

OFFICE OF ADJUDICATIONS

IN THE MATTER OF

:APPLICATION NO. 200400513

THOMAS & JANET BAGG

:JULY 14, 2005

PROPOSED FINAL DECISION

The parties in the above-referenced matter have reached an agreement and have proposed the attached *Agreed Draft Decision* for my consideration. Upon review of the facts and legal conclusions expressed in the *Agreed Draft Decision*, I adopt it as my *Proposed Final Decision* and recommend that the Commissioner issue the permit that is the subject of this proceeding (Attachment A).

July 14, 2005
Date

/s/ James Malcolm
James Malcolm, Hearing Officer

ATTACHMENT A

AGREED DRAFT DECISION

THOMAS AND JANET BAGG
COASTAL PERMIT APPLICATION #200400513-MG

INSTALLATION OF A PIER, RAMP AND FLOATING DOCK
TOWN OF OLD LYME

July 1, 2005

1. Introduction: On February 25, 2004, Mr. Thomas Bagg and Mrs. Janet Bagg (the "Applicants") submitted an application to undertake regulated activities in tidal, coastal and navigable waters of the State waterward of the high tide line and in an area of tidal wetlands, for the installation of a fixed pile and timber pier, ramp and floating dock with associated tie-off piles in the Back River, in the Town of Old Lyme. This application seeks a permit to undertake said regulated activities under the provisions of the Structures, Dredging and Fill provisions of the Connecticut General Statutes ("General Statutes") sections 22a-359 through 363f, in accordance with the Connecticut Coastal Management Act, sections 22a-90 through 22a-112 of the General Statutes, and the Tidal Wetlands Act and regulations, sections through 22a-28 through 22a-35 of the General Statutes and sections 22a-30-1 through 22a-30-17 of the Regulations of Connecticut State Agencies ("RCSA") and the Connecticut Water Quality Standards developed pursuant to General Statutes section 22a-426.
2. Parties: The parties to the proceeding are: the Applicants, Thomas Bagg and Janet Bagg, and staff from the Office of Long Island Sound Programs ("OLISP") of the Department of Environmental Protection ("DEP").

The parties have agreed to the admission of all the exhibits listed on the attached Prehearing Submissions comprising staff exhibits DEP-1 through DEP-17, and the Applicants' exhibits APP-1 through APP-4.

FINDINGS OF FACT

Background:

1. Site Location and Character: The site is located at 31 Smiths Neck Road on the Back River in Old Lyme, Connecticut. The Back River is a tidal creek subject to an average 3.5' tidal range. (APP-4). Tidal wetland vegetation is present along the entire frontage of the site. (DEP-7).
2. Application History: The initial application was received on February 25, 2004. It requested authorization to install an elevated 4' wide by 36' long fixed dock supported by

four (4) single pilings and a steel support fastened to an existing boulder, a 3.5' wide by 25' long ramp, and a 6'8" wide by 15' long floating dock anchored by four (4) battered pilings with ice breakers and two (2) battered outhaul pilings with ice breakers. (DEP-1). After discussions with staff, the Applicants submitted modified designs in July of 2004 (DEP-4) and December of 2004 (DEP-5) which extended the fixed portion of the dock to 40'. In January of 2005, the design was revised once more to return the fixed portion of the dock to 36', ending on a large boulder, and the January, 2005 configuration became the basis for the Notice of Tentative Determination to Approve and Intent to Waive a Public Hearing issued by the Department in February of 2005. (DEP-8). The Notice was published in The Day newspaper for the installation of a pier, ramp and floating dock as described above. (DEP-8). Because the project spans an area of tidal wetland vegetation, section 22a-32 of the General Statutes required a 40-day comment period on the application and also required that a public hearing be held upon request by twenty-five (25) individuals in a petition. The public comment period closed on March 19, 2005. On March 9, 2005, staff received a comment letter from Belton A. Copp with a petition containing 28 signatures requesting that a public hearing be held on the application. (DEP-11). Staff also received a comment letter from Margaret P. Kenny and John F. Kenny that was dated March 17, 2005, and a comment letter from Lyman B. Hoops and Lois M. Hoops on April 27, 2005. (DEP-12, DEP-15).

In accordance with statutory requirements, upon receipt of Mr. Copp's petition a public hearing was scheduled on the application. A status conference was held on May 9, 2005, and a Notice of Public Hearing was published in The Day newspaper. (DEP-16). A site inspection took place on May 31, 2005, at 12 P.M. In attendance were the Hearing Officer, the Applicants, the Applicants' counsel, Gregory A. Sharp, the Applicants' engineer, Gary Sharpe, Micheal Grzywinski (DEP), Peter Francis (DEP), and Margaret and John Kenny. The hearing was held in Old Lyme at the DEP Marine Headquarters Office, 333 Ferry Road at 6:30 P.M. Mr. Sharpe, the Applicants' expert witness, and Mr. Grzywinski (DEP) each testified as to the application's consistency with all applicable requirements. Two members of the public, Mr. Lymon Hoops and Mr. James McQuade testified as to their concerns that the proposed structure could cause navigational impacts. Both declined to be sworn in before speaking. Neither Mr. Hoops nor Mr. McQuade offered any documentary evidence to support their beliefs and neither gentleman proffered any evidence suggesting that they were experts on the issues on which they testified.

3. Project Description: The Applicants seek authorization to install an elevated 4' wide by 36' long fixed dock supported by four (4) single pilings and a steel support fastened to an existing boulder, a 3.5' wide by 25' long ramp, and a 6'8" wide by 15' long floating dock anchored by four (4) battered pilings with ice breakers and two (2) battered outhaul pilings with ice breakers. (DEP-8)
4. Purpose and Use of Proposed Dock: The purpose of the proposed work is to construct a pier, ramp and floating dock for the Applicants' private, recreational boating use. (DEP-1).

5. Compliance and Enforcement History: There are no previous permits or certificates issued by the DEP-OLISP that authorized work waterward of the high tide line at this site. The site has not been the subject of a DEP enforcement action for unauthorized activities waterward of the high tide line. (DEP-7).
6. Tidal Wetlands Vegetation: On September 22, 2004, OLISP staff conducted a site visit to verify the location of tidal wetland vegetation within the project location. The inspection revealed that tidal wetland vegetation (consisting primarily of *Spartina alterniflora*) exists along the entire frontage of the property as shown on the submitted plans. The area in the vicinity of the high tide line is dominated by *Iva frutescens* and *Baccharis*, and upland grass (lawn area) was noted landward of the high tide line. The location of the proposed pier was selected to minimize disturbance of the existing vegetation that would result from the driving of piles and to utilize an existing stone boulder which will serve as an anchoring point for the pier. Open grating will be used for the pier decking to allow for the maximum amount of sunlight penetration through the proposed structure thereby minimizing any potential shading impacts to the existing vegetation. In addition, the pier will be elevated a minimum of 3' above the existing marsh substrate to minimize potential shading impacts. There will be minor impacts to the existing tidal wetland vegetation associated with the installation of the timber piles. (DEP-7).
7. Shellfish: OLISP staff spoke with James Citak, Department of Agriculture, Bureau of Aquaculture regarding the proposed activity. Mr. Citak reviewed the plans and did not have any concerns with the proposed activity. (DEP-7).
8. Connecticut Endangered, Threatened and Special Concern Species: A review of all Endangered, Threatened, and Special Concern species was conducted for the project site by staff of DEP's Environmental & Geographic Information Center (EGIC). An October 29, 2004, letter from Dawn McKay (EGIC) to Mr. Sharpe indicated that six species that are either federal and state endangered species, state threatened species, or state endangered species, are located in the vicinity of the project site. The species included the bald eagle, *Haliaeetus leucocephalus*, black rail, *Laterallus jamaicensis*, and Atlantic sturgeon, *Acipenser oxyrinchus*. Ms. McKay recommended that Julie Victoria (DEP Wildlife Division) and Peter Aarrestad (DEP Fisheries Division) be consulted for further information. A November 30, 2004, letter from Julie Victoria to Mr. Sharpe recommended that no work be conducted between December 31st and March 1st in order to avoid affecting wintering eagles and between May 1st and August 30th in order to avoid affecting nesting black rails. Staff spoke with Mr. Aarrestad, who reviewed the proposed plans and did not recommend the inclusion of any special conditions to protect the Atlantic sturgeon. (DEP-7).
9. Intertidal Mudflats: The proposed structure does not affect any intertidal mudflats. (DEP-7).
10. Finfish: The proposed project was discussed with Mark Johnson, DEP Inland Fisheries Division, to determine potential impacts to fisheries and fisheries habitat. Mr. Johnson

concluded that the installation of the proposed fixed pier, ramp and float will not adversely impact existing finfish populations in the vicinity. (DEP-7).

11. Navigation Impacts: The Applicants own a 12' catboat with a beam of approximately 8'. (DEP-7). The plans indicate that there are approximately 32' between the waterward terminus of the proposed floating dock and the landward edge of a naturally occurring channel, which is 8' deep at mean low water and approximately 40' wide in this section of the Back River. (APP-4). Even when the catboat is berthed at the end of the dock, the distance of open water to the landward edge of the 8' channel is 24', giving any craft navigating the river ample room to maneuver. (APP-4). The northwest corner of the proposed dock is approximately 170' from the southern tip of Madagascar Island. (APP-2). Mr. Sharpe performed an investigation of the bathymetry of the river in the area of the proposed dock prior to the submission of application in February of 2004, and he performed another bathymetric investigation in April of 2005 in order to address any concerns that conditions had changed. The second investigation showed that water depths and bottom contours in the area of the proposed dock were substantially the same as they were when the initial analysis was performed. The results of the first bathymetry evaluation are reflected in APP-4, while the results of the latter bathymetry analysis are reflected in APP-2. The Applicants provided APP-4 in the form of a transparency, so that it could be overlaid on APP-2 to demonstrate that there had been no change in bathymetric conditions during the intervening period of time. The Applicants also submitted a photograph, APP-3(d), of a buoy marking the location of the waterward end of the proposed dock in relation to two existing moorings in the river channel. The photograph clearly indicates that the buoy marking the end of the dock is well landward or inside the mooring balls. Mr. Sharpe testified that boats traveling up and down the Back River would typically navigate on the waterward or West side of the mooring balls. Clearly, if such craft can navigate on the West side of the moorings, they can pass unobstructed by the dock as proposed. Based on the foregoing, it is not anticipated that the proposed structure will present navigational conflicts within the Back River. With respect to potential impacts on adjacent properties, the proposed dock is located approximately 50' from the property line of the Applicants' upstream (northerly) neighbors (and approximately 300' from the existing dock on that adjacent property), and approximately 300' from the property line to the south. (APP-2). Therefore, the structure will not adversely impact navigation of either adjacent property owner, both of whom have docks on their own frontage. A state-owned and maintained boat launch ramp (Great Island Boat Ramp) is located approximately 1,000' south of the proposed structure. Given the distance between the Applicants' proposed structure and the existing boat launch ramp, it is not anticipated that the proposed structure will create adverse impacts to the use of this public facility. (DEP-7).
12. Public Trust: The DEP has found that along the Connecticut coast reasonable access for a riparian property owner can generally be achieved by a fixed pier extending to mean low water with a ramp and 100 square foot float. As noted above, the proposed structure's design was modified to eliminate two (2) single support piles and two (2) battered support piles. Dense brush in the vicinity, and tidal wetland vegetation and muddy conditions located at and waterward of the mean high water prevent the public from accessing the area. As modified, the proposed structure

cannot be further minimized, does not deviate from standard policies, and does not affect public access. Therefore, the proposed structure does not represent an unreasonable encroachment into public trust waters in Back River. (DEP-7).

Environmental Impacts:

Environmental impacts associated with the proposed pier, ramp and floating dock have been minimized to the greatest extent practicable. The installation of the ramp and float are not anticipated to adversely impact existing intertidal flats, tidal wetlands, shellfish or finfish resources. (DEP-7).

Alternatives: Several project alternatives were considered by the Applicants:

1. Shorter Fixed Dock: A shorter fixed dock was considered but rejected because the dock and any boats tied to it would rest on the substrate for longer periods of time increasing the potential for benthic impacts. (DEP-1).
2. Longer Fixed Dock: A longer fixed dock structure to reach deeper water depths was not considered feasible as it would be inconsistent with the public trust responsibilities of the DEP to minimize encroachment into public trust waters. In addition, a longer structure might cause navigation conflicts in the Back River. (DEP-7).
3. No Dock: There would be significant adverse impacts to the existing tidal wetland vegetation associated with the Applicants dragging a boat through the tidal wetland vegetation if the No Dock alternative was selected. (DEP testimony).

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

CONCLUSIONS

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

minimize adverse impacts to coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners;

- c. Section 22a-92(b)(1)(H) of the General Statutes, which requires, where feasible, that such boating uses and facilities (i) minimize disruption or degradation of natural coastal resources, (ii) utilize existing altered, developed or redeveloped areas, (iii) are located to assure optimal distribution of state owned facilities to the state wide boating public, and (iv) utilize ramps and dry storage rather than slips in environmentally sensitive areas;
- d. Section 22a-92(b)(2)(D) of the General Statutes, which requires the management of intertidal flats so as to preserve their value as a nutrient source and reservoir, a healthy shellfish habitat and a valuable feeding area for invertebrates, fish and shorebirds; to allow coastal uses that minimize change in the natural current flows, depth, slope, sedimentation and nutrient storage functions and to disallow uses that substantially accelerate erosion or lead to significant despoliation;
- e. Section 22a-92(c)(2)(A) of the General Statutes, which requires management of estuarine embayments so as to insure that coastal uses proceed in a manner that assures sustained biological productivity, the maintenance of healthy marine populations and the maintenance of essential patterns of circulation, drainage and basin configuration; to protect, enhance and allow natural restoration of eelgrass flats except in special limited cases, notably shellfish management, where the benefits accrued through alteration of the flat may outweigh the long-term benefits to marine biota, waterfowl, and commercial and recreational fisheries;
- f. Section 26-310(a) of the General Statutes, which requires that each state agency, in consultation with the Commissioner, shall conserve endangered and threatened species and their essential habitats, and shall ensure that any action authorized, funded or performed by such agency does not threaten the continued existence of the endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species, unless such agency has been granted an exemption.
- g. Section 22a-92(b)(2)(E) of the General Statutes, which requires preservation of tidal wetlands and to prevent the despoliation and destruction thereof in order to maintain their vital natural functions.
- h. Section 22a-92(c)(1)(B) of the General Statutes, which disallows any filling of tidal wetlands and nearshore, offshore and intertidal waters for the purpose of creating new land from existing wetlands and coastal waters which would otherwise be undevelopable unless it is found that adverse impacts on coastal resources are minimal.

- i. Section 22a-33 of the General Statutes, which establishes the criteria for review of Tidal Wetlands Act applications.
 - j. RCSA section 22a-30-10 of the Tidal Wetlands Regulations, which further explains the criteria for Tidal Wetlands Act review.
 - k. RCSA section 22a-30-11(b)(2) of the Tidal Wetlands Regulations, which defines the use guidelines for small residential docks.
2. Consistent with All Applicable Standards: The proposal is consistent with applicable standards, goals and policies of sections 22a-28 through 22a-35 and 22a-359 of the General Statutes which require the Department to make permit decisions with due regard for indigenous aquatic life, fish and wildlife, the use and development of adjoining uplands, and the recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned.
3. Alternatives to the Proposed Action: There is no feasible or prudent alternative that would provide the applicant reasonable riparian access and which would have less impact on the adjacent coastal resources.
4. Public Comments and Testimony. The public comments focused primarily on the proposed structure's length and raised a concern that it could have navigational impacts. (DEP-11, DEP-12, DEP-15). No expert testimony was provided to support these assertions. Neither Mr. Copp nor Margaret or John Kenny testified at the hearing. Mr. Lyman Hoops and Mr. James McQuade in unsworn testimony voiced concerns over navigational impacts at the hearing. While well intentioned, their expressed concerns about navigation were contradicted by the sworn expert testimony of Mr. Sharpe and Mr. Grzywinski and the evidence in the record. The record clearly demonstrates that the 32' distance between the waterward end of the proposed structure and the easterly landward edge of the 8' deep channel and the 170' distance between the southerly end of Madagascar Island and the waterward edge of the proposed structure will provide more than adequate space to navigate up and down the river past the proposed dock. Based on a review of the proposed structure and existing conditions in the Back River, staff concluded that proposed structure would not have any navigational impacts. (DEP-7). In his letter, Mr. Copp also asserted that the proposed structure would affect the Back River and the Lieutenant River, but offered no evidence or expert testimony to support that assertion. Both staff and Mr. Sharpe testified that the proposed structure was consistent with the applicable standards, and would not create any navigational impacts asserted by the public commenters or the environmental impacts described by Mr. Copp. Therefore, the unsworn, hearsay comments by the public are neither entitled to any significant weight nor supported by the sworn, expert evidence in the record.

AGREEMENT

Based on the foregoing, the undersigned hereby agree to the granting of a permit subject to the standard and special conditions stated in Section 8 of Exhibit DEP-7, attached hereto*.

APPLICANTS, THOMAS & JANET BAGG

By: /s/ Gregory A. Sharp
Gregory A. Sharp, Esq.
Their Attorney

OFFICE OF LONG ISLAND SOUND
PROGRAMS

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

* in the form of a Draft Permit as Attachment B.

/s/ GAS

/s/ CHE

ATTACHMENT B

DRAFT - PERMIT

Permit No.: 200400513-MG

Town: Town of Old Lyme

Work Area: Back River off property located at 31 Smith Neck Road

Permittees: Thomas & Janet Bagg
31 Smith Neck Road
Old Lyme, CT 06371

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

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

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

SCOPE OF AUTHORIZATION

The Permittees are hereby authorized to conduct the following work as described in application #200400513-MG, including six (6) sheets of plans dated January 28, 2004, sheet 2 of 6 revised June 25, 2004 and sheets 4, 5 and 6 of 6 revised January 12, 2005, submitted by the Permittees to the Commissioner and attached hereto:

construct a 4' wide by 36' long fixed pile and timber pier, of which approximately 28' is located waterward of the high tide line with open grate decking and ice breakers attached to the pier support piles and a steel support attached to an existing boulder, a 3½' wide by 25' long ramp to a 6'8" wide by 15' long floating dock anchored by four (4) battered pilings with ice breakers and two (2) sets of battered tie-off piles equipped with ice breakers.

UPON INITIATION OF ANY WORK AUTHORIZED HEREIN, THE PERMITTEES ACCEPT AND AGREE 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. 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 approved for the disposal of such material.
4. The Permittees shall remove the float and associated access ramp authorized herein no later than November 15th, and shall not install such float and ramp before April 15th, of any calendar year. The Permittees shall store such structures at an upland location landward of the high tide line and outside of any wetlands.
5. The Permittees shall install and maintain the open grating on the deck of the pier authorized herein for the life of the structure.
6. The Permittees shall construct the fixed pile and timber pier authorized herein with the landward terminus of the pier with a top elevation of +6.5' MLW as shown on the plans.
7. The Permittees shall ensure that none of the construction adhesive enters the water and shall immediately remove and properly dispose of any excess or spilled adhesive.
8. All work authorized herein is prohibited between December 31st through March 1st and May 1st through August 30th, inclusive, of any year in order to protect wintering bald eagles and nesting populations of black rails, respectively, in the area unless otherwise authorized in writing by the Commissioner.
9. Not later than two (2) weeks prior to the commencement of any work authorized herein, the Permittees 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.
10. 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 Permittees shall submit to the Commissioner Aas-built@ plans prepared and sealed by a licensed engineer, licensed surveyor or licensed architect, as applicable, of the work area showing all contours, bathymetries, tidal datums and structures.

GENERAL TERMS AND CONDITIONS

1. All work authorized by this permit shall be completed within three (3) years from date of issuance of this permit ("work completion date") in accordance with all conditions of this permit and any other applicable law.
2. The Permittees 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 at 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 Permittees to enforcement action, including penalties, as provided by law.
4. In conducting the work authorized herein, the Permittees shall not deviate from the attached plans, as may be modified by this permit. The Permittees shall not make de minimis changes from said plans without prior written approval of the Commissioner.
5. The Permittees shall maintain all structures or other work authorized herein in good condition. Any such maintenance shall be conducted in accordance with applicable laws including, but not limited to, sections 22a-28 through 22a-35 and sections 22a-359 through 22a-363f of the General Statutes.
6. Prior to the commencement of any work authorized herein, the Permittees shall cause a copy of this permit to be given to any contractor(s) employed to conduct such work. At the work area the Permittees shall, whenever work is being performed, make available for inspection a copy of this permit and the final plans for the work authorized herein.
7. In undertaking the work authorized hereunder, the Permittees 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 Permittees shall restore all areas impacted by construction, or used as a staging area or accessway in connection with such work, to their condition prior to the commencement of such work.
9. Any document required to be submitted to the Commissioner under this permit or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

Permit Section
Office of Long Island Sound Programs

Department of Environmental Protection
79 Elm Street
Hartford, Connecticut 06106-5127

10. The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this permit, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is personally delivered or the date three (3) days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this permit, the word "day" as used in this permit means calendar day. Any document or action which is required by this permit to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or a Connecticut or federal holiday.
11. The work specified in the SCOPE OF AUTHORIZATION is authorized solely for the purpose set out in this permit. No change in the purpose or use of the authorized work or facilities as set forth in this permit may occur without the prior written authorization of the Commissioner. The Permittees 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 Permittees' 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 Permittees 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 Permittees, including information and data provided in support of the Permittees' application. Neither the Permittees' 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 Permittees become 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 Permittees 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 Permittees 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 Permittees shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Permittees 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 Permittees and on the Permittees' representations concerning site conditions, design specifications and the purpose of the work authorized herein, including but not limited to representations concerning the commercial, public or private nature of the work or structures authorized herein, the water-dependency of said work or structures, its availability for access by the general public, and the ownership of regulated structures or filled areas. If such information proves to be false, deceptive, incomplete or inaccurate, this permit may be modified, suspended or revoked, and the Permittees may be subject to enforcement action.
18. The Permittees may not conduct any work waterward of the high tide line or in tidal wetlands at this work area other than work authorized herein, unless otherwise authorized by the Commissioner pursuant to section 22a-359 et. seq. and/or section 22a-32 et. seq. of the Connecticut General Statutes.
19. The issuance of this permit does not relieve the Permittees 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 Permittees and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense."
21. This permit is subject to and does not derogate any present or future property rights or powers of the State of Connecticut, and conveys no property rights in real estate or material nor any exclusive privileges, and is further subject to any and all public and private rights and to any federal, State or local laws or regulations pertinent to the property or activity affected hereby.

Issued on _____, 2005.

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Gina McCarthy
Commissioner

Permit #200400513-MG, Old Lyme
Thomas & Janet Bagg

APPENDIX A

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

PERMITTEES: Thomas & Janet Bagg
31 Smith Neck Road
Old Lyme, CT 06371

PERMIT NO.: 200400513-MG, Old Lyme

CONTRACTOR 1: _____

Address: _____

Telephone #: _____

CONTRACTOR 2: _____

Address: _____

Telephone #: _____

CONTRACTOR 3: _____

Address: _____

Telephone #: _____

EXPECTED DATE OF COMMENCEMENT OF WORK: _____

EXPECTED DATE OF COMPLETION OF WORK: _____

PERMITTEES: _____ (signature) _____ (date)

AGREEMENT

Based on the foregoing, the undersigned hereby agree to the granting of a permit subject to the standard and special conditions stated in Section 8 of Exhibit DEP-7, attached hereto.

BAGG

APPLICANTS, THOMAS & JANET

By: /s/ Gregory A. Sharp
Gregory A. Sharp, Esq.
Their Attorney

OFFICE OF LONG ISLAND SOUND
PROGRAMS

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