

OFFICE OF ADJUDICATIONS

*IN THE MATTER OF* : *APPLICATION No.: 201502692*  
*MARACHE* : *FEBRUARY 22, 2019*

**PROPOSED FINAL DECISION**

**I  
Summary**

On April 14, 2015, Mark and Marti Marache (“Applicants”) applied for the authorizations necessary to construct a residential dock to include a fixed pier beginning with an access ladder six inches waterward of Mean High Water, ramp, floating dock and boatlift (“Application”). The Department’s Land and Water Resources Division (“Department staff”) reviewed the Application, made a tentative determination that the Application should be approved, and prepared a Draft Permit (attached hereto as Appendix 1). A petition for hearing was received and this hearing process was initiated.

The parties to this matter are the Applicant, Department staff, and Susan Cohen, who was granted status as an intervening party pursuant to General Statutes § 22a-19.

Applicants exhibits APP-1 through APP-19, APP-21 and APP-22 have been admitted to the evidentiary record as full exhibits, as have Department staff exhibits DEEP-1 through DEEP-27. Intervening Party exhibits INT-2 through INT-6, INT-8 through INT-10, INT 13 through INT-16, INT23 through INT-26, INT 30, and INT 31 have been admitted to the evidentiary record as full exhibits. Exhibits INT-1, INT-7, and INT-17 through INT-21 have been withdrawn. All other exhibits are marked for identification.

I have reviewed the record in this matter, including the documentary evidence and expert testimony. Based on this review, I conclude that the Applicants have met their burden of demonstrating by a preponderance of the evidence that the proposed activity, if conducted in accordance with the Draft Permit, modified as recommended herein, complies with the relevant statutory standards, namely the Structures, Dredging and Fill Act (General Statutes § 22a-361), the statutes and regulations concerning activities conducted in tidal wetlands (General Statutes § 22a-32 and Regs., Conn. State Agencies §§ 22a-30-1 through 22a-30-17) and relevant implementing regulations, and the applicable portions of the Coastal Management Act (General Statutes §§ 22a-90 through 22a-112).

In two rulings, dated July 9, 2018 and September 17, 2018, three allegations of environmental harm made by the Intervening Party were determined to be sufficient to convey standing to participate in this proceeding. The Intervening Party alleges that the proposed regulated activity is reasonably likely to unreasonably pollute, impair or destroy the public trust in the air, water or other natural resources of the state because: 1) the proposed dock structure will degrade visual quality through a significant alteration of the natural features of the tidal wetland in which it is proposed to be located; 2) the tidal wetlands will be unreasonably impacted by pedestrian access to the proposed dock from land; and, 3) the tidal wetlands will be unreasonably impacted by motorboat access to the proposed dock. I have considered these allegations, the relevant evidence in the record, the legal standard set out in General Statutes § 22a-19, and the many decisions in which our courts have applied that standard. I conclude that it is not reasonably likely that the proposed regulated activity will have an unreasonable impacts on tidal wetlands or visual quality.

I therefore recommend that the Commissioner issue the Draft Permit, modified in accordance with part III.6. of this decision, as a final permit.

## II Findings of Fact

### 1 *Procedural History*

1. On April 14, 2015, Mark and Marti Marache submitted an application for permission to construct a residential dock, including a boatlift. Notice of the Application was published in the *Greenwich Time* on April 7, 2015 and provided to the Town of Greenwich. Included with the application were consultation forms from the Greenwich Shellfish Commission and the Department of Agriculture’s Bureau of Aquaculture, indicating the proposed work would not significantly impact any shellfish area. (Exs. DEEP-19, DEEP-20.)<sup>1</sup>
2. On July 31, 2015, Department staff requested additional information from the Applicants. That information was provided on August 25, 2015. In response to comments from Department staff, the design of the proposed dock was modified to replace timber steps with an access ladder at the landward end of the pier, just waterward of Mean High Water (“MHW”). Department staff made two additional requests for information, and the Maraches provided the requested information. (Exs. APP-1, DEEP-10, DEEP-11, DEEP-12 through DEEP-16, DEEP-19.)
3. On April 3, 2018, the United States Army Corps of Engineers authorized the work proposed in the Application, determining that the proposed regulated activities will have only minimal individual or cumulative impacts on the waters of the United States, including wetlands. The Army Corps approval was subject to the condition that the lowermost part of the float shall be a minimum of eighteen inches above the substrate at all times. (Ex. DEEP-24.)

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<sup>1</sup> This is the second application for a dock on the subject property. An earlier application, which proposed a pier extending from the upland, was submitted August 25, 2014. After submission, it became clear that local zoning regulations would not permit the dock as proposed. On December 23, 2014, the Department wrote to the Applicants, indicating that, “we have concluded it would be inadvisable to allow you to revise the pending application to propose a dock entirely waterward of mean high water. In our experience, structures designed to avoid upland land use restrictions, whether originating in zoning regulations or conservation easements, raise a number of policy issues, and could set a precedent encouraging proliferation of docks in inappropriate locations. In order to thoroughly evaluate such issues, we believe that the best course of action would be for you to withdraw the pending application, and re-apply at a later date. The new application could then include a written confirmation from the appropriate Town of Greenwich official indicating that there are no municipal issues with the dock being installed at mean high water, as well as revised consultations with municipal commissions and DEEP resource agencies.” The first application was subsequently withdrawn and the Application, with the proposed structure redesigned, was subsequently filed. (Exs. APP-1, APP-20, INT-16; test., 9-24-18, S. Jacobson, pp. 109-110.)

4. On March 6, 2018, a tentative determination to approve the Application was issued and a proposed Draft Permit was prepared. Notice of the tentative determination was published in the *Greenwich Time*. (Ex. DEEP-21, DEEP-23.)
5. A petition for hearing, signed by more than twenty-five people, was submitted on March 26, 2018, commencing this hearing process.<sup>2</sup>
6. On June 6, 2018, Susan Cohen filed a “Verified Petition and Notice of Intervention” pursuant to both the Department’s Rules of Practice and General Statutes § 22a-19, seeking status as an intervening party in this matter. On June 13, 2018, the Applicants filed an objection, and on June 15, 2018, the Intervening Party filed a response.
7. On July 9, 2018, a ruling on the Verified Petition and Notice of Intervention was issued, granting Ms. Cohen intervening party status as to one allegation made pursuant to General Statutes § 22a-19, concerning the visual impact of the proposed structure, and denying intervening party status on all other grounds alleged.
8. On August 8, 2018, a pre-hearing conference was held at Greenwich Town Hall, attended by representatives of the Applicant, Department staff and the Intervening Party. A site visit was conducted later that day.
9. Notice of the hearing in this matter was published on August 12, 2018 in the *Greenwich Time*.
10. On August 13, 2018, the Intervening Party filed a “Motion for Reconsideration of Ruling on Petition and Notice of Intervention” (“Motion”). On August 24, 2018, the Applicants filed an objection to the Motion. On August 29, 2018, I requested Department staff provide certain information and Department staff filed that information on September 12, 2018.
11. On September 17, 2018, a ruling on the Motion was issued, expanding the issues that the Intervening Party was permitted to pursue to include the issues of unreasonable impacts to the tidal wetlands from pedestrian access to the proposed dock and the operation of motorboats in the vicinity of the proposed dock.
12. On September 13, 2018, a hearing to receive public comments was conducted at Greenwich Town Hall. Written comments were accepted until September 19, 2018.
13. On September 11, 2018, the Greenwich Harbor Management Commission was granted permission to file a late public comment. The Commission filed its comment on September 21, 2018.

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<sup>2</sup> Certain documents regarding the hearing process are not part of the evidentiary record, but are part of the administrative record for this matter. Those documents are on file with the Department’s Office of Adjudications.

14. The evidentiary hearing in this matter was held on September 24, 2018 at DEEP Headquarters in Hartford.
15. Mark Marache testified as a fact witness for the Applicants. James Bajek, an expert in the permitting of coastal structures, and R. Scott Warren, Ph.D., an expert in coastal resources and tidal wetlands ecology, provided expert testimony for the Applicant. Susan Jacobson provided expert testimony on behalf of Department staff. Susan Cohen, the Intervening Party, provided fact testimony and William Kenny, an expert in coastal resources and tidal wetlands ecology, provided expert testimony on her behalf.
16. The parties submitted post-hearing filings on or before November 9, 2018. The parties were provided the opportunity to file reply briefs, and reply briefs were filed by the Applicants and the Intervening Party on November 19, 2018.

2

*The Site*

17. The Application is for a permit to conduct regulated activities at a property known as 15 Perkley Lane, Greenwich (“Property”). The Property is owned by the Applicants, Mark and Marti Marache. (Exs. APP-1, APP-2, DEEP-19, DEEP-20.)
18. The Property is approximately 0.7 acres in size, and is unimproved. (Exs. DEEP-19, DEEP-20.)
19. The Property is on the east side of Perkley Lane, a residential street. The property extends into Greenwich Cove to the south and east, forming a small cove on the Property’s southern edge. Much of the Property is made up of two bands of tidal wetlands, a band of “low marsh” below MHW and along the edge of Greenwich Cove, and a band of “high marsh” just inland of the low marsh, extending approximately to MHW. Near the far eastern portion of the Property, a small island rises above the tidal wetlands. (Exs. APP-05, DEEP-19.)
20. The upper section of Greenwich Cove, into which the Property extends, is a tidal, coastal or navigable water of the State. The main body of Greenwich Cove extends to the south of the Property, eventually emptying into Long Island Sound. (Exs. APP-1, APP-2, DEEP-19.)
21. The Property, and the portion of Greenwich Cove adjoining it, is subject to significant tidal fluctuation of approximately seven feet. At periods of low water, there are extensive intertidal flats in this area of Greenwich Cove. (Exs. APP-1, DEEP-26)

22. The shoreline of Greenwich Cove surrounding the Property is heavily developed with homes and docks. Aerial photographs of this area of Greenwich Cove show more than a dozen docks in the vicinity of the Property, including a community dock at the end of Perkley Lane and a dock on property owned by Ms. Cohen, immediately to the north of the Property. None of these docks has a boatlift. (Ex. App-6, App-1, APP-2, APP-6; test. 9-24-18, M. Marache, p. 11, S. Cohen, pp. 175-182.)
23. Motorboats and paddle craft use the area of Greenwich Cove near the Property regularly. This area of Greenwich Cove is a no wake zone. (Test. 9-24-18, M. Marache, pp. 11, 13.)
24. There is no public access to Greenwich Cove near the Property. The shoreline of the Property, and of the areas near the Property consists of tidal wetlands and intertidal flats which discourage members of the public from walking the areas waterward of MHW. (Exs. APP-1; DEEP-26.)
25. There are no unauthorized structures on the Property, and the Property has never been the subject of an enforcement action. The Applicants do not have a history of non-compliance with any environmental statues or regulations. (Exs. APP-1, APP-20, DEEP-19, DEEP-20.)

3

*The Proposed Dock*

26. The proposed dock will begin with a thirty inch wide access ladder, located six inches waterward of MHW. A 4 foot wide by 26 foot long timber pier will extend waterward. The pier will have open-grate decking and steel cable handrails and be supported by six timber piles. At the waterward end of the pier a three foot wide, twenty-three foot long ramp will extend to a floating dock, five feet by twenty feet. The floating dock will be anchored by two float restraint piles and be equipped with float stops. (Ex. DEEP-21.)
27. The proposed dock includes a fifteen foot by fifteen foot boat lift with a support stringer and two piles. The boatlift can accommodate a motorboat as large as approximately thirty feet. (Ex. DEEP-21, test. 9-24-18, J. Bajek, p. 48.)
28. During low water portions of the tidal cycle, the float stops will keep the proposed floating dock elevated at least eighteen inches above the substrate and the proposed boat lift will keep a motorboat elevated at least eighteen inches above the substrate. (Exs. APP-1, DEEP-21.)
29. The proposed dock is located in the small cove on the southern shoreline of the Property. The proposed boat lift is located approximately twelve feet from an outcropping of shoreline to its east and seventeen feet from the shoreline to its north. The floating dock is

approximately eighteen feet from the shoreline to its west and a similar distance from the shoreline to its north. (Ex. DEEP-21; test. 9-24-18, W. Kenny, p. 204.)

30. The proposed dock will be accessed from the upland by walking through the tidal wetlands to reach the access ladder. Although the ladder itself is located in the lower marsh, it is likely that pedestrians accessing the dock will step from the high marsh, over the small strip of low marsh, and onto the ladder. (Exs. APP-1, APP-2; test. 9-24-18, R. Warren, p. 81.)
31. Use of the proposed dock is limited by the tidal range in this area of Greenwich Cove. There will be significant portions of each tidal cycle when the proposed dock cannot be used because there will be little or no water surrounding the floating dock and boat lift. (Test. 9-24-18, R. Warren, pp. 79-80.)
32. Consultants for the Applicants prepared many alternative dock designs, which were rejected as having more impact than the proposed dock. Department staff evaluated and rejected fourteen alternative dock designs. (Exs. APP-1, DEEP-19; test. 9-24-18, J. Bajek, p. 60, S. Jacobson, p. 115.)

4

*Impacts to Tidal Wetlands*

33. The proposed dock is located entirely within the low marsh. The low marsh is vegetated by intertidal salt water cord grass, *Spartina alterniflora*. Low marsh vegetation extends from at or near MHW between approximately ten and fifty feet, and surrounds the small cove where the proposed dock will be located on three sides. The lower marsh is flooded twice each day during high water portions of the tidal cycle and low marsh soils are saturated at all times. (Exs. APP-5, INT-30; test. 9-24-18, W. Kenny, p. 206.)
34. Installation of piles to support the proposed dock will result in the disturbance of only twelve square feet of the low marsh. (Ex. APP-2.)
35. Pedestrians will access the dock by crossing an area of high marsh. The high marsh is vegetated by a mix of salt meadow hay, *Spartina patens*, and spike grass, *Distichlis spicata*. The high marsh is flooded by twenty five to forty percent of high tides and is underwater between three and fifteen percent of the time. The soil in the high marsh is relatively dry, when compared to the soil of the low marsh. (Test. 9-24-18, R. Warren, p. 79, W. Kenny, p. 206.)
36. Pedestrian activity in the high marsh for the purposes of accessing the dock will be limited because the tidal range in the area will prevent the dock from being used for boating at all times. (Test. 9-24-18, R. Warren, p. 79.)

37. The Intervening Party's expert identified two potential impacts from pedestrians accessing the proposed dock. He claimed that pedestrians crossing the high marsh as few as three times per week would cause unacceptable adverse impacts. He further indicated that he believed pedestrians using the access ladder would damage the more sensitive low marsh vegetation in the area immediately landward of the access ladder, between the ladder and MHW. (Ex. INT-30; test. 9-24-18, W. Kenny, pp. 220, 223.)
38. High marsh vegetation is resistant to trampling. In one example provided, a traveled way across a high marsh along the Thames River has been used for more than forty years, and received significantly more foot traffic than the amount that will be generated by the proposed dock, without significant damage to the marsh. In some cases, for example to avoid shading impacts caused by long fixed piers, docks starting in the lower marsh are a preferred by the Department to docks spanning a large expanse of tidal wetland vegetation. (Test. 9-24-18, R. Warren, p. 79, S. Jacobson, p. 103.)
39. An additional small group of low marsh vegetation – approximately two tidal wetlands grass plants - was observed immediately south of the proposed dock. These plants were likely relocated from the low marsh by a storm event or ice raft, and are at to low an elevation relative to the tidal cycle to survive. The marsh in this area is likely shrinking as marsh is being replaced by mudflats. The presence of one or two plants is not an indication that the marsh in this area is expanding. (Exs. INT-30, INT-31; test. 9-24-18, R. Warren, pp. 246-247, S. Jacobson, p. 243-243.)
40. The tidal wetlands are regularly stuck by small, wind-driven waves. These naturally created waves have no impact on the tidal wetlands. (Test 9-24-18, R. Warren, p. 78.)
41. The Intervening Party's expert also expressed concern that motorboats using the proposed dock would impact the tidal wetlands. His testimony focused on two potential impacts: that waves created by motorboats would damage the tidal wetlands; and, that motorboats, and particularly their props, would disturb sediment which would damage the tidal wetlands by causing erosion. (Ex. INT-30; test. 9-24-18, W. Kenny, p. 205, 227-229.)
42. The Intervening Party's expert could not identify a speed at which boats must operate to generate the type of wave that he claimed would damage the tidal wetlands. Other witnesses familiar with the operation of a motorboat in proximity to a tidal wetlands testified that there was sufficient room to maneuver a boat to and from the dock, with an ordinary level of seamanship. Boats traveling to and from the proposed floating dock or boatlift will travel at steerage speed, estimated at approximately one knot. At this speed, boats will generate virtually no wake. (Test. 9-24-18, M. Marache, pp. 12-13, 19, J. Bajek, pp. 33, 48, R. Warren, 75-78, W. Kenny, p. 227-229.)
43. The trim of a motorboats engine can be adjusted to prevent the prop from striking or upsetting the substrate. (Test., 9-24-18, M. Marache, p. 30.)



44. “Prop dredging,” or the resuspension of sediments from repeated use of a motorboat’s prop operating in proximity to or contacting the substrate, can cause minor localized sedimentation and, eventually, a scar along the substrate. However, these impacts, if they occur, would be to intertidal flats and not to tidal wetlands. (Test. 9-24-18, S. Jacobson, pp. 133-134.)

5

*Visual Impact*

45. There are no identified viewpoints or vistas of statewide significance on the Property or in the area of Greenwich Cove near the Property. (Test. 9-24-18, S. Jacobson, pp. 105-107.)
46. The proposed dock will be visible from the Intervening Party’s property, including from inside her residence and from her porch and deck. Several other docks are also visible from the Intervening Party’s property. (Ex. INT-29; test. 9-24-18, S. Cohen, pp. 173-177.)

6

*Expert testimony*

47. The experts retained by the Applicant – Mr. Bajek and Mr. Warren – and Susan Jacobson, testifying as an expert on behalf of Department staff, were each asked if the Application complies with each statutory and regulatory criteria and policy relevant to the proposed regulated activities. For each relevant criteria and policy, each witness testified that the Application complies. (Exs. APP-1, APP-2; test. 9-24-18, J. Bajek, S. Jacobson, pp. 113-119.)
48. The Intervening Party’s expert, Mr. Kenny, testified that the proposed dock did not comply with portions of the Tidal Wetlands Act, and identified several sections of the regulations implementing the Tidal Wetlands Act which he believed the Application did not satisfy. These were the only statutory or regulatory criteria he identified that he alleged that the Application does not satisfy. In each instance, the claimed non-compliance with statutory or regulatory criteria was a result of impacts caused by either pedestrian access to the proposed dock or motorboat activity in the vicinity of the proposed dock. Mr. Kenny also questioned whether the Application complied with the Coastal Management Act’s policy regarding impacts to vistas and viewpoints. (Ex. INT-30; test. 9-24-18, W. Kenny, pp. 214-218.)

### III Conclusions of Law

#### I *Burdens of Proof and Production*

There are competing burdens in this matter. Because a hearing was requested, the Applicants bear

the burden of going forward with evidence and the burden of persuasion with respect to each issue which the Commissioner is required by law to consider in deciding whether to grant or deny the application. Each factual issue in controversy shall be determined upon a preponderance of the evidence.

Regs., Conn. State Agencies § 22a-3a-6(f). The Applicants must demonstrate, by a preponderance of the evidence, that they have satisfied the statutory and regulatory criteria relevant to the requested permit.

The Intervening Party also bears a burden in this matter. As more fully discussed in part 4 below, the Intervening Party must produce sufficient evidence to demonstrate that the environmental impacts she alleges are both reasonably likely and will result in unreasonable harm. See, e.g., *City of Waterbury v. Town of Washington*, 260 Conn. 506, 551 (2002).

#### 2 *The Applicants' Littoral Rights*

As the owner of waterfront property, the Applicants have certain littoral rights. “The fundamental riparian right on which all others depend is the right of access.” *Town of Orange v. Resnick*, 94 Conn. 573, 582 (1920). The owner of the adjoining upland has certain exclusive yet qualified rights and privileges in the waters and submerged land adjoining his upland. He has the exclusive privilege of wharfing out and erecting piers over and upon such soil and of using it for any purpose which does not interfere with navigation. *Rochester v. Barney*, 117 Conn. 462,

(1933). The littoral property owner may also have the right to the exclusive occupation of the area between MHW and mean low water. See, *Town of Orange v. Resnick*, 94 Conn. 573 (1920)(Littoral owner had right to occupy littoral area for construction of a bathhouse; only right of public superior to littoral owner’s rights is the right to be free of interference to navigation.) The rights of the littoral property owner are ancient common law rights, and have been limited and qualified over time, particularly through the adoption of the Coastal Management Act. However, these rights have not been extinguished; instead, they are balanced against the right of the public to access the public trust, and against modern concerns regarding preservation of coastal resources and the importance of orderly development codified in the Coastal Management Act.

In many instances, the littoral owner’s right of access is used to construct a pier from the upland to mean low water, a ramp and a floating dock. While the proposed dock does not match that more typical design, there is no requirement of statute or common law requiring that it must. The Applicant has the right to use the littoral area to access the water, provided that, when balanced with the policies in the Coastal Management Act, the exercise of access is reasonable, and other relevant statutes and regulations are satisfied.

### 3

#### *The Role of the Harbor Management Commission and its Comments*

One issue that divides the parties – and which raises both substantive and procedural questions – is the public comment submitted by the Greenwich Harbor Management Commission (“HMC”) and the impact of the adoption of the ‘Greenwich Harbor Management Plan’ (“Plan”) on the Department’s review of the proposed dock. The HMC submitted a public comment on September 21, 2018, purporting to set out its “review to determine the consistency of the Applicants’ proposal with the Greenwich Harbor Management Plan,” and its “[f]indings and

[r]ecommendation,” which it claims are binding on the Department pursuant to General Statutes § 22a-113n(b).

The parties dedicate much of their briefing on this issue to a discussion of whether the Plan, adopted long after the Application was filed, but prior to the issuance of the NTD, is applicable to the Department’s review of the Application. If it is applicable, the Intervening Party argues, a referral to the HMC would be necessary and any recommendation made by the HMC – including any recommendation in the public comment submitted – would be binding on the Department. The Applicant and Department staff argue the because the Harbor Management Plan became effective after the Application was filed, a review under the plan is not required, and input from the Harbor Management Commission – either in the form of the public comment submitted or a new referral – is not necessary.

My review of issues related to the HMC and its public comment is guided by two statutes. First, General Statutes § 22a-113n(b) states, in relevant part, that

[U]pon adoption of the plan, any recommendation made pursuant to this section shall be binding on any official of the state, municipality or any other political subdivision when making regulatory decisions or undertaking or sponsoring development affecting the area within the commission’s jurisdiction, unless such official shows cause why a different action should be taken.

Next, the statutes concerning Structures, Dredging and Filling prohibit issuing a “permit to authorize any dock or other structure in an area that was designated as inappropriate or unsuitable for such dock . . . in a harbor management plan approved and adopted pursuant to section 22a-113m.” General Statutes § 22a-361(h).

In evaluating the HMC’s public comment, and the claims of each party, I determine that the HMC has not made any binding recommendation which prohibits me from recommending

authorization of the proposed regulated activities. I further conclude that there is no evidence in the record that the proposed dock is in an area designated in the Harbor Management Plan as inappropriate or unsuitable for such a dock. Because these conclusions resolve the issue, I need not determine if the Harbor Management Plan applies retroactively.

It is important to note that the HMC's public comment is just that – a public comment. The purpose of public comment is to guide my inquiry into this matter; public comments are not evidence in the record upon which I may base my recommendation. Regs., Conn. State Agencies § 22a-3a-6(t) . It is, at best, unclear how the contents of a public comment – intended only to guide my inquiry – could somehow require a certain outcome in this proceeding. In order to place evidence into the record – which forms the basis for my recommendation – status as an intervening party or intervenor is generally required. The HMC could have, but did not, seek status as an intervening party or intervenor in this matter. While I rely on the HMC's comment to identify issues of local concern, and while the issues identified in the comment that are relevant to this proceeding are addressed elsewhere in this decision, it is not at all clear that any type of “binding recommendation” can be made by submitting a public comment.<sup>3</sup>

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<sup>3</sup> It is also not clear that the plain meaning of General Statutes § 22a-113(n)(b) makes recommendations by harbor management commissions regarding individual docks “binding.” That section states, “b) [t]he plan may recommend: (1) Boundaries for development areas to be approved and established by the Commissioner of Energy and Environmental Protection in accordance with the provisions of section 22a-360; (2) designations for channels and boat basins for approval and adoption by the Commissioner of Energy and Environmental Protection in accordance with the provisions of section 22a-340; (3) lines designating the limits of areas for the location of vessels with persons living aboard to be approved and adopted by the director of health in accordance with section 19a-227; (4) pump-out facilities, including the designation of no discharge zones in accordance with Section 312 of the federal Clean Water Act; and (5) regulations for the operation of vessels on the harbor pursuant to the provisions of section 15-136. Upon adoption of the plan, *any recommendation made pursuant to this section* shall be binding on any official of the state, municipality or any other political subdivision when making regulatory decisions or undertaking or sponsoring development affecting the area within the commission's jurisdiction, unless such official shows cause why a different action should be taken.” (Emphasis added.) This section - § 22a-113n – does not discuss the recommendations of a HMC regarding individual dock applications. The only “recommendations” contemplated by this section are those contained in the harbor management plan. It is entirely plausible that the recommendations that are binding, then, are those contained in an adopted harbor management plan, and that a recommendation concerning an individual dock is simply advisory. I note that this approach would also be consistent with General Statutes § 22a-361(h), where the

Even assuming, *arguendo*, that any recommendation contained in the public comment were somehow binding, the HMC has made no recommendation regarding the disposition of the Application. Under the heading “[f]indings and [r]ecommendation” the HMC writes,

[i]nsofar as the Applicants’ proposed water-access structure would be located in its entirety waterward of the MHW line, the Greenwich Harbor Management Commission is concerned with the precedent-setting implications and potential environmental impacts of this and similar proposals in the Greenwich Harbors Area, including impacts on tidal wetlands. In addition, the HMC is concerned that the proposed structure apparently has been designed to avoid the requirements of the Town of Greenwich Building Zone Regulations which preclude docks absent a principal structure on the affected property. The HMC finds that it is not able to make a favorable recommendation concerning the proposed project absent an understanding of the DEEP LWRD’s policy concerning state review and approval of proposed water-access structures located entirely in the Public Trust Area waterward of the MHW line and affecting tidal wetlands and other coastal resources. The HMC therefore formally recommends that the DEEP LWRD provide such a policy statement to be considered in the ongoing public hearing process and any subsequent appeals. In addition, the HMC is concerned that the policies of the Harbor Management Plan were not considered by the DEEP LWRD in the application review process, which it is obliged to do, and formally recommends that such consideration now be given in the ongoing public hearing process and any subsequent appeals.

While the HMC may “find that it is not able to make a favorable recommendation concerning” the proposed regulated activities, nowhere in its comments does it make a recommendation that the Application be denied. Instead of making any concrete recommendation about the proposed regulated activities, the HMC lists a number of “concerns.” The only “formal” recommendation is a request that the Department provide a policy statement for consideration. There is no statutory or regulatory criteria requiring such a policy statement be produced before a permit for the proposed regulated activity can be issued.

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contents of the plan itself bind the Department’s decision making on individual applications. However, my recommendation does not turn on resolving this question, and it is therefore unnecessary to do so at this time.

Having determined that I am not bound by any recommendation made by the HMC, I next turn to the requirement in § 22a-361(h) – whether the proposed dock is in an area “that was designated as inappropriate or unsuitable for such dock . . . in a harbor management plan approved and adopted pursuant to section 22a-113m.” I understand that there is significant disagreement about whether the policies and provisions of the Plan are applicable to the proposed regulated activities. However, even if I were to determine the Plan is applicable, the prohibition found in § 22a-361(h) would not operate to prevent issuance of the permit sought by the Applicants. There is no indication in statute that the determination required by § 22a-361(h) must be made by the HMC; the statute prohibits the Commissioner from issuing a permit under certain circumstances so the Commissioner, in the first instance, must make a determination about whether a dock is in an area designated as inappropriate or unsuitable in an approved harbor management plan.<sup>4</sup>

Neither the HMC, in its public comment<sup>5</sup>, nor the Intervening Party in her post-hearing filing, have identified any portion of the Plan that indicates that the location of the proposed dock is in an area identified as inappropriate or unsuitable. My own review of the Plan also revealed no restriction. For example, the Plan contains a map, identified as “Map 6-7” and entitled “Greenwich Cove Recommendations” which depicts no recommendation in the area of the proposed dock, and

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<sup>4</sup> This interpretation of General Statutes § 22a-361(h) is consistent with the interpretation of § 22a-133n(b) as discussed in footnote 1 above, that it is certain types of recommendations in an approved harbor management plan that bind the Commissioner.

<sup>5</sup> While the HMC’s public comment is not evidence in the record, as discussed above, I can rely on it to guide my inquiry into this matter. It is reasonable to assume that, if the HMC believed that the proposed dock was in an area it had identified as inappropriate or unsuitable, it would have included a statement to that effect in its comment, for the purpose of guiding my inquiry into § 22a-361(h). In making this assumption, I do not rely on the public comment as proof of any particular fact, but instead as a collective statement of the HMC, a group with extensive knowledge of, and a vested interest in, the Plan.

certainly not any prohibition on docks. Even if the proposed dock is subject to the Plan, the prohibition in § 22a-361(h) does not apply to the proposed regulated activities.

There is, therefore, no need for me to definitively resolve the question of whether the Plan applies retroactively and I decline to do so.<sup>6</sup> While I appreciate the comments provided by the HMC and have used them to guide my inquiry into relevant issues, I find no reason why anything contained therein prohibits me from recommending the Commissioner issue the requested permit. I further conclude that nothing in the Plan prevents such a recommendation, and that no additional review or comment by the HMC is necessary before making this recommendation or issuing a permit.

4

*The Intervening Party's Allegations*

I now turn to the substance of the Intervening Party's allegations. I take up these allegations first because there is some overlap between the allegations and the statutory and regulatory criteria that the Applicants must demonstrate that they have satisfied and it is more efficient to discuss those areas of overlap in the context of the Intervening Party's claims first.

In two rulings prior to the commencement of the hearing in this matter, the Intervening Party was granted standing to pursue three allegations of environmental harm, made pursuant to General Statutes § 22a-19. Those three claims are: 1) that the proposed dock structure will degrade visual quality through a significant alteration of the natural features of the tidal wetland in which it is proposed to be located; 2) that the tidal wetlands will be unreasonably impacted by pedestrian

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<sup>6</sup> I also see no reason that the Application should be referred to the HMC for formal review prior to issuance of a permit. As noted by Department staff, such a referral is done as a courtesy, and is not required by statute. Furthermore, it is clear that the HMC has reviewed the Application and provided comment. Although those comments are not binding, I have relied upon them to guide my review of the relevant issues identified and discussed elsewhere in this decision.



access to the proposed dock from land; and, 3) that the tidal wetlands will be unreasonably impacted by motorboat access to the proposed dock. These are the only issues the Intervening Party was granted standing to pursue.

In analyzing the Intervening Party's claims, I note that her post hearing-filing contains only one citation to § 22a-19, during its discussion of visual impacts. Her reply briefs contain no citation to § 22a-19. Nowhere does the Intervening Party marshal the facts in the record and compare them to the standards set out in § 22a-19, namely that alleged impacts be both "reasonably likely" and "unreasonable," or to the body of case law interpreting those standards. While the Intervening Party's post-hearing filing and reply brief contain sufficient discussion of her claims that those claims should not be deemed abandoned<sup>7</sup>, the task of evaluating the Intervening Party's claims based on the evidence in the record is certainly made more difficult by the Intervening Party's failure to thoroughly analyze her own claims using the appropriate legal standards.

*a*

*The Intervening Party's Burden*

A person granted standing as an Intervening Party pursuant to General Statutes § 22a-19 bears a specific burden relative to the allegations of environmental harm asserted to gain party status. An intervening party bears a burden of production with regards to its allegations; that person "must first come forward and show that the [proposed regulated activities are] reasonably likely to unreasonably pollute, impair, or destroy a natural resource." *Manchester Envtl. Coal. v. Stockton*, 184 Conn. 51, 58 (1981), overturned on other grounds by *City of Waterbury v. Town of Washington*, 260 Conn. 506 (2002). A party intervening pursuant to § 22a-19 "has the burden of

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<sup>7</sup> Claims not briefed are typically deemed abandoned. See *Commission on Human Rights & Opportunities v. Truelove v. Maclean, Inc.*, 238 Conn. 337, 344 n. 11 (1996) ("Where an issue is merely mentioned, but not briefed beyond a bare assertion of the claim, it is deemed to have been waived").

proving not just the fact that pollution has, or is about to occur. He must prove that the pollution complained of is unreasonable and unavoidable.” (Internal citations omitted.) *City of Waterbury v. Town of Washington*, 260 Conn. 506, 551 (2002).

To prevail, an intervening party must satisfy this burden by producing evidence that the pollution, impairment or destruction of the public trust it complains of is *reasonably likely* to occur and that if the pollution, impairment or destruction does occur, it will be “*unreasonable*.” If, and only if, an intervening party is able to make such a showing, the burden shifts to the entity proposing the regulated activities to demonstrate that the activities should be permitted anyways because there are no feasible and prudent alternatives to the proposed activities. *Id.* at 550.

It follows then, that an intervening party bears the burden of producing some evidence that the impacts alleged are indeed reasonably likely to occur. Courts reviewing decisions of administrative agencies look to see if an agency’s decision is supported by substantial evidence. Mere speculation, or generalized concerns, do not qualify as substantial evidence. See, e.g., *Estate of Casimir Machowski v. Inland Wetlands Commission*, 137 Conn. App. 830, 836 (2012). To satisfy this part of their burden, an intervening party must present more than speculation that an impact will occur.

Our courts have carefully considered what constitutes an impact that is “unreasonable.” “It is clear that § 22a–19, consistent with the rest of the act, was intended, not as a mere impediment to developers, but rather as a means to protect the environment from unreasonable adverse impact.” *Paige v. Town Plan & Zoning Commission*, 235 Conn. 448, 462, (1995). “The legislative history shows that the word ‘unreasonably’ was added as a means of preventing lawsuits directed solely for harassment purposes.” *Manchester Env’tl. Coal.*, *supra*, 184 Conn. at 58 (1981). Impacts which

are *de minimus* are not unreasonable. *City of Waterbury*, supra, 260 Conn. at 549 (2001). Nor are impacts authorized by a relevant statutory and regulatory scheme. *See, Id.* at 557. (“When there is an environmental legislative and regulatory scheme in place that specifically governs the conduct that the plaintiff claims constitutes an unreasonable impairment under CEPA, whether the conduct is unreasonable under CEPA will depend on whether it complies with that scheme.”) Not all activity that results in pollution, impairment or destruction, therefore is unreasonable. *See, Manchester Environmental Coalition v. Stockton*, supra, 184 Conn. at 59-60 (1981)(“The [administrative agency] may, however, find that the proposed activity pollutes the environment, but that this pollution is not unreasonable.”) “The question of reasonableness is one of fact” to be determined by the administrative agency tasked with reviewing the proposed regulated activities. *Mystic Marinelife Aquarium, Inc. v. Gill*, 175 Conn. 483, 502-503 (1978).

*b*  
*Visual Impacts*

Among the allegations the Intervening Party was granted standing to pursue is her claim that “the proposed dock structure will degrade visual quality through a significant alteration of the natural features of the tidal wetland in which it is proposed to be located.” General Statute § 22a-19. Our courts have determined that visual impacts are an issue that can be raised by a party intervening in a proceeding using the standing conferred by General Statutes § 22a-19. *See Lawrence v. Dep't of Energy & Envtl. Prot.*, 2016 WL 5339427, at \*8 (Conn. Super. Ct. July 18, 2016), *aff'd*, 178 Conn. App. 615, 176 A.3d 608 (2017)(“... the court finds that [a party participating pursuant to §22a-19] is aggrieved and may pursue his statutory CEPA claim of visual degradation . . . .”) Because the Intervening Party was granted standing to make this claim pursuant to General Statutes § 22a-19, however, it is her burden to make a *prima facie* showing that the proposed conduct is reasonably likely to result in unreasonable pollution, impairment or

destruction of the public trust in the air, water or other natural resources of the state. The Intervening Party has failed to satisfy her burden of demonstrating that the proposed dock will have an *unreasonable* visual impact.<sup>8</sup>

The visual impact of the proposed dock is regulated by General Statutes § 22a-93(15)(F), a provision of the Coastal Management Act. See, e.g., *Lawrence*, supra, 178 Conn.App. 622. “[W]hen there is an environmental legislative and regulatory scheme in place that specifically governs the conduct that the plaintiff claims constitutes an unreasonable impairment under CEPA, whether the conduct is unreasonable under CEPA will depend on whether it complies with that scheme.” *City of Waterbury v. Town of Washington*, 260 Conn. 506, 557 (2002). General Statutes § 22a-93(15)(F) defines an adverse impact on coastal resources to include “degrading visual quality through significant alteration of the natural features of vistas and view points.” There is no evidence in the record that the view in the area of the proposed structure is of any statewide significance. See *Coen v. Ledyard Zoning Com’n.*, 2011 WL 5307400 (2011)(Distinction between a view that is “pleasant” and one that is of “statewide significance” drawn when evaluating visual impacts under the Coastal Management Act.)<sup>9</sup> In fact, the evidence in the record reveals that the proposed dock is in a developed area of Greenwich Cove. The shoreline of the cove has been heavily developed with homes. Aerial photographs of the site show ten or more docks in the

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<sup>8</sup> If the structure is constructed it will have some visual impact, satisfying the requirement of § 22a-19 that an intervening party demonstrate that a visual impact is “reasonably likely.” I must, therefore, only determine whether that impact will be “unreasonable.”

<sup>9</sup> In her reply brief, the Intervening Party misstates the holding of the *Coen* case, as standing for the proposition that “views from Greenwich Cove, including from the waters and shorefront thereof, should be no less protected than views from the ‘streets and ways’ referred to in the *Cohen* [*sic*] case . . .” In *Coen*, the Superior Court found that just because a proposed three family home blocked a portion of the view of Smith Pond, considered a coastal resource, from a street or way did not justify denial of a permit. Similarly, that the proposed dock will occupy the view of a small portion of the tidal wetlands does not justify denial of the Application. Furthermore, in *Coen*, the Superior Court clarified that the Coastal Management Act is concerned with views of statewide significance, not the view from a private property.

immediate vicinity of the proposed dock, including the Intervening Party's own dock. The proposed dock will not be out of context on this heavily developed shoreline.

While none of the other docks in the immediate vicinity include a boatlift, the boatlift in and of itself does not make the visual impact unreasonable. The lift – required by the Department to prevent adverse impacts from a boat resting on the substrate at times of low water – is in character with a heavily developed residential shoreline with a large number of residential docks. There is little visual difference between a boat resting on the substrate at times of mean low water – as many boats in this area must – and one suspended on a boatlift, but there is a significant difference in impacts to coastal resources.

The testimony of one abutter, that one dock is particularly offensive to her because it is in view from her kitchen, porch and deck, is simply not sufficient to establish that the visual impacts of the proposed structure unreasonably pollute, impair or destroy the natural features of vistas or viewpoints, in violation of the Coastal Management Act. Nor is there any other evidence in the record which indicates that the proposed dock's visual impact will be unreasonable for some other reason. The Intervening Party has failed to satisfy its burden on this issue.

*c*  
*Impacts from Pedestrian Access*

The Intervening Party's claims that pedestrians accessing the proposed dock will unreasonably impact the tidal wetlands must be viewed in the context of the Intervening Party's multifaceted opposition to the proposed dock. If any dock is to be permitted by the Department, the Intervening Party intimates, it should be a dock which extends from the upland and spans MHW. The dock design proposed by the Applicants – beginning with an access ladder six inches below MHW – is an "unusual arrangement" – which should not be permitted. The Intervening

Party is also quick to point out, however, that a dock extending from the upland has not been, and perhaps cannot be, approved by the Town because it violates provisions of the local zoning ordinance preventing an accessory structure on a lot without a primary use. Thus, the Applicant is placed in a Catch 22 - the only dock that should be permitted by the Department is one that cannot be permitted by the Town - and the Applicants would be denied a dock.

However, for the Intervening Party to satisfy its burden, it is not enough to demonstrate that the proposed dock is unusual in its design. Nor is it sufficient to claim, as several public commenters including the HMC did, that the design of the dock is “precedent setting.” That the proposed dock does not match some unwritten or uncodified standard is not, in and of itself, reason for denial. Instead, it is the Intervening Party’s burden to identify particular impacts caused by the proposed dock that are both reasonably likely to occur and will cause unreasonable pollution, impairment or destruction. Of the three allegations of environmental harm the Intervening Party has been granted standing to pursue, the allegation concerning impacts from pedestrian access to the proposed structure bear directly on this point.

Because the proposed structure is accessed using a ladder six inches waterward of MHW, it is necessary for pedestrians accessing the structure to cross an area of upper marsh – vegetated by *spartina patens* – to reach the ladder. The ladder and much of the rest of the proposed dock will be located in, or elevated over, an area of low marsh beginning at or just below MHW vegetated by *spartina alterniflora*. The evidence presented by the Intervening Party identifies two distinct types of pedestrian impacts: trampling of the upper marsh from pedestrians crossing it to reach the proposed dock; and, trampling of the area of low marsh in the immediate vicinity of the ladder, an area of approximately several square feet.

On this issue, the parties introduced competing expert testimony. “An administrative agency is not required to believe any witness, even an expert.” *Feinson v. Conservation Commission*, 180 Conn. 421, 427-428 (1980). “The determination of the credibility of expert witnesses and the weight to be accorded their testimony is within the province of the trier of facts, who is privileged to adopt whatever testimony he reasonably believes to be credible.” (Internal quotation marks omitted, internal citations omitted.) *Windels v. Environmental Protection Commission*, 284 Conn. 268, 291 (2007).

Taking first the issue of pedestrian impacts to the upper marsh, Intervening Party’s expert testified that as few as three trips per week across the upper marsh could cause damage to the *spartina patens* in that area, although he also testified that trampling impacts to the upper marsh are not as much of an issue because it is dry much of the time. Other expert testimony undermines this assertion. Mr. Warren, the Applicants’ expert, agreed that the soils in the high marsh were relatively dry, and testified that the plants in the upper marsh are relatively resistant to trampling. When taking into account the likely amount of foot traffic, based on the amount of time the tidal cycle would provide sufficient water depth to use the dock, this witness concluded that there would not be significant adverse impacts to the upper marsh vegetation. He provided an example of a traveled way through a similar upper marsh environment that has endured much more foot traffic than is expected to be generated by the proposed dock over a period of more than forty years that has not had significant impacts on the wetlands. Department staff’s expert characterized the possible impacts from pedestrians crossing the upper marsh as “minor – really minimal impact.”

I find the testimony of the witnesses offered by the Applicants and Department staff credible and persuasive. I further conclude the evidence offered by the Intervening Party does not establish that impacts from foot traffic to the upper marsh vegetation are reasonably likely to result

in the unreasonable destruction of that coastal resource. The evidence in the record demonstrates that the upper marsh is resilient to trampling and that any impacts to the upper marsh from pedestrian activity will be *de minimums*, not unreasonable. Further, these impacts are identical to the impacts that would be caused by the property owner crossing the upper marsh to access the water – to launch paddle craft, to fish, to enjoy the view – even if the proposed dock were not constructed. To conclude that this type of impact is “unreasonable” would essentially prohibit any activity at all in the upper marsh, related to a structure or otherwise. This is simply not a plausible reading of General Statutes § 22a-19 or a reasonable interpretation of the record in this matter.

The second pedestrian impact identified by the Intervening Party’s expert is impacts to the low marsh in the area in immediate proximity to the access ladder. This area, he asserts, will be the subject of more concentrated foot traffic and increased activity, as people use the ladder to access the pier. There is some discussion in the record regarding the size of this area. It may be as small as 1.25 square feet, or as large as perhaps three or four square feet.<sup>10</sup> In any event, the area that will be subject to these increased impacts is small, and the record indicates that any impacts will be localized. While I accept this testimony that the soil in the low marsh is saturated, and its vegetation is more susceptible to trampling, I disagree with the conclusion that pedestrian access to the proposed dock will have an unacceptable impact on the low marsh.

I do not find credible the assertion that everyone using the dock will congregate in this very small area of low marsh vegetation. Common sense dictates that pedestrians seeking to reach the

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<sup>10</sup> The ladder is thirty inches wide. Using the ladder as one bound and MHW six inches way, as required by the draft permit, as the other bound, would form an area of 1.25 square feet. In his testimony at page 206, Mr. Kenny indicates he believes that the ladder would not necessarily be six inches from MHW along its entire length and that the true area of disturbance may be “on one side it’s six feet down to half a foot, so three or four feet in the middle that you’re crossing the low marsh.”



dock will remain on the drier soil of the upper marsh and simply step over the six inches of saturated lower marsh soil onto a ladder. For this reason, I do not believe that the impact identified by the Intervening Party's witness is reasonably likely.

Further, the Intervening Party has failed to satisfy its burden by demonstrating that even the complete destruction of a very small area of the lower marsh would be unreasonable. The Tidal Wetlands Act regulates activity within tidal wetlands like the low marsh. “[W]hen there is an environmental legislative and regulatory scheme in place that specifically governs the conduct that the plaintiff claims constitutes an unreasonable impairment under CEPA, whether the conduct is unreasonable under CEPA will depend on whether it complies with that scheme.” *City of Waterbury v. Town of Washington*, supra, 260 Conn. 557 (2002). The Tidal Wetlands Act and its implementing regulations do not require that there be no adverse impact to tidal wetlands at all, just that any adverse impact be minimized. See, e.g., Regs., Conn. State Agencies § 22a-30-10(1)(a). The Tidal Wetlands Act requires that I consider, in relevant part, “public health and welfare, marine fisheries, shellfisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in sections 22a-28 to 22a-35 inclusive.” General Statutes § 22a-33. The impacts identified are so minor as to have no effect on the public health or welfare, marine or shellfisheries, wildlife or property. The ultimate goal of the policies set out in the act is to “preserve wetlands and to prevent the despoliation and destruction thereof.” § 22a-28. The type of localized impact caused by pedestrians is not the type of impact that will despoil or destroy entire wetlands systems. It is not the law that the proposed dock must have no impact on the low marsh, or the environment writ large; the law concerns itself with preventing *unreasonable* impacts. The Intervening Party has failed to satisfy her burden of

demonstrating that pedestrian impacts to the low marsh, if they do occur – and I am far from certain that they will – will be unreasonable.

*d*  
*Impacts From Motorboat Access*

The final issue the Intervening Party was granted standing to pursue is the potential for impacts to the tidal wetlands caused by a motorboat using the proposed dock and boat lift.

Because of its location in a small cove, surrounded on three sides by tidal wetlands, the Intervening Party claims that impacts to tidal wetlands from the operation of a motorboat are likely.<sup>11</sup> In her post-hearing filing, the Intervening Party identifies “prop dredging,” or the resuspension of sediment from the substrate as a result of the prop of a motorboat striking bottom, as a primary concern. The record also indicates that wave action caused by the operation of a motorboat to and from the dock is of significant concern to the Intervening Party’s expert, Mr. Kenny.

On each of these claims, as on each of her other allegations, the Intervening Party bears the burden of demonstrating that unreasonable harm is reasonably likely to occur. The evidence in the record does not establish that impacts to the tidal wetlands from prop dredging or from wave action are reasonably likely and, therefore, the Intervening Party has failed to satisfy her burden.

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<sup>11</sup> Mr. Kenny, the Intervening Party’s expert, actually claims that the proposed dock is surrounded on four sides by tidal wetlands. This assertion is based on the presence of a small number of tidal wetlands grass plants – most likely two individual plants. The presence of these isolated plants is most likely the result of some type of storm event that picked up and moved the two plants from another area of the tidal wetlands. These plants are unlikely to survive in this location, whether the proposed dock is constructed or not. The evidence in the record indicates that the plants are at too low an elevation, an area too inundated by the tides, to survive. Other evidence in the record indicates that these plants are not likely evidence that the tidal wetland in the area is expanding, because tidal wetlands in this area have been eroding for some time. Even if there were clear evidence in the record that these two isolated, individual tidal wetlands grass plants could survive in the location where they have been identified by Mr. Kenny – which there it is not - it is not at all clear that the potential destruction of two individual tidal wetlands grass plants through the operation of motorboats using the proposed dock would constitute an unreasonable impact on the tidal wetlands at the site of the proposed dock.

The evidence in the record demonstrates that during significant portions of the tidal cycle, the proposed dock will not be usable due to the tidal range and the presence of significant intertidal flats. During other portions of the tidal cycle, there will be sufficient water depth to use the proposed dock without impact. A boater is able to avoid prop dredging by adjusting the trim on the boat's engines, essentially raising them to prevent contact with substrate. While the Intervening Party's expert expressed concern about the effects of prop dredging, he presented no evidence on how likely it was to occur. He also did not testify that only one instance of prop dredging would cause an unreasonable impact; in fact there is no evidence in the record about the frequency at which prop dredging would need to occur for the impact to be unreasonable. In fact, Department staff testified that prop dredging would have no impact on the tidal wetlands at all. Other witnesses, Mr. Bajek, Mr. Warren and Mr. Marache, all testified about their experience handling motorboats in this area or other similar areas. All believed that there was sufficient room to maneuver, and sufficient water depth for a portion of the tidal cycle, for a motorboat to use the proposed dock. The evidence in the record, then, demonstrates that it is possible for a motorboat to use the proposed dock without prop dredging. In the absence of any other clear, credible statement about with what frequency prop dredging is to likely occur, and how that frequency of occurrence will cause an unreasonable impact, the Intervening Party has not satisfied her burden on this issue.

The evidence concerning wave action produced by a boat using the dock is similarly speculative. The Intervening Party's expert testified that wave action from a boat would unreasonably harm the tidal wetlands. However, when asked how fast a motorboat must be traveling to produce the type of wave he was concerned about, he testified that he "couldn't tell you exactly." This witness did admit that a boat "could" operate in a way that did not produce a

wake that would damage the tidal wetlands. This is a common sense conclusion because, as other experts point out, the tidal wetlands are routinely struck by small, wind generated waves. There is, then, some threshold that the wave produced by a motorboat must exceed for the wave energy produced to damage the wetland. Other evidence in the record identifies the entire Greenwich Cove as a no wake zone, and indicates that any motorboat approaching the dock will be travelling at steerage speed – identified by multiple witnesses as approximately one knot. There is no evidence in the record that a motorboat traveling at that very slow speed will produce a wave any larger than the wind generated waves which routinely strike the tidal wetlands, never mind a wave capable of damaging the tidal wetlands. Because there is no evidence regarding the frequency with which motorboats approaching or leaving the proposed dock will generate a wave capable of damaging the tidal wetlands, the Intervening Party has failed to satisfy her burden on this issue.

5

*Coastal Management Act, Tidal Wetlands Act,  
Statutes Concerning Structures, Dredging and Fill*

The activity proposed in the Application, as conditioned by the proposed Draft Permit, is regulated by the applicable portions of the Coastal Management Act (General Statutes §§ 22a-90 through 22a-112), the statutes concerning structures, dredging and fill (General Statutes §§ 22a-359 through 22a-363), and the Tidal Wetlands Act and associated regulations (General Statutes § 22a-32 and Regs., Conn. State Agencies §§ 22a-30-1 through 22a-30-17). The Applicant has the burden of proving it has satisfied these statutory and regulatory criteria. The Structures Dredging and Fill Act and the Coastal Management Act require a balancing of rights and requires applicants to minimize impacts to coastal resources. The proposed activity, the construction of the proposed structure, will provide the Applicants with reasonable access to the water while balancing intrusions into the public trust and limiting environmental impacts. The Application and evidence

presented during the hearing support the assertion that the Applicants' exercise of their littoral right to wharf out can be achieved while minimizing impacts to coastal resources, wildlife, navigation, and costal sedimentation and erosion patterns.

The statutes and regulations concerning tidal wetlands require me to "consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth [in this act.]" General Statutes § 22a-30(c). The Application and evidence placed in the evidentiary record indicate that the proposed structure will have no impact on the health or welfare of the public or to any fisheries, wildlife or sediments.

The record supports the factual findings and conclusions based on those findings that potential environmental impacts from the proposed project have been sufficiently minimized and that the project is consistent with applicable policies regarding coastal resources management, satisfying the Applicants burden in this matter.

*a*  
*Uncontradicted Expert Testimony*

When considering technically complex issues, such as impacts to tidal wetlands or coastal resources, administrative agencies typically rely on experts, as I do here. See *River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 78 (2004) (determination of impacts to an inland wetland is a technically complex matter for which inland wetlands commissions typically rely on evidence provided by experts). "When the application of agency regulations requires a technical, case-by-case review, that is precisely the type of situation that calls for agency expertise." *MacDermid v. Department of Environmental Protection*, 257 Conn. 128, 139 (2001). Mr. Bajec and Mr. Warren, testifying as experts on behalf of the Applicant, and Ms. Jacobson, an expert from Department staff, were all asked whether, in their expert opinion,

the proposed structure complied with each statutory or regulatory criteria or policy identified above. This was the only testimony regarding many of the criteria and policies of the Coastal Management Act, Tidal Wetlands Act, the statutes concerning structures, dredging and filling, and relevant implementing regulations.<sup>12</sup> Each responded that the proposed structure complied. “An administrative agency is not required to believe any of the witnesses, including expert witnesses... but it must not disregard the only expert evidence available on the issue . . . .” *Bain v. Inland Wetlands Commission*, 78 Conn. App. 808, 817 (2003). “The trier of fact is not required to believe un rebutted expert testimony, but may believe all, part or none of such un rebutted expert evidence.” *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 405 (1998). These expert opinions were credible and provide a substantial basis in fact upon which to base my recommendation. The analysis that follows is intended to amplify the general conclusions reached by these experts and provide context for my recommendation that the proposed Draft Permit should be issued.

*b*  
*Tidal Wetlands Act and Regulations*

*i*  
*Impacts to Tidal Wetlands*

The placement of a pile-supported structure in this area of tidal wetlands is consistent with the requirement that the proposed activity will not result in a significant adverse impact on the circulation and quality of coastal or tidal waters. Regs., Conn. State Agencies § 22a-30(10)(f).

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<sup>12</sup> Mr. Kenny did testify that the proposed dock did not comply with certain provisions of General Statutes § 22a-28, the Tidal Wetlands Act, and of certain sections of the regulations implementing that act, specifically Regs., Conn. State Agencies §§ 22a-30-10(b)(1), 22a-30-10(d)(1), 22a-30-10(d)(4)(B), 22a-30-10(e)(1), 22a-30-10(e)(3), 22a-30-11(b)(3)(B). The cause of each of these claimed inconsistencies is the result of either impacts caused by pedestrians accessing the proposed dock or motorboat activity associated with the proposed dock. Each of these claims is analyzed in detail and that analysis is not repeated here. The preponderance of the evidence shows that each of the impacts identified is not likely to occur, not likely to be more than *de minimus*, or is consistent with the relevant statutory and regulatory scheme.

The tidal wetlands regulations state a preference for elevated, pile-supported structures as a means to eliminate or minimize obstructions to the flow and circulation of water in the tidal wetlands system. Regs., Conn. State Agencies §§ 22a-30-10(b)(3) and 22a-30-10(f)(3). The impacts to the flow and circulation of water in the tidal wetlands system from the proposed pilings will be *de minimus*. The installation of a pile-supported structure rather than a solid-fill structure will meet the Applicants' objective to access the waters of Greenwich Cover from their property and the Department's objective of attenuating impacts to tidal the tidal wetlands system by ensuring the continued free flow of water and sediments in the existing system and spanning the emergent vegetation.

While the proposed pier does not span the entire tidal wetland, it does span the vegetation most sensitive to trampling, minimizing the potential impact from access to the proposed structure. The proposed pier is at a sufficient height, and uses open-grate decking and cable railings – rather than more traditional wooden railings – in an attempt to minimize shading impacts to the low marsh vegetation it spans.

In its post-hearing filing, Department staff further notes that because of the shallow depth of the cove and the gentle slope of the shoreline in the area of the proposed dock, any wave energy generated by motorboats using the proposed dock is likely to dissipate without damaging the tidal wetlands.

While installation of piles will result in the temporary suspension of sediment, this suspended sediment will quickly dissipate and will not adversely impact the tidal wetlands. For these reasons, I find that the proposed regulated activity is consistent with the Tidal Wetlands Act.

*ii*  
*Feasible and Prudent Alternatives*

The regulations implementing the Tidal Wetlands Act require, in relevant part, that

[i]n order to make a determination that a proposed activity will preserve the wetlands of the state and not lead to their despoliation and destruction the commissioner shall, as applicable, find that: (1) There is no alternative for accomplishing the applicant's objectives which is technically feasible and would further minimize adverse impacts . . . .

Regs., Conn. State Agencies § 22a-30-10(b). This requirement applies only to tidal wetlands impacts. It is distinct from the requirement in General Statutes § 22a-19 that I consider feasible and prudent alternatives to any proposed activity that is shown to be reasonably likely to unreasonably pollute.

The record in this matter indicates that Department staff examined many alternative dock designs, each of which was determined to have greater impact to the tidal wetlands than the proposed dock. I rely on Department staff's expertise in evaluating the impacts from various alternative dock configurations to establish that feasible alternatives have been considered, and that there is no feasible alternative which further minimizes adverse impacts, as required by § 22a-30-10(b).

As discussed above, the Intervening Party has identified two potential sources of tidal wetlands impacts: impacts from pedestrians accessing the dock and impacts from motorboats using the proposed dock. In her post hearing filing, the Intervening Party puts forth what she believes are additional feasible alternatives that address the impacts identified.<sup>13</sup>

The Intervening Party argues that a dock extending from the upland is a feasible alternative to the proposed dock, which would minimize impacts to the tidal wetlands from trampling. I reject

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<sup>13</sup> The Intervening Party has standing to raise its concerns regarding tidal wetlands impacts only in the context of General Statutes § 22a-19. Because non-compliance with a statutory or regulatory standard may support a claim of unreasonable pollution, I conclude that it is necessary to evaluate the suggested alternatives for compliance with the requirements of the Tidal Wetlands Act. I reach this conclusion even though the Intervening Party has failed to establish that unreasonable pollution, impairment or destruction is reasonably likely, which would require me to analyze feasible and prudent alternatives pursuant to General Statutes § 22a-19(b).



this alternative, as it would have other impacts, including the driving of piles into the tidal wetlands and shading of the upper marsh. Because I rely on the testimony of experts offered by the Applicants and Department staff that trampling will have only very minor impacts on the upper marsh, I conclude that those other impacts caused by additional piles and shading from a longer pier are comparable to any potential impact from pedestrians, so that alternative does not “further minimize adverse impacts.”<sup>14</sup>

Next, the Intervening Party proposes that impacts from motorboats using the proposed dock would be minimized if the proposed structure were not constructed and the Applicants instead used a community dock located nearby. This is not an alternative to the proposed dock. The Department has previously stated that

[a] conclusion that use of an existing facility is an equivalent alternative to a dock structure proposed for a residential property would equate to a failure to recognize a legitimate property interest. Although the record reveals that the Applicant does have access to these share facilities, the existence of such facilities does not, by itself, abrogate the right of the Applicant to access the water from its upland. . . . To hold that [a] statute requires denial [of a residential dock] where an existing off-site facility is present would . . . be inconsistent with the Coastal Management Act’s state goal of ‘ensur[ing] that the development, preservation or use of the land and water resources of the coastal area proceeds *in a manner consistent with the rights of private property owners.*’ . . . Accordingly, there is no legal or factual basis for DEEP to require that [an applicant] exclusively rely on [a community dock], or any other off-site alternative, for access to tidal waters.

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<sup>14</sup> The Intervening Party also claims that the Applicant could redesign the dock in the manner recommended by Brian Thompson, director of the Land and Water Resources Division, in a letter dated December 23, 2014. In that letter, Mr. Thompson suggested a dock could be built “at mean high water.” The Intervening Party argues that in this letter, Mr. Thompson was suggesting a dock which began from the upland, the Application for which contained evidence that municipal officials had certified there were no issues with this configuration. This reading of Mr. Thompson’s letter is strained, and the context of his letter suggests that he was recommending a dock such as the proposed dock, which begins at, or just barely waterward, of MHW. Regardless of how Mr. Thompson’s letter is read, it is simply advisory. Nevertheless, I interpret the Intervening Party’s unsound reliance on Mr. Thompson’s letter to be a suggestion that a pier extending from the upland should be considered as a feasible alternative to the proposed dock, and evaluate such an alternative.

(Internal citations omitted. Emphasis original). In the matter of *16 Highgate Road, LLC*, Final Decision, pp. 5-6, June 23, 2015.

Finally, the Intervening Party argues that limiting use of the proposed dock to paddle craft is a feasible alternative.<sup>15</sup> There is, however, no evidence in the record that establishes that the use of motorized vessels will have an adverse impact on the *tidal wetlands*. As discussed above, in the section evaluating the Intervening Party's allegations of unreasonable pollution, the testimony in the record that prop dredging will impact tidal wetlands is speculative, because it fails to establish a link to unreasonable adverse impacts to the tidal wetlands, and fails to identify the frequency at which prop dredging may occur and that prop dredging at that frequency will cause the impacts alleged. I rely, instead, on the testimony of Department staff that prop dredging, were it to occur, and would impact intertidal flats but not tidal wetlands. I therefore reject this alternative because the evidence in the record does not clearly establish any impact to the tidal wetlands that this alternative will further minimize.

### C

#### *Coastal Management Act and Structures, Dredging and Fill Statutes*

The Structures, Dredging and Fill statutes and the Connecticut Coastal Management Act contain myriad overlapping statutory requirements and policies to be considered when permitting a coastal structure. As the uncontradicted evidence in the record clearly indicates that the proposed application is consistent with each of these requirements and policies, there is no need to separately

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<sup>15</sup> It is not clear that limiting the use of the proposed dock to non-motorized vessels is a valid alternative. The proposed activity is not motorboat use in this area of Greenwich Cove, which is already permitted without any permit. The proposed regulated activity is the construction and maintenance of the proposed structure. While the Department does evaluate potential secondary impacts such as those allegedly caused motorboat traffic, it does not directly regulate what types of vessels may use the proposed dock. Therefore, it is not at all clear that a restriction about what type of vessel may use the proposed dock is appropriate, or whether this alternative is valid. Nevertheless, because I have determined that the record does not establish that motorboat use of the proposed dock will adversely impact the tidal wetlands, there is no impact to "further minimize" and I reject this alternative on those grounds.

analyze each requirement of policy here. Instead, the topics highlighted below are taken from both statutory schemes and are highlighted because they implicate issues of concern to those who commented on the Application.

*i*  
*The Public Trust*

The area around the proposed structure is entirely private property. There is no access to the public trust – that area below MHW – nearby. Because of the presence of extensive tidal wetlands and intertidal flats, it is extremely unlikely that members of the public would walk along the shore in this area and encounter the proposed dock as an obstacle. For these reasons, the Applicants’ right to access has been appropriately balanced with the rights of the public to use the public trust in the design of the proposed dock, as required by General Statutes § 22a-92(c)(1)(K).

*ii*  
*Impacts to Coastal Resources*

The identified coastal resources on the site are tidal wetlands, intertidal flats, tidal wetlands, estuarine embayments, coastal hazard areas, near shore waters, wildlife resources and habitat, benthic habitat, and indigenous aquatic life. The Applicants have met their burden to show that the proposed activity, as conditioned by the Draft Permit, minimizes impacts to these coastal resources in compliance with the Coastal Management Act, General Statutes §§ 22a-92(b)(1)(D), 22a-92(b)(2)(E), 22a-92(c)(2)(A), 22a-92(b)(2)(D), 22a-93(15)(F) and 22a-93(15)(G).

Of particular note are the efforts made to protect coastal wetlands – discussed throughout this decision – and intertidal flats. To prevent damage to intertidal flats, the proposed floating dock will rest on float stops during times of low water, keeping it elevated above – and not resting on - intertidal flats. The proposed boatlift also performs the same function, ensuring that during times of low water, a boat using the proposed dock is elevated above the intertidal flats. The

benefits of the boatlift are not limited to long term storage. Because of the tidal range in this area, use of the boatlift may be required of a boat using the dock for only a portion of the day, so that it does not rest on the intertidal flats during a portion of a tidal cycle. The proposed structure will have only minimal impacts on coastal resources, consistent with the policies enumerated by the Coastal Management Act and the statutes concerning structures, dredging and filling.

*iii*  
*Impacts to Navigation*

The proposed structure is located entirely within a small cove, set apart from the larger Greenwich Cove. It is unlikely that boats not using the proposed dock would ever venture into the small cove. The larger Greenwich Cove is a no-wake area, meaning any boats in the vicinity of the proposed dock will be travelling slowly. The relatively short length of the proposed dock, and the presence of other navigational hazards, including a significant number of other docks and an irregular shoreline, will further require boaters to use caution in the area of the proposed dock. After considering this context, the only reasonable conclusion is that the proposed dock will not adversely impact navigation.

*iv*  
*“Precedent Setting” Dock Design*

The Intervening Party and many public comments claim that the dock is precedent setting and should therefore be denied. It is true that the proposed dock does not meet the more common configuration of a pier extending from the upland to mean low water, a ramp and a floating dock. However, as set out above, the Applicants, as littoral property owners, have sufficient property rights to use the area between MHW and mean low water to access the water in front of their property, provided the appropriate balance between their rights and the public interest as expressed by the policies of the Coastal Management Act is achieved. Further, evidence in the record

indicates that other docks have been permitted whose landward terminus is within areas of tidal wetlands. Some testimony indicates that, in certain instances, a landward terminus in tidal wetlands is preferred. Other testimony indicated that here, based on the expected use of the dock, the upper marsh would not be adversely impacted. While the proposed dock does not appear to present a precedent, it is somewhat different than the typical design. However, there is no evidence in the record that any adverse impacts caused by the deviation from the more typical design are significant, or require denial of the Application.

6

*Modifications to the Proposed Draft Permit*

In its post-hearing filing, Department staff recommend two modifications to the proposed Draft Permit. First, Department staff recommends that a condition be added entitled “Pier Railings” specifying that “[t]he licensee shall use rope, cable, or an alternative railing design on the fixed pier to minimize shading impacts on the tidal wetland vegetation.” I find this condition reasonable, and consistent with statements made by the Applicants during the hearing process. For this reason, I recommend the Draft Permit be modified to include this condition.

Department staff next recommends that the sixth condition, entitled “Boat Lift” be modified to read “Boat Lift. The Licensee shall install the boat lift to prevent the boat from resting on the bottom at low water. Such structure shall be maintained in optimal operating condition for the life of the dock unless other[wise] authorized in writing by the Commissioner.”<sup>16</sup> Department staff suggests such a modification to relieve the owner of the proposed dock of the obligation to maintain the boat lift in the event the proposed dock will only be used for paddle craft in the future.

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<sup>16</sup> The Draft Permit previously stated “The Licensee shall install the 2” x 10” stringer authorized in the “Authorized Activities” paragraph above, as part of the boat lift structure to keep the boat elevated at least 1.5’ above the substrate. Such stringer shall be maintained in optimal operating condition for the life of the structure.” I note that the modified Draft Permit attached to Department staff’s brief also includes headings for each of the seven proposed “Terms and Conditions” while headings were not included in the earlier, unmodified Draft Permit (part of exhibit DEEP-21).

The first sentence of the proposed modification clarifies that it is a condition of the permit that the boat lift is constructed. However, I do not recommend that the second sentence of the proposed modification be adopted. Under General Statutes § 22a-361, a permit is required to construct and *maintain* a structure like the proposed dock, meaning the life of the permit does not end when the proposed structure is constructed. Because the boat lift is integral to the proposed dock, and my recommendation that the permit be issued relies in part upon it, I believe that removal of the proposed boat lift would require a modification of the permit, and not just a written approval by the Commissioner. I do not believe a written statement that a permit modification would be required is necessary. I therefore recommend that this condition be modified as follows: “Boat Lift. The Licensee shall install the boat lift to prevent the boat from resting on the bottom at low water.”

Finally, there appears to be some potential for confusion regarding how far the proposed access ladder will be from MHW. I recommend that the section of the Draft Permit entitled “Authorized Activities” be modified to state “Install, .5 feet waterward from the MHW Line, a 30” wide access ladder . . . .” to resolve any potential ambiguity regarding the location of the proposed access ladder. I believe this modification to be consistent with statements of the Applicants during the hearing process.

#### **IV Conclusion and Recommendation**

For the reasons set forth herein, I recommend that the Commissioner determine that the Applicants have satisfied their burden of proving, by the preponderance of the evidence in the record, that they should be granted the requested permit. I further recommend that the Commissioner determine that the Intervening Party has failed to satisfy her burden of proving that

unreasonable pollution, impairment or destruction of the public trust in the natural resources of the state is reasonably likely if the proposed dock is authorized and constructed. I recommend that the Commissioner approve the Application and issue the Draft Permit, with the modifications recommended above.



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Brendan Schain, Hearing Officer

## Connecticut Department of Energy and Environmental Protection License\*

### Structures, Dredging & Fill and Tidal Wetlands Permit

**Licensee(s):** Mark. A. and Marti Burke  
Marache

**Licensee Address(s):** 12 Perkely Lane  
Riverside, CT 06878

**License Number(s):** 201502692-TS

**Municipality:** Riverside

**Project Description:** Install a dock for recreational boating access

**Project Address/Location:** 15 Perkely Lane, Riverside

**Waters:** Greenwich Cove

**Authorizing CT Statute(s) and/or Federal Law:** CGS Section 22a-28 to 35; CGS Section 22a-359 to 363g; CGS Section 22a-90 to 112

**Applicable Regulations of CT State Agencies:** 22a-30-1 to 17

**Agency Contact:** Land & Water Resources Division,  
Bureau of Water Protection & Land Reuse, 860-424-3019

**License Expiration:** Five (5) years from the date of issuance of this license.

**Project Site Plan Set:** Six sheets of plans dated August 1, 2014 and revised May 6, 2015, and prepared by William W. Seymour & Associates. P.C.

**License Enclosures:** Site Plan Set, LWRD General Conditions, Land Record Filing, Work Commencement Form, Compliance Certification Form

### **Authorized Activities:**

The Licensee is hereby authorized to conduct the following work as described in application # 201502692-TS:

Install, at least .5 feet waterward from the Mean High Water Line, a 30" wide access ladder, a 4' x 26' fixed timber pier with open-grate decking and handrails with steel cables and supported by six timber piles, a 3' x 23' ramp, a 5' x 20' float with float stops

\*Connecticut's Uniform Administrative Procedure Act defines License to include, "the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law . . ."



anchored by two float restraint piles with two cut-off piles, and a 15' x 15' boat lift with a 2" x 10" support stringer and two piles.

*Failure to comply with the terms and conditions of this license shall subject the Licensee and / or the Licensee's contractor(s) to enforcement actions and penalties as provided by law.*

**This license is subject to the following Terms and Conditions:**

1. **License Enclosure(s) and Conditions.** The Licensee shall comply with all applicable terms and conditions as may be stipulated within the License Enclosure(s) listed above.
2. The Licensee shall ensure that any vessel utilized in the execution of the work authorized herein shall not rest on, or come in contact with, the substrate at any time.
3. At no time shall any barge be stored over intertidal flats, submerged aquatic vegetation or tidal wetland vegetation or in a location that interferes with navigation. In the event any barge associated with the work authorized herein is grounded, no dragging or prop dredging shall occur to free the barge.
4. The Licensee shall construct the fixed pier such that the bottom stringer of the pier is at elevation +11.5' above mean low water.
5. The Licensee shall install float stops to prevent the entire float surface from resting on the bottom at low water. Such float stops shall be maintained in optimal operating condition for the life of the structure.
6. The Licensee shall install the 2" x 10" stringer authorized in the "Authorized Activities" paragraph above, as part of the boat lift structure to keep the boat elevated at least 1.5' above the substrate. Such stringer shall be maintained in optimal operating condition for the life of the structure.

Issued under the authority of the Commissioner of Energy and Environmental Protection on:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Betsey C. Wingfield  
Bureau Chief  
Bureau of Water Protection & Land Reuse



**General Conditions for Land & Water Resources Division Licenses**

1. **Land Record Filing (for *Structures Dredging & Fill, Tidal Wetlands, Certificate of Permission, and Long Island Sound General Permit Licenses only*).** The Licensee shall file the Land Record Filing on the land records of the municipality in which the subject property is located not later than thirty (30) days after license issuance pursuant to Connecticut General Statutes (CGS) Section 22a-363g. A copy of the Notice with a stamp or other such proof of filing with the municipality shall be submitted to the Commissioner no later than sixty (60) days after license issuance. If a Land Record Filing form is not enclosed and the work site is not associated with an upland property, no filing is required.
2. **Contractor Notification.** The Licensee shall give a copy of the license and its attachments to the contractor(s) who will be carrying out the authorized activities prior to the start of construction and shall receive a written receipt for such copy, signed and dated by such contractor(s). The Licensee's contractor(s) shall conduct all operations at the site in full compliance with the license and, to the extent provided by law, may be held liable for any violation of the terms and conditions of the license. At the work site, the contractor(s) shall, whenever work is being performed, have on site and make available for inspection a copy of the license and the authorized plans.
3. **Work Commencement.** Not later than two (2) weeks prior to the commencement of any work authorized herein, the Licensee shall submit to the Commissioner, on the Work Commencement Form attached hereto, the name(s) and address(es) of all contractor(s) employed to conduct such work and the expected date for commencement and completion of such work, if any.
  - For water diversion activities authorized pursuant to 22a-377(c)-1 of the Regulations of Connecticut State Agencies, the Licensee shall also notify the Commissioner in writing two weeks prior to initiating the authorized diversion.
  - For emergency activities authorized pursuant Connecticut General Statutes Section 22a-6k, the Licensee shall notify the Commissioner, in writing, of activity commencement at least one (1) day prior to construction and of activity completion no later than five (5) days after conclusion.
4. **For Coastal Licenses Only - License Notice.** The Licensee shall post the first page of the License in a conspicuous place at the work area while the work authorized therein is undertaken.
5. **Unauthorized Activities.** Except as specifically authorized, no equipment or material, including but not limited to, fill, construction materials, excavated material or debris, shall be deposited, placed or stored in any wetland or watercourse on or off-site. The Licensee may not conduct work within wetlands or watercourses other than as specifically authorized, unless otherwise authorized in writing by the Commissioner. Tidal wetlands means "wetland" as

defined by section 22a-29 and “freshwater wetlands and watercourses” means “wetlands” and “watercourses” as defined by section 22a-38.

6. **Unconfined Instream Work.** Unless otherwise noted in a condition of the license, the following conditions apply to projects in non-coastal waters:
  - Unconfined instream work is limited to the period June 1 through September 30.
  - Confinement of a work area by cofferdam techniques using sand bag placement, sheet pile installation (vibratory method only), portadam, or similar confinement devices is allowed any time of the year. The removal of such confinement devices is allowed any time of the year.
  - Once a work area has been confined, in-water work within the confined area is allowed any time of the year.
  - The confinement technique used shall completely isolate and protect the confined area from all flowing water. The use of silt boom/curtain or similar technique as a means for confinement is prohibited.
7. **For State Actions Only - Material or Equipment Storage in the Floodplain.** Unless approved by a Flood Management Exemption, the storage of any materials at the site which are buoyant, hazardous, flammable, explosive, soluble, expansive, radioactive, or which could in the event of a flood be injurious to human, animal or plant life, below the elevation of the five-hundred (500) year flood is prohibited. Any other material or equipment stored at the site below said elevation by the Licensee or the Licensee's contractor must be firmly anchored, restrained or enclosed to prevent flotation. The quantity of fuel stored below such elevation for equipment used at the site shall not exceed the quantity of fuel that is expected to be used by such equipment in one day. In accordance with the licensee's Flood Contingency Plan, the Licensee shall remove equipment and materials from the floodplain during periods when flood warnings have been issued or are anticipated by a responsible federal, state or local agency. It shall be the Licensee's responsibility to obtain such warnings when flooding is anticipated.
8. **Temporary Hydraulic Facilities for Water Handling.** If not reviewed and approved as a part of the license application, temporary hydraulic facilities shall be designed by a qualified professional and in accordance with the *Connecticut Guidelines for Soil Erosion and Sediment Control*, the *2004 Connecticut Stormwater Quality Manual*, or the *Department of Transportation's ConnDOT Drainage Manual*, as applicable. Temporary hydraulic facilities may include channels, culverts or bridges which are required for haul roads, channel relocations, culvert installations, bridge construction, temporary roads, or detours.
9. **Excavated Materials.** Unless otherwise authorized, all excavated material shall be staged and managed in a manner which prevents additional impacts to wetlands and watercourses.
10. **Best Management Practices.** The Licensee shall not cause or allow pollution of any wetlands or watercourses, including pollution resulting from sedimentation and erosion. In constructing or maintaining any authorized structure or facility or conducting any authorized activity, or in removing any such structure or facility, the Licensee shall employ best management practices to control storm water discharges, to prevent erosion and sedimentation, and to otherwise

prevent pollution of wetlands and other waters of the State. For purposes of the license, "pollution" means "pollution" as that term is defined by CGS section 22a-423. Best Management Practices include, but are not limited, to practices identified in the *Connecticut Guidelines for Soil Erosion and Sediment Control* as revised, *2004 Connecticut Stormwater Quality Manual*, Department of Transportation's *ConnDOT Drainage Manual* as revised, and the Department of Transportation Standard Specifications as revised.

- 11. Work Site Restoration.** Upon completion of any authorized work, the Licensee 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.
- 12. Inspection.** The Licensee shall allow any representative of the Commissioner to inspect the project location at reasonable times to ensure that work is being or has been conducted in accordance with the terms and conditions of this license.
- 13. Change of Use. (Applies only if a use is specified within the License "Project Description")**
  - a. The work specified in the license is authorized solely for the purpose set forth in the license. No change in purpose or use of the authorized work or facilities as set forth in the license may occur without the prior written approval of the Commissioner. The Licensee shall, prior to undertaking or allowing any change in use or purpose from that which is authorized by this license, request permission 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.
- 14. De Minimis Alteration.** The Licensee shall not deviate from the authorized activity without prior written approval from the Commissioner. The Licensee may request a de minimis change to any authorized structure, facility, or activity. A de minimis alteration means a change in the authorized design, construction or operation that does not increase environmental impacts or substantively alter the construction of the project as authorized.
  - For diversion activities authorized pursuant to 22a-377(c)-2 of the Regulations of Connecticut State Agencies, a de minimis alteration means an alteration which does not significantly increase the quantity of water diverted or significantly change the capacity to divert water.
- 15. Extension Request.** The Licensee may request an extension of the license expiration date. Such request shall be in writing and shall be submitted to the Commissioner at least thirty (30) days prior to the license expiration. Such request shall describe the work done to date, what work still needs to be completed, and the reason for such extension. It shall be the Commissioner's sole discretion to grant or deny such request.
- 16. Compliance Certification.** Not later than 90 days after completion of the authorized work, the Licensee shall prepare and submit to the Commissioner the attached Compliance

Certification Form. Such Compliance Certification shall be completed, signed, and sealed by the Licensee and a Connecticut Licensed Design Professional. If non-compliance is indicated on the form, or the Commissioner has reason to believe the activities and/or structures were conducted in non-compliance with the license, the Commissioner may require the Licensee to submit as-built plans as a condition of this license.

- 17. Maintenance.** The Licensee shall maintain all authorized structures or work in optimal condition or shall remove such structures or facility and restore the affected waters to their pre-work condition. Any such maintenance or removal activity shall be conducted in accordance with applicable law and any additional approvals required by law.
- 18. No Work After License Expiration.** Work conducted after the license expiration date is a violation of the license and may subject the licensee to enforcement action, including penalties, as provided by law.
- 19. License Transfer.** The license is not transferable without prior written authorization of the Commissioner. A request to transfer a license shall be submitted in writing and shall describe the proposed transfer and the reason for such transfer. The Licensee's obligations under the license shall not be affected by the passage of title to the license site to any other person or municipality until such time as a transfer is approved by the Commissioner.
- 20. Document Submission.** Any document required to be submitted to the Commissioner under the license or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

Regulatory Section  
Land & Water Resources Division  
Department of Energy and Environmental Protection  
79 Elm Street  
Hartford, Connecticut 06106-5127  
860-424-3019
- 21. Date of Document Submission.** The date of submission to the Commissioner of any document required by the license shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under the license, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is personally delivered or the date three (3) days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in the license, the word "day" as used in the license means calendar day. Any document or action which is required by the license 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.
- 22. Certification of Documents.** Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under the license shall be signed by the Licensee 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.”

- 23. Accuracy of Documentation.** In evaluating the application for the license, the Commissioner has relied on information and data provided by the Licensee and on the Licensee’s representations concerning site conditions, design specifications and the proposed work, including but not limited to representations concerning the commercial, public or private nature of the work or structures, 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, the license may be modified, suspended or revoked, and any unauthorized activities may be subject to enforcement action.
- 24. Limits of Liability.** In granting the license, the Commissioner has relied on all representations of the Licensee, including information and data provided in support of the Licensee’s application. Neither the Licensee’s representations nor the issuance of the license shall constitute an assurance by the Commissioner as to the structural integrity, the engineering feasibility or the efficacy of such design.
- 25. Reporting of Violations.** In the event that the Licensee becomes aware that they did not or may not comply, or did not or may not comply on time, with any provision of this license or of any document incorporated into the license, the Licensee shall immediately notify the agency contact specified within the license 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 agency contact, the Licensee shall provide, for the agency’s review and written approval, a report including the following information:
- a. the provision(s) of the license that has been violated;
  - b. the date and time the violation(s) was first observed and by whom;
  - c. the cause of the violation(s), if known;
  - d. if the violation(s) has ceased, the duration of the violation(s) and the exact date(s) and times(s) it was corrected;
  - e. if the violation(s) has not ceased, the anticipated date when it will be corrected;
  - f. steps taken and steps planned to prevent a reoccurrence of the violation(s) and the date(s) such steps were implemented or will be implemented; and
  - g. the signatures of the Licensee and of the individual(s) responsible for actually preparing such report.

If the violation occurs outside of normal business hours, the Licensee shall contact the Department of Energy and Environmental Protection Emergency Dispatch at 860-424-3333. The Licensee shall comply with any dates which may be approved in writing by the Commissioner.

- 26. Revocation/Suspension/Modification.** The license may be revoked, suspended, or modified in accordance with applicable law.
- 27. Other Required Approvals.** License issuance does not relieve the Licensee of their obligations to obtain any other approvals required by applicable federal, state and local law.
- 28. Rights.** The license 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.
- 29. Condition Conflicts.** In the case where a project specific special condition listed on the license differs from, or conflicts with, one of the general conditions listed herein, the project specific special condition language shall prevail. It is the licensee's responsibility to contact the agency contact person listed on the license for clarification if needed prior to conducting any further regulated activities.



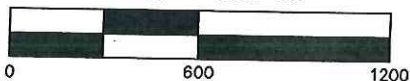
LOCATION MAP

TAX ASSESSORS ID #05-2706

ZONE: R - 12

PERMITTING AGENT  
 JAMES J. BAJEK, LLC  
 36 POTTER ROAD  
 WILTON, NEW HAMPSHIRE 03086  
 PHONE 603-654-5350  
 JJBAJEK@COMCAST.NET

1 inch = 600 ft.



LOCUS MAP  
 12 PERKELY LA  
 PREPARED FOR

**MARK A. MARACHE**  
**MARTI BURKE MARACHE**  
 GREENWICH, CONNECTICUT

SCALE: 1" = 600 FT.

AUGUST 1, 2014

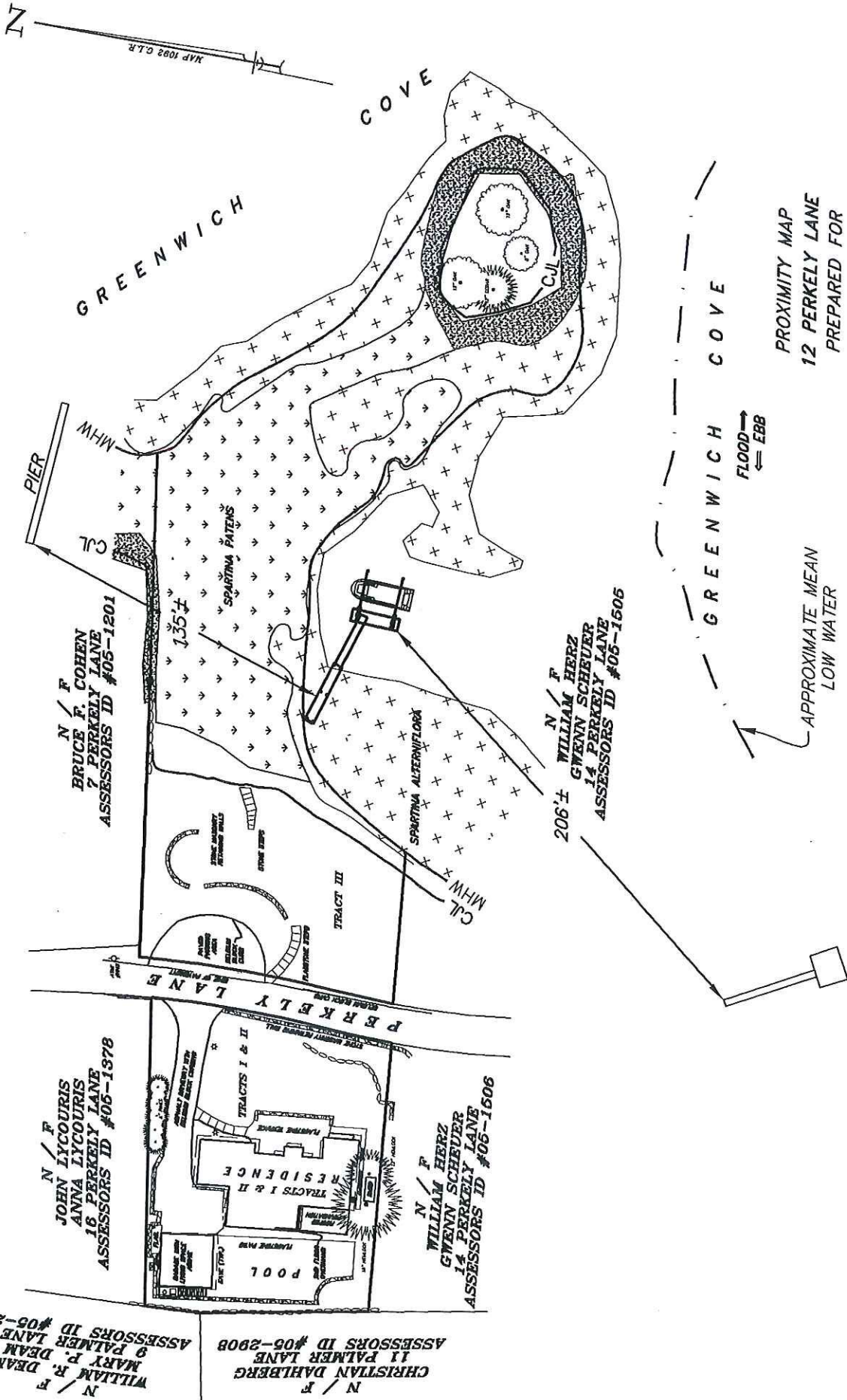
REVISED: MAY 6, 2015

**WILLIAM W. SEYMOUR & ASSOCIATES, P.C.**  
 LAND SURVEYORS ~ ZONING & LAND USE CONSULTANTS  
 170 NOROTON AVENUE ~ 203-655-3331 ~ DARIEN, CONN. ©

12-13093ACOE



SEE SHEET 5 OF 6 FOR DATUM CONVERSION



**MARK A. MARACHE**  
**MARTI BURKE MARACHE**

GREENWICH, CONNECTICUT  
SCALE: 1" = 60 FT. AUGUST 1, 2014  
REVISED: MAY 6, 2015

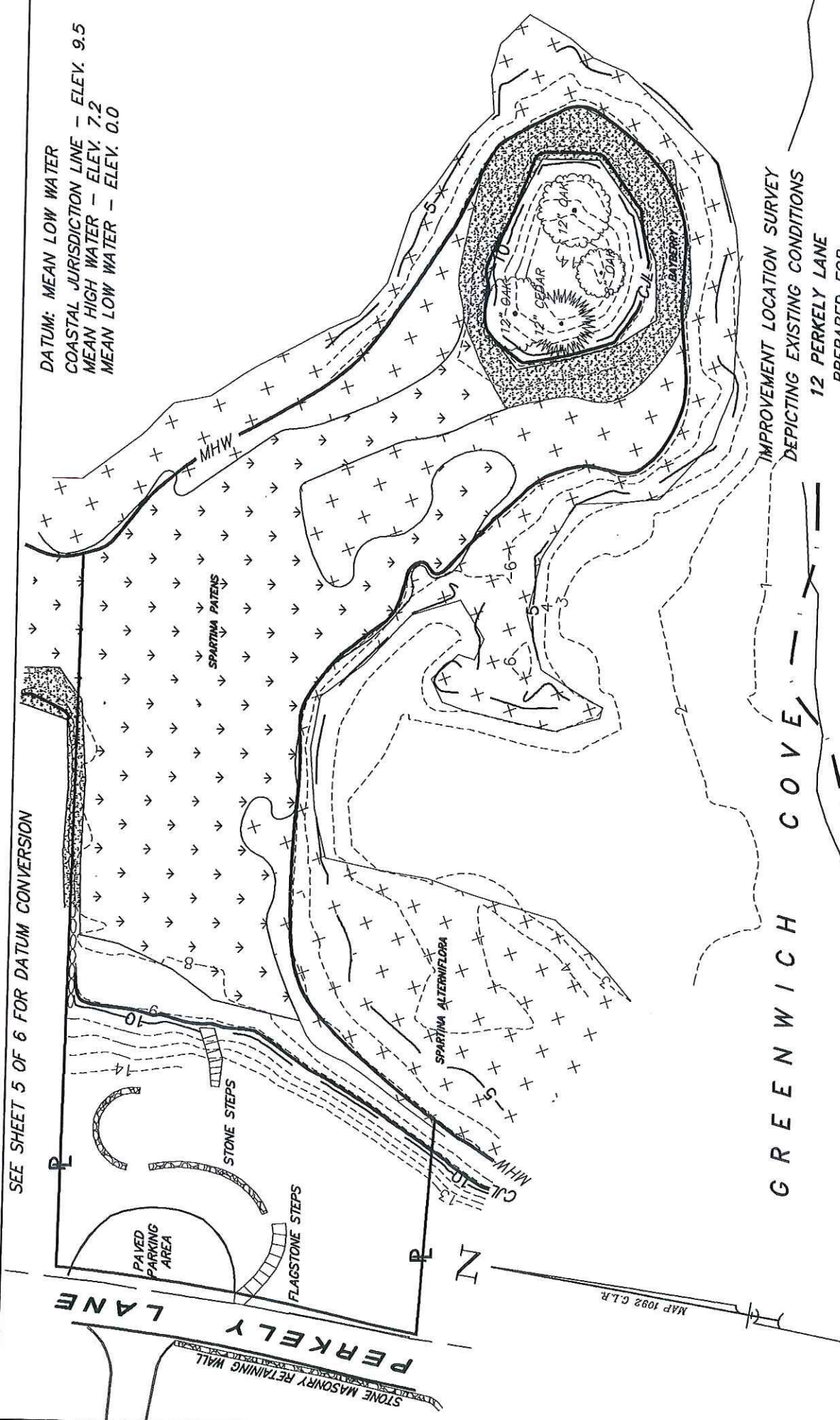
**WILLIAM W. SEYMOUR & ASSOCIATES, P.C.**  
LAND SURVEYORS ZONING & LAND USE CONSULTANTS  
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12-13093AC0E



DATUM: MEAN LOW WATER  
COASTAL JURISDICTION LINE - ELEV. 9.5  
MEAN HIGH WATER - ELEV. 7.2  
MEAN LOW WATER - ELEV. 0.0

SEE SHEET 5 OF 6 FOR DATUM CONVERSION

DATUM: MEAN LOW WATER  
COASTAL JURISDICTION LINE - ELEV. 9.5  
MEAN HIGH WATER - ELEV. 7.2  
MEAN LOW WATER - ELEV. 0.0



IMPROVEMENT LOCATION SURVEY  
DEPICTING EXISTING CONDITIONS  
12 PERKELY LANE  
PREPARED FOR

**MARK A. MARACHE**  
**MARTI BURKE MARACHE**  
GREENWICH, CONNECTICUT

SCALE: 1" = 40 FT.  
AUGUST 1, 2014  
REVISED: MAY 6, 2015

**WILLIAM W. SEYMOUR & ASSOCIATES, P.C.**  
LAND SURVEYORS ~ ZONING & LAND USE CONSULTANTS  
170 NOROTON AVENUE ~ 203-655-3331 ~ DARIEN, CONN. ©  
12-13093ACOE

GREENWICH COVE

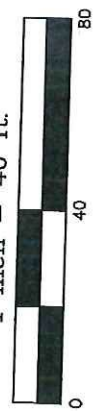
FLOOD ⇒  
⇐ EBB  
LOCAL CHANNEL AS DEPICTED  
ON TOWN G.I.S. MAP

APPROXIMATE MEAN  
LOW WATER

*[Signature]*  
Jeffrey W. McDougal, Cdm., L.L.S. Reg. No. 70090

TO MY KNOWLEDGE AND BELIEF, THIS MAP IS  
SUBSTANTIALLY CORRECT AS NOTED HEREON.  
PREPARED TO CLASS 'A', '2' & 'V' - 3' STANDARDS

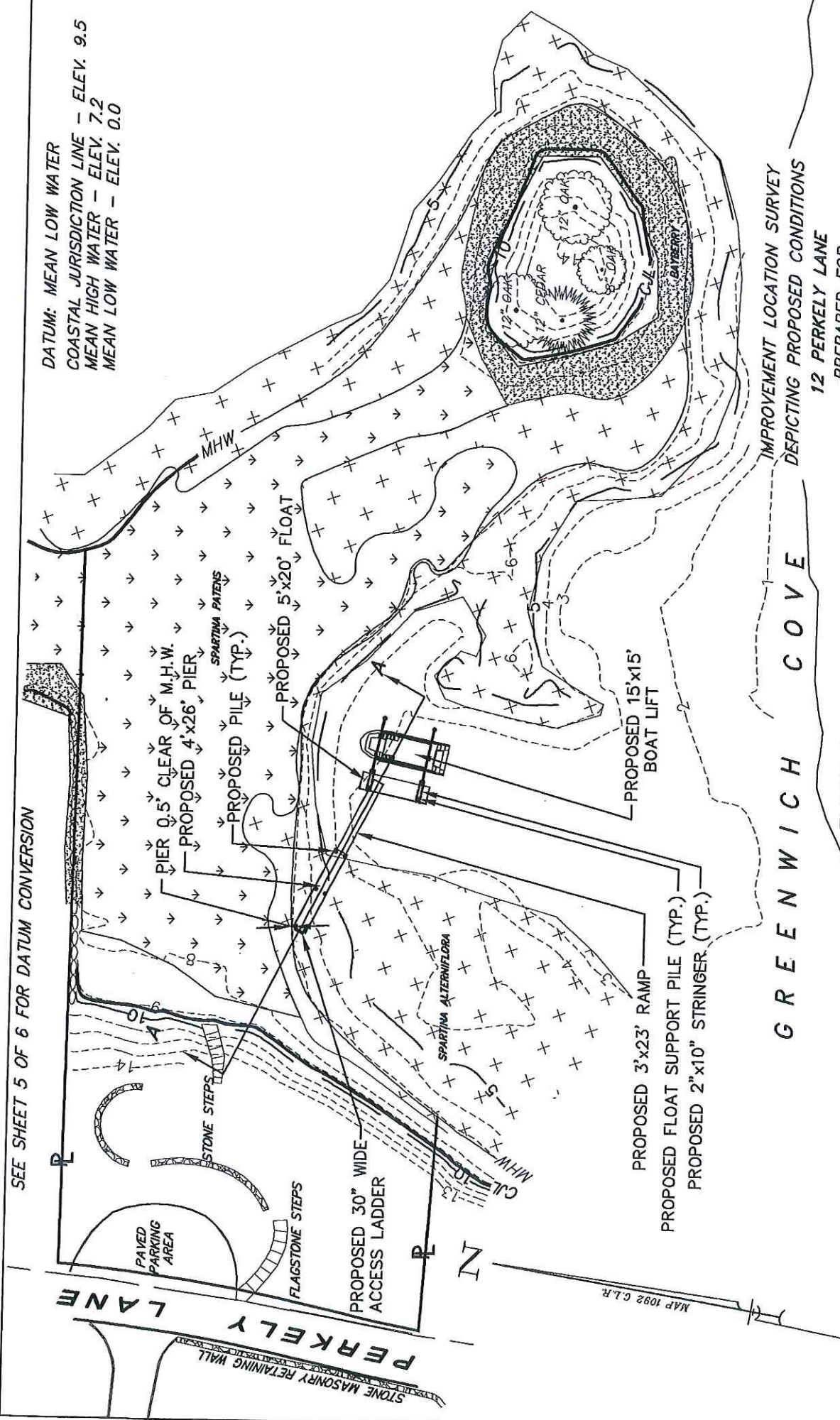
1 inch = 40 ft.



SHEET 3 OF 6

SEE SHEET 5 OF 6 FOR DATUM CONVERSION

DATUM: MEAN LOW WATER  
COASTAL JURISDICTION LINE - ELEV. 9.5  
MEAN HIGH WATER - ELEV. 7.2  
MEAN LOW WATER - ELEV. 0.0



IMPROVEMENT LOCATION SURVEY  
DEPICTING PROPOSED CONDITIONS  
12 PERKELY LANE  
PREPARED FOR

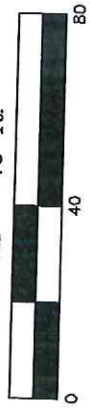
**MARK A. MARACHE**  
**MARTI BURKE MARACHE**  
GREENWICH, CONNECTICUT

SCALE: 1" = 40 FT.  
AUGUST 1, 2014  
REVISED: MAY 6, 2015

**WILLIAM W. SEYMOUR & ASSOCIATES, P.C.**  
LAND SURVEYORS ~ ZONING & LAND USE CONSULTANTS  
170 NOROTON AVENUE ~ 203-655-3331 ~ DARIEN, CONN. ©  
12-13093ACOE

FLOOD →  
← EBB

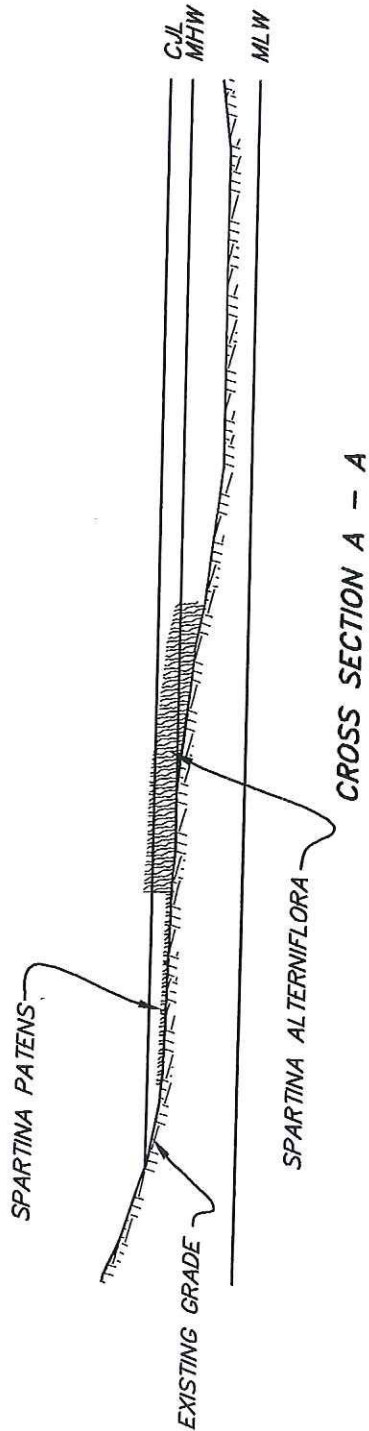
1 inch = 40 ft.



LOCAL CHANNEL AS DEPICTED  
ON TOWN G.I.S. MAP

*[Signature]*  
Jeffrey W. McHugh, Conn. L.L.S. Reg. No. 70090

TO MY KNOWLEDGE AND BELIEF, THIS MAP IS  
SUBSTANTIALLY CORRECT AS NOTED HEREON  
PREPARED TO CLASS 'A - 2' & 'V - 3' STANDARDS



C.J.L. CONVERSION FROM NAVD 88 TO MLW

5.5 (NAVD 88)
+1.1
<hr style="width: 50%; margin-left: 0;"/>
6.6 (NGVD 29)
+2.9
<hr style="width: 50%; margin-left: 0;"/>
9.5 (MLW)

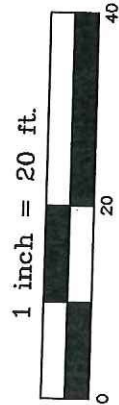
M.H.W. CONVERSION FROM NAVD 88 TO MLW

3.2 (NAVD 88)
+1.1
<hr style="width: 50%; margin-left: 0;"/>
4.3 (NGVD 29)
+2.9
<hr style="width: 50%; margin-left: 0;"/>
7.2 (MLW)

M.L.W. CONVERSION FROM NAVD 88 TO MLW

-4.0 (NAVD 88)
+1.1
<hr style="width: 50%; margin-left: 0;"/>
-2.9 (N.G.V.D. 29)
+2.9
<hr style="width: 50%; margin-left: 0;"/>
0.0 (MLW)

DATUM: MEAN LOW WATER  
 COASTAL JURISDICTION LINE - ELEV. 9.5  
 MEAN HIGH WATER - ELEV. 7.2  
 MEAN LOW WATER - ELEV. 0.0



IMPROVEMENT LOCATION SURVEY  
 DEPICTING EXISTING CROSS SECTION  
 12 PERKELY LANE  
 PREPARED FOR

**MARK A. MARACHE**  
**MARTI BURKE MARACHE**  
 GREENWICH, CONNECTICUT

SCALE: 1" = 20 FT.      AUGUST 1, 2014  
 REVISED: MAY 6, 2015

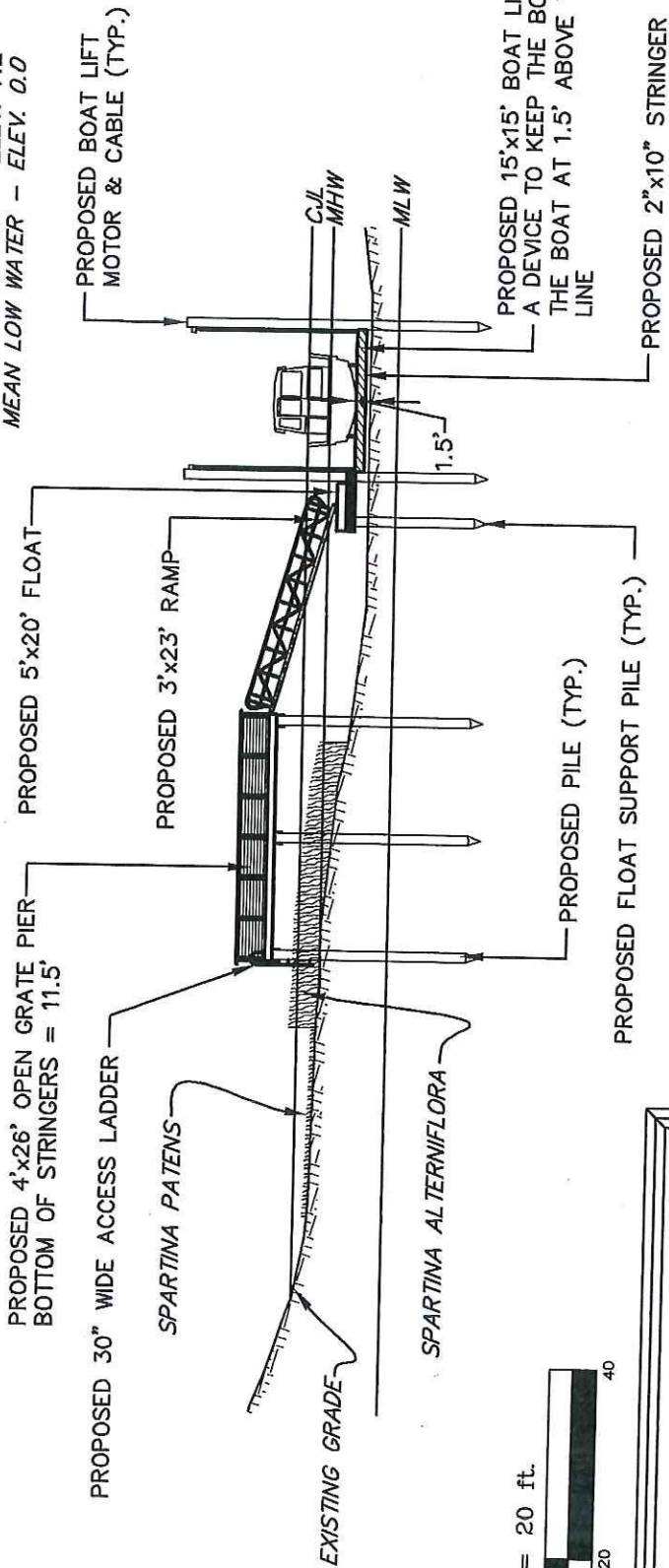
**WILLIAM W. SEYMOUR & ASSOCIATES, P.C.**  
 LAND SURVEYORS ~ ZONING & LAND USE CONSULTANTS  
 170 NOROTON AVENUE ~ 203-655-3337 ~ DARIEN, CONN. ©

TO MY KNOWLEDGE AND BELIEF, THIS MAP IS  
 SUBSTANTIALLY CORRECT AS NOTED HEREON.  
 PREPARED TO CLASS 'A - 2' & 'V - 3' STANDARDS

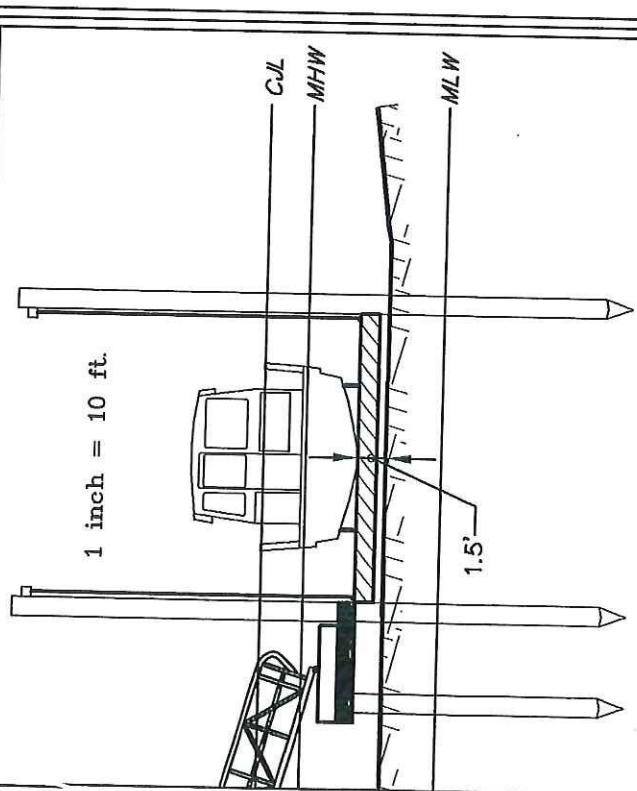
Jeffrey W. McBratney  
 Conn. U.S. Reg. No. 70080

SEE SHEET 5 OF 6 FOR DATUM CONVERSION

DATUM: MEAN LOW WATER  
COASTAL JURISDICTION LINE - ELEV. 9.5  
MEAN HIGH WATER - ELEV. 7.2  
MEAN LOW WATER - ELEV. 0.0



CROSS SECTION 'A - A'



IMPROVEMENT LOCATION SURVEY  
DEPICTING PROPOSED CROSS SECTION  
12 PERKELY LANE  
PREPARED FOR

**MARK A. MARACHE**  
**MARTI BURKE MARACHE**  
GREENWICH, CONNECTICUT

SCALE: 1" = 20 FT. AUGUST 1, 2014  
REVISED: MAY 6, 2015

**WILLIAM W. SEYMOUR & ASSOCIATES, P.C.**  
LAND SURVEYORS ~ ZONING & LAND USE CONSULTANTS  
170 NOROTON AVENUE ~ 203-655-3531 ~ DARIEN, CONN. ©

TO MY KNOWLEDGE AND BELIEF, THIS MAP IS  
SUBSTANTIALLY CORRECT AS NOTED HEREON  
PREPARED TO CLASS 'A - 2' & 'V - 3' STANDARDS

Jeffrey W. McBratney, L.L.S. Reg. No. 70090



**Land Record Filing\***

**To:** Greenwich Town Clerk

**Signature and  
Date:**

**Subject:** 15 Perkely Lane, Riverside  
License #201502692-TS

Pursuant to Section 22a-363g of the Connecticut General Statutes, the Commissioner of Energy and Environmental Protection gives notice that a license has been issued to Mark A. and Marti Burke Marache, 12 Perkely Lane, Riverside, CT 06878 to:

Install, at least .5 feet waterward from the Mean High Water Line, a 30" wide access ladder, a 4' x 26' fixed timber pier with open-grate decking and handrails with steel cables and supported by six timber piles, a 3' x 23' ramp, a 5' x 20' float with float stops anchored by two float restraint piles with two cut-off piles, and a 15' x 15' boat lift with a 2" x 10" support stringer and two piles.

If you have any questions pertaining to this matter, please contact the Land & Water Resources Division at 860-424-3019.

Return to:

Land & Water Resources Division  
State of Connecticut  
Department of Energy & Environmental Protection  
79 Elm Street  
Hartford, CT 06106-5127

\*The Licensee shall file the Land Record Filing on the land records of the municipality in which the subject property is located not later than thirty (30) days after license issuance pursuant to Connecticut General Statutes (CGS) Section 22a-363g. A copy of the Notice with a stamp or other such proof of filing with the municipality shall be submitted to the Commissioner no later than sixty (60) days after license issuance.



**Work Commencement Form**

**To:** Regulatory Section  
Department of Energy and Environmental Protection  
Land & Water Resources Division  
79 Elm Street  
Hartford, CT 06106-5127

**Licensee Name:** \_\_\_\_\_  
**Licensee Address:** \_\_\_\_\_  
\_\_\_\_\_

**License No(s):** \_\_\_\_\_

**CONTRACTOR(s):**

# 1 Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

# 2 Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

# 3 Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Date Contractor(s) received a copy  
of the license and approved plans: \_\_\_\_\_

EXPECTED DATE OF COMMENCEMENT OF WORK: \_\_\_\_\_

EXPECTED DATE OF COMPLETION OF WORK: \_\_\_\_\_

LICENSEE: \_\_\_\_\_  
(Signature) (Date)



**Connecticut Department of Energy and Environmental Protection**  
 Bureau of Water Protection and Land Reuse  
 Land & Water Resources Division

## Compliance Certification Form

The following certification must be signed by the licensee working in consultation with a Connecticut-licensed design professional and must be submitted to the address indicated at the end of this form within ninety (90) days of completion of the authorized work.

1. Licensee Name: _____ License Number(s): _____	
2. <b>Check one:</b> (a) <input type="checkbox"/> "I certify that the final site conditions and / or structures are in general conformance with the approved site plans". Identify and describe any deviations and attach to this form. (b) <input type="checkbox"/> "The final site conditions and / or structures are not in general conformance with the approved site plans. The enclosed "as-built" plans note the modifications".	
3. "I understand that any false statement in this certification is punishable as a criminal offence under section 53a-157b of the General Statutes and under any other applicable law."	
_____ Signature of Licensee	_____ Date
_____ Name of Licensee (print or type)	
_____ Signature of CT-Licensed Design Professional	_____ Date
_____ Name of CT-Licensed Design Professional (print or type)	
_____ Professional License Number (if applicable)	Affix Stamp Here
<ul style="list-style-type: none"> <li>• As-built plans shall include: elevations or tidal datums, as applicable, and structures, including any proposed elevation views and cross sections included in the approved license plans. Such as-built plans shall be the original ones and be signed and sealed by an engineer, surveyor or architect, as applicable, who is licensed in the State of Connecticut.</li> <li>• The Licensee will be notified by staff of the Land and Water Resources Division (LWRD) if further compliance review is necessary. Lack of response by LWRD staff does not imply compliance.</li> </ul>	
Submit this completed form to : <b>Regulatory Section</b> <b>Department of Energy and Environmental Protection</b> <b>Land &amp; Water Resources Division</b> <b>79 Elm Street</b> <b>Hartford, CT 06106-5127</b>	



*S E R V I C E   L I S T*

In the matter of Marache  
Application No.: 201502692  
PARTY

REPRESENTED BY

The Applicants

Marti & Mark Marache  
12 Perkeley Ln.  
Greenwich, CT 06878

John P. Casey, Esq.  
Robinson & Cole, LLP  
280 Trumbull St.  
Hartford, CT 06103  
Ph: (860) 275-8299  
[jcasey@rc.com](mailto:jcasey@rc.com)

Department of Energy and Environmental Protection

Land and Water Resources Division  
Bureau of Water Protection and Land Reuse

Susan Jacobsen  
[susan.jacobsen@ct.gov](mailto:susan.jacobsen@ct.gov)

Intervening Party

Susan Cohen  
7 Perkely Lane  
Riverside, CT 06878

Bruce F. Cohen  
Fogarty, Cohen, Russo  
& Nemiroff, LLC  
1700 East Putnam Ave.  
Old Greenwich, CT 06870  
Ph: (203) 629-7300  
[bcohen@fcsn.com](mailto:bcohen@fcsn.com)

Courtesy Copies

Bernard Armstrong  
Greenwich Harbor Management Commission  
[bernard.armstron@att.net](mailto:bernard.armstron@att.net)

Geoffrey Steadman  
[geoffreysteadman@att.net](mailto:geoffreysteadman@att.net)