

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **APPLICATION NO. 200302227**

HARBORSIDE ASSOCIATES, LLC : **AUGUST 24, 2007**

PROPOSED FINAL DECISION

I

SUMMARY

On July 18, 2007, the applicant and DEP staff jointly filed the attached Agreed Draft Decision for my review and consideration.¹ (Attachment A.) Regs., Conn. State Agencies §22a-3a-6(1)(3)(A). I have reviewed this submission, the record, and the relevant law in this matter. I find that the application complies with the applicable statutes and relevant provisions of the implementing regulations. Furthermore, I find that the parties' Agreed Draft Decision, as supplemented herein, satisfactorily conveys the factual findings and legal conclusions necessary to support my conclusion. I therefore accept this Agreed Draft Decision as part of my Proposed Final Decision.

The DEP has prepared a draft permit authorizing the project. (Attachment B.) The record and this draft permit reflect staff's consideration of all of the relevant criteria set forth in the applicable statutes and regulations governing the proposed activity.

If conducted as proposed and in accordance with the terms and conditions of the draft permit, the regulated activities would be consistent with all relevant statutes and regulations regarding coastal resources, tidal wetlands and coastal management. General Statutes §§22a-28 through 22a-35, 22a-90 through 22a-112, 22a-359 through 22a-363f and Regs., Conn. State Agencies §§22a-30-1 through 22a-30-17.

I therefore recommend issuance of the draft permit subject to the Agreed Draft Decision and the supplemental findings and conclusions of law set out below.

II

DECISION

¹ On August 23, 2007, the parties submitted an Errata of Exhibit References to the Agreed Draft Decision, which is attached and has been made a part of that draft decision.

A

FINDINGS OF FACT

The following findings supplement specific findings of fact contained in the Agreed Draft Decision. The numbered paragraphs correspond to the proposed findings of fact as they are numbered in the Agreed Draft Decision.²

2. Application History:

The hearing in this matter was originally scheduled for February 22, 2007, but was postponed due to inclement weather. On motion filed by staff, the hearing was continued to July 11, 2007 to allow the Connecticut Department of Agriculture/Bureau of Aquaculture to complete a follow-up survey to its August 2005 oyster resource survey in the project area. The hearing was held in Stratford on July 11, 2007, and was well attended. In consideration of concerns about notice of the July 11 hearing and in the exercise of caution, a continued hearing was duly noticed and held on August 23, 2007, where additional public comments were received. The record in this matter closed at the conclusion of that hearing.³ (Exs. DEP-26, 27.)

3. Project Description:

The applicant will remove an existing fixed pier located approximately 110 linear feet north of the southern property line and retain an existing stone gabion wall located under the portion of the public access walkway perpendicular to the shoreline. (Exs. DEP-9, 23.)

² Testimony provided at the hearing on this application summarizes the exhibits entered into the record. Therefore, the citations to the record will only reference the exhibits.

³ All documents pertaining to the procedural history that are not specifically cited are contained in the docket file maintained by the Office of Adjudications and are part of the record in this matter. General Statutes §4-177(d).

The proposed commercial marina is a water dependent use and will include a 1500 square foot support building that provides shower and bathroom facilities. A parking area adjacent to the restaurant on the site will provide space for boaters and users of the public access walkway. The draft permit requires the applicant to construct the upland support facilities, including a lavatory, laundry and storage, showers and a pump-out facility and parking spaces and to ensure the support facilities are operational prior to occupation of the marina. (Exs. DEP-9, 23.)

7. Shellfish:

Public comments were directed primarily to concerns over the possible impacts of the project on shellfish habitat and shellfishermen activities in the area. The May 9, 2007 Bureau of Aquaculture determination raised concerns over sediment deposition and turbidity due to the presence of boats, docks and pilings in the area and the shallow water depth in a portion of the marina. The Bureau's specific concern was the possible transportation of accumulated sediments from the area of the marina down stream, which could "negatively impact historically important natural oyster beds." (Ex. DEP-21.)

To address the concerns of the Bureau, the revised draft permit requires the applicant to prepare and submit an environmental monitoring plan to assess sediment deposition characteristics within and immediately up-drift and down-drift of the proposed marina footprint. In accordance with the approved plan, the applicant will take benthic sediment samples during the month of September for a minimum of three years. (Exs. DEP-22, 23.)

The applicant must also narrow the most landward boat slips to prevent access by larger deep draft vessels, thereby permitting only shallow-draft vessels access to those slips. The applicant will narrow the slips by locating the tie off piles to establish fifteen-foot berthing areas. (Exs. DEP-22, 23.)

14. Water Quality:

The temporary turbidity that will be generated by driving piles will be localized and is likely to disperse quickly due to water currents in the construction area. The draft permit provides a condition that restricts pile driving during periods of low water conditions and requires construction of the fixed piers by water based barge or by heavy equipment operated from the upland and outside the tidal wetlands area. (Exs. DEP-9, 23.)

All utilities, including sewer service, have been brought to the site of the proposed upland support facility. Portable pump-out equipment will be provided at the main dock that will pump boat waste to the support facility. The marina will not be used for boat maintenance or fueling activities. (Ex. DEP-9.)

15. Visual Quality:

To address concerns that are likely to be associated with the operation of the marina, the draft permit provides that the Marina Operations Plan must describe marina bylaws, rules and regulations. The plan must include the hours of operation and control of the marina including noise, lighting, trash collection, boating safety, restrictions on illegal dumping and discharge, access to and usage of the transient dock, and restrictions on occupancy and mooring of vessels or floating homes. (Exs. DEP-9, 23.)

B

CONCLUSIONS OF LAW

The following conclusions supplement the specific conclusions contained in the Agreed Draft Decision.

Any person or corporation seeking to conduct work in the coastal, tidal or navigable waters of the state waterward of the high tide line must obtain a permit from the Commissioner and agree to comply with the permit conditions. General Statutes §22a-361(a). The Commissioner is required to conduct a public hearing on any permit application submitted pursuant to §22a-361(a) if the Commissioner receives a petition signed by twenty-five or more persons and the Department of Agriculture/Bureau of Aquaculture determines that the proposed activity will significantly impact any shellfish area. §22a-361(b). It is therefore essential that the Commissioner request and rely on a determination from the Bureau of Aquaculture regarding such impacts.

The record reflects the Bureau's thorough evaluation of the potential impacts of the proposed project on shellfish and associated habitat, and its concern for the natural shellfish beds located downstream from the project site. The record also shows that the Bureau surveyed the project area twice over a two-year period for the presence of oysters with no significant results. The applicant has demonstrated that it will comply with the additional permit terms regarding

annual sediment assessments and the configuration of the shallow dock slips. I find that the applicant's proposed marina will not significantly impact shellfish or shellfish habitat in the area.

III

CONCLUSION

The applicant has sufficiently demonstrated that all adverse environmental impacts associated with the proposed project have been avoided, minimized or mitigated. The proposed activities, if conducted in accordance with the terms and conditions of the draft permit, would be consistent with all applicable criteria of the relevant statutes and regulations.

IV

RECOMMENDATION

I recommend that the Commissioner issue the requested permit incorporating the terms and conditions set forth in the draft permit (Attachment B).

/s/ Jean F. Dellamarggio
Jean F. Dellamarggio
Hearing Officer

P A R T Y L I S T

Proposed Final Decision in the Matter of Harborside Associates, LLC
Application No. 200302227

PARTY

REPRESENTED BY

The Applicant

Harborside Associates, LLC
200 Boston Post Road
Orange, CT 06744-3222
(site: 946 Ferry Street, Stratford)

Benjamin Proto, Esq.
P.O. Box 778
Stratford, CT 06615

Department of Environmental Protection

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

Kevin Zawoy

AGREED DRAFT DECISION

HARBORSIDE ASSOCIATES COASTAL PERMIT
APPLICATION # 200302227-KZ

INSTALLATION OF A 36 SLIP MARINA TOWN OF
STRATFORD

JULY 10, 2007

1. Introduction: On August 8, 2003, Harborside Associates, 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 steel and wooden pile supported 36 slip marina, with two associated pile supported access piers, in the Housatonic River, in the Town of Stratford. 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-113 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.
2. Parties: The parties to the proceeding are: the Applicant, Harborside Associates, LLC, 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-20. Applicant's exhibits, APP-1 through APP-15.

FINDINGS OF FACT

Background

1. Site Location and Character: The site is located at 946 Ferry Boulevard on the Western shore of the Housatonic River in Stratford, Connecticut. The landward area of the site is classified as shoreland and coastal flood hazard area. The Housatonic River itself is an Estuarine Embayment. The majority of the shoreline frontage of the Applicant's property contains tidal wetland vegetation, consisting primarily of *Spartina alterniflora*. There are also areas of *Spartina patens*, dune grass, and *Ivy frutescens* along the shoreline. There is no eel grass or intertidal flats in the vicinity of the proposed fixed pier, ramp or float. (DEP-10).

2. Application History: The initial application was received by the Department on August 8, 2003 requesting authorization to install a 36 slip marina consisting of one 8' wide x 70' long fixed pier leading to a 6' wide x 30' long ramp both extending from the existing public access boardwalk each which accesses an 8' wide x 335' long main floating dock which provides access to three docks as show in Exhibit APP-6).

In evaluating the application, OLISP staff solicited or received input from the State of Connecticut Department of Agriculture/Bureau of Aquaculture regarding shellfish resources in the area of the river of the proposed marina. (DEP-7 & 8 and APP-3, 7, 8). OLISP staff inspected the site on February 16, 2005.

The Army Corps of Engineers granted its approval for the marina on February 24, 2006. (APP-5).

On August 3, 2006, 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-11). On that same day, the notice was published in The Connecticut Post, a daily newspaper published in Bridgeport, CT. (DEP-12). 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 September 12, 2006. On September 12, 2006, OLISP staff received a petition signed by 26 members of the public all from the City of Milford. The petitioners were concerned about the "excessive noise level issuing from this establishment which has had an impact on our quality of life. We are concerned that the proposed marina and building will have an even greater negative impact."

In accordance with statutory requirements, upon receipt of the petition a public hearing was scheduled on the application. The hearing officer, Janice Deshais, of the DEP Office of Adjudications, held a status conference on January 17, 2007. On February 7, 2007, a Notice of Public Hearing was published in The Connecticut Post newspaper. (DEP-16). The parties submitted their prehearing exchange of information on January 31, 2007. A final Prehearing Conference was held on February 15, 2007 and conducted by the newly assigned hearing officer, Jean Dellamarggio. Thereafter, a site visit was held on February 13, 2007.

3. Project Description: The Applicant, in its application, sought authorization to construct a new 36 slip marina consisting of one 8' wide x 70' long fixed pier leading to a 6' wide x 30' long ramp and one 6' wide x 46' long fixed pier leading to a 6' wide by 30' long ramp extending from the existing public access boardwalk each which accesses an 8' wide x 335' long main floating dock which provides access to three docks as shown on plans submitted with the Application (DEP-1, 6). At the request of the Stratford Waterfront and Harbor Management Commission, the Applicant agreed to move the structure's set back from the federal navigation channel from 23 feet to 28 feet
4. Purpose and Use of Proposed Dock: The purpose of the proposed work is to construct a 36 slip marina for the public recreational boating use. (APP-1).
5. Compliance and Enforcement History: The property was the subject of a previous complaint. The complaint was for unauthorized work performed in a tidal wetland, which was resolved by the issuance of a Certificate of Permission to remove fill to restore the tidal wetlands. (DEP-3, 4). In addition, DEP in December, 1994, issued a Permit for the then property owner, Avon Financial Services Ltd LCC, to construct a 37 slip marina. (APP-4)
6. Tidal Wetlands: On February 16, 2005, OLISP staff conducted a site visit to verify the location of tidal wetland within the project location. Tidal wetlands on the 3.6-acre site had been restored by the applicant/property owner to resolve unauthorized work which had been undertaken by the applicant/property owner. The system was restored by the applicant/property owner in the spring of 2005 and has "self-seeded", no vegetation has been manually planted in the area. A nascent tidal creek system, which is fed by the Housatonic River, is present in the northern portion of the wetland area. Vegetation along the creek and in close proximity to the tidal flow is comprised of smooth cordgrass (*Spartina alterniflora*). Common reed (*Phragmites australis*) is located in patches along the earthen banks that surround the wetland. Tidal wetland vegetation is also present to the north of the restored system adjacent to the bank of the Housatonic River.

In order to minimize potential impacts to the Tidal Wetlands, the Applicant has proposed that the fixed piers be located over tidal wetland areas where the grasses are absent or not as abundant. The lowest point on the proposed Auxiliary Pier, which is over Tidal Wetlands, is 3 feet above the underlying vegetation, which consists primarily of *Spartina patens*, which grows to a maximum height of 18 inches during the peak part of the growing season. By setting the lowest point at a height of 3 feet above the vegetation, the Applicant has allowed for more than adequate sunlight penetration to this vegetation. The Applicant has proposed constructing the Main Pier within the footprint of the existing dock, which the Applicant proposes to remove. There are no Tidal Wetlands under the existing pier, and as such, there will be no Tidal Wetlands located under the Main Pier. Further, the "no-wake" zone created by the marina will serve to further protect the tidal wetland areas by reducing wave action against the resource.

The Draft Permit requires, as a condition of the Permit, that the fixed piers (both Auxiliary and Main) be constructed no lower than elevation 9.0' NGVD. This will allow for a more suitable environment for native tidal wetland plants to colonize areas below the proposed Main pier and will allow for public access passage. Further, this elevation for the Auxiliary Pier will provide for the 3 foot clearance above the vegetation below the Auxiliary Pier.

The Applicants in designing the floating dock section of the marina, have proposed using steel piles to support much of the marina structure. The use of steel piles minimized the number of piles that will be driven in order to support the structure. This will result in the least amount of disturbance to the river bottom and reduce and minimize the amount of sediment that could possibly be displaced into the adjoining Tidal Wetlands. (Exs. APP-1, APP-6, DEP-9, DEP-19).

7. Shellfish: The Department of Agriculture/Bureau of Aquaculture (DA/BA) has determined that the proposed location is not within areas designated by law as a natural bed, (APP-8). The DA/BA conducted a survey of the area, which was reviewed by DA/BA staff as well as by environmental scientist. DA/BA forwarded to the Army Corp of Engineers, a series of letters regarding the projects impact on shellfish. In its letter to the Army Corp of Engineers, dated August 22, 2005, DA/BA indicated that the proposed marina, without modification, will impact a small shellfish resource. (APP-8). Upon reviewing studies conducted by professional engineers and environmental scientists, DA/BA, in its letter of December 2, 2005 to the Army Corp of Engineers, stated that the studies showed that the project should not negatively impact the oyster resource and habitat. That the information presented by these studies resolves the issues that DA/BA raised in its August 2, 2005 letter to the Army Corp of Engineers. (APP-8). Upon reviewing the data, the DA/BA made a finding and a determination to the DEP that the work proposed would not significantly impact any shellfish areas. (DEP-8).

Subsequent to the finding that the work would not significantly impact any shellfish areas, the DA/BA, just prior to the scheduled public hearing, requested that the public hearing be postponed so that the DA/BA could conduct a second shellfish survey. The hearing officer agreed to postponed the public hearing and on April 9, 2007, the DA/BA conducted a second shellfish survey.

On May 9, 2007, the DA/BA submitted its findings from the April 9, 2007 (DEP-21) and, although no significant shellfish resources were discovered during the survey, the DA/BA raised concerns regarding the marina's potential impact on shellfish resources in the area. On May 31, 2007, the DA/BA issued a letter to OLISP, in which DA/BA indicates that it has reviewed the Applicants proposed modifications and proposed conditions and, with the inclusion of those conditions, the DA/BA will be addressed with the submission and inclusion of those revisions in the project permit. (DEP- 22)

Based upon a review of the proposed conditions which the applicant and OSLIP have agreed to include in the Draft Permit (DEP-23), DA/BA, by letter to OSLIP dated June 18, 2007, has indicated that it would support the Draft Permit with the conditions imposed in the Draft Permit. (DEP- 24).

8. Connecticut Endangered, Threatened and Special Concern Species: There are no Endangered, Threatened, and Special Concern species located on the property.
9. Intertidal Mudflats: Intertidal mudflats do not exist in the area of the proposed marina.
10. Finfish: The proposed project will not adversely impact fisheries resources and habitat in the Housatonic River.
11. Navigation Impacts: The encroachment associated with the proposed structure is approximately 355 feet waterward of the existing high tide line, with a 28 ft setback from the federal navigation channel. The rivers width at this location is at least 640 ft with a 200 ft wide federal channel. The proposed project is the minimum size necessary at this particular location to provide safe and reasonable boating access to the Housatonic River and Long Island Sound. Appropriate setback distances for the marina dock structures from the federal channel were developed through coordination with the Army Corps of Engineers and the Stratford Waterfront and Harbor Management Commission. There are no unacceptable navigational impacts associated with this project. The encroachment and relatively small size of the proposed marina are consistent with coastal regulatory policy and other existing marina development on the river.
12. Public Trust: The facility is water dependent and provides public access in an area where this opportunity does not currently exist. Therefore, the proposed structure does not represent an unreasonable encroachment into public trust waters in the Housatonic River. (DEP-9)

13. Environmental Impacts: Environmental impacts associated with the proposed marina have been minimized to the greatest extent practicable. The installation of the marina is not anticipated to adversely impact existing tidal wetlands, shellfish, or finfish resources.

14. Water Quality: DEP has determined that, since the marina will be constructed by driving piles into the river bed, there is the possibility that the quality of the water in that area may be impacted during the construction of the marina. (DEP-9). To ensure that any impact to the water quality, during construction, is mitigated as much as possible, DEP has recommended, and the Applicant has agreed that the pile driver barge, which will be used, shall not operate during low water conditions.

In addition, to protect the water quality during the operation of the marina, DEP has recommended (DEP-9) and the Applicant has agreed that a functional sanitary pump out system be installed for use by boats located at the marina. This pump out system will be connected to the town of Stratford sanitary sewer system. The use of this pump out system will help to protect water quality in this area. Further, there will be no fueling at the marina which will further insure that water quality is protected.

The Applicant will submit to the Commissioner a Marina Operations Plan which will address, among other things, pump out operations, debris and garbage collection and containment and berthing of low draft boats in the slips closest to the shore.

Finally, the Applicant has not sought any permit for dredging of any kind in this area.

Alternatives

1. The Applicant considered the following alternatives:
 - a. A larger fixed structure, which would have extend a greater length as the proposed structure. The Army Corp of Engineers determined that the location of this structure would negatively impact navigation and should be moved back from the federal navigation channel an additional 5 feet.

2. After balancing all of the relevant concerns, a marina structure 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 public 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) C.G.S. 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) C.G.S., 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) C.G.S., 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)(E) C.G.S., 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) C.G.S., 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) C.G.S., 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) C.G.S., 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 C.G.S., 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 C.G.S., 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-30-1 1(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 CGS, 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.

Alternatives to the Proposed Action: There is no feasible or prudent alternative which would provide the safe access that this water dependent use provides to the public.

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, Harborside Associates, LLC

By /s/ Brian Thompson
 Brian Thompson, Director
 Office of Long Island Sound Programs
 Department of Environmental Protection
 79 Elm Street
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By /s/ Benjamin S. Proto, Jr.
 Benjamin S. Proto, Jr.
 It's Attorney
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STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Errata of Exhibit References
Application of Harborside Associates, LLC

Findings of Fact

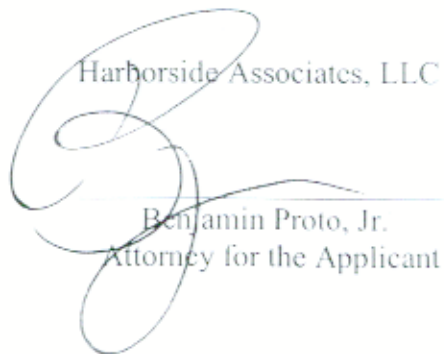
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1. APP - 1
3. App - 1, 6
5. App - 1
6. Paragraph 1 DEP - 9
Paragraph 2 APP - 6
Paragraph 3 DEP - 23
Paragraph 4 DEP - 23 (for DEP - 19)
8. App - 1
9. DEP - 9
10. DEP - 9
11. APP - 6 DEP 9
13. DEP - 9

Alternatives

- 1a. APP - 1
2. APP - 1 DEP 9

Harborside Associates, LLC



Benjamin Proto, Jr.
Attorney for the Applicant

DEP



Kevin Zawoy
Environmental Analyst

ATTACHMENT B

SECOND REVISED DRAFT PERMIT

Permit No: 200302227-KZ

Town: Stratford

Work Area: Housatonic River off property located at 946 Ferry Street

Permittee: Harborside Associates, LLC
c/o Gary Richetelli
200 Boston Post Road
Orange, CT 06744-3222

Pursuant to sections 22a-359 through 22a-363f of the Connecticut General Statutes ("CGS"), CGS sections 22a-28 through 22a-35, and in accordance with CGS section 22a-98 and the Connecticut Water Quality Standards dated December 2002, a permit is hereby granted by the Commissioner of Environmental Protection ("Commissioner") to remove an existing dock and construct a commercial marina for recreational boating use and to retain a stone gabion wall for shoreline flood and erosion control as is more specifically described below in the SCOPE OF AUTHORIZATION, in the Housatonic River 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 #200302227-KZ, including eighteen sheets of plans submitted by the Permittee to the Commissioner and attached hereto, as follows: Vicinity Map dated March 22, 2006 and sheets 1 through 17 of 17 dated June 3, 2007 as follows:

1. remove an existing 6' wide x 35' long fixed pile and timber pier leading to a 10' wide x 15' long fixed pier head located approximately 110 linear feet north of the southern property line;
2. retain an existing 3' wide x 27.5' long stone gabion wall located under the portion of the public access boardwalk that is located perpendicular to the shoreline; and
3. construct a new 36-slip marina consisting of one 8' wide x 70' long fixed pier (Auxiliary Pier) leading to a 6' wide x 30' long ramp and one 6' wide x 46' long fixed pier (Main Pier) leading to a 6' wide x 30' long ramp both extending from

the existing public access boardwalk each which accesses an 8' wide x 335' long main floating dock which provides access to three docks as shown on sheets 3 through 6 of 17 of the plans attached hereto as follows:

- a. Dock "A" an approximately 8' wide x 230.7' long floating dock with four 6' wide x 45' long finger floats on the south side and four 6' wide x 40' long finger floats on the north side and to an 8' wide x 100' long "T-head" floating dock supported by timber and steel piles and including tie-off piles;
- b. Dock "B" an approximately 8' wide x 165.7' long floating dock with three 6' wide x 40' long finger floats on the south side and three 6' wide x 35' long finger floats on the north side and an 8' wide x 90' long "T-head" floating dock supported by timber and steel piles and including tie-off piles; and
- c. an approximately 8' wide x 142.8' long floating transient dock held in place by seven (7) steel piles and one steel pile cluster.

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 tidal wetland or watercourse on or off-site, nor shall any tidal wetland or watercourse be used as a staging area or accessway other than as provided herein.
2. 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.
3. 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.
4. Within 60 days of issuance of this authorization, the Permittee shall submit for review and written approval of the Commissioner a plan outlining an environmental monitoring program to assess sediment deposition characteristics within and immediately up-drift and down-drift of the proposed marina footprint. The plan shall include several bottom samples taken from the marina footprint and from areas both immediately up-drift and

down-drift of the site. Following written approval of the plan by the Commissioner, the Permittee take the benthic sediment samples annually during the month of September and continue for a minimum of three years. The Permittee shall generate an annual monitoring report that shall be submitted to the Commissioner no later than December 15th of the year being monitored. After the three-year period, the Department will evaluate the need to continue the monitoring program. The Permittee shall continue the monitoring program indefinitely upon receipt of any written correspondence from the Commissioner indicating such.

5. The Permittee shall ensure that all work associated with the driving of piles for construction of the fixed piers authorized herein shall be conducted by a water-based barge only during periods of high water or with heavy equipment staged or operated from the upland and outside the location of tidal wetlands. Any such barge must move to deeper waters during periods of low water in the area of the proposed docks. It shall not be a defense to this provision for the Permittee to assert that it has no control over the operation of the barge. At no time shall the Permittee allow any equipment to access or be staged within areas waterward of the high tide line or in tidal wetlands.
6. The Permittee shall construct the fixed piers (Auxiliary Pier and Main Pier) authorized in the SCOPE OF AUTHORIZATION paragraph 3., above, so that the lowest horizontal stringer of the proposed pier is constructed no lower than elevation 9.0' NGVD.
7. The Permittee shall configure the landwardmost tie off piles of the proposed marina to allow for a maximum of a 15 foot wide berthing area as shown on sheets 3 through 6 of 17 of the plans attached hereto.
8. The floating dock authorized in the SCOPE OF AUTHORIZATION paragraph 3.c., above, shall be available at all times during the boating season for transient boaters.
9. Prior to the occupation or use of the marina slips authorized herein, the Permittee shall install a pump-out facility that is capable of sufficiently handling the wastes from the vessels berthed at the subject facility.
10. The Permittee shall maintain the floating docks authorized herein at all times so that a 28-foot setback exists between the waterward face of the floating docks and the western federal channel line, a 10 foot setback from the waterward face of the northern floating docks to the northern littoral line, and a 10 foot setback from the waterward face of the southern floating docks to the southern littoral line known as Washington Avenue Map Road. The Permittee shall not moor, berth, or otherwise affix any vessels on the outboard or channel side of either Dock A or Dock B within the 28' channel setback limit as shown on sheets 3 through 6 of 17 of the plans attached hereto.
11. Prior to the occupancy of the marina authorized herein, the Permittee shall construct the upland support facilities shown on sheet 13 of 17 of the plans attached hereto, including a building with sanitary facilities, a building with lavatory, laundry and storage facilities, showers, and a pump-out facility.

12. The Permittee shall develop a Marina Operations Plan for the proposed marina that shall describe marina bylaws, rules, and regulations, including at a minimum, the following: 1) marina and facility hours; 2) how the marina hours will be controlled and who will be responsible; 3) noise; 4) lighting; 5) pollution from debris and garbage; 6) boating safety; 7) access to and usage of the transient dock; 8) a requirement for "no discharge" from vessels moored or berthed at the marina docks authorized herein; 9) the use of the pump-out facilities required herein and methods of enforcement; 10) restrictions on continuous occupancy of vessels; and 11) restrictions on permanently moored vessels/floating homes. A copy of such Marina Operations Plan shall be submitted to the Commissioner not later than thirty (30) days subsequent to occupancy of the marina authorized herein and shall be posted at all times at the Marina Support Building.
13. The Permittee shall provide restroom facilities on-site for all marina slip renters between April 15 and October 15 of any year.
14. The Permittee shall provide no less than 9 parking spaces for the public access boardwalk as shown on sheet 3 of 17 of the plans attached hereto. Such parking spaces shall be clearly demarcated and access to such spaces from the public street shall not be impeded at any time.
15. On or before September 30, 2007, the Permittee shall submit for the review and written approval of the Commissioner, a report which details the success of the tidal wetland restoration effort approved pursuant to COP-2003-075-KZ. The report shall include a map of the tidal wetland restoration area that shows the following: a) areas and type(s) of tidal wetland grasses that have colonized the site; b) areas and type(s) of invasive species that have colonized the site; c) an evaluation whether additional soil material needs to be removed from the site to provide better tidal flushing of the area; d) a proposal for the removal of any invasive species which have colonized the site; and e) photographs of the restoration area.
16.
 - a. The work specified in the SCOPE OF AUTHORIZATION is authorized solely for the purpose set out in this permit. No change in the purpose or use of the authorization work or facilities as set forth in this permit may occur without the prior written authorization of the Commissioner. The Permittee shall, prior to undertaking or allowing any change in use or purpose from that which is authorized by this permit, request authorization from the Commissioner for such change. Said request shall be in writing and shall describe the proposed change and the reason for the change.
 - b. A change in the form of ownership of any structure authorized herein from a rental/lease commercial marina to a wholly-owned common interest community or dockominium may constitute a change in purpose as specified in paragraph (a) above.

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 her 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. 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.
4. 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.
5. 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 CGS section 22a-423.
6. 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.
7. 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

8. 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.
9. This permit may be revoked, suspended, or modified in accordance with applicable law.
10. 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.
11. 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.
12. 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.
13. 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.

14. 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.
15. 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.
16. 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.
17. 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."
18. 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 _____, 2007.

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Gina McCarthy
Commissioner

Permit Application No. 200302227-KZ
Harborside Associates, LLC

KZ/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: Harborside Associates, LLC
Gary Richetelli
200 Boston Post Road
Orange, CT 06744

Permit No: 200302227-KZ, Stratford

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)