



79 Elm Street • Hartford, CT 06106-5127

www.ct.gov/deep

Affirmative Action/Equal Opportunity Employ

STATE OF CONNECTICUT File #LIS-2016-3778-V Date of Issuance: February 7, 2017

v.

JOLLY ROGER ENTERPRISES, LLC dba BLACK HALL OUTFITTERS, INC.

CONSENT ORDER

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

1. Jolly Roger Enterprises, LLC dba Black Hall Outfitters, Inc. is the owner of 132 Shore Road, Old Lyme, CT ("The Property"). The property is located adjacent to Black Hall River, a tidal, coastal and navigable water of the State and includes tidal wetlands as defined by section 22a-29 of the Connecticut General Statutes ("CGS").
2. On February 19, 2016, Certificate of Permission (COP) #201509895-SB was issued to the Respondent to retain existing marina docking structures and to dredge the marina basin and place dredge material within the marina parking lot and within the yard of an adjacent property at 131 Shore Road, Old Lyme. The authorized work is depicted on 8 sheets of plans: sheet 4 of 4 dated September 29, 2015, sheets 1, 2, 2A and 3 of 4 dated September 29, 2015 and revised January 28, 2016, and sheets 1 through 3 of 3 dated February 10, 2016 and revised February 19, 2016, entitled "Maintenance Dredging," prepared by Docko Incorporated, a copy of which is attached hereto as "Attachment A."
3. On or before March 29, 2016 without authorization, Respondent conducted work out of compliance with COP #201509895-SB as follows:
 - a) SPECIAL TERMS AND CONDITIONS paragraph 5. Failed to post the Permit Notice in a conspicuous place at the work site;

- b) SPECIAL TERMS AND CONDITIONS paragraph 6. Failed to install and maintain appropriate sedimentation and erosion controls until the site has been stabilized;
 - c) SPECIAL TERMS AND CONDITIONS paragraph 7. Placed equipment and materials in a tidal wetland;
 - d) SPECIAL TERMS AND CONDITIONS paragraph 8. Failed to flag the existing tidal wetlands in and adjacent to the area where work was conducted or areas to be used for access to be readily identifiable by the contractor until all work has been completed both 131 and 132 Shore Road;
 - e) SPECIAL TERMS AND CONDITIONS paragraph 9. Failed to establish a minimum of 10 foot setback from any wetlands or watercourses at both 131 and 132 Shore Road;
 - f) SPECIAL TERMS AND CONDITIONS paragraph 10. Failed to follow the addendum entitled "Construction sequencing and Methodology" attached to the certificate; and
 - g) SPECIAL TERMS AND CONDITIONS paragraph 18. Failed to obtain permission from the Commissioner to alter a portion of the dredged material from the approved dredge material disposal location of the rear yard of 131 Shore Road, Old Lyme and the parking lot of 132 Shore Road, Old Lyme to 308 Mile Creek Road, Old Lyme.
4. The property and the location of the work described in paragraphs A.1. and A.2., above, shall hereinafter be referred to as "the site."
5. Respondent did not received a certificate or permit, or necessary approval from the Commissioner under sections 22a-32 and 22a-361 of the Connecticut General Statutes (CGS) for the non-compliance activities described in paragraph A.3. at the site.
6. By virtue of the above, Respondent has violated sections 22a-32 and 22a-361 of the CGS.
- B. With the agreement of the Respondent, the Commissioner, acting under CGS sections 22a-6, and 22a-361 and 22a-32 orders Respondent as follows:
1. Submission of a Restoration Plan. Within 21 calendar days of issuance of this Consent Order, Respondent shall submit a restoration plan for the disturbance to tidal wetland areas resulting from the construction work completed within the yard of 131 Shore Road, Old Lyme. The restoration plan shall be for the review and written approval of the Commissioner. Such restoration plan shall be prepared by a certified wetland scientist and include a detailed method for establishment of native tidal wetland vegetation along

the entire shoreline of the impacted area of the property. The plan shall include drawings which shows proposed site conditions, including the location of the property, property lines, coastal jurisdiction line, site elevations, impacted tidal wetlands area, and location of existing tidal wetlands. In addition, the restoration plan must include a detailed methodology for the establishment of tidal wetland vegetation including the use of tidal wetland plant plugs; provision for sedimentation and erosion controls; staking or other reliable demarcation of tidal wetland boundaries; a proposal for a minimum of a 2 year monitoring plan for the restoration of any tidal wetland plant species; a timetable for accomplishing all such restoration work; and any other measures as are appropriate to prevent adverse environmental impacts and ensure compliance with this notice and with all applicable statutes and regulations. Such plan shall provide for the completion of all restoration work no later than 21 days after the Commissioner's written approval of such plan.

2. Dredge Material Disposal Site. Within 30 calendar days of issuance of this Consent Order, Respondent shall thoroughly mix the dredge material identified in paragraph A.3.g., above, placed on property located at 308 Mile Creek Road, Old Lyme with the scattered piles of native earth materials surrounding the dredge material disposal area, seed with a salt tolerant grass mix, and lime. Proper erosion and sediment control measures shall be installed in the area where the mixing and re-grading of dredge material/soil mix occurs in order to prevent the migration of sediment. Within 14 days of completion of this work, the Respondent shall submit photographs of the mixed and stabilized disposal material.
3. No Additional Work. Respondent 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.
4. Full compliance. Respondent 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.
5. Supplemental Environmental Project.
 - a. The Respondent has 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 Respondent shall pay \$4,000 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-2016-3778-V."

- b. If the Respondent fails to fund the SEP in accordance with paragraph B.5.a. above, the Respondent shall immediately pay a civil penalty of \$4,250. Respondent shall pay such civil penalty in accordance with the provisions of paragraph B.6 of this Consent Order.
 - c. The Respondent 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 Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, the Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
6. 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 Nos. LIS-2016-3778-V."
7. Approvals. Respondent 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 Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent 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.
8. 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 Respondent, whichever is earlier.

9. 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.
10. Notification of noncompliance. In the event that Respondent 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, Respondent 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, Respondent 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 Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent 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.
11. 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 Respondent 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."
12. 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 Respondent to an injunction and penalties under Chapters 439, and 446i of the General Statutes.

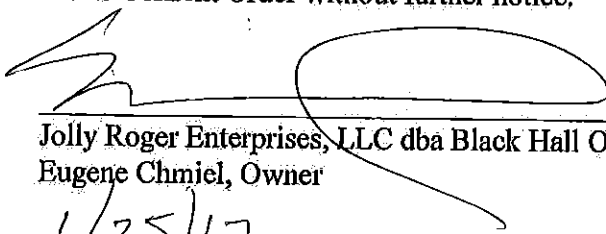
13. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense in accordance with CGS section 22a-6, under CGS section 53a-157b.
14. Notice of transfer; liability of Respondent and others. Until Respondent has fully complied with this Consent Order, Respondent 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. Respondent's 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.
15. 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 Respondent pursuant to this Consent Order have not successfully corrected all violations, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to correct violations.
16. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.
17. 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 Respondent pursuant to this Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.
18. 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.
19. 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.
20. Notice to Commissioner of changes. Within fifteen days of the date Respondent 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, Respondent shall submit the correct or omitted information to the Commissioner.

21. 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


Respondent consent to the issuance of this Consent Order without further notice,


Jolly Roger Enterprises, LLC dba Black Hall Outfitters, Inc.
Eugene Chmiel, Owner

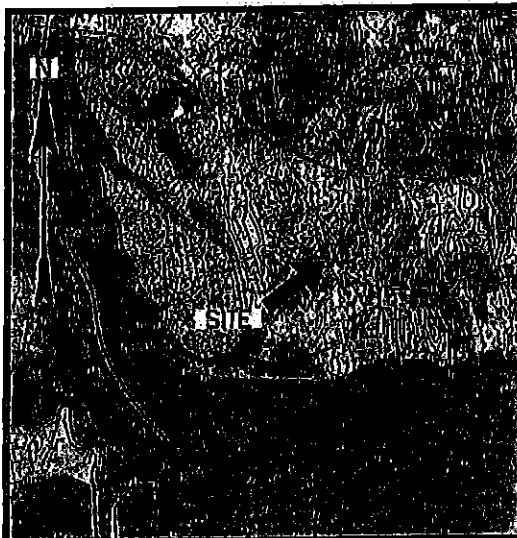
1/25/17
Date

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

February 7, 2017.


Michael Sullivan
Deputy Commissioner

ATTACHMENT " A "

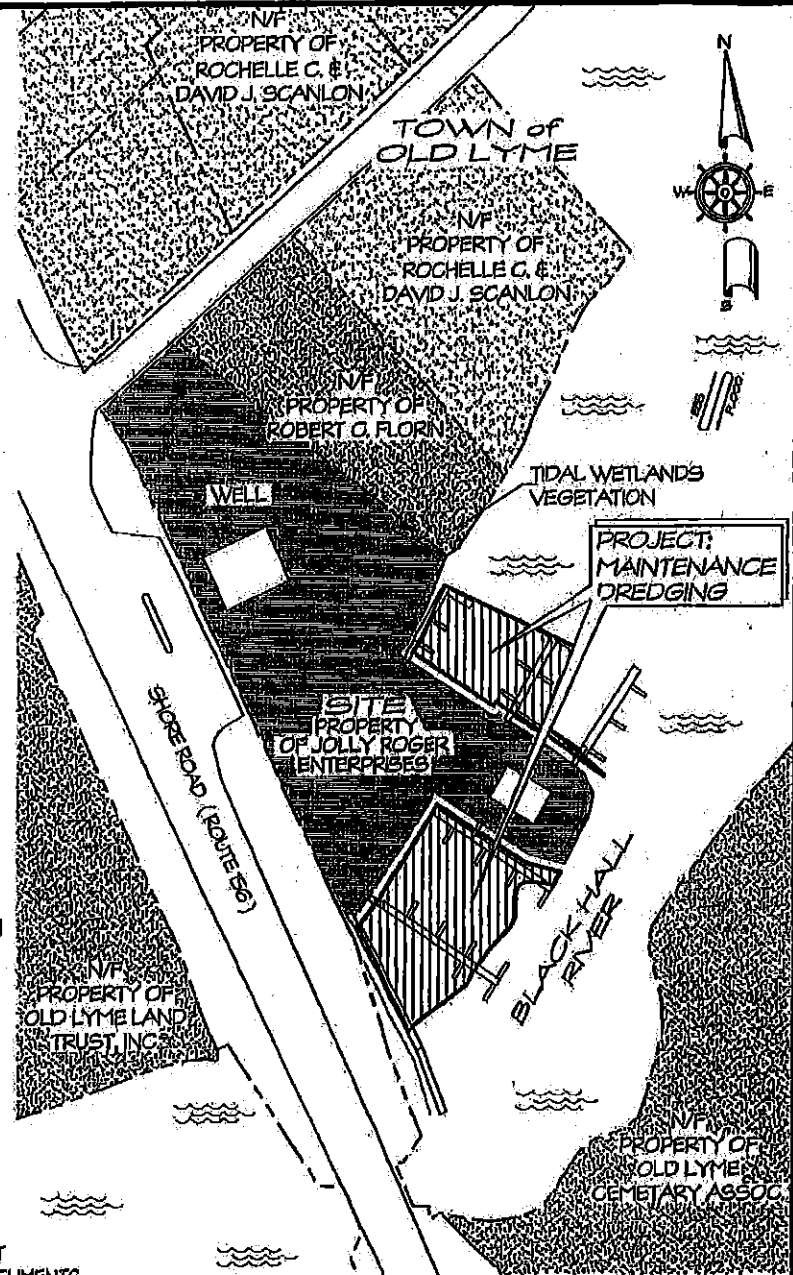


LOCATION MAP REFERENCE CHART 12372 GRAPHIC SCALE 2000 0 2000 IN YARDS

NOTES:

- ELEVATION DATUM IS MEAN LOW WATER (MLW).
- TIDE DATA IS TAKEN FROM 2015 NOAA TIDE TABLES REFERENCE: NEW LONDON, CT. IS TAKEN FROM THE COASTAL JURISDICTIONAL LINE FACT SHEET: OLD LYME
- PROJECT DESCRIPTION: MAINTENANCE DREDGE TO -4FT MEAN LOW WATER, 1500 CY OF SILT OVER AN AREA OF 11,800 SF BY MECHANICAL MEANS FOR UPLAND DISPOSAL ON OR OFF SITE, RETAIN THE FOLLOWING: A 4-FT X 45-FT MAIN FLOAT WITH TWO 2-FT X 10-FT FINGER FLOATS A 4-FT X 18-FT FINGER FLOAT AND RAMP, A 4-FT X 82-FT MAIN FLOAT WITH FIVE 2-FT X 10-FT FINGER FLOATS A 4-FT X 20-FT FINGER FLOAT AND RAMP, A 5-FT X 62-FT MAIN FLOAT WITH THREE 2-FT X 10-FT FINGER FLOATS A 5-FT X 20-FT FINGER FLOAT AND RAMP, A 4-FT X 82-FT MAIN FLOAT WITH FOUR 2-FT X 10-FT FINGER FLOATS AND RAMP, A 4-FT X 82-FT MAIN FLOAT WITH SIX 2-FT X 10-FT FINGER FLOATS AND RAMP AND A 4-FT X 18-FT FLOAT WITH RAMP, WATERWARD OF THE HIGH TIDE AND COASTAL JURISDICTION LINES.
- PROJECT PURPOSE: THIS IS A COMMERCIAL MARINA IN SUPPORT OF RECREATIONAL BOATING.
- THESE APPLICATION DRAWINGS REPRESENT A COMPILED OF SURVEYS FOR ENVIRONMENTAL PERMIT PURPOSES, THEY ARE NOT CONSTRUCTION CONTRACT DOCUMENTS. A TOWN ZONING COMPLIANCE PERMIT MAY BE REQUIRED.
- ADJOINING PROPERTY OWNERS:

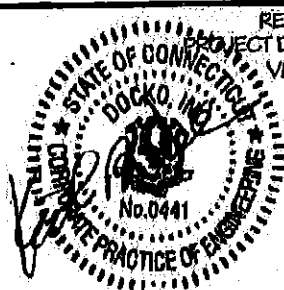
NORTHEAST:	SOUTHWEST:
ROBERT C. FLORIN	OLD LYME LAND TRUST, INC.
36 HOMESTEAD CIRCLE	195 SHORE ROAD
OLD LYME, CT	OLD LYME, CT



OVERALL PLAN

GRAPHIC SCALE 1"=100'

100 50 0 100



REVISED 1-28-16 DEEP
PROJECT DESCRIPTION, TIDAL
VEGETATION & WELL

PROJECT: MAINTENANCE DREDGING

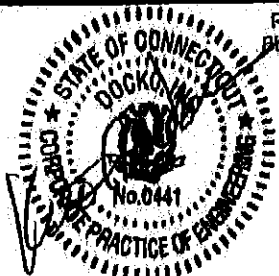
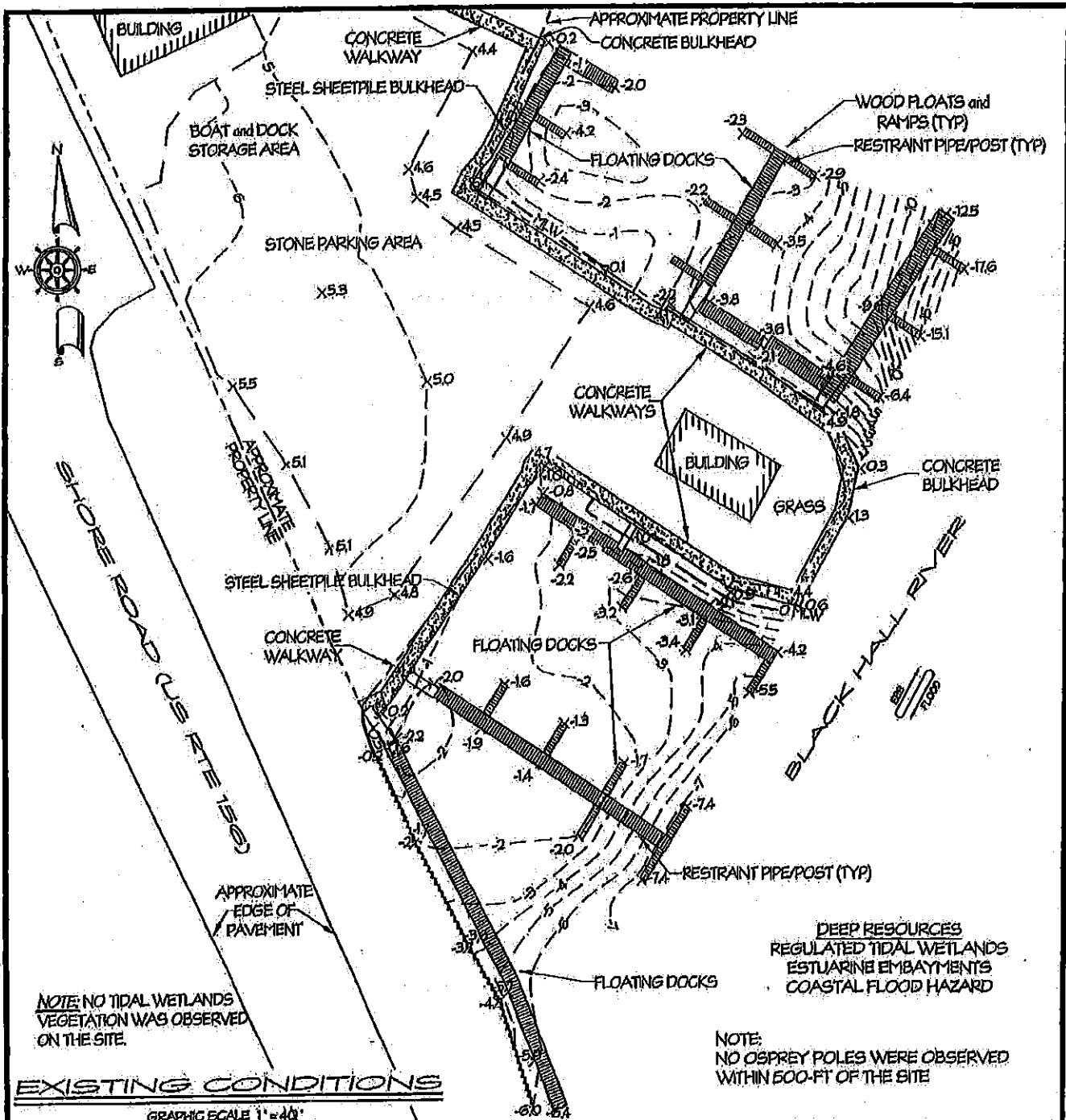
LOCATION: TOWN of OLD LYME
NEW LONDON COUNTY, CONNECTICUT
WATERWAY: BLACK HALL RIVER
DATE: SEPTEMBER 29, 2015
APPLICANT: BLACK HALL
OUTFITTERS INC.
AGENT: SHEET 1 OF 4

DOCKO, INC.

Keith B. Nelson, PE
Mystic, CT 06355
860 572 8939 FAX 860 572 7569
EMAIL: office@docko.com



DWG 00-04-1084

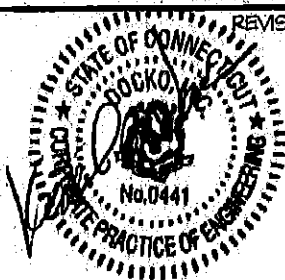
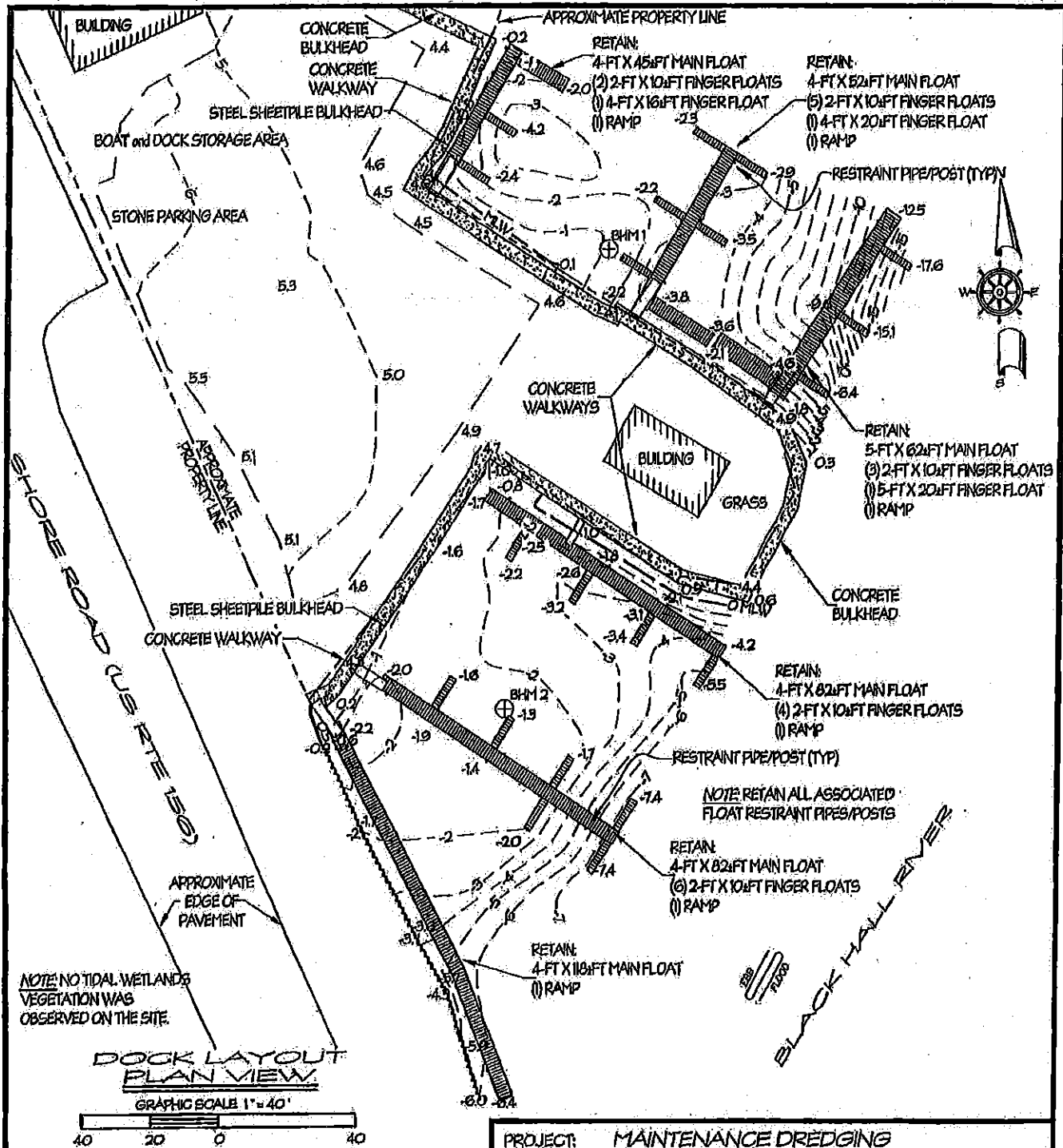


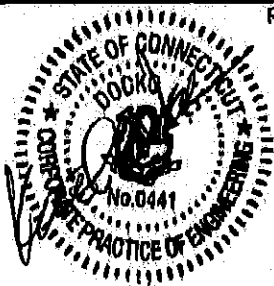
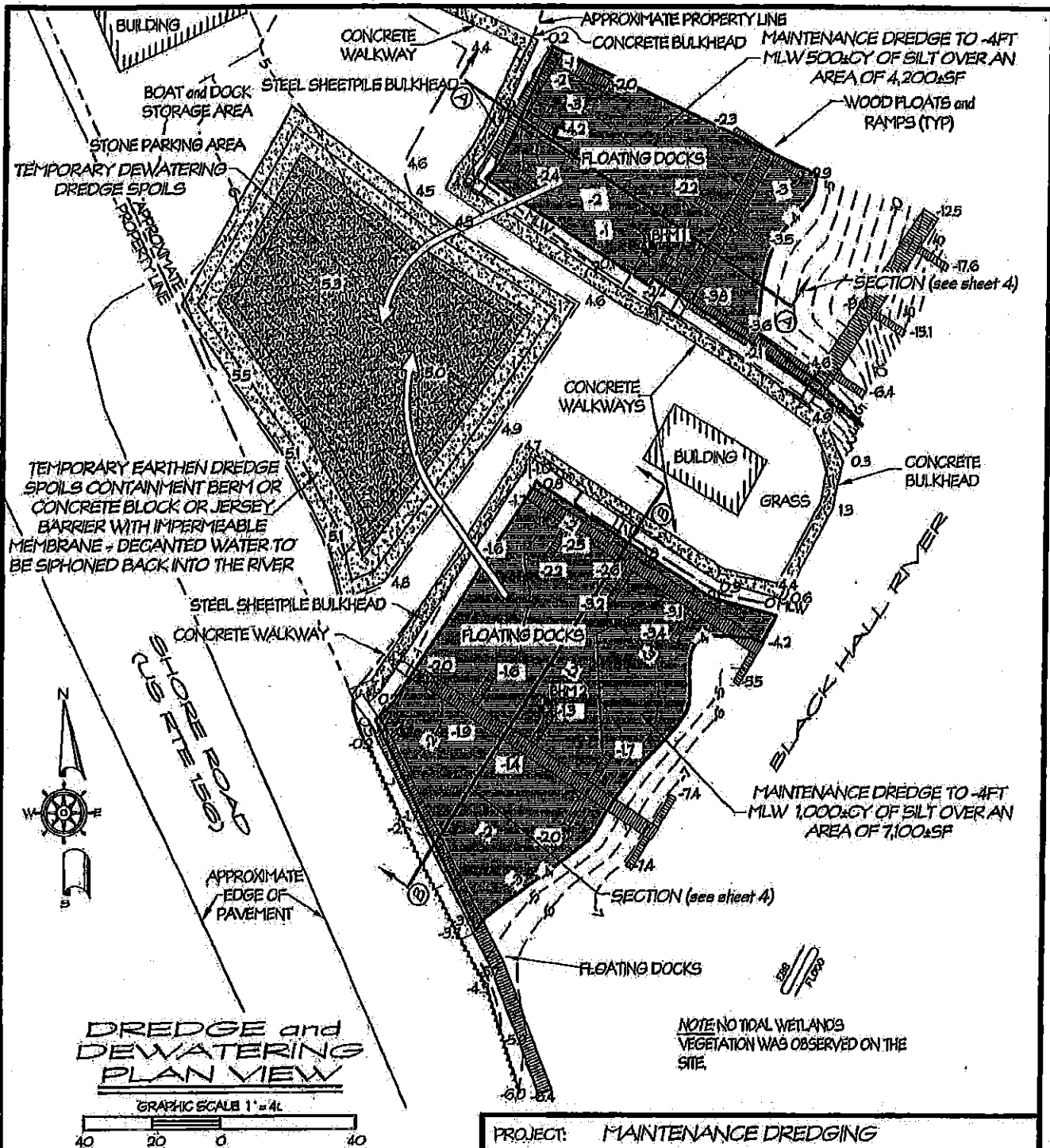
REVISED 1-28-16 DEEP
BUILDING, ROAD, TIDAL
WETLANDS NOTE &
BOUNDARY SURVEY

PROJECT:	MAINTENANCE DREDGING
LOCATION:	TOWN OF OLD LYME NEW LONDON COUNTY, CONNECTICUT
WATERWAY:	BLACK HALL RIVER
DATE:	SEPTEMBER 29, 2015
APPLICANT:	BLACK HALL OUTFITTERS INC
AGENT:	SHEET 2 OF 4
DOCKO, INC.	
Keith B. Nelson, PE Mystic, CT 06355 860 572 8939 FAX 860 572 7569 EMAIL: office@docko.com	



DWG 00-04-1084





REVISED 1-28-16 DEEP
BUILDING, TIDAL
WETLANDS NOTE &
BOUNDARY SURVEY

PROJECT: MAINTENANCE DREDGING

LOCATION: TOWN OF OLD LYME
NEW LONDON COUNTY, CONNECTICUT

WATERWAY: BLACK HALL RIVER

DATE: SEPTEMBER 29, 2015

APPLICANT: BLACK HALL
OUTFITTERS INC

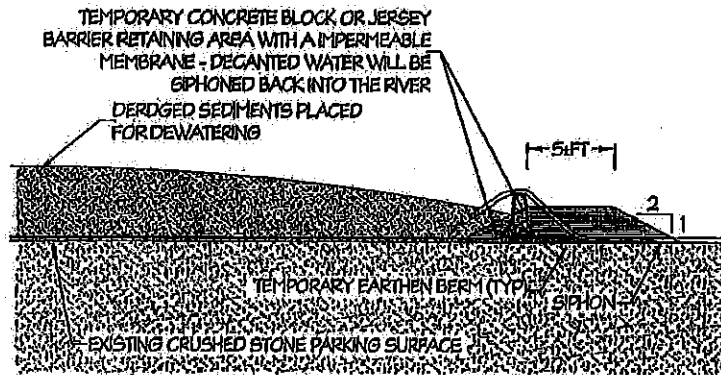
AGENT: SHEET 3 OF 4

DOCKO, INC.

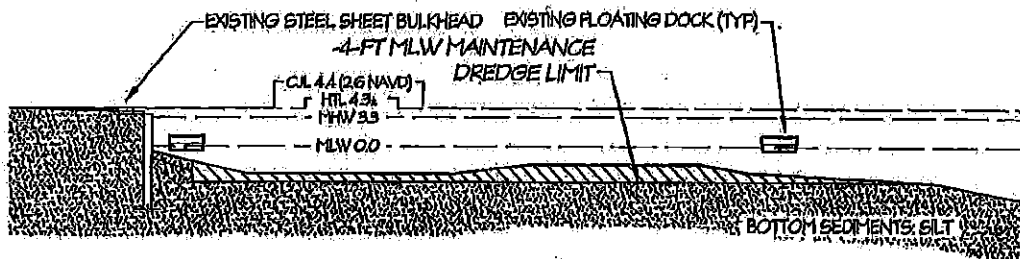
Keith B. Nelson, PE
Mystic, CT 06355
860 572 8939 FAX 860 572 7569
EMAIL: office@docko.com



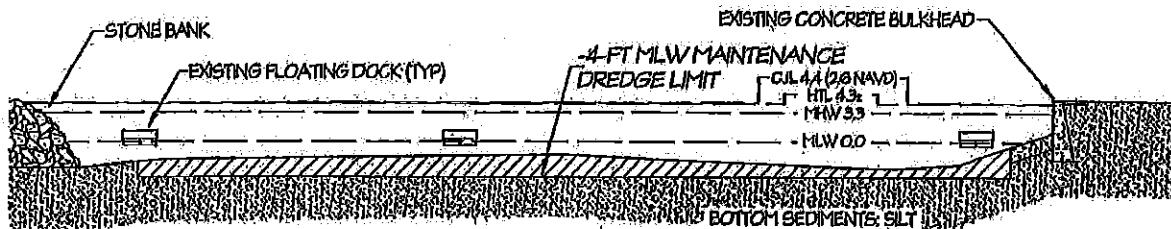
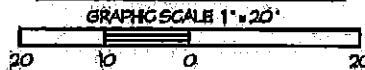
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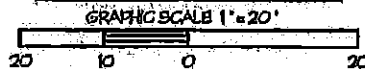
DREDGED SEDIMENTS CONTAINMENT DETAIL



SECTION A-A



SECTION B-B



PROJECT: MAINTENANCE DREDGING

LOCATION: TOWN OF OLD LYME
NEW LONDON COUNTY, CONNECTICUT

WATERWAY: BLACK HALL RIVER

DATE: SEPTEMBER 29, 2015

APPLICANT: BLACK HALL
OUTFITTERS INC

AGENT: SHEET 4 OF 4

DOCKO, INC.

Keith B. Nelson, PE

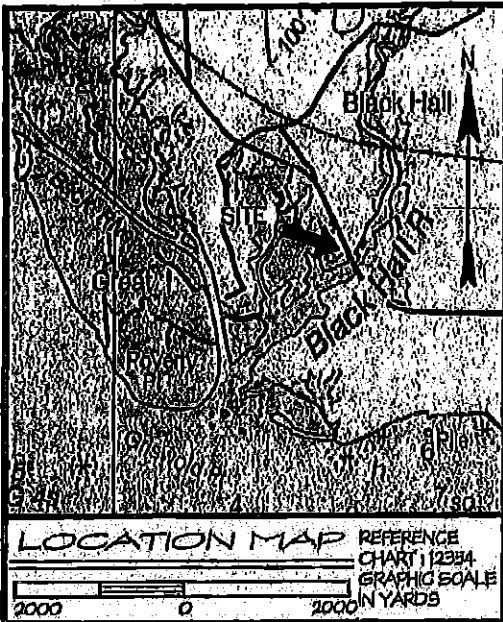
Mystic, CT 06355

860 572 8939 FAX 860 572 7569

EMAIL: office@docko.com



DWG 00-04-1084



NOTES:

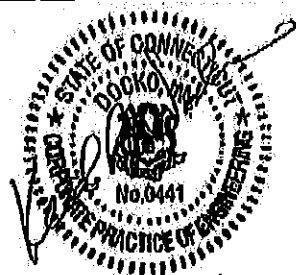
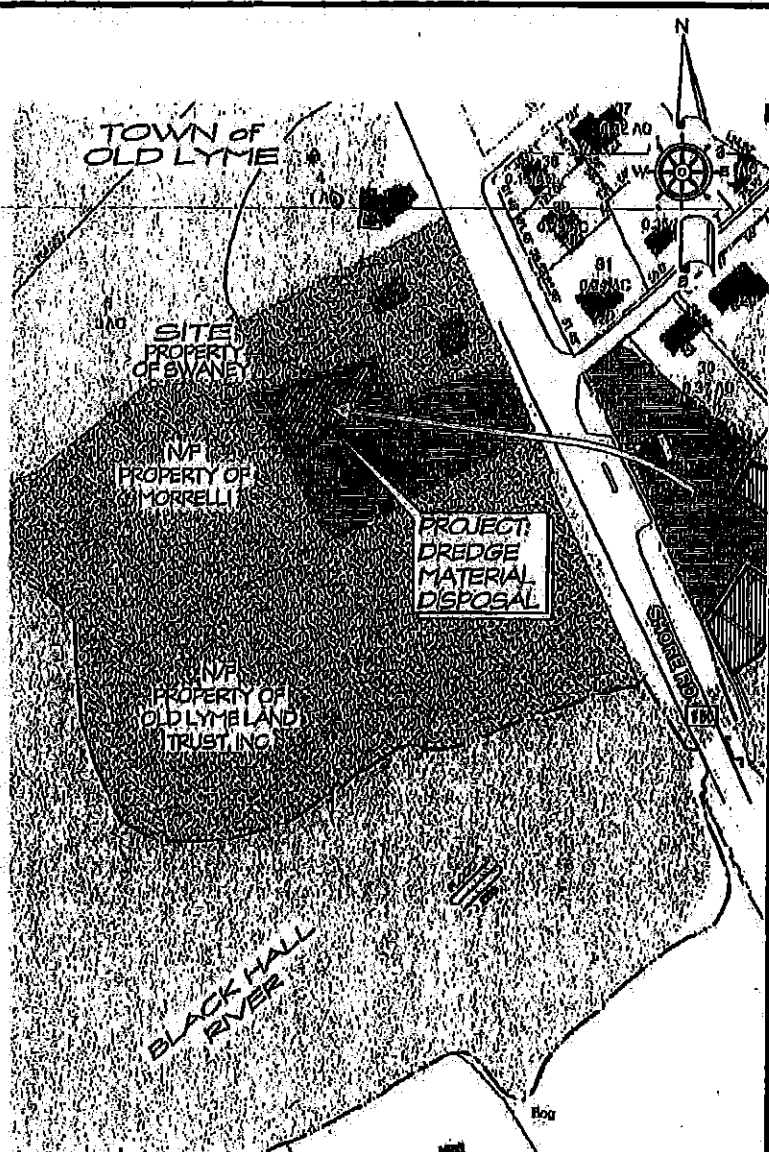
1. ELEVATION DATUM IS MEAN LOW WATER (MLW).
2. TIDE DATA IS TAKEN FROM 2016 NOAA TIDE TABLES
 REFERENCE: NEW LONDON, CT. IS TAKEN FROM THE
 COASTAL JURISDICTION LINE FACT SHEET: OLD LYME
3. PROJECT DESCRIPTION: PLACE 195,000 YD OF DEWATERED,
 CLEAN DREDGE MATERIAL FROM AN ADJACENT
 MAINTENANCE DREDGE PROJECT, OVER 7,000±SF,
 LANDWARD OF THE HIGH TIDE AND COASTAL JURISDICTION
 LINES.

4. PROJECT PURPOSE:
 THIS PROJECT MAKES BENEFICIAL USE OF DREDGED
 MARINE SILTS TO ENHANCE LAWN SOILS.

5. THESE APPLICATION DRAWINGS REPRESENT
 A COMPILATION OF SURVEYS FOR ENVIRONMENTAL
 PERMIT PURPOSES. THEY ARE NOT CONSTRUCTION
 CONTRACT DOCUMENTS. A TOWN ZONING COMPLIANCE
 PERMIT MAY BE REQUIRED.

6. ADJOINING PROPERTY OWNERS:

NORTH & WEST:	SOUTH:
FRANK & SUZANNE MORELLI	OLD LYME LAND TRUST, INC.
129 SHORE ROAD	PO BOX 163
OLD LYME, CT 06371	OLD LYME, CT 06371



REVISED 2-19-16 DEEP
 APPLICANT

PROJECT: DREDGE MATERIAL DISPOSAL

LOCATION: TOWN of OLD LYME
 NEW LONDON COUNTY, CONNECTICUT

WATERWAY: BLACK HALL RIVER

DATE: FEBRUARY 10, 2016

APPLICANT: BLACK HALL OUTFITTERS INC

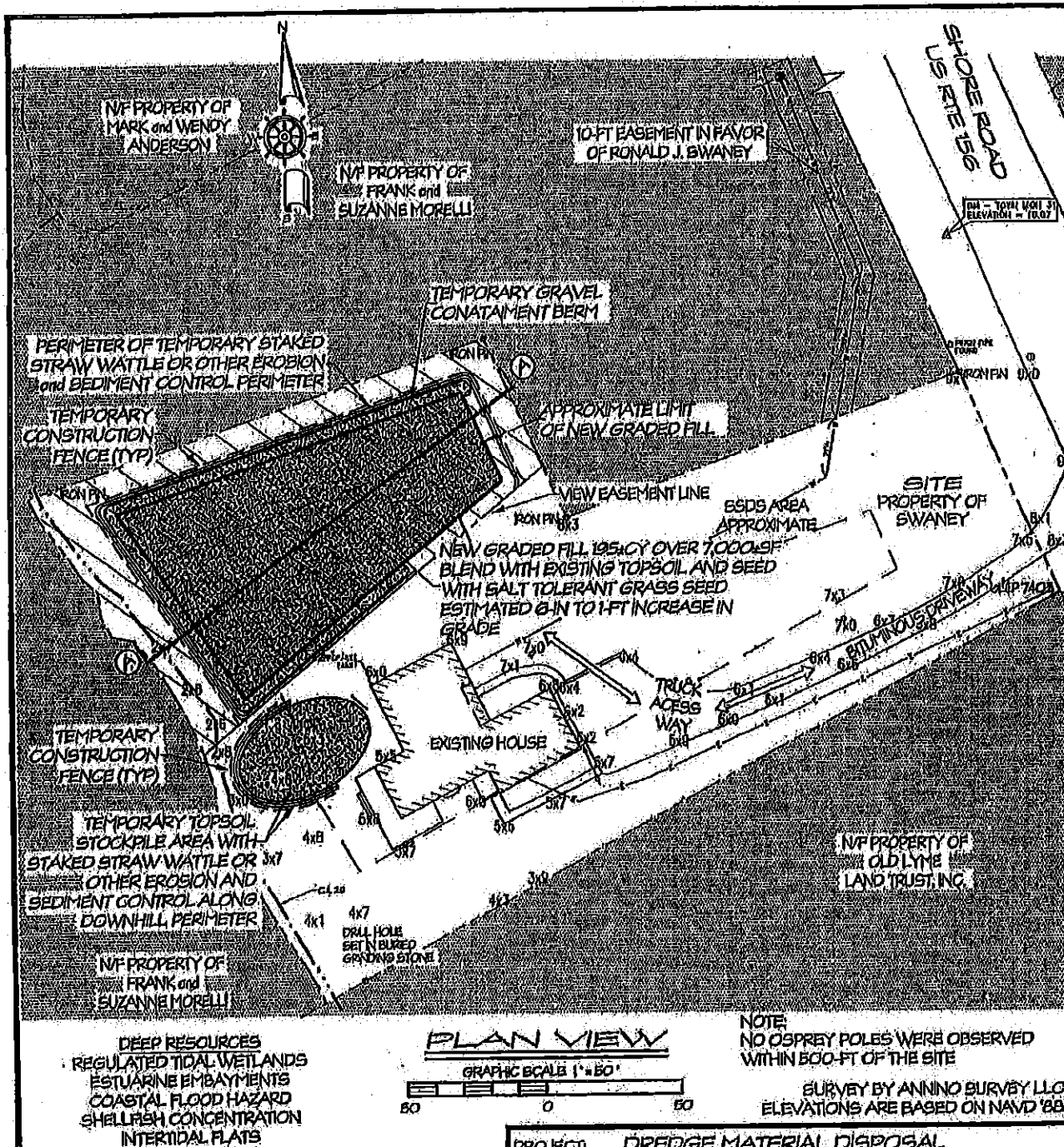
AGENT: SHEET 1 OF 3

DOCKO, INC.

Keith B. Nelson, PE
 Mystic, CT 06355
 860 572 8939 FAX 860 572 7569
 EMAIL: office@docko.com



DWG 00-04-1084



REVISED 2-19-16 DEEP
APPLICANT



PROJECT: DREDGE MATERIAL DISPOSAL

LOCATION: TOWN of OLD LYME
NEW LONDON COUNTY, CONNECTICUT

WATERWAY: BLACK HALL RIVER

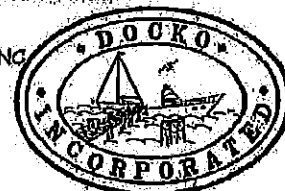
DATE: FEBRUARY 10, 2016

APPLICANT: BLACK HALL OUTFITTERS INC.

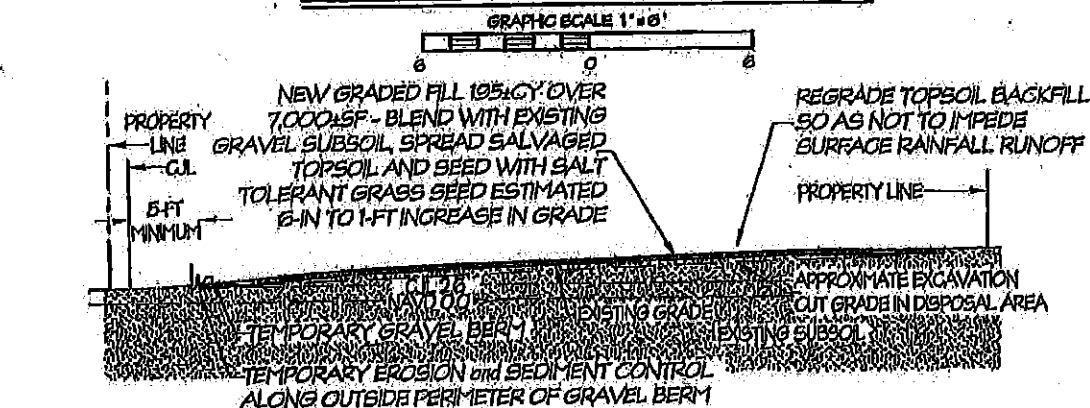
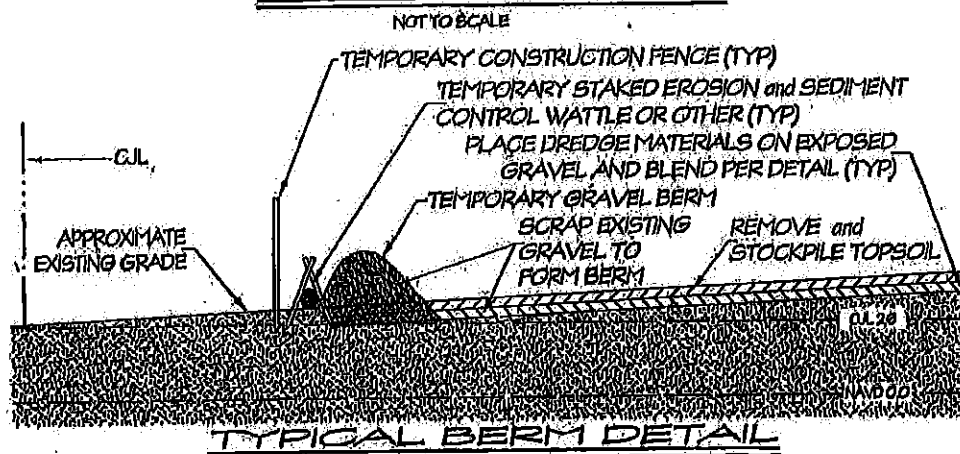
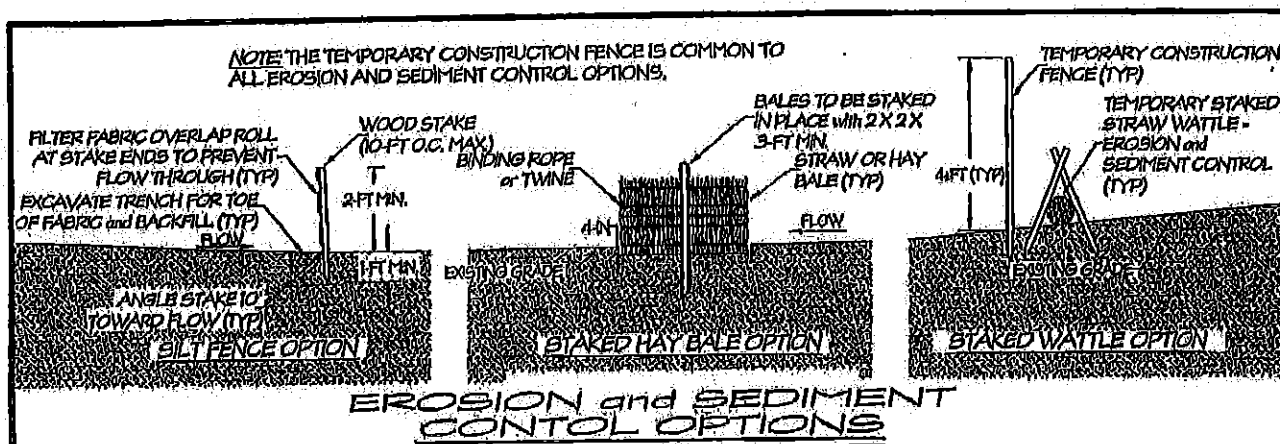
AGENT: SHEET 2 OF 8

DOCKO, INC.

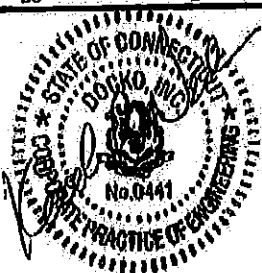
Keith B. Nelson, PE
Mystic, CT 06355
860 572 8939 FAX 860 572 1569
EMAIL: office@docko.com



DWG 00-04-1084



ELEVATIONS ARE BASED ON NAVD '88



REVISED 2-19-16 DEEP APPLICANT

PROJECT: DREDGE MATERIAL DISPOSAL

LOCATION: TOWN of OLD LYME
NEW LONDON COUNTY, CONNECTICUT

WATERWAY: BLACK HALL RIVER

DATE: FEBRUARY 10, 2016

APPLICANT: BLACK HALL OUTFITTERS INC

AGENT: SHEET 3 OF 3
DOCKO, INC.

Kelith B. Neilson, PE
Mystic, CT 06355
860 572 8239 FAX 860 572 7569
EMAIL: office@docko.com



DWG 00-04-1084