Testimony of David Sutherland – Director of Government Relations
Before the Planning and Development Committee – March 13th, 2019

In Support, with changes, of Raised Bill 1010
AAC THE DISCLOSURE OF DAMS AND SIMILAR STRUCTURES BY OWNERS OF REAL PROPERTY

On behalf of The Nature Conservancy, I would like to express our strong support, with changes recommended below, for Raised Bill 1010, which would require that owners of properties with dams disclose the presence of such dams to prospective buyers of that property.

Owning a dam entails significant responsibilities and expense; and if a dam is in disrepair and could threaten downstream properties, those expenses could run into the hundreds of thousands of dollars. There are over 4,600 dams in the state, an average of 27 per town.

Yet there is no requirement that a prospective buyer of a property in Connecticut be notified that the parcel includes a dam.

Even if they are aware of a dam, many people assume that all dams are owned by the state or by another nearby property owner. Fewer than 300 of the thousands of dams are State-owned, however. The rest are privately owned, and it is not always obvious which property includes ownership of a dam.

Connecticut Case Studies:

A woman bought a house overlooking a small pond. Months after the purchase, she received a notice from the DEEP Dam Safety saying deficiencies in her dam needed to be addressed. She was unaware there even was a dam, and unaware that the seller had hired an engineer to design the repairs that were necessary and had decided to sell the property when he’d learned the repairs would cost over $150,000.

Another buyer purchased a small, older subdivision parcel thinking he’d just gotten a house. In fact, his parcel includes a Class B dam requiring an inspection every 5 years.

A young woman purchased a foreclosed property with house and barn. It also has a significant hazard dam, needing expensive repairs and inspections every 5 years.

In Connecticut, dams are required to be inspected by a licensed engineer every 2-10 years, depending on their hazard rating. The average cost for an inspection is $2,500. When inspection engineers identify maintenance and/or safety issues, dam owners are required to make the necessary repairs to restore the dam to safe condition or remove the dam.

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Over 3,600 dams are registered with the CT DEEP Dam Safety Division. The registration is supposed to be updated with DEEP when a property sells, but there is no requirement that the registration be shared with the buyer; and many registrations are not updated and submitted to DEEP, often rendering the State’s dam registration data incorrect. DEEP simply would not have the staff to implement or enforce any requirement that buyers be provided these updated registrations.

We support the requirement in Section 1(a) of Bill 1010 that the owner of any dam be required to “cause to be recorded” the presence of the dam on town records. We strongly support the requirement in Section 1(d) that requires an owner selling a property with a dam to notify a prospective buyer regarding the dam at least 15 days in advance of a sale.

The most effective way, however, of ensuring that as many buyers as possible are informed of a dam’s presence would be the requirement in Section 2 of this bill of inclusion of such information on the Real Estate Disclosure Form. The form currently informs buyers of the existence of lead paint, underground storage tanks, septic systems, wells, radon, neighborhood association fees and potential municipal assessments and now, foundations. Dams should be added to the features whose disclosure should be required.

We do recommend that the proposed new wording in Section 2 and the existing statutory language in Section 1 be amended. These amendments are necessary due to what we maintain are flaws in the existing statutory language in Sec. 22a-409(b). Even after fixing that existing language in 22a-409(b); it will still be necessary to amend the proposed new language in Section 2 of Bill 1010, for reasons that are difficult to discern and complicated to explain.

The existing statutory language requires the owners of dams that are not already registered and that by failing will endanger life or property to register on or before October 1st, 2015. Clearly, it is impossible for a dam owner who meets those criteria to now register before 2015, and that paragraph in the statutes can be remedied by deleting “on or before October 1, 2015,” from this sentence:

“(b) The owner of any dam or similar structure that, by failing, may endanger life or property and that is not already registered shall register [on or before October 1, 2015,] with the Commissioner of Energy and Environmental Protection on a form prescribed by the commissioner, the location and dimensions of such dam or structure and such other information as the commissioner may require.”

Even if that change is made; however, referring to that paragraph for lines 13-18 of Bill 1010’s Section 2, would make that section only cover dams that are already registered and that by failing will endanger life or property. It would not cover dams that have not already been registered and would not endanger life or property. There are hundreds of dams that would fit that description but could still incur significant expense for a new owner. We therefore recommend that Section 2 (d)(B)(vi) of Bill 1010 be amended as follows:

(vi) Is a dam or similar structure [that is required to be recorded or registered pursuant to section 22a-409 of the general statutes] located on the property? If YES, has the dam or structure been recorded or registered on town land records, has the dam or structure been categorized as a high hazard or significant hazard, and when was the dam or structure last inspected? Provide any and all written documentation concerning such inspection within your control or possession by attaching a copy of such documentation to this form.