

IN THE MATTER OF)
)
PAUL J. GANIM)
)

APPLICATION NO. 200300739

FINAL DECISION

This matter concerns an application for a permit for a residential dock at 420 Gilman Road in Bridgeport, Connecticut. The applicant is Paul J. Ganim. The parties to this proceeding are the applicant, Mr. Ganim, staff of the Department of Environmental Protection (“the Department”), the Ash Creek Conservation Association (“ACCA”) and the Connecticut Conservation Association. As proposed, the dock would extend from the shore of Mr. Ganim’s property into Ash Creek.

In approaching this matter, I recognize that Ash Creek is a significant environmental resource. The meeting of fresh and salt water at the mouth of the Creek and the extent to which the tide leaves exposed intertidal flats makes this area ecologically meaningful and provides educational opportunities. I also want to acknowledge and frankly encourage those who showed such interest in protecting this resource. However, I also recognize that the area of the proposed dock is quite developed, including, as the Hearing Officer found, homes and buildings, including a condominium complex, a houseboat, at least five docks, a boat ramp, walkways and other structures. Proposed Final Decision, Sec.II,A.2,¶11, p.4.

The Department held a hearing in this matter on February 4, 2004, June 24, 2004, July 1, 2004, and August 5, 2004. On April 26, 2005, the Hearing Officer issued a Proposed Final Decision recommending issuance of the permit with an additional condition restricting when the

dock could be built. On May 10, 2005, the ACCA filed exceptions to the Hearing Officer's Proposed Final Decision and requested oral argument. On June 9, 2005, the Department's staff filed a brief responding to the ACCA's exceptions. The applicant relied on its previous submissions in responding to the ACCA's exceptions. Oral argument was held on June 30, 2005.

The ACCA's primary objection to the issuance of the permit is the claim that the dock will have an adverse impact on the ability of certain migratory shorebirds to feed during their migration. Secondly, the ACCA claims that the dock will have an adverse impact on shellfish near the dock. Each claim is considered below.

A. Impacts on Migratory Shorebirds

The gist of the ACCA's claims is that the Hearing Officer paid insufficient heed to the testimony of Mr. Milan Bull, an expert who testified for the intervenor, concerning the impacts the proposed dock would have on feeding in Ash Creek by certain nearctic or palearctic birds during their migration. Basically, Mr. Bull testified that as a result of the dock certain migratory shorebirds would not feed in areas around the dock where feeding may have previously taken place. While Mr. Bull quantified the size of this area, he emphasized that diminishing the area available for feeding would adversely impact the migratory shorebirds he identified.

However, the Hearing Officer also had before her certain exhibits and testimony from both the applicant and the Department's staff that, as proposed, the dock would have no impact upon wildlife, including birds. Proposed Final Decision, Sec.II,A.2,¶ 16, p.6. (Additionally, see the testimony of Kevin Zawoy, June 24, 2004, p. 164).

In weighing all of the testimony the Hearing Officer found that

[t]he area of the dock is not a direct nesting area for any birds, however Ash Creek has been observed as a feeding area for migratory shorebirds that

typically feed on the intertidal flats during periods of low water. According to an expert witness for the ACCA, for every two feet rise in height, migratory birds that feed on the mudflats would stay an additional ten feet away from an obstacle. According to this witness, the proposed dock would create such an “avoidance zone”, preventing shorebirds from feeding on mudflats. The witness provided no scientific or empirical studies to support this claim.

Proposed Final Decision, Sec.II,A.2,¶ 17, p.6. Ultimately, the Hearing Officer concluded that

[t]he mudflats of Ash Creek have been observed as a feeding area for migratory shorebirds. However, there is not substantial evidence in the record to sustain the claim that the dock would adversely impact the feeding habits of those shorebirds.

Proposed Final Decision, Sec.II,B.3, p.14. After this conclusion the Hearing Officer cited Bancroft v. Commissioner of Motor Vehicles, 48 Conn. App. 391,405 (1998) for the proposition that a Hearing Officer is not required to believe even the un-rebutted testimony of an expert witness, but may choose to believe all, part, or none of such evidence. Id.

In this case the Hearing Officer did not find dispositive Mr. Bull’s testimony that the proposed dock would in fact create an “avoidance zone” or that any such zone would adversely impact the ability of certain migratory shorebirds to feed in Ash Creek. There is little dispute, and even the ACCA recognizes, that the Hearing Officer is not obligated to accept Mr. Bull’s testimony without question, even if such testimony is un-rebutted. The Hearing Officer is clearly in the best position to weigh all of the testimonial and other evidence, including the credibility of witnesses. While the ACCA might object to the Hearing Officer not giving portions of Mr. Bull’s testimony much weight, the fact remains that Hearing Officer’s findings and conclusions regarding the impact the proposed dock may have on wildlife, including migratory shorebirds, are supported by the record. As such, I decline the ACCA’s invitation to change these findings and conclusions based upon Mr. Bull’s testimony.

Indeed, based upon my review of the record, even if Mr. Bull's testimony regarding the dock and its impact on the availability of feeding area was given greater weight, it would not have changed the outcome in this matter. If accepted, Mr. Bull's testimony may have established that Mr. Ganim's dock would have an impact on the available feeding area for certain migratory shorebirds while they are in Ash Creek. Much of the testimony at the hearing appeared aimed at establishing or refuting whether the dock would have *any* such impact. However, the question to be asked is not whether the dock has *any* impact; rather under Conn. Agencies Regs. § 22a-3a-10(e), I must determine that a proposed activity will not result in *significant* adverse impacts, including whether wildlife and their nesting, breeding or feeding habitats will be *unreasonably* reduced or altered.¹

Without diminishing the beauty or importance of Ash Creek's natural resources, the area in the vicinity of the proposed dock is not a pristine structureless area. As was noted above, in the general vicinity of the proposed dock the shores of Ash Creek are highly developed and there are numerous structures in Ash Creek including five other docks, a houseboat, a small boat ramp and other structures. And while the dock may be thirty-nine (39) feet long, the portion that will

¹ Conn. Agencies Regs. § 22a-30-10(e) states that [i] order to make a determination that a proposed activity will not result in significant adverse impacts on marine fisheries, shellfisheries or wildlife the commissioner shall, as applicable, find that:

- (1) The existing biological productivity of any wetland will not be unreasonably affected;
- (2) Habitat areas, such as habitat of rare and endangered wildlife and fish species, will not be destroyed, filled, or otherwise unreasonably affected;
- (3) Wildlife and their nesting, breeding or feeding habitats will not be unreasonably reduced or altered;
- (4) Erosion from the proposed activity will not result in the formation of deposits harmful to any fish, shellfish or wildlife habitat;
- (5) Shellfish beds will not be adversely affected by changes in:
 - (A) Water circulation and depth patterns around and over the shellfish beds;
 - (B) Natural relief of shellfish beds;
 - (C) Grain size and distribution of sediment in shellfish beds;
- (6) The timing of construction activities takes into consideration the movements and lifestages of fish, shellfish, and wildlife;
- (7) The proposed activity will not unreasonably interfere with the harvesting or maintenance of leased, franchised or natural shellfish beds.

actually intrude into mudflats is only nine feet. Also, the dock will not preclude the use of other areas for feeding, including other parts of Ash Creek and other locations. So while Mr. Bull may be correct that the proposed dock may have *some* impact on the feeding area available for certain migratory shorebirds, viewed in context, the incremental impacts from this one structure alone does not appear to be significant, or to put the matter differently, given all of the evidence, I conclude that Mr. Ganim's dock alone, would not have a *significant* adverse impact and would not *unreasonably* reduce or alter the feeding area available for certain migratory shorebirds.

Finally, in reaching this conclusion I have not, as argued by the ACCA, changed the height of the evidentiary bar for intervenors or placed a burden of proof on the ACCA. Like all other proceedings regarding an application, in this case the burden of proof rests with the applicant. Conn. Agencies Regs. § 22a-3a-6(f). I reached my conclusion in this matter based upon considering and weighing all of the evidence, including the evidence presented by the applicant, the intervenors and the Department's staff.

B. Impacts on Shellfish

Secondarily, the ACCA claims that the dock will result in suspension of sediments and adversely impact shellfish in the area around the dock. However, both the Department staff and Mr. David Carey, Director of the Bureau of Aquaculture disagree. In addition, the permit, as proposed, includes conditions aimed at ensuring that any impacts to shellfish are minimized. As was the case above regarding potential impacts to certain migratory shorebirds, I see no reason to change the Hearing Officer's findings and conclusions regarding the dock's impact on shellfish.

In its exceptions and at oral argument, the ACCA mentioned that it was unable to discuss its concerns about shellfish impacts from the dock with members of the Bureau of Aquaculture. However, there is nothing in the record to indicate that when the ACCA was allegedly rebuffed

by the Bureau of Aquaculture that the ACCA brought this matter to this Department's attention. In fact, despite the opportunity to do so, this issue was never raised at the hearing. As far as I can tell, the first time the ACCA mentioned this problem was in its post-hearing brief, but by then it was too late for anything to be done.

C. The Permitting Process

I understand that after commencement of the hearing in February 2004, that the original design of the dock was revised. Among those raising concerns about the original design of the dock was the Department of Agriculture's, Bureau of Aquaculture. In light of the concerns expressed about the original design of the dock, the Department's staff did exactly what I would expect them to do, namely work with the applicant and the Bureau of Aquaculture to see if the issues could be resolved. This is not only what I would expect, but also what the public expects from the Department.

I do not agree with the ACCA that the Department's independence was in any way comprised as a result of working with the applicant and Bureau of Aquaculture. There is simply no basis for this assertion. My understanding is that the ACCA was asked for its input, but that the ACCA declined to provide any. Having declined to participate in discussions, the ACCA should not now complain that the Department viewed this matter differently than the ACCA.

Nevertheless, it is important for the Department to perform all coordination with all other state agencies, such as the Bureau of Aquaculture or any municipal entities, before a notice of tentative determination is issued. This is how the coastal regulatory programs are currently designed given the statutory role the Bureau of Aquaculture plays in the Department's regulatory process. In the future the Department will not proceed to tentative determination on a coastal permit, like the one in this case, until it has received comments from and coordinated as

necessary with other governmental entities. This should lend greater credibility to the Department's decision-making by ensuring that those with the appropriate expertise have provided input into any decision that is made.

D. Revisions to the Draft Permit

Based upon the evidence the Hearing Officer recommended that a condition be added to the permit requiring that construction of the dock take place only between June 1st and October 15th. The purpose of this condition is to avoid impacts to migratory shorebirds from construction activities. See Proposed Final Decision, Sec.II,B.3, p.15.

However, my understanding of the evidence and the briefs filed by the parties is that migratory shorebirds are likely to be present in Ash Creek from mid-March to May 1st and from July 1st through the end of September. Therefore, constructing a dock in either mid-summer or late fall is the best time to avoid impacts to migratory shorebirds. See Staff's January 20, 2005 brief at p.13 and the testimony of Milan Bull, August 5, 2004, p. 79-81.

To help avoid conflicts between migratory shorebirds and construction activity related to the dock, I am revising those portions of the Proposed Final Decision that address this matter as follows:

- 1) Section II,A.3, Finding #31, page 10 - the third sentence is revised as follows: "OLISP staff has also recommended that the permit be amended to include a condition that ~~restricts the~~ *prohibits* construction of the dock between June 1 and October 15 of any year."
- 2) Section II.B.3, p.15 – The last sentence of the second paragraph is revised as follows: "~~Construction would occur only between June 1 and October 15 of any year~~ *cannot occur from March 15th through June 1st and from July 1st to September 30th*, to avoid impacts to migratory shorebirds from that work."
- 3) Recommendation, p.24, Special Terms and Conditions – The additional condition suggested by the Hearing Officer is replaced with the following condition: "Construction of the dock authorized by this permit shall not be allowed from March 15th through June 1st, inclusive, or from July 1st to September 30th, inclusive."

In addition, with the issuance of this Final Decision, I am also instructing OLISP staff to make the following changes to the Draft Permit appended to the Proposed Final Decision. I emphasize here that these revisions are not and should not be viewed as a departure from the Hearing Officer's Proposed Final Decision. Rather, the intent of these revisions is to clarify certain matters and aid in the enforceability of the permit.

1) Special Terms and Conditions, ¶ 3 – Special conditions three and four respond to the testimony at the hearing regarding the barge used to drive the pilings for the dock. This barge can be used only during periods of high water and must move to deeper waters during periods of low tide. Condition three is being revised to better implement this intent and to also ensure that the Permittee retains responsibility for compliance with this requirement. Condition 3 is revised as follows: *“The Permittee shall ensure that all work associated with the driving of piles for construction of the dock shall be conducted by a water-based barge only during periods of high water in the area of the proposed dock. Any such barge must move to deeper waters during periods of low water in the area of the proposed dock. It shall not be a defense to this provision for the Permittee to assert that it has no control over the operation of the barge.”*

2) Special Terms and Conditions, ¶ 4 – Along with condition three, while work is being performed, condition four prevents the barge being used to drive pilings for the dock from coming into contact with the bottom of Ash Creek. This condition is being revised to better reflect that intent and to reflect that after the piles for the dock have been installed the Permittee no longer has any responsibility for the actions of this barge. Condition four is replaced with the following: *“During the time that pilings are being driven pursuant to Special Term and Condition # 3, the Permittee shall ensure that the barge used for such work does not rest on or come in contact with the bottom of Ash Creek.”*

3) Special Terms and Conditions, ¶ 5 – An explanation for the requirements regarding the elevations of portions of the dock is not needed in the permit and could be viewed as a potential hindrance to enforcement. Accordingly, the phrases “to prevent the shading of underlying tidal wetland vegetation” and “to protect shellfish that may be located in the area” should be deleted from this paragraph.

4) Special Terms and Conditions, ¶ 6 – This paragraph restricts when a vessel may be berthed at the dock to certain hours before and after “the predicted time of local high tide.” To clarify, staff should specify in the permit how “the predicted time of local high tide” will be determined. In particular, what source or point will be used to make this determination. Any such determination must be based upon an objective reference that is published and readily available. Staff should add this objective reference to condition #6 and specify that this reference will be used to determine the predicted time of local high tide.

E. Revisions to the Proposed Final Decision

While I am affirming the Hearing Officer's Proposed Final Decision, and incorporating its findings and conclusions, I am also making some revisions to that Decision. I emphasize here that these revisions are not and should not be viewed as a substantive departure from the Hearing Officer's Proposed Final Decision. Rather, these revisions either clarify certain matters or make minor corrections. All of the revisions are noted in Attachment A to this Final Decision and, if needed, include an explanation.

F. Conclusion

For all of the reasons noted above, I hereby affirm the Hearing Officer's April 26, 2005 Proposed Final Decision with the modifications noted in Attachment A and with the revisions to the draft permit noted in section D above.

10/6/05
Date

/s/ Gina McCarthy
Gina McCarthy
Commissioner of Environmental Protection

ATTACHMENT A

(This attachment contains clarifications and or corrections to the Hearing Officer's April 26, 2005 Proposed Final Decision, In the Matter of Paul J. Ganim, Application No. 200300739. Additions are in italics, deletions are shown as strikeouts. Any provision of the Proposed Final Decision not specifically mentioned, including portions of paragraphs, is adopted without change.)

Changes to the Proposed Final Decision

- 1) Section 1, Summary, p.1 - The legal citations at the end of paragraph one should be revised to be consistent with the legal citations that appear in Section II.B, page 11 of the Proposed Final Decision. Accordingly, the citations at the end of the first paragraph are replaced by the following: "General Statutes §§22a-28 through 22a-35, inclusive, §§22a-90 through 22a-112, inclusive, §§22a-359 through 22a-363f, inclusive and Regs., Conn. State Agencies § 22a-30-1 through 22a-30-17, inclusive."
- 2) Section II,A.2, Finding #9, p.4 – While the proposed final decision correctly concludes that the proposed dock is subject to Conn. Gen. Stat. §§ 22a-28 to 22a-35a, inclusive, to clarify that the term tidal wetlands is not defined in Conn. Gen. Stat. § 22a-29 and delete an incorrect reference to the Inland Wetlands and Watercourses Act, the last sentence of this paragraph is replaced with following: "The surrounding area contains tidal flats and growths of *Spartina Alterniflora*, a plant whose presence aids in identifying this area as a wetlands. General Statutes § 22a-29."
- 3) Section II.A.2, Finding #14, p.5, - Conn. Agencies Regs. § 22a-30-10(e) requires an analysis of whether the proposed dock will unreasonably interfere with leased, franchised or natural shellfish beds. To address this matter, the following sentence is added before the last sentence of this section. "*The shellfish bed areas within the footprint of the proposed dock are not leased, franchised, or commercially harvested.*"
- 4) Section II,A.3, Finding #19, p.6 – To include a mention that when the dock was redesigned, it was also shortened, the second sentence is revised as follows: "The current design, *shortens the length of the dock*, eliminates the boatlift, and replaces the floating dock with a fixed platform."
- 5) Section II,A.3, Finding #23, p.7 – The first sentence of this section, which is not necessary for the final decision in this case, could be construed as a limitation on the Department's jurisdiction. Prudence dictates that such a finding is better left for a case that squarely raises the underlying issue. Accordingly, this section is revised as follows: "~~The size of a boat that might use this proposed dock is not directly pertinent to the application for a permit to construct the dock.~~ The potential size of a boat using the dock would have been relevant if, *among other things*, there had been concerns about impacts to navigation, or possible encroachment into the Ash Creek channel. (Exs. APP-3, 32; tr. 7/1/04, pp. 133-134.)"

6) Section II.B., “Statutory and Regulatory Criteria,” p.11 – This first sentence of the second paragraph could leave the impression that Conn. Agencies Regs. § 22a-30-10 implements the mandate of Conn. Gen. Stat. § 22a-359. This is not the case. As such, this paragraph is revised as follows: “~~Section 22a-30-10 of the Regulations of Connecticut State Agencies implements this mandate by setting out the criteria for granting, denying, or limiting permits. These criteria~~ *In addition, the applicable regulations describe the scope of the consideration to be given to the impact of regulated activities on the wetlands, adjoining coastal and tidal resources, navigation, recreation, erosion, sedimentation, water quality and circulation, fisheries, shellfisheries, wildlife, flooding and other natural water-dependent uses. §22a-30-10(a).*”

7) Section II.B.2, p.13 – This section of the Proposed Final Decision considers the recreational and navigational uses that must be considered under Conn. Agencies Regs. § 22a-30-10(c). In addition to considering these issues, the last two paragraphs of this section also include a discussion of erosion and sedimentation, which must be considered under Conn. Agencies Regs. § 22a-30-10(d).

I think it is clearer and more consistent from a formatting standpoint if each subsection of Conn. Agencies Regs. § 22a-30-10 is separately considered. This is how the Proposed Final Decision addresses each other subsection of section 22a-30-10. Accordingly, I am revising the second paragraph of this section to address only navigational and recreational uses under Conn. Agencies Regs. § 22a-30-10(c). Accordingly, those portions of the second paragraph that address this matter are revised to read: “*The evidence establishes that the main portion of the proposed dock would not unreasonably interfere with any established public rights of access to and use of wetlands, as its elevation would allow for passage underneath at all times. The dock ~~would not~~ is not located within a navigable channel and will not interfere with the navigation a navigable channel or small craft navigation. The proposed project would not cause or contribute to any sedimentation problems in adjacent or nearby navigable waters or channels, anchorages or turning basins.*”

To address erosion and sedimentation separately under Conn. Agencies Regs. § 22a-30-10(d), I am adding the provisions of the regulation and I am also making minor revisions to the existing provisions that address this matter. Accordingly, right after the second paragraph with the modifications noted in this section, the following addition and modifications are made:

“Erosion and Sedimentation

In order to find that a proposed activity will not cause or produce unreasonable erosion or sedimentation, the Commissioner must find that:

- (1) The proposed activity will not cause significant changes in current patterns, water velocity or exposure to storm or wave conditions which result in adverse effects on erosion or sedimentation patterns;*
- (2) Temporary erosion control measures will be utilized on the project site both during and after construction;*
- (3) When permanent erosion control measures are proposed, non-structural alternatives are utilized unless structural alternatives are demonstrated to be unavoidable and*

necessary to protect infrastructural facilities, water-dependent uses and existing inhabited structures;

(4) Any structure or fill shall:

(A) Not cause a significant adverse impact on the movement of sediments on or along the shoreline;

(B) Not cause erosion of adjacent or downdrift areas;

(C) If necessary, include provision for the transfer of sediment to downdrift areas to prevent those areas from being deprived of sediments;

(5) The perimeter of all areas proposed to be filled, dredged or excavated are suitably stabilized to prevent spillover or erosion of material into adjoining wetland or watercourse areas;

(6) When areas are proposed to be dredged:

(A) They are laid out so as to make the best practical use of existing water depths;

(B) They are designed to avoid siltation of any existing natural or established navigation channel;

(C) The best available methods are used to reduce sedimentation.

Regs., Conn. State Agencies §22a-30-10(d).

In this case, the open pile construction would not change any current water patterns or water velocity in Ash Creek and would not change exposure to storm conditions that would result in adverse effects on erosion or sedimentation patterns. There is no proposal to fill, dredge or excavate as part of the project. In addition, the evidence indicates ~~There is no evidence to indicate~~ that the structure of the proposed dock would not cause a significant adverse impact on the movement of sediments on or along the shoreline or cause erosion of adjacent or down drift areas. The draft permit contains temporary erosion control measures, namely restrictions on the barge performing work, to prevent erosion during construction. Any erosion after construction would be minimal and confined to a one foot area around each piling. There would therefore be no adverse effects on erosion and sedimentation. See Regs., Conn. State Agencies §22a-30-10(d)."

8) Section II.B.3, p.14 – To better track the language of the regulation being cited, Conn. Agencies Regs. § 22a-30-10(e), the reference in subdivision (g) is revised as follows: “The proposed activity will not unreasonably interfere with the harvesting or maintenance of *leased, franchised or* natural shellfish beds.”

9) Section II.B.3, p.14 – While the proposed decision correctly concludes that the proposed dock is subject to Conn. Gen. Stat. §§ 22a-28 to 22a-35a, inclusive, to clarify that spartina alterniflora, is not actually defined as a tidal wetlands, but helps in identifying an area as a wetland, the first sentence of the second paragraph is revised as follows: “*Spartina Alterniflora*, a plant, ~~that is defined and protected as tidal wetlands and~~, *that aids in identifying an area as a wetland*, is located in the area of the proposed dock. *This plant* would not be unreasonably affected by the structure....”

10) Section II.B.3, p.15 – The proposed dock would not unreasonably interfere with the harvesting or maintenance of any shellfish beds. Accordingly, in the first sentence of the first paragraph, the term “natural” is deleted.

11) Section II.B.5 p.16 – To better track the language of the regulation being cited, Conn. Agencies Regs. § 22a-30-10(g), the first sentence of the first paragraph is revised as follows: “To determine that a proposed activity is consistent with the need to protect life and property from *hurricanes or other* natural disasters, including flooding, the Commissioner must find:”

12) Section II.C.2 p.18 – The fourth paragraph of this section contains a statement that when a notice of tentative determination is published that publication does not mean that DEP staff is prepared to act on an application. While I understand the point being made by the Hearing Officer, namely that the publication of a notice of tentative determination is an invitation to receive comments and that based upon those comments changes to the permit may still be made, the reference to DEP staff in this discussion may be confusing, since when a notice of tentative determination is published, *at that time* DEP staff *is* prepared to recommend the action reflected in any such notice. To clarify this matter, the third and fourth sentences of the fourth paragraph are revised as follows: “The publication of this notice ~~does not mean that DEP staff is “fully prepared” to approve the original application, as alleged by the ACCA. To the contrary, the publication~~ triggers a time period for the receipt of public comments and advises the public as to how it may request a hearing on the application.”

13) Section II.C.3 p.22 – The third sentence of the third paragraph contains a reference to “voluntary” actions by the applicant that are also required in the permit. To avoid any implication that a requirement in the permit is voluntary, i.e., not mandatory, in the third sentence of the third paragraph, the words “voluntary” and “by the applicant” are deleted.

14) I am making editorial revisions to the language used by the Hearing Officer to describe certain conclusions so that as revised these conclusions will more closely track the language of Conn. Agencies Regs. § 22a-30-10.

Section II.B.4, p.15 – The first sentence of the second paragraph is revised as follows: “~~There is no evidence~~ *Based upon the record, I conclude* that the proposed dock would *not* significantly alter the patterns of tidal exchange or flushing rates, freshwater input or existing basin characteristics and channel contours.”

Section II.B.5 p.16 – The second and third sentences of the second paragraph are revised as follows: “~~There is no evidence~~ *Similarly, the evidence indicates* that the dock would *not* significantly increase the velocity or volume of any floodwater in ~~the area or that it would~~ *Ash Creek or any other stream or estuary, and would not* significantly reduce the capacity of Ash Creek, *or any other waters, to transmit floodwaters generated by storm events. There is no evidence that the dock would* *hurricanes or other storm events, and will not* result in increased flooding up or downstream or in its location.”

Section II.B.6 p.17 – The second sentence of the first paragraph is revised as follows: “~~There is no~~ *The evidence indicates* that the proposed activity will *not* unreasonably interfere with the riparian rights of adjacent landowners or claimants of water or shellfish rights adjacent to the tidal wetlands.”

15) Conclusion, p.23 – The conclusion contains a reiteration of much that was already discussed in other portions of the Proposed Final Decision. I prefer that the conclusion section not be used to reiterate or restate that which was previously stated. Accordingly, the entire

conclusion section is replaced with the following: *“Based upon all of the foregoing and upon my review of the record in this matter, I conclude that the application satisfies all applicable criteria of the relevant statues and regulations and that a permit should be issued pursuant to Conn. Gen. Stat. §§ 22a-33, 22a-359 and that the issuance of this permit is consistent with the goals and policies set forth in Conn. Gen. Stat. §§ 22a-92, 22a- 98 and 22a-359, and Conn. Agencies Regs. § 22a-30-10 and any other applicable provision.”*

APPENDIX A

P A R T Y L I S T

In the matter of Paul Ganim, Application No. 200300739

PARTY

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