

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **APPLICATION NO.: 1999501270**

HAMBURG COVE YACHT CLUB : **APRIL 2, 2001**

PROPOSED FINAL DECISION

The parties have proposed the attached *Agreed Draft Decision* dated March 12, 2001 as the *Proposed Final Decision* in the above-captioned matter. The *Decision* is consistent with the policies and purposes of the relevant provisions of General Statutes §§22a-90 through 22a-112 (*Coastal Management Act*); General Statutes §§ 26-303 through 26-311 (*Endangered Species Act*) and General Statutes §§ 22a-359 through 22a-363 (*Dredging and Erection of Structures*). By my signature, I adopt this *Decision* and recommend to the Commissioner approval of the draft permit (Attachment I).

April 2, 2001
Date

/s/ Elaine R. Tata
Elaine R. Tata, Hearing Officer

APPENDIX A

AGREED DRAFT DECISION

HAMBURG COVE YACHT CLUB
COASTAL PERMIT APPLICATION #199501270-KZ

INSTALLATION OF A FLOATING DOCK EXTENSION
TOWN OF LYME

MARCH 12, 2001

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1. Introduction: In March of 1993, the Hamburg Cove Yacht Club (HCYC) submitted an application to undertake regulated activities in tidal, coastal and navigable waters of the State waterward of the high tide line for the installation of a new floating dock configuration and dredging in Hamburg Cove, in the Town of Lyme. This application seeks a permit to undertake said regulated activities under the provisions of the Structures, Dredging and Fill Statutes of the Connecticut General Statutes (General Statutes) section 22a-359 through 363f, in accordance with the Connecticut Coastal Management Statutes, sections 22a-90 through 22a-112 of the General Statutes, and Endangered Species Act sections 26-303 through 26-311 of the General Statutes.
 2. Parties: The parties to the proceeding are: the Applicant, HCYC (Applicant), and staff from the Office of Long Island Sound Programs (OLISP) of the Department of Environmental Protection (DEP)(Staff).

The parties have agreed to the admission of all the exhibits listed on the attached exhibit list comprising applicants exhibits APP-1 through APP-7 and staff exhibits DEP-1 through DEP-19.

FINDING OF FACTS

Background:

1. Brief time line:
 - Permit #SD-83-252 issued in 1984 to the HCYC for installation of a bulkhead along the shoreline of the property (DEP-2).
 - Permit application #199501270-KZ (then known as SD-JG-93-030) submitted on March 16, 1993 for expansion of existing structures and dredging (DEP-3).
 - Permit #CENED-OD-R-17-93-000-684 issued by the U.S. Army Corps of Engineers on June 23, 1994 for expansion of existing structures but not for dredging (DEP-5).
 - 1993 to 2000 continued discussions on appropriate size of structures between DEP and applicant.

- Certificate of Permission #COP-2000-005-KZ (and attached COP Review Summary Sheet) issued on March 21, 2000 for retention of a dock that existed at this site prior to January 1, 1980 and to temporarily expand such dock for one year (DEP-9).
 - On December 1, 2000, tentative determination (and attached Notice Review Summary Sheet) to approve application #199901270-KZ was published (DEP-10).
 - Proposed permit #199501270-KZ and attached Permit Review Summary Sheet (DEP-11).
2. Site Location and Character: The site is located in the upper reaches of Hamburg Cove. Hamburg Cove is a freshwater tidal system that is subject to an approximately 4' tidal cycle. The presence of the tidal influence combined with a freshwater cove system makes this site quite unique, as reflected by the presence of many rare species. Freshwater tidal wetland plants can be found within the intertidal areas of the cove. This habitat provides a pristine area for many shore birds and animals. The HCYC is located within the Waterfront District of Hamburg Cove. This means that for many years this area of the cove has been occupied by commercial uses. Shorefront development is prevalent in this area of the cove. This area of the cove is dominated by waterfront bulkheads and docking structures. Such structures have limited tidal wetland resources.
3. Application History: The initial application (DEP-3) requested a significant expansion of the existing structures which were authorized in a 1984 permit, #SD-83-252. This initial application included the dredging of an area of 16,500 square feet and the installation of 2,190 square feet of new floating docks. The initial response to this application was that such an increase of docking structures would encroach into an adjacent navigational channel. In addition, it was suggested that the proposed new dredging would pose unacceptable adverse impacts to the sensitive resources present in Hamburg Cove (DEP-4). Due to the adverse response received regarding this proposal (DEP-6 and DEP-7), the application was never acted upon. Instead, the HCYC and this Office undertook an extensive discussion of how the proposed project could be downsized to minimize adverse impacts to navigation and the environment. Over many years of discussion, it was concluded that dredging in this area of the cove posed unacceptable adverse impacts to coastal resource contained in this environment. It was further discussed that the length and overall encroachment of the proposed floating docks would require a significant reduction. In permit #SD-83-252, it was discovered that the existing floating dock located adjacent to this property dating back to the 1960's was never authorized. The dock was shown on the submitted drawings but was not called out in the permit's scope of authorization. Given that this may have been an oversight on the Department, it was suggested to the HCYC to submit a Certificate of Permission (COP) to retain the dock shown in the 1984 permit (DEP-8).

On March 21, 2000, the HCYC received authorization to retain such a dock via COP#2000-005-KZ (DEP-9). However, this dock was considerably smaller than the dock that has been present at this site since the early 1990's. Because the now authorized dock would significantly reduce the club's overall use of the structure from a boating standpoint, the Department authorized the slightly larger structure as a temporary structure for a water dependent use for one year. In the subject permit, HCYC seeks

authorization to install four (4) 8' x 16' floating docks at the end of the existing authorized dock discussed above, and install an 8' x 32' "T" shaped float at the terminus of such structure secured by two piles with batter pile bracing. This proposal has minimized to the greatest extent practicable all adverse impacts to the environment, while still providing reasonable access to waters of the State (DEP-11).

4. Purpose and Use of Proposed Dock: The site has historically contained a dock for recreational use by the HCYC since 1946. The dock will be used to bring members using shallow draft vessels to larger boats tied to moorings located in the outer areas of the cove. Only shallow draft vessels such as dinghies and small sailboats will be tied up to the proposed floating docks. There are approximately 106 members that are currently actively using the HCYC. Most of their boats are berthed in mooring areas outside of the HCYC site. Each member has approximately one boat (DEP-12).
5. Lyme Guidelines (DEP-1): On May 5, 1980, the Commissioner of Environmental Protection issued a "Final Decision [re] Application of the Town of Lyme to Establish Boundaries Pursuant to Section 25-7c of the General Statutes" (hereinafter referred to as the "5/5/80 Decision"). Commissioner Pac's 5/5/80 Decision adopted the "Guidelines for Tidal Areas in Lyme" (hereinafter referred to as the "Lyme Guidelines") pursuant to section 25-7c (now section 22a-360) of the General Statutes. According to the 5-5-80 Decision, the Lyme Guidelines are "criteria for presumptive approval or disapproval" and are factors to be considered along with the generally applicable statutory policies (contained in sections 22a-359 and 22a-90 through 22a-112 of the General Statutes). The 5/5/80 Decision further provided that "If the guidelines are not satisfied in an application for a permit pursuant to Section 25-7d of the Statutes (now section 22a-361), a Public Hearing on the application for a State Permit will be mandatory." (For all the above, see DEP-1).

The proposed dock is located in the Waterfront District of Hamburg Cove which is designated Zone A in the Lyme Guidelines (DEP-1). The proposal is consistent with all specifications of the Lyme Guidelines for Zone A except for two provisions. Provision "a" requires that the combined deck area of the structure not be greater than 400 square feet; here, the combined deck area of the proposed structure is approximately 1,072 square feet. Provision "b" requires that the proposed structure not extend beyond ordinary low water a distance greater than 50'. The current proposed structure extends 112' feet waterward of ordinary low water. This distance is required for the members to obtain reasonable water depths in this area of the cove. The proposed structure is consistent with all other applicable provisions of the Lyme Guidelines as follows: the extreme end of the structure does not extend more than 25% of the distance to the opposite shore and that a channel for passage has not been obstructed; the structure does not intrude into the area within 10' of the adjacent property lines; only one extension is located beyond the high water line of a dock, float, or dock and float combination; and there is no structure proposed over wetlands, therefore, the requirement that the structure must be open pile supported and shall not be wider than four feet does not apply.

6. Compliance and Enforcement History: In 1984 permit #SD-H-83-252 was issued to the HCYC to install wooden bulkheads along the shoreline of the property. The permit application plans also requested the authorization of a small dock located off the proposed bulkhead. However, this small dock was never specifically called out in the permit. In 1993 the HCYC submitted a permit application to further modify the yacht club. This modification contained a significant dock expansion and dredging. At that time it was discovered that the dock located at the HCYC site had been expanded without further authorizations. However, no formal enforcement action proceeded against the club. After many years of negotiations regarding the current application no requirements had been made to remove the modified dock. On March 21, 2000 certificate of permission (COP) #2000-005-KZ was issued to retain the smaller dock that was shown on the plans submitted under permit #SD-H-83-252 and to allow the temporary placement of the larger modified dock for one year. At this time, per the new COP, the HCYC is in compliance with this Office (DEP-9).
7. Tidal Wetlands: On April 22, 2000, staff conducted a site visit to determine if any tidal wetlands were located within the project location. The inspection revealed that no tidal wetlands were located within the area of the proposed work. The proposed floating docks are located off an existing bulkhead and due to tidal elevation is not conducive to the growth of tidal wetlands. However, tidal wetland vegetation has been identified adjacent to the southern property line on Town of Lyme property. It is not anticipated that the proposed floating dock expansion will pose any adverse environmental impacts to such vegetation. Accordingly, the application was noticed as a Structures, Dredging and Fill proposal under section 22a-361 of the General Statutes (DEP-10).
8. Submerged Aquatic Vegetation (SAV): SAV's are known to exist in abundant amounts in upper Hamburg Cove. Several types of SAV's have been identified in the vicinity of the proposed location of the dock including Eurasian Watermilfoil *Myriophyllum spicatum*, Common Waterweed *Elodea canadensis*, Tapegrass *Vallisneria spiralis* and Coontail *Ceratophyllum demersum*. SAV's are so pronounced in this area of the cove that they have flourished around and under the existing floating docks, based on inspections. Due to such dense populations, it is anticipated that SAV will remain and colonize under new floating docks placed in this area. Prop-dredging is not a concern at this site due to the dense presence of the vegetation; in some circumstances, prop-dredging actually may spread SAV. The proposed floating docks are located waterward of mean low water, meaning that except for extreme low tides the floating docks will be off the cove bottom. In addition, shallow draft vessels will also be off the cove bottom reducing benthic disturbance. The vast presence of SAV will also aid in the reduction of turbidity because they will hold benthic sediments in place during potential disturbance. Based on the current condition of the vegetation and that the proposed floating dock extension is not anticipated to modify the use of the facility, it is anticipated that no additional adverse impacts will result from the proposed project (DEP-12, DEP-15, and DEP-16).
9. Connecticut Endangered, Threatened and Special Concern Species: A review of all Endangered, Threatened, and Species of Special Concern was conducted for the

surrounding area where the dock is proposed. This review was conducted by Ken Metzler of the DEP-NRC Natural Diversity Data Base. Mr. Metzler identified that populations of Parker's pipewort *Eriocaulon parkeri*, a Connecticut Threatened Species, occurs in the vicinity of the project site. On April 22, 2000, Mr. Metzler and staff of OLISP inspected the property for the presence of the Parker's pipewort. The inspection revealed that some of the plants were present at the Town of Lyme boat launching ramp directly south of the facility. In addition to Parker's pipewort, a Special Concern species *Limosella subulata* (Mudwort) was located mixed within the colonies of Parker's pipewort. Since the species are located quite a distance away from the proposed activity, Ken Metzler of the DEP-NRC Natural Diversity Data Base has stated that the proposed project should pose no adverse impacts to the plants. The proposed project should also pose no adverse impacts to bald eagles or shortnose sturgeon (DEP-17).

10. Freshwater Intertidal Flats: The location of the proposed floating dock is in an area that is waterward of mean low water (MLW). In most tidal circumstances the existing and proposed floating docks are not resting on the cove surface. Corner posts or float stoppers have not been recommended due to this infrequency. The infrequent grounding of the floating docks is not considered an adverse impact. Due to cove bottom being covered with SAV it does not constitute an intertidal flat under the statutory criteria. In addition, all floating dock structures will be removed no later than November 15 of any calendar year and shall not be reinstalled before April 15 of any calendar year. (see item 8, above).
11. Finfish: A review of the proposed projects impacts on fisheries habitat was conducted in reviewing the application. SAV provide a variety of important ecological functions for fisheries resources including providing cover and feeding opportunities. It has been determined that the proposed dock expansion will pose no additional adverse impacts to SAV. For this same reason it is anticipated that the proposed project will pose no additional adverse environmental impacts to fisheries resources in Hamburg Cove (DEP-15).
12. Navigation Impacts: The terminus of the proposed floating docks are located approximately 80 linear feet landward of a federally designated channel. It is anticipated that no navigation conflicts will result from the additional floating docks in this area (DEP-3).
13. Public Concerns: A public notice of tentative determination was published on December 1, 2000. During the comment period which extended until January 1, 2001 no comments from the general public were obtained in writing or by telephone. One comment letter was received from the Lyme Conservation Inland Wetland Commission. The letter did not oppose the application but requested that the Department proceed carefully considering the sensitive resources at this site. A comment letter was also received by the Historical Commission indicating that the "proposed undertaking will have no effect" on Historical resources (DEP-10, DEP-16 and DEP-14).

14. National Marine Fisheries Services (NMFS): During the application process the NMFS Army Corps of Engineers (ACOE) were contacted to get their inputs on the proposed project. NMFS and ACOE agreed with the Department that a removable floating dock would be the least environmentally intrusive structure. The NMFS advises the ACOE on all their permitting activities related to fisheries concerns.

Project Description:

The Applicant is seeking authorization to remove an existing 8' x 16' "T" shaped floating dock located at the terminus of the existing authorized floating dock pursuant to COP #2000-005-KZ (DEP-9) and install four (4) 8' x 16' floating docks at the end of the existing dock and one 8' x 32' "T" shaped float at the terminus of such structure secured by two piles with batter pile bracing (DEP-11). The existing footprint of floating dock structures will be increased from 432 square feet to 1,072 square feet a net increase of 768 square feet. This additional encroachment is to provide the club with additional berthing space to accommodate shallow drafting boats. These boats are used to bring passengers to moorings located in deeper water (DEP-12). The deeper water that will be obtained with additional structures will be used for unloading and loading of larger vessels at the floating "T" shaped head. In addition, the "T" shaped head will be used to service the club's sailing program. Due to tidal flushing constraints in Hamburg Cove, it is widely known that the cove is quickly silting in. As small boats and dinghies sit on the cove bottom when filled with passengers at lower tides, the additional water achieved by the proposed structural modification will allow for improved "dinghy" usage and fewer shoaling impacts.

Environmental Impacts:

1. Impacts: Environmental impacts associated with the proposed floating dock extension have been minimized to the greatest extent practicable. The proposed dock has been greatly minimized in its overall size and dredging activities have been completely eliminated from this application. The users of this facility understand that boating usage at this club will be extremely limited due to water depths and sensitive coastal resources. The expansion of the floating docks are not anticipated to adversely impact any state listed endangered, threatened or special concern species. In addition, the expansion is not expected to cause any additional adverse impacts to SAV.

Alternatives: Several project alternatives were considered by the applicant:

1. Dock Relocation: The dock is located in a position which will have the least adverse environmental impact. SAV are located throughout this area of the cove. There is no identifiable location for the dock where SAV is less dense. In addition, the water frontage of the site is only 100 linear feet.
2. Fixed Pier Dock Construction: It has been discussed in great detail whether the existing floating docks located at this site should be converted to a fixed pier structure with a ramp to a parallel floating dock system. It is true that a fixed pier structure would most likely cause reduced adverse impacts to SAV and the benthic areas of the cove. The elevated structure would

reduce shading and the floating dock system could be located in deeper water minimizing boating disturbance from the bottom of the boats and prop-dredging. However, a fixed pier structure would be a permanent encroachment into the cove. It would require large equipment to be mobilized to install many wooden piles. These piles would likely need to be replaced often due to extensive icing in the cove. In addition, the members of the club would not be able to use the sides of the fixed pier because there would be no way to get down to the small boats at lower tides. This would require all boats to be berthed at the floating dock. The loss of all the berthing space adjacent to both sides of the fixed pier would require a significantly larger floating dock to provide berthing for the small boats. This would then include a large fixed pier with an equally large float dramatically increasing the size of the total structure and creating a permanent encroachment. Balancing all these concerns, a floating dock system appears to be the least intrusive and most environmentally friendly alternative to this pristine environment.

3. No Dock: Because the proposed dock structure would not have significant adverse environmental impacts, the “no build” alternative would not result in significantly less adverse environmental impacts than the proposed activity (DEP-10 and DEP-11).

CONCLUSIONS

1. Environmental Impact of the Proposed Action: The proposed project would provide the applicant with reasonable recreational boating access. The adverse impacts of the project have been minimized to the maximum extent possible. No adverse comments have been received as a result of the notice of tentative determination to approve the application (DEP-10). The proposed project is therefore consistent with the following policies regarding coastal resources and Endangered, Threatened, and Special Concern Species:

- a. section 22a-92(a)(1) of the General Statutes, which requires that the development, preservation or use of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water resources to support development, preservation or use without significantly disrupting either the natural environment or sound economic growth;
- b. section 22a-92(a)(4) of the General Statutes which requires the Department to resolve conflicts between competing uses on the shorelands adjacent to marine and tidal waters by giving preference to uses that minimize adverse impacts on natural coastal resources while providing long term and stable economic benefits;
- c. section 22a-92(b)(1)(D) of the General Statutes which requires that structures in tidal wetlands and coastal waters be designed, constructed and maintained to minimize adverse impacts to coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners;
- d. section 22a-92(b)(1)(G) of the General Statutes which encourages increased recreational boating use of coastal waters, where feasible, by (i) providing additional berthing space

- in existing harbors, (ii) limiting non-water-dependent land uses that preclude boating support facilities, (iii) increasing state-owned launching facilities, and (iv) providing for new boating facilities in natural harbors, new protected water areas and in areas dredged from dry land;
- e. section 22a-92(b)(1)(H) to protect coastal resources by requiring, where feasible, that such boating uses and facilities (i) minimize disruption or degradation of natural coastal resources, (ii) utilize existing altered, developed or redeveloped areas, (iii) are located to assure optimal distribution of state owned facilities to the state wide boating public, and (iv) utilize ramps and dry storage rather than slips in environmentally sensitive areas;
 - f. section 26-310(a) of the General Statutes, which requires that each state agency, in consultation with the commissioner, shall conserve endangered and threatened species and their essential habitats, and shall ensure that any action authorized, funded or performed by such agency does not threaten the continued existence of the endangered or threatened species or result in the destruction or adverse modification of habitat designation as essential to such species, unless such agency has been granted an exemption;
 - g. section 22a-92(c)(1)(K) of the General Statutes which requires that new coastal structures not unreasonably impair access to or along the public beach; and
 - h. section 22a-92(b)(2)(D) of the General Statutes, which requires the management of intertidal flats so as to preserve their value as a nutrient source and reservoir, a healthy shellfish habitat and a valuable feeding area for invertebrates, fish and shorebirds.
2. Consistent with All Applicable Standards: The proposal is consistent with all applicable standards, goals and policies of section 22a-359 of the General Statutes which requires the Department to make permit decisions with due regard for indigenous aquatic life, fish and wildlife, the use and development of adjoining uplands, and the recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned.
 3. Alternatives to the Proposed Action: There is no feasible or prudent alternative which would provide the applicant reasonable riparian access which would have less impact on the adjacent coastal resources.

AGREEMENT

Based on the foregoing, the undersigned hereby agree to the granting of a permit subject to the standard and special conditions stated in Exhibit DEP-11, Draft Permit, attached hereto.

By:/s/ Richard Kyle
Hamburg Cove Yacht Club
APPLICANT

By:/s/ Charles H. Evans
Charles H. Evans, Director
Office of Long Island Sound Programs