



April 16, 2021

Dr. Damian Ortelli, Chairman
Harbor Management Commission
City of Stamford
888 Washington Blvd
Stamford, Connecticut 06904-2152

Re: Public Trust and Navigation Rights in Stamford Harbor Area

Dear Dr. Ortelli:

Thank you for your letter dated April 7, 2021 regarding public trust and navigation issues in Dolphin Cove lagoon in Stamford. After reviewing the letter and attached materials, we concur with the Commission's understanding that tidal waters are subject to the public trust, even where the underlying submerged lands are privately owned.

First, it is well established in statute and caselaw that the state of Connecticut holds the submerged lands and waters waterward of the mean high water line in tidal coastal, or navigable waters in trust for the public, which may freely use these lands and waters for traditional public trust uses such as fishing, shellfishing, boating, sunbathing, or simply walking along the beach.¹ The landward boundary of the public trust, the mean high water line (often referred to as "high water mark" in court decisions),ⁱ is also the waterward boundary of private title. There can be an exception to this rule, however, where former upland areas have been excavated or otherwise opened to the flow of tidal or navigable waters. In such cases, the upland owner continues to own the now-

¹ "Public rights include fishing, boating, hunting, bathing, taking shellfish, gathering seaweed, cutting sedge, and of passing and repassing. . ." *Orange v. Resnick*, 94 Conn. 573 (1920). "It is settled in Connecticut that the public has the right to boat, hunt, and fish on the navigable waters of the state." *State v. Brennan*, 3 Conn. Cir. 413 (1965). The public has the right to fish and shellfish over submerged private lands, *Peck v. Lockwood*, 5 Day 22 (1811). The public has the right to pass and repass in navigable rivers, *Adams v. Pease* 2 Conn. 481 (1818). The public may gather seaweed between ordinary high water and low water, *Chapman v. Kimball* 9 Day 38 (1831).

submerged substrate, but does not own or control the waters flowing above. Under the public trust doctrine, vessels may freely navigate the tidal waters above the bottomlands, so long as they do not physically affect or infringe on the bottom itself.

Whether the vessels in question are engaged in recreational, commercial or other types of travel is irrelevant. It is possible to find dicta in old cases that discuss the concept of “navigability” in terms of waterborne commerce, but this is not the prevailing law in Connecticut, if anywhere. C.G.S. §15-15-3a defines “navigable waters” as “waters which are subject to the ebb and flow of the tide shoreward to their mean high-water mark,” and “navigable waterways” as “waters which are physically capable of supporting waterborne traffic, and subject to the ebb and flow of the tide.” If navigability were conferred solely by the passage of vessels engaged in merchant commerce, very few of Connecticut’s waterways could be considered “navigable,” which flies in the face of common reality. Moreover, we are unaware of any authority that associates title in submerged bottomlands with the ability to restrict non-commercial navigation of vessels passing above.

In terms of the Dolphin Cove situation specifically, when the Lagoon was opened to Long Island Sound, the excavated area became overflowed by public trust tidal waters. With the public trust waters came the public trust rights to navigate and to fish, and these rights cannot be infringed upon by owners of title to the submerged lands. However, the private owners of the adjacent and submerged property retained their rights in the soil, which means that they may forbid the public from harvesting shellfish, excavating, sinking pilings, dropping anchor, setting mooring tackle or otherwise touching or making use of the privately owned substrate. They may not obstruct or restrict boat traffic into or out of the Lagoon.

We appreciate the Commission’s ongoing concern for balancing public and private rights to the public trust area, and hope that our comments have been helpful. If you have any questions please feel free to contact David Blatt of my staff at David.Blatt@ct.gov

Sincerely,



Brian P. Thompson

Director

Land and Water Resources Division

Cc: Geoff Steadman

ⁱ The public owns up to “high water mark,” *Simons v. French*, 25 Conn. 346 (1856). Title of riparian proprietor terminates at ordinary high water mark, *Mather v. Chapman*, 40 Conn. 382 (1873). Private ownership of submerged lands is possible, only when basins are dredged from upland, or from inland, non-navigable waters. *Michalczo v. Woodmont*, 175 Conn. 535 (1978).