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Martin Mador, Legislative Chair*

Judiciary Committee  
April 4, 2011

Testimony in Support of  
HB 6557 AAC Liability For The Recreational Use Of Lands

I am Martin Mador, 130 Highland Ave., Hamden, CT 06518. I am the volunteer Legislative Chair for the Sierra Club-Connecticut Chapter. I hold a Masters of Environmental Management degree from the Yale School of Forestry and Environmental Studies.

In addition to my own testimony, I have submitted statements separately from 123 Connecticut residents in support of HB 6557. These statements were forwarded to the Sierra Club within the past week specifically for submission to the Committee. I have printed them together in order to save paper.

Ensuring that town-owned open space is open for hiking, boating, cycling, and other "passive" recreation is the reason we are here today. Connecticut towns and agencies such as the MDC lost their liability protections for allowing use of open space without charge in 1996. The state Supreme court that year in Conway vs Wilton ruled that towns were not "landowners" for purposes of the 1971 Recreational Land Use Act. Not that they were ineligible for protection somehow, just that they had not been included. So some towns have closed their open space lands, some have considered doing so, and all towns are paying a price. The MDC considered closing their lands following a \$3M judgment last year.

Fifteen years of legislative efforts to restore the immunity have failed due to the influence of what I will call "special interests".

For reasons I cannot fully explain, there are no fewer than 14 bills filed this year, all calling for restoration. These 14 bills have had 6 public hearings in 3 committees. There are currently 38 legislative sponsors: 3 senate democrats, 6 senate republicans, 19 house democrats, and 10 house republicans. The Environment Committee JFSed SB 831 to Judiciary by a vote of 26-0. Planning and Development JFSed SB 43 to the floor by a vote of 19-1.

This year, for the first time, the public interest advocates have taken up the restoration effort. Of the many issues we support, this is a top legislative priority. Our grateful thanks to Rep. David Baram, who supports the bill, and has been working diligently for the past few weeks with representatives of the "special interests" in an effort to fashion a compromise bill.

You will receive written testimony from several hundred supporters today. Over twenty people will sign up to testify. In addition, written testimony on essentially the same bill as HB 6557 is available on SB 831 in Environment, and SB 43, HB 5254, SB 90, SB 507 in P&D.

The citizens of Connecticut have been waiting for fifteen years to remedy this unfortunate 1996 court decision. We have been concerned for 15 years about the closing of public lands to the public because of liability concerns. This year, we add concerns about the costs to towns to carry insurance coverage, the costs of defending court suits, costs of settling nuisance cases, costs of jury awards (\$3M against the MDC last year). Open spaces are not manicured, engineered lands. They are natural spaces, which is why we appreciate them. The financial burden on towns to continuously find and remove fallen tree limbs, clumps of wet leaves

and piles of acorns would be enormous, and would serve no purpose other than fear of liability lawsuits. We are all looking for ways to reduce town expenses in this time of fiscal crisis.

A town whose mayor is risk-averse may decide to close town open space lands. There is no requirement that such land remain available, unless conditions were attached at the time the property was acquired by the town.

HB6557 restores the liability protections towns enjoyed until Conway. It simply provides the specific legislative language the court found lacking in the original law.

A single hiking trail may traverse a state forest, then land trust property, a field owned privately, and finally a municipal park. State law now provides liability protection for the first three segments, but not the last. HB 6557 would harmonize the protections for the trail across these four lands.

HB 6557 would not alter the limit on liability for "wilful or malicious failure to guard or warn against a dangerous condition, use, structure or activity" .(Sec. 52-557h)

Encouraging people to get outdoors and enjoy the natural world is a high priority. Outdoor recreation contributes to personal health and well-being; provides satisfaction for our genetically-driven biophilic need to connect with the natural world; contributes to the economy through sales of equipment and outings, and thus creates local jobs; and enhances awareness of natural places which helps preserve them.

It is clearly in our interest to encourage people to get outdoors, and to ensure that open spaces are available to them. The 8,000 members of the Connecticut Chapter of the Sierra Club ask you to vote for the public interest, not for the special interests which have blocked this important bill for far too long.