

LAND TRUST LAW SCHOOL

The Intersection of Law and Conservation

and Private Environmental Enforcement

Keith R. Ainsworth, Esq.

CLCC 2025



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(Apocalypse Edition)

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Conservation
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What We Will Cover



Nuggets of Wisdom

Just What is Private Environmental
Enforcement?

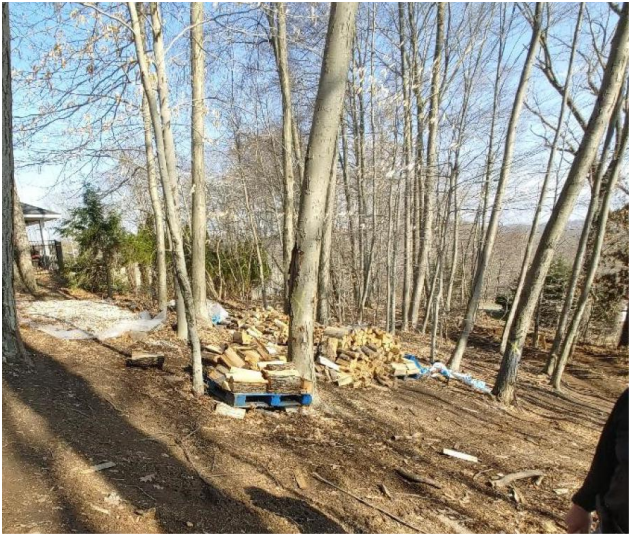
The Foundation of American
Environmental Law

Public Trust: Citizen Right to Protect
Natural Resources

Sampling of Environmental
Conservation Cases

The Vexing Clash of Green Energy vs.
Conservation

Question and Answer



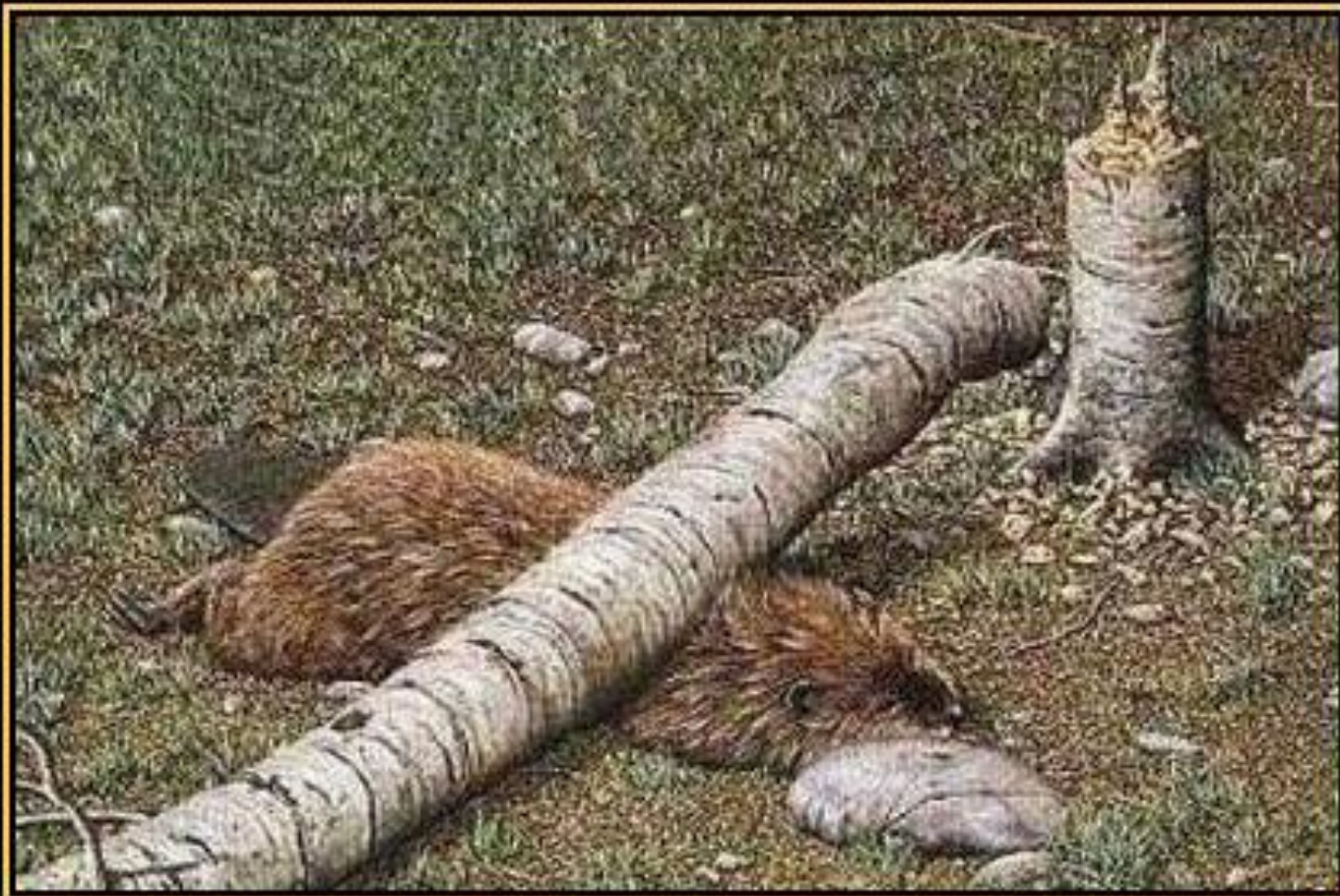
Some Pending Encroachments 2025

WHAT IS PRIVATE ENVIRONMENTAL ENFORCEMENT?

How the Law Interacts with Conservation

Representative Clients

- 24 Land Trusts
 - Innumerable Voluntary Associations
 - Businesses
 - Non-Profit Conservation Orgs
 - Governmental Agencies
-
- Representative Matter Types
 - Transmigration of Hazardous Substances
 - Nuisances/Trespases
 - Poorly Sited/High Impact Development
 - Noise From Trash to Energy Plant
 - Flooding Due to Poor Stormwater Control



PYRRHIC VICTORY

NUGGETS OF WISDOM

DEADLINES

- ▶ **DEADLINES – Most Encroachments Settle With Discussion But Play a Firm Hand**
- ▶ **Statute of Limitations for Trespass 2 years**
- ▶ **Don't Let Them Delay**
- ▶ **10-day letter, 30-day Plan, 90-day Fix**



NUGGETS OF WISDOM

MUNICIPALITIES FRIEND OR FOE??

- ▶ Some encroachments are ALSO a wetlands violation
- ▶ Some Encroachments Are ALSO a Zoning Violation
- ▶ If You ask the Municipal WEO or ZEO to inspect, they may or may NOT Agree With You
- ▶ Towns LOSE INTEREST
- ▶ YOU LOSE CONTROL
- ▶ Unhelpful Records Get Created



NUGGETS OF WISDOM

PROPERTY SWAPPING

- ▶ **Tempting to Resolve Encroachment By Swapping Land**
- ▶ **Slippery Slope Problem – Like Potato Chips, Can't Stop at Just One**
- ▶ **Need to Re-encumber New Plot, New Mylar Map, Not As Easy As It Seems**
- ▶ **Can Be Useful for Situations Where There Is Ambiguous Ability to Enforce (e.g. - You waited too long..... Laches)**



NUGGETS OF WISDOM

SURVEYOR AND TITLE SEARCHERS

- ▶ **Can't Enforce Unless You know Your Boundaries – GET SURVEY MARKERS ON THE LINE IN QUESTION**
- ▶ **Old Deeds and Easements on Old Parcels May Have Uncertain Provenance – GET A TITLE SEARCH IF THEY CHALLENGE OWNERSHIP**



NUGGETS OF WISDOM

BOUNDARY LINE ACQUIESCENCE

- ▶ Ancient Concept in the Law – Never Been Applied Directly
- ▶ Alluded to *DelBuono v. Brown Boat Works*, 45 Conn.App. 524 (1997)
- ▶ If you delay in inspecting an encroachment and you should have or could have known about it, you may have impliedly agreed to the new boundary line
- ▶ Runs counter to Connecticut General Statutes §47-27(b) provides in relevant part:
- ▶ No length of possession, use or occupancy of land belonging to a nonprofit land-holding organization or of land subject to a conservation restriction, as defined in § 47-42a, held by a nonprofit land-holding organization shall create or continue any right in or to such land.



NUGGETS OF WISDOM

THREATS FROM THE BAD GUYS

- ▶ DEFAMATION – THREAT DU JOUR
- ▶ TRUTH IS AN ABSOLUTE DEFENSE
- ▶ PUBLIC RELATIONS IS WORSE FOR THEM
- ▶ Special Motion to Dismiss 52-196a – attorneys' fees and costs, immediate dismissal
- ▶ First Amendment Protects Political and Pure Speech and Petition to Government
- ▶ Protects Statements Made on Matters of Public Concern
- ▶ Matters of public concern include, "issue[s] related to (A) health or safety, (B) environmental, economic, or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work."



NUGGETS OF WISDOM

BASELINES

- ▶ **Baseline**
- ▶ **BASELINE**
- ▶ **BASELINES**
- ▶ **BASELINES!!!!**
- ▶ **DID I MENTION HAVING A BASELINE??**
- ▶ **PUT “BASELINE” ON SHOPPING LIST**



NUGGETS OF WISDOM

AGRICULTURAL EASEMENTS

- ▶ AG Easements are NOT the SAME AS Conservation Easements
- ▶ Agriculture Is Broadly Defined in CT in Conn.Gen.Stat 1-1(q)
- ▶ Except as otherwise specifically defined, the words “agriculture” and “farming” include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, the production of honey, poultry, fur-bearing animals and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish; the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by a storm, as an incident to such farming operations; the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale. The term “farm” includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoopouses and other temporary structures or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities. The terms “agriculture” and “farming” do not include the cultivation of cannabis, as defined in section 21a-420. The term “aquaculture” means the farming of the waters of the state and tidal wetlands and the production of protein food, including fish, oysters, clams, mussels and other molluscan shellfish, on leased, franchised and public underwater farm lands.
- ▶ CAN INCLUDE FARM WINERY, BREWERY OR CIDERY CONN. GEN. STAT. sec 30-16



CHARITABLE TRUST AND THE PUBLIC TRUST

FOUNDATION OF CONSERVATION LAW

Statute of Charitable Uses Conn. Gen. Stat. § 47-2

► All estates granted for the maintenance of the ministry of the gospel, or of schools of learning, or for the relief of the poor, or for the preservation, care and maintenance of any cemetery, cemetery lot or monuments thereon, or for any other public and charitable use, shall forever remain to the uses to which they were granted, according to the true intent and meaning of the grantor, and to no other use whatever.

► aka “Statute of 1702”, first adopted in 1684 in Connecticut

► Adopted in England in 1601- **An Act to Redress the Mis-employment of Lands, Goods and Stocks of Money heretofore given to certain charitable Uses.**

An aerial photograph of a rural landscape. The scene is dominated by a patchwork of green agricultural fields, some of which are divided into smaller plots. A road with several buildings and parked cars runs diagonally across the upper left. A wide, muddy river flows through the lower portion of the image, with a long barge or boat visible on its surface. The overall tone is natural and agricultural.

Environmental Policy Act of 1971

- **Sec. 22a-1.The air, water, land and other natural resources, taken for granted since the settlement of the state, are now recognized as finite and precious. It is now understood that human activity must be guided by and in harmony with the system of relationships among the elements of nature. Therefore the General Assembly hereby declares that the policy of the state of Connecticut is to conserve, improve and protect its natural resources and environment and to control air, land and water pollution in order to enhance the health, safety and welfare of the people of the state.**

- (1971, P.A. 872, S. 1.)



Environmental Protection Act of 1971

- Sec. 22a-15. Declaration of policy. **It is hereby found and declared that there is a public trust in the air, water and other natural resources of the state of Connecticut and that each person is entitled to the protection, preservation and enhancement of the same.**
- **It is further found and declared that it is in the public interest to provide all persons with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution, impairment or destruction.**

A Sampling of Environmental Cases

SUIT AGAINST CITY OF NEW HAVEN TO STOP SALE OF URBAN PARK FOR AFFORDABLE HOUSING

BOY SCOUTS TO STOP SALE OF BIRD SANCTUARY FOR HOUSING TO PAY FOR MOLESTATION CLAIMS

PANDEMIC RELOCATIONS RESULTING IN CLEARING OF PROTECTED OPEN SPACE FOR A VIEW

WIND POWER COMPANY BUILDING TURBINE NEAR TNC BIRD SANCTUARY AND PRIVATE HOME (Ice Throw)

ENFORCEMENT OF NOISE LAW AGAINST A TRASH TO ENERGY PLANT

REMOVAL OF RUNNING BAMBOO DESTROYING PRIVATE PROPERTY

VIOLATIONS OF CONSERVATION EASEMENTS

NUISANCE OUTDOOR WOOD BURNING FURNACES, DIRT BIKE NOISE, WEDDING VENUE NOISE AND FLOODING FROM BEAVERS AND DRAINS

UTILITY COMPANY THREATENING TO CUT DOWN AN ORCHARD

MI-USE OF PESTICIDES IN RESIDENTIAL NEIGHBORHOOD

SAVED COMSTOCK BARN

THIRD ENVIRONMENTAL JUSTICE SUIT IN US



Environmental Quality in Connecticut

**Annual Report of the Council on Environmental
Quality**

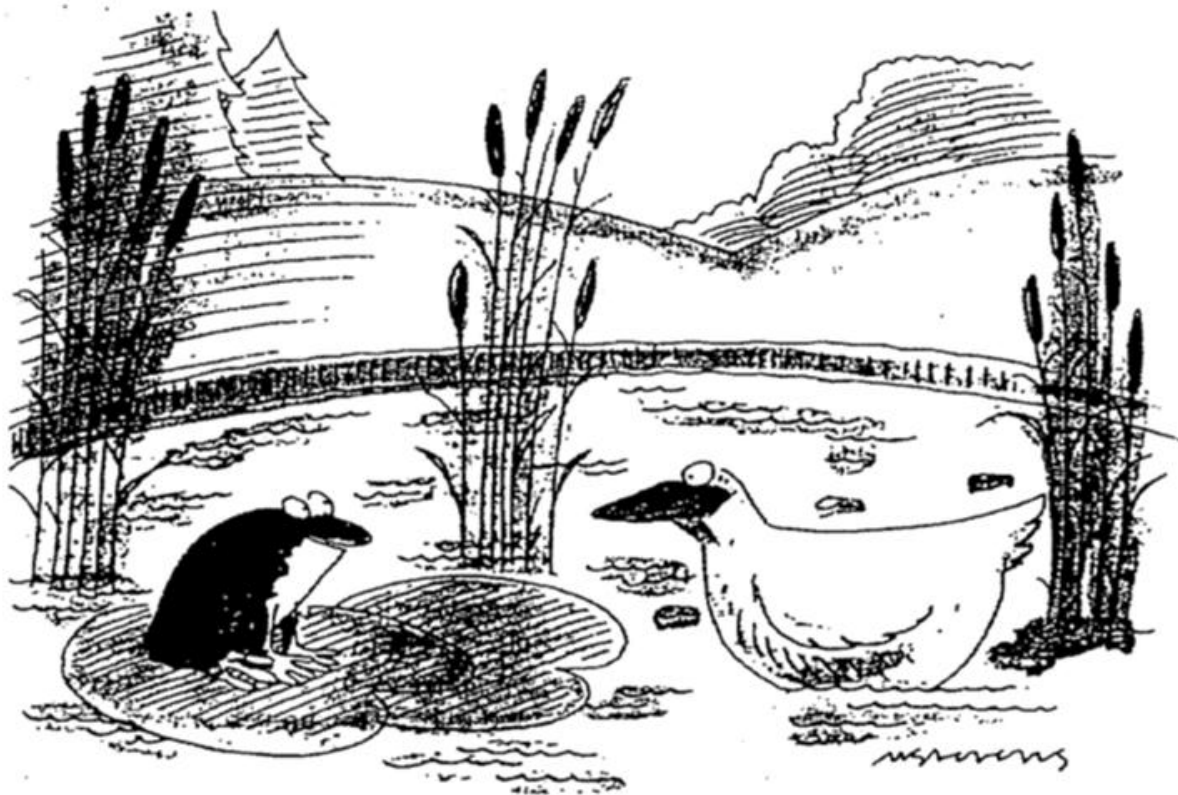
**Advise other state agencies on the environmental
impacts of proposed construction projects.**

**Investigate citizens' complaints and allegations of
violations of environmental laws.**

Siting Cell Towers, Wind Turbines and Solar Farms

The Clash Between Green Energy Core Forest and Prime Farmland





"My lawyer finally got me on the endangered-species list!"

Questions?

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CONNECTICUT Land Conservation Council

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General Conference Evaluations



Workshop Evaluations