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February 19, 2016

Environment Committee
Connecticut General Assembly
Legislative Office Building
Hartford, Connecticut

Re: Public hearing on February 19, 2016 on S. J. 5, Resolution proposing an amendment to the state constitution concerning the environment and natural resources of the state

Dear Members of the Environment Committee:

Thank you for the opportunity to submit this letter into the public hearing on S. J. 5. I submit this letter in support of the concept of constitutional amendment to protect state property or state interests in property with agricultural, conservation or recreational values, although not in support of the language in S. J. 5. I write this from the perspective of someone who has practiced environmental law in the state since 1981, with eighteen years in the Attorney General's Office representing DEP and enforcing the state environmental laws, followed by a decade in private practice focusing on environmental and land use law. I have also co-authored Volume 15 of the Connecticut Practice Series devoted to the Connecticut Environmental Protection Act.

As a member of the Council on Environmental Quality since March 2009, I participated in the development of CEQ's report, *Preserved but Maybe Not – the Impermanence of State Conservation Lands*. The need for a constitutional amendment arises because lands in state ownership with conservation value have repeatedly been the legislative subjects of Conveyance bills with no transparency to the public of bills which swap, give away or sell state land without consideration of the conservation values being lost. With customary Conveyance bill introductory language of "(n)otwithstanding any provision of the general statutes . . ." there is no legislative fix that would prevent future Conveyance bills reappearing with similar language. The appropriate procedure is to amend the state constitution.

The text in the proposed resolution, however, in the words of Goldilocks, is both "too large" and "too small." The language is too large in that the first sentence of Section 21 doesn't even address state property:

"Every citizen has the right to clean air, pure water, freedom from excessive and unnecessary noise and the right to the enjoyment and preservation of the natural, scenic historic and esthetic qualities of the environment."

I don't know why the air is "clean" and the water "pure" and what is intended by the difference. Nor do I know what the right to such air and water means. Natural resources of the state are

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referred to in § 22a-15 of the Connecticut Environmental Protection Act. “Waters” of the state are defined in § 22a-423 of the General Statute as being either public or private. Thus, the scope of the first sentence is far broader than is necessary to address the protection of agricultural, conserved or recreational lands owned by the state. The second sentence continues with phrases of unknown meaning, such as “common property” and “public natural resources.” The overly broad text of S. J. 5 seems to expose the state to fiscal consequences which would doom the resolution in this year of extraordinary budget challenges.

The proposed text is also “too small” to protect the interests in state-owned lands for agricultural, conservation, or recreational values. I inquired and learned that the Connecticut Forest and Park Association had shared its proposed language for a constitutional amendment. I am including it here because it may be the “just right” solution that is needed:

“Sec. 1. State park and forest land or other real estate, held by the State in the custody and control of the Department of Energy and Environmental Protection, the Department of Agriculture or any successor agencies in fee or by easement for conservation, recreation or agricultural purposes, may not be sold, transferred to another party, or converted to other uses except on the vote of 2/3 of all the members elected to each House in a Special Act devoted solely to such sale, transfer, or conversion following a public hearing in the town or towns where such land is located. The fair market value of any such land shall be appropriated in the bill authorizing such sale, transfer, or conversion for the sole purpose of purchasing additional land of similar conservation, recreational, or agricultural value in as close proximity as possible to the land sold, transferred or converted.

Sec. 2. The provisions of Section 1 shall not apply to the following:

- a. Minor boundary adjustments as defined by regulation of the state agency having custody and control of such real estate.**
- b. Transfers ensuring permanent continued use of such property for conservation, recreation or agricultural purposes.**
- c. Land no more than an acre in size transferred by law to a municipality or another state agency for a public purpose provided any such law includes
an appropriation for the purchase of additional land of the same or greater appraised value in as close proximity as possible to the land transferred.**
- d. Land subject by law to a process that provides for public notice with a written public comment period of at least 30 days and detailed written public responses to such comments by a designated agency explaining why the public interest in such sale, transfer or conversion outweighs retention of such land by the state for conservation, recreation or agriculture.”**

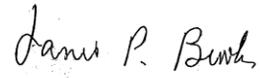
The goal of this resolution should be to address the articulated problem – prohibition of the transfer of state-owned land or land with a state-owned interest (such as an easement) without proper vetting. To that end language that accomplishes that *and no more* is called for

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lest we end up with unintended consequences that would require adoption of another constitutional amendment to fix.

Thank you for consideration of my comments.

Sincerely,

A handwritten signature in black ink that reads "Janet P. Brooks". The signature is written in a cursive style with a large initial 'J' and 'B'.

Janet P. Brooks