

**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



IN THE MATTER OF

:

*APPLICATION NO.
200802178-MG*

CT DEP

BAYBERRY LANE BOAT LAUNCH

:

OCTOBER 15, 2009

PROPOSED FINAL DECISION

***I
SUMMARY***

The Department of Environmental Protection (DEP) Bureau of Outdoor Recreation, State Parks and Public Outreach Division (the Applicant) has filed an application with the DEP Office of Long Island Sound Programs (DEP-OLISP) for a permit to conduct work in regulated areas waterward of the high-tide line and in tidal wetlands. In its application, the Applicant proposes to renovate the existing Bayberry Lane Boat Launch in Groton. The renovations are intended to improve and provide better access to the launch and associated dock structures, parking, and the bathroom facilities. DEP-OLISP issued a Notice of Tentative Determination (NTD) to approve and issue permits to the proposed project subject to specific permit conditions on March 19, 2009. After the NTD, a petition signed by more than 25 members of the public was submitted requesting a hearing on the application and tentative determination to approve the proposed project.

A public hearing was held at Groton City Hall on June 29, 2009 to accept public comment on the record. The hearing was continued in Hartford on July 1, 2009 to collect evidence from the parties. The record was left open until July 8, 2009 to allow the public a final opportunity to submit written comment. On September 29, 2009, the parties submitted an Agreed Draft Decision (ADD) for my consideration. Regs., Conn. State Agencies §22a-3a-6(1)

I have reviewed the ADD; the evidentiary record in this matter, including the exhibits admitted into evidence and hearing testimony of the Applicant and DEP-OLISP; and the public comment offered in writing and at the hearing. The hearing record supports the findings within the ADD and the supplemental findings articulated in this decision. These findings substantiate the conclusions that the proposed project complies with applicable statutory and regulatory standards. Based on the complete record, I accept the attached Agreed Draft Decision (Attachment A) and with the additional findings articulated below, adopt it as my proposed final decision and recommend that the proposed draft permit (Attachment B) be issued without delay.

II
DECISION

A
Findings of Fact

I adopt the findings set forth in the Agreed Draft Decision and make the following additional findings of fact.

1. Sally Snyder has twelve years of experience with the Department of Environmental Protection, including eleven years with the Inland Water Resources Division. She is familiar and has significant experience with the agency's permitting programs and requirements related to water resources and water quality. Micheal Grzywinski has fourteen years of experience with the Department's Office of Long Island Sound Programs, including the review of permit applications for activities proposed in coastal resources and tidal wetlands to ensure the proposed activities meet the requirements and standards articulated in the state statutes and regulations concerning coastal resources. (Exs. APP-21, DEP-15; test. 7/1/09, S. Snyder, M. Grzywinski¹).

2. The proposed activity will not negatively impact flow from the drainage ditch located on the eastern border of the property. Sediment and erosion controls will be placed around the project limits, including the area adjacent to the drainage ditch to prevent any overflow of sediments during construction. In addition, construction timing and sequencing will further limit the possibility of sediment flowing into the watercourse. The deteriorated timber retaining wall will be removed only after the new retaining wall is constructed and construction will only occur during periods of low water. The proposed project will improve drainage from the drainage ditch because the new timber retaining wall and the use of a five-foot crushed stone drainage apron around the perimeter of the site will reduce the ability of sediment to seep into the watercourse. The newly constructed wall will no longer encroach into the channel as the deteriorated wall does now. The removal of the sea wall at the mouth of the channel will also improve flow. The improved boat launch will prevent the piling up of rock, debris, and sediment caused by power loading by reorienting and extending the area of the launch away from the drainage ditch and protecting the sea floor with the Armorflex concrete pavers for ten feet beyond the end of the boat ramp. (Exs. APP-1, 11, 27, 28, and 30 DEP-3; test. S. Snyder, M. Grzywinski).

¹ The testimony and proceedings in this matter were recorded. No written transcript has been prepared. The audio recording of this hearing is on file with the Office of Adjudications and is the official record of this proceeding.

3. The applicant has no authority or control over the bathrooms located at the town-owned pumphouse facility. The only feasible alternative is the employment of well screened, well maintained, portable toilet facilities. These facilities will be maintained twice a week during the boating season and three times a week if necessary. The facilities will be screened at a minimum on three sides. The applicant will explore the use of a slatted roof and additional shrubbery screening to further reduce the visibility of these facilities from neighboring properties. (Exs. APP-11, 16, 27, 28, 30, DEP-3; test. M. Payton, S. Snyder).

4. The discarding of fish carcasses or parts at DEP boat launches is prohibited by DEP regulations. Notice of these regulations is posted at the site currently and will be reposted once construction is complete and the facility is open to the public. DEP Environmental Conservation Police officers patrol the area on a regular basis and have the authority to enforce DEP regulations. (Exs. APP-11, 22, 27, 30; test. S. Snyder).

5. The issuance of the proposed draft permit does not alter any rights in real estate currently held by several owners of property on Bayberry Lane, including Mario Peruzzotti, and their successors and assigns. (Ex. APP-30; test. S. Snyder).

B
Public Comment

The scope of this hearing and this decision is limited to the authority granted to the DEP under the applicable permitting statutes and regulations and the Coastal Management Act.² Although these statutes and regulations grant the Commissioner broad authority, they do not give the Commissioner unlimited discretion to impose permit terms or to accommodate all public concerns in the scope of a permit proceeding.

Several public comments expressed concern regarding fish carcasses and parts that wash ashore on private property. The discarding of fish parts is expressly prohibited at DEP boat launch areas by DEP regulation (Regs., Conn. State Agencies §26-16-1). The proposed project does not alter this prohibition and there is no evidence that the continued use of this facility would exacerbate the alleged problem. DEP will continue to provide signage clearly stating such activity is prohibited. The suggestions to impose stricter penalties cannot be addressed in the scope of this proceeding. The applicant cannot be made responsible for removing this type of debris from private property. There is no authority to place such a condition in the proposed permit. Even if there was such authority there is no evidence that it would solve the problem because there is no evidence that illegal disposal at the boat launch is the primary source of this

² Relevant authorities include: the Tidal Wetlands Act, General Statutes §§ 22a-28 through 22a-35 and implementing regulations at Regs., Conn. State Agencies §§ 22a-30-1 through 22a-30-17; the Coastal Management Act, General Statutes §§ 22a-90 through 22a-112; and Structures and Dredging Provisions of the General Statutes, §§ 22a-359 through 22a-363f.

refuse. A search of call logs from the DEP dispatch center revealed no complaints in the past two years about the discarding of fish carcasses at this boat launch or other neighboring launches. Illegal activity that goes unreported cannot be properly addressed. The DEP expressed its willingness to respond to local complaints and enforce its regulations while maintaining this facility as it is within the scope of its duty to provide accessible and safe boating and recreational facilities to the public. However, the DEP cannot be held responsible for such debris disposed of legally offshore or at other nearby boating facilities, nor can the DEP alter the flow of tides and currents that may wash this debris on shore.

The watercourse referred to on plans as the “drainage ditch” was also of significant concern to those who commented. The applicant has an affirmative duty to avoid and then minimize any impact to this watercourse. The proposed permit conditions are intended to and will protect it from any infiltration of silt or sediment. The construction sequencing will also minimize any impact from construction as the new wall will be constructed prior to the removal of the old wall. The minor impacts associated with construction can only be avoided if nothing is done to the wall. This is clearly not an option as the wall is in obvious disrepair. Its immediate replacement will likely improve the situation by preventing seepage of sediments into the drainage ditch through the deteriorating wall. Finally, other improvements to the launch, including the removal of the stone sea wall and the placement of precast interlocking concrete blocks past the end of the ramp, will alleviate the problem of power loading and the accumulation of rock and debris as a result of the launch.

The applicant has met its burden to demonstrate that the project will not have an adverse impact on drainage or flooding and that it has minimized the impact to the watercourse. The minimal impact from construction is necessary and there was consistent evidence presented that the proposed activity is intended to and will improve the drainage situation. Any examination of activity further upstream is clearly outside the scope of the project and requires separate permitting approvals and permission from private property owners. It cannot and should not be made a part of this project, which is intended to improve public access to the water and associated recreational opportunities. The applicant has shown and DEP-OLISP has confirmed that the proposed activity strikes an appropriate balance between providing waterfront access to the general public and protecting the public trust in the state’s coastal resources by avoiding and minimizing impacts to those resources.

Numerous comments concerned the on-site chemical toilets. DEP has responded to these comments by agreeing to certain screening measures, including the three-sided, slatted wood privacy screen and, if feasible, an additional shrubbery screen and slatted wood roof to provide a sufficient visual barrier. DEP has also indicated that the toilets will be maintained regularly (twice a week and if necessary, three times a week) to reduce odors. Other options such as composting toilets will be explored but physical site constraints limit alternatives. The

alternative of using the pumphouse bathrooms was explored but proved to be infeasible because the facility is controlled by the City of Groton and an agreement to reopen the bathrooms could not be reached.

Finally, there were concerns expressed about the effect on rights to use a 50-foot right of way on the western side of the property by property owners on Bayberry Lane. Nothing in the proposed draft permit would alter rights in real estate held by the individuals on Bayberry Lane. The site plan is intended to further prohibit the overflow parking that has historically blocked this right of way.

There were other concerns expressed at the public hearing session, many related to facility management, neighborhood impacts, and other issues outside the scope of this hearing and the agency's permitting authority. Nevertheless, staff adequately addressed many issues throughout the permitting process. Concerns about headlight glare will be addressed by shrub screening where feasible as well as the increased height of the timber retaining wall adjacent to the parking area. Other issues such as maintenance and security will be handled, as it is at all DEP facilities, by regular maintenance crews and regular patrols by the Environmental Conservation Police.

C

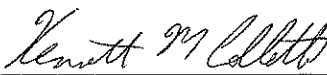
Conclusions of Law

I adopt the conclusions of law stated in the agreed draft decision.

D

Recommendation

The applicant has met its burden of demonstrating that the proposed activity as authorized by the proposed draft permit complies with the applicable statutory and regulatory requirements. The hearing record supports the findings and conclusions submitted by the parties. Therefore, I recommend that the permit be issued without further delay.



Kenneth M. Collette, Hearing Officer

SERVICE LIST

Proposed Final Decision concerning CT DEP State Parks and Public Outreach Division
Bayberry Lane Boat Launch
Application No. 200802178

PARTY

REPRESENTED BY

The Applicant

DEP
State Parks and Public Outreach Division
79 Elm Street
Hartford, CT 06103

Sally Snyder

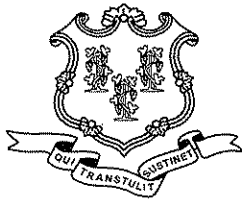
Department of Environmental Protection

Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106

Micheal Grzywinski

PETITIONER

Malcolm Hutchinson
110 Karen Lee Road
Glastonbury, CT 06033



**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



AGREED DRAFT DECISION

DEP BUREAU OF OUTDOOR RECREATION, STATE PARKS DIVISION
COASTAL PERMIT APPLICATION #200802178-MG

BAYBERRY LANE STATE BOAT LAUNCH RENOVATIONS
CITY OF GROTON

September 30, 2009

1. Introduction: On August 20, 2008, the Department of Environmental Protection's, Bureau of Outdoor Recreation, State Parks and Public Outreach Division (the "Applicant") 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 renovation of the Bayberry Lane State Boat Launch facility in the City of Groton. 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 ("CGS") sections 22a-359 through 363f, in accordance with the Connecticut Coastal Management Act, sections 22a-90 through 22a-112 of the CGS, and Tidal Wetlands Act and regulations, sections through 22a-28 through 22a-35 of the CGS and sections 22a-30-1 through 22a-30-17 of the Regulations of Connecticut State Agencies, the Connecticut Water Quality Standards developed pursuant to CGS section 22a-426, and Section 401 of the Federal Clean Water Act as amended.
2. Parties: The parties to the proceeding are: the Applicant, the Bureau of Outdoor Recreation/ State Parks and Public Outreach Division of the Department of Environmental Protection ("DEP"); and staff from the Office of Long Island Sound Programs ("OLISP") of the DEP.
3. The parties have agreed to the admission of all the exhibits listed on the attached Prehearing Submissions comprising staff exhibits DEP-1 through DEP-16, and Applicant's exhibits APP-1 through APP-24. Applicant's exhibits APP-25 through APP-30, which were not listed on the Applicant's Prehearing Submissions, were admitted without objection at the hearing of this matter on July 1, 2009. Staff exhibit DEP-17 was also admitted into the record without objection at the hearing.

RECEIVED

SEP 29 2009

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF ADJUDICATIONS

FINDINGS OF FACT

Background

1. Site Location and Character: The site is located at the end of Bayberry Lane on Pine Island Bay in Groton, Connecticut. Pine Island Bay is an estuarine embayment. The landward area of the site is classified as residential and commercial (DEP-6). The abutting eastern and western properties contain tidal wetlands vegetation, consisting primarily of *Spartina patens*

and *Spartina alterniflora*. The eastern boundary also abuts a tidal drainage ditch and tidal wetlands. There are no eel grass or intertidal flats in the vicinity of the existing or proposed boat launch ramp, docks or piers (DEP-3, DEP-4).

2. Application History: The initial application was received on August 21, 2008 requesting authorization to mechanically dredge approximately 100 cubic yards of sediment at the end of the boat ramp, and to remove the large ½ to 1 ton stone from the existing shoreline within the vicinity of the proposed work; replace and increase the existing boat ramp from 30' wide by 50' long to 40' wide by 60' long; replace two 5' wide by 15' long fixed docks with two 8' wide by 60' long floating, handicapped accessible docks with ten timber piles; provide car-top boat launch access; replace the deteriorating timber retaining wall on the eastern property boundary adjacent to a drainageway; reconstruct and pave the parking area; and other general site improvements (DEP-3).

In evaluating the application, OLISP staff solicited or received input from the State of Connecticut Department of Agriculture's Bureau of Aquaculture, DEP's Fisheries Division, and DEP's Wildlife Division (DEP-2, APP-5, APP-6, APP-8). OLISP staff inspected the site in August and September 2008. During the course of OLISP staff review, staff asked in a letter dated November 26, 2008 (DEP-1) that the Applicant revise the application to: show the top and toe of the proposed dredge footprint; show the existing and proposed locations of the high tide line, mean high water and mean low water; show the locations of existing tidal wetlands vegetation located on either side of the existing project site and clearly identify the extent of this vegetation; indicate if the proposed timber pile and vertical sheathing bulkhead is proposed to be constructed on the west side of the project site; provide a detailed specification sheet(s) for the proposed cofferdam to be installed and maintained around the project area; show the presence of existing tidal wetlands vegetation located immediately waterward of the existing timber bulkhead; provide a discussion as to how the proposed activity addresses the concerns during the review of the preceding application (#199601020-MG) which was subsequently withdrawn after receiving significant public comment at an informational meeting held on October 21, 1998 and uncovering a Right-of-Way easement; provide a sequence of construction for the proposed activity, including the staging of the equipment and materials; show the locations of shellfish beds in relation to the proposed dredging; provide a discussion of stormwater drainage improvements that will be incorporated into the proposed renovation of the existing site; indicate if crushed stone or organic material will be placed in the voids between (and within the individual pavers) the proposed Armorflex concrete pavers, and indicate if open (20% open) or closed (10% open) pavers will be used; provide a discussion as to how the design of the proposed boat launch ramp will alleviate the issue of accumulation of sediment at the waterward terminus of the existing launch ramp; indicate if the Bureau of Outdoor Recreation has received any guidance or feedback from the DEP {Water Permitting & Enforcement Division} staff regarding the proposed dewatering activities and provide any correspondence regarding the proposed dewatering; provide a discussion as to how the proposed boat launch ramp will be more efficient from an operational standpoint than the existing boat launch ramp; revise the plans that show proposed conditions to delete reference to existing structures, and; indicate if sideslopes of the proposed ramp will require stone riprap stabilization to address potential erosion of the ramp; revise the application plans and materials accordingly (DEP-1). The

Applicant complied with staff's requests and provided responses to each item in a memo dated December 18, 2008 (APP-11).

On March 19, 2009, OLISP staff recommended tentative approval of the application and issued a Notice of Tentative Determination to Approve and Intent to Waive a Public Hearing (DEP-4). On March 27, 2009, the notice was published in *The Day*, a daily newspaper published in New London, CT (DEP-5). Because the project has the potential to result in adverse impacts to tidal wetlands, 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 May 6, 2009. On May 6, 2009, OLISP staff received a petition from Malcolm Hutchinson with 66 signatures requesting that a public hearing be held on the application (DEP-12). No concerns were identified in the petition or the cover letter accompanying it.

In accordance with statutory requirements, upon receipt of the petition a public hearing was scheduled on the application. The hearing officer, Kenneth M. Collette, Esq., of the DEP Office of Adjudications, held a Status Conference on May 20, 2009. On May 30, 2009, a Notice of Public Hearing was published in *The Day* newspaper (DEP-14). The parties submitted their prehearing exchange of information on June 22, 2009. Thereafter, a site visit was held on June 29, 2009.

The Public Hearing was held in Groton at the Groton City Hall Municipal Auditorium on June 29, 2009 at 7:00 pm, preceded by a Public Information Meeting from 6:00 pm to 7:00 pm. At the Public Hearing, the Applicant presented testimony regarding the appropriateness of the proposed boat launch facility renovations for its intended use and its consistency with the relevant statutory and regulatory requirements (APP-25). Public comments made during the Public Hearing and the site walk focused primarily on the issue of dredging material from the adjacent drainage ditch on the eastern property boundary, reopening the City's pump house building to use the public bathrooms, halting the discarding of fish parts in Pine Island Bay, facility maintenance, landscaping, and patrols. No expert testimony was provided to support the assertions that the proposed structures would impact drainage, coastal resources or navigation. Mr. Grzywinski noted that it was the opinion of DEP staff that the environmental impacts associated with the proposed project have been minimized to the greatest extent practicable and have been found to be acceptable (DEP-17).

At the Continuation of the Public Hearing at the Department of Environmental Protection on July 1, 2009 at 10:00 am, the Applicant presented evidence and testimony describing how the proposed boat launch facility renovations will affect the existing boat launch and how these would be consistent with the relevant statutory and regulatory requirements, as well as responding to several public comments received during the Public Hearing (APP-26, APP-27, APP-28, APP-29, APP-30). Following the Public Hearing, the Hearing Officer kept the record open until July 8, 2009, to receive written comments regarding the Application. Post hearing comments were received from Mr. Mario C. Peruzzotti regarding his concerns over the conveyance of his privileges as a holder of the 50' Right-of-Way easement, including a copy of his deed, and from Mr. Malcolm G. Hutchinson reiterating his concerns about the current condition of the adjacent drainage ditch on the eastern property boundary of the boat

launch site, including a history of mosquito control concerns, and his request for its continual maintenance through channel dredging.

3. Project Description: The Applicant seeks authorization to remove the existing concrete railroad ties boat ramp (30' wide by 50' long) and riprap sea walls in order to install a wider, tongue and groove concrete-paneled boat ramp (40' wide by 60' long) with an Armorflex block apron; mechanically dredge approximately 100 cubic yards of sediment from an area roughly 40' wide by 80' long at the end of the new boat ramp down to the new bathymetric profiles for disposal at an upland location approved by DEP, in order to facilitate power-loading; remove large ½ to 1 ton stone from the existing shoreline within the area of work; remove the two existing 5' wide by 15' long fixed piers; install two concrete bulkheads, each with a 8' wide by 60' long floating dock system and a total of ten timber piles; install an new car-top access ramp constructed of Armorflex block; replace the deteriorating timber retaining wall along the eastern property line; pave the parking area and travel lanes; mark the pavement, perform minor landscaping and install signs; and conduct other site improvements such as pouring a concrete slab for the chemical toilets and erect slated wood screening on three sides, relocate the underground propane tank (to be performed by the City of Groton) and reset boulders on site.
4. Purpose and Use: The purpose of the proposed project is to renovate the existing state boat launch facility which is in disrepair and underutilized due to its poor condition. The above described activities will improve public access by facilitating boat launching and loading; safely allow for two lanes of boating traffic; expand the piers for improved fishing and boater access, including handicapped access; provide for a formalized car-top boat launch area; improve parking and traffic flow, increase the number of parking stalls from 30 to 37 while eliminating or reducing the unauthorized, overflow parking; and otherwise generally improve the site's overall character and usage while addressing the need for providing riparian access to the adjacent property owner(s) who hold a Right-of-Way easement (DEP-3).
5. Compliance and Enforcement History: Previous permits or certificates issued by the DEP-OLISP that authorized work waterward of the high tide line at this site were a Certificate of Permission, #COP-2007-196-MG, to perform maintenance and repair a scour hole in the boat launch ramp (DEP-3). The site has not been the subject of a DEP enforcement action for unauthorized activities waterward of the high tide line.
6. Shellfish: Approximately 50 feet from shore is a deeded, private leased grounds, classified as CR-R (Conditionally Restricted-Relay) shellfish area pursuant to a DEP Shellfish Concentration Map dated 1979. The State of Connecticut Department of Agriculture, Bureau of Aquaculture has determined that the proposed work would not significantly impact any shellfish area (DEP-2, APP-5) and noted that the property owner has never taken out a permit to harvest or plant shellfish on his shellfish grounds (APP-5). To minimize impacts on shellfish areas, the Bureau of Aquaculture recommended that the project not be done during shellfish spawning season; June 1 – Sept. 30 and recommended sediment controls if the material to be dredged is very fine silts (DEP-2, DEP-6).

7. 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 the DEP Bureau of Natural Resources/Wildlife Division. In a memo dated September 15, 2008 to Sally Snyder, representing the Applicant, Dawn McKay of DEP's Wildlife Division indicated that according to the Natural Diversity Data Base maps and files, there are no known extant populations of Federal or State Endangered, Threatened or Special Concern Species that occur at the site in question. Ms. McKay's memo also stated that this information is not necessarily the result of comprehensive or site-specific field investigations (APP-8).
8. Beaches and Dunes: There are no beaches and dunes in the project area (DEP-4).
9. Bluffs and Headlands: There are no bluffs and headlands in the project area (DEP-4).
10. Coastal Hazard Area: A coastal hazard area is present on site but will not be impacted by the proposed work (DEP-4).
11. Islands: There are no islands within the project area (DEP-4).
12. Rocky Shorefronts: There are no rocky shorefronts in the project area (DEP-4).
13. Coastal Waters e.g. Tidal Rivers, Streams and Creeks: Coastal waters and tidal creeks are present on site but will not be impacted by the proposed work. Sedimentation and erosion controls will be installed around the work area to minimize impacts to coastal waters (DEP-4).
14. Developed Shorefront: A developed shorefront is present adjacent to the site but will not be impacted by the proposed work (DEP-4).
15. Adjacent Shorelands: Shorelands are present adjacent to the site but will not be impacted by the proposed work (DEP-4).
16. Tidal Wetlands and Marshes: Tidal wetlands and tidal marshes are present on site but the tidal marsh will not be impacted by the proposed work. With regard to tidal wetlands, the impacts will not be significant. Sedimentation and erosion controls will be installed around the work area to minimize impacts to tidal wetlands (DEP-4). In August and September 2008, OLISP staff conducted a site visit to verify the location of tidal wetlands vegetation within the project location (DEP-4). There will be only minor impacts to the existing tidal wetlands vegetation associated with the installation of the timber retaining wall. Approximately five thousandths (0.005) of an acre of tidal wetlands will be temporarily impacted during the replacement of the deteriorated timber retaining wall along the eastern property boundary. These impacts have been minimized by partially installing the new retaining wall immediately inside the existing wall. All construction will occur during low water conditions, as will the subsequent removal of the retaining wall (APP-28).

17. Freshwater Wetlands: There are no freshwater wetlands in the project area (DEP-4).
18. Intertidal Mudflats: There are no intertidal mudflats in the project area (DEP-4).
19. Submerged Aquatic Vegetation: There is no submerged aquatic vegetation in the project area (DEP-4).
20. Wildlife: There is no wildlife in the project area (DEP-4).
21. Finfish: The proposed project will not adversely impact fisheries resources and habitat in Pine Island Bay (DEP-4).
22. Navigational Impacts: The proposed renovations to the existing State boat launch facility will not have any adverse impact on navigation within Pine Island Bay (DEP-4, APP-26, APP-28).
23. Public Trust: The proposed renovations do not represent an unreasonable encroachment into public trust waters within Pine Island Bay (DEP-4).

Environmental Impacts:

Environmental impacts associated with the proposed boat launch ramp, bulkheads, floating docks, car-top access ramp, and timber retaining wall have been minimized to the greatest extent practicable. The installation of the boat ramps, floating docks, and timber retaining wall are not anticipated to significantly impact existing tidal wetlands, shellfish, or finfish resources (DEP-4).

Alternatives:

1. The Applicant considered the following alternatives:
 - a. Alternative sites were considered but rejected because this site has already been established as a state public boat launch facility since 1958 and the proposed renovations pose minimal impact on the aquatic resources (APP-6).
 - b. The proposed impacts are minimal and temporary in nature, and are far less than if another site were selected (APP-6).

After balancing all of the relevant concerns, the proposed boat launch ramp and dock expansion, addition of a car-top access ramp, removal of the boulder seawalls, localized dredging and replacement of the timber retaining wall as proposed by the Applicant was determined to provide 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 (DEP-4, APP-6).

CONCLUSIONS

1. Environmental Impact of the Proposed Action: 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 applicable 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 proceed 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(a)(2) of the General Statutes, which requires the preservation and enhancement of coastal resources;
 - c. Section 22a-92(a)(3) of the General Statutes, which requires that high priority and preference be given to uses and facilities which are dependent upon proximity to the water or the shorelands immediately adjacent to marine and tidal waters;
 - d. Section 22a-92(a)(6) of the General Statutes, which encourages public access to the waters of Long Island Sound by expansion, development and effective utilization of state-owned recreational facilities within the coastal area that are consistent with sound resource conservation procedures and constitutionally protected rights of private property owners;
 - e. Section 22a-92(a)(8) of the General Statutes, which requires that activities of public agencies be coordinated to insure that state expenditures enhance development while affording maximum protection to natural coastal resources and processes in a manner consistent with the state plan for conservation and development;
 - f. 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;
 - g. Section 22a-92(b)(1)(F) of the General Statutes, which requires making use of the rehabilitation, upgrading and improvement of existing transportation facilities as the primary means of meeting transportation needs in the coastal area;
 - h. Section 22a-92(b)(1)(G)(iii) of the General Statutes, which requires the encouragement of increased recreational boating use of coastal waters, where feasible, by increasing state-owned launching facilities;
 - i. Section 22a-92(b)(1)(H) of the General Statutes, which requires the protection of

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, and (iii) are located to assure optimal distribution of state owned facilities to the state wide boating public;

- j. Section 22a-92(b)(1)(I) of the General Statutes, which requires the protection and, where feasible, the upgrade of facilities serving the commercial fishing and recreational boating industries; and to design and locate, where feasible, proposed recreational boating facilities in a manner which does not interfere with the needs of the commercial fishing industry;
- k. Section 22a-92(b)(2)(E) of the General Statutes, which requires the preservation of tidal wetlands and the prevention of the despoliation and destruction thereof in order to maintain their vital natural functions;
- l. Section 22a-92(b)(2)(F) of the General Statutes, which requires the management of coastal hazard areas so as to insure that development proceeds in such a manner that hazards to life and property are minimized and to promote nonstructural solutions to flood and erosion problems except in those instances where structural alternatives prove unavoidable and necessary to protect existing inhabited structures, infrastructural facilities or water dependent uses;
- m. Section 22a-92(b)(2)(G) of the General Statutes, which promotes, through existing state and local planning, development, promotional and regulatory programs, the use of existing developed shorefront areas for marine-related uses, including but not limited to, commercial and recreational fishing, boating and other water-dependent commercial, industrial and recreational uses;
- n. Section 22a-92(b)(2)(I) of the General Statutes, which requires the regulation of shoreland use and development in a manner which minimizes adverse impacts upon adjacent coastal systems and resources;
- o. Section 22a-92(c)(1)(J) of the General Statutes, which requires making effective use of state-owned coastal recreational facilities in order to expand coastal recreational opportunities including the development or redevelopment of existing state-owned facilities where feasible;
- p. 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;
- q. Section 22a-30(c) of the General Statutes, which authorizes the adoption of regulations which establishes the criteria for granting, denying, or limiting permits

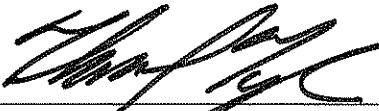
giving due regard to the impacts of regulated activities on the wetlands of the state, adjoining coastal and tidal resources, navigation, recreation, erosion, sedimentation, water quality and circulation, fisheries, shellfisheries, wildlife, flooding and other natural disasters and water-dependent use opportunities as defined in chapter 444;

- r. RCSA Section 22a-30-10 of the Tidal Wetlands Regulations which further explains the criteria for Tidal Wetlands Act review;
 - s. Section 22a-33 of the General Statutes, which requires that the DEP consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in sections 22a-28 to 22a-35, inclusive;
 - t. Section 22a-359 of the General Statutes, which establishes the criteria for review of applications seeking permission for dredging and erection of structures and placement of fill in tidal, coastal or navigable waters; which requires the Department to make permit decisions with 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; and
 - u. 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 any endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species, unless such agency has been granted an exemption.
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.
3. Alternatives to the Proposed Action: There is no feasible or prudent alternative which would have less impact on the coastal resources while allowing the proposed renovations to occur at the site and still allow reasonable riparian access for the adjacent property owners who hold a Right-of-Way easement.

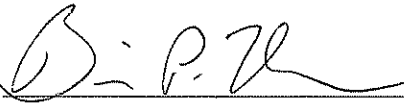
AGREEMENT

Based on the foregoing, the undersigned hereby agree to the granting of a permit subject to the standard and special conditions stated in the Draft Permit, DEP-6, attached hereto.

APPLICANT: DEP STATE PARKS & PUBLIC OUTREACH DIVISION

By:  9/29/09
Thomas J. Tyler, Acting Director
State Parks & Public Outreach Division
Bureau of Outdoor Recreation
Department of Environmental Protection

OFFICE OF LONG ISLAND SOUND PROGRAMS

By:  9/28/09
Brian P. Thompson, Director
Office of Long Island Sound Programs
Bureau of Water Protection & Land Reuse
Department of Environmental Protection

Draft

PERMIT

Permit No: 200802178-MG

Municipality: Town of Groton

Work Area: Pine Island Bay/Long Island Sound off property located at the end of Bayberry Lane

Permittee: Connecticut Department of Environmental Protection
Division of State Parks & Public Outreach
c/o Sally Snyder
79 Elm Street, 6th Floor
Hartford, CT 06106-5127

Pursuant to sections 22a-28 through 22a-35 and 22a-359 through 22a-363f of the Connecticut General Statutes ("CGS") and in accordance with CGS section 22a-98, and section 401 of the Federal Clean Water Act, as amended, and the Connecticut Water Quality Standards dated December 2002, a permit is hereby granted by the Commissioner of Environmental Protection ("Commissioner") to renovate and reconstruct a state boat launch ramp for public recreational boating access as is more specifically described below in the SCOPE OF AUTHORIZATION, in Pine Island Bay 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, #200802178-MG including twenty-four (24) sheets of plans dated December 28, 2008, submitted by the Permittee to the Commissioner and attached hereto as follows:

1. install a temporary cofferdam around the work area and dewater to an upland location;
2. remove an existing 30' wide by 50' long concrete boat launch ramp, two (2) 5' wide by 15' long fixed pile and timber piers and approximately 225 linear feet of stone seawall located on the western side of the site;
3. dredge by mechanical means 100 cubic yards of sediment from a 40' wide by 80' long area to a depth of -4.0' mean low water ("MLW") with an allowable one foot of overdredge with upland off-site disposal of the dredged material;

4. construct a new 40' wide by 60' long reinforced concrete boat ramp with a concrete anchor wall;
5. construct two (2) 10' wide by 10' long reinforced concrete bulkheads, two (2) 8' wide by 60' long floating dock systems secured by a total of ten (10) timber piles;
6. install interlocking concrete block armor flex over an approximate 4,400 square foot area backfilled with ¾" crushed stone, including geotextile fabric and a 6" thick 1¼" crushed stone base;
7. remove the temporary cofferdam identified above; and
8. remove 200 linear feet of existing timber bulkhead located on the eastern side of the site and install 216 linear feet of new timber bulkhead timber soldier piles and vertical timber sheathing with 2" diameter weep holes approximately 6' on center.

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. Prior to the commencement of the work authorized herein, the Permittee shall install sedimentation and erosion controls around the construction area in the vicinity of the existing tidal wetland vegetation. The Permittee shall maintain such sedimentation and erosion controls in optimal operating condition until the work authorized herein has been completed and the area has stabilized.
4. Dragging the bottom with a spoil barge, scow, vessel, beam or similar equipment outside of the area authorized by this certificate to be dredged or excavated is prohibited.
5. Sidecasting or in-water rehandling of dredged or excavated material is prohibited.
6. Not later than sixty (60) days following receipt of this authorization to conduct dredging, the Permittee shall submit to the Commissioner a proposed schedule for the dredging project.
7. Not later than sixty (60) days following receipt of this authorization to conduct dredging, the Permittee shall submit to the Commissioner a proposed schedule for the dredging project.

8. The Permittee shall ensure that all work associated with the installation of the cofferdam system authorized herein shall be installed during periods of low water. Such cofferdam shall be maintained in optimal operating condition until the completion of the work authorized herein.
9. All work authorized herein that is conducted outside of the cofferdam shall be conducted by land-based equipment during periods of low water.
10. The dredging authorized herein is prohibited between June 1st through September 30th, inclusive, of any year in order to protect shellfish spawning, unless otherwise authorized in writing by the Commissioner.
11. In undertaking the work authorized herein, the Permittee shall not cause or allow pollution of tidal 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.
12. 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.
13. 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.
14. 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 "as-built" and "as-dredged" 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 five (5) 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 her 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 law 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 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.
7. 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 (3) days prior to the commencement of such work and no later than seven (7) days after the completion of such work.
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 (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 becomes 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 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 CGS section 22a-359 et. seq. and/or CGS section 22a-32 et. seq.
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 _____, 2009

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Gina McCarthy
Commissioner

Permit #200802178-MG, Groton
CT DEP-State Parks & Public Outreach Division

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: Connecticut Department of Environmental Protection
Division of State Parks & Public Outreach
c/o Sally Snyder
79 Elm Street, 6th Floor
Hartford, CT 06106-5127

Permit No: #200802178-MG, Groton

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)