



COUNCIL ON ENVIRONMENTAL QUALITY

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Karl J. Wagener
Executive Director

TESTIMONY

DATE: February 27, 2015

TO: Environment Committee
Connecticut General Assembly

FROM: Karl Wagener
Executive Director

RE: Committee Bill 5710
An Act Authorizing the Commissioner of Energy and Environmental
Protection to Seek Enforcement of Prohibitions Against Persons
Encroaching on State-Owned Open Space

and

Committee Bill 5686
An Act Concerning the Approval of Land Swaps

The Council recommends amendment and adoption of Bill 5710, which relates directly to a 2005 report of this Council, *Preserved But Not Protected*, and the 2006 public act that dramatically improved the law regarding encroachments on open space land. (Please see a brief history at the end of this testimony.)

As drafted, the bill might not solve an existing problem. Normally, the Commissioner of Energy and Environmental Protection is represented in court by the Attorney General, and no additional authorization for either party would be required. The Council has learned of a slightly different problem that *could* be fixed by this bill: what happens when a case does *not* go to court and instead is handled administratively via a consent order with no public notice or opportunity for public involvement.

I can illustrate the problem by contrasting two recent encroachment cases:

Case 1: The current edition of the [Environmental Monitor](#) (published on the CEQ website) includes a notice posted by DEEP regarding a proposed resolution of an encroachment (clearing and other disturbances) on a parcel of Tunxis State Forest in northwestern Connecticut. DEEP proposes to convey the land to the encroacher in exchange for about four times the acreage nearby. DEEP evidently regards it as a good deal, and now the public can review the proposal and submit comments, to which DEEP and OPM must respond.

Case 2: The Council listened to a complaint this week about a significant clearcut of more than 300 trees on Housatonic State Forest land in north-western Connecticut that occurred in 2010. In that case, DEEP negotiated a consent order with no public notice.

What is the difference between the two cases? In the first, the resolution involves an exchange of land, which by statute is subject to public notice and comment. The town or anyone else can weigh in on the merits of the proposed resolution. In the second, there was no exchange of land, so public notice was not required. But there certainly was an exchange of resources. The public lost hundreds of trees, including dozens of mature red oaks and other trees of value, and received very little in return. Whether a deal is a good deal or a terrible deal, it should not be negotiated and executed completely out of sight of the owner of the land – the citizenry of Connecticut.

The Council **recommends** amending the bill to state that if a state-land encroachment resolution does not go to court, and instead is handled administratively via a consent order, then the proposed resolution should be subject to an opportunity for public review and comment.

Thank you. The Council would welcome the opportunity to work with you further on any language that might go forward.

A brief history: In 2005, this Council published [*Preserved But Not Protected*](#), which documented numerous encroachments on preserved lands where the encroaching parties suffered no consequences of any significance. In 2006, the General Assembly responded to the widespread problem by adopting P.A. 06-89, An Act Concerning Encroachments on Open Space Lands – truly a landmark bill that changed the legal landscape dramatically (and thereby protected the physical landscape). The 2006 Act makes the encroaching parties liable for significant damages, which accomplishes two things: it provides the owner of the affected open space properties with the funds to restore the property, and it serves as a deterrent to would-be encroachers.

Committee Bill 5686 An Act Concerning the Approval of Land Swaps

The reasoning in the testimony above regarding the importance of public notice and public participation also applies to land exchanges. The Council recommends maximum deliberation and openness when an executive agency *or the General Assembly* is contemplating the transfer of the public's land to another party. For more information about the frequency with which people approach DEEP to ask for land, please see the 2014 special CEQ report, [*Preserved But Maybe Not*](#).