

THE HABITAT

DEP Victorious Before the Supreme Court: Mellon Tree-Cutting Subject to CEPA Relief

by Janet P. Brooks

Editor's Note: Connecticut's preserved lands are under siege, according to "Preserved But Not Protected," a recent report by Connecticut's Council on Environmental Quality (CEQ). The most common problem is illegal tree-cutting, but there are many other illegal actions taken on conservation lands owned by the state, municipalities, land trusts and other private entities. While evidence for encroachment of public and preserved land is easy to document, there is a lack of legal recourse available to defend against them. In this issue there are two articles on a recent Connecticut Supreme Court case involving the illegal cutting of 340 trees in wetlands on land owned by the East Haddam Land Trust and The Nature Conservancy. Attorney Brook's article, below, and "Damages for Wetlands Violations: Lesson from Ventres v. Mellon" by Mark K. Branse, Esq. (page 3) are written to address legal issues that will be instructive to Conservation and Inland Wetlands Commissions. A link to CEQ's 2005 Special Report, "Preserved But Not Protected," can be found on their website at www.ct.gov/ceq/cwp/view.asp?a=986&q=248850. — Tom ODell

Since December 1999 when Timothy Mellon, sole member of Goodspeed Airport, LLC, set in motion the clearcutting of 2.5 acres of floodplain forest along the banks of the Connecticut River in East Haddam, directly south of the Airport and north of Chapman's Pond, Mr. Mellon learned that town and state regulators carry through with their missions to protect natural resources from illegal activities. The trees were on land owned by the East Haddam Land Trust and The Nature Conservancy. The forest was part of an ecosystem designated as a wetlands complex of international significance. Prior to the state initiating litigation, state and local parties interested in a resolution of the assault conducted informal negotiations. When no fruitful resolution was reached, the Attorney General's Office representing the Department of Environmental Protection (DEP) filed a lawsuit based on violations of the Connecticut Environmental Protection Act (CEPA): that the clearcutting of the forest constituted unreasonable impairment and destruction of the forest as well as unreasonable impairment to the wetlands on which the forest was located. The East Haddam Inland Wetlands & Watercourses Agency had already initiated suit under

the state Inland Wetlands & Watercourses Act (Wetlands Act) alleging that the clearcutting was regulated by the Wetlands Act and the cutting was performed without a local wetlands permit. The Attorney General's Office could have crafted a suit based on the Wetlands Act, as any person is authorized to bring a suit alleging wetlands violation. The decision to rely on CEPA was fortunate, as the trial court ultimately issued its order for relief *solely* under CEPA.

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Board of Directors Changes

We Say Goodbye to Two Board Members...

Regretfully, we accepted the resignations of **Ned Kreidel** and **Jim Ferlow** from the Board of Directors. We are deeply grateful for the combined 17 years of service that Ned and Jim have contributed to the CACIWC Board. Ned served on the Board for 10 years as the New Haven County Representative, and Jim served for 7 years, initially as the Litchfield County Representative, and more recently as Secretary and member of the Executive Committee. Both were also members of the Board's Inland Wetlands Education Committee. Ned is a member of the Guilford Inland Wetlands Commission, and Jim is the Inland Wetlands Agent for the Town of Milford. Their experience, insight and contributions will be sorely missed.

Juan Sanchez, formerly the Windham County Representative, has been elected to the position of Secretary and member of the Executive Committee, replacing Jim Ferlow.

...And We Welcome Three New Board Members!

We extend a warm welcome to three very able and experienced new Board members. All three members have extensive backgrounds in land conservation, and a strong involvement in their respective communities. We anticipate an enjoyable and productive working relationship with them.

Ellie Czarnowski, Chairperson of the Old Lyme Conservation Commission, joins the Board as the New London County Alternate Representative. She also served on the Old Lyme Inland Wetlands Commission, the Open Space Committee and is a member of the Old Lyme Conservation Trust. With a masters degree in computer science and experience in strategic planning, Ellie brings new dimension to the Board and is taking a lead role in CACIWC's current strategic planning efforts.

Holly Drinkuth, Chairperson of the Brooklyn Conservation Commission, joins the Board as the Windham County Representative. Holly is the Land Conservation Coordinator for the Green Valley Institute and plays a key role in coordinating conservation commissions in the Green Valley area. She has a bachelor's degree in environmental science and is the Quinebaug Highlands Landscape Project Director for The Nature Conservancy.

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Damages for Wetlands Violations: Lessons from *Ventres v. Mellon*

by Mark Branse, Esq.

The Connecticut Supreme Court's recent decision in the case of *Ventres v. Mellon, et al.*, 275 Conn. 105 (2005) contains lessons about the enforcement of Inland Wetlands and Watercourses regulations — some helpful for such enforcement actions, and some not. The case arose when the Goodspeed Airport, LLC in East Haddam, controlled by Timothy Mellon, clear-cut about 2.5 acres of dense forest that allegedly impaired the approach to the Goodspeed Airport runway. Every plant was cut at ground level — trees of all sizes, shrubs, and brush, even though FAA guidelines did not require that extent of cutting. There were a few problems with this: First, the area was a floodplain forest, and hence a regulated wetland. Mellon did not seek any declaration of jurisdiction nor a permit from the East Haddam Inland Wetlands and Watercourses Commission. Second, Mr. Mellon did not own the property where the trees were cut. And third, the owners were the East Haddam Land Trust and The Nature Conservancy. This cut area formed the northerly portion of the Chapman Pond Wildlife Refuge, home to the largest wintering ground for American Bald Eagles in the eastern United States.

The Commission's enforcement agent issued a Cease and Desist Order, but when the Commission convened the show cause hearing, Mr. Mellon alleged conflicts of interest for so many Commission members that it could not raise a quorum that would meet his tests. The hearing adjourned without action on the Order, and then the Commission authorized the enforcement action to be brought. Although Mellon acknowledged that his conflict of interest claims were no longer applicable in June of 2001, the Commission did not re-open the show cause hearing because litigation was already in progress.

Mr. Mellon raised a number of defenses, including a claim that FAA guidelines preempted the local wetlands regulations and so no permit was needed; a claim that he had a prescriptive easement to clear the area, and did not the consent from the Trusts; and a claim that, regardless of any wrongs, only Goodspeed Airport, LLC was liable, not him

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personally. The Connecticut Department of Environmental Protection brought its own independent action against Mr. Mellon, and the Trusts brought cross complaints under the Connecticut Environmental Protection Act (CEPA). The eight-day trial involved the testimony of many experts, and included testimony that restoration of the cut area would cost between \$148,117.60 (per Mr. Mellon's expert) and \$158,092.00 (per the commission's expert).

The trial court ruled in favor of the Commission, finding that Mr. Mellon's actions violated the wetlands regulations; that FAA guidelines did not preempt those regulations; that whatever conflicts of interest might have interrupted the show cause hearing did not prevent the bringing of the enforcement action; and that Mr. Mellon was personally liable for his actions, in addition to his company. The State's CEPA claim was upheld on one count, but not on another one. The trial court ordered total damages on both the State and local actions of \$67,500 — about half of the actual restoration costs. He must also pay the attorney's fees and costs for the conservation parties.

Mr. Mellon appealed to the Supreme Court, and the Commission appealed the low level of the damage award. The State and the

Trusts cross appealed on other adverse rulings. The Supreme Court affirmed the trial court's decision as to the enforcement action, and improved on the trial court's decision relative to the State and the Trust cases. It also found that the FAA preemption issue was not part of the case and need not be ruled upon. While this was a complex case, there are some lessons to be learned:

The Supreme Court missed an important chance to send a message to wetlands violators. The fact is that Mr. Mellon got the clear approach to his runway, he cut more trees than he could have under the limited easement the trial court gave him, and he paid less than half of the restoration cost. The payment of attorney's fees only makes the trust parties whole — it does not provide any benefit to the wetlands. The Court also implied that the penalty for "each day of violation" *might* be read to apply only to the violation itself. This tells violators to move fast! CACIWC should consider seeking changes to the Statutes to specify that "each day of violation" includes any time period of violation *continuing until the violation is corrected*.

The decision also calls into question the wisdom of issuing a Cease and Desist Order for a major wetlands violation. The trial court terminated the calculation of the per diem penalty upon the issuance of the Order on the basis that the

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The trial was conducted as a team effort among the attorneys for the DEP, the town wetlands commission, the East Haddam Land Trust and The Nature Conservancy. The team shared expert witnesses and coordinated efforts putting on the case. While the case involved issues such as federal aviation law and private property rights, this article focuses on the environmental aspect of the clearcutting.

The Attorney General's Office separated the harm done into two categories: 1) to wetlands and watercourses, and 2) to the forest. To prove the CEPA violation of unreasonable impairment of the wetlands and watercourses, under state Supreme Court precedent, proof needed to be offered that the clearcutting was a violation of the Wetlands Act. To so establish we had to prove that clearcutting is a regulated act. DEP offered its own soil scientist who identified key terms in the definitions of the Wetlands Act: the "removal or deposition of material" or "alteration" of a wetlands is a "regulated activity." In addition, "material" is defined as "any substance...organic or inorganic..." The trial court found clearcutting to be a regulated activity. The Supreme Court affirmed that ruling, stating: "If the removal of all vegetation growing in a wetlands area was not intended to be a regulated activity, we would be hard pressed to imagine what type of material the legislature had in mind in enacting § 22a-38 (13) [of the General Statutes.]" *Ventres v. Goodspeed Airport, LLC*, 275 Conn. 105, 138 (2005). This ruling affirmed what the DEP and wetlands commissions have believed since the inception of the Act: clearcutting, except for the expansion of agricultural crop land, is a regulated activity.

The Supreme Court also dismissed out of hand that its decision in *AvalonBay Communities, Inc. v. Inland Wetlands Commission*, 266 Conn. 150 (2003) controls this case. In *AvalonBay* the Supreme Court held that, in a matter arising from the concern of salamander habitat outside the regulated upland review area, wildlife does not come within the jurisdiction of the Wetlands Act. In contrast, the court held that this clearcutting of vegetation within wetlands can be regulated even if it does not harm the wetlands soils. The court admitted that the trial court found harm, scouring and erosion, to the wetlands by the elimination of the trees which acted as a floodbrake. The use of expert testimony was interwoven with the legal argument made by counsel that as a matter of fact and law clearcutting is a regulated activity.

The trial court dismissed the DEP's claim alleging unreasonable impairment to the wetlands. The Supreme Court reversed that aspect of the decision and sent the case back to the trial court to consider the granting of further relief.

The trial court found that DEP had proved unreasonable destruction of forest, the second aspect to the CEPA claim. The trial court found that the airport had an easement to trim several trees a year for airport safety, but that clearcutting all vegetation to the ground was unreasonable. The Supreme Court upheld this ruling.

Ultimately the trial court awarded relief at the site under CEPA and not the Wetlands Act. The court found that the

"...The court held...this clearcutting of vegetation within wetlands can be regulated even if it does not harm the wetlands soils."

relations were strained between the neighboring property owners and any requirement for Mellon to enter onto property, such as to plant trees, could be problematic. It turned to an alternative available by law only when the Attorney General brings a CEPA case: issuance of a supplemental environmental project. In this case, the trial court, although guided

by a proposal from the Attorney General's Office regarding invasive plant species, crafted a plan on its own, that Mellon and the airport be responsible to pay \$50,000 to DEP for a government-funded research project at the site. The trial court expects DEP to identify one of the affected landowners, if possible, to be the recipient of the funds, to study and implement many of the aspects of restoration that the witnesses for the DEP, the property owners and the local wetlands agency testified in support of. The civil penalties are required by law to be used for restoration. In sum, the trial court ordered the payment of \$67,500 with the expectation that the amount would be used to remediate the harm. Such creative relief was not available under the Wetlands Act. In addition, Mellon may be assessed the attorney's fees for all prevailing parties under the Wetlands Act and CEPA. The entire "team" reserved their individual rights to petition for attorney's fees.

The Supreme Court affirmed the trial court's holding that Timothy Mellon was personally liable for the violations under the Wetlands Act and CEPA. His liability is grounded in his participation, i.e., the management of the clearcutting. The fact that the Goodspeed Airport was legally organized as a limited liability corporation (LLC) under the state laws doesn't shield a member of the LLC from the legal repercussions of conduct in which he participated. By this decision the Supreme Court extended the "participation doctrine" to environmental violations.

The Supreme Court upheld the wetlands commission's successful efforts to cast Mellon's clearcutting as a viola-

tion of the Wetlands Act. The trial court found that the wetlands agency proved a violation of the Wetlands Act, and ordered that Mellon and the airport engage in no future regulated conduct without a permit. It also assessed a civil penalty (\$500/day) for a 35-day period which began the day of the clearcutting and ended with the issuance of a cease and desist order prohibiting regulated activities without a wetlands permit. No hearing was held as is required. (Mellon objected to wetlands commissioners participating in the hearing who were also members of the affected property owner, the East Haddam Land Trust.) The Supreme Court upheld the 35 day limit on penalties, although the legal reasoning is not so clear to predict penalties in future cases. It appears that the commission's issuance of an administrative order to cease, desist or restore without holding the hearing contributed to this outcome. The Supreme Court did state, however, if a commission wants penalties for the lack of restoration, it must complete the hearing, and affirm or revise the order, and then go to court to seek penalties or enforcement of the order.

Lessons to be learned:

1. To receive a trial court decision full of facts in your favor, work hand-in-hand with experts who can describe the harm from as many perspectives as the facts support. (In this case that included a soil scientist, botanist and geologist.)
2. In addition to the legal entity that undertook the illegal activity (corporation, limited liability corporation, etc.) consider bringing the lawsuit or administrative order against the corporate officer or LLC member who participated in the illegal conduct.
3. When your commission issues an order, hold the hearing and take action to revoke, affirm or revise the order. If your commission cannot hold the hearing, take official steps to revoke the order.
4. Work in tandem with all parties whose interests are allied.

The Attorney General's Office was represented by Assistant Attorneys General Janet Brooks and David Wrinn.

To access the Supreme Court decisions in this case electronically:

1. go to the judicial website at: www.jud.state.ct.us/opinions.htm
2. click on "Archives"
3. click on "Supreme Court archives"
4. click on "2005"
5. scroll down to "Published in *Connecticut Law Journal* — 8/30/05"
6. click on SC 17280 for *Ventres v. Goodspeed Airport, LLC* (wetlands commission case)
7. click on SC 17281 for *Rocque v. Mellon* (DEP case) 🍁

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Order prevented *restoration* of the cut area, as well as further cutting. It may be that issuing an Order for serious violations merely opens up more defenses for the violator and that the matter should just be referred for immediate legal action.

Where an Order *is* issued, and the violator offers no remedy, the Commission should prescribe one itself and issue it as an order under Conn. Gen. Stats. §22a-44(a). The Supreme Court implied that, if the Commission had done that in this case, the Court would have expanded its definition of the "period of violation" to include the time during which no restoration was performed.

Another lesson is that when the violator is a corporate entity, the commission must be watchful for evidence of personal involvement by the owner in the violation. In this case, Mellon's personal signature on certain documents and his personal statements to the Wetlands Enforcement Officer proved pivotal in finding him personally liable for the damage.

Lastly, the case emphasizes the role of perseverance. Mr. Mellon may have counted on wearing down the Commission with extensive discovery, numerous defenses and counter-claims, and a long trial. It didn't work. The message to other violators is clear: we are serious about enforcement. 🍁

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Editor's Note: The following article is instructive for both Conservation and Inland Wetlands Commissions. Ready access to updated soils information is important for making land use recommendations and inland wetlands decisions, as well as development of the Municipal Plan of Conservation and Development.

Connecticut Soils Information Available Online

by Marjorie Faber, Soil Scientist, USDA NRCS

Soil scientists from the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) and partners in the National Cooperative Soil Survey have been working for the past fifteen years to create a new digital soil survey for the state of Connecticut. Some of the older published county soil survey reports (Hartford, Litchfield, and Tolland counties) were out of print and not available for distribution any more. In addition, soil mapping standards and techniques have advanced since the days of the initial soil surveys.

A seamless statewide soil survey, on recent aerial photographic base with one soil legend, was created. Modern soil interpretations have been generated. The maps were created at a scale of 1:12,000, which means that one inch on the map represents 1000 feet on the ground. The minimum size delineation on these maps is about 3 acres. Many landscapes consist of soils in complex patterns. Soil differences often occur within short distances. In some instances, however, the soils grade imperceptibly to other soils. Because of this, the soil units are not absolutely homogeneous or pure. Thus, onsite investigation is required for small land parcels and intensive land uses.

The new digital soil survey has been officially certified by the national NRCS office. This digital soil survey, dated July 15, 2005, is the official soil survey information for Connecticut. The eight published county soil survey reports (or any information from the reports or derived from them) are to be used only as historic references. The new *Soil Survey of the State of Connecticut* will NOT be published in hard copy.

Most of the information from the new *Soil Survey of the State of Connecticut* is now available from a USDA website (<http://soils.usda.gov/survey>). This site provides public access to national soil survey information and is simple to use. Users of the Web Soil Survey do not have to know about GIS (geographic information systems) to get soils information.

USDA designed the website with three easy to use features – Define, View, and Explore. When viewers visit the web soil survey they are asked to define a geographic area. Once a location is defined and projected on the screen, the viewer is offered the choice to print the map and related information, save it to their hard drive, or download the data for use in a geographic information system.


The viewer can also Explore the designed location and receive information on soil suitability in relationship to usage. This provides the viewer flexibility in developing a

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report to address a specific need, whether it is to build a new house, design a road, plant a field, or create a wetland for wildlife habitat.

Currently, the USDA website has soil maps and data available online for more than 95 percent of the nation's counties and anticipates having 100 percent in the future. The national web soil survey site will be updated and maintained online as the single authoritative source of soil survey information. For users with GIS skills, the same information (packaged differently) can be accessed from the NRCS Soil Data Mart (<http://soildatamart.nrcs.usda.gov>).


The soil survey maps generated from the web soil survey or from the soil data mart can be created at scales other than the original scale of 1:12,000. However, users must realize that zooming in to create a larger soil map does not result in a more detailed or accurate map. The map is just larger, but does not show any more detail. The blown up map is misleading because if the map was made at the larger scale, more detail could be shown. The minimum size delineation is still three acres in size.

On-site investigation of the soils in the field is necessary to accurately determine the type of soil for any use, or to accurately determine the presence/absence of Connecticut state wetlands soils. The soil survey, however, does provide excellent general planning information.

Other soils information, such as the updated list of Connecticut inland wetlands soils, is not currently available on the web soil survey site, but can be accessed in the soils interpretation folder of Section II of the Connecticut electronic access field office technical guide at: <http://www.ct.nrcs.usda.gov/technical/>. This wetlands list, as well as some soil interpretations customized for Connecticut, will be available on the web soil survey site in the future.

The digital soils data from the Connecticut DEP CDs ("Environmental GIS Data for Connecticut, 2005 Edition") is not the officially certified version of the updated soil survey. Neither is the digital soils information available from the University of Connecticut's Map and Geographic Information Center (MAGIC) website. The digital data from DEP and MAGIC are interim sets of the data and are not the final version. The official USDA NRCS digital soil survey for Connecticut is the version certified on July 15, 2005 and posted on USDA NRCS websites.

People without computer access can still acquire soil survey information from any USDA Service Center, by contacting one of the NRCS Soil Scientists in Connecticut, or by visiting their local library.

For more information on the *Soil Survey of the State of Connecticut*, contact: Margie Faber, 860-688-7725 ext. 115 margie.faber@ct.usda.gov. 

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CACIWC's 28th Annual Meeting And Environmental Conference: An Inspiring Day, A Wonderful Learning Experience!

On an unusually warm and sunny November day, some 280 Connecticut conservation and inland wetlands commissioners took time out of their busy lives to learn, listen and network — at our 28th Annual Meeting and Environmental Conference. The November 5th event, held at the Mountainside in Wallingford, was again a huge success. We thank YOU who attended — for your willingness to educate yourself, and for the work you do for your community.

Gina McCarthy, Commissioner of the Department of Environmental Protection, was the keynote speaker. As always, Commissioner McCarthy gave a wonderfully inspiring talk particularly relevant to the conservation and inland wetlands commissioners in the audience. She thanked them for their dedication and the key role they play in the protection of the natural resources of the state. She outlined the agency's new initiatives, including "No Child Left Inside," a program directed at encouraging young people to explore their outdoor environment and to become more familiar with the many opportunities and landscapes of our State's parks. She also described the "Landscape Stewardship" initiative which involves coordinating and focusing the DEP programs that influence land development. **The energy, enthusiasm and inspiration** that the Commissioner expressed throughout her talk contributed greatly to the positive spirit of the conference and to the success of the entire day.



Another key event of the day was the educational program: **eleven excellent, well-received workshop presentations** were given by specialists and technologists in their respective fields. **Thirty-four exhibits** by vendors and non-profit agencies provided additional and interesting materials for commissioners. Your evaluation forms told us how much you liked the workshops and displays. We agree — they were THE best — and they'll be back in '06!

President Tom ODell chaired the business meeting, which this year included election of the Board of Directors for two-year terms. (See page 2 for the story, and the list of the newly elected Board members). Many thanks go to CACIWC's Annual Meeting Committee, ably chaired by Alan Siniscalchi, for the huge effort it took to make the day a success: Marianne Corona, Ann Letendre, Tom ODell, Rod Parlee, Margie Purnell and Juan Sanchez.

Lastly, we thank the staff at Mountainside for the great accommodations and wonderful food. Bottom line: a great day was had by all! See you at our 2006 meeting!

And More Applause to the Award Recipients!



Left: DEP Commissioner Gina McCarthy delivers her keynote address.

Above: Annual Meeting Chairman and CACIWC Vice President Alan Siniscalchi presents the "Commission of the Year" award to Ralph Zahner, chairman of the Vernon Inland Wetlands Commission.

William Sahlmann of the Milford Conservation Commission received the award for "**Conservation Commissioner of the Year.**" After serving on the Milford Inland Wetlands Commission for a full nine-year term, Mr. Sahlmann joined the Milford Conservation Commission and became its Chairman in 2003. In addition to promoting conservation throughout Milford, he organized the first formal student

commission program in Connecticut. The program has already graduated a number of dedicated student environmentalists. As a Master Wildlife Conservationist, Mr. Sahlmann volunteers as a nest site and habitat monitor for the U.S. Fish and Wildlife Service and the Connecticut Department of Environmental Protection. He also conducts numerous environmental education programs throughout the state.

Russell Dirienzo of the Roxbury Inland Wetlands & Watercourse Commission, received the award for “**Inland Wetlands Commissioner of the Year.**” Mr. Dirienzo has been a member of the Roxbury Inland Wetlands & Watercourse Commission for 16 years and has served as its Chairman for the past 12 years. His fair and objective review of wetlands applications has gained widespread recognition and respect for his commission. Under his leadership, the commission has educated area residents on the value of preserving wetlands and protecting watercourses. Both he and his commission have been active voices in important regional wetlands and watercourse issues, including state efforts to maintain adequate flow volume in the Shepaug River.

The Vernon Inland Wetlands Commission received the award for “**Commission of the Year.**” The Commission was recognized for its dedicated efforts to diligently protect wetlands systems within its town, in particular potential impacts to the small but environmentally sensitive Tankerhoosen Watershed which harbors a native wild trout management area. Under the direction of Chairperson Ralph Zahner, the commission carefully guided the commission through a difficult period of multiple and controversial applications that impacted that resource over the past few years. The commission has preserved many important wetlands and watercourses through tireless reviews of evidence, numerous objective fact-finding sessions and multiple weekly meetings.



The ever-popular display area enjoyed a record number of exhibitors, including vendors of products and services, non-profit organizations and government agencies.

Kim Barbieri, Inland Wetlands Enforcement Office for the City of Torrington, received the award for “**Commission Agent of the Year.**” Ms. Barbieri has served as the Inland Wetlands Enforcement Officer for the City of Torrington for over six years. During this time, she revolutionized Torrington’s land use office, providing single-point of contact service, while adding a level of professionalism and customer service that should serve as a model for other towns. Utilizing her training as a landscape architect and her knowledge of sedimentation and erosion control, Ms. Barbieri has proved invaluable in preserving important natural resources while improving the esthetic quality of the City. 🍁

Publication Resources for Commissioners

Handbook for Connecticut Conservation Commissions: A Guide to the Principals and Practices of Local Environmental Administration in Connecticut —

Provides information commissions need to build the capacity to be an effective research and advisory agency in your community. To be most effective, each commissioner should have this reference document. Order forms can be downloaded from caciwc.org (click on CACIWC Publications), or contact Tom ODell at todell@snet.net or (860) 399-1807.

Celebrating Connecticut’s Conservation Commissions: A Guide for Local Action —

This 2001 CACIWC publication celebrates the community actions and contributions of Connecticut’s Conservation Commissions. This 81-page publication contains 144 project descriptions. Order forms can be downloaded from caciwc.org (click on CACIWC Publications), or contact Tom ODell at todell@snet.net or (860) 399-1807.

Greening Connecticut Cities and Towns: Managing Public Trees and Community Forests —

Produced by Robert M. Ricard, Urban and Community Forester, UConn Cooperative Extension System, and Glenn D. Dreyer, Executive Director, Connecticut College Arboretum, this is a comprehensive guide to conducting urban and community forestry programs for natural resource professional and volunteers. For a copy, contact Bob Ricard at robert.ricard@uconn.edu.

2005 Environmental Scorecard — Connecticut League of Conservation Voters scoring of your legislator’s record for voting on environmental bills in 2005.

Building on 2004 victories for the environment, when 13 major environmental bills became law, the legislature voted in 2005 in support of a significant number of new pro-environmental bills. To see if your legislators supported these successes, go to the League’s website at www.ctlc.org. 🍁

Trust for Public Land Celebrates 10th Anniversary

CACIWC congratulates the Trust For Public Land's (TPL) Connecticut office on their 10th anniversary. In celebrating a decade of conservation work in Connecticut, TPL noted that since opening its New Haven office in 1995, it has completed 60 conservation projects, resulting in the permanent protection of over 4,000 acres, including 30 historic sites and ten farms. To accomplish these projects TPL has worked with communities, land trusts and individuals all over the state and has a strong expectation of continuing and increasing their work to protect some of Connecticut's most special places.


To celebrate their 10th Anniversary the Connecticut office inaugurated an annual set of awards to recognize outstanding contributions to land conservation in the state. This year's awards were presented to:




- Christopher Shays, Connecticut's Fourth District Congressional Representative, for his leadership in acquiring federal funds for critical projects in Fairfield

County, in particular the protection of the Treetops estate and Calves Island.


- Mayor Daniel P. Malloy of Stamford, whose leadership in helping TPL protect the Blake Colman and Treetops properties in Stamford led to a long-term engagement with TPL on the Mill River Greenway.
- Ecton Manning of Washington, Connecticut, who as chair of the Connecticut Advisory Board, helped TPL increase its profile in the state by initiating new conservation programs and widening its supporter base.
- Tom ODell of Westbrook, Connecticut, who, as Chairman of his town's Conservation Commission, invited TPL to collaborate with Westbrook on its first "greenprinting" effort. In the past five years, TPL and Westbrook, under Tom's leadership, have completed a successful \$2.2 Million Bond Referendum and protected four of the town's priority open space parcels.

For more information about TPL and to request assistance, please visit www.tpl.org/connecticut. 

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Connecticut Envirothon — The Natural Challenge

by Jean Cronauer

Envirothon is a problem-solving natural resource education program for high school students culminating in a field day competition. The program is sponsored by Connecticut's Conservation Districts with assistance from many environmental partners. Our mission is to promote environmental awareness, knowledge and active personal stewardship through education and team competition.

Envirothon was founded in 1979 by the Conservation Districts in Pennsylvania. Today, the program has spread throughout the United States and Canada making it North America's largest environmental education competition reaching over 500,000 students annually.

Since 1992, CT Envirothon has reached thousands of students. Envirothon objectives are closely aligned with National Science Standards. Each year in CT, dozens of high schools are actively engaged in Envirothon. Teams of students study Soils, Aquatic Ecology, Wildlife and Forestry plus a special current issue. For 2006, that issue is Climate Change.

The year begins with a Teacher Orientation followed by workshops throughout the school year given by environmental professionals in each field. At the event, teams complete a series of field tests and give a prepared oral presentation such as a management plan before a panel of judges.

Many science teachers are committed to Envirothon because it provides them with excellent curriculum materials, access to a host of environmental professionals and the chance to network with like-minded peers.

Each year at the competition in May, a State Champion is chosen. This year at Peoples State Forest, the team from Litchfield High School coached by John Markelon

achieved that honor. As Team CT, they traveled to the Canon Envirothon held in July in Springfield, MO where they finished eighth overall among 50 teams. They achieved 4th place in Cultural/Historic Landscapes, 5th in Forestry and 8th for the plan they developed to balance natural resource protection with enhanced visitor usage at a Civil War Battlefield. Congratulations!

Many Envirothon alumni have gone on to careers in natural resource management or environmental studies. They are also uniquely prepared to become the next generation of volunteers for land use commissioners, land trusts or other environmental groups.

To start a team at your high school or become an Envirothon volunteer, visit www.ctenvirothon.org or contact ctenvirothon@snet.net. You can learn more and meet Team CT at www.conservect.org. 🍁

Jean Cronauer is Executive Director of the Northwest Conservation District.



Members of the 2005 Connecticut Envirothon winning team from Litchfield High School included (from L-R): Amy Katzin, Erik Watkins, Alexandra Regenbogen, John Zullo and Matt Dickinson (advisor: John Markelon).

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Editor's Note: The Community Investment Act is the new name for Public Act 228. Representatives from a coalition of the agencies that will be administering the funds are developing strategies for how communities can make the best use of these funds. CACIWC will assist the coalition in distributing information as soon as it is available.

COMMUNITY INVESTMENT ACT

– Investing in our Home, Heritage and Land –

Public Act 05-228 — “An Act Concerning Farmland Preservation, Land Protection, Affordable Housing, and Historic Preservation” is landmark legislation that will serve to protect and preserve Connecticut for future generations by providing increased funding for municipal open space grants, farm viability and preservation, historic preservation, and new and existing affordable housing programs, along with new infrastructure to support and promote agriculture in Connecticut.

Beginning October 1, 2005 a \$30 fee will be charged by town/city clerks for the recording of all documents into municipal land records — \$1 of this fee will be retained by the clerk's office, \$3 deposited into the municipality's general fund, with the remainder of the fee submitted to the state's newly created “land protection, affordable housing and historic preservation” account.

Revenue deposited into the “land protection, affordable housing and historic preservation” account will be made available every three months as follows:

- **25% to the Department of Environmental Protection** for municipal open space grants (approx. \$6.5 million per year).
- **25% to the Department of Agriculture** (i) \$500,000 for matching grants to municipalities to help further agricultural viability; (ii) \$500,000 for matching grants to farmers and certain agricultural organizations for diversification of farm operations, transitioning to value added agricultural production and sales, and developing farmers market or other such venues where agricultural products can be sold; (iii) \$75,000 for creating and maintaining the Connecticut Farm Link Program, which shall include a database of agricultural land or operations for sale in Connecticut and a database of people interested in purchasing any type of agricultural land or operation; (iv) \$100,000 to encour-

age the sale of Connecticut Grown food to schools, restaurants, retailers, and other institutions and businesses in the state; and (v) the remainder for funding current farmland preservation programs (approx. \$4.6 million per year).

- **25% to the Connecticut Commission on Culture and Tourism** to supplement the technical assistance and historic preservation activities. (approx. \$6.5 million per year).
- **25% to the Connecticut Housing Finance Authority** to supplement new or existing affordable housing programs. (approx. \$6.5 million per year).

In addition, the Act also allows municipalities (1) to establish land acquisition and development authorities and (2) provide a property tax exemption for buildings used to house seasonal farm employees. 🍁

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SAVE THE DATE!!

CACIWC's Annual Meeting and Environmental Conference is scheduled for **November 4, 2006**. Mark your calendar!

Bob Flanagan, Chairman of the Thomaston Inland Wetlands and Watercourses Commission, joins the Board as the Litchfield County Alternate Representative. Bob has extensive regional and community land use experience and has served on many boards, including the Regional Planning Commission, Council of Governments of the Central Naugatuck Valley (Vice-Chairman), and Council Member of the Kings Mark Resource Conservation & Development Area. His associate's and bachelor's degree work in Urban and Community Life and Legal Studies brings added dimension to the Board. 🍁

DUES ARE DUE!

Membership dues for the FY 2005-2006 were due in July 2005. If you have not sent in your dues as yet, please do so as soon as possible so that we may have updated information on your commission. Your membership ensures that you will receive a copy of *The Habitat* for each commissioner. For a membership form, call Tom ODell at (860) 399-1807 or visit caciwc.org, click on "About CACIWC."



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Connecticut Greenways Council Requests Greenway Nominations

The Connecticut Greenways Council is soliciting nominations for this year's official state greenway designation. Designated greenways, both for recreation and resource protection, will be listed in a subsequent revision of the State Plan of Conservation and Development and may receive increased consideration for a variety of grants. The Greenways Council will evaluate all nominated greenways for consistency with the attached designation criteria. Those selected for designation will be announced by the Council in the Spring of 2005.

What Does Official Greenway Designation Mean?


In its enabling legislation, the Connecticut Greenways Council was charged with establishing criteria for designating greenways around the state. The Council took some time and thought to evaluate this charge, and the criteria were finalized in 2000. As part of Greenway Week 2001, the first 18 officially-designated greenways were announced by the Council and Governor Rowland.

What does designation as a greenway mean? For the first designees, it means that the Council, in consultation with the DEP Greenways Assistance Center, has determined


that the greenway project has many of the qualities described in the criteria: connectivity, local support, a history of success. In addition, these projects were regional in scope, linking at least two or more towns.

Designation also offers a level of visibility for a greenway project. Each greenway will be listed in the next revision of the State Plan of Conservation and Development as prepared by the Office of Policy and Management. This plan serves as a "blueprint" for state agencies and state-funded projects. Greenways should not be adversely affected by these projects. Conversely, designation should attract state grant monies which may be available in the future. State recognition of greenways may also help in the pursuit of such federal designations and Wild and Scenic Rivers or National Scenic Trails. It should be noted that greenway designations do not restrict private property rights in any way.

In the future, communities will be able to nominate their greenways for official designation. For more information on the process, please contact **Leslie Lewis, DEP Greenways Assistance Center**, at (860) 424-3578. 🍁



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CACIWC CONSERVATION COMMISSION SURVEY

Please fill out with name and address and send to Tom O'Dell, 9 Cherry Street, Westbrook, CT 06498. This survey is also posted on caciwc.org for down loading and emailing. Click on Conservation Commissions then What's New.

CACIWC's Conservation Commission Education Subcommittee is conducting a survey to determine the feasibility of holding regional workshops on the use of Geographic Information Systems (GIS) for assisting commissions in conducting town-wide natural resource inventories (NRI). A GIS/NRI will increase the capacity of Conservation Commissions to provide resource-based recommendations; 1) for the Town's Plan of Conservation and Development; 2) for open space acquisitions; and 3) for advising other land use commissions on development applications.

Connecticut's Department of Environmental Protection has FREE GIS software to display environmental, natural resource, transportation (roads, etc.) and political boundary data to aid in land use planning, open space prioritizing, and other environmentally sensitive tasks. This free GIS software will be used for the workshops and provided to commissions attending the workshops.

PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. Would you attend a 3-hour GIS/NRI workshop if it was held near your town?
(Check one) YES ___ NO ___ Possibly ___ (provide explanation)

2. If YES, would you or your commission pay a fee to attend the 3-hour course?
(Check one) YES if fee is not more than: \$25 ___ \$50 ___ \$75 ___

3. IF NO please provide main reason:

4. Does your town have GIS maps for land use planning? YES ___ NO ___

5. If YES are they available to the Conservation Commission use them? (Check one) YES ___ NO ___

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CACIWC Needs Your Help!

CACIWC is a leading grass roots organizer for advocating environmental legislation that fosters the protection of wetlands and other natural resources. To keep you up to date and active on environmental legislation being proposed in the 2006 Connecticut Legislature session CACIWC urges you to join CACIWC Listserv, a ListServ for Commissioners of Connecticut's Conservation and Inland Wetlands Commissions.

CACIWC ListServ **provides a low-stress way for commissioners to easily receive and share information, ask questions, find resources, solicit advice and post notices.**

IT IS EASY: Interested commissioners join the listserv by filling out a short form on the host website. Messages posted by CACIWC or a listserv member are automatically sent to all others. Members can choose to receive them individually or in a batch. Responses to a posting can be sent to all members, or just the author. Messages are archived for future reference. **Identities are confidential; they are used for no other purpose.**

If you are interested in subscribing to the CACIWC List Serve please notify Janice Fournier at pfournier@earthlink.net to receive a registration form and the CACIWC List Serv rules.

Damages for Wetlands Violations: Lessons from Ventres v. Mellon — see Page 3

Fall 2005

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