MEMORANDUM

FROM : OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO : Linda Bowers, Environmental Planner

DATE : July 20, 1995

RE : Inland Wetlands & Watercourses Agency - Intervention

Based upon my review of all of the Connecticut Superior, Appellate and Supreme Court cases cited in the Land Use Seminar materials regarding intervention under section 22a-19 of the Connecticut General Statutes, as amended, I would note the following.

The filing of a verified complaint, i.e. one under oath, with the Agency containing the assertions required under §22a-19, C.G.S., as amended, i.e. that the activity and/or conduct has or is 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 by ....., grants the party(ies) standing as of right in the application pending before the administrative agency to address only matters of environmental concern that impact only on the inland wetlands and watercourses within the jurisdiction of the Agency. Therefore, the Agency must determine if the Complaint filed has been made under oath; if the proper assertions have been made as required by §22a-19, C.G.S., as amended; and if the environmental concerns raised by the intervenors are within the jurisdiction of the Agency. The Agency has no discretionary authority to reject an intervention if the party(ies) have met the statutory requirements, i.e. compliance with the language of §22a-19, C.G.S., as amended. The intervenors have standing as of right in the application and, therefore, should be treated as would an applicant with respect to due process and notice. However, the intervenors may only raise environmental issues, within the jurisdiction of the Agency, regarding the proposed conduct and/or activity set forth in the application.

The Agency will need to determine if in fact the environmental issue(s) raised by the intervenor(s) affects the air, water or other natural resources of the State and whether the issue(s) are matters over which the Agency has jurisdiction. Various cases cited in the Land Use Seminar materials have decided what is and is not a natural resource of the State. For example, in the case

of trees and wildlife, the Court has held that where there was no evidence presented by the intervenors that there were any endangered or rare trees and wildlife, there is no evidence to find that the trees and wildlife are natural resources of the State.

The Connecticut Courts have held that the intervenor(s) must make a prima facie showing that the conduct of the applicant, acting alone or in combination with others, has or is reasonably likely to pollute, impair or destroy the public trust in the air, water or other natural resources of the State within the jurisdiction of the Agency. Once the prima facie case has been established by the intervenors, the burden of production shifts to the applicant to rebut that showing by the intervenors with evidence to the contrary. Unless the Agency finds that the proposal and/or conduct of the applicant will cause unreasonable pollution, impairment or destruction of the wetlands and watercourses on the site, the Agency is not required to consider feasible and prudent alternatives under Section 22a-19(b), C.G.S., as amended. The case law has held that prudent alternatives are those which are economically reasonable in light of the specific benefits to be derived from the proposal and/or conduct of the applicant. Case law has held that not all pollution is unreasonable and that the question of its reasonableness is one of fact.

Thank you.

Trina A. Solecki
City Attorney

TAS/dw

cc: Mayor Thomas J. Serra