

**OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF** : **APPLICATION NO. 200300739**

**PAUL J. GANIM** : **APRIL 26, 2005**

**PROPOSED FINAL DECISION**

***I***  
**SUMMARY**

Paul J. Ganim has applied to the Department of Environmental Protection (DEP) Office of Long Island Sound Programs (OLISP) for a permit to install a pile-supported fixed pier timber dock for private recreational boating access to Ash Creek, Bridgeport. The proposed dock would be located in coastal waters, tidal wetlands and in a shellfish concentration area; the dock and review of this application are therefore subject to the following statutes and regulations. General Statutes §§22a-29, 22a-32, 22a-93(5), 22a-93(7)(d) and (n), and §22a-361. Regs., Conn. State Agencies §§22a-30-1 through 22a-30-17 and 22a-90 through 22a-112.

The DEP published notice of its tentative determination to approve this application in August 2003, and has prepared a draft permit that would allow the applicant to build the proposed dock. The parties to this proceeding are the applicant, OLISP staff and, as intervening parties, the Ash Creek Conservation Association and the Connecticut Conservation Association.

I have reviewed the record, the submissions of the parties and the relevant law in this matter. I have also considered concerns expressed by the public and, where relevant to this application, I have addressed the issues raised by those comments.<sup>1</sup> I find that this regulated activity, if conducted in accordance with the conditions and proposed modifications of the draft permit, would comply with applicable statutory and regulatory standards and recommend that the Commissioner issue the requested permit, with the additional condition outlined herein.

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<sup>1</sup> Some concerns of the public, such as the need for this dock, are not relevant to the statutory and regulatory criteria that govern my decision on this application of a riparian owner to exercise his right to access the waters of Ash Creek.

**II**  
**DECISION**

**A**  
**FINDINGS OF FACT**

**I**  
**Procedural History**

1. In February 2003, Paul J. Ganim applied for a permit to construct a private dock from his property for recreational access to Ash Creek. DEP OLISP staff reviewed the application and, on August 26, 2003, issued a notice of tentative determination approving it. Staff also prepared a draft permit that would allow the applicant to construct the dock. (Exs. APP-3, 10, 32; exs. DEP- 15, 19, 20, 27, 28, 30.)
2. A petition for a hearing was filed by the Ash Creek Conservation Association (ACCA), which also requested and was granted status as an intervening party. The Connecticut Conservation Association (CCA) also intervened in this process.<sup>2</sup> (Exs. DEP- 23, 24; test. K. Zawoy, 6/24/04, pp. 174-175.)
3. The first hearing session was held in Bridgeport on February 4, 2004, to receive public comments. Written comments were also received at and after the hearing.<sup>3</sup>
4. At this hearing, the applicant discussed proposed revisions to the dock and distributed copies of a plan of this new design. Thereafter, OLISP staff obtained a continuance of the hearing to provide time to evaluate this new design and issues that had been raised at the public hearing, and because the Department of Agriculture/Bureau of Aquaculture (Bureau) had to complete its review of the application and the new design.<sup>4</sup>
5. In a March 3, 2004 letter, the Director of the Bureau wrote to OLISP staff expressing concerns about the impacts on shellfish in Ash Creek that could result from the permitting of docks in that area. The Bureau also indicated in its letter that it was aware of information provided to the DEP by the ACCA regarding a past problem with contaminants in Ash Creek that could be re-suspended if the mud flats were disturbed. Bureau staff subsequently expressed that its specific concerns were that the proposed

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<sup>2</sup> The representative for the CCA limited his participation in this matter to testifying at the hearing and questioning the witnesses of the other parties.

<sup>3</sup> All public comments are in the hearing record on file in the Office of Adjudications.

<sup>4</sup> All motions are in the hearing record on file in the Office of Adjudications.

floating dock would rest on the bottom of Ash Creek. In addition, Bureau staff was concerned the use of the dock during periods of low water could cause “prop dredging” which would re-suspend sediments and silt, ruining the hard bottom where young oysters could settle. (Ex. DEP-29, ex. INT-4; test. 7/1/04, L. Romick, p. 25, D. Carey, p. 38.)

6. The applicant and his consultants worked with DEP staff and the Bureau regarding the Bureau’s concerns and other issues raised at the hearing, including the applicant’s proposed redesign of the dock.<sup>5</sup> Pursuant to its role in the permitting process, the DEP advised the applicant and consulted with Bureau staff. In a June 3, 2004 Motion to Amend, OLISP submitted the new plans and a revised permit reflecting a new dock design, which substituted an entirely fixed dock structure for the previous ramp and float. The Bureau rescinded its earlier objection to the proposed dock; it also recommended that a permit condition be added that no vessels be berthed between tide cycles or overnight at the proposed dock. (Exs. DEP-28, 29, 30; ex. INT-4; test. 6/24/04, J. Hilts, p. 99, K. Zawoy, pp. 230-232; test. 7/1/04 L. Romick, pp. 24-27, D. Carey, pp. 37-39, 43-69.)

7. At the request of the ACCA, the hearing scheduled for June 9 and 10 was continued to provide additional time for review of the new design. The hearing reconvened on June 24, continued on July 1, and concluded on August 5, 2004. Transcripts of the August 5 hearing session were received on December 22, 2004. The applicant, DEP staff and the ACCA timely filed post-hearing briefs and replies by February 3, 2005.<sup>6</sup>

8. In addition to its proposed findings of fact and conclusions of law, the ACCA raises several procedural issues regarding the permitting and hearing processes in its post-hearing brief. The ACCA has also attached a letter to its brief regarding its allegation that it was unfairly denied access to the Bureau to express its concerns about the application. In his reply brief, the applicant has objected to this letter as “evidence outside the record”.<sup>7</sup>

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<sup>5</sup> A March 23, 2004 *Summary of Status Conference Call* between the parties and the hearing officer notes that the applicant indicated his willingness to work with the intervenors during that call, inviting ACCA counsel to share his client’s concerns regarding the dock with him. This *Summary* is in the hearing record on file with the Office of Adjudications.

<sup>6</sup> Transcripts and all post-hearing briefs are on file in the Office of Adjudications.

<sup>7</sup> Post-hearing briefs are on file in the Office of Adjudications.

**Location of the Dock**  
**Ash Creek: *Spartina*, Shellfish and Shorebirds**

9. Ash Creek, an estuarine embayment off Long Island Sound, is a tidal, coastal and navigable water of the State. The area is considered coastal waters and an area of intertidal flats under the Coastal Management Act (CMA). §§22a-93(5) and (7)(d). The waters at and around the site are shallow, with a muddy bottom. The surrounding area contains tidal flats and growths of *Spartina Alterniflora*, a plant that is defined and protected as tidal wetlands in the Inland Wetlands and Watercourses Act. General Statutes §22a-29. (Ex. APP-32; ex. DEP-28; test. 6/24/04, K. Zawoy, pp.175-176.)

10. The applicant's property at 420 Gilman Road is on the eastern shore of Ash Creek in Bridgeport, approximately one mile upstream of the mouth of the Creek. An existing stone retaining wall forms the waterward boundary of the upland, and extends into the adjacent downstream properties.<sup>8</sup> Along the waterward face of the seawall is a band of tidal wetlands (*Spartina*), which varies in width from twenty to thirty feet. This area of emergent vegetation gives way to an intertidal flat. The applicant's home is upland at the site. (Exs. APP-2, 32; ex. DEP-28; test. 6/24/05 K. Zawoy, pp. 175-176.)

11. Other homes and buildings, including a condominium complex, line the banks of Ash Creek. A houseboat is docked on the west side of the creek. At least five docks, a boat ramp, walkways and other structures extend out into Ash Creek. These extant structures include another dock across from the site of the proposed dock. (Exs. APP-13-14 - 22, 24-28, 34, 34a-c; ex. INT-2B; test. 8/5/04, J. Trautman, pp. 180- 189.)

12. The proposed dock would be located near the southern boundary of the applicant's property. No abutting property owners have any objections to the proposed dock at that location. Extending thirty-nine feet from the existing seawall, the dock would go over an area of *Spartina* and end approximately nine linear feet into the intertidal flats. *Spartina* found in this general area has a maximum height of six feet. The location for the dock was chosen in part because there is a cut in the seawall at that point, but mainly because the extent of the *Spartina* at that point is not as dense as other areas surrounding the dock, minimizing waterward encroachment of the dock to the greatest

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<sup>8</sup> The DEP issued a Certificate of Permission for this wall. (Ex. HO-6.)

extent possible. (Exs. APP- 1, 7, 8, 32; exs. DEP-19, 28, 30; test. 6/24/04, J. Hilts, pp. 49-51, 74-75, 79, K. Zawoy, pp. 107-111, 118-120, 176-177, 237-238, 241.)

13. The tallest specimens of *Spartina* found in the area were located approximately twenty to thirty yards from the proposed dock; *Spartina* under the proposed dock were less than six feet tall. An expert witness for the ACCA, collecting samples “from the general footprint of the proposed activities”, found specimens that exceeded six feet. This expert did not plot out the precise location of the specimens he measured and did not measure how high the actual vegetation was from the surface of the land beneath the proposed dock. (Ex. DEP-28, exs. INT-3, 7; test. 6/24/04, K. Zawoy, pp. 107-111, 176-178, 236-238; test. 8/5/04, J. Trautman, pp. 109-127, 192-197.)

14. The intertidal flats are considered a “shellfish concentration area” as defined in the CMA. §22a-93(7)(n). Ash Creek is a “natural bed”<sup>9</sup> for shellfish and a productive area for oysters. The water encroachment of the pier would not prevent the harvesting of shellfish in the area. Any collection of shellfish in this area would be by hand dredging, due to the vegetation in the area. (Ex. DEP-31; ex. HO- 7; test. 6/24/04, J. Hilts, pp. 64-65, K. Zawoy, pp. 113, 165-166; test. 7/1/04, L. Romick, pp. 13- 24, D. Carey, pp. 35-37; test. 8/5/04, J. Trautman, pp. 127- 128, pp. 132-136.)

15. The intertidal substrate waterward of the *Spartina*, an area below and seaward of the proposed four-foot lower platform of the dock, has a muddy bottom that is made up of fine “silty” sediment. This material becomes suspended in the water column when disturbed by an activity such as a human walking on the substrate. Re-suspension of sediments and silts would threaten the existence of shellfish such as oysters by damaging any hard bottom on the substrate for young oysters to settle, reducing recruitment of oysters and also smothering previously settled young oysters. A floating dock would directly disturb the substrate where the intertidal flats are located. (Exs. DEP-28, 31; ex. HO-7; test. 7/1/04 L. Romick, pp. 24-27, D. Carey, p. 38; test. 8/5/05 J. Trautman, pp. 143-144, 152-156.)

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<sup>9</sup> A natural bed is an area that promotes the growth of shellfish by nutrients that come from runoff rain, shallow water, warmer temperatures and natural predator control. There are approximately 12,000 acres of natural beds in the State. (Test. 7/1/04, L. Romick, pp. 18-19, D. Carey, pp. 40-42.)

16. A review of the National Diversity Data Base maps and files regarding the area of the proposed dock revealed the presence of salt-marsh bulrush, a species of State Special Concern. However, in a subsequent DEP field inspection, no bulrush or any other State-listed plant species were observed in the area. The application raised no concerns that the proposed dock would have impacts on fisheries or wildlife. (Exs. APP-4,5; exs. DEP-6, 13, 19; test. 6/24/04, J. Hilts, p. 59, K. Metzler, pp. 140-158.)

17. The area of the dock is not a direct nesting area for any birds, however, Ash Creek has been observed as a feeding area for migratory shorebirds that typically feed on the intertidal flats during periods of low water. According to an expert witness for the ACCA, for every two feet rise in height, migratory birds that feed on the mudflats would stay an additional ten feet away from an obstacle. According to this witness, the proposed dock would create such an “avoidance zone”, preventing shorebirds from feeding on nearby mudflats. The witness provided no scientific or empirical studies to support this claim.<sup>10</sup> (Exs. APP-22, 24; 34a-34g; test. 6/24/04, J. Hilts, p. 60, M. Bull, pp. 247-263; test. 8/5/04, M. Bull, pp.25-35, 52-55, 67-71, 88.)

### 3

#### *The Proposed Dock*

18. Docks in Connecticut are generally a fixed pier, no more than four feet wide, and extend to the mean low water mark with a ramp and floating dock.<sup>11</sup> This dock was designed without a ramp and float to reduce impacts to the intertidal flats. The dock does stop 38 feet before the point of mean low water. (Test. 8/5/04, M. Bull, pp. 82-85.)

19. The original dock design was for a 4’ x 40’ stationary dock, leading to a 5’x 20’ floating dock with a wooden boatlift. The current design eliminates the boatlift and replaces the floating dock with a fixed platform. The structure is a 4’ x 27’ open pile raised pier, leading to a set of 4’x 5’ open wooden stairs to maximize sunlight under the dock for the Spartina. The pier would lead to a 4’ x 7’ lower fixed platform. The pier will be elevated above the substrate seven feet at its closest point toward shore and nine

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<sup>10</sup> At July 1, 2004 hearing, OLISP asked for the scientific studies supporting this testimony. No materials were ever produced. The witness later said that his testimony was based on his personal knowledge and that he did not believe such studies exist. (Tr. 7/1/04, p. 172; test. 8/5/05, M. Bull pp.27-28.)

<sup>11</sup> *Residential Dock Guidelines*, Connecticut’s Coastal Permit Program, Connecticut Department of Environmental Protection, September 2002.

feet at its farthest point from shore. (Exs. APP-3, 10, 28, 32; exs. DEP-28, 31; ex. HO-7; ex. INT-4; test. 6/24/04, J. Hilts, pp. 51-52, K. Zawoy pp. 112, 113, 160-161, 172, 179, 226-230; test. 7/1/04, L. Romick, pp. 14-21, 25, D. Carey, pp. 37-39.)

20. The upper fixed pier of the dock would be at elevation 11 mean or average high water, which would provide for a one-foot vertical clearance of the lowest structural member of the dock (“stringers”) over any existing vegetation on the site, which is consistent with DEP guidance. The clearance above the grasses to the deck elevation would be approximately 24 inches. Given this clearance, even the tallest *Spartina* found in the general area would not hit the bottom of the pier. In addition, the minimal four-foot width of the pier would not inhibit the growth of the *Spartina*. (Ex. DEP-28; test. 6/24/04, J. Hilts, pp. 49-51, 69-70, 82; K. Zawoy, pp. 112, 163, 172, 177,179; test. 8/5/04, J. Trautman, p. 194.)

21. Eight timber pilings would support the structure; impacts to the areas below would be limited to a one-foot diameter where the piling is located. Only two pilings, with a total impact of two square feet, would be in the area of the *Spartina* grasses. (Test. 6/24/04, J. Hilts, pp. 52-53.)

22. The dock would be sufficiently elevated to allow passage underneath it. The ability of the public to access the shoreline would not be impacted by this structure. The dock would not interfere with the riparian rights of adjacent property owners, and would not interfere with protecting those adjacent properties from any type of natural disaster, such as flooding. (Ex. DEP-28; test. 6/24/04, J. Hilts, pp. 49- 53, 58, 62-63, 68-71, K. Zawoy, pp. 120, 165, 167, 183-185.)

23. The size of a boat that might use this proposed dock is not directly pertinent to the application for a permit to construct the dock. The potential size of a boat using the dock would have been relevant if there had been concerns about impacts to navigation, or possible encroachment into the Ash Creek channel. (Exs. APP-3, 32; tr. 7/1/04, pp. 133-134.)

24. The dock would not interfere with navigation on Ash Creek and is consistent with the Bridgeport Harbor Management Plan. The question of whether the dock would increase recreational boating in the area is not relevant to this application. (Exs. DEP-16, 28; test. 6/24/04, J. Savino, pp. 38-41, 45, J. Hilts, p. 63, K. Zawoy, pp. 165, 183.)

25. The dock is no longer, wider or higher than necessary to accomplish its purpose. The open pile construction of the dock would not impact water quality or change any current water patterns, flushing rates or water velocity in Ash Creek. The eight pilings would be approximately 10 to 12 inches in diameter. Because of this small size and the limited number of pilings, there would be only the potential of minor erosion around the piles but no significant erosion of the mudflats or wetland areas. The open-pile construction would also have no impact on sedimentation or blocking of the tidal flow and patterns. Pilings associated with docks can also create new habitat within the tidal zone for some species, including oysters. (Test. 6/24/04, J. Hilts, pp. 57, 62-66, K. Zawoy, pp. 158, 164 – 167; test. 8/5/04, J. Trautman, p. 201.)

#### 4

#### *Construction of the Dock*

26. No filling, dredging or excavation is part of the construction of the proposed dock, which would be completed in approximately one week. The pier would be built using a barge-borne derrick crane moored on-site during high tides. The barge would be moved to deeper waters during periods of low tide and inactivity at the site. Other than minor siltation possible due to the mobilization of the barge, there would be no significant impacts to the bottom the Ash Creek; moving the barge out with the receding tide would also prevent impacts. An alternative construction method would require heavy machinery working from shore. In addition, the existing structures on the upland would prohibit access for the size and capacity crane necessary to reach the most waterward pilings. (Ex. APP-32; ex. DEP-28; test. 6/24/04, J. Hilts, pp. 56, 64, 71, 91-92, K. Zawoy, p. 165.)

27. The eight support pilings would be driven to the point of refusal or a minimum pit elevation of nine feet. Once the piles are driven and generally cut to rough grade, the barge would be withdrawn. With the substructure in place, workers would access the dock from the upland, completing the construction with hand tools. (Ex. DEP-28; test. 6/24/04, J. Hilts, pp. 56-57, 98-99.)



*Alternatives*

28. The applicant would use the proposed dock for swimming, fishing and small boat launching and retrieval. The dock would provide recreational access to Ash Creek while eliminating the need for repeated crossings through the area of tidal wetland vegetation. If this dock were not built, the applicant, who has the right to access the water, would have to get to the water by walking through areas of tidal wetlands and shellfish resources while pulling or dragging boats and other watercraft, which would damage the plants and the peat bog material on which they grow. (Ex. APP-32; test. 6/24/04, J. Hilts, pp. 53-54, K. Zawoy pp. 177, 184-185.)

29. Use of a boat ramp is not a reasonable alternative to the proposed dock. In addition to impacts from construction of the ramp, its use would require crossing the wetland vegetation for access to the water. Fishing from the sea wall would also impact the tidal wetlands. (Ex. DEP-28; test. 6/24/04, J. Hilts, pp. 67-68; test. 8/5/04 J. Trautman, pp. 164-165.)

30. To protect tidal wetland resources, docks are more acceptable when they span tidal wetlands, rather than encouraging access through it. Access to the water from the existing seawall, possible with a wall built to its base, would require crossing the continuous band of *Spartina* on foot, in a small boat or watercraft, or on foot and towing a boat or watercraft. Even careful walking through the *Spartina* would cause a disturbance; the proposed dock would span the tidal vegetation, leaving it undisturbed. Re-designing the wall would not change this result, as the band of *Spartina* crosses the entire site. Launching a boat from the wall would be difficult. The wall is about eight feet off the substrate on the waterward side of the wall; the high tide line is four feet below the top of the wall, and the average high tide is a foot and one-half lower. A boat docked at that time would therefore be at least four feet below the top of the wall, preventing reasonable or safe access. Even if traversing the *Spartina* at high tide, a boat would disturb the tidal vegetation. In addition, at low tide, a boat would be sitting on tidal wetland vegetation. (Exs. APP-3, 12, 23, 35; ex. DEP-28; test. 6/24/04 J. Hilts, pp. 53-55, 79-81, K. Zawoy, pp. 114-118; test. 8/5/04 J. Trautman pp. 160-161, 166-180, 190-191.)

**6**  
***Permit Conditions***

31. The draft permit provides that a water-based barge shall conduct all construction work associated with the driving of piles. This barge shall drive piles only during periods of high water and shall not be allowed to rest on the bottom of Ash Creek. OLISP staff has also recommended that the permit be amended to include a condition that restricts the construction of the dock between June 1 and October 15 of any year. This additional condition has been proposed to avoid adverse impacts to migratory shorebirds that might be associated with the construction of the dock. (Ex. DEP-30; test. 6/24/04, K. Zawoy, pp. 180-181; test. 7/1/04, M. Bull, p.81.)

32. The fixed pier authorized in the permit must be constructed so that the lowest horizontal member of its main portion is no lower than elevation 10.0' NGVD to prevent the shading of underlying tidal wetland vegetation. In addition, the lower portion of the fixed pier must be constructed so that its lowest horizontal member is no lower than elevation 5.8' NGVD to protect shellfish that may be located in the area. (Ex. DEP-30.)

33. The draft permit provides restrictions on encroachments associated with the dock structure. Specifically, the permit provides that vessels may only be berthed at the proposed dock three hours before and three hours after the predicted time of local high tide, the highest the tide rises twice in a day. This would prevent vessels from tying up or leaving the dock during those times from "prop-dredging" on the creek bottom and disturbing shellfish beds. (Exs. DEP-28, 30; ex. INT-5; test. 6/24/04, K. Zawoy, pp.180 - 183, 189- 194, 199-203, 232; test. 7/1/04, L. Romick, pp. 24-25, D. Carey, pp. 37-39, A. Ruellan, pp. 104-124; test. 8/5/04, J. Trautman, pp. 103, 143-156.)

34. This three-hour period would limit boating access for higher tides and prevent the tying of a boat at the terminus of the dock between tidal cycles. Even without this condition, however, the end of the pier would be at the approximate location of the high tide line, making it difficult for boaters to use the dock at low tide without damaging a boat. Also, a person in a boat at the dock during low water would have to leap up onto the dock from the boat low in the water. (Exs. DEP- 29, 30; test. 6/24/04, K. Zawoy p. 159, 187; test. 7/1/04 D. Carey pp. 43-56.)

## **B**

### **STATUTORY AND REGULATORY CRITERIA**

As a riparian property owner, the applicant has the right to access navigable waters. *Water St. Assoc. Ltd. Partners v. Innopak Plastics*, 230 Conn. 764 (1994). Like other property rights, this right can be regulated by the State pursuant to its police power. *Poneleit v. Dudas*, 141 Conn. 413, 417 (1954). Because the proposed dock would be located in coastal waters, tidal wetlands and in a shellfish concentration area, this proposed regulated activity must comply with the statutes and regulations relevant to this application that protect those resources. This application was reviewed under the applicable provisions of General Statutes §§22a-28 through 22a-35, §§22a-359 through 22a-363f and Regs., Conn. State Agencies §§22a-30-1 through 22a-30-17. The application was also reviewed for consistency with the policies and provisions of the Coastal Management Act that provide for the preservation of tidal wetlands and the protection, preservation and enhancement of coastal resources, including those used for recreational purposes. §§22a-90 through 22a-112.

In acting on an application, §22a-359 requires that the Commissioner give:

due regard for indigenous aquatic life, fish and wildlife, the prevention or alleviation of shore erosion and coastal flooding, the use and development of adjoining uplands, the improvement of coastal and inland navigation for all vessels, including small craft for recreational purposes, the use and development of adjacent lands and properties and the interests of the state, including pollution control, water quality, recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned.

Section 22a-30-10 of the Regulations of Connecticut State Agencies implements this mandate by setting out the criteria for granting, denying, or limiting permits. These criteria describe the scope of the consideration to be given to the impact of regulated activities on the wetlands, adjoining coastal and tidal resources, navigation, recreation, erosion, sedimentation, water quality and circulation, fisheries, shellfisheries, wildlife, flooding and other natural water-dependent uses. §22a-30-10(a).

***1***

***Preservation of Tidal Wetlands***

In order to find that tidal wetlands will be preserved and that their despoliation and destruction will be prevented, the Commissioner must find:

- (a) *There is no alternative for accomplishing the applicant's objectives that is technically feasible and would further minimize adverse impacts.*
- (b) *Any structure or fill is no greater in length, width and height than necessary to accomplish its intended function.*
- (c) *Pile-supported construction will be used to the fullest extent possible.*
- (d) *All reasonable measures that would minimize the adverse impacts of the proposed activity on wetlands and adjoining coastal and tidal resources are incorporated as limitations on or conditions to the permit.*

Regs., Conn. State Agencies §22a-30-10(b).

The applicant's objective is to construct a dock for access to the waters of Ash Creek for recreational purposes. The proposed dock will accomplish this objective. The record demonstrates that there is no technically feasible alternative that will accomplish the objectives of the applicant and further mitigate or minimize any significant environmental impacts. Some alternatives proposed would in fact result in more significant impacts to tidal wetlands, including the alternative of not building a dock for access to the waters of the Creek.

The applicant, in consultation with the DEP, is proposing a plan that provides for a structure that is no greater in length, width and height than necessary to accomplish its intended function. The applicant has proposed a dock without a ramp and floating dock to reduce impacts to the intertidal flats. The dock would be an open pile raised pier, leading to a set of open wooden stairs and a lower fixed platform. Eight timber pilings would support the structure; impacts would be limited to a one-foot diameter where the piling is located. Only two pilings would be in the area of tidal vegetation.

The draft permit includes limitations and conditions that will provide reasonable measures to minimize any adverse impacts of the proposed project on the wetlands and adjoining coastal and tidal resources. The dock constructed under the permit meets the minimum height necessary to prevent adverse impacts to tidal wetlands vegetation. The open stair construction would prevent shading impacts to vegetation. The pile-supported structure would have minimal impacts to the tidal vegetation in the footprint of the dock.

The permit provides that a water-based barge will conduct all construction work associated the driving of piles. This barge shall work only at times of high water and shall not be allowed to rest on the bottom of the Creek. OLISP staff has also proposed that the permit allow construction to take place only between June 1 and October 15 of any year. The permit also prescribes the minimum heights of the fixed pier to prevent impacts to tidal wetland vegetation and shellfish. Finally, the permit places restrictions on the use of the dock to prevent vessels from grounding or prop dredging on the Creek bottom during periods of low water. These limitations and restrictions listed in the permit would minimize adverse impacts to the tidal wetlands and adjoining coastal and tidal resources.

## 2

### ***Recreational and Navigational Uses***

In order to find that a proposed activity will not destroy existing or potential recreational or navigational uses, the Commissioner must find:

- (a) *The proposed activity will not unreasonably interfere with established public rights of access to and use of wetlands.*
- (b) *The proposed activity will not be located in a way that unreasonably interferes with a navigable channel or small craft navigation; and*
- (c) *The proposed activity will not cause or contribute to sedimentation problems in adjacent or nearby navigable waters, channels, anchorages or turning basins.*

Regs., Conn. State Agencies §22a-30-10(c).

The proposed dock would not unreasonably interfere with any established public rights of access to and use of wetlands, as its elevation would allow for passage underneath at all times. The dock would not interfere with the navigation. The proposed project would not cause or contribute to any sedimentation problems in adjacent or nearby navigable waters or channels. The open pile construction would not change any current water patterns or water velocity in Ash Creek and would not change exposure to storm conditions that would result in adverse effects on erosion or sedimentation patterns.

There is no proposal to fill, dredge or excavate as part of the project. There is no evidence to indicate that the structure of the proposed dock would cause a significant adverse impact on the movement of sediments on or along the shoreline or cause erosion of adjacent or down drift areas. There would therefore be no adverse effects on erosion and sedimentation. See Regs., Conn. State Agencies §22a-30-10(d).

***Marine Fisheries, Shellfisheries, and Wildlife***

To determine that a proposed activity will not result in significant adverse impacts on marine fisheries, shellfisheries or wildlife, the Commissioner must find:

- (a) *The existing biological productivity of any wetland will not be unreasonably affected.*
- (b) *Habitat areas, such as habitat of rare and endangered wildlife and fish species, will not be destroyed, filled or otherwise unreasonably affected.*
- (c) *Wildlife and their nesting, breeding or feeding habitats will not be unreasonably reduced or altered.*
- (d) *Erosion from the proposed activity will not result in the formation of deposits harmful to any fish, shellfish or wildlife habitat.*
- (e) *Shellfish beds will not be adversely affected.*
- (f) *The timing and construction activities take into consideration the movements and life stages of fish, shellfish and wildlife.*
- (g) *The proposed activity will not unreasonably interfere with the harvesting or maintenance of natural shellfish beds.*

Regs., Conn. State Agencies §22a-30-10(e).

*Spartina Alterniflora*, a plant that is defined and protected as tidal wetlands and located in the area of proposed dock, would not be unreasonably affected by the structure. The elevation of the dock would provide a minimum one-foot clearance above these wetlands and only two of the eight timber pilings that would support the structure would be in the area of this vegetation, for a total impact of two square feet. The wooden stairs leading from the main fixed pier of the dock to the lower platform would be open to maximize sunlight underneath the structure.

This application raised no concerns that habitat areas of rare and endangered wildlife and fish species would be destroyed, filled or otherwise unreasonably affected. No State-listed plant species were observed in the area of the proposed dock.

The mudflats of Ash Creek have been observed as a feeding area for migratory shorebirds. However, there is not substantial evidence to sustain the claim that the dock would adversely impact the feeding habits of these shorebirds. See *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 405 (1998) (The trier of fact is not required to believe even un-rebutted expert testimony, and may believe all, part or none of such evidence.) There would be no erosion from the proposed activity; therefore, no deposits harmful to any fish, shellfish or wildlife habitat would be formed.

The structure of the dock and limitations and conditions of the permit would prevent an adverse impact to shellfish beds and avoid unreasonable interference with any harvesting or maintenance of natural shellfish beds. The dock would be a fixed pier; no floating dock will rest on the bottom of the Creek and disturb the substrate. The permit also provides that vessels may only be berthed at the dock three hours before and after the predicted time of high tide. This condition would prevent boats berthed at the dock from disturbing the sediments on the bottom of the Creek and impacting the shellfish beds in that area under the dock.

The timing and construction activities of the dock take the movements and life stages of fish, shellfish and wildlife into consideration. The driving of piles would be done from a water-based barge during periods of high tide; the barge will not be allowed to rest on the bottom of the Creek. Construction would occur only between June 1 and October 15 of any year to avoid impacts to migratory shorebirds from that work.

#### 4

#### ***Circulation and Quality of Coastal or Tidal Waters***

To decide that a proposed activity will not result in a significant adverse impact on the circulation and quality of coastal or tidal waters, the Commissioner must find:

- (a) *The proposed activity will not cause the significant adverse alteration of patterns of tidal exchange or flushing rates, freshwater input or existing basin characteristics and channel contours.*
- (b) *Water stagnation will be neither caused nor contributed to, and the ability of wetlands and adjacent water bodies to flush themselves will not be adversely affected.*
- (c) *Pile-supported construction will be utilized to the fullest extent practical.*
- (d) *The proposed activity will not result in water pollution that unduly affects the bottom fauna, the physical or chemical nature of the bottom, and the propagation and habitats of shellfish, finfish, and wildlife.*

Regs., Conn. State Agencies §22a-30-10(f).

There is no evidence that the proposed dock would significantly alter the patterns of tidal exchange or flushing rates, freshwater input or existing basin characteristics and channel contours. Piles would support the entire dock structure. The proposed dock would not result in water pollution that unduly affects bottom fauna or the propagation of fish and wildlife and would not result in any significant adverse impact on the circulation and quality of coastal or tidal waters.

5

***Protection of Life and Property from Natural Disaster***

To determine that a proposed activity is consistent with the need to protect life and property from natural disasters, including flooding, the Commissioner must find:

- (a) *The proposed activity will not increase the potential for flood damage on adjacent or adjoining properties.*
- (b) *The proposed activity will not increase the exposure of any property, land or structures to damage from storm waves and erosion produced thereby.*
- (c) *The proposed activity will not result in significant increase in the velocity or volume of floodwater flow both in streams and estuaries.*
- (d) *The proposed activity will not significantly reduce the capacity of any stream, river, creek or other watercourse to transmit flood waters generated by hurricanes or other storm events and will not result in significantly increased flooding either up or downstream or in its location.*

Regs., Conn. State Agencies §22a-30-10(g).

The location, structure and methods to be used to construct the dock would not increase the potential for flood damage on adjacent or adjoining properties and would not increase the exposure of any property, land or structures to damage from storm waves and erosion. There is no evidence that the dock would significantly increase the velocity or volume of any floodwater in the area or that it would significantly reduce the capacity of Ash Creek to transmit floodwaters generated by storm events. There is no evidence that the dock would result in increased flooding up or downstream or in its location.

6

***Criteria for Water-Dependent Uses of Tidal Waters***

In order to determine that a proposed activity within the coastal boundary, as statutorily defined and mapped, is consistent with the state policy that water-dependent uses of the shoreline be given highest priority and preference, the Commissioner shall make the following applicable findings:

- (a) *All reasonable measures that would minimize adverse impacts on future water-dependent uses are incorporated as limitations on or conditions of the permit.*
- (b) *The proposed activity will not unreasonably interfere with the riparian rights of adjacent landowners or claimants of water or shellfish rights in or adjacent to the wetland.*

Regs., Conn. State Agencies §22a-30-10(h).



The applicant is the owner of the site and therefore holds the appurtenant riparian rights. There is no evidence that the proposed activity will unreasonably interfere with the riparian rights of adjacent landowners or claimants of water or shellfish rights adjacent to the tidal wetlands. The proposed dock would promote water-dependent uses and would not unreasonably interfere with the rights of adjacent landowners.

### *C*

#### ***CLAIMS REGARDING THE PERMITTING AND HEARING PROCESSES***

The parties were instructed at the close of the hearing that they could file proposed findings of fact and conclusions of law, with a supporting brief. Regs., Conn. State Agencies §22a-3a-6(x) (DEP Rules of Practice). However, in its post-hearing filing, the ACCA has raised several claims concerning the permitting and hearing process in this matter.

The claims raised by the ACCA are clearly beyond the proper scope of these post-hearing filings. The objections raised would be timely and more appropriately raised, if necessary following the issuance of the proposed final decision, as exceptions to that decision. §22a-3a-6(y)(3)(A) (DEP Rules of Practice.) Nevertheless, the following is intended to explain those aspects of the permitting and hearing processes questioned by the ACCA in order to clarify the record for further review.

### *I*

#### ***New Evidence***

The ACCA has attached to its brief a letter from its president to counsel alleging that it was unfairly denied access to the staff of the Bureau of Aquaculture during this process. In his reply brief, the applicant has objected to the admission of this “evidence”.

Counsel for the ACCA notes in his brief that he has attached this letter “objecting to the unfairness of [the] situation”. Counsel does not specifically offer this letter as new evidence; if he had, the offer of evidence would be denied. The letter and the allegation could have been, but were not, brought forward at the hearing, where the ACCA would have had to establish the relevancy of an alleged misdeed of another state agency to this proceeding. The letter is not part of the evidentiary record. §22a-3a-6(w).

2  
*Burden of Proof*

The applicant has the burden of proof in a proceeding on an application. Regs., Conn. State Agencies §22a-3a-6(f). The applicant must demonstrate by a preponderance of the evidence that the proposed application is consistent with all applicable statutory and regulatory requirements that I am required to consider in deciding whether to recommend that the Commissioner issue a permit.

The ACCA accuses the DEP of assuming the burden of proof for the applicant. While acknowledging that it was “appropriate and pragmatic” for OLISP staff to testify in favor of proposed changes the DEP “told the applicant were necessary” to reduce environmental impacts, the ACCA, argues that “what is not acceptable” is that the application has “become as much that of the OLISP as it is the applicant’s”.

The ACCA claims that the “general public” would not have much confidence in a process under which DEP staff “were fully prepared to approve the original application as submitted” when it issued the notice of tentative determination. Then, according to the ACCA, after the first public hearing, and the “chorus of substantive points in opposition raised by the public”, OLISP staff moved for a continuance, and worked, through “unilateral conferences” with the applicant, to “make the application comply”.

What the ACCA maligns is exactly how the permitting process should work. Before the Commissioner can approve or deny an application, notice of the tentative decision of the DEP regarding that application must be published. The publication of this notice does not mean that DEP staff is “fully prepared” to approve the original application, as alleged by the ACCA. To the contrary, the publication triggers a time period for the receipt of public comments and advises the public as to how it may request a hearing on the application. If comments are received and/or a hearing is held that reveal concerns from the public or another party, including intervening parties, staff might request that the applicant make changes to its proposal, such as the revisions made to the design of the proposed dock. A final decision on an application cannot be rendered without this notice, comment period and any hearing. E.g., General Statutes §22a-361(b).

The ACCA equates the interaction between the DEP and the applicant during the permitting process, the “unilateral conferences” held between the two, as the equivalent of an “interdependency between the applicant and the State Agency”. This condemnation misconstrues the role of the DEP during the permitting process. First, contrary to the implication of the ACCA, interaction between the DEP and the applicant during the course of the hearing, or between any of the parties, is not improper. The DEP stands in the position of a party during a hearing. Any party can freely communicate, or not, with any other party during a hearing, including the applicant or the intervenors, without the other party being present. DEP staff is under no obligation to communicate with all parties together.

The DEP is obliged to assure that a permit issued under its authority complies with relevant statutes and regulations. Relevant comments, including public statements made at a hearing, or comments following review of an application by a consulting state agency, must be considered. See §22a-361(b). In this case, and as announced in the notice of tentative determination, the Bureau of Aquaculture reviewed the application pursuant to §22a-361(b). The Bureau determined that the first design of the dock would have an impact on shellfish and shared its concerns with DEP staff and the applicant. OLISP staff also consulted with Bureau staff and worked with the applicant to revise the dock design to address those concerns. This was part of the permitting process set out in the notice.

As noted by the ACCA, the mission of the DEP is to protect the tidal and coastal resources of the State. Here, the DEP worked with an applicant to address concerns of another state agency and the public regarding the application in order to protect those resources. The DEP serves the interests of the public in meeting with an applicant to discuss how an application might be revised to make it environmentally sound. This is the purpose of the comment and review process and the hearing process that might follow the issuance of a notice of tentative determination. By looking for clandestine motives, the ACCA does a disservice to this essential aspect of the permitting process.

*Presentation of Evidence*

The ACCA argues that the testimony of its witnesses relating to the three-hour “window” for boating access to the dock was “arbitrarily excluded”. Specifically, the ACCA claims that evidence on “prop wash” and “re-sedimentation” was limited, which, it argues, was “hard to fathom” given the concern of the Bureau of Aquaculture on this subject and its subsequent “lame and unexamined” acceptance of the three-hour window.

The ACCA argues that I should have given “wide latitude” to the admission of such testimony by both experts and non-experts as it bears on “critical issues for decision”. The ACCA notes that an administrative hearing process is not a more formal court proceeding and, generally, certain evidence that might not be admitted in court is admitted in an administrative proceeding and subsequently given its appropriate weight by the hearing officer in his or her deliberations for decision.

The ACCA correctly asserts that hearsay evidence is admissible in an administrative hearing. Indeed, the record of this proceeding shows that such evidence was admitted and this decision reflects my consideration of the merits of such evidence. However, the rules of administrative process provide for the exclusion of “irrelevant, immaterial or unduly repetitious evidence”. General Statutes §4-178(1).

The record refutes the claims of the ACCA that their witnesses were not allowed to testify on the subject of “prop wash” and “re-sedimentation”. The ACCA wanted to show that the three-hour window would not be adequate to protect against adverse impacts to the bottom of the Creek due to the boats grounding, prop dredging or otherwise coming in contact with the bottom or from the re-sedimentation that could occur from boat in and around the dock. Witnesses were given time to explain their theories on water depth and the impacts of boats, at times over the objections of the other parties and even when those theories were given by witnesses whose “qualifications” to make certain conclusions or calculations were unclear or questionable. Evidence that was arguably hearsay was admitted and was given its proper weight; clearly irrelevant, repetitive and unreliable evidence was excluded as appropriate.

The staffs of the DEP and the Bureau of Aquaculture are the technical experts in this matter. As a hearing officer for the DEP, I may rely on the technical expertise of

DEP staff. See *Connecticut Building Wrecking Co. v. Carothers*, 218 Conn. 580, 593 (1991) (An agency may rely on its own expertise in evaluating evidence within the area of its expertise.) Staff has proposed a permit condition that provides that no boats may be berthed at the dock more than three-hours before or after high tide. Bureau staff has concurred. Obviously, both staffs believe this condition will provide an adequate depth of water to sufficiently protect the Creek bottom from boats using the dock. There was no evidence presented by the ACCA, in documents or the testimony of its witnesses, sufficient to show that this would be otherwise.

This contention is also rebutted by common sense. The area of Ash Creek where the proposed dock would be located has periods of extremely low water levels. So low, in fact, that it was undisputed that a floating dock would rest on the bottom of the Creek during some of this time. As noted by some witnesses and the parties at the hearing, a boater would risk harming the bottom of his boat if he traversed the Creek during certain periods of time. The area of the dock is one of these areas. It is not clear why the ACCA seems to believe that the applicant would risk damaging a boat by driving up to a dock at low water.

Finally, the ACCA maintains that their testimony on boating and the impacts of boats in Ash Creek was unjustly limited by my “interpretation of the jurisdictional scope” of what is commonly known as the Structures and Dredging Act, specifically §22a-359. The ACCA argues that this Act is far more comprehensive than the scope given it by DEP staff and me. The ACCA argues that consideration of the potential impacts from boat traffic is relevant to the issue of impacts to navigation that are considered in reviewing a dock application. The ACCA misinterprets the Act.

During the hearing, the ACCA raised the issue of potential adverse impacts to shellfish in Ash Creek that could result from re-sedimentation due to powerboats using the proposed dock. Essentially, however, the ACCA tried to introduce evidence that the DEP should regulate not only boats that were potentially berthed at the dock, but also any boat traffic within Ash Creek that may or may not intend to use the dock. <sup>12</sup>

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<sup>12</sup>DEP staff concurs that there are potential adverse impacts to coastal resources when a propeller-driven boat operates in shallow sub-tidal flats during low water conditions, and does not condone or promote such activities. However, the DEP cannot deny public access to public trust waters for private recreational boating use. With or without a dock, the applicant may access the waters of Ash Creek from his property.

The DEP regulates the dock structure; §22a-359; as well as boats that would be berthed at (i.e., temporarily affixed to) the dock, as associated “encroachments”. §22a-361(a). These statutes, under which the proposed activity is regulated, do not provide OLISP with the authority to consider the perceived adverse impacts argued by the ACCA that could result from increased recreational boating, whether in this instance or from any other user of the State’s public trust waterways. In fact, however, the permit condition on this proposed dock in fact serves as a de facto restriction on boating in the vicinity of the dock during low water conditions.

The arguments of the ACCA on this topic were not relevant to the review criteria and my decision in this matter. As a hearing officer, I have a responsibility to exclude irrelevant evidence. §4-178. Nevertheless, the record shows that evidence pertaining to these concerns was introduced throughout the hearing and, when limited or excluded, the reasons for such action were explained, with arguments to the contrary considered.

It is clear that the ACCA has concerns regarding this permit. Many of its concerns, as well as concerns raised by the public, are significant: the cumulative impact of additional boating facilities and activities on a relatively undisturbed ecosystem. Here, however, not only are there no specific and identifiable adverse impacts from this proposed dock, but any potential impacts have been voluntarily addressed by the applicant through restrictions on the use of the dock. The applicant has sufficiently demonstrated compliance with all regulatory requirements. As OLISP staff so appropriately states in its reply brief: “[D]ue process requires that we deal with what [this application] proposes rather than what it symbolizes”.

## *CONCLUSION*

The intervening parties in this matter expressed particular concerns as to the potential impacts from the construction and use of the proposed dock on shellfish, intertidal flats and the tidal wetland grasses (*Spartina*). Concerns were also raised as to potential impacts to migratory shorebirds from the construction and presence of the dock.

The modification of the dock and the permit conditions limiting the time when boats may be berthed at the dock and prohibiting the construction barge from resting on the bottom of the Creek would prevent adverse impacts to the shellfish in the area of the dock during its construction and use. The elimination of the floating dock will prevent impacts to intertidal flats. The fixed pier structure, supported by pilings, has been designed and special conditions have been placed in the permit to avoid or minimize impacts to the intertidal flats during construction and use of the dock. The dock has been sited and designed to reduce to the greatest extent possible any adverse impacts on tidal wetland grasses. Conditions of the permit also satisfactorily address potential impacts during construction and from the structure of the dock. The intervening parties were not able to demonstrate that migratory shorebirds would be adversely impacted from this dock, or that any impacts would be due to this dock and not from other structures on or around Ash Creek. Nevertheless, the dock has been designed to encroach into only approximately nine linear feet into the intertidal flat region and the period for construction has been limited to protect those shorebirds. In addition, the limitation on use of the dock to three hours before and after high tide will further prevent any adverse impacts to shorebirds feeding at low water periods.

The proposed dock has been appropriately designed to strike a reasonable balance between the riparian right of the applicant to access the waters of Ash Creek for recreational activities and the responsibility of the DEP to protect the coastal and tidal wetlands areas of the State. The application meets the relevant statutory and regulatory criteria that guide the Commissioner's decision to grant or deny such an application. The applicant has sufficiently demonstrated that all adverse environmental impacts associated with the construction and use of the proposed dock have been avoided, minimized or mitigated and that all applicable criteria of the relevant statutes and regulations have been satisfied.

**RECOMMENDATION**

I recommend that the Commissioner issue the requested permit incorporating the terms and conditions set forth in the draft permit (Attachment A), with the following modification.

Special Terms and Conditions.

Add a new Paragraph 4 as follows. Re-number Paragraphs 4 to 6 accordingly.

4. *“Construction of the dock shall take place only between June 1<sup>st</sup> and October 15<sup>th</sup> of any year”.*

4/26/05 \_\_\_\_\_  
Date

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





## DRAFT PERMIT

**Permit No:** 200300739-KZ

**City:** Bridgeport

**Work Area:** Ash Creek off property located at 420 Gilman Street

**Permittee:** Paul J. Ganim  
420 Gilman Street  
Bridgeport, CT 06606

Pursuant to sections 22a-359 through 22a-363f and sections 22a-28 through 22a-35 of the Connecticut General Statutes (General 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 install a fixed pier for private recreational boating use as is more specifically described below in the SCOPE OF AUTHORIZATION, in Ash Creek off property identified as the “work area” 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 #200300739-KZ, including two sheets of plans submitted by the Permittee to the Commissioner and attached hereto as follows: sheets 1 and 2 of 2 dated January 30, 2004 and revised May 19, 2004 as follows:

install a minimum of 10' north of the southern property line a fixed pier consisting of a 4' x 27' open pile fixed pier at elevation 11.0' NGVD leading to a set of wooden stairs 4' wide x 5' long to a 4' wide x 7' long lower fixed platform at elevation 6.8' NGVD.

**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. Not later than two 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.

2. On or before (a) 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 "as built" plans showing all contours, bathymetries, tidal datums and structures.
3. All work associated with the driving of piles shall be conducted by a water-based barge during periods of high water.
4. At no time shall the Permittee allow the barge to rest on the creek bottom.
5. The Permittee shall construct the fixed pier authorized herein so that the lowest horizontal member of the main portion of the fixed pier is constructed no lower than elevation 10.0' NGVD to prevent the shading of underlying tidal wetland vegetation and that the lower portion of the fixed pier shall be constructed so that the lowest horizontal member of the lower pier be constructed no lower than elevation 5.8' NGVD to protect shellfish that may be located in the area.
6. The Permittee may only berth vessel(s) adjacent to the dock authorized herein not earlier than 3 hours before or not later than 3 hours after the predicted time of local high tide.

**GENERAL TERMS AND CONDITIONS**

1. All work authorized by this permit shall be completed within three years from date of issuance of this permit ("work completion date") in accordance with all conditions of this permit and any other applicable law.
  - a. 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 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.
  - b. 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.
2. 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.
3. The Permittee shall maintain all structures or other work authorized herein in good condition. Any such maintenance shall be conducted in accordance with applicable law including, but not limited to, sections 22a-28 through 22a-35 and sections 22a-359 through 22a-363f of the General Statutes.

4. Prior to the commencement of any work authorized hereunder, 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.
5. The Permittee shall notify the Commissioner in writing of the commencement of any work and completion of all work authorized herein no later than three days prior to the commencement of such work and no later than seven days after the completion of such work.
6. All waste material generated by the performance of the work authorized herein shall be disposed of by the Permittee at an upland site approved for the disposal of such waste material.
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  
(860) 424-3034  
Fax # (860) 424-4054

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 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 authorization 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 becomes aware that he 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 proposed 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 any unauthorized activities may be subject to enforcement action.

18. The Permittee may not conduct work waterward of the high tide line or in tidal wetlands at this permit site other than the 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 General Statutes.
19. The issuance of this permit does not relieve the Permittee of his 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

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**Gina McCarthy**  
**Commissioner**

**Permit Application No. 200300739-KZ**

Paul J. Ganim

Certified Mail # \_\_\_\_\_

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**OFFICE OF LONG ISLAND SOUND PROGRAMS**

**APPENDIX A**

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

**PERMITTEE:** Paul J. Ganim  
420 Gilman Street  
Bridgeport, CT 06606

**Permit No:** 200300739-KZ, Bridgeport

**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)