

# The Habitat

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

Winter 2015

volume 27 number 1



## DEEP Open Space Grants

Deadline

March 1, 2015

Are You Prepared?

CT DEEP Open Space & Watershed Land Acquisition Grant Program

### Grant Evaluation

Preference given to those lands currently available for acquisition within a twelve-month period.

Grants given to projects with highest conservation and recreational value and leverage the greatest percentage of private and municipal funding. All applications must contain requisite appraisals.

For grant application go to [www.ct.gov/deep/open-space](http://www.ct.gov/deep/open-space). Questions, contact David Stygar at 860-424-3081, or Allyson Clarke at 860-424-3774.

**Also check the website for any change to the deadline due to Storm Colbie.**

## Interplay of Federal and State Permitting Programs with Local Inland Wetlands & Watercourses Regulation

by Mark K. Branse Esq.

*Editor's Note: As advisory agencies, Conservation Commissions should have knowledge about federal and state permitting programs for inland wetlands regulations.*

### US Army Corps of Engineers

The legal authority for federal oversight of wetlands and watercourses by the US Army Corps comes from the Rivers and Harbors Act, and the Clean Water Act:

- Rivers and Harbors Act Section 10: prohibits unauthorized obstruction or alteration of any navigable water of the U.S.<sup>1</sup>
- Clean Water Act: regulates discharges of dredged or fill materials into waters of the United States<sup>2</sup>

---

*“Category 1: less than 5,000 sq. ft. of fill, less than 200 linear feet of bank stabilization, or other standards. Requires a state CT DEEP permit, does not require an Army Corps permit.”*

---

The Army Corps is a **federal** agency, and they have jurisdiction over **federal** waters. They find ways to make many waters (interstate waters, tidal waters, wetlands) federal, but there are limits. The question is “whether the specific wetlands and issue possess a significant nexus with navigable waters.”<sup>3</sup> However, the U.S. Supreme Court found the Army Corps had no jurisdiction over an abandoned sand and gravel pit, even though it was used as a habitat for migratory birds, saying to do so would result in a significant impingement of the States’ traditional and primary power over land and water use.<sup>4</sup>

The Army Corps has **overlapping jurisdiction** with local wetlands agencies: because of the different definitions of wetlands, there will be situations that are only under local jurisdiction, situations that are only under Army Corps jurisdiction, but the majority will be under both.

Further, the Army Corps uses **different standards** in granting applications. One standard used to evaluate a PGP (see below) is “minimum direct, secondary, and cumulative impacts.”<sup>5</sup> Another standard used by the Army Corps is called a “Public Interest Review” which evaluates “the relative extent of the public and private need for the proposed structure or work, whether

*permitting, continued on page 14*

## Inside ★

CACIWC News	2
Annual Meeting 2014 Wrap	3
Announcements: Wildflowers; Wildlife	6
Remembering Penni Sharp	7
Conservation Commission - Advisory Role	8
Community Farms Preservation Program	11
CT Land Conservation Conference	16

# CACIWC

## Board of Directors

### Officers

Alan Siniscalchi	President
Laura Magaraci	Vice President
Maureen FitzGerald	Secretary
Charles Dimmick	Treasurer

### County Representatives

Alicia Mozian	Fairfield County
Ann Beaudin	Hartford County
Steve Wadeldon	Litchfield County
Marianne Corona	Middlesex County
Peter Basserman	New Haven County
Vacant	New London County
Rodney Parlee	Tolland County
Steve Sadlowski	Windham County

### Alternate County Representatives

Barbara Wilson	Fairfield County
Vacant	Hartford County
Vacant	Litchfield County
Vacant	Middlesex County
Maria Kayne	New Haven County
Vacant	New London County
Vacant	Tolland County
Vacant	Windham County

Darcy Winther DEEP Liaison



*The Habitat* is the newsletter of the Connecticut Association of Conservation and Inland Wetlands Commissions (CACIWC). Materials from *The Habitat* may be reprinted with credit given. The content of *The Habitat* is solely the responsibility of CACIWC and is not influenced by sponsors or advertisers.

Editor: Tom O'Dell

Associate Editor: Ann Letendre

Correspondence to the editor, manuscripts, inquiries, etc. should be addressed to *The Habitat*, c/o Tom O'Dell, 9 Cherry St., Westbrook, CT 06498. Phone & fax 860.399.1807 or e-mail [todell@snet.net](mailto:todell@snet.net).

[www.caciwc.org](http://www.caciwc.org)

## CACIWC News

CACIWC has been closely following ongoing activities being conducted by the State of Connecticut Department of Energy and Environmental Protection (DEEP) to implement goals of the **Climate Preparedness Plan**. These include activities that are especially relevant to our members, such as incorporating careful consideration of sea level rise and other climate change-related impacts on the 2013-2018 Plan of Conservation and Development, along with proposals to support municipal commissions and staff efforts to develop local adaptation plans.

It was in this spirit of helping to support our member's climate change preparedness efforts, that CACIWC organized our **37th Annual Meeting and Environmental Conference** with the theme of *Preparing Connecticut for the Impact of Global Changes*. This conference, held Saturday, November 15, 2014 at the spacious Villa Capri Banquet Facility in Wallingford, featured DEEP Commissioner Rob Klee as our keynote speaker. An entire new track of several climate change preparedness workshops was included in the schedule.

1. The CACIWC Annual Meeting Committee has been reviewing the various comments and suggestions submitted on the survey distributed at our 2014 annual meeting. If you did not have an opportunity to complete the 2014 meeting survey, please contact us with your comments and suggestions at [AnnualMtg@caciwc.org](mailto:AnnualMtg@caciwc.org). We also welcome early suggestions for workshop topics and speakers that you would like us to recruit for our **38th Annual Meeting and Environmental Conference**, tentatively scheduled for Saturday, November 14, 2015. Please send your ideas to us at [AnnualMtg@caciwc.org](mailto:AnnualMtg@caciwc.org) along with any other suggestions. Watch for additional conference news in upcoming issues of *The Habitat* and on our [www.caciwc.org](http://www.caciwc.org) website.

2. The CACIWC Board of Directors has also begun reviewing the many responses to our revised one-page **conservation commission and inland wetlands membership survey** that was mailed to each commission in September. Your responses to this survey will make valuable contributions to the development our new **strategic plan** and help us develop new educational programs. If you have not yet done so *please complete and mail in your survey*.

3. The Board of Directors appreciated the large number of commissions who renewed their CACIWC membership prior to our annual meeting. For those who have not yet done so, it is not too late to send in your **2014-15 membership dues**. A

*CACIWC news, continued on page 15*

# CACIWC's 37<sup>th</sup> Annual Meeting & Environmental Conference; Connecticut Commissioners and Staff Discuss Ways to Prepare Connecticut for the Impact of Climate Change

The CACIWC Board of Directors and its Annual Meeting Committee extends their appreciation to the many members and guests who were able to attend our **37<sup>th</sup> Annual Meeting and Environmental Conference**, held on November 15, 2014. The conference featured DEEP Commissioner **Rob Klee** as the keynote speaker. The Board of Directors and Annual Meeting Committee worked to bring attendees a wide variety of informative workshops and exhibitors, as well as an expanded lunch buffet.

The conference was held at a new location, the Villa Capri Banquet Facility in Wallingford. The new location was especially welcomed by our many workshop leaders, who enjoyed the facility's spacious meeting rooms. The initial responses from our conference evaluations suggested that most thought the new location was a good match for our conference needs.

## Keynote Speaker

Conference attendees were excited to welcome DEEP Commissioner Rob Klee as our 2014 keynote speaker. Klee was appointed DEEP Commissioner by Governor Dannel P. Malloy in January 2014. Commissioner Klee holds a PhD from Yale's School of Forestry & Environmental Studies in industrial ecology, a law degree from Yale, and an undergraduate degree from Princeton in geology and environmental science.

In his keynote address Commissioner Klee emphasized the joint role of DEEP and CACIWC member commissions is supporting our 2014 conference theme of *Preparing Connecticut for the Impact of Global Changes*. The challenges to our members from these global changes range from preparing our towns for the impact of climate change on our state's important habitats to balancing the regional and global needs for food and energy with local environmental conservation and protection.

Our member commissions, along with land trusts and other organizations, are already facing increasing local challenges in their efforts to appropriately balance the growing demands for development with the long term goals of habitat preservation. Expected changes



*DEEP Commissioner Rob Klee: Keynote address  
Photo courtesy of Rod Parlee, CACIWC*

related to climate along with regional and global economic pressures will further challenge our members. Lessons learned from this year's conference will help our members commissions maintain their role as effective stewards of wetlands and open space lands within their towns.



*Dan Stepanek, Chairman New Canaan Inland Wetland and Watercourses Commission, presenting Dr. Sven Englund with CACIWC's 2014 "Lifetime Achievement Award"  
Photo Courtesy of Kathleen Holland, Director, Inland Wetlands and Watercourses Commission, New Canaan*

## Awards

A special CACIWC awardee was honored at the Saturday, November 15, 2014 conference ceremony. **Sven Englund, PhD** received the **CACIWC 2014 "Lifetime**  
*annual meeting, continued on page 4*

annual meeting, continued from page 3

**Achievement Award**” for his three decades of service in the protection of inland wetlands and watercourses in the Town of New Canaan.

Dr. Englund has served for 30 years as an active and dedicated volunteer on the Inland Wetlands and Watercourses Commission in the Town of New Canaan, with nine of those years as Chairman. In addition to the hundreds of hours of Commission meetings required, Dr. Englund understood the importance of participating in the many training opportunities offered by the State of Connecticut Department of Energy and Environmental Protection (DEEP), CACIWC and many other partners who are versed in the protection of wetland resources. Dr. Englund felt that these additional training opportunities bolstered his knowledge and ability to effectively and competently navigate technical and sometimes difficult decisions required by the Commission.

Dr. Englund was always ready and willing to share his years of experience and knowledge with new Commissioners. In addition, Dr. Englund actively participated in the monthly site visits to view pending applications. As Chairman, he conducted the meetings with a keen sense of fairness. Dr. Englund’s review and helpful comments on revisions to the regulations were always well thought out and directed towards making the regulations as user-friendly as possible.



Attorneys Janet Brooks, David Wrinn, and Mark Branse present workshop on “2014 Wetlands Law Update with Question & Answers Session”  
Photo courtesy of Rod Parlee, CACIWC

Trained as a Chemical Engineer, Dr. Englund as active in early industrial pollution abatement for chemical processes. He was appointed to the Environmental Commission of New Canaan at or close to its founding in 1972. He has been a New Canaan resident since





Clare Cain, Trail Stewardship Director, Connecticut Forest & Park Association (CFPA), presents workshop on “Open Space Management: Creating & Managing Trails”  
Photo courtesy of Rod Parlee, CACIWC

1958. As many know, Sven is of Swedish extraction and often travels, with the most recent visit at 93 years of age this summer for two weeks to see relatives.

As Dr. Englund resigns from the Commission in December, 2014, it was widely acknowledged that his extensive experience and depth of historical knowledge of the Town of New Canaan will be missed and difficult to replace. CACIWC was  
annual meeting, continued on page 5

TRAFFIC STUDIES

THAT DON'T COST YOU

AN  AND A 

KWH ENTERPRISE, LLC | KERMIT HUA | (203) 807-5482

**REDNISS & MEAD**

LAND SURVEYING  
CIVIL ENGINEERING  
PLANNING & ZONING CONSULTING  
PERMITTING



22 FIRST STREET  
STAMFORD, CT 06905  
203.327.0500  
www.rednissmead.com

annual meeting, continued from page 4

honored to recognize his years of dedicated service with this Lifetime Achievement Award.

## Workshops & Displays

Four workshop tracks were provided at the 2014 annual conference: Open Space & Conservation Biology, Land Use Law & Legal Updates, Wetlands Science & Engineering, and a *new track*, entitled Climate Change and Planning. The workshops covered a variety of topics relevant to Connecticut commissioners including creating and managing trails in local open space parcels, new approaches to pond monitoring & management, and issues surrounding identification of aquatic invasive plants & spreading bamboo. Wetlands law updates were provided along with updates from a survey of municipal wetlands regulations. Our new climate change track included workshops



Display Table: Bolton Conservation Commission  
Photo Courtesy of Rod Parlee, CACIWC

on climate change and wetlands, the value of riparian corridors, planting for storm defense, and a review of a study on coastal adaptation efforts. Other new topics for this conference included stormwater management & control and the latest information on Connecticut's growing black bear population. We thank all the workshop leaders for their time spent preparing and presenting these well received forums. Many commercial entities and non-profit groups also provided a variety of displays to further inform visitors of current issues relevant to their work and volunteer efforts.

## Evaluations

The CACIWC Board of Directors has already begun a review of the evaluations forms submitted by participants of this conference. In addition to opinions, valuable suggestions for workshop topics for next



Display Table: DEEP Bookstore  
Photo Courtesy of Brenda Cataldo

year's conference were also given by participants. To allow all of our members the opportunity to submit ideas for workshop topics and other suggestions throughout the year, the email [AnnualMtg@caciwc.org](mailto:AnnualMtg@caciwc.org) will remain available for your input. Please keep your suggestions coming.

The Board of Directors extends its sincere appreciation to our 2014 conference sponsors and looks forward to seeing all of you at our 2015 Annual Meeting and Environmental Conference, tentatively scheduled for **Saturday, November 14, 2015.** 🐾

## Engineers Specify BMP SNOUT® Hoods for Stormwater Quality



**Built in New England,  
and Made to Last**

**Best Management Products, Inc.**  
[bmpinc.com](http://bmpinc.com) • 800-504-8008

US Patent 6126817, 7857966, 7951294 and Canada Patent 2285146

## Become a Plant Conservation Volunteer with New England Wild Flower Society

New England Wild Flower Society is actively seeking volunteers for its Plant Conservation Volunteer (PCV) Corps. Participants in this program collect data on the status of rare plant populations throughout New England and assist with invasive and habitat management projects.

The requirements are motivation, discretion, and a basic knowledge of native flora. It's a great way to learn more about plants, meet others with similar interests, and make an impact in conservation.

Training sessions will be held on a weekend in March in all New England states. For more information and an application visit our website at [www.newenglandwild.org/docs/pcv-application.doc](http://www.newenglandwild.org/docs/pcv-application.doc).

## URGENT! Your Input Is Requested on Connecticut's Wildlife Action Plan

DEEP's Wildlife Division needs your help to update the state's Wildlife Action Plan, which serves as Connecticut's blueprint for conservation action. Participation by conservation partners, academic institutions, municipalities, and the public is a key to making the revised Wildlife Action Plan an effective tool for conserving Connecticut's diversity of wildlife resources for future generations.

You can submit comments on the revised list of species of greatest conservation need, an updated description of key habitats found in Connecticut, and revisions to chapters of the original 2005 plan (called the Comprehensive Wildlife Conservation Strategy). All of the revised documents can be found on the DEEP's Wildlife Action Plan webpage. You are encouraged to check the website often, as more updates and revisions become available for review. Comments can also be submitted to [deep.wildlifeactionplan](http://deep.wildlifeactionplan) or Connecticut Wildlife Division, Sessions Woods W.M.A., P.O. Box 1550, Burlington, CT 06013.

## STEVEN DANZER, PHD & ASSOCIATES LLC Wetlands & Environmental Consulting



STEVEN DANZER, PHD  
Professional Wetland Scientist (PWS)  
Soil Scientist

203 451-8319

[WWW.CTWETLANDSCONSULTING.COM](http://WWW.CTWETLANDSCONSULTING.COM)

WETLAND BOUNDARIES ▶ POND & LAKE MANAGEMENT  
CONSTRUCTION FEASIBILITY CONSULTATIONS ▶ ENVIRONMENTAL STUDIES



## NEE environmental consulting

*Collaborating with Clients on Environmental Projects Since 1986:*

### Natural Resources & Environmental Permitting

Wetland Science, Rare Species Evaluations, Environmental Permitting & Review

### Ecological Restoration

Riparian, Wetland & Coastal Restoration, Construction, Invasive Species Management

### Landscape Architecture & Ecological Design

Sustainable Design, Permitting & Construction Plans, 3-D Modeling, Design Charettes

### Site Assessment & Remediation

Environmental Site Assessment, Asbestos Services, Hydrogeology

### New England Environmental, Inc.

15 Research Drive  
Amherst MA 01002  
(p) 413.256.0202

6 Way Road Suite 214  
Middlefield CT 06445  
(p) 860.316.2001

[www.neeinc.com](http://www.neeinc.com)



## Connwood Foresters, Inc.

Serving CT, MA, RI & NY Since 1945

Forest Stewardship Plans  
Property Tax and Cost Savings  
Baseline Documentation Reports  
Wildlife Habitat Improvements  
Permit Acquisition

Expert Witness Services  
Timber Sales and Appraisals  
Boundary Location/Maintenance  
Invasive Species Control  
GIS & GPS Mapping

USDA NRCS Technical Service Provider for  
Gov. funded stewardship plans/activities  
for land trusts & individuals

860-349-9910

[CONNWOOD.COM](http://CONNWOOD.COM)

# Remembering Penni Sharp

**P**enni Sharp, 76, died peacefully December 14, 2014 at her home in Northford, CT. Penni was a talented and creative botanist and wetland biologist who volunteered her passionate voice for protecting wetlands and native plants to leadership roles for a number of environmental organizations. She was an active member of CACIWC's Board of Directors for 15 years, including service as the Secretary from 1996 to 2003. Penni also contributed as a periodic advisor to the Board including serving on various Nominating Committees, and served on the Northford Inland Wetlands and Watercourses Commission.



Penni also held leadership positions in the Connecticut Association of Wetland Scientists, the Connecticut Botanical Society, and was active with the Connecticut Invasive Plant Working Group. She was also the principal author of *Trap Rock Ridges of Connecticut; Natural History & Land Use*. In 2009, she was given the Connecticut State Award by the New England Wildflower Society.

A graduate of Miss Porter's School and Sarah Lawrence College, Penni also studied at Yale University School of Forestry, receiving a Master of Forest Science degree.

Professionally, Penni served as the Director of Conservation for the Town of Wilton for ten years and then worked until her death as a consulting biologist for many municipal and private clients in Connecticut. Penni's excellent reputation as a botanist was the reason the Westbrook Conservation Commission hired her to conduct a plant inventory for a 5 acre coastal open space. Completed just before Tropical Storm Irene battered the Connecticut coast, her comprehensive botanical inventory will now serve as a baseline for documenting climate change impacts.

Penni will be remembered by the many people that her friendship and passionate voice for conservation touched, and for her achievements as a professional botanist and wetlands biologist. 🍂

**GEI Consultants, Inc.**  
Consulting Scientists and Engineers



**Serving Connecticut**  
GEI is a multi-disciplinary national firm with a strong local presence. Our Glastonbury, CT office has a staff of 50 professionals with expertise in Ecological, Soil, Wetland, and Environmental Sciences. We also provide Environmental Assessment, Remediation, and Geotechnical Design. We offer Connecticut municipalities a variety of services including:

- Natural Resource Inventories
- GIS Services
- Soil Science Services
- Wetland Permit Peer Reviews
- Mitigation & Restoration
- Shoreline Enhancement and Stabilization

For more information about GEI, please contact Martin Brogie at 860.368.5340 or mbrogie@geiconsultants.com

[www.geiconsultants.com](http://www.geiconsultants.com)

engineers • scientists • planners



 **FUSS & O'NEILL**

**Providing engineering services  
in New England since 1924**

[www.fando.com](http://www.fando.com)  
860.646.2469

Connecticut • Massachusetts • Rhode Island • South Carolina

# What's Free Advice Worth? What You Make It Worth!

## Tips for Conservation Commissions: How to Be Effective in the Land-Use Review Process

by Mark K. Branse, Esq.

These comments relate to the conservation commission's role as an *advisory body*. Even if the conservation commission is also the Inland Wetlands and Watercourses Agency, the role of conservation commission is *separate*.

By Statute (Conn. Gen. Stats. §8-131a) one of the eight functions of a Conservation Commission is to advise other land use agencies. It may make recommendations to zoning commissions, planning commissions, inland wetlands agencies and other municipal agencies on proposed land use changes.

Many towns have separate conservation commissions, i.e., not combined with an Inland Wetlands and Watercourses agency having regulatory powers for wetlands permits. A combined commission wears two "hats" (see Habitat Vol. XII, No. 4, January, 1999), and has the advantage that applicants *must*, in most cases, at least appear before the commission and get a permit. The separate conservation commission has no such leverage and is purely advisory to other land use agencies. How do you make that advice count?

### Can the Other Agency Heed Your Advice?

There is no case law concerning the weight to be given to a conservation commission recommendation, but the courts have held that it is not an abuse of discretion for a land use agency to act upon the advice of an agency that is statutorily authorized to render such advice. In *Arway v. Bloom*, 29 Conn. App. 469 (1992), affirmed 227 Conn. 799 (1993), the Redding Inland Wetlands and Watercourses Commission granted a permit and transmitted its decision to the Zoning Commission per its duty under Conn. Gen. Stats. §8-3(g) and 8-3c(b) to file a report with that Commission, which in turn, was required to give "due consideration to the report" of the Wetlands Commission. *Id.* The Zoning Commission approved the use subject to a number of conditions, the first of which was drawn verbatim from the Wetlands Commission's approval. Neighbors appealed the Wetlands and Zoning approvals, and the trial court sustained the Wetlands appeal on procedural grounds. The trial court then sustained the Zoning appeal on the grounds that since the Wetlands decision was void, the Zoning Commission had acted illegally in giving "due consideration" to that permit when

approving the site plan. The Appellate Court overturned the trial court decision:

Here, the zoning commission acted on the applicants' site plan and special permit application with a favorable final report from the wetlands commission in hand. The fact that the wetlands decision was later reversed by the trial court on procedural grounds did nothing to disturb the zoning commission's jurisdiction to render its own decision at the time it considered the wetlands report. *Id.*, pp. 479-480.

So it would appear that other land use agencies can heed the advice you are Statutorily authorized to give them and the courts will support that.

### Getting Them to Listen

OK, the other agency *can* heed your advice. But why *should* they?

Know the Ground Rules: In order for your advice to be effective, you have to know the scope of authority and discretion of the receiving agency to accept it. What kind of application is being heard—text or map amendment for wetlands or zoning, subdivision text amendment, special permit, wetlands permit, subdivision, or site plan review? They all have different levels of discretion that the agency can exercise, and they are arranged in the preceding sentence from highest to lowest levels of discretion. If it's a permit application, what are the criteria of the regulations that the agency is applying? To the extent that you can couch your recommendations by reference to *the words used in the regulatory criteria*, you increase the agency's confidence that it can heed your advice, and you also boost the agency's chances for being upheld on appeal. The worst thing you can do is recommend that another agency do something that, by its own regulations, it is not authorized to do. You lose credibility and, if they heed your advice, you expose them to a successful court appeal.

Know the Facts: Unlike the combined wetlands commission, you have no way to *force* an applicant to come in and make a presentation to you. Some zoning and/or subdivision regulations include a requirement for referral  
*free advice, continued on page 9*



free advice, continued from page 8

to the conservation commission, and I would certainly urge you to seek such regulations. Without that, you have two options: invite the applicant before you (with adequate notice) and hope that they will appear; or get the facts from town staff members. But whatever it takes, know what you are talking about.

A relatively recent case is helpful, *Unistar Properties, LLC v. Conservation & Inland Wetlands Commission*, 293 Conn. 93, 120-121 (2009). In that case, the wetlands commission requested a wildlife inventory of the site, and the applicant refused to provide it. The applicant argued that since there were no proposed activities in the wetland (only the upland review area), the commission had no jurisdiction over wildlife and therefore could not request a wildlife inventory. The Supreme Court upheld the commission's denial, noting that activities in the upland review area *could* adversely impact wildlife, and if those adverse impacts impacted the physical characteristics of the wetland, then the commission would have jurisdiction. Without the wildlife inventory, the commission was unable to *determine* its jurisdiction. The possibility that wildlife could affect the physical characteristics of wetlands was left hanging in the *Avalon Bay v. Weston* case, but was addressed in the case of *River Sound Development, LLC v. Inland Wetlands &*

*Watercourses Commission of Old Saybrook*, 122 Conn. App. 644, 653 et. Seq. (2010) (held that evidence from the *plaintiff's* expert supported the conclusion that wood frog tadpoles remove detritus from vernal pools and protect water quality.)

So the wetlands agencies authority to *request information* may be broader than its jurisdiction. Asking for the information provides you with the facts that you need.

**Know the Schedule:** A last-minute recommendation is less likely to be heeded by either the applicant or the receiving agency. I represent applicants, and they always try to accommodate every possible concern *if they hear it early enough*. Once the final drainage calculations are completed, it is a lot more expensive and time-consuming to make what would otherwise be a small tweak in the stormwater management plan. So try to get into the process at the earliest possible moment.

**Be Honest:** Let's face it, a lot of the opponents who appear at a public hearing and waive the flag of "environmental protection" never gave a damn until there was an application in their own back yard. Don't get sucked into that. Treat all applicants and applications equally. Adopting a set of guidelines (such as criteria for open space) will help you to be consistent and demonstrate to both the agency and the applicant that you are playing fair.

**Be Specific:** A recommendation that is vague is less likely to be heeded. State *as precisely as you can* what should change about the proposal and why. Recommendations like, "the development is too dense" or "the open space is located in the wrong place" are sure to be ignored—and they *should be*.

**Be Constructive:** Wherever possible, specify the changes that you are seeking. The authority of a land use agency

*free advice, continued on page 10*

## New England Wetland Plants, Inc.

### Wholesale Native Plant Nursery

Your source for...

Trees, Shrubs, Ferns, Flowering Perennials, and Grasses

Coastal and Inland Wetland Plants

Specialty Seed Mixes

Coir Logs, Straw Wattles, Blankets and Mats



820 West Street, Amherst, MA 01002  
Phone: (413) 548-8000 Fax: (413) 549-4000  
Email: [info@newp.com](mailto:info@newp.com) Web: [www.newp.com](http://www.newp.com)



# Membership Dues Are Due!

free advice, continued from page 9

to just deny an application is much lower than its authority to modify or condition one. Seek ways that the proposal can reasonably be modified to achieve both your goals and the applicant's. Remember: An applicant would like to go to the regulatory agency with a positive recommendation from you, so if they can make changes to their plan to achieve that, they will.

**Be There:** Letters and e-mails are great for setting forth a joint position of your commission, but the applicants will be at the agency hearing in person, with their entourage of experts. If you really want your advice to be taken, you need to be prepared to send one or more live bodies to attend the hearing and present your letter, amplify on it if need be, and respond to questions or comments.

**Be respectful:** The problem with being "just" an advisor is that there will be times when your advice is ignored. Don't get mad! Always give the agency a face-saving way out if you can: "We felt that open space in the northwest corner made sense for the reasons articulated in our letter, but we understand the agency giving a higher priority to an active recreation field in the southwest corner." Throwing a tantrum will not increase your credibility with the agency and will almost surely decrease it.

**Be Watchful:** There is a fine line between "I told you so" and "please note what happened on that other project when you didn't heed our advice. Gosh, it would be good not to have *that* happen again!" In Glastonbury, we were able to persuade the Council to hire the Town's first environmental planner because of a costly and destructive error that would have been easily avoidable by proper review. Use past mistakes to make your point, but don't humiliate the ones who *made* those mistakes—they're probably the people whose support you are seeking.

**Infiltrate:** Many land use agencies have trouble getting volunteers to serve, and with the long hours, lack of public gratitude, and low "wages," it's no wonder. *You* are prime candidates. Volunteer!

You *can* make a difference in the process! Know the rules, be constructive, be alert!

Mark K. Branse practices law with Branse & Willis, LLC in Glastonbury, [www.bransewillis.com](http://www.bransewillis.com). 🌿




**Restoring the native habitat**

ernstseed.com  
sales@ernstseed.com  
800-873-3321  
814-336-5191 (fax)

f  
in  
t  
g+  
v

ERNST  
SEEDS



LAW OFFICES OF  
**Branse & Willis, LLC**

Zoning & Inland Wetlands  
Commercial & Residential Real Estate  
Business Law • Municipal Law  
Wills & Probate

MARK K. BRANSE • MATTHEW J. WILLIS  
RONALD F. OCHSNER • CALEB F. HAMEL  
ELIZABETH L. HEINS

148 Eastern Boulevard, Suite 301  
Glastonbury, CT 06033  
Tel: 860.659.3735 • Fax: 860.659.9368

**AGRESOURCE, INC.**

800-313-3320 OR 413-265-0181

WETLAND SOILS  
BIORETENTION SOILS  
RAIN GARDEN SOILS  
LIGHTWEIGHT SOILS FOR GREEN ROOF  
CUSTOM SOILS



WWW.AGRESOURCEINC.COM

# Community Farms Preservation Program

By Katherine Winslow, Property Agent, CT Department of Agriculture

The Community Farms Preservation Program (CFPP), made possible by Public Act 08-174, is a voluntary program of the State's Department of Agriculture (DoAg) to preserve small farms of local economic importance, with a demonstrated level of community support.

The Department of Agriculture established criteria for the CFPP in consultation with the Farmland Preservation Advisory Board and preference is for human-food producing farms. CFPP was designed as an alternative for farmers whose land may not qualify, or is a low priority, for funding through the longstanding Farmland Preservation Program.

Agriculture Commissioner Steven K. Reviczky in 2011 announced a \$2 million CFPP pilot program that is currently underway with Community Investment Act (CIA) funding. Towns completed basic eligibility requirements prior to submitting farm applications. The DoAg considered nine applications for the pilot. Currently six farms are under contract for the purchase of development rights, of which three are at the closing stage, one at survey stage, and two pending State Properties Review Board approval. One farm is at the offer stage, pending review by the town. Two farm applications were withdrawn, but may reapply for future consideration.

Our first farm closed through the pilot of CFPP is Kassman Farm in Columbia and Hebron, comprised of 53 acres. The five heirs of the Estate of Morris Kassman desired to fulfill their uncle's wish to preserve the farm. Kassman Farm contains 30 acres of prime and statewide important farmland soils with cropland in corn and hay for dairy and livestock support. A conservation plan prepared in consultation with the U.S. Department of Agriculture's Natural Resources Conservation Service (USDA-NRCS) shall

guide agricultural practices. The farm is adjacent to two preserved farms known as 113-acre Szegda Farm and the 43-acre Robinson Farm, preserved by the State of Connecticut through its Farmland Preservation Program in 2013 and 1987, respectively. This block of preserved open land is the picturesque landscape one sees to the north and south of Connecticut Route 66 at the town border of Columbia and Hebron. Both Kassman Farm and Szegda Farm were preserved through a partnership of the State of Connecticut's Department of Agriculture, Town of Columbia, and Connecticut Farmland Trust, Inc. of Hartford. Joshua's Tract Conservation & Historic Trust of Mansfield made a financial contribution to the town's share.



"Facing east at northern hayfield, Kassman Farm, Columbia & Hebron." Photo: Courtesy of William Ryan of Flanagan Associates

If funding is left over from the pilot, or new funding is designated, DoAg would be able to preserve additional small farms through CFPP.

The Commissioner of Agriculture encourages additional CFPP applications and will base funding decisions on the quality of applications received, success of the pilot program, and funding availability. DoAg is working with the Farmland Preservation Advisory Board to encourage greater participation by municipalities with small

*community farms, continued on page 12*

## ENVIRONMENTAL PLANNING SERVICES

Wetland, Biological and Soil Surveys,  
Impact Assessment and Mitigation Planning

MICHAEL S. KLEIN, Principal  
JAMES COWEN, ERIC DAVISON

Professional Wetland Scientists, Soil Scientists & Biologists

89 BELKNAP ROAD • WEST HARTFORD, CT 06117  
PHONE/FAX: (860) 236-1578

Email: michael.klein@epsct.com • Web: www.epsct.com

*community farms, continued from page 11*

farms in urban areas. Such farms sell directly to the consumer, typically through Community Supported Agriculture operations or an on-site farm market. Also communities with a strong land trust, whose mission is to preserve agricultural lands, would be encouraged to participate and augment town participation.

Currently there are 26 towns representing all eight counties in Connecticut that have completed eligibility requirements for the CFPP. Additional towns are in progress and encouraged to do the same. The basic eligibility requirements are designed to increase local capacity to participate in agricultural lands preservation both functionally and efficiently. For additional guidance, please see the *Planning For Agriculture: A Guide for Connecticut Municipalities*, a publication of American Farmland Trust and Connecticut Conference of Municipalities. Towns may submit documentation of the following basic town eligibility requirements listed below to establish eligibility for CFPP:

1. Recognize farmland preservation in the town plan of conservation & development. (This may be an interim town plan or amendment).

2. Establish an agricultural commission. (This may be combined with a conservation commission or, less optimally, a sub-committee of an existing commission).
3. Establish a funding mechanism for agricultural lands preservation. (At least \$1 must exist in the account, and this account may be combined with open space preservation, if desired).
4. Inventory farmland in town. (This may be a Public Act 490 list, combined with any other farms of interest).
5. Determine criteria for prioritizing the farms in town. (Town may consider various factors which at a minimum would consider extent of prime, statewide important, and locally important farmland soils).
6. Apply to the USDA-NRCS for farmland soils of local importance designation.
7. Enter a cooperative letter of joint partnership for the preservation of agricultural lands between the State and Town. (This agreement

*community farms, continued on page 13*

# Are you paving the way to protect the environment? Pervious Is!



**Advantages of Pervious Concrete:**

- Recognized by the EPA as BMP [Best Management Practices] for stormwater runoff
- Excellent LID applications for parking lots, driveways, walkways, trail pathways
- Installations at Subway World Headquarters, CT State Capitol, Goodspeed Opera House, schools throughout CT, and nature trails

Contact Executive Director Jim Langlois of the Connecticut Concrete Promotion Council  
912 Silas Deane Hwy., Wethersfield, CT 06109 • tel.: 860.529.6855 • fax: 860.563.0616 • jlanglois@ctconstruction.org • CTConcretePromotion.org

community farms, continued from page 12

does not obligate a town to preserve any particular farm but signifies its readiness to participate in joint projects with the State).

Once a town has completed its eligibility requirements, the town may work with willing local farmers to submit one or more CFPP applications for specific farms in town. Applications would be evaluated by DoAg staff, and if qualified and funding permits, entered into the process for purchase of development rights. The process is comparable to joint state-town projects of the Farmland Preservation Program.

The number of towns capable of working on joint state-town projects to preserve development rights has more than doubled since the announcement of the pilot of CFPP in December 2011 by Commissioner Steven Reviczky. The 26 towns with state-town cooperative agreements in place for joint partnership include:

Litchfield County	New Hartford
	New Milford
Fairfield County	Shelton
New Haven County	Bethany
	Southbury
Middlesex County	Cromwell
	East Haddam
Hartford County	Canton
	East Windsor
	Granby
	Rocky Hill
	Suffield
Tolland County	Columbia
	Coventry
	Ellington
	Mansfield
Windham County	Ashford
	Brooklyn
	Canterbury
	Eastford
	Hampton
	Pomfret
	Woodstock
New London County	Colchester
	Lebanon
	Sprague

In addition, multiple towns have requested locally important farmland soils status and are in the process of becoming eligible. Some are working together through their regional council of governments to apply all at once. A useful tool for planning purposes, as well as eligibility for state and federal programs, towns may request of the Office of Policy and Management to have all farmland soils be depicted in the Locational Guide Map of the *Conservation & Development Policies: The Plan for Connecticut 2013-2018*.

A broad coalition of stakeholders, including Working Lands Alliance, Connecticut Farmland Trust, Inc., and the Connecticut Farm Bureau Association, recognized Connecticut's diverse and small farm operations and the critical role they play in local food systems. Connecticut agriculture depends on the viability and sustainability of its farm businesses and prime and important farmland soils resource base. Preserving farms, and investing in these farms, helps to protect the State's agricultural heritage and support Connecticut agriculture's future adaptation to a changing climate – a strategy that will deepen the strength, diversity and resilience of Connecticut agriculture.

#### CFPP Applications may be mailed to:

CT Department of Agriculture  
Community Farms Preservation Program  
165 Capitol Ave, Rm G-8  
Hartford, CT 06106

Questions regarding the CFPP may be directed to Katherine Winslow, Property Agent, at [katherine.winslow@ct.gov](mailto:katherine.winslow@ct.gov) or Cameron Weimar, Director of Farmland Preservation Program, at [cam.weimar@ct.gov](mailto:cam.weimar@ct.gov), by regular mail at the address above, or by phone at 860-713-2511. 🍁



**Ferrucci & Walicki, LLC**

**[www.fwforesters.com](http://www.fwforesters.com)**

6 Way Road, Middlefield, CT 06455  
CT and MA Certified Foresters  
NRCS Technical Service Provider

Forest management, timber harvest,  
recreation and wildlife habitat plans

Boundary and GIS mapping services

PA 490 and Chapter 61

**860-349-7007 – [fw@fwforesters.com](mailto:fw@fwforesters.com)**



*permitting, continued from page 1*

reasonable alternative locations and methods exist, and the positive and negative effects which the proposed structure or work will have on the public and private uses to which the area is suited.”<sup>6</sup> For this reason, the Commission may grant a permit the Army Corps denies, and vice versa.

**The burden is on the applicant to obtain all necessary permits; the burden is not on the Commission to monitor the decisions made by the federal agency.**

The Army Corps administers its Programmatic General Permit [“PGP”] through CT DEEP. Most applications that are before local wetlands agencies will qualify for a Category 1 PGP.

- Category 1: less than 5,000 sq. ft. of fill, less than 200 linear feet of bank stabilization, or other standards. Requires a state CT DEEP permit, does not require an Army Corps permit.<sup>7</sup>
- Category 2: between 5,000 sq. ft. and 1 acre of fill, between 200 and 500 linear feet of bank stabilization or other standards. Requires a state CT DEEP permit and an Army Corps permit.<sup>8</sup>

The Connecticut General Permit general conditions state on the very first page:

“1. Other Permits. Authorization under this General Permit does not obviate the need to obtain other federal, state, or local authorizations required by law.”<sup>9</sup>

## FEMA

There is very little case law on the role of FEMA for local wetlands agencies. A 2008 Superior Court case held that an Inland Wetlands Commission could require the applicant to provide a more detailed topological map than required under FEMA—it was up to the discretion of the Commission.<sup>10</sup>

If the Army Corps or FEMA are involved, the Commission should continue to process the application under their local regulations and Connecticut Statutes. It is inaccurate to say you “have to” or “can’t” approve a permit because of Army Corps determinations. You do not “have to” approve a project the Army Corps has permitted. You “can” approve a project, even if the Army Corps does not. Again, it falls to the applicant to obtain the permits, not to the Commission to make a determination based on a federal agency’s decision.

## State Permits: Areas of Exclusive State Jurisdiction

Unlike the concurrent jurisdiction shared by local wetlands agencies and the U.S. Army Corps of Engineers, there are areas of exclusive Connecticut state jurisdiction:

- **tidal wetlands**,<sup>11</sup>
- the determination of **stream channel encroachment lines** that had been established by DEEP,<sup>12</sup>
- the inspection, construction, and licensing of **dams**<sup>13</sup>
- **Shoreline flood and erosion control structures** including breakwaters, bulkheads, groins, jetties, revetments, riprap, seawalls, and the placement of concrete rocks or other significant barriers to the flow of flood waters...<sup>14</sup>

Tidal wetlands are defined as areas which border on or lie beneath tidal waters, including areas now or formerly connected to tidal waters, and whose surface is at or below an elevation of 1 foot above local extreme high water and upon which may grow vegetation listed in section 22a-29(2).<sup>15</sup> As of 2014, statutes define a “coastal jurisdiction line” which is the location of the topographical elevation of the highest predicted tide from 1983 to 2001, as defined by the National Oceanic and Atmospheric Administration, and is now defined in terms of feet of elevation.<sup>16</sup>

*Note: This document and all reference documents are available at <https://www.dropbox.com/sh/yhuob9tmy-h82lkp/AAB97xsp6G0nCd-LZtnyRE4va?dl=0>*

*Mark K. Branse practices law with Branse & Willis, LLC in Glastonbury, [www.bransewillis.com](http://www.bransewillis.com)*

## End Notes

<sup>1</sup>33 U.S.C. 403

<sup>2</sup>33 U.S.C. 1344

<sup>3</sup>Rapanos v. United States, 547 U.S. 715, 717 (2006).

<sup>4</sup>Solid Waste Agency v. United States Army Corps of Engineers, 531 U.S. 159, 174 (2001).

<sup>5</sup>DEPARTMENT OF THE ARMY GENERAL PERMIT STATE OF CONNECTICUT & LANDS LOCATED WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION, 1 (July 15, 2011).

<sup>6</sup>FULLER, ROBERT, LAND USE LAW AND PRACTICE, Section 13.4, State, Federal and Other Agencies Regulating Land Use (9 CTPRAC § 13:4, 2013).

<sup>7</sup>DEPARTMENT OF THE ARMY GENERAL PERMIT STATE OF CONNECTICUT & LANDS LOCATED WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION, Appendix 1, p. 4 (July 15, 2011).

<sup>8</sup>Id. at Appendix 1, p. 7-8.

*permitting, continued on page 15*

permitting, continued from page 14

<sup>9</sup>Id. at 1.

<sup>10</sup> Oven Rock Partners v. Inland Wetland Comm'n of Bethel, No. HHBCV064011322S, 2008 WL 2068205 (Conn.Super Apr. 28, 2008).

<sup>11</sup>CGS § 22a-29.

<sup>12</sup>CGS §§ 22a-340 and 22a-342 to 22a-348, however Public Act 13-205 altered this section. Before 2013, the language was that DEEP shall establish stream channel encroachment lines, now the language is that DEEP may establish the lines. Section 22a-344(b) revoked any lines established on or before October 1, 2013. Practically, DEEP has discontinued this function.

<sup>13</sup>CGS §§ 22a-401 to 22a-411.

<sup>14</sup>CGS § 22a-109. This is part of the Coastal Site Plan review that is the jurisdiction of DEEP and the municipal zoning commissions.

<sup>15</sup>CGS § 22a-29, see also FULLER, ROBERT, LAND USE LAW AND PRACTICE, Section 13.5, Tidal Wetlands; Departments of Environmental Protection (9 CTPRAC § 13:5, 2013).

<sup>16</sup>CGS § 22a-359(c). But see Sams v. Department of Environmental Protection, 308 Conn. 359, 378 (2013) for the old definition “[t]he term high tide line as used in § 22a-359(c) refers to the highest point at which the water’s surface intersects with the land over the course of the entire yearly tidal cycle, excluding only storm surges caused by a hurricane or other intense storm.” ↩

CACIWC news, continued from page 2

copy of the renewal form and additional information can still be found on our website: [www.caciwc.org](http://www.caciwc.org). Would you or your company like to provide additional support to CACIWC? The website also provides a description of additional individual and business membership categories. Please consider making an additional contribution to support our planned CACIWC education and outreach efforts!

4. The officers and members the Board of Directors have begun the second year of their two-year term following the elections that took place at our 2013 annual meeting. Although we were able to fill several vacancies during 2014, the New London County director and a number of other CACIWC board vacancies remain unfilled (please see the list in this issue of The Habitat and on [www.caciwc.org](http://www.caciwc.org)). Please submit your name to us at [board@caciwc.org](mailto:board@caciwc.org) if you are interested in serving as the New London County representative, one of the vacant alternate county representatives, or as one of the alternate at large representative positions.

5. Is your schedule too filled to join the board but you would like to contribute to CACIWC initiatives? We are organizing several 2015 CACIWC advisory committees to help us plan our education and outreach efforts, select new goals and objectives for our updated strategic plan, or participate in the review of Connecticut environmental legislative initiatives being conducted in cooperation with other statewide environmental and land use organizations. Let us know of your interest area by emailing us at [board@caciwc.org](mailto:board@caciwc.org).

We look forward to a productive year in support of all of you, the dedicated members and staff of Connecticut’s conservation and inland wetlands commissions. Please do not hesitate to contact us at [board@caciwc.org](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 efforts and wish you a safe, healthy, and happy new year!

~ Alan J. Siniscalchi, President ↩

Wetlands & Soils Scientists | Biologists | Ecologists | Archaeologists



BL Companies specializes in Natural & Cultural Resource studies related to:

- Land Development
- Energy
- Telecommunications
- Infrastructure
- Transportation
- Regulatory Compliance

Meriden  
Hartford  
Bridgeport  
An Employee-Owned Company



Architecture  
Engineering  
Environmental  
Land Surveying

[www.blcompanies.com](http://www.blcompanies.com)



Connecticut Association of Conservation and  
Inland Wetlands Commissions, Inc.  
27 Washington Street  
Middletown, CT 06457

Non Profit Org  
US Postage  
PAID  
Hartford, CT  
Permit # 158

Winter 2015

## THE HABITAT

*Dedicated to constant vigilance, judicious management  
and conservation of our precious natural resources.*

*[www.caciwc.org](http://www.caciwc.org)*



*Printed on  
recycled paper*

### 31st Annual Connecticut Land Conservation Conference



Saturday, March 21, 2015

8:30am - 4:45pm

Wesleyan University, Middletown, CT

Keynote Address

***Building a Community that Cares about Land Conservation over Generations***  
**Juan Martinez, Director, Natural Leaders Network of the Children and Nature Network**

#### ***Other 2015 Highlights!***

- **8 Subject Matter Tracks** – *featuring 30 workshops and 3 half-day seminars. Curriculum sneak peek is available on our website.*
- **Excellence in Conservation Awards** – *recognizing outstanding achievements by organizations and individuals; nominations are due February 9, 2015.*
  - > *Excellence in Conservation Organization Award*
  - > *Katchen Coley Award for Excellence in Land Conservation*
- **Exhibits and Displays** – *from land trusts, conservation partners and other sponsors*
- **Post-Conference Reception** – *an informal evening of socializing, networking and taste testing of Connecticut grown refreshments*

***Visit the CLCC Website for details and updates!***

***[www.ctconservation.org](http://www.ctconservation.org)*** 