

# "The New Encroachment Law: Help at Last for Protection of Open Space Lands"

*by Janet P. Brooks*

With the passage of Public Act 06-89, AN ACT CONCERNING ENCROACHMENT ON OPEN SPACE LANDS, the Connecticut legislature has created a valuable tool for the state, towns and non-profit land conservation organizations to use in protecting open spaces from illegal encroachments. The law clearly affords these affected landowners the right to go to court to have their land restored and to seek reimbursement of their attorney's fees and costs of bringing the suit as well as money damages from the violators.

## What is protected?

The land protected by this new law need not be designated as "open space." It includes *"but is not limited to, any park, forest, wildlife management area, refuge, preserve, sanctuary, green or wildlife area."*

## Who may seek protection of the law?

The state, a municipality or a "nonprofit land conservation organization" which owns open space land is eligible to use this law. Local land trusts and The Nature Conservancy are a few examples of such nonprofit organizations.

## What is prohibited:

**"No person may encroach or cause another person to encroach on open space land"** or land on which a conservation easement is held by the state, a town or land conservation organization, without the permission of the landowner. "Encroach" is broadly defined to include conduct that causes damage as well as to conduct that alters the land. Clearly, encroachments that damage open space land are prohibited. But so are unauthorized encroachments that alter the land, *even if they cause no damage*. The law provides a list of activities to illustrate, but not limit, the scope of encroachments covered under the law:

*"erecting buildings or structures, constructing roads, driveways or trails, destroying or moving stone walls, cutting trees or other vegetation, removing boundary markers, installing lawns or utilities, or using, storing, or depositing vehicles, materials or debris."*

Examples would include clear-cutting on open space property to extend a scenic view to an abutter, ATV use of open space land, constructing a deck or gazebo on open space property by a neighbor, the parking (or abandoning) of cars, and the dumping of trash.

## How does the law work?

The state, a town or conservation organization may start an action in court against anyone who encroaches on open space land or land subject to a conservation easement. The court is authorized to order any person violating the law to restore the land or to award the landowner the costs of restoration. In addition, the court may impose other relief as the situation warrants. The court may award attorney's fees and the costs of bringing the

lawsuit. This is a significant positive change in law. Land trusts have always had the legal right to go to court when a violator has trespassed on protected lands. But having to bear the legal costs has served as a tremendous impediment. So has the valuation of damages. With this change in law, *in addition* to restoring the land, the court may award money damages of up to five times the cost of restoration or statutory damages of up to five thousand dollars. The statutory damage clause may be useful in assessing damages where the cost of restoration may be small or insignificant, such as the removal of debris. The violator may still be assessed with money damages – a deterrent to repeated behavior or others who might otherwise be willing to violate now and just remove the encroachment later.

In summary, the new law allows a court to award (1) restoration (or the costs for such restoration to be assessed against the violator,) (2) other relief as the situation warrants, (3) attorney's fees and costs and (4) money damages. Hopefully the passage of this law, which goes into effect October 1, 2006, will operate as a disincentive to those who would otherwise encroach on open space lands. But if it does not, the remedies provided should go a long way to restoring the open space lands and leaving the finances of the state, the towns and conservation organizations intact for the purchase of open space land.

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Editor's Note: Connecticut's preserved lands are under siege, according to, *Preserved But Not Protected*, a recent report by Connecticut's Council on Environmental Quality (CEQ). There are many other illegal actions to conservation lands owned by the state, municipalities, land trusts and other private entities. While evidence for encroachment of public and preserved land is easy to document there has been a lack of legal recourse available to defend against them. Now, with the passage of Public Act 06-89, land owners can take encroachers to court with some certainty that they will recover costs of damage, property restoration and attorney fees. The passage of this bill was a high priority for CACIWC.

Representative Roberta Willis was the lead sponsor on this legislation. The Council on Environmental Quality played a crucial role in highlighting the extent of encroachment problems on DEP lands through a special report (see below "*Preserved But Not Protected*") and in providing other information to legislators. The Nature Conservancy was the lead lobbying group, with assistance from the Attorney General's Office and DEP. The Farmington Land Trust and the Land Trust Service Bureau conducted a survey of all Connecticut land trusts to determine the extent of the encroachment problem. The Farmington, Madison, and other land trusts communicated extensively with their legislators about the legislation. CACIWC testified in support of the legislation and provided grass roots calling and emailing.

*Preserved But Not Protected*, Connecticut's Council on Environmental Quality; 2005 Special Report. Log on to [caciwc.org](http://caciwc.org), use site specific google, type in encroachment.

For language of Bill 5447 (PA 06-89) go to <http://www.cga.ct.gov/>; put in the bill number in the “quick search” section at the top of the page. That will bring you to the Bill Status page. The last language should be in the top item under “Text of Bill” on the left hand column. Click on PA 06-89 pdf for final language.