

**September 2, 2009**

The Environmental Department of Murtha Cullina is pleased to provide clients and friends with information about topics of interest in the environmental area.

Diane C. Bellantoni

Kathleen E. Connolly

Francis A. DiLuna

Michael J. Donnelly

Loni S. Gardner

Sarah P. Kowalczyk

Andrew W. Lord

David Platt

Gregory Sharp

Alfred E. Smith, Jr.

Mark R. Sussman

## **OLISP PROPOSES NEW REGULATIONS - DEADLINE FOR COMMENTS IS SEPTEMBER 10TH**

The Department of Environmental Protection's Office of Long Island Sound Programs ("OLISP") has circulated a draft set of regulations which would apply exclusively to applications for the construction of residential docks in tidal and coastal waters. The deadline for comments on the proposed draft is September 10, 2009.

According to OLISP presenters at stakeholder meetings this summer, the regulations were proposed to reduce the permit workload of the Department by making clear what is approvable. However, instead of providing a streamlined process for residential docks along the lines of a general permit, the regulations seek to achieve workload reductions by eliminating coastal property owners' rights of access.

The draft regulations include arbitrary limitations on dock length and design, as well as prohibitions on accessory structures and well-accepted structural solutions to site-specific design problems. They also include outright prohibition of any residential dock structures where the commissioner determines coastal resources may be impacted.

As you know, residential property owners in the state have no organization to protect their interests. As a result, those who represent them in the permit process must protect their interests for them, or the exercise of riparian property rights at specific locations will, in many cases, be eliminated forever by regulation.

Examples of provisions which should be carefully analyzed and commented upon are:

- New regulatory definition of "high tide line" (Section 22a-361-2(l));
- New regulatory definition of "water dependent use" which changes the definition in the Coastal Management Act, and will, if adopted, foreclose residential owners from the balancing of interests required by the Act (Section 22a-361-2(m));
- New prohibition on regulated activities that the commissioner finds would "impede the landward migration of tidal wetlands and other coastal resources in response to rising sea levels" (Section 22a-361-8(b));

- New prohibitions on wave-attenuators, cribs, dredging, fill, non-boating related structures or buildings, boardwalks, and use of pressure treated wood except for structural members (Section 22a-361-10);
- New prohibition on the riparian right of access by use of a dock where:
  - construction or use of a dock might impact significant coastal resources; or
  - local Harbor Management Plans designate “no dock zones”; or
  - construction of a new dock would encourage applications for other new docks; or
  - areas exposed to high winds and waves would require significant structural accommodations (Section 22a-361-11).
- New authority for the commissioner to consider the use of the vessel accessing a dock, which would unilaterally extend the commissioner’s jurisdiction to the vessels themselves and their manner of operation, as opposed to the existing legislative authorization limiting that jurisdiction to the structures (Section 22a-361-14);
- New setback requirement of 25 feet from the intersection of the high tide line with the adjacent property line or the nearest dock (Section 22a-361-16);
- New limitation on dock length which is the shortest of 25% of the distance to the opposite shore, or 50 feet waterward of mean low water, or 50 feet waterward from mean high water of the nearest adjacent authorized residential dock (sic) (Section 22a-361-19);
- New outright prohibition on floats where the water is less than 18 inches at mean low water, which would eliminate the use of float stops or other mechanical methods to keep a float suspended (22a-361-19);
- Codification of the current limitation on float size of 100 square feet, unless hardship or other justification is found, and then no more that 160 square feet (Section 22a-361-21);
- New prohibition on construction of any residential dock if the commissioner determines that protection of shellfish beds, tidal wetlands, intertidal flats, islands, and submerged aquatic vegetation outweighs the exercise of the property owner’s riparian rights (Section 22a-361-29);
- New prohibition on dock walkways crossing tidal wetlands that exceed 100 feet from the upland border to the waterward edge of the wetland (Section 22a-361-29(b)).

Please make your voice heard by September 10th so that changes can be made before the Department issues a notice of formal rulemaking and schedules a public hearing. If OLISP does not hear from you, you can expect the July 10, 2009 draft will likely be proposed for the formal rule making process. For a copy of the July 10, 2009 Draft Residential Dock Regulations, [click here](#) for access to a copy on our website.

If you have questions, please contact: Gregory Sharp at [gsharp@murthaw.com](mailto:gsharp@murthaw.com), 860-240-6046, or Andrew Lord at [alord@murthalaw.com](mailto:alord@murthalaw.com), 860-240-6180.



BOSTON

HARTFORD

MADISON

NEW HAVEN

STAMFORD

WOBURN