
Preserved But Not Protected

The Damage to Connecticut's Preserved Lands from Boundary Encroachments, Illegal Tree Cutting, ATVs, and Other Assaults



Stumps on Farmington Land Trust property where 120-year-old trees were taken (Page 2)



**A Road Runs Through It:
Wyantenock State Forest (Page 7)**



**The view of state forest land is excellent from this building: Part of it is *in* a state forest.
(Page 4)**



**According to Connecticut's laws,
these trees had no value (Page 3)**



A Report of the Connecticut Council on Environmental Quality

December 20, 2005

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Executive Summary

The Council on Environmental Quality has found that existing laws are not adequate to protect preserved lands – including state parks and forests, municipal parks and land trust properties – from various forms of encroachment. The Council defines encroachment as an unlawful action that is harmful to preserved land owned by the state, municipalities, or private organizations such as land trusts. The most common type of encroachment is the illegal felling of trees, but there are many other types as well, including the placement of buildings, driveways, and lawns on what is supposed to be protected open space. State government has not been strong in the defense of its land. The Department of Environmental Protection (DEP) is not equipped to protect state lands from encroachment, and is losing public resources. Some damaging activities, such as the paving of an abandoned road that bisects a state forest, are aided by antiquated statutes. State-owned lands, not managed by the DEP, have been sold or transferred with no knowledge of what natural resources were present. Finally, hundreds of areas of preserved land have been damaged by people driving All-Terrain Vehicles (ATVs) illegally. The Council recommends a combination of statutory amendments and increased enforcement capacity to reverse the growing problem. The detailed recommendations begin on page 10.

Major Recommendations In Brief

- Update the penalties for illegal tree cutting on preserved lands, and make the violator liable to the landowner for the costs of restoration and legal fees.
- Define the value of trees that are cut illegally on preserved lands as the *appraised* value of the trees (to replace the current standard, the market value of the logs).
- Establish a firm policy of not tolerating encroachments on state land. Work to resolve all known encroachments by 2008. Appropriate to the DEP the resources – including surveyors and support staff – necessary for quick and effective response to reports of encroachment.
- Enact a new statute that would guide the assessment of damages in cases of encroachment (other than tree-cutting) on preserved lands. The trespasser should be liable to the landowner for the costs of restoration plus legal fees and related costs.
- Authorize the Attorney General to act on behalf of nonprofit land trusts against encroachments.
- Amend the statute that gives certain landowners rights to develop and use abandoned roads in a way that would inhibit development of paved roads through preserved lands.
- Review the natural resources of surplus state properties before they are transferred out of state ownership.
- Improve the DEP's ability to enforce laws that prohibit the use of ATVs on public land. People who damage preserved lands with ATVs should be liable to the landowners for the cost of restoration.

Background: The Farmington Complaint

In June 2005, representatives of the nonprofit Farmington Land Trust spoke to the Council about an incident that occurred on one of the trust's preserves. As described in police reports, the owner of a new subdivision next to the preserve paid a contractor to remove trees from the preserve. The boundary of the preserve was well marked. All of the trees were more than 120 years old and in plain view of the boundary signs. A certified forester determined that the resulting gap in the tree canopy probably will result in the spread of undesirable invasive plant species. The clearing also reportedly led to erosion and considerable damage to the subsurface drainage system that had been installed decades earlier on the portion of the preserve that was a pasture.

After a thorough investigation by the municipal police department, the Chief State's Attorney declined to prosecute, stating that the matter was "more appropriate for a civil forum."¹ Accordingly, the land trust hired an attorney. It also hired an environmental consultant who estimated the cost of restoring the property to be approximately \$120,000.

If the land trust prevails in court, the penalty that is likely to be assessed pursuant to Connecticut General Statutes (CGS) Section 52-560 is three times the market value of the severed wood, which was estimated to be less than \$400. This amount is not close to being sufficient for restoring the property or for serving as a deterrent to future incidents. The neighboring landowner almost certainly gained many times that amount in land value because of the enhanced view.

An individual or commercial landowner might choose to forego legal action, but the land trust has an obligation to pursue a civil remedy even if such action brings a substantial monetary loss. On the other hand, the organization cannot spend so much on legal expenses as to risk insolvency. The land trust's reason for existence is to preserve parcels of land that are rich in natural resources for present and future generations of residents. A failure to take action would jeopardize future gifts, as potential donors of land rightfully might question the trust's commitment to ensuring the preservation of the land in its natural state. Also, the trust is directed by the *Land Trust Standards and Practices*² manual to take action to correct abuses of its property.

The Connecticut Supreme Court Invites Change

In 2005, the Connecticut Supreme Court ruled on another incident of unauthorized tree cutting on land owned by a land trust, this one along the Connecticut River in East Haddam (James Ventres et al. v. Goodspeed Airport, LLC, et al.)³ About 340 trees were cut, some of which were more than 100 years old. The value of the wood was negligible, as would be expected for silver maple and other species that grow in floodplains. The trees' significant ecological value was not relevant to the court. The plaintiff's consultant and the defendant's consultant both estimated that restoration would cost more than \$100,000. This restoration did not include full replacement of the trees; a forestry consultant estimated the cost of replacement to be more than \$200,000. Although the plaintiffs prevailed, the court ordered restoration-related payments of only \$67,500, of which \$17,500 was a civil penalty for a violation of the Inland Wetlands and Watercourses Act; the other \$50,000 went to a DEP-controlled fund for research projects that could be spent to benefit the site.

The land trust argued to the trial court that the damage award should be based on the cost of replacing the trees, because the “value of the property lies in its place within the environment, rather than as a potential building lot or a working woodlot.” The Supreme Court replied that the “plain language of the statute precludes such a reading,” and the court is “precluded from substituting its own ideas of what might be a wise provision in place of a clear expression of legislative will.”

The Supreme Court affirmed that under current law there are only three possible measures of damage for loss of trees in Connecticut:

1. Damages for unlawful entry on the plaintiff’s land, which would be “nominal.”
2. “Value of the trees removed, considered separately from the land” (or in other words, the value of the wood on the market if sold for lumber, pulp, or firewood.)
3. “Reduction in the pecuniary value of the land” as a result of the tree removal (that is, the difference in the value of the land before and after the tree removal.)

None of these methods is appropriate to cases of people cutting trees illegally on preserved lands. The value of the wood is usually insignificant. As an example, using median wood prices from late 2005: the value of 100 quite large red maple and hemlock trees (each being more than two feet in diameter) would be about \$2,000 on the market.⁴ In the unlikely event they were all large white oaks, a more valuable type of tree, the total value would be only about \$5,000.

The pecuniary or market value of the land has almost no meaning in this type of case. Preserved land usually is permanently encumbered by legal restrictions that would prohibit development, and in most cases the land has little or no value on the open market even if it could be legally sold. Many preserved lands were gifts to conservation organizations or the state and have deed restrictions that would prohibit their sale. Land trusts maintain the lands for conservation purposes only. The market value of a swamp, for example, that was donated to a land trust with permanent deed restrictions might be nonexistent, but that same land could be of extraordinary ecological value to the residents of the state.

The laws pertaining to tree-cutting on others’ land are woefully outdated. They were adopted at a time – 1726 – when the typical problem was theft of trees for the commodity value of the wood. (Interestingly, the financial penalties were actually greater in 1726; they were reduced through amendments over time.)⁵ Now, the problem is more likely to be removal of trees to enhance the view from expensive homes. The penalties, if assessed, are minor in relation to the homes’ value, and are of no deterrent value. Meanwhile, the true value of the trees on preserved lands, which is value to wildlife, scenery, recreation, and other public purposes, is not recognized in the law at all.

There are several options for updating the statutes. One approach would be to define “value” of trees to mean the appraised value, which is related to replacement cost. There is precedent for this approach: In 2000, the General Assembly amended the law regarding illegal

tree cutting in rights-of-ways (CGS Section 23-65(b)) to establish the fine as the “appraised” value of the tree, and defined the appraisal method to be used. This fine is explicitly in addition to any civil liability to the landowner. A similar law for illegal tree cutting on preserved lands would be consistent and appropriate. Another option is to specify a conservation value in monetary terms. The Council’s recommended approach (see p. 10) is a combination of penalties: Where the cutting occurs on preserved lands, the fine would be set at three times the appraised value of the trees, and the person who cuts the trees shall be liable to the injured party for the costs of restoring the land to its former ecological condition, as determined by the DEP or a qualified consultant. In a case where the owner of preserved land – including state parks and forests, land trust preserves, and municipal parks – seeks a civil remedy, the damages should also include all costs, fees, expenses, and reasonable attorney’s fees. The model for this last provision is the Inland Wetlands and Watercourses Act (specifically CGS Section 22a-44(b)).

A Common Problem

During the Council’s investigation of the Farmington case, it became aware of other abuses of preserved lands. From information collected from other citizens, state agencies, municipalities, conservation organizations, news accounts, and members’ own observations, the Council soon concluded that the problem was widespread and spreading.

Land Trusts are Frequent Victims

According to a survey of 78 nonprofit land trusts conducted in 2005 by the Connecticut Land Trust Service Bureau and a volunteer, the majority have suffered encroachments.⁶ The most common illegal activity is tree cutting (reported by more than one-third of the land trusts). Next is illegal dumping (35 percent), with an assortment of roads and buildings (12 percent each) and other abuses. Only one in seven land trusts reported no encroachment problems. Damage from illegal ATV use is also a common complaint. Existing penalties are not deterrents, and the cost of legal action is often beyond the means of the organization. Most of these charitable organizations are run by volunteers for the benefit of their communities, and they deserve protection.

The survey of land trusts also found that 20 percent of land trusts reported that their boundaries were not necessarily surveyed, marked and inspected as they should be. Just as they are for state and municipal lands, *well-marked accurate boundaries* are a land trust’s first line of defense against encroachments. The recommendations in this report are intended to aid those organizations that maintain their boundaries properly.

Theft of Public Resources

The Council found that dozens of encroachments compromise the boundaries and natural resources of state forests, parks, and wildlife management areas. In a typical case, neighboring property owners cut vegetation, expand their lawns into the state land, build unauthorized drive-

ways, roads, or structures, remove stone walls, or use the state land for dumping or storage. Sometimes, the state boundary signs and/or monuments are removed. Some of the more unusual encroachments include houses, a deer enclosure, and an in-ground swimming pool in a state forest. Examples include:

- **Chain Saws in a State Park:** The DEP arrested two men in November 2000 for cutting 131 trees in a State Park. The apparent reason for the cutting was to enhance the adjacent landowner's view of the Connecticut River. The largest tree was more than 100 years old. The trees' wood value was negligible, according to the DEP forester who viewed the stumps, but their appraised value (which takes into account their replacement costs) was about \$16,000. Ultimately, the criminal charges were dismissed, and the landowner agreed to make a charitable donation of \$15,000 to a nonprofit organization related to parks. The DEP received nothing for restoration and no compensation for its expenses.

Compare this to a similar event that occurred along the Potomac River in Maryland that same year. The Potomac Conservancy reported that someone had cut 32 mature trees to enhance the view of the river from a nearby residence. In 2004, the National Park Service, which held a scenic easement on the property, reached an out-of-court settlement with the landowner. *In addition to* reforestation of the site, the landowners agreed to donate a more restrictive easement *and* paid more than \$470,000 in fines, payments, and contributions to the Park Service and two nonprofit organizations related to parks and the Potomac River.

- **Houses in a State Forest?:** A DEP Park Supervisor reported the construction of new homes on land that he understood to be part of a state forest. However, until the boundary can be surveyed and (perhaps) the deeds researched, no action can be taken to correct this potentially major encroachment. As explained below, the boundary is not being surveyed.
- **Filled Wetlands: The State as Inadvertent Violator:** There are numerous reported instances of landowners expanding their lawns and fences into wetlands that are owned by the state and managed by the DEP as parks or wildlife management areas. Corrective action is not taken because of the DEP's inability to document the boundaries. In the cases where non-tidal wetlands have been filled, the DEP potentially is in the unfortunate legal position of maintaining illegal fill (placed by others) on its own property, a violation of the Inland Wetlands and Watercourses Act.

The DEP's Defenses

The first line of defense against encroachments is well-defined borders, according to experienced land managers throughout the country. This is one of the DEP's first weaknesses. Section 23-24a of the Connecticut General Statutes required the DEP to survey all park and forest boundaries by 1984. This work was never completed. In 2002, the Auditors of Public Accounts recommended that the DEP develop a plan to survey all of its land. The Department's response indicated that the deficiency is huge: "There are approximately 180,000 acres for

which no survey may exist.”⁷ The DEP further estimated that the entire job would cost more than \$23 million, and would take approximately 120 years at the 2002 level of expenditure. However, surveying expenditures not related to new land acquisitions have declined to near zero, which means most of the state’s land will never be surveyed unless this activity is budgeted for.

The DEP’s directive to staff (Directive MC 2234) that establishes procedures for handling encroachments instructs field staff, through his or her division director, to contact the party believed to be responsible. However, if the area is not monumented or if there is a question concerning the boundary line – which is common because encroachers often remove the signs and/or monuments, and because the majority of the land has not been surveyed – then the division director is to contact the DEP’s Division of Land Acquisition and Management to have the land surveyed. This division, which once had several surveying crews, has no surveyors on staff, and almost no funds for contract surveyors other than for new land acquisitions. (The funds for surveying new acquisitions are included in the capital costs of acquisitions.) The Connecticut DEP could well be the only entity anywhere that manages 250,000 acres and employs no surveyor. Other large land-owning entities in Connecticut, such as the Metropolitan District Commission, have surveyors on staff to review boundary problems.

In contrast, a single region of the New York Department of Environmental Conservation (DEC) manages about the same acreage as the Connecticut DEP. It employs surveyors who respond to potential problems, and posts this warning on its website: “Private property owners whose property adjoins DEC land should be aware that it is their responsibility to know where their boundaries are before they start any activity that may result in an encroachment or trespass onto DEC land. Such activities might include building a camp or a fence, harvesting timber or drilling a well. Owners are advised to consult with a professional land surveyor if they are not certain of their boundary locations. DEC will rigorously defend against encroachment or trespass. Court actions are usually far more costly to the private owner than the initial cost of a survey.”

DEP foresters and other staff walk boundaries regularly and maintain signs, but this is not adequate to fully protect the land. When a problem is found, any necessary legal action is virtually impossible if the DEP’s claim of encroachment cannot be supported by a survey.

These facts lead to the inevitable conclusion that the DEP is not equipped to defend itself against encroachments. Of course, legal defense is not as desirable as prevention, and a combination of stronger penalties and swifter enforcement could serve as genuine deterrents to future would-be encroachers.

It is not possible to present a reliable estimate of losses that result from encroachments, which would give a good idea of the money that could be saved by equipping the DEP with the tools and resources it needs. In theory, the DEP does not actually lose land to encroachments because there is no adverse possession against the state. In reality, it is difficult legally to have a private structure removed from public land if it has gone undetected or has been allowed to remain for several years. State agencies are required to report property losses due to theft and vandalism to the Comptroller. Financial losses due to illegal tree cutting and other encroachments could be (and probably should be) reported to the Comptroller by the DEP but generally are not.

If they were reported, the frequency and severity of damage from encroachments could be tracked, and the Council is recommending this change (p. 11).

Pavement in the Forest

In Kent, the beautiful Wyantenock State Forest is now bisected by a paved road more than half a mile long that leads to a large new subdivision. State files contain hundreds of pages of memos, maps, draft legal agreements, correspondence, and inspection reports relating to this road, which evidently was relocated, widened, graded, and paved with the full knowledge and dismay of the DEP and Attorney General's Office. Utilities were installed. Some of the correspondence states that the permission of the DEP – the actual landowner – was needed for utility installation, but the records in the files do not indicate that permission was ever granted. In the end, the state's efforts to prevent the destruction were all ineffectual, and the "environmental values...in this wooded parcel of State Forest were significantly compromised."⁸ A swap agreement was proposed at one time that would have resulted in a new right-of-way in favor of the state to another nearby parcel, but it is the Council's understanding that even this agreement was never given final approval by the state.

What happened? An old dirt and gravel road on the site had been formally abandoned by the Town in 1971. A landowner outside the forest decided to subdivide and develop his land. Relevant law (CGS Section 13a-55) allowed him to use the abandoned road for access to his new development. Around 1990, he graded and paved the road, and installed culverts and utilities on the DEP's land. This adjoining landowner did not require, nor did he obtain, permission from the DEP. (He did obtain an inland wetlands permit from the town, though on the application he entered "N/A" as the name of the landowner, which in reality was the State of Connecticut; this is an apparent breakdown in the regulatory process that is separate from the encroachment problem.) The subdivided lots were offered for sale in 2005, which will result in considerable traffic through the forest that has been used much for hunting, hiking, and other uses. The value of the State Forest to the public is now considerably lower than it was.

The relevant law, which dates to 1959, was amended in 1985 and 1990 to grant rights to such landowners that, in hindsight, seem far too broad and are potentially very harmful to preserved lands. The statute should be amended to provide rights to adjoining landowners to pave abandoned roads through preserved lands only where no reasonable alternative exists, and to make only those improvements that are truly necessary.

Separate from the question of the legal right to develop the abandoned road, the Council has not been able to learn why the state took no effective action when the developer reportedly damaged resources in the state forest, including stone walls, boundary monuments (a violation of state law in itself), trees, and land outside the abandoned roadway. This damage, if corroborated, would have provided the DEP with considerable leverage to pursue modifications and/or compensation. Had the DEP been more protective of state lands, it could have taken several additional steps, including intervention in the local wetlands application, placement of physical barriers on its own land until all matters were resolved, and/or legal pursuit of compensation for damages outside the roadway.

The Legal Defense of State Interests

According to the Attorney General's Office, very few cases of encroachment on state lands have been pursued through lawsuits or other legal actions. A few are being addressed now, though most of these have regulatory components. (For example, some of the encroachments involve structures that also violate local zoning regulations, and the Attorney General's Office is engaged in zoning appeals.) Aside from these current cases, the Attorney General's Office reports having pursued only two encroachment cases in recent years. Yet, it reportedly acts upon all cases forwarded by the DEP. The Council is trying to determine why the large number of encroachments has resulted in so few legal cases. The reason for the absence of referrals and decisive action is difficult to document. Probably there was a reluctance to formally refer and pursue cases that suffered from lack of evidence in the form of surveyors' analyses, police reports, and other products of field investigation, combined with a collective reluctance to commit scarce resources to such activities that would have uncertain results. In sum, however, the situation reflects a historic lack of resolve in defending the state's own parks, forests, and wildlife management areas.

Disposing of State-Owned Natural Lands

Occasionally a state agency determines that it no longer needs a particular parcel of land, and notifies the Office of Policy and Management (OPM) pursuant to CGS Section 4b-21. OPM asks all other agencies if they wish to propose a re-use of the land; if there is no proposed re-use, OPM can sell, ease, or exchange it, giving the municipality the first opportunity to acquire it. Since 1992, approximately 25 parcels have gone through this process. In a few instances, the DEP has requested parcels of land it needed for specific purposes, such as a boat launch or wildlife management area. In most other cases, the DEP found it had no need for the property. However, even where the DEP has no use for the land itself, the best use of the land, or some part of it, might include preservation in a natural condition.

The deficiency in the current surplus land process is that land can be sold or transferred out of state ownership without the state knowing how valuable it might be for the protection of natural resources. Large wooded lands have been discarded in this way, and the state does not know what natural resources it might have had in its possession. If these lands harbored significant natural resources (a presence which we might never confirm), they could have been protected at virtually no cost, perhaps through the use of conservation easements, while the state might be spending considerable sums elsewhere to protect the same resources.

In addition to the 25+ properties that went through the OPM-administered process, many more have been transferred out of state ownership by direct acts of the General Assembly. The same conclusions apply: We might never know if some of the parcels should have been conserved, in whole or in part.

ATVs: Encroachments on Wheels

Since 1980, the number of All-Terrain Vehicles (ATVs) has grown substantially. Exact numbers are impossible to obtain. State law requires ATVs to be registered unless they are used exclusively on one's own property. Off one's own property, they can be driven only with the landowner's permission. As of June 2005, about 2,500 were registered. The DEP and ATV interest groups estimate that there might be tens of thousands of ATVs in Connecticut, but without registrations this is not possible to verify. Possibly, the great majority of ATV buyers decline to register their vehicles at the time of purchase by claiming they will be used exclusively on their own properties.

Use of ATVs on public and private preserved lands is commonplace, and it is virtually all illegal. State law does not allow ATVs on state land (except by disabled hunters), and allows their use on private land only with written permission. The Council is not able to measure the problem, but it is difficult to find anyone who spends time outdoors who has not witnessed violations or evidence of violations. Regrettably, the evidence usually takes the form of damage to trails, streams, and wildlife habitat. The Council has received complaints of ATV tracks in and around a stream that flows to drinking water supply reservoirs, and water companies have reported damage to watershed lands from ATVs. Numerous land trusts have reported problems.

While the extent of illegal ATV use defies precise measurement, there is enough data to confirm that illegal ATV use constitutes a widespread assault on preserved lands. In 2001, the DEP made more than 1100 arrests for illegal ATV use; this was 16% of all arrests made by Environmental Conservation (EnCon) Police Officers. At the time, EnCon Officers responded to complaints of illegal ATV use anywhere in the state. In 2003, the number of EnCon Officers was reduced substantially, and the DEP reduced its enforcement work to include only DEP-managed lands. In 2004, under this more limited scope of work, the DEP responded to about 600 ATV-related complaints on state land and made 255 arrests. State and municipal police have made many arrests, probably many hundreds.

There has been considerable public debate, at the General Assembly and elsewhere, about strategies to reduce illegal ATV use. Several parties have suggested the designation of public lands where riding would be allowed. A 1986 law (CGS Section 23-26c) charges the DEP with identifying appropriate state-owned properties, and the DEP adopted a policy in 2002 that creates a procedure whereby ATV organizations can nominate lands for designation.

The Council offers no recommendation at this time on the proposal to spend public dollars to acquire or create a recreation area where people could ride ATVs. Many people have suggested that the creation of legal ATV trails would reduce the incidence of illegal use. However, the Council is not aware of evidence that supports the suggestion that a reduction in illegal use would necessarily follow the establishment of legal riding areas. A legal riding area could expand the popularity of ATVs, which could in turn lead to more ATV ownership and conceivably more illegal use. The Council observes that the DEP does not have adequate staff to patrol and manage its existing parks, forests, and wildlife management areas, and thus would seem unable to take on the additional tasks associated with a new type of use.⁹ Also, existing parks, forests, and wildlife management areas were acquired for specific conservation purposes not re-

lated to motorized vehicle use. Regardless of the future of legal riding areas, the first step is to slow the spread of illegal riding and the resulting damage that it inflicts on the public's land. The enforcement authorities need more resources.

The Council has been reviewing efforts by other states to limit the damage from illegal ATV use. Such measures as requiring registration (with visible plates) and insurance at the time of purchase, and requiring in-state registration for out-of-state ATVs, warrant further study.

Other States Have Similar Problems

Numerous other states have greatly increased their penalties for encroachments, including illegal tree cutting, and have experience with problems such as widespread boundary encroachments. The Council can assist in determining what solutions in other states might be directly applicable to legislation in Connecticut.

Recommendations

Note: All organizations that own and manage land for conservation purposes should survey, mark, and regularly inspect the boundaries of their lands. The recommendations below are intended to aid those organizations that properly maintain their boundaries.

To deter and compensate for illegal tree cutting, the most common form of encroachment:

1. Amend CGS Section 52-560 to add a provision that for any cutting of trees without permission of the owner on preserved lands (state, municipal, and nonprofit land trust lands), where the boundary is reasonably well-marked, the consequences shall be as follows:
 - a. establish the fine for illegal tree cutting on preserved lands at three times the value of the trees *and*
 - b. make the violator liable civilly to the injured party for three times the value of the trees, plus the cost of restoring the land to a condition from which the land can regain the ecological functions it performed prior to the cutting, plus any reasonable attorneys fees, other costs and expenses in connection with the legal action. (The model for this last provision is the Inland Wetlands and Watercourses Act, CGS Section 22a-45(b).) The court, in assessing the damages to be awarded, should also be authorized to consider, in addition to the cost of restoration, the willfulness of the violation, the damage to natural resources, added economic benefit gained by the violator through the tree-cutting, and other relevant factors.
 - c. define the value of a tree on preserved land as its **appraised** value, which may be made in accordance with The Guide for Plant Appraisal, as published by the International Society of Arboriculture, Urbana, Illinois. (This is the definition currently used in CGS Section 23-65 for trees cut illegally in rights-of-way.)

To defend State Parks, Forests and Wildlife Management Areas against encroachments:

2. The Governor, General Assembly, and DEP should establish a firm policy of not tolerating any encroachments. ("It is the policy of the State of Connecticut that encroachments will not be tolerated on state lands.")
3. The DEP and Attorney General should resolve all known existing encroachments by 2008.
4. The Governor and General Assembly should appropriate sufficient funds to the DEP to survey state lands and mark their boundaries.
5. The DEP should hire at least one survey crew and necessary support to allow for swift response to all encroachments and boundary disputes.
6. The DEP should refer all encroachments to the Attorney General for swift action. The Attorney General should seek compensation sufficient to cover restoration costs.
7. The DEP should report all losses due to theft and encroachment to the Comptroller and Auditors of Public Accounts. The goal should be to reduce unrecovred losses to zero.
8. The DEP should continue its practice of reducing border mileage and potential conflicts by acquiring (from willing sellers) inholdings and parcels that have the effect of smoothing irregular boundaries of its properties. Many such acquisitions have been made as part of the Recreation and Natural Heritage Trust program.

To give all organizations – state, municipal, and nonprofit – that own preserved lands the legal tools they need to defend themselves from all encroachments:

9. The General Assembly should enact a new statute that makes the trespasser civilly liable for any encroachment on land that has been permanently preserved for the protection of the natural environment (including land preserved by a conservation easement where the grantee is the State of Connecticut or a conservation organization). The damages awarded should be sufficient to pay for the restoration of the land to its original pre-encroachment condition, as determined by a qualified scientist. The injured party should be permitted to recover any reasonable attorneys fees, other costs and expenses in connection with such action. (Again, the model is the Inland Wetlands and Watercourses Act.) The court, in assessing the damages to be awarded, should be authorized to consider, in addition to the cost of restoration, the willfulness of the violation, the degree to which the boundary was marked, the damage to natural resources, added economic benefit gained by the violator through the encroachment, and other relevant factors.
10. The General Assembly should amend the Connecticut Environmental Protection Act (CGS 22a-16) to authorize the Attorney General to act on behalf of nonprofit land trusts against encroachments by taking an action in the Superior Court.

11. The General Assembly should authorize the DEP to establish a revolving fund to provide legal expenses for qualified land trusts that are victims of encroachment. Such fund, once established, would be replenished when the land trust that borrows from the fund is awarded attorney's fees by the court (as recommended in # 9, above).

To prevent unreasonable paving of roads in state forests, parks, wildlife management areas and preserved lands held by nonprofit land trusts:

12. The General Assembly should amend CGS Section 13a-55 – which gives rights to landowners adjoining abandoned and discontinued roads to use and improve those roads – to provide an exception if the abandoned or discontinued road in question runs through preserved lands. Specifically, the amendment should specify that any owner of land adjoining the abandoned or discontinued road has a right-of-way through preserved land only if there is no reasonably alternative means of access to his or her property that avoids the preserved land, and if the improvements are found to be necessary. Also, within preserved lands, the improvements allowed by the right-of-way should be only those essential to permit passing and re-passing. Also, the permission of the owner of the preserved land should be required in order to install utilities or any other improvements not directly related to passing and re-passing on the right-of-way. Finally, the party who constructs the road should be legally responsible for all maintenance and should assume all liability, unless a government body or other party agrees to assume such responsibility.

To Prevent the Discarding of Ecologically Significant State Lands

13. The DEP should amend the regulations of the Connecticut Environmental Policy Act to include, as an agency action for which an environmental review is required, “transfer of land to another party, except for land which has been permanently conserved.”
14. The Office of Policy and Management or the Department of Public Works (depending on the land’s status in the surplus property program) should secure a natural resource inventory of any undeveloped lands declared to be “surplus,” and develop a plan with the assistance of the DEP to protect any acres that might be of conservation value to the public. Any acres so protected will count toward the state’s open space preservation goal, and at very low cost.
15. The General Assembly, prior to conveying any undeveloped lands to a municipality or other party for purposes other than open space conservation, should ask the DEP for an environmental assessment of such land and its recommendations for protecting any portions of it for conservation purposes. Funds should be appropriated, as required, for such purpose.

To Protect Preserved Lands from ATVs:

16. The Governor and General Assembly should appropriate sufficient funds to the DEP to restore the number of Conservation Officers to at least 32 for the area outside of the ma-

rine district. This would be comparable to the 1992 staffing level, which itself was found to be insufficient by the Governor's Task Force on Hunting and Public Safety. There will be many benefits beyond the improved enforcement against illegal ATV use.

17. The General Assembly should amend CGS Section 23-26g to state that any person found guilty of an infraction for illegal ATV use on state land or any preserved land shall be civilly liable for any necessary costs of restoring the land and related costs.

When legislation is drafted, the Council stands ready to assist in any way it can, and encourages the drafters to solicit input from the many categories of people and organizations who would be affected.

Notes

1. Correspondence from Christopher L. Morano, Chief State's Attorney, to Representative Demetrios Giannaros, 21st Assembly District, June 6, 2005.
2. Land Trust Alliance, *Land Trust Standards and Practices*, Revised 2004.
3. *Ventres v. Mellon* 275 Conn. 105 A.2d (2005).
4. *Southern New England Stumpage Price Survey Results, Third Quarter – 2005*, joint effort of Cooperative Extension at the Universities of Massachusetts and Connecticut, and the state forestry agencies in CT, MA, RI. <http://forest.fnr.umass.edu/stumpage.htm>
5. **An Act for the more Effectual Detecting and Punishing Trespass**, Passed by the General Court of Assembly of His Majesty's Colony of Connecticut in New England, 1726. For each tree 12 inches or more in diameter, the violator owed the owner three times the value *plus* 20 shillings.
6. Data from "Land Trust Encroachment Survey - Final Report," presented by Dr. Charles Leach , Farmington Land Trust, at November 30, 2005 CEQ meeting.
7. *Performance Review Follow-Up, Real Property, Surplus Real Property*, Auditors of Public Accounts Kevin P. Johnston and Robert G. Jaekle, July 31, 2002.
8. Memo from Donald H. Smith, State Forester and Director, DEP Division of Forestry, to Elizabeth Brothers, Director, DEP Division of Land Acquisition and Management, December 18, 2003.
9. *Connecticut State Parks Infrastructure Conditions Assessment*, prepared by Clough, Harbour, and Associates, LLP for the Department of Environmental Protection, December 2003.

About the Council on Environmental Quality

The duties of the Council on Environmental Quality are described in Sections 22a-11 through 2a-13 of the Connecticut General Statutes. The Council is a nine-member board that works independently of the Department of 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 (<http://www.ct.gov/ceq/monitor.html>), the official publication for state project information under CEPA.

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