



PO Box 7114
Wilton, CT 06897
norwalkriver.org

To: Eric McPhee, DPH – Drinking Water Section

Date: September 23, 2022

Re: Public Scoping Meeting, Norwalk First Taxing District - Grupes Dam Rehabilitation

I am submitting these comments on behalf of the Norwalk River Watershed Association (NRWA) which represents over 2000 participants working together to protect water quality and fish and wildlife habitat in six CT towns--Norwalk, Wilton, Ridgefield, Redding, Weston, New Canaan—as well as Lewisboro, NY.

It is the position of the NRWA that an Environmental Impact Evaluation of the Grupes Dam Restoration project is necessary as part of the Department of Public Health scoping under the CT Environmental Policy Act. NRWA urges consideration of the following three points not addressed by DEEP Dam Safety in the permitting process.

1. The project as proposed requires the removal of riparian buffer vegetation and the erection of walls and earthen berms contiguously along 1500 feet of the east side of the reservoir. The effects of the loss of roughly 400 trees and scores of native shrubs were not considered during the Dam Safety permitting process, as was testified to by the First Taxing District attorneys and DEEP staff during adjudication. (See image 1 below)

2. The effects the proposed wall will potentially have on wetlands on the adjacent Land Trust property were also not considered during the permitting process, according to testimony from DEEP. DEEP staff member Danielle Missel testified that only wetlands within the building envelope were considered. The entire building envelope is on the First Taxing District property. (See image 2)

The adjacent land trust wetlands, fed by a 50-acre watershed, flow into the reservoir through two intermittent streams that cross First Taxing District property and will be walled off and diverted from the reservoir in the proposed plans. The effects of this diversion were not considered during permitting, first, because the wetlands were omitted from the permitting drawings of 2017 and then because they were added back in 2020 in a truncated form, without the intermittent streams. To illustrate how the wetlands mapping changed, see images 3-8 below.

There was a site visit in the fall of 2020 during adjudication which was during a drought, and water was not flowing out of the wetlands. When it rained again later, we submitted a video of the wetlands, but it was not allowed in as evidence because it was too late. Watch the video [here](#).

[New Canaan, Norwalk, Redding, Ridgefield, Weston, Wilton, Lewisboro NY](#)

See images 9-10, images of the wetlands after rain showing the areas that were removed from the survey and that are plainly wetlands/streams.

3. It is NRWA's position that there are viable alternatives to this project which would repair the dam to safety and would be less damaging to the wetlands and the riparian buffer along the reservoir and that were not considered during the planning or permitting process. During adjudication, engineer Laura Wildman, then of Princeton Hydro and now at Save the Sound, and wetland scientist, William Kenny, of William Kenny Associates, presented ideas for alternatives, three of which are illustrated in Figures 2,3 and 4 below.

We feel that a complete evaluation of the potential environmental effects of the project as proposed is needed, and that the results then need to be weighed against those of possible alternatives.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Louise Washer", is written over a light blue rectangular background.

Louise Washer, President
Norwalk River Watershed Association

Image 1. The project as proposed requires the removal of riparian buffer vegetation and the erection of walls and berms along 1500 feet of the east side of the reservoir.

The effects of the loss of roughly 400 trees and scores of native shrubs were not considered during the permitting process, as was testified to by the First Taxing District and DEEP.

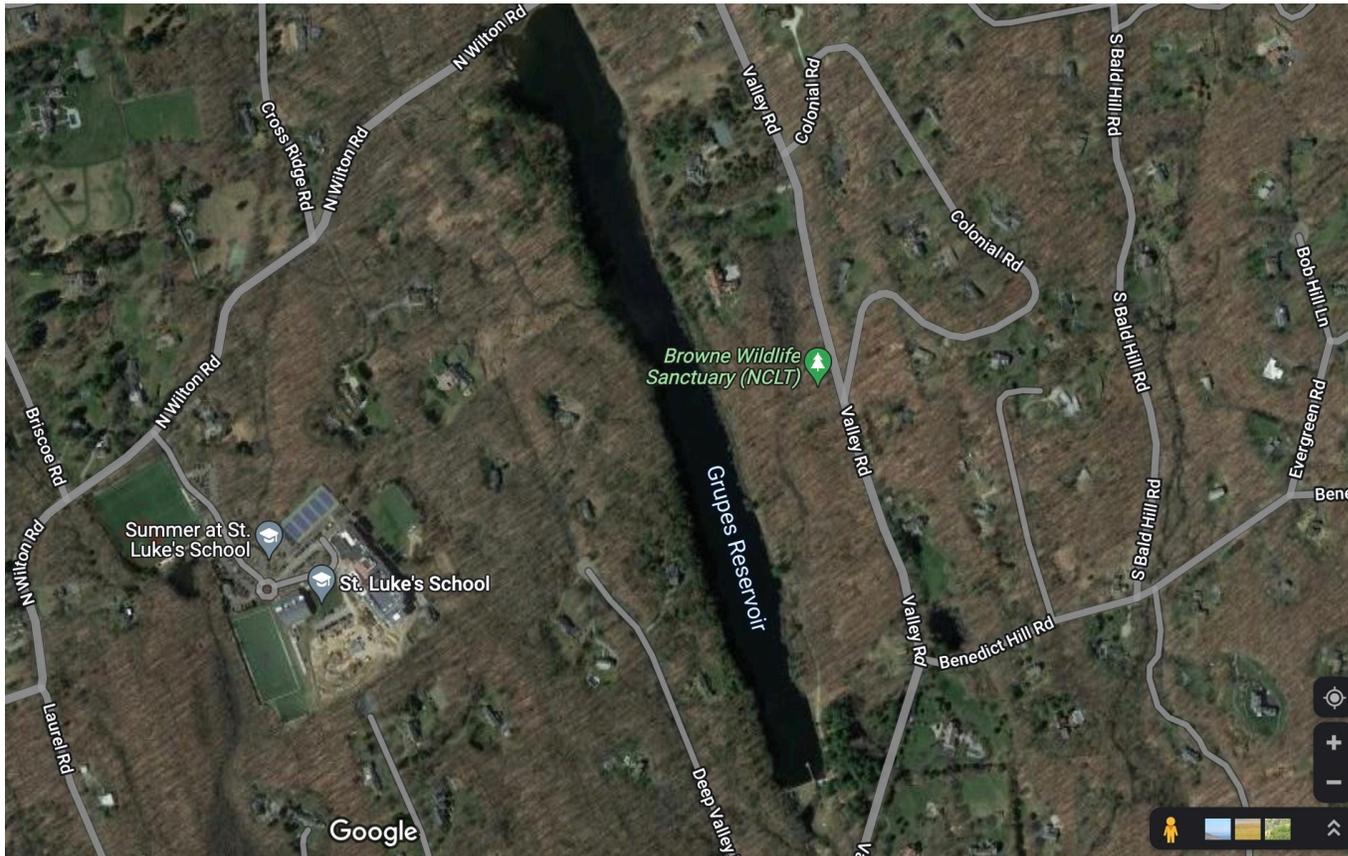


Image 2

Intermittent streams that drain wetlands to reservoir in blue circle

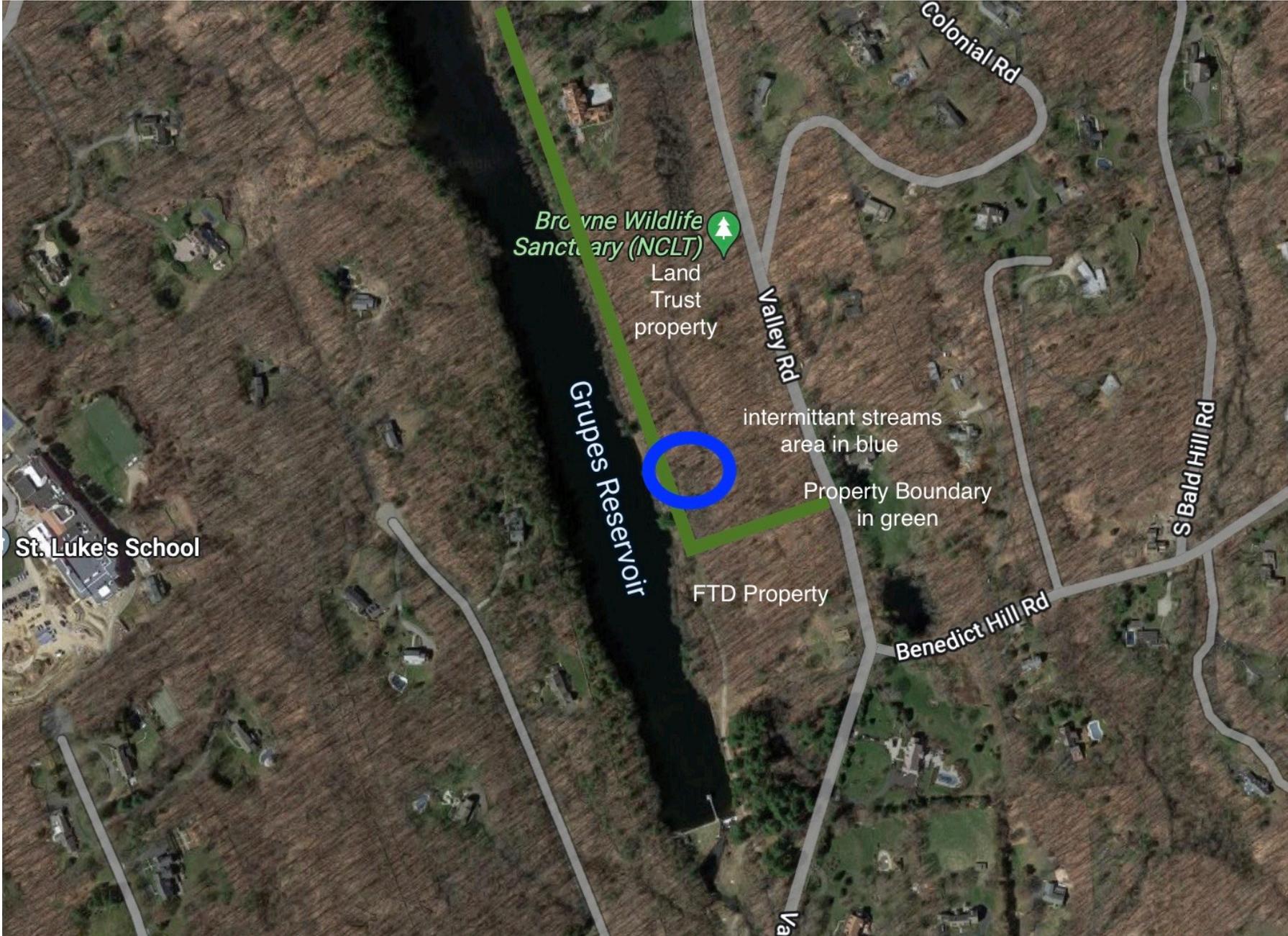


Image 3

Survey Map on File with the Town of New Canaan Shows the Land Trust Wetlands Draining to Grupes Reservoir Through Two Streams

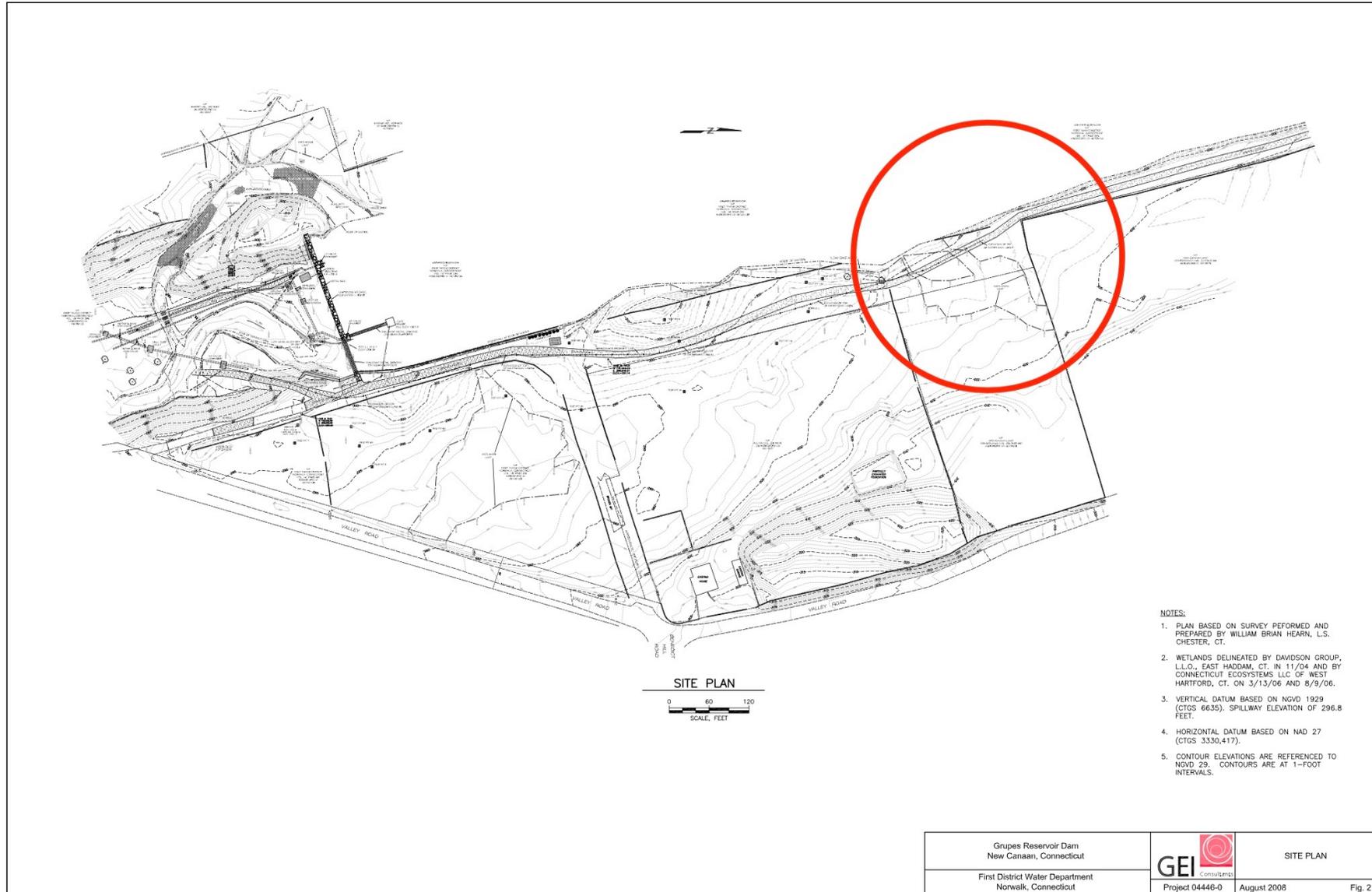
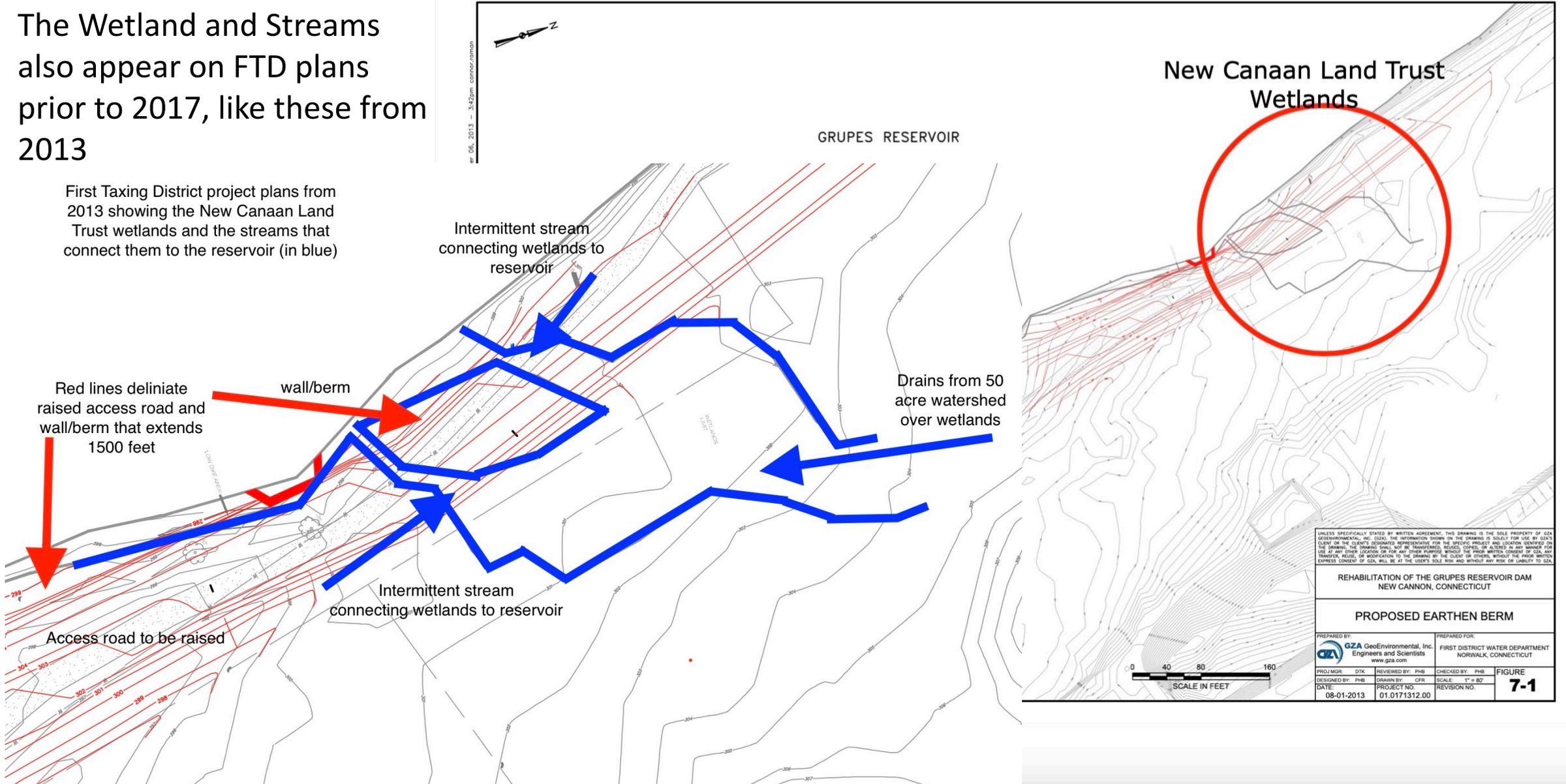


Image 4

The Wetland and Streams also appear on FTD plans prior to 2017, like these from 2013

First Taxing District project plans from 2013 showing the New Canaan Land Trust wetlands and the streams that connect them to the reservoir (in blue)





New Canaan
Land Trust

Topo Map (2' elev. marks) Browne Preserve



0 80 160 320 480 640
Feet

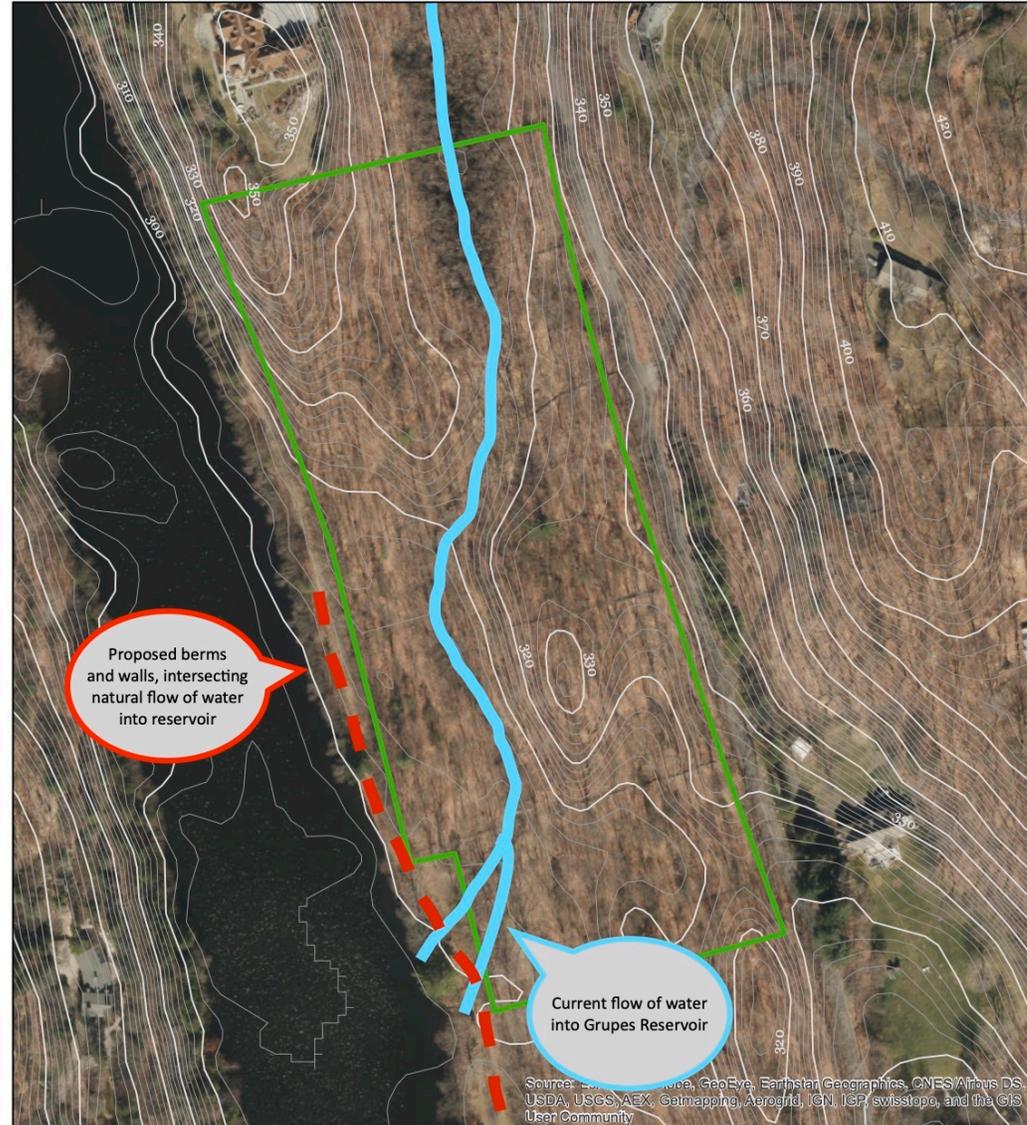


Image 6

Land Trust Wetlands Not Shown on Permitting Plans, 2017, Though Other Wetlands Are Shown

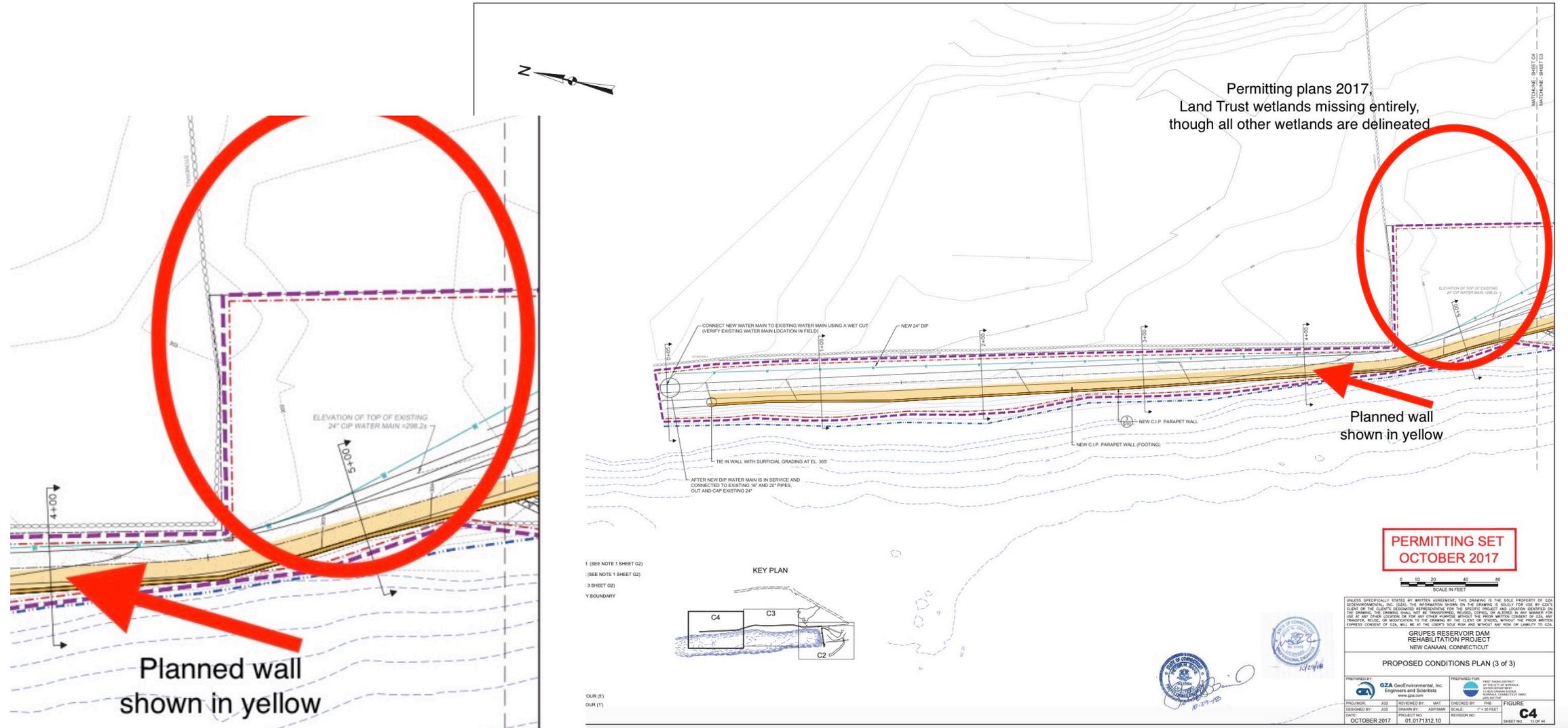


Image 7

Wetlands redrawn by FTD in 2020 during adjudication, omitting streams and showing only part of existing channel

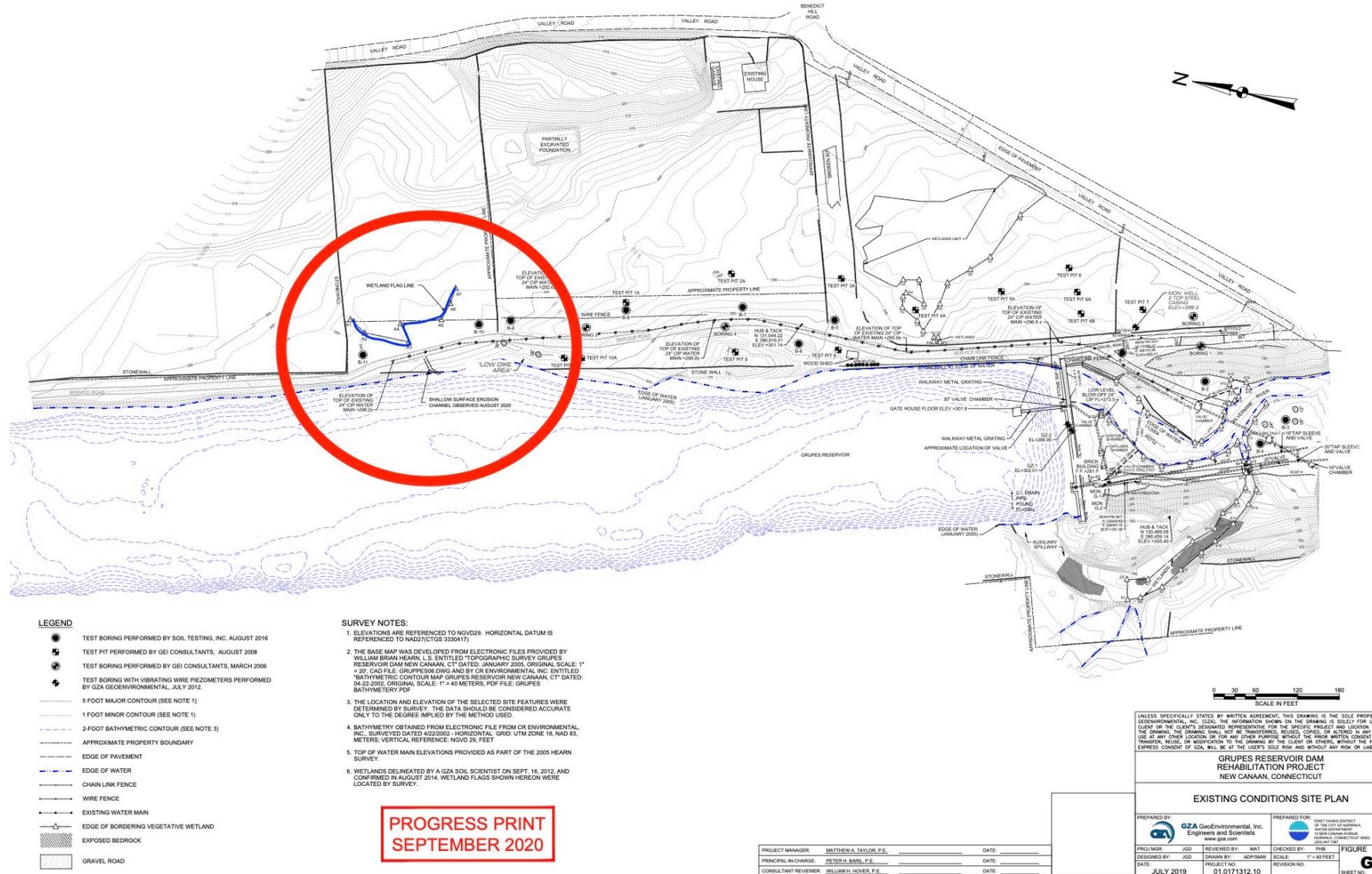


Image 8

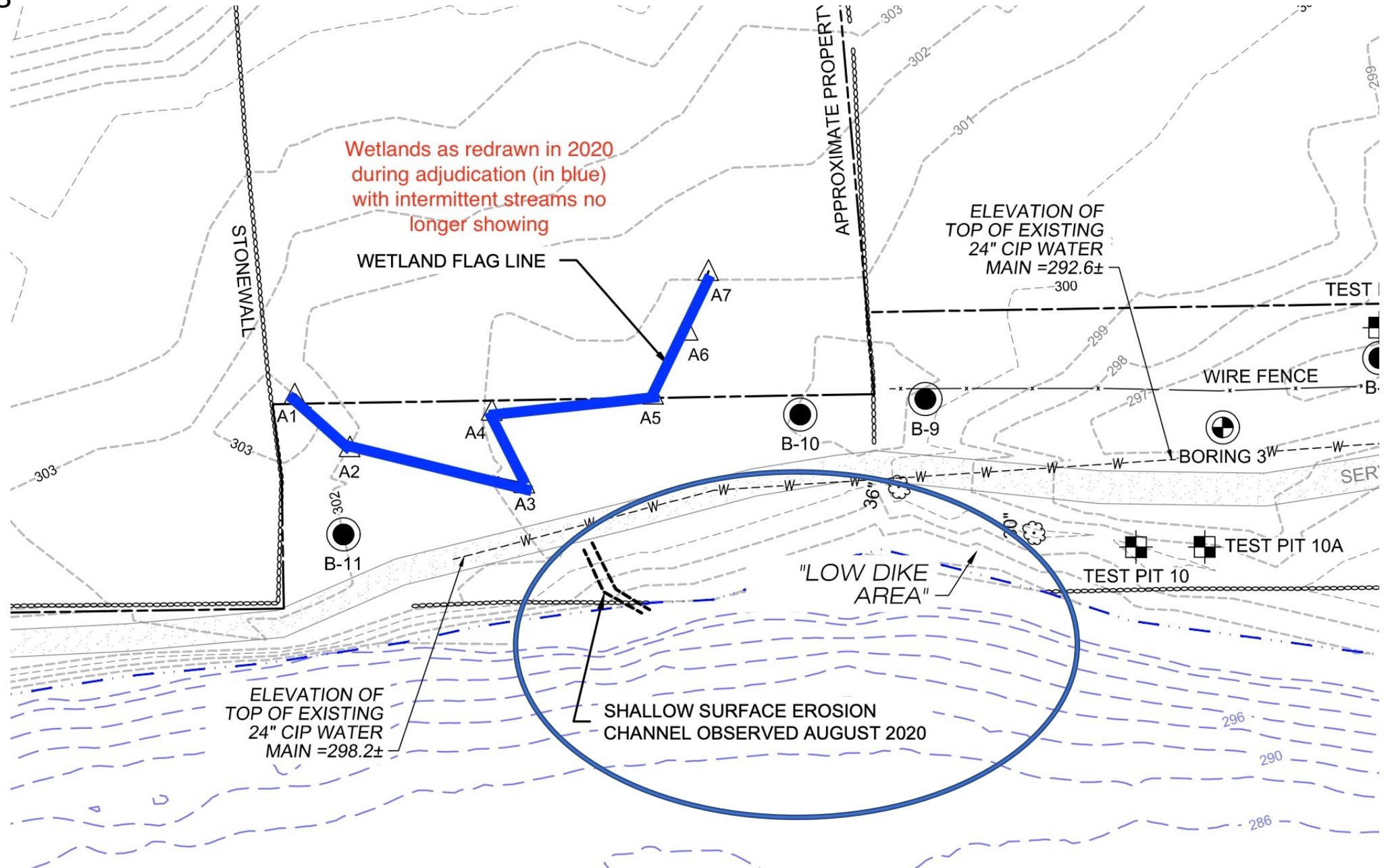


Image 9: Northern-most of the two Intermittent Streams Draining Browne Sanctuary Wetlands to Grupes Reservoir



Image 10: Southern-most of the two Intermittent Streams Draining Browne Sanctuary Wetlands to Grupes Reservoir

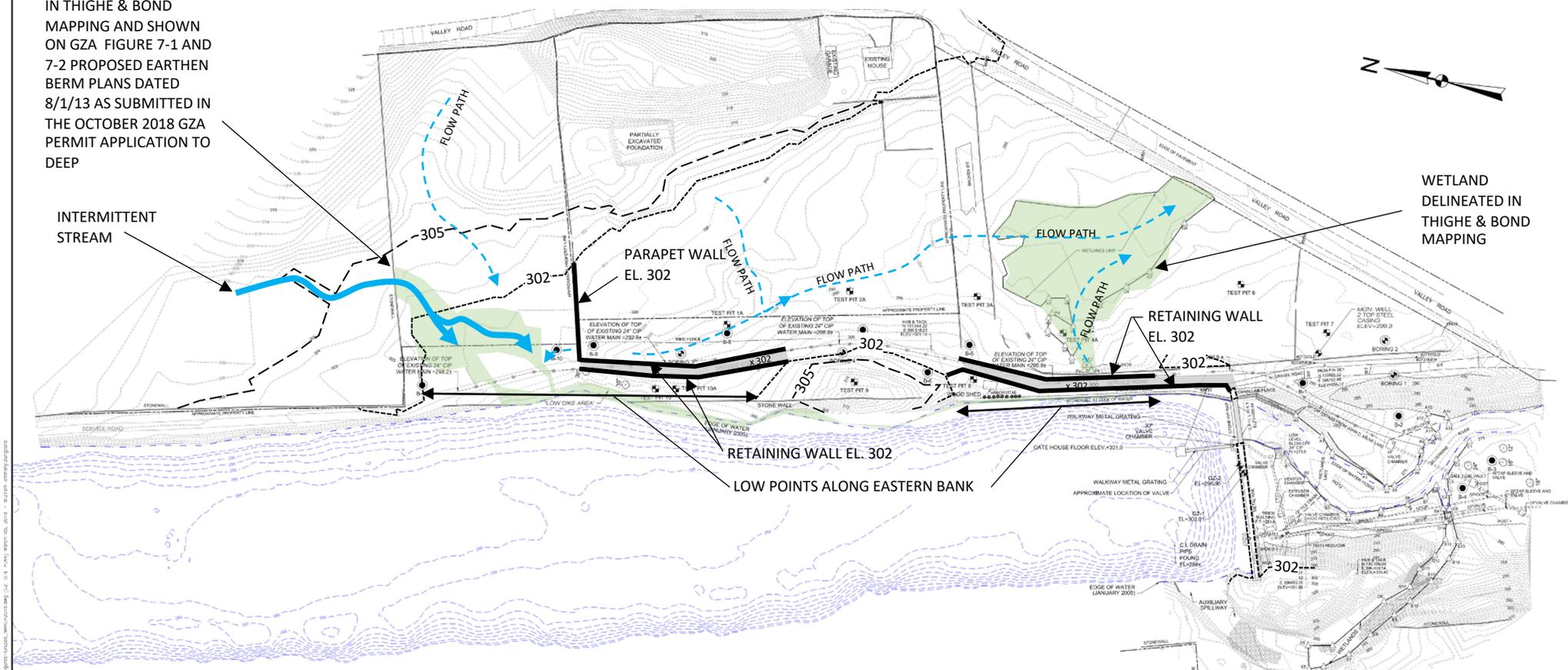


**FIGURE 2: POTENTIAL ALTERNATIVE TO RAISE EASTERN BANK/ACCESS ROAD TO EL. 302, WITHOUT IMPACTING WETLAND
COULD BE TEAMED WITH ALTERNATIVES THAT DO NOT REQUIRE DAM RAISING**

WETLAND DELINEATED IN THIGHE & BOND MAPPING AND SHOWN ON GZA FIGURE 7-1 AND 7-2 PROPOSED EARTHEN BERM PLANS DATED 8/1/13 AS SUBMITTED IN THE OCTOBER 2018 GZA PERMIT APPLICATION TO DEEP

WETLAND DELINEATED IN THIGHE & BOND MAPPING

INTERMITTENT STREAM



- LEGEND**
- TEST BORING PERFORMED BY SOIL TESTING, INC. AUGUST 2016
 - ⊕ TEST PIT PERFORMED BY GEI CONSULTANTS, AUGUST 2008
 - ⊕ TEST BORING PERFORMED BY GEI CONSULTANTS, MARCH 2006
 - ⊕ TEST BORING WITH VIBRATING WIRE PIEZOMETERS PERFORMED BY GZA GEOENVIRONMENTAL, JULY 2012
 - 5 FOOT MAJOR CONTOUR (SEE NOTE 1)
 - 1 FOOT MINOR CONTOUR (SEE NOTE 1)
 - 2-FOOT BATHYMETRIC CONTOUR (SEE NOTE 3)
 - APPROXIMATE PROPERTY BOUNDARY
 - EDGE OF PAVEMENT
 - EDGE OF WATER
 - CHAIN LINK FENCE
 - WIRE FENCE
 - EXISTING WATER MAIN
 - EDGE OF BORDERING VEGETATIVE WETLAND
 - EXPOSED BEDROCK
 - GRAVEL ROAD

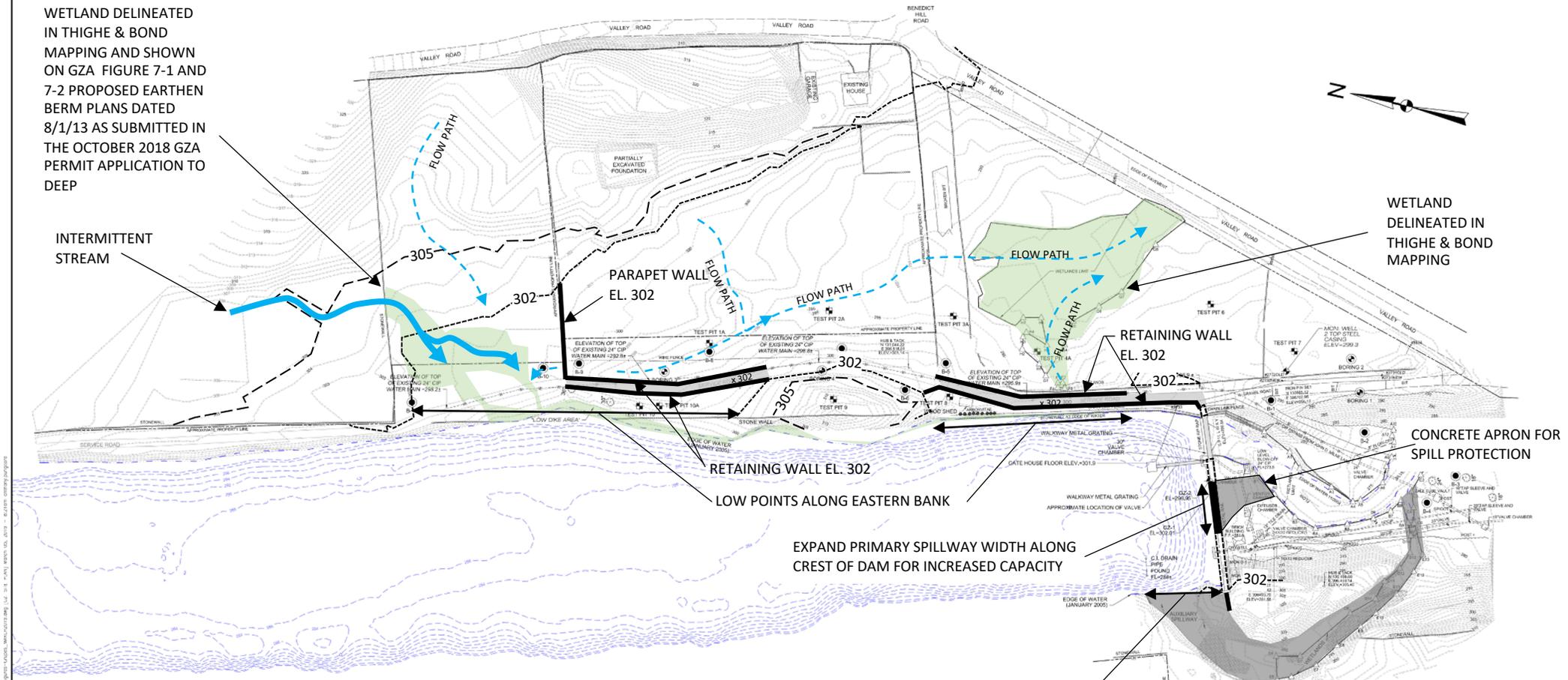
Note: elevation grade lines for elevation 302 and 305 are highlighted to better display how the proposed work would connect to the site's topography.



Alternative Concept by: Laura Wildman, P.E., Princeton Hydro, LLC, 9/16/20

PREPARED BY: GZA GeoEnvironmental, Inc. Engineers and Scientists www.gza.com		PREPARED FOR: FIRST THING DISTRICT OF THE CITY OF NORWALK WATER DEPARTMENT NORWALK, CONNECTICUT 06852	
PROJ. NO.: J00 DESIGNED BY: J00 DATE: MARCH 2019	REVIEWED BY: MAT DRAWN BY: ADP/SMY PROJECT NO.: 01.0171312.10	CHECKED BY: PHB SCALE: 1" = 80 FEET REVISION NO.:	FIGURE G2 SHEET NO.: 8 OF 49

FIGURE 3: POTENTIAL ALTERNATIVE TO MODIFY THE PRINCIPAL AND/OR AUXILIARY SPILLWAY WIDTHS



WETLAND DELINEATED IN THIGHE & BOND MAPPING AND SHOWN ON GZA FIGURE 7-1 AND 7-2 PROPOSED EARTHEN BERM PLANS DATED 8/1/13 AS SUBMITTED IN THE OCTOBER 2018 GZA PERMIT APPLICATION TO DEEP

INTERMITTENT STREAM

WETLAND DELINEATED IN THIGHE & BOND MAPPING

Note: elevation grade lines for elevation 302 and 305 are highlighted to better display how the proposed work would connect to the site's topography.

Alternative Concept by: Laura Wildman, P.E., Princeton Hydro, LLC, 9/16/20

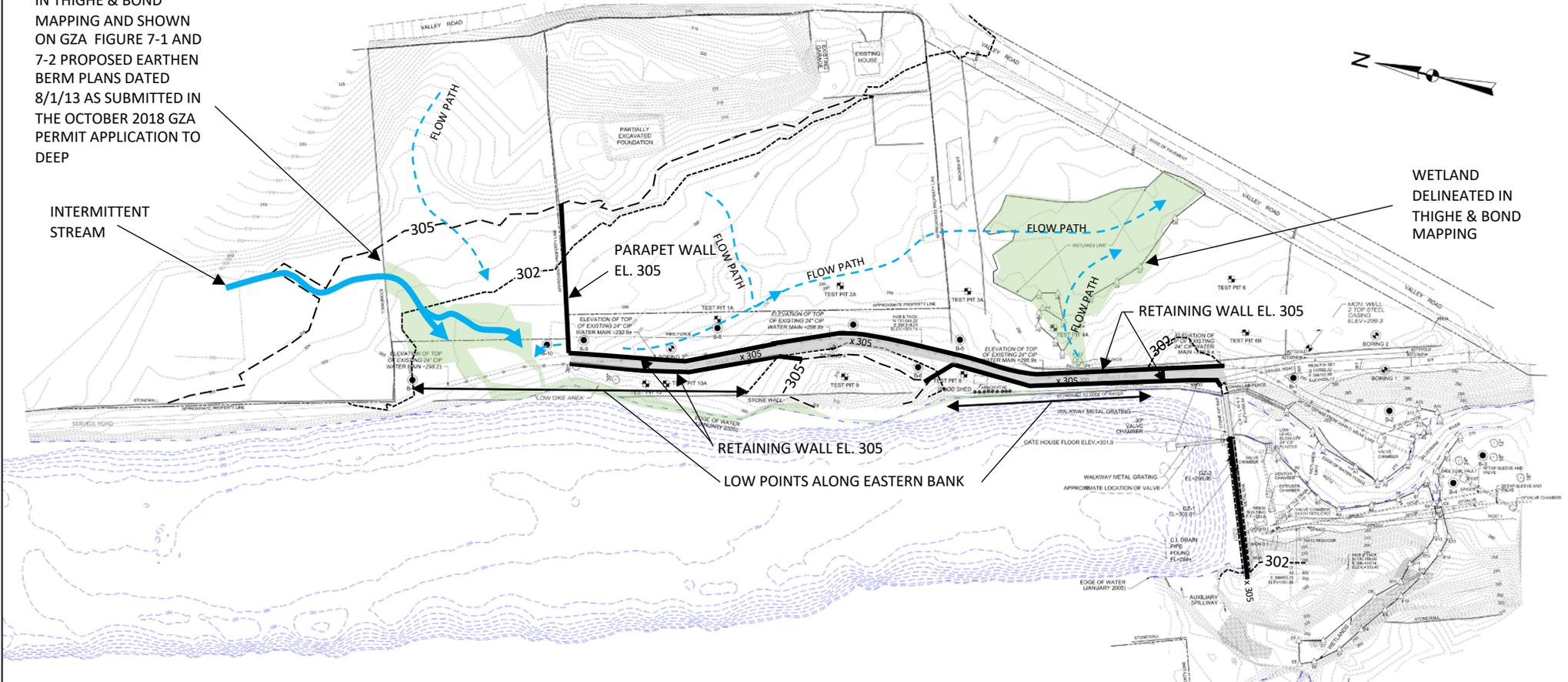
PREPARED BY: GZA GeoEnvironmental, Inc. Engineers and Scientists www.gza.com		PREPARED FOR: FIRST THING DISTRICT OF THE CITY OF NORWALK WATER DEPARTMENT NORWALK, CONNECTICUT 06852	
PROJ. NO.: J03 DATE: MARCH 2019	DESIGNED BY: J03 DRAWN BY: ADP/SMY PRODUCT NO.: 01.0171312.10	REVIEWED BY: MAT CHECKED BY: PHB SCALE: 1" = 80 FEET REVISION NO.:	FIGURE G2 SHEET NO.: 3 OF 49

FIGURE 4: POTENTIAL ALTERNATIVE TO RAISE DAM TO EL. 305 COULD BE MODIFIED TO MINIMIZE IMPACTS TO WETLAND AND THE IMPOUNDMENT VEGETATIVE BUFFER

WETLAND DELINEATED IN THIGHE & BOND MAPPING AND SHOWN ON GZA FIGURE 7-1 AND 7-2 PROPOSED EARTHEN BERM PLANS DATED 8/1/13 AS SUBMITTED IN THE OCTOBER 2018 GZA PERMIT APPLICATION TO DEEP

INTERMITTENT STREAM

WETLAND DELINEATED IN THIGHE & BOND MAPPING



- LEGEND**
- TEST BORING PERFORMED BY SOIL TESTING, INC. AUGUST 2016
 - ⊕ TEST PIT PERFORMED BY GEI CONSULTANTS, AUGUST 2008
 - ⊕ TEST BORING PERFORMED BY GEI CONSULTANTS, MARCH 2006
 - ⊕ TEST BORING WITH VIBRATING WIRE PIEZOMETERS PERFORMED BY GZA GEOENVIRONMENTAL, JULY 2012
 - 5 FOOT MAJOR CONTOUR (SEE NOTE 1)
 - 1 FOOT MINOR CONTOUR (SEE NOTE 1)
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 - APPROXIMATE PROPERTY BOUNDARY
 - EDGE OF PAVEMENT
 - EDGE OF WATER
 - CHAIN LINK FENCE
 - WIRE FENCE
 - EXISTING WATER MAIN
 - EDGE OF BORDERING VEGETATIVE WETLAND
 - EXPOSED BEDROCK
 - GRAVEL ROAD

Note: elevation grade lines for elevation 302 and 305 are highlighted to better display how the proposed work would connect to the site's topography.



Alternative Concept by: Laura Wildman, P.E., Princeton Hydro, LLC, 9/16/20

PREPARED BY: GZA GeoEnvironmental, Inc. Engineers and Scientists www.gza.com		PREPARED FOR: FIRST THING DISTRICT OF THE CITY OF NORWALK WATER DEPARTMENT 1111 CHURCH STREET NORWALK, CONNECTICUT 06852 (203) 847-0200	
PROJ. NO.: J00 DESIGNED BY: J00 DATE: MARCH 2019	REVIEWED BY: MAT DRAWN BY: ADP/SMY PROJECT NO.: 01.0171312.10	CHECKED BY: PHB SCALE: 1" = 60 FEET REVISION NO.:	FIGURE G2 SHEET NO.: 3 OF 49

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TO: Eric McPhee, DPH – Drinking Water Section

DATE: September 22, 2022

RE: Public Scoping Meeting, Norwalk First Taxing District - Grupes Dam Rehabilitation

I represent the Norwalk River Watershed Association (NRWA) in this scoping matter pursuant to the Connecticut Environmental Policy Act/CEPA (“Policy Act”) and I represented the NRWA which was an environmental intervenor pursuant to the Connecticut Environmental Protection Act/CEPA (“Protection Act”) in the dam safety permit application before the Department of Energy and Environmental Protection.ⁱ Because of the self-imposed limitations that DEEP utilized in processing the Taxing District’s dam safety permit application, DEEP’s environmental review is not sufficiently broad to be co-extensive with the DPH’s under the Policy Act.

The Policy Act requires the sponsoring agency to “make a detailed written evaluation of its environmental impact”; C.G.S. § 22a-1b (c); which include “detailed statements” of, among other things, “the environmental consequences of the proposed action, including cumulative, direct and indirect effect which might result during and subsequent to the proposed action.” C. G. S. § 22a-1b (c) (2). “Direct effects” are further defined by regulation: “Direct effects are the primary environmental consequences which would result from the implementation of an action – R.C.S. A § 22a-1a-3 (b).

The dam safety permit process authorizes the commissioner of DEEP to “determine the impact of the construction work on the environment . . .” C. G. S. § 22a-403 (b). On its face DEEP’s statutory duty was as broad as DPH’s is pursuant to the Policy Act. But an examination of the administrative record in the DEEP dam safety permit proceeding on the Taxing District’s application makes manifest the limitations DEEP placed on its environmental review which the Commissioner of DEEP deemed sufficient under the dam safety process but do not satisfy the Policy Act statutory duty.

This position is not based on *my* opinion that the DEEP perspective was limited, it is based on the testimony of DEEP staff and the Taxing District’s representative and environmental consultants which I will detail below.

DEEP employee Danielle Missell testified that she confined her review of the dam

safety application to the impact on wetlands on the Applicant's property. When questioned whether she was directed to confine her review to the impact on the wetlands of the applicant's property, Missell stated: "That's typically what we do." Hearing, 10/9/20, 02:10:15 – 02:10:20, Missell.ⁱⁱ Missell acknowledged that the state wetlands statutes do not limit the review of impacts to the review of wetlands on the applicant's property. Hearing, 10/9/20, 02:12:18, Missell. Thus, DEEP did not consider or evaluate the wetlands impact to the wetlands and watercourses on the abutting property, the nature sanctuary of the New Canaan Land Trust.

The Taxing District's representatives and consultants acknowledged they did not consider the effect on wetlands off of the Taxing District's property. The District's consultant, Riberdy, did not look for off-site impact to wetlands. Hearing, 10/9/20, video 1, 00:30:37, Riberdy.

Beyond wetlands and watercourse impacts on the District's property, the District's consultants provided no environmental assessment. Each of the District's environmental consultants stated that nonwetlands and non-watercourse evaluation were not part of their scope of work. In response to being asked if it was part of their scope of work to review the environmental impact beyond impacts to wetlands and watercourses, GZA consultant Riberdy replied: "No, we did not do that. It was not part of our scope." Hearing, 10/9/20, video 1, 00:42:20, Riberdy.

Only trees to be removed with a diameter greater than 16" were identified on the District's property. Trees with a 16" or 18" diameter are shown on the maps as trees. Anything smaller is designated "underbrush." Hearing, 9/30/20, 1:43:43, DiGangi.

As a result of the omission of trees with a diameter less than 16", there was no evaluation of the impact to the tree community, as acknowledged by the District's consultant. Asked about the impact of tree removal, Riberdy reiterated: "Correct, that isn't something we did." Hearing, 10/9/20, video 1, 00:42:20, Riberdy. This omission extended to DEEP as well. DEEP employee Missell testified that she did not ask the District about the number of trees to be removed. "Typically we just look at areas of trees, not the actual number of trees. And typically if that area is within a regulated wetland or watercourse." Missell considered the impact of tree removal on the site "a bit." She believed that the removal of trees is negligible on the environment. When asked if that meant the riparian buffer, right now, provides no significant benefit to the site, Missell responded: "I suppose you could word it that way." Hearing, 10/9/20, video 1, 02:15:58, Missell.

The District provided no assessment of the impact on wildlife. DEEP employee Missell stated she would not generally do a review of wildlife for the site of the application. Nor did she require the Applicant to undertake a wildlife study. When asked if she normally required that, Missell responded only if there was a listed species. Hearing, 10/9/20, video 1, 02:12:25 – 02:12:30, Missell. However, DEEP's limited review of wildlife impact restricted to a listed endangered species is not a limitation imposed by the Policy Act on a sponsoring agency.

Because only a subset of what can be considered the environment was considered by DEEP, its review is not legally sufficient under the Policy Act, which has no qualifications limiting and excluding aspects of the flora, fauna and off-site wetlands and off-site watercourses.

As a result of the narrower scope chosen by DEEP, DEEP's alternative analysis similarly is insufficient under the Policy Act. The alternatives analysis shall include an evaluation of whether the alternative "minimizes or mitigates environmental impacts," C. G. S. § 22a-1b (c) (5). By necessity all environmental impacts must first be determined. Based on the testimony of the District and DEEP staff, that did not occur. The appropriate alternative analysis must therefore await DPH's determination of environmental impact to comply with the Policy Act provisions.

As enticing as it may at first blush appear, to rely on DEEP's prior "environmental" consideration, the fact remains that impacts to resources remain unassessed on the District's property (non-wetland and watercourse impacts, i.e., plant and animal life) and unassessed off-site (wetlands, watercourse, plant and animal life at the New Canaan Land Trust). Therefore, the Norwalk River Watershed Association urges the DPH as sponsoring agency to undertake the environmental review within its proper scope so that a proper alternative analysis may be undertaken.

Thank you for your consideration of these comments.

ⁱ Because both statutes referred to in this sentence are commonly known within their own spheres as "CEPA" and there is the possibility of confusion, the acronym "CEPA" will not be used in this memo. Instead, Policy Act and Protection Act will be used.

ⁱⁱ DEEP held a public hearing by zoom videoconference. The citations are to the time, hour/minute/second and date of the recordings, which are public documents.

TO: Eric McPhee
CT Department of Public Health, Drinking Water Section
FROM: Margaret Miner, Consultant, Rivers Alliance
DATE: August 5, 2022
**RE: Comments on Notice of Scoping for Norwalk First Taxing District - **
Grupes Dam Rehabilitation

My understanding is that DPH will be holding a public hearing on this application, but since I do not see a public notice, I am submitting these preliminary comments.

This project was also reviewed by the Department of Energy and Environmental Protection (DEEP), which issued a dam-safety permit for the work. The permit was challenged by the Norwalk River Watershed Association and the New Canaan Land Trust as intervenors. Rivers Alliance also opposed the permit as written. After a hearing in 2021, DEEP Adjudications dismissed the claims of the environmental groups and upheld the permit.

I do not question the need to rehabilitate the dam.

First, a procedural matter. The application now managed by DPH is not exactly the same as that which was managed by DEEP. GZA, the engineer for the applicant, The First Taxing District (FTD), reported to the FTD in March of this year that a reason for delay in beginning the project was the need to amend it to reflect current standards and requirements. This was not entirely a surprise, however, we do not know what changes have been made. It does appear from the Notice that the changes to the spillway are somewhat different.

What are the implications of bringing to a CEPA scoping an application that is not exactly the same as that submitted for DEEP permitting? Shouldn't the application that went to a hearing have been up to date on standards?

Assuming we want consistency, I urge DPH to be sure it is working with an accurate site map. The longstanding site map, which showed wetlands and wetlands discharges, was replaced for the 2021 process by a new map. Advocates familiar with the site said the new map was inaccurate. They appeared to have several strong points.

The key provision in both applications is to raise the dam on the Grupes reservoir by 4 feet. The purpose of this has not been clear. The explanation was the need to avoid overtopping, which can cause grave structural damage. The obvious alternative is to let more water down the river when the risk of overtopping is impending. Instead FTD chose an approach that does serious, apparently unnecessary damage to an unspoiled and ecologically sensitive riverbank adjacent to land trust property.

From an environmental perspective, the application was puzzling. However, since the process was managed by DEEP, there was little opportunity to review it from the equally important water-supply perspective. Advocates did ask whether a key reason for raising the dam was to increase the capacity for impoundment of more water in the future if needed. The response was mainly, No.

As a water-supply project, the application is much more understandable. In the Approved Western WUCC [Water Utility Coordinating Committee] Coordinated Plan, FTD stands out as one of a very few utilities facing major difficulties with adequacy of supply. The new town charter for Norwalk gives much attention to FTDs need for water rights and comments on shortages in 2020, with 3 of five wells being out of commission. The WUCC Plan pretty much dismisses the possibility of FTD obtaining more usable water from the wells. It describes the system as fully reliant on reservoirs.

The WUCC Plan states that without more conservation, FTD is likely to come up short when implementing streamflow standards. Even now, adequate available water depends on conservation. DPH has developed a new model for calculating safe yield and available water, which will make the FTD supply appear more ample. Otherwise, there will be a deficit. The WUCC Plan recommends that in order to solve the risk of deficit, FTD should “Work with DPH to adjust methodology for calculation of available water.” When the assessment of adequacy of supply depends on adjusting a definition, that’s not good. Repeatedly, the WUCC Plan states that FTD will come up short without stepped-up conservation measures.

Another approach touched on in the plan would be to increase the volume impounded, but the Plan notes that FTD might have trouble getting a diversion permit from DEEP (p. 75).

In sum, on the basis of the WUCC Plan, the project, which was puzzling when focused on environmental alterations, makes better sense with a DPH focus on adequate water supply. The applicant claims that the raised dam will not impound more water -- or only a small amount in certain circumstances. Nevertheless, the greater height would make it easier in the future to hold back more water. And FTD needs more water,

The WUCC Plan comment on the possible difficulty of getting a diversion permit raises another important question: Why is this project and at least one other with which I am familiar being handled exclusively under the DEEP dam-safety program? DEEP claims that permits issued for dam safety are just as environmentally protective as permits issued under the Water Diversion Policy Act. That is quite evidently not true. Why does the Grupes project not have a diversion permit as well as a safety permit? It appears that the project involves two definite diversions (the higher dam and a stream diversion on the riverbank) as well as a possible additional diversion apparently shown on the original map of the site.

Many of these questions could have been handled more effectively if the public were brought into the process at a much earlier date with a clear description of the details and impacts of the work. Conversations with local people (including a landlord on the adjacent Valley Road area) indicate considerable skepticism regarding the needs for various aspects of the project.

These are all my comments for now. I believe the dam can be made safe without ruining the riverbank. Solving FTD's difficulties with maintaining ample supply may be more complicated.

Thank you for your dedication to safe water,

Margaret Miner

Roxbury CT

Margaret.miner@charter.net

203-788-5161

TO: Eric McPhee
CT Department of Public Health, Drinking Water Section
FROM: Margaret Miner, Consultant, Rivers Alliance
DATE: September 21, 2022
**RE: Comments on Notice of Scoping for Norwalk First Taxing District - **
Grupes Dam Rehabilitation

I submit here a bullet-point summary of my comments from August 5 with clarifications from the discussions during the DPH hearing of September 19.

- Under CEPA (the Policy Act), the Grupes dam project in New Canaan requires a full environmental review of the direct and indirect effects of the work, as explained by Attorney Janet Brooks. Under CEPA, this review would be an Environmental Impact Evaluation (EIE).
- The affected riverside area and the adjacent Browne preserve of the New Canaan Land Trust possess valuable environmental and ecological resources that will be impaired by the work as proposed. (Extensive evidence submitted by the Land Trust, the Norwalk River Watershed Association, and others.)
- A previous review by the Department of Energy and Environmental Protection (DEEP) in connection with issuing a Dam Safety permit was less extensive than CEPA requires and problematic for various reasons, including 1) DEEP did not have an accurate map of wetlands and streams that would be impacted negatively by the work, and therefore, a new, more correct map is needed (extensive evidence presented); 2) DEEP did not have the final construction plan of the project, which was later amended by the applicant to meet current standards and practices (minutes of March 2022 meeting of the First Taxing District).
- A key feature of the project is elevation of the dam by four feet, which would be responsible for increased runoff and proposed management measures that would significantly damage the riverside environment. There are alternatives to this measure that would achieve dam safety without similar riverside damage (testimony of Engineer Laura Wildman and others.)
- The safety of the dam could and should be achieved by a less harmful, fully protective design based on a prudent and feasible alternative.

Thank you for your consideration.

Margaret.Miner@charter.net 203-788-4161