

MURTHA CULLINA LLP

A T T O R N E Y S A T L A W

CITYPLACE I
185 ASYLUM STREET
HARTFORD, CONNECTICUT 06103-3469

TELEPHONE (860) 240-6000
FACSIMILE (860) 240-6150
www.murthlaw.com

GREGORY A. SHARP
(860) 240-6046 DIRECT TELEPHONE
(860) 240-5846 DIRECT FACSIMILE
GSHARP@MURTHLAW.COM

August 29, 2008

VIA HAND DELIVERY

Gina McCarthy, Commissioner
Office of the Commissioner
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Re: Petition for Declaratory Ruling

Dear Commissioner McCarthy:

Pursuant to Regulations of Connecticut State Agencies § 22a-3a-4, enclosed please find the Petition of Thomas and Gail Lane for a Declaratory Ruling on three issues:

1. Did the Office of Long Island Sound Programs (“OLISP”) err in denying the Petitioners’ Application for a Certificate of Permission for substantial maintenance of structures that have existed at their property since prior to June 24, 1939?
2. Is OLISP’s literal interpretation of the “continuously maintained and serviceable” provision of Section 22a-363b of the General Statutes contrary to the legislative intent of the statute to grandfather structures existing prior to June 24, 1939?
3. Did OLISP err in issuing a Notice of Violation for twenty year old repairs to a pre-1939 structure to the Petitioners, who are innocent purchasers of the property and did not perform the repairs, where a) the basis for the NOV was that OLISP had no record of a permit for the repairs; and b) the reason for the absence of a permit is that DEP did not require such a permit at the time the repairs were performed by the prior owner?

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

PETITION OF THOMAS AND GAIL LANE
FOR A DECLARATORY RULING
AS TO WHETHER THE OFFICE OF LONG
ISLAND SOUND PROGRAMS ERRED IN
DENYING AN APPLICATION FOR
CERTIFICATE OF PERMISSION FOR
STRUCTURES ON PROPERTY WHERE
STRUCTURES HAVE EXISTED SINCE
PRIOR TO 1939 AND ISSUING A NOTICE
OF VIOLATION FOR STRUCTURES
SUBSTANTIALLY REPAIRED IN 1987
WITHOUT A PERMIT

PETITION FOR DECLARATORY RULING

I. INTRODUCTION

The Department of Environmental Protection, through its Office of Long Island Sound Programs ("OLISP"), has wrongfully denied the application of Thomas and Gail Lane (the "Petitioners" or "Lanes") to retain and maintain a long-existing boardwalk and dock system located at their residence at 32 Money Point Road, Mystic, Connecticut ("Property") (Certificate of Permission ("COP") Application no. COP-2008-103-DL, Town of Stonington, (hereinafter the "Application") (Exhibit 1). A dock system has existed on the Property for at least the past 70 years, with the last major repair occurring in 1987 after devastation caused by Hurricane Gloria, and 17 years before the Lanes acquired the Property in 2004.

The Lanes seek after-the-fact authorization for repairs made in 1987, as well as additional environmentally beneficial upgrades to the structure, at the same location where a

docking system has existed since prior to 1939. The after-the-fact approval is required to address a Notice of Violation No. LIS-2007-054-V, Stonington ("NOV") issued on May 7, 2007, (Exhibit 2) and to avoid a threatened removal order. The Petitioners seek a ruling: 1) that the COP Application was wrongfully denied; and 2) that the NOV was issued in error, because the agency's practice in 1987 was not to issue or require permits to re-build pre-existing dock structures.

OLISP is the program within the Department that handles applications under the Structures, Dredging and Fill Act (the "Act"), Conn. Gen. Stat. § 22a-359 et seq. As applied to the structures located on the Lanes' Property, OLISP has misinterpreted the applicability of Conn. Gen. Stat. § 22a-363b. As relevant to the facts of this Petition, that statute provides for the expedited issuance of a COP for substantial maintenance of structures, fill, obstructions or encroachments in place prior to June 24, 1939 and continuously maintained and serviceable since that time.

Despite the existence of a docking system on the Property since prior to 1939 through the present, OLISP has wrongfully taken the position that the structures have not been "continuously maintained and serviceable" due to the fact that much of the docking system was destroyed by Hurricane Gloria in late 1985 and, therefore, the entire structure did not "continually" exist in its exact original state for the brief period of time between the hurricane devastation and the time the dock re-build was complete in 1987. This literal interpretation of the "continuously maintained and serviceable" provision of the statute is out of line with the

clear legislative intent to grandfather structures existing prior to the enactment of the Act and allow for the maintenance and improvement of these structures over time.

Because OLISP has misapplied the statute, the Petitioners request the Commissioner to declare OLISP's interpretation in error and direct OLISP to approve the Petitioners' COP Application to permit the substantial repairs to the docking system made in 1987 and additional improvements proposed in the Application.

Moreover, the Petitioners request the Commissioner to withdraw the NOV issued to the Lanes premised on repair activities undertaken by a previous owner in 1987 without a permit, because the agency at that time did not require permits for repair activities to pre-existing structures. See Affidavit of Thomas Lane, (Exhibit 3).

II. STANDING AND STATUTORY AUTHORITY

This request is made pursuant to the provisions of the Uniform Administrative Procedure Act ("UAPA"), Connecticut General Statutes § 4-175 and 4-176, and the Regulations of Connecticut State Agencies ("RCSA") § 22a-3a-4. Conn. Gen. Stat. § 4-176 provides that any person may petition an agency for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency.

Section 4-176(e) provides that the agency must act on the petition in one of five ways.

Within sixty days after receipt of a petition for a declaratory ruling, an agency in writing shall: (1) Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified circumstances,

(2) order the matter set for specified proceedings, (3) agree to issue a declaratory ruling by a specified date, (4) decide not to issue a declaratory ruling and initiate regulation-making proceedings, under section 4-168, on the subject, or (5) decide not to issue a declaratory ruling, stating the reasons for its action.

Section 4-176(e).

Conn. Gen. Stat. § 4-175 provides that a petitioner is entitled to seek a declaratory ruling directly from the Superior Court if the agency does not take action as provided in § 4-176(e)(1), (2), or (3). A ruling by an agency on a petition for declaratory ruling issued pursuant to § 4-176(e) is appealable as a final decision under the UAPA. Conn. Gen. Stat. § 4-166.

III. HISTORY AND STATUTORY BACKGROUND

A. Historical Docking System and Approvals

The Property has existed as a residence since at least 1936, when it was acquired by Emma Albert Cole. (Exhibit 1, Application at p. 3). In 1985, her son, Hugh Cole, inherited the Property. (Exhibit 1, Application at p. 3; Attachment H, letter of June 18, 2007 letter of Hugh Cole). A docking system, including a cinder walkway through a salt marsh, was constructed in or about the spring of 1937, and prior to 1939. (Exhibit 1, Application, Attachment H, letter of Josey Wright dated June 17, 2007; see also id. June 18, 2007 letter of Hugh Cole; June 7, 2007 letter from Sarah Moore Hallberg; June 11, 2007 letter from Daniel Van Winkle; July 21, 2008 letter from Peter G. Briggs).

The docking system was subsequently damaged in the 1938 hurricane and rebuilt thereafter, but otherwise remained in continual use and existence on the Property until

portions were destroyed and rebuilt following Hurricane Gloria, which struck southeastern Connecticut on September 15, 1985. (Id., letter of Josey Wright dated June 17, 2007; Attachment H, Two Photographs of the Property Subsequent to the 1938 Hurricane; see also Attachment H, letter of June 18, 2007 letter of Hugh Cole). Notwithstanding, a docking system, which currently consists of a 4' x 100' at grade boardwalk, a 5' x 74' fixed dock with two 8' x 8' support cribs and pilings, a 3' x 12' ramp and a 8' x 16' floating dock, has continually existed at the Property since prior to 1939 to the present. (Exhibit 1).

Indeed, aerial photographs following the 1938 hurricane taken in 1951, 1965, 1974, and 1980 depict the at grade walkway and dock system. In all aerial photographs from 1951-1980, the dock system consistently appears to be in the same proportions as the prior aerial photograph. In addition, the 1951 photograph indicates that the waterward end of the dock was a crib structure. (Exhibit 4). Available aerial photographs from 1981 show a significant dock is visible. (Exhibit 5). Indeed, there is evidence that the dock continually existed on the property until the dock was largely destroyed in 1985. (Exhibit 1, Application, Attachment H, letter of June 18, 2007 letter of Hugh Cole). As a result of the devastation of Hurricane Gloria in September 1985, the docking system is not visible in the aerial photograph taken in 1986. (Exhibit 6).

Indeed, at the time of landfall, Gloria is estimated to have been a Category 2 Hurricane. (Id.). Boats were ripped from their moorings and marina slips were hurled about by wind-driven waves. Docks across the State were destroyed or significantly damaged, as were marina terminals in New London and Mystic, and industrial facilities such as Pfizer and

Dow. In short, the wreckage caused by Gloria was a disaster and it took contractors from all over the regions months and in many cases more than a year to clean-up all the damage done to the shoreline. Due to the considerable damage caused by Hurricane Gloria, contractors were in high demand and generally unavailable for a considerable time after the hurricane.

(Id.).

By 1987, the owner of the Property at that time, David J. Shiling, was able to secure a contractor and complete the rebuild of the destroyed portions of the dock within the same footprint as the previous dock, after obtaining verbal approval from the U.S. Army Corps of Engineers (the "Corps").¹ See contemporaneous note from Dr. Shiling dated August 3, 1987, (Exhibit 1, Attachment H). Aerial photographs from 1990 and 2004, which follow the 1987 rebuild, depict the current docking system, which appears to be shorter than the 1939 structure, and is contained within the original footprint of, and generally consistent with, the original docking system constructed prior to 1939. (Exhibit 1, Application, Attachment H).

In short, the docking system has existed on the Property for at least 70 years, with the last significant rebuild occurring over 20 years ago after the devastation caused by Hurricane Gloria.

¹ The damage caused by Hurricane Gloria was so severe and widespread the Corps and DEP were unable to visit each site and verbally advised owners to rebuild their docks to the same footprint as before. See Dr. Shiling's Note, Ex. 1, Attachment H, and Affidavit of Thomas Lane, Ex. 3.

B. Recent Proceedings

The Petitioners, Thomas and Gail Lane (the "Lanes"), purchased the Property in 2004 from Ruth and Robert Stetson, who had purchased the Property from David Shiling and Claire Warren. (Exhibit 1, Application at p. 3). On or about March 28, 2006, the Lanes and their consultant met with OLISP staff to seek permission to eliminate the existing 4' x 100' at grade boardwalk, which is, and has historically been, located through a salt marsh, with a raised boardwalk. (Exhibit 7, July 16, 2007 letter from Gregory A. Sharp to Brian Thompson). The Lanes' proposal would have resulted in an accessway over the salt marsh that is far more environmentally sensitive than the at grade walkway. (Id.). At that time, OLISP staff indicated to the Lanes that OLISP "policy" disfavored boardwalks in these circumstances and made an appointment to visit the Property. On March 31, 2006, OLISP staff visited the Property, observed the walkway and dock structures, and advised Mrs. Lane that the existing walkway would have to be removed. Following the visit, Mrs. Lane followed up with OLISP staff by voicemail and with a written confirmation, requesting the statutory basis for the removal request and what appeal rights, if any were available to the Lanes.

OLISP never responded to this request. Instead, 13 months later, on June 1, 2007, the Lanes received the NOV. The issuance of the NOV roughly coincides with an application made by adjacent property owners, John and Julia Parry (the "Parrys"), to OLISP seeking to build a dock at their property, 36 Money Point Road, Mystic, Connecticut (the "Parry Property"). OLISP staff, making a site visit to the Parry Property in connection with their dock application on or about April 2007, made observations of the Lanes' Property and issued

the NOV. The NOV alleges that an unauthorized walkway through tidal wetlands and an unauthorized dock are located on the Property and that the Lanes must remove the entire docking system by hand, including the stone cribs and walkway, despite the existence of a docking system with a walkway on the Property for at least 70 years.

Following the issuance of the NOV, the Lanes engaged in discussions with OLISP in an attempt to resolve the NOV, pointing out that they did not build the dock, but merely bought the property with an existing dock. On July 16, 2007, the Lanes, through their attorney, informed OLISP that the docking system existed on the Property since prior to 1939, with exception to the brief period following the aftermath of Hurricane Gloria in 1985, after which the dock system was rebuilt pursuant to authorization obtained by Dr. Shiling. (Exhibit 7).

In response, on July 27, 2007, OLISP responded by letter stating its position that the walkway and dock facility were installed without authorization and inconsistent with the Department's current "policies," as well as those employed in 1987, regarding structures in tidal wetlands. (Exhibit 8, July 27, 2007 letter from Brian Thompson to Gregory A. Sharp). Specifically, OLISP indicated its view that the docking system had not been "continuously maintained and serviceable" since June 24, 1939 on the basis that there had been changes to the original docking system that it contends were not routine maintenance. OLISP further concluded that the reconstruction of the dock following Hurricane Gloria was not eligible for a COP. (Id.).

Following further communications, OLISP informed the Lanes it would afford them the opportunity to provide OLISP with documentation supporting the Lanes' position that the docking system had existed on the Property since prior to 1939. In response, by letter dated December 31, 2007, the Lanes timely provided OLISP with supporting documentation that the docking system was originally constructed in 1937, with approved repairs in 1987, after Hurricane Gloria destroyed much of the dock. (Exhibit 9, December 31, 2007 letter from Gregory A. Sharp to Brian Thompson). This documentation includes letters and affidavits from prior owners and photographs which all document the existence of the original structure and its subsequent repair. (See Id.).

Although OLISP management gave the Lanes the opportunity to provide additional documentation for its consideration by a date certain, the Lanes later found out that this gesture was not completely genuine. Unknown to the Lanes, OLISP staff, prior to the deadline and before the Lanes submitted materials, had already made a pre-determination that it would require the Lanes to remove the docking system. Pursuant to the Freedom of Information Act ("FOIA"), the Lanes obtained correspondence from OLISP staff to the Parrys' attorney indicating that OLISP had already drafted a removal order and intended to issue an order to remove the docking system as soon as the Lanes had responded. (Exhibit 10).

Notwithstanding OLISP staff's apparent pre-determination on the matter, the Lanes continued their attempt to resolve the NOV with OLISP management. As part of the

negotiations, OLISP requested that the Lanes apply for a permit. Pursuant to this request, the Lanes filed the Application, which is subject to this request for Declaratory Ruling.

C. July 2008 COP Application and August 2008 Denial

On or about July 25, 2008, the Lanes filed an application for a COP to retain and maintain the existing docking system, and repair and replace portions of the docking system. In their Application, the Lanes proposed to remove the 4' x 100' at grade boardwalk and the landward 17' portion of a 5' x 74' fixed dock and in its place construct a 4' x 152' raised wooden boardwalk. The Application also sought to retain and maintain the 8' x 16' floating dock, the 3' x 12' ramp, the remaining 5' x 57' portion of the fixed dock with the two 8' x 8' support crib and pilings. (Exhibit 1).

Less than eight (8) business days after submitting the Application, by letter dated August 6, 2008, OLISP denied the Lanes' Application for a COP on the basis that "the present structures are not equivalent to what had existed in prior years." (Exhibit 11, August 6, 2008 letter from Brian Thompson to the Lanes). This statement in particular summarizes OLISP's literal interpretation that "continuously maintained and serviceable" means the current structures must, in effect, be identical to the pre-1939 structure. OLISP further stated that the dock and walkway did not exist in 1981² or 1986 and, therefore, the

² The contention that the docking system did not exist in 1981 is apparently based solely on OLISP staff's interpretation of a 1981 aerial photograph. The copy of the photograph staff presented at a meeting with Petitioners is an out-of-scale, distorted, black and white copy of a color infrared photograph, which is difficult to decipher. Petitioners have obtained the infrared color version of the photograph from DEP Cartographer Rosemary Malley. Attached as Exhibit 4 is the color infrared 1981 aerial photograph which clearly shows the dock and walkway are in place. Moreover, there is additional evidence that the dock was in continual use and existence on the Property until portions were

current structures had not been “maintained and serviceable since June 24, 1939, or were they completed prior to January 1, 1980.” (Id.). OLISP concluded that the structures would require removal or modification. (Id.).

As a result of OLISP’s denial, which is erroneously based on its literal interpretation of the “continuously maintained and serviceable” provision of the statute, the Petitioners request the Commissioner to declare OLISP’s interpretation in error and direct OLISP to approve the Petitioners’ COP Application to formally authorize the 1987 repairs and permit the raised boardwalk to replace the at-grade walkway.

IV. QUESTIONS FOR WHICH THE DECLARATORY RULING IS SOUGHT

Petitioners request a Declaratory Ruling on the following questions:

- (1) Did OLISP err in denying the Petitioners’ Application for a COP for substantial maintenance of structures that have existed on the Property since prior to June 24, 1939?
- (2) Is OLISP’s literal interpretation of the “continuously maintained and serviceable” provision of Section 22a-363b contrary to the legislative intent of the statute to grandfather structures existing prior to June 24, 1939?
- (3) Did OLISP err in issuing an NOV for 20 year old repairs to a pre-1939 structure to the Petitioners, who are innocent purchasers of the property and did not perform

destroyed and rebuilt following Hurricane Gloria. See Exhibit 1, Application, Attachment H, letter of June 18, 2007 letter of Hugh Cole.

the repairs, where a) the basis for the NOV was that no record of a permit existed; and b) the reason for the absence of a permit is that DEP did not require such a permit at the time the repairs were performed by the prior owner?

V. ARGUMENTS IN SUPPORT OF THE PETITION

A. OLISP's Literal Interpretation of the Statute Frustrates the Grandfathering Provision Contained in Section 22a-363b

OLISP has interpreted the “continuously maintained and serviceable³” provision of Section 22a-363b to literally mean that unless a structure is and has remained exactly the same as it existed before the Act went into effect on June 24, 1939, then the structure is not eligible for a COP for substantial repairs. In other words, this interpretation would impose upon pre-1939 structures, most of which are of wooden pile and timber construction, the burden and practical impossibility of remaining unchanged for 50 years until the passage of the COP process in 1990. The legislature, in passing Section 22a-363b could not have meant that “continuously maintained and serviceable” would preclude issuance of COP due to repairs made to the structure over time, especially those necessitated by natural disasters such as hurricanes which frequently batter Connecticut’s shoreline. The legislature could not have meant, or expected that each nail, timber, and plank remain unchanged over the passage of time. This interpretation simply turns a blind eye to the reality and vulnerability of Connecticut’s coastline to destruction caused by hurricanes, in addition to the realities of nature’s toll on structures historically existing prior to the passage of the Act. Instead, it is

³ “Continuously maintained and serviceable” is not defined under the Act.

obvious that the legislature intended to create a category of grandfathered structures entitled to obtain a COP for the substantial maintenance of these structures.

1. COP Process

COPs are intended to provide a fast-track approval process which gives preference to existing and established uses. Section 22a-363b provides this streamlined process for previously existing structures, built with or without prior permits, to encourage owners to obtain current authorizations and bring them into compliance. The COP process offers an Applicant a permit turn-around time of 45 days, unless the Commissioner requests additional information and then allows an additional 45 days. See Conn. Gen. Stat. § 22a-363b(c). Among other activities, a COP may be issued for (1) substantial maintenance or repair of previously permitted structures, fill, obstructions or encroachments; and (2) substantial maintenance of any structures, fill, obstructions or encroachments in place prior to June 24, 1939, and continuously maintained and serviceable since such time. Conn. Gen. Stat. § 22a-363b(a).

Here, there is no doubt that a docking system existed on the Property prior to the 1938 Hurricane and was subsequently rebuilt thereafter and prior to the existence of the Act and permitting regime. Additionally, with exception to the brief period during which destroyed portions of the dock were re-built following Hurricane Gloria, there has been the continual existence, use, and upkeep of a dock and walkway at the very site where the original docking system and walkway have been located for over 70 years.

Moreover, OLISP's entire argument on this issue, as well as its justification for the NOV, is premised on the fact that it has no record of a permit for the work performed by Dr. Shiling in 1987. A recent Freedom of Information Request by the Lanes has revealed that permits for the rebuilding of existing structures in 1987 were not issued. Rather, property owners were given verbal approvals, as was the case with the ACOE documentation by Dr. Shiling. A review of 151 permit applications issued between 1985 and 1989 reveals no re-construction applications of residential docks. Michael Grzywinski of the Office of Long Island Sound Programs confirmed this fact on August 27, 2008. See Exhibit 3.

2. Legislative History

The legislative history of the Act indicates that the focus of the original legislation has never been aimed at making the maintenance of previously built docks difficult for property owners with such structures, but rather the early legislation clearly was aimed at curtailing unpermitted "reckless building without regard for anybody else's rights and interests." See Joint Standing Committee, Water Resources and Flood Control, 1963, p. 255. Moreover, later revisions to the Act emphasized preferential treatment for existing structures, such as the one at issue here, with a fast-tracking component for these structures, as the full blown process was unnecessary due to the understanding that existing structures had less adverse impact on the natural resources the Act aimed to protect.

Senator Spellman, in describing the 1990 legislation, explained the way it would streamline the process for eligible activities:

Under this bill, simple maintenance of any dock or dredging under a permit could be done without the necessity of any certificate of permission, nor the necessity of a full blown hearing. . . And its also sets up a middle tier approach, which is called a certificate of permission. . . . whereby the Commissioner could issue a permit without the requirement of a hearing and all of the attendant notice requirements required by the statute.

S. Proc., 1990 (April 18, 1990)(emphasis added).

The logic behind the streamlined process for existing structures is further explained in program's the vetting process. As part of the debate on the 1987 amendments to the Act, Representative Casey asked the Department's representative, Arthur Rocque, how the legislation affected existing structures. Mr. Rocque responded:

Well, there isn't a lot that we can do. . . If the structure exists, then it's grandfathered, and there's not much we can do, and I would say if we were to regulate them on a repair or replacement, we would have to look at two things, we would have to look at how it is functioning now and how it would function under repair, and unfortunately with a seawall or a groin or jetty-type structure, the impact occurs when the structure goes in initially. If you remove it, and then don't replace it, you get the same types of impact back that you had normally when you put it in the first place. In other words, you interrupt the natural system one time, it stabilizes, if you remove it and don't replace it, then you may cause an additional problem in the other direction, so I would say that the ones that are there are already there, we've pretty much got to live with.
Regretfully.

See Joint Standing Committee, Environment, 1987, p. 787 (emphasis added).

Indeed, Mr. Rocques' commentary further reflects the logic behind the environmental policy to leave long-existing structures in their place. If a structure which has, in this case, been existing at a site for a significant period of time is subsequently removed, then there are interruptions to the natural system that are equivalent to the impacts caused by installing the structure in the first place. Where the interruption to the natural system occurred prior to the

passage of a permitting regime, as here, it would be not only unfair to require removal or otherwise refuse to allow the structure to continue to be maintained over time, but detrimental to the environment because stabilization has long since occurred.

Accordingly, the Legislative history on the 1990 revisions to the Act adding the COP procedure is instructive. It compels the conclusion that the legislature could not have intended the Department to interpret “continuously maintained and serviceable” as applied to structures existing prior to June 24, 1939 to mean that such a structure is ineligible for a COP unless it had managed to withstand the passage of time completely unchanged, as OLISP has interpreted with respect to the Petitioners’ Application. This is simply a burden that the legislature could not have intended as this would have rendered the grandfathering provision of Section 22a-363b(2) completely meaningless. What structures existing before the passage of the Act could have possibly withstood the test of time and also thwarted the destructive nature of hurricanes for the 50 year period before the 1990 amendments? It is simply unreasonable to interpret this provision to mean that the portions of the Lanes’ dock rebuilt with approval following Hurricane Gloria are literally not the “original” dock and therefore, cannot now qualify for a COP.

Additionally, OLISP’s directive to the Petitioners, in denying the Application, indicated that the long existing docking system and walkway would simply have to be removed or modified. (Exhibit 10). Not only is this contrary to the purpose of the COP process and desire of the legislature to grandfather these structures, but results in extreme inequity for subsequent property owners who inherit long-existing structures, such as the

Lanes, by denying them their riparian rights and imposing punitive consequences on them for structures which have long-existed on the Property and for which they have never altered.

B. The OLISP Position Violates The Petitioners' Common Law Littoral Rights

OLISP's interpretation of Section 22a-363b as applied to Petitioners' Application violates the Petitioners' common law littoral or riparian⁴ property rights and are contrary to well-established state law, because the denial and conclusion that the structures would require removal or modification denies the Petitioners their existing, reasonable access to deep water.

Foremost, the legislative history of the Act also makes clear that the Act did not abrogate any rights a littoral or riparian owner had to access the water. In describing the bill, Representative Dreyfous explained that "the bill also recognized that riparian property owners have certain qualified rights that must be recognized. . ." See H.R. Proc., 1963, p. 5098. In the Joint Committee Hearings, Commissioner Wise, the Commissioner of the Flood Control Commission, explained that a riparian owner has certain franchised rights:

[The riparian landowner can] build a dock. He can build a marina. He can build a channel, or he can get to navigable water from his property. Those are franchised rights that he has, and they've been upheld by the courts of this state over a period of many years. And that's why we wanted to include in this bill the fact that the riparian owner has certain franchised rights, but to exercise. . . [his rights] he will have to get a permit and things of that sort.

⁴ "The term [riparian] is sometimes used as relating to the shore of the sea or other tidal water, or of a lake or other considerable body of water not having the characteristics of a watercourse. But this is not accurate. The proper word to be employed in such connections is 'littoral.'" Water St. Assocs. Ltd. Partnership v. Innopak Plastics Corp., 230 Conn. 764, 770 (1994), citing Black's Law Dictionary (6th Ed. 1990).

See Joint Standing Committee, Water Resources and Flood Control, 1963, p. 254-255.

Commissioner Wise clearly viewed the riparian property owner's rights as important, explaining that the language of the statute "with [proper] regard for the rights and interests of all persons concerned" directed the Commission to consider these rights. See id. at 256.

As clear from the legislative history of the statute, the Act does not serve as a barrier to a property owner's riparian rights. Here, the Property enjoyed a walkway and docking system as a mechanism of effectuating the riparian rights of the property owner since prior to the enactment of the Act and as it has for the past 70 years. OLISP's denial of the Petitioners' attempt to maintain this long-existing right extinguishes or substantially diminishes their right of access, which is the fundamental component of the riparian right. See Rochester v. Barney, 117 Conn. 462, 469 (1933); Water St. Assocs. Ltd. Pshp. v. Innopak Plastics Corp., 230 Conn. 764, 769-770 (1994). Certainly OLISP's denial of the Application and directive to remove or modify the structures that have long existed fails to consider the Lanes rights and interests, as directed by the language of the statute.

Indeed, the caselaw would permit the digging of channels in order to wharf out in order to effectuate riparian rights, which is far more than requested by the Lanes or imposed by the existing structures on the Property. "[O]wners of adjoining upland have the exclusive, yet qualified, right and privilege to dig channels and wharf out from the owner's land in a manner that does not interfere with free navigation." Water St. Assocs. Ltd. Pshp., 230 Conn. at 769; DelBuono v. Brown Boat Works, 45 Conn. App. 524, 526 (1997); Shorehaven Golf Club, Inc. v. Water Resources Comm'n,

146 Conn. 619, 624 (1959). The Lanes simply want to retain and maintain the walkway and docking system that has been associated with the Property since 1937.

OLISP's extinguishment of the Petitioners riparian rights would give rise to a claim under the State and Federal constitutions for taking of private property without just compensation. Extinguishment of littoral rights without just compensation has been held to be a violation of takings jurisprudence in Connecticut. In Orange v. Resnick, 94 Conn. at 580-82, the Connecticut Supreme Court invalidated an act purporting to convey adjoining upland between high and low-water mark to the town for the purpose of developing a park, insofar as it extinguished the riparian rights of an adjoining upland owner without condemning them and providing just compensation. See also Port Clinton Assoc. v. Board of Selectmen, 217 Conn. 588, 597 (1991) (dismissing a takings claim relating to limitations of expansion of a marina based on lack of final administrative decision, but discussing the possibility that loss of such rights could give rise to takings claim).

Given the demonstrated enhancement to the value of property from a dock accessing deep water, such a taking could give rise to significant damages. See Ben Casselman, *When the Dock is Worth More Than the House*, WALL STREET JOURNAL, June 29, 2007, at W1 (Attached as Exhibit 12). The extinguishment of riparian rights of a waterfront owner, such as the Lanes, clearly will result in a reduction of property values. OLISP's actions here, therefore, not only result in extreme inequity for the Lanes, but are contrary to the interest of the citizens of Connecticut to avoid uncertain property values and rights.

C. OLISP's Interpretation Results in Extreme Inequity for the Lanes

The Lanes did not construct the current docking system that that has been associated with the Property for the past 20 years and which was a repair and re-build of the original docking system originally installed in 1937. In fact, the Lanes, who are Tennessee residents, would have had no way of knowing, as part of reasonable due diligence in purchasing the Property, whether a permit from OLISP authorizing the repair of the dock was required or existed. Such an authorization would not be filed on the land records and thereby could not be found by a title searcher. Moreover, it is clear that the Department's practice in 1987 was not to require or issue written permits for repairs to pre-existing structures. (Exhibit 3). There was simply no way for the Lanes to know or suspect that the docking system on Property for which they paid full value could later be subject to possible removal by DEP order or that they would otherwise be denied the ability to improve, maintain, and repair the dock.

Here, the Lanes have justifiably relied on the fact that a docking system has long-existed on the Property. It has been 20 years since the current docking system underwent major repair and in all this time there has been no indication by the Department that the repairs were not unauthorized, nor has the Department at any time pursued any enforcement action against any of the prior owners. For this reason, OLISP should be equitably estopped from denying the Lanes' Application for COP to make substantial repairs to the structure and, specifically, should be estopped from acting on its directive to remove or modify the existing structures.

In this regard, the Connecticut Supreme Court has recognized the application of the equitable estoppel doctrine against a public agency where the party claiming estoppel would be subjected to a substantial loss if the agency were permitted to negate the acts of its agents.

Dupuis v. Submarine Base Credit Union, Inc., 170 Conn. 344, 354 (1976); see also

Greenwich v. Kristoff, 2 Conn. App. 515, 522 (1984), cert. denied, 194 Conn. 807 (1984).

Although the invocation of the doctrine most often arises in the context of municipal enforcement of zoning laws, the doctrine is equally applicable here. See generally, id. The Appellate Court has elaborated that the doctrine may be invoked “when special circumstances make it highly inequitable or oppressive to enforce the regulations” and where the person claiming the estoppel has “exercised due diligence” and “lacked knowledge of the true state of things but had no convenient means of acquiring that knowledge.” Greenwich, 2 Conn. App. at 522.

As to the first component of the doctrine, the Lanes will indeed be subjected to a “substantial loss.” In particular, as a direct result of OLISP’s refusal to permit the requested repairs and, in particular, if it attempts to enforce its directive that the existing structures must be removed or modified, the Lanes will suffer a substantial loss of the use and enjoyment of their waterfront property, and a significant reduction in the property’s economic value, given the demonstrated enhancement to the value of property from a dock accessing deep water, such as exists on the Lane Property.

With respect to the second component of the doctrine, the Lanes have justifiably relied on the fact that for the past 20 years since the last major repair of the dock, the Department

has taken no action to indicate that the repairs made in 1987 were not authorized. As noted above, the Lanes could not have determined through the course of reasonable due diligence whether the docking system on the Property was or was not the docking system that had been associated with the Property since 1937 or whether and when there had been any repairs made over time. As innocent purchasers of the Property 17 years after repairs were made, the Lanes lacked this knowledge and had no convenient means of acquiring that knowledge.

Moreover, it is clear that OLISP's insistence on a written permit to establish the legality of the 1987 repairs is an impossible hurdle for the Petitioners, because no such permits were issued in 1987. This calls into question all of OLISP's enforcement actions against pre-1990 structures.

For all of the foregoing reasons, the Commissioner should direct OLISP to grant the Lanes' Application for a COP to make substantial repairs to the structure and, specifically, should withdraw its directive to remove or modify the existing structures. Under these circumstances, upholding OLISP's denial of the Application and directive to remove or modify the existing structures is highly inequitable and oppressive.

VI. ADDRESS OF PETITIONERS

Pursuant to RCSA § 22a-3a-4(2), the Petitioners' address and phone number are as follows: Mr. and Mrs. Thomas and Gail Lane, 900 19th Avenue South, Apartment 1202, Nashville, TN 37212, telephone (615) 320-9402.

VII. CONCLUSION

For all of the reasons set forth herein, Petitioners respectfully request a Ruling declaring that:

(1) The OLISP erred in denying the Petitioners' Application for a COP for substantial maintenance of structures that have existed on the Property since prior to June 24, 1939.

(2) The OLISP's literal interpretation of the "continuously maintained and serviceable" provision of Section 22a-363b is contrary to the legislative intent of the statute to grandfather structures existing prior to June 24, 1939.

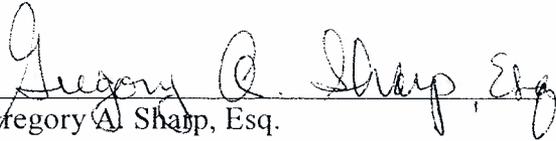
(3) The OLISP's Notice of Violation and directive to remove the structures is withdrawn.

Dated: Hartford, CT

Respectfully submitted,

August 29, 2008

PETITIONERS, THOMAS AND GAIL LANE


Gregory A. Sharp, Esq.
Loni S. Gardner, Esq.
Murtha Cullina, LLP
185 Asylum Street, 29th Floor
Hartford, CT 06019
Their Attorneys

**AFFIDAVIT IN SUPPORT OF PETITION
FOR DECLARATORY RULING**

STATE OF CONNECTICUT:

: ss HARTFORD

August 29, 2008:

COUNTY OF HARTFORD :

I, Gregory A. Sharp, being duly sworn, depose and says:

1. I am an attorney duly admitted to practice in the State of Connecticut and submit this Affidavit in accordance with R.C.S.A. § 22a-3a-4(a)(3) in support of the foregoing Petition For a Declaratory Ruling.

2. This Petition seeks a Declaratory Ruling that OLISP's denial of the Petitioners' Application for a COP for substantial maintenance of structures that have existed on the Property since prior to June 24, 1939 was in error; that OLISP's literal interpretation of the "continuously maintained and serviceable" provision of Section 22a-363b is contrary to the legislative intent of the statute to grandfather structures existing prior to June 24, 1939; and that the Notice of Violation issued to the Petitioners was in error and should be withdrawn.

3. R.S.C.A. § 22a-3a-4(a)(3) requires a Petitioners for a declaratory ruling to give certain notice of the substance of the Petition and of the opportunity to file comments and to request interviewer or party status to all persons known to the Petitioners to have an interest in the subject matter of the petition. This section further provides that if there are more than fifty such persons the Petitioners may publish the required notice in a newspaper of general circulation in the area where such persons may reside or where their businesses may be

located. To the best of Petitioners' knowledge, the persons potentially having an interest in this proceeding are the following persons who have written letters to the Department concerning the Lanes' dock.

John P. Casey, Esq.
Robinson & Cole
280 Trumbull Street
Hartford, CT 06103-3597
Representing Julia Parry

Ms. Marcia T. Robinson
3 Canberra Court
Mystic, CT 06355-3105

Ms. Nancy T. Rankin
84 Whetten Road
West Hartford, CT 06117

Ms. Margaret L. Jones
Denison Pequotsepos Nature Center
P.O. Box 122
Mystic, CT 06355

Ms. Josy Cole Wright
86 Clarke Street
Jamestown, RI 02835

Ms. Sarah Moore Halberg
8 Old South Road
Mystic, CT 06355

Mr. Hugh Cole
P.O. Box 231
Mystic, CT 06355

Mr. Daniel H. Van Winkle
20 Nauyaug Point Rd.
Mystic, CT 06355

David J. Shiling, M.D.
270 Broadway
Norwich, CT 06360

Mr. Jay Kiszkiel
One Plover Lane
Mystic, CT 06355

Mrs. Billie Palmer
11 East Forest Road
Mystic, CT 06355

Gary P. Sharpe, P.E.
Angus McDonald/Gary Sharpe Assoc. Inc.
233 Boston Post Rd
P. O. Box 60
Old Saybrook, CT 06475

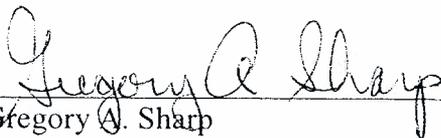
Mr. Edward Haberek, Jr.
First Selectman
152 Elm Street
Stonington, CT 06378

Mr. Rufus Allyn
Harbormaster
Ram Point, Masons Island
Mystic, CT 06355

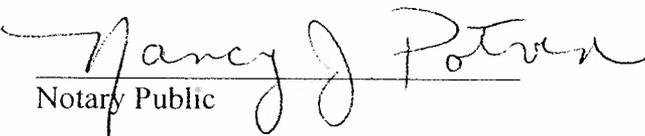
State Senator Andrew Maynard
Legislative Office Building, Room 3000
Hartford, CT 06106-1591

State Representative Diana Urban
Legislative Office Building, Room 4057
Hartford, CT 06106-1591

4. Copies of letters advising the foregoing individuals of this Petition are attached
hereto.


Gregory A. Sharp

Subscribed and sworn to before me this 29th day of August, 2008.


Notary Public
Comm'n expires 2-28-2012



STATE OF CONNECTICUT
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 Central Permit Processing Unit
 79 Elm Street
 Hartford, CT 06106-5127

DEP USE ONLY

Permit Application Transmittal Form

Please complete this transmittal form in accordance with the instructions in order to ensure the proper handling of your application(s) and the associated fee(s). Print legibly or type.

Part I: Applicant Information

Applicant: **Thomas and Gail Lane**

Mailing Address: **900 19th Avenue South, Apartment 1202**

City/Town: **Nashville** State: **TN** Zip Code: **37212-2155**

Business Phone: **615-320-9402** ext. Fax:

Contact Person: **Gary Sharpe** Phone: **860-388-4671** ext. **13**

Applicant (check one) individual company federal gov't state agency municipality

If a Company, list company type (e.g., corporation, limited partnership, etc.):

Check if any co-applicants. If so, attach additional sheet(s) with the required information as supplied above.

Please provide the following information to be used for *billing purposes only*, if different:

Company/Individual Name:

Mailing Address:

City/Town: State: Zip Code:

Contact Person: Phone: ext.

Part II: Project Information

Brief Description of Project: *(Example Development of a 50 slip marina on Long Island Sound)*
Retain and maintain existing docking system, repair and replace portions of docking system.

Location (City/Town). **Mystic**

Other Project Related Permits (*not* included with this form)

Permit Description	Issuing Authority	Submittal Date	Issuance Date	Denial Date	Permit #

Part III: Individual Permit Application and Fee Information

New, Mod. or Renew	Individual Permit Applications	Initial Fees	No. of Permits Applied For	Total Initial Fees	Original + Required Copies
	AIR EMISSIONS				
	New Source Review	\$750.00			1 + 0
	Title V Operating Permits	none			1 + 0
	WATER DISCHARGES				
	To Groundwater	\$1050.00			1 + 1
	To Sanitary Sewer (POTW)	\$1050.00			1 + 1
	To Surface Water (NPDES)	\$1050.00			1 + 2
	INLAND WATER RESOURCES - multiple permits 1 + 6 total copies				
	Dam Construction	none			1 + 2
	Flood Management Certification	none			1 + 1
	Inland 401 Water Quality Certification	none			1 + 5
	Inland Wetlands and Watercourses	none			
	Stream Channel Encroachment Lines	★			
	Water Diversion	★			1 + 5
	OFFICE OF LONG ISLAND SOUND PROGRAMS				
N	Certificate of Permission	\$400.00	1	400.00	1 + 3
	Coastal 401 Water Quality Certification	none			1 + 3
	Structures and Dredging/Tidal Wetlands	\$525.00			1 + 3
	WASTE MANAGEMENT				
	Aerial Pesticide Application	★			1 + 2
	Aquatic Pesticide Application	\$100.00			1 + 0
	CGS Section 22a-454 Waste Facilities	★			1 + 1
	Hazardous Waste Treatment, Storage and Disposal Facilities	★			1 + 1
	Marine Terminal License	\$125.00			1 + 0
	RCRA Closure Plan	\$3750.00			1 + 0
	RCRA Post Closure	\$3750.00			1 + 0
	Solid Waste Facilities	★			1 + 2
	Waste Transportation	★			1 + 0
		Subtotal →	1	400.00	
GENERAL PERMITS and AUTHORIZATIONS		Subtotals Page 3 →	0	0	
Enter subtotals from Part IV, pages 3 & 4 of this form		Subtotals Page 4 →	0	0	
		TOTAL →	1	400.00	
<input type="checkbox"/> Indicate whether municipal discount or state waiver applies. Less Applicable Discount →					
		AMOUNT REMITTED →		400.00	
Check # →	2512	Check or money order should be made payable to: "Department of Environmental Protection"			

★ See fee schedule on individual application.

Part IV: General Permit Registrations and Requests for Other Authorizations
Application and Fee Information

✓ General Permits and Other Authorizations	Initial Fees	No. of Permits Applied For	Total Initial Fees	Original + Required Copies
AIR EMISSIONS				
<input type="checkbox"/> Limit Potential to Emit from Major Stationary Sources of Air Pollution	\$5000.00			1 + 0
<input type="checkbox"/> Ionizing Radiation Registration	\$200.00			1 + 0
<input type="checkbox"/> Emergency/Temporary Authorization	★ ★			★ ★
<input type="checkbox"/> Other, (please specify):				
WATER DISCHARGES				
<input type="checkbox"/> Domestic Sewage	\$500.00			1 + 0
<input type="checkbox"/> Food Processing Wastewater	\$500.00			1 + 0
<input type="checkbox"/> Groundwater Remediation Wastewater to a Sanitary Sewer	\$500.00			1 + 0
<input type="checkbox"/> Groundwater Remediation Wastewater to a Surface Water Registration Only	\$500.00			1 + 0
<input type="checkbox"/> Approval of Registration by DEP	\$1000.00			
<input type="checkbox"/> Minor Non-Contact Cooling and Heat Pump Water	\$500.00			1 + 1
<input type="checkbox"/> Minor Photographic Processing	\$100.00			1 + 0
<input type="checkbox"/> Minor Printing & Publishing Wastewater	\$500.00			1 + 0
<input type="checkbox"/> Minor Tumbling or Cleaning of Parts Wastewater	\$1000.00			1 + 1
<input type="checkbox"/> Miscellaneous Discharges of Sewer Compatible Wastewater Flow < 5,000 gpd and fire sprinkler system testwater	\$500.00			1 + 1
<input type="checkbox"/> Flow > 5,000 gpd	\$1000.00			
<input type="checkbox"/> Stormwater Associated with Commercial Activities	\$500.00			1 + 0
<input type="checkbox"/> Stormwater Associated with Industrial Activities	\$500.00			1 + 0
<input type="checkbox"/> Stormwater & Dewatering Wastewaters-Construction Activities 5 - 10 acres	\$500.00			1 + 0
<input type="checkbox"/> > 10 acres	\$1000.00			
<input type="checkbox"/> Stormwater from Small Municipal Separate Storm Sewer Systems (MS4)	\$250.00			1 + 0
<input type="checkbox"/> Swimming Pool Wastewater - Public Pools and Contractors	\$500.00			1 + 0
<input type="checkbox"/> Vehicle Maintenance Wastewater Registration Only	\$500.00			1 + 0
<input type="checkbox"/> Approval of Registration by DEP	\$1000.00			
<input type="checkbox"/> Water Treatment Wastewater	\$500.00			1 + 0
<input type="checkbox"/> Emergency/Temporary Authorization - Discharge to POTW	\$1500.00			1 + 0
<input type="checkbox"/> Emergency/Temporary Authorization - Discharge to Surface Water	\$1500.00			1 + 0
<input type="checkbox"/> Emergency/Temporary Authorization - Discharge to Groundwater	\$1500.00			1 + 0
<input type="checkbox"/> Other, (please specify):				
AQUIFER PROTECTION PROGRAM				
<input type="checkbox"/> Registration for Regulated Activities	\$500.00			1 + 0
<input type="checkbox"/> Permit Application to Add a Regulated Activity	\$1000.00			1 + 0
<input type="checkbox"/> Exemption Application from Registration	\$1000.00			1 + 0
Note: Carry subtotals over to Part III, page 2 of this form.		Subtotal →	0	0

★★ Contact the specific permit program for this information (Contact numbers are provided in the instructions).

Part IV: General Permit Registrations and Requests for Other Authorizations (continued)

✓ General Permits and Other Authorizations	Initial Fees	No. of Permits Applied For	Total Initial Fee	Original + Required Copies
INLAND WATER RESOURCES				
<input type="checkbox"/> Dam Safety Repair and Alteration	\$1000.00			1 + 2
<input type="checkbox"/> Diversion of Water for Consumptive Use	★			1 + 2
<input type="checkbox"/> Habitat Conservation	\$1000.00			1 + 2
<input type="checkbox"/> Lake, Pond and Basin Dredging	\$1000.00			1 + 2
<input type="checkbox"/> Minor Grading	\$1000.00			1 + 2
<input type="checkbox"/> Minor Structures	\$1000.00			1 + 2
<input type="checkbox"/> Utilities and Drainage	\$1000.00			1 + 2
<input type="checkbox"/> Emergency/Temporary Authorization	★★			★★
<input type="checkbox"/> Other, (please specify):				
OFFICE OF LONG ISLAND SOUND PROGRAMS				
<input type="checkbox"/> 4/40 Docks	\$700.00			1 + 1
<input type="checkbox"/> Non-harbor Moorings	\$100.00			1 + 0
<input type="checkbox"/> Osprey Platforms and Perch Poles	none			1 + 0
<input type="checkbox"/> Pump-out Facilities (no fee for Clean Vessel Act grant recipients)	\$100.00			1 + 0
<input type="checkbox"/> Remedial Activities Required by Order	\$700.00			1 + 0
<input type="checkbox"/> Residential Flood Hazard Mitigation	\$100.00			1 + 0
<input type="checkbox"/> Swim Floats	\$100.00			1 + 0
<input type="checkbox"/> Emergency/Temporary Authorization	★★			★★
<input type="checkbox"/> Other, (please specify):				
WASTE MANAGEMENT				
<input type="checkbox"/> Addition of Grass Clippings at Registered Leaf Composting Facilities	\$500.00			1 + 0
<input type="checkbox"/> Asbestos Disposal Authorization	\$240.00			1 + 0
<input type="checkbox"/> Contaminated Soil and/or Staging Management (Staging/Transfer) Registration Only	\$250.00			1 + 0
<input type="checkbox"/> Approval of Registration by DEP	\$1500.00			1 + 0
<input type="checkbox"/> Disassembling Used Electronics	\$1000.00			1 + 0
<input type="checkbox"/> Drop-site Recycling Facility	\$200.00			1 + 0
<input type="checkbox"/> Leaf Composting Facility	none			1 + 1
<input type="checkbox"/> Limited Processing Recycling Facility	\$500.00			1 + 0
<input type="checkbox"/> One Day Collection of Household Hazardous Waste and Hazardous Waste from Certain Generators	\$500.00			1 + 0
<input type="checkbox"/> Recyclables Transfer Facility	\$500.00			1 + 0
<input type="checkbox"/> Single Item Recycling Facility	\$500.00			1 + 0
<input type="checkbox"/> Special Waste Authorization	\$525.00			1 + 0
<input type="checkbox"/> Storage and Distribution of Two (2) Inch Nominal Tire Chip Aggregate	\$500.00			1 + 0
<input type="checkbox"/> Storage and Processing of Asphalt Roofing Shingle Waste and/or Storage and Distribution of Ground Asphalt Aggregate	★			1 + 0
<input type="checkbox"/> Storage and Processing of Scrap Tires for Beneficial Use	\$1000.00			1 + 0
<input type="checkbox"/> Emergency/Temporary Authorization	★★			★★
<input type="checkbox"/> Other, (please specify):				
Note: Carry subtotals over to Part III, page 2 of this form.		Subtotal	0	0

★ See fee schedule on application.

★★ Contact the specific permit program for this information.



Office of Long Island Sound Programs Certificate of Permission Application Form

Please complete this application form in accordance with the instructions (DEP-OLIS-INST-200) and CGS Section 22a-363b in order to ensure the proper handling of your application. Print or type unless otherwise noted.

DEP USE ONLY	
Application No.	_____
Analyst Assigned:	_____

Mail completed application form and associated fee to:

Central Permit Processing Unit, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106-5127

If your town has a Harbor Management Commission, you must submit a copy of this application to the Commission. Please check here to indicate you have done so.

My town does not have a Harbor Management Commission.

Part I: Permit Type and Fee Information

A fee of \$400.00 must be submitted with this application form. Note: The fee for municipalities is \$200.00.
--

Part II: Applicant Information

1. Fill in the name, address and phone number of the applicant(s)			
Applicant: Mr. & Mrs. Lane, Thomas and Gail	<small>Title (Mr, Mrs, Ms, Dr, etc.)</small>	<small>Last Name</small>	<small>First Name</small> <small>Middle Initial</small> <small>Suffix (Jr, P.E., Ph.D.)</small>
Contact Person: Gary Sharpe	Title: P.E.		
Mailing Address: 900 19th Avenue South, Apartment 1202			
City/Town: Nashville	State: TN	Zip Code: 37212-2155	
Business Phone: 615-320-9402	ext.	Fax: - -	
Home Phone: - -	E-Mail:		
2. Applicant's interest in the property at which the proposed activity is to be located			
<input checked="" type="checkbox"/> owner <input type="checkbox"/> option holder <input type="checkbox"/> lessee <input type="checkbox"/> other (specify)			
<input type="checkbox"/> Check here if there are co-applicants. If so, label and attach additional sheet(s) with the required information as Attachment F. <input type="checkbox"/>			
3. List primary contact for departmental correspondence and inquiries if different than applicant.			
Name: Gary Sharpe			
Mailing Address: P.O. Box 608, 233 Boston Post Road			
City/Town: Old Saybrook	State: CT	Zip Code: 06475-	
Business Phone: 860-388-4671	ext. 13	Fax: 860-388-3962	
Contact Person: Gary Sharpe	Title: P.E.		

Part II: Applicant Information (continued)

4 List attorney or other representative, if applicable.

Firm Name: **Murtha Cullina**

Mailing Address: **City Place One, 185 Asylum Street**

City/Town: **Hartford**

State: **CT**

Zip Code: **06103-3469**

Business Phone: **860-240-6046**

ext

Fax: - -

Attorney: **Gregory Sharp**

Title:

5. List Property, Facility or Site Owner, if different than applicant:

Mailing Address

City/Town:

State:

Zip Code: - -

Business Phone: - - -

ext.

Fax: - -

Contact Person:

Title:

Property owner Facility Owner Site Owner

Check here if additional sheets are necessary, and label and attach them as Attachment F.

6 List any engineer(s) or other consultant(s) employed or retained to assist in preparing the application or designing or constructing the activity. Check here if additional sheets are necessary, and label and attach them as Attachment H

Name: **Angus McDonald/Gary Sharpe & Associates, Inc.**

Mailing Address: **P.O. Box 608, 233 Boston Post Road**

City/Town: **Old Saybrook**

State: **CT**

Zip Code: **06475**

Business Phone: **860-388-4671**

ext. **13**

Fax: **860-388-3962**

Contact Person: **Gary Sharpe**

Title: **P.E.**

Service Provided: **civil engineering**

7. Provide abutting or adjacent property owners' names and addresses as Attachment C.

8. If you met with Office of Long Island Sound Program (OLISP) staff in a pre-application meeting, please note the meeting date and OLISP staff person's name:

Name: **DeAva Lambert**

Date: / /

Part III: Site Information and Resource Information

1 Name of facility, if applicable: **residential property**

Street Address or description of location:

32 Money Point Road

City or Town **Mystic**

2. Tax Assessor's Reference: **Map 180**

Block 2

Lot 29

Part III: Site Information and Resource Information (continued)

3. Is the project site located in a municipality within the coastal area (check town list in the instructions)?
 Yes No
4. Is the project site located within an area identified as a habitat for endangered, threatened or special concern species as identified on the "State and Federal Listed Species and Natural Communities Map"?
 Yes No Date of Map: **12/ /2006**

If yes, complete and submit a *Connecticut Natural Diversity Data Base (CT NDDB) Review Request Form* (DEP-APP-007) to the address specified on the form.

When submitting this permit application, please include copies of any correspondence to the NDDB, including copies of the completed CT NDDB Review Request Form, any field surveys, and any other information which may lead you to believe that endangered or threatened species may or may not be located in the area of your existing or proposed permitted activity, as Attachment D.

Has a field survey been conducted to determine the presence of any endangered, threatened or special concern species? Yes No If yes, provide:

Biologist's Name:

Address:

and submit a copy of the field survey with your application as Attachment D.

5. Is the site located within an aquifer protection area as defined in CGS Section 22a-354a through 354bb)?
 Yes No
6. Indicate the number and date of issuance of any previous state coastal permits or certificates issued by DEP authorizing work at the site and the names to whom they were issued. Please include copies of all issued permits and certificates, if available, as Attachment E.

Permit/COP Number	Date Issued	Name of Permittee/Certificate Holder
	/ /	
	/ /	
	/ /	
	/ /	

If information on prior state coastal permits and certificates is unknown, list names of the owners of the property since 1939 and the years owned:

Emma Aubert Cole - 9/1936 - 11/1985, Hugh Cole - 11/1985 - 3/1987
Hudson Holdings, Inc. - 3/1987 - 7/1987, David Shiling & Claire Warren - 7/1987 - 8/1991
Ruth & Robert Stetson - 11/1991 - 10/2004, Thomas & Gail Lane - 10/2004 - present

7. Identify any changes in conditions of the site (including ownership, development, use, or natural resources) since the issuance of the most recent DEP coastal permit or certificate authorizing work at the site:

Applicants acquired the property in 2004.

Part III: Site and Resource Information (continued)

8. Describe the *existing* structures, conditions and uses at the site of the proposed work. Provide photographs showing existing conditions as Attachment B.

Existing structures consist of a 4' x 100' at grade boardwalk, a 5' x 74' fixed dock with two 8' x 8' support cribs and pilings, a 3' x 12' ramp and a 8' x 16' floating dock in fair to good condition

9. Provide the name of the waterbody at the site of proposed work: **Fishers Island Sound**

10. Provide the elevations of the high tide line, mean high water and mean low water at the site based on a datum of either NGVD of 1929 or MLW:

HTL = 3.7

MHW = 1.7

MLW = -0.7

Datum = NGVD

11. Identify all aquatic resources on and adjacent to the site and describe the characteristics and condition of each resource (identify location of resources on plans submitted as Attachment A):

Tidal wetlands, coastal waters & estuarine embayments, submerged aquatic vegetation. Tidal wetlands are low lying and receive frequent tidal inundation. Vegetation is healthy and water quality is good to excellent.

12. Identify the locations of any osprey nesting platforms within 500 feet of the site.

none

Part IV: Project Information

1. Describe the proposed regulated work and activities including construction methodology.

Remove a 4' x 100' at grade boardwalk and the landward 17' portion of a 5' x 74' fixed dock. Retain & maintain an 8' x 16' floating dock, a 3' x 12' ramp, a 5' x 57' fixed dock with two 8' x 8' support cribs and pilings. Construct a 4' x 152' raised wooden boardwalk

2. Provide plans of the project as Attachment A. They must be 8 1/2" x 11" scaled plans of the site and proposed work including:

- a. A Vicinity Map;
- b. A Tax Assessor's map showing the subject property and immediately adjacent properties;
- c. Plan Views showing existing and proposed conditions; and
- d. An Elevation or Cross-Section View showing existing and proposed conditions

Please refer to instructions for identification of plan components.

Part IV: Project Information (continued)

3. Describe the purpose, need and use of the proposed work.

To retain and maintain berthing for recreational boating.

4. Identify and evaluate the adverse environmental impacts associated with proposed work and mitigation measures to be employed.

The proposed work will eliminate impacts to the tidal marsh caused by shading by elevating the boardwalk above the marsh

5. Check each category of eligible activities that applies to this application:

CGS Section 22a-363b(a):

- 1. Substantial maintenance or repair of existing structures, fill, obstructions or encroachments authorized pursuant to the Structures, Dredging and Fill Statutes, CGS Section 22a-361, and/or the Tidal Wetlands Act, CGS Section 22a-32.
- 2. Substantial maintenance of any structures, fill, obstructions or encroachments in place prior to June 24, 1939, and continuously maintained and serviceable since such time.
- 3. Maintenance dredging of areas which have been dredged and continuously maintained and serviceable as authorized pursuant to the Structures, Dredging and Fill Statutes, CGS Section 22a-361, and/or the Tidal Wetlands Act, CGS Section 22a-32.
- 4. Activities allowed pursuant to a perimeter permit and requiring authorization by the Commissioner of Environmental Protection.
- 5. The removal of derelict structures or vessels.
- 6. Minor alterations or amendments to activities permitted pursuant to CGS Section 22a-361 and/or CGS Section 22a-32 consistent with the original permit.
- 7. Minor alterations or amendments to activities completed prior to June 24, 1939.
- 8. Placement of temporary structures for water-dependent uses as defined in CGS Section 22a-93(16)
- 9. Open water marsh management or conservation activities undertaken by or under the supervision of the Department of Environmental Protection.
- 10. Placement or reconfiguration of piers, floats, docks, and moorings within existing waterward boundaries of recreational marinas or yacht clubs which have been authorized pursuant to Section 22a-361 and/or CGS Section 22a-32.

CGS Section 22a-363b(b):

- Retention of pre-1980 unauthorized activities which do not interfere with navigation or littoral or riparian rights, and do not cause adverse impacts to coastal resources.
- Substantial maintenance or repair of pre-1980 unauthorized activities which do not interfere with navigation or littoral or riparian rights, and do not cause adverse impacts to coastal resources.
- Minor alterations or amendments to pre-1980 unauthorized activities which do not interfere with navigation or littoral or riparian rights, and do not cause adverse impacts to coastal resources.

Part IV: Project Information (continued)

6. For question 5, CGS Section 22a-363b(a), if item numbers 2, 3 and/or 7 were checked, demonstrate that the structure or activity for which work is proposed has been continuously maintained and serviceable since state authorization or 1939, as applicable.

Check the box if documents have been provided in Attachment H.

See attached Part IV Item 6 summary.

7. For question 5, CGS Section 22a-363b(b), if any item was checked, demonstrate that the structure or activity for which retention or work is proposed has been completed prior to January 1, 1980, does not interfere with navigation or littoral or riparian rights, and does not cause adverse impacts to coastal resources as defined by CGS Section 22a-93(15).

Check the box if documents have been provided in Attachment H.

The existing dock structures were in place before 1939. See attached Part IV Item 6 summary.

8. For question 5, CGS Section 22a-363b(b), if any item was checked, state whether the applicant conducted or was responsible for the unauthorized activity, or whether the applicant knew or had reason to know of the unauthorized activity at the time the property which is the site of the unauthorized activity was acquired. Check the box if documents have been provided in Attachment H.

The applicant did not conduct the work and was unaware that it was unauthorized at the time of purchase in 2004.

9. a. Is any portion of work for which authorization is being sought now complete or under construction?
 Yes No

Specify what parts of the proposed work have been completed or are under construction and indicate when such work was undertaken or completed. Identify completed portions on the plans submitted.

The existing structures described above are in place. There has been no further activity.

- b. If yes, is the application associated with an enforcement action pending with DEP?
 Yes No If yes, explain:

Check here, if documents have been provided in Attachment H. Also please complete *Applicant Compliance Information Form* (DEP-APP-002).

Part IV: Project Information (continued)

10. Provide other relevant information you deem important to consider in the review of this application. Check the box if documents have been provided in Attachment H:

There were brief periods of time during which the dock was undergoing maintenance and repair work but it was in substantially continuous use from 1937 to the present time.

Part V: Supporting Documents

The supporting documents listed below must be submitted with the application and labeled as indicated. The specific information required in each attachment is described in the *Instructions for Completing a Certificate of Permission Application for the Office of Long Island Sound Programs* (DEP-OLIS-INST-200). Please check the box by the attachments listed to indicate that they have been submitted.

- Attachment A: Plans in accordance with Part IV, item 2 of the instructions
- Attachment B: Photographs showing existing conditions of the site
- Attachment C: Abutting or adjacent property owner information; including names and mailing addresses
- Attachment D: Copy of any field survey conducted to identify any presence of endangered, threatened or special concern species (if applicable)
- Attachment E: Copies of previous state coastal permits or certificates issued by DEP (if applicable)
- Attachment F: *Applicant Background Information Form* (DEP-APP-008) (if applicable)
- Attachment G: *Applicant Compliance Information Form* (DEP-APP-002)
- Attachment H: Other Information (if applicable)

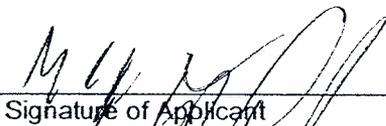
Part VI: Application Certification

The applicant(s) and the individual(s) responsible for actually preparing the application must sign this part. An application will be considered insufficient unless all required signatures are provided.

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of the individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief.

I understand that a false statement in the submitted information may be punishable as a criminal offense, in accordance with Section 22a-6 of the General Statutes, pursuant to Section 53a-157b of the General Statutes, and in accordance with any other applicable statute.

I certify that this application is on complete and accurate forms as prescribed by the commissioner without alteration of the text."



Signature of Applicant

7-24-2008
Date

Thomas and Gail Lane

Name of Applicant (print or type)

Title (if applicable)

Signature of Preparer (if different than above)

Date

Gary Sharpe

Name of Preparer (print or type)

P.E.

Title (if applicable)

Check here if additional signatures are required. If so, please reproduce this sheet and attach signed copies to this sheet. You must include signatures of any person preparing any report or parts thereof required in this application (i.e., professional engineers, surveyors, soil scientists, consultants, etc.)

Note: Please submit the Permit Application Transmittal Form, Application Form, Fee, and all Supporting Documents to:

CENTRAL PERMIT PROCESSING UNIT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
79 ELM STREET
HARTFORD, CT 06106-5127

Part VI: Application Certification

The applicant(s) and the individual(s) responsible for actually preparing the application must sign this part. An application will be considered insufficient unless all required signatures are provided

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of the individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief

I understand that a false statement in the submitted information may be punishable as a criminal offense, in accordance with Section 22a-6 of the General Statutes, pursuant to Section 53a-157b of the General Statutes, and in accordance with any other applicable statute.

I certify that this application is on complete and accurate forms as prescribed by the commissioner without alteration of the text."

Signature of Applicant

Date

Thomas and Gail Lane

Name of Applicant (print or type)

Title (if applicable)

Signature of Preparer (if different than above)

Date

Gary Sharpe

Name of Preparer (print or type)

P.E.

Title (if applicable)

Check here if additional signatures are required. If so, please reproduce this sheet and attach signed copies to this sheet. You must include signatures of any person preparing any report or parts thereof required in this application (i.e., professional engineers, surveyors, soil scientists, consultants, etc.)

Note: Please submit the Permit Application Transmittal Form, Application Form, Fee, and all Supporting Documents to:

CENTRAL PERMIT PROCESSING UNIT
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 79 ELM STREET
 HARTFORD, CT 06106-5127

**GP - 41 DEPARTMENT OF THE ARMY
PROGRAMMATIC GENERAL PERMIT
STATE OF CONNECTICUT**

**APPLICANT'S ELIGIBILITY
TO BE SUBMITTED WITH STATE OF CONNECTICUT APPLICATION TO THE
OFFICE OF LONG ISLAND SOUND PROGRAMS**

I assert that I have read the Department of the Army Programmatic General Permit GP-41 for the State of Connecticut. I further assert that the proposed activity is eligible for the following category under the General Permit:

CATEGORY I

Non-reporting/minimal impacts. (I understand that my assertion of eligibility for this category means that no review or screening by the Army Corps of Engineers will be made and that the Corps is relying on my assertion of eligibility for the Federal General Permit).

CATEGORY II

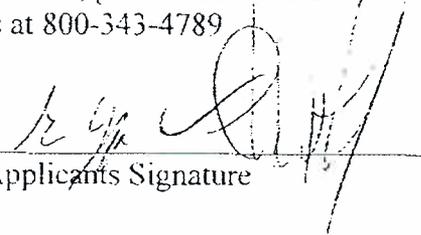
Screening/minimal impacts. (I understand that the Office of Long Island Sound Programs will forward my application to the Army Corps of Engineers for an eligibility determination under the Federal General Permit.)

INDIVIDUAL PERMIT

Individual application will be made to the Army Corps of Engineers. (I assert that I have or will make an individual application to the Army Corps of Engineers to conduct the proposed activities and that I am not eligible for authorization under the General Permit.)

I further assert that I have read the terms and conditions outlined in GP-41 and will abide by such terms and conditions. If you have any questions or need a copy of GP-41, please contact the Office of Long Island Sound Programs at (860) 424-3034 or the Army Corps at 800-343-4789

29 July 2008
Date


Applicants Signature

Applicant Name, Address of Activity and Town:

Thomas and Gail Lane
32 Money Point Road
Mystic, CT 06355



Connecticut Natural Diversity Data Base Review Request Form

Please complete this form *only* if you have conducted a review which determined that your activity is located in an area of concern.

Name: Gary Sharpe

Affiliation: Angus McDonald/Gary Sharpe & Associates, Inc.

Mailing Address: P.O. Box 608, 233 Boston Post Road

City/Town: Old Saybrook

State: CT

Zip Code: 06475

Business Phone: 860-388-4671

ext. 13

Fax: 860-388-3962

Contact Person: Gary Sharpe

Title: P.E.

Project or Site Name: Gail and Thomas Lane, 32 Money Point Road

Project Location

Town: Mystic

USGS Quad: Attached

Brief Description of Proposed Activities:

Retain and maintain existing boardwalk and dock system.

Have you conducted a "State and Federal Listed Species and Natural Communities Map" review?

Yes No Date of Map: 12/2006

Has a field survey been previously conducted to determine the presence of any endangered, threatened or special concern species? Yes No

If yes, provide the following information and submit a copy of the field survey with this form.

Biologists Name:

Address:

If the project will require a permit, list type of permit, agency and date or proposed date of application

OLISP / COP

(See reverse side - you must sign the certification on the reverse side of this form)

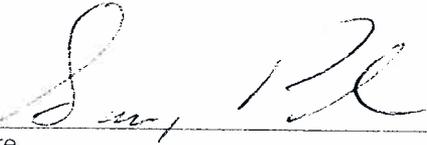
The Connecticut Natural Diversity Data Base (CT NDDB) information will be used for:

- permit application
- environmental assessment (give reasons for assessment):

- other (specify)

"I certify that the information supplied on this form is complete and accurate, and that any material supplied by the CT NDDB will not be published without prior permission."

Signature



Date

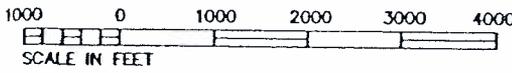
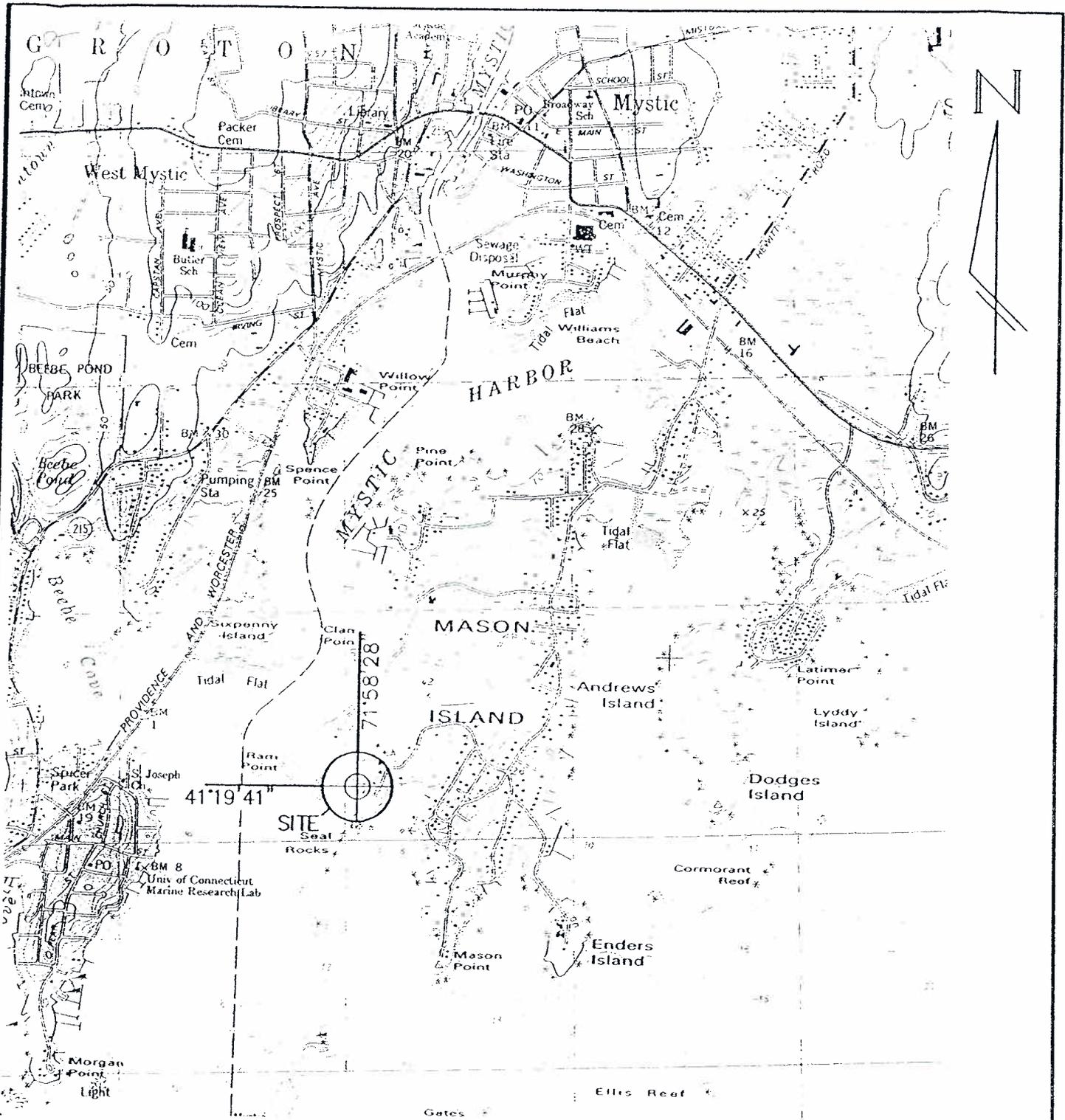
9/24/08

All requests must include a USGS topographic map with the project boundary clearly delineated.

Return completed form to

WILDLIFE DIVISION
BUREAU OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL PROTECTION
79 ELM ST, 6TH FLOOR
HARTFORD, CT 06106-5127

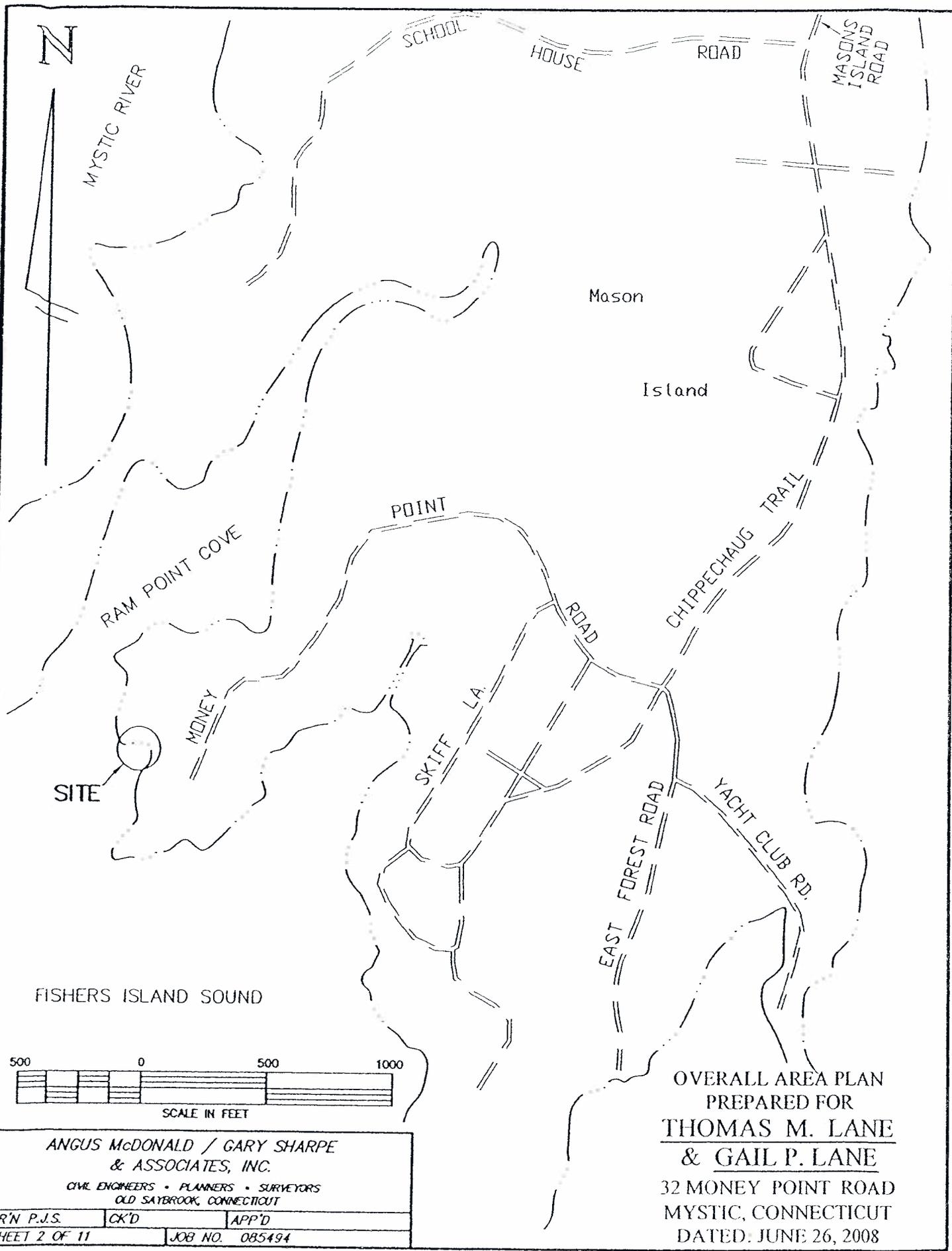
* You must submit a copy of this completed form with your registration or permit application.



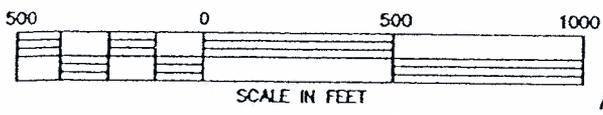
VICINITY PLAN
 PREPARED FOR
THOMAS M. LANE
 & GAIL P. LANE
 32 MONEY POINT ROAD
 MYSTIC, CONNECTICUT
 DATED: JUNE 26, 2008

ANGUS McDONALD / GARY SHARPE
 & ASSOCIATES, INC.
 CIVIL ENGINEERS • PLANNERS • SURVEYORS
 OLD SAYBROOK, CONNECTICUT

DR'N PJS	CK'D	APP'D
SHEET 1 of 11		JOB NO. 085494



FISHERS ISLAND SOUND

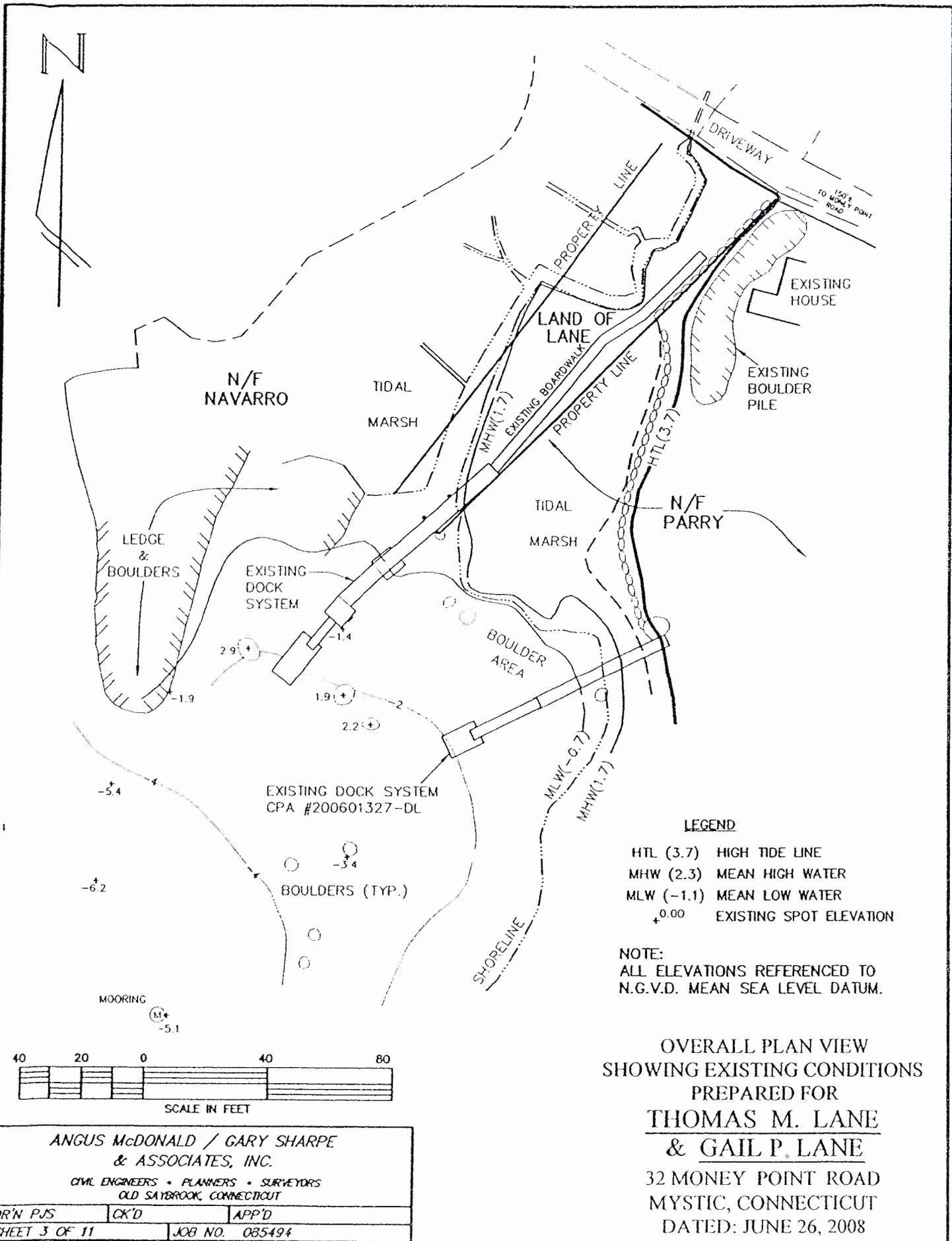


ANGUS McDONALD / GARY SHARPE
& ASSOCIATES, INC.

CIVIL ENGINEERS • PLANNERS • SURVEYORS
OLD SAYBROOK, CONNECTICUT

DR'N P.J.S.	CK'D	APP'D
SHEET 2 OF 11		JOB NO. 085494

OVERALL AREA PLAN
PREPARED FOR
THOMAS M. LANE
& GAIL P. LANE
32 MONEY POINT ROAD
MYSTIC, CONNECTICUT
DATED. JUNE 26, 2008



LEGEND

- HTL (3.7) HIGH TIDE LINE
- MHW (2.3) MEAN HIGH WATER
- MLW (-1.1) MEAN LOW WATER
- +0.00 EXISTING SPOT ELEVATION

NOTE:
ALL ELEVATIONS REFERENCED TO
N.G.V.D. MEAN SEA LEVEL DATUM.

OVERALL PLAN VIEW
SHOWING EXISTING CONDITIONS
PREPARED FOR

**THOMAS M. LANE
& GAIL P. LANE**

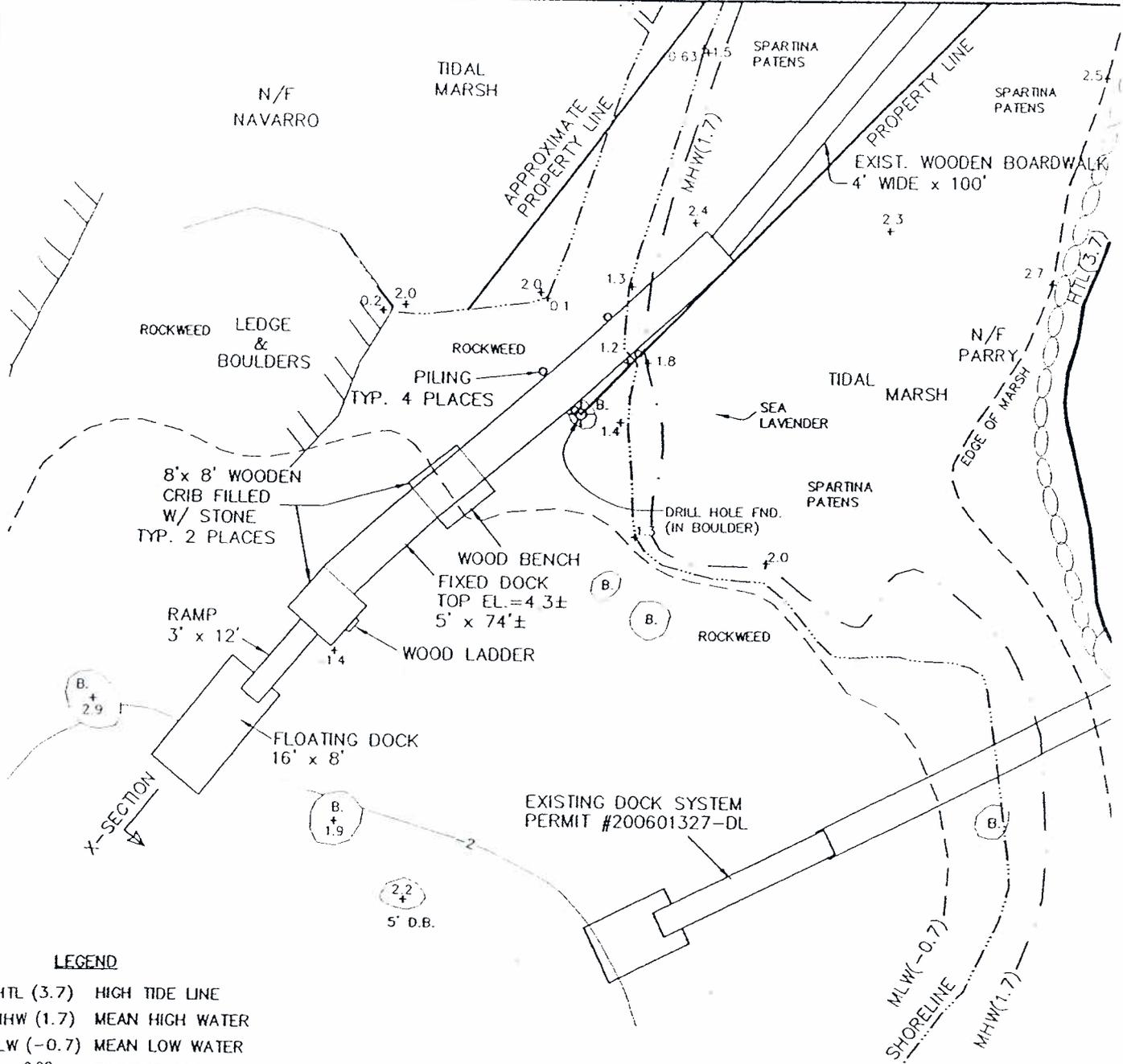
32 MONEY POINT ROAD
MYSTIC, CONNECTICUT
DATED: JUNE 26, 2008

ANGUS McDONALD / GARY SHARPE
& ASSOCIATES, INC.

CIVIL ENGINEERS • PLANNERS • SURVEYORS
OLD SAYBROOK, CONNECTICUT

DR'N PJS	CK'D	APP'D
SHEET 3 OF 11	JOB NO. 085494	

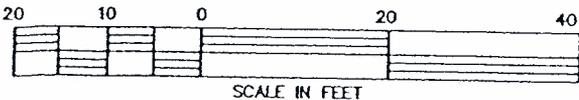
MATCH LINE TO SHT. 5



LEGEND

- HTL (3.7) HIGH TIDE LINE
- MHW (1.7) MEAN HIGH WATER
- MLW (-0.7) MEAN LOW WATER
- +0.00 EXISTING SPOT ELEVATION
- B. BOULDER
- D. DIAMETER

NOTE:
 ALL ELEVATIONS REFERENCED TO
 N.G.V.D. MEAN SEA LEVEL DATUM.

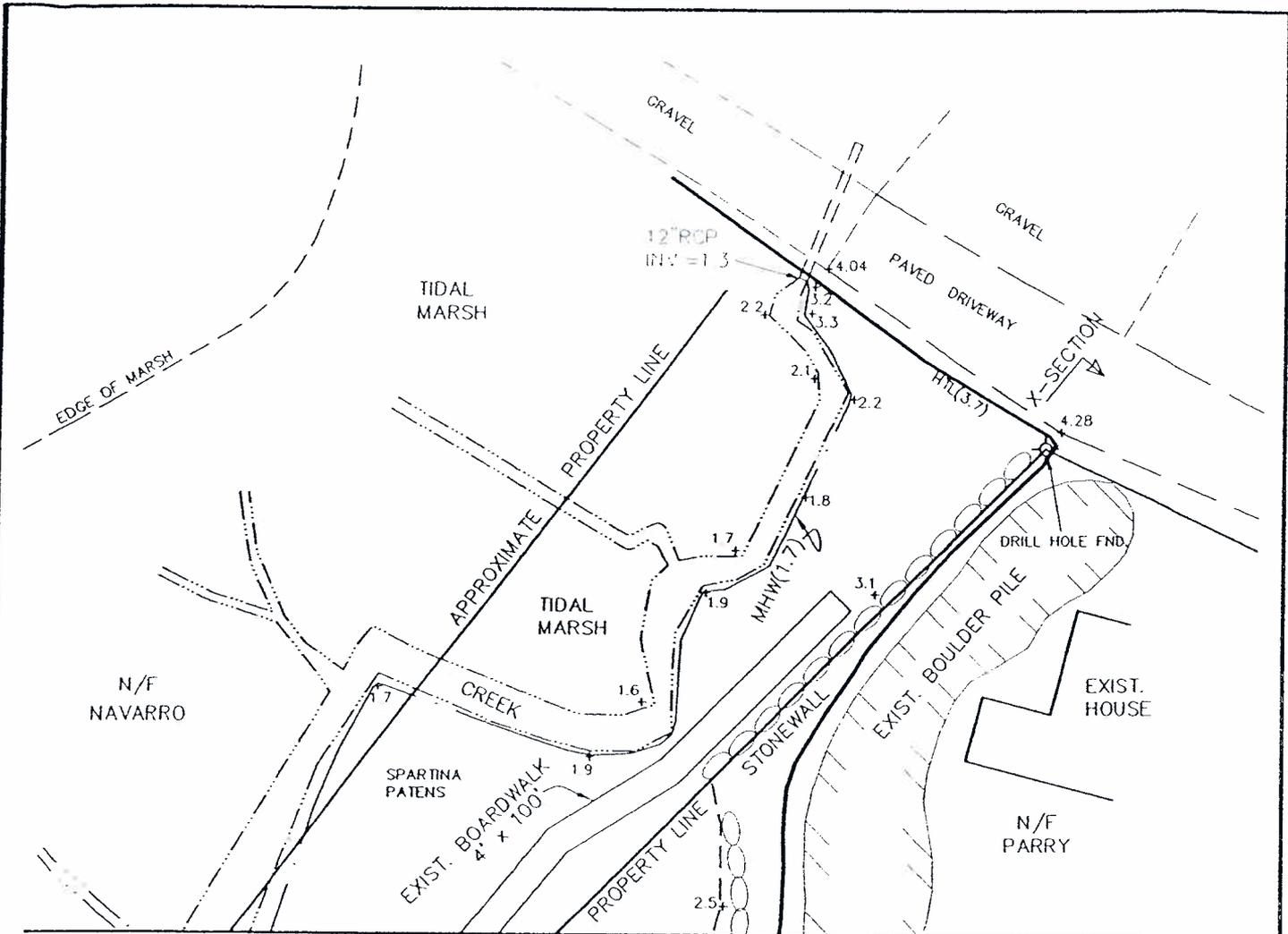


DETAIL PLAN VIEW
 SHOWING EXISTING CONDITIONS
 PREPARED FOR
THOMAS M. LANE
 & **GAIL P. LANE**
 32 MONEY POINT ROAD
 MYSTIC, CONNECTICUT
 DATED: JUNE 26, 2008

ANGUS McDONALD / GARY SHARPE
 & ASSOCIATES, INC.

CIVIL ENGINEERS • PLANNERS • SURVEYORS
 OLD SAYBROOK, CONNECTICUT

DR'N PJS	CK'D	APP'D
SHEET 4 OF 11		JOB NO. 085494

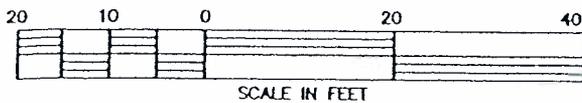


MATCH LINE TO SHT. 4

LEGEND

- HTL (3.7) HIGH TIDE LINE
- MHW (1.7) MEAN HIGH WATER
- MLW (-0.7) MEAN LOW WATER
- +0.00 EXISTING SPOT ELEVATION
- B. BOULDER
- D. DIAMETER

NOTE:
ALL ELEVATIONS REFERENCED TO
N.G.V.D. MEAN SEA LEVEL DATUM.



DETAIL PLAN VIEW
SHOWING EXISTING CONDITIONS

PREPARED FOR
THOMAS M. LANE
& **GAIL P. LANE**

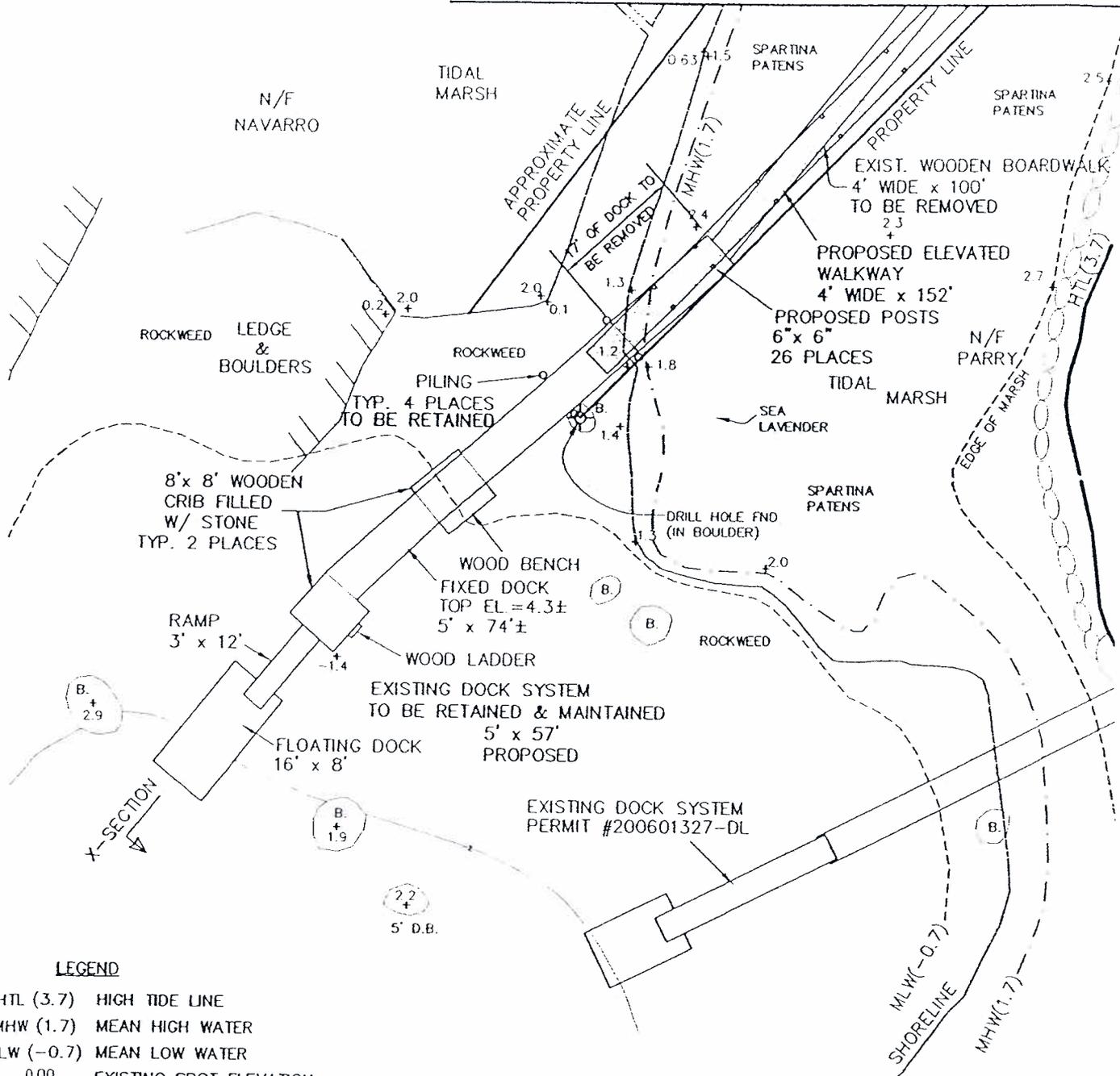
32 MONEY POINT ROAD
MYSTIC, CONNECTICUT
DATED: JUNE 26, 2008

ANGUS McDONALD / GARY SHARPE
& ASSOCIATES, INC.

CIVIL ENGINEERS • PLANNERS • SURVEYORS
OLD SAYBROOK, CONNECTICUT

DR'N PJS	CK'D	APP'D
SHEET 5 OF 11	JOB NO. 085494	

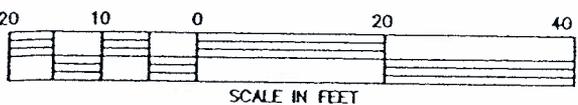
MATCH LINE TO SHIT. 7



LEGEND

- HTL (3.7) HIGH TIDE LINE
- MHW (1.7) MEAN HIGH WATER
- MLW (-0.7) MEAN LOW WATER
- +0.00 EXISTING SPOT ELEVATION
- B. BOULDER
- D. DIAMETER

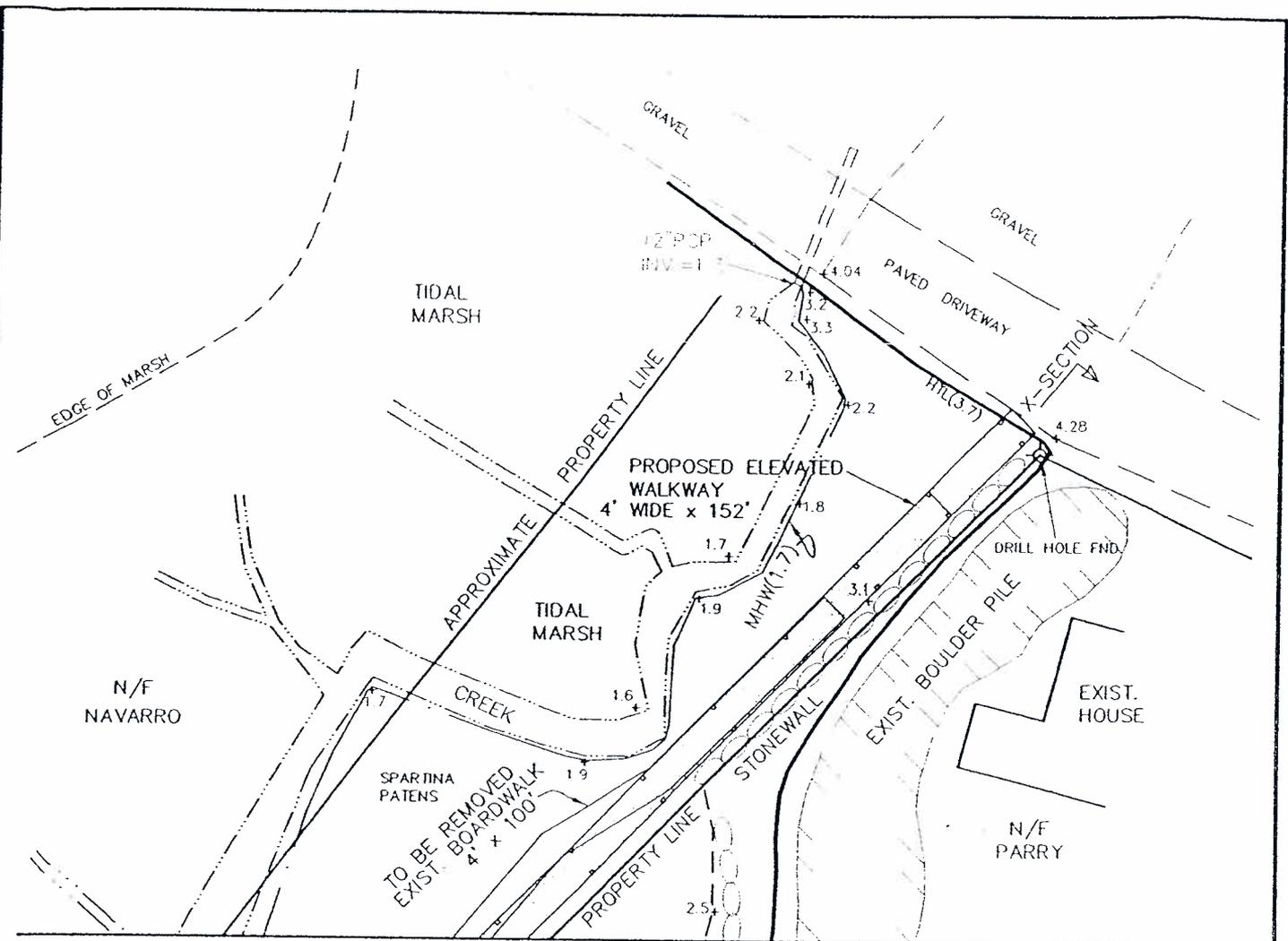
NOTE:
ALL ELEVATIONS REFERENCED TO
N.G.V.D. MEAN SEA LEVEL DATUM.



DETAIL PLAN VIEW
SHOWING PROPOSED CONDITIONS
PREPARED FOR
THOMAS M. LANE
& **GAIL P. LANE**
32 MONEY POINT ROAD
MYSTIC, CONNECTICUT
DATED: JUNE 26, 2008

ANGUS McDONALD / GARY SHARPE
& ASSOCIATES, INC.
CIVIL ENGINEERS • PLANNERS • SURVEYORS
OLD SAYBROOK, CONNECTICUT

DR'N PJS	CK'D	APP'D
SHEET 6 OF 11	JOB NO. 085494	

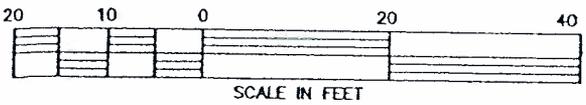


MATCH LINE TO SHT. 6

LEGEND

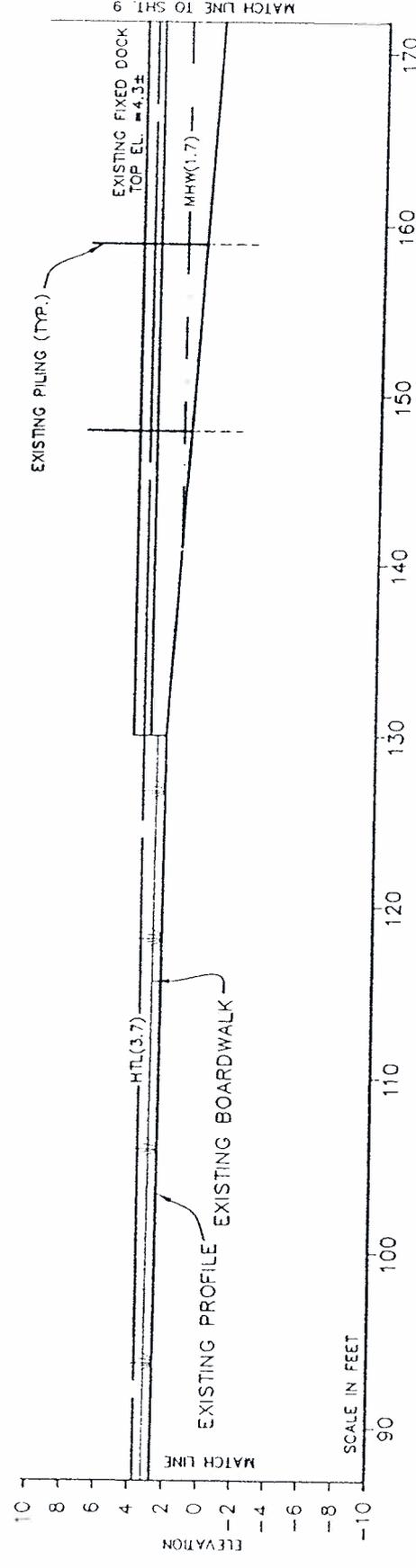
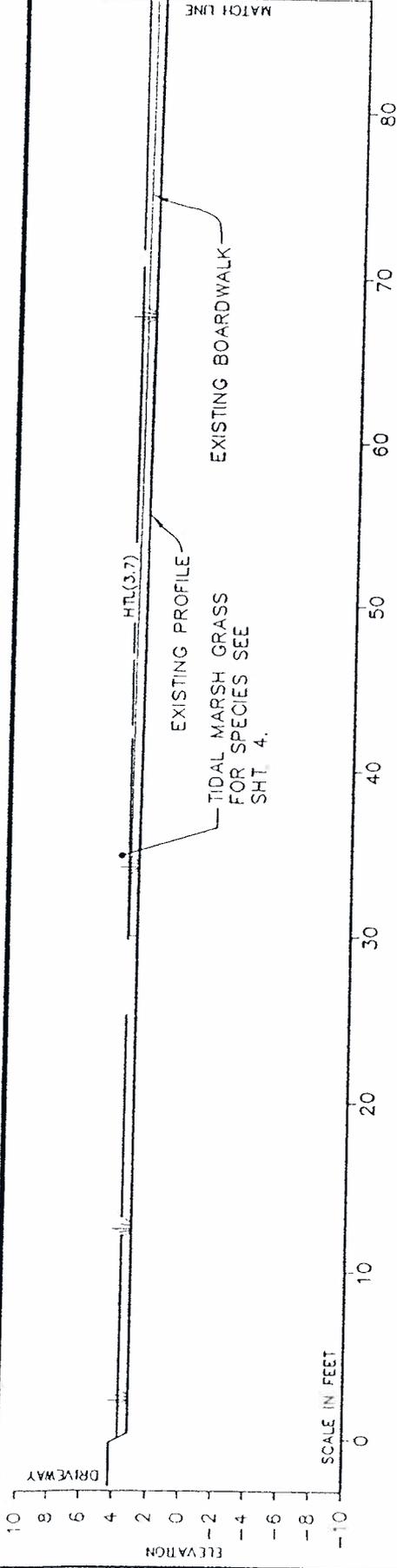
- HTL (3.7) HIGH TIDE LINE
- MHW (1.7) MEAN HIGH WATER
- MLW (-0.7) MEAN LOW WATER
- +0.00 EXISTING SPOT ELEVATION
- B. BOULDER
- D. DIAMETER

NOTE:
ALL ELEVATIONS REFERENCED TO
N.G.V.D. MEAN SEA LEVEL DATUM.



DETAIL PLAN VIEW
SHOWING PROPOSED CONDITIONS
PREPARED FOR
THOMAS M. LANE
& **GAIL P. LANE**
32 MONEY POINT ROAD
MYSTIC, CONNECTICUT
DATED: JUNE 26, 2008

ANGUS McDONALD / GARY SHARPE & ASSOCIATES, INC.		
CIVIL ENGINEERS • PLANNERS • SURVEYORS OLD SAYBROOK, CONNECTICUT		
DRN PJS	CK'D	APP'D
SHEET 7 OF 11	JOB NO. 085494	



DETAIL PLAN
 SHOWING EXISTING CONDITIONS
 PREPARED FOR
THOMAS M. LANE
& GAIL P. LANE
 32 MONEY POINT ROAD
 MYSTIC, CONNECTICUT
 DATED: JUNE 26, 2008

NOTE:
 ALL ELEVATIONS REFERENCED TO
 N.G.V.D. MEAN SEA LEVEL DATUM.

LEGEND
 HTL(3.7) HIGH TIDE LINE
 MHW(1.7) MEAN HIGH WATER
 MLW(-0.7) MEAN LOW WATER

REVISIONS	
ANGUS McDONALD / GARY SHARPE & ASSOCIATES, INC. CIVIL ENGINEERS • PLANNERS • SURVEYORS OLD SAYBROOK, CONNECTICUT	
DRN PJS	CX'D
SHEET 8 OF 11	APP'D
JOB NO. 034834	

DETAIL PLAN
 SHOWING EXISTING CONDITIONS
 PREPARED FOR
THOMAS M. LANE
 & GAIL P. LANE
 32 MONEY POINT ROAD
 MYSTIC, CONNECTICUT
 DATED: JUNE 26, 2008

ANGUS McDONALD / GARY SHARPE
 & ASSOCIATES, INC.
 CIVIL ENGINEERS • PLANNERS • SURVEYORS
 OLD SAYBROOK, CONNECTICUT

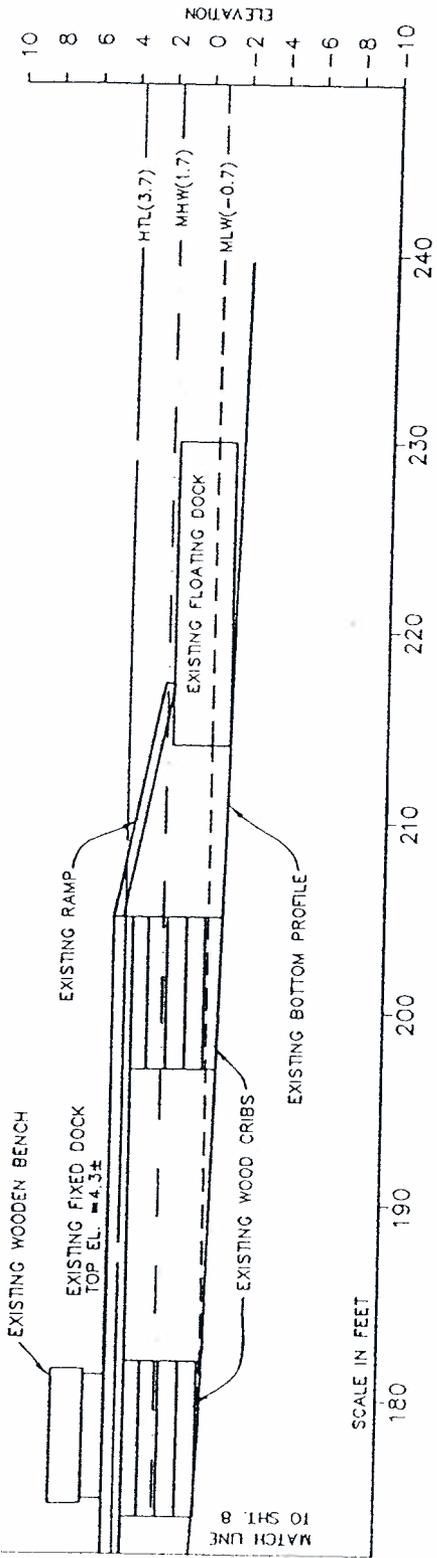
DRN PJS CX'D APP'D
 SHEET 9 OF 11 JOB NO. 034834

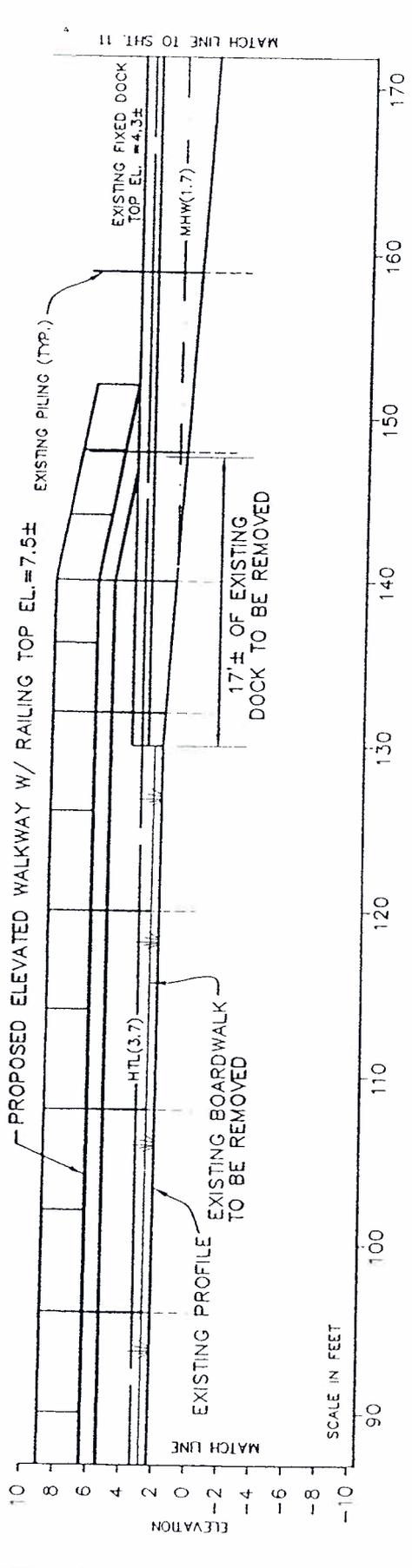
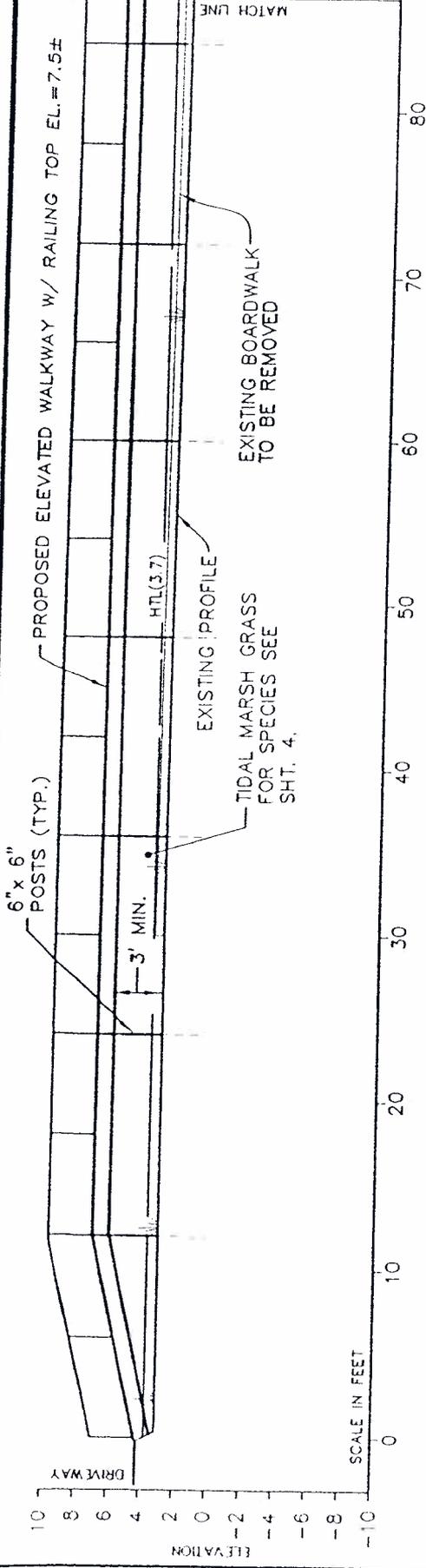
REVISIONS:

NOTE:
 ALL ELEVATIONS REFERENCED TO
 N.G.V.D. MEAN SEA LEVEL DATUM.

LEGEND

- HTL(3.7) HIGH TIDE LINE
- MHW(1.7) MEAN HIGH WATER
- MLW(-0.7) MEAN LOW WATER





NOTE:
 ALL ELEVATIONS REFERENCED TO
 N.G.V.D. MEAN SEA LEVEL DATUM.

LEGEND

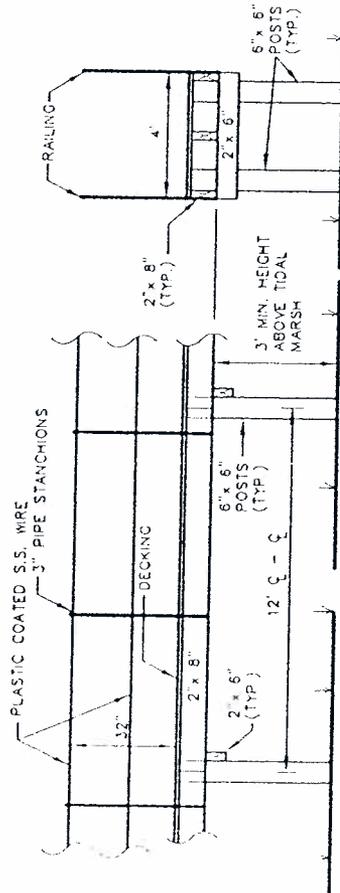
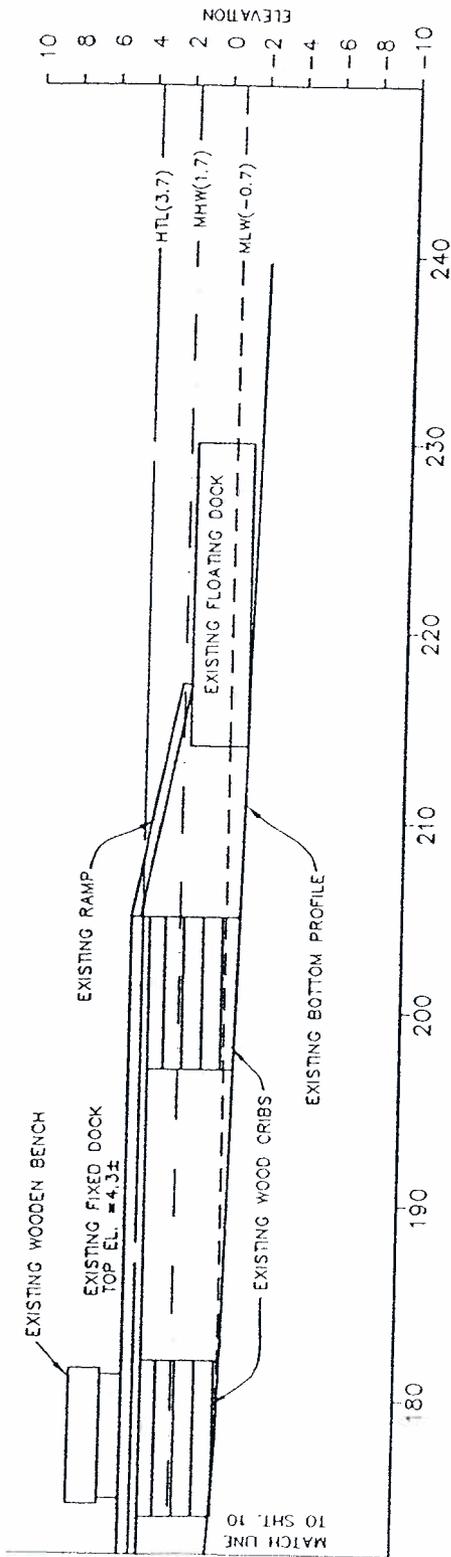
- HTL(3.7) HIGH TIDE LINE
- MHW(1.7) MEAN HIGH WATER
- MLW(-0.7) MEAN LOW WATER

DETAIL PLAN
 SHOWING PROPOSED CONDITIONS
 PREPARED FOR
THOMAS M. LANE
 & GAIL P. LANE
 32 MONEY POINT ROAD
 MYSTIC, CONNECTICUT
 DATED JUNE 26, 2008

REVISIONS:

ANGUS McDONALD / GARY SHARPE
 & ASSOCIATES, INC.
 CIVIL ENGINEERS • PLANNERS • SURVEYORS
 OLD SAYBROOK, CONNECTICUT

DRN PJS	CX'D	APP'D
SHEET 10 OF 11		JOB NO. 034834



ELEVATION VIEW

CROSS-SECTION VIEW

ELEVATED WALKWAY DETAIL
(NOT TO SCALE)

DETAIL PLAN
SHOWING PROPOSED CONDITIONS
PREPARED FOR

**THOMAS M. LANE
& GAIL P. LANE**

32 MONEY POINT ROAD
MYSTIC, CONNECTICUT
DATED: JUNE 26, 2008

ANGUS McDONALD / GARY SHARPE
& ASSOCIATES, INC.

CIVIL ENGINEERS • PLANNERS • SURVEYORS
OLD SAYBROOK, CONNECTICUT

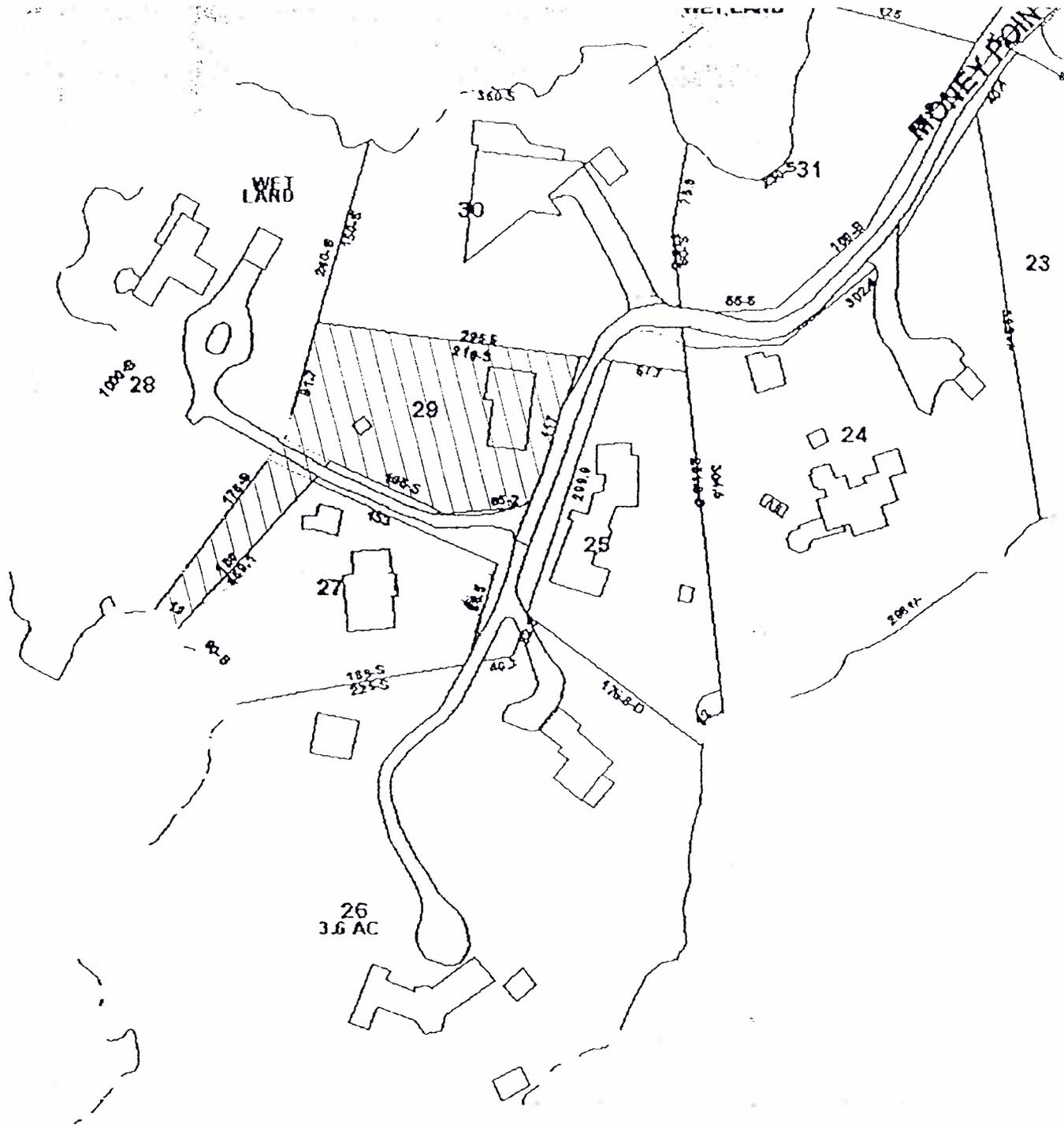
DRN PJS	CKD	APP'D
SHEET 11 OF 11		JOB NO. 034834

REVISIONS:

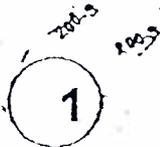
NOTE:
ALL ELEVATIONS REFERENCED TO
N.G.V.D. MEAN SEA LEVEL DATUM.

LEGEND

- HTL(3.7) HIGH TIDE LINE
- MHW(1.7) MEAN HIGH WATER
- MLW(-0.7) MEAN LOW WATER



FISHERS ISLAND SOUND



ASSESSOR'S MAP #180 BLOCK #2 LOT #29

Project:
 Location: TOWN OF MYSTIC
 NEW LONDON COUNTY, CONN.
 Waterway: FISHERS ISLAND SOUND
 Date:
 Applicant: THOMAS M. AND GAIL P. LANE
 Agent: Angus McDonald / Gary Sharpe & Assoc. Inc.

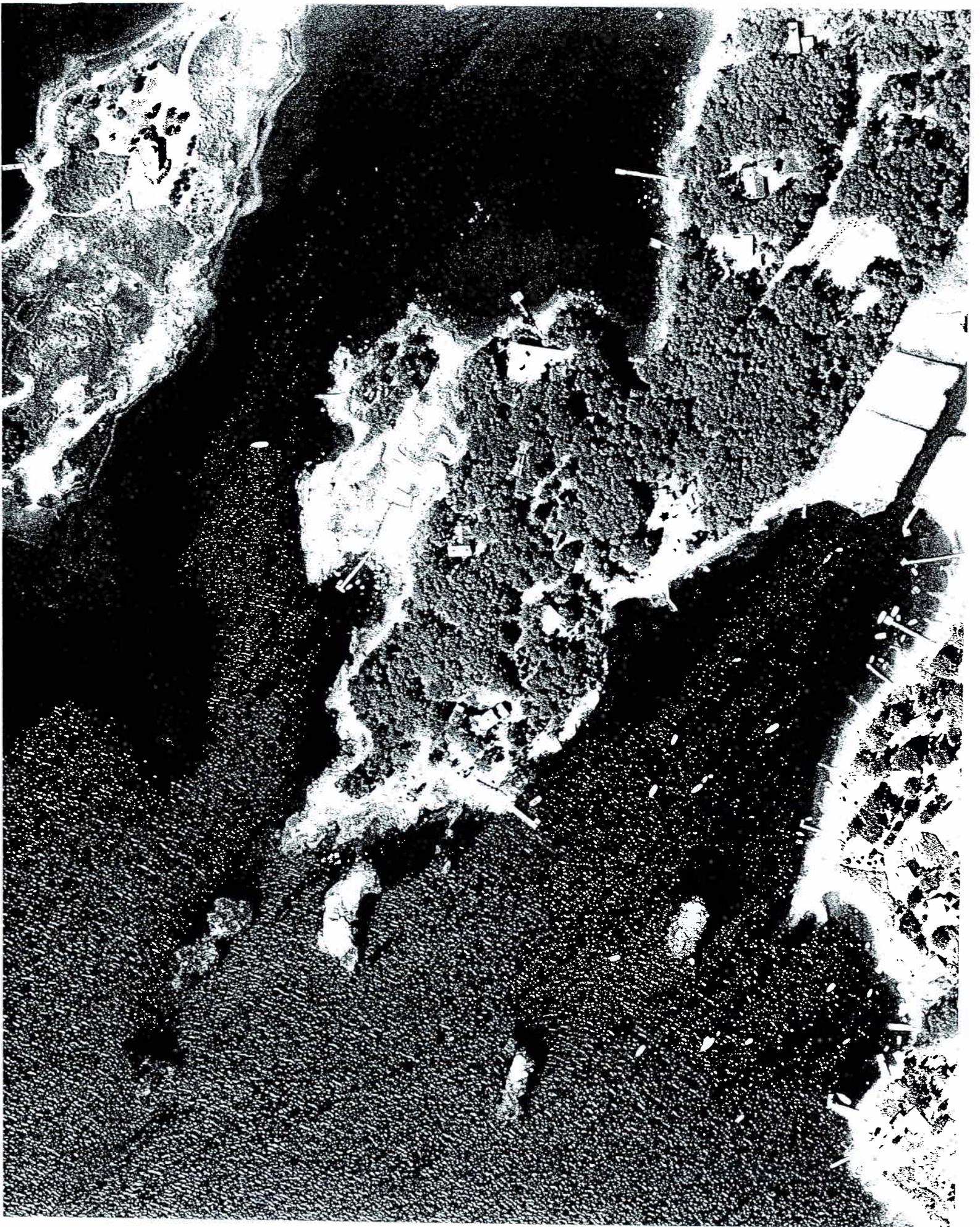


HAPPY BIRTHDAY TO THE GALT HOUSE
JULY 15, 1950
J. GALT

R4 Hackmead 15



Attachment B



1-2-10-10-10-10

Attachment C

THOMAS AND GAIL LANE
32 MONEY POINT ROAD
MYSTIC, CT 06355
ABUTTING PROPERTY OWNERS

TAX MAP #180

<u>LOT</u>	<u>NAME / ADDRESS</u>
27	JOHN R. AND JULIA V. PARRY 36 MONEY POINT ROAD MYSTIC, CT 06355
28	BRIAN NAVARRO 27 W. MAIN STREET, SUITE A MYSTIC, CT 06355 (34 MONEY POINT ROAD)

Applicant Background Information (continued)

Voluntary Association

1. List authorized persons of association or list all members of association.

Name:

Mailing Address:

City/Town:

State:

Zip Code: -

Business Phone: - -

ext.

Fax: - -

Name:

Mailing Address:

City/Town:

State:

Zip Code: -

Business Phone: - -

ext.

Fax: - -

Name:

Mailing Address:

City/Town:

State:

Zip Code: -

Business Phone: - -

ext.

Fax: - -

Name:

Mailing Address:

City/Town:

State:

Zip Code: -

Business Phone: - -

ext.

Fax: - -

Name:

Mailing Address:

City/Town:

State:

Zip Code: -

Business Phone: - -

ext.

Fax: - -

Please enter a check mark, if additional sheets are necessary. If so, label and attach additional sheet(s) to this sheet with the required information as supplied above.

Individual or Other Business Type

1. Name: **Thomas and Gail Lane**

Mailing Address: **32 Money Point Road**

City/Town: **Mystic**

State: **CT**

Zip Code: **06355-**

Business Phone: **860-326-2032**

ext.

Fax: - -

2. State other names by which the applicant is known, including business names.

Name:

Please enter a check mark, if additional sheets are necessary. If so, label and attach additional sheet(s) to this sheet with the required information as supplied above.

Attachment G



Applicant Compliance Information

DEP ONLY
App. No. _____
Co./Ind. No. _____

Applicant Name: **Thomas and Gail Lane**
(as indicated on the *Permit Application Transmittal Form*)

If you answer yes to any of the questions below, you must complete the Table of Enforcement Actions on the reverse side of this sheet as directed in the instructions for your permit application.

- A. During the five years immediately preceding submission of this application, has the applicant been convicted in any jurisdiction of a criminal violation of any environmental law?
- Yes No
- B. During the five years immediately preceding submission of this application, has a civil penalty been imposed upon the applicant in any state, including Connecticut, or federal judicial proceeding for any violation of an environmental law?
- Yes No
- C. During the five years immediately preceding submission of this application, has a civil penalty exceeding five thousand dollars been imposed on the applicant in any state, including Connecticut, or federal administrative proceeding for any violation of an environmental law?
- Yes No
- D. During the five years immediately preceding submission of this application, has any state, including Connecticut, or federal court issued any order or entered any judgement to the applicant concerning a violation of any environmental law?
- Yes No
- E. During the five years immediately preceding submission of this application, has any state, including Connecticut, or federal administrative agency issued any order to the applicant concerning a violation of any environmental law?
- Yes No

Thomas and Gail Lane

PART IV, Item #6 – DEP APPLICATION

TIMELINE SUMMARY

In 1936 the property was acquired by Emma Aubert Cole.

The following documentation is provided for consideration:

- A June 17, 2007 letter written by Josy Wright, the daughter of Emma Aubert Cole and Hugh Cole, Sr., indicates her recollection of the dock having been built in the spring of 1937 so that it would be ready for that summer's use. She goes on to say that the dock was damaged in the 1938 hurricane and that when it was rebuilt a platform was added to accommodate the bench, which is present even today.
- A June 7, 2007 letter from Sarah Moore Hallberg in which she indicates her observations with respect to the dock having been present in 1939.
- A June 18, 2007 letter from Hugh Cole, the son of Emma Aubert Cole and Hugh Cole, Sr. once again indicating that in 1937 the Coles constructed a dock at the property.
- A June 11, 2007 letter from Daniel H. Van Winkle indicating, from his observations, his confidence that the dock existed prior to 1939.
- A July 21, 2008 letter from Peter G. Briggs, who apparently sailed with the Cole family on their sloop, indicating his observation that the dock "has been substantially equivalent for at least 60 years".
- A July 12, 2007 letter from David J. Shilling, M.D., the owner of the house from July 1987 to August of 1991. Dr. Shilling indicates that he had contracted with a boatyard in Rhode Island to rebuild the dock to the footprint that previously existed. The need to rebuild the dock was the result of damage incurred by Hurricane Gloria.
- An 8/8/87 note by Dr. Shilling indicating that he had contacted Ralph Atkinson of the US Army Corps of Engineers and was given verbal approval to rebuild the dock subsequent to the Hurricane Gloria damage.

Apparently the damage caused by Hurricane Gloria was so severe and widespread the Corps and DEP were unable to visit each site and advised people to rebuild to the same footprint as before.

PHOTOGRAPHIC DOCUMENTATION

1. Two photographs of the subject property are provided just subsequent to the 1938 hurricane. In each of these photographs the damage can be seen along with the end of the dock appearing in the left-hand corner of the photograph, while the neighbor's dock can be seen in the foreground on the right-hand side of these photographs.
2. A 1951 aerial photograph showing the walkway and dock at the subject property together with the neighbor's dock to the east.
3. A 1965 aerial photograph in which the dock appears to be of substantially the same proportions as previous photographs.
4. A 1974 aerial photograph in which the dock appears of substantially the same proportion.
5. A 1980 photograph in which the dock appears to be of substantially the same proportion.
6. Two 1981 photographs in which a portion of the dock appears.
7. A 1986 aerial photograph in which the dock does not exist as a result of the devastation caused by Hurricane Gloria, which occurred in September 1985. Due to the considerable damage caused by this hurricane contractors were generally unavailable to undertake repairs in a timely fashion and therefore the dock had not been replaced at the time of this photograph. As noted above Dr. Shilling had conferred with the US Army Corps of Engineers and had received verbal approval to reconstruct the dock and did so in 1987.
8. A 1990 aerial photograph showing the dock consistent with the present day dock.
9. A 2004 aerial photograph once again showing the existence of the dock at that time.

Attachment H

Dear Eail and Tom,

June 18, 07

What a lot of memories you stirred up with your inquiry about the dock at "Crosstrees". Yes, there ^{is} was a dock on the property in 1939. Whether it is the same dock that exists now, ^{or one} that a former owner might have constructed, I do not know.

The dock that my family built that I remember was built in the spring of 1937 to be ready for that summer you first on Masons Island. My father's boat "Bohemian" a old sloop, or design, which had belonged to his father and was of primary importance to our

Attachment H

Summer lives was moored to the side of the dock as was my little cat boat acquired in 1941.

The dock had a short gravel path leading to it and a ramp up to it so that we could use a wheelbarrow to haul gear to and from. The 4 foot wide dock extended far enough to the south so that we could swim off it and even dive off at high tide. There was an out-haul far out drifing on the east side. The dock had been damaged in the '38 hurricane and when rebuilt had a platform with a bench on the south end - nice for swimmers and those waiting to get out to the "Bohemia". We sailed every Sunday in the summer, there is no doubt in my mind that a dock was there in 1939 we couldn't have done without it.

It's so good to hear that you are enjoying the house. I, age 9, broke ground for it in early spring '36. As you probably know, John Allou was the architect but it was my mother's vision. The garage was the first attached garage ever seen in that area. I could go on but it's

++ Attachment ++

the dock, or as Harry my husband points
out a dock, that interests you and
the D E P. now. I would be happy
to write them or speak to them
if necessary. And if you have any
questions do call us at 401 423-2978
or 401 423-1503 (our summer home), both
are on Jamestown both have answering
machines which we check daily. I
certainly hope this helps you. Can't
imagine sailing life without a dock!

P.S. I love the drawing of
Cross-trees!

Sincerely,
Josy

7 June 2007

Sirs. This letter affirms that there was a Dock - owned by Mr and Mrs H.M. Cole of "Christies" - in 1938. The Coles owned two sailboats - a small dory "DINGBAT" and a large gaff rig ship "Bohemian" (Sloop). Both boats were anchored in the Mystic River below their house - (now 32 money point). It was a long Dock with a "float" at the end - large enough for two built-in benches and two out-hauls - for a row boat.

I spent my summers - starting in 1938 on Masons Island and for the most part lived with the Coles and their family. There could not possibly be any access to these two moored boats without a dock and they spent every weekend on the Bohemian.

Sincerely yours 

Sam Moore-Hall
 9 Old South Road
 Masons Island
 Mystic CT 06355

6/18/87

RE: PROPERTY LOCATED AT 31 MONEY POINT RD MASON'S
ISLAND MYSTIC, CT 06355

TO WHOM IT MAY CONCERN

IN 1937, MY PARENTS HUGH AND EMMA COLE,
PURCHASED THE ABOVE REFERENCED PROPERTY AND BUILT
A HOUSE IN WHICH TOM AND GAIL LANE CURRENTLY
RESIDE. THE PROPERTY CAME WITH A RIGHT OF WAY TO THE
WATER OVER THE MARSH TO THE COVE FORMED BY MASON'S
ISLAND ON THE EAST AND CLAM POINT ON THE WEST. MY
FATHER HAD A 30' GAFFED RIG SLOOP WHICH HE MOORED
IN THE COVE.

TO FACILITATE ACCESS TO HIS BOAT, HE BUILT A CUNTER
PATHWAY ON THE RIGHT OF WAY, FROM MONEY POINT RD. TO THE
WATERS EDGE WHERE HE HAD A DOCK BUILT WHICH EXTENDED
OUT FROM SHORE SOME 25 TO 30 YARDS AND ENDED IN A "T".
HE CEMENTED AN EYE BOLT INTO A BOLT UP THE DOCK
AND RIGGED AN OUTBOARD FOR HIS DINGHY AND BUILT STAIRS
FROM THE DOCK INTO THE WATER. ALTHOUGH THE DOCK HAD TO
BE REPAIRED MANY TIMES OVER THE YEARS, DUE TO STORMS
AND HIGH TIDES, IT WAS STILL IN EXISTENCE IN 1985 WHEN,
HAVING INHERITED THE PROPERTY, I SOLD IT TO DR. S
SCHILLING OF NORWICH, CT. AS A MATTER OF FACT THE
RIGHT OF WAY AND THE DOCK WAS AN ATTRACTIVE FEATURE
OF THE PROPERTY TO THE SCHILLINGS WHO OWNED A SAILBOAT.

I WOULD GLADLY TESTIFY, UNDER OATH, TO THE
EXISTENCE OF A DOCK FROM THE 1930'S THROUGH 1985
AND PROBABLY MANY YEARS BEYOND.

Hugh Cole

Hugh Cole
P.O. Box 231
Mystic, CT 06355
860 961-1849

June 11, 2007

Mr. & Mrs. Thomas Lane
32 Money Point Road
Mystic, CT 06355

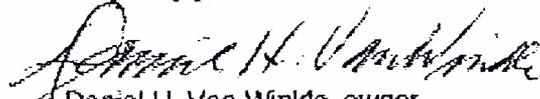
Dear Mr. & Mrs. Lane:

Thank you for asking me whether I have knowledge of a dock existing on your property prior to 1939.

I have looked through old family photographs (my family came here circa 1898 during the summer months and ever since) and so far have not found any photos of the area. My grandfather, H. Schuyler Horn, owned the property next door at 36 Money Point Road and I remember visiting him and sitting on his dock in 1943 and 1944 watching old Mr. Cole (everyone looked old to me then) walk down his own dock, get into a boat and row out to his sailboat. Mr. Cole owned the property you now own. In those days the docks were built with cedar posts not the pressure treated piles they use today. I would wonder how in the world he walked across the marsh so easily until one day I walked down there and saw that he had a wooden walkway over the marsh which I hadn't been able to see from my grandfather's dock because of the tall marsh grass. I remember the dock was quite long like my grandfather's, and the reason was that the water was very shallow and it took a long run to get to water deep enough to have a boat. I know my memories don't predate 1939 but I know Mr. Cole bought the property before that, and having known him, he wouldn't have lived at the shore for more than a few months before he built a dock because he and his wife loved boating so much. I feel extremely confident that the dock was there prior to 1939. Also in those days much of the dock decking was removed in the winter months so it wouldn't be washed away in storms. Those old docks were not very substantial but they served the purpose. Of course in those days no permits were needed to build a dock - you just built it and it didn't bother anybody. Most of the Island's residents were just there in the summer. Sometimes docks would just disappear during winter storms and the owners had to build them all over again.

I don't know if this is of any help to you and I will continue to look for old photographs showing the dock. As of now, my excellent memory is all I have, but on this small island, where I have lived almost my whole life, nothing goes unnoticed.

Very truly yours,



Daniel H. Van Winkle, owner
20 Nauryaug Point Rd., Mystic

David J. Shiling, M.D.
270 Broadway
Norwich, CT 06360

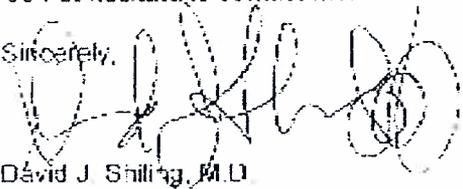
July 12, 2007

To Whom It May Concern:

We owned the house at 32 Money Point Road, Masons Island, at the time the dock that is currently in was built (Circa 1988). We contracted with Randy Conraty of Avondale Boat Yard in Rhode Island to build the dock. All necessary permits were in place for the dock prior to construction. My recollection is that permission to rebuild the dock to its former length out over the water as per a flyover done of that area of the shoreline was undertaken and did not go beyond what was allowed. All building permits from the Town of Stonington were obtained.

If I can be of any further use in this situation, please do not hesitate to contact me.

Sincerely,


David J. Shiling, M.D.

DJS/kk/7/13/2007

OCT-23-1987 14:10 From:

TO: SAC WFO

P. 1/2

Approval for repair of Deck 32 (see file)

REPAIR & RENOVATION SECTION OF THE
US ARMY CORPS OF ENGINEERS NATIONAL
PERMIT - GO! ←

RALPH ATKINSON - 617-647-8148

8/3/87

[Handwritten signature]

Attachment A

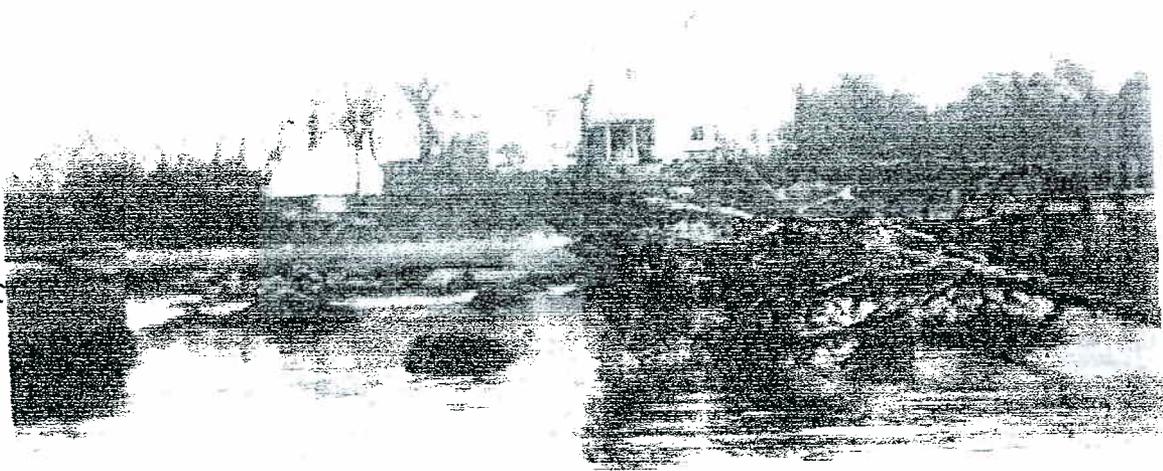
June 14 1964
Dad + Lisa
at the end of the dock



END OF DOCK →

Dad + Lisa

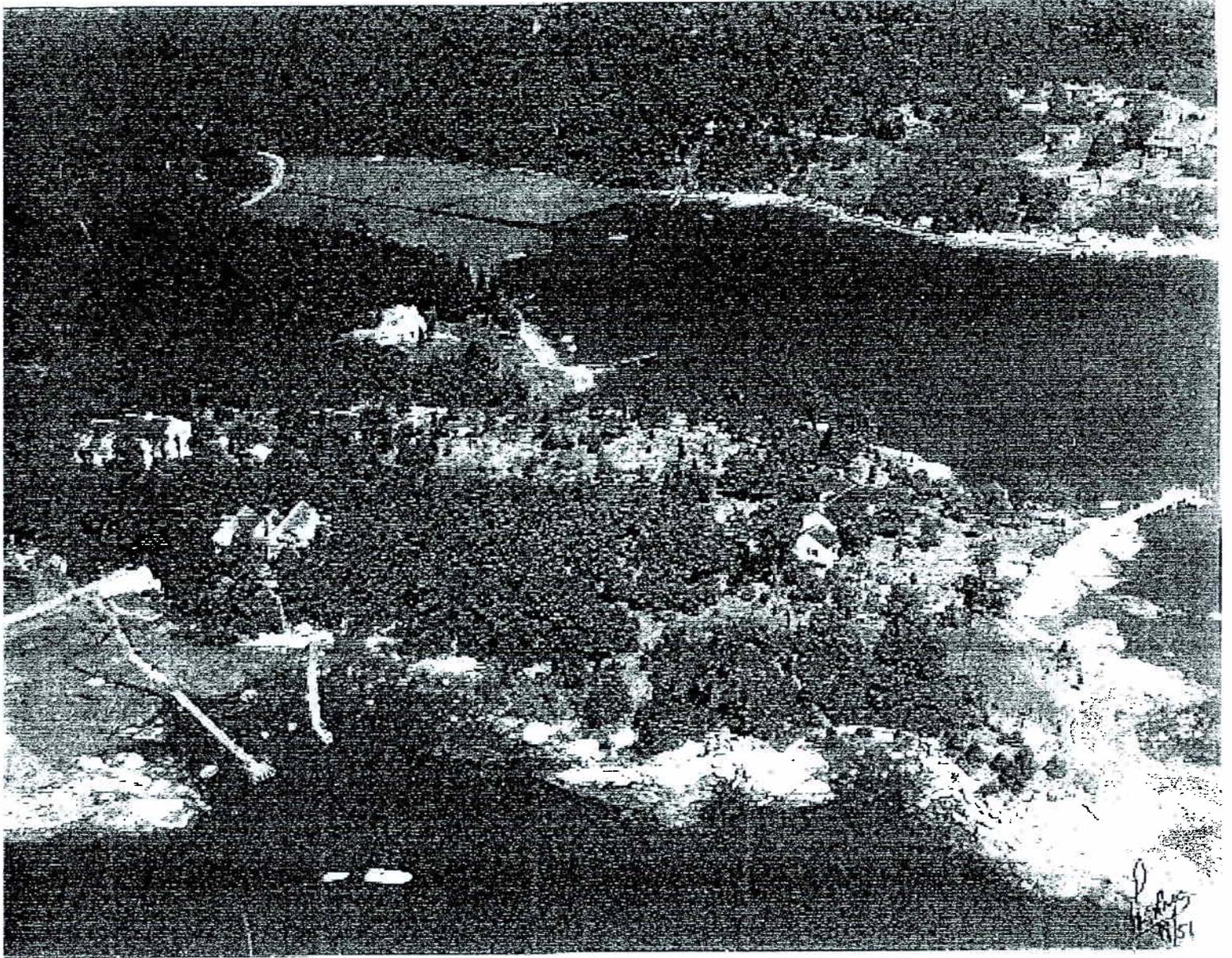
Attachment H



E 22 OF DOCK

IMMEDIATELY AFTER 1938 HURRICANE

Attachment H



AERIAL PHOTO 1951



Home | About | Help | Search | Contact Us | Privacy Policy | Terms of Use

Connecticut State Library Digital Collections

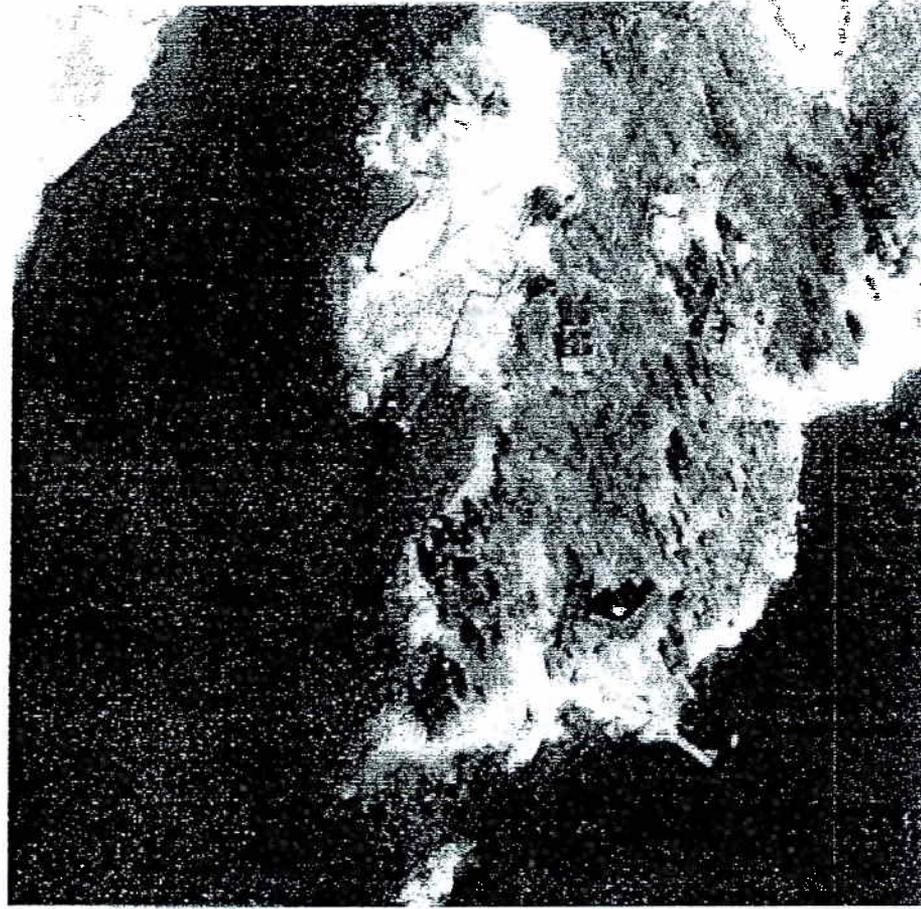
Search

Home > Aerial Survey of Connecticut 1965

Home > Aerial Survey of Connecticut 1965



Aerial survey of Connecticut 1965 photograph 00407



Title	Aerial survey of Connecticut 1965
Subject	Aerial photography Connecticut Photography
Description	Aerial photograph of the state of Connecticut, showing the coastline and major roads. The photograph was taken on an overcast day in 1965.
Town(s) Covered	Connecticut
County	Connecticut
Coverage - Spatial	Connecticut
Creator	Keystone Aerial Surveys, Inc.
Date Created	1965
Type	Image
Format	Jpeg
Publisher	Connecticut State Library
Source	Keystone Aerial Surveys, Inc.
Language	eng
Relation	

This image is from the 1974 OHF General Aerial Photo program by Lockheed Kollsman Systems, Inc.

Aerial Photo of AP Grid 137418, Stationing C
Photo Date: 07/15/74

Photo Time: 10:15 AM EST

Photo Index #: 661

Photo format: Control based on photo grid system 1974
control base photo transparency.

Geographic base: 260° Stationing B&W Photo Index
Toll Control No.

Imagery provided by

State of Connecticut Department of Environmental and Planning
1000 Elm Street, 3rd Floor, Hartford, CT 06103

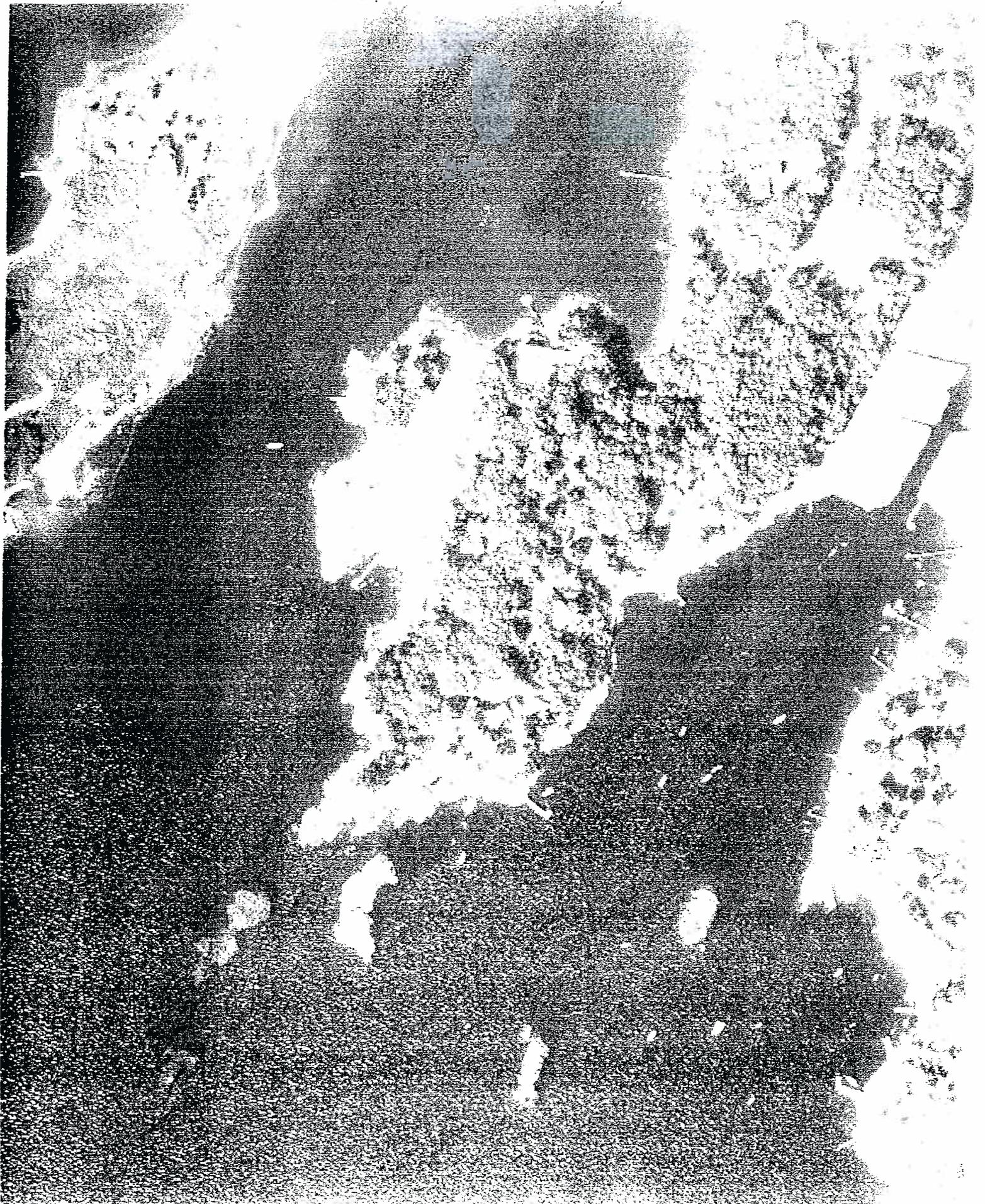
Call for more information: 860-424-3000

1 inch equals 60 feet

Scale: 1:360,000

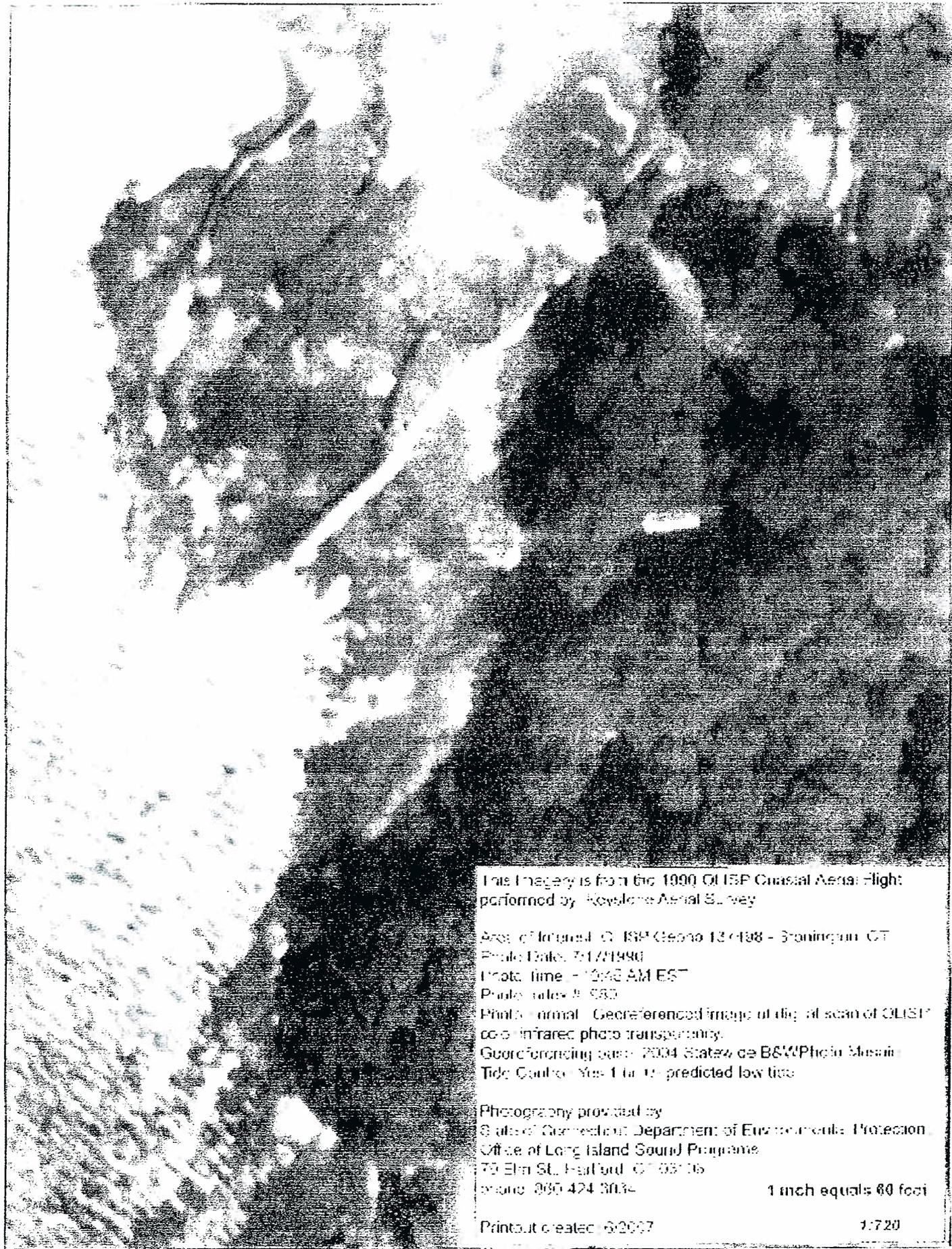
1:360,000

17-11-1980



1980

Attachment H



This Imagery is from the 1990 OLEP Coastal Aerial Flight performed by KeyStone Aerial Survey

Area of Interest: OLEP (Station 13-0138 - Branford, CT

Photo Date: 7/17/1990

Photo Time: 10:48 AM EST

Photo Scale: 1:500

Photo Format: Georeferenced image of dig. of scan of OLEP color infrared photo transparency.

Georeferencing base: 2004 Statewide B&W Photo Mission

Tide Control: Yes (1 hr. to predicted low tide)

Photography provided by

State of Connecticut Department of Environmental Protection

Office of Long Island Sound Programs

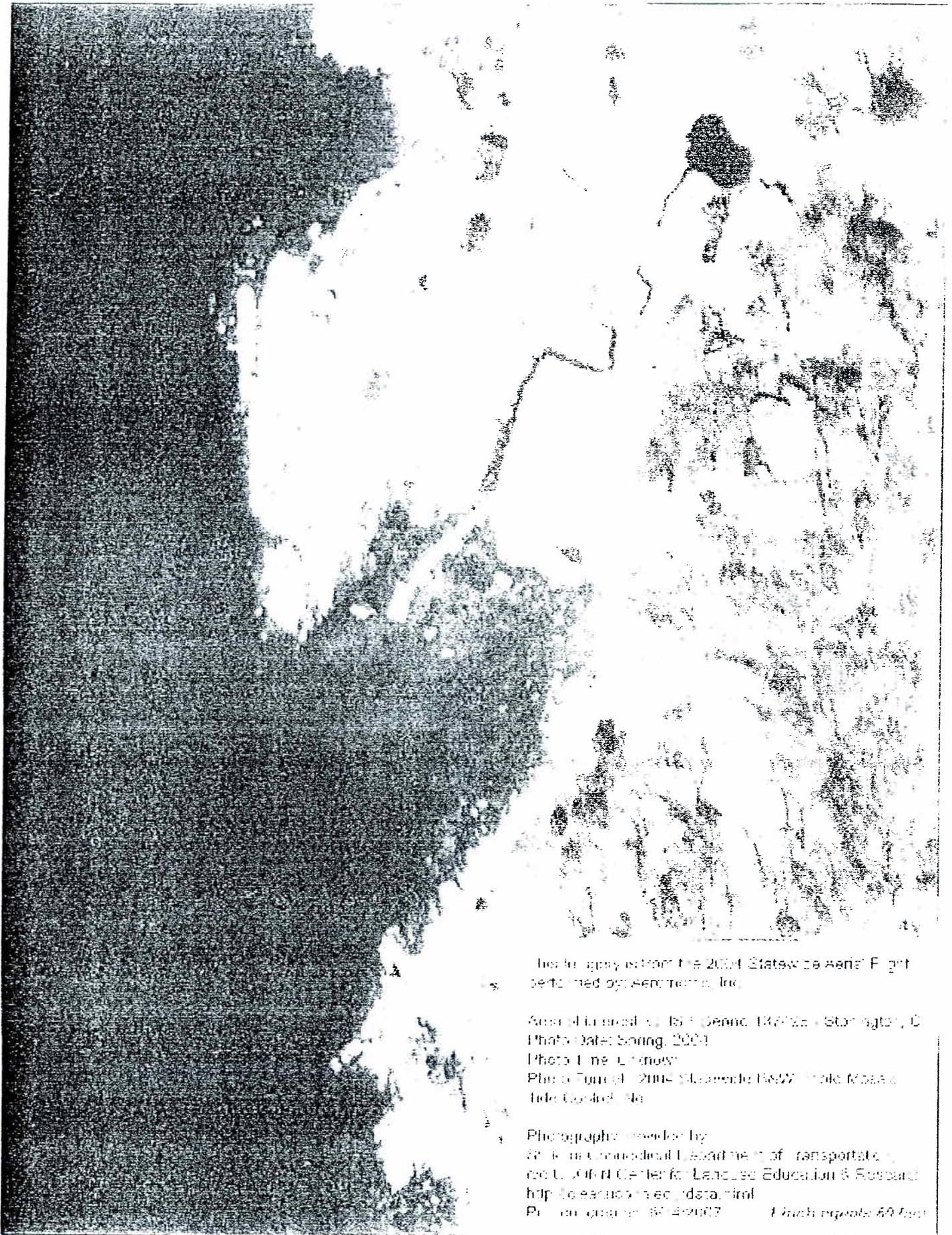
70 Elm St. Hartford, CT 06106

Phone: 860-424-3034

1 inch equals 60 feet

Printout created: 6/20/07

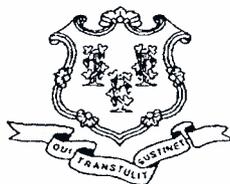
1:720



This imagery is from the 2004 Statewide Aerial Flight performed by AeroMetric, Inc.

Aerial Imagery © 2004 GeoEye, Inc. (Starlight), ©
Photo Date: Spring, 2004
Photo Line: Unknown
Photo Format: 2004 Statewide USW Photo Metadata
File Created: NA

Photographic provided by
Dr. Kenneth Goodrich, Department of Transportation
and U.S. Forest Center for Land Use Education & Research
<http://www.forestdata.org/>
Project number: 04-02007 *Each report: 50 pages*



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



NOTICE OF VIOLATION
NOV No.#LIS-2007-054-DL

To: Thomas and Gail Lane
900 19th Avenue S, #1202
Nashville, TN 37212

The purpose of this Notice is to inform you that personnel of the Department of Environmental Protection ("DEP") have made observations or otherwise obtained information indicating that a violation of law has occurred at the property located at 32 Money Point Road, Stonington, CT. On March 30, 2007, the DEP Office of Long Island Sound Programs conducted an inspection. Based upon that inspection, it appears that you have unauthorized structures comprised of a 2' X 82' plywood walk laid out atop an estuarine marsh down to a 6' X 51' pier with support pilings and two stone cribs, each 8' X 6' X 6', out to a 2.5' X 10' ramp with railing and a 8' X 20' floating dock below the evidenced high tide line without authorizations required by Connecticut General Statutes section 22a-32 and 22a-361.

Please correct the above referenced violation by removing by hand all structures to a location landward of the high tide line outside of tidal wetlands within forty-five (45) days.

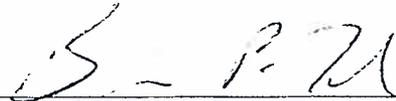
When you have corrected the violation(s) alleged in this notice, you should submit in writing the details of the corrective action(s). The submittal should be made within fifty (50) days of issuance of this notice and on the enclosed Compliance Statement, and sent to the contact person identified below in paragraph D. Until the DEP has received such a statement, the DEP will presume you remain in violation.

A. Other violations may exist; legal obligations. This Notice does not necessarily specify all violations of Connecticut environmental law or violations of any other legal requirements that may exist at the aforementioned property. This Notice does not preclude the DEP or other state, local or federal agencies from commencing any enforcement action regarding any such violations. Your facility may be inspected again pursuant to law and without additional prior notice to determine compliance with state and any applicable federal law. It is your responsibility to comply with all legal requirements, whether or not the DEP notifies you of any violations or takes any enforcement action against you. Nothing in this Notice relieves you of other obligations under applicable federal, state and local law.

B. Enforcement action. Civil penalties of up to \$1,000.00 may be assessed for each day of each violation under sections 22a-32 and 22a-361 of the Connecticut General Statutes (CGS). Notwithstanding the issuance of this Notice, the DEP may seek such penalties and may issue an order, seek an injunction, or take other legal action under CGS Chapters 439 and 446.

C. No assurance by Commissioner. No provisions of this Notice and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that actions you may take to address the violation(s) alleged herein will result in compliance.

D. Staff contact. If you have any questions regarding this Notice, please contact DeAva Lambert, Environmental Intern of the Office of Long Island Sound Programs at (860) 424-3034, 79 Elm St., Hartford, CT 06106-5127.



Brian Thompson, Director
Office of Long Island Sound Programs
Bureau of Water Protection and Land Reuse

Date of Issuance 5/7/07

COMPLIANCE STATEMENT

This Compliance Statement shall be signed by: (I) You (*if an individual-the individual signs*); (*if a corporation or partnership-by a responsible corporate officer/general partner or a duly authorized representative of such person, as those terms are defined in Section 22a-430-3(b)(2) of the Regulations of Connecticut State Agencies*); or (*if a municipality-chief elected official or principal executive officer*) and (II) if different, by the individual responsible for actually preparing such statement, each of whom shall read and sign the certification regarding false statements on the Compliance Statement.

Within fifteen days of the date you become aware of a change in any information in the Compliance Statement, or that any information was inaccurate or misleading or that any relevant information was omitted, submit the correct or omitted information to the staff contact identified on the Notice of Violation.

Notice of Violation No. LIS-2007-054-DL
DeAva Lambert, Environmental Intern
Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106-5127

In accordance with the directions in the above-referenced Notice of Violation, I certify that the noted violations have been corrected in the following manner:

Attach additional sheet(s) as needed
(Enclose supporting documentation demonstrating compliance)

Certificate of Accuracy

I certify that the information in this Compliance Statement and any attachments thereto are true, accurate and complete, and I understand that any false statement may be punishable as a criminal offense under Connecticut General Statutes Section 22a-6 and 53a-157.

Date

Signature

Telephone

Thomas and Gail Lane, Violator

Address

Date

Preparer's Signature, if different from above

Telephone

(Type name and Title)

Address

ADVICE TO RECIPIENTS OF NOTICES OF VIOLATION

Read the Notice of Violation: It tells you:

- ! what activity you have conducted or what condition on your property is causing or may result in damage to the environment;
- ! the environmental laws you are not complying with;
- ! in some cases, what action you need to take to address the environmental problem;
- ! how quickly DEP expects you to take action; and
- ! who to contact if you have a question or problem.

Do Not Cause Additional Problems: Make sure that you do not engage in activity that might result in further environmental harm.

Follow the Deadlines: If you can't meet the deadlines provided in the Notice of Violation, call the contact person. Explain why you can't meet the deadline. Staff will explore with you the feasibility of alternate deadlines.

Cooperate with DEP: Generally, DEP's first attempt to resolve the types of violations alleged in this case is through the issuance of a Notice of Violation. If you disregard this notice, it will be assumed you do not wish to cooperate and you should expect that DEP will take more formal enforcement action. This can include issuing an administrative order, and/or filing suit to obtain an injunction and penalties as provided by law. The most important thing to remember is to call DEP if you have any questions.

Call if you don't Understand: DEP staff name and telephone number are given at the end of the Notice of Violation. Staff are there to try to answer your questions and work with you to resolve the environmental compliance issue. In some cases you may need to obtain the services of a professional consultant to plan and implement effective corrective measures. DEP staff can discuss with you the kind of professional help you may need to address the alleged violation cited in the notice.

*The Notice of Violation does not necessarily specify all environmental violations which may exist at your property regulated by the Department. Nothing in the Notice relieves you of other obligations under applicable federal, state and local law.

Note to Juliet:

Enter following information into the Violations Database in Access and in PAMS:

Enforcement Action Entry Slip	
Violator's Name: Thomas and Gail Lane	Town: 900 19th Avenue S, #1202, Nashville, TN 37212

SCHEDULE A

Gail & Tom Lane
32 Money Point Road
Mystic, CT 06355

July 21, 2008

Mary Lou Kramer
Connecticut Department of Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Via: Fax, e-mail and U.S. certified mail

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, please accept this correspondence as my formal request for copies of any and all permit applications for docks, both residential and commercial, approved permit plan(s), drawings, environmental studies, and/or documents relating to or regarding the approval and/or denial of the permit applications by the Connecticut Department of Environmental Protection (hereinafter, "DEP") from September 1, 1985 up to and including January 1, 1989. The geographical scope of this request is limited to the Connecticut coastline (including all tidal wetlands covered by the Long Island Sound Program) from the Connecticut River East to the Rhode Island Border.

To the extent that the DEP claims any information covered by this request is not subject to disclosure, please provide the undersigned with a log setting forth the general nature of the information withheld and the statutory basis upon which you rely.

Thank you in advance for your consideration of this request. Should pre-payment be required, I ask that you contact me so that I may make any and all necessary arrangements for the same.

Very truly yours,

Gail Lane
GailPL@aol.com
860-326-2032
Fax 775-201-1356

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

PETITION OF THOMAS AND GAIL LANE
FOR A DECLARATORY RULING
AS TO WHETHER THE OFFICE OF LONG
ISLAND SOUND PROGRAMS ERRED IN
DENYING AN APPLICATION FOR
CERTIFICATE OF PERMISSION FOR
STRUCTURES ON PROPERTY WHERE
STRUCTURES HAVE EXISTED SINCE
PRIOR TO 1939 AND ISSUING A NOTICE
OF VIOLATION FOR STRUCTURES
SUBSTANTIALLY REPAIRED IN 1987
WITHOUT A PERMIT

AFFIDAVIT OF THOMAS LANE

I, **THOMAS LANE**, being first duly sworn, do depose and state as follows:

1. That I am over the age of 18 and understand the responsibilities and obligations of an oath.
2. I make this Affidavit based on my personal knowledge and belief.
3. I currently reside at 32 Money Point Road in Mystic, Connecticut.
4. On July 21, 2008, my wife, Gail Lane submitted a request, pursuant to the Freedom of Information Act ("FOIA"), to the Connecticut Department of Environmental Protection ("DEP") seeking copies of any and all permit applications for residential and commercial docks, approved permit plan(s), drawings, environmental studies, and/or documents relating to or regarding the approval and/or denial of permit applications by the DEP from September 1, 1985 up to and including January 1, 1989. The FOIA request is attached hereto as Schedule A.

5. The geographical scope of the FOIA request was limited to the Connecticut coastline (including all tidal wetlands covered by the Long Island Sound Program) from the Connecticut River East to the Rhode Island border.

6. On August 26, 2008, Mrs. Lane and I came to the public access file room at the DEP to review 151 files which were produced by the DEP in response to the FOIA request.

5. A review of the 151 files revealed that no permits had been issued in the relevant time period for the repair of residential waterfront structures, including docks and seawalls, after Hurricane Gloria.

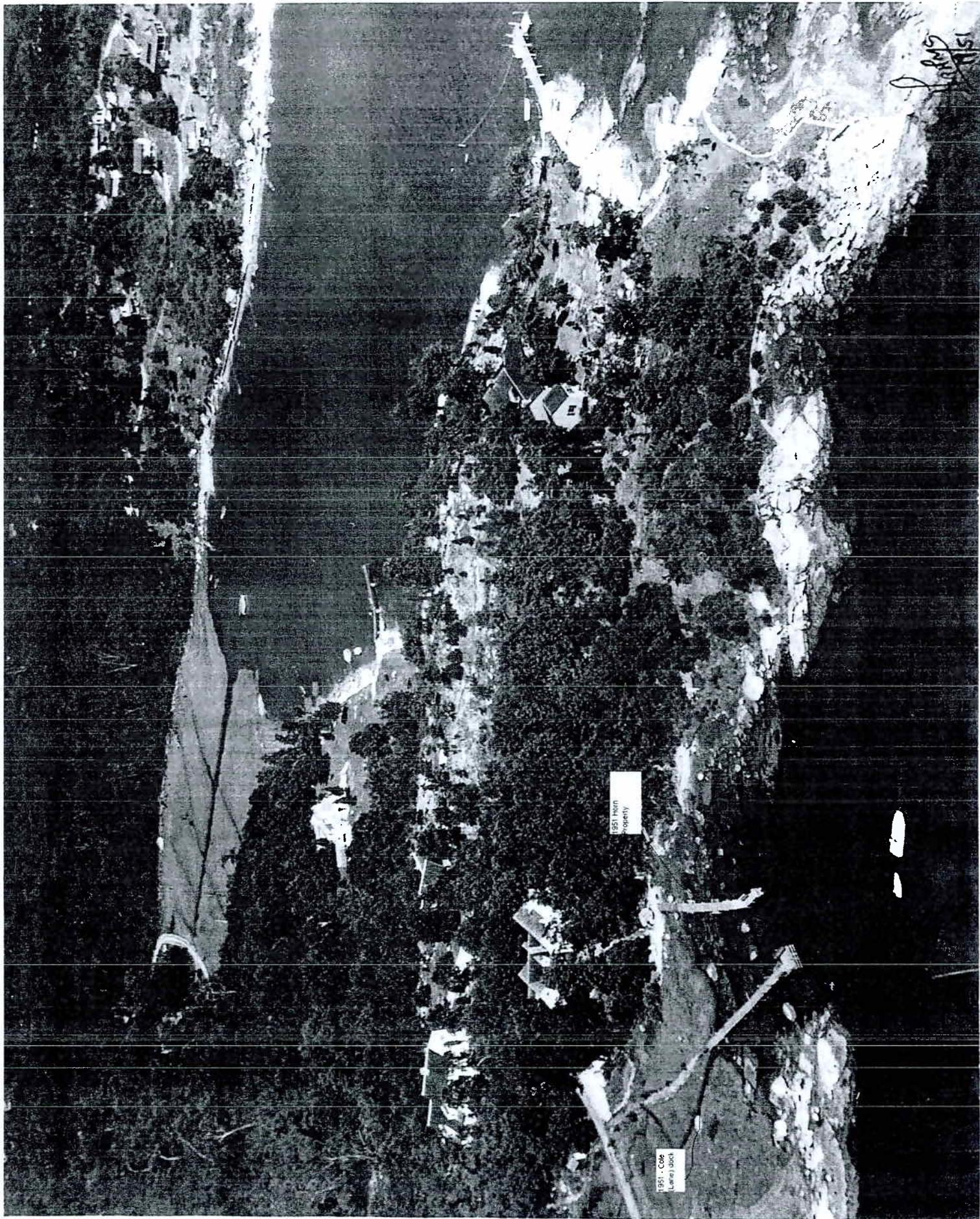
6. After contacting various members of the DEP staff about the absence of such permits, Michael P. Grzywinski, Senior Environmental Analyst of the DEP Office of Long Island Sound Programs (“OLISP”), met with Mrs. Lane and I on August 26, 2008.

7. Mr. Grzywinski stated that he has been an employee of the DEP for approximately thirteen (13) years.

8. Mr. Grzywinski advised Mrs. Lane and I that after joining the DEP, he was told by agency members who were on staff in the 1980s that it was not practical or possible for the Department to issue permits for all of the docks and other structures damaged by Hurricane Gloria.

9. Mr. Grzywinski advised that the DEP’s policy at the time was to provide verbal permission to repair a damaged dock to any person who had an existing permit.

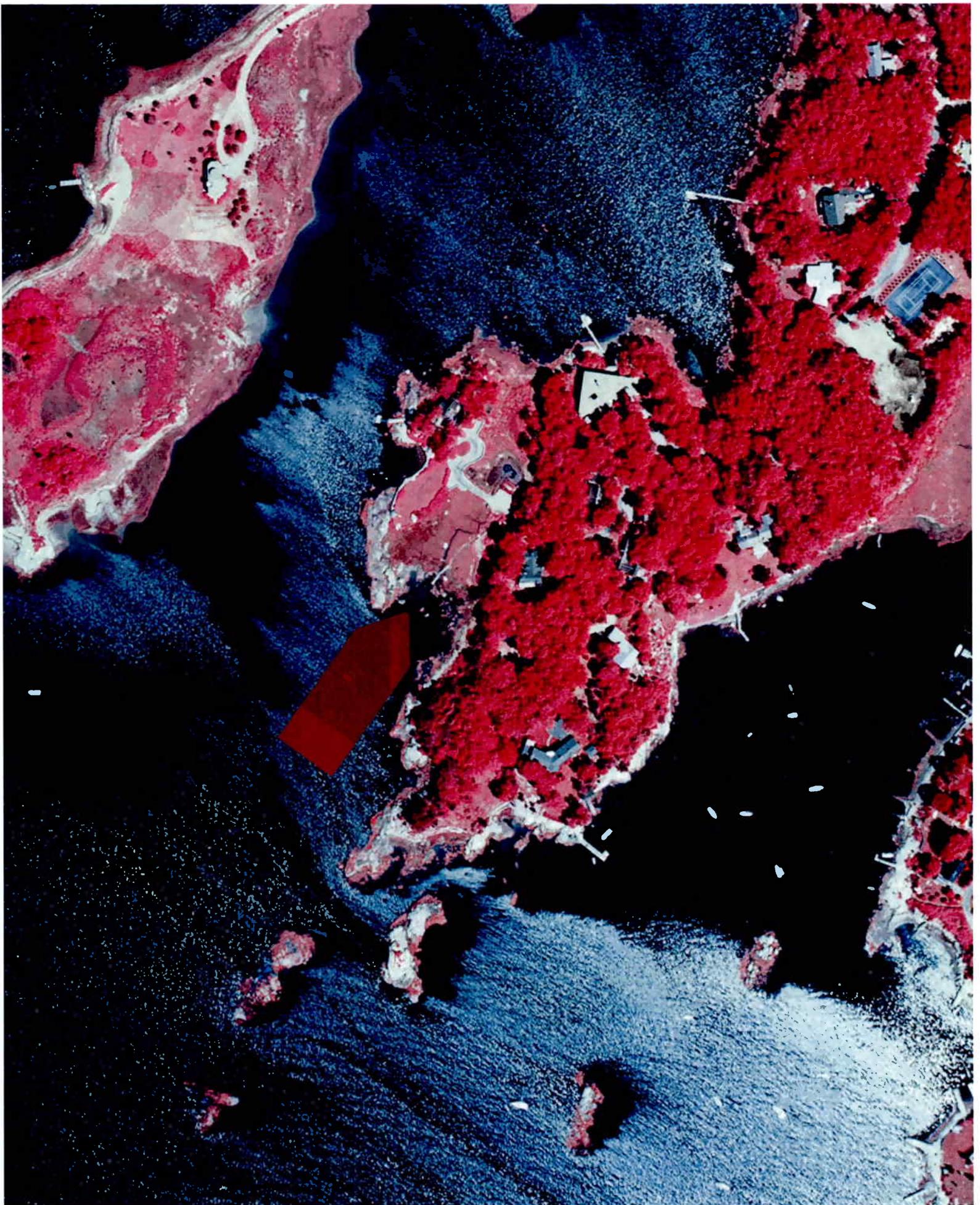
10. Mr. Grzywinski also advised that no process for issuing a Certificate of Permission was in place before 1990, and thus, a pre-1939 structure would have been given a “grandfathered” status.

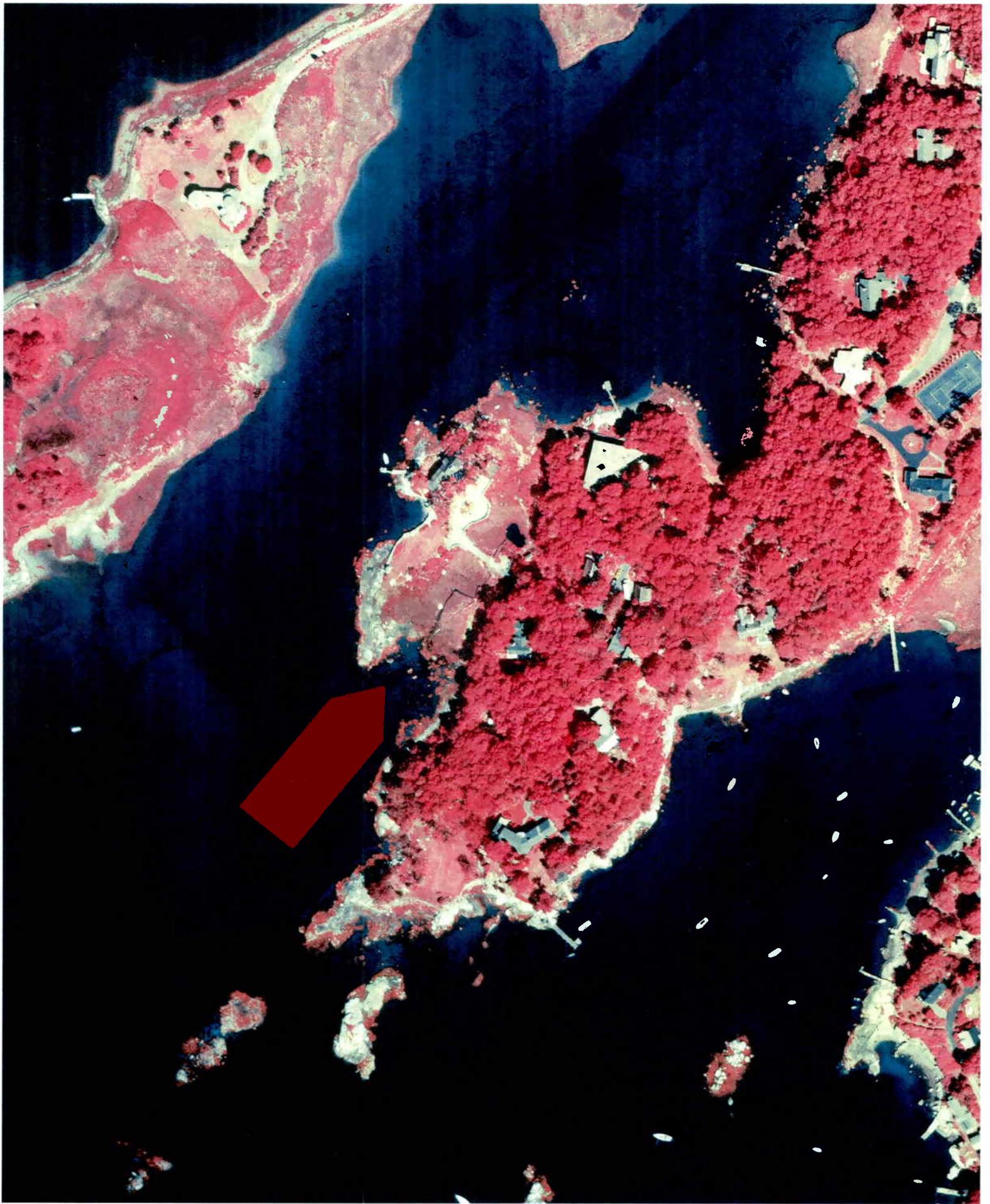


1951
1951

1951 - Home property

1951 - Cole Lane) dock





MURTHA CULLINA LLP

A T T O R N E Y S A T L A W

GREGORY A. SHARP
(860) 240-6046
GSHARP@MURTHALAW.COM

CITY PLACE I
185 ASYLUM STREET
HARTFORD, CONNECTICUT 06103-3469

TELEPHONE (860) 240-6000
FACSIMILE (860) 240-6150
www.murthalaw.com

July 16, 2007

RECEIVED

JUL 16 2007

DEP OFFICE OF
LONG ISLAND SOUND PROGRAMS

VIA HAND DELIVERY

Brian Thompson, Director
Office of Long Island Sound Programs
Bureau of Water Protection and Land Reuse
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Re: Thomas and Gail Lane/NOV No. LIS-2007-054-V

Dear Mr. Thompson:

I am writing on behalf of my clients, Thomas and Gail Lane, in response to the Notice of Violation ("NOV") dated May 7, 2007, referenced above relating to their property at 32 Money Point Road in Mystic. Because the Lanes did not receive the letter until June 1, 2007, you extended the response time in the NOV, by letter dated June 6, 2007, until July 21, 2007, for which my clients thank you.

As you confirmed in our telephone conference of June 20, 2007, the Department's NOV's requests the Lanes to remove by hand, within 45 days, a number of structures in front of their property that pre-existed their ownership. Specifically, you have requested the Lanes to remove a 2' X 82' plywood walk, a 6' X 51' pier with support pilings and two 8' X 8' X 6' stone cribs, and a 2.5' X 10' ramp with railing and an 8' X 20' floating dock. Please note that the "plywood" reference is in error. The walkway is made of wooden treads on runners, similar to pallet construction.

It is my understanding that this NOV was initiated as a result of the Lanes' coming to your office on March 28, 2006 with a consultant to seek permission for eliminating the "plywood" walkway referenced in the NOV and replacing it with a raised walkway across the marsh. Their proposal would have resulted in an accessway over the salt marsh that is far more environmentally sensitive than the original stonedust and gravel path which existed 60 or 70 years, or the wooden boards of more recent vintage. It also would have been easier to maintain and provide more convenient access to the Lanes' dock. It is further my understanding that, at that meeting, Ms. Bailey explained OLISP's "policy" disfavoring boardwalks in these

BOSTON

HARTFORD

NEW HAVEN

STAMFORD

WOBURN

Brian Thompson, Director
July 16, 2007
Page 2

circumstances, described the permitting process for the boardwalk, and made an appointment to visit the site on March 31, 2006.

On March 31, 2006, Ms. Bailey and Ms. Chase of your office came to the property, observed the walkway and dock structures and advised Mrs. Lane that the walkway would have to be removed. Apparently, no mention was made of the dock. Mrs. Lane advised Ms. Bailey and Ms. Chase that, in view of the fact that the Lanes were returning home to Tennessee, they would be unable to remove the walkway immediately. Mrs. Lane, after speaking with Mr. Lane by telephone, then contacted Ms. Bailey by voicemail and follow-up written confirmation and requested what the statutory basis was for the removal request and what appeal rights, if any, were available to the Lanes. I am advised that the first and only response to her requests of April, 2006 was the NOV issued 13 months later, at which point the Lanes sought my assistance.

The Lanes, with the assistance of Keith Neilson and this firm, have compiled copies of aerial photographs over the last 70-plus years, spoken to neighbors who have lived on Mason's Island for many years, the previous owner, Dr. David Shiling, and the contractors who were responsible for the last reconstruction of this pier and dock facility in 1987. As a result of this research, I am compelled to contest the determination that led to the NOV. This pier and dock facility has a long-standing history which dates back prior to the 1938 Hurricane and precedes the jurisdiction of the original Structures and Dredging Act. We have photographs to document that point.

Based on staff notes in the public file, it appears that the basis for the NOV with respect to the dock structure rests solely on the aerial photograph of July 15, 1986. For the reasons set forth below, this determination, based on a single piece of information, is an inappropriate, unfair, and unreasonably punitive basis on which to pursue an NOV.

As you know, Hurricane Gloria struck the southeastern Connecticut coast very close to this location on September 15, 1985 and caused significant damage throughout the region and in adjacent states. At the time of landfall, Gloria is estimated to have been a Category 2 Hurricane. Boats were ripped from their moorings and marina slips, hurled about by wind-driven waves, and left stranded on railroad tracks and railroad embankments, creating a significant mess on the southeastern Connecticut shoreline. Docks were also destroyed or significantly damaged, as were marina terminals in New London and Mystic, and industrial facilities such as Pfizer and Dow. In short, it was a disaster, and it took contractors in this area, Long Island, and Rhode Island months, and, in many cases, more than a year to clean-up all the damage that was done along the shoreline.

It happens that the reconstruction of the dock at what is now the Lanes' property, was also necessitated by this hurricane, but, like many damaged residential docks, repairing this dock was a relatively low priority for marine contractors. Dr. Shiling the owner at the time, along

Brian Thompson, Director
July 16, 2007
Page 3

with residents in similar situations, deferred to the contractors' judgments and schedules in taking care of the highest priority repairs and reconstruction first. As a result, Dr. Shiling's dock did not get re-built until 1987. Mr. Neilson has spoken with the contractors who did the work, Don and Randall Conradi, and they have confirmed this fact.

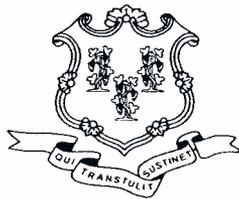
The structure as re-built in 1987 was notably shorter and smaller in dimension than the original pier, where a 38-foot sailboat had been moored. The current facility is utilized for small vessel recreational boating and has been rebuilt to minimum standards consistent with the Structures & Dredging Act and Coastal Management Act. Mr. Neilson, who has been to the site and is familiar with the equipment used by Conradi at the time, a vibratory air hammer, has advised that it is likely that driving piles was impractical with the vibratory hammer due to ledge conditions, and the crib structure was utilized as an alternative to piles to provide stability. The large quantity of rock blasted from the neighboring property during a recent expansion of the adjacent residence, which your staff has observed, lends support to this conclusion. We believe that this evidence is compelling in favor of the Lanes who bought the property in 2004 with the dock facility as it exists and have maintained it actively since that time.

On behalf of the Lanes, I would request your office to reconsider the factors associated with your determination to issue this NOV and let us know how we can resolve the issues it raises so that the Lanes can retain the existing structure and rebuild the walkway to make it more closely conform to the goals of the statutes under which you operate. If you would like to meet on this matter, we will make the necessary arrangements to suit your convenience. Please let us know how we can work together to resolve this issue.

Very truly yours,


Gregory A. Sharp

cc: Thomas and Gail Lane
Keith Neilson, P.E.



STATE OF CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION



July 27, 2007

Gregory A. Sharp
Murtha Cullina, LLP
Cityplace I
185 Asylum Street
Hartford, CT 06103-3469

Re: Thomas and Gail Lane/NOV No. LIS-2007-054-V, Stonington

Dear Mr. Sharp:

I am writing in response to your letter dated July 16, 2007, contesting the determination of the notice of violation referenced above and requesting consideration for retention of the walkway and dock that are the subject of the notice. I have further reviewed the evidence upon which the notice is based and the applicable statutes and regulations regarding Structures, Dredging, and Fill. We maintain that the walkway and dock facility were installed without authorization and that they are inconsistent with our current policies, as well as those employed in 1987, regarding structures in tidal wetlands.

Section 22a-363b of Connecticut General Statutes (CGS) exempts routine maintenance of permitted structures and structures that were continuously maintained and serviceable since June 24, 1939. Although a dock facility may have been present at this site prior to 1939, substantial changes in the dock facility are evident in the aerial photography from 1951 to 2005, including pier extensions, float additions and changes, and the installation of support cribs in different areas of the facility. These changes do not meet the definition of routine maintenance, defined in section 22a-363a of CGS as replacement and repair of out-of-water structures including the surfaces of docks and piers and replacement or reinstallation of up to 25% of all pilings approved in accordance with section 22a-361 of CGS. Furthermore, these changes, including reconstruction of the dock after its alleged destruction in 1985, were not eligible for authorization through a certificate of permission as substantial maintenance or minor alterations pursuant to section 22a-363b. Substantial maintenance is defined in section 22a-363a of CGS as rebuilding, reconstructing, or reestablishing to a preexisting condition and dimension any structure, fill obstruction or encroachment, including maintenance dredging. The changes made to the dock facility regarding the installation of support cribs in different areas of the facility that are evident in the aerial photography would not be considered reestablishing to a preexisting condition and dimension or minor alterations. We conclude that the dock facility was never eligible for a certificate of permission to be re-installed and that it cannot be presently authorized under a permit.

Since the walkway did not appear until after 1986, it is ineligible for retention pursuant to section 22a-363b (b) of CGS. Since both the walkway and the dock facility are inconsistent with DEP policies regarding installation of structures in tidal wetlands, they

LIS-2007-054-V
Thomas & Gail Lane, Stonington
Page 2

cannot be retained with a permit pursuant to 22a-361 of CGS. Therefore, the unauthorized walkway and dock facility must be removed in accordance with the notice of violation. If after the removal of the walkway and dock, the Lanes wish to pursue authorization for the placement of a dock facility that is consistent with DEP policies, my staff would be available to meet with them to discuss possible options. As the area of the walkway is high marsh, it is unlikely that a structure proposed over this area would be approvable.

If you have any questions, please contact DeAva Lambert of the Office of Long Island Sound Programs at (860) 424-3207, 79 Elm St., Hartford, CT 06106-5127. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "B. P. Thompson", with a long horizontal line extending to the right.

Brian Thompson, Director
Office of Long Island Sound Programs
Bureau of Water Protection and Land Reuse

dkl/
Enclosure
cc: Diane Ray, US ACOE
cc: Thomas and Gail Lane
32 Money Point Rd.
Mystic, CT 06355

MURTHA CULLINA LLP

A T T O R N E Y S A T L A W

CITYPLACE I
185 ASYLUM STREET
HARTFORD, CONNECTICUT 06103-3469

TELEPHONE : 860 240-6000
FACSIMILE : 860 240-6150
www.murthlaw.com

GREGORY A SHARP
(860) 240-6046
GSHARP@MURTHALAW.COM

December 31, 2007

Brian Thompson, Director
Office of Long Island Sound
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

Re: Thomas and Gail Lane,
NOV No. LIS-2007-054-V, Stonington

Dear Mr. Thompson,

I am writing on behalf of my clients, Tom and Gail Lane, concerning their dock at 32 Money Point Road on Mason's Island. This letter serves as a follow-up to my previous correspondence in which I tried to resolve the outstanding Notice of Violation issued by your office requesting removal of the long-standing, pre-existing dock on the property, which they acquired in 2004.

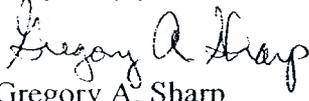
The Lanes have requested me to communicate their position on this matter in the hope that your Office would acknowledge their right to retain the dock at the property. The Lanes have provided ample documentation that supports their contention that the dock should be considered "grandfathered" under the relevant statutes. The dock was originally constructed in 1937 according to the affidavit by a resident who lived at the property at the time. See Schedule A, Letter and Affidavit of Josy Cole Wright. The dock was depicted in a photograph taken in 1938 following the hurricane of that year. See Schedule B, front and back of photograph showing a downed tree, the dock and houses identified as being owned by Cole and Horn in the background. Renovations performed by a prior owner, Dr. Shiling, following Hurricane Gloria in 1985 were undertaken with necessary approvals, the lack of a DEP file on the work notwithstanding. See Schedule C, Letter and Affidavit by Dr. Shiling, Contemporaneous notes by Dr. Shiling of verbal approval from Ralph Atkinson (retired) at the Army Corps of Engineers, dated 8/3/87. You might inquire of staff who can still remember the aftermath of Gloria how the reconstruction of previously existing structures in southeastern Connecticut was handled.

Brian Thompson, Director
December 28, 2007
Page 2

In any event, the Department took no action against the prior owner who authorized the work. The prior owner, believing the dock was in built in accordance with regulatory requirements, then sold the property to Dr. Robert Stetson, who in turn sold it to the Lanes in 2004, receiving full value for the dock improvements. Now, 20 years after the work was performed, the Department seeks to impose the cost and expense of removal and reconstruction on the Lanes, for a prior owner's repairs to a structure that has existed at the site since 1937.

On behalf of my clients, and in the interest of justice, please reconsider your position.

Very truly yours,


Gregory A. Sharp

cc: Thomas and Gail Lane

SCHEDULE A

Dear Gail and Tom,

June 12, 07

What a lot of memories you stirred up with your inquiry about the dock at "Crosstrees". Yes there was a dock on the property in 1957. Whether it is the same dock that exists now ^{or not} that a former owner might have constructed, I do not know.

The dock that my family built that I remember was built in the spring of 1957 to be ready for that summer, our first as Mason Island. My father's boat "Bobcat" a old drop keel design which had belonged to his father and was of primary importance to our

summer lives was moored to the stern of
the dock as was my little cat boat
acquired in 1941.

The dock had a short gravel path
leading to it and a ramp up to it so that
we could use a wheelbarrow to haul
gear to and from. The 4 foot wide
dock extended far enough to the south
so that we could remain off it and even
dive off at high tide. There was an
outboard motor on the east
side. The dock had been damaged in
the '63 hurricane and when rebuilt had
a platform with a bench on the south
end - nice for sunbathers and those
waiting to get out to the "Bahamas".
There is no doubt in my mind that a
dock was there in 1959, we couldn't
have done without it.

It is good to know that you are
enjoying the house. I, age 9, broke
ground for it in early spring '63.
A you probably know John Dillon
was the architect but it was my
mother's vision. The garage was the
first attached garage ever seen in
that area. I could go on but it's

The dock is as heavy my husband points
out a dock, that interests you and
the 'B' I.D. now. I would be happy
to write them or speak to them.
I am sorry. And if you have any
questions do call us at 401 923 2778
or 401 423 1503 (our summer home) both
are in Tannockburn both have a security
machine which we check daily. I
certainly hope this helps you. I can't
imagine living life without a dock.
I love the drawing of
crosses.
Sincerely,
Joey

Document 1, Image 3 of 3

AFFIDAVIT OF Josy Cole Wright

I, Josy Cole Wright, am over the age of eighteen (18) and understand the obligations of an oath, do hereby attest and state as follows:

1. The attached 3 page document is a document generated by me.
2. I am personally familiar with the information set forth in said document and do hereby attest that the facts set forth there in are true and accurate.
3. The statements set forth in said document were voluntarily made and were not the product of coercion, threat or force.

Josy Cole Wright Josephine S. Wright

Josy Cole Wright
86 Clarke St.
Jamestown, RI 02835

Date of Birth:
Jan. 29, 1929

Subscribed and sworn to before me this
27th day of July, 2007.

Sandra M. Paterson
Notary Public / Commissioner of the Superior Court

SANDRA M. PATERSON
Notary Public
My commission expires 11-30-2008

SCHEDULE B

Waterfall



SCHEDULE C

David J. Shiling, M.D.
270 Broadway
Norwich, CT 06360

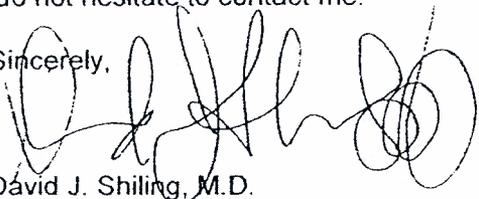
July 12, 2007

To Whom It May Concern:

We owned the house at 32 Money Point Road, Masons Island, at the time the dock that is currently in was built (Circa 1988). We contracted with Randy Conraty of Avondale Boat Yard in Rhode Island to build the dock. All necessary permits were in place for the dock prior to construction. My recollection is that permission to rebuild the dock to its former length out over the water as per a flyover done of that area of the shoreline was undertaken and did not go beyond what was allowed. All building permits from the Town of Stonington were obtained.

If I can be of any further use in this situation, please do not hesitate to contact me.

Sincerely,

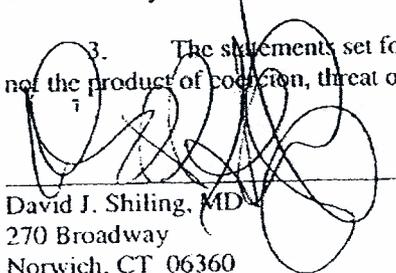

David J. Shiling, M.D.

DJS/kk/7/13/2007

AFFIDAVIT OF David J. Shiling, MD

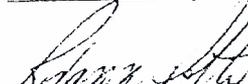
I, David Shiling, MD, am over the age of eighteen (18) and understand the obligations of an oath, do hereby attest and state as follows:

1. The attached 1 page document is a document generated by me.
2. I am personally familiar with the information set forth in said document and do hereby attest that the facts set forth there in are true and accurate.
3. The statements set forth in said document were voluntarily made and were not the product of coercion, threat or force.



David J. Shiling, MD
270 Broadway
Norwich, CT 06360
Date of Birth:

Subscribed and sworn to before me this
20th day of August, 2007.



Notary Public / Commissioner of the Superior Court

Commission expires on 10-31-08

Approval for repair of Dock 32 May (B) (K)

REPAIR & RENOVATION SECTION OF THE
US ARMY CORPS OF ENGINEERS NATIONAL
PERMIT - GO! ←

STELLA ATKINSON - 617-627-8148

8/3/87



29

MODE = MEMORY TRANSMISSION

START=DEC-21 19:18

END=DEC-21 19:18

FILE NO. = 124

STN NO.	COM	ADDR NO.	STATION NAME/TEL. NO.	PAGES	DURATION
001	OK		92750299	001/001	00:00:25

-DEP DL1SP

***** - ***** - 860 424 4054- *****



Fax

To: John Casey From: DaAva Lambert

Fax: (860) 275-8299 Pages:

Phone: (860) 275-8359 Date: December 21, 2007

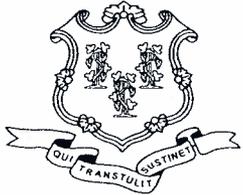
Re: Enforcement at 32 Money Point Rd. Mystic CC:

Urgent For Review Please Comment Please Reply Please Recycle

• Comments:

I received your message today regarding enforcement at the Lane property. Cheryl Chase, the Supervising Environmental Analyst for Permitting & Enforcement in East spoke with Greg Sharpley today. He is preparing a letter on behalf of the Lanes, indicating their opposition to the Notice of Violation and any modifications to their dock that would be required in a consent order. Once I receive the letter, the removal order will be processed.

Sincerely,



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



August 6, 2008

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Thomas and Gail Lane
900 19th Avenue South Apt. 1202
Nashville, TN 37212-2155

Subject: Certificate of Permission Application no. COP-2008-103-DL, Town of Stonington

Dear Mr. & Mrs. Lane:

This is to notify you that the above-referenced application is ineligible for a Certificate of Permission (COP) pursuant to Connecticut General Statutes (CGS) Section 22a-363b. Your application sought to remove a 100-foot long and 4-foot wide boardwalk and 17 feet of the landward portion of a 5'x 74' fixed dock, retain and maintain an 8'x 16' floating dock, a 3'x 12' ramp, and a 5'x 57' fixed dock with two 8'x 8' support cribs and pilings, and construct a 4'x 152' raised wooden walkway. Your application indicated these activities to be substantial maintenance of structures in place prior to June 24, 1939. However, our letters to you and your attorney dated July 27, 2007 and February 4, 2008 explained that the present structures are not equivalent to what had existed in prior years. Since there was no walkway and dock present in 1981 and 1986, the current structures have not been maintained and serviceable since June 24, 1939, nor were they completed prior to January 1, 1980. As those letters further stated, the structures require authorization pursuant to Sections 22a-361 and 22a-32 of Connecticut General Statutes, and both the walkway and dock would require removal or modification since they are inconsistent with DEP standards and causing adverse impacts to tidal wetlands. Therefore, the proposed activities do not meet the eligibility criteria for a Certificate of Permission, and your application is denied.

Please be aware that any work in tidal wetlands, or waterward of the high tide line in the tidal, coastal, or navigable waters of the state undertaken without a valid permit or certificate of permission is a violation of state law and subject to enforcement action by this Department and by the Office of the Attorney General. Thank you for your cooperation in this matter.

Sincerely,

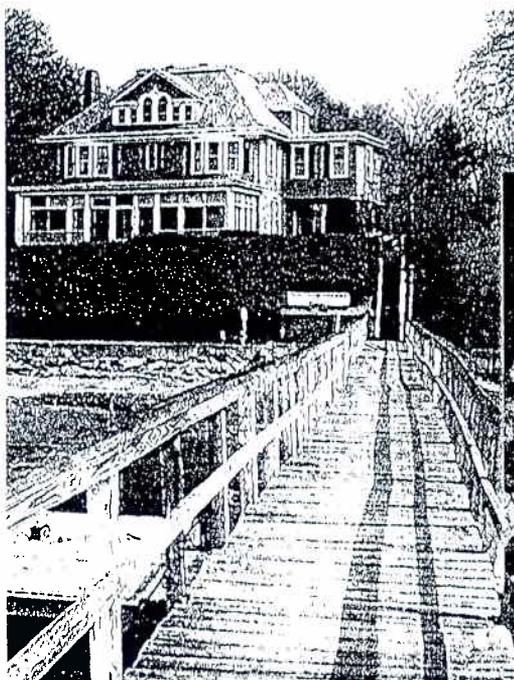
Brian Thompson, Director
Office of Long Island Sound Programs
Bureau of Water Protection & Land Reuse

BT/dkl
Enclosure

cc: Gary Sharpe, P.E.
Edward Haberek, Jr., First Selectman
Rufus Allyn, Harbormaster
State Sen. Andrew Maynard
State Rep. Diana Urban

THE HOME FRONT

When the Dock is Worth More Than the House



Value Added: Deep-water docks such as this 250-foot-long pier in Spring Island, S.C. (above), command higher premiums, as do those in environmentally sensitive areas like Cove Neck, N.Y. (left), where new construction is limited.

Domenico Lombardi/Sherwin-Williams; David Johnson/PhotoQuest; Doug Knecht/PhotoQuest

Continued from page W1
the number of boats has grown, so too has the dock-building logjam, stirring up community feuds and petty politics between newcomers and longtime residents.

"It all boils down to the same thing," says John Weldon, a member of the city council in Neptune Beach, Fla., which recently passed new dock-building regulations. "More and more money comes down to Florida and it creates more and more friction."

Although laws regulating design and materials have driven up costs somewhat in recent years, the physical cost to construct a deep-water dock rarely tops \$75,000 in most parts of the country, and smaller docks can cost far less. In a few areas, rugged seas or unusual restrictions can push the price tag into the six figures, and maintenance can add thousands of dollars a year. Even so, that pales in comparison to what docks add to the value of the real estate. "I personally think some of the values are overstated," says Steve Bliven, a harbor planning consultant in South Dartmouth, Mass. But Mr. Bliven adds, "it's a market economy."

Getting Into Deep Water

There is no official measure for calculating dock premiums. But appraisers, brokers and other real-estate experts say they are able to get a reasonable estimate in various areas by analyzing past sales. In the Cape Cod town of Osterville, for example, the median sale price of a home with a dock last year was \$5.8 million—versus \$2.45 million for a waterfront home without one, according to local real estate agent Jack Cotton. While properties with docks are often larger or better situated, Mr. Cotton says a good dock routinely adds at least \$1 million to a property's sale price.

Appraisers also look at "paired sales"—properties that are similar except for one feature. Chatham, Mass., where Mr. Manker has his dock, provides a particularly good example: two five-bedroom Colonials that sold within four months of one another. Both were waterfront properties with similar acreage and square footage, but only one had a dock. The difference in sale price: \$1.3 million, a 33% premium.

For most of the 20th century, adding a dock required little more than a local building permit. New environmen-

tal regulations passed in the 1970s and 1980s added a layer of bureaucracy but rarely blocked construction altogether, except in a few especially sensitive areas. Only recently have construction bans, moratoriums and other harsh restrictions become widespread enough for docks to command such significant premiums.

In some areas, long waiting lists for berths at public moorings and slip space at private yacht clubs mean that private docks are the only option for many boat owners in need of a place to tie up their crafts. Duxbury, Mass., resident Bill Rice, who recently paid \$1.7 million for a 0.78-acre waterfront property with a five-bedroom house, a pool and a dock for his 15-foot Boston Whaler, says he would have had to wait years to get a mooring in town. Without a private dock, he says, "we wouldn't have had access." But for many boat owners, private docks are about convenience, rather than need. "To be able to walk down to the end of the dock, grab my gear and go—it's a great thing," says Long Island lawyer Richard Hutchinson, who owns a home in Cove Neck, N.Y., with a 175-foot-long deep-water dock for his 36-foot Chris-Craft power boat.

Docks are worth far less in areas where they are commonplace or relatively easy to build; in much of the Midwest, for example, where lakefront docks usually require no special permits, they add just \$15,000 to \$20,000 to the property value, roughly the cost of construction.

The ones that add the most value are those that have access to deep water even at low tide, include

water and electric hookups and can withstand storms without being pulled out of the water. Deep-water docks—commonly defined as those with at least six feet of water at low tide and suitable for a large sailboat—are often worth two or three times as much as those in more shallow water.

There are exceptions, however. In Nantucket, where only a handful of properties have private docks and new construction has been banned since April 2005, a property sold for nearly \$18 million that year, and local agents say anywhere from \$4 million to \$7 million of the price came from the dock. This, despite the fact that it sits in four or five feet of water at low tide, enough for only about a 20-foot boat.

Seattle-based dock builder Waterfront Construction charges up to \$90 per hour to help property owners obtain an average of seven required permits from the state Department of Ecology. Dave Douglas, a permit coordinator for the company, says the cost of getting a dock permit has more than tripled in the past decade.

When Billy Joel paid \$22 million for a 14-acre waterfront estate on Centre Island in 2002, located in the Oyster Bay National Wildlife Refuge, he assumed he'd be allowed to rebuild a dock that once stood on the property. But U.S. Fish & Wildlife Service, which controls dock-building in the refuge, refused the request because the property's dock permit had expired. Mr. Joel, who had in-pull support for the project, eventually gave up and is now selling. "Because I'm a high-profile person, if I was allowed to build a dock, it would open up a can of worms because many people have applied for dock permits and have been denied," Mr. Joel says. A spokesman for the refuge says the agency's rules are intended to protect wildlife and are applied consistently.

The Manatee Question

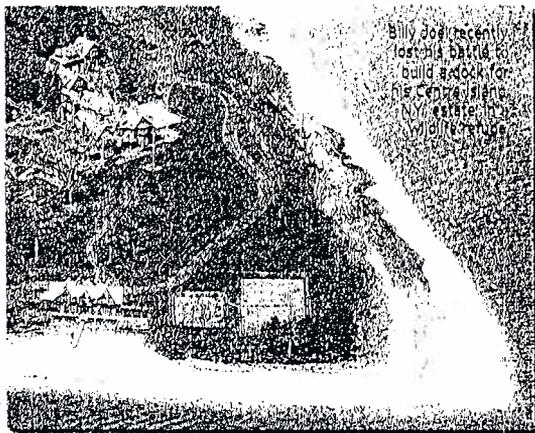
Most current dock-building restrictions are rooted in environmental issues and concerns about increases in recreational boating activity. Many of the country's most popular boating areas lie in environmentally sensitive areas. Florida's Biscayne Bay, for example, is a key habitat for the threatened manatees, while Puget Sound is home to the threatened Chinook salmon.

Others argue that strict rules are necessary because while one dock may not do much environmental damage, many docks can. "If everybody who lives in Oyster Bay wants to put up a dock, then all we'd have is docks

everywhere," says Michelle Williams, deputy manager of the Oyster Bay refuge. Ms. Altschul, on Centre Island, agrees. "There's nothing worse than seeing islands where every 20 feet there's a dock sticking out," she says.

Ms. Altschul, of course, already has a dock—and with her house on the market for \$15.8 million, she's ready to cash in on the premium, which her real estate agent, Barbara Candee, estimates to be at least \$1 million. Others, too, are looking to take advantage. John Foster, a 55-year-old lawyer and developer, paid \$850,000 for a 12.9-acre parcel of land on Edisto Island, S.C., two years ago. The sale included dock rights—as long as he put one up by Dec. 31, 2006. Mr. Foster says he spent \$100,000 to build a 300-foot-long dock, even though he doesn't own a boat and doesn't plan to build a house on the lot until he's closer to retirement. Passing on the chance to build a dock, he says, would have been like throwing away money.

Besides, he adds, he likes having it. Occasionally, he'll drive the 100 miles from his home in Columbia, S.C., just to visit. "I sit on the end of the dock," Mr. Foster says, "and have a drink."



Billy Joel recently lost his battle to build a dock for his Centre Island estate.

A Rising Tide of Services

On the water and off, boaters have access to a range of high-end services. Here are a few offerings around the country.

NAME / LOCATION	DESCRIPTION	PRICE	COMMENT
Forty 1st North Newport, R.I.	Marina accommodates yachts up to 250 feet long	\$750 per foot per night for transient boaters	Billed as "how the other half docks," facility offers concierge service, free wireless Internet and two restaurants
Yacht Clubs of the Americas Fort Myers, Fla.	A network of boat clubs in Florida and the Bahamas	\$130k to \$250k for a dry slip; \$210k to \$1 million+ for wet slips	Members get access to boat storage at all locations. Clubs offer cigar lounges, fitness centers, cocktail bars and private chefs
Island Gardens Miami	50-slip mega-yacht marina and mixed-use project	Early projections are for \$3 to \$6 per foot per day	Marina will be part of a \$575 million project, due to open in 2009, with two hotels, 60 shops and 10 restaurants
Monocle Fractional Yachts Fort Lauderdale, Fla.	Fractional ownership shares in 100-300-foot yachts	\$500k for a 10% stake in a 100-foot yacht, plus maintenance fees	Owners get access for four weeks a year. Shipboard amenities include hot tubs, media rooms and live-in staff, including private chef
Four Seasons Ocean Residences; Magellan Residential Cruise Line	Luxury residential cruise ships	\$1.875 million to \$39 million for fully owned units; Magellan has fractionalists, too	Set to launch in 2010, amenities will include restaurants, spas, and aboard the Magellan an on-board astronomer. The Four Seasons will have 112 residences, the Magellan 212