented.
- Temporary erosion and sediment control products are designed to degrade after a period of time. However, several temporary erosion and sediment control products are commonly left in place permanently, particularly when used with seeding because the new vegetation grows up through the netting.
- When plastic netting does degrade, plastic fragments may be blown or washed into waterways creating additional hazards to wildlife.
- Acceptable, cost effective biodegradable products exist that may fulfill erosion control functions and do not persist in the environment and certain management practices can reduce the need for non-biodegradable products.
- Vermont, Washington and Ontario, Canada have cautioned, curtailed or prohibited the use of non-biodegradable ECM due to risk and mortality to species including amphibians and reptiles, birds, other small mammals.
- Additional knowledge is needed on species risk, entanglement/entrapment, and mortality on National Forest System and other public lands to inform decision makers on the scope and severity of the issue and applicable alternatives.

Background:

Erosion Control Matting, also known as mulch control netting, erosion control blanket, landscape mesh or netting, is routinely used to stabilize seed and soil in road, stream, or sod projects. However, some ECM products contain a plastic monofilament mesh (same material as fishing line) and pose risks to several wildlife species. Nylon mesh netting of 1” square or more is often embedded in erosion control materials and has been exhibited to entangle wildlife, including mammals, birds, fish, reptiles, and amphibians. It is believed that snakes suffer the highest rate of mortality as a result of entanglement with ECM containing monofilament mesh as snakes are unable to move backwards.

Contact: Anne Zimmermann, Director, Watershed, Fish, Wildlife, Air & Rare Plants, 202-205-1671

Editor’s Note: Laura Magaraci, CACIWC Board of Directors, in response to the entrapment issue noted that she has witnessed a snake caught in erosion control netting that did not survive. She points out that netting can quickly stabilize soil so it will be important to identify and use alternative netting material that will biodegrade or break away to ensure this stabilization tool continues to be available. For alternative netting material go to www.coastal.ca.gov/nps, “Wildlife-Friendly Plastic-Free Netting in Erosion and Sediment Control Products”, a Water Quality Fact Sheet, California Coastal Non-point Source Program. We thank Darcy Winther for alerting CACIWC to this issue and providing the information cited. ↴

Free Book to Commissions

Bringing Nature Home,
by Doug Tallamy.
See page 12.



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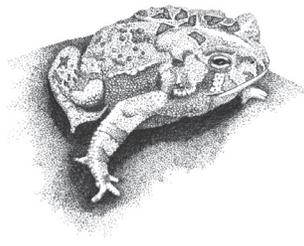
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