OFFICE OF ADJUDICATIONS

IN THE MATTER OF : *APPLICATION NO. 199501277-KH*

BREWER DEEP RIVER MARINA : *MARCH 30 , 2001*

PROPOSED FINAL DECISION

I

SUMMARY

Brewer Deep River Marina, Inc. (BDRM or the applicant) has filed an amended application with the Department of Environmental Protection (DEP) Office of Long Island Sound Programs seeking a permit to conduct certain regulated activities, including dredging, in connection with the reconfiguration and expansion of a marina located in Deep River. The amended application has been filed pursuant to General Statutes §§22a-359 through 22a-363f.

The parties to this proceeding are the applicant, the DEP Office of Long Island Sound Programs (Staff) and the following intervenors participating in the hearing process: the Deep River Land Trust; the Connecticut Fund for the Environment; and John D. Kennedy as an individual.

Upon review of the relevant facts and applicable law in this matter, I find that the application meets the relevant statutory and regulatory criteria as outlined herein. I conclude that the application strikes an appropriate balance between using a water-

dependent public trust and minimizing adverse environmental impacts to protect the unique resources of the area, while permitting boaters and others to enjoy the area and develop an appreciation for the ecosystem that includes Brewer Deep River Marina. I find that the proposed regulated activities, if conducted in accordance with the terms and conditions of the proposed permit as modified, will be consistent with the applicable legal standards for its issuance. I therefore recommend that a permit be issued in accordance with the terms and conditions of the draft permit. (See *Attachment I.*)

II

DECISION

A
FINDINGS OF FACT

1
Procedural History

1. On June 27, 1990, Douglas and Karen Van Dyke, the prior owners of Deep River Marina, Inc., filed an application that proposed a plan to conduct maintenance dredging and shoreline stabilization, and to reconfigure and expand the marina (1990 application). (Ex. DEP-6; test. D. Blatt, 08/22/00, p.68.)
2. Following the submission of the 1990 application, DEP staff and the Van Dykes and their consultants, exchanged informational requests and engaged in negotiations for a period of years in attempts to revise the pending application to minimize any adverse impacts of this proposal. (Test. D. Blatt, 08/22/00, pp. 68-69.)

3. Ownership of Deep River Marina, Inc. was transferred to the applicant in 1997. (Ex. APP-1; test. D. Van Dyke 8/22/00, p. 135.)

4. The DEP issued a *Notice of Tentative Determination* approving the 1990 application now submitted by BDRM, on May 29, 1997. The publication of this *Notice* generated public interest and comments, many of which were in opposition to the application. Petitions to hold a hearing were also received, and a hearing was scheduled. (Exs. DEP-7 through 12, 15,16,18 through 36; test. D. Blatt 8/22/00, pp. 69-71.)

5. BDRM subsequently requested a postponement of the hearing in order to revise the 1990 application. BDRM also engaged in discussions with various intervenors to address concerns raised during the pre-hearing process. (Exs. DEP-35, 37; test. D. Blatt 8/22/00, pp. 69-71.)

6. The following individuals and/or organizations were granted status as intervening parties on the listed dates: Charles Scarlott, August 15, 1997; Deep River Land Trust (DRLT), October 7, 1997; Deep River Conservation and Inland Wetlands Commission (CIWC), October 21, 1997; Citizens Committed to Saving the Lower Connecticut River (Citizens Committed), October 21, 1997; Potapaug Audubon Society (Audubon), October 29, 1997; Gershon Horowitz, November 10, 1997; Connecticut River Watershed Council of Connecticut, Inc. (CRWC), November 12, 1997; Connecticut Fund for the Environment (CFE), December 4, 1997, September

13, 2000; Stanley Kirla, December 4, 1997; and John D. Kennedy, August 18, 2000. (Ex. INT-DRLT-1; exs. Hearing Officer-1 through 10.)[1]

7. On February 16, 2000, BDRM submitted the amended application that is the subject of this proceeding. This application included all required compliance information. General Statutes §22a-6(m). On July 10, 2000, the DEP issued a *Notice of Tentative Determination* approving the application and providing notice of a public hearing. (Exs. APP-1, 2, 10; ex. DEP-43.)

2
The Applicant

8. BDRM operates the marina according to measures recommended in "Tier 1: Best Management Practices for Existing Facilities" as outlined in the DEP document *Best Management Practices for Coastal Marinas.*[2] This tier level of guidance is intended for existing marinas, which includes the marina owned and operated by the applicant, and is the tier under which this application was evaluated by DEP staff. (Ex. Hearing Officer-11; test. J. Brown 9/13/00, pp. 17-18, 28-29,36-37, 63-65; test. P. Francis 9/13/00, pp.153-163.)

9. BDRM requires boaters who use the marina to follow procedures that mirror its best management practices. The contracts for summer slip rentals and winter storage contain include prohibitions to protect against fuel spills, the disposal of waste into the water and other pollution prevention measures. The applicant monitors

[1] These exhibits and copies of the rulings granting intervention are public documents and are included in the files of the Office of Adjudications.
[2] *Best Management Practices for Coastal Marinas*, Connecticut Department of Environmental Protection, Office of Long Island Sound Programs and Bureau of Water Management, August 1992.

compliance with these and other regulations, and may cancel the contracts of violators. (Ex. APP-14; test. J. Brown 9/13/00, pp. 17-18; 28-29, 31-35, 51.)

10. BDRM has operated the marina for many years, and has received various environmental awards and acknowledgments. Neither BDRM nor the prior owners of the marina have experienced a major spill or pollution accident. BDRM has been in compliance with all state and federal environmental laws. (Exs. APP-1, 10, 13; test. J. Brown 9/13/00, pp. 17-18, 28-29, 33-35, 40-41, 66; test. D. Van Dyke 8/22/00, p. 132 -135.)

3
The Marina

11. Situated at the mouth of Pratt Cove, the Brewer Deep River Marina provides docking, storage, fueling and sanitation services for boats using the Connecticut River. There has been a marina at this location off of River Lane for at least 35 years. The marina is zoned as a harbor development district of the Town of Deep River. This classification is intended for commercial use. (Ex. APP-1; test. D. Domenie 8/22/00, p. 26.)

12. The *Ramsar Convention* included this area in its list of wetlands of international importance in 1994. *The Nature Conservancy* designated this area as one of its "Last Great Places" in 1993. These and other designations occurred after the marina was established. None of these designations mandate any additional regulatory review, but are and were taken into account in evaluating any application. (Ex.

INT-JK-3; test. T. Gootz 8/22/00, p.88; test. P. Francis 9/13/00, pp. 114, 144, 217-218.)

13. The marina is on a site of approximately 18 acres, a substantial part of which includes wetlands, wooded areas, landscaped areas and vessel basins. Approximately three of the 18 acres are considered operable or usable space. During the boating season, this space is principally used as a parking area for marina members. During the off-season, typically from mid-October through March, marina members use the parking areas and select grass areas for vessel storage. Other features of the site include a paved roadway, gravel parking areas, a pool, and several buildings associated with marina operations. The site is split into two areas, the North Yard and the Main Yard. (Exs. APP-1, 1A, 1B.)

14. The marina currently has a total of 265 berths (219 slips and 46 "free swinging" moorings). The 1990 application proposed a total of 391 berths (313 slips and 78 "free swinging" moorings). The present application proposes a total of 309 berths (289 slips and 20 "bow to stern" moorings).[3] At the conclusion of the proposed reconfiguration, there will be 24 more slips, but 26 fewer moorings. The aggregate increase in slips will provide greater public access to the coastal and tidal resources of the state, including waters held in public trust. The reconfiguration will also return slightly more than three acres to these waters. (Exs. APP-1, 1A, 1B, 12; test. D. Domenie 8/22/00, p. 28; test. 9/12/00, C. Klemmer, p. 87, G. Bouthillette, p. 138.)

[3] "Free swinging" moorings allow boats to swing 360º, wind and current permitting; "bow to stern" moorings hold boats at the bow and stern and limit movement to left to right drifting within the moorings.

15. The docking/mooring facilities are currently located in three principal areas. There are two dock areas. Slips in Docks A through I are located along the west edge of the Connecticut River and slips within a channel and basin area are located at the south end of the facility at the mouth of Pratt Cove. Moorings are located off shore in the River, east of the docking structures. (Exs. APP-1, 1A, 1B.)

16. The proposed reconfiguration of the perimeter of the marina will follow the boundaries of the present and proposed dock arrangement. The boundary will extend east along Dock A, south along the tips of Docks A through H, back to the foot of Dock I and along its outer perimeter, and end just beyond the mouth of the basin across from Dock I. The north side of Dock A will not be used for any slips or moorings. (Exs. APP-1, 1A, 1B; test. C. Klemmer 9/12/00, pp.52-53.)

17. At the south end of the existing mooring field there is a "No Wake Zone" sign. The proposed plan will provide two additional "No Wake Zone" signs placed farther south near the southern end of Eustasia Island to intercept northbound traffic. Another sign is proposed for the entrance of Pratt Creek warning boaters that they are entering an environmentally sensitive area. (Exs. APP-1, 1A, 1B; test. C. Klemmer 09/12/00, pp. 53-54.)

18. The modification of the existing docking configuration and layout of boating access structures relating to Docks A through H will utilize pile supported construction. (Ex. APP-1; ex. DEP-50; test. C. Klemmer 9/12/00, p. 42.)

19. The marina shoreline is predominantly stone riprap slope or stonewall bulkhead. Certain sections at the south and southwest ends of the facility are not protected

with shoreline structures. The shoreline will be stabilized with vegetative and other natural structures. (Exs. APP-1, 1A, 1B.)

20. The marina was last dredged around 1960, to a depth of approximately 6 feet at the mean low water mark. The marina basin is presently shallow in various areas due to sedimentation from Pratt Cove where silt has been deposited. Proposed maintenance dredging will excavate areas in and around the basin to a depth of 5.5 feet. (Exs. APP-1, 1A; exs. DEP-47, 48; test. J. Brown, 09/13/00, pp. 20-21, 76.)

21. The "cul-de-sac" nature of the basin at the south end of the marina, its shallowness and its narrow entrance allow very little natural flushing. Water velocity decreases as it enters the mouth of the basin, which causes a tendency to deposit sediment. Bottom water moves out into Pratt Creek at a very slow velocity. (Ex. APP-1; test. G. Bouthillette, 09/12/00, pp. 125-128.)

22. At low tide, the depth of the water in the basin falls to two to three and one-half feet. This low water can cause the boats that transit the entrance to the basin to hit the bottom basin, or "ground out", creating a navigation problem. Berthing at the docks along Pratt Creek and in shallow sections of the basin is also hazardous. Keels, rudders and propellers of vessels in those berths rest on the bottom of the basin at low tide. With little water under the keel, the propellers and rudders of vessels tend to rip up and tear submerged aquatic vegetation (SAV).[4] (Ex. APP-1; test. G. Bouthillette 09/12/00, p. 130; test. J. Brown 9/13/00, pp. 20-21.)

[4] Submerged aquatic vegetation (SAV) is a group of rooted aquatic vascular plants that form dense beds in regularly flooded zones of lakes, rivers and ponds. These species grow completely underwater or up to the water's surface and provide food for herbivorous waterfowl, mammals and invertebrates, and habitat for fish and other aquatic animals. Among the factors that influence the abundance and distribution of

23. The marina and its adjacent areas include the following aquatic resources: mud/slit/sand inter-tidal flats; tidal wetlands; and fresh water wetlands. SAV is also found in Pratt Creek and in the marina basin. (Exs. APP-1, 1A, 1B.)

24. Pratt Creek and Pratt and Post Coves are located at the south end of the marina. Pratt Cove and Post Cove are adjacent freshwater tidal marshes associated with the tidelands of the lower Connecticut River. Their soils are subject to flooding twice daily as is typical of freshwater tidal marshes in the lower Connecticut River. Situated 14.5 miles north of Long Island Sound, this wetland complex includes approximately 200 acres of tidal marsh separated by a narrow red and silver maple dominated floodplain forest. A 1995 study commissioned by DRLT concluded that Pratt and Post Coves appeared to be pristine, as there were no industries within the watershed and minimal non-point sources of pollution. Potential threats noted in that study were in reference to activities proposed in the 1990 application that are not part of the current application. (Exs. APP- 1, 1A, 1B; ex. INT-DRLT-2.)

25. Freshwater tidal marshes account for approximately 1200 acres in Connecticut. The distribution of freshwater tidal marshes is limited to portions of riverine ecosystems that are close enough to the coast to be tidally influenced but that are above the reach of oceanic salt water. Due to the absence of salinity and the generally harsh soil conditions that characterize saline wetlands, freshwater tidal marshes support a greater diversity of plants and animals than salt marshes. (Ex. INT-DRLT-2; test. T. Gootz 9/14/00, pp. 35-46, 51-52.)

SAV is the availability of light and nutrients. SAV may help stabilize sediments and reduce erosion in tidal creeks and channels. (Ex. INT-DRLT-2.)

26. Navigation within Pratt Cove tends to be restricted to canoes, kayaks and other non-powered craft. Few, if any, of the powerboats berthed at the marina tend to travel up Pratt Creek. The application proposes to eliminate four slips on two fingers within the basin, so fewer boats will need to travel out of the mouth of the Creek to reach the Connecticut River. (Test. C. Klemmer 9/12/00, p. 49; test. J. Brown 9/13/00, pp. 37-38; test. P. Francis 9/13/00, pp.137-138.)

27. Ownership of the Pratt and Post Cove marshes is divided among the State of Connecticut and the Town of Deep River (16 acres), The Deep River Land Trust and Deep River Historical Society (7.9 acres), The Nature Conservancy (2.5 acres), and private landowners. Approximately 57 acres of this marsh complex are registered with the Connecticut Natural Heritage Registry, a volunteer landowner conservation program established by The Nature Conservancy. With the exception of the harbor development district at the mouth of Pratt Cove, the land surrounding these marshes has been designated as *Reserved Open Space* or *Areas of Special Conservation Interest* in the Deep River Comprehensive Development Plan (1992 Amendment). (Ex. INT-DRLT-2.)

4
The Application

28. The present application significantly amends the 1990 application, primarily as a result of negotiations with many of the intervenors and the efforts of the applicant and the DEP. There are material reductions in the scope and type of work proposed by the previous application. These changes include: maintenance dredging of

approximately 5,000 cubic yards of sediment over approximately 67,450 square feet from within the marina basin and adjacent to the Pratt Creek, as opposed to dredging 7,667 cubic yards of sediment over 85,782 square feet; eliminating upland disposal of dredged material; reducing the total number of boat slips and moorings; and planting vegetation to stabilize a slope within the marina basin, rather than the previously proposed 360 cubic yards of riprap. (Ex. APP-1; exs. DEP-7, 43; test. D. Blatt 8/22/00, pp. 69-72; test. D. Domenie 8/22/00, pp. 20-25, 29; test. C. Klemmer 09/12/00, pp. 35-36, 58; test. P. Francis 9/13/00, pp. 115-116.)

29. The application does not propose any work to occur in any tidal wetland area. As there will be no structure, dredging, or activity in tidal wetlands, the application is not subject to the Tidal Wetlands Act. (Ex. APP-1; test. D. Blatt 8/22/00, pp. 66-67; test. P. Francis 9/13/00, pp.114-115, 189-190.)

30. The application proposes that the applicant will perform the following specific activities:

    (a) Establish a marina perimeter within which BDRM may, subject to a *Declaration of Restrictions and Reservation,* reconfigure and relocate docks and associated structures, or add or subtract piles or docks in conjunction with such structures.

    (b) Modify the existing docking configuration and layout of boating access structures to accommodate 289 slips, provide for easier access to the slips, eliminate the need for boats to traverse debris booms in order to access the northerly side of Dock A, and eliminate the upstream slips on the northerly side of Dock A.

(c) Reconfigure the existing mooring layout to accommodate 20 "bow to stern" moorings, and return approximately three acres of existing mooring field area at the southernmost point of the existing mooring field to use for general navigation, provide an approximately 75' buffer between the easterly edge of the reconfigured mooring field and subaquatic vegetation along Eustasia Island, and provide a 30' navigation channel between the easterly edge of the reconfigured mooring field and subaquatic vegetation along Eustasia Island.

(d) Remove three existing dock systems including pilings within the south basin (Docks L, K and J) and install three new dock systems in the south basin.

(e) Eliminate five slips within the marina basin and reconfigure the slips at the entrance of the marina basin along Dock J to permit a wider navigation channel at the entrance of the marina basin.

(f) Install the following pier structures:

- Pier A: main floating pier extending 218 linear feet from mean high water and including six floating finger piers.

- Pier B: main floating pier extending 240 linear feet from the 172' floating access pier orientated parallel to the shoreline, to include 14 finger piers.

- Pier C: main floating pier extending 240 linear feet from 172' floating access pier orientated parallel to the shoreline, to include 13 finger piers and a 140 linear foot access way to the travel lift.

- Pier D: main floating pier extending 320 linear feet from mean high water, to include eight finger piers, a pump out facility and two gas-pump facilities and associated equipment.

- Pier E: main floating pier extending 330 linear feet from mean high water and including 22 floating finger piers.

- Pier F: main floating pier extending 310 linear feet from mean high water and including 20 floating finger piers.

- Pier G: main floating pier extending 305 linear feet from mean high water and including 19 floating finger piers.

- Pier H: main floating pier extending 315 linear feet from mean high water and including 19 floating finger piers.

- Pier I: 10-foot wide main floating pier extending 250'long parallel with the shoreline in Pratt Creek including eight 24' x 5' finger piers and two access ramps.

(g) Construct 230 linear feet of steel sheet pile bulkhead in the travel lift well area and backfill landward of the bulkhead with approximately 63 cubic yards of backfill, the minimum amount of fill necessary for this activity.

(h) Retain 27 linear feet of existing timber bulkhead inside the travel lift system.

(i) Retain and maintain 1,352 linear feet of existing shoreline protection including 340 linear feet of stone wall, 75 linear feet of concrete wall and 937 linear feet of stone riprap around the marina basin.

(j) Plant vegetation upward of the mean high water mark to stabilize a slope within the marina basin area and along Pratt Creek Peninsula at a 3 to 1 ratio.

(k) Relocate the debris boom 200 feet from mean low water to the end of Dock A.

(l) Maintenance dredge 5000 cubic yards of sediment over a 67,450 square foot area within the marina basin and adjacent to the Pratt Creek peninsula to maintain consistent depth of 5.5 feet in the marina basin and 6.0 feet adjacent to the Pratt Creek Peninsula and dispose of sediment at the

Cornfield Shoals Long Island Sound open water disposal site and establish no dredge areas within the marina basin exhibiting the greatest concentrations of sub-aquatic vegetation.

(m) Remove certain strands of phragmites located to the west and south of the entrance to the marina basin.

(n) Create a 150 foot wide navigation fairway between the reconfigured Docks A through H of the marina and reconfigured mooring field.

(o) Grant a *Conservation Easement* in favor of the Deep River Land Trust over an area of approximately seven acres to the west and south of the marina basin and upward of the mean high water mark along Pratt Cove.

(p) Add an additional sewage pump out system for use by the general boating public as well as marina slip and mooring tenants.

(q) Post environmental sensitive area signage at the confluence of Pratt Creek and the Connecticut River.

(r) Extend the "no wake" signage farther to the south at the southerly end of Eustasia Island.

(s) Restrict the use of personal watercraft within the marina area (subject to the rights of the general public to utilize waters held in public trust) and incorporate restriction in the BDRM rules and regulations.

(Exs. APP-1, 1A, 1B, 3, 4; ex. DEP-50.)

31. The maintenance dredging of sediments from within the marina basin and adjacent to Pratt Creek will maintain a consistent depth of 5.5 feet in the marina basin and 6

feet adjacent to the Pratt Creek Peninsula. Dredging will be prohibited from areas of greatest concentrations of SAV. (Ex. APP-1.)

32. In preparing the application for permission to dredge and dispose of the sediment at Cornfield Shoals, the applicant's experts conducted various tests in the basin and the area around the mouth of Pratt Creek. These tests included a bulk sediment analysis, which examines the sediments in the area of the proposed dredging to determine what kinds of pollutants are in the sediments, including the levels of heavy metals. Also performed was a limnological study, which analyzes the different components of the water to determine the water quality in the area. The results of these tests revealed that the levels of contaminants, including heavy metals, were below any level of concern and the material could be disposed of at Cornfield Shoals if the permit is issued. (Exs. APP-1, 8, 9; test. G. Bouthillette 8/22/00, pp. 30-37, 42-45, 9/12/00, pp. 97-109.)

33. The estimated time to complete the proposed project is seven years. A phased project, certain work will be performed only during certain periods of the year. Maintenance dredging will be prohibited from ***March 15 to September 30***, to protect migrating species. No on-site work will take place between ***December 15 and March 1,*** to protect migrating bald eagles. Construction activities will be primarily performed on-site and over the water with very little need for over the road use by construction vehicles and equipment. (Ex. APP-1; exs. DEP-14, 45, 50; test. P. Francis 9/13/00, pp. 126-129.)

34. The proposed activities will be carried out in compliance with applicant's current National Pollution Discharge Elimination System (NPDES) Stormwater Discharge

Permit and Plan, as well as with its current use of the *Best Management Practices for Coastal Marinas*. (Exs. APP-1, 13-14.)

35. During the dredging and activities related to the dock reconfiguration and reconstruction, the applicant will take measures to prevent or reduce impacts to the surrounding area. The dredging activities will take place over a period of approximately seven days. Preventative measures include the installation of silt booms across Pratt Creek to prevent, to the greatest extent possible, any potential adverse impacts due to any temporary sediment suspension, sedimentation, or turbidity. Seasonal restrictions on dredging will protect areas of the marina that include migrating fish and bald eagles. (Ex. AP-1, exs. DEP-14, 50; ex. INT-DRLT-2; test. G. Bouthillette 8/22/00, pp. 52-53, 9/12/00, pp. 133-136; test. P. Francis 9/13/00 p. 128.)

5

Declaration of Restrictions and Conservation Easement

36. BDRM has proposed to grant a *Declaration of Restrictions and Reservation* (*Declaration*) to DRLT on the marina property. The *Declaration,* which sets limits on the size of the marina and keeps marina activities within the parameter of the marina, is intended to minimize any adverse impacts on future water dependent uses at the marina. The *Declaration* will be a negotiated agreement between BDRM and DRLT and was not part of the permit application required by the DEP. (Ex. APP-3; ex. DEP-50; test. C. Klemmer 9/12/00, pp. 88-89; test. P. Francis, 9/13/00, p. 139.)

37. BDRM has proposed to grant a *Conservation Easement (Easement)* in favor of DRLT . The wetlands within this *Easement* encompass an area of approximately seven acres that follow the southeast end boundary of the marina and run north-south eighty feet west, and then angle southward maintaining the current grass strip between Pratt Creek or adjacent to Pratt Creek on the peninsula south. This area encompasses a significant portion of an area where phragmites will be dredged. The *Easement* will be a negotiated agreement between BDRM and DRLT and not part of the permit application required by the DEP. The proposed agreement contains all reasonable measures intended to minimize any adverse impacts of the proposed activities set forth in the amended application on any wetlands, coastal or tidal resources adjoining the marina. (Exs. APP-1B, 4; test. C. Klemmer 9/12/00, p. 55; test. P. Francis 09/13/00, pp.138-139.)

38. The proposed activities set forth in the amended application will have no effect on, or interfere with, the riparian rights of adjacent landowners or claimants of water or shellfish rights in or adjacent to the marina property. (Exs. APP-1, 1A, 1B; test. G. Bouthillette, 9/12/00, p. 147.)

6
Impacts of the Proposed Activities

a
Navigation and Use of the Marina

39. As a result of the reconfiguration of the dock and mooring areas, some boat slips on the docks will be eliminated and others will extend further into the water. However, because the mooring area will also be reconfigured, the extension will not impede

navigation in the fairway. The present mooring field of 177,220 square feet will be reduced to 25,800 square feet. A reduction in the number of moorings will shorten the mooring field and the installation of bow and stern moorings will prevent boats from swinging 360 degrees into the fairway. The fairway will be consistently at least 150' wide, which will improve the ability of boaters to navigate in and around the marina. (Exs. APP-1, 1A, 1B; test. 9/12/00, G. Bouthillette, pp. 136-139, C. Klemmer, pp. 37-40, 43-49; test. J. Brown 9/13/00, pp. 9-14.)

40. A new debris boom will be installed for improved and more efficient function. The new boom, to be located north of Dock A, will occupy less fairway navigation area than the present booms, and will reduce wakes that occur in the area from boats exiting and entering the marina. The debris boom will also allow for safer navigation in the marina area. (Exs. APP-1, 1A, 1B; test. 9/12/00, G. Bouthillette, pp. 114-115, C. Klemmer, pp. 36-37; test. J. Brown 9/13/00, pp. 14-15.)

41. Existing bulkheads will be repaired, particularly in the travel lift area. The repair of these bulkheads and related shore repair, stabilization and maintenance will improve safety and make the area more user-friendly for patrons of the marina. (Exs. APP-1, 1A, 1B; test. C. Klemmer 09/12/00, pp. 40-43.)

42. The location of the new pump-out station will provide easier access for boaters navigating in and around the marina. (Exs. APP-1, 1A, 1B; test. C. Klemmer 9/12/00, pp. 51-52.)

43. The dredging of the marina basin will provide sufficient water depth for all the boats located in the marina to navigate at low tide without any impediments or navigational and safety problems. The dredging will also create more flushing in the

basin, further reducing the risks of boats "grounding out". (Exs. APP-1, test. G. Bouthillette 09/12/00, p. 130.)

b
Erosion/Sedimentation

44. Along Dock I at the entrance to Pratt Creek and along the marina shore side of the basin, erosion is occurring due to wave action and the movement of winter ice sheets. Appropriate vegetation will be planted in these areas to help prevent further erosion and to stabilize the associated banks at mean high water and protect against flooding during storm events. (Ex. APP-1.)

45. The planting of small trees and shrubs upward of the mean high-water mark will control, mitigate, and prevent erosion. The vegetative stabilization of shoreline slopes will: (i) prevent future erosion into those areas which may damage SAV; (ii) extend the time at which any future dredging maintenance may be necessary; and (iii) utilize non-structural alternatives to protect water dependent uses and proposed structures from hazards, including flooding. (Ex. APP-1; ex. DEP-17; test. 9/12/00, C. Klemmer, pp. 43, 51, 59-60, G. Bouthillette, pp. 132-133,147-148.)

46. The refurbishing of the travel lift well will stop existing and prevent further erosion and sedimentation. (Ex. APP-1; test. 9/12/00, C. Klemmer, p. 43, G. Bouthillette, pp. 119-120.)

47. The elimination of the boat slips from the boom area will reduce the normal wake that occurs when boats access that area, thereby reducing any erosion to the adjacent shoreline. The boom will also protect the marina, its boats and facilities from large

and small debris streaming down the Connecticut River, during normal and storm flows of the River. (Test. G. Bouthillette 9/12/00, pp. 113-115, 147-148.)

48. The proposed procedure to remove fill from around the existing travel lift area in a 3 to 1 slope will prevent any sedimentation from occurring. (Exs. APP-1; test. G. Bouthillette 09/12/00, pp.119-120.)

c
Flushing/Water Quality/Flooding

49. Flushing in the area of the marina is excellent, as the majority of the boat slips extend into the main channel of the Connecticut River. The extension of the docks in the area of the marina basin and Pratt Creek will have no effect on the current flow or flushing of the water of the Creek to the basin. The proposed dredging in the areas of the basin will increase beneficial flushing. (Exs. APP-1, 1A; test. G. Bouthillette 9/12/00, pp. 122-130; test. A. Mauger 9/13/00, pp. 225-226.)

50. Dredging can cause changes to drainage and circulation, impacting an area with suspended sediments. The proposed dredging will maintain consistent depths of 5.5 feet in the marina basin and 6 feet adjacent to the peninsula of Pratt Creek and will not alter the nature of the bottom substrate. The dredging, which will take place in a small cross section of the entire Pratt Creek area, will eliminate shallow areas and will increase the amount of current going through the basin, eliminating the amount of sedimentation. The water velocity will be higher and more flushing will be created in the basin, reducing stagnation. (Ex. APP-1; test. G. Bouthillette, 9/12/00, pp. 123-130, 142; test. 9/13/00 P. Francis, pp. 121-122, A. Mauger, pp. 225-226.)

51. The volume and velocity of river flows will attenuate any water pollution caused by boat traffic within the marina or traversing the River. No evidence of contaminants was found in the sediments within the marina. Even if there were marina-generated pollutants in the water, there is very little water movement up Pratt Creek, where, on some tidal stages, water flows are backed up by an incoming tide. (Test. G. Bouthillette 9/12/00 pp. 124, 151-157; test. P. Francis 9/13/00, p. 147; test. A. Mauger 9/13/00, pp. 228-229.)

52. The current best management practices followed by the applicant avoid adverse impacts to water quality as a result of the operation of the marina. These include measures to avoid adverse impacts from the operation of boats in and around the marina. Limnological testing reflect high water quality at all locations, with no adverse quality impacts in excess of acceptable standards. (Exs. APP-1, 1A, 8, 9, 14; ex. Hearing Officer-11; test. G. Bouthillette 9/12/00, p. 98; test. A. Mauger 9/13/00, pp. 227-229.)

53. The use of the new pump-out station will help to prevent the disposal of human waste into the water in and around the marina. (Test. G. Bouthillette 9/12/00, pp. 120-121; test. A. Mauger 9/13/00, pp. 223, 228.)

54. Sediment character will not change as a result of dredging. Areas not directly affected by the maintenance dredging activity will be protected by a top to bottom silt curtain to prevent to the greatest extent possible any adverse environmental impacts due to temporary sediment suspension, sedimentation or turbidity. (Ex. APP-1; test. G. Bouthillette 9/12/00, pp. 134-135; test. A. Mauger 09/13/00, p.226.)

55. The procedures and equipment used in the maintenance dredging, sediment disposal, and dock reconfiguration will conform to DEP and United States Army Corps of Engineers requirements. These measures are the best available methods to reduce sedimentation, and are designed to make the best practical use of obtainable water depths. Finally, they will comply with the Tier I requirements set forth in the DEP *Best Management Practices for Coastal Marinas* as adopted by BDRM. (Exs. APP-1, 1A, 1B; ex. INT-DRLT-7; ex. INT-JDK-2; test. P. Francis 9/13/00, pp. 159-160.)

d
Wetlands
Aquatic Plants, Fish, Shellfish and Wildlife

56. The removal of the docks will result in the loss of aquatic species as this activity will disturb the aquatic animal, plant and fish communities that are established on the docks in their current configuration. However, the final reconfiguration, which will extend many of the docks and install a new debris boom, will increase the surface area on which this aquatic life, which include algae, various types of invertebrates and small fish, can live. Given the reproductive rate of these animals, they should quickly re-colonize the newly exposed substrate and develop new communities of aquatic animal and plant life. The reconfiguration of the marina docks and slips will therefore help to diversify the ecosystem of the area by creating new colonization of different kinds of algae, invertebrates and small fish. (Ex. APP-1; test. G. Bouthillette 9/12/00, pp. 115-119, 121-122.)

57. In the current mooring configuration, "free swinging" boats have a larger permissible digression over the SAV area. With the proposed configuration, "bow to stern" there is less likelihood of boats impeding on the any SAV. (Ex. APP-1; test. C. Klemmer 9/12/00, pp. 46-47.)

58. When the basin was created in the early 1960's, there were no SAV. Over time, seeds and other types of reproductive entities found their way into the basin from the upper marsh areas. The average depth of the basin originally was 6 feet; SAV found the marina basin to be a suitable environment for aquatic colonization. (Ex. APP-1)

59. The SAV located in the proposed dredge area in the basin will re-colonize and grow in that area very quickly after dredging. The increase in the current water depth will alleviate the negative impact on SAV due to transit of vessels through the area and will reduce the amount of sedimentation. The depth will also be conducive to light penetration, which is necessary for growth and survival. (Ex. APP-1; test. G. Bouthillette 9/12/00, pp. 129-130,140-141; test. P. Francis 9/13/00, pp. 124-125.)

60. Phragmites are an opportunistic invasive species. Over time they will accumulate and trap sediments within their structure preventing water from percolating through a freshwater marsh or freshwater swamp. The removal of phragmites will enable productive species of flora to reassert themselves in certain areas. (Test. G. Bouthillette 09/12/00, p. 131.)

61. There are presently two plant species that occur on-site and are listed as Special Concern by the DEP. These species, *Sagittaria montevidensis* and *Sagittaria sublata,* grow in the excavated basin and on the mud flat along Pratt Cover Creek

with *Sagittaria sublata* more abundant. The basin was artificially created with a steep side slope and narrow intertidal flat. Impacts to these species will be minimal as long as the fringing flat and vegetation are not disturbed. (Ex. DEP-17.)

62. Pratt Creek and the Connecticut River support a diversity of freshwater, diadromous (anadromous and catadromous)[5] and transient marine species. The latter use these waters on a seasonal basis. The River supports spawning migrations of various anadromous species including river herring, American shad, Atlantic salmon and sea lamprey. Waters within the marina are used by young river herring and American shad during their downstream migration to marine waters. The species in and around the marina also use its waters for foraging and as a seasonal refuge to avoid strong river currents in the winter when their metabolic rate is reduced. The seasonal restrictions on dredging activities and the proposal of the applicant to undertake the minimum amount of dredging necessary in the basin will prevent an adverse effect on the fish population in the area. (Ex. APP-1; ex. DEP-45.)

63. The project will have no significant impact on shellfish resources in the Connecticut River and Long Island Sound. There are no shellfish beds in the area of the proposed activities, except for freshwater mussels, which are found further up the River on the other side. (Ex. APP-1; ex. DEP-13; test. G. Bouthillette 9/12/00, pp. 143-145.)

64. The bald eagle is a federally threatened and state endangered species because of the loss of waterside habitat due to human occupation and activity. Winter is the most critical time for these birds. They arrive in Connecticut to areas of open water to

feed on fish, their preferred food and at night they roost in conifers on sheltered ridges. (Ex. DEP-14.)

65. Bald eagles regularly use the Connecticut River as a travel corridor during the winter months. They use the shoreline trees in the area of the BDRM for perching and feeding from December to March. As access to feeding and roosting areas is essential to their survival, the restrictions on on-site work during these months will prevent adverse impacts as a result of the proposed activities at the marina. (Ex. DEP-14.)

[5] Diadromous fish migrate between salt and fresh waters. Anadromous species ascend rivers from the sea to spawn (e.g., American shad); catadromous fish live in the rivers and go to the sea to spawn (e.g., eels).

III

CONCLUSIONS OF LAW

A

Introduction

This application of the Brewer Deep Marina was first filed by a prior owner of the marina over ten years ago, and has been the subject of considerable public interest and comment. The permit seeks to conduct regulated activities associated with the reconfiguration of the marina, including expansion of the dock areas, maintenance dredging, and shoreline stabilization. The applicant appears to follow sound management and operations practices at the marina, which provides boaters with access to the Connecticut River. The marina is located adjacent to tidal wetlands, and is part of the lower Connecticut River wetlands, an important and valuable environmental resource. This application, which presents a plan for marina improvement and development, must be evaluated with the goals of coastal management in mind to balance the recreational uses of the marina while minimizing any adverse impacts to the environment.

B

Statutory and Regulatory Criteria

The applicant has the burden to demonstrate that the proposed application is consistent with all applicable statutory and regulatory requirements. Marinas are water-dependent uses promoted and preferred by the *Coastal Management Act.* General Statutes §§22a-92(a)(3); 22a-92(b)(1)(A); 22a-92(b)(1)(G); 22a-92(2)(G); 22a-93(16). However, applications for development of marinas must comply with statutory and

regulatory requirements that protect coastal and aquatic resources. General Statutes §22a-359; Regs., Conn. State Agencies §22a-30-10.

The present application was filed pursuant to the requirements of General Statutes §22a-359 through §22a-363(f), commonly referred to as *The Structures and Dredging Act.* Section 22a-359 provides that the Commissioner shall regulate dredging and the erection of structures and the placement of fill and associated work in the tidal, coastal or navigable waters of the state waterward of the high tide line. Any decisions of the Commissioner pursuant to this section shall be made:

> "with due regard for indigenous aquatic life, fish and wildlife, the prevention or alleviation of shore erosion and coastal flooding, the use and development of adjoining uplands, the improvement of coastal and inland navigation for all vessels, including small craft for recreational purposes, the use and development of adjacent lands and properties and the interests of the state, including pollution control, water quality, recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned." §22a-359(a).

Section 22a-361(d)(1) grants the Commissioner the authority to issue a general permit if he determines that such activity would cause minimal environmental effects, minimal cumulative environmental effects, and not be inconsistent with the considerations and public policy set forth in the *Inland Wetlands and Watercourses Act*, the *Coastal Management Act.* The activity must also constitute an acceptable encroachment into public lands and waters. See §§22a-28 through 22a-35; 22a-90 through 22a-112. The policies of the preservation of tidal wetlands and the protection, preservation and enhancement of coastal resources, including those used for recreational purposes, must therefore be assessed.

The Commissioner established the criteria for granting, denying, or limiting permits in §22a-30-10 of the Regulations of Connecticut State Agencies. This criteria gives due regard 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). The Commissioner shall grant, or grant with limitations or conditions, a permit to conduct a proposed activity only if it is determined that the application is consistent with all applicable criteria set forth in this regulation.

(1)
Preservation of Wetlands

In order to find that wetlands will be preserved and that their despoliation and destruction will be prevented, the Commissioner must find the following.

(a) *There is no alternative for accomplishing the applicant's objectives that is technically feasible and would further minimize adverse impacts.*

(b) *Any structure or fill is no greater in length, width and height than necessary to accomplish its intended function.*

(c) *Pile supported construction will be used to the fullest extent possible.*

(d) *All reasonable measures that would minimize the adverse impacts of the proposed activity on wetlands and adjoining coastal and tidal resources are incorporated as limitations on or conditions to the permit.*

The objective of the application is an improved marina. The dock reconfiguration, structure erection and maintenance dredging proposed in the application will meet this goal. The record, which includes evidence of many years of consideration of plans and specifications, does not present any indication that there is

any technically feasible alternative that will accomplish the goals of the applicant and further mitigate or minimize any significant environmental impacts.

The record also demonstrates that the applicant, in consultation with the DEP, has presented a proposed plan in which any structure or fill is no greater in length, width and height than necessary to accomplish its intended function. The applicant has carefully considered the proposed plan of work against this requirement as demonstrated by its plan to replace and improve the debris booms with a more efficient and less invasive system, and by its evidence of the backfill procedures to be used in the area of the travel lift well.

Pile-supported construction will be used to the fullest extent possible. The modification of the existing dock configuration and arrangement of boating access structures relating to Docks A through H will use pile-supported construction.

The draft permit includes limitations and conditions that will provide reasonable measures to minimize any adverse impacts of the proposed activity on wetlands and adjoining coastal and tidal resources. The permit specifically provides that the applicant will not be able to place any structures or conduct any work outside of the reconfiguration perimeter that is authorized in the permit. The applicant will also not be able to moor, berth or otherwise secure any vessels to the fairway side of the T-head finger piers of docks identified as Pier A through Pier H in the permit. The applicant is also restricted from conducting any work waterward of the high tide line or in tidal wetlands at this work area other than as authorized in the permit. Finally, although not part of the permit, the applicant has agreed that the marina perimeter will be established with the cap on its size enforced through a *Declaration of Restrictions and*

Reservations, which will be granted in favor of the intervenor DRLT.[6] In addition, the applicant will grant a *Conservation Easement* to the Land Trust that will protect the freshwater tidal marsh and Pratt Cove to the south of the marina.

In addition to the specific limitations and restrictions listed in the permit, the activities that it will authorize, and the way in which they will be carried out by the applicant, will minimize any adverse impacts of the proposed activity on wetlands and adjoining coastal and tidal resources.

(2)

Recreational and Navigational Uses

In order to find that a proposed activity will not destroy existing or potential recreational or navigational uses, the Commissioner shall find the following relevant conditions.

(a) *The proposed activity will not unreasonably interfere with established public rights of access to and use of wetlands.*

(b) *The proposed activity will not be located in a way that unreasonably interferes with a navigable channel or small craft navigation; and*

(c) *The proposed activity will not cause or contribute to sedimentation problems in adjacent or nearby navigable waters, channels, anchorages or turning basins.*

The work proposed by the applicant will not unreasonably interfere with established public rights of access and use of the marina and will not unreasonably interfere with a navigable channel or small craft navigation. Rather than present the

[6] DRLT indicated in its post-hearing submission that the Connecticut River Watershed Council Board had agreed to add its name as a reverter on this deed restriction and would be sending a letter to confirm this fact. No letter was received, so this issue has not been addressed.

potential for interference with established public rights of access to and use of wetlands, the marina improvements will enhance the public right of access to and use of this important resource by all boaters. The navigational fairway channel will be straightened and widened by the reconfiguration of the docks and the shortening and reconfiguration of the mooring field. A straighter, wider and more consistent fairway will be safer for not only boaters but also users of small watercraft such as canoes and kayaks. The elimination of slips in the basin area and the additional *"No Wake"* signage will also enhance the safety of the users of this small watercraft. The need to traverse the debris boom to access Dock A will improve and make navigation in that area safer. The addition of a second accessible "pump-out" facility will provide an essential service to all boaters in the marina area. These and other improvements will make the marina a safer and more efficient source of public recreation.

Neither the proposed dredging in and around the basin, nor the proposed structure erection activities, will cause or contribute to sedimentation problems in adjacent or nearby navigable waters, channels, anchorages or turning basins. The record satisfactorily demonstrates that all measures will be taken to prevent temporary sedimentation problems during the activities, and that the activities will not cause a significant adverse impact to the adjacent Pratt or Post Coves, the shoreline, or the navigable areas of Pratt Creek and the Connecticut River.

(3)
Erosion and Sedimentation

In order to make a determination that the proposed activity will not cause or produce unreasonable erosion or sedimentation, the Commissioner shall make the following findings.

(a) *The proposed activity will not cause significant changes in current patterns, water velocity or exposure to storm or wave conditions that result in adverse effects on erosion or sedimentation patterns*.

(b) *Temporary erosion control measures will be utilized on the project site both during and after construction*.

(c) When permanent erosion control measures are proposed, non-structural alternatives are utilized unless structural alternatives are shown to be unavoidable and necessary to protect infrastructural facilities, water-dependent uses and existing inhabited structures.

(d) Structures and fill shall not cause a significant adverse impact on the movement of sediments on or along the shoreline; and shall not cause erosion of adjacent or down drift areas.

(e) The perimeters 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.

(f) When areas are proposed to be dredged: they are laid out to make the best practical use of existing water depths; they are designed to avoid siltation to any existing natural or established navigation channel; and the best available methods are used to reduce sedimentation.

The applicant has provided more than sufficient evidence that its proposed activities will not cause significant changes in water patterns or velocity, and that none of its activities will cause conditions that could result in adverse effects on erosion or sedimentation patterns, even during a storm event. Any changes to the current pattern and velocity of water in and around the marina, especially as it flows in and out of the

basin, will actually be improved as a result of the activities, and will reduce the chance of sedimentation problems. Temporary erosion control measures, to the extent any are necessary, will be addressed through measures such as the installation of a silt curtain in the basin. Permanent erosion control measures will use the non-structural alternatives of vegetative plantings and configurations, and structural alternatives will be used only where necessary to protect infrastructure, water-dependent uses and existing structures. The proposed structures and fill described in the application will not cause erosion on adjacent or down drift areas. The conditions of the permit and the plan proposed by the applicant will ensure that the perimeter of all areas to be filled or dredged are suitably stabilized to prevent spillover or erosion of material into adjoining wetland or watercourse areas. The dredging planned in the area of the basin and an area adjacent to the Pratt Creek Peninsula was designed to be as minimal as necessary to accomplish its goal of safe navigation within the basin at high and low tides and to provide a greater rate of water flow and flushing. This maintenance dredging will maintain a consistent depth of water in the basin and the area adjacent to the Peninsula. No dredging will occur in areas with concentrations of SAV and, where SAV is present, the depth of the dredging will not prevent the regrowth and survival of SAV. The dredging methods are the best available and will avoid siltation to any existing natural or established navigational channel and will reduce sedimentation.

(4)
Marine Fisheries, Shellfisheries, and Wildlife

In 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 make the following applicable conclusions.

(a) The existing biological productivity of any wetland will not be unreasonably affected.

(b) Habitat areas, such as habitat of rare and endangered wildlife and fish species, will not be destroyed, filled or otherwise unreasonably affected.

(c) Wildlife and their nesting, breeding or feeding habitats will not be unreasonably reduced or altered.

(d) Erosion from the proposed activity will not result in the formation of deposits harmful to any fish, shellfish or wildlife habitat.

(e) *Shellfish beds will not be adversely affected*.

(f) *The timing and construction activities take into consideration the movements and lifestages of fish, shellfish and wildlife*.

(g) The proposed activity will not unreasonably interfere with the harvesting or maintenance of natural shellfish beds.

The existing biological productivity of any wetland will not be unreasonably affected by the proposed activities. Measures to be taken during and after the reconfiguration and dredging activities will ensure that the habitats of fish species and wildlife that populate the area are not destroyed, filled or otherwise unreasonably affected. Seasonal restrictions on dredging and structural erection take into consideration the movements and lifestages of fish and wildlife, and will assure that there are no adverse impacts to migrating fish or bald eagles that use the area for nesting and feeding. Any erosion from the planned activities will not result in the formation of

deposits that could harm fish or wildlife. There are no beds of shellfish in the area of the marina that could be harmed by the planned activities.

(5)
Circulation and Quality of Coastal or Tidal Waters

In order to decide that a proposed activity will not result in a significant adverse impact on the circulation and quality of coastal or tidal waters, the Commissioner shall find the following.

(a) *The proposed activity will not cause the significant adverse alteration of patterns of tidal exchange or flushing rates, freshwater input or existing basin characteristics and channel contours.*

(b) *Water stagnation will be neither caused nor contributed to, and the ability of wetlands and adjacent water bodies to flush themselves will not be adversely affected*.

(c) *Pile-supported construction will be utilized to the fullest extent practical*.

(d) *The proposed activity will not result in water pollution that unduly affects the bottom fauna, the physical or chemical nature of the bottom, and the propagation and habitats of shellfish, finfish, and wildlife.*

There is no evidence that the proposed activity will significantly alter the patterns of tidal exchange or flushing rates, freshwater input or existing characteristics and channel contours. There was evidence that the applicant has studied these patterns, and has taken them into consideration in its planning of the proposed activities. There was evidence that the proposed dredging will improve the beneficial flushing in the basin area and will enhance the ability of that basin to be part of the natural pattern of water flow in and around the marina. This increase flushing and the other related proposed activities will prevent rather than contribute to any problems with water

stagnation. The proposed dredging, the planned vegetative stabilization and the other measures such as controlled fill and structural changes will not cause pollution that will unduly affect the bottom fauna or the propagation of the fish and wildlife. The planned activities, while they may temporarily impact SAV and other aquatic vegetation and communities of algae and other water-dependent colonies, will enhance the future growth and survival of these species.

(6)
Protection of Life and Property from Natural Disaster

To make a determination that a proposed activity is consistent with the need to protect life and property from natural disasters, including flooding, the Commissioner shall find the following applicable facts.

(a) The proposed activity will not increase the potential for flood damage on adjacent or adjoining properties.

(b) The proposed activity will not increase the exposure of any property, land or structures to damage from storm waves and erosion produced thereby.

(c) The proposed activity will not result in significant increase in the velocity or volume of flood water flow both in streams and estuaries.

(d) The proposed activity will not significantly reduce the capacity of any stream, river, creek or other watercourse to transmit flood waters generated by hurricanes or other storm events and will not result in significantly increased flooding either up or downstream or its location.

By their very nature, the methods that will be used to carry them out, and their location, the proposed activities will not increase the potential for flood or hurricane damage on properties adjacent to or adjoining the marina. They will also not increase the exposure of any property, land or structures to storm waves or erosion produced by

those storms. The increased velocity of the water flow in the basin as a result of the dredging will improve its ability to transmit water out of the basin, and, in the case of a storm, would allow higher waters to flow away from that area more quickly. The pattern of flow of water into Pratt Cove will not be affected by the dredging and, again, could be protected by more efficient water flows away from that area in the event of a storm. The shoreline stabilization measures will improve the ability of those measures to protect the shoreline and adjacent land and properties, during normal conditions and during a storm or natural disaster. Because the activities will not significantly reduce the capacity of any stream, river, creek or other watercourse to transmit floodwaters generated by hurricanes or other storm events, they will not cause significantly increased flooding upstream or downstream from the marina property.

(7)
Criteria for Water Dependent Uses of Tidal Wetlands

In order to make a determination that a proposed activity within the coastal boundary, as statutorily defined and mapped, is consistent with the state policy that water-dependent uses of the shoreline be given highest priority and preference, the Commissioner shall make the following applicable findings.

(a) *All reasonable measures that would minimize adverse impacts on future water-dependent uses are incorporated as limitations on or conditions of the permit.*

(b) *The proposed activity will not unreasonably interfere with the riparian rights of adjacent landowners or claimants of water or shellfish rights in or adjacent to the wetland.*

The application proposes work that will permit some expansion, better utilization of space at the marina, and lead to improved navigational conditions. There is no evidence that the proposed activity will unreasonably interfere with the riparian rights of adjacent landowners or claimants of water rights adjacent to the wetland. The proposed dredging will enhance the ability of the waters of the marina to provide for safer navigation and will maintain and ensure the survival of aquatic plant and animal life. The applicant has provided evidence that all reasonable measures will be taken to avoid adverse impacts on future water-dependent uses. The conditions of the permit incorporate these measures as part of its authorization. In addition, the applicant will enter into a deed restriction and conservation easement that will further protect the future use of this water-dependent resource.

C

Monitoring and Testing

The intervenors seek a permit provision that would require on-going monitoring by the applicant. This testing would include the collection of sediment and water column samples, both in and around the marina, to document the marina's environmental impacts on Pratt Cove. However, there is no evidence that any pollution generated by the marina impacts Pratt Cove; therefore, there is no support for such a permit requirement. High water quality was demonstrated by testing done by the applicant in preparation of this application, lending further support to this conclusion.

The intervenors presented no evidence as to proposed testing standards, and did not present a reasonable way in which such a requirement could be enforced. The intervenor DRLT, which will hold a *Conservation Easement* granted to it by the applicant, is always free to conduct its own testing in Pratt Cove and report the results to the applicant and the DEP. There was no evidence presented to demonstrate that the applicant is not an environmentally conscious entity and would not be responsive to a reliable report of marina-generated pollution in Pratt Cove.

IV

CONCLUSION

The application meets the relevant statutory and regulatory criteria that guide the Commissioner's decision to grant or deny such an application. This proposal to expand and reconfigure the Brewer Deep River Marina and conduct associated maintenance activities, will improve and enhance a recreational facility that provides access to the waters of the Connecticut River for boaters and other users of watercraft while avoiding, minimizing or limiting any significant adverse environmental impacts as a result of that activity.

I conclude that the application strikes an appropriate balance between using a water-dependent public trust while minimizing adverse environmental impacts to protect the unique resources of the area, the goal of effective coastal management. Accordingly, I recommend a permit be issued to Brewer Deep River Marina, Inc. in accordance with the terms and conditions of the draft permit, attached hereto as *Attachment I.*

September 30, 2001
Date

/s/ Janice B. Deshais
Janice B. Deshais, Hearing Officer