OFFICE OF ADJUDICATIONS

IN THE MATTER OF : APPLICATION NO. IW-2001-110

DOT/ROUTE 219 RECONSTRUCTION : MARCH 7, 2002

PROPOSED FINAL DECISION

The parties have submitted the attached *Agreed Draft Decision* (Attachment 1) for my consideration in this matter. I hereby adopt this agreement as my *Proposed Final Decision*, and recommend that the Commissioner issue the requested permit incorporating the terms and conditions set forth in the attached permit (Attachment "A").

March 7, 2002
Date

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

AGREED DRAFT DECISION

I

SUMMARY

The Connecticut Department of Transportation (the "applicant"), has applied to the Department of Environmental Protection for a permit to conduct regulated activities along Route 219 from the vicinity of the East Branch of the Farmington River in New Hartford to the intersection of CT Route 219 and CT Route 318 in Barkhamsted (State Project 91-108). These regulated activities are associated with the reconstruction of approximately 2.66 miles of CT Route 219. The DOT has filed an application for an Inland Wetlands and Watercourses Permit pursuant to General Statutes §22a-39 of the Inland Wetlands and Watercourses Act. General Statutes §22a – 36 through 22a-45. (Ex. DOT-1)

The applicant and Inland Water Resources Division ("staff") are the only parties in this matter. Staff supports issuance of the permit and has submitted into the record a draft permit that would authorize the applicant's proposed regulated activities. (Ex. DEP-10)

The reconstruction of 2.66 miles of CT Route 219 that is the subject of this permit application would improve public safety by correcting the deteriorated pavement structure and upgrading the substandard railing system. The proposed project will alleviate these problems and provide a safer, more efficient roadway. The project will also improve water quality by the construction of an upgraded drainage system. (Ex. DOT-1, Ex. DOT-7)

The project has been planned to minimize wetland impacts, while improving safety as much as possible. These proposed regulated activities, if conducted in accordance with the terms and conditions of the draft permit, would be consistent with the applicable legal standards for issuance of the permit. (Ex. DOT-1, Ex. DOT-5, Test.-Rosado, Ex. DEP-10)

This permit should be issued in accordance with the terms and conditions of the draft permit (Ex. DEP-10)

II

DECISION

A

FINDINGS OF FACT

1. The Application

On April 3, 2001, the Department of Transportation (DOT) submitted an application to the Department of Environmental Protection (DEP) Inland Water Resources Division for an Inland Wetland and Watercourses permit. (Ex. DOT-1) A hearing was requested

upon receiving a petition with more than twenty-five signatures, and a hearing was held on February 6, 2002. (Ex. DEP-3, Ex. DEP-5) The record remained open until March 1, 2002 to allow time for the submission of additional written public comments.

2. The Project

a. The proposed regulated activities that are the subject of this permit application (the "project") are all associated with the reconstruction of a 2.66 mile section of CT Route 219. The project will begin in the vicinity of the East Branch of the Farmington River in New Hartford and end at the intersection of CT Route 318 in Barkhamsted. Generally, the horizontal and vertical alignment will remain as close to the existing roadway footprint as possible. As a result of the proposed work, six wetland areas will be affected. Approximately 0.028 acres of regulated areas will be impacted as a result of grading operations for the support of the highway and from drainage replacement/installations. Most impacted areas consist of drainage crossings and ditches, which will be replaced and/or stabilized with erosion protection. These systems will continue to function as they do once construction is completed. Steep slopes (up to 1.5:1) and gabions will be used to avoid and/or minimize impacts to regulated resources. The storm drainage design for the catch basins and piping in the project area conforms to applicable state and federal guidelines. (Ex. DOT-1, Test.-Rosado, Ex. DOT-6, Ex. DOT-7)

b. The proposed project has been identified by the DOT as a priority due to the poor roadway structure and substandard guide railing conditions on Route 219. The project is intended to improve safety issues caused by current condition. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

c. Route 219 is a state route which is characterized as a major rural collector with operating speeds ranging from 34 mph to 44 mph. (Ex. DOT-1) Due to the topographic constraints of the area, no major geometric improvements can be implemented and the roadway footprint and geometry will be greatly unchanged. (Test.-Rosado Ex. DOT-5)

d. Improvements to the road include minor widening and reconstruction to provide a more uniform 24-foot width and upgrading the drainage and railing systems. However, several areas will be widened to only 22 feet to avoid impacts to the lake. From Station 118+00 to the end of the project at Route 318, the roadway will be reconstructed to a uniform width of 30 feet. This project also includes improvements to two local roads that intersect this section of Route 219. These roads are, from south to north, Farmington River Turnpike and Ratlum Road. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

Watercourses/ Flood Control

e. Located within the limits of the project are Lake McDonough and several unnamed

tributaries to Lake McDonough. Lake McDonough is located to the west of Route 219 throughout the project area. Lake McDonough is a regional recreational waterbody that is owned by the Metropolitan District Commission (MDC). No work is proposed within the public water supply watershed of the Barkhamsted Reservoir, which is located just north of the project area. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Ex. DEP-6)

Several unnamed tributaries to Lake McDonough exist within the project area. Watercourses cross Route 219 at the following stations, 53+20, 98+30, 125+60, and 130+80. The watercourses within the project area flow from the east to the west. The watercourses drain the uplands located to the east of Route 219. To the east of Route 219 is Ratlum Mountain and adjacent hillsides. The watercourse crossing at station 98+30 currently crosses under Route 219 through a 3-foot by 5-foot box culvert. The watercourses located at station 53+20 and station 130+80 currently utilizes a 24" RCP culvert, while the watercourse at station 125+60 currently utilizes an 18-inch RCP. (Ex. DOT-1)

Wetland Impact Sites/ Proposed Activities

f. The impacted areas on this project consist of roadside-forested wetlands, intermittent watercourses, and drainage channels. The current project will impact six wetland sites. A total of 0.028 acres of wetlands (136 square yards) will be impacted by the project. A total of 52 linear feet of watercourses will be temporarily impacted during culvert construction. Of the six impact locations along the project corridor, three of those sites include unnamed watercourses, and the remaining impact sites are roadside drainage areas. Most of these impacts are minimal and are unavoidable with the proposed alignment. The impact areas are mainly along steep embankments that are sandwiched between Route 219 and either Ratlum Mountain to the east or Lake McDonough to the west. Most of the sites provide some measure of wildlife habitat, refuge, and/or corridor opportunities as a result of their position between the mountain and the lake as well as the relatively low-density of nearby development. (Ex. DOT-1, Test.-Alexander Ex. DOT-7) The following provides additional site-specific information.

1. *Site 1* (Station 27+30 RT)

- Site 1 is a forested depression with a layer of leaf litter and detritus that functions as a drainage swale for the nearby culvert and carries overland flow from the upland forest areas. The surrounding area is dominated by Eastern hemlock (*Tsuga canadensis*) and Northern Red Oak (*Quercus rubra*) with a limited shrub layer and trout lily (*Erythronium sp.*) in the herbaceous layer. The depression provides for groundwater recharge, floodflow attenuation, and nutrient retention and transformation. (Ex. DOT-1, Test.-Alexander Ex. DOT-7)
- Approximately 0.002 acres of wetland, or 86 square feet, will be impacted. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)
- The existing roadway through this area is approximately 20 feet wide. It was built on fill, with steep 2:1 (horizontal to vertical) slopes. Storm runoff is

conveyed from east to west through an 18-inch concrete culvert. Improvements include minor widening of the road to 24 feet and upgrading the railing system. The existing culvert will be maintained with minor modification to the inlet side. (Ex. DOT-1, Test.-Rosado Ex. DOT-5) The impact area will occur as a result of the modification of the headwall of the culvert and side slopes. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)

Guiderail and 2:1 side slopes will be used to avoid additional impacts. On the lake side, between station 27+40 and station 28+40 1.5:1 side slopes with gabions will be used to avoid impacts to this area. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

There will be no adverse impacts to the functions and values provided by this wetland due to the project. (Test.-Alexander Ex. DOT-7)

2. *Site 2* (Station 51+50 – Station 53+10 LT)

- Site 2 is an area of sandy, rocky shoreline of Lake McDonough that has considerable dead wood collected along the edge. The canopy layer is dominated by Eastern hemlock (*Tsuga canadensis),* white pine (*Pinus strobus),* and birch (*Betula sp)*. Wetland functions noted at this site include shoreline stabilization and sedimentation control. The accumulated dead wood at the site attenuates floodflow. In addition, the site provides both recreation opportunities and limited wildlife habitat. (Ex. DOT-1, Test-Alexander)
- Approximately 0.010 acres of wetland, or 435.6 square feet, will be impacted. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)
- Route 219 in this area varies from 20 to 22 feet in width. The road will be shifted to the east, and a railing system with 1.5:1 side slopes and gabions will be utilized to minimize impacts to the wetlands. The regulated area is located on the lake side (west of Route 219) and consists mainly of rocky shore area. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

At station 51+50lt, construction activities involve installation of a new 15-inch culvert system to convey storm runoff from the adjacent uplands east of Route 219. Installation of riprap protection to prevent erosion at the outlet of the new culvert will impact approximately 0.001 acres of wetland. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

At station 53+10lt, approximately 0.009 acres of wetland will be impacted at this site. Impacts involve minor filling in the wetland area to accommodate the roadway embankment, replacement of the culvert endwall and installation of riprap protection at the outlet. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

The design will minimize impacts as much as possible and will not effect the functioning of the wetland. (Test.-Alexander Ex. DOT-7)

3. *Site 3* (Station 62+10 RT)

- Site 3 is an isolated depressional wetland that is sandwiched between Route 219 and a rock outcropping to the east. The vegetation at this site consists of young saplings and brush that has been cut back along the roadway edge. This site provides opportunity for sedimentation of road drainage as a result of its proximity to the roadway and the nature of the existing roadway grading. This

ditch has very limited wetland functional value due to its isolation and a very limited water supply. (Ex. DOT-1, Test.-Alexander Ex. DOT-7)

- Approximately 0.003 acres of wetland, or 130.68 square feet, will be impacted. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)
- Construction activities involve slope stabilization on the west side of the roadway and extension of the existing cross culvert. The culvert conveys storm runoff from the roadway and adjacent uplands east of Route 219. A railing system and 1.5:1 side slopes with gabions will be utilized to avoid impacts to the wetlands on the west side. Impacts to regulated areas will be limited to the installation of the culvert end and RCP for the culvert extension on the east side. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

There will be no change in the functions provided by this wetland. (Test.-Alexander Ex. DOT-7)

4. *Site 4* (Station 98+30 LT & RT)

- Site 4 contains an unnamed brook that flows from the upland forest westerly through a 3-foot by 5-foot box culvert towards Lake McDonough. A portion of the upper reach of this watercourse has been stone-lined along the slopes and channel bottom. The watercourse has a high velocity that is dissipated by an existing three-foot vertical drop at the culvert outlet. This three-foot drop currently is a barrier to fish passage. The floor of the culvert is deteriorated and the endwalls need repair. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)

This wetland and the surrounding areas provide wildlife habitat and refuge. The watercourse downstream of the roadway also provides for fishery habitat. The watercourse has the potential to act as a discharge of groundwaters being released from the subsurface of the upper watershed. During low-flow periods, however, the watercourse channel may provide opportunity for nutrient retention and transformation as well as groundwater recharge. (Ex. DOT-1, Test.-Alexander Ex. DOT-7)

- Approximately 0.006 acres of wetland, or 261.36 square feet, will be impacted. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)
- Route 219 at this site will be shifted to the west and a railing system with 1.5:1 side slopes and gabions will be used to minimize impacts to the wetlands on the east side of Route 219. The existing box culvert will be replaced with a 48-inch RC pipe system. These improvements will result in 0.006 acres of wetland impacts and will temporarily disturb 52 linear feet of watercourse for water handling during construction of the culvert. A series of baffles will be installed through the culvert to aid in the retention of streambed material. Standard riprap will be placed at the outlet to protect against erosive forces. This layer of riprap will be covered with suitable materials obtained onsite to provide a heterogeneous mix of stone for improved fisheries habitat. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)

The area at the inlet will be protected with sand bags or other means to raise and divert the water through a temporary pipe inside the culvert. The section of the existing culvert will be removed in order to install the proposed 48-inch

RCP system. The flow will then be diverted to the new culvert and the temporary pipe will be removed. The existing box culvert will be removed or broken down and the area will be backfilled with suitable material. No flow will be diverted without proper erosion protection.(Ex. DOT-1)

At this site not only will structural deficiencies be corrected, but the new culvert will allow for fish passage which is currently restricted, thus improving the functions and values of this wetland. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test-Rosado Ex. DOT-5)

5. *Site 5* (Station 125+60 RT)

- Site 5 is a narrow manmade ditch that carries the flow from an intermittent watercourse that drains the forested wetland and uplands from the west to the east. The dominant vegetation to the east of Route 219 is red maple (*Acer rubrum)* and Northern red oak (*Quercus rubra).* (Ex. DOT-1, Test.-Alexander Ex. DOT-7) The watercourse crosses under Route 219 through an 18-inch RCP culvert. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

The portion of the watercourse downstream of the culvert offers suitable habitat for fish; however, the upstream portion of the watercourse does not offer fish habitat. This watercourse also has potential for carrying groundwater discharges, those waters released from the subsurface along upland slopes of the watershed. (Ex. DOT-1, Test.-Alexander Ex. DOT-7)

- Approximately 0.005 acres of wetland, or 217.80 square feet, will be impacted. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)
- Construction activities include extending the existing 18-inch RCP culvert and stabilizing the channel. Impacts to the wetland will result from installation of the culvert end and modified riprap channel protection. The extended drainage system will help existing erosion problem at the inlet. Modified riprap will be placed at the outlet to protect against erosive forces. This layer of riprap will be covered with suitable materials obtained onsite to provide a heterogeneous mix of stone for improved fisheries habitat. (Ex. DOT-1, Test.- Alexander, Test.-Rosado Ex. DOT-5)

6. *Site 6* (Station 130+80 LT)

- Site 6 contains a cross-culvert carrying a natural cobble-bottom brook. The endwall at the outlet of the existing culvert has collapsed and the channel is filled with broken concrete and stone. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)

The surrounding forest and existing culvert and watercourse provide valuable wildlife habitat and refuge. This site offers suitable fish habitat in the downstream portion but not in the upstream portion of the stream. (Ex. DOT-1, Test.-Alexander Ex. DOT-7)

- Approximately 0.002 acres of wetland, or 87.12 square feet, will be impacted. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)
- Construction activities at this site involves shifting the roadway to the east and slope stabilization on both sides of the roadway. A railing system and 1.5:1

side slopes with gabions will be used to avoid impacts to the wetlands. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

Activities in the regulated area involves channel work to replace the damaged endwall and install a riprap scour hole for outlet protection. Standard riprap will be placed at the outlet to protect against erosive forces; this layer of riprap will be covered with suitable materials obtained onsite to provide a heterogeneous mix of stone for improved fisheries habitat. (Ex.DOT-1, Test.-Alexander Ex. DOT-7, Test.-Rosado Ex. DOT-5)

g. In general, the wetlands along the project provide habitat for wildlife which are tolerant of nearby traffic and human disturbance. The project is designed to minimize long-term reduction in habitat values for existing wildlife species. (Test.-Alexander Ex. DOT-7) The impacts are deemed low and temporary, it is anticipated that these impacts will only exist during the construction process whereby the associated noise and activity may deter wildlife from frequenting the area. (Ex. DOT-1)

h. DEP Fisheries Division recommended several measures to minimize impacts to fisheries resources. DOT has incorporated all of these recommendations into design plans and construction contracts. (Ex. DOT-1, Test.-Alexander Ex. DOT-7, Ex. DEP-2) Therefore, as part of permit, baffles will be installed in the culvert located at site 4. Better transitions between the culvert outlets and downstream channels will be provided to aid fish passage. In-water construction will be limited to a period between June 1 and September 30, to minimize disturbance to cold water fisheries reproduction. Riprap will be covered with suitable materials obtained onsite to provide a heterogeneous mix of stone for improved fisheries habitat. Riparian vegetation disturbed during construction will be re-established in a timely manner upon the project's completion. The species of vegetation to be selected for reestablishment will be non-invasive species and native to the immediate watershed. All appropriate erosion and sediment control measures will be established prior to and maintained throughout all stages of construction in accordance with the Department of Transportation's Standard Specifications for Roads, Bridges, and Incidental Construction and appropriate Best Management Practices will be used during construction. (Ex. DOT-1, Ex. DEP-6)

3. State Threatened, Endangered, or Species of Special Concern

The DEP Natural Diversity Database Maps[1] revealed that no known populations of state or federal endangered, threatened, and special concern species or natural communities occur within the project area. The Connecticut Department of Environmental Protection's Natural Diversity Database had been reviewed throughout the project development. The September 1998, March 1999, and July 2000 maps were reviewed. Subsequent correspondence and communication with

[1] DEP Natural Diversity Database mapping includes information regarding critical biological resources available to the DEP. The information is a compilation of data collected over the years by the DEP Natural Resource Center's Geological and Natural History Survey and cooperating units of the DEP, private conservation groups, and the scientific community.

Dawn M. McKay and Julie Victoria of the CT DEP, revealed that, based on the project limits and activities proposed, the project is not deemed to be in conflict with any species or natural community. (Ex. DOT-1, Test.-Alexander Ex. DOT-7)

4. Alternatives

During the planning and design of this project, a continuous examination of design alternatives was conducted. Numerous alternatives were considered in consultation with the various units of the DOT, as well as the DEP, the U.S. Army Corps of Engineers, the Towns of New Hartford and Barkhamsted, concerned citizens and regulatory agencies. Among the factors considered when assessing alternatives were geometric constraints, historical and archeological concerns, impacts to private property, and environmental concerns. The following alternatives were considered when examining the potential range of alternatives.

- Resurfacing and Safety Improvements

  The pavement structure is failing due to poor base conditions. Resurfacing would provide some temporary relief but conditions would continue to deteriorate until the pavement structure problems are addressed. It was also determined that reconstruction and widening of the shoulder and shelf area was necessary to provide proper support for the railing system. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

- Taking no action

  Similar to resurfacing, this alternative would not address the needs of the area and the roadway would continue to deteriorate. The substandard railing system, which is leaning due to the lack of proper support, could fail. (Ex. DOT-1, Test.-Rosado Ex. DOT-5)

B
CONCLUSIONS OF LAW

The purposes and policies set forth in the Inland Wetlands and Watercourses Act are secured through the process and criteria outlined in §22a-41 of the General Statutes. Section 22a-41(b)(1) provides that where a permit application has been the subject of a hearing, the commissioner must find that there is no feasible and prudent alternative to the proposed action before issuing a permit. In determining whether such an alternative exists, the commissioner must consider all relevant facts and circumstances, including but not limited to, the six statutory factors outlined in §22a-41 (a*)*.

The six factors set out in § 22a-41 (a) are:

(1) The environmental impact of the proposed regulated activity on wetlands or watercourses;

(2) The applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands and watercourses;

(3) The relationship between the short-term and long-term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;

(4) Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (A) prevent or minimize pollution or other environmental damage, (B) maintain or enhance existing environmental quality, or (C) in the following order of priority: Restore, enhance and create productive wetland or watercourse resources;

(5) The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and

(6) Impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed activity and which may have an impact on wetlands or watercourses.

Applying these factors to this permit application, the following facts are found:

(1) *Environmental Impacts*

The proposed project will result in some loss of wetlands and some disturbance to wetlands during the construction phase.

The project has been designed and planned to reduce impacts on wetlands to the greatest extent possible. Recommendations of DEP Fisheries Division have been incorporated into design plans and construction contracts, minimizing impacts to fisheries resources. Impacts to wildlife as a result of the project will be limited due to the restricted area of the project, and the existing disturbance of the area due to the existing roadway and residential properties.

Short-term impacts during construction will be reduced through measures to control sedimentation and erosion. These controls will assure that no permanent adverse effects will impact fisheries or riparian habitat. These measures will minimize the chance that siltation and sedimentation will encroach into the area of

the regulated wetlands and watercourses. Ground and surface water quality will also be protected.
The project will not result in any significant short or long-term environmental impacts. The overall long-term impacts to the wetlands will be minimal. Short-term impacts will be controlled though the use of sedimentation and erosion controls during construction. Long-term impacts to the wetland system as a habitat for wildlife and fish will be minimal. The project will correct existing erosion and improve water quality by improving the stormwater drainage system.

(2) *Alternatives*

There are no feasible or prudent alternatives to the present proposed plan for the project. The alternative of taking no action, or the "no build alternative", would not meet the goal of the project and obligation of the applicant to provide for a safe roadway. The project has been designed to minimize environmental impacts to the greatest extent possible. Where safety would be significantly and negatively impacted, the DOT reasonably rejected changes to the design that would only minimally improve the impact to the environment. The proposed plan for reconstruction and safety improvements on CT Route 219 is reasonable in view of the social benefits to be derived from an improved and safer roadway. The applicant has adequately demonstrated that the proposed plan is a feasible and prudent choice.

(3) *Short and Long-term Impacts /Maintenance and Enhancement of Long-Term Productivity*

The record demonstrates that the short-term impacts of the project, primarily due to the construction activities that will be necessary, will be minimized through erosion and sedimentation control guidelines that will be included in the construction contract as required by the DOT. These guidelines will protect ground and surface water by minimizing the possibility of siltation and sedimentation within the area of the wetlands and watercourses impacted by the project. Adherence to these guidelines and the terms and conditions of the permit will assure that temporary impacts to the environment will be minimal.

The project will improve the functioning of some areas of the present wetland systems. Improvements to culverts and streambed channels will allow wildlife and fish to travel in and around the watercourses. Stabilization of existing slopes and channels will decrease the siltation into the wetlands. Improvements in the drainage system will improve water quality.

This project will impact the environment, both in the short and long term. However, the short-term impacts during construction will be tempered by construction mitigation efforts and the long-term impacts will be kept to a minimum. Improvements as a result of the project will enhance the overall long-term productivity of the wetlands. The proposed plans include steps that will be taken to rehabilitate some areas of the impacted wetlands immediately after construction is completed.

(4) *Irreversible/Irretrievable Loss of Wetlands and Watercourses Resources and Mitigation Measures*

The proposed project keeps to a minimum the irreversible and irretrievable commitment of wetlands resources. In recognition of wetlands as an indispensable, irreplaceable fragile natural resource, the project is designed to protect existing wetland areas to the greatest extent possible. The applicant will mitigate the loss of wetlands by stabilizing areas of existing erosion and improve water quality by improving the drainage system. The project also reestablishes fish passage in locations which are currently impossible.

The commitment of wetland resources to the proposed project will not result in an unacceptable loss of irretrievable or irreplaceable wetland resources and the project will restore and enhance existing deteriorated wetland resources.

(5) Impact on Safety and Health or Reasonable Use of Property

The project, which will result in a safer roadway, has been designed to avoid adverse impacts to the wetlands to the greatest extent possible. The applicant will take measures to mitigate the potential for harm during construction, including the protection of ground and surface waters. The success of these measures will be monitored through regular inspections during the construction phase of the project. Potential impacts to wildlife and fisheries resources will be minimized through measures that include the incorporation of recommendations of the DEP. When concluded, the improvements to existing unstable sideslopes and culverts, the construction of new stormwater drainage systems, and the enhancements of existing stream channels will facilitate wildlife and fish movement throughout the wetlands system and will enhance the ability of the wetland system to control stormwaters. The improvements as a result of the project will provide a safer Route 219 for the public. These improvements will also enhance the functioning of the overall wetland systems to be impacted by the project. The impacts to the wetlands do not pose a threat of injury or interference with the public health or safety or the reasonable use of property.

(6) *Impacts on Wetlands Outside the Area and Inevitable Future Activities*

There is no evidence that the proposed project will have a negative impact on wetlands outside of the project area. The measures that will be taken during construction will prevent erosion and sedimentation that could encroach upon surrounding wetlands. Improvements as a result of the project, such as stabilization of erosive slopes and improved fish passage will offset the impacts to wetlands. The project as designed will not prevent future activities in and around CT Route 219. Those future activities, if designed in a fashion similar to the present plan, could also have an overall minimal impact on the environment.

RECOMMENDATION

The requirements of General Statutes §22a-41(b) have been met by this permit application. The record presented and consideration of all the relevant facts and circumstances pursuant to the six factors outlined in §22a-41(a) demonstrate that there is no feasible and prudent alternative to the proposed project that meets the purpose of the project and that would cause substantially fewer impacts to the natural resources.

The reconstruction of CT Route 219 will result in a safer and better roadway and a more efficient transportation system. The proposed plan strikes an appropriate balance between the obligation of the applicant to improve a road that is presently a risk to human health and safety and the mission of the DEP to protect the environment. The permit that is the subject of this application should be issued.

/s/ Edgar T. Hurle	February 28, 2002
Applicant, Department of Transportation	*Date*
/s/ Cheryl A. Chase	February 28, 2002
CT DEP IWRD Representative	*Date*

DRAFT PERMIT – Draft Date 2/7/02

Permittee: Connecticut Department of Transportation
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131-7546

Attn: Edgar T. Hurle

Permit No: IW-2001-110
Permit Type: Inland Wetlands and Watercourses
Town: New Hartford/Barkhamsted
Project: DOT Project Number 91-108

Pursuant to Connecticut General Statutes Section 22a-39 the Commissioner of Environmental Protection hereby grants a permit to the Connecticut Department of Transportation (the "permittee") to conduct activities within inland wetlands and watercourses in the Town of New Hartford/Barkhamsted in accordance with its application and plans which are part thereof filed with this Department on April 4, 2001 signed by Edgar T. Hurle and dated March 30, 2001, revised June 26, 2001 (the "plans"). The purpose of said activities is the reconstruction of 2.66 miles of Route 219 from the vicinity of Farmington River Turnpike northerly to its intersection with Route 318 (the "site").

AUTHORIZED ACTIVITY

Specifically, the permittee is authorized to alter 0.028 acres of inland wetlands or watercourses for full depth pavement reconstruction and drainage improvements in accordance with said application.

This authorization constitutes the permits and approvals required by Section 22a-39 of the Connecticut General Statutes and is subject to and does not derogate any present or future property rights or other rights or powers of the State of Connecticut, conveys no property rights in real estate or material nor any exclusive privileges, and is further subject to any and all public and private rights and to any federal, state, or local laws or regulations pertinent to the property or activity affected hereby.

PERMITTEE'S FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT SHALL SUBJECT PERMITTEE AND PERMITTEE'S CONTRACTOR(S) TO ENFORCEMENT ACTIONS AND PENALTIES AS PROVIDED BY LAW.

This authorization is subject to the following conditions:

SPECIAL CONDITIONS

1. If any changes are proposed in the water handling plan at the site from that which is shown on the permit plates, the permittee shall submit such changes to the Commissioner for review and written approval. The permittee shall not implement any such plan until an approval is issued.

2. If any changes are proposed in the storm drainage system at the site, including any proposed swales, from that which is shown on the permit plates, the permittee shall submit such changes to the Commissioner for review and written approval. The permittee shall not implement any such plan until an approval is issued.

3. If any changes are proposed in the bank protection from that which is shown on the permit plates, the permittee shall submit such changes to the Commissioner for review and written approval. The permittee shall not implement any such plan until an approval is issued.

4. The permittee shall not refuel, store, or clean equipment within the water supply watershed which is located just north of the site.

5. The permittee shall maintain and keep readily available sanitary receptacles and spill control materials at the site for the duration of the construction project.

GENERAL CONDITIONS

1. **Initiation and Completion of Work.** At least five (5) days prior to starting any construction activity at the site, the permittee shall notify the Commissioner of Environmental Protection (the "Commissioner"), in writing, as to the date activity will start, and no later than five (5) days after completing such activity, notify the Commissioner, in writing, that the activity has been completed.

2. **Expiration of Permit.** If the activities authorized herein are not completed by five years after the date of this permit, said activity shall cease and, if not previously revoked or specifically extended, this permit shall be null and void.

Upon the written request of the permittee and without notice, the Commissioner may extend the expiration date of this permit for a period of up to one year, which period may be extended once for a like period, in order for the permittee to complete activities authorized herein which have been substantially initiated but will not be completed by the expiration date of this permit. Any request to extend the expiration date of this permit shall state with particularity the reasons therefore.

In making his decision to extend the expiration date of this permit, the Commissioner shall consider all relevant facts and circumstances including but not limited to the extent of work completed to date, the permittee's compliance with the terms and conditions of this permit, and any change in environmental conditions or other information since the permit was issued.

Any application to renew or reissue this permit shall be filed in accordance with the Section 22a-39 of the General Statutes and section 22a-3a-5(c) of the regulations of Connecticut State Agencies.

3. **Compliance with Permit.** All work and all activities authorized herein conducted by the permittee at the site shall be consistent with the terms and conditions of this permit. Any regulated activities carried out at the site, including but not limited to, construction of any structure, excavation, fill, obstruction, or encroachment, that are not specifically identified and authorized herein shall constitute a violation of this permit and may result in its modification, suspension, or revocation. In constructing or maintaining the activities authorized herein, the

permittee shall not store, deposit or place equipment or material including without limitation, fill, construction materials, or debris in any wetland or watercourse on or off site unless specifically authorized by this permit. Upon initiation of the activities authorized herein, the permittee thereby accepts and agrees to comply with the terms and conditions of this permit.

4. **Transfer of Permit.** This authorization is not transferable without the written consent of the Commissioner.
5. **Reliance on Application.** In evaluating the permittee's application, the Commissioner has relied on information provided by the permittee. If such information subsequently proves to be false, deceptive, incomplete or inaccurate, this permit may be modified, suspended or revoked.

6. **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 are 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 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 haybales 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) 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 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 times(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;

(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 section 9 of this permit.

For information and technical assistance, contact the Department of Environmental Protection's Inland Water Resources Division at (860)424-3019.

7. **Contractor Liability.** The permittee shall give a copy of this permit to the contractor(s) who will

be carrying out the activities authorized herein prior to the start of construction and shall receive a written receipt for such copy, signed and dated by such contractor(s). The permittee's contractor(s) shall conduct all operations at the site in full compliance with this permit and, to the extent provided by law, may be held liable for any violation of the terms and conditions of this permit.

8. **Monitoring and Reports to the Commissioner.** The permittee shall record all actions taken pursuant to Condition Number 6(e) of this permit 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 Condition Number 9 below. 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.

9. **Certification of Documents.** Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this permit shall be signed by the permittee, a responsible corporate officer of the permittee, a general partner of the permittee, or a duly authorized representative of the permittee and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense in accordance with Section 22a-6 under Section 53a-157b of the Connecticut General Statutes."

10. **Submission of Documents.** The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. Except as otherwise specified in this permit, the word "day" as used in this permit means the calendar day. Any document or action which falls on a Saturday, Sunday, or legal holiday shall be submitted or performed by the next business day thereafter.

    Any document or notice required to be submitted to the Commissioner under this permit shall, unless otherwise specified in writing by the Commissioner, be directed to:

    The Director
    DEP/Inland Water Resources Division
    79 Elm Street, 3rd Floor
    Hartford, Connecticut, 06106-5127

Issued by the Commissioner of Environmental Protection on:

_____

_____

Date Arthur J. Rocque, Jr., Commissioner