

## Sustainable CT: Local Actions. Statewide Impact

by Jessica H. LeClair, Institute for Sustainable Energy

**Editor's Note:** Many of the actions required for certification in the Sustainability program align with CACIWC's goals of protecting wetlands and watersheds, improving water quality, preserving open space and habitat conservation. Sample actions include natural resource and wildlife inventories, implementing low impact development and invasive species management — all relevant to our member commissions.

**S**ustainable CT is a voluntary certification program intended to enhance and increase a community's overall sustainability. The newly minted program, formally launched in November 2017, provides a wide-ranging menu of best practices that communities can implement to earn points towards certification as a Sustainable CT community.

Sustainable CT arose out of an early partnership between the Institute for Sustainable Energy at Eastern Connecticut State University (ISE) and the Connecticut Conference of Municipalities (CCM). Throughout 2016 a CCM Task Force on Sustainability, comprised of Mayors and First Selectmen from across the state, reviewed similar programs from across the country and created the vision for Sustainable CT. "Sustainable CT communities strive to be thriving, resilient, collaborative, and forward-looking. They build community and local economy. They equitably promote the health and well-being of current and future residents, and they respect the finite capacity of the natural environment."

With this vision in hand, an Advisory Committee of municipal, state agency, business, nonprofit, and academic institution representatives oversaw the creation of Sustainable CT throughout 2017. All of Connecticut's 169 towns and cities participated in Sustainable CT's development, represented directly by a municipal official, staff person, a local volunteer, or a regional entity representing member municipalities. Sustainable CT is a grassroots effort, built by towns, for towns.

Sustainable CT provides opportunities for funding and technical support to help communities implement actions that promote sustainability. The program has already offered many assistance opportunities and will continue to do so moving forward. Participation is free. At the time of writing, over 40 cities and towns from across the state have registered to join the program, and more join weekly!

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*"We envision that both Conservation and Inland Wetlands Commissioners will assist in implementing relevant actions."*

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Sustainable CT provides recognition to communities. For instance, a community may use certification as a way to market itself to current and future residents, businesses, and tourists, as a means to demonstrate its values and actions. A community may also benefit from the efficiencies and cost savings of some of the program's initiatives, or the community partnerships and opportunity to engage in peer learning across the state. Sustainable CT can be a vehicle to help a municipality achieve its short- or long-term goals.

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## CACIWC News

The 2017 Atlantic hurricane season is now known to be the most expensive season in U.S. history. With current estimates of greater than \$200 billion in damages, the impact exceeds the previous record of \$159 billion established in 2005, the year Hurricane Katrina hit New Orleans<sup>(1)</sup>. A total of 17 named storms were formed, 10 became hurricanes, and six developed into major hurricanes (category 3 or greater). Three of these major hurricane, Harvey, Irma, and Maria caused extensive loss of property, habitats, and life from Texas through southeastern U.S., Puerto Rico and the U.S. Virgin Islands. “This was a hurricane season that wouldn’t quit,” stated Rear Admiral (ret) Timothy Gallaudet, PhD, Acting Administrator of the US National Oceanic and Atmospheric Administration (NOAA)<sup>(2)</sup>.

Although hurricanes are a natural phenomena, evidence is growing that human-caused climate change factors are enhancing their strength and destructive capacity. Hurricane Harvey, which caused \$127 billion damage when it hit Texas in late August, was a good example of this. Harvey produced the most rain on the continental U.S. from any Atlantic hurricane on record. Between August 24 - September 1, 2017, a total of 60.58 inches of rain fell near Nederland, Texas and 60.54 in Groves, Texas (just east of Houston) amounts greater than Connecticut’s 50.3 inch average *annual* total precipitation. A *one-day total* of 26.03 inches of rain was measured at the Jack Brooks Regional Airport near Port Arthur, Texas on August 29, 2017. The estimated total release of 27 - 33 trillion gallons of rain water throughout Texas and neighboring states far exceeds the volume of Chesapeake Bay (18 trillion gallons)<sup>(3,4)</sup>.

A recent study of Hurricane Harvey examined the association between ocean heat content (OHC), as measured in the record heat in the Gulf of Mexico prior to Harvey’s passage, and the subsequent evaporative cooling resulting from Harvey’s heavy rainfall as it passed through Texas. “Harvey could not have produced so much rain without human-induced climate change,” according to the authors<sup>(5)</sup>.

The authors further emphasize, “planning for such supercharged hurricanes (adaptation) by increasing resilience (e.g., better building codes and flood protection) and preparing for contingencies (such as evacuation routes, power cuts, and so forth) is essential but not adequate in many areas, including Texas, Florida, and Puerto Rico where Harvey, Irma, and Maria took their toll.”<sup>(5)</sup> Many CACIWC members have asked for guidance on

*CACIWC news, continued on page 13*



## Journey to the Legal Horizon

by Attorney Janet Brooks

For this issue I am returning to the original format Tom Odell, then CACIWC editor, asked me to provide – a Q & A column. Since the annual meeting in November, the following comments or questions have reached me, three directly and one forwarded from another source. I have removed the identifying features of the comments (names, towns) but otherwise they are the verbatim comments I received. No, I didn't plant any of them, but *you* can plant your question or comment by sending an email to my address at the bottom of the article or sending it to AskCACIWC@caciwc.org.

I like to think of this as the potpourri of what could come up at any meeting. Are you prepared to think out (loud) how to approach each of these topics, even if you are not ready to draw conclusions at the first airing? You will notice some recurring themes in my responses.

### #1: Right to inspect property

“Unless the model inland wetlands regulations, 4th edition, posted at the DEEP website are defective, it seems to me that the claims you make in paragraph three of your discussion [‘Survey of Municipal Wetlands Regulations: The Right (or not) to Inspect Private Property,’ Journey to the Legal Horizon, The Habitat, Fall 2017] are somewhat misleading (or potentially so). Section 7.5j states that applications for a wetlands permit shall include ‘authorization for the members and agents of the Agency to inspect the subject land, at reasonable times, during the pendency of an application and for the life of the permit.’ It would be bizarre to require a permit, while prohibiting inspections to help ascertain whether a permit should be granted in the first place, or whether activity conforms to the conditions of a permit that has been granted, unless the landowner consents to these inspections. Cf. building permits. It should be made clear that in applying for a wetlands permit, the landowner grants permission for certain inspections by the IWA or its agent.”

My response sent to the commenter:

“Thank you for the comment. Looking at 7.5j I find

from a legal point of view the ordering of access problematic. Maybe a commission will get away with it, but since there is no statutory authorization for wetlands agencies or their staff to enter onto property like there is for the DEEP commissioner or building inspectors or zoning enforcement officials, it is problematic. I actually think 7.5j misleads commissions into thinking there is legal authorization when the statute provides none. I think I'll write further on this issue. Thank you for pointing that out! I think you can ask for consent, but I don't know that you can legally require it.”

A little context and further elaboration on my response: in the fall edition in the 3<sup>rd</sup> paragraph which the commenter refers to, I wrote:

“Unlike the Commissioner of DEEP: (1) you are not authorized to enter private or public property to inspect for possible violations of the wetlands law or permits; (2) you are not protected from a claim by the landowner of trespass; (3) you cannot require a landowner to grant access to his/her property; (4) you are not authorized to seek a search warrant based on probable cause from the courts.”

There's no denying it. The legislature granted authority in the statutes for (1) – (4) to the commissioner of DEEP and not to wetlands commissions. What's the significance of that? Our Supreme Court has said on numerous occasions that administrative agencies (that includes state agencies such as DEEP and municipal land use commissions such as wetlands agencies) are “creatures of statute.” If the power is set forth in the statute, the agency may exercise it; if not, then not.

An agency doesn't make up for that lack of statutory authority by adopting a regulation, whether based on the Model Regulations or not. Why not? Because an agency doesn't have statutory authority to create its powers, only to execute the powers the legislature gave to it. If there is statutory authority to inspect properties, such as for the DEEP commissioner,

*legal, continued on page 14*

# CT ECO Fish Community Viewer

## What is in Your Stream or Lake? Serving up Fish and Macroinvertebrate Community Data to Your Fingertips

by Mike Beauchene and Ed Pawlak

The Fisheries and Water Quality Monitoring programs within the Connecticut Department of Energy and Environmental Protection have a long history of collecting fish data from streams and lakes and benthic macroinvertebrate data from Connecticut's streams. Benthic macroinvertebrates are the immature and adult stages of aquatic organisms (e.g., mayflies, stoneflies, beetles, flies, snails, etc.) that live on or in a stream or lake bottom. The data are collected to support water quality assessments (per the Federal Clean Water Act), to understand the condition and distribution of individuals and populations, to monitor for status and trends, and to manage fisheries for public benefit.

Mike Beauchene (who worked within both fisheries and the water quality programs) was in the unique position to be able to compile data from multiple sources into a single product, the CT ECO fish community viewer. The intent of the viewer is to share and present these valuable data to the public in a user-friendly and intuitive format.

### What Data are in the Viewer

The online viewer compiles most of DEEP's fish community and benthic macroinvertebrate data from over 2,300 locations statewide in a single location. Previously, these data were available only in printed reports, many of which are now out of print and hard to find or by contacting DEEP staff. As a result, the public was largely unaware of the existence and availability of this valuable set of information.

The fish community data is a count of the number of each species that were observed at a location and date through standard electrofishing sampling (electrofishing is a non-lethal controlled use of electric current to momentarily stun fish, enabling biologists to net, measure, and return the fish). The macroinvertebrate data (collected using a rectangular "kick net") is a bit more complicated as there are over 350 species potentially found in Connecticut. For each sample date,

the data presented in the viewer, is the count of the number of different genera that were collected within each taxonomic family.

### Helpful and Useful Data

This tool fills an important data gap in land use applications that include an on-site stream or lake, or an off-site aquatic resource that receives runoff from a project site, and thus may be impacted by a development project. Most consultants lack the training, experience, equipment and expertise required to sample the finfish community in a stream or lake. As a result, unless the consultant has access to the appropriate DEEP report, information on the finfish community is omitted from the application. This information is necessary for a land use

*ECO, continued on page 5*



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*ECO, continued from page 4*

commission to make an informed decision on the merits of a development application.

Similarly, many consultants do not collect benthic macroinvertebrates from streams. This is unfortunate, because the makeup of the benthic macroinvertebrate community can be an indicator of water quality and instream habitat. Some taxa, such as mayflies and stoneflies, are typically associated with unimpaired waters, while others, such as midges and snails, are often found in waters with one or more physical or chemical impairments.

### Simple to Use

The fish community viewer is very easy to use. Here is the URL: <http://cteco-web1.grove.ad.uconn.edu/projects/fish/viewer/index.html>. Select from one of four filters (Town, Waterbody, Fish Species and Macroinvertebrates.) Insert the desired name in the selection box, or use the dropdown menu to choose it. Click “Apply”, and red dot(s) will appear on the map showing the location of the sample site(s). Click on a

red dot to select it, then click on “Site Detail” to see information on the collection site; and either “Freshwater Fish Counts” or “Macroinvertebrates” for the biological data collected at the site.

You are encouraged to look at what is available for your town. Check out the list of fish and benthic macroinvertebrates, the location where samples were collected, and most importantly, when the data were collected (some will be old).

### Next Steps

While an awesome step forward, as it is now, it only answers the question “what type of fish and benthic macroinvertebrates did the DEEP find in this stream or lake?” DEEP would like to eventually carry it further, and include life history and ecological information that will allow users to interpret these data. However, with this important tool, anyone has easy access to a wealth of fish and macroinvertebrate data that has taken decades to compile. Questions about the viewer or the data can be directed to Mike Beauchene at [mike.beauchene@ct.gov](mailto:mike.beauchene@ct.gov) or 860-424-4185.

*Mike Beauchene is Supervising Fisheries Biologist at the CT Department of Energy and Environmental Protection Fisheries Division. Contact - [mike.beauchene@ct.gov](mailto:mike.beauchene@ct.gov), (860)424-4185.*

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# Long Island Sound Blue Plan

by Darcy Winther, Connecticut Department of Energy and Environmental Protection

After years of background work by a coalition of environmental groups, academics, and Department of Energy and Environmental Protection (DEEP) staff, Public Act 15-66, An Act Concerning a Long Island Sound Blue Plan and Resource and Use Inventory, was signed by Governor Dan Malloy on June 19, 2015 and went into effect on July 1<sup>st</sup> of that year.

This “Blue Plan” legislation established a process by which Connecticut will develop an inventory of Long Island Sound’s natural resources and uses and, ultimately, a spatial plan to guide future use of the Sound’s waters and submerged lands. The Blue Plan is intended to prioritize the protection of existing natural resources and human uses of the Sound (fishing, aquaculture, and navigation) from future conflicting or incompatible activities. The Plan will not create new regulatory restrictions for these resources and uses, but instead will help inform decisions made under existing regulatory programs.

The legislation requires that the Commissioner of DEEP develop the Blue Plan with the assistance of a Blue Plan Advisory Committee, made up of representatives of state agencies (DEEP, Department of Transportation, Department of Agriculture, and the Office of Policy and Management), a faculty member from the University of Connecticut’s (UConn’s) Marine Sciences Programs, a representative of the Connecticut Siting Council, and representatives of various human use sectors and stakeholders including the marine trades industry, conservation organizations, the gas and electric distribution industries, the commercial finfish industry, the recreational fishing and hunting community, the shellfish or aquaculture industry, and the commercial boating or shipping industries. The human use sector and stakeholder members of the Advisory Committee were appointed by the governor and the legislative leadership.

Development and implementation of the Long Island Sound Blue Plan must be coordinated with local, regional, and federal planning entities and agencies, as well as with the State of New York. Municipalities are particularly important Blue Plan stakeholders,

as representatives of two coastal municipalities are members of the Advisory Committee.

The first step in the Blue Plan planning process is the development of an inventory of Long Island Sound’s natural resources and human uses. The Inventory was completed in April 2018 under the leadership of Sylvain De Guise of UConn/Connecticut Sea Grant, and is based on the best available information and data on the Sound’s plants, animals, habitats, and ecologically significant areas in nearshore and offshore waters and their substrates. The Inventory also includes the human uses of the Sound’s waters and substrates, such as recreational boating and fishing, aquaculture, shipping corridors, and gas pipelines and telecommunications crossings in the Sound.

The Resource and Use Inventory is available for public review and comment, and a public hearing to solicit public feedback and input was held in May 2018. The information contained in the Inventory

*blue plan, continued on page 7*

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*blue plan, continued from page 6*

will now be used to develop the Blue Plan to help avoid user conflicts in the Sound by identifying and protecting special, sensitive, and unique estuarine and marine life and habitats, as well as significant human use areas. The Plan will foster sustainable uses of Long Island Sound that will make the most of economic opportunity without significantly harming the Sound's ecology or natural beauty.

The Blue Plan will also remain "fluid," adapting as necessary to our ever-evolving knowledge and understanding of the marine environment, recognizing current issues like climate change impacts and sea level rise adaptation while anticipating and addressing future emerging issues.

The Blue Plan legislation requires that Plan be developed by a transparent and inclusive process that includes widespread public and stakeholder participation and encourages public input in decision making. Ultimately, the Plan will only be successful if stakeholders believe their issues, concerns, and vision are well represented. The planning team strongly encourages stakeholders to get involved and stay informed to help develop a plan to protect what is most important to them:

- Join the [Blue Plan listserv](#) to be notified of Blue Plan Advisory Committee meetings, additional public events, updated web postings, and other information related to the Blue Plan.
- Visit the [Blue Plan website](#) ([www.ct.gov/deep/lisblueplan](http://www.ct.gov/deep/lisblueplan)) and the "Frequently Asked Questions" for background information about the Blue Plan and links to related material.
- Review the [Resource and Use Inventory](#), the [Basic Blue Basics Introduction](#), [Public and Stakeholder Engagement Factsheet](#), [Focusing on the Issues Factsheet](#), and the [Draft Vision and Goals document](#) and provide your comments and feedback via the [Blue Plan email address](#) ([DEEP.BluePlanLIS@ct.gov](mailto:DEEP.BluePlanLIS@ct.gov)), the [Blue Plan Online Comment Form](#) ([www.ct.gov/deep/blueplancomments](http://www.ct.gov/deep/blueplancomments)), or send written comments to LIS Blue Plan, DEEP WPLR Land and Water Resources Division, 79 Elm Street, Hartford, CT 06106. 🍁

## Aquifer Protection Training Info

### DEEP Launches New Online Aquifer Protection Area Program Technical Training for Municipal Officials

In January 2018, the Connecticut Department of Energy and Environmental Protection (DEEP) launched the new Aquifer Protection Area Program Technical Training Course for municipal officials, staff and aquifer protection agency members.

This FREE, online course was custom built to assist municipal Aquifer Protection Agencies and staff meet the training requirements under the Aquifer Protection Act. The course is designed as an overview of the regulatory requirements for local implementation, and instructs agency members and staff responsible for knowing the law and assists them in complying with the law.

The course is now open to municipal officials and anyone else interested in learning about Connecticut's Aquifer Protection Area Program. To gain access to the course, visit [www.ct.gov/deep/aquiferprotection](http://www.ct.gov/deep/aquiferprotection).

*For questions contact Kim Czaplá, DEEP Aquifer Protection Area Program, at [kim.czapla@ct.gov](mailto:kim.czapla@ct.gov) or (860)424-3335. 🍁*



# Protecting Public Lands Update

Protecting Connecticut's Public Lands is on the November 6, 2018 Ballot!

by Eric Hammerling, Executive Director, CT Forest and Park Association

Ever since the CT Council on Environmental Quality (CEQ) published “Preserved But May-be Not – the Impermanence of State Conservation Lands” in 2014, it has been clear that amending the state constitution is the only way to better protect public lands like State Parks and Forests from being given away by the CT General Assembly without adequate public input.

Thanks to the passage of Senate Joint Resolution 35, a.k.a. “Resolution Proposing an Amendment to the State Constitution to Protect Real Property Held or Controlled by the State,” this year, you will be able to vote in support of this necessary reform to protect your public lands on the statewide ballot on November 6th.

Here's why we believe voting “yes” to protect your public lands is so necessary.

## Your public lands are so valuable

Connecticut's State Parks, State Forests, Wildlife Management Areas, state-owned agricultural lands, and other conservation areas, are some of the state's most beloved, valuable, and visited places. Popular beaches at Hammonasset and Rocky Neck, historic masterpieces like Gillette Castle and the Harkness estate, iconic landscape features like Heublein Tower or Sleeping Giant, or watershed protectors like Peoples' or the Centennial Watershed State Forests attract 9+ million people to Connecticut every year and are irreplaceable natural assets.

UConn performed an economic benefit analysis of State Parks that documented a benefit to Connecticut of over \$1 billion and 9,000 private sector jobs every year – equivalent to a return to Connecticut taxpayers of over \$38 for every \$1 invested in the Parks. Also, a 2017 study by the Outdoor Industry Association documented an annual benefit to Connecticut from outdoor recreation of \$6.9 billion in consumer spending, \$2.2 billion in wages and salaries in the private sector, \$502 million in state and local tax revenues, and support for 71,000 Connecticut jobs.

## However, your public lands are unprotected and can be given away for nothing in return

Unless this referendum on the November ballot is approved, Connecticut's General Assembly will continue to sell, swap, or give away your priceless public lands in a backroom deal – most often a late session amendment to the annual Conveyance Bill (known as a “rat”) – that usually gets approved without any public input at all. Despite additional scrutiny on public land conveyances this year, there were 4 new conveyances of public lands and 4 changes to the Conveyance Bill (SB 502) that passed in Committee made in the last 6 hours of the 2018 Legislative session. Whether or not those late additions of public lands and other changes are controversial, that's not the way valuable public resources should be treated.

## Is it necessary to amend the state constitution?

Yes. A constitutional amendment is necessary because each section of the annual Conveyance Bill proposes public lands to be given away with powerful language that nullifies all existing laws (“Notwithstanding any provision of the general statutes ...”), so simply passing a new law won't work. A joint House/Senate rules change that would require a public hearing has been proposed in the past, but at the end of the session when mischief often occurs, the rules are suspended to pass lots of bills in a short amount of time. A constitutional amendment – similar to those that have been in the state constitutions of Maine, Massachusetts, and New York for decades – would be impossible for the General Assembly to ignore.

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### Would this interfere with typical interactions between municipalities and the state?

No. If passed, the constitutional amendment would only be triggered when the General Assembly proposed a conveyance of public lands. It would not impact exchanges of public land between state agencies, the current administrative surplus land process, or the ability of the state to work cooperatively with towns and other entities to enter into leases or concession arrangements, make boundary adjustments, allow for easements for utility work, etc. The typical normal activities between municipalities and the state that take place outside of the General Assembly's conveyance process now would be unchanged.

### What would voting for this referendum on the ballot actually do?

Voting "Yes" would require that BEFORE the General Assembly could sell, swap, or give away public lands, there must be two important safeguards in place:

1. There must be a public hearing for all state-owned public lands; AND
2. A 2/3rds vote would be required for any public lands held by the Department of Energy & Environmental Protection (e.g., State Parks, State Forests, and Wildlife Management Areas), or the Department of Agriculture (e.g., state-owned farmland or easements).

### How can you get involved?

In addition to voting on November 6th, you can also support this effort as a volunteer, by hosting an awareness-raising event, or with a financial contribution as an individual or organization. The Connecticut Forest & Park Association is forming a 501c4 nonprofit organization to advocate and spend the resources necessary to raise awareness of this ballot measure. If you have any questions, or to learn more as this effort evolves, you can contact me anytime via [ehammerling@ctwoodlands.org](mailto:ehammerling@ctwoodlands.org).

*Eric Hammerling has been the Executive Director of the Connecticut Forest & Park Association (CFPA) since May, 2008. CFPA is the oldest nonprofit conservation organization in Connecticut (established in 1895) and has long advocated for protected and well-managed parks, forests, open spaces, and trails for current and future generations to enjoy.* 🌿

## Needed: Advocates for Sound Forest Management in CT Apply to Coverts Today!

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# CEQ's Annual Environmental Quality Report Ties Connecticut to Regional Climate Trends

by Karl Wagener, Executive Director, Council on Environmental Quality

Connecticut's air, water, wildlife and human health are showing the effects of warming temperatures and heavier rainfalls, the hallmarks of a changing climate, according to the state Council on Environmental Quality (CEQ).

The Council submitted the state's annual environmental quality report for 2017 to Governor Dannel P. Malloy in late May. In her letter to Governor Malloy, Council Chair Susan Merrow of East Haddam said, "As you know, one major factor influencing most of these environmental quality indicators is the changing climate. In most cases, warming temperatures and episodic rainfall hinder Connecticut's mission to improve air and water quality.

"This year's report includes a new feature: for every indicator that is affected by climate change (which is nearly all of them), the reader will find a link to "Climate Notes" with more information that explains the relationship."

This year's report also introduces a new section called "Invasions." One consequence of a warming climate is wave after wave of invasive pests. "Invasions" is the new section that documents this phenomenon, beginning this year with charts showing the remarkable incursion of Asian tiger mosquitoes into Connecticut. The Connecticut Agricultural Experiment Station monitors mosquito populations across the state and has documented an explosive increase in the Asian tiger mosquito since 2010. This very aggressive mosquito can transmit a variety of diseases, and its range expansion, according to scientists, is aided greatly by warmer temperatures and heavy rains – hallmarks of a changing climate in the northeast. Future editions of the CEQ's report is expected to include data on other invasive species.

Apart from pesky invasive insects, the report summarizes 2017 in this way: "As in many recent years, each improvement of 2017 was countered by a step backward in another part of the environment. Air was better, beaches were closed more often. More eagles, fewer bats. And so on."

"There is a reason that Connecticut residents' continued commitment to a more healthful environment does not yield quicker, more satisfying results: Connecticut's location in a changing climate. Connecticut residents take pride in the unique history and beauty of their state. There is uniqueness in Connecticut's challenges, too. The seas of the world, for example, are rising everywhere, but nowhere more quickly than the shores of New England. That is just one challenge."

The report notes that climate change is not the only hindrance to environmental progress: "Public investment in the land and wildlife of Connecticut is vitally important. There has been improvement in the acreage of farmland preserved in the last three years, but Connecticut is not on track to attain its land-conservation goals." While Connecticut came close to the annual target for farmland preservation, it fell further behind in its mission to achieve its goals for conserving forest and other open-space lands.

The reader also will find references to the public trust in the air, water, wildlife and other natural resources of Connecticut, an essential ingredient of this state's environmental progress.

"We will continue to consult climate change experts," Merrow concluded. "Many people have come to rely on our reports for accurate and unbiased data on Connecticut's environment, so we will make sure that all new climate change information is updated and reliable."

Though not mentioned in the report, readers of *The Habitat* will be interested and pleased to learn that the CEQ should no longer be the subject of perennial budget battles at the State Capitol. Beginning this year, the CEQ will be funded from the Passport to the Parks account. This account, which receives the revenue from the new surcharge on vehicle registrations, is known best for allowing residents to enter state parks for free and for improving DEEP's capacity to manage the parks, but it also provides funds for the

*CEQ, continued on page 11*

CEQ, continued from page 10

CEQ, the five conservation districts, and the Council on Soil and Water Conservation. This outcome is the product of strong and effective advocacy by countless conservation-minded citizens and numerous organizations including, of course, CACIWC.

*Karl Wagener serves as the Executive Director of the Council of Environmental Quality (CEQ). Established in 1971, the CEQ submits Connecticut's annual report on the status of the environment to the Governor pursuant to section 22a-12 of the Connecticut General Statutes. Additional responsibilities of the Council include review of construction projects of other state agencies, publication of the twice-monthly Environmental Monitor, and investigation of citizens' complaints and allegations of violations of environmental laws. The Council is a nine-member board that is independent of the Department of Energy and Environmental Protection (except for administrative functions). The chairman and four other members are appointed by the Governor, two members by the President Pro Tempore of the Senate and two by the Speaker of the House. All serve without compensation.* 🍁

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*sustainable, continued from page 1*

Sustainable CT was designed to support all Connecticut municipalities, regardless of size, geography, or resources. Participating communities can select from 55 different actions that fall into nine different categories:

- Thriving Local Economies
- Well-Stewarded Land and Natural Resources
- Vibrant and Creative Cultural Ecosystems
- Dynamic and Resilient Planning
- Clean and Diverse Transportation Systems and Choices
- Efficient Physical Infrastructure and Operations
- Strategic and Inclusive Public Services
- Healthy, Efficient, And Diverse Housing
- Inclusive and Equitable Community Impacts

The actions in the program reflect a broad interpretation of sustainability, where environment, equity, and economy are in harmony. Many actions align with the goals of CACIWC, promoting wetland and watershed protection, improved water quality, open space, forestland and habitat conservation through education, planning/regulation, and on-the-ground projects. Sample actions include creating and maintaining natural resource and wildlife inventories, facilitating invasive species education and management, and implementing low impact development. We envision that both Conservation and Inland Wetlands Commissioners will assist in implementing relevant actions.

There is no one-size-fits all approach to navigating Sustainable CT – communities can pick and choose the actions that align with their local character and vision. All actions in the program were developed during an intensive five-month-long working group process, in which municipal elected officials and staff, commissioners, non-profit representatives, state agency employees, and business owners compiled the inaugural action list. Actions identified in the program may be updated over time.

There is even an innovation action where a municipality can receive credit for implementing actions toward sustainability that are not on the action list. It is important to note that communities may also receive credit for past actions. Connecticut's cities and towns have been active champions of sustainability, and we want to credit past achievements.

If your municipality is interested in joining Sustainable CT, the first step is for the municipality to pass a resolution (a template is available at [www.sustainablect.org](http://www.sustainablect.org)). The resolution will declare the community's intent to participate and identify a municipal point of contact with whom Sustainable CT will coordinate. The resolution also establishes a Sustainability Team that will implement program actions. This Sustainability Team may be created or an existing Commission or agency may be named as the Sustainability Team.

Once your community has passed a resolution, go online at [www.sustainablect.org](http://www.sustainablect.org) and create a municipal profile. The municipality then works through the program and compiles completed actions at its own pace. There is no commitment to earn certification in any given year. The municipality will also be eligible for technical support and financial resources, including the Sustainable CT small grants program.

Individuals and organizations can also participate in Sustainable CT by assisting communities in implementing actions or through sponsorship. Please contact us if you are interested in discussing how you might get involved.

We look forward to certifying our first class of Sustainable CT communities this fall!

*For more information on Sustainable CT, see our website: [www.sustainablect.org](http://www.sustainablect.org). You can also contact Jessica LeClair at [leclairj@easternct.edu](mailto:leclairj@easternct.edu) or 860-465-0258 with any questions. 🍁*

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how to best improve the resilience of their own municipalities for the next superstorm.

As this issue of *The Habitat* is heading to press, Subtropical Storm Alberto, the first named storm of 2018, has made landfall in the Florida panhandle causing flooding and mudslides in Alabama. CACIWC will continue our efforts to bring you relevant speakers and workshops that will help you increase the resiliency of your town's habitats and infrastructure, and help prepare you for expected impact of future severe storms in Connecticut.

<sup>1</sup> Drye, William. (2017, November 30). 2017 Hurricane season was the most expensive in US History. Retrieved from: <https://news.nationalgeographic.com/2017/11/2017-hurricane-season-most-expensive-us-history-spd/>

<sup>2</sup> NOAA. (2017, November 30). Extremely active 2017 Atlantic hurricane season finally ends. Retrieved from: [www.noaa.gov/media-release/extremely-active-2017-atlantic-hurricane-season-finally-ends](http://www.noaa.gov/media-release/extremely-active-2017-atlantic-hurricane-season-finally-ends)

<sup>3</sup> Fritz, Angela & Jason Samenow. (2017, September 2) Harvey unloaded 33 trillion gallons of water in the US. *The Washington Post*. Retrieved from: [www.washingtonpost.com/news/capital-weather-gang/wp/2017/08/30/harvey-has-unloaded-24-5-trillion-gallons-of-water-on-texas-and-louisiana/?utm\\_term=.187bbcd81653](http://www.washingtonpost.com/news/capital-weather-gang/wp/2017/08/30/harvey-has-unloaded-24-5-trillion-gallons-of-water-on-texas-and-louisiana/?utm_term=.187bbcd81653).

<sup>4</sup> The Weather Channel. (2017, September 2). Historic Hurricane Harvey's Recap. Retrieved from: <https://weather.com/storms/hurricane/news/tropical-storm-harvey-forecast-texas-louisiana-arkansas>.

<sup>5</sup> Trenberth, K. E., Cheng, L., Jacobs, P., Zhang, Y., & Fasullo, J. (2018). Hurricane Harvey links to ocean heat content and climate change adaptation. *Earth's Future*, 6. <https://doi.org/10.1029/2018EF000825>

In other CACIWC news:

1. The CACIWC Annual Meeting Committee has completed its review of the many comments and suggestions submitted on the survey distributed at our **40th Annual Meeting and Environmental Conference** on Saturday, November 18, 2017 at our new venue, the Radisson Hotel Cromwell. We thank you for your helpful comments and suggestions.

2. The Annual Meeting Committee is recruiting speakers and workshops for our **41st Annual Meeting and Environmental Conference**, which we have already scheduled for Saturday, November 17, 2018. We are pleased to announce that, based on your positive feedback, we are returning to the Red Lion Hotel Cromwell (formerly known as Radisson Hotel Cromwell) for our 2018 conference. Please contact us at [AnnualMtg@caciwc.org](mailto:AnnualMtg@caciwc.org) with any new suggestions. Watch for additional conference news in upcoming issues of *The Habitat* and on our [www.caciwc.org](http://www.caciwc.org) website.

3. The Board of Directors is very grateful to the large number of commissions who renewed their CACIWC membership prior to our annual meeting. For those who have not yet done so, it is not too late to send in your 2017-18 membership dues! Our new fiscal year begins in July, when we will be requesting your commission's renewal and support of our **2018-19 membership dues**. A copy of the current renewal form and additional information can be found on our website: [www.caciwc.org](http://www.caciwc.org).

4. Your commission's support of our membership dues has become even more critical in recent years as the costs of hosting our annual meeting and environmental conference have substantially increased. Would you or your company like to provide additional support to CACIWC through **contributions or a dedicated sponsorship**? Our website provides a description the various sponsorship categories, along with additional individual and business membership categories. Please consider making an additional contribution to enable us to continue to provide our Saturday annual conference!

5. Many members have asked those of us on the CACIWC board of directors for help with various issues facing their commissions. We are pleased to announce a new program, starting with this issue of *The*

*CACIWC News*, continued on page 14

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*CACIWC news, continued from page 13*

*Habitat*, entitled **Ask CACIWC**. CACIWC members with questions ranging from guidance on conducting wildlife surveys to help with legal and regulatory issues. While we cannot provide town-specific legal advice (which you should seek from your town attorney), we will provide general guidance and suggestions to selected questions. The “Journey to the Legal Horizon” column in this issue provides guidance on three initial questions.

Do you or your commission have other questions for us? Questions from both member Inland Wetlands and Conservation Commissions are encouraged. Just send them to: [AskCACIWC@caciwc.org](mailto:AskCACIWC@caciwc.org) to be selected for a response. Remember, questions cannot be town-specific or time-critical, as our response will not appear until the next issue. We will also continue to seek new topics for articles to be published in *The Habitat* along with additional feedback from our members, which you can also email to us directly at [TheHabitat@caciwc.org](mailto:TheHabitat@caciwc.org).

Please do not hesitate to contact us at [board@caciwc.org](mailto:board@caciwc.org) if you have questions or comments on any of the above items or have suggestions for your board of directors.

We thank our members for all of your ongoing efforts and wish you a safe and healthy summer!

Alan J. Siniscalchi, President 🌿



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*legal, continued from page 3*

building inspectors and zoning enforcement officer, the Fourth Amendment to the United States Constitution, which prohibits unreasonable searches and seizures, must also be complied with.

Back to the current version of the Model Regulations: Section 7.5 j specifies that an application (for a wetlands permit) shall contain “authorization for the members and agents of the Agency to inspect the subject land, at reasonable times, during the pendency of an application and for the life of the permit.” That doesn’t sound like consent, it sounds like a requirement. Since there is no statutory authority for members to enter property, I think putting a signature line in an application asking for consent on the application is a more prudent approach and more likely to be upheld by the courts.

## #2: How to strengthen enforcement

Our commission is currently toothless and facing challenges with no power of fines or enforcement. Do any Connecticut towns have fines and enforcement statutes?

There are two ways of looking at this question: heads, you win – *you actually do have enforcement authority* and tails, you lose – *if you create fines and enforcement remedies in your municipal regulations that haven’t been provided in the wetlands statute, those mechanisms are really toothless.*

The wetlands statute authorizes a commission to issue cease, desist and restore orders to anyone undertaking a regulated activity without a permit or not in compliance with permit terms. Is your commission exercising that authority? The statute also authorizes a commission to bring its case to court and ask for civil penalties to be imposed or in very rare cases to have the state’s attorney’s office prosecute for criminal violation of the wetlands law and have the court impose a fine. The third option is for the town’s legislative body (board of selectmen, town council) to adopt an ordinance establishing fines for violations of the wetlands law, followed by a due process hearing set out in the statute (the citation process). That hearing is not conducted by the wetlands agency. The law does

*legal, continued on page 15*

legal, continued from page 14

**not** authorize a wetlands commission to impose fines, separate from the citation process.

Are you exercising your enforcement muscles with informal actions for smaller matters where the actor or land owner will work with you? And upping the ante only when you need to – after informal actions have failed by serving a cease and desist order or starting court proceedings. A “one-size-fits-all” approach to enforcement will fail. Either it is too lenient, if you always try informal actions and never escalate to formal ones because it seems to complicated or risky, or it is too severe, everyone is issued a cease and desist order as the first communication from the agency. Your commission has to become comfortable with the full range of enforcement tools with the goal of getting people into compliance as soon as possible. If your commission shows itself to be willing to fine-tune its enforcement approach, you are more likely to get buy-in from the public which in the long run will create an atmosphere of good will and have a salutary deterrent effect.

### #3: Exemptions or are they “permitted as of right”?

“You’re confusing exempt with ‘as of right.’ A profound difference.”

That’s it. That’s all the commenter wrote. I don’t know the context. I don’t know if the person is a commission member or someone being subjected to an enforcement action or asking for a ruling on a request for determination of jurisdiction. Here’s what I do know. “Permitted as of right” is the language from the statute. It’s so awkward and bulky that practitioners conversationally use a shorthand term, “exemption,” to describe the activities that the legislature has declared do not require a wetlands permit.

If there *were* a profound difference between “exempt” and “as of right” (which there isn’t), how would I figure that out? First, I’d look in the statute. Second, I would review exemption court cases. Why? Because the “law” is the action undertaken by an agency (executive branch) pursuant to a statute (legislative branch) as interpreted by the courts (judicial branch.) The action is upheld/affirmed or overruled/

reversed. In a review of the leading state Supreme Court and Appellate Court decision interpreting § 22a-40 (the “exemptions,” if you will) virtually every decision refers to the “exemptions in § 22a-40” or the “farming exemption.” These cases span 1981 to 2016. In no case did the court characterize the terms “exempt” and “as of right” as having separate and distinct meaning. On the contrary, they used them interchangeably. So, my conclusion, is that you are in good company in referring to the activities in § 22a-40 of the state wetlands law as exemptions – or permitted as of right. Is there is a profound difference between the terms? Well, that’s what we would call a “distinction without a difference.”

Recurring themes: In approaching any new topic — is it in the statute? It’s not good enough to find it only in your commission’s regulations. If it’s not in the statute (like the word “exemption”), is it used in court cases interpreting the wetlands law? Send in your questions for the next column.

*Janet P. Brooks practices law in East Berlin. You can read her blog at: [www.ctwetlandslaw.com](http://www.ctwetlandslaw.com) and access prior training materials and articles at: [www.attorneyjanetbrooks.com](http://www.attorneyjanetbrooks.com). 🦉*

## Dues are Due!

2018-19 CACIWC  
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The 2018-19 membership renewal  
form is on our website at  
[www.caciwc.org](http://www.caciwc.org)





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*We hope to see you there!*