

OFFICE OF ADJUDICATIONS

IN THE MATTER OF

: APPLICATION NO. 20002046-KC

FRED AND MARIE MEYER

: JANUARY 10, 2002

PROPOSED FINAL DECISION

The parties have submitted the attached *Agreed Draft Decision* (Attachment 1) for consideration as the *Proposed Final Decision* in the above-captioned permit application. By my signature, I adopt the attached *Agreed Draft Decision* as my *Proposed Final Decision* and recommend that the commissioner issue the permit (as modified therein).

January 10, 2002
Date

/s/ Elaine R. Tata
Elaine R. Tata, Hearing Officer

ATTACHMENT 1

AGREED DRAFT DECISION

FRED AND MARIE MEYER
COASTAL PERMIT APPLICATION #200002046-KC

RETENTION OF EXISTING STRUCTURES AND
INSTALLATION OF A RAMP AND FLOATING DOCK
TOWN OF GREENWICH

December 10, 2001

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1. Introduction: In July of 2000, Mr. and Mrs. Fred Meyer submitted an application to undertake regulated activities in tidal, coastal and navigable waters of the State waterward of the high tide line for the removal down to grade of an existing stone outcropping, retention of existing structures and installation of a ramp and floating dock in Greenwich Cove, in the Town of Greenwich. 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 Applicants, Fred and Marie Meyer, and staff from the Office of Long Island Sound Programs (OLISP) of the Department of Environmental Protection (DEP)(Staff).

The parties have agreed to the admission of all the exhibits listed on the attached exhibit list comprising applicants exhibits APP 1-8, APP Drawings and APP Photographs and staff exhibits DEP-1 through DEP-19.

FINDINGS OF FACT

Background:

1. Site Location and Character: The site is located at 7 Tod's Driftway on Greenwich Cove in Greenwich, CT. Greenwich Cove is an estuarine embayment that is subject to an approximately 9.0' tidal cycle. Tidal wetland vegetation is seen along the entire frontage of the site. In addition, there is an extensive intertidal mudflat at low water. This habitat provides a pristine area for many shore birds as well as blue mussels, hard-shell clams, periwinkles and barnacles.

Existing structures on site include the following: a 2' x 255' stone masonry seawall, a 12' x 15.4' stone masonry pedestal, a 5' wide x 35.5' timber catwalk, and a 6' x 8' timber platform. Shorefront development is prevalent in this area of the cove. (APP 1-8).

2. Application History: The initial application was received on July 5, 2000 requesting retention of a post-1980, 2' x 255' stone masonry seawall, an anchor stone, a 5' x 35.5' timber catwalk with railings, and a 6' x 8' timber platform with railings supported by a 12' x 15.5' concrete and stone masonry pedestal; installation of a 4' x 40' ramp, a 6.5' x 15' float and two pilings; and maintenance of the seawall and masonry/concrete pedestal (DEP-1). After review of the initial application submittal, it was determined that the proposed work appeared to be generally consistent with applicable state policies, standards and criteria although some modifications were required. A fee letter dated July 26, 2001 was sent requesting additional information. Information was received in response to this fee letter from October 2000 to March 2001 (DEP-3-9). In early April of 2001, the DEP recommended tentative approval of the application. On April 12, 2001, the Notice of Tentative Determination was published in the Greenwich Time newspaper (DEP-11). The proposed work included: retention and maintenance of an existing 2' x 255' stone masonry seawall and a 12' x 15.4' stone masonry pedestal; retention of a 5' x 35.5' timber catwalk and a 6' x 8' timber platform; and installation of a 4' x 40' ramp, a 6.5' x 15' float with four (4) 12" x 12" feet and two timber pilings. There was a 40-day comment period on the application, which closed on May 22, 2001. During the comment period, two adverse comment letters were received. On May 15, 2001, an adverse comment letter was received from Lucy Jinishian (DEP-12) of the Greenwich Shellfish Commission, which stated that the area of the proposed dock location is in a prime recreational shellfish bed. On May 22, 2001 a letter was received from Mary Staples-Webber requesting a hearing. Also included with this letter was a petition with 25 signatures (DEP-16).

Pursuant to statutory requirements, upon receipt of the petition a public hearing was scheduled on the application. On October 18, 2001, a Notice of Public Hearing was published in the Greenwich Time newspaper (DEP-18). The hearing was held in the Greenwich Town Hall on November 7, 2001. While several issues and concerns with the application were discussed at the Public Hearing, no opposition was expressed to the proposal. An issue concerning removal down to grade of the existing, approximately 4' x 18" x 18" stone/concrete outcropping located in the cobble/stone area where the proposed float on float stops is to rest, was clarified as a revision to the original application. Special conditions were added to the draft permit (DEP-19) to account for this additional work.

3. Purpose and Use of Proposed Dock: The purpose of the proposed work is to retain and maintain existing pre-1980 structures on site, and to construct a ramp and floating dock for recreational use by the Meyer family. Since the time of the Meyers purchase of the property in 1982, the seawall, masonry pedestal, timber

catwalk and timber pier have existed and have been used by the Meyer family. (Meyer testimony).

4. Compliance and Enforcement History: Prior to this application, there were no previous permits or certificates that authorized work at this site. As evidenced in a 1937 aerial photograph, the site has historically contained a dock for recreational use. Based on an aerial photograph review of the site back to 1974, it appears that the seawall, masonry pedestal, timber catwalk and timber platform have existed in kind and in place since that time. Mr. and Mrs. Meyer have owned the property since 1982. At the time of their purchase, the above-mentioned site conditions were the same. As evidenced in an aerial photograph review, it appears that between 1986 and 1995, a ramp and float were installed at the waterward end of the timber platform of the catwalk. As evidenced in an aerial photograph review of the site in 2000, no ramp and float were seen. In addition, as noted during a site inspection on July 13, 2000, there was also no ramp and float. If the draft permit (DEP-19) is issued, all existing, pre-1980 structures on site will be authorized, as well as repairs to the existing seawall and the removal down to grade of an existing approximately 4' x 18" x 18" stone/concrete outcropping located in the stone/cobble area where the float on float stops is to rest.
5. Tidal Wetlands: On July 13, 2000, staff conducted a site visit to verify the location of tidal wetland vegetation within the project location. The inspection revealed that tidal wetlands exist along the entire frontage of the property (See photographs DEP-17), immediately in front of the existing seawall as shown on the submitted plans. The tidal wetland vegetation in this area at the height of the growing season is approximately 5' in height and extends out from the seawall approximately 30-40'. The proposed ramp and floating dock will not impact the existing tidal wetland vegetation on-site. The addition of the ramp and float will not affect vegetation since the ramp and float will be installed waterward of the extent of tidal wetland vegetation, and will be removed seasonally. (DEP-11).
6. Shellfish: The Shellfish Concentration Map for Greenwich shows this area of Greenwich cove to contain hard-shell clams and oysters. In a telephone conversation with staff on April 15, 2001, John Volk of the Department of Agriculture Bureau of Aquaculture stated that they do not have any significant concerns with the proposed construction of a 4' x 40' ramp and a 6.5' x 15' float with float stops and two timber pilings (DEP-13). On May 15, 2001, Staff received a letter from Lucy Jinishian of the Greenwich Shellfish Commission regarding the shellfish beds in the area of the proposed project (DEP-12). In the letter, she states that the area where the ramp and float are proposed is located in one of the prime recreational shellfish beds. However, based on information submitted by the applicants, the area where the float is proposed to be located is within the existing, raised 1/4" cobble/stone area as shown on the submitted plans as well as in the exhibit submitted by Chris Drake (APP-Drawings). This area sits atop the existing mudflat approximately 6-10 inches and is composed of

cobbles and aggregate. This artificial substrate is not suitable habitat for shellfish, and is above water at low tide; accordingly, the installation of the floating dock will not cause any adverse impacts to shellfish in this area. (Drake testimony; APP-1-8; photographs included in APP-Photographs).

7. Connecticut Endangered, Threatened and Special Concern Species: A review of all Endangered, Threatened, and Species of Special Concern was conducted for the surrounding area where the dock is proposed. There are no Endangered, Threatened or Species of Special Concern in the vicinity of the proposed project. (DEP-11).
8. Intertidal Mudflats: The location of mean low water (MLW) is approximately 300' from the existing seawall on-site. Tidal wetland vegetation extends out from the existing seawall approximately 30-40'. Beyond the tidal wetland vegetation is the intertidal mudflat. The proposed ramp and float will extend out from the existing timber catwalk into the area of cobble/aggregate. This area is raised approximately 6-10 inches above the surrounding mudflat (as evidenced in APP-Drawings). The area provides a stable area for the float and float stops to rest. It is not anticipated that the installation of the ramp and float will cause any adverse impact to the surrounding mudflat. The float stoppers will be located on the underside of each corner of the float to minimize the impact to the substrate. The infrequent grounding of the floating docks is not considered an adverse impact. In addition, the permit will include a condition requiring that the Permittee remove the ramp and float no later than November 15 of any calendar year and shall not be reinstalled before April 15 of any calendar year. In addition, the Permittee will be required to store the ramp and float at an upland location, landward of the high tide line and outside of tidal wetlands.
9. Finfish: A review of the proposed projects impacts on fisheries habitat was conducted in reviewing the application. It has been determined that the installation of the proposed ramp and float will pose no additional adverse impacts to the area. For this same reason it is anticipated that the proposed project will pose no additional adverse environmental impacts to fisheries resources in Greenwich Cove.(DEP-11).
10. Navigation Impacts: There is no Federal Navigation Channel within the vicinity of the proposed project. This area of the Cove is generally navigated by smaller boats. At low tide, the mudflat extends out approximately 300', which makes navigation impossible. The proposed overall combined length of the existing and proposed structure prevents no heightened risk to navigation nor does it produce an unreasonable encroachment into the wide expanse of Greenwich Cove. Based on this information, it is anticipated that no navigational conflicts will result from the construction of the ramp and floating dock.(APP 1-8; DEP-11).
11. Public Concerns: A public notice of tentative determination was published on April 12, 2001 in the Greenwich Time. During the comment period which

extended until May 22, 2001, one comment letter and a petition were received. The comment letter, from Lucy Jinishian of the Greenwich Shellfish Commission, concerned shellfish issues as described above.(DEP-12) The other letter included a petition and was received from Mary Staples-Webber requesting a hearing on the application (DEP-16).

Project Description:

The Applicant is seeking authorization to: retain all existing, pre-1980 structures on site; authorize the removal down to grade of an existing approximately 4' x 18" x 18" stone/concrete outcropping located in the stone/cobble area where the float with float stops is to rest; authorize repairs to the existing seawall; install a 4' x 40' ramp, a 6.5' float with four (4) stand-off extension legs (float stops) and two timber pilings. (APP 1-8; DEP-19)

The existing timber catwalk and pedestal extend out from the seawall approximately 45'. With the addition of the ramp and float, the dock structure will extend out from the seawall approximately 82' 9". This additional encroachment is rather small and only includes the installation of a ramp and floating dock.

There is a possibility that the contractor engaged to construct the dock may not be able to drive piles due to ledge, and that the float may need to be anchored by bottom anchors. (Drake testimony) Since the necessity for use of bottom anchors as opposed to pilings is unknown, the parties have agreed that the draft permit should authorize the driving of two timber pilings for the float.(DEP-19). If bottom anchors become necessary at the time of installation, the applicants will apply at that time for a Certificate of Permission pursuant to section 22a-363b of the General Statutes to modify the permit to authorize the use of mushroom anchors to secure the float.

Environmental Impacts:

1. Impacts: Environmental impacts associated with the proposed ramp and floating dock extension have been minimized to the greatest extent practicable. Existing structures will be used as well as areas that have been previously impacted. The proposed ramp and floating dock have been minimized in overall size. The Meyers understand that usage of the dock will be extremely limited and tide dependent. The installation of the ramp and float are not anticipated to adversely impact any state listed endangered, threatened or special concern species, intertidal flats, tidal wetlands or shellfish resources.

Alternatives: Several project alternatives were considered by the applicants:

1. Dock Relocation: A timber catwalk and platform have existed at this site since at least 1974 according to an aerial photograph review. Based on this information, the proposed area for installation of the ramp and float will cause the least amount

of environmental impact. The ramp and float will extend from the existing timber catwalk, and the ramp will connect to a float with float stops that will rest within an existing, stable area of cobble/aggregate. This artificial substrate offers a stable resting area for the proposed floating dock during low water periods. There is no other location on site where existing structures can be utilized for construction/expansion. (APP 1-8; Drake Testimony)

2. Fixed Pier Dock Construction: An entirely fixed pier structure was not considered feasible given the existing conditions and structures on-site. A fixed pier structure would be a permanent encroachment into the cove, and would require large equipment to be mobilized to install many additional wooden piles. These piles would likely need to be replaced often due to extensive icing in the cove. In addition, the Meyers would not be able to readily use the sides of the fixed pier because there would be no way to get down to the small boats at lower tides.
3. No Dock: The timber catwalk and timber platform have existed at the site since at least 1974. This structure has not been usable since the removal of the ramp and float in the mid 1990's. With the installation of the ramp and float, the Meyers will be able to exercise their riparian right of access to the waters of the cove and to use the structure for recreational boating.

After balancing all of the relevant concerns, a ramp and float extension appear to be the least intrusive and most environmentally friendly alternative to this pristine environment.

CONCLUSIONS

1. Environmental Impact of the Proposed Action: The proposed project would provide the applicant with reasonable recreational boating access. The adverse impacts of the project have been minimized to the maximum extent possible. One adverse comment letter was received by the Commissioner of the Greenwich Shellfish Commission as a result of the notice of tentative determination to approve the application (DEP-11). As discussed above, the record indicates that the proposed project will not impact shellfish in this area. The proposed project is therefore 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(a)(4) of the General Statutes which requires the Department to resolve conflicts between competing uses on the shorelands

adjacent to marine and tidal waters by giving preference to uses that minimize adverse impacts on natural coastal resources while providing long term and stable economic benefits;

- c. 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;
- d. section 22a-92(b)(1)(G) of the General Statutes which encourages increased recreational boating use of coastal waters, where feasible, by (i) providing additional berthing space in existing harbors, (ii) limiting non-water-dependent land uses that preclude boating support facilities, (iii) increasing state-owned launching facilities, and (iv) providing for new boating facilities in natural harbors, new protected water areas and in areas dredged from dry land;
- e. section 22a-92(b)(1)(H) to protect 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;
- f. 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.
- g. section 22a-92(c)(2)(A) of the General Statutes, which policies concerning coastal land and other resources within the coastal boundary are: (A) to manage estuarine embayments so as to insure that coastal uses proceed in a manner that assures sustained biological productivity, the maintenance of healthy marine populations and the maintenance of essential patterns of circulation, drainage and basin configuration; 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.

- 2. Consistent with All Applicable Standards: The proposal is consistent with applicable standards, goals and policies of section 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 Exhibit DEP-19, Draft Permit, attached hereto.

By: /s/ Fred Meyer _____ /s/ Marie Meyer
Fred and Marie Meyer, Applicants

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

