

Preserved But Maybe Not

The Impermanence of State Conservation Lands



A Special Report of the Council on Environmental Quality

January 2014

Summary

The General Assembly and the Department of Energy and Environmental Protection have been asked to consider proposals during the past three years to transfer, exchange or re-purpose hundreds of acres of state parks, forests and wildlife management areas. Most of those proposals were not completed, but analysis of the cases reveals procedural deficiencies that routinely put state conservation lands in jeopardy of being “unpreserved.”

The two biggest deficiencies are the lack of accurate information at the beginning stages of the decision-making process and the lack of truly permanent protections for most lands that Connecticut residents typically think are preserved.

The Council offers nine recommendations (p. 7) to improve the long-term protection of state conservation lands and the process for evaluating transfer proposals. Adoption of these recommendations will

1. get information to the front end of the decision-making process, and
2. preserve state parks, forests and other “preserved” lands in perpetuity.

When Connecticut residents visit a beautiful state park or wildlife area they often are contented by the knowledge that the land is set aside for forests, wildlife and all people for all time.

Except usually it isn't.

Recent proposals to exchange or convey state parks, forests and wildlife areas totaling hundreds of acres have highlighted weaknesses in the protections granted to Connecticut's conservation lands. These weaknesses could result in the sudden “unpreservation” and subsequent development of those lands. Such dramatic occurrences can and should be avoided in order to secure the sustainability of Connecticut's impressive and valuable network of conservation lands.

Recent Cases Illustrate a Problem: The Door is Always Open

In describing these cases, the Council is not offering a conclusion about the merits of any project. The purpose here is to document how proposals have been able to move forward well in advance of the information that would have been needed to make a good decision.

An exchange of a portion of the **Clarke Creek Wildlife Management Area** in Haddam was authorized by a Special Act in 2011¹ and repealed two years later.² Had the act been implemented, the Department of Energy and Environmental Protection (DEEP) would have been required to convey 17 acres of the wildlife area near the Connecticut River to a private company in exchange

for about ninety acres of forest in a more upland location if the value of the lands were determined to be similar. The deal never was consummated because of a great difference in the appraised values of the lands.

The wildlife area had been bought by the state in 2003 with language in the deed that said this parcel

“has high priority recreation, fishery, and conservation value, and is consistent with the state comprehensive plan for outdoor recreation and the state plan of conservation and development, and should be retained in its natural scenic or open condition as park or public open space.”³

The land was described in quite different terms by proponents of the exchange in public hearing testimony:

‘Under this plan, the state would exchange land, which is essentially a former sand pit, full of shrubs, so it could be redeveloped as a tourism destination and a job creator for the local economy.’⁴

and

“The main area of the DEP parcel that we're interested in... was formerly a sand and gravel pit for several decades... There's little or no native vegetation, mainly just some trees around the edges.”⁵

Which was accurate, the deed or the testimony? Remarkably, it might all have been true to some extent. Sandy soils can support a community of shrubs that are of uncommon importance to wildlife. As DEEP states, “There are many birds that use shrubland habitat at some point in their life, but there is a group of about 40 birds that rely specifically on shrubland habitat for breeding,” and “the Wildlife Division in cooperation with other partners has initiated the Young Forest and Shrubland Initiative to help restore these important habitats.”⁶ The true condition and natural resource value of the land were questions of fact, not opinion, but those facts were never known. No report was produced that documented the wildlife present on the land or DEEP’s objectives for wildlife conservation there.

Under the terms of Public Act 13-23, DEEP will transfer about eight acres of **Hammonasset State Park** to the Town of Madison for inclusion in the latter’s adjacent park. A condition of the act’s language requires the town to “undertake all reasonable and prudent efforts, as reasonably

On Election Day 2013...

.. two exchanges of state land were approved by voters in New York. The opportunity for every voter in that state to review and consider the details of every proposed exchange in the Adirondack and Catskill regions is provided by the New York **state constitution**. A proposal is put before the voters only after approval in two separately-elected legislative sessions. Exchanges of other state conservation lands require approval in two successive sessions because, according to the constitution, “the legislature shall...provide for the acquisition of lands and waters, outside the forest preserve counties, and the dedication of properties so acquired or now owned, which because of their natural beauty, wilderness character, or geological, ecological or historical significance, shall be preserved and administered for the use and enjoyment of the people. Properties so dedicated shall constitute the state nature and historical preserve and they shall not be taken or otherwise disposed of except by law enacted by two successive regular sessions of the legislature.”⁷

determined by the Commissioner of Energy and Environmental Protection, to protect established natural habitat.” But what is the “established natural habitat?” That has yet to be determined.

In April 2013, the Department of Emergency Services and Public Protection, Division of State Police [proposed](#) to accept a transfer of land from DEEP within **Meshomasic State Forest** so that a firearms training facility could be constructed. Because this was a proposal of executive agencies, not the General Assembly, it was subject to the requirements of the Connecticut Environmental Policy Act (CEPA), which includes the need for early public notice and comment, known as early scoping.⁸ Through the scoping process, the sponsoring agencies learned that the site was the home of endangered species and was Connecticut’s first state forest and was opposed overwhelmingly by the public and host municipality. The proposal was withdrawn, confirming the importance of early scoping (a process that is fairly new, having been inserted into the CEPA process as a mandatory step in 2002). Again, the question is: How can a project be planned for months at considerable expense before critical knowledge becomes available for decision-making?

There have been many other exchanges and transfers proposed in recent years that are not described here.⁹ (*May I Have Some of Your Land?*, on page 4, describes a request for 140 acres.)

Three common threads run through most proposals to use conservation lands for other purposes:

- The land is viewed by those proposing its transfer as unused, underutilized or vacant, as opposed to serving a specific conservation purpose.
- To the proponents, the door to an exchange appears to be wide open because the conservation lands are not in fact preserved in perpetuity.
- Complete and accurate knowledge needed to make a good decision arrives late in the process.

Unprotected Open Space on the Map

The Department of Energy and Environmental Protection has labored for at least 13 years to create an inventory of “preserved” lands across the state. Known as the Protected Open Space Mapping project, or POSM, the database now includes maps and data on lands owned by DEEP, municipalities, land trusts and other organizations within most towns. POSM is concerned with counting and mapping lands, while this memo is more concerned with the actual legal status of lands classified as “preserved,” but the two topics are closely linked. It would be useful to know what percentage of the land in the POSM database is actually without legal protection, but such data are not known. An interesting example of “impermanence” came to light recently. The Town of Bethel was awarded a state grant in 1983 to develop an industrial park. One of the conditions of the grant was to leave several acres in their natural state. Those conditions expired after 30 years. In reviewing a 2013 proposal to give the town a new grant to expand the industrial park, the CEQ noticed that some of the land – the parcels left alone in 1983 – was included in the POSM data. Further examination revealed that all land owned by the town was included in POSM because of an assumption that such land was preserved as open space, a faulty assumption. (Note: The Town of Bethel stated in October 2013 that it was revising its plans and would not expand the industrial park into the lands it left alone in 1983.)

The Council commends and encourages DEEP’s efforts to map all “open space,” as such a map would be helpful to all residents and organizations working to conserve land. However, no one should make assumptions about a parcel’s permanent protection. The POSM project or its successor should include documentation about the level of protection granted to each parcel in the data base. This will be a big task with which many local conservation commissions would help.

Land Transfers and the CEQ: A Brief History

The Council has fielded complaints about state land transfers for decades. Residents who settle into neighborhoods near state parks and forests – and in doing so pay a premium in purchase price and municipal property taxes¹⁰ – assume those lands to be preserved in perpetuity, but that assumption is unfounded. The Commissioner of Energy and Environmental Protection has full authority to exchange land or interests therein.¹¹ In the 1980s, when DEEP (then the DEP) had an inadequate budget for preserving land, it was open to proposals to swap lands if the state ended up with desired acreage. Predictably, residents living near the state lands that were to be swapped and subsequently developed were dismayed, especially when those nearby state lands were being traded for lands to be preserved farther away, sometimes in other towns. At the recommendation of the Council, the DEP adopted a Land Exchange Policy in 1990 that included provisions for notifying local officials and the public in addition to defining criteria for an acceptable exchange.

In 2007, the Council received a complaint about a DEP-approved swap that actually had occurred in 2000 and found that the DEP had not adhered to its Land Exchange Policy. Again at the Council's recommendation, the DEP issued a new directive in 2008 to establish a logical process for land exchanges, which since has been applied to exchange proposals from private interests (see sidebar, below). Meanwhile, a 2007 law provides for public notification and comment when state land (with some exceptions) is proposed for transfer out of state ownership.¹² The 2007 law has been helpful to some aspects of the land-transfer process and has resulted in the conservation of surplus state lands that had been proposed for transfer.¹³

Neither the 2008 directive nor the 2007 law applied to any of the specific cases discussed above.

May I Have Some of Your Land?

DEEP's 2008 Directive on Exchanges of Land has been applied by DEEP to many proposals from private interests. The summary of a single 2012 DEEP staff meeting includes discussion of five such proposals. These cases, like the others in this memo, highlight the need to protect conservation lands more thoroughly, if only to discourage proposals that end up going nowhere but consume DEEP staff resources which are needed for other urgent tasks. An example: Developers of a proposed wind energy facility in Ashford proposed in 2012 that they be given about 140 acres of **Nipmuck State Forest** – an area characterized by their representative as having “difficult grades, poor soils and a lack of practical access” – in exchange for 11 acres near a highway exit and pond. DEEP staff reviewed the proposal in accordance with the 2008 directive and, after four months, denied it. Staff of various DEEP bureaus examined the request and determined that the 140 acres were “integral and significant to the resource management programs of the Department.” An uncounted but significant amount of staff time was expended to conduct research and reach a conclusion that should have been self-evident. Ideally, the tract in question – which includes part of the renowned Mountain Laurel Sanctuary – would have been protected by language that would have made an exchange impossible except under truly extraordinary circumstances; failing that, sufficient natural resource information would have been available to all parties to make the decision possible and immediate without much staff time being expended. It would seem that the developer also would have benefited from an immediate answer, as some engineering was completed, presumably in anticipation of a favorable reply.

Recent History

[Public Act 12-152](#), An Act Concerning the State's Open Space Plan, includes provisions that could, if implemented, help prevent the imprudent transfer of state lands that have significant conservation value, especially those under the care of agencies other than DEEP. Under the Act, DEEP is to develop strategies "for protecting in perpetuity lands of high conservation value" and establish a process by which all state agencies may identify such lands. When implemented, that law also should lead to more permanent protection of state forest and park land. Again, however, few if any of the cases discussed above would have been affected by those provisions even if they had been implemented.

What Does P.A. 490 Have to Do With State Lands?

Adopted 50 years ago, Public Act 490 allows landowners to have their qualifying lands classified as farm or forest land and thereby be subject to reduced municipal property tax rates. Under a separate law (CGS Section 12-81(7)), most lands owned by the state and nonprofit conservation organizations are exempt completely from property taxes. The State of Connecticut does not pay property taxes to municipalities but does reimburse them through appropriated Payments in Lieu of Taxes (PILOT). So why would the state need to classify its own State Forest lands under P.A. 490? Because town assessors do not always accept the permanency of the protection afforded state lands; just because a parcel is state forest land now, they reason, does not mean it is protected for the future, and therefore the land should be assessed at market value like other lands whose owners have not chosen to classify their land as forest under P.A. 490. In some towns, the difference is millions of dollars in assessed value, which changes the PILOT payments proportionally. (And because the PILOT fund is finite, the amount available to other municipalities *shrinks* proportionally.) As a result, DEEP staff spends considerable time and money on the unexpected task of classifying State Forest as forest land under P.A. 490 – a process that requires expertise, authoritative reports, time and expense.

Conclusions

- Residents have a strong sense that state conservation lands are protected forever, even when the law says otherwise. Proposals to exchange or re-purpose conservation lands conflict mightily with public expectations.
- There is a common thread that runs through proposals to exchange or re-purpose state conservation lands: the land is characterized by proponents as surplus, unused or without special attributes that justify its continued status as state park, forest or wildlife management area. Sometimes the land is characterized as being deficient by reason of having poor soils, steep slopes or some other perceived flaw. Decision makers might read those descriptions without benefit of actual information about the land's conservation value.
- Exchanges and swaps undermine the support of citizen volunteers when the state should instead be cultivating stronger support. The State of Connecticut benefits greatly from residents' affinity with conserved lands. Because many people are willing to pay more to

live near such lands, municipal tax revenues see gains. More importantly, local residents and regular visitors frequently develop special interest in those lands and the state gains again from those citizens' substantial volunteer efforts. Those efforts often are organized through Friends groups. The Friends of Connecticut State Parks expressed dismay a sense of betrayal when state conservation lands were given away.¹⁴

- The impermanence of state conservation lands costs taxpayers in at least two ways even when proposed exchanges are not completed. First, as discussed above, the evaluation of requests for exchanges consumes valuable staff time that is needed on other projects. Second, DEEP spends staff resources on the classification of state lands under P.A. 490 for municipal tax assessment purposes, a process that would be unnecessary if the lands had permanent protection.
- Most state lands were acquired, sometimes by gift but often at considerable expense, for specific conservation purposes that often are not apparent or known to the public.
- Recent [reports](#) have identified a new and important reason for the continued preservation of certain lands, especially in coastal areas: resilience to climate change and rising seas. As temperatures and sea level rise, some preserved lands which may now harbor only common upland species will be needed to accommodate the “retreat” of coastal ecosystems.¹⁵
- Some lands owned by municipalities and nonprofit organizations are often considered to be preserved but some (primarily municipal lands and easements) are beset with the same lack of permanence as state lands.
- Any change to statute or procedure is itself not permanent. New York has excellent language in its constitution that reduces the risk that future decision makers – who might place less value on land conservation – will be able to exchange state conservation lands.

Need for Action

The Conservation and Development Policies Plan adopted by the General Assembly in 2013 is organized into six Growth Management Principles. Principle #4 concerns natural resources; the first two policies are to

“Continue to protect permanently preserved open space areas and ...

Limit improvements to permanently protected open space areas to those that are consistent with the long-term preservation and appropriate public enjoyment of the natural resource and open space values of the site;...”

These policies require consistent commitment from all branches and agencies of state government.

Recommendations

These recommendations are aimed at getting information to the front end of the decision-making process for land transfers and at preserving “preserved” lands in perpetuity.

1. **A clear and unified process:** The General Assembly and all state agencies should follow a unified procedure prior to proposing the transfer or re-purposing of state conservation lands. This procedure should include the completion of a form by DEEP that includes brief information about a property’s history, conservation purposes, natural resources and general management plans. Such information should be made public at the earliest possible stage of the process. The intent of such a procedure would be to document at the earliest stages whether a parcel is just “unused property” or is in fact important to a conservation purpose.

The unified procedure should have specific minimum requirements, including the information described above as well as information about the parcel’s ecological relationship to surrounding lands and the landscape of the community. Another factor for evaluation should be the property’s potential contribution to climate change resiliency – that is, the ability to absorb and accommodate the landward movement of coastal ecosystems as temperature and sea level rise.

In the event that the DEEP has insufficient resources to complete the requested forms, the law should allow the landowner to pay a DEEP-approved contractor to complete the form for approval and submission by DEEP.

2. **Plans and data:** DEEP should have a conceptual management plan for each property, or at the least a public “data sheet” describing the property’s purposes, natural resources and general purposes. DEEP does in fact have management plans for many parks, forests and wildlife areas, but in the interim, for those which do not there should be data available for quick consultation by all parties.

By having management plans (or at least public data sheets) ready, the Council suggests, DEEP should be able to save significant amounts of staff time when swap proposals are made. In fact, the ready availability of management plans probably would dissuade many landowners from proposing exchanges in the first place, as they could see that the conservation lands in question are valuable to the state and are not just vacant or underutilized land.

3. **Preserve for perpetuity:** All future acquisitions of land for conservation purposes should be implemented in a way that ensures their permanent protection. There are several options, some of which would require legislation.

Note: When DEEP awards a grant to a municipality or nonprofit organization to acquire land, it requires the land to be subject to a permanent conservation easement, but no parallel requirement applies to state acquisitions.

4. **Lands of high conservation value:** DEEP should implement the provisions of Public Act 12-152 that require DEEP to develop a method for evaluating state lands (under the custody of any agency) to determine those of high conservation value. Lands already designated as state park, state forest, state wildlife management area or similar designations should be classified as lands of high conservation value by default (that is, without the necessity of additional analysis).
5. **Legislation:** The General Assembly should adopt legislation, as needed, to implement Numbers 1 and 3, above and to permanently protect lands of high conservation value as determined pursuant to Number 4, above.
6. **State Constitution:** The General Assembly should start the process for amending the Constitution of the State of Connecticut to state that (to borrow from, as a starting point, the Constitution of the State of New York), “the legislature shall provide for the acquisition of lands and waters... and the dedication of properties so acquired or now owned, which because of their natural beauty, wilderness character, or geological, ecological or historical significance, shall be preserved and administered for the use and enjoyment of the people. Properties so dedicated shall constitute the state nature and historical preserve and they shall not be taken or otherwise disposed of except by law enacted by two successive regular sessions of the legislature.”
7. **Public notice and conservation easements:** The General Assembly should adopt legislation to guide the release or modification of any conservation easement that has been granted to a municipality. At a minimum, there should be a requirement for public notice and opportunity for public comment.
8. **State Forests and P.A. 490:** The General Assembly should adopt legislation that requires State Forest land to be classified automatically as forest land under P.A. 490, thereby removing the need for DEEP to spend limited resources completing the P.A. 490 classification process.
9. **Municipalities will help:** DEEP should enlist willing municipal conservation commissions to help document the extent and legal status of “protected open space” within their boundaries, perhaps using the data of the Protected Open Space Mapping project as the starting point. DEEP should consider offering incentives, such as bonus points on grant applications, to participating municipalities.

Footnotes

1. S.A. 11-16, An Act Concerning the Conveyance of Certain Parcels of State Land and the Removal of Certain Traffic Signs.
2. S.A. 13-23, An Act Concerning the Conveyance of Certain Parcels of State Land, the Boundaries of Fenwick, the Validation of Certain Town Actions, the City Point Yacht Club and Wheeler Library.
3. From the deed recorded in the Haddam Town Clerk’s Office, June 12, 2003, v. 263, p. 319.
4. Testimony of Jeff Pugliese, Director of Legislative Affairs at the Middlesex County Chamber of Commerce on Senate Bill 1196, March 21, 2011

5. Testimony of Steve Rocco, Architect, on Bill 5520, March 19, 2010.
6. DEEP Website: http://www.ct.gov/deep/cwp/view.asp?a=2723&q=514596&deepNav_GID=1655
7. The Constitution of the State of New York, Article XIV, Section 4.
8. Scoping requirements are described in the [Connecticut Environmental Policy Act](#). Scoping notices are published in the [Environmental Monitor](#) which is published twice monthly by the Council on Environmental Quality. The *Environmental Monitor* also contains [additional information](#) about the scoping process.
9. At least 70 requests for exchanges have been evaluated by DEEP since 2000, according to DEEP files. The General Assembly has considered numerous proposals for conveyance of DEEP lands.
10. "The average assessed value of houses is higher than those not overlooking DEP-managed parks and forests. Total estimates of the above average assessed values of residences overlooking DEP-managed venues to the states' property tax base are the \$143.1 to \$246.7 million. At current average property rates of 2.2%, this increase in assessed property values adds \$3.1 to \$5.4 million (2010\$) in annual government revenues. Attributable to DEP's husbanding of and long-term commitment to parks and forests green spaces, the above average assessment values annually enhance state and local government revenues indirectly via the tax system."
From *The Economic Impact of State Parks, Forests and Natural Resources under the Management of Department of Environmental Protection* by Peter Gunther, Kathryn Parr, Marcello Graziano, Fred Carstensen, Connecticut Center for Economic Analysis, University of Connecticut, June 11, 2011.
11. CGS Section 22a-25: "Acquisition of land and waters. The Commissioner of Energy and Environmental Protection may acquire in the name of the state and for the benefit of the public, by purchase, lease, gift, devise or exchange, land, waters and rights in land or waters or interests therein, or may take the same by right of eminent domain in the manner provided in section 48-12 for any purpose or activity relating to or compatible with the functions of the Department of Energy and Environmental Protection."
12. P.A. 07-213, codified as Section 4b-47 of the Connecticut General Statutes.
13. Example: After publishing a notice in the *Environmental Monitor* of their intent to transfer out of state ownership the portion of the Norwich State Hospital property that was in Norwich (not Preston, where most of the former campus lay), state agencies received comments from a knowledgeable citizen about the environmental resources on the property. As a result, the Office of Policy and Management assigned permanent custody of the 13 acres to DEEP. (*Environmental Monitor*, December 21, 2010.)
14. Example: correspondence from Friends of Connecticut State Parks re: Hammonasset exchange: Excerpts of emails to CEQ from Eileen Grant, President, Friends of Connecticut State Parks:

June 21, 2013: "I would like to put on record with CEQ the strong opposition of the Friends of CT State Parks (and the Friends of Hammonasset) to the transfer itself and to the manner in which the forced transfer was engineered."

June 24, 2013: "Divestment of state park and forest lands is a matter of very great concern to our Friends organizations, not only because it is our stated mission to preserve these properties for perpetuity, but also because of the dramatically increasing investments our groups are making to enhance facilities and on occasion to purchase acreage for communal benefit...Our contributions are substantial. We donate 79,000 volunteer hours per year to buttress the System; these hours are conservatively valued at \$2.2 million per annum. In addition to our labor, Friends contribute cash, goods and land yearly. Since our first group's inception, our non-labor contributions total approximately \$8million. Our gifts of time and money come with a few strings attached; our expectation is that our contributions will not be wasted and that they will never be redirected for purposes other than those which benefit and service every Connecticut citizen visiting parks. Friends also expect that government will not decrease or diminish the value of the very assets we work so hard to enhance...The use of the Conveyance Bill to forcibly transfer state land betrays citizens' trust and neutralizes so many good people's best intentions. An undermining of those philanthropic impulses so sorely needed in our straitened economy is perhaps the most regrettable and damaging result of an action like this."
15. *Connecticut Climate Change Preparedness Plan* (pp. 51-64), Governor's Steering Committee on Climate Change, Adaptation Subcommittee, 2011; online at http://www.ct.gov/deep/lib/deep/climatechange/connecticut_climate_preparedness_plan_2011.pdf

About the Council on Environmental Quality

The duties of the Council on Environmental Quality (CEQ) are described in Sections [22a-11 through 22a-13](#) of the Connecticut General Statutes.

The Council is a nine-member board that works independently of the Department of Energy and Environmental Protection (except for administrative functions). The Chairman and four other members are appointed by the Governor, two members by the President Pro Tempore of the Senate and two by the Speaker of the House. The Council's primary responsibilities include:

1. Submittal to the Governor of an annual report on the status of Connecticut's environment, including progress toward goals of the statewide environmental plan, with recommendations for remedying deficiencies of state programs.
2. Review of state agencies' construction projects.
3. Investigation of citizens' complaints and allegations of violations of environmental laws.

In addition, under the Connecticut Environmental Policy Act (CEPA) and its attendant regulations, the Council on Environmental Quality reviews Environmental Impact Evaluations that state agencies develop for major projects. The Council publishes the *Environmental Monitor*, the official publication for scoping notices and environmental impact evaluations for state projects under CEPA. The *Environmental Monitor* also is the official publication for notice of intent by state agencies to sell or transfer state lands.

Council Members

Susan D. Merrow, *Chair*

Janet P. Brooks

Lee E. Dunbar

Karyl Lee Hall

Alison Hilding

Michael W. Klemens

James O'Donnell

Richard L. Sherman

Contact the CEQ

Website: www.ct.gov/ceq (for this and all Council publications)

Mail: 79 Elm Street Hartford, CT 06106

Phone: 860-424-4000 (messages can be left 24 hours a day)

E-mail the Council's Executive Director: karl.wagener@ct.gov

