

# LYME LAND TRUST BULLETIN

October 1987

Vol. I No. 4

The Lyme Land Conservation Trust

## PRESIDENT'S LETTER

Dear Neighbors,

Anyone driving north on Mt. Archer Road past the Mill Pond has undoubtedly noticed the extensive clearing of land and the new house under construction on the east side of the Mill Pond. The site, formerly heavily wooded, has been clear cut and the underbrush stripped in preparation for grading and planting of an expanse of lawn. All of this activity took place almost overnight in late August so that the Town and the Land Trust had no opportunity to regulate or discuss with the builder what he was doing, which was clearly within the regulated wetlands area which borders property owned by the Land Trust.

The Mill Pond (or Moulson's Pond) and the land under it are the property of the Land Trust, a gift in 1973 from Mrs. Orlean V. Curtin. In her conveyance Mrs. Curtin was specific in that the pond is to be maintained as a "bird and wildlife sanctuary." The boundary of the tract in question is at the "shore of the pond" which, given the nature of the land, can move several feet depending upon the level of water in the pond. Despite any vagueness in the boundary line, it is abundantly clear that the land immediately adjacent to the pond is an inland wetland, regulated by the Lyme Conservation Commission, and that it lies within the flood plain, regulated by the Planning and Zoning Commission. While the lines of these two zones do not coincide, they are sufficiently close and upland from the "shore of the pond" to render the Land Trust's interest virtually identical to those of the two Commissions. (Cont'd next page)



The diFazio development, subject of this issue's President's letter, as seen from across the Mill Pond on the Eight Mile River.

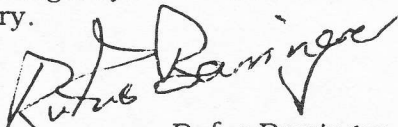


Land Trust acquires 40 acres of unspoiled wetlands as part of Augur property subdivision (see page 3).

(President's letter cont'd)

We have communicated with the landowner through our attorney, calling attention to our property interest and requesting a meeting to discuss the situation. To date we have received no reply. Both regulatory commissions, Conservation and Planning and Zoning, have acted decisively, notifying the landowner, Lucien diFazio, of the violations and calling in each case special meetings to assess the impact of the violations and determine the best methods, for both the short and long terms, of restoring the disturbed areas. To date Mr. diFazio has appeared only through his engineering representative. We at the Land Trust will continue to monitor the situation and, for the moment, will rely on the enforcement proceedings of the Town regulatory bodies to protect out interest.

If any lesson is to be drawn from this incident it is the need for vigilance on the part of the residents of Lyme. This time the violation happened to be clearly visible from a well-travelled road, but it still took place. Such visibility will generally not be the case. With the increase in building activity in Lyme (there are now probably 50 new houses under construction in the town) it is beyond the capacity of a building inspector, full or part time, to police all of the potential land violations. The regulatory commissions have demonstrated that they intend to enforce their regulations upon notice of a violation, and for this we applaud them. Let us go further in showing our support for the men and women who put in long and often thankless hours on these boards by bringing such matters to their attention and by attending their meetings. Lyme will be the beneficiary.



Rufus Barringer  
October 15, 1987



## THE WETLANDS OF LYME

High among the assets of our town are its wetlands. There are the tidal wetlands responding to the ebb and flow of the Connecticut River, and there are the inland wetlands, the fresh water creeks, marshes and ponds which support much of our wildlife and directly affect the quantity and quality of our water supply. In this issue of the *Bulletin* you will read about our acquisition of a prime example of uncorrupted wetlands, the 40-acre marsh on the former Augur property. You will also read about the potential damage to another wetland property of the Land Trust by the diFazio development on the Eight Mile River across from Mt. Archer Road.

With increasing development throughout Lyme, our wetlands will be put under added pressure. Already some have been irreversibly damaged. It is not an issue that can be brushed aside lightly, because not only the beauty of the community but its health are at stake.

Recognizing the dangers, a Lyme town meeting in 1973 adopted an ordinance aimed at effective protection of our inland wetlands. It charged the Lyme Conservation Commission with carrying out the provisions of the ordinance. The full text of the ordinance is available to citizens at the Lyme Town Hall, but a portion of the statement of intent is reprinted below. It is good reading for anyone interested in that aspect of the town's welfare. The excerpt follows:

*"The wetlands and water courses of the Town are an indispensable and irreplaceable but fragile natural resource with which the citizens of the Town have been endowed. The wetlands and water courses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of ground water and to the existence of many forms of animal, aquatic and plant life.*

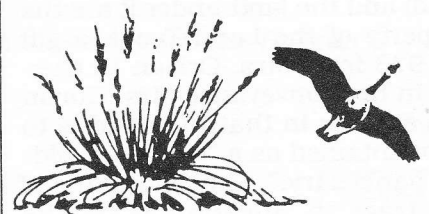
*Many wetlands and water-*

*courses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and water courses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment of the Town....*

*The preservation and protection of the wetlands and water courses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the Town.*

*It is, therefore, the purpose of this ordinance to protect the citizens of the Town by making provisions for the protection, preservation, maintenance and use of the wetlands and water courses ...."*

The Lyme Conservation Commission, which is charged with these responsibilities, is now under the chairmanship of Frederick Holth of Blood Street. Its other members are: Leslie Corey, Peter DeLisa, Cynthia Heye, Alan Kyle, Frank Skwarek, Cynthia Willauer and Betsy Woodward.



## NEW BOOK ON WETLANDS

For those wishing to delve further into the fascinating world of wetlands, the *Bulletin* recommends a new book, now in the Lyme Public Library as a gift of the Land Trust. It is *Wetlands*, by William A. Niering, Professor of Botany at Connecticut College and a member of the National Wetlands Technical Council. It is published by Knopf as part of the National Audubon Society Nature Guide Series.



## TRUST ACQUIRES AUGUR PROPERTY

The long-awaited transfer to the Land Trust of a choice parcel of conservation land from the Estate of the late Charles E. Augur was completed on September 30, 1987. The gift, which was first proposed early this decade, consists of some 40 acres of unspoiled wetlands located between Blood Street and Uncas Lake. Most of the newly-acquired land is a pristine swamp (see picture) surrounded by evergreen forest and huge outcroppings of rock. It is beautiful in all seasons, and the Land Trust is pleased to own it and thus to preserve it for all in its natural state.

The property given to the Land Trust is part of a much larger tract of land owned for many years by the Augur family, subdivision of which began in 1981 and is still going on. Many of the problems encountered in the gradual process of subdividing the Augur property, including some which involved considerable controversy, are typical of what may be expected as more and more large landholdings in Lyme are broken up. Among the issues are the varied and often inconsistent interests of heirs, the equitable application of zoning and wetlands regulations to questions like the adequacy of existing access roads and grandfathering, and the extent, if any, to which the Land Trust may participate.



## MERRIAM ADDRESSES ANNUAL MEETING

The Annual Meeting of the Lyme Land Trust last June was favored by an appropriate, if fortuitous, bit of timing. Just the day before, the U.S. Supreme Court had decided a significant and widely-published land use regulation case (*First Lutheran Church v. Los Angeles County*), and the speaker at our meeting was Dwight H. Merriam, a partner of the Hartford law firm of Robinson & Cole and a recognized authority on land use law. The *First Lutheran Church* decision was the main, but not only, topic of his wide ranging talk. The

case, in which the Court decided that a property owner was entitled to compensation from the local government which had temporarily prevented, for flood control reasons, any use of the property, was given broad coverage by the press, including our local newspapers, in which it was generally claimed that the decision imposed a heavy new burden of liability on local land use regulatory bodies. In Mr. Merriam's view, however, the press had failed to grasp the real meaning of the rather intricate case, and he proceeded to try to enlighten his audience as to that and a number of other subjects.

One of the cardinal issues in land use regulation (i.e., zoning, wetlands management, flood plain regulation, etc.) is the concept of a "taking", which derives from the final phrase of the Fifth Amendment to the U.S. Constitution that states "nor shall private property be taken for public use, without just compensation". (It is not to be confused with "taking the Fifth", a refuge provided for in another phrase of the same Amendment.) At issue is what constitutes a "taking" and when regulation becomes over-regulation resulting in "inverse condemnation". One of the problems with the *First Lutheran Church* case, according to Mr. Merriam, is that the taking question was never decided by trial. A taking was simply assumed by the California courts to have occurred, and the remaining issue was whether or not damages were payable by the local government.

Mr. Merriam said that a regulatory taking occurs only when all economic use of property is denied to its owner. A reduction in value, as long as it is of less than 100%, does not constitute a taking. Furthermore, it seems likely that liability for damages when a taking does occur is limited to the actual cost of owning and maintaining the property during the period from the adoption of the offending regulation until its invalidation.

The real objective of Mr. Merriam's talk, however, was to set forth the ways in which land use regulations can be devised and administered so as to avoid, or at least be successful in, lawsuits.

Zoning, for example, has been universally held since a U.S. Supreme Court decision in 1926 to be a valid exercise of the police power, but zoning as well as other land use regulations must "have a rational basis and bear a reasonable relationship to a permissible governmental objective". Rules drawn up to fit that description which are also fairly administered would appear to meet the requirements of both substantive and procedural due process and thus be pretty much unassailable in the courts.

The key to success in lawsuits, according to Mr. Merriam, is for local officials to develop a clear, comprehensive and rational land use plan and to adopt and administer carefully considered and drafted regulations which further the objectives of the plan. To that end he thought Lyme might do well to enlist the services of a professional planner or planning consultant. In the meantime, he cautioned all of us to avoid overreacting to the *First Lutheran Church* decision.

## BOARD CHANGES

At the annual meeting of the Lyme Land Conservation Trust held last June two new trustees, Gerald Dahlke of Bill Hill Road and John Friday of Beaver Brook Road, were elected to the Board to fill vacancies caused by the retirements of Chip Bates and James Thach. Since then Frederick Gahagan, owing to the press of other responsibilities, has resigned as both vice president and a trustee, and trustee Betsy Woodward has been appointed vice president in his place. The full membership of the Board of Trustees is now as follows:

Rufus Barringer, President  
Virginia Bladen  
Gerald Dahlke  
Jane Davison  
Judith Duran, Treasurer  
John Friday  
Joseph Greene  
Frank Hamilton  
Paul Harper  
Jonathan Isleib  
James Malone  
Joan Meyers, Secretary  
Graham Raynolds  
Betsy Woodward, V. President

## NATURE NOTES

### LYME'S CHRISTMAS FERN

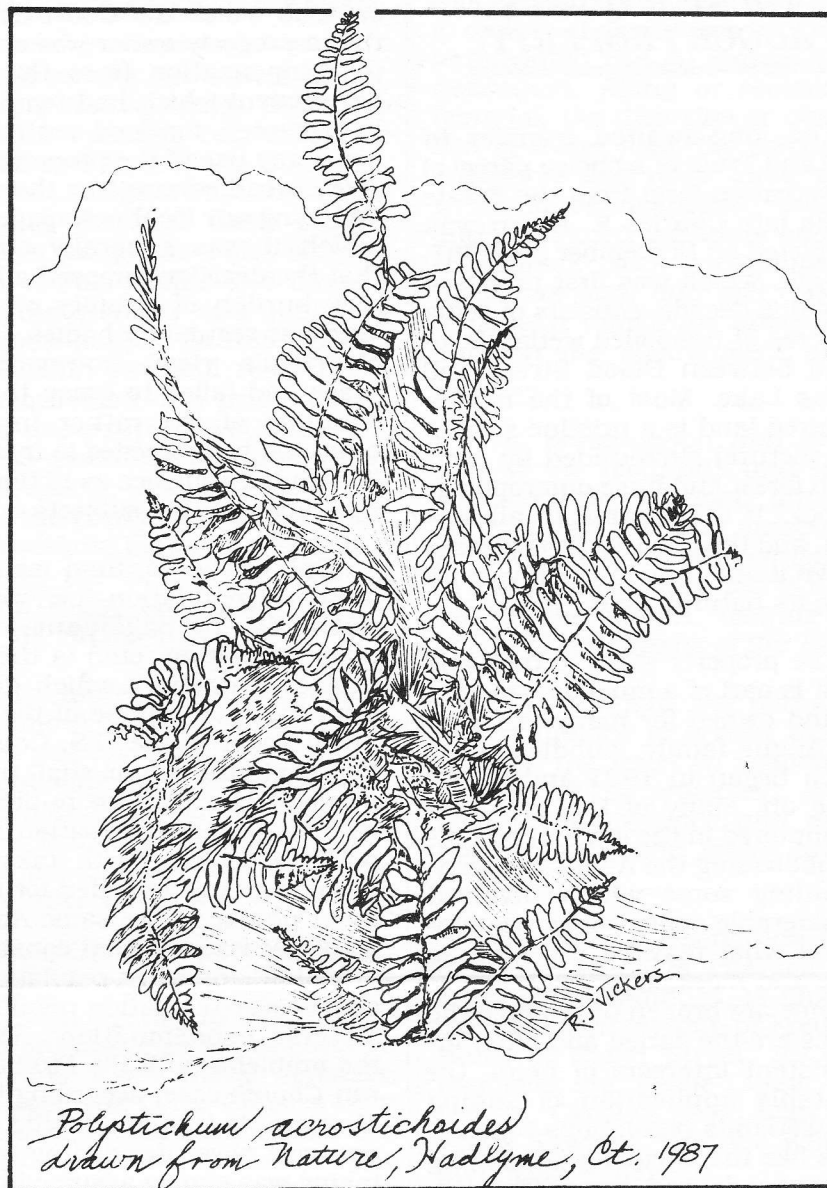
One of the showiest and most abundant ferns in Lyme is the Christmas Fern. It is so named because it is nearly evergreen with rich-green fronds well into winter. In addition, each leaflet resembles a tiny stocking.

Christmas Fern grows in clumps up to 3' high and 4' wide in rocky or sandy soil. It may be found on shaded slopes, along woodland streams and in semi-open spaces.

Because of its strong color, upright growth, and ease of cultivation this fern is particularly suited to garden planting and use with flowers. In winter it is the sterile leaves that stay upright and green while the fertile ones drop and wither.



**The Lyme Land Trust Bulletin** is published several times a year by the Lyme Land Conservation Trust, Inc. as a matter of interest to its membership and to the general public in Lyme. Its editorial board, to whom readers are invited to direct questions and suggestions, consists of Paul Harper, Virginia Bladen and John Friday.



The Christmas Fern. Drawn especially for the *Bulletin* by R. J. Vickers of Hadlyme.

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