

OFFICE OF ADJUDICATIONS

IN THE MATTER OF

:APPLICATION NO. 200301091

BOROUGH OF FENWICK

:

AUGUST 16, 2005

PROPOSED FINAL DECISION

The Borough of Fenwick in Old Saybrook has submitted an application to install a fixed pile and timber pier, ramp and floating dock in South Cove at the mouth of the Connecticut River. This dock, which would be placed at the exact location of an historic pier and float facility, will provide Fenwick residents with reasonable access to public trust waters while minimizing overall encroachment and impacts to coastal resources.

The attached *Agreed Draft Decision* submitted by the parties satisfactorily conveys the findings of fact and assessments of applicable law necessary to support this conclusion. General Statutes §§22a-28 through 22a-35; §§22a-90 through 112; §§22a-359 through 22a-363f; §22a-426; and Regs., Conn. State Agencies §§22a-30-1 through 22a-30-17. I therefore adopt this agreement as my proposed final decision and recommend that the Commissioner issue the requested permit. (Attachment A.)

8/16/05
Date

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

AGREED DRAFT DECISION

BOROUGH OF FENWICK
COASTAL PERMIT APPLICATION #200301091-MG

INSTALLATION OF A PIER, RAMP AND FLOATING DOCK
BOROUGH OF FENWICK

August 11, 2005

1. Introduction: On April 1, 2003, The Borough of Fenwick submitted an application to undertake regulated activities in tidal, coastal and navigable waters of the State waterward of the high tide line and in an area of tidal wetlands, for the installation of a fixed pile and timber pier, ramp and floating dock in South Cove at the mouth of the Connecticut River, in the Borough of Fenwick. This application seeks a permit to undertake said regulated activities under the provisions of the Structures, Dredging and Fill provisions of the Connecticut General Statutes ("General Statutes") sections 22a-359 through 363f, in accordance with the Connecticut Coastal Management Act, sections 22a-90 through 22a-112 of the General Statutes, and Tidal Wetlands Act and regulations, sections through 22a-28 through 22a-35 of the General Statutes and sections 22a-30-1 through 22a-30-17 of the Regulations of Connecticut State Agencies ("RCSA") and the Connecticut Water Quality Standards developed pursuant to General Statutes section 22a-426.
2. Parties: The parties to the proceeding are: the Applicant, the Borough of Fenwick and staff from the Office of Long Island Sound Programs ("OLISP") of the Department of Environmental Protection ("DEP").

The parties have agreed to the admission of all the exhibits listed on the attached Prehearing Submissions and admitted during the Public Hearings comprising staff exhibits DEP-1 through DEP-25 and Applicant's exhibits APP-1 through APP-30.

FINDINGS OF FACT

Background:

1. Site Location and Character: The site is located off Nibang Avenue on South Cove in Fenwick, CT. South Cove is an estuarine embayment at the mouth of the Connecticut River that is subject to an average 3.5' tidal range. Tidal wetland vegetation is present along the entire frontage of the site. (DEP-1). The site is subject to a conservation easement held by the Lynde Point Land Trust, Inc. (APP-30). The site has historically supported access to South Cove for Fenwick residents, including a timber pier, float and mooring piles. Those facilities were allowed to deteriorate and remnants of the piles exist to this day.

2. Application History: The initial application was received on April 1, 2003 requesting authorization to install an elevated 4' wide by 39' long fixed pile and aluminum pier, a 3' wide by 22' long ramp to a 20' wide by 40' long floating dock with four (4) anchor piles. (DEP-1). On March 26, 2003 the DEP, Natural Resources Center requested that the Applicant perform a field survey to determine if the site supported three (3) state-listed plant species, specifically *Spergularia Canadensis* (Canada sandspurry), *Lilaepsis chinensis* (Lilaepsis), and *Limosella subalata* (mudwort). (DEP-2). A survey was performed on May 14, 2003 (DEP-4) and reported that the identified plant species were not observed in the immediate vicinity of the proposed fixed pier. After their initial review of the application, staff determined that the proposed work appeared to be consistent with applicable State policies and standards and criteria. Staff did request additional justification for the proposed project. This request in the letter dated June 2, 2003 was sent to the Applicant requesting additional information. (DEP-5). The Applicant supplied the required information in a June 17, 2003 letter, received June 26, 2003. (DEP-6). In December 2003, OLISP staff recommended tentative approval (DEP-14) of the application and on December 12, 2003, the Notice of Tentative Determination to Approve and Intent to Waive a Public Hearing was published in the *Pictorial Gazette* newspaper for the construction of a fixed pile and timber pier, ramp and floating dock for private municipal recreational boating. Because the project spans an area of tidal wetland vegetation, section 22a-32 of the General Statutes required a 40-day comment period on the application and also required that a public hearing be held upon request by twenty-five (25) individuals in a petition. The public comment period closed on January 15, 2003. On January 16, 2003, staff received a petition from Martha D. Soper with 50 signatures requesting that a public hearing be held on the application. (DEP-21). A Status Conference was held on March 25, 2004 at the DEP offices, at which several representatives of the Applicant, including Mr. Charles M. Chadwick, Mr. Bruce Arneil, Ms. Lisa Jarvis, Mr. Sam Jones, Mr. Geoffrey Steadman, and Mr. John Roberge, PE, and the Petitioners including Ms. Martha Soper, Ms. Sallie Boody, Ms. Martha Lavendier and Mr. Joseph Lavendier, as well as DEP staff Mr. Micheal Grzywinski and Mr. Peter Francis discussed the application and alternatives to modify the proposed structures. In a letter dated March 24, 2004 from Mr. John Roberge, PE, on behalf of the Applicant, and received by DEP on March 25 and copied to the Petitioners (DEP-22), notified the hearing officer, Ms. Elaine R. Tata that the Applicant was willing to modify the application to: change the pier deck materials; reduce the pier deck elevation to the lowest that OLISP would allow; and reduce the width of the pier deck. These issues were further discussed with the Petitioners at the initial Pre-Conference Hearing held at the DEP offices on April 14, 2004. The presentation of Mr. Roberge, on behalf of the Applicant, at the subsequent May 12, 2004 Public Hearing reflected these revisions. No substantive professional testimony was offered by the Petitioners, though opinions of potential impacts to wildlife and local navigation resulting from the proposed activity were offered. Further discussions during the May 12, 2004 Public Hearing raised concern as to the appropriateness of landing the proposed pier onto upland areas restricted by a Conservation Easement held by the Lynde Point Land Trust, Inc. Ms. Tata recommended the hearing be continued and requested the Applicant to provide: (1) additional information regarding the location of the Conservation Easement, the position of a 6' wide buffer located between the Conservation Easement and the Mean High Water; and (2) navigation depths and the position of the natural channel in the vicinity of

the proposed facility. These materials were subsequently provided by the Applicant. Ms. Tata noted that a subsequent Public Hearing would be necessary to receive comment on these open issues. Subsequently, Ms. Tata resigned from the DEP Office of Adjudications and Ms. Janice B. Deshais was appointed as the Hearing Officer, replacing Ms. Tata. A site walk was conducted by Ms. Deshais, accompanied by Mr. Grzywinski, Mr. Francis, Mr. Roberge, the Petitioners, and other representatives of the Applicant on June 20, 2005. Mr. Roberge identified the position of the proposed pier, ramp, and float and also identified the approximate position of the 6' conservation easement buffer. OLISP Staff noted the height of the existing wetland growth and requested that Mr. Roberge prepare revised application drawings to reflect a pier at a lower elevation, providing that the deck would be composed of materials that will allow sunlight to penetrate to the shaded wetland grasses. Mr. Roberge stated that the appropriate revisions would be provided at the forthcoming Public hearing. As noted in the Notice of Public Hearing (DEP-25), the Public Hearing was held at the DEP Marine Headquarters on June 29, 2005. Mr. Roberge presented a brief history of the project and offered the final revised permit drawings which reflected the revised pier, ramp and float structures, including: (1) a 3' wide by 33' long elevated timber pile supported pier with access steps founded on a concrete pad located within the Lynde Point Land Trust, Inc. ("LPLT") conservation easement; (2) a 3' wide by 26' long seasonally removable aluminum ramp, extending to; (3) a 20' by 20' seasonally removable float anchored by four (4) timber piles. Mr. Grzywinski further detailed the history of the project and noted the DEP staff recommendation that the pier elevation be reduced to El. +7.45' mean low water ("MLW"). Mr. Roberge offered a letter from the LPLT, prepared by Ms. Ethel Davis and dated June 26, 2005 (APP-30), noting that the LPLT acknowledges that the proposed dock steps will have to be located on land under easement and that the existing easement is not consistent with the historical use of some areas such as the "dock" area which has provided access to the Cove. The LPLT has requested that no structures be built until the easement has been amended.

3. Project Description: The Applicant, in their initial application, sought authorization to install an elevated 4' wide by 39' long fixed pile and timber pier, a 3' wide by 22' long aluminum ramp to a 20' wide by 40' long floating dock with four (4) anchor piles. The elevation of the pier deck was proposed to be El. +10.0' MLW and the access landing was proposed to be a 3' by 10' aluminum ramp. (DEP-1). Several revisions of the facility plan were proposed during the Public Hearing and Status Hearing procedures. The result of the revisions and discussions of the final Public Hearing held on June 29, 2005 was an elevated 3' wide by 33' long fixed pile and timber pier, a 3' wide by 26' long aluminum ramp to a 20' wide by 20' long floating dock with four (4) anchor piles. The elevation of the fixed pier deck will be El. +7.45' MLW. (APP-29). Per the subsequent discussions of the Public Hearing and the recommendation of OLISP staff, the pier deck will be constructed of THRUFLOWTM plastic decking to assure sufficient sunlight transmission to the wetland grasses positioned below the deck.
4. Purpose and Use of Proposed Dock: The purpose of the proposed work is to construct a pier, ramp and floating dock for the Applicant's private municipal recreational boating use. (DEP-1).

5. Compliance and Enforcement History: There are no previous permits or certificates issued by the DEP-OLISP that authorized work waterward of the high tide line at this site. The site has not been the subject of a DEP enforcement action for unauthorized activities waterward of the high tide line. (DEP-14).
6. Tidal Wetlands Vegetation: On September 17, 2003, OLISP staff conducted a site visit to verify the location of tidal wetland vegetation within the project location. The inspection revealed that a band of tidal wetland vegetation (consisting primarily of *Spartina patens*, *Distichlis spicata*, *Juncus gerardii*, *Limonium nashii*, and Mudworts) exists along the entire frontage of the property as shown on the submitted plans. This band transitions to low marsh vegetation consisting of *Spartina alterniflora*. There will be minor impacts to the existing tidal wetland vegetation associated with the installation of the timber piles. While beneficial, open grating decking has been proposed for the pier to allow for the maximum amount of sunlight penetration through the proposed structure, the pier meets the Department's standards for dock design over tidal wetland vegetation in that it will be elevated approximately 1' above the height of the tallest tidal wetlands vegetation. The ramp and float portions of the dock structure will be installed waterward of the extent of the tidal wetland vegetation located on-site and therefore is not expected to impact this resource. In addition, the ramp and float will be removed seasonally reducing impacts to the bottom substrate.
7. Shellfish: OLISP staff received a letter from the State of Connecticut, Department of Agriculture, Bureau of Aquaculture (DEP-12) stating that the area of South Cove to include the proposed dock is currently classified as a restricted-relay shellfishing area and noted that the construction of a marina would require the existing classification with a seasonal closure. That letter, prepared by Mr. James Citak, noted that the facility would not be considered a marina if no more than ten (10) boats were docked at the facility and that none of those boats had overboard discharge capabilities. Mr. Citak noted that boats stored on land would not be considered in the 10 boat limit and that if the stated conditions were met, no shellfish growing classification change would be required and that his office would not object to the project. OLISP staff sought clarification of the issues raised by the Bureau of Aquaculture and asked Mr. Roberge to respond on behalf of the Applicant. In a letter dated November 11, 2003 and received by OLISP on November 17, 2003 (DEP-13), Mr. Roberge noted that the facility is intended as a day-use facility and that no more than seven (7) boats were expected to use the float and pier at any given time. Mr. Roberge also noted that the float and ramp will be removed seasonally to accommodate any shellfish relay operations.
8. Connecticut Endangered, Threatened and Special Concern Species: A review of all Endangered, Threatened, and Special Concern species was conducted for the project site by staff of DEP's Natural Resources Center, Natural Diversity Data Base ("NDDDB"). A March 26, 2003 letter from Dawn McKay (NDDDB) to the Applicants' representative indicated: (1) the area of the proposed work supports the shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic sturgeon (*Acipenser oxyrinchus*), endangered and threatened species respectively; and (2) that three state-listed plant species are present in the area, including Canada sand-spurry (*Spergularia Canadensis*), Lilaepsis (*Lilaepsis chinensis*) and Mudwort (*Limosella subulata*). The letter noted that the NDDDB ecologist, Ken

Metzler requested that a field survey be completed for these plant species prior to any work being performed on this project. The Applicant, under the direction of Mr. John Roberge, PE and the field expertise of Mr. Marc Garret, performed the requested field assessment on May 14, 2003. The assessment results (DEP-4) noted the presence of only the mudwort, though not within the footprint of the proposed pier and ramp and noted further that the nearshore fishery conditions should mimic the temporal distribution and abundance described for Long Island Sound by Stone, et al. (1994).

9. Intertidal Mudflats: The location of MLW on the project site is coincidental with a shallow escarpment which defines the seaward face of the wetland grasses. The area waterward of the tidal wetland vegetation includes no intertidal mudflats. The fixed pier has been designed to span the wetlands. The float will not impact the bottom during low water events and thus no impacts are anticipated. (DEP-1).
10. Finfish: The proposed project was discussed with Mark Johnson, DEP Inland Fisheries Division, by OLISP staff to determine potential impacts to fisheries and fisheries habitat that may result from the proposed activities. Mr. Johnson's review concluded that the only possible issue that could result from the installation of the proposed fixed pier, ramp and float would be to submerged aquatic vegetation ("SAV"). (DEP-9). Staff determined, that since no SAV is evident, the project will not adversely impact fisheries resources and habitat in South Cove. (DEP-9).
11. Navigation Impacts: The encroachment associated with the proposed pier, ramp and floating dock is approximately 75' waterward of the existing high tide line and approximately 33" waterward of the existing mean low water line which is coincidental with the waterward extent of the wetland grasses. The Applicant provided documentation that the area waterward of the existing tidal wetland vegetation and the area to include the proposed float has been historically used as a public access pier and float and that no interference with navigation through South Cove will result.
12. Public Trust: The DEP has found that along the Connecticut coast reasonable access for a riparian property owner can generally be achieved by a fixed pier extending to mean low water with a ramp and 100 square foot float at individual residential sites. Facilities that serve communities are often allowed larger float systems, though OLISP seeks to minimize all such encroachments. Neighboring properties with permitted structures extend further into South Cove than that proposed by the current permit application. The current proposal includes a fixed dock that extends to the approximate mean low water line and will provide access for pedestrian traffic. The dock cannot be relocated and is proposed to be placed at the exact location of a historic pier and float facility, as evidenced by the existing remnant mooring piles. The proposed dock represents the minimum that can be reasonably expected at this site and does not represent an unreasonable encroachment into public trust waters in South Cove. (DEP-14).

Environmental Impacts:

Environmental impacts associated with the proposed pier, ramp and floating dock have been minimized to the greatest extent practicable. The Applicant understands that use of this dock to berth vessels may not be possible at all tidal cycles due to shallow depths in South Cove. The installation of the ramp and float are not anticipated to adversely impact existing intertidal flats, tidal wetlands, shellfish or finfish resources. (DEP-14).

Alternatives: Several project alternatives were considered by the applicant:

1. Shorter Fixed Pier: A shorter fixed dock was not considered. If the pier were shorter than proposed, the float would rest in shallower water and would rest on the substrate during extreme low water conditions increasing the potential for benthic impacts. (DEP-1).
2. Longer Fixed Pier: A longer fixed pier structure to reach deeper water depths was not considered feasible as it would be inconsistent with the public trust responsibilities of the DEP to minimize encroachment into public trust waters. In addition, a longer structure might cause navigation conflicts in the cove. (DEP-1).
3. No Dock: This alternative was considered and rejected because it would not provide the applicant with a means to exercise their riparian right of access to the waters of the cove. The site has historically included a pier and dock structure and has been utilized by residents for access to South Cove. Since the deterioration of the old pier, residents have accessed the Cove by walking and dragging boats through the fringe wetland grasses. It was determined that there would be significant adverse impacts to the existing tidal wetland vegetation associated with the Applicant dragging a boat through the tidal wetland vegetation. (DEP-1).

After balancing all of the relevant concerns, a dock structure consisting of a fixed pier, ramp and float as proposed by the Applicant will afford the residents of the Borough of Fenwick with reasonable access to public trust waters for boating while minimizing both overall encroachment and impacts to coastal resources. This proposal represents the least intrusive and most environmentally sensitive of those alternatives considered.

CONCLUSIONS

1. Environmental Impact of the Proposed Action: The proposed project would provide the Applicant with reasonable access to public trust waters for recreational boating. The record supports a finding that the potential environmental impacts from the proposed project have been sufficiently minimized and the proposed project is consistent with the following policies regarding coastal resources, tidal wetlands, and coastal management:
 - a. Section 22a-92(a)(1) of the General Statutes, which requires that the development, preservation or use of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water resources to support

development, preservation or use without significantly disrupting either the natural environment or sound economic growth;

- b. Section 22a-92(b)(1)(D) of the General Statutes which requires that structures in tidal wetlands and coastal waters be designed, constructed and maintained to minimize adverse impacts to coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners;
- c. Section 22a-92(b)(1)(H) to protect coastal resources by requiring, where feasible, that such boating uses and facilities (i) minimize disruption or degradation of natural coastal resources, (ii) utilize existing altered, developed or redeveloped areas, (iii) are located to assure optimal distribution of state owned facilities to the state wide boating public, and (iv) utilize ramps and dry storage rather than slips in environmentally sensitive areas;
- d. Section 22a-92(b)(2)(D) of the General Statutes, which requires the management of intertidal flats so as to preserve their value as a nutrient source and reservoir, a healthy shellfish habitat and a valuable feeding area for invertebrates, fish and shorebirds; To allow coastal uses that minimize change in the natural current flows, depth, slope, sedimentation and nutrient storage functions and to disallow uses that substantially accelerate erosion or lead to significant despoliation;
- e. Section 22a-92(c)(2)(A) of the General Statutes, which policies concerning coastal land and other resources within the coastal boundary (in part) are: (A) to manage estuarine embayments so as to insure that coastal uses proceed in a manner that assures sustained biological productivity, the maintenance of healthy marine populations and the maintenance of essential patterns of circulation, drainage and basin configuration; to protect, enhance and allow natural restoration of eelgrass flats except in special limited cases, notably shellfish management, where the benefits accrued through alteration of the flat may outweigh the long-term benefits to marine biota, waterfowl, and commercial and recreational fisheries;
- f. Section 26-310(a) of the General Statutes, which requires that each state agency, in consultation with the Commissioner, shall conserve endangered and threatened species and their essential habitats, and shall ensure that any action authorized, funded or performed by such agency does not threaten the continued existence of the endangered or threatened species or result in the destruction or adverse modification of habitat designation as essential to such species, unless such agency has been granted an exemption.
- g. Section 22a-92(b)(2)(E) of the General Statutes, to preserve tidal wetlands and to prevent the despoliation and destruction thereof in order to maintain their vital natural functions.

- h. Section 22a-92(c)(1)(B) of the General Statutes, to disallow any filling of tidal wetlands and nearshore, offshore and intertidal waters for the purpose of creating new land from existing wetlands and coastal waters which would otherwise be undevelopable unless it is found that adverse impacts on coastal resources are minimal.
 - i. Section 22a-33 of the General Statutes, which establishes the criteria for review of Tidal Wetlands Act applications.
 - j. RCSA section 22a-30-10 of the Tidal Wetlands Regulations which further explains the criteria for Tidal Wetland Act review.
 - k. RCSA section 22a-30-11(b)(2) of the Tidal Wetlands Regulations, defines the use guidelines for small residential docks.
- 2. Consistent with All Applicable Standards: The proposal is consistent with applicable standards, goals and policies of sections 22a-28 through 22a-35 and 22a-359 of the General Statutes which requires the Department to make permit decisions with due regard for indigenous aquatic life, fish and wildlife, the use and development of adjoining uplands, and the recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned.
- 3. Alternatives to the Proposed Action: There is no feasible or prudent alternative which would provide the applicant reasonable riparian access which would have less impact on the adjacent coastal resources.
- 4. Public Comments and Testimony: Public comments made during both Public Hearings and the site walks focused primarily on the proposed structure's size, height and length and raised concerns that the facility could impact navigation and wildlife, specifically water birds. No expert testimony was provided to support the assertions that the proposed structures would impact local wildlife and navigation. The expressed concerns about navigation were contradicted by field measurements and testimony provided by Mr. John Roberge, PE. Mr. Grzywinski noted that it was the opinion of DEP staff that the proposed facility would have no impact on local wildlife. The Applicant consistently expressed its desire to work with the abutting neighbors to reduce the scale of the project and offered several alternatives throughout the procedures. In cooperation with staff, the Applicant proposed a final alternative (APP-29) which significantly reduced the height of the proposed fixed pier deck, reduced the overall length of the facility and reduced the size of the floating dock. DEP staff noted that the height reduction could be accomplished, and the effects of shading upon the wetland grasses minimized, providing that the deck is constructed of a light penetrating material such as those manufactured by THRUFLOW™. The landside access to the proposed pier was proposed to be positioned within the limits of a conservation easement held by the LPLT. A 6 ft wide buffer extends between the upland conservation area and the Mean High Water (MHW) Line. The original application sought to place the access over the 6 ft buffer strip and within the conservation easement. Authorization for this use within the conservation easement is required from the LPLT. To date, this authorization has not been secured, though a letter

of agreement (APP-30) from the LPLT, dated June 26, 2005 has been issued which acknowledges that the proposed dock steps will have to be located on land under easement and that the existing easement is not consistent with the historical use of some areas such as the “dock” area which has provided access to the Cove. The LPLT has requested that no structures be constructed until the easement has been amended.

AGREEMENT

Based on the foregoing, the undersigned hereby agree to the granting of a permit subject to the standard and special conditions stated in **Exhibit DEP-XX**, Draft Permit, attached hereto.

APPLICANT: THE BOROUGH OF FENWICK

By: /s/ John C. Roberge, for _____
Mr. Charles H. Chadwick
Warden, Borough of Fenwick

OFFICE OF LONG ISLAND SOUND PROGRAMS

By: /s/ Charles H. Evans _____
Charles H. Evans, Director
Office of Long Island Sound Programs
Department of Environmental Protection

ATTACHMENT A

DRAFT - PERMIT

Permit No.: 200301091-MG

Town: Old Saybrook (Borough of Fenwick)

Work Area: South Cove/Connecticut River off property located off Nibang Avenue

Permittee: Borough of Fenwick
c/o Charles M. Chadwick

P.O. Box 126
Old Saybrook, CT 06475

Pursuant to sections 22a-28 through 22a-35 and 22a-359 through 22a-363f of the Connecticut General Statutes (AGeneral Statutes≅), and in accordance with section 22a-98 of the General Statutes and the Connecticut Water Quality Standards dated December 2002, a permit is hereby granted by the Commissioner of Environmental Protection ("Commissioner") to construct a pier, ramp and floating dock for municipal recreational boating use as is more specifically described below in the SCOPE OF AUTHORIZATION, in the Awork area≅ in South Cove described above.

*******NOTICE TO PERMITTEES AND CONTRACTORS*******

FAILURE TO CONFORM TO THE TERMS AND CONDITIONS OF THIS PERMIT MAY SUBJECT THE PERMITTEE AND ANY CONTRACTOR TO ENFORCEMENT ACTIONS, INCLUDING PENALTIES AND INJUNCTIONS, AS PROVIDED BY LAW.

SCOPE OF AUTHORIZATION

The Permittee is hereby authorized to conduct the following work as described in application #200301091-MG, including five (5) sheets of plans dated March 14, 2003 and sheets 4 and 5 of 5 revised June 22, 2005, submitted by the Permittee to the Commissioner and attached hereto:

1. remove fourteen (14) existing deteriorated timber piles and two (2) 36' long steel rails;
and
2. construct a 1' wide by 4' long concrete pad with timber steps to a 3' wide by 33' long elevated fixed pile and pier with railings, a 3' wide by 26' long ramp with railings to a 20' wide by 20' long floating dock with skids and four (4) anchor piles.

UPON INITIATION OF ANY WORK AUTHORIZED HEREIN, THE PERMITTEE ACCEPTS AND AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS OF THIS PERMIT.

SPECIAL TERMS AND CONDITIONS

1. Except as specifically authorized by this permit, no equipment or material including but not limited to, fill, construction materials, excavated material or debris, shall be deposited, placed or stored in any wetland or watercourse on or off-site, nor shall any wetland or watercourse be used as a staging area or accessway other than as provided herein.
2. At no time shall heavy equipment, including but not limited to excavators, front-end loaders, trucks, backhoes, tractors and other non-low pressure equipment be staged waterward of the high tide line or in tidal wetlands.
3. The driving of piles shall be conducted from a water-based barge during periods of high tide only. The Permittee shall not allow the barge to rest on the substrate at any time.
4. All waste material generated by the work authorized herein shall be disposed of at an approved upland location landward of the high tide line and outside of any tidal wetland vegetation.
5. Prior to the construction of the pier, ramp and floating dock authorized herein, the Permittee shall remove the piles and railway identified in paragraph 1., of the SCOPE OF AUTHORIZATION above.
6. The Permittees shall construct the fixed pile and timber pier authorized herein with the landward terminus of the pier with a top elevation of +7.45' MLW as shown on the plans.
7. The Permittees shall install and maintain the open grating on the deck of the pier authorized herein for the life of the structure.
8. The Permittee shall install and maintain skids on the float authorized herein for the life of the structure.
9. The structures authorized herein shall be only used for docking of small sailboats and no boats shall have overboard discharge capabilities.
10. The Permittee shall remove the floating dock and associated access ramp authorized herein no later than November 15th, and shall not install such floating dock and ramp before April 15th, of any calendar year. The Permittee shall store such structures at an upland location landward of the high tide line and outside of any wetlands.
11. Not later than two (2) weeks prior to the commencement of any work authorized herein, the Permittee shall submit to the Commissioner, on the form attached hereto as Appendix A, the name(s) and address(es) of any contractor(s) employed to conduct such work and the expected date for commencement and completion of such work.

12. On or before (a) ninety (90) days after completion of the work authorized herein, or (b) upon expiration of the work completion date or any authorized one-year extension thereof, whichever is earlier, the Permittee shall submit to the Commissioner Aas-built plans prepared and sealed by a licensed engineer, licensed surveyor or licensed architect, as applicable, of the work area showing all contours, bathymetries, tidal datums and structures.

GENERAL TERMS AND CONDITIONS

1. All work authorized by this permit shall be completed within three (3) years from date of issuance of this permit ("work completion date") in accordance with all conditions of this permit and any other applicable law.
2. The Permittee may request a one-year extension of the work completion date. Such request shall be in writing and shall be submitted to the Commissioner at least thirty (30) days prior to said work completion date. Such request shall describe the work done to date, work which still needs to be completed and the reason for such extension. The Commissioner shall grant or deny such request in his sole discretion.
3. Any work authorized herein conducted after said work completion date or any authorized one-year extension thereof is a violation of this permit and may subject the Permittee to enforcement action, including penalties, as provided by law.
4. In conducting the work authorized herein, the Permittee shall not deviate from the attached plans, as may be modified by this permit. The Permittee shall not make de minimis changes from said plans without prior written approval of the Commissioner.
5. The Permittee shall maintain all structures or other work authorized herein in good condition. Any such maintenance shall be conducted in accordance with applicable laws including, but not limited to, sections 22a-28 through 22a-35 and sections 22a-359 through 22a-363f of the General Statutes.
6. Prior to the commencement of any work authorized herein, the Permittee shall cause a copy of this permit to be given to any contractor(s) employed to conduct such work. At the work area the Permittee shall, whenever work is being performed, make available for inspection a copy of this permit and the final plans for the work authorized herein.
7. In undertaking the work authorized hereunder, the Permittee shall not cause or allow pollution of wetlands or watercourses, including pollution resulting from sedimentation and erosion. For purposes of this permit "pollution" means "pollution" as that term is defined by section 22a-423 of the General Statutes
8. Upon completion of any work authorized herein, the Permittee shall restore all areas impacted by construction, or used as a staging area or accessway in connection with such work, to their condition prior to the commencement of such work.

9. Any document required to be submitted to the Commissioner under this permit or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

Permit Section
Office of Long Island Sound Programs
Department of Environmental Protection
79 Elm Street
Hartford, Connecticut 06106-5127

10. The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this permit, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is personally delivered or the date three (3) days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this permit, the word "day" as used in this permit means calendar day. Any document or action which is required by this permit to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or a Connecticut or federal holiday.
11. The work specified in the SCOPE OF AUTHORIZATION is authorized solely for the purpose set out in this permit. No change in the purpose or use of the authorized work or facilities as set forth in this permit may occur without the prior written authorization of the Commissioner. The Permittee shall, prior to undertaking or allowing any change in use or purpose from that which is authorized by this permit, request authorization from the Commissioner for such change. Said request shall be in writing and shall describe the proposed change and the reason for the change.
12. This permit may be revoked, suspended, or modified in accordance with applicable law.
13. This permit is not transferable without prior written authorization of the Commissioner. A request to transfer a permit shall be submitted in writing and shall describe the proposed transfer and the reason for such transfer. The Permittee's obligations under this permit shall not be affected by the passage of title to the work area to any other person or municipality until such time as a transfer is authorized by the Commissioner.
14. The Permittee shall allow any representative of the Commissioner to inspect the work authorized herein at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.
15. In granting this permit, the Commissioner has relied on representations of the Permittee, including information and data provided in support of the Permittee's application. Neither the Permittee's representations nor the issuance of this permit shall constitute an assurance by

the Commissioner as to the structural integrity, the engineering feasibility or the efficacy of such design.

16. In the event that the Permittee became aware that they did not or may not comply, or did not or may not comply on time, with any provision of this permit or of any document required hereunder, the Permittee shall immediately notify the Commissioner and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. In so notifying the Commissioner, the Permittee shall state in writing the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and the Permittee shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Permittee shall not excuse noncompliance or delay and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically stated by the Commissioner in writing.
17. In evaluating the application for this permit, the Commissioner has relied on information and data provided by the Permittee and on the Permittee's representations concerning site conditions, design specifications and the purpose of the work authorized herein, including but not limited to representations concerning the commercial, public or private nature of the work or structures authorized herein, the water-dependency of said work or structures, its availability for access by the general public, and the ownership of regulated structures or filled areas. If such information proves to be false, deceptive, incomplete or inaccurate, this permit may be modified, suspended or revoked, and the Permittee may be subject to enforcement action.
18. The Permittee may not conduct any work waterward of the high tide line or in tidal wetlands at this work area other than work authorized herein, unless otherwise authorized by the Commissioner pursuant to section 22a-359 et. seq. and/or section 22a-32 et. seq. of the Connecticut General Statutes.
19. The issuance of this permit does not relieve the Permittee of their obligations to obtain any other approvals required by applicable federal, State and local law.
20. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this permit shall be signed by the Permittee and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense."
21. This permit is subject to and does not derogate any present or future property rights or powers of the State of Connecticut, and conveys no property rights in real estate or material

nor any exclusive privileges, and is further subject to any and all public and private rights and to any federal, State or local laws or regulations pertinent to the property or activity affected hereby.

Issued on _____, 2005.

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Gina McCarthy
Commissioner

Permit Application No. 200301091-MG, Old Saybrook
Borough of Fenwick
Certified Mail # _____

APPENDIX A

**TO: Permit Section
Department of Environmental Protection
Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106-5127**

PERMITTEE: Borough of Fenwick
c/o Charles M. Chadwick
P.O. Box 126
Old Saybrook, CT 06474

PERMIT NO.: 200301091-MG, Old Saybrook

CONTRACTOR 1: _____

Address: _____

Telephone #: _____

CONTRACTOR 2: _____

Address: _____

Telephone #: _____

CONTRACTOR 3: _____

Address: _____

Telephone #: _____

EXPECTED DATE OF COMMENCEMENT OF WORK: _____

EXPECTED DATE OF COMPLETION OF WORK: _____

PERMITTEE: _____ (signature) _____ (date)