

## RESTORE RECREATIONAL LIABILITY PROTECTION FOR MUNICIPALITIES 9.24.2010

In Connecticut, municipalities have protected over 75,000 acres for open space/recreation, and over 1,000 miles of recreational trails wind through a mix of state, municipal, and private lands. However, due to recreational liability concerns, municipalities are considering restrictions to recreational access on their lands. Potential exposure to costly personal injury lawsuits has made municipalities skittish on recreational liability. Towns should not have liability for recreational accidents as long as they do not charge and negligence is not involved. We ask the General Assembly to fix this problem once and for all.

### **Recreational Liability in Connecticut**

With passage of the Connecticut Land Use Recreation Act in 1971 (C.G.S. § 52-557f et seq.), the General Assembly recognized the importance of encouraging landowners to open their lands to the public by protecting landowners from personal injury lawsuits. For 25 years after the passage of the Act, towns were considered to be included under the Act as landowners.

### **Why doesn't the Recreational Liability Law include Municipalities?**

Ever since a 3-2 Supreme Court decision in Conway v. Wilton (1996) which overturned previous holdings of the court, municipalities (including entities such as the MDC, a "nonprofit municipal corporation") are no longer considered "owners" for this purpose and therefore are not covered under the Statute. Fortunately, the statute still provides strong protection for private, corporate, and utility landowners who host recreational activities on their lands without charging a fee. Similar liability protection is available to the State when an incident related to recreational use occurs on state-owned land (C.G.S. § 4-160). Given the existing protections for private, corporate, utility, and state landowners, omitting municipalities from protection does not make sense.

### **Why Must the General Assembly Fix the Recreational Liability Law for Municipalities?**

- There are many recent examples where recreational liability lawsuits have had a chilling effect on municipalities providing recreational activities on municipal lands:
  - In July, 2010 the MDC revisited its recreational access policies and considered closure of its lands to the public in response to a \$2.9 million jury verdict found for a mountain biker who crashed into a gate at the West Hartford Reservoir;
  - In August, 2010, Waterbury lost an \$8 million verdict to a person who crashed into a metal bench while snow tubing at Fulton Park. In response, Middlebury is considering the closure of its most popular sledding area near Town Hall;
  - The town of Litchfield is opposing the opening of the Litchfield Greenway bicycle trail until issues of liability can be clarified; and
  - The town of Sharon is concerned about its exposure to liability as it considers a canoe/kayak access point along the Housatonic River.
- Under existing statutory and common law protections against liability, municipalities are still forced to incur expenses associated with settling or defending personal injury lawsuits. Irrespective of whether these lawsuits have merit, the expenses are paid for by ALL OF US.
- It would be poor public policy for the state to encourage municipalities to conserve land, provide bonding/funding for that purpose, and then support policies which lead to municipalities closing their lands to recreational access due to liability concerns (e.g., the State has held the policy of preserving 21% of the state's land area for over a decade).
- Therefore, the more personal injury lawsuits that are brought against municipalities, the greater the risk that the municipalities will close, restrict, or decide not to open recreational lands.

We ask the General Assembly to preserve public access to municipal lands for recreational purposes by restoring to our towns the liability protection that is available to State and private landowners!

## SUPPORTERS OF RESTORING RECREATIONAL LIABILITY PROTECTION FOR MUNICIPALITIES

Appalachian Mountain Club - CT Chapter	League of American Bicyclists
Benidorm Bikes	Lebanon Rails to Trails Committee
Berlin Bicycle	Litchfield Hills Council of Elected Officials
Biker's Edge	Manchester Cycle Shop
BikeWalkCT	New England Mountain Biking Association - CT Chapter (NEMBA - CT)
Central Connecticut Regional Planning Agency	New Haven Urban Design League
Central Naugatuck Valley Council of Governments	Plainville Greenway Alliance
Central Wheel Bike Shop	Preston Parks and Recreation Department
City of Hartford	Ragged Mountain Foundation
Clarke Cycles	REI
Collinsville Canoe & Kayak	Rivers Alliance of CT
Connecticut Association of Conservation and Inland Wetlands Commissioners (CACIWC)	Road Runners Club of America - CT Chapter
Connecticut Conference of Municipalities (CCM)	Sartorius Sports
Connecticut Forest & Park Association (CFPA)	Savethemdctrails.org
Connecticut Land Conservation Council (CLCC)	Sierra Club - CT Chapter
Eastern Mountain Sports	South Central Regional Council of Governments
Farmington Valley Trails Council	Sporthouse Inc.
Fleet Feet Sports	Suburban Sports
Friends of CT State Parks	The Alliance for Biking and Walking
Harvey & Lewis Opticians	The Beat Bike Blog
Horst Engineering & Manufacturing Company	The Bike Shop
Housatonic Valley Association (HVA)	Thread Rolling Company
Housatonic Valley Council of Elected Officials	Tolland Bicycle
International Mountain Biking Association	Yankee Pedalers Bicycle Club

**RESTORE RECREATIONAL LIABILITY  
PROTECTION FOR MUNICIPALITIES**

The Recreational Land Use Act no  
longer provides immunity for  
Municipalities

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**RESTORE RECREATIONAL LIABILITY  
PROTECTION FOR MUNICIPALITIES**

Background  
Progress to Date  
What's Next

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**Background**

- Land Use Recreation Act – 1971
  - Protected private landowners, Utilities, & Municipalities. State protected with special legislation
  - 1996 Supreme Court 3-2 decision – Municipalities no longer considered “owners” (Conway v Wilton)
  - Municipalities are exposed to costly personal injury lawsuits and/or settlements
  - Loss of existing & new Open Space/Recreation Areas
  - Statewide issue ... not a local issue confined to the MDC properties

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**Progress to Date**

- MDC Public Hearing – ground swell.
- Statewide interest
- Web Site & Facebook ( 1400+ friends)
- Recreational Liability Working Group
- Position Paper
- Supporters – 6,000+ individuals, many Organizations and Businesses
- Meeting with the MDC

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**What's Next**

- Continue to gather Signatures/Supporters
- Meet with Legislators and present Position Paper
- Emphasize Statewide issue, not local
- Grassroots Campaign, Public Testimony

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**Save Our CT Trails**

- Charlie Beristain – savethemdctrails.org & saveourctrails.org , Bike Walk CT, DOT Bike/Ped Advisory Committee. 860.521.7188 cberistain@savethemdctrails.org
- Eric Hammerling – Exec. Director ,CT Forest & Park Association. 860.346.2372 Ehammerling@ctwoodlands.org

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