

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **APPLICATION NO. 200303661**

GRAHAM BLUFF REALTY, LLC : **FEBRUARY 25, 2005**

PROPOSED FINAL DECISION

Graham Bluff Realty, LLC has filed an application with the Department of Environmental Protection (DEP) Office of Long Island Sound Programs (OLISP) for a permit to construct a pier, ramp and floating dock in Wilson Cove in the Rowayton section of the City of Norwalk. This permit is sought under the provisions of the structures, dredging and fill provisions of General Statutes §§22a-359 through 22a-363f, in accordance with the Coastal Management Act, §§22a-90 through 22a-112, and the Tidal Wetlands Act and regulations. §§22a-28 through 22a-35; Regs., Conn. State Agencies §§22a-30-1 through 22a-30-17.

The parties to this proceeding are the applicant and OLISP staff. Following its review, OLISP staff issued a tentative determination to approve the application. Public comments were received during a hearing on January 19, 2005, at the Rowayton Community Center. Written public comments were submitted at and after the hearing.

The parties have submitted the attached *Agreed Draft Decision* for consideration as my proposed final decision in this matter. A revised draft permit is appended to this agreement. (Attachment I.) This draft permit incorporates special terms and conditions within the jurisdiction of the DEP, including authorization for a dock only for private recreational boating use and a prohibition on the number of vessels the applicant (Permittee) may moor, raft or otherwise berth at the dock or tie-off pile.

The applicant has addressed concerns about pipes located on the site, submitting evidence that demonstrates that there would be no adverse impact on the tidal wetlands as a result of the presence of these pipes. The public, including the hearing petitioners, expressed concern regarding the use of the planned dock. This zoning issue is not within the jurisdiction of the DEP and is therefore not within the scope of my authority. However, I note that Paragraph 17 of the draft permit provides: “The issuance of this permit does not relieve the Permittee of [its] obligation to obtain any other approvals required by applicable federal, state and local law”.¹

The application complies with all relevant statutes and regulations. The *Agreed Draft Decision* submitted by the parties satisfactorily conveys the findings of fact and conclusions of law necessary to support this conclusion. I therefore adopt this attached *Agreed Draft Decision* as my proposed final decision and recommend that the Commissioner issue the permit requested by this application.

2/25/05
Date

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

¹ On February 17, 2005, I received and entered into the hearing record two letters to DEP staff. (Hearing Officer Exhibits – 1, 2) The first, a February 14, 2005 letter from the Norwalk Harbor Management Commission, notes that the Commission had met and reaffirmed its earlier findings on the application as follows: “... [T]he application...is consistent with the Norwalk Harbor Management Plan and [the Commission] recommends favorable action on the application with the ...condition. ...[that] the proposed use of the structure is contingent upon it [the proposed use] being consistent with all applicable City land use policies and regulations”. The second letter, dated February 17, 2005, is from the Norwalk Zoning Commission and reports the following comment: “...[T]he Zoning Commission reserves the right to review the operation and use [of the proposed fixed pier with a ramp and float] at any time in the future to insure [sic] conformance with the Building Zone Regulations”.

AGREED DRAFT DECISION

GRAHAM BLUFF REALTY, LLC
COASTAL PERMIT APPLICATION # 200303661

INSTALLATION OF A PIER, RAMP AND FLOATING DOCK
CITY OF NORWALK

February 17, 2005

1. Introduction: On November 4, 2003, Graham Bluff Realty, LLC 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 Wilson Cove, in the City of Norwalk. This application seeks a permit to undertake said regulated activities under the provisions of the Structures, Dredging and Fill provisions of the Connecticut General Statutes (“General Statutes”) sections 22a-359 through 363f, in accordance with the Connecticut Coastal Management Act, sections 22a-90 through 22a-112 of the General Statutes, and Tidal Wetlands Act and regulations, sections through 22a-28 through 22a-35 of the General Statutes and sections 22a-30-1 through 22a-30-17 of the Regulations of Connecticut State Agencies.
2. Parties: The parties to the proceeding are: the Applicant, Graham Bluff Realty, LLC, and staff from the Office of Long Island Sound Programs (“OLISP”) of the Department of Environmental Protection (“DEP”). Mr. George Middleton and Mr. John Igneri sought permission to intervene, but the hearing officer denied their request.

The parties have agreed to the admission of all the exhibits listed on the attached Prehearing Submissions comprising staff exhibits DEP-1 through DEP-25 and Applicant’s exhibits APP-1 through APP-8. Applicant’s exhibits APP-9 through APP-12, which are not listed on the Applicant’s Prehearing Submissions, were admitted without objection at the hearing of this matter on January 19, 2005. Exhibit DEP-26 was also admitted into the record without objection after the hearing was held.

FINDINGS OF FACT

Background

1. Site Location and Character: The site is located at 47 Bluff Avenue on Wilson Cove in the Rowayton section of Norwalk, CT. The landward area of the site is classified as Modified Bluffs and Escarpments. Wilson Cove itself is an estuarine embayment that is subject to an average tidal range of 7.1'. Tidal wetland vegetation, smooth cordgrass (*Spartina alterniflora*), is present along the north and south frontage areas of the site. Peat is present in the center of the site, at the proposed location of the fixed pier. There is

no eel grass in the vicinity of the proposed fixed pier, ramp or float. In addition, there is approximately 105 linear feet of riprap located waterward of the high tide line. The proposed structure will span 57 feet of intertidal flats. (DEP-2, DEP-13).

2. Application History: The initial application was received on November 4, 2003 requesting authorization to install an elevated 4' wide by 65' long fixed pile and timber pier, a 3.5' wide by 40' long ramp to a 8' wide by 20' long floating dock with four (4) anchor piles and seven (7) associated tie-off piles. (DEP-2).

In evaluating the application, OLISP staff members solicited or received input from various state and local agencies, including the Norwalk Harbor Management Commission, the Norwalk Shellfish Commission, the Norwalk Planning and Zoning Commission, and the State of Connecticut Department of Agriculture, as well as input from other offices within the DEP itself. During a site walk with OLISP staff, it was suggested to the Applicant that the height of the fixed pier be raised from 5' to 7' above the substrate so as to avoid shading the peat area and thus allow for the possibility of tidal wetland vegetation growth. (DEP-13). The Applicant complied with the suggestion and raised the height of the fixed pier. (DEP-5).

The Harbor Management Commission and the Shellfish Commission had concerns about the number of tie-off piles. (DEP-3, DEP-7). In response to these concerns, the Applicant decreased the number of tie-off pilings from seven three-pile dolphins to one batter-braced pile. (DEP-8). After making this change, both the Harbor Management and Shellfish Commissions gave their support for the dock. (DEP-9, DEP12). The proposed float will terminate 55' waterward of mean low water. As proposed, the float will rest in only 1.2' of water at mean low tide, which is just enough water to prevent the float from resting on the bottom during most low tides, thereby avoiding impacts to the substrate. If the fixed pier were any shorter, both the float and any boats tied to it would bottom out twice a day during average low tides.

On July 23, 2004, 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-14). On that same day, the notice was published in The Hour, a daily newspaper published in Norwalk, CT. (DEP-15). 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 August 31, 2004. On August 31, 2004, OLISP staff received a petition from George Middleton and John Igneri (the "Petitioners") with 37 signatures requesting that a public hearing be held on the application. (DEP-19). The Petitioners submitted a comment letter along with the petition to OLISP staff. In the letter, the Petitioners raised concerns about the use of the dock and pipes present on the site that were not depicted in the plans.

In accordance with statutory requirements, upon receipt of the petition a public hearing was scheduled on the application. The hearing officer, Janice B. Deshais, of the DEP Office of Adjudications, held a status conference on November 10, 2004. Thereafter, a site visit was held on December 8, 2004. A final Prehearing Conference was held on January 12, 2005. Mr. Middleton and Mr. Igneri filed a petition to intervene as parties

dated January 13, 2005. The petition was denied by the Hearing Officer on January 14, 2005. On December 27, 2004, a Notice of Public Hearing was published in The Hour newspaper. (DEP-26). The hearing was held in Norwalk at the Rowayton Community Center on January 19, 2005 at 6:30 pm. At the hearing, the Applicant presented exhibits and testimony to address the Petitioners' relevant concerns about the pipes on the site to show that there was no adverse impact on the tidal wetlands and that future modifications to the upland stormwater management system would further reduce any outflows from the pipes. (APP-3, APP-4, APP-8).

3. Project Description: The Applicants, in their initial application, sought authorization to install an elevated 4' wide by 65' long fixed pile and timber pier, a 3.5' wide by 40' long ramp to a 8' wide by 20' long floating dock with four (4) anchor piles and seven (7) associated tie-off piles. (DEP-2). At the suggestion of OLISP staff, the Applicant raised the height of the fixed pier from 5' to 7' above the substrate so as to avoid shading the peat area and thus allow for the possibility of tidal wetland vegetation growth. (DEP-5, DEP-13). The proposal also changed in response to comments received by OLISP and the number of tie-off pilings were reduced from seven three-pile dolphins to one batter-braced pile. (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-2, DEP-13).
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-2, DEP-13).
6. Tidal Wetlands Vegetation: On December 4, 2003, 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 north and south frontage areas of the property as shown on the submitted plans. Peat is present in the center of the site, the proposed location of the fixed pier. There will be minor impacts to the existing tidal wetland vegetation associated with the installation of the timber piles. The proposed structure is designed to be sufficiently elevated to minimize shading of this vegetation. The ramp and float portions of the dock structure will be installed waterward of the extent of the tidal wetland vegetation on-site and therefore is not expected to impact this resource. In addition, the ramp and float will be removed seasonally reducing impacts to the bottom substrate. (DEP-2, DEP-13).
7. Shellfish: The site is classified as an area of (EO) Eastern Oyster as shown on the DEP Shellfish Concentration Map; however, no evidence of shellfish was found during the Applicant's site investigation. (DEP-2). OLISP research found that Environmental Conditions Online does not classify the area as a shellfish concentration area. (DEP-13). OLISP staff received an e-mail message from the Norwalk Shellfish Commission stating that the proposed dock is located close to a natural shellfish bed. (DEP-3). The State of Connecticut Department of Agriculture, Bureau of Aquaculture determined that the proposed work would not significantly impact any shellfish area. (DEP-22). To minimize impacts on shellfish areas, the float is to be equipped with skids to keep it

above the bottom substrate at periods of low water and the ramp and float are to be removed seasonally. (DEP-13).

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"). In a letter dated August 11, 2003 to Thomas C. Law, the Applicants' representative, Kenneth J. Metzler of EGIC indicated that there are no known extant populations of Federal or State Endangered, Threatened or Special Concern Species that occur at the site in question. (DEP-1). Mr. Metzler's letter also stated that this information is not necessarily the result of comprehensive or site-specific field investigations.
9. Intertidal Mudflats: The proposed structure will span 57' of intertidal flat. The fixed pier has been designed to span this area to minimize contact and disturbance of the intertidal flat. The float is equipped with skids to keep it above the surface of the flat at periods of low water. (DEP-2, DEP-13).
10. Finfish: The proposed project will not adversely impact fisheries resources and habitat in Wilson Cove. (DEP-2, DEP-13).
11. Navigation Impacts: The encroachment associated with the proposed pier, ramp and floating dock is approximately 115' waterward of the existing high tide line, with 60' of fixed pier extending waterward of the high tide line. No portion of the fixed pier extends beyond mean low water. The ramp and floating dock extend 55' waterward of mean low water. The proposed project is the minimum length necessary at this particular location to provide the applicant with reasonable boating access to Wilson Cove and Long Island Sound. Because the float is in only 1.2' of water at low tide, the distance is necessary to ensure that the float and any vessels moored to it do not bottom out at low tide. The length of the proposed structure and the size of the float are also consistent with the dock immediately to the south of this site, which was permitted in 2003. It is not anticipated that the proposed structure will present navigational conflicts within Wilson Cove.
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. The proposed fixed pier complies with this policy by terminating at mean low water. (DEP-2, DEP-13). The bottom stringers of the fixed pier will be elevated 7' above the substrate, thus not interfering with public access below mean high water. (DEP-5, DEP-13). As proposed, the dock is centrally located on the Applicant's frontage, thus minimizing impacts on neighboring riparian owners. As noted above, the entire project is the minimum length necessary to access Wilson Cove. In certain exposed areas, the DEP can find consistent floats that are larger than 100 square feet when the applicant demonstrates that a larger float is necessary due to site conditions. The applicant has sufficiently demonstrated that a larger than normal float is appropriate at this site and the float size is consistent with others in the area. Therefore, the proposed structure does not represent an unreasonable encroachment into public trust waters in Wilson Cove. (DEP-13).
13. Environmental Impacts: Environmental impacts associated with the proposed pier, ramp and floating dock have been minimized to the greatest extent practicable. The Applicant

understands that use of this dock to berth vessels may not be possible at all tidal cycles due to shallow depths in Wilson Cove. The installation of the ramp and float are not anticipated to adversely impact existing intertidal flats, tidal wetlands, shellfish or finfish resources. (DEP-13).

14. Permit Conditions: OLISP proposed the inclusion of a Special Condition in the draft permit that would prevent unreasonable mooring, berthing or rafting of vessels around the dock which has been designed and intended as a recreational boating dock. This condition was proposed due to the ownership of the subject residential property. (DEP-24). Specifically, Special Terms and Conditions paragraph 2 was included, which read: “The Permittee shall not moor, raft or otherwise berth more than two recreational vessels at any time at the dock or braced tie-off pile authorized herein except for short periods of time during loading or off-loading as necessary but not to exceed one hour.” The Applicant sought some relief from the somewhat restrictive nature of this condition and OLISP agreed to reevaluate it. Special consideration was given to the public testimony in which there was negligible concern raised over the Applicant’s proposed berthing arrangement. In light of this, OLISP and the Applicant have agreed to revised language for this paragraph 2 of the Special Terms and Conditions that upholds the DEP’s public trust responsibility of limiting encroachments and navigation impacts while better meeting the Applicant’s right to use their riparian access structure. As such, we hereby request modification of Special Terms and Conditions paragraph 2 of the Draft Permit so it reads as follows (a Revised Draft Permit which includes this language has been appended for your consideration):

The number of registered vessels the Permittee may moor, raft or otherwise berth at the dock or braced tie-off pile authorized herein shall not exceed 2, except for short periods of time when only one additional registered boat may moor, raft or otherwise berth for loading or off-loading as necessary but not to exceed four hours. At no time shall the Permittee even temporarily moor, raft or otherwise berth more than a total of four recreational vessels (registered or unregistered) at the dock or braced tie-off pile authorized herein.

Alternatives

1. The Applicant considered the following alternatives:
 - a. A larger fixed pier, which would extend an additional 50' to 100' into Wilson Cove, so as to reach 6' of water at low tide. This alternative was rejected because of its potential impact on navigation and because it would be inconsistent with DEP public trust policy. (DEP-2).
 - b. A shorter pier or ramp, to minimize the extent of the structure into Wilson Cove. This alternative was rejected because it would provide no access to the waters of Wilson Cove at the lower tide cycles and would cause environmental damage to the substrate due to repeated grounding of the float and any vessels moored to it. (DEP-2).

c. The alternative of no dock was considered and rejected because it prevents the Applicant from exercising its right of riparian access to the waters of Wilson Cove.

2. After balancing all of the relevant concerns, a dock structure consisting of a fixed pier, ramp and float 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.

CONCLUSIONS

1. Environmental Impact of the Proposed Action: The proposed project would provide the Applicant with reasonable access to public trust waters for recreational boating. The record supports a finding that the potential environmental impacts from the proposed project have been sufficiently minimized and the proposed project is consistent with the following policies regarding coastal resources, tidal wetlands, and coastal management:
- a. Section 22a-92(a)(1) of the General Statutes, which requires that the development, preservation or use of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water resources to support development, preservation or use without significantly disrupting either the natural environment or sound economic growth;
 - b. Section 22a-92(b)(1)(D) of the General Statutes, which requires that structures in tidal wetlands and coastal waters be designed, constructed and maintained to minimize adverse impacts to coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners;
 - c. Section 22a-92(b)(1)(H) of the General Statutes, which provides for 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, (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; and 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 of tidal flats;

- e. Section 22a-92(b)(2)(E) of the General Statutes, which requires the preservation of tidal wetlands and the prevention of despoliation and destruction of tidal wetlands in order to maintain their vital natural functions;
 - f. 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;
 - g. Section 22a-92(c)(2)(A) of the General Statutes, which requires the 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; and 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;
 - h. Section 26-310(a) of the General Statutes, which requires that each state agency, in consultation with the Commissioner, shall conserve endangered and threatened species and their essential habitats, and shall ensure that any action authorized, funded or performed by such agency does not threaten the continued existence of the endangered or threatened species or result in the destruction or adverse modification of habitat designation as essential to such species, unless such agency has been granted an exemption;
 - i. 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;
 - j. Section 22a-33 of the General Statutes, which establishes the criteria for review of Tidal Wetlands Act applications;
 - k. Section 22a-30-10 of the Tidal Wetlands Regulations, which further explains the criteria for Tidal Wetland Act review; and
 - l. 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 requires the Department to make permit decisions with due regard for indigenous aquatic life, fish and wildlife, the use and development of adjoining uplands, and the recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned.

3. Alternatives to the Proposed Action: There is no feasible or prudent alternative which would provide the applicant reasonable riparian access which would have less impact on the adjacent coastal resources.

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, attached hereto.

Department of Environmental Protection

Applicant, Graham Bluff Realty, LLC

By /s/ Charles H. Evans

Charles H. Evans, Director
Office of Long Island Sound Programs
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

By /s/ John P. Casey

Its Attorney
John P. Casey, Esq.
Robinson & Cole LLP
280 Trumbull Street, 27th floor
Hartford, CT 06103-3597

ATTACHMENT I
REVISED DRAFT PERMIT

Permit No: 200303661-JW

City: Norwalk

Work Area: Wilson Cove off property located at 47 Bluff Avenue

Permittee: Graham Bluff Realty, LLC
Lockledge Financial Center
40 Highland Avenue
Rowayton, CT 06853

Pursuant to sections 22a-359 through 22a-363f and sections 22a-29 through 22a-35 of the Connecticut General Statutes (General Statutes) and in accordance with the Connecticut Water Quality Standards dated December 2002, a permit is hereby granted by the Commissioner of Environmental Protection (Commissioner) to construct a fixed pier, ramp and float for private recreational boating use as is more specifically described below in the SCOPE OF AUTHORIZATION, in Wilson Cove 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 #200303661-JW, including 4 sheets of plans submitted by the Permittee to the Commissioner and attached hereto as follows: sheets 1 and 2 of 4 dated October 23, 2003 revised January 7, 2004 and sheets 3 and 4 of 4 dated October 23, 2003 revised December 15, 2003 and January 7, 2004 as follows:

install an elevated 4' wide timber pile-supported fixed pier of which 65 linear feet is waterward of the high tide line, a 3.5' x 40' ramp, an 8' x 20' float with electric and water service held in place by four (4) anchor piles, and one (1) batter-braced tie-off pile located approximately 20 feet north of the float.

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. The work specified in the SCOPE OF AUTHORIZATION is authorized solely for the purpose of private recreational boating use. At no time shall the dock authorized herein be used for access to or support of any commercial boating vessels. 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.

2. The number of registered vessels the Permittee may moor, raft or otherwise berth at the dock or braced tie-off pile authorized herein shall not exceed two, except for short periods of time when only one additional registered boat may moor, raft or otherwise berth for loading or off-loading as necessary but not to exceed four hours. At no time shall the Permittee even temporarily moor, raft or otherwise berth more than a total of four recreational vessels (registered or unregistered) at the dock or braced tie-off pile authorized herein.
3. 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 tidal wetland or tidal watercourse on or off-site, nor shall any tidal wetland or tidal watercourse be used as a staging area or accessway other than as provided herein.
4. Not later than two weeks prior to the commencement of any work authorized herein, the Permittee shall submit to the Commissioner, on the form attached hereto as Appendix A, the name(s) and address(es) of any contractor(s) employed to conduct such work and the expected date for commencement and completion of such work.
5. On or before (a) 90 days after completion of the work authorized herein, or (b) upon expiration of the work completion date or any authorized one-year extension thereof, whichever is earlier, the Permittee shall submit to the Commissioner "as-built" plans 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.
6. All work associated with the driving of piles shall be conducted by a water-based barge during periods of high water. At no time shall the Permittee allow the barge to sit on the cove bottom.
7. The Permittee shall construct the fixed pier authorized herein so that the lowest horizontal member of the pier is elevated a minimum of 7' above the substrate waterward of mean high water to prevent the shading of tidal wetland vegetation that may colonize the underlying substrate.
8. The Permittee shall install and maintain a float support structure consisting of four extended wooden corner posts connected to two 2" x 8" skids on the underside float authorized herein to prevent the entire area of the float from resting on the cove bottom during periods of low water.
9. The Permittee shall remove the ramp and float authorized herein no later than November 15th of any calendar year and shall not install such ramp and float before April 15th of any calendar year. Upon removal of the ramp and float authorized herein, the Permittee shall store such structures at an upland location, landward of the high tide line and outside of tidal wetlands.
10. Prior to the commencement of work authorized herein, the Permittee shall install sedimentation and erosion control measures along the base of the wooded area to prevent sedimentation, potentially caused by any slope-clearing work, from entering the waterway or tidal wetlands. Such sedimentation and erosion control measures shall be placed

landward of the high tide and outside of tidal wetlands. The Permittee shall maintain such sedimentation and erosion control measures in optimal operating condition until the work authorized herein has been completed and the area has stabilized.

GENERAL TERMS AND CONDITIONS

1. All work authorized by this permit shall be completed within three years from date of issuance of this permit ("work completion date") in accordance with all conditions of this permit and any other applicable law.
 - a. The Permittee may request a one-year extension of the work completion date. Such request shall be in writing and shall be submitted to the Commissioner at least 30 days prior to said work completion date. Such request shall describe the work done to date, work which still needs to be completed and the reason for such extension. The Commissioner shall grant or deny such request in his sole discretion.
 - b. Any work authorized herein conducted after said work completion date or any authorized one year extension thereof is a violation of this permit and may subject the Permittee to enforcement action, including penalties, as provided by law.
2. In conducting the work authorized herein, the Permittee shall not deviate from the attached plans, as may be modified by this permit. The Permittee shall not make de minimis changes from said plans without prior written approval of the Commissioner.
3. The Permittee shall maintain all structures or other work authorized herein in good condition. Any such maintenance shall be conducted in accordance with applicable law including, but not limited to, sections 22a-28 through 22a-35 and sections 22a-359 through 22a-363f of the General Statutes.
4. Prior to the commencement of any work authorized hereunder, the Permittee shall cause a copy of this permit to be given to any contractor(s) employed to conduct such work. At the work area the Permittee shall, whenever work is being performed, make available for inspection a copy of this permit and the final plans for the work authorized herein.
5. The Permittee shall notify the Commissioner in writing of the commencement of any work and completion of all work authorized herein no later than three days prior to the commencement of such work and no later than seven days after the completion of such work.
6. In undertaking the work authorized hereunder, the Permittee shall not cause or allow pollution of wetlands or watercourses, including pollution resulting from sedimentation and erosion. For purposes of this permit, "pollution" means "pollution" as that term is defined by section 22a-423 of the General Statutes.
7. 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.
8. 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

9. The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this permit, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is personally delivered or the date three days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this permit, the word "day" as used in this permit means calendar day. Any document or action which is required by this permit to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or a Connecticut or federal holiday.
10. This permit may be revoked, suspended, or modified in accordance with applicable law.
11. 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.
12. 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.
13. 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.
14. In the event that the Permittee becomes aware that he did not or may not comply, or did not or may not comply on time, with any provision of this permit or of any document required hereunder, the Permittee shall immediately notify the Commissioner and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. In so notifying the Commissioner, the Permittee shall state in writing the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and the Permittee shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Permittee shall not excuse noncompliance or delay and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically stated by the Commissioner in writing.

15. 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.
16. The Permittee may not conduct work waterward of the high tide line or in tidal wetlands at this permit site other than the work authorized herein, unless otherwise authorized by the Commissioner pursuant to section 22a-359 et. seq. and/or section 22a-32 et. seq. of the General Statutes.
17. The issuance of this permit does not relieve the Permittee of his obligations to obtain any other approvals required by applicable federal, state and local law.
18. 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."
19. 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 _____, 2004.

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Gina McCarthy
Commissioner

Permit Application No. 200303661-JW
Graham Bluff Realty, LLC

JW/ko

Issued on _____, 2004.

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Arthur J. Rocque, Jr.
Commissioner

Permit Application No. 200303661-JW
Graham Bluff Realty, LLC

JW/ko

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: 200303661-JW
Lockledge Financial Center
40 Highland Avenue
Rowayton, CT 06853

Permit No: 200303661-JW, Norwalk

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)