

Connecticut Department of

**ENERGY &
ENVIRONMENTAL
PROTECTION**

Bureau of Water Protection and Land Reuse

June 16, 2016

Jean Routt and Richard Shanahan
5 Shore Drive
Branford, CT 06405

**Re: Consent Order No. LIS-2015-3715-V, 5 Shore Road
Town: Branford**

Dear Mr. Shanahan and Mrs. Routt:

Please find enclosed a signed administrative Consent Order for your records. The Consent Order requires the payment of a civil penalty of \$1,750 in the form of a Supplement Environmental Project (SEP) to the Long Island Sound SEP Account and the submission of a Certificate of Permission (COP) application within 90 days of issuance of this Order.

If you have any further question, please do not hesitate to contact me at (860) 424-3626. Thank you.

Sincerely,

Kevin Zawoy, Environmental Analyst
Office of Long Island Sound Programs
Bureau of Water Protection and Land Reuse

KZ/

Enclosure – Consent Order #LIS-2015-3715-V



79 Elm Street • Hartford, CT 06106-5127

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Affirmative Action/Equal Opportunity Employer

STATE OF CONNECTICUT

File # LIS-2015-3715-V

Date of Issuance: June 16, 2016

v.

JEAN ROUTT

AND

RICHARD SHANAHAN

CONSENT ORDER

A. The Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. Jean Routt and Richard Shanahan ("Respondents") are the owners of the property located at 5 Shore Road in Branford, Connecticut ("the property"). The property is located adjacent to the Farm River, a tidal, coastal and navigable water of the State.
2. On or before June 24, 2015, without authorization, Respondents raised by 2 feet the height of an existing approximately 96 linear foot long stone stacked seawall which is located along the westerly shoreline of the property. The raised seawall elevation is depicted on site drawings prepared by Criscuolo Engineering, LLC, and entitled "Coastal Site Plan and Sections," dated December 15, 2015, a copy of which is attached hereto as "Attachment A."
3. The property and the location of the work described in paragraph A.2., above, shall hereinafter be referred to as "the site".
4. Respondents have not received a certificate or permit from the Commissioner under section 22a-361 of the Connecticut General Statutes ("CGS") for the elevation of the existing seawall described in paragraph A.2. at the site.

B. With the agreement of the Respondents, the Commissioner, acting under CGS sections 22a-6 and section 22a-361, orders Respondents as follows:

1. Removal of Structures. Respondents shall not later than September 1, 2016 remove the approximately 1 foot top layer of existing stacked stone and grade landward to a 2:1 horizontal/vertical slope along the surface of the western seawall for a length of approximately 96 linear feet in accordance with the approved partial restoration plan, a copy of which is attached hereto as "Attachment B."
2. Retention of Structures. Respondents may retain the remaining 1 foot seawall height increase described in paragraph A.2., above, pending a final determination, including a final determination on any appeal, of the COP application identified in paragraph B.3., below.
3. COP Application Decision.
 - a. No later than ninety (90) days after issuance of this Consent Order, Respondents shall submit a COP application to authorize the work completed to raise the height of the seawall a foot as described in paragraph A.2., above. Such application shall include all information required on forms prescribed by the Commissioner, including a justification for the purpose and need for the additional seawall height increase and its consistency with all applicable state statutes and policies.
 - b. In the event that the Commissioner's final determination on the COP application submitted pursuant to paragraph B.3.a., above, requires modification or removal of the 1 foot seawall height increase, the Respondents shall, not later than 30 days following issuance of a final decision, submit a timetable to the Commissioner for his review and written approval for the modification or removal of the existing structure(s) in accordance with the terms and conditions of such final decision. Upon the Commissioner's written approval, the Respondents shall modify or remove such existing structure(s) in accordance with the approved timetable and final decision.
4. No Additional Work. Respondents shall not conduct any work waterward of the coastal jurisdiction line or in tidal wetlands at the site without prior written authorization of the Commissioner in accordance with CGS sections 22a-361 and 22a-32.
5. Full compliance. Respondents shall not be considered in full compliance with this Consent Order until all actions required by this Consent Order have been completed as approved and to the satisfaction of the Commissioner.
6. Supplemental Environmental Project.

- a. The Respondents have agreed to fund a supplemental environmental project ("SEP") or projects as selected by the Department according to its February 15, 1996 "Policy on Supplemental Environmental Projects." Therefore, on or before thirty (30) days after the date of issuance of this Consent Order, the Respondents shall pay \$1,750 to the Long Island Sound SEP Account. The payment shall be mailed or personally delivered to the Department of Energy & Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127, and shall be by certified or bank check payable to the "Treasurer, State of Connecticut," with notation thereon "Long Island Sound SEP Account" and "Consent Order No. LIS-2015-3715-V."
 - b. If the Respondents fails to fund the SEP in accordance with paragraph 6.a. above, the Respondents shall immediately pay a civil penalty of \$2,000. The Respondents shall pay such civil penalty in accordance with the provisions of paragraph B.7 of this Consent Order.
 - c. The Respondents shall not claim or represent that any SEP payment made pursuant to this Consent Order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and the Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.
 - d. If and when the Respondents disseminate any publicity, including but not limited to any press releases regarding funding a SEP, the Respondents shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
7. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to the "Connecticut Department of Energy & Environmental Protection," Financial Management Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to the Connecticut Department of Energy & Environmental Protection. The check shall state on its face, "Office of Long Island Sound Programs, Consent Order No. LIS-2015-3715-V."
8. Approvals. Respondents shall use best efforts to submit to the Commissioner all documents required by this Consent Order in a complete and approvable form. If the Commissioner notifies the Respondents that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondents shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within thirty days of the Commissioner's notice of deficiencies. In approving any document or other action under

this Consent Order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this Consent Order. Nothing in this paragraph shall excuse noncompliance or delay.

9. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner of Energy & Environmental Protection or an agent of the Commissioner. The date of "issuance" of this Consent Order is the date the Order is deposited in the mail or personally delivered to the Respondents, whichever is earlier.
10. Dates. The date of submission to the Commissioner of any document required by this Consent Order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this Consent Order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is personally delivered or the date three days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this Consent Order, the word "day" as used in this Order means calendar day. Any document or action which is required by this Order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal legal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or Connecticut or federal holiday.
11. Notification of noncompliance. In the event that Respondents become aware that they did not or may not comply, or did not or may not comply on time, with any requirement of this Consent Order or of any document required hereunder, Respondents shall immediately notify the Commissioner and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. In so notifying the Commissioner, Respondents shall state in writing the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondents shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondents shall not excuse noncompliance or delay. The Commissioner's approval of any revised compliance dates shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
12. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this Consent Order shall be signed by a duly authorized representative of the Respondents 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 thereto, and I 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. I understand that any false statement made in the submitted information may be punishable as a criminal offense in accordance with CGS Section 22a-6, under CGS Section 53a-157b and in accordance with any other applicable statute."

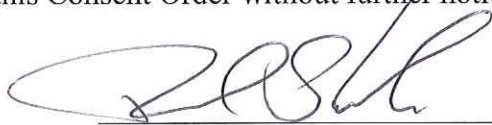
13. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondents to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
14. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense in accordance with CGS section 22a-6, under CGS section 53a-157b.
15. Notice of transfer; liability of Respondents and others. Until Respondents have fully complied with this Consent Order, Respondents shall notify the Commissioner in writing no later than fifteen days after transferring all or any portion of the site, structures, obstructions, encroachments, fill, operations or facilities which are the subject of this Consent Order, or obtaining a new mailing or location address. Respondents' obligations under this Consent Order shall not be affected by the passage of title to the site to any other person or municipality. A future owner of the site may be subject to the issuance of an Order from the Commissioner.
16. Commissioner's powers. Nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any action to prevent or abate violations of law, prevent or abate pollution, recover costs and damages for adverse impacts to natural resources and to impose penalties for violations of law, including but not limited to violations of any permit issued by the Commissioner. If at any time the Commissioner determines that the actions taken by Respondents pursuant to this Consent Order have not successfully corrected all violations, the Commissioner may institute any proceeding to require Respondents to undertake further investigation or further action to correct violations.
17. Respondents' obligations under law. Nothing in this Consent Order shall relieve Respondents of other obligations under applicable federal, state and local law.
18. No assurance by Commissioner. No provision of this Consent Order or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the corrective actions taken by Respondents pursuant to this Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.

19. Access to site. Any representative of the Department of Energy & Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.
20. No effect on rights of other persons. This Consent Order shall neither create nor affect any rights of persons who or municipalities which are not parties to this Consent Order.
21. Notice to Commissioner of changes. Within fifteen days of the date Respondents become aware of a change in any information submitted to the Commissioner under this Consent Order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondents shall submit the correct or omitted information to the Commissioner.
22. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

Kevin Zawoy
Department of Energy & Environmental Protection
Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106-5127
(860) 424-3626
Fax # (860) 424-4054

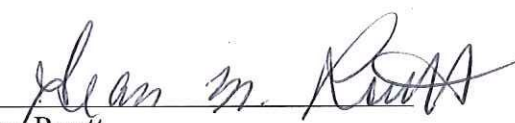
23. Joint and Several Liability. The Respondents shall be jointly and severally liable for compliance with this Consent Order.

Respondents consent to the issuance of this Consent Order without further notice.


Richard Shanahan

6-8-16
Date

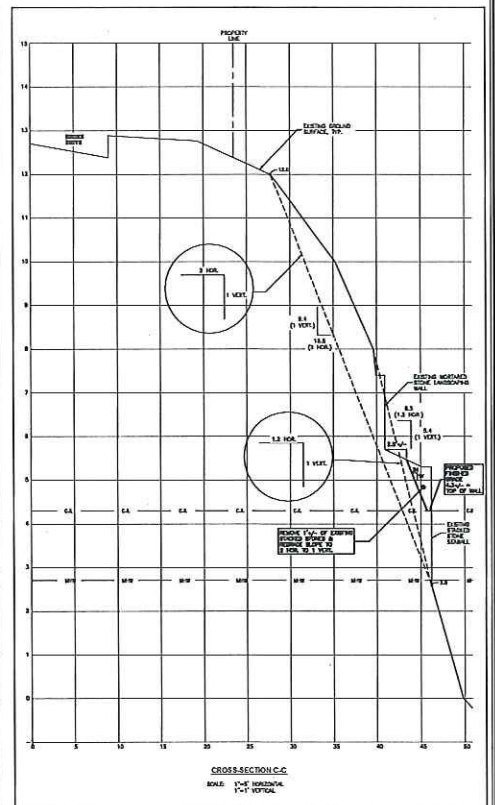
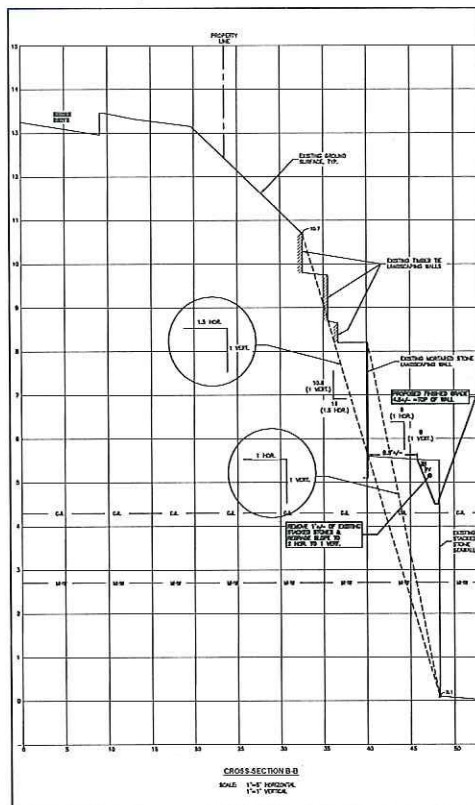
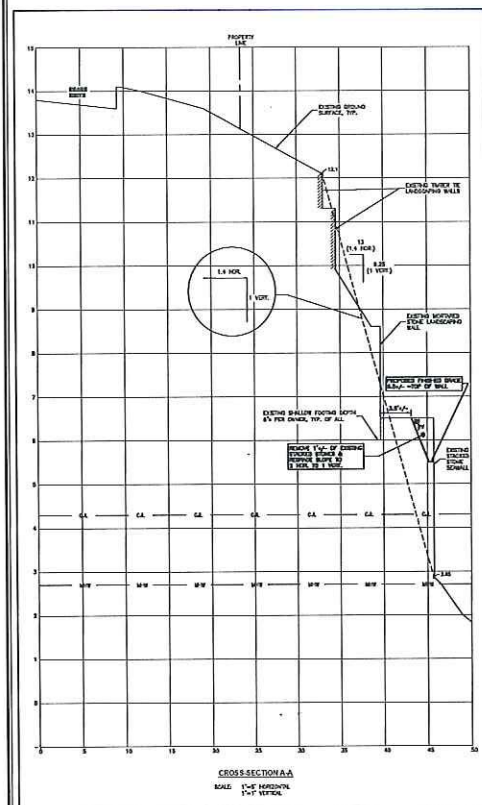
AND


Jean Routt
6/8/16
Date

Issued as a final order of the Commissioner of Energy & Environmental Protection on

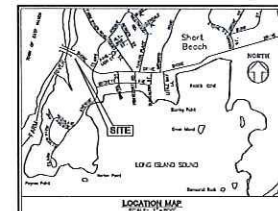
6/16/16, 2016.




Michael Sullivan
Deputy Commissioner



RESTORATION PLAN
PER
LIS-2015-3715-V

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|--|--|---|--|
| CRISCUOLO ENGINEERS & ARCHITECTS | | PROPERTY LOCATED AT 16 BRIDGE DRIVE BRANFORD, CONNECTICUT | |
| DATE: 10/15/15 BY: [Signature] | | OWNER: RICHARD BHANUJAN | |
| PROJECT: [Blank] | | CROSS-SECTIONS A-A, B-B, AND C-C | |
| SHEET: 3 OF 3 | | DATE: 10/15/15 | |

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| LEGEND | | | |
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|  | Grp |  | Wood Fence |
|  | Wk Fence |  | Wk Fence |
|  | Excavation |  | Excavation |
|  | Elevation Contour |  | Elevation Contour |
|  | Solid Dashed Line |  | Solid Dashed Line |
|  | Hand Reflected Boundary |  | Hand Reflected Boundary |
|  | Vegetation Line |  | Vegetation Line |
|  | Deadline Fee |  | Deadline Fee |
|  | Confidence Fee |  | Confidence Fee |
|  | Cash Back |  | Cash Back |
|  | Mortgage |  | Mortgage |
|  | Utility Fee (Ref. Gals) |  | Utility Fee (Ref. Gals) |
|  | Water Fee |  | Water Fee |
|  | Over Road Fee |  | Over Road Fee |
|  | Water Fee |  | Water Fee |
|  | Survey Line |  | Survey Line |
|  | Grp |  | Grp |
|  | Grp Line |  | Grp Line |
|  | Feeling Point |  | Feeling Point |
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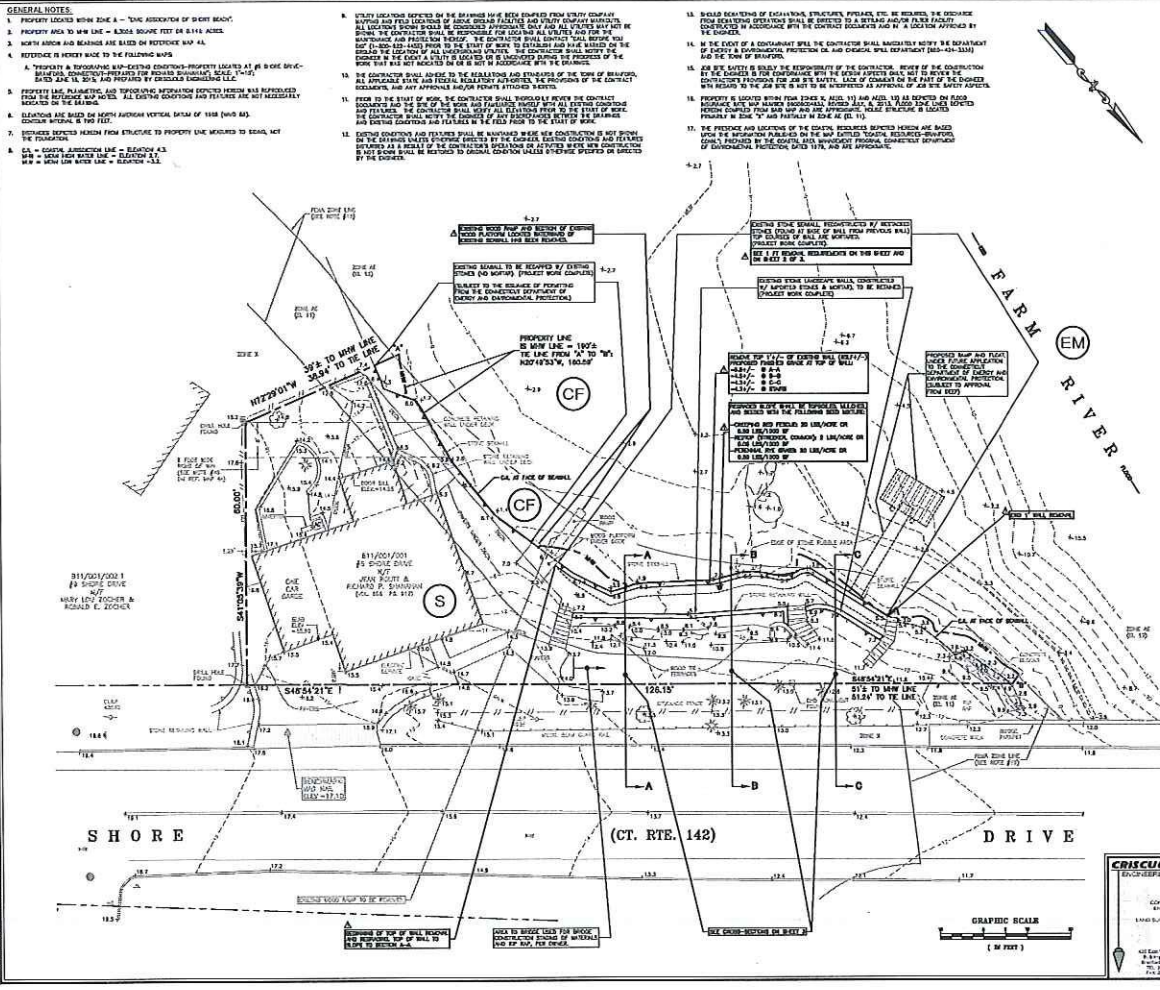
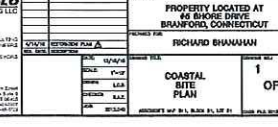
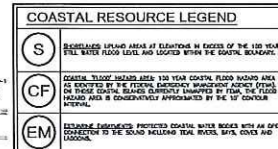
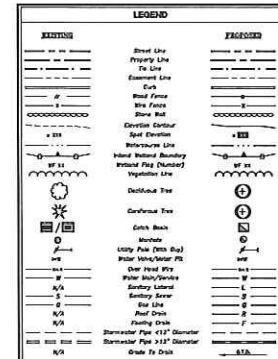
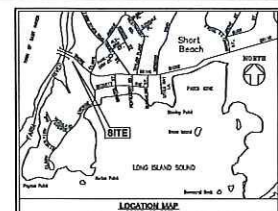
RESTORATION PLAN
PER
LIS-2016-3716-V

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ATTACHMENT "B"

May 15, 2016

Jean Routt and Richard Shanahan
5 Shore Drive
Branford, CT 06405

RE: Restoration Approval Plan, Notice of Non-Compliance #LIS-2015-3715-V, 5 Shore Drive
Town: Branford

Dear Mrs. Routt and Mr. Shanahan:

On April 14, 2016 this Office received a proposal by Criscuolo Engineering, LLC to partially restore your westerly seawall which includes removing by hand approximately 1 foot in height of the existing stacked stone seawall. After removal of the stone, the ground surface will be graded landward with a 2 horizontal to 1 vertical slope. Once the slope has been graded, a bio-degradable matting will be placed and the area planted with salt tolerant vegetation. On May 9, 2016, additional information regarding the methodology for completing the work was provided by your consultant, John B. Lust.

Based upon the information provided by your consultants, the submitted proposal, a copy of which is included herein as Attachment "A" prepared by Criscuolo Engineering, LLC, consisting of sheets 1 through 3, dated December 15, 2015, entitled "Coastal Site Plan and Sections," a two page narrative, and a two page email from John B. Lust, dated May 9, 2016 is hereby approved with the following conditions:

1. All work must be completed no later than September 1, 2016, unless otherwise authorized by the Commissioner in writing;
2. Within 21 days of the completion of the work, Respondent shall submit site photographs which show pre-work, construction work, and post-work site conditions;
3. All work must be completed by hand;
4. All material removed must be disposed of at an upland location landward of the coastal jurisdiction line and outside tidal wetlands; and
5. A bio-degradable matting must be installed and maintained in optimal operating condition until the site has become stabilized atop of the new graded slope.

Should you have questions on this matter, please do not hesitate to contact Kevin Zawoy of my staff at (860) 424-3626 or kevin.zawoy@ct.gov. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "B-P-Z", with a long horizontal stroke extending to the right.

Brian P. Thompson, Director
Office of Long Island Sound Programs
Bureau of Water Protection & Land Reuse

cc: Town of Branford Planning & Zoning Department
John B. Lust, consultant
Criscuolo Engineering, LLC

Richard Shanahan, 5 Shore Drive, Branford

The single family residence located at #5 Shore Drive (CT Rte. 142) was, per the Town of Branford's Assessor's field card, constructed in the year 1948. The subject property has a unique land configuration, with the Farm River located to its west and north, and Shore Drive to its east. It is very narrow in shape, with the widest section being on the southerly side of the property, which is where the residence is located.

Section 22a-92(b)(2) of the Connecticut Coastal Management Act (CCMA) states that, "Policies concerning coastal land and water resources within the coastal boundary are to:(F)to manage coastal hazard areas so as to ensure that development proceeds in such a manner that hazards to life and property are minimized and to promote nonstructural solutions to flood and erosion control problems except in those instances where structural alternatives prove unavoidable and necessary to protect commercial and residential structures and substantial appurtenances that are attached or integral thereto, constructed as of January 1, 1995, infrastructural facilities or water dependent uses."

WALL AT HOUSE

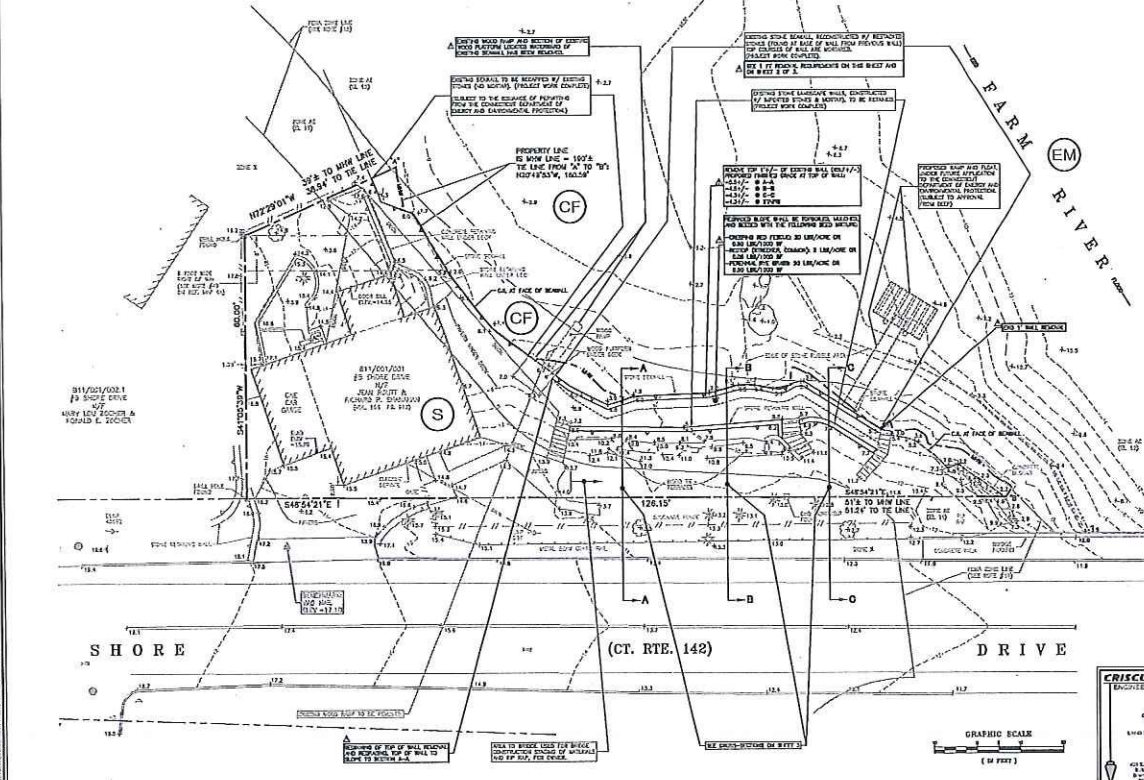
As determined by a field survey performed by this office in June of 2015, the house and its foundation are located in close proximity to the southeasterly property line (1.3' +/-); to the easterly property line, which is the westerly Shore Drive right-of-way-line (3.0'); and to the westerly property line, which is the mean high water line for the Farm River runs, and also substantially along an existing seawall (7.8' +/-). The existing deck, which is attached and appurtenant to the house, is also located very close to the existing seawall (1.7' +/-). The existing seawall, because of its close proximity to the existing residence, provides a necessary means of protection to the house's foundation, and subsequently to life and property. The seawall located on the westerly/southwesterly side of the property can therefore be considered a structure that is "unavoidable and necessary" to protect the existing circa. 1948 house, and is therefore permissible under the CCMA.

Proposed Restoration- The existing seawall that is located on the westerly/southwesterly side of the property would be retained in place. The close proximity of this seawall to the existing residence makes it a critical means of protection and support for the home's foundation.

WESTERLY SEAWALL

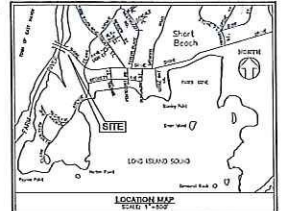
The existing seawall on the westerly/northwesterly side of the subject property is located at the narrowest section of the site; the distance between the seawall /Farm River mean high water line and the Shore Drive westerly right-of-way line is approximately 22' +/- . This existing seawall had degraded over time, and had been reconstructed, in place, by the current property owner by restacking the existing stones by hand. The reconstruction of this seawall was necessary to protect the subject property from further degradation and potential erosion. In addition, because of the seawall's close proximity to Shore Drive (CT Rte. 142), its reconstruction was also necessary in order to maintain a safe buffer from and protection to the public roadway and utility infrastructure contained therein. The reconstruction of this seawall was therefore permissible under the CCMA.

Proposed Restoration- It is proposed that approximately one foot in height be removed from the top of the existing stacked stone seawall that is located on the westerly/northwesterly side of the subject property. The ground surface would be graded back from the lowered wall with a two- horizontal-to-one- vertical slope, until existing grade is matched. The removal of more than one foot in height from the top of the wall would result in a ground surface slope that is in excess of two-to-one, and would therefore be difficult to stabilize, be susceptible to erosion, and have the potential for failure. The removal of more than one foot of height from the top of this seawall would also jeopardize the stability of the adjacent mortared landscape walls, which, per the owner, have a shallow foundation.

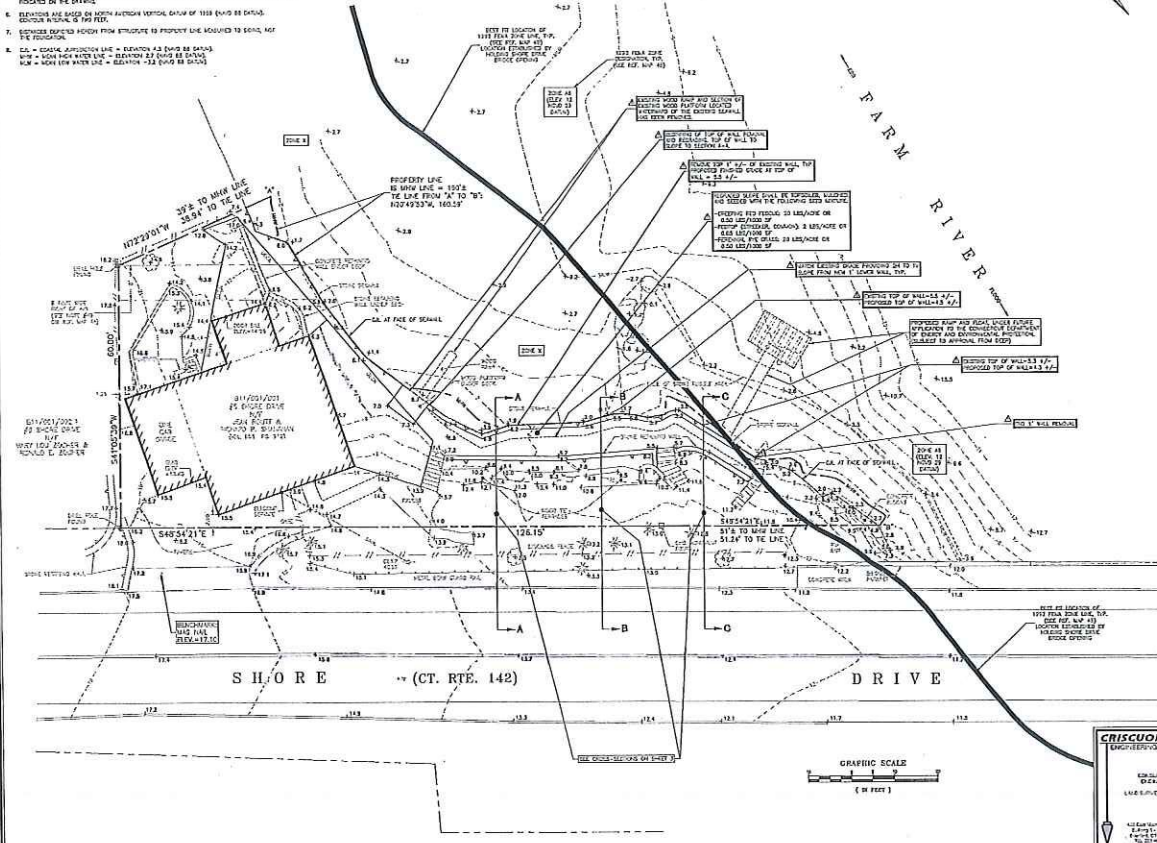


GENERAL NOTES

1. PROPERTY LOCATED WITHIN ZONE A - FLOOD PROTECTION OF 500 FEET.
2. PROPERTY AREA TO BE FLOODED - 1,000 FEET DEEP ON 500 FEET.
3. FLOOD PROTECTION AREAS ARE BASED ON FLOODING MAP A.
4. FLOODING IS BASED ON THE FOLLOWING DATA:
 - A. PROPERTY & FLOODING MAP - 1,000 FEET DEEP ON 500 FEET.
 - B. FLOODING MAP - 1,000 FEET DEEP ON 500 FEET.
 - C. FLOODING MAP - 1,000 FEET DEEP ON 500 FEET.
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100. FLOODING MAP - 1,000 FEET DEEP ON 500 FEET.



| EXISTING | LEGEND | PROPOSED |
|----------|---------------|----------|
| --- | Shore Line | --- |
| --- | Property Line | --- |
| --- | Zone A | --- |
| --- | Zone B | --- |
| --- | Zone C | --- |
| --- | Zone D | --- |
| --- | Zone E | --- |
| --- | Zone F | --- |
| --- | Zone G | --- |
| --- | Zone H | --- |
| --- | Zone I | --- |
| --- | Zone J | --- |
| --- | Zone K | --- |
| --- | Zone L | --- |
| --- | Zone M | --- |
| --- | Zone N | --- |
| --- | Zone O | --- |
| --- | Zone P | --- |
| --- | Zone Q | --- |
| --- | Zone R | --- |
| --- | Zone S | --- |
| --- | Zone T | --- |
| --- | Zone U | --- |
| --- | Zone V | --- |
| --- | Zone W | --- |
| --- | Zone X | --- |
| --- | Zone Y | --- |
| --- | Zone Z | --- |



RESTORATION PLAN
LIS-2016-3715-V

| | |
|-------------------------|--|
| CRISCUOLO | PROPERTY LOCATED AT #8 DUNDY DRIVE BRANFORD, CONNECTICUT |
| DATE: 11/11/16 | PROJECT NO: 2 |
| SCALE: 1"=100' | OF 3 |
| BY: [Signature] | 1992 FEMA FLOOD ZONE OVERLAY PLAN (PANEL NO. 060073 0001 D) |
| CHECKED BY: [Signature] | DATE: 11/11/16 |

[illegible]

EASTERLY LANDSCAPE WALL

The existing landscaping wall, which is also located in the narrow section of the property, is situated just to the east of the existing seawall. The base elevation of this wall is above DEEP's Coastal Jurisdiction Line (CJL) elevation. This wall was constructed in an effort to restore an area on the subject property that had been destabilized during a Farm River bridge construction project. This area was disturbed during its usage as a staging and storage area for materials and rip rap, and was not adequately restored upon the project completion. The landscaping wall serves to stabilize the limited area that is between the adjacent seawall and the Shore Drive roadway infrastructure, and reduces the ground surface slope to a more acceptable, safer gradient. This wall serves to provide a safer buffer area between the Farm River and the Shore Drive public roadway infrastructure, and was therefore permissible under the CCMA.

Proposed Restoration:- The existing easterly landscape wall would be retained in place. The elevation of the base of this wall is above the coastal jurisdiction line, and the entirety of the wall is located outside of the 1992 FEMA 100 year flood boundary line.

Zawoy, Kevin

From: John B. Lust <johnblustjr@gmail.com>
Sent: Monday, May 09, 2016 1:30 PM
To: Zawoy, Kevin
Subject: RE: 5 shore road, branford

Right Kevin, Fabric would be a good idea.
How long can we take to get this done? 1 year? 6 months?
John

John B. Lust Jr.
454 East Main Street
P.O. Box 615
Branford, CT 06405-0615
Cell (203) 988-4665

-----Original Message-----

From: Zawoy, Kevin [mailto:Kevin.Zawoy@ct.gov]
Sent: Monday, May 09, 2016 1:17 PM
To: 'John B. Lust' <johnblustjr@gmail.com>
Subject: RE: 5 shore road, branford
Importance: Low

Thanks John, I also need a date for completion. Do you think any fabric is needed to help stabilize the slope? Also the Forestieres and contractor did sign the consent order.

-----Original Message-----

From: John B. Lust [mailto:johnblustjr@gmail.com]
Sent: Monday, May 09, 2016 1:05 PM
To: Zawoy, Kevin
Cc: Bob Criscuolo; Richard Shanahan
Subject: RE: 5 shore road, branford

Dear Kevin,

I know you'd like to have this work completed as soon as possible, but this process :

1. The local CAM approval (which just came in by the way).
2. The work I've been doing sheparding this thru the process.
3. The permitting work still to be completed meaning a COP and a 440 dock which is where this all started.

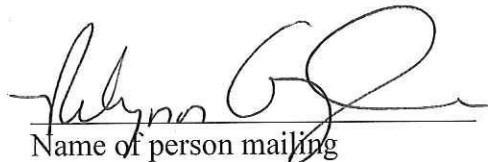
has been so expensive, that there is a short fall in monies available to complete this work. We'd appreciate any consideration you could give us the time allowed to get this work completed. Would it be possible to have the agreed upon restoration plan called out in the Certificate of Permission we will have to get to retain the wall and then give us 90 days to complete the work?

In answer to your questions:

Certification of Mailing

On 6/20, 2016, at 10:00 a.m./p.m., I mailed a certified copy of Consent Order No. LIS-2015-3715-V to the following, by placing it in the U.S. mail/interdepartmental mail:

Jean Routt and Richard Shanahan
5 Shore Drive
Branford, CT 06405


Name of person mailing

Title: Adm asst

Date: 6/20/16