

<b>HHD LND CV-22-6165124-S</b>	:	<b>SUPERIOR COURT</b>
	:	
<b>MURPHY ROAD RECYCLING, LLC and AIRLINE</b>	:	<b>LAND USE DOCKET</b>
<b>AVENUE REALTY, LLC</b>	:	<b>AT HARTFORD</b>
	:	
<b>v.</b>	:	
	:	
<b>NEW HAVEN CITY PLAN COMMISSION</b>	:	<b>FEBRUARY 21, 2023</b>

**PETITION TO INTERVENE UNDER CONN. GEN. STAT. §22A-19**

Save the Sound, on behalf of its members, presents this verified petition and moves to intervene, as of right, as a party in the above captioned proceeding pursuant to the Connecticut Environmental Protection Act (“CEPA”), § 22a-19(a) of the Connecticut General Statutes (“CGS”). CEPA permits any person to intervene as a party in a judicial review of an administrative proceeding, such as the proceeding above, which involves or would permit conduct 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 of Connecticut, as set forth more specifically below.

Save the Sound, Inc. (formerly Connecticut Fund for the Environment) is a non-profit environmental organization dedicated to protecting and preserving Connecticut’s air, land, and water and that of the entire Long Island Sound region. It represents over 4,000 members and conducts a variety of activities to achieve its goals, including legislative and administrative advocacy, legal action to assure compliance with environmental laws, public educational campaigns, and promoting environmental justice throughout the state.

Save the Sound seeks to intervene in this administrative appeal arising from a decision by the New Haven City Planning Commission (“Commission” or “Defendant”), which imposed

certain conditions, discussed below, on a special permit issued to Murphy Road Recycling, LLC (“MRR”) in May 2022.

### **BACKGROUND**

Located in the Annex neighborhood of New Haven, MRR operates a solid waste transfer station, situated along 15 acres of the Quinnipiac River, that processes municipal solid waste and construction and demolition debris (the “Property”). New Haven City Plan Comm’n Spec. Permit: New Haven City Plan Comm’n Coastal Site Plan Rev., at 3–4, 8 (2022) [hereinafter New Haven Review]. MRR subleases a portion of the Property to All American Waste, LLC (“AAW”), a trucking company that transports waste to the transfer station. Def. Am. Compl. at ¶ 8. The Property itself is owned by Airline Avenue Realty, LLC (“AAR”). *See* New Haven Review, at 1. The Plaintiffs, MRR and AAR, as well as AAW, are separate business entities but share the same owners. The Property is zoned within the IH District (“IH Zone”) and is located within close proximity to residential, commercial, and heavier industrial sites. New Haven, Conn., Zoning Ordinance, art. 5, § 46(h) (2005). Pursuant to the New Haven Zoning Ordinances (the “Code”), solid waste facilities within IH Zones, like MRR, are required to attain site plan approval and special permits that must be renewed after no longer than five years. New Haven, Conn., Zoning Ordinance, art. 5, § 46(h) (“Section 46(h”).

The Commission issued the special permit at issue in this matter in May 2022. MRR’s previous solid waste special permit was due to expire in 2022 and the company had applied to renew its authorizations to operate. Through the public hearing process held for the special permit and coastal site plan review, a coalition of advocates requested greater regulation at the site to curtail its harmful externalities. The Commission, after receiving testimony from residents and advocates, including Save the Sound, issued the

special permit for two years and imposed conditions to regulate operations at the Property. *See generally* New Haven Review. There were six substantive additions to the 2022 special permit which were not imposed previously:

1. “Murphy Road Recycling LLC will prohibit idling of vehicles on-site and inform truck operators of this prohibition through signage on the premises and enforcement by facility operators and/or the Building Official. *Existing signage shall be supplemented with signage at the beginning of the driveway at the corner of Wheeler Street and Goodwin Street.*” (italicized text is new);
2. Adhere to City Ordinance Title III, Chapter 18, Article II, Noise Control. Any violations will be strictly penalized according to Article II Sec. 18-82. - Violations and penalties;
3. As required by law, no storage or temporary location of wet, putrescible waste, or any materials on the site is permitted unless delineated by the special permit;
4. Install a permanent sign, visible from the Public Way, providing contact information for the business and relevant safety enforcement agencies;
5. Create and maintain a “green buffer zone of arborvitaes or similar evergreen plantings to reduce noise between the site and abutting residences”; and
6. MRR shall “conduct a pest control survey provided by a licensed operator of their own and abutting property owners who wish to opt in and implement recommended control measures.”

*Compare* New Haven Review, at 11–12 (describing 2022 operating conditions), *with* New Haven City Plan Comm’n Spec. Permit: New Haven City Plan Comm’n Coastal Site Plan Rev. (2016), at 7–8 (listing 2016 operating conditions).

In June 2022, Plaintiffs sued the Commission, claiming that it overstepped its authority and acted arbitrarily when it issued conditions to the special permit. More particularly, they argue that the Commission's actions were ultra vires when they incorrectly relied on Section 46(h) of the Code and that Conn. Gen. Stat. § 22a-208b(b) does not apply to solid waste facilities that were approved by special act or permit. Moreover, Plaintiffs argue that Public Act 21-34 ("Public Act"), which tolled expiration dates of certain special permits expiring during the COVID-19 pandemic, entitles it to a modified expiration date.

The Plaintiffs initiated this proceeding on June 29, 2022 and requested to revise their complaint on October 3, 2022, which was granted by the Court on January 17, 2023. On January 31, 2023, this proceeding was transferred to the land use litigation docket in the judicial district of Hartford.

The scheduling order entered on February 17, 2023 set the following dates: the return of record will be filed by February 27, 2023; the Plaintiffs' brief is due on April 17, 2023; the Commission's brief is due on June 5, 2023; and the Plaintiffs' reply brief is due on June 30, 2023. Save the Sound proposes to submit its brief simultaneously with the Commission on June 5, 2023.

### **PUBLIC TRUST**

Standing for Save the Sound is provided under CEPA, Conn. Gen. Stat. § 22a-19, which states that: any person, corporation, association, organization, or other legal entity may intervene as of right as a party in any administrative, licensing, or other proceeding upon the filing of a verified pleading which asserts 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.” Conn. Gen. Stat. § 22a-19(a)(1).

The Commission issued the subject approvals after receiving extensive testimony from advocates and residents of the Annex about the conditions of the neighborhood and the impacts of the waste facility. The Annex is one of the most environmentally overburdened neighborhoods in the State of Connecticut and scores poorly on most indices of environmental hazards according to the EPA’s EJScreen tool. Residents contend with the cumulative impacts of I-91, the Port of New Haven and the associated maritime traffic, oil terminals and the associated truck traffic, a water pollution control facility, an oil-fired power plant and, most directly, MRR’s riverfront solid waste facility. The testifiers sought greater regulation of the activity at the property to address complaints of trucks queuing and idling, nuisances of noise, odors, and vermin, and stormwater contamination.

This appeal concerns conduct which is reasonably likely to unreasonably pollute, impair, or destroy the public trust in water and other natural resources of the neighborhood, and implicates issues within the Commission’s authority, in the following specific ways:

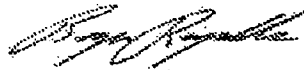
- The conduct exacerbates the objectionable noise, odor, litter, traffic, diesel fumes, and dust which generate problems and aggravate health problems for residents in this environmental justice community, in violation of the “policy of the City that the burden of fulfilling the need for solid waste facilities shall not fall disproportionately on any community . . . .” See Section 46(h)(1).
- The conduct is inconsistent with the health, safety, and welfare of the neighborhood in that it imposes additional environmental burdens on an already overburdened area. See Section 46(h)(3)(h).

- The conduct involves the queuing of trucks seeking to deposit refuse at the Property, which causes traffic congestion, decreases road quality, poses ingress and egress concerns for nearby adjacent properties, and imperils pedestrian safety. See Section 46(h)(3)(h)(1).
- The conduct involves traffic and idling which results in perpetual release of dangerous pollutants, like diesel fumes, nitrogen oxides, and sulfur, which causes a deleterious effect on air quality. See Section 46(h)(3)(h)(2).
- The conduct exacerbates the likelihood that contaminated stormwater will drain into the Quinnipiac River, decreasing its water quality. See Section 46(h)(3)(h)(2).
- The conduct produces loud noises both day and night, creates odors, and attracts vermin, creating a public nuisance to the nearby residential community. See Section 46(h)(3)(h)(3).
- The conduct negatively impacts the abundance of nearby “sensitive receptors,” like schools, churches, parks, day care facilities, elderly apartments, residential care facilities, residential households, and apartments. See Section 46(h)(3)(h)(5).
- The conduct unreasonably contributes to the cumulative impact of other nearby nuisance sources and deteriorates the livelihood of the community and poses grave environmental concerns. See Section 46(h)(3)(h)(6).
- The conduct is inconsistent with the Comprehensive Plan of Conservation and Development in that it has adverse air and water quality impacts, is an inappropriate non-water dependent use that cuts off public use of coastal land, and fails to promote recycling or to reduce the amount of waste sent to incinerators or landfills.
- By blocking public access to the Quinnipiac riverfront, the conduct is inconsistent with the coastal goals and policies set forth in Conn. Gen. Stat. § 22a-92 in that, among other things, it is not a water dependent use, it degrades coastal resources and it impedes public access.

Save the Sound seeks to intervene on behalf of its members to prevent or mitigate the environmental harm described above. Save the Sound wishes to file a brief and participate in oral argument to oppose the legal arguments of the Plaintiff on administrative appeal and to highlight the substantial environmental and environmental justice concerns that would result from a decision adopting the Plaintiffs' position.

WHEREFORE, Save the Sound hereby petitions to intervene as a party in this proceeding and seeks to submit a brief on June 5, 2023.

PETITIONER,  
SAVE THE SOUND, INC.



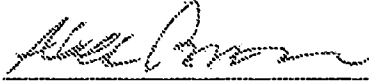
By:

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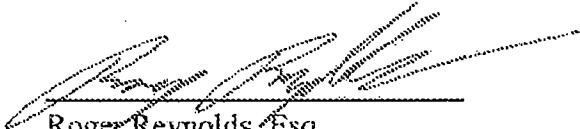
VERIFICATION

I, Alex Rodriguez, being duly sworn, depose and say that I have read the foregoing motion and that the allegations contained therein are true and correct to the best of my knowledge



Alex Rodriguez  
Environmental Justice Specialist  
Save the Sound

Subscribed and sworn before me this 21st day of February, 2023.



Roger Reynolds, Esq.  
Commissioner of the Superior Court  
Juris No. 409852

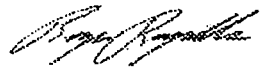


**CERTIFICATION**

I certify that a copy of the above was or will immediately be mailed or delivered electronically on February 21, 2023 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

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