

Office of Adjudications

***IN THE MATTER OF*** : ***APPLICATION NO.***  
***201207495-TS***

***16 HIGHGATE ROAD LLC*** : ***OCTOBER 30, 2014***

**PROPOSED FINAL DECISION**

***I***  
***SUMMARY***

16 Highgate Road LLC (the applicant), has applied for a permit from the Department of Energy and Environmental Protection (DEEP/department) and its Office of Long Island Sound Programs (OLISP) to construct a residential dock and pier to serve its property at 16 Highgate Road in Greenwich and provide access to the waters of Long Island Sound. OLISP issued a Notice of Tentative Determination (NTD) on September 18, 2013 that recommended approval of the proposed dock structure. A petition for hearing signed by more than twenty-five members of the public was submitted on October 22, 2013 requiring the department to conduct a hearing on the application and OLISP's tentative determination to approve the application subject to the terms and conditions of a proposed draft permit (Attachment A).

Five residents individually filed petitions to intervene as parties in the hearing and were granted party status under General Statutes § 22a-19 based on their allegation that the proposed structure will or is reasonably likely to cause unreasonable pollution, impairment, or destruction of the air, water or other natural resources of the state. Three of these individuals were also granted rights as intervenors because their participation in the hearing was found to be in the interest of justice. Regs., Conn. State Agencies § 22a-3a-6(k)(2).<sup>1</sup>

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<sup>1</sup> The five intervening parties are: Robert Lawrence, Jr., Sara Keller, Penelope Low, Ralph DeNunzio, and Eric Lecoq as managing member of 5 BPL LLC. The claims submitted within each individual petition for party status under § 22a-19 were substantially similar. Any findings related to the intervening parties are applicable to all the individual parties unless specifically noted. Dr. Lawrence, Mr. Lecoq, and Mr. DeNunzio were also granted status as intervenors because their properties and that of the applicant are all within the Harbor Point Association.

The applicant and DEEP staff presented evidence on the application and its review, including the details of the final project plans and the proposed draft permit as assurance that the proposed activity complies with the applicable statutes and regulations, namely the Tidal Wetlands Act (General Statutes §§ 22a-28 through 22a-35) and its implementing regulations at Regs., Conn. State Agencies §§ 22a-30-1 et seq.; the Structures Dredging and Fill Act (General Statutes §§ 22a-359 through 22a-363); and the applicable portions of the Coastal Management Act (General Statutes § 22a-90 through 22a-112). The intervening parties offered evidence regarding their contention that the proposed activity violates standards within those acts and therefore will or is reasonably likely to cause unreasonable pollution, impairment, or destruction of the air, water, or other natural resources of the state.

Based on substantial evidence submitted in the record, I find that the proposed structure as conditioned by the proposed draft permit with the modifications recommended later in this decision meets the applicable statutory and regulatory standards cited above and recommend issuance of the permit consistent with this decision.

## *II* *DECISION*

### *A* *FINDINGS OF FACT*

1. The applicant, 16 Highgate Road LLC, is a limited liability company that owns the residential property at 16 Highgate Road in Greenwich (the Property). The Property serves as the primary residence of the Coleman family. Mr. Coleman is a managing member of 16 Highgate Road LLC. The Property is improved with a single-family home and has frontage along the waters of Long Island Sound, more specifically an inlet lying in the southwest portion of Greenwich Cove. This inlet includes the waters to the north of a line drawn from the southern terminus of Elias Point northeasterly to the southern terminus of the Gifford property. The inlet is understood to be the Cove for purposes of this application and its review. (Exs. APP-1, 7, 8; test. T. Coleman, 3/24/14, pp. 7-9, 12, 17, 60, T. DeBartolomeo, 3/24/14, p.103, D. Santa, 3/25/14, p. 12.)

2. Mr. Coleman and his family enjoy kayaking and paddleboarding in the Cove. They currently access the waters of the Cove from the Property by walking through tidal wetlands and over rocks on the southerly portion of the Property. On several occasions, the Colemans have sustained minor injuries when attempting to traverse the wetlands and rocks to access the water. To avoid further injuries, and to avoid any impacts from foot traffic over the wetlands, the Colemans seek to exercise their littoral rights and to construct a docking facility to access the

water for kayaking and paddleboards. (Exs. DEEP-3, 23; test. T. Coleman, 3/24/14, pp. 13-14, 16, 22-23, 30, 50-51, 68-69, T. DeBartolomeo, 3/24/14, pp. 104, 175, T. Selmeski, 3/27/14, p. 89, 4/2/14, p. 21, F. Cantelmo, 3/28/14, p. 185.)

3. The applicant engaged the firm of Roberge Associates Coastal Engineers, LLC ("RACE") to design a docking facility for kayak and paddleboard (non-motorized) use, and to prepare the Application. Tim DeBartolomeo, P.E. of RACE was assigned as the project manager. Mr. DeBartolomeo has over twenty six years of experience as an engineer with over twenty years working almost exclusively on coastal projects, including residential docks and piers under the department's jurisdiction. (Exs. DEEP-3, 23, APP-13; test. T. Coleman, 3/24/14, pp. 13, 15, 91, T. DeBartolomeo, 3/24/14, pp. 95-97, 124.)

4. During the pre-application phase, RACE submitted proposals for initial consideration by OLISP staff. These initial proposals called for a longer pier than what was actually proposed in the application and tentatively approved by DEEP. The final proposal of the pre-application phase included a 100-foot pier. Tonia Selmeski of OLISP advised the applicant that the department would not likely approve a 100-foot fixed pier because it was longer than necessary to span the tidal wetlands. RACE submitted the application on behalf of the applicant on December 7, 2012. The proposal in the application and the subject of the staff's tentative determination called for the installation of a 4' x 72' timber and steel framed fixed pier supported by two sets of two foundation piles; a 3' x 38' aluminum gangway; a 8' x 12.5' floating dock (100 sq. ft.) secured by four timber anchor piles. (Collectively, the "Proposal"). The original pre-application proposal that included a 100-foot fixed pier was included in the pre-application consultation review required to be conducted by the Greenwich Shellfish Commission and the Department of Agriculture's Bureau of Aquaculture. Those agencies approved the proposal that included the longer, 100-foot fixed pier. DEEP staff tentatively approved the shorter, 72-foot fixed pier that appeared in the actual application submitted on December 7, 2012. (Exs. DEEP-3, APP-24; test. T. DeBarolomeo, 3/24/14, pp. 127-128, T. Selmeski, 3/27/14, pp. 6, 27.)

5. RACE communicated with OLISP staff after submission of the Application to address any issues and to discuss what changes, if any, would be required so that the Application would likely obtain approval. In the summer of 2013, Ms. Selmeski and Mr. DeBartolomeo discussed the unauthorized stone debris located in tidal wetlands on the northeastern shoreline of the Property. DEEP supported authorizing the removal of stones less than 250 lbs., while stones exceeding that weight would remain in place. The removal of the stone debris will foster tidal wetland vegetation growth in the areas where the debris had been located. (Exs. DEEP-14 through 17, 20, APP-04D, 04G, 05B, 05E; test. T. DeBartolomeo, 3/24/14, pp 136-137, M. Raymond, 3/25/14, p. 166, T. Selmeski, 3/27/14, pp. 35, 46, 104.)

6. Upon Ms. Selmeski's request, the Application was revised on August 16, 2013, to include the removal of the stone debris on the northeastern shoreline of the Property. The revised project scope included the removal of approximately fifty cubic yards of stone debris over a length of approximately 170 feet of shoreline. Removal of the stone debris will clear approximately 600 to 700 square feet of additional wetlands on the Property and enable tidal vegetation to repopulate this area adding to the function and value of this part of the tidal wetland on the Property. The stone debris will be removed by hand using wheel barrows and possibly hand shovels. No machinery will be used to remove the stone debris. (Exs. DEEP-17, 18, 23; test. M. Raymond, 3/25/14, p. 166, T. Selmeski, 3/27/14, pp. 35, 46, 104.)

7. The tidal wetlands species *spartina alterniflora* is the predominant species in a band of tidal wetlands located along the shoreline of the Property. Waterward of the tidal wetlands grasses is an area of intertidal flat. The flat is inhabited by small invertebrates, soft shell clams, oysters, horseshoe crabs, finfish, and birds. These various species all rely on the intertidal flat at different points in the tidal cycles. Finfish and horseshoe crabs will come in at higher tides to feed. Softshell crabs and small invertebrates will bury themselves in the first fifteen centimeters of the muddy bottom of the Cove. Oysters may append themselves to rocks and other hard substrates, including pilings, in the cove. (Ex. DEEP-3; test. R. Zajac, 3/25/14, pp. 100, 111, M. Raymond, pp. 3/25/14, 156-157, F. Cantelmo, pp. 3/28/14, 173-174, 179.)

8. The proposed 72-foot fixed pier will completely span the band of wetlands but is no longer than necessary to span the actual tidal wetlands vegetation. The deck of the pier will be at a height sufficient to prevent impactful shading of the tidal wetlands plants and substrate. The use of the proposed pier, ramp, and float for paddle craft access to the water of the Cove will not impact the tidal wetlands. The incorporation of the rock outcropping in the design as the starting point of the fixed pier minimized the impact to tidal wetlands because only one set of piles will be placed in the tidal wetlands vegetation. The use of steel framing also minimized the need for additional structure to bring the pier to an appropriate height over the tidal wetlands. The pier will also eliminate the need to cross the wetlands by foot and any impacts associated with carrying paddleboards or kayaks through the tidal wetlands vegetation. The impacts from walking through tidal wetlands to access the water include physical breakage, uprooting, and trampling of vegetation. (Exs. DEEP-3, 20, 23; test. T. DeBartolomeo, 3/24/14, pp. 107-108, M. Raymond, 3/25/14, pp. 160, 164, 189, 199, T. Selmeski, 3/27/14, pp. 12, 45-46, 59.)

9. The sediments of the intertidal flat in the vicinity of the proposed structure are not sandy enough to support breeding activities of horseshoe crabs. Horseshoe crabs will use the muddy area in the vicinity of the proposed structure for feeding. The installation of piles to support the pier and anchor the floating dock will not have a permanent impact on the feeding activities of horseshoe crabs, finfish, or birds. Sandy areas immediately south of the proposed structure will continue to support breeding activities of horseshoe crabs. Prior use of the Cove for kayaking,

paddling, shellfishing, and other activities has not disrupted the activities of horseshoe crabs in this area. The uses associated with the proposed structure will not have any additional impact on the intertidal flat. (Exs. INT-51 to 54; test. R. Zajac, 3/25/14, pp. 110-114, 140.)

10. The piles being used to support the fixed pier and floating dock are natural hardwood piles. They are not preserved and will not pose a risk to water quality by leaching any chemical to the water column or substrate after installation. Each pile will have a permanent impact of 0.785 sq ft. The total permanent impact to tidal wetlands is 1.57 sq ft. The permanent impact to the intertidal flat is 4.71 sq. ft. Any impacts to the water column as a result of pile installation from increased turbidity will be resolved in a normal tidal cycle. There are no samples of sediments from the tidal wetlands or intertidal flat that indicate the presence of any harmful or heavily polluted sediments. The residential use of the Property and adjacent properties indicate little to no risk from contaminated sediments. Construction-related impacts will be temporary in nature and limited to the areas in the immediate vicinity of the piles to be installed. The proposed draft permit places conditions on the construction that if adhered to will protect the intertidal flat from more significant impacts associated with the barge coming into contact with the intertidal flat. The applicant is responsible for adhering to these conditions and ensuring any contractors adhere to these provisions. Wetlands and tidal flats can rebound quickly from any temporary impacts associated with the construction of the proposed structure. (Exs. APP-12, DEEP-22; test. T. DeBartolomeo, 3/24/14, pp. 129, 155, 161-162, 174-175, 264-265, R. Zajac, 3/25/14, pp. 105-109, M. Raymond, 3/25/14, pp. 174, 201.)

11. The properties around the Cove are developed in similar fashion to the Property at 16 Highgate Road including residential homes, accessory structures, seawalls, docks, ramps, and floats. In addition, a portion of a mooring field consisting of approximately 300 moorings exists just beyond the mouth of the Cove, in the main body of Greenwich Cove, southeast of the Gifford property and east of Elias Point. Elias Point is improved with a seawall, paved boat ramp, and paved roadway to allow pedestrian access and limited vehicle traffic and facilitate the launching of car-top vessels, including paddle craft. (Exs. DEEP-44, 45, APP-7, INT-37, 96; test. J. Roberge, 3/25/14, pp. 43, 68, T. Coleman, 3/24/14, pp. 17-21, 61, T. DeBartolomeo, 3/24/14, p. 103, M. Raymond, 3/25/14, pp. 158-59, 169, T. Selmeski, 3/27/14, pp. 85-86, 3/28/14, p. 33, 4/2/14, pp. 13-14, R. Lawrence, 4/3/14, pp. 12, 74, I. MacMillan, 3/27/14, pp. 121-22, S. Keller, 4/2/14, pp. 85-86.)

12. Three properties in the Cove have access to private docks, ramps, or floats that provide residents with access to the waters of the Cove and Long Island Sound. Two of the structures were built without approval from the department and are constructed without being subject to the balancing of interests that department-reviewed structures typically would receive during the authorization process. There is a ramp and float extending from the southern terminus of the Gifford property. The Gifford ramp and float received department approval through a Certificate

of Permission. The Gifford ramp and float is visible from Greenwich Point Park, from the waters of Greenwich Cove, and from the Lawrence and Lecoq properties. The mooring field in Greenwich Cove is visible from Greenwich Point Park, Elias Point, and the Lawrence and Lecoq properties. (Exs. APP-7, INT-37, 50, 51, 96, 99; test. T. Coleman, 3/24/14, pp. 20, 29, 63-64, T. DeBartolomeo, 3/24/14, p.102, D. Santa, 3/25/14, p. 10, T. Selmeski, 3/27/14, pp. 17-20, 52.)

13. South of the Cove is Greenwich Point Park (the Park). There are several recreational facilities at the Park associated with boating, including a boathouse, associated docks, and boat ramps. The views from the Park looking north include the Cove. The proposed structure will be visible from the north side of the Park and its boating facilities. The boating facilities and associated vessels at the Park can be seen from the Cove and the residences on the west side of the Cove. The Park's boating facilities and associated vessels are visible from Elias Point. Numerous vessels of varying type navigate in the area immediately outside the Cove between the Cove and the Park, including sailboats, rowing shells, and power boats. Vessels operating in this area have views from the water of the Association marina, residential docks west and east of Elias Point, and the Park facilities and associated vessels. Numerous boats are moored immediately north of the Park in an area of water between the Park and the Cove. This mooring area is part of the largest mooring area in Greenwich waters that includes over 300 moorings in Greenwich Cove overall out of 791 in all of Greenwich. (Exs. APP-7, 8, INT-40, 42, 46, 96; test. T. Coleman, 3/24/14, pp. 20-23, I. MacMillan, 3/27/14, pp. 121-122, 127-128, 131-143.)

14. The railings and decking on the proposed pier are intended to minimize impacts to views. The guard rails will use a steel cable construction to allow those within viewing distance to see through the pier. The decking and railing are made of Ipe, a natural wood that is intended weather and blend into natural surroundings. (Ex. APP-12; test. T. DeBartolomeo, 3/24/14, pp. 154-156.)

15. The Property is part of the Harbor Point Association, Inc. (the Association). The Association owns and maintains two areas for boating access for the use of its residents. On the west side of Elias Point, the Association owns a launching and storage area that provides access for launching kayaks, paddleboards and canoes. Further west, the association owns a private marina with several boat slips accessed from a pier and float also owned by the Association. The marina is primarily used to access power vessels or other larger vessels docked at the marina and is not typically used for launching paddle craft. The Association's marina facility was approved by the department and is subject to one of its permits. The marina facility is visible from the waters of Long Island Sound and neighboring waterfront properties. (Exs. APP-7, INT-48, 49; test. T. Coleman, 3/24/14, pp. 10-11, 30-31, 68, R. Lawrence, 4/2/14, pp. 143-146, 185-187.)

16. There are numerous deed conditions that run with the properties that are within the Association. The rights under some of these conditions are held by the Association. One of the

restrictions states that “No building or structure shall be erected or maintained upon the premises hereby conveyed other than one single family dwelling house with garage, if any, attached, except with written consent of the grantor or its successors or assigns. Such building or structure shall be used for no purposes other than a strictly private residence and such appropriate uses usually incidental thereto.” This restriction applies to the Property. Staff was not aware of and did not consider the restriction in making its tentative determination to approve the application. The proposed draft permit does not relieve the permittee of its obligation to obtain other approvals required by applicable federal, state, and local law. The bylaws of the Association indicate that the Association will review plans for new construction or modification of buildings on lots within the Association. The Association’s bylaws do not specifically refer to dock structures. Other residents within the Association have requested and secured approval for residential dock structures from the Association. These residential dock structures have also been subject to varying levels of authorization by the department. Any plans and specifications submitted for approval by the Association are submitted to each individual member of the Association for approval or disapproval. The proposed draft permit is subject to any and all public and private rights pertinent to the property. The deed restrictions do not absolutely prohibit placement of a residential dock or any other structure on the Property. Based on its language, the existence of the deed restriction would not have altered staff’s review and tentative approval of the application. (Exs. INT-1, 4, 29, DEEP-22, APP-1; test. T. Coleman, 3/24/14, pp. 10-11, 36-37, 46, T. Selmeski, 3/28/14, pp. 47-49, 51, 4/2/14, pp. 10-12, R. Lawrence, 4/2/14, pp. 138-140.)

17. The distance from the terminus of the float to mean low water is ninety feet in normal tidal conditions but fluctuates based on atmospheric conditions, including prevailing winds that can impact the tidal range in this area due to the Cove’s relatively flat topography. There will be limited access to the water from the proposed structure. The extent of the limitation on access will be influenced by a variety of factors, including wind direction. Mr. Coleman is aware of the limitations and the restriction on water access. Mr. Coleman reviews tide information before going out in the Cove. Given the primary use of the facility to access the water for use of paddle craft, the timeframe of use is suitable given the inclination to shorter excursions using paddle craft. (Exs. APP-27, 28, INT-64 to 82; test. T. Coleman, 3/24/14, pp. 88-89, T. DeBarolomeo, 3/24/14, pp. 214, 229-230, R. Lawrence, 4/2/14, pp. 225-228.)

18. South of the proposed dock there is a sand shoal or spit in the Cove that starts in an area immediately south of the proposed dock location and extends east towards the Gifford property. Unlike other muddy parts of the intertidal flat, one can walk on the shoal. It provides a means of egress if someone needed to reach shore from a paddle craft at a time of low water in the Cove or to access deeper water from the shore during times of low water. The shape of the shoal has fluctuated over time but has not changed its position or size. It was likely formed when sand overtopped Elias Point due to wave activity. The seawall and elevated roadway on Elias Point

currently prevent significant amounts of sand from being transported into the Cove and prevent further shifting of the shoal or spit. The existence of the proposed structure will not impact this shoal or spit because the proposed structure is supported by piles. The shoal does not currently interfere with the location of the proposed floating dock. (Exs. APP-7, INT-51, 76, 112; test. T. DeBartolomeo, 3/24/14, pp. 207-210, J. Roberge, 3/25/14, pp. 44-47, 50-51, I. MacMillan, 3/27/14, p. 139, F. Cantelmo, 3/28/14, pp. 148-150, 160-161, 167-168, R. Lawrence, 4/3/14, pp. 110-111, 114.)

19. The proposed draft permit does not require the seasonal removal of the aluminum ramp and the floating dock. The seasonal removal of these components is typically required if a potential impact to shell fish is anticipated. The Department of Agriculture, Bureau of Aquaculture (BOA) did not recommend such a condition and found no significant shellfish impact at this site. The Greenwich Shellfish Commission also found no impact to shell fish would results from the proposed structure. The fixed pier and the piles are all designed to withstand the 100-year or 1% chance storm. Docks of similar design by RACE withstood storms Irene and Sandy. The portion of the Association's marina left standing after Sandy was designed by RACE. The remaining, pre-existing portion not subject to these design parameters was destroyed. Unlike the fixed portions of the structure, the proposed ramp and float are not designed to withstand the 100-year or 1% chance storm. The ramp could be removed and placed on the floating dock. The float can be unfastened from the piles and floated to shore and stored on the upland. If removed prior to a storm, any potential for these structures to cause damage to adjacent properties would be minimized. The proposed ramp and floating dock do not pose any unique threat. There are existing structures elsewhere within and in the immediate vicinity of the Cove that could dislodge in a storm. Removal of the ramp and floating dock would not protect properties in the Cove from other forms of debris that could wash ashore in any coastal setting from all directions. Mr. Coleman and his family spend time away from the Property during the winter at residences in Santa Barbara, California and Park City, Utah. The timeframe during which they use the Cove for paddling activities runs approximately from April to November. Mr. DeBartolomeo would advise clients to remove accessories like ramps and floats on a seasonal basis and if a substantial coastal storm is forecast but acknowledges it is the client's choice whether to do so absent a permit requirement. (Exs. DEEP-3, 22, INT-57, 59-62; test. T. Coleman, 3/24/14, pp. 52-54, T. DeBartolomeo 3/24/14, p. 132, 4/2/14, p. 125, D. Santa, 3/25/14, p. 10, J. Roberge, 3/25/14, pp. 41, 82, 85-86, T. Selmeski, 3/28/14, pp. 108-111, R. Lawrence, 4/2/14, pp. 198, 206.)

20. On January 10, 2013, the United States Army Corps of Engineers authorized the work proposed in the Application under the Connecticut Programmatic General Permit upon its determination that the proposed activity will have only minimal individual or cumulative impacts on waters of the United States, including wetlands. The Army Corps approval required: incorporation of float stops to ensure that the float remains at least 18 inches above the substrate

during all tidal cycles; that the height of the structure above the marsh must be equal to or greater than the width of the deck to prevent shading of tidal vegetation; and any part of the docking facility that is removed from the waterway for a portion of the year must be stored in an upland location above mean high water ("MHW"), and not in tidal wetlands. The application as tentatively approved meets the first two requirements and the applicant can comply with the requirement for storage of the ramp and float should their removal be necessary. (Ex. DEEP-4; test. T. DeBartolmeo, 3/24/14, pp. 147-148, T. Selmeski, 3/27/2014, pp. 23, 36, 64-67.)

21. The proposed structure will not impact navigation. The Cove provides limited opportunities for navigation into it from other locations because of the limited water depth and lack of water during lower ends of the tidal cycle. The proposed structure would protrude approximately fifty feet from the edge of the tidal grasses. The pier, ramp, and float would not impede access to any mooring fields or boating facilities and its location on the Property would not impact access to existing dock structures on other properties or littoral access rights of adjoining property owners. (Ex. APP-3; test. T. DeBartolmeo, 3/24/14, p. 180, D. Santa, 3/25/14, pp.13-15, I. MacMillan, 3/27/14, pp. 180-181.)

22. The proposed structure will not have a significant impact on coastal sedimentation, erosion, and water circulation patterns. The impact of a pile-supported structure as proposed in the application typically results in minimal impact on sedimentation and littoral transport limited to the immediate area around the piles. Water, in certain tidal areas, will flow with greater speed as it moves around a pile causing localized erosive impacts in the immediate vicinity of the pile. In this area, water velocities are less significant thus lessening the potential for sediment disruption, even in the vicinity of the piles. The pile-supported structure allows waters and sediments to move freely through the system. (Test. T. DeBartolmeo, 3/24/14, pp. 181, 184, J. Roberge, 3/25/14, pp. 47-50.)

***B***  
***CONCLUSIONS OF LAW***

***I***  
***SUMMARY***

The activity proposed in the application as conditioned by the proposed draft permit is regulated by the Tidal Wetlands Act (General Statutes §§ 22a-28 through 22a-35) and its implementing regulations at Regs., Conn. State Agencies §§ 22a-30-1 et seq; the Structures Dredging and Fill Act (General Statutes §§ 22a-359 through 22a-363); and the applicable portions of the Coastal Management Act (General Statutes §§ 22a-90 through 22a-112). The overall regulatory framework requires a balancing of interests and requires applicants to minimize impacts to coastal resources. Overall, the proposed project meets the

requirements of the referenced statutes. The proposed activity will provide the applicant with reasonable access to the water while balancing the limitations presented by the site with any resource and navigational impacts associated with placing a structure in the intertidal area. The application and evidence presented during the hearing supports the assertions that the stated need for improved recreational boating access from the upland has been achieved while minimizing impacts to coastal resources, including tidal wetlands, intertidal flats, and wildlife, navigation, water quality, and coastal sedimentation and erosion patterns.

The evidence, including documents and testimony, support approving the application and issuing the proposed draft permit with the additional conditions recommended later in this decision. The record supports the factual findings and conclusions based on those findings that the potential environmental impacts from the proposed project have been sufficiently minimized and the proposed project is consistent with the following applicable policies regarding coastal resources management. The intervening parties did not provide substantial evidence to demonstrate the proposed activity would violate or is reasonably likely to violate the relevant statutory and regulatory scheme identified in the preceding paragraph. Therefore, it logically follows that the proposed activity is not reasonably likely to cause unreasonable pollution, impairment, or destruction of the air, water or other natural resources of the state. *City of Waterbury v. Town of Washington*, 260 Conn. 506, 549-551 (2002).

## 2

### ***APPLICABLE LEGAL STANDARDS***

#### A. §22a-359 – Structures, Dredging and Fill Act

General Statutes § 22a-359 requires the department to give due regard for indigenous aquatic life, fish and wildlife, the prevention or alleviation of shore erosion and coastal flooding, the use and development of adjoining uplands, the improvement of coastal and inland navigation for all vessels, including small craft for recreational purposes, the use and development of adjacent lands and properties and the interests of the state, including pollution control, water quality, recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned.

B. § 22a-92 – Coastal Management Act

The Coastal Management Act, General Statutes §§ 22a-92 to 22a-111, includes several general policy statements and requirements regarding the management of Connecticut's coastal resources and the review of proposed structures in coastal areas, including:

- i. § 22a-92(a)(1), which requires that the development, preservation or use of the land and water resources of the coastal area will proceed in a manner consistent with the capability of the land and water resources to support development, preservation or use without significantly disrupting either the natural environment or sound economic growth;
- ii. Section 22a-92(a)(2), which requires the preservation and enhancement of coastal resources;
- iii. Section 22a-92(a)(3), which requires that high priority and preference be given to uses and facilities which are dependent upon proximity to the water or the shorelands immediately adjacent to marine and tidal waters;
- iv. Section 22a-92(b)(1)(D), which requires that structures in tidal wetlands and coastal waters be designed, constructed and maintained to minimize adverse impacts to coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners;
- v. Section 22a-92(b)(2)(F), which requires the management of coastal hazard areas so as to insure that development proceeds in such a manner that hazards to life and property are minimized and to promote nonstructural solutions to flood and erosion problems except in those instances where structural alternatives prove unavoidable and necessary to protect existing inhabited structures, infrastructural facilities or water dependent uses;
- vi. Section 22a-92(b)(2)(I), which requires the regulation of shoreland use and development in a manner which minimizes adverse impacts upon adjacent coastal systems and resources;
- vii. Section 22a-92(c)(2)(A), which sets forth policies concerning coastal land and other resources within the coastal boundary, including the management of estuarine embayments so as to insure that coastal uses proceed in a manner that assures sustained biological productivity, the maintenance of

healthy marine populations and the maintenance of essential patterns of circulation, drainage and basin configuration.

C. § 22a-32 – Tidal Wetlands Statutes

The Commissioner must 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 sections 22a-28 to 22a-35, inclusive. The Tidal Wetlands Act requires that any impacts to tidal wetlands associated with a coastal structure must be minimized by using pile-supported structures as a means to avoid filling and other impacts associated with solid structures.

D. Regs., Conn. State Agencies § 22a-32-1 et seq. – Tidal Wetlands Regulations

The tidal wetlands regulations, authorized to specify grounds for issuance or denial of permit applications to conduct regulated activities specify in greater detail the resources and policy issues to be considered when considering whether to approve a permit to conduct activities within tidal wetlands. The portions of the tidal wetlands regulations relevant to the proposed structure require a demonstration by the applicant that the proposed activity will:

- 1) preserve the wetlands of the state and not lead to their despoliation and destruction, § 22a-32-10(b);
- 2) not destroy existing or potential recreational or navigational uses, § 22a-32-10(c);
- 3) not cause or produce unreasonable erosion or sedimentation, § 22a-32-10(d);
- 4) not result in significant adverse impacts on marine fisheries, shellfisheries or wildlife, § 22a-32-10(e);
- 5) not result in a significant adverse impact on the circulation and quality of coastal or tidal waters, § 22-32-10(f); and
- 6) be consistent with the need to protect life and property from hurricanes or other natural disasters, including flooding, § 22a-32-10(g).

3  
*ANALYSIS*

The subject matter covered by the statutory and regulatory requirements for the approval of an application for a permit to construct a residential dock in an area of tidal wetlands and waterward of the coastal jurisdiction line clearly overlaps. The proposed activity as conditioned by the proposed draft permit complies with the applicable statutory and regulatory requirements. This overall conclusion is supported by the factual findings I have made. The topical discussion of the legal issues explains more thoroughly my review and analysis of the facts and application of the law to those facts. In some instances the analysis addresses those issues that the applicant, DEEP staff or the intervening parties specifically focused on during the course of the hearing.

A. The proposal for a residential dock structure in this location is a proper exercise of the applicant's littoral rights.

The Connecticut courts clearly confirm that waterfront property owners hold littoral rights that include a right to erect structures to reach navigable waters. "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, and he may convey these privileges separately from the adjoining land. He also has the right of accretion, and generally of reclamation, and the right of access by water to and from his upland." *Rochester v. Barney*, 117 Conn. 462, 468 (1933). While these rights are qualified, the qualifications are formulated in statute and administrative regulations that govern applications for structures waterward of the state's coastal jurisdiction line. The governing statutory scheme focuses on minimizing impacts to navigation, coastal resources, water circulation and sedimentation, public access in the intertidal area, and conflicts with adjacent riparian landowners. General Statutes § 22a-92(b)(1)(D).

The intervening parties maintain that the type of structure and its intended purpose are not a proper exercise of littoral rights because the proposed structure does not extend to fully navigable waters. The applicants are owners of waterfront property and are entitled to access water from the upland. The water adjacent to the applicant's property does not support the type of recreational boating for which deep water access would be required at all tides and times. The focus of this structure is on a recreational activity that does not require such access and is in fact restricted to use for paddle craft. If waterfront property owners were faced with the type of limitation on their littoral rights sought by the intervenors, they would consistently argue for lengthy piers to provide full access to deep water even when they deem such access to be unnecessary to meet their goals. This argument does not respect the unique balance that must be struck between competing interests. Longer piers may provide full access to navigable water but

would unnecessarily impact coastal resources, navigation, and public recreational use. This is an illogical result and not manifested by the court decisions cited by the intervening parties. The waterfront property owner has the exclusive right to erect a pier and use it for “any purpose.” *Rochester v. Barney*, supra, 117 Conn. at 468. The limitation on the length of the structure imposed by DEEP corresponds with the concept of “reasonable access” to navigable water. This limitation does not alter the overall littoral rights held by the applicant to reach the water from the upland.

Further, the limitation argued for by the intervening parties has never been recognized by Connecticut courts. In *Rochester v. Barney*, supra, the Supreme Court reviewed at length the apportionment of the littoral area between two properties in question with full knowledge that the lands waterward of the high water mark were exposed mud flat during the lower range of the tidal cycle. The topography of the Property that is the subject of the application and the limited exposure it may have to navigable water does not alter the applicant’s right to gain access to the water. This right includes the placement of structures such as the one proposed.

B. The proposal meets the requirement to minimize adverse impact to coastal resources, including tidal wetlands.

The applicant has met its burden to show through the presentation of substantial evidence that its proposal as conditioned by the proposed draft permit minimizes impacts to and ensures the continuing functionality of the coastal resources in the vicinity of the proposed structure in compliance with General Statutes §§ 22a-92(a)(2), 22a-92(b)(2)(D) and 22a-92(b)(2)(I). The proposal will not result in significant adverse impacts to the intertidal flat, fish and wildlife, recreation, or navigation in accordance with Regs., Conn. State Agencies §§ 22a-30-10(c) and (e). Further, the application and its review specifically considered the proposal’s impact on the tidal wetlands, including the effort to minimize impacts to the wetlands in accordance with Regs., Conn. State Agencies § 22a-30-10(b). The application review documents and witness testimony explain the effort made to reduce the length of the structure and to design it in a manner respectful of the resources potentially impacted by its construction, use, and maintenance. Staff’s refusal to approve a structure longer than necessary to span the tidal wetlands and the overall project design, including the use of structural steel to reduce the number of pilings minimizes permanent and temporary impacts to the coastal resources. Further, the evidence shows that the availability of the proposed structure will be a net benefit to tidal wetlands. The proposed structure’s use will avoid the impacts associated with walking through the wetland area as a means to access the water. The planned removal of small stone debris from an area of tidal wetlands will foster additional tidal wetlands vegetation growth in that area of the wetlands.

The impact to the wetlands has been sufficiently minimized through the overall design and the identified construction methodology. Any remaining impact from the permanent placement of two piles is unavoidable and insignificant. The tidal wetlands will continue to function appropriately and will recover fully from any impact associated with construction. The impacts to the tidal wetlands from the drilling and placement of piles will be minimal and temporary in nature. The permit conditions ensure that the construction is conducted from the water at time when the barge will not impact the wetland vegetation. The record is clear that the applicant intends to place erosion and sedimentation controls in the vicinity of the construction work to protect tidal wetlands vegetation in accordance with Regs., Conn. State Agencies § 22a-32-10(d). Erosion and sedimentation controls are not required by the proposed draft permit; however, the applicant can work with staff to determine whether their placement is necessary. In order to address the potential for their installation, staff shall modify the permit to require that any such controls are installed and maintained in accordance with DEEP's approval and in accordance with best management practices.

The permanent impact to the intertidal flat from the placement of the piles is also minimal. Again, the number of piles has been minimized and they occupy a minimal area within the overall resource. The intertidal flat will recover from the temporary minimal impact associated with installing the piles and continue to function appropriately as a resource area supportive of small invertebrates and foraging finfish, horseshoe crabs, and birds despite the area permanently occupied by the piles. The biggest risk to the intertidal flat appears to be the use of the barge during construction. The shallow water depths and swift rise and fall of the tide in the Cove account for this risk but it is addressed appropriately through the permit conditions limiting activities to times and tides needed to keep the barge off of the bottom. Also, under the permit, the applicant continues to be responsible for the actions of any of its contractors and is required to ensure their awareness of the permit conditions. The applicant should closely monitor the plans for construction and work with RACE and the construction contractor and barge operator in preparation for doing work at the Property to ensure compliance with these important permit conditions.

The wildlife resources that utilize the area will not be significantly impacted. The evidence regarding the horseshoe crabs indicated that their breeding activities were limited to the area of sand that is distinct from and south of the area where the proposed structure will be located. There was insufficient evidence to conclude that the minimal impact to the muddy portions of the intertidal flat could significantly impact breeding horseshoes or their breeding habitat. Any disruption to their foraging habitat will be minimal and horseshoe crabs and other fauna that rely on the area for feeding may temporarily avoid the area during actual construction.

In their briefs, the intervening parties point to language from DEEP guidance documents indicating that applicants are to avoid impacts. These guidelines are not regulations and do not

necessarily require an applicant to avoid constructing a dock on its property if there are coastal resource impacts associated with it. There are statutory standards that require an applicant to demonstrate that a structural solution is unavoidable. However, those standards are limited in their application to flood and erosion control structures. This proposal does not involve a flood and erosion control structure; therefore the same standards that require an applicant to demonstrate that a structural solution is unavoidable do not apply. Instead, DEEP approval of residential dock structures is based on a balancing of several interests. In order to provide the appropriate balance, the standard is whether the applicant has minimized impacts from the structure.<sup>2</sup> It is reasonable to infer from this lack of the word “avoid” in relation to coastal structures that are not flood and erosion control structures that the legislature respects the littoral right held by waterfront property owners to wharf out. However, as demonstrated during the course of this hearing and further by this decision, this right is not unfettered. The department can and will place limitations on this right in consideration of the multiple resources and interests represented.

In some cases, minimizing impact, e.g., reducing the number of piles, will avoid impact.<sup>3</sup> However, demonstrating that the structure itself is unavoidable is not within the standard of approval for a residential dock structure. DEEP staff has worked with the applicant to minimize and, in effect, avoid particular impacts associated with the proposed coastal access structure. There is insufficient evidence of particular resource or navigation impacts to warrant imposing a

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<sup>2</sup> Compare §§ 22a-92(b)(2)(F) and (J), emphasis added

(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 problems except in those instances where structural alternatives prove *unavoidable* and necessary to protect inhabited structures constructed as of January 1, 1995, infrastructural facilities or water dependent uses

(J) to maintain the natural relationship between eroding and depositional coastal landforms and to minimize the adverse impacts of erosion and sedimentation on coastal land uses through the promotion of nonstructural mitigation measures. Structural solutions are permissible when necessary and *unavoidable* for the protection of infrastructural facilities, cemetery or burial grounds, water-dependent uses, or inhabited structures constructed as of January 1, 1995, cemetery or burial grounds, and where there is no feasible, less environmentally damaging alternative and where all reasonable mitigation measures and techniques have been provided to minimize adverse environmental impacts

with §§22a-92(b)(2)(D) and (I), emphasis added

(D) to require that *structures* in tidal wetlands and coastal waters be designed, constructed and maintained to *minimize* adverse impacts on coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners

(I) to regulate shoreland use and development in a manner which *minimizes* adverse impacts upon adjacent coastal systems and resources

<sup>3</sup> Other examples include use of pile-supported structures to avoid filling associated with solid-fill structures or extending a pile-supported pier to avoid impactful dredging.

no-build alternative on the applicant.<sup>4</sup> The scope of the proposed project has been significantly reduced to protect coastal resources and public trust interests and in consideration of the structure's placement within the existing backdrop of the Cove. DEEP's review must continue to involve a balancing of interests with due regard for the rights of waterfront property owners and those resources and interests impacted by the proposed structure.

C. The proposal will not significantly impact coastal circulation patterns or result in erosion and sedimentation concerns.

The record is clear that the use of piles in the proposed structure's design results in negligible impacts to the water circulation patterns in the Cove that are localized to the area immediately adjacent to the piles. Any concern is further reduced by the lack of significant water velocities in the Cove. There was no evidence that there would be any impact on the water circulation. The record is also clear that any disruption caused by the pile installation will be temporary and have no lasting impact. The temporary suspension of sediments caused by the pile installation will not result in significant sedimentation that would disrupt the coastal circulation patterns in the Cove. Regs., Conn. State Agencies §§ 22a-30-10(d) and (f). The intervening parties' expert would not commit to any opinion to the contrary given the understanding that pile installation would for all practical purposes be a one-time event. The intervening parties' expert's concern about the suspension of contaminated sediments without actual data was not persuasive given the residential nature of the property in the vicinity of the Cove. Any need for erosion and sedimentation controls during construction can be addressed by the applicant and staff in accordance with a permit modification recommended later in this decision.

D. The project review gave due regard to those issues cited in § 22a-359, including the development of adjoining uplands and the rights of all concerned.

The applicant and DEEP staff's review of the proposal thoroughly considered indigenous aquatic life, fish and wildlife, the prevention or alleviation of shore erosion and coastal flooding, the use and development of adjoining uplands, the improvement of coastal and inland navigation for all vessels, including small craft for recreational purposes, the use and development of adjacent lands and properties and the interests of the

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<sup>4</sup> The tidal wetlands regulations require the Commissioner to find that there is no alternative to achieving the objective of the *applicant* that is technically feasible and would further minimize impacts. Regs., Conn. State Agencies § 22a-32- This is the closest that the governing statutory and regulatory scheme comes to a requirement to avoid impacts from dock structures, but it does not impose a non-structural solution on an applicant in the same manner as if an applicant were proposing a flood and erosion control structure. Here the applicant's objective is to exercise the owner's right to reach navigable water from its property. Although the no-build alternative is certainly feasible, it will not minimize impact as it would continue to force the Property owner to traverse the wetlands and expose the wetlands and associated resources to a regular source of impact. Likewise, this objective cannot be achieved by using an existing structure on property the applicant does not own or enjoy exclusive rights to. The regulations invoke the *applicant's* objectives and not the general objective accomplished by the proposal.

state, including pollution control, water quality, recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned in accordance with General Statutes §22a-359.

In the hearing, three of the intervening parties raised the existence of the restrictive covenants as an issue for consideration in the application review and denial of the permit because of statutory references to the consideration of rights of others and the development of adjoining uplands in section 22a-359 of the General Statutes. The development of the upland is clearly residential in nature and developed with year-round residences with any number of accessory structures, including decks, patios, pools, tennis courts, and others clearly associated with the use and enjoyment of residential property and dependent on individual tastes and interests. The association owns two properties with facilities related to marine recreation, including a marina and pier with several slips which was approved by the department using the same statutory criteria. The rules do not suddenly change because the proposal is shifted to a more sheltered area of water absent more specific evidence of an impact to coastal resources or navigation. The proposed structure is a residential dock. It is not out of character with the residential nature of the Cove and its surroundings. By virtue of the permit conditions and its placement on private property it will not transform into a commercial wharf or pier catering to activities out of line with the residential nature of the upland abutting the coastal area near the site of the proposed structure. The development of the adjoining uplands was adequately considered during the permit review.

The existence of the deed restriction itself is also not an impediment to the department's approval. Whether the applicant will seek approval from the Association, whether the Association will grant approval, and whether the Association's approval is required for a residential dock are all questions for at least some of the participants in this matter to answer outside of this process and I will not adjudicate them. The fact that these questions remain unanswered does not bar the department from completing its permitting process because the permit by its terms reflects that other legally required approvals may be necessary and the permit does not diminish those additional legal requirements or private property rights. The fact that the permit includes those express terms is itself evidence that the department proceeds with "due regard" for these interests when it tentatively approves such a permit.

Although permission from the Association may be needed before the proposed structure can be built, securing all required approvals outside the scope of the proposed permit remains the responsibility of the applicant or permittee and nothing in the permit to be issued by DEEP relieves the applicant of its responsibilities or impinges on any other legal rights held by others, including real property rights and any private standing that may exist to enforce those rights. Therefore, the order of operations is dictated neither by the deed restriction or the DEEP

application process. The applicant's choice to proceed in this manner was within its discretion and will not be used by the department to reject this application for a permit.<sup>5</sup>

In exercising its discretion to seek DEEP's approval first the applicant gains no legal benefit in any request for approval it places before the Association. This concept is strongly supported by case law. "[C]ommon-law riparian rights are subject to reasonable police regulation in the interest of the public welfare and have been held subject to such regulation for many years. [An applicant's] common-law rights, if anyone's, are curtailed by the statutes in question. The plaintiffs' rights, such as they are, remain, by the express terms of the permit, unaffected by it." *Bloom v. Water Resources Com.*, 157 Conn. 528, 536 (1969). In *Bloom*, an applicant was granted a permit from DEEP's predecessor without providing the adjacent property owner an opportunity to be heard because the permit terms expressly did not seek to impact or curtail the rights of others, including adjacent property owners. In so holding, the court reasoned that "[i]f the plaintiffs' rights were infringed, or threatened with infringement, by [the applicant], they can be protected, or damage to them redressed, in an appropriate action where, of course, the plaintiffs may be fully heard." *Bloom v. Water Resources Com.*, supra, 157 Conn. at 537. Likewise, any rights the Association has to approve the proposed structure or rights held by individual members to enforce the restriction are governed by a different body of law over which the department and I have no jurisdiction to determine and which remain unaffected by the proposed permit.

However, the applicant is forewarned that any modification to the approved structure's design after issuance of the permit brought about by any permission secured from the Association or required by any judicial decision that enforces the deed restriction may require further review by the Office of Long Island Sound Programs. This would include the removal of any structure deemed by a court to have been constructed in violation of the deed restriction. DEEP would maintain the discretion to exercise full authority over any such activity that falls within its jurisdiction.

The record reflects that the deed restriction's existence was not known by DEEP staff during its initial review of the application. However, in part, the purpose of the hearing is to elicit facts not known to DEEP staff to understand how they may or may not impact the department's tentative determination to approve the proposal. Staff clearly indicated the restriction in this case does not impact its determination. I find this conclusion reasonable because: the cited restriction requires permission to construct a structure as opposed to an

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<sup>5</sup> One only has to examine the hearing record to understand that a significant number of residents of the Harbor Point Association and the surrounding area oppose this dock. I acknowledge that these comments were received and are part of the record. Several of the themes referenced in those comments were discussed and addressed during the course of the hearing. However, environmental permitting decisions are not a popularity contest. They must be based on the legal standards that govern them. This general opposition is not substantial evidence that any standards have been violated.

outright ban on the construction of a dock; the Association has approved residential dock structures after the department's tentative determination on a previous application and there was nothing in the record to indicate that the department's tentative determination influenced the Association's decision; the permit by its terms is considerate of and protects outside legal rights; and the department's review and approval of the structure's design provides the Association with a final picture of the proposal it may be asked to consider.

The department adequately considered the issues within § 22a-359 during the application review, which includes this hearing. The requirement to consider these issues does not necessarily require the permitting process to resolve the issues before a coastal structure is permitted. The permit by its own terms recognizes that other legal rights exist and puts applicants and permittees on notice that the permit cannot be used to impact those rights.

E. The proposed activity will not degrade visual quality through the significant alteration of natural vistas and viewpoints.

The applicable statutory scheme indicates that “degrading visual quality through significant alteration of the natural features of vistas and viewpoints” is included within the definition of “adverse impact to coastal resources.” General Statutes § 22a-93(15)(F). In this matter, there is a residential neighborhood where the homes are built relatively close to the coastal waters and are clearly visible from all parts of the Cove and other vantage points in Long Island Sound south, east and west of the Cove. As stated earlier in this decision, these homes include all types of accessory structures that can be seen from the water and neighboring residential properties. I decline to view the placement of the proposed structure in this area of the cove as a “significant alteration” given the landscape within which it will be placed. Further, any visual impact associated with the proposed structure was further minimized through the materials selected in the pier's design.

The opinions expressed about the impact to views were of a highly personal and private nature and unconvincing. I do not doubt that Dr. Lawrence, Mr. MacMillan, and Ms. Keller personally consider the proposed structure to have a negative or adverse visual impact based on their testimony. However, the statute requires that there be a significant alteration of natural features of visas and viewpoints to be considered an adverse impact to coastal resources. Significant means “having or likely to have a major effect.” The American Heritage Dictionary of the English Language, 4<sup>th</sup> ed. I find the proposed placement of a modest residential dock structure within the character of the residential development prevalent throughout this area of the coastline. The overall character of the surrounding area is relevant in considering a proposal's impact. See *Coen v. Ledyard Zoning Comm'n*, 2011 Conn. Super. LEXIS 2663 (Conn. Super. Ct., Oct. 19, 2011), ruling that affordable housing project would not restrict views despite being 40-feet in height and exceeding the zoning regulation by five feet. “[T]he potential adverse

impact to the vista is acceptable and not unreasonable given that the property is in a residential zone.” *Fromer v. Lombardi*, 1992 Conn. Super. LEXIS 2733 (Conn. Super. Ct., Sept. 14, 1992) (ruling that home construction within 100-feet of coastal resource would not significantly alter the view). Dr. Lawrence’s concern over the alteration of his view from his deck does not equate to a significant alteration that degrades visual quality given the widespread activity within his viewshed that includes seawalls, public boathouses, public and private docks, moorings, tennis-court fences, and brightly colored kayaks and sailing vessels.

Likewise, Mr. MacMillan’s concern over the view from a friend’s window and Ms. Keller’s view from her property are of a similar nature. These personal concerns are not substantial evidence that the proposed activity will cause a significant alteration and cannot serve as the basis for this agency to deny what is otherwise the proper exercise of the applicant’s littoral rights.<sup>6</sup> Instead, the record shows that the proposed activity is unlikely to have a major effect given the intensity of activity and development immediately proximate to and in the area surrounding the Cove.

As an example, structures to the west of Elias Point were authorized to be built or reconstructed under the same standards regarding impact to natural vistas and viewpoints, including the Heimboldt dock, the Duus dock, and most notably, the Association’s own pier and marina. Coastal property owners are not entitled to permanently unaltered views. There is no support for this in the law. “Defendant seems to believe that any development which changes a view necessarily has an adverse impact on that view, and such a position is contrary to the policy of the CAMA of promoting both the natural environment and economic growth.” *Smith v. Zoning Bd. of Appeals*, 1991 Conn. Super. LEXIS 771 (Conn. Super. Ct. Apr. 10, 1991). The holding from *Smith* speaks to the balancing of interests required during a coastal application review. The proposed structure does not upset the balance within its surroundings; a balance that respects all types of activity and uses, including structures that foster access to the water, public and private, in line with statutory and regulatory requirements.

Widespread and diverse recreational activities are intrinsic to this area and range from passive to active. Sailboats, paddle craft, fishing vessels, and rowing shells are all present in the vicinity of the Property and in great numbers. These uses are supported by man-made structures and contrivances, including boathouses, floats, ramps, pilings, and mooring buoys above the surface and chains, anchors, foundations, etc. below the surface. The addition of a structure on private property may be deemed by some as unnecessary, but it is not patently out of character for the area. All of the uses and associated structures discussed above are deemed acceptable to some degree because they foster appropriate recreational activity and appreciation for Long

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<sup>6</sup> I acknowledge receipt of comment from several other individuals that also indicates opposition to the visual changes brought about by the proposed structure. As previously indicated in footnote 5, unlike the Association’s approval process, this decision process is not a voting process. The number of comments alone is not substantial evidence of a “significant alteration.”

Island Sound as the crown jewel of Connecticut waters that serves not only as a marine playground but also as a critical ecosystem and mode of transportation. A private residential dock used to support paddling activities in the area of Greenwich Cove adjacent to the Property can be properly conditioned to fit within this backdrop without causing significant disturbance to other use groups and the natural ecosystem. The effort to accommodate these concerns by the applicant, DEEP staff, and the applicant's consultants has not been insignificant and strikes an appropriate balance given the rights of waterfront property owners to reach navigable water directly from their upland.

F. If properly conditioned, the proposed activity is consistent with the need to protect life and property from hurricanes or other natural disasters, including flooding and to minimize hazards to life and property.

The tidal wetlands regulation require a review of the proposal for consistency with the need to protect life and property from hurricanes or other natural disasters, including flooding § 22a-32-10(g). This review calls on the department to analyze whether the proposed activity will increase the potential for flood and hurricane damage, increase water velocities, increase exposure of other properties, or reduce stream capacity to handle flood water. The Coastal Management Act also requires development to proceed in manner that minimizes hazards to life and property. Given the minimal footprint of the structure's pile-supported design and use of structural steel, the proposed structure will not increase the potential for flooding or hurricane damage and sufficiently minimizes any hazard it poses in this area. The record shows that the fixed pier and the piles are built to withstand significant storm events. The detachable portions can be removed prior to a significant storm event. For unexpected storm activity, the floating dock and ramp are no different than the large sailboats moored immediately outside the Cove. Concern about floating debris after significant storms exists with or without the construction of the proposed structure. I can infer that the proposed ramp and floating dock's association with the applicant's primary residence will result in swifter action being taken if a storm is forecast or if the ramp and float were to unexpectedly be dislodged. I have no evidence to find that the proposal would increase potential for hurricane damage or coastal flooding.

However, the concern of the intervening parties regarding Mr. Coleman's absence from the area during winter months is warranted. Traditionally, staff does not impose seasonal removal requirements unless there is a known shellfish area that could be impacted or to allow access to shellfishing areas during winter months. Although shellfish are a coastal resource to be protected, there are also applicable requirements that focus on the protection of adjacent property. The structure itself does not pose any unique threat in this setting. However, the clear indication on the record that the applicant or permittee may not be in residence to address impending coastal storms during winter months or to monitor the detachable portions of the structure during this time period warrant an

additional permit condition requiring removal on a seasonal basis. Such a condition would correspond with Mr. Coleman's representation during the hearing that his recreational activities in the Cove run approximately from April to November and his engineer's initial representation on the record that the seasonal removal of ramps and floats not engineered for significant storm activity is recommended as a best practice. I conclude it is warranted to require complete removal of the floating dock and ramp for upland storage from November 15 through March 15 to minimize any potential impact to adjacent properties from an unattended structure. As indicated in the Army Corps approval, this upland storage must be in an area landward of mean high water. The applicant must exercise the due care and prudent judgment required of anyone responsible for a residential dock structure while the ramp and floating dock are in use from March 16 through November 14 and take any necessary precautions if coastal storms are forecast or to address issues that can unexpectedly arise in a coastal setting. This approach is consistent with the requirements in the tidal wetlands regulations to ensure the potential for storm damage is not increased by the proposal given the applicant's absence during winter months.

G. The proposed activity will not cause or be reasonably likely to cause unreasonable impairment, destruction, or pollution of the air water or other natural resources of the state.

The intervening parties alleged that the proposed activity will or is reasonably likely to cause unreasonable pollution, impairment, or destruction of the air water or other natural resources of the state. This allegation provided the grounds for their status as intervening parties. The allegation of unreasonable pollution has been inextricably intertwined with the given statutory and regulatory standards that apply to a give activity. *City of Waterbury v. Town of Washington*, supra, 260 Conn. at 549-551. In this matter, the applicable statutory and regulatory scheme has been met by the applicant. There is substantial evidence in the record supportive of the application and awarding the proposed draft permit with minor modifications. The allegations of environmental impact were insufficiently supported by the witnesses and documents presented by the intervening parties as it did not rise to the level of substantial evidence.

The intervening parties have the burden to establish a prima facie case that, if the proposed conduct is authorized, unreasonable pollution and impairment will likely result. *Manchester Env'tl. Coalition v. Stockton*, 184 Conn. 51, 57-58 (1981). I cannot base such a conclusion on suspicion or possible impacts unsubstantiated by fact or expert testimony or documentary evidence. See *Riverbend Associates v. Conservation and Inland Wetlands Commission*, 269 Conn. 57, 71 (2004); *Estate of Casimir Machowski v. Inland Wetlands Commission*, 137 Conn. App. 830, 836 (2012) (evidence of general environmental impacts, mere speculation or general concerns do not qualify as substantial evidence). Viewed in its most favorable light, the testimony from the intervening parties' witnesses demonstrated that others would not choose to exercise the applicant's littoral rights in the same manner and desire to permanently preserve their existing views regardless of private littoral rights held by the

applicant. This is not substantial evidence as articulated by the courts and is in sharp contrast to the extensive body of expert testimony provided on behalf of the applicants specifically supporting the proposed activity and demonstrating clearly that impacts associated with the proposal either do not exist or have been sufficiently minimized.

### *III*

#### *CONCLUSION AND RECOMMENDATION*

Given the substantial evidence in the record, I conclude that the proposal is consistent with the applicable standards, goals and policies of the Tidal Wetlands Act (General Statutes §§ 22a-28 through 22a-35) and its implementing regulations at Regs., Conn. State Agencies §§ 22a-30-1 et seq.; the Structures Dredging and Fill Act (General Statutes §§ 22a-359 through 22a-363); and the applicable portions of the Coastal Management Act (General Statutes §§ 22a-90 through 22a-112).

For the reasons stated above, I recommend issuance of the proposed draft permit provided DEEP staff includes a condition in the proposed draft permit's Special Terms and Conditions that requires seasonal removal of the ramp and float to a secure place on the applicant's upland from November 15 through March 15. Further, the department shall add a condition clarifying that the use and placement of erosion and sedimentation controls during construction are to be approved by DEEP in the field. Any determination that such controls are unnecessary is to be left within DEEP's discretion.



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Kenneth M. Collette, Hearing Officer

**Service List**

In re  
16 Highgate Road LLC            Application No. 201207495-TS

**PARTY**

16 Highgate Road LLC, Applicant

**REPRESENTED BY**

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# Draft



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## PERMIT

Permit No: #201207495-TS

Municipality: Greenwich

Work Area: Greenwich Cove off property located at 16 Highgate Road

Permittee: 16 Highgate Road, LLC  
16 Highgate Road  
Greenwich, CT 06878

Pursuant to sections 22a-359 through 22a-363g and sections 22a-28 through 22a-35 of the Connecticut General Statutes (“CGS”) and in accordance with CGS section 22a-98 and the Connecticut Water Quality Standards, effective February 25, 2011, a permit is hereby granted by the Commissioner of Energy and Environmental Protection (“Commissioner”) to remove miscellaneous debris and riprap, retain riprap, and install a dock for kayak and paddle board access as is more specifically described below in the SCOPE OF AUTHORIZATION, off property identified as the “work area” above.

### **\*\*\*\*\*NOTICE TO PERMITTEES AND CONTRACTORS\*\*\*\*\***

**UPON INITIATION OF ANY WORK AUTHORIZED HEREIN, THE PERMITTEE ACCEPTS AND AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS OF THIS PERMIT. FAILURE TO CONFORM TO THE TERMS AND CONDITIONS OF THIS PERMIT MAY SUBJECT THE PERMITTEE AND ANY CONTRACTOR TO ENFORCEMENT ACTIONS, INCLUDING INJUNCTIONS AS PROVIDED BY LAW AND PENALTIES UP TO \$1,000.00 PER DAY PURSUANT TO THE ADMINISTRATIVE CIVIL PENALTY POLICY DESCRIBED IN SECTIONS 22a-6b-1 THROUGH 22a-6b-15 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.**

### **SCOPE OF AUTHORIZATION**

The Permittee is hereby authorized to conduct the following work as described in application #201207495-TS, including seven sheets of plans dated November 15, 2013, submitted by the Permittee to the Commissioner and attached hereto, as follows:

1. remove miscellaneous debris and approximately 50 cubic yards of riprap smaller than 250 lbs. located water of the Coastal Jurisdiction Line and along approximately 170 linear feet of the northeastern shoreline as shown on plan sheet 9;

2. retain approximately 50 cubic yards of riprap larger than 250 lbs. located waterward of the Coastal Jurisdiction Line and along approximately 170 linear feet of the northeastern shoreline as shown on plan sheet 9; and
3. install a 4' x 72' timber and steel framed fixed pier supported by four timber piles, a 3' x 38' ramp, and an 8' x 12'6" float with float stops anchored by four restraint piles, as shown on the attached plans.

### SPECIAL TERMS AND CONDITIONS

1. Not later than two (2) weeks prior to the commencement of any work authorized herein, the Permittee shall submit to the Commissioner, on the form attached hereto as Appendix A, the name(s) and address(es) of all contractor(s) employed to conduct such work and the expected date for commencement and completion of such work, if any.
2. The Permittee shall file Appendix B on the land records of the municipality in which the subject property is located not later than thirty days after permit issuance pursuant to CGS Section 22a-363g. A copy of Appendix B 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 permit issuance.
3. The Permittee shall give a copy of this permit to the contractor(s) who will be carrying out the activities authorized herein prior to the start of construction and shall receive a written receipt for such copy, signed and dated by such contractor(s). The Permittee's contractor(s) shall conduct all operations at the site in full compliance with this permit and, to the extent provided by law, may be held liable for any violation of the terms and conditions of this permit. At the work area the contractor(s) shall, whenever work is being performed, make available for inspection a copy of this permit and the final plans for the work authorized herein.
4. The Permittee shall post the attached Permit Notice in a conspicuous place at the work area while the work authorized herein is undertaken.
5. The Permittee shall ensure that any work by a water-based barge is done so in a manner in which such barge does not rest on the bottom of Greenwich Cove.
6. 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.
7. The work authorized in paragraph 1. of the SCOPE OF AUTHORIZATION, above, shall be conducted prior to the work authorized in paragraph 3. of the SCOPE OF AUTHORIZATION, above, and no later than 120 days from issuance of this permit.
8. The work authorized in paragraph 1. of the SCOPE OF AUTHORIZATION, above, shall be

conducted using hand-held tools only during periods of low water.

9. The Permittee shall construct the new fixed pier authorized in herein such that the decking of the pier is at 11.5' NGVD 1929.
10. At no time shall any vessel be berthed at, moored at, or otherwise secured to, the dock authorized herein.
11. The Permittee shall install float stops prevent the entire float surface from resting on the bottom at low water. Such float stops structure shall be maintained in optimal operating condition for the life of the structure.
12. Except as specifically authorized by this permit, no equipment or material, including but not limited to, fill, construction materials, excavated material or debris, shall be deposited, placed or stored in any wetland or watercourse on or off-site, or within any delineated setback area, nor shall any wetland, watercourse or delineated setback area be used as a staging area or access way other than as provided herein.
13. All waste material generated by the performance of the work authorized herein shall be disposed of by the Permittee at an upland site approved for the disposal of such waste material, as applicable.
14. On or before ninety (90) days after completion of the work authorized herein, the Permittee shall submit to the Commissioner "as-built" plans of the work area showing all tidal datums and structures, including any proposed elevation views and cross sections included in the permit. Such 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.

### **GENERAL TERMS AND CONDITIONS**

1. All work authorized by this permit shall be completed within five (5) years from date of issuance of this permit ("work completion date") in accordance with all conditions of this permit and any other applicable law.
  - a. The Permittee may request a one-year extension of the work completion date. Such request shall be in writing and shall be submitted to the Commissioner at least thirty (30) days prior to said work completion date. 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.
  - b. Any work authorized herein conducted after said work completion date or any authorized one year extension thereof is a violation of this permit and may subject the Permittee to enforcement action, including penalties, as provided by law.
2. In conducting the work authorized herein, the Permittee shall not deviate from the attached plans, as may be modified by this permit. The Permittee shall not make de minimis changes

from said plans without prior written approval of the Commissioner.

3. The Permittee may not conduct work waterward of the coastal jurisdiction line or in tidal wetlands at this permit site other than the work authorized herein, unless otherwise authorized by the Commissioner pursuant to CGS section 22a-359 et. seq. and/or CGS section 22a-32 et. seq.
4. The Permittee shall maintain all structures or other work authorized herein in good condition. Any such maintenance shall be conducted in accordance with applicable law including, but not limited to, CGS sections 22a-28 through 22a-35 and CGS sections 22a-359 through 22a-363g.
5. In undertaking the work authorized hereunder, the Permittee shall not cause or allow pollution of wetlands or watercourses, including pollution resulting from sedimentation and erosion. For purposes of this permit, "pollution" means "pollution" as that term is defined by CGS section 22a-423.
6. Upon completion of any work authorized herein, the Permittee shall restore all areas impacted by construction, or used as a staging area or access way in connection with such work, to their condition prior to the commencement of such work.
7. The work specified in the SCOPE OF AUTHORIZATION is authorized solely for the purpose set out in this permit. No change in the purpose or use of the authorized work or facilities as set forth in this permit may occur without the prior written authorization of the Commissioner. The Permittee shall, prior to undertaking or allowing any change in use or purpose from that which is authorized by this permit, request authorization from the Commissioner for such change. Said request shall be in writing and shall describe the proposed change and the reason for the change.
8. The Permittee shall allow any representative of the Commissioner to inspect the work authorized herein at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.
9. This permit is not transferable without prior written authorization of the Commissioner. A request to transfer a permit shall be submitted in writing and shall describe the proposed transfer and the reason for such transfer. The Permittee's obligations under this permit shall not be affected by the passage of title to the work area to any other person or municipality until such time as a transfer is authorized by the Commissioner.
10. Any document required to be submitted to the Commissioner under this permit or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

Permit Section  
Office of Long Island Sound Programs  
Department of Energy and Environmental Protection  
79 Elm Street  
Hartford, Connecticut 06106-5127

(860) 424-3034

Fax # (860) 424-4054

11. The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this permit, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is personally delivered or the date three (3) days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this permit, the word "day" as used in this permit means calendar day. Any document or action which is required by this permit to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or a Connecticut or federal holiday.
12. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this permit shall be signed by the Permittee and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense."
13. In evaluating the application for this permit the Commissioner has relied on information and data provided by the Permittee and on the Permittee's representations concerning site conditions, design specifications and the proposed work authorized herein, including but not limited to representations concerning the commercial, public or private nature of the work or structures authorized herein, the water-dependency of said work or structures, its availability for access by the general public, and the ownership of regulated structures or filled areas. If such information proves to be false, deceptive, incomplete or inaccurate, this permit may be modified, suspended or revoked, and any unauthorized activities may be subject to enforcement action.
14. In granting this permit, the Commissioner has relied on representations of the Permittee, including information and data provided in support of the Permittee's application. Neither the Permittee's representations nor the issuance of this permit shall constitute an assurance by the Commissioner as to the structural integrity, the engineering feasibility or the efficacy of such design.
15. In the event the Permittee becomes aware that they did not or may not comply, or did not or may not comply on time, with any provision of this permit or of any document required hereunder, the Permittee shall immediately notify the Commissioner and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. In so notifying the Commissioner, the Permittee shall state in writing the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and

the Permittee shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Permittee shall not excuse noncompliance or delay and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically stated by the Commissioner in writing.

16. This permit may be revoked, suspended, or modified in accordance with applicable law.
17. The issuance of this permit does not relieve the Permittee of their obligations to obtain any other approvals required by applicable federal, state and local law.
18. This permit is subject to and does not derogate any present or future property rights or powers of the State of Connecticut, and conveys no property rights in real estate or material nor any exclusive privileges, and is further subject to any and all public and private rights and to any federal, state or local laws or regulations pertinent to the property or activity affected hereby.

Issued on \_\_\_\_\_, 2013

STATE OF CONNECTICUT  
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

---

Betsey C. Wingfield  
Bureau Chief  
Bureau of Water Protection and Land Reuse

Permit #201207495-TS  
16 Highgate Road, LLC

# 16 HIGHGATE ROAD, LLC RESIDENTIAL DOCK

## DRAWING LIST

DRAWING No.	DRAWING TITLE	DATE	REV
1	TITLE SHEET & GENERAL NOTES	8/1/2013	1
2	VICINITY MAP	8/1/2013	1
3	EXISTING SITE PLAN	8/1/2013	1
4	EXISTING PARTIAL PLAN 1	8/1/2013	1
5	PROPOSED PARTIAL PLAN 1	8/1/2013	1
6	EXISTING & PROPOSED SECTION A-A	8/1/2013	1
7	PROPOSED SECTION B-B	8/1/2013	1
8	EXISTING PARTIAL PLAN 2	8/1/2013	0
9	PROPOSED PARTIAL PLAN 2	8/1/2013	0
10	EXISTING & PROPOSED SECTION C-C	8/1/2013	0

### GENERAL NOTES:

1. THE PURPOSE OF THESE DRAWINGS IS FOR PERMIT APPLICATIONS ONLY. DRAWINGS ARE PRELIMINARY AND NOT FOR CONSTRUCTION.
2. THE SITE INFORMATION HAS BEEN TAKEN FROM A DRAWING TITLED, "SITE DEVELOPMENT AND SEDIMENTATION & EROSION CONTROL PLAN", DATED FEBRUARY 16, 2010 AND REVISED AUGUST 23, 2011, BY SOUND VIEW ENGINEERS & LAND SURVEYORS, LLC.
3. ADDITIONAL SITE INFORMATION OBTAINED BY ROBERGE ASSOCIATES COASTAL ENGINEERS, LLC ON FEBRUARY 3, 2012.
4. VICINITY MAP TAKEN FROM USGS, STAMFORD QUADRANGLE, DATED 1984.
5. ELEVATIONS REFERENCE NATIONAL GEODETIC VERTICAL DATUM OF 1929, UNLESS NOTED OTHERWISE.
6. WORK HAS BEEN DESIGNED IN ACCORDANCE WITH THE CONNECTICUT STATE BUILDING CODE WHICH INCLUDES THE 2003 INTERNATIONAL BUILDING CODE AND THE 2005 CONNECTICUT SUPPLEMENT WITH AN EFFECTIVE DATE OF DECEMBER 31, 2005.
7. CONSTRUCTION METHODOLOGY, CONSTRUCTION SEQUENCE, AND TEMPORARY WORK, DEVELOPED BY THE CONTRACTOR, SHALL BE IN ACCORDANCE WITH THE CT-DEEP PERMIT.

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NOT FOR CONSTRUCTION

DRAWN BY: SCS	SEAL:	PROJECT:	
CHECKED BY: TD		PERMIT APPLICATION RESIDENTIAL DOCK GREENWICH COVE LONG ISLAND SOUND	
DATUM: N/A			
SCALE: N/A		APPLICANT:	
DATE: 11/15/2012		16 HIGHGATE ROAD, LLC 16 HIGHGATE ROAD GREENWICH, CT 06878	
REV: 1 8/1/2013			
PROJECT #: 201211	NOT VALID WITHOUT ENGINEER'S SEAL		 <b>ROBERGE ASSOCIATES</b> Coastal Engineers, LLC <hr/> 611 Access Road, Stratford, CT 06615 Tel: 203-377-0663      www.racellc.com



PROJECT SITE

VICINITY MAP  
 APPROX. SCALE 1" = 1500'

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CHECKED BY:	TD
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DATE:	11/15/2012
REV:	1 8/1/2013
PROJECT #:	201211

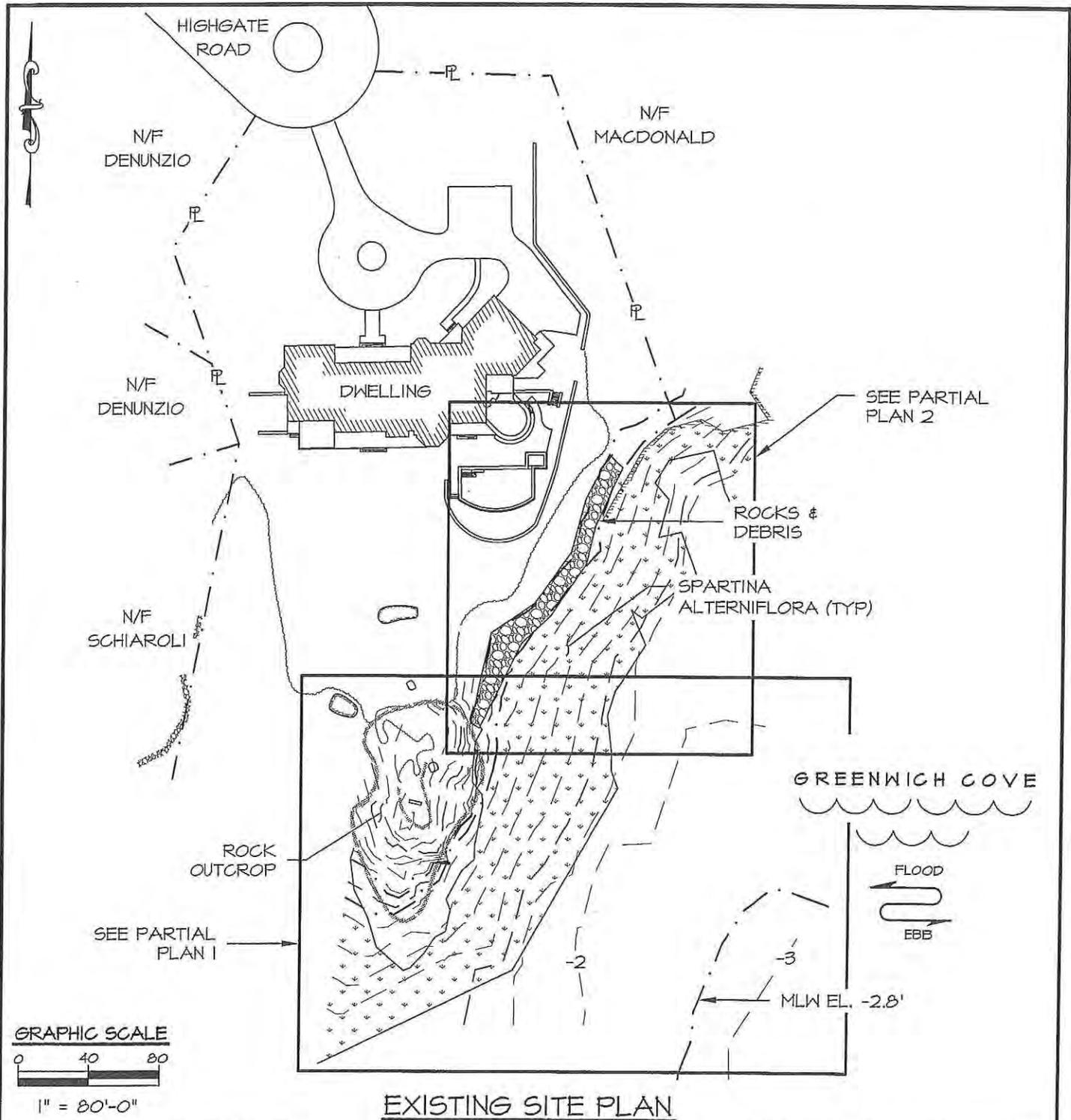


PROJECT: PERMIT APPLICATION  
 RESIDENTIAL DOCK  
 GREENWICH COVE  
 LONG ISLAND SOUND

APPLICANT:  
 16 HIGHGATE ROAD, LLC  
 16 HIGHGATE ROAD  
 GREENWICH, CT 06878

**ROBERGE ASSOCIATES**  
 Coastal Engineers, LLC

611 Access Road, Stratford, CT 06615  
 Tel: 203-377-0663 www.racellc.com



**EXISTING SITE PLAN**

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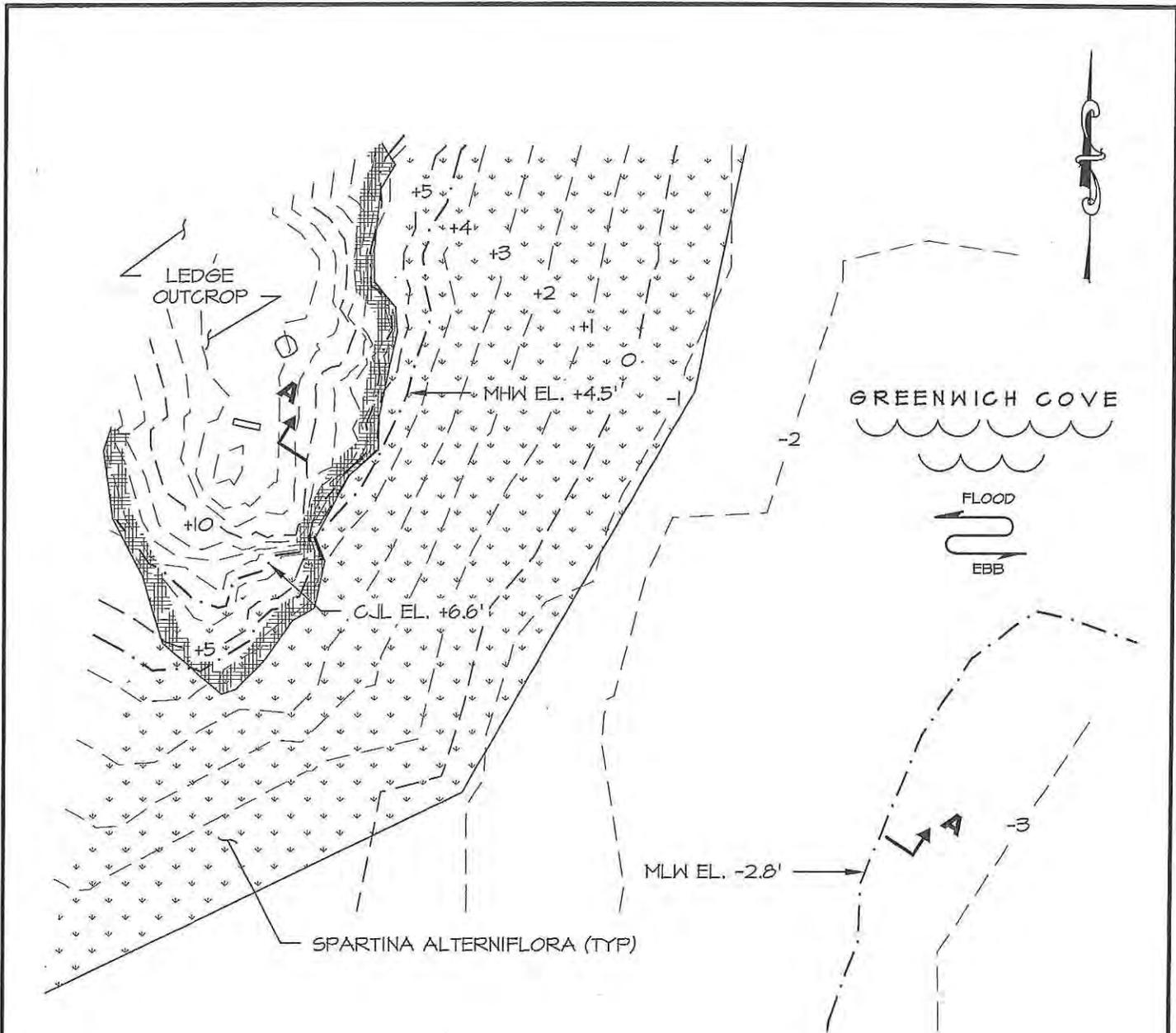
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PROJECT #:	201211



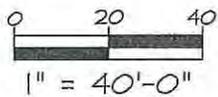
PROJECT:	PERMIT APPLICATION RESIDENTIAL DOCK GREENWICH COVE LONG ISLAND SOUND
APPLICANT:	16 HIGHGATE ROAD, LLC 16 HIGHGATE ROAD GREENWICH, CT 06878

**RACE**  
ROBERGE ASSOCIATES  
Coastal Engineers, LLC

611 Access Road, Stratford, CT 06615  
Tel: 203-377-0663 www.racellc.com



GRAPHIC SCALE

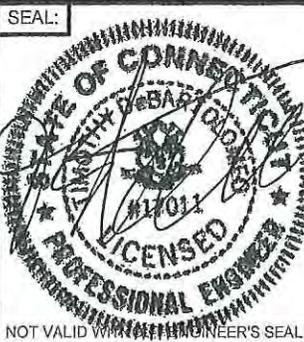


EXISTING PARTIAL PLAN I

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NOT FOR CONSTRUCTION

DRAWN BY:	SCS
CHECKED BY:	TD
DATUM:	NGVD 1929
SCALE:	1" = 40'-0"
DATE:	11/15/2012
REV:	1 8/1/2013
PROJECT #:	201211



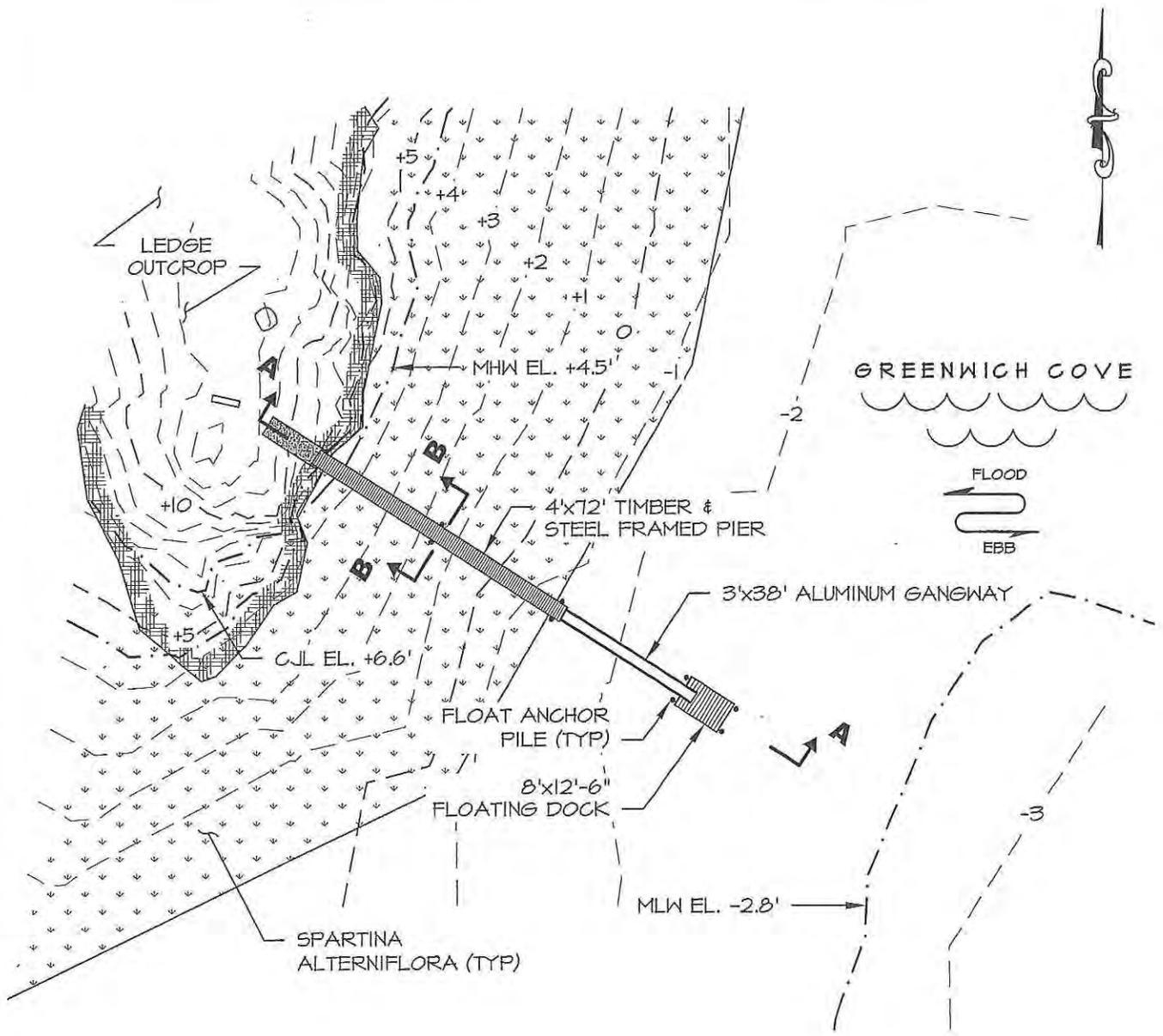
PROJECT:	PERMIT APPLICATION RESIDENTIAL DOCK GREENWICH COVE LONG ISLAND SOUND
APPLICANT:	16 HIGHGATE ROAD, LLC 16 HIGHGATE ROAD GREENWICH, CT 06878

**RACE**

ROBERGE ASSOCIATES  
Coastal Engineers, LLC

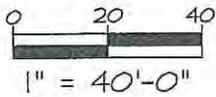
611 Access Road, Stratford, CT 06615  
Tel: 203-377-0663 www.racellc.com

DRAWING NO. 4 of 10



**GRAPHIC SCALE**

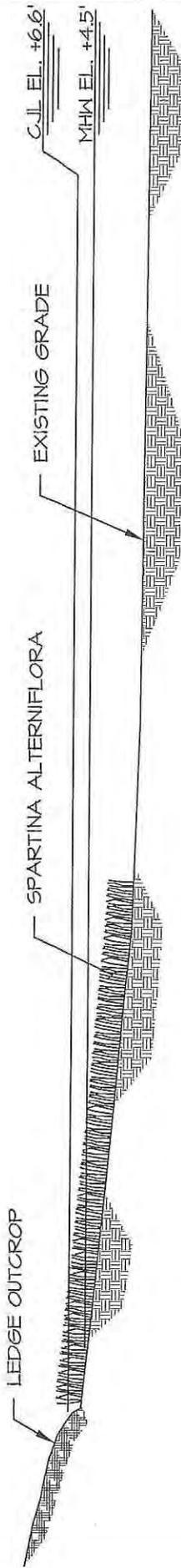
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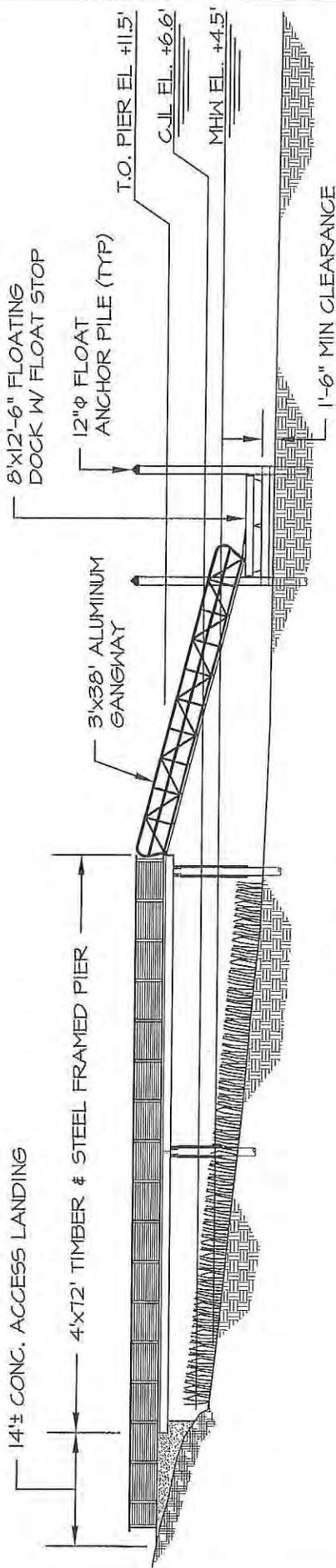
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NOT FOR CONSTRUCTION

DRAWN BY: SCS	SEAL:	PROJECT:		<p>PERMIT APPLICATION RESIDENTIAL DOCK GREENWICH COVE LONG ISLAND SOUND</p>	<p>ROBERGE ASSOCIATES Coastal Engineers, LLC</p>
CHECKED BY: TD		APPLICANT:			
DATUM: NGVD 1929					
SCALE: 1" = 40'-0"					
DATE: 11/15/2012					
REV: 1 8/1/2013					
PROJECT #: 201211	NOT VALID WITHOUT ENGINEER'S SEAL				DRAWING NO. 5 of 10



EXISTING SECTION A-A



PROPOSED SECTION A-A

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NOT FOR CONSTRUCTION

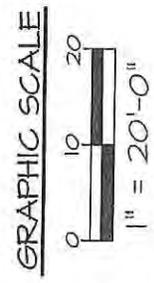
**RACE**  
**ROBERGE ASSOCIATES**  
 Coastal Engineers, LLC  
 611 Access Road, Stratford, CT 06615  
 Tel: 203-377-0663 www.racellc.com

DRAWING NO. 6 of 10

PROJECT:	PERMIT APPLICATION RESIDENTIAL DOCK GREENWICH COVE LONG ISLAND SOUND
APPLICANT:	16 HIGHGATE ROAD, LLC 16 HIGHGATE ROAD GREENWICH, CT 06878

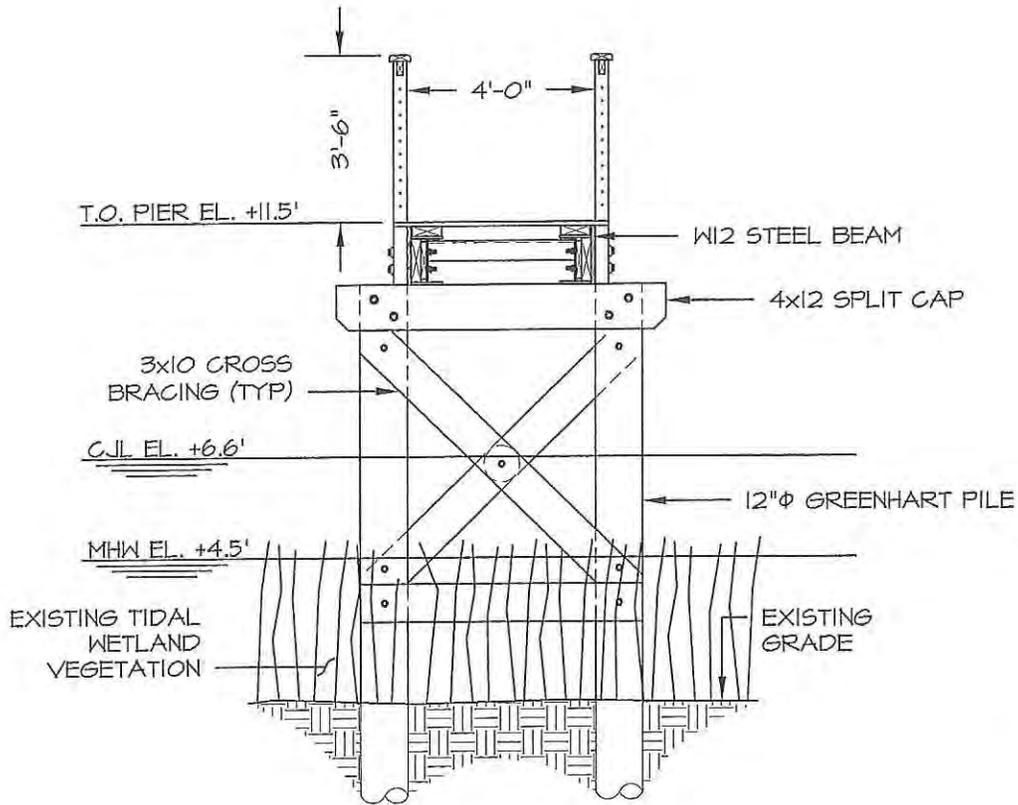


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SCALE:	1" = 20'-0"
DATE:	11/15/2012
REV:	1 8/1/2013
PROJECT #:	201211



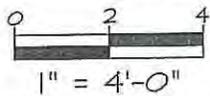
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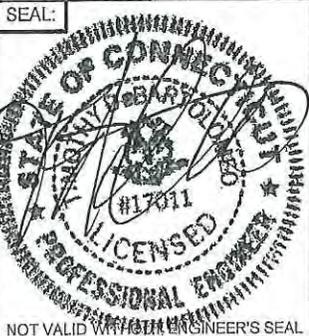
PROPOSED SECTION B-B

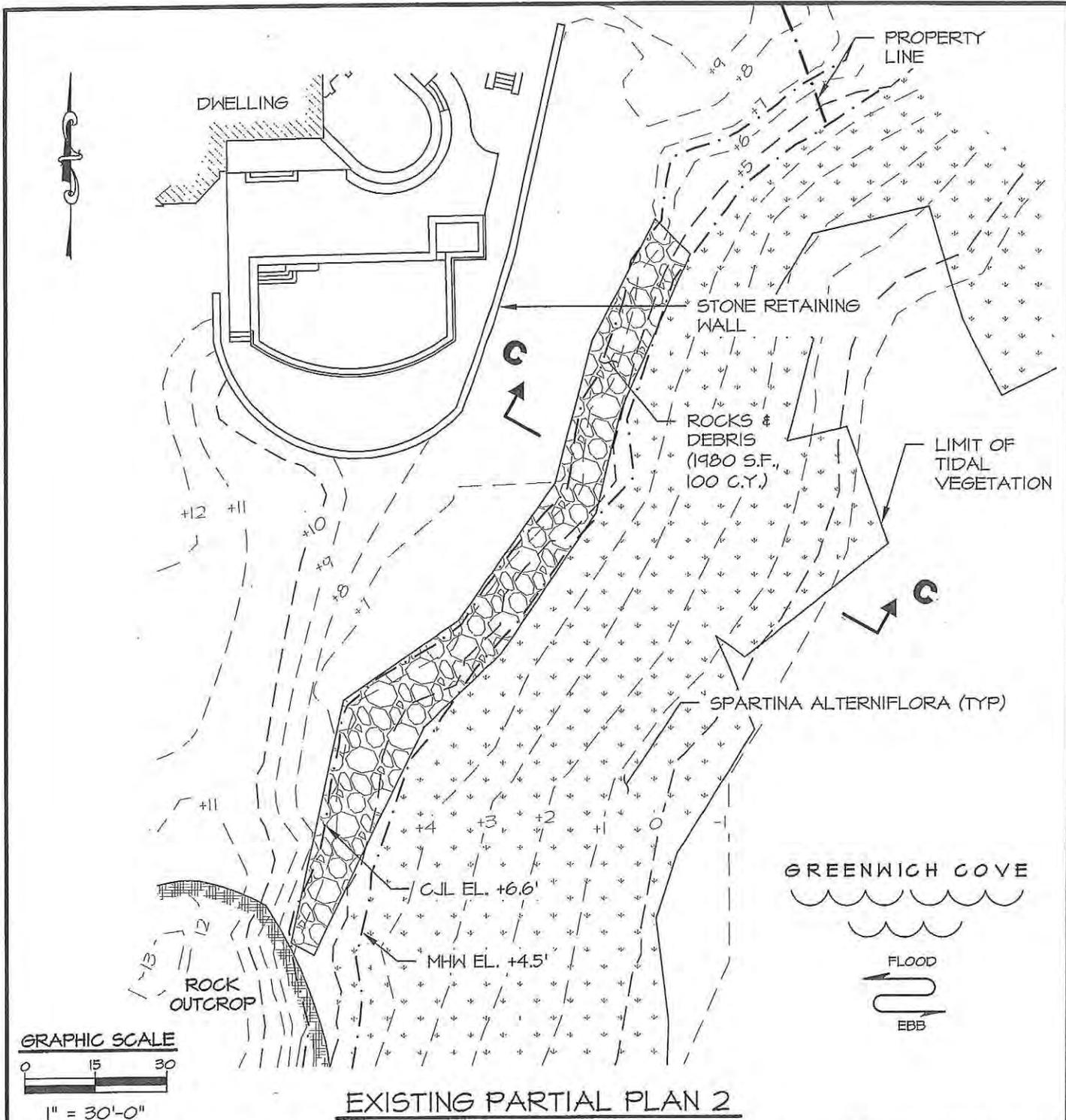
GRAPHIC SCALE



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DRAWN BY: SCS	SEAL:	PROJECT:	 <b>ROBERGE ASSOCIATES</b> Coastal Engineers, LLC 611 Access Road, Stratford, CT 06615 Tel: 203-377-0663 www.racellc.com
CHECKED BY: TD		PERMIT APPLICATION RESIDENTIAL DOCK GREENWICH COVE LONG ISLAND SOUND	
DATUM: NGVD 1929		APPLICANT:	
SCALE: 1" = 4'-0"		16 HIGHGATE ROAD, LLC 16 HIGHGATE ROAD GREENWICH, CT 06878	
DATE: 11/15/2012		NOT VALID WITHOUT ENGINEER'S SEAL	
REV: 1 8/1/2013		DRAWING NO. 7 of 10	
PROJECT #: 201211			



**EXISTING PARTIAL PLAN 2**

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DRAWN BY:	SCS
CHECKED BY:	TD
DATUM:	NGVD 29
SCALE:	1" = 30'-0"
DATE:	8/1/2013
REV:	
PROJECT #:	201211

SEAL:

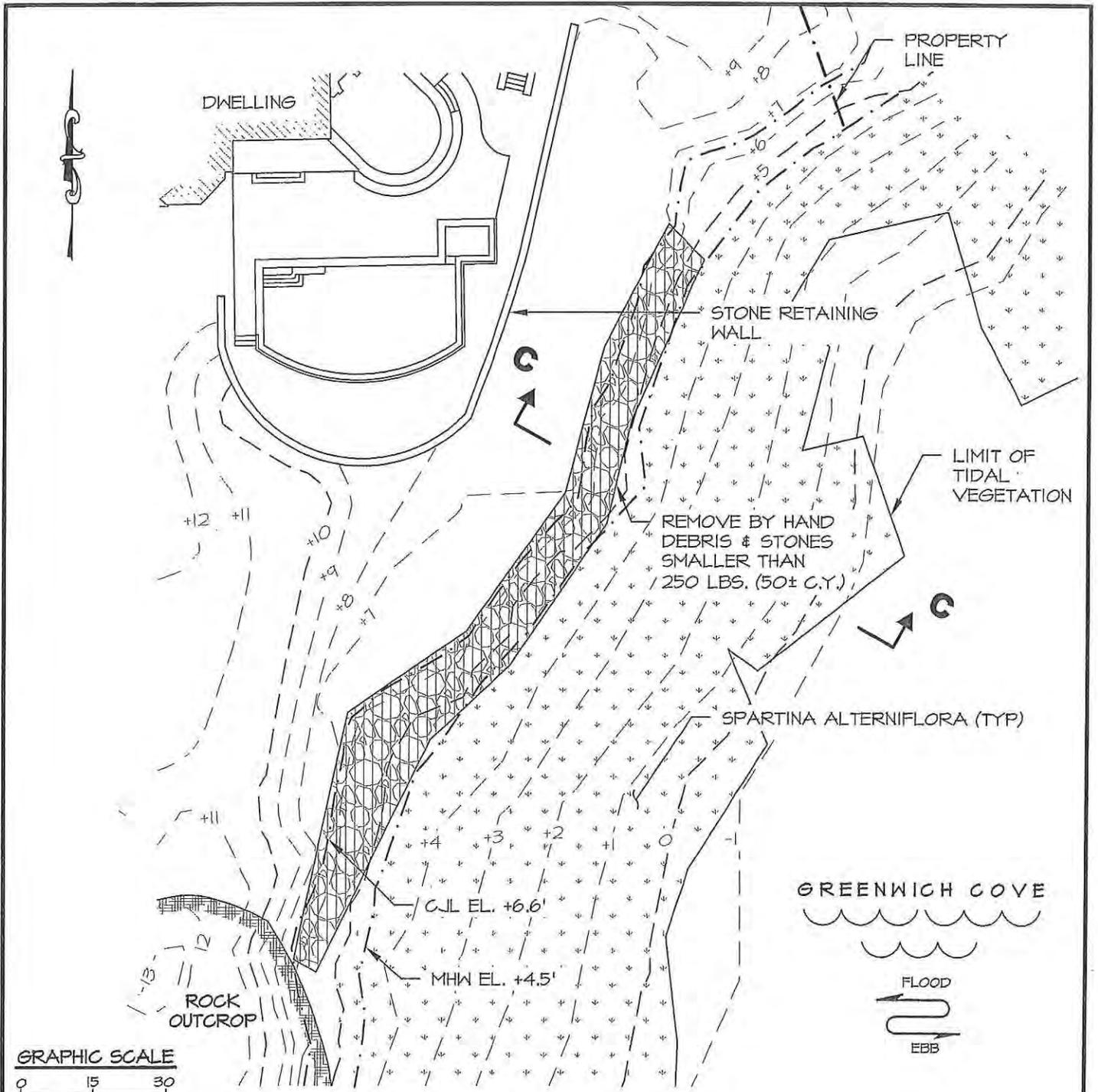
NOT VALID WITHOUT ENGINEER'S SEAL

PROJECT:	PERMIT APPLICATION RESIDENTIAL DOCK GREENWICH COVE LONG ISLAND SOUND
APPLICANT:	16 HIGHGATE ROAD, LLC 16 HIGHGATE ROAD GREENWICH, CT 06878

**RACE**  
ROBERGE ASSOCIATES  
Coastal Engineers, LLC

2499 Main Street, Unit F, Stratford, CT 06615  
Tel: 203-377-0663 www.racellc.com

DRAWING NO. 8 of 10



**PROPOSED PARTIAL PLAN 2**

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DRAWN BY:	SCS
CHECKED BY:	TD
DATUM:	NGVD 29
SCALE:	1" = 30'-0"
DATE:	8/1/2013
REV:	
PROJECT #:	201211

SEAL:

PROJECT:

PERMIT APPLICATION  
RESIDENTIAL DOCK  
GREENWICH COVE  
LONG ISLAND SOUND

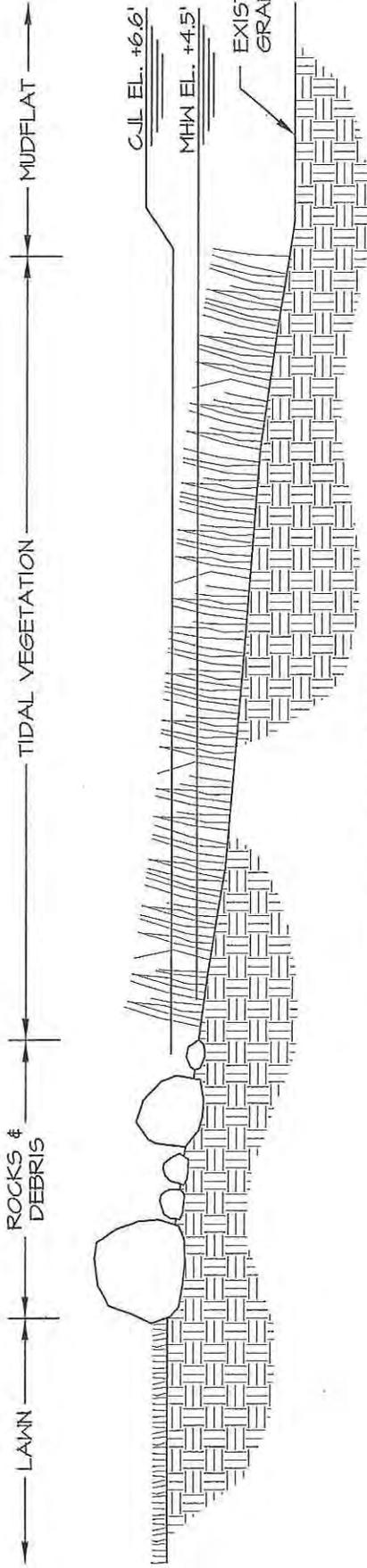
APPLICANT:

16 HIGHGATE ROAD, LLC  
16 HIGHGATE ROAD  
GREENWICH, CT 06878

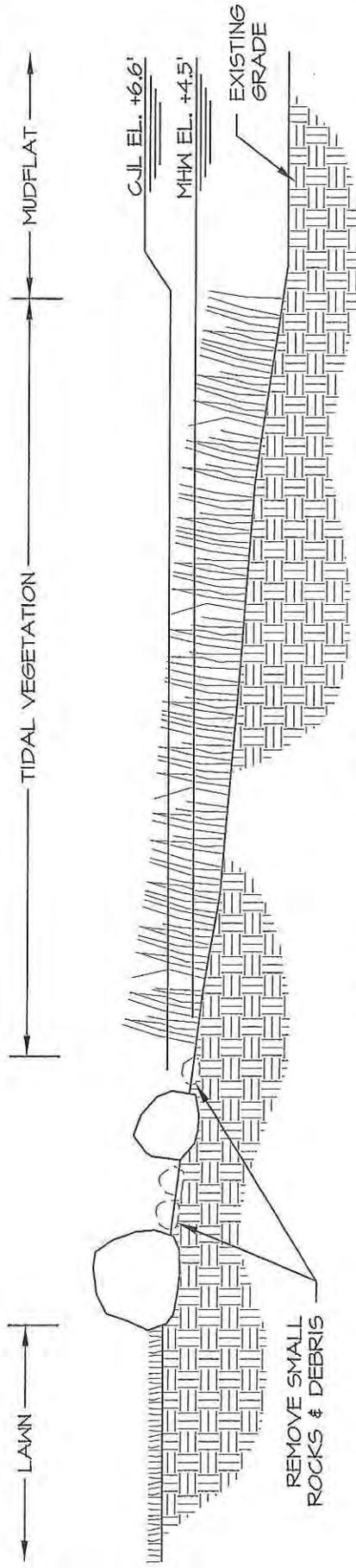
**RACE**  
ROBERGE ASSOCIATES  
Coastal Engineers, LLC

2499 Main Street, Unit F, Stratford, CT 06615  
Tel: 203-377-0663 www.racellc.com

DRAWING NO. 9 of 10



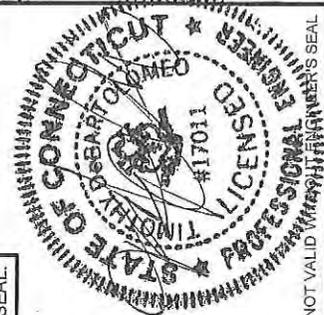
EXISTING SECTION C-C



PROPOSED SECTION C-C

FOR REGULATORY AGENCY REVIEW ONLY  
NOT FOR CONSTRUCTION

DRAWN BY:	SCS
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DATUM:	NOVD 1929
SCALE:	1" = 10'-0"
DATE:	8/1/2013
REV:	
PROJECT #:	201211

SEAL: 

NOT VALID WITHOUT ENGINEER'S SEAL

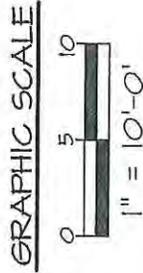
PROJECT: PERMIT APPLICATION  
RESIDENTIAL DOCK  
GREENWICH COVE  
LONG ISLAND SOUND

APPLICANT: 16 HIGHGATE ROAD, LLC  
16 HIGHGATE ROAD  
GREENWICH, CT 06878

**RACE**  
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Coastal Engineers, LLC

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DRAWING NO. 10 of 10



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	NAVD 88	NGVD 29
CJL	+5.5'	+6.6'
MHW	+3.4'	+4.5'
NAVD 88	0.0'	+1.1'
NGVD 29	-1.1'	0.0'
MLW	-3.9'	-2.8'

## CONVERSION TABLE

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DRAWN BY:	SCS	PROJECT:	 <b>ROBERGE ASSOCIATES</b> Coastal Engineers, LLC <hr/> 611 Access Road      Stratford, CT 06615 Tel: 203-377-0663      www.racellc.com
CHECKED BY:	TD	PERMIT APPLICATION RESIDENTIAL DOCK GREENWICH COVE LONG ISLAND SOUND	
DATUM:	N/A	APPLICANT:	
SCALE:	N/A	16 HIGHGATE ROAD, LLC 16 HIGHGATE ROAD GREENWICH, CT 06878	
DATE:	8/15/2013		
REV:			
PROJECT #:	201211		

OFFICE OF LONG ISLAND SOUND PROGRAMS

APPENDIX A

**TO: Permit Section**  
**Department of Energy and Environmental Protection**  
**Office of Long Island Sound Programs**  
**79 Elm Street**  
**Hartford, CT 06106-5127**

**PERMITTEE:** 16 Highgate Road, LLC  
16 Highgate Road  
Greenwich, CT 06878

**Permit No:** #201207495-TS, Greenwich

**CONTRACTOR 1:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

**CONTRACTOR 2:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

**CONTRACTOR 3:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

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

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

**PERMITTEE:** \_\_\_\_\_  
(signature) (date)

OFFICE OF LONG ISLAND SOUND PROGRAMS

APPENDIX A

**TO: Permit Section**  
**Department of Energy and Environmental Protection**  
**Office of Long Island Sound Programs**  
**79 Elm Street**  
**Hartford, CT 06106-5127**

**PERMITTEE:** 16 Highgate Road, LLC  
16 Highgate Road  
Greenwich, CT 06878

**Permit No:** #201207495-TS, Greenwich

**CONTRACTOR 1:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

**CONTRACTOR 2:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

**CONTRACTOR 3:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

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

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

**PERMITTEE:** \_\_\_\_\_

(signature)

(date)



**OFFICE OF LONG ISLAND SOUND PROGRAMS**

**APPENDIX B**

**NOTICE OF PERMIT ISSUANCE**  
**DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION**

**To:** Greenwich Town Clerk

**Signature and  
Date:**

**Subject:** 16 Highgate Road, Greenwich  
Coastal Permit #201207495-TS

Pursuant to Section 22a-363g and Section 22a-32, Section 22a-361 of the Connecticut General Statutes, the Commissioner of Energy and Environmental Protection gives notice that a permit has been issued to 16 Highgate Road, LLC, 16 Highgate Road, Greenwich, CT 06878 to:

1. remove miscellaneous debris and approximately 50 cubic yards of riprap smaller than 250 lbs. located water of the Coastal Jurisdiction Line and along approximately 170 linear feet of the northeastern shoreline as shown on plan sheet 9;
2. retain approximately 50 cubic yards of riprap larger than 250 lbs. located waterward of the Coastal Jurisdiction Line and along approximately 170 linear feet of the northeastern shoreline as shown on plan sheet 9; and
3. install a 4' x 72' timber and steel framed fixed pier supported by four timber piles, a 3' x 38' ramp, and an 8' x 12'6" float with float stops anchored by four restraint piles, as shown on the attached plans.

If you have any questions pertaining to this matter, please contact the Office of Long Island Sound Programs at 860-424-3034.



# PERMIT NOTICE

This Certifies that Authorization to perform work below the Coastal Jurisdiction Line and/or within Tidal Wetlands of coastal, tidal, or navigable waters of Connecticut

Has been issued to:

16 Highgate Road, LLC

At this location:

16 Highgate Road, Greenwich

To conduct the following: **to remove miscellaneous debris and riprap, retain riprap, and install a dock.**

Permit #: 201207495-TS

Issued on: <Issue Date>

This Authorization expires on: <Expiration Date>

This Notice must be posted in a conspicuous place on the job during the entire project.

Department of Energy and Environmental Protection  
Office of Long Island Sound Programs  
79 Elm Street • Hartford, CT 06106-5127  
Phone: (860) 424-3034 Fax: (860) 424-4054  
[www.ct.gov/deep](http://www.ct.gov/deep)