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BY: JRM
LAND USE DEPT.

**SOMERS CONSERVATION COMMISSION
SOMERS, CT**

In the matter of:

Date: DECEMBER 2, 2020

**APPLICATION #740
50 HANGDOG LANE
CONSTRUCT DRIVEWAY AND
REPAIR DRAINAGE IN UPLAND REVIEW AREA
ROULIER FAMILY PARTNERSHIP/DANIEL R. ROULIER**

VERIFIED PETITION TO INTERVENE

Pursuant to Section 22a-19 et seq. of the Connecticut General Statutes, the undersigned Hangdog Lane LLC, a taxpayer of Somers, Connecticut, owning land at 54 Hangdog Lane directly abutting 50 Hangdog Lane, the subject of this proceeding, is concerned with environmental integrity of wetland resources including the ground water, surface water, land and quality of life in Somers, applies hereby, by and through its Agent, Jacqueline T. Sarkis, to become an intervening party in the above entitled administrative proceeding, and represents as follows:

1. The subject administrative proceedings (the "Application") involve the construction of improvements in wetlands and the upland review area.
2. Hangdog Lane, LLC, is the owner of a certain drainage easement including the pipe and other improvements across the subject premises at 50 Hangdog Lane. Hangdog Lane, LLC enjoys the privileges which the drainage easement confers and it enjoys the integrity of natural resources in the Hangdog Lane area.
3. Hangdog Lane, LLC is the owner of a driveway access easement across 50 Hangdog Lane, and the improvements in the easement are proposed to be altered and adversely affected. As the owner of a property interest affected by the Application, Hangdog Lane, LLC should have been joined as an applicant, which the Applicant has failed to do.
4. This administrative proceeding involves conduct which has or which is reasonably likely to have, the effect of unreasonably polluting, impairing or

destroying the public trust in the air, water and other natural resources of the state in the following ways:

- a. The activities which are proposed are in an area of unidentified wetlands because the historic flows from the upland have altered the wetlands. The most recent wetlands delineation was done more than 20 years ago at the time of the original subdivision approval. The wetlands scientist who delineated the wetlands died many years ago at age 91 and is not available to verify the accuracy of his work which must be redone given the extraordinary passage of time since the original delineation.
 - b. The Application is fatally flawed in failing to identify the actual, present location of the regulated wetlands, which have expanded as a result of the alteration of flows since the original subdivision many years ago. These regulated wetlands are directly affected by the proposed work.
 - c. The reasonable probability of unreasonable pollution lies in the activities proposed, which will redirect flows from their existing location to some new but yet undesignated underground piping system and then to the surface and on to a pond for which there has been no design. The Conservation Commission at its meeting on November 4, 2020, was unable to identify in any definitive way what work was proposed to be done in the regulated wetlands or the upland review area given the lack of any plans.
 - d. Essential to protecting the public interest is knowing the origins of the water recharging and maintaining this wetlands system and the Application is grievously deficient in not identifying the watershed and not providing the location of the piping system proposed to be altered. There is no plan identifying the location of the existing pipe and what water from where goes into that pipe.
5. There is a feasible and prudent alternative to the proposed development in the upland review area and, in what on information and belief are, regulated wetlands, presently not determined because of the lack of any current delineation. The feasible and prudent alternative is to access the property directly from the public thoroughfare at the frontage on Hangdog Lane, which the Applicant has routinely done, and continues to do, on an ongoing basis without any improvements to the property.
 6. The Connecticut Environmental Protection Act of 1971 provides, in part, that any person may intervene as of right in any administrative proceeding upon the filing

of a verified pleading asserting that the proceeding "involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the State". C.G.S. Section 22a-19(a).

7. It is the responsibility of the Applicant in these administrative proceedings to adequately develop by the introduction of substantial evidence of record, evidence that will address the issues raised herein with respect to the potential impacts, and the Applicant has the burden of establishing that the proposed action will not have such significant adverse impact as alleged and that no alternatives exist that would reduce or eliminate the potential for such adverse impacts.
8. Pursuant to C.G.S. 22a-19, et. seq., the undersigned requests all rights of participation granted to any party in accordance with the provisions thereto.
9. This request for intervention with party status will further the policies and purposes of the Connecticut Environmental Protection Act. (C.G.S. 22a-19, et. seq.).
10. The Application involves a degradation of jurisdictional wetlands resources and the petitioner's intervention will advance the public interest with regard to the protection of the natural resources of the State.
11. The Intervening Petitioner, pursuant to the provisions of C.G.S. Section 1-21c, hereby requests that it be given written notice by mail of all hearings and meetings to be held in connection with this proceeding as well as all negotiations pertaining to the above captioned application.

Applicable Law:

A. CEPA Allows Any Person To Intervene In Legal Proceedings to Raise Environmental Issues

As noted above, this Application is made pursuant to CEPA, the plain language of which was intended to provide wide access to the states' various tribunals. Red Hill Coalition, Inc. v. Conservation Commission of Town of Glastonbury, 212 Conn. 710 (1989).

The statute provides in relevant part:

“[in] any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, ...any person ...or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.”

§22a-19 (emphasis added).

Unlike a classical zoning case, a §22a-19 or 22a-19 intervenor need not show “aggravement”. Hyllen-Davey v. Planning & Zoning Commission, 57 Conn. App. 598, 593, 749 A.2d 682, cert denied, 253 Conn. 926, 754 A.2d 796 (2000)(“the EPA waives the additional aggravement requirement in ...§22a-19, [which] authorizes any citizen or other entity, without having to first establish aggravement, to intervene in an existing proceeding.”); Scaringe v. Meriden Planning & Zoning Comm, CV-000274515-S, J.D. at Meriden, (November 26, 2002)(Gilardi, J).

An allegation of facts that the action at issue in the proceeding is likely to unreasonably impair the public trust in natural or historical resources of the State is sufficient. See, Cannata v. Dept. Of Environmental Protection, et al, 239 Conn. 124 (1996)(alleging harm to floodplain forest resources).


B. CEPA Is Not Discretionary: Once A Verified Application Has Been Filed, Intervention Is A Matter of Statutory Right

The Connecticut Appellate Court has noted that statutes “such as the EPA are remedial in nature and should be liberally construed to accomplish their purpose.” Avalon Bay Communities, Inc. v. Zoning Commission of the Town of Stratford, 87 Conn.App.537 (2005); Keeney v. Fairfield Resources, Inc., 41 Conn. App. 120, 132-33, 674 A.2d1349 (1996). In Red

Hill Coalition, Inc. V. Town Planning & Zoning Commission, 212 Conn. 7272, 734, 563 A.2d 1347 (1989) ("section 22a-19 makes intervention a matter of right once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded"); Polymer Resources, Ltd. V. Keeney, 32 Conn. App. 340, 348-49, 629 A.2d 447 (1993) ("*[Section] 22a-19[a] compels a trial court to permit intervention in an administrative proceeding or judicial review of such a proceeding by a party seeking to raise environmental issues upon the filing of a verified complaint. The statute is therefore not discretionary.*") See Also, Connecticut Fund for the Environment, Inc. V. Stamford, 192 Conn. 247, 248 n.2, 470 A.2d 1214 (1984).

In Mystic Marinelife Aquarium v. Gill, 175 Conn. 483, 490, 400 A.2d 726 (1978), we concluded that one who filed a verified pleading under § 22a-19 (a) became a party to an administrative proceeding upon doing so and had "statutory standing to appeal for the limited purpose of raising environmental issues." "It is clear that one basic purpose of the act is to give persons standing to bring actions to protect the environment." Belford v. New Haven, 170 Conn. 46, 53-54, 364 A.2d 194 (1975).

This Application makes specific verified allegations of unreasonable impairment of natural resources, *inter alia*: the unpermitted destruction of wetlands resources and upland grassy areas; thus, the undersigned party intervenes in this proceeding on the filing of this Verified Notice of Intervention and requests notice of all meetings.



Jacqueline T. Sarkis, Agent
Hangdog Lane LLC

STATE OF CONNECTICUT :
 : ss: Somers
COUNTY OF TOLLAND :

On this 2nd day of December, 2020 personally appeared Jacqueline T. Sarkis, of 54 Hangdog Lane, Somers, Connecticut, Agent for Hangdog Lane LLC, duly authorized, and made oath to the truth of the matters contained in the foregoing application, before me.



George C. Schober, Esq.,
Commissioner of the Superior Court #409883