

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **APPLICATION NO. 200102489**

DEAN ALLEN : **JULY 20, 2004**

PROPOSED FINAL DECISION

I
SUMMARY

The applicant, Dean Allen, has filed an application with the Department of Environmental Protection (DEP) Office of Long Island Sound Programs (OLISP) seeking a permit to conduct certain regulated activities in connection with the construction of a pier, ramp and floating dock in Greenwich Cove in Greenwich. The application has been filed pursuant to General Statutes §§22a-28 through 22a-35 and 22a-359 through 22a-363f and in accordance with the Connecticut Coastal Management Act. General Statutes §§22a-90 through 22a-112. The applicant and OLISP have submitted an agreed draft decision for my review and consideration.¹ OLISP has also prepared a draft permit authorizing the project.

Public comments were received during a June 2, 2004 hearing on this application at the Greenwich Town Hall. Sworn written comments were also submitted after the hearing. I have reviewed these comments and all exhibits submitted by speakers. I have considered all relevant comments and exhibits in my review of the Agreed Draft Decision. Some of the comments received concern issues that, while related to the Cove,

¹ The DEP Rules of Practice provide that the parties may submit an agreed draft decision, which sets out the terms of agreement between them. A hearing officer may thereafter adopt that agreed decision as her proposed final decision. Regs., Conn. State Agencies §22a-3a-6(1)(3)(A).

are not within the scope of the responsibility of the DEP in its consideration of the proposed regulated activities and therefore cannot be considered by me in rendering this decision.

The Agreed Draft Decision sets forth findings that support the conclusion that the proposed regulated activity, if conducted in accordance with the terms and conditions of the revised draft permit², would comply with all relevant statutes and regulations and would be “consistent with all applicable goals and policies” of the Coastal Management Act. This includes the fact that the activity would incorporate “all reasonable measures mitigating any adverse impacts of such actions on coastal resources.” General Statutes §22a-98.

The record and the revised draft permit reflect staff’s consideration of all of the relevant criteria set forth in the applicable statutes and regulations governing this activity. In particular, the record shows that alternatives to the proposed structure represent an encroachment into the public trust waters of Greenwich Cove, or will not further minimize adverse impacts and accomplish the applicant’s objectives. Regs., Conn. State Agencies §22a-30-10 (b). The permit also requires that the height and design of the pile and timber pier will be no greater than necessary to minimize adverse impacts on the wetlands by preserving the intertidal flats and existing areas supporting salt marsh grasses, and encouraging additional vegetation in those areas that are capable of growing such grasses. General Statutes §22a-29. The structure will allow for public access to the wetlands and will not unreasonably interfere with the channel or with small craft navigation or contribute to sediment problems in navigable areas. Regs., Conn. State Agencies §22a-30-10 (b) and (c). Also, the proposed float stops and seasonal use of the float will minimize any significant adverse impact on shellfish areas. §22a-30-10 (c).

² The initial draft permit was revised in response to public comments. (Agreed Draft Decision, Finding of Fact 2.)

Staff considered and the draft permit reflects the determination of the Department of Agriculture/Bureau of Aquaculture and the opinion of the Greenwich Shellfish Commission concerning the impact of the regulated activity on any shellfish area. Although the Commission recommended the use of the applicant's existing structure, such use is inconsistent with the policies and goals identified above.

II

CONCLUSION

The application complies with the criteria outlined in the relevant statutes and regulations. The proposed regulated activity, if conducted in accordance with the terms and provisions of the draft revised permit, would strike a proper balance between the applicants' riparian right to access navigable water and the state's responsibility to minimize navigational and environmental impacts and encroachments into public trust land and waters. General Statutes §22a-90 through 113c. I therefore adopt the Agreed Draft Decision as my Proposed Final Decision and recommend its affirmation by the Commissioner.³ (Attachment A.) I also recommend that the Commissioner issue the permit that is the subject of this application. (Attachment B.)

7/20/04
Date

/s/ Jean F. Dellamarggio
Jean F. Dellamarggio, Hearing Officer

³ At the hearing, OLISP supplemented its exhibit list to include exhibits DEP-18 through DEP-20. The applicant stipulated to the admission of those exhibits. The second paragraph of Finding of Fact 2 in the Agreed Draft Decision should therefore be revised as follows: "The parties have agreed to the admission of OLISP's exhibits DEP-1 through DEP-17 and applicant's exhibits APP- A through APP-E."