***OFFICE OF ADJUDICATIONS***

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| ***IN THE MATTER OF*** | ***:*** | ***APPLICATIONS NOS. DIV-96-08 and DS-98-007*** |
| | ***:*** | |
| ***SEYMOUR PARK, INC.*** | ***:*** | ***JULY 18, 2000*** |

## ***PROPOSED FINAL DECISION***

### ***SUMMARY***

Seymour Park, Inc. has submitted applications to the Department of Environmental Protection (DEP) Bureau of Water Management Inland Water Resources Division for permits associated with the proposed development of a 94-lot cluster subdivision in Seymour, Connecticut called the Brookfield Residential Subdivision. The applicant has filed applications for a water diversion permit pursuant to Connecticut General Statutes §22a-368; a dam construction permit pursuant to §22a-403; and a water quality certificate pursuant to §401(a)(1) of the Federal Clean Water Act.[1] A water diversion permit is necessary because the construction of a stormwater drainage system to collect surface water runoff would result in a change in flow or the detention or impoundment of water within a watershed area of more than 100 acres. A dam construction permit is required because a detention berm/road crossing that would be built to control stormwater for the subdivision has been classified as a dam by the DEP.

[1] Based on representations of staff, the application for a water quality certificate is not a subject of this proceeding. See 33 USC §1341.

The parties to this proceeding are Seymour Park, Inc. (the applicant) and the DEP Bureau of Water Management Inland Water Resources Division (staff). Upon the filing of a verified petition under §22a-19, Citizens for Controlled Growth (intervenor) was allowed to intervene as a party regarding the water diversion permit on October 29, 1997, and, as to the dam permit, on September 14, 1999. Staff reviewed the applications and issued a *Notice of Tentative Determination* to approve both on September 17, 1999. The *Notice* stated that the applications are complete, and that the proposed diversion is necessary, will not significantly affect long-range water resources management, and will not impair the proper management and use of the water resources of the State.

Hearings were held on September 28 and 30, and October 5 and 20, 1999. A site visit was conducted on September 28; all parties were represented. The record was closed on December 22, 1999 following the receipt of post-hearing briefs.

After consideration of all relevant facts and circumstances, I find that the applications meet the criteria set out in General Statutes §§22a-373(b) and 22a-403(b), and the requirements of §§22a-377(b) and (c) and 22a-409-1 and -2 of the Regulations of Connecticut State Agencies. The applicant's compliance history also satisfies the considerations set out in §22a-6m.[2] I also find that the applications are compatible with DEP policy on riparian corridor protection. I therefore recommend that the applications for a water diversion permit and a dam construction permit be granted with the conditions outlined herein.

[2] Section 22a-6m(a) of the General Statutes provides that the Commissioner may consider the record of an applicant regarding compliance with the environmental protection laws of the State.

***FINDINGS OF FACT***

1. Seymour Park, Inc. (the applicant) owns approximately 132 acres of an undeveloped wooded area in Seymour, Connecticut that was purchased from the Ansonia-Derby Water Company. The site is located north of Steep Hill Road, east of Davis Road, south of Botsford Road and west of Bungay Road. (Ex. APP-60; test. P. Santos, 9/28/99, p. 21.)

2. The proposed project would be a 94-lot residential cluster subdivision. The minimum lot size would be 25,000 square feet; rear lots would be 40,000 square feet. The subdivision would have a 7,000-foot loop road starting and ending on Botsford Road and two dead end streets totaling 1,200 feet. There would also be emergency vehicle access from the southeasterly dead-end street to Old Town Road. The stormwater detention system for the subdivision would include a detention berm/road crossing at the southern part of the loop road that has been classified as a dam by the DEP. Public sewer and water would service the subdivision, eliminating the need for wells and septic systems. (Exs. APP-60, 63; test. P. Santos, 9/28/99, pp. 23-25, 41, 9/30/99, pp. 34, 43-44; test. S. Synder, 9/28/99, p. 45.)

3. The proposed project would change the instantaneous flow of water within a watershed area of more than 100 acres. It would also impound water, primarily from storm events, within that watershed area. Thus, the activities as a result of the proposed project require the permits that are the subject of these applications. (Test. P. Santos, 9/30/99, pp. 80, 86.)

4. The regulated activities as a result of the proposed project would involve several areas. First, at the site of the dam on the southern road crossing on the loop road, which would

involve the permanent alteration of 18,400 square feet of wetlands.[3] Second, at the area of the westerly road crossing which would require a wetland alteration of 8,750 square feet. Third, at the area of access to a planned playground requiring an alteration of 2,000 square feet, and finally, at an isolated wetland area at station 35 on the loop road that would be filled and would alter 1,800 square feet of wetlands. In total, .7 of an acre of wetlands would be altered. (Exs. APP-55, 60; test. P. Santos, 9/28/99, pp. 27-29; 9/30/99, pp.74-75; test. K. Stevens, 9/30/99, pp. 127-128; test. S. Snyder 10/5/99, p.191.)

5. The proposed project was approved by the Town of Seymour Inland Wetlands Commission in February 1997 and by the Town Planning & Zoning Commission in August 1997.[4] The Commissions approved a 97-lot cluster subdivision, mainly with 25,000 square foot lots, and two wetland crossings with detention basins. The project provided for 57 acres of open space and 9.7 acres of conservation easements. (Exs. APP-60, 61, 61A, 63, 64, 65; test. P. Santos, 9/28/99, pp. 23-25, 9/30/99, pp. 41-42.)

6. The applicant submitted to the DEP an application for a water diversion permit in November 1996, and an application for a dam construction permit in March 1998. The applicant received a *Notice of Insufficiency* from the DEP in August 1998 that identified deficiencies in the applications. The *Notice* also noted the DEP policy on riparian corridor protection. In response, significant modifications were made to the proposed project to minimize wetland impacts, including the expansion of conservation easements.

[3] The Connecticut Inland Wetland and Watercourses Act defines wetlands as "land… which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and flood plain by the National Cooperative Soil Survey, as may be amended from time to time, of the Natural Resources Conservation Service of the United States Department of Agriculture." General Statutes §22a-38(15) See also *Method for the Evaluation of Inland Wetlands in Connecticut*. Connecticut Department of Environmental Protection, October 1986, revised March 1991. (Ex. Hearing Officer-1)

Other changes included the elimination of a proposed northern detention berm and side slopes along the westerly crossing where a retaining wall was then proposed. Other modifications included the elimination of some proposed construction lots, redesign of the stormwater control system, and the adoption of more stringent erosion and sediment control measures and the agreement to implement Best Management Practices. The applicant has fully complied with the concerns expressed by the DEP in its *Notice*. (Exs. APP-1-12, 27-40, 43, 45-55, 60, 61, 61A, 67; Exs. DEP-8, 16; test. P. Santos, 9/28/99, pp. 35-44, 10/5/99, pp. 125-145; test. S. Synder, 9/28/99, p. 45, 10/5/99, pp. 190-192, 195.)

7. During a site visit on July 6, 1998, staff discovered a sedimentation problem occurring as a result of previous residential construction on Davis Road. A significant volume of sediment was being discharged to a tributary watercourse to Kinneytown Brook and its associated wetlands. A *Notice of Violation* was issued to the applicant on October 21, 1998. The applicant subsequently took various remedial actions that were sufficient to reduce the discharge of the sediments and comply with the *Notice*. Staff considered the applicant's compliance history when reviewing these applications and concluded that the applicant had taken the appropriate measures to comply with the *Notice*. (Exs. DEP-7, 10-12, 14, 26, 26A; test. P. Santos, 10/5/99, pp.106-111; test. C. Chase, 10/5/99, p.154; test. S. Synder, 10/ 20/99, pp. 4-6; test. B. Golembiewski, 10/20/99, pp. 22-31.)

8. The proposed project is located in the watershed of the Kinneytown Brook, which is a tributary of the Naugatuck River. The total acreage of watershed is 229 acres in three

[4] An earlier plan was submitted to the Seymour Inland Wetlands and Planning & Zoning Commissions in 1994. This plan was withdrawn before either Commission took any action. (Test. P. Santos, 9/30/99, pp. 37-42.)

main watersheds. The central and northern portions of the site flow easterly to Kinneytown Brook. The southeastern portion of the site flows southerly to a culvert crossing on lower Bungay Road and eventually to the Naugatuck River. The combination of the northern watershed, the southern watershed, and other areas adjacent to the site converge at one discharge point, a crossing adjacent to Route 8 flowing to the Naugatuck River. (Exs. APP-55, 62; Ex. DEP-24; test. P. Santos, 9/28/99; pp. 21-22, 30, 9/30/99, p.44; test. D. Ballou, 9/30/99, pp. 202, 206; test. C. Chase, 10/5/99, p.154.)

9. The typography of the site ranges from steeply sloping to moderately sloping with an upland wooded area, one perennial stream, three intermittent streams and various wetlands associated with the streams. Watercourses on the site are generally confined to narrow channels within steeply sloping ravines. A perennial watercourse, referred to as an unnamed tributary to Kinneytown Brook, is in the central portion of the site; it starts at Botsford Road, flows south and southeast, and ends at Bungay Road. This watercourse has associated broad wetland on either side of its banks. There is an intermittent watercourse on the site in a planned open space to the east. The southern portion of the site has two intermittent watercourses, one that flows southeasterly to an existing pond on the property and one that flows easterly connecting to the unnamed tributary to Kinneytown Brook. The associated wetlands, primarily common red maple/mixed deciduous forest, narrow to form a band along either edge of the stream until the slope flattens out again. The proposed project would not change the direction of the perennial stream or intermittent streams on the site. (Ex. APP-60; Ex. DEP-26; test. P. Santos, 9/28/99, pp. 21-23, 9/30/99, pp. 34-36, 67, 79-80; test. S. Snyder, 10/5/99 pp. 189-190.)

10. There are 22.7 acres of wetlands on the site. These wetlands are generally level to generally sloping. The wetlands are associated with perennial or intermittent streams. The main wetland areas are associated with the tributary to Kinneytown Brook, a perennial watercourse running through the center portion of the site. There are fifteen identified wetlands on the site, and four isolated wetland areas. The first isolated area is located west of the southern dead-end road. The second is situated within the loop road and the third, to the north of the loop road at the southern portion of the site. The fourth is located on the western portion of the site east of the Davis Road lots. (Exs. APP-9, -9A, -10, -60; test. P. Santos, 9/28/99, pp. 22, 28-29, 9/30/99, pp. 36-37.)

11. The fifteen identified wetland areas are typical and of the type expected to be found in most similar forested areas on the eastern and western rims of the Connecticut valley. The areas are all deciduous wooded swamps. Their functional values are as follows. Because these wetlands and adjacent areas have not been disturbed to a great extent by human activity, their ecological integrity is generally high to medium high. Wildlife habitat varies, from the highest quality in the course of the wetlands associated with the perennial stream, to lowest in the area of the western road crossing where the wetland is very narrow and steeper sloping with less diversity of vegetation. Fish habitat is either non-existent or very low. Water based recreation is, for practical purposes, non-existent as no lakes or ponds are on the site that could support such activity. The flood control ability of these wetlands is very low to medium as the sloping nature of the site prevents much natural detention even in the larger areas. Although there is some absorption quality to the area for groundwater use, groundwater actually leaves the wetland in some areas. The opportunity presented by the wetlands for nutrient sediment removal is very

low for the majority of wetlands because they are not large, flat areas that will retain nutrients. Shoreline anchoring is non-existent due to the absence of watercourses and the forestry potential is low. There is no other characteristic of the wetlands, such as the presence of an endangered species that would make them noteworthy. (Exs. APP-9, -9A, -10, -10A, -60; test. K. Stevens, 9/30/99, pp.132- 137, 141- 153.)

12. One vernal pool has been identified on the site. It is within the fourteenth of the fifteenth identified wetlands south of the Old Town Road crossing. The vernal pool would not be interfered with or altered pre or post construction. The pool would not be impacted if the adjacent road is paved. (Test. K. Stevens, 9/30/99, pp. 159-162.)

13. Long term impacts to flora and fauna from the increased duration, depth and period of impoundment of water for various storm events would be a low-intensity partial wetland impact. There would be no effects to woody vegetation; the trees on the site are adapted to flooding. Herbaceous vegetation will shift from wetlands herbaceous species to a different species more adapted to wet conditions. There would be no wetland dependent species that would be lost. Most of the species present are typically tolerant of inundation events, particularly the larger mammals. The most significant impact would be to smaller mammals that burrow and have smaller home ranges, however, overall impact on the entire population of small mammals would be insignificant. Overall impacts to amphibians, reptiles, birds and fin fish would be either nonexistent or minimal. There is a sub-optimal habitat for cold water fisheries; these species are not abundant on the site. The biological diversity on the site would remain; any impacts would be to abundance particularly in the uplands area. The conservation easements and buffer zones in the riparian corridors would, however, offset this impact. Any impacts to water quality

would not impair its use as habitat for fish and wildlife. Unlike a fill condition where all wetland functions are eliminated, some wetland functions, particularly as they relate to habitat, will be unaltered or improved by the detention of the storm water. (Exs. APP-24, -25, -60, -66, -66A; test. G. Logan, 10/5/99, pp.18-52, 83-89.)

14. The proposed project would have a stormwater drainage collection system. The detention of stormwater is necessary to insure that there would be no net increase in stormwater runoff as a result of the project. To prevent adverse flood hazards as a result of the proposed project, two detention basins would be designed to mitigate the impact of increased runoff from the site. These basins would be located at the southerly crossing (the site of the dam) and at the westerly crossing of the inland/wetland area to accommodate the looping of the road. During the most common storm flows, the 2" and 3.3"rainfall events, approximately 0.16 acre and 0.31 acre of wetlands would be flooded for a relatively short duration. (Exs. APP-24, -25, -55; Ex. DEP-26; test. P. Santos, 9/30/99, pp. 43-48, 51-53; test. S. Snyder, 10/5/99, p.190.)

15. The surface water quality for the site is Class A and would not be impaired by the project. The technology of the stormwater drainage system that would be employed, the use of public water and sewer, and adherence to Best Management Practices by the applicant would assure the continued water quality. (Ex. DEP-24; test. C. Chase 10/5/99, pp.158-159; test. G. Logan, 10/5/99, pp. 67-71.)

16. The dam on the southern road crossing would be one of two such crossings that would serve as a stormwater detention berm. The dam would enclose stream flows within a 136-foot, 72 inch reinforced concrete pipe across an unnamed tributary to Kinneytown Brook. The dam would essentially be a road embankment with a filled slope and two-to-

one side slopes. It would impound water on the west side of the roadway. The applicant would construct a second road crossing, the western crossing, across an intermittent stream and the wetlands associated with that stream. A concrete retaining wall would be constructed to hold back the road to lessen the impact of wetland fill. A corrugated metal pipe would be laid in the intermittent watercourse for drainage of stormwater. This type of pipe was requested by the DEP Inland Fisheries Division to better assimilate the wetland corridor for the passage of wildlife. (Exs. APP-33, -37, -40, -55, -60, -62; Exs. DEP-27; test. P. Santos, 9/30/99, pp. 68-75.)

17. The dam would measure approximately 130 feet at its base/bottom width. The top width would measure 60 feet to accommodate the roadway. A 14-foot width is the minimum width that is necessary for safety concerns. Because this roadway would be part of the dam, it would also be built to dam specifications. The embankment would be an approximate 19 to 20 foot fill through an existing ravine. A reinforced concrete outlet structure would allow for the discharge of flows associated with various return frequency storms. The maximum water surface elevation for the 100-year return frequency storm would be approximately 3 feet below the top elevation of the dam. The areas inundated by this storm would be approximately .92 acre. For the 100-year storm, in a 24-hour period, the impoundment would begin to fill with stormwater at elevation 325 feet until it reaches approximately elevation 338 feet and then would drain back to elevation 325 feet. Approximately 13.25 feet of water would be detained behind the dam in a 100-year storm. The dam design does not require installation of a fishway. (Exs. APP-45, -55, Exs. DEP-9, -25; test. D. Ballou, 9/30/99, pp. 207-223; test. A. Kuzyk, 10/5/99, pp. 163-165, 168-179.)

18. After development of the property, there would be three major points of stormwater discharge from the site. The first would be the area east of the southern road crossing. The second would be at the rear of Lot 48 at the southeasterly portion of the site, and the third would be located adjacent to a planned playground area. Runoff, the flow of water exiting from the property post-development[5], would be controlled as follows. The runoff from the first discharge point would be controlled by the installation of a structure and pipe system that would act as a controlled outlet for any increases in the flow. As a result, there would be no net increase in runoff as a result of construction of the proposed project from this area of discharge. The second point, the dam at the southerly road crossing, would detain storm water in the natural basin that would be provided between the road and the existing topography. Runoff at the third point would remain virtually unchanged pre and post development because of the relocation of the flow from that area to the central watershed area. The system has been designed to mitigate the impact of increased runoff from the site such that no adverse flood hazards would occur as a result of the project. (Exs. APP-55, -60, -62; Ex. DEP-24; test. P. Santos, 9/28/99, p. 29, 9/30/99, pp. 45-53, 118-119; 10/5/99, pp. 96-100; test. C. Chase, 10/5/99 p. 155.)

19. The Federal Emergency Management Agency has designated a 500-year flood zone on Kinneytown Brook and on the central tributary. A 100-year flood zone has been designated for the lower reach of Kinneytown Brook. The stormwater system has been designed to attenuate post-development increases in the peak rates of runoff from the site

[5] The water captured as runoff includes water from the road system, driveways and the roofs of houses and other impervious surfaces in the proposed subdivision. The extent of runoff is a function of the level of the development. (Test. P. Santos 9/30/99, pp. 52, 87)

for 2, 5, 10, 25, 50 and 100-year storm events. (Ex. APP-33; Ex. DEP-24; test. P. Santos, 9/28/99, p. 29; test. C. Chase, 10/5/99, pp. 154-155.)

20. The stormwater detention system has been designed to pass the 25-year frequency storm without closing the roadway facilities to traffic. The proposed outfalls outlet to existing swales or wetland areas except for one which is a small outfall from two catch basins that would drain to an area near the proposed playground that did not previously collect flow. A level spreader would be incorporated into the project at this point. All of the outlets to the storm drainage system would be provided with both two and four foot sumps, oil/water separator hoods and, in two locations, a 1,500 gallon grid trap where the 400 foot grid traps could not be accommodated. The oil/water separator hoods would remove petroleum products and floatables from the stormwater prior to its discharge from the site. Appropriately sized wrap aprons would be provided on all of the drainage outlet structures. Maintenance of the system would be the responsibility of the applicant during construction and ultimately the Town of Seymour. (Exs. APP-33, -40, -43, -45, -60; Ex. DEP-24; test. P. Santos, 9/28/99, p. 31; test. D. Ballou, 9/30/99, pp. 227-230, 10/5/99, pp. 101-104; test. C. Chase, 10/5/99, p. 156.)

21. The proposed project would be constructed in phases.[6] The first phase of the project would be the construction of a sewer line from Steep Hill Road through the site to Botsford Road. This line would be extended and 20 lots on the easterly entrance of the loop road would be constructed. The next phase of the project would be the continuation of the sewer line within the road network to make sewers available to construct a second

[6] The first phase of the project, which has been completed and is not a subject of these permit applications, was the construction of two lots on Davis Road. (Test. P. Santos, 9/30/99, p. 53.)

series of 20 lots on the westerly side of the loop road. The last phase would be to complete the loop road and the dead end streets and to construct the remaining lots. (Ex. APP-60; test. P. Santos, 9/28/99, pp. 32-33, 9/30/99, pp.53-57, 10/20/99, p.73.)

22. The applicant has proposed a complete soil erosion control plan, which would be in effect during construction. During construction, temporary sediment control fencing and haybales would be located around most of the project. Anti-tracking pads would also be situated at the two entrances to the site from Botsford Road and catch basins would be ringed with haybales. Temporary diversion berms located on the main roadway would funnel water to a stone filter prior to entering a catch basin. At the stream crossings, water flow would be handled either by damming up the stream and pumping around the crossing area or diverting the water through temporary pipes. As needed, temporary stockpiles of topsoil would be temporarily seeded and mulched and a sediment barrier would be placed around each stockpile. There would be four temporary sediment basins, each sized for a 10-year storm. The proposed maximum slope in disturbed areas, a ratio of two to one as required by the Town of Seymour, would be stable with a good vegetative cover. Local authorities and DEP have approved the sediment control measures for this construction phase. As a condition of approval by the Town of Seymour, the applicant would retain a qualified person to oversee the soil erosion control plan and report to local authorities on a weekly basis. (Exs. APP-55, -60, -64; Ex. DEP-24; test. P. Santos, 9/28/99, pp. 32-33, 37, 9/30/99, pp. 53-57; test. C. Chase, 10/5/99, pp. 157-158.)

23. Fifty-seven acres of the proposed project, or 43% of the total tract area, would be set aside as open space. These 57 acres would include five separate parcels of open space. (Ex. APP-61; test. P. Santos, 9/28/99, p. 25, 9/30/99, p. 59.)

24. The proposed project would have a total of 9.7 acres set aside as conservation easements. These easements, a restriction on each lot, would be placed on each deed when each individual lot is sold and would run with the land. The purpose of these easements would be to preserve the designated uplands, wetlands and watercourses in perpetuity from human disturbance, and to restrict human activities adjacent to stream corridors. Each conservation easement would have a minimum width of 30 feet except for three lots that would have 25-foot easements on the side of the lots. In some cases, these easements would be expanded to as much as 100 feet to provide a further buffer between the residential development and the wetland corridor. The applicant has proposed that a homeowners association be established to protect the conservation easements. The work of this association would be funded, at least in part, through fees collected from the sale of the lots that would go into a general fund for open space maintenance and other preservation efforts. (Exs. APP-45, -61; Ex. DEP-26; test. P. Santos, 9/28/99, pp. 26-27, 35-36, 9/30/99, pp. 58-66, 105.)

25. In December 1991, the DEP Inland Fisheries Division issued a document entitled *Policy Statement, Riparian Corridor Protection*.[7] As outlined in the introduction of this document, the policy was developed by the Division in recognition of the need to preserve, protect, and restore riparian ecosystems. The stated objective of the *Policy* in

[7] A riparian corridor is defined in this document as a land area contiguous with and parallel to an intermittent or perennial stream.

December 1991, was to establish uniform riparian corridor buffer zone guidelines. The *Statement* provides that a width of 100 feet from each side of a perennial stream and 50 feet from each side of an intermittent stream should be used to calculate buffer zone widths. The *Statement* further provides that the buffer zone should be maintained in "an undisturbed condition" and that "[a]ll activities that pose a significant pollution threat to the stream ecosystem should be prohibited". (EX. DEP-8)

26. In response to this policy favoring standard uniform buffer zone widths, Brian Murphy, a staff biologist with the Division, authored a document entitled *Position Statement, Utilization of 100-Foot Buffer Zones to Protect Riparian Areas in Connecticut Position Statement.* This document was intended to address the theory of the *Policy Statement* that 100-foot buffer zones should be used as a minimum setback along perennial streams. The document addressed the question of whether this standard approach was preferable to an approach in which buffer zone widths would be based on site specific considerations. Murphy outlined the ramifications of adopting a riparian corridor policy that includes the use of a 100-foot buffer zone. He concluded that use of a standard setting method is "environmentally and politically prudent". When acknowledging the language of the *Policy Statement* regarding restrictions on activities within the buffer zones, Murphy states that if the policy that buffer zones are to be areas in which no development is to be allowed is to become effective, "further clarification and more precise definitions of allowable uses will … be required *if the policy evolves into a departmental regulation*." (Emphasis added.) Murphy concludes his paper by stating that the "[w]hile the proposed policy in its 'current form' [i.e., the *Policy Statement*], represents a recommendation from

the CTDEP Inland Fisheries Division, the ultimate goal of the Division should be to progressively *implement this policy as either a CTDEP regulation or State of Connecticut statute*." (Emphasis added.) (Ex. DEP-8)

27. Staff cited the riparian corridor *Policy Statement* in the August 1998 *Notice of Insufficiency* issued to the applicant. Staff advised the applicant that it "should also be aware" of the *Policy Statement*, and notes that the Policy "suggests" that 100 and 50-foot buffer zones be maintained along each side of a perennial stream and intermittent stream, respectively. The *Notice* informs the applicant that certain lots will fall within these buffer zones and states that sites "which cannot be developed without *significantly encroaching upon the buffer zones should be deleted from the plans*." (Emphasis added.) The applicant was directed to submit revised plans that illustrate minimal buffer zone encroachment for staff's review. (Ex. DEP-8)

28. As a result of this direction in the *Notice*, the applicant did submit such plans and certain building lots were deleted from the plans for the proposed project. DEP staff, in reviewing those plans, eventually determined that the applicant was in compliance with the *Notice of Insufficiency.* The applicant was directed to file the revised plans as a result of the direction of the *Notice*. (Exs. APP-45, -55)

29. There are four riparian corridors on the project site. One is the unnamed tributary to Kinneytown Brook, which is a perennial stream. This central riparian corridor falls within the definition of wetlands and watercourses protected by Chapter 440 of the General Statutes (*Inland Wetlands and Watercourses Act*). The three others are intermittent streams. One of these three is located east of the loop road; the other two flow east to west at the southern-most portion of the site. The majority of the developed

lots adjacent to wetlands with an intermittent watercourse would have at least a 50-foot buffer from the edge of the wetlands. At least 50% of the lots next to wetlands containing a perennial watercourse would have a minimum 100-foot buffer from the edge of the wetlands. The width of the riparian corridor in some areas is as wide as 400 feet. The applicant has eliminated some house lots, revised its plans and minimized its encroachment on the riparian corridors in an attempt to comply with the intent of DEP policy on riparian corridor protection. (Exs. App-55, -60; Exs. DEP-2, -8, -26; test. P. Santos, 9/28/99, pp. 33-34, 9/30/99, pp. 66-68; test. S. Synder, 10/5/99 pp. 191-192, 10/20/99, pp. 33, 46-47, 50-69.)

30. A limited amount of blasting may be necessary for construction of the proposed project. If blasting is necessary, a blasting contractor would inspect any private wells in proximity to the site and foundations of nearby homes prior to blasting activities. (Ex. APP-68; test. K. Stevens, 9/30/99, pp. 178-180.)

31. An operations and management plan submitted with the application contained a computer model for the dam's breaching or failure. This analysis indicated that the only hazard would be associated with the roadway or dam itself. The dam's failure would not impact structures or cause possible loss of life downstream. If the dam were to be breached, the outflow would be less than that occurring from a 100-year storm. It was not necessary to submit an emergency operations plan with the permit application. (Exs. APP-45, -48, -55; Ex. DEP-25; test. D. Ballou, 9/30/99, p.211; test. A. Kuzyk, 10/5/99, pp. 164-165.)

32. The long-term maintenance of the dam and the storm water detention system, including the detention basin behind Lot 48, would be relatively low. The proposed maintenance of the dam would adequately address the routine maintenance items necessary for safe

operation. There would be no mechanical devices to maintain and no permanent pool of water. Maintenance would consist of keeping the inlet and outlet structures clean and free of debris, trees, branches and other debris. A maintenance schedule in the permit would be the responsibility of the applicant and ultimately the Town of Seymour. (Exs. APP-33, -45; DEP-24, -25; test. P. Santos, 9/28/99, p.33, 9/30/99, pp. 102-103; test. A. Kuzyk, 10/5/99, p. 164.)

33. The application provides that a qualified engineer would oversee construction of the dam and outlet structures. Upon completion of the dam construction, the dam would be classified as a moderate hazard structure and would be subjected to periodic inspection by the DEP. The inspection interval for a moderate hazard dam is 7 years. (Ex. APP-45, Ex. DEP-25; test. D. Ballou, 9/30/99, pp. 200, 233-234; test. A. Kuzyk, 10/5/99, pp.165-167.) *See also* Regulations, Connecticut State Agencies §22a-409-2.

34. The applicant considered numerous alternatives to the configurations and design of the proposed project and stormwater detention system. Some alternatives, including recommendations of DEP staff, were incorporated into the proposed project where possible. Others were abandoned for reasons that included prohibitions of the Town of Seymour subdivision regulations, rejection by the DEP, the need for an increased level of maintenance, and the consequence of more significant environmental impacts, particularly impacts to wetlands areas. These alternatives included moving the road from its present location 260 feet east to a narrower area of wetlands. This idea was eliminated as it would have resulted in a larger impact to the uplands due to the steep topography in this area. A bridge was considered for the westerly road crossing but was rejected by the Town of Seymour on the basis of maintenance concerns. Numerous alternatives were

considered at all the road crossings. These included the elimination of sidewalks, the reduction of shoulder widths and smaller curve radii. All of these were in conflict with the subdivision regulations for the Town of Seymour. Side to side slopes for the southerly road crossing were rejected by the Town of Seymour. A northern detention berm was eliminated on the recommendation of DEP staff. Other alternatives were adopted to lessen impacts to wetlands and watercourses. For example, the playground area was moved from its original location to avoid any impacts to the vernal pool to the south of the Old Town Road crossing. The total number of lots in the present plan was reduced to minimize impacts to wetlands and the riparian corridor. The alternative of relocating the stormwater detention system outside of the watercourse was evaluated but judged imprudent as this could significantly affect the buffer areas in place to protect the wetlands and watercourses. (Exs. APP-21, -60; Exs. DEP-8, -26; test. P. Santos, 9/28/99, pp. 36-44, 9/30/99, pp.68-70, 76-79, 91-92, 10/5/99, pp. 125-145; test. K. Stevens, 9/30/99, pp. 150-151, 159- 162, 173, 176-177; test. S. Snyder, 10/5/99 pp. 192-193.)

35. The intervenor has raised a claim under §22a-19 of the General Statutes alleging that the activities that are the subject of these applications would have, or would be reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the State. (Exs. DEP-5, -6, -15.)

***CONCLUSIONS OF LAW***

***Jurisdiction***

The Department of Environmental Protection is responsible for management of state water resources. General Statutes §22a-1. All matters relating to the preservation and protection of these natural resources are therefore within its jurisdiction. §22a-2. The water diversion and dam statutes are part of this comprehensive body of laws to protect and maintain these resources, and grant to the Commissioner the authority to consider these applications. §§22a-365 to 378, §§22a-401 to 411.

***General Statutes §22a-19 and Alternatives Analysis***

The intervenor claims that the activities that are the subject of these permit applications would have, or would be reasonably likely to have, "the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the State". §22a-19(b). Accordingly, the intervenor continues, the applicant has the additional burden of establishing that there are no feasible and prudent alternatives to those activities.

As the moving party, the burden of proof on this issue belongs to the intervenor. *Manchester v. Environmental Coalition v. Stockton*, 184 Conn. 51 (1981). The intervenor has not presented any evidence that any pollution that would result from the activities for which the applicant seeks these permits would be unreasonable as set out in §22a-19. Contrary to the assertions of the intervenor in its brief and reply brief, there is no evidence that the proposed activities are inconsistent with statutory and regulatory requirements, and with state policies designed to protect the natural resources at issue.

I find the expert testimony presented by the applicant and the supporting testimony of staff to be persuasive evidence that the applications are consistent with the objectives of the relevant state law and policies that are designed to protect the State's natural resources. Because I find that these activities will not cause unreasonable pollution, it is not necessary for me to evaluate whether any alternatives to the present plan would be feasible and prudent. Section §22a-19 requires the consideration of alternative plans only when it is first decided that the proposed project would cause unreasonable pollution, impairment or destruction of the public trust and natural resource at issue. *Paige v. Town Planning & Zoning Commission of the Town of Fairfield*, 235 Conn. 448 (1995).

Even if I was to determine that I should assess the availability of reasonable and feasible alternatives, the applicant has provided substantial evidence of the assessment of alternatives as part of this application process. See *Gardiner v. Conservation Commission of the Town of Waterford,* 222 Conn. 98 (1992). The application for the water diversion permit included an analysis of alternatives. See General Statutes §22a-369(8). The applicant presented persuasive evidence of its extensive consideration of alternatives to the configuration of the project and design of the stormwater detention system. Staff also presented evidence of its assessments and recommendations for alternatives to the project, primarily in relation to the *Notice of Insufficiency* issued to the applicant as part of the application process. The facts demonstrate that alternatives were considered in this application, and, where feasible, incorporated into the proposed project that is the subject of the applications under evaluation.

***Water Diversion Permit***

The applicant seeks a water diversion permit because the construction of a storm drainage system to collect surface water runoff from the planned subdivision, which includes a dam and water detention basin, would result in a change in flow or the detention or impoundment of water within a watershed area of more than 100 acres. The location and typography of the site on which the proposed project is located requires a stormwater system to insure that there is no net increase in stormwater runoff as a result of the subdivision both during and after construction.

Section 22a-367(2) defines diversion to include "any activity which causes, allows or results in the withdrawal from or alteration, modification or diminution of the instantaneous flow of the waters of the state". Section 22a-373 of the General Statutes provides that in making a decision to grant or deny a permit for a diversion of the waters of the State, the Commissioner shall consider all relevant facts and circumstances including but not limited to ten enumerated factors.[8]

[8] §22a-373(b) provides that "the Commissioner shall consider all relevant facts and circumstances including but not limited to: (1) The effect of the proposed diversion on related needs for public water supply including existing and projected uses, safe yield of reservoir systems and reservoir and groundwater development; (2) The effect of the proposed diversion on existing and planned water uses in the area affected such as public water supplies, relative density of private wells, hydropower, flood management, water-based recreation, wetland habitats, waste assimilation and agriculture; (3) Compatibility of the proposed diversion with the policies and programs of the state of Connecticut, as adopted or amended, dealing with long-range planning, management, allocation and use of the water resources of the state; (4) The relationship of the proposed diversion to economic development and the creation of jobs; (5) The effect of the proposed diversion on the existing water conditions, with due regard to watershed characterization, groundwater availability potential, evapotranspiration conditions and water quality; (6) The effect, including thermal effect, on fish and wildlife as a result of flow reduction, alteration or augmentation caused by the proposed diversion; (7) The effect of the proposed diversion on navigation; (8) Whether the water to be diverted is necessary, and to the extent that it is, whether such water can be derived from other alternatives including but not limited to conservation; (9) Consistency of the proposed diversion with action taken by the Attorney General, pursuant to sections 3-126 and 3-127; and (10) The interests of all municipalities which would be affected by the proposed diversion."

I have reviewed this application in light of the following relevant factors.[9] First, the possible impacts of the stormwater runoff on flood management, including downstream flood hazards. Next, the effect of the stormwater drainage collection system, with the dam and detention berms that would be created, on inland wetlands and watercourses and on existent water conditions, including water quality. Included in this analysis are an assessment of the adequacy of the design of the storm drainage system and the sufficiency of the erosion and sediment controls. Third, the impact on fish and wildlife due to the flow reduction, alteration or augmentation caused by the proposed diversion. Finally, the compatibility of the proposed diversion with the policies and programs of the state of Connecticut dealing with long-range planning, management, allocation and use of water resources of the State, in this case the DEP policy on riparian corridor protection.

*Flood Management*

I find that the stormwater drainage and collection system would provide for either a controlled runoff or no net increase in stormwater runoff as a result of the project. No adverse flood hazards will therefore occur as a result of the proposed project. The stormwater system, an arrangement that includes controlled discharge points and two detention basins, is designed to manage any post-development increases in the peak rates of runoff from the site for 2, 5, 10, 25, 50 and 100-year storm events. The applicant has, where possible, incorporated improvements to this system recommended by the DEP, such as the use of a level spreader at a discharge area. These improvements enhance the design and function of the system, particularly as it relates to

[9] My legal conclusions are based on the evidence presented on the relevant enumerated factors of §22a-373. See Samperi v. Inland Wetlands Agency, 226 Conn. 579 (1993).

the prevention of downstream flooding hazards. The stormwater system operates without mechanical devices that would need to be activated in order for it to function. Maintenance of the system is minimal and limited to keeping the inlet and outlet structures free of excessive debris such as trees and branches. With proper maintenance, now the responsibility of the applicant and later the responsibility of the Town of Seymour, the system would protect against and prevent any risk of adverse flood hazards.

*Wetlands and Watercourses*

The proposed project would not change the direction of the perennial stream or the intermittent streams on the site. Its present design, including changes to the configuration of the stormwater control system (e.g., the elimination of the northern detention berm) and the adoption of mitigation measures (e.g., the conservation easements, the use of particle separators in stormwater discharge pipes), as well as the adoption of the soil erosion and sedimentation controls and Best Management Practices during construction, would avoid or minimize impacts to the watercourses and associated wetlands. The erosion and sediment control system would sufficiently mitigate against any erosive and flooding effects from the stormwater discharge points. As further mitigation during the construction phase, the applicant has specifically designed soil and erosion controls for this aspect of the project. The wetlands and watercourses would be further protected by the installation of public water and sewer.

The only direct impact on the wetlands associated with these watercourses would be caused by the actual filling of wetland areas for the two road crossings, the filling of wetland for the walkway for access to the playground, and the filing of an isolated wetland area on the loop road. Four-tenths of an acre would be filled for the dam, the subject of the dam permit. In total,

only .7 of an acre of wetlands would be permanently altered as a result of the entire project. However, 57 acres would be set aside as open space and 9.7 acres would be protected by conservation easements. This total of 66.7 acres of dedicated open space and conservation easements would provide for additional protection and preservation of wetlands and watercourses.

*Water Quality*

The current Class A surface water classification would not be impacted by the proposed project. Subpart (8) of §22a-38 defines pollution as the "harmful, thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters". "Rendering unclean or impure" is defined in subpart (9) as "any alteration of the physical, chemical or biological properties of any of the waters of the state, including, but not limited to change in odor, color, turbidity or taste".

The operation of the stormwater detention system would be designed to move stormwater through its control devices such as catch basins, underground pipes, level spreaders, and rip-rap to prevent any harmful or thermal pollution from waste or other materials from being discharged or deposited, or to directly or indirectly to come in contact with the wetlands and watercourses. If any waste or materials were to be discharged from the stormwater detention system, the riparian buffer zone areas and the areas of the conservation easements would also add another level of protection.

*Fish and Wildlife*

The 22.7 acres of wetlands include 15 identified wetlands and four isolated wetland areas. The long-term impacts to these wetlands in their capacity as wetland habitats for flora and fauna as a result of the stormwater management system with the attendant increase in duration, depth and period of impoundment of water for various storm events would be a low-intensity partial wetland impact. The biological diversity on the site would remain; any impacts would be to abundance particularly in the uplands area. The conservation easements and buffer zones in the riparian corridors would, however, offset this impact.

*DEP Policy on Riparian Corridor Protection*

This water diversion permit application must be compatible with "the policies and programs of the state of Connecticut dealing with long-range planning, management, allocation and use of water resources of the state." §22a-373(b)(3). The intervenor maintains that the proposed diversion is not consistent with DEP policy on riparian corridor protection. Specifically, the intervenor alleges that the proposed project does not comply with the buffer zone widths for riparian corridor protection that are established by the policy.

I find that the statements of Brian Murphy in his *Position Statement* acknowledge the distinction between a substantive rule of an agency, reflected in a law or regulation, and a policy statement and recognize the logical differences between the impact of the two. "[A] policy statement 'is neither a rule nor precedent but is merely an announcement to the public of the policy which the agency hopes to implement in future rule-makings or adjudications.' In this sense, a policy statement …[may be] 'like a press release' in that it 'presages an upcoming

rulemaking or announces the course which the agency intends to follow in future adjudications.'" *Panhandle Eastern Pipe Line Company v. Federal Energy Regulatory Commission*, 198 F. 3d 266, 269 (D.C. Cir. 1999) , citing *Pacific Gas & Electric Power Commission*, 506 F.2d 33, 38 (D.C. Cir. 1974). Again citing *Pacific Gas*, the court concluded: "In other words, a policy statement has neither the force of a substantive rule adopted pursuant to rulemaking nor the binding effect of an order following an adjudication." *Id.*

The *Notice of Insufficiency* reflected the intent of the DEP policy on riparian corridor protection. The revised plans that were accepted by the DEP, and the lots included in those plans, meet the objectives of the DEP policy. The applicant presented expert testimony that the goals of the DEP riparian policy can be attained without strict adherence to the uniform buffer zone recommendations in the policy statement. The applicant presented no evidence that the development of the lots in question would so disturb the buffer zone that their retention in the plan would pose a significant pollution threat to the riparian ecosystem.

This evidence, plus the fact that DEP staff reviewed the application as it was revised in response to the *Notice of Insufficiency* and determined it to be in compliance with the *Notice* (that included a direction to adhere to the intent of the riparian policy statement regarding the exclusion of certain lots), convinces me that the applicant's revised plans are not incompatible with the goals of the DEP policy on riparian corridor protection.

The actions of staff confirm my conclusion that the application is not incompatible with DEP policy on riparian corridor protection. "An agency may rely on its own expertise in evaluating evidence within that area of its expertise." *Connecticut Building Wrecking Co. v. Carothers*, 218 Conn. 580, 593 (1991).

The intervenor also argues that §22a-377(c) – 2(f) of the Regulations of Connecticut State Agencies provides that no diversion permit shall be issued unless the applicant demonstrates the proposed diversion is consistent with the policies and requirements of the *Inland Wetlands and Watercourses Act*. Chapter 440, General Statutes. The wetlands and watercourses potentially impacted by the proposed project are defined in §22a-36 of the Act and included in its protective plan. The riparian corridor, the perennial stream through the central portion of the site, is also subject to the requirements of the *Act.* Section 22a-373(b) of the General Statutes delineates the criteria for issuance of a water diversion permit. No permit shall be issued unless and until the commissioner considers all relevant criteria in §22a-373(b), which include various impacts on wetlands and watercourses. An analysis of a permit application under this criteria, as reflected in the foregoing analysis herein, satisfies the protective intent of the *Act* and the provision of the §22a-377(c) - 2(f) of the Regulations.

***Dam Construction Permit***

In making a decision to grant a permit for the construction of a structure classified as a dam, the commissioner shall determine "the impact of the construction work on the environment, on the safety of persons and property and on the inland wetlands and watercourses of the state in accordance with the provisions of sections 22a-36 to 22a-45, [the *Inland Wetlands and Watercourses Act],* inclusive, and shall further determine the need for a fishway in accordance with the provisions of section 26-136…." General Statutes §22a-403(b).

*Impact of the construction work*

The erosion and sediment control measures and the Best Management Practices to be utilized by the applicant during construction of the project would mitigate the impact of the dam construction on the environment. A professional engineer would oversee the construction of the dam and its outlet structures.

*Safety of persons and property*

The impact of the dam on the safety of persons and property is minimal. Its design would mitigate the effects of increased stormwater flows due to the development of the proposed project. An operations and maintenance plan submitted with the application contained a computer model for the breaching or failure of the dam that indicated that any hazard would only be associated with the roadway that is part of the dam or the dam itself. The dam is 60 feet wide to accommodate the roadway; a 14-foot width is the minimum acceptable width for safety considerations. Further, the failure of the dam would not impact structures or cause possible loss of life downstream.

*Impact on Wetlands and Watercourses*

Because the dam is part of the stormwater management system for the proposed project, the analysis of its impact on inland wetlands and watercourses is similar to the diversion permit analysis as to the impact of the entire proposed project on wetlands and watercourses. The design of the dam includes an outlet structure that would allow for the discharge of flows associated with the various frequency storms. The only direct impact of the dam on the wetlands associated with the watercourses would involve the permanent alteration of 18,400 square feet of

wetlands or .4 of an acre. This alteration must be considered in light of the 66.7 acres of dedicated open space and conservation easements that would insure that an additional buffer would be provided to protect wetlands and watercourses.

*Fishway*

Section 26-136 provides that a permit to construct a dam will require a fishway if it is determined that "such a facility is necessary to protect fisheries resources by providing access to natural spawning or nursery areas or to protect the public interest by preventing the loss of a fishery from the area of the dam…." I find that the evidence supports the conclusion that there are no fisheries resources on the site, therefore, no fishway is required for the dam structure.

***Conservation Easements***

Section 47-42a(b) of the General Statutes defines a "conservation restriction" as a "limitation… in any deed…whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use." Section 47-42b provides for enforcement of such a restriction by a governmental body, regardless of privity of estate or contract.

Conservation easements would be included on lots that abut or are adjacent to wetland areas. The purpose of these easements would be to preserve the designated uplands, wetlands and watercourses in perpetuity from human disturbance, and to restrict human activities adjacent to stream corridors. The language of these easements, set out herein, would accomplish this purpose.

The 9.7 acres proposed to be set aside as conservation easements in the subdivision would be in the form of a restriction on each lot. This restriction would be placed on each deed when each individual lot is sold. The deed would indicate that the restriction would run with the land. The restriction would be recorded in the land records and run with the land in perpetuity. "It is well settled that where a restrictive covenant contains words of succession, i.e., "heirs and assigns", a presumption is created that the parties intended the restrictive covenant to run with the land." *Weeks v. Kramer*, 45 Conn. App. 319, 323 (1997). As the easement benefits the entire project rather than the individual lot, any lot owner who violates its restrictions will be subject to actions to enforce the easement. See *Castonguay v. Plourde*, 46 Conn. App. 251 (1997).

The easements range in width from 30 to l00 feet on the lots on which they are attached. Under the plan proposed by the applicant, easements would be granted in favor of a homeowner's association with a mandate that the property within the easement be maintained in a natural and undisturbed condition. The homeowner's association would be created once the first lot is sold. Each deed would provide that every lot owner in the subdivision be a member of the homeowner's association. For ease of identification, I recommend that this association be entitled the *Brookfield Homeowner's Association* or another appropriate name.

The conservation easements to be included in each deed would provide as follows:

*"As a condition of his/her acceptance of this deed, the grantee, his/her heirs and assigns, hereby covenants and agrees that he/she will maintain that portion of lot ___ that is designated as a conservation area (conservation easement) under §47-42a of the General Statutes to the Brookfield Homeowner's Association. Said easement, recorded on the record*

*subdivision map, shall be maintained by the grantee in a natural state and that he/she will not construct or build any structure or building within said easement area nor pave or re-grade said easement area nor conduct stumping or grubbing activities nor introduce any non-native species nor conduct any other activity that would impair the overhead canopy within said easement area; provided that nothing herein shall preclude his/her use and enjoyment of said easement area in any way not otherwise inconsistent herewith, including the right to: (i) prune and maintain any plantings and other vegetation in a neat and attractive appearance, including the removal of dead vegetation and other debris; and, (ii) installation of low-impact, non-permanent structures and/or recreational facilities such as benches, swing sets and other related or similar uses as may be approved by the homeowner's association as consistent herewith. Furthermore, the limits of said conservation easements are to be delineated by a row of blue spruce trees. The grantee hereby covenants and agrees to maintain said spruce trees, the removal of which shall be prohibited. In the event any such tree dies or is otherwise removed, it shall be the responsibility of the grantee, his/her successors and assigns, to replace such tree with a new tree of a size and type consistent with the rules and regulations of the homeowner's association.*

*Grantee covenants and agrees that he/she will permit any person authorized by any applicable law, regulation, ordinance, permit or approval to enter his property at all reasonable times for the purpose of inspecting the easement area described above to determine compliance with this easement and any other law, regulation, ordinance, permit or approval.*

*Any uncertainty in the interpretation of this easement shall be resolved in favor of conserving the protected area in its natural state."*

***RECOMMENDATIONS***

I recommend that the permits be issued, each with the conditions listed below, to be included in each permit as follows.

***Water Diversion Permit (Attachment 1)***The section entitled "Special Conditions", consisting of paragraph 1, be deleted and the following language be substituted in its place.

***Dam Construction Permit (Attachment 2)*** The section entitled "Special Conditions – None", be deleted and the following language be substituted in its place.

***SPECIAL* CONDITIONS**

1. Within 120 days of the filing of the Final Subdivision Maps with the Town of Seymour, the permittee shall have properly recorded within the Town of Seymour land records conservation easements in favor of the *Brookfield Homeowner's Association,* or some other appropriate entity under CGS §47-42a, as approved by the Commissioner and in accordance with the plans entitled, "Subdivision Map 'Brookfield' Seymour, CT", sheets 1-5 numbered M1-M5, dated April 8, 1997, revised 5/13/99, prepared by AM Engineering. The purpose of such conservation easements shall be to preserve the designated uplands, wetlands and watercourses in perpetuity from human disturbance, and to restrict human activities adjacent to said stream corridors. Said conservation easements shall not be recorded until the Commissioner has approved in writing its form and contents. Such easements shall be enforceable as a conservation restriction under CGS §47-42b.

2. ***Best Management Practices***. In constructing or maintaining the activities authorized herein, the permittee shall employ best management practices, consistent with the terms and conditions of this permit, to control storm water discharges and erosion and sedimentation and to prevent pollution. Such practices to be implemented by the permittee at the site include, but not necessarily limited to:

    a. Prohibiting dumping of any quantity of oil, chemicals or other deleterious material on the ground;

    b. Immediately informing the Commissioner's Oil and Chemical Spill Section at 860-424-3338 of any adverse impact or hazard to the environment, including any discharges, spillage or loss of oil or petroleum or chemical liquids or solids,

which occurs or is likely to occur, as the direct or indirect result of the activities authorized herein;

c. Separating staging areas at the site from the regulated areas by silt fences or hay bales at all times;

d. Prohibiting storage of any fuel and refueling of equipment within 25 feet from any wetland or watercourse;

e. Preventing pollution of wetlands and watercourses in accordance with the document "Connecticut Guidelines for Soil Erosion and Sediment Control" as revised. Said controls shall be inspected by the permittee for deficiencies at least once per week and immediately after each rainfall and at least daily during prolonged rainfall. The permittee shall correct any such deficiencies within forty-eight (48) hours of said deficiencies being found;

f. Stabilizing disturbed soils in a timely fashion to minimize erosion. If a grading operation at the site will be suspended for a period of thirty (30) or more consecutive days, the permittee shall, within the first seven (7) days of that suspension period, accomplish seeding and mulching or take such other appropriate measures to stabilize the soil involved in such grading operation. Within seven (7) days after establishing final grade in any grading operation at the site the permittee shall seed and mulch the soil involved in such grading operation or take such other appropriate measures to stabilize such soil until seeding and mulching can be accomplished;

g. Prohibiting the storage of any materials at the site which are buoyant, hazardous, flammable, explosive, soluble, expansive, radioactive, or which could in the event of a flood, be injurious to human, animal or plant life, below the elevation of the five hundred (500) year flood. Any other material or equipment stored at the site below said elevation by the permittee or the permittee's contractor must be firmly anchored, restrained or enclosed to prevent flotation. The quantity of fuel stored below such elevation for equipment used at the site shall not exceed the quantity of fuel that is expected to be used by such equipment in one day;

h. Immediately informing the Commissioner's Inland Water Resources Division (IWRD) at 860-424-3019 of the occurrence of pollution or other environmental damage resulting from construction or maintenance of the authorized activity or any construction associated therewith in violation of this permit. The permittee shall, no later than 48 hours after the permittee learns of a violation of this permit, report same in writing to the Commissioner. Such report shall contain the following information:

(i) the provision(s) of this permit that has been violated;

(ii) the date and time of the violation(s) was first observed and by whom;

(iii) the cause of the violation(s), if known;

(iv) if the violation(s) has ceased, the duration of the violation(s) and the exact date(s) and time(s) it was corrected;

(v) if the violation(s) has not ceased, the anticipated date when it will be corrected;

(vi) steps taken and steps planned to prevent a reoccurrence of the violation(s) and the date(s) such steps were implemented or will be implemented; and

(vii) the signatures of the permittee and of the individual(s) responsible for actually preparing such report, each of whom shall certify said report in accordance with General Condition No. 11 of this permit.

**3.** ***Monitoring and Reports to the Commissioner.*** The permittee shall record all actions taken pursuant to subsection (e) above and shall, on a monthly basis, submit a report of such actions to the Commissioner. This report shall indicate compliance or noncompliance with this permit for all aspects of the project which is the subject of this permit. The report shall be signed by the environmental inspector assigned to the site by the permittee and shall be certified in accordance with General Condition No. 11 of this permit. Such monthly report shall be submitted to the Commissioner no later than the 15th of the month subsequent to the month being reported. The permittee shall submit such reports until the subject project is completed.

***CONCLUSION***

The subject applications meet the statutory and regulatory criteria relevant to this decision. The activities for which they are intended are not incompatible with DEP policies regarding protection of the State's natural resources. The water diversion and dam construction permits should be issued to the applicant as modified herein. The conservation easements should be included in each deed as specified herein.

The proposed project is a reasonable use of the applicant's property and would not unreasonably pollute, impair or destroy the natural resources of the State. General Statutes §22a-19. The applicant has worked with the DEP to minimize impacts to natural resources that might be impacted by the development of the site that is the subject of these applications. Alternatives have been explored and, where appropriate, feasible and prudent, have been incorporated into the proposed project. The reservation of open space and the inclusion of conservation easements would impact a significant portion of the site and further protect and enhance the State's natural resources.

July 18, 2000
Date

/s/ Janice B. Deshais
Janice B. Deshais, Hearing Officer