

STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



IN THE MATTER OF A REQUEST )  
FOR A DECLARATORY RULING )  
BY )  
)  
)  
MR. STUART BELL )

DECLARATORY RULING

Pursuant to Conn. Gen. Stat. § 4-176, I am issuing this Declaratory Ruling in response to a Petition for Declaratory Ruling (“the Petition”) submitted by a representative of Mr. Stuart Bell (“the Petitioner”). The Petition questions whether the Department has wrongfully adopted a policy to preclude the consideration of new dredging in connection with private residential docks and whether the dredging proposed by the Petitioner is eligible for a Certificate of Permission under Conn. Gen. Stat. § 22a-363b.

I. FACTS

The Petitioner owns waterfront property located at 340 Willow Street, Southport, Connecticut. The property is located near the mouth of the Mill River along a water body also known as Southport Harbor. There is a 200-foot long pier that extends from the Petitioner’s property over tidal wetlands, intertidal flats and other tidal areas into Southport Harbor and is in close proximity to a shellfish concentration area. The pier extends out far enough to enable the Petitioner to accommodate the berthing of vessels. Vessels can be accommodated more easily at high tides, than at mid or low tides.

In March 2006, the Petitioner submitted an application to the Department of Environmental Protection ("the Department") seeking an authorization to make certain repairs to the pier, install a new dock, and dredge an area around the end of the pier. The Petitioner's stated intent was to dredge an area so that at all times or during all tidal cycles the Petitioner could both berth a vessel up to thirty feet in length that draws five (5) feet and move the vessel from the pier to a nearby channel. The Petitioner had approached the Department in 2004 with his "Conceptual Work Plan" and the Petitioner's proposal - which has been revised a number of times - has been the subject of numerous meetings, conversations and letters between the Department and the Petitioner's representatives. While the record does not reveal the full extent of these communications, a few things are clear.

One, the Department notified the Petitioner that the activities he was proposing to engage in did not qualify for a certificate of permission under Conn. Gen. Stat. § 22a-363b(a). Two, on two occasions, the Petitioner received correspondence from the Department indicating that it is the "policy" of the Office of Long Island Sound Programs ("OLISP") to not allow the dredging sought by the Petitioner, namely dredging in connection with private residential docks. On another occasion, the Petitioner received correspondence from the Department indicating that it is OLISP's policy "to disallow the expansion of authorized dredge footprints for private residential docks." Three, no decision has been made regarding the Petitioner's application; the matter is still pending.

The Petitioner has also provided the following information. The date the pier was installed is apparently not known, but aerial photographs from 1934 show the pier in place. There is no record of any authorization having been issued for the construction

and installation of the pier. In 1947, the Connecticut Flood Control and Water Policy Commission authorized the then owner of the property, Cornelia Ford, to reinforce the pier, construct a pile jetty at the end of the pier, install a ramp and float perpendicular to the pier head, and dredge in an area around the end of the pier. In 1964, the U.S. Army Corps of Engineers issued a permit to the then owner of the property, Hoyt Perry, to enlarge the area where Ms. Ford been authorized to dredge. With respect to Mr. Perry's application, the Connecticut Water Resources Commission, which had jurisdiction over the matter at the time, did not issue a permit, rather it advised that a permit was not necessary since it considered the dredging to be maintenance dredging.

The authorization issued by the Army Corps in 1964 was the last authorization issued for dredging around the end of the pier; no additional authorizations have been issued in the ensuing forty (40) plus years.

Recent bathymetric surveys conducted in the area where dredging was previously authorized indicate that if the previously authorized dredging was ever conducted it was not maintained and any such area is now completely filled-in. Indeed, based upon these surveys, there is no evidence that dredging was ever conducted; the area where dredging was last authorized is completely indistinguishable from the areas adjacent to the previously authorized dredge "footprint."

Moreover, natural benthic contours and ecological communities are established in the area where dredging was previously authorized. Given the location of the lowest predicted tide, virtually the entire area that the Petitioner is proposing to dredge is comprised of intertidal flats, an area specifically mentioned in the Coastal Management

Act as deserving protection.<sup>1</sup> There are also tidal wetlands and a shellfish concentration area in close proximity to the area where the Petitioner has proposed dredging.

Additionally, the sediments that the Petitioner proposes to dredge contain a number of metals, including but not limited to, copper, zinc, chromium, and lead, detectable levels of pesticides, polychlorinated aromatic hydrocarbons (“PAHs”), and polychlorinated biphenyls (“PCBs”). Given these pollutants in sediments and the pier’s close proximity to tidal wetlands and shellfish concentration areas, the potential resuspension and transport of sediments occasioned by dredging is certainly a concern.

With respect to the portion of its application regarding dredging, the Petitioner seeks a permit to dredge in a portion of the area where dredging had previously been authorized as well as in a new area, where there is no evidence that dredging had been previously performed, so that a vessel can get from the pier to a nearby channel. The Petitioner claims that all this dredging is “maintenance dredging.”

## II. THE PETITION FOR DECLARATORY RULING

The Petitioner filed his Petition on November 1, 2007. In accordance with Conn. Agencies Regs. § 22a-3a-4(c)(3), the Petition included an affidavit from his counsel stating that individual notice of the Petition and the opportunity to file comments thereon or request intervention or party status was provided to a number of entities and published

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<sup>1</sup> Conn. Gen. Stat. § 22a-92(b)(2) provides, in pertinent part, that policies concerning coastal land and water resources within the coastal boundary are... (D) to manage 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; to encourage the restoration and enhancement of degraded intertidal flats; to allow coastal uses that minimize change in the natural current flows, depth, slope, sedimentation, and nutrient storage functions and to disallow uses that substantially accelerate erosion or lead to significant despoliation of tidal flats....

in a number of newspapers throughout the state.<sup>2</sup> The Petition also contained a request for a hearing. After the Petitioner provided this notice, the Department received a number of comments from various entities or persons. A list of those providing comments is attached as Appendix A. In addition, the Norwalk Shellfish Commission and the Connecticut Department of Agriculture, Bureau of Aquaculture filed a request to intervene as a party in this matter. Also, the Westport Shellfish Commission, the Fairfield Shellfish Commission and the Fairfield Conservation Commission requested a hearing.

On December 28, 2007, pursuant to Conn. Gen. Stat. § 4-176(c) and Conn. Agencies Regs. § 22a-3a-4(c)(3), I issued a Notice of Intent To Issue A Ruling. This Notice of Intent indicated that the Petition had been accepted and that a ruling would be issued on or before April 29, 2008. This Notice of Intent also contained two other rulings. One, I granted the requests of the Bureau of Aquaculture and the Norwalk Shellfish Commission to intervene as parties. Two, based upon the process that those requesting a hearing were seeking, I granted all members of the public - in addition to the public comment period - an opportunity to submit data, information, views, or argument in a manner similar to that provided for in Conn. Gen. Stat. § 4-168(a)(6). This opportunity was provided on February 11, 2008 at which time nine speakers provided oral and/or written comments, including Mr. Bell, his attorney and his consultant. A list of those who spoke on February 11, 2008 is included in Appendix A.

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<sup>2</sup> The Petitioner provided notice of its Petition to the Fairfield Planning & Zoning Commission, the Fairfield Shellfish Commission, the Fairfield Harbor Management Commission, the Connecticut Harbor Management Association, the National Marine Fisheries Service, the Commissioner of Agriculture, the Commissioner of Transportation, the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. Notice of the Petition was also published in the Hartford Courant, the New Haven Register, the Middletown Press, the New London Day, the Advocate (Stamford), the Norwalk Hour, the Norwalk Bulletin and the Connecticut Post.

### III. THE ISSUES RAISED IN THE PETITION

The Petitioner seeks three rulings. The first two relate to whether the Department has wrongfully adopted a policy to prohibit the consideration of new dredging in connection with private residential docks. Specifically, the Petitioner asks whether:

1. the OLISP policy to prohibit any consideration of new dredging for residential docks, as applied to Mr. Bell's application, is authorized by either the Conn. Gen. Stat. §§ 22a-359 and 22a-361 or Conn. Gen. Stat. § 22a-90 et seq., the Coastal Management Act; and

2. the OLISP policy of prohibiting consideration of new dredging for residential docks is an agency statement of general applicability adopted by the Commissioner that implements, interprets, or prescribes law or policy and accordingly, is required to be adopted as a rule pursuant to Conn. Gen. Stat. § 4-166.

In his third request, the Petitioner asks whether Conn. Gen. Stat. § 22a-363b(a)(1) requires that a proposed maintenance dredging footprint must be continuously maintained and serviceable to be eligible for a certificate of permission when associated with a proposal to perform substantial repairs to a structure. These matters are considered below.

### IV. SUMMARY OF PUBLIC COMMENTS

The Department received a number of public comments in response to this proceeding. Most of the commenters spoke favorably of Mr. Bell's petition. The themes running through these comments were that:

- the Department should not make policy "on the fly" but must ground its policies in the language of the applicable statutes;

- a prohibition on dredging in connection with residential docks is not supported by any statute and that any such policy should be publicly vetted before being adopted;

- a prohibition on dredging in connection with residential structures is not only unfair, but will place an undue burden on public facilities that do not have the space to accommodate vessels that could otherwise be berthed at private docks;

- the Department has a bias against dredging and that this bias is not supported by science and Mr. Bell should be given an opportunity to show that the dredging he is proposing will not have an adverse impact;

- a prohibition on dredging in connection with residential structures is arbitrary, and arbitrary decision-making by the Department weakens its credibility and its ability to properly manage environmental resources;

- a distinction should be drawn between new dredging and other types of dredging and Mr. Bell is seeking to perform maintenance dredging only, not new dredging; and

- the Department should evaluate dredging applications on a case-by-case basis.

Those speaking on the other side of the issue emphasized that:

- the Department is appropriately concerned about the adverse environmental impacts associated with dredging, especially impacts on shellfish resources;

- the Department should not "open the floodgates" to dredging, something that is likely to occur if the dredging proposed by Mr. Bell is approved;

- the Department should consider alternatives to dredging, such as mooring vessels in deeper water;

- other states have policies in place prohibiting dredging in connection with residential docks;

- a blanket prohibition against dredging in connection with residential structures helps inform the public about what activities are allowed and not allowed;

- there are statutes in place that support a prohibition against dredging in connection with residential structures; and

- the Department should evaluate Mr. Bell's application, and applications like it, on a case-by-case basis.

Commenters on both sides of the issue did agree on one thing, that the Department can and should evaluate applications, like the one submitted by Mr. Bell, on a case-by-case basis.

V. ANALYSES OF THE ISSUES

A. *Whether the Department has wrongfully adopted a policy to preclude consideration of dredging in connection with private residential docks.*

The Petitioner makes a number of arguments to support his claim that OLISP has improperly adopted a policy that precludes the consideration of applications for a permit where dredging in connection with a private residential dock is being proposed. The Petitioner argues that any such policy: 1) violates the Petitioner's common law littoral rights; 2) is not supported by the provisions of Conn. Gen. Stat. §§ 22a-359, 22a-361 or the Coastal Management Act, Conn. Gen. Stat. § 22a-90 et seq., as well as the legislative history and cases construing these provisions; 3) is undermined by the Department's issuance of a 401 water quality certificate to the U.S. Army Corps of Engineers ("Army Corps") for the Army Corps' Programmatic General Permit ("PGP"), since dredging is an activity covered by the PGP; and 4) is unenforceable since under Connecticut's Uniform Administrative Procedure Act, Conn. Gen. Stat. § 4-166 et seq., it has not been promulgated as a rule.

In responding, I note that I disagree with much in the Petitioner's arguments. The cases cited by the Petitioner regarding common law littoral rights hardly support the claim that a littoral property owner has an unqualified right to dredge in order to be able to dock a thirty foot vessel at all tidal cycles, especially when vessels may be docked at high and other tides without the need for dredging. To the contrary, the cases establish that a littoral property owner is subject to whatever regulatory system has been put in place regarding the shoreline, including the need to obtain any necessary permits. See Shorehaven Golf Club, Inc. v. Water Resources Commission, 146 Conn. 619 (1959); Bloom v. Water Resources Commission, 157 Conn. 528 (1969); and New Jersey v.



Delaware, 128 S. Ct. 1410 (2008). Likewise, despite the Petitioner's claim to the contrary, the Department has consistently held and it was specifically determined in a final decision issued by my predecessor that a private recreational dock is not a water dependent use under the Coastal Management Act, Conn. Gen. Stat. § 22a-90 et. seq. See In the Matter of Arthur and Judith Schaller, Final Decision, June 26, 2003. Finally, the Department's issuance of a 401 water quality certification for the Army Corps PGP does not mean that the Department has approved of any dredging or that dredging does not have a negative impact. To the contrary, any dredging undertaken pursuant to the Army Corps PGP still requires a separate authorization from the Department at which time any proposed dredging will be subject to evaluation.

I have determined that it is not necessary for me to address the Petitioner's arguments in detail, since I do not agree with the premise that is fundamental to each of these arguments, namely, that there is a Departmental "policy" prohibiting the consideration of new dredging in connection with private residential docks. Simply put, there is no such Department "policy." Rather, applications seeking authorization for such dredging, like the application submitted by the Petitioner, are accepted, reviewed, and judged on their merit in accordance with the applicable legal requirements.

I say this recognizing that the Petitioner and his representatives have received letters from the Department stating that, as a matter of "policy," OLISP does not authorize dredging in connection with private recreational docks for boating uses.<sup>3</sup> However, these letters must be viewed in the context of on-going discussions between the

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<sup>3</sup> I note that the formulation of the OLISP's "policy" in the December 2006 letter is clearly different than the one expressed in the March 2005 and June 2007 letters. The differing formulations alone cast doubt on the existence of a clear unequivocal OLISP policy.

Department and the Petitioner's representatives and reflect OLISP's experience in assessing the fate of similar applications based upon the applicable legal requirements.

For example, a letter containing OLISP's initial response to the Petitioner's application noted that the Petitioner's proposal was "inconsistent with state policies, standards and criteria" and that it was unlikely a permit would be issued for the project. In a June 2007 letter, the Department explained that "a review of your bathymetric surveys shows that the existing depth within the proposed dredge footprint are identical to the surrounding depths outside your proposed footprint with no evidence of past dredging" and that since any prior dredging had not been continuously maintained and serviceable the Petitioner's proposed dredging would be considered new dredging. The letter went on to note that "it is the policy of the Department to disallow new dredging for private recreational boating facilities" explaining that "...[d]redging activities generally cause significant adverse disruption to benthic resources and ecological communities with no benefit provided to public facilities or water dependent uses. In sum, the adverse impacts to coastal resources do not outweigh the benefits...."

There would have been no need for such explanations if OLISP had in place a clear unequivocal "policy" of the type described by the Petitioner, namely one that prohibited *even the consideration* of the dredging sought by the Petitioner. If such a clear unequivocal policy was in place, the Petitioner's application would have been summarily denied. This did not occur. What did occur is that the Petitioner's application was accepted and reviewed. The Petitioner's application has been the subject of a number of letters, meetings, and discussions that have resulted in revisions to the original proposal. These communications reveal that there is no "policy" prohibiting the consideration of

applications that seek to dredge in connection with private docks. If anything, these communications reveal that the Petitioner's application was accepted and was being substantively reviewed.

While OLISP provided the Petitioner with the benefit of its experience regarding applications seeking to dredge in connection with private docks, and may have communicated more clearly, the fact remains that all dredging applications submitted to the Department are accepted, reviewed, and judged on their merit in accordance with the applicable legal requirements. Notwithstanding the references to a "policy" in the two letters noted by the Petitioner, the Petitioner's application was accepted and reviewed. This will continue to occur.

Nevertheless, as a result of this Petition, the Department will refrain from such short hand references to a "policy" in any future explanations. Each application, including the application filed by the Petitioner and including those proposing dredging in connection with private recreational boating facilities, will be considered and as issues arise the Department will fully explain its position. I pass no judgment on whether or not such applications may or may not be approved, but as each one is considered the Department will explain the basis for its position regarding any particular issue or the application as a whole.

In sum, with respect to the first two rulings being sought, I find that it is not necessary to address the Petitioner's multiple arguments about an improper OLISP policy, because I find that there is no such policy. The Department will consider and render a decision on the application filed by the Petitioner and will do so on the basis of the applicable legal requirements.

*B. Whether The Activities Proposed by the Petitioner Are Eligible for a Certificate of Permission Under Conn. Gen. Stat. § 22a-363b*

The next issue raised by the Petitioner concerns the applicability of Conn. Gen.

Stat. § 22a-363b(a). This statute provides, in pertinent part, that

...[t]he following activities may be eligible for a certificate of permission, in accordance with the provisions of subsections (c) and (d) of this section: (1) substantial maintenance or repair of existing structures, fill, obstructions, or encroachments authorized pursuant to section 22a-33 or section 22a-361; (2) substantial maintenance of any structures, fill, obstructions or encroachments in place prior to June 24, 1939, and continuously maintained and serviceable since such time; (3) maintenance dredging of areas which have been dredged and continuously maintained and serviceable as authorized pursuant to section 22a-33 or section 22a-361....<sup>4</sup>

For purposes of applying this statute, I reiterate a few pertinent facts.

While it may be unclear when the pier was first constructed, aerial photographs indicate that the pier on the Petitioner's property was in place in 1934.

In 1947, the Connecticut Flood Control and Water Policy Commission issued a permit to a previous owner of the property, Cornelia Ford, authorizing her to reinforce the existing pier, construct a jetty, install a float and ramp, and dredge an L-shaped area around the end of the pier.

In 1964, another owner of the property, Hoyt Perry, received permission from the Army Corps of Engineers to enlarge the area that Cornelia Ford had been authorized to dredge. For the dredging requested by Mr. Perry, the Connecticut Water Resources Commission did not issue a permit terming what Mr. Perry was requesting as "maintenance dredging" for which a permit was not required.

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<sup>4</sup> I understand that in implementing Conn. Gen. Stat. § 22a-363b, it has been the Department's practice to read the references to section 22a-33 and section 22a-361 as including the predecessors to these provisions. Since I do not need to decide this issue, I accept this approach for purposes of this Declaratory Ruling, although I note that I view this as somewhat of an open question.

While the Petition contains information about previous *authorizations* to dredge, there is no evidence in the Petition that dredging actually took place. A bathymetric survey of the area around the end of the pier was conducted. This survey measures the distance from the surface of the water to the sand or sediment below in relation to a datum. Based upon the survey, I find that the area in which the Petitioner now proposes to dredge shows no evidence of previous dredging. This means that despite the authorizations issued to Ms. Ford or to Mr. Perry either those owners did not use the authorizations and never conducted dredging or if either actually did dredge, the dredged area has not been maintained and is now completely filled-in so much so that the dredged footprint is now indistinguishable from the area adjacent to this footprint.

Based upon these facts, the Petitioner claims that the dredging he proposes qualifies for a certificate of permission (“COP”) under Conn. Gen. Stat. § 22a-363b(a)(1).<sup>5</sup> Section 22a-363(a)(1) applies to substantial maintenance or repair of existing structures, fill, obstructions, or encroachments authorized pursuant to section 22a-33 or section 22a-361. The Petitioner argues that the dredging he seeks to perform constitutes “substantial maintenance.” To support this claim, the Petitioner points out that the term “substantial maintenance” is defined in Conn. Gen. Stat. § 22a-363a to mean “rebuilding, reconstructing, or reestablishing to a pre-existing condition and dimension any structure, fill, obstruction or encroachment, including *maintenance dredging*.” (Italics added). I cannot agree.

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<sup>5</sup> I note that the Petitioner has not filed an application seeking a certificate of permission for any dredging. Rather, the Petitioner filed an application for a permit under Conn. Gen. Stat. § 22a-361. This is, at a minimum, a tacit admission that the requested dredging is not COP eligible.

Based upon the facts of this case, I conclude that the dredging proposed by the Petitioner is not maintenance dredging as part of substantial maintenance being performed; rather it is and should be considered new dredging. There is no question that this is the case with respect to a small area where dredging the Petitioner proposes to dredge to help facilitate access from the pier to the navigational channel. This is outside the area where the Connecticut Flood Control and Water Policy Commission and the Army Corps of Engineers previously approved dredging. In fact, there is no evidence in the record that dredging in this area was *ever* authorized under Conn. Gen. Stat. §§ 22a-33 or 22a-361 or that dredging in this area has *ever* taken place. While I understand why the Petitioner has requested to dredge in this location, based upon the record, there is no question that dredging in this area is new dredging. Accordingly, such dredging is not “maintenance dredging” and cannot be considered “substantial maintenance” as that term is used in Conn. Gen. Stat. § 22a-363b(a)(1).

The same holds true for the area around the end of the pier where two previous owners received authorization to engage in dredging. While both owners received authorization to dredge, there is no evidence in the record to demonstrate that either owner in fact actually dredged this area. To the contrary, the recent bathymetric survey of this area shows no evidence of prior dredging. Even if the prior owners did dredge in this area, at best such dredging took place more than forty (40) years ago and today there is no remaining dredge footprint or evidence that such dredging took place. Natural benthic contours and ecological communities are established in this area. Based upon these facts, I conclude that dredging in the area where dredging was previously authorized would again be considered new dredging not “maintenance dredging,” and, as

such, the dredging proposed by the Petitioner does not qualify as “substantial maintenance” as that term is used in Conn. Gen. Stat. § 22a-363b(a)(1).

In addition, even if the area where dredging was previously authorized had been dredged before, at this point, any such dredging was so long ago that the area has returned to an intertidal flat and accordingly, in the facts of this case, any dredging to be undertaken today *should* be assessed through the permitting process where the environmental impacts can be more fully considered. Dredging that is truly “maintenance dredging” assumes that the area is already disturbed and less in need of protection. That is simply not the case here.

Moreover, I also reject the Petitioner’s claim that the dredging he seeks to perform qualifies as “substantial maintenance” under subdivision (1) of section 22a-363b(a). The Petitioner’s reading would render virtually meaningless another subdivision of section 22a-363b(a), namely subdivision (3). Subdivision (3) is specifically applicable to maintenance of dredged areas. The language of subdivision (1) makes clear that, provided the activity in question has been previously authorized under section 22a-33 or section 22-361, subdivision (1) applies to substantial maintenance or repair *of existing structures, fills, obstructions or encroachments.* (italics added). The definition of substantial maintenance in section 22a-363a reinforces this understanding since under this definition, the rebuilding, reconstructing, or reestablishing activity in question must relate to the maintenance or repair of a structure, fill, obstruction or encroachment. It is in this context, that the definition of “substantial maintenance” refers to and uses the term “maintenance dredging.” Maintenance dredging that is performed

within the context of subdivision (1), must be a necessary part of the maintenance or repair of an existing structure, fill, obstruction or encroachment.

In contrast, the dredging proposed by the Petitioner, to maintain what may have been a previously dredged area to accommodate a vessel, is independent of and not a necessary part of the maintenance or repair of an existing structure, fill, obstruction or encroachment. Such dredging is not eligible for a COP under subdivision (1) of section 22a-363b(a), but is governed by the requirements of section 22a-363b(a) specifically applicable to maintenance of dredged areas, namely subdivision (3).<sup>6</sup> Were it otherwise, maintenance dredging could always be performed under subdivision (1) of section 22a-363b(a), a result that would render subdivision (3) superfluous and is contrary to the principle of statutory construction that no word in a statute should be treated as superfluous or insignificant.

The Petitioner argues that since a structure – a dock - received a permit, dredging associated with substantial maintenance or repairs to the dock, qualifies for a COP under subdivision (1) of section 22a-363b(a). I cannot agree. The dredging proposed by the Petitioner is clearly separate from the maintenance or repairs to the dock and cannot become COP eligible merely by being “associated” with other maintenance or repairs that may be COP eligible. Each activity must be evaluated on its own.

For all of these reasons, I conclude that the dredging proposed by the Petitioner does not constitute “substantial maintenance” as that term is used in Conn. Gen. Stat. § 22a-363b(a)(1). Based upon the facts before me, I find the dredging proposed by the

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<sup>6</sup> The Petitioner does not argue that the dredging it proposes would be eligible for a COP under subdivision (3) of section 22a-363b(a). In addition to being authorized under section 22a-33 or section 22a-361, to be eligible for a COP under subdivision (3) the area to be dredged must have been continuously maintained and serviceable. For the reasons already discussed above, that is not the case here. In short, since the area the Petitioner proposes to dredge has not been continuously maintained and serviceable, I find that it is not eligible for a COP under Conn. Gen. Stat. § 22a-363b(a)(3).



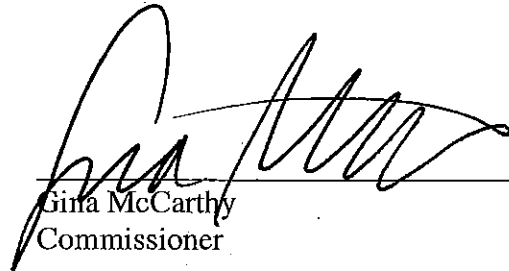
Petitioner does not constitute "substantial maintenance" since this dredging is properly considered to be new dredging and this dredging is not a necessary part of the maintenance or repair of an existing structure, fill, obstruction or encroachment.<sup>7</sup>

VI. CONCLUSION

Based upon all of the foregoing, I rule that there is no OLISP or Department policy prohibiting the consideration of dredging in connection with private recreational boating facilities. As such, there is reason to determine whether any such policy is either legal or illegal. Moreover, consistent with what I understand to be the Department's practice, OLISP shall consider each application for a permit that involves dredging, including permit applications of a type submitted by the Petitioner, on a case-by-case basis in light of the applicable facts and law presented by each application. Finally, with respect to the dredging proposed by the Petitioner in its application, I rule that such dredging does not qualify for a certificate of permission under Conn. Gen. Stat. § 22a-363b(a).

4/20/08

Date



Gina McCarthy  
Commissioner

<sup>7</sup> Based upon the above, I do not need to consider the potential application of Conn. Gen. Stat. § 22a-363b(c) to this matter, namely whether even if the dredging proposed by the Petitioner was eligible for a certificate of permission, for the reasons noted in section 22a-363b(c), a complete application for a permit under section 22a-361 may still be required.

## APPENDIX A

### LIST OF COMMENTERS

Thomas Steinke, Fairfield Shellfish Commission  
Thomas Steinke, Fairfield Conservation Commission  
Christopher Marchesi, Triton Environmental, Inc.  
Gary Wetmore  
Mary Von Conta, Fairfield Harbor Management Commission  
Keith Neilson, Docko, Inc.  
Timothy Lynch  
Arthur Glowka  
John Frank, Norwalk Shellfish Commission

### LIST OF SPEAKERS ON FEBRUARY 12, 2008

Gregory Sharp, Esq., counsel for the Petitioner  
Michael Alexander  
William Heiple, Triton Environmental, Inc.  
Mary Von Conta, Fairfield Harbor Management Commission  
Alicia Mozian, Town of Westport  
Stuart Bell, Petitioner  
Jeffrey Snyder, Sea Vision Marine Services, LLC  
Peter Johnson  
Thomas Steinke, Town of Fairfield