



Connecticut Chapter
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Martin Mador, Legislative Chair

Planning and Development Committee
February 14, 2011

Testimony In Favor of
SB 43 AA Expanding The Recreational Land Use Act
SB 90 AAC The Recreational Land Use Act
HB 5254 AA Expanding The Recreational Land Use Act

I am Martin Mador, 130 Highland Ave., Hamden, CT 06518. I am the volunteer Legislative Chair for the Sierra Club-Connecticut Chapter, as well as a director of Rivers Alliance and the Quinnipiac River Watershed Assn. I hold a Masters of Environmental Management degree from the Yale School of Forestry and Environmental Studies.

First let me point out that these three bills are first cousins of SB831, heard by the Environment Committee on January 31. I suggest you also look at the testimony from that hearing, available on the Committee's website. I note that there are now 13 similar bills in P&D, Environment, and Judiciary, with a total of 35 legislative sponsors.

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.

Ensuring that town-owned open space is open for hiking, boating, cycling, and other "passive" recreation is the reason we are here today. State law has provided since 1971 that landowners who open their lands for recreation without charge are protected from liability for such use, except in the case of negligence. Town lands were included in this protection until a 3-2 state supreme court split decision in 1996 (*Conway vs Wilton*) reversed previous case law and stripped the immunity from towns on a narrow, technical, ruling involving the definition of "landowner". There was no finding that towns are not inherently eligible for the protection, only that the specific language of the Recreational Land Use Act did not include them. Subsequent legislative efforts to restore the immunity have failed because of the opposition of special interests.

So some towns have closed their open space lands, some are considering doing so, and all towns are paying a price. The MDC considered closing their lands following a recent \$3M judgment. It is even possible that open space purchased with state funding may be closed to the public. Because of this lack of immunity, the costs to municipalities include insurance premiums, jury awards, insurance deductibles, and litigation and attorney expenses.

The state itself, individuals, corporations, non-profits, land trusts, and others who allow recreational use without charge all receive immunity. Only the towns and political subdivisions such as the MDC are left exposed. As a result, owners of some portions of a trail may be covered while others on the same trail are not.

There is no question about the import of the 1996 Conway vs. Wilton decision in striking towns from the law. Simply look at OLR reports 96-R-1130, 96-R-1163, 97-R-0715, 97-R-0608, and 2009-R-0236.

These three bills restore the liability protections towns enjoyed until *Conway*. However, Sierra suggests that the liability concerns and negligence threshold for political subdivisions of the state may not be the same as for private landowners. Simply amending the definition of "owner" in section 52-557f may not be an appropriate remedy.

The Sierra Club asks you to place the public interest above that of the special interests which have blocked this needed remedy for far too long, and pass this bill with substitute language specifically applicable to political subdivisions of the state.